THE LAW TIMES:

THE

JOURNAL AND RECORD

OF

THE LAW AND THE LAWYERS.

FROM MARCH, 1852, TO SEPTEMBER, 1852.

VOLUME XIX.

LONDON:
PUBLISHED AT THE OFFICE OF THE LAW TIMES,
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1852.

THE
LAW TIMES REPORTS
OF
All the Cases Argued and Determined
IN ALL THE
COURTS OF LAW AND EQUITY, IN BANKRUPTCY, INSOLVENCY, NISI PRIUS, THE CRIMINAL COURTS, AND IN IRELAND,
FROM MARCH, 1852, TO SEPTEMBER, 1852.

VOLUME XIX.

THE REPORTS IN THIS VOLUME ARE CONTRIBUTED BY THE FOLLOWING GENTLEMEN:—

HOUSE OF LORDS, by W. H. BENNETT and JAMES PATERSON, Esqrs., Barristers-at-Law.

PRIVY COUNCIL, by JAMES PATERSON, Esq., Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT.—LORD TRURO, by R. G. WELFORD and OWEN TUDOR, Esqrs., Barristers-at-Law; LORD ST. LEONARD'S, by C. H. KEENE, Esq., Barrister-at-Law.

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1852.

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OF THE

14th and 15th VICTORIÆ, contained in this Volume of the LAW TIMES, showing whether they relate to the whole or to any part of the United Kingdom, viz:

E. signifies that the Act relates to England (and Wales, if the subject extends so far.)

W. - - - - - -	Wales, exclusively.
S. - - - - - -	Scotland.
I. - - - - - -	Ireland.
E. & I. - - - - -	England and Ireland.
G. B. - - - - -	Great Britain.
G. B. & I. - - - -	Great Britain and Ireland.
U. K. - - - - - -	The whole of the United Kingdom

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To Readers and Correspondents.

"Owe, &c."—*Thanks for the notice of the perjury case at Worcester. We hope to have a report of it from our reporter.*

"T. D."—*There is no book that gives the information sought, such have been the changes in the law. But he will find the latest list of books, for articled clerks' studies, in the articles entitled "The Attorney," in Vols. XII. to XV. of* Law Times.

"Lex."—*It would not pay. It would be too expensive.*

"J. E." (Leeds).—*The substance of his appeal to the Attorneys, to avail themselves of the general election to enforce their claims, has already appeared in leading articles.*

"A Barrister."—*We speak of a fact, and not of our wishes, when we say that Law Reform during this Session is hopeless. It is notorious that a dying Parliament will not give it attention; wherefore, then, should it indicate any lukewarmness to say so? Our correspondent's is, however, a very common failing; he is guided by his desires rather than by his reason.*

We cannot undertake to return rejected communications. Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith.

No notice can be taken of anonymous communications.

THE LAW TIMES.

SATURDAY, MARCH 27, 1852.

LAW OF WILLS.

The Lord Chancellor has lost no time in addressing himself to this important subject. He has already introduced a Bill to amend the Law of Wills, so far, at least, as to remove the doubts in which it has been involved by some recent decisions. The principle of the proposed amendment is, that a will shall not be avoided by reason of defects in the *form* of execution, provided the Court or Jury shall be of opinion that it was *substantially* done according to the provisions of the Legislature. As soon as we receive a copy of this salutary improvement in the law we will lay it before our readers.

THE ATTORNEYS' TAX.

An opportunity offers for obtaining the justice so long denied, such as may not again occur for many years. A general election is near, candidates are already canvassing, the assistance and votes of the Lawyers are everywhere sought.

They have a plain duty to perform to themselves and to their Profession.

Let them not give either help or vote to any candidate who will not distinctly pledge himself to support the abolition of the Attorneys' Tax.

We admit that the principle of exacting pledges is a bad one, if applied to political questions, because these are necessarily to some extent questions of expediency, and their application must be determined by facts that are continually varying. Otherwise it is with such a question as that of a particular tax imposed upon a *particular class*. That is not a question of expediency or of time, but of right and wrong, or as it might be more appropriately described, of right against might. A special tax imposed upon any class, and from which other classes are exempt, is the rankest tyranny of the strong over the weak,—of the many over the few; for what is it but taking money from the pockets of those who are thus singled out for oppression, for the relief of those who are exempted? Suppose that the people under the height of six feet, being an overwhelming majority of the inhabitants of a country, were to impose a tax upon all persons above six feet in height—thus availing themselves of their numbers to make a few contribute to the funds of the State more largely than themselves; would not all agree that this was an act of intolerable tyranny and wrong, and would not the taxed tall men be justified in using all lawful means to relieve themselves from the iniquitous burden? And such *is* precisely the case with the Attorneys' Tax. The majority have inflicted it upon a small minority; the minority are bound to resist the injustice, and to employ all the powers they possess for its overthrow. If they do not help themselves, others are not likely to help them, because the rest of the community, who are relieved from taxes to the extent of the *extra* tax put upon the Attorneys, cannot be expected to volunteer to take the burden from the shoulders which now bear it, however wrongfully, and put it upon their own. It is not tax-payers' nature, nor human nature, to be so self-denying. Therefore must the sufferers rely upon themselves alone for redress; they will obtain a great deal more by using the *power* that is in their own hands, than by any appeals to justice, however eloquent or unanswerable. *They have the power to command* that which hitherto they have humbly sued for in vain. If they fail to put it forth, everywhere and resolutely, permitting no evasion, and taking no denial, they will have themselves only to blame for the continuance of the unjust burden even for another year. It is *certain* that if the Attorneys will but act together, now in this one matter, for their common interest, and, while differing as much as they please on all political questions, will resolve that *no* candidate, whatever his party, who will not *distinctly pledge himself* to vote for the repeal of the Attorneys' Tax, shall have help or vote from *any* of *them* at the approaching elections, the justice for which they have been so long striving will be *secured*; if they fail in this duty, the tax will probably continue to oppress them for many a year to come.

It would be well for the Attorneys' Clubs and Law Societies throughout the country to hold meetings on this subject, of such great present interest to the Profession, and endeavour to bring about a general agreement among their members, as to the course that shall be pursued by them at the coming elections in relation to the Attorneys' Tax.

SECURITY OF TITLES.

So long as Lord St. Leonard's sits on the woolsack there is no danger of another Registration Bill; but as the tenure of his office is very uncertain, it will be prudent to occupy the leisure thus afforded from the task of combating the details of a particular scheme, in deliberating what other measure might be adopted which might obtain the same desirable object by less inconvenient and costly means.

The end sought is, to prevent the cost of an inquiry into an entire title to a property every time any portion of it changes hands.

This was proposed to be effected by a compulsory registration of every dealing with the property from a certain future day.

To this there were two principal objections; first, that for the next half century, at least, it would still be necessary to investigate the titles previous to the commencement of the register, so that the present cost of making a title would actually be *increased by the addition* of the costs of registration; second, that the cost of registering the conveyances of very small properties would be extremely burdensome, and that the burden would be imposed equally upon the best and clearest, as well as upon the most equivocal titles.

These objections were, in the estimation of those best informed upon the subject, that is to say, the *actual practitioners*, the Attorneys, who *alone* know what *are* the *real costs* of conveyancing, fatal to the proposed scheme of registration, and to any that has yet been devised, unless accompanied with some plan for clearing up *existing* titles, and for facilitating the transfer of land by compulsory arrangement of *interests* in it.

The great cost of the conveyance of land arises not from the deed of conveyance, but from the *investigation* and *proof of title*, and title *must* be investigated, because the law recognises the right of the owners of land to *charge* it with liabilities beyond the rights of the possessor for the time being, who, therefore, takes it subject to those claims.

Whether it is wise to permit land to be thus charged is a question not now under consideration, although it is one upon which a good deal might be said on some future occasion. Enough, now, that *so it is*, and therefore to the extent of the period that the law permits a charge to extend, there *must* be investigation, in order to ascertain if any such charge exists, otherwise a purchaser or mortgagee, who must take subject to the charge would incur a loss to the extent of that charge.

But this is only *one* of the costs arising out of the permissive power to charge land. If charges are discovered, they must be removed, as no good title can be made. This is usually a still more costly process; the persons having charges, however numerous, must be found, and paid off, and made parties to the conveyance. But it often happens that some of those persons are dead, and then their legal representatives must be sought, and empowered to discharge *their* claims upon it; deaths and heirships must be *proved*, that it may be ascertained who *are* the proper representatives of the deceased; then, it may be, that some of the claimants are minors, and they cannot convey at all.

These are the practical causes of the complaints so freely made of the cost of conveyancing, and, until some provision is made for these, there *can* be no great diminution of the expenses. It is not the fault of the Attorneys, but of the Law they have to deal with. In justice to the Profession, it *must be* asserted, that *they* are very desirous that conveyancing should be facilitated and cheapened, and would be glad to see a remedy for the evils we have described. It annoys them often, as we know, to be *obliged* to put their clients to such cost, in order to investigate or make a title; but they cannot help themselves; often they will incur responsibility, and hazard their own liability, in accepting a title that might be questionable, because they will not put upon their clients the cost of a strictly legal proof, or enforce the requirements of the conveyancer.

It is, therefore, a question of very much more interest to our generation than that of Registration, whether it might not be possible to devise means for facilitating the conveyance of land, by removing some of those obstacles to it which we have above described, and we have

some suggestions for that purpose, which we will submit to our readers in another article.

SKETCH OF THE SCOTTISH LAW COURTS.

ARTICLE SIXTH.

JUDGES OF THE FIRST INSTANCE.

As we stated in our last article, a leading feature o: the Scottish judicial economy consists in the divi sion of the Superior Court into judges of the first instance, and Chambers of Review—an internal relation, which, in some respects, resembles that subsisting between one of the Common Law Court: here and the Exchequer Chamber, or between Vice-Chancellor and the Lords Justices of Appeal. This is so ancient and well-established a division of labour in the Scottish Courts, and so popular and well regulated has it become, especially of late years, that we believe the public in that part of the realm would not now lightly consent to part with it. Amid all the changes projected within the last half century, which have been neither few nor small, it has never for a moment been seriously proposed to interfere with that branch of the administration of the law appropriated to judges of the first instance and the weight of authority has always been for maintaining it unimpaired. Lord BROUGHAM long ago recommended the same plan as well worthy of the imitation of this country; and it may be observed, that the changes proposed by the present Chancery Commission, with a view to dispense with the Master's offices, are a near approach to this consummation.

It is of course not to be denied, that there are points in the general procedure of the Scottish Courts, not exactly compatible with the present position of our courts here. But there have been gradual improvements of late years, and at present the procedure, as far as relates to the judges of the first instance, is so eminently satisfactory, that in one half of the cases the decision of these judges is acquiesced in, and no further step is taken in the way of appeal. As it has been of late here also in several quarters proposed, that a Master of Court might discharge beneficially a similar function in relation to the pleadings in our Common Law Courts, by way of a substitute for special pleadings, it may be well to look a little more minutely into what may be said in favour of that proposal, as far as any light can be thrown upon it by the practice in Scotland.

The most obvious advantage of having a Judge, or officer, of the highest skill and authority, for the preliminary purpose of sifting the causes that enter the court, and preparing them for the decision of the Court of Review, must resolve itself in one form or other into this, that it is the least expensive mode of administering justice. Of course such an arrangement must be considered as correlative to an untechnical system of pleading, by which is meant pleading more or less at large. The outcry, which now attends the practice of special pleading, seems to resolve itself into an objection as to expense. It is obvious that we may make our system too scientific,—that we may attain a precision of movement at the expense of too complicated a machinery,—that we may indulge in distinctions too nice for the popular sense of justice,—and that the cost of victory may outweigh the satisfaction which ought to attend it. If, on the other hand, we abandon special pleading, the most natural recourse is, both to allow the parties to state the facts as briefly as possible, and to have a Judge or other officer to superintend these statements, for the purpose of punishing impertinence. By the former method the parties can go on exchanging pleadings, and working out an issue to their own satisfaction, without the intervention of the Court: by the latter, the intervention of the Court seems indispensable. We have had experience of the one system; the Scotch have had experience of the other. The general characteristic of our whole administration of justice, as contradistinguished from theirs, is its greater subdivision. If we may attach importance to the opinion of the public, as in these latter days we must undoubtedly do, we have carried this subdivision too far. The Scotch may, on the other hand, have erred in subdividing too little. It is true, they indulged at one time, by their own confession, in an alarming latitude of pleading, and latterly they have been cultivating a more rigorous brevity: still it is not a self-sustaining system into which they have settled. They possess the experience, therefore, of travellers, who have come from the opposite pole—the pole of latitudinarianism. We have exhausted the rigours of a severe, pedantic, and inflexible system, and finding it unsatisfactory, have a tendency now to relax ourselves. It is possible the true golden mean may lie between these extremes, and accordingly, the experience of the Scotch as to their Judges of the first instance, cannot but be acceptable information.

While we have been cultivating a one-sided talent for special forms of justice, the Scotch have enjoyed the comprehensive plan, which undoubtedly has a tendency to breed a larger and more liberal study of jurisprudence, inasmuch as they consider that every one who is promoted to the office of a judge ought to be prepared for all the duties which justice requires to be performed. In attaching this condition to judicial appointments they do not consider that they throw any obstacle in the way of professional ambition, nor that the country will lose the services of many able and highminded men, who would rather sacrifice emolument and station than adventure to discharge duties to which they feel themselves unequal, or rather than hazard in one department the reputation they have acquired in another. Those who are possessed of a special and exclusive genius for one particular department are better adapted to be teachers of law than administrators of justice. The tendency of their system, therefore, they consider to be chiefly towards widening the course of moral and intellectual culture. Under any other each man is apt to humour his own inclination, and restrict himself to that path to which his momentary bent lies, to the neglect of that large study of his profession, and that completeness of knowledge in principle and practice which is necessary to accomplish the character of a great lawyer and judge. The field of training is widened, and when a fitness for all professional duties is expected from every one, the best discipline will be as throughly ensured as judicial preferment will be looked forward to by most men as the termination and reward of their professional life.

As all the Judges of the Superior Court of Scotland, with few exceptions, are thus called upon to discharge the same duties, and as the Court possesses a jurisdiction embracing at once every thing proper to our Equity and Common Law, as well as Admiralty and Consistorial Courts, the Judge of the firstinstance requires to possess ascomplete knowledge while he enjoys the same *status* as the Judges of the Court of Review. All kinds of cases come before him. An action of debt, a creditor's suit, a bill to set aside a deed for fraud must alike be instituted and prepared under his eye. He sits as a Judge at Chambers at all times, and grants all necessary applications arising incidentally out of the suit for whatever purpose. At each step almost the parties appear before him and take his commands or await his sanction.

It is in the option of the plaintiff, in original cases, and now in appeals from the County Courts for the respondent, to choose not only the particular Judge of the first instance before whom his case is to go, but also the Chamber of Review, to which it may be afterwards desirable to appeal. Formerly, these single-handed Judges were attached to one or other of the two Inner Chambers, and consequently by choosing any one Judge, the suitor was bound to go also before the Inner Chamber to which that Judge was attached. But it was found desirable to break this connection, and now accordingly the choice of both courts is unrestrained. This is found to be a very valuable privilege; and when it has frequently been proposed to take it away, great opposition and dissatisfaction has been excited. The effect of allowing the choice is undoubtedly to create a run of business towards one or two favourite Judges; and Lords JEFFREY and MONCREIFF in their time pointed in vain against the ever increasing load of cases piled up at their door. The amount of labour thus kindly imposed by the confiding suitors on the best Judges was often felt to be a grievance, and plans were often projected with a view of enforcing the rule of rotation, and thus equalizing the burdens. The evil, however, was at last left to cure itself. One good effect has been said to flow from this unconfined election of the suitor, that it tends to secure a supply of the most able Judges; for the moment a barrister is appointed who does not command the general confidence, the scanty and odiously select list of his cases will at once attest this fact. On the other hand, the fickleness only of popular applause has often been demonstrated by these proportions. Be that as it may, however, to attempt nowadays to deprive the Scotch suitor of the choice of his Lord Ordinary, would be to pluck up justice by the roots.

It has been objected to the plan by which Judges of the first instance are exclusively and permanently confined, each a separate court; that their valuable assistance is thereby lost in the ultimate decision of the causes. It is said with some truth, that the intellect and judicial habits of the Judge are never so well cultivated and improved, as when he discharges his duty along with others, and forms part of a deliberative Court. Though some weight is due to this objection, and though it has been frequently considered in Scotland, with a view to an improvement, yet it has been found on examination that no plan could be adopted which would not be followed, not merely by great inconvenience in practice, but by the disadvantages attending a fluctuating court, and by other evils much more immediate and extensive than any which such a change could be hoped to remove.

While the Judges of the first instance have been so undeniably popular in performing their part in the administration of justice, it has occasionally been objected, that the practice has been carried too far of engrossing such Judge's time with mere matters of form, to the delay of the more important business. By relieving the Judge, therefore, of much of this routine, and by improving the process of preparing the pleadings, it has been sought of late years to obviate this objection gradually. At the same time, the vigilant superintendence which is exercised by him in the preparatory stages of the suit—the opportunity afforded for more severe and anxious discussion—the judicial talent and experience employed in the investigation and decision—and the manner in which causes arrived in the Inner Chamber, matured for judgment, were so strong and obvious recommendations, that it was feared, lest by tampering with the minutiæ they might impair the efficiency of this branch of the Court. Accordingly, it was some time before the force of this objection came to be met effectually, which may be said now, however, almost to be done, as we may shew in our next article on pleading.

Further, however, with respect to this same objection, which is the one which most readily occurs to ourselves, viz. that it is a waste of high judicial skill for a Judge to sit alone and perform all the duties incidental to the pleadings; it may be said, that the record and its final adjustment may be safely entrusted to some officer of the Court, such as the Master. Some think that it is no part of proper judicial duty to prepare the case, but that the Judge should confine his attention solely to the decision. That, moreover, it is difficult for a Judge to assist in the preparation of a case without forming some opinion of its merits, before he has an opportunity of hearing it argued in all its bearings, and is in a condition to apply his mind to it judicially. To this it has been replied, that any officer of the Court, on whom so important a duty might be imposed, would require to be possessed of qualifications equally high with those of the Judge, by whom the case is to be finally decided. And even if it were not difficult to find a general officer fully qualified, still he could never have the same weight and authority, and the same means of repressing scandalous and impertinent matter, as the Judge, nor would his suggestions be equally well attended to. It is true, an appeal might be given to the Judge against any proceeding of the master, or officer, in the preparation of the record; but if such applications were to be frequent, they would be the source of increased expense and vexatious litigation, and take up as much of the time of the Judge as would be required if the adjustment were wholly intrusted to him. If, on the other hand, it could be anticipated that there would be no such frequent appeals, this could only arise from the circumstance that practitioners would become more slovenly in preparing their pleadings, a result to be strenuously averted. In other words, the Master would only cut and square all records whatever to one system, and the only way to avoid objections would be generality. Besides, judicial business is never well done by an irresponsible officer, who has none of the proper duties of a Judge to perform, and there would often be entrusted to him most important motions, which involve material questions as to the *onus probandi*, which it would be absurd to expect him to decide effectually.

Such were the reasons, that prevailed in Scotland, against withdrawing from the Judge in person the superintendence of the pleadings, and [illegible]t delegating so important a discretion to an [illegible]r officer, the importance of which we can, however, scarcely appreciate, inasmuch as our system of pleading is self sustaining, and does not

require the help of the Court at all. It was found that nothing but the presence of the Judge could supply a wholesome stimulus to the practitioners, so as to exclude objectionable matter, and though it was found an irksome duty for the judge to perform, still that it behoved to be done, as being upon the whole, the best, the promptest, and the cheapest method to the public of obtaining the end proposed. It is obvious, indeed, that our own experience in this country of the virtues of a Master in Chancery, who in some respects resembles the functionary proposed in Scotland to be substituted for the judge of the first instance, can corroborate the propriety of this conclusion. The expense and delay of references back and forward between the Court and the Master, and the want of authority obvious in the latter, when discharging judicial functions, have with other infirmities, led at last to the long-meditated and now approaching abolition of the entire system of which these Masters and their offices were the most corrupt branch.

In reference to appeals from the County Courts, it came to be a question, whether these ought to go through the ordeal of a preliminary investigation by the judges of the first instance. Great complaints at one time prevailed among the country attorneys, that when their cases were brought up from the County Court, they became subject to a temporary detention at the porch of the Superior Court, before advancing to the scrutiny of the Inner Chamber. They thought this an unnecessary and superfluous stoppage in the transit. This source of complaint was accordingly investigated, and yet so enamoured were the Scotch Law Commissioners of this preliminary process in the Outer House, that they could not find it in their heart to make any exception in favour of these appeals. Their chief reason was this, that inasmuch as the unskilfulness of County Court pleading was not a rarity and as the necessity of a remit from the Inner Chamber would be frequent to get the record amended it would come to be more expensive in the end to allow these importations from the country to come to the Inner Chamber without previous scrutiny. Further, it was alleged, that as there was always an argument by counsel on each case before the Judge of the first instance previous to his decision, there would thus be a second argument before the Inner Chamber, and that two arguments were always more desirable than one. These reasons fully prevailed at the time, but it may be remarked, that the late statute has effected a partial retreat from this position, inasmuch as they now allow all appeals from the County Courts—which are in the nature of writs of error—to be brought direct to the Inner Chamber, if either party desire it. The same privilege is bestowed on appeals from the County Courts sitting in Bankruptcy.

As was stated in our last article, there are two ways, in which a case passes from the Judge of the first instance into the Inner Chamber. If he thinks it a very important and difficult question which is involved, he has it in his power to hand the case over after superintending the preparation of the Record, and without himself giving any decision. But, in the great majority of instances, he hears counsel after the record is made up, and reserves judgment for some days. He then produces this judgment which is in the shape of a brief formal Interlocutor, to which is appended what is called a "Note." This Note is, in fact, a lucid and able statement of the grounds of his decision, and consists of a review of the arguments and cases cited at the bar, and of the authorities generally. When the case is appealed to the Inner Chamber, copies of the pleadings and of this Interlocutor and Note of the Judge of the first instance, are the documents submitted to the Judges there, who hear the case argued again, and thereafter give judgment,—affirming, reversing, or altering the Interlocutor alluded to.

In our next article we shall describe the mode of pleading adopted in the Superior Courts of Scotland.

THE LEGISLATOR.

Imperial Parliament.

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BILLS READ A FIRST TIME.

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Repayment of Advances Act Amendment
Marine Mutiny.
Secretary of Bankrupt's Office Abolition
Apprehension of Deserters from Foreign Ships.

Tuesday, March 23.

Parish Constables
Building of Churches, &c.

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Passengers' Act Amendment
General Board of Health
Office of Messenger to the Great Seal Abolition
Improvement of Towns, Ireland
Friendly Societies, No. 2

Wednesday, March 24.

Corrupt Practices at Elections.

BILLS READ A THIRD TIME AND PASSED.

Friday, March 19.

Personal Estates of Intestates.

Tuesday, March 23.

Consolidated Fund, 8,000,000*l*

Thursday, March 25.

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Differential Dues.

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Thursday, March 25.

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HOUSE OF LORDS

THE LAW OF WILLS

TUESDAY, March 23.—The LORD CHANCELLOR—My lords, I rise to move the second reading of a Bill for the amendment of the law with respect to wills. When I introduced this Bill the other night I stated to your lordships the difficulties which it was intended to guard against. By a statute passed in the reign of Charles II all devises in writing were to be attested and subscribed by three or four witnesses, in the presence of the testator and it was said that a will was good if the name of the testator was found at the head of the will, and therefore, if a man, for example, began in these terms,—"I, John Styles, do make this my will," that was held to be a sufficient signature. Now, my lords, this was thought to be an abuse, and, in order to guard against such an abuse, a new Act of Parliament was passed in the first year of her present Majesty for the amendment of the law of wills, which provided that every will should be signed at the foot or end thereof by the testator, in the presence of certain witnesses. I had stated to your lordships that the effect of that enactment was (and I dare say it was a surprise upon those who framed the Act,) that unless the name of the testator followed immediately after the disposition of the will (if there was, for example, a little more than an inch of space left, on which the name might have been introduced), if the name was placed a little lower, the case was tried, not by the rule of law, but, rather, by the rule of space, and the will was held to be void; and upon that construction, my lords, hundreds of wills have been held to be invalid, and misery and wretchedness have found their way to hearths, where wealth, and peace, and comfort ought to have found their habitations. My lords, the proposition is to amend the present law by providing that where the name of the testator is found, after the will, so as to give, by its place and situation, a sanction to the will itself—so as to shew that it was intended to sanction the will by the signature after the will—that shall be held to be valid. My lords, there are other points which I have endeavoured to cope with, and which may be open to more observation, and which may draw from some of my noble and learned friends objections to its passing without more mature consideration; and, my lords, if that should be so, I can only say that I should at once feel myself bound to withdraw those clauses, because I mean to put forward nothing that in my opinion shall endanger this measure, which is one which I think so exceedingly important. My lords, the two clauses to which I refer will, I think, remedy a very great abuse. The Act of Parliament of her present Majesty, as I have told your lordships, requires a will to be signed at the foot or end thereof, in the presence of two witnesses. That, my lords, I have disposed of. It then goes on to require that the signature of the testator shall be made or acknowledged in the presence of the witnesses. Now, my lords, this difficulty has arisen upon that,—it was not required by the Statute of Frauds, but this difficulty has now arisen. Your lordships will bear in mind that what the Act requires is, that the signature of the testator shall be made or acknowledged in the presence of the witnesses. Now, my lords, it often happens that when a man has made his will and called in the witnesses to attest it, he is anxious that they should not see any part of the provisions of that will,—suppose, for example, that it is written on a sheet of letter paper,—you have it before you, and two servants, perhaps, come into the room to witness the will, and the testator desires that they should not read any portion of the will by glancing over that part which is above the signature, and that has induced a man frequently to fold down the will so as to hide from the witnesses the portion above the signature, and in doing so they have folded down the signature itself. And, my lords, it has been held that as the statute requires that the signature, not the will, should be made and acknowledged in the presence of the witnesses, unless they have seen the signature the will is void. Now, my lords, that was never the intention, and with your lordships' permission I propose to amend that state of the law in this manner, by enacting that if the signature of the testator be in its proper place, and it is not proved to have been placed there after the witnesses affixed their signatures, and if the testator at the time acknowledges the instrument to be his will, that that shall be sufficient. My lords there is another improvement, if your lordships should think proper to concur in it, that I propose to introduce. The statute requires that the witnesses should sign in the presence of the testator. And my lords it has very often happened, that when a man is making his will in extremis—when he is lying in bed, and is incapable of being moved, but still in a state of perfect capacity of mind—it has frequently happened that witnesses who have come round the bedside and witnessed the execution of the will, and seen it signed by the testator, all due solemnities been observed, in order not to disturb him, have retired to the adjoining room, and there attested the will, and then the question has arisen,—is that, or is it not, a compliance with the statute, which requires that a will shall be signed by the witnesses in the presence of the testator? Now, my lords, in order to meet the difficulties of the case—with a natural desire to give effect to men's wills, where there is no fraud, and where the statute has been substantially complied with, the Courts have made this distinction, that if the witnesses sign in such a position, in an adjoining room, that they are within the line of light, so that the testator, if he liked, might see them (although nobody pretends that he did see them), the will is good, but if they happen to retire a little way beyond the line of light, the table, for example, being out of view, and they all sign the will, then the will is void. Now, my lords, what has been the consequence? Why, my lords, this—that juries have not been found who would, though upon their oaths, find a will so signed to be void. They would not find a will to be void, though it was clear that the testator was not in a position in which he could have seen the witnesses sign. It will not be, perhaps, so easy to persuade some of my noble and learned friends that I have provided a satisfactory remedy, although I have often and anxiously taken the subject into my consideration; but, my lords, this is no hasty conclusion of mine. I have no doubt some of my noble and learned friends will think that I have not provided in the

most satisfactory manner for the solution of this question; but what I propose to provide is this, that where witnesses, without fraud, and as part of the same transaction, without quitting the house or place where the will is signed, do sign a will after seeing the testator sign it, all due solemnities being observed, that shall be held to be a valid will. Now, my lords, no doubt it may be said that this would open a door to some fraud or to a substitution of one will for another. My lords, these are not the dangers, after all, which we have to avoid. It may be said that because the dangers have not occurred these laws have prevented them. But the law has not stuck at fraud; the law has destroyed a man's which was open to no substantial objection. The law has not prevented the frauds which, whenever the parties have been determined to carry them into execution, they have been able to do so in spite of it. And, as I am addressing your lordships upon the subject, and speaking of future measures, I would draw your lordships' attention to a measure as to wills, which may require the attention of this and the other House of Parliament. The statute of the 1st of Queen Victoria for the first time imposed the same solemnities upon the disposition of personal estate as, in the time of Charles II. (with variations), were imposed upon the disposition of real estate; and it was said,—how very absurd is it that you cannot dispose of half an acre of land without three witnesses, and yet you may dispose of 100,000*l.* of personal estate, which is ever fluctuating, without any witnesses at all. Yet, people do not desire every day to alter their testamentary dispositions, but may make variations in the disposition of their personal estate by codicil or by legacy to be payable out of their personal estate, however large it may be; but now no man can make the slightest alteration in his will, he cannot give 5*l.* nor alter a certain legacy, without calling in two witnesses. It was said of a great man that the faults which we denounced in him died with him; but I might say with greater truth that owing to the difficulties which the law throws around them many codicils die even in thinking. These are points, however, which we must consider hereafter. The noble and learned lord then concluded by moving the second reading of the Bill.—Lord BROUGHAM stated that he had no objection to give a second reading to the whole of this Bill. He entirely approved of the course which his noble and learned friend proposed to take.—The Bill was then read a second time, and ordered to be committed on Thursday.

COUNTY COURTS.

THURSDAY, March 25.—Lord BROUGHAM said that last session there was a Bill before their lordships, and in which some progress was made, but the further proceeding had been purposely postponed, in order that the more important provisions of the measure might be fully considered during the interval—viz. those which related to the law of bankruptcy and insolvency. The County Courts Act had afforded incalculable relief in the cases of solvent debtors, but considerable evils still existed in cases of insolvency. Great advantages had arisen from the measure brought forward by his noble and learned friend (Lord Lyndhurst) in 1842. That measure was extended to the country before the establishment of the local courts. It was the original plan of the Bill of 1833, which had never passed into law, that the local courts should have jurisdiction in bankruptcy and insolvency as in actions of debt and cost; but as the Bill of 1842 established County Courts of Bankruptcy, before the new County Courts came into existence, the result had been that they had had two systems. Small creditors, in the country especially, felt the inconvenience of the present system very greatly. He knew a case in Leicester where there were eighteen creditors, and not one appeared to prove, as some of them would have had to travel a distance of 100 miles. The measure he was about to lay on the table had for its object to remedy this evil, by the consolidation of the two systems, so as to make the County Court Judges, in the manner proposed by the commissioners in 1841, go round their districts, with a view to work the different fiats at the residences of the parties interested.

The Bill was then read a first time.

LAW OF WILLS AMENDMENT BILL.

THURSDAY, March 25.—The LORD CHANCELLOR moved the second reading of this Bill, and said that he had omitted from the Bill the second and third clauses, which he had explained the night before, so as not to endanger the passing of the first and most important clause. He should, however, lay on the table a separate Bill containing the other two clauses.—The House then went into committee on the Bill.—Lord CRANWORTH thought such a measure was necessary, in consequence of the decision of the Courts. The clause in the late Lord Langdale's Bill was very plain and clear, requiring that the signature of the testator should be placed at the foot or end of his will. Where the signature was a long way off it might be right to decide that it invalidated a will; but some of the decisions had been quite revolting, for it had been held that, if the signature was an inch below the writing of the will, the instrument was void. The Bill then before the lordships provided that, "if the signature should be so placed as after, or following, or under, or beside, or opposite to the end of the will, so that it should be apparent that the testator intended to give effect to the writing in the will by his signature," it should be valid. He thought that by all these enumerations fresh difficulties would be created. Some one would find some other way in which it could be done, and he suggested that the clause should be simplified by the omission of the enumerating words.—The LORD CHANCELLOR said the language provided for all the cases in which the Courts had decided that the signature so placed rendered the will void.—After a few words from Lord LYNDHURST, which were inaudible, the Earl of ELLENBOROUGH suggested that a committee should sit to-morrow to settle the phraseology in a satisfactory way.—The LORD CHANCELLOR said he had gone carefully, studiously, and elaborately through the subject; and he believed the phraseology to be accurate.—Lord BROUGHAM thought his noble and learned friend ought to feel much obliged to the noble lords who had brought the objection under his notice, because it would give him an opportunity of reconsidering the points which had been raised, and which he could deal with at a future stage of the Bill. He (Lord Brougham) would deprecate the sending of the Bill before a select committee, inasmuch as the result would only be to delay, without improving the measure.—The other clauses were then agreed to, and the House resumed.

HOUSE OF COMMONS.

COMMON LAW FEES REGULATION BILL.

WEDNESDAY, March 24.—Mr. BOUVERIE moved that the House should go into committee on this Bill.—The ATTORNEY-GENERAL said the Government could not give an unqualified support to the Bill. There were some alterations they wished to introduce.—After a conversation the House went into committee. Some of the clauses were postponed, the remainder were agreed to, and the House resumed. The Bill was ordered to be recommitted on Friday.

COMMON LAW FEES REGULATION (SALARIES).

The House went into committee on this subject, and the resolution was agreed to.

CORRUPT PRACTICES AT ELECTIONS BILL.

Mr. V. SMITH (in the absence of Lord J. Russell) moved the second reading of this Bill.—The ATTORNEY-GENERAL believed the Government did not intend to object to the passing of this Bill, and he should not offer any obstacle to the second reading. He, of course, reserved to himself the liberty to propose amendments in committee.—The Bill was read a second time, and ordered to be committed on Friday.

FEES OF COMMON LAW OFFICERS.

Mr. WALPOLE gave notice, to move for leave to bring in a Bill providing for the payment of the salaries of common law officers out of the Consolidated Fund, and for the regulation of common law fees.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

IT is remarkable that so few cases in this branch of the law should occupy the Courts. When we reflect upon the number and variety of matters that are placed under the jurisdiction of Magistrates, and the many thousands of cases decided by them every month, in which an appeal lies from their decision, we cannot but be astonished that those appeals should be few. The fact certainly speaks trumpet-tongued on behalf of those courts, in which justice is administered promptly and cheaply, and argues, with the evidence of a fact that cannot be denied, that practically a non-legal Magistracy to dispense law is not so great an absurdity as it appears. The reason for this is, that the Magistrates are usually guided in questions of law by their clerk, and in questions of fact their common sense is, perhaps, a better guide than the lawyer's learning. unfrequency of appeals is equally creditable to them and to their legal advisers.

One case only, and that in *Criminal Law*, was reported last week. *Reg.* v. *Rowlands*, 18 Law T. Rep. 346, was an indictment for a conspiracy to violate the provisions of 6 Geo. 4, c. 129, s. 3, and it was held to be sufficient if it followed the words of the statute, and charged the defendants with "conspiring by unlawfully molesting" the hired workmen of A. "to force the workmen to depart from their hiring and employment," without stating the specific means of molestation.

Sir JOHN PAKINGTON, we understand, purposes to proceed with his Beer Houses Bill in the new Parliament. We are also informed that a measure for the general regulation of Highways and Turnpikes is contemplated by the present Government, should they continue in office after the elections.

JOINT-STOCK COMPANIES' LAW JOURNAL.

The Great Northern Railway Company v. *The Manchester, &c. Railway Company*, 18 Law T. 344, was a question on the construction of an agreement made between the two companies, as to the right of running engines and carriages over each other's lines. No term was specified over which the agreement was to extend, excepting in one clause, which limited to three years the engagement made by that clause. The agreement, with that exception, was held to be permanent, and not revocable at the will of either party, although no mention was made of *successors.* "The word 'successors,'" said Vice-Chancellor PARKER, "was not a word which was at all material when dealing with rights to be conferred on, or acknowledged to be made to, a body corporate. The word 'company' meant a body which was to exist for ever."

A question as to whether a society for certain purposes was a joint-stock company requiring to be registered, was raised in *Bear* v. *Bromley*, 18 Law T. Rep. 347, reported from Nisi Prius. The society consisted of 100 members, who held shares of 40*l.* each. The society made loans to its members, which were given to the highest bidder. The premiums paid for the loans and the fines for non-payment of instalments, were paid into the funds of the society. Lord CAMPBELL reserved the point.

PUBLIC POLICY *v.* PRIVATE POLICY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In addition to the objection against policies issued by certain modern offices, on the ground of their expressed *indisputability* on the score of *fraud*, may be added *another*, to which public attention might usefully be drawn, viz. that many such policies are expressed to be payable, "death by duelling or by the sentence of the law" to the contrary notwithstanding. Now in *Amicable Society* v. *Bolland*, 4 Bligh, N.S. 199, it was stated that if a man insuring his own life were to introduce a stipulation that the policy *should* be payable in such event, it would be void, as against public policy; though in consequence of *Schwabe* v. *Clift*, 2 Car. & K. 134, the point cannot be declared entirely free from doubt. I am, Sir, yours, &c.

Warnford-court, March 29, 1852. J. M.

WINDING UP.

MADRID AND VALENCIA RAILWAY.—On Friday, 19th, before Master Blunt, the inquiry into the claims of those shareholders entitled to participate in the dividend of 15s. were further gone into, and all the cases finally settled. This completes the protracted process of "winding up" the company, which has been going on since Jan. 1850. It is understood that the payment of the 15s. per share will, including costs, absorb the 25,000*l.* in hand. Further assets under the estate are expected to be realised under the agreement of compromise effected with the directors, and from which an additional dividend will accrue, but these latter transactions are likely to extend over two or three years to come.

JOINT-STOCK COMPANIES.—The report of the Registrar of Joint-Stock Companies to the Board of Trade for the year 1851, has been printed in a Parliamentary paper. There were 211 companies provisionally registered in the year. The number completely registered in the year was 63. The number provisionally registered and not completely registered was 187. The fees received at the head office in London in the year amounted to 3,178*l.* 17s. 10d.; and at Dublin (the branch office), 113*l.* 11s. 3,292*l.* 8s. 10d.

GLOUCESTER, ABERYSTWITH, AND CENTRAL WALES RAILWAY.—On Friday, the 19th inst. the inqu..., calling on the directors to account for the 40,000*l.* entrusted to them, was resumed before Master Tinney. Mr. Williams, clerk at Glyn's; Mr. Hawker, the secretary; and Mr. Hill, the solicitor of the company, were examined at length, and eventually the Master allowed the charge as against the directors, giving them three weeks to file a discharge.

THE GOLD MINING MANIA.—It appears, from the returns of the Registrar of Joint-Stock Companies, that no fewer than fourteen gold mining companies were registered during 1851, up to Dec. 31. Their titles were: Anglo-Californian Gold Mining Company, Agua Fria Gold Mining Company, Australian Gold Mining Company, Quartz Rock Mariposa Mining Company, Golden Mountain of Mariposa Mining Company of California, Australian Gold Amalgamation Company, Bathurst Gold Mining Company of Australia, East Mariposa Gold Quartz Mining Company, Royal Gold Mining Company of Australia, Ophir Gold Mining Company of Australia, Ave Maria Gold Quartz Mining Company, Australasian Gold Mining Company, Royal Australian Gold Refining and Mining Company, and London and Californian Gold Quartz Crushing Company. The return does not embrace the gold mining companies projected since December last.

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

Arigna Iron and Coal Company.—Creditors to come in and prove. (*Gazette*, March 23.)

British and American Steam Navigation Company.—Call of 66*l.* per share, on 1st of April.—Rose.

Universal Gaslight Company.—Further call of 5*l.* per share, on 29th of March.—Rose.

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

A *donatio mortis causâ* is now-a-days extremely rare; the reader will, therefore, peruse with more interest the case of *Stainland* v. *Willott*, 18 Law T. Rep. 338, in which it appeared that a person, supposing himself to be dying, transferred to another as a gift some shares in a company. But he did not die, although he never recovered his senses, and continued a lunatic. It was held not to be a good gift *mortis causâ*, and that the transferee held the shares only as a trustee for the lunatic, and was bound to retransfer them. In this case the defendant was severely reprimanded for taking the transfer with the aid of his own solicitor only, and without calling in the aid of the solicitor to the donor to protect him. The case is well worth reading, as an excellent review of the law on this subject, and we especially recommend it to students.

The new LORD CHANCELLOR has reversed the decision of Vice-Chancellor BRUCE, which we reported some time since, in *Letts* v. *London Corn Exchange*, 18 Law T. Rep. 340, where the plaintiff, rector of the parish of St. Olave, was entitled by statute to 2*s.* 9*d.* in the pound upon the annual value of all houses in the parish in lieu of tithes, and the company had taken down a number of houses and built the Corn Exchange on their site, and agreed with the rector to pay him 90*l.* a year in lieu of such tithes, which was received by him from Lady-day to Christmas 1837, when he died, and the plaintiff, his successor, claimed the tithe upon the annual value of the Corn Exchange. The Court below held that this property was liable only to the extent of its previous value as houses. But now, upon appeal, the LORD CHANCELLOR reversed the decision, and held that the tithe was payable upon the *present* value.

In *Briggs* v. *The Earl of Oxford*, 18 Law T. Rep. 341, the LORDS JUSTICES have held that an agreement by the persons beneficially interested in the equity of a redemption of a wooded estate which had been made the subject of a settlement, that no person having a limited interest should apply any of the wood to his own purposes until the corpus of the estate had been freed from incumbrances, was a valid agreement, and did not trespass against the law of perpetuity.

The case of *Paterson* v *Scott*, 18 Law T. Rep. 343, is of unusual interest in the *Law of Wills*. A. by will directed that his debts and testamentary expenses should be paid out of the fund thereafter provided for payment thereof. He then devised his real estate to trustees for sale, and directed them, out of the proceeds, to pay his debts and funeral and testamentary expenses, and to hold the residue on certain trusts. He then bequeathed his personal estate, after payment of debts and funeral and testamentary expenses. The personal estate was held to be the primary fund for the payment of debts. Also, that the doctine of *marshalling* was applicable in favour of legatees and annuitants. "If, though specifically devised, the land is made subject to all debts, that distinguishes the case, for there is a double fund; and as by that denotation of intention the creditor has a double fund—the land devised and the personal estate—he shall not disappoint the legatee." This was a dictum of Lord ELDON, and the Court of Appeal has now confirmed it.

In the law of *Landlord and Tenant*, there is another case reported from Nisi Prius. Apartments were held under this agreement, that plaintiff "should hold the premises until one of the said parties shall give to the other of the said parties six calendar months' notice in writing." It was held by Lord CAMPBELL, C.J. that the tenancy might be determined at any time by six months' notice, and that it was not necessary that the expiration of the tenancy should be at the same time of the year that it began. (*Doe dem. King* v. *Grafton*, 18 Law T. Rep. 347.)

The liability to *Legacy Duty* under the following circumstances was decided in *Reg.* v. *Sir D. Norreys, Bart.* 18 Law T. Rep. 352. A. having an annuity for life, assigned it to B. and his heirs. B. died intestate in the lifetime of A. It was held that the annuity descended to the heir-at-law, and did not pass to the next of kin, and that therefore the administrator was not chargeable for duty in respect of it.

Soar v. *Dalby*, 18 Law T. Rep. 352, was a case of some importance in the *Law of Mortgages*. A mortgagee agreed with the mortgagor to receive the rents of *part* of the property in payment of interest, and he continued to do so till the death of the mortgagor. This was held not to constitute him mortgagee in possession of *the whole* property. He was called upon, under the circumstances detailed in the report, to account for the rents and profits of the whole property, but the Court held that he was accountable only for that portion of it which was actually in his possession.

COUNTY COURTS.

Summary.

THE County Courts Extension Bill is sent down to the Commons. What is its chance of passing during this doomed session we know not, but we trust that an effort will be made to run it through its stages. Most of its clauses have already received the sanction of the present House of Commons, therefore there is no need for again discussing them.

An interesting case as to the liability of assignees in insolvency was reported in *Re Williams*, 18 Law T. Rep. 350. An assignee had put the funds of the estate in a bank which failed, and the money was lost. It was held that if the same care of it was exercised by the assignee as if it was his own, and there was no negligence, and he did not deviate from the ordinary course of business or practice, and debited himself with those funds as an ordinary account, he was not liable.

COUNTY COURT IMPROVEMENTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Your exertions to obtain the introduction into the County Courts Amendment Act, of a clause entitling a successful suitor to recover from his opponent the whole amount of his attorney's charges, induce me to call your attention to another evil, very similar to that which the clause in question is intended to remove, viz. that of fees for paying money out of court, being chargeable against the party taking it out.

It appears to me, that no reasonable argument can be adduced in support of such a practice, but that all the expenses necessarily incurred in litigation, ought to be borne by the losing party, and as the justice of this principle will, by the clause I have alluded to, be admitted so far as regards the attorney's charges, I hope you will urge its extension to the case of court fees.

Another desirable reform would be, that attorneys should be recognised throughout the proceedings in these courts, instead of being, as at present, entirely passed over on every occasion, except when appearing at the trial.

An attorney may enter a plaint, but if notice of set off, or of a special defence is given, it is sent to the plaintiff: if the defendant submits to the demand, he is only expected to pay into court the debt and the amount of court fees, without any fee for the attorney; and even if the attorney conducts the case at the hearing, and money is afterwards paid into court upon the judgment, notice is sent not to him but to his client. In fact, the system is, in this respect, consistent throughout, for after having advanced perhaps some pounds in payment of court fees, the attorney cannot receive a shilling out of court *as attorney* in the cause, nor without producing a written order, signed by his client, just as any mere messenger who is sent for the money must do.

Why should not an attorney in these courts be allowed to stand in the place of his client in all stages, and for all the ordinary purposes of the suit, just in the same manner as he does in the Superior Courts? If you will agitate this question you will be doing good service to the Profession and to the public. I am, Sir, yours, &c.

C. J. G. EILOART.

16, Great James-street, Bedford-row,
22nd March, 1852.

Answers to Queries.

BAILIFFS' FEES.

IN answer to the question put by your correspondent "B." in your journal of last week, as to the high bailiff's fee for possession under an execution for costs on a warrant to give possession of a tenement, there can be no doubt that he is only entitled to the possession money on the amount of the *costs alone*, and certainly not on the amount of the rental and costs jointly. The new scale of fees declares that the bailiff for keeping possession of the goods till sale, shall be entitled to sixpence in the pound on the amount *for which the execution issues* per day; and inasmuch as the execution issues for the costs *alone*, the possession-money can clearly only be charged on that amount. W. J. L.

Winchester, March 23, 1852.

THE LAWYER.

Summary.

EQUITY PRACTICE.—In *Crabbe* v. *Moxey*, 18 Law T. Rep. 346, the Court refused to appoint a guardian *ad litem* to infant defendants, without their appearance in court, observing that it was not an unmeaning form, it being desirable they should be shewn to be under the care of the appointed guardian. In the next case, *Carwardine* v. *Wishlade*, 18 Law T. Rep. 346, which was a similar application, the Court remarked that "the costs of appointing a guardian on the motion of counsel were actually greater than the costs of doing it by appearance in court or by commission. It was desirable this should be generally known." The costs of each mode of appointment are stated in the report.

COMMON LAW.—In *O'Brien* v. *King*, 18 Law T. Rep. 352, where a cause had been struck out of the list, none of the parties being present when it was called on, the Court consented to restore it, no injustice being done. A point in *evidence* is reported in *Nott* v. *Fitzgibbon*, 18 Law T. Rep. 351, a letter addressed by plaintiff's attorney to defendant was read by plaintiff's counsel, for the purpose of proving existence of a correspondence, and as an inducement to defendant's answers, but the jury were told by the judge not to pay any attention to anything stated in the letter. It was held that, even with this caution, the letter was inadmissible, for it was impossible to say whether the jury might not have been influenced by its statements. A letter read is evidence of the facts stated in it or of nothing.

THE MERCANTILE LAWYER.

Summary.

A QUESTION under the Ship Registry Act was decided in *Cato* v. *Irving*, 18 Law T. Rep. 345. In a ship belonging to the port of Liverpool, A. had forty and B. sixteen shares. The ship sailed from Liverpool under the command of B. who, at Sydney, sold ship and cargo to C. having brought with him an authority from A. to sell his shares. The ship was then registered at Sydney in C.'s name. Before this sale, and while the ship was at sea, A. mortgaged his shares in the ship and all future freight to D. who had not notice of the power of

attorney, and a memorandum of this mortgage was entered in the Liverpool register. The ship was freighted at Sydney by C. sailed for England and arrived at London without having been to Liverpool. On its arrival D. took possession of it and the cargo, giving notice of his claims, and afterwards the agents of C. took possession. C. had no notice of the mortgage at the time of the sale to him. In this state of affairs it was held that D. (the mortgagee) was entitled to forty-eight shares in the ship and of the net freight (after allowing C. his expenses) to the amount of his mortgage, with interest and costs.

Again there are several *bankruptcy* cases. In *Re Cheetham*, 18 Law T. Rep. 343, it was held that the Court of Appeal cannot order the payment of money out of the Bankruptcy Court unless the application be made by way of appeal from a commissioner. *Ex parte Cross*, 18 Law T. Rep. 348, was an important decision as to *reputed ownership*. It was held that where the articles in the possession of the bankrupt are of such a peculiar nature as to cause inquiry whose property they were, such as pictures placed in a room which customers frequented, to whom it was stated that they were not the property of the holder, the rule of reputed ownership does not apply. In *Re Ashlin*, 18 Law T. Rep. 348, the Court ordered a bankrupt to be prosecuted by the assignees for fraudulently altering his books, and held that he was not entitled to protection until his last examination. In an *Anonymous case*, 18 Law T. Rep. 349, Mr. Commissioner AYRTON decided that there was no jurisdiction to annul with consent of creditors, save under sect. 230; but if every creditor consents, the order will be made at the risk of the petitioner. In *Re Nowlan*, 18 Law T. Rep. 349, an agreement was avoided by which, after a composition made with the other creditors whom he had deceived as to the facts, the bankrupt had agreed with a debtor, who had a judgment debt, for a mortgage of his leasehold premises. In *Re Shelley*, 18 Law T. Rep. 350, it was held that a petitioning creditor might buy up an overdue bill, in order to have a debt sufficient to sue out a commission, provided he gives full value for it; and in *Re Shelley*, 18 Law T. Rep. 350, an insolvent, against whom a commission of bankruptcy issues within two months from the filing of his petition, and pending the hearing, may be discharged by the Insolvent Court, although the issuing of the commission has the effect of diverting his estate out of the provisional assignee.

ASSURANCE CHRONICLE.

[The great interest and importance of this subject to Solicitors, who transact the greater portion of the Assurance business of the United Kingdom, suggests the utility of a brief record of the doings of the various candidates for their favours. The proceedings of every office will be impartially given, if sent.]

PROFESSIONAL LIFE ASSURANCE COMPANY.

ON Wednesday, the 21th, the annual meeting was held at the office, No. 76, Cheapside. The chair was taken at one o'clock by Major Stones. From the report it appeared that the total sum assured during the year 1851 was 176,680*l.*; the number of policies issued, 611; and the increase of annual income from new premiums, 5,807*l.* 9s. 6d. The directors have endeavoured to extend the business of the company by the establishment of effective agencies in Newcastle and Sunderland, and by the formation of a local board of management in Dublin. An influential public meeting was also held in the month of October last, in Birmingham. The directors have vested Jacob Montefiore, esq. one of their body, with the means and authority for establishing agencies in various parts of our Australasian colonies. By such and similar proceedings the directors have succeeded, with eight per cent. only paid up on a fully subscribed capital of 250,000*l.* in creating an annual income, which, on the 31st of December last, amounted to 15,000*l.* from life premiums alone, exclusive of a large yearly return from instalments and interest on loans.

PROMOTIONS, APPOINTMENTS, ETC.

On the 17th instant, J. Tiplady, esq. Durham, was appointed the Deputy Clerk of the Peace for Durham, in the place of the late Walter Scruton, esq.; and on the same day the Lord Lieutenant (Marquis of Londonderry) nominated Mr. Tiplady to the office of Registrar of the Court of Chancery, at Durham, to supply the vacancy also occasioned by Mr. Scruton's decease.

COURT PAPERS.

Court of Chancery.

List of Causes transferred from Vice-Chancellor KINDERSLEY and Vice-Chancellor PARKER to the MASTER of the ROLLS, pursuant to an order of the Court, dated March 10, 1852.

From Vice-Chancellor KINDERSLEY'S Book.

Boote v. Parker	Langley v. Hall
Clark v. Berrington	Morgan v. Sayce
Same v. Same	Newland v. Newland
Bailey v. Case	Lees v. Newland
Taner v. Deavin	Rowley v. White
Pitt v. Slade	Bridge v. Bridge
Same v. Same	Wright v. Brigg
St. John v. Phelps	Gladding v. Novill
Attorney-General v. Earl of Fingall	Mitchell v. Beaumont
Lloyd v. Peers	Abrey v. Newman
Ford v. Earl of Chesterfield	Herbert v. Bradford
Same v. Clark	Ford v. White
Same v. Pennell	Ford v. White
Same v. Earl of Chesterfield	Claringbould v. Curtis
North v. White	Sparks v. Wilks
Skipworth v. Skipworth	Pooley v. Rumney
Parkin v. Thorold	Nicholls v. Birdseye
Ayles v. Cox	Pariente v. Lubbock
Lowe v. White	Phipps v. Budd
Ward v. Warde	Jodrell v. Turner.

From Vice-Chancellor PARKER'S Book.

Osmond v. Fisher	Maxwell v. Maxwell
Horn v. Coleman	Spear v. Spear
Horn v. Campbell	Clegg v. Fishwick
Gooday v. Colchester and Stour Valley Railway Company	Clegg v. Massey
	Stephenson v. Jones
	Blacklock v. Harland
Williams v. Nalder	Kennington v. Houghton
Hutchinson v. Newark	Lake v. Eastern Counties Railway Company
Cary v. Parkes	
Hope v. Threlfall	Gray v. Haig
Bell v. London and North-Western Railway Company	Morton v. Verity
	Brown v. Gordon
Windle v. Newton	Heaton v. Dearden
Wild v. Gladstone	Same v. Buckley
Harwood v. Burstall	Same v. Dearden
Same v. Same	Appleton v. Dearden
Bennet v. Hallam	Cocking v. Kennerley
Beresford v. Barker	Cocking v. Hitchin
Williams v. Jones	Pritchard v. Smith
Williams v. Lomas	Same v. Frank
Kemp v. Latter	Same v. Jones
Havley v. Gummer	Salmaper v. Lynn
Shortridge v. Bosanquet	Same v. Same
Beattie v. Lea	Same v. Weeks
Edwards v. Gelling	Worthington v. Wigginton
Tracy v. Curtress	Pickthall v. Braithwaite
Tracy v. Ward	Berryman v. Lamb
Ashwin v. Ashwin	Thornton v. Court
Gibbons v. Taylor	Crouch v. Hooper
Cole v. Louder	Whitmore v. Smith
Smith v. Parkes	Raven v. Canning
Miller v. Cooper	Raven v. Canning
Meakin v. Meakin	Anderson v. Kemshead
Close v. Gordon	Ellis v. Clough
Donald v. Bather	Bridger v. Bridger
Davy v. Bailey	Hilton v. Blake
Davy v. Acraman	Bates v. Hilcourt
Whitehead v. Thompson	Ward v. Ward
Walker v. Jones	Fielding v. Nutting
Pyke v. Franklin	Baker v. Baker
Cormack v. Capons	Baker v. Groom
Same v. Drever	Osborne v. Alway
Same v. Matthews	Ellis v. Ellis
Tuck v. Childs	Seymour v. Elwin.

Court of Common Bench.

Sittings at Nisi Prius in Middlesex and London, before Sir JOHN JERVIS, Knt. in and after Easter Term, 1852.

IN TERM.—MIDDLESEX.

Tuesday, April 20 | Tuesday, April 27

AFTER TERM.

Monday, May 10.

IN TERM.—LONDON.

Thursday, April 22 | Thursday, April 29

AFTER TERM.

Tuesday, May 11.

N.B. The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

On Tuesday, the 11th of May, in London, no causes will be tried, but the Court will adjourn to a future day.

The Office of the Marshal and Associate is at the Lord Chief Justice's Chambers, Rolls-gardens, Chancery-lane. Hours of attendance during Term and sittings after Term are from eleven to five.

ATTORNEYS TO BE ADMITTED.

Easter Term, 1852.

QUEEN'S BENCH.

Acland, Samuel Lawford, 1, Lincoln's Inn Fields, and Frederick Street—articled to H. C. Chilton, Chancery Lane
Acworth, George Brindley, 2, Sebbon Street, Canonbury Square; Rochester; and Mylne Street—G. Acworth, Rochester
Allen, John, 40, Great James Street, Bedford Row; and Warwick—W. Allen, Warwick; H. A. Beaumont, Chancery Lane
Arkwright, Loftus Wigram, 30, George Street, Hanover Square; and Great Rider Street—J. Maynard, 57, Coleman Street
Andrews, Richard, 4, Spencer Street, Northampton Square; Modbury; and Dawlish—J. Andrews, Modbury
Atkins, George, Lewisham—T. Parker, jun. Lewisham
Ayliff, George, 45, Liverpool Street, King's Cross; and Holbeach—T. Ayliff, Holbeach; R. Caparn, Holbeach
Baker, Alfred, 24, Camden Street North; and Market Deeping—W. Baker, Market Deeping; F. Roberts, do.; F. Brown, ditto
Baker, George, 1, Richmond Terrace, Canonbury Square; and Audlem—W. Machin, Audlem
Bannister, Charles, 13, Camden Road Villas—R. Every, Exeter; W. Woodrooffe, Lincoln's Inn
Bannister, Henry, 40, Baker Street, Lloyd Square; and Accrington—R. Ashcroft, Preston; G. Bannister, Accrington
Barlow, Charles, Manchester—J. Barlow, Manchester
Batten, James Brend (articled as James Batten), 30, Burton Street, Burton Crescent; Cheltenham—J. P. Bell, Cheltenham
Baylam, Charles Henry, 21, Rutland Street, Hampstead Road; Wakefield; and Roystone—W. H. Brown, Wakefield; H. Brown, Wakefield
Bell, John Hyde, 13, Swinton Street, Gray's Inn Road; and Bedford Square—F. H. Cartwright, Bawtry; C. Bell, Bedford Row
Blackmore, Samuel Fry, 16, Critchill Place, Hoxton; Stoke Damerel; and Blackfriars Road—W. P. Blackmore, Devonport; S. Rouse, Plymouth
Blake, Francis William, 28, John Street, Bedford Row; and Cavendish Road—F. Blake, 6, King's Road, Bedford Row
Blakey, George, 37, John Street, Bedford Row—T. Harwood, Newport; F. K. Parkinson, John Street
Blyth, Edmund Kell, 1, Chepstow Villas West; Upper Charlotte Street; and Edgbaston—W. H. Reece, Birmingham; E. W. Field, Bedford Row
Bonnor, Benjamin, Mayfield Lodge, Bayswater; and Gloucester—B. Bonnor, Gloucester
Booth, Samuel Barker, 51, Tavistock Square—S. Barker, Tavistock Square
Borradaile, Charles, Upper Tooting—H. Denton, Lincoln's Inn
Brett, George, Manchester—E. Tilsley, Moreton-in-Marsh; J. H. Hulme, Manchester
Briggs, John Hall Newton, 8, Golden Terrace, Barnsbury Road; and Brunswick Terrace—J. Huish, Derby; W. Hallowes, Bedford Row
Brundrit, Robert Wright, 13, Gray's Inn Square; Stretford, near Manchester; and Runcorn—J. Stevenson, Manchester
Burgon, William, Archway Road, Highgate—W. P. Milner, Sheffield
Burrell, Edward Montague, 1, White Hart Court, Lombard Street—S. A. Beck, Ironmongers' Hall
Buse, Richard Henry, 23, Lawrence Pountney Lane; Bideford; Stanhope Street, Mornington Crescent—W. H. E. Burnard, Bideford
Calthrop, Thomas Dounie, 4, Upper Park Place; Blackheath; and Spencer Place—J. S. Rymer, Whitehall Pl.
Capes, Henry Hawkesley, Boroughbridge—W. Hirst, Boroughbridge
Cattlow, John Reynolds, Greenhill; and Chadwell Street, Myddleton Square—J. Cattlow, Greenhill, W. H. Trinder, John Street, Bedford Row
Chambers, Henry Thomas, Lincoln—J. Moore, Lincoln
Clarkson, George Palmer, Wandsworth Common—C. J. Palmer, Bedford Row
Clements, Charles, 42, Kelham Place, Lambeth; and Fairfield, near Liverpool—T. Toulmin, Liverpool
Cockerill, Thomas Marshall, 10, Symonds Inn; Arthur Street; Featherstone Buildings; Newport—H. Heane, Newport; W. Dean, Essex Street, Strand
Conington, Henry James, Boston—F. T. White, Boston; R. F. Lindsay, Boston
Cooke, William Lawrence, 20, Cloudesley Square; and Cheltenham—B. Bubb, Cheltenham; E. Washbourn, Gloucester
Crallan, Richard Nelson, Hornsey Lane, Highgate—W. Hodson, King's Road, Bedford Row; J. Bridges, Red Lion Square
Cripps, William Charles, 17, Cecil Street, Strand; and Tonbridge—W. Gorham, Tonbridge
Currey, Benjamin Scott, Blackheath Park—W. Currey, New Street, Spring Gardens; T. W. Nelson, Cloak Lane
Derry, William Smith, 6, Windsor Terrace, Vauxhall—C. Smale, Bideford
Dixon, Henry, 4, Little James Street, Bedford Row; and New North Street—J. Young, Sunderland
Dorman, Charles, 6, Newington Place, Kennington; Canterbury; and Charles Street—T. N. Wightwick, Canterbury
Edwards, Thomas Wynne, Archway Road, Highgate—C. Wilson, Bedford Row; J. Browne, Bedford Row
Ellman, James Boys, 7, Bowhill Terrace, North Brixton; and Landport, near Lewes—H. Whitmarsh, Battle; J. Lewis, Lewes
Evans, Edward, 7, King's Bench Walk, Temple—F. Boydell, Chester
Fairbairn, Peter, 5, Duke Street, Westminster; and Manchester—S. Heelis, Manchester
Farrar, Henry Jeffreys, 36, Myddleton Square—B. Turner, Red Lion Square
Farrow, William Hudson, 12, Elizabeth Terrace, Liverpool Road; and York—T. Walker, York
Foster, Francis Gostling, Ivy Cottage, Highgate; and Bernard Street—Sir W. Foster, bart. Norwich
Fowler, Robert, 8, Ebury Street, Pimlico; York; Elm Place, Brompton; and Trevor Square—G. Leeman, York
Freeman, James Albert, Brommell's Road, Clapham; and Brighton—T. Freeman, Brighton
Garrard, George Henry, 37, Upper Berkeley Street, Portman Square; Esther Place; and Argyle Square—G. P. Arden, Halstead; W. W. Aldridge, South Square
Gates, Richard Smythe, Horsham; and Greenwich—T. Coppard, Horsham; T. Davidson, Basinghall Street
Gell, Robert, jun. York—G. Leeman, York
Gilbert, William, Market Harborough; and Great Bowden—W. Andrews, Market Harborough
Gill, Thomas, jun. 33, Bedford Place, Russell Square; and Harrington Street—T. Gill, Bedford Place
Gillow, John, 24, Great Ormond Street; Cranbrook—C. Willis, Cranbrook
Goodwin, John Cuttle, 10, Webb's County Terrace, New Kent Road; and Doncaster—E. Baxter, Doncaster

Goode, William Henry, 23, Calthorpe Street, Gray's Inn Road; Haverfordwest; and Chadwell Street—J. R. Powell, Haverfordwest

Graham, Charles, Clapham Common—G. Herbert Kinderley, Lincoln's Inn

Gregory, Henry Lewis, 8, Ampton Street; Liverpool; New Ormond Street; Great George Street—J. H. Gregory, Liverpool

Gross, Benjamin Lillistone, 37, Upper Berkeley Street, Portman Square; Bernard Street; Argyle Square—S. B. Jackaman, Ipswich

Groves, Harrington Charles James, 1, Salisbury Street, Strand; and Bradford—R. T. Way, Bradford, Wilts

Growse, Robert, Hadleigh—T. Last, Hadleigh; C. H. Last, Hadleigh

Hadfield, Samuel, 65, Bayham Street South, Camden Town; and Manchester—G. Hadfield, Manchester

Hammond, Henry, jun. Wentworth Lodge, Finchley—H. Hammond, sen. Wentworth Lodge, Finchley

Harris, Edmund, Rugby—G. Harris, Rugby

Hartley, James, Rochdale—R. Hunt, Rochdale

Hawley, John, 2, Pembroke Cottages, South Pembroke Square—J. B. Williams, Shrewsbury; R. Metcalf, Chancery Lane

Haywood, Fred. Michael, 14, Caroline Street, Bedford Square; Devonshire Street; Gloucester Street—A. Meek, Devizes

Hazard, Thomas, 2, John Street, Bedford Row; and Redenhall with Harleston—W. Hazard, Redenhall with Harleston

Heald, Thomas Mangnall, Wigan, Lancashire—E. Scott, Wigan

Hearnshaw, John, Sebbon Street, Canonbury; Nottingham; and Alfred Terrace—S. Moore, Nottingham

Hemp, James, 4, Grosvenor Villas, Brixton—J. Clark, Old Bailey

Hickley, Thomas Allen, 4, Fulham Place, Paddington—L. Desborough, Size Lane

Hillyer, George, 44, Great College Street, Camden Town—E. Farn, Gray's Inn Square

Hindmarsh, Henry Edward, 15, Tibberton Square, Islington—J. T. Hindmarsh, Crescent, Jewin Street

Holden, James Henry, 22, Frederick Street, Gray's Inn Road; and Kingston-upon-Hull—T. Holden, Kingston-upon-Hull

Hughes, George Martin, 32, Holford Square, Pentonville; and Yalding—F. Scudamore, Maidstone

Jeffery, George, 57, Swinton Street, Gray's Inn Road; and Holford Square—H. M. Gibson, Plymouth

Jeffery, George Abbitt, 8, Knightsbridge Terrace, Hyde Park—R. K. Lane, Argyle Street

Jennings, Richard Francis, 5, Princes Gate, Hyde Park—G. Brace, Surrey Street

Johns, Bradford, 16, Shadwell Street, Pentonville; and Myddleton Square—J. H. Todd, Winchester; E. Lyne, Liskeard; W. H. Brown, Swansea

Johns, Frederick John Bull, Falmouth; St. Austell; Barnsbury Road; and Holford Square—W. Shilston, St. Austell

Johnston, Harry Bell, 1, Belgrave Street, South; Eaton Square; York; and Lower Calthorpe Street—H. Richardson, York

Jones, James Webb, Carmarthen; and Dorchester Place, Blandford Square—P. G. Jones, Carmarthen

Keen, Grinham, 13, Dorset Street, Portman Square; and Manchester Square—W. Washbourne, Newport; G. Faulkner, Bedford Row

Kent, Edmund, jun. 6, Albion Terrace, Sydenham; and Fakenham—E. Kent, sen. Fakenham

Kitson, Henry, Compton Street, Brunswick Square; Penn—C. Corser, Wolverhampton

Lane, Newton John, Leyton—J. Lane, Goldsmith's Hall

Large, Charles Edward, 21, Great Percy Street, Amwell Street; and Burford—J. S. Price, Burford

Leverson, Montague Richard, 18, Queen Square, Bloomsbury—W. H. Dickson, Frederick's Place, Old Jewry; W. T. Elliot, Kentish Town

Longley, Frederick Henry, 9, St. Swithin's Lane; and Tysoe Street—D. W. Wire, St. Swithin's Lane

Lumley, Robert Benjamin, 36, Chancery Lane—B. Lumley, Parliament Street; E. Towsey, Quality Court

Macaulay, William Henry, 9, Devonshire Street, Queen's Square; and Windsor Terrace, Pimlico—J. C. Macaulay, Leicester

Maddox, John Mortimer, Hornsey, and Southampton Buildings—C. M. Stretton, Southampton Buildings; C. H. Shirreff, Lincoln's Inn Fields

March, Owen, Newbury; Taunton; Gloucester Place and Tachbrook Street—E. Rossiter, Taunton

Marsack, George Richardson, 7, Farringdon Street; and Camden Cottages, Camden Town—H. Footner, Andover; C. H. Bower, Chancery Lane

Marten, Alfred George, 1, De Crespigny Terrace, Denmark Hill; and Denmark Row—J. U. Harwood, Clement's Lane, Lombard Street

Mason, William Ludlam, 8, St. Thomas, East, Southwark, and Louth—T. P. Waite, Louth

Maynard, William Roper, 52, Westbourne Terrace—J. Maynard, Coleman Street

Melmoth, William Toogood, 7, New Inn; and Sherborne—J. Y. Melmoth, Sherborne

Metcalfe, Frederick M. 43, Burton Street, Burton Crescent; Upper Bedford Place; and Wisbeach—C. Metcalfe, jun. Wisbeach

Meyler, Thomas, Gloucester; Amwell Street, Pentonville; and Lloyd Square—R. Wilton, Gloucester

Moore, William Walter W. 5, Blenheim Terrace, St. John's Wood; Exeter; Tooley Street—H. W. Hooper, Exeter

Morres, Thomas Furley, 9, Compton Street East, Regent Square; Wells Street; and Sidmouth Street—J. R. Wheeler, Wokingham; J. S. Gregory, Bedford Row

Murray, George James, 34, Southampton Row, Russell Square; and Oldham—H. Radcliffe, Oldham

Newman, Charles, 127, Albany Street, Regent's Park; and Hemingfield—J. Birks, Hemingfield

Norris, Henry, 22, Upper Gower Street, Bedford Square—W. Ruck, Lime Street

Overton, Edward Francis, 15, Green Terrace, Clerkenwell; and [illegible]hethy [illegible] [illegible], Overton, Merthyr Tydvil

[illegible]am Sutton, [illegible]mbridge, near Dursley; Stroud; [illegible]et, [illegible]tonville—W. T. Paris, Stroud; [illegible], Stroud

Parker, Charles Lewes, 41, Upper Bedford Place—C. Parker, Russell Square; C. Few, Henrietta Street

Parkes, William, 26, Noel Street, River Terrace; and Wilhenhall—R. D. Gough, Wolverhampton

Payn, William, 35, Holford Square, Pentonville; Handsworth; Kenton Street, Paddington Green—H. M. Griffiths, Birmingham

Pattisson, James, 51, Gerrard Street, Islington—C. B. Wilson, Furnival's Inn

Phillips, Henry Millar, 35, Hart-street, Bloomsbury—R. S. White, Lincoln's Inn Fields

Plumbe, Henry, Store Street; and Maidenhead—W. J. Ward, Maidenhead

Raby, Richard Stephens, 14, Middleton Square, Pentonville; and Liskeard—C. Childs, Liskeard

Rackham, Matthew Robert, Norwich—R. Wortley, Norwich

Rankin, William, 2, Sussex Place, Islington—E. G. Craig, Braintree

Redfern, Thomas, jun. Leek—T. Redfern, sen. Leek

Richardson, William Benson, 73, Mount Street, Grosvenor Square; and York—W. Richardson, York

Roberts, Thomas, Chester—W. H. Brown, Chester

Robinson, John, jun. 4, Green Terrace, New River Head; and Abinghall House—J. J. G. Borlase, Mitchel Dean

Russell, Thomas, 23, Martin's Lane, Cannon Street—R. Russell, Martin's Lane

Rutter, George, Manchester—E. C. Milne, Manchester; W. S. Rutter, Manchester

Sabine, Charles Edwyn, Oswestry; Houghton Street—C. Sabine, Oswestry

Selby, James Addison, 16, William Street, Albany Street, Regent's Park; East Street; and West Malling—J. Selby, West Malling

Solomons, Samuel, 39, Albemarle Street, Piccadilly; and Crutched Friars—L. H. Braham, Chancery Lane

Speed, Robert Henry, 12, Wilmot Street, Bloomsbury—E. Patchitt, Nottingham

Standring, John, jun. Rochdale—H. Whitehead, Rochdale

Stansfield, John, 27, Great College Street, Westminster; and Todmorden—T. E. Hammerton, Todmorden

Stevens, Geo. Chubb, Chardstock; and Guernsey—E. H. Roberts, Exeter

Stone, William Way, 16, Great Ormond Street—J. Rose, Aylesbury; R. Rose, ditto

Suckling, John, jun. Birmingham; and Dalby Terrace, City Road—J. Suckling, Birmingham

Sykes, Edwin, 62, Bartholomew Close; and Huddersfield—T. W. Clough, Huddersfield

Talley, William, 6, Upper Chadwell Street, Myddleton Square; Alphington; and Garnault Place—W. Burridge, Wellington; R. T. Head, Exeter

Taylor, Thomas Ullock, 1, Albert Place, Lewisham—J. H. Taylor, Bowness

Thistlethwaite, Wm. jun. 17, Titchborne Street, Haymarket—J. Fearenside, Burton; J. Raw, Furnival's Inn

Thomas, William Thomas, Carmarthen—L. Morris, Carmarthen

Thompson, Thomas, 9, George Street, Minories—J. R. Thompson, George Street, Minories

Turner, Frederick Holden, 8, Chancery Lane—J. H. Turner, Chancery Lane

Turner, Hubert Francis, 12, The Terrace, Kilburn—W. Furner, Brighton; G. M. Gray, 9, Staple Inn

Warden, George, 8 and 9, Shaftesbury Crescent, Kenton Street; and Edgbaston—J. Suckling, Birmingham

Waterhouse, Robert, jun. 61, Acton Street, Gray's Inn Road; and Sheffield—E. Bramley, Sheffield

Waugh, Edward, jun. 1, Dalston Terrace, Dalston; and Cockermouth—E. Waugh, Cockermouth

Webster, Fras. 6, Soley Terrace, Pentonville; and Kendal—E. Harrison, Kendal

Westall, Harry John, Herne Hill, Surrey; Frome; and Rodney Terrace, Bow—W. C. Cruttwell, Frome; J. W. D. T. Wickham, Frome

White, George John, 41, Camden Street, Camden Town—R. S. White, Lincoln's Inn Fields

Wilkinson, John, York—W. Gray, York

Williams, Thomas Joseph A., Monmouth—W. A. Williams, Monmouth

Williams, William Benman, Corwen—D. Smart, Ruthin; E. Walker, Corwen

Willoughby, William, 15, Lower Calthorpe Street; Daventry; and Frederick Street—E. S. Burton, Daventry

Willoughby, William Arthur, Blackheath—R. Cheere, King's Bench Walk; E. Willoughby, Lancaster Place, Strand

Wilson, Charles Wathen E. 22, Connaught Square, Hyde Park—B. Gray, Edgeware Road

Wilson, Jonathan, Tunbridge Wells—W. Stone, Tunbridge Wells

Winterbotham, William, 2, Burton Crescent; and Cheltenham—J. B. Winterbotham, Cheltenham

Wright, John, Macclesfield Street and Halsey Street, Chelsea—E. Procter, Macclesfield

Yewdall, Henry, Bradford—E. Hailstone, Bradford, Yorkshire.

Added to the List pursuant to Judges' Orders.

Coleman, Henry Horner, Chiswick—J. Phillips, Abchurch Lane

Finch, William Newton, 24, Holford Square, Pentonville—W. Stephens, Bedford-row

Head, John Oswald, 28, John Street, Bedford Row; and Richmond, Yorkshire—J. B. Simpson, Richmond, Yorkshire

Naters, Henry Trewhitt, Sunderland; Dorchester Place; and 7, Nassau Street—G. W. Wright, Sunderland; F. Turner, Aldermanbury

Prickard, Hugh Powell, Dderw House, near Rhayader; and Featherstone Buildings—J. Roberts, Truro; B. P. Squance, Coleman Street; E. Williams, Rhayader

Salaman, Joseph Seymour, 36, Baker Street, Portman Square—T. Tilson, Coleman Street

Snowball, George, Sunderland—G. W. Wright, Sunderland

Waugh, George, jun. Worthing; and Great James Street, Bedford Row—G. Waugh, sen. Great James Street; R. Edmonds, Worthing.

LEGAL INTELLIGENCE.

CASES IN THE COURT OF CHANCERY.—A return to Parliament has been printed shewing that on the 21st ult. there were 644 appeals and other matters standing for hearing in the Court of Chancery.

Assizes.

OXFORD CIRCUIT.

SHREWSBURY, March 18.—Mr. Baron Platt opened the commission about three o'clock yesterday. Mr. Justice Wightman was not able to arrive here till this morning. The business is very light. There is not one cause for trial, nor has a single venire been returned. Such an event is unparalleled. From the documents to which we referred in our report from Oxford, it appears that in the seventeenth century the average entry here exceeded ninety causes at each Assizes, and that from the beginning of this century down to the abolition of the Welsh judicature in the reign of George the Fourth the average was upwards of thirty; that from 1789 to 1849 they ranged about fifteen; and that certainly from 1789 down to the end of 1851 there is no instance of an assize without a cause. Nor is there any tradition or other the remotest reason for supposing that such an event ever before occurred since commissions of assize were first issued. Lest it might be fancied that preparations might have been made for the trial of several causes, but that the parties compromised since they came unto the assize, we have inquired and learned that not a single venire (that is, the first writ for the summoning of a jury) has been returned. At Oxford, though there was but one cause, there were three venires, but here there is neither cause nor venire.

The calendar contains the names of only thirty-four prisoners, and the offences are not of a very serious character.

HEREFORD, March 20.—The commission was opened here this afternoon with the usual formalities. The business is expected to be very light. There are two venires returned; but it is thought there will not be a cause for trial. The calendar contains the names of only twenty prisoners, and the charges against them are not of a very serious character.

HEREFORD, March 22.—The business here is lighter than usual. There are on the civil side only two causes. The calendar for county and city contains the names of twenty-seven prisoners. At post-hour all the cases except seven were tried, and it is considered certain that all will be disposed of early to-morrow.

NORFOLK CIRCUIT.

BURY ST. EDMUND'S, March 22.—The Chief Justice and Mr. Serjt. Adams arrived in this town on Saturday afternoon, when the commission was duly opened, and this morning both Courts proceeded to the despatch of business, Lord Campbell presiding in the Crown Court, and Mr. Serjt. Adams in the Nisi Prius Court. The entry of causes is but a meagre one, the cause list containing only eight causes, one of which alone is marked for trial by a special jury. With one exception the common jury causes are of the most ordinary description. The calendar, on the other hand, is very heavy, both in regard to the number of prisoners and the character of their alleged offences. There are 54 prisoners, and the charges embrace 4 cases of murder (3 of which are instances of death produced by poison), 5 of arson, 3 of rape, 3 of concealment, 4 of burglary, 5 of highway robbery, 2 of forgery, 3 of malicious wounding, 3 of night poaching, 2 of manslaughter, 1 of abduction, and a few minor offences.

HOME CIRCUIT.

KINGSTON, March 23.—The commission for the county of Surrey was opened at this place on Monday, and to-day business was proceeded with in both courts, Mr. Baron Parke presiding on the civil side, and Mr. Justice Coleridge in the Crown Court. There are 33 prisoners for trial on the Crown side, and 44 causes are entered at Nisi Prius, six of which are special jury cases.

MIDLAND CIRCUIT.

WARWICK, March 22.—The cause list contains an entry of 13 causes only, several of which are undefended. The Lord Chief Justice Jervis took his seat at ten o'clock this morning, and all the common jury causes, except one, have been disposed of. None of them presented any feature of public interest.

NORTHERN CIRCUIT.

LIVERPOOL.—The calendar is very heavy, containing the names of 113 prisoners. Of these 7 are charged with murder, and 1 with an assault with intent to murder, 8 with manslaughter, 5 with cutting and stabbing, 4 with rape, 14 with burglary, 48 with robbery with violence, 4 with feloniously placing stones on a railway, 4 with bigamy, 2 with coining, 3 with forgery, and 5 with larceny and other offences. The cause-list, it is said, is good. The list is not yet published, but rumour assigns an entry of 35 causes to the Salford Hundred, and 54 causes to the West Derby Hundred, of which it is said 19 are marked for special juries.

THE NEW RECORD REPOSITORY.—The walls of this long-needed building are now above forty feet above the ground, and are sufficiently high to develope the character of the building, which is of a late

massive perpendicular kind. The present portion is intended to be the centre of the structure, which, when completed, will be flanked by towers. The interior of the building is divided into a series of moderate-sized chambers, evidently with the intention of obtaining security from fire,—so as to limit the volume of fire in case a fire should happen anywhere. So far as the walls develope the form and arrangement of the chambers at present, it appears that they are made to communicate one with the other, besides there being an access to each one from a central passage.

MATTERS DISPOSED OF IN THE COURT OF CHANCERY.—FROM 1841 TO 1852.—By a return to the House of Commons it appears that the appeals, re-hearings, causes, exceptions, further directions, pleas, and demurrers, in each year for the last ten years, were as follow:—

2nd Nov. 1841 to 1st Nov. 1842		7,325
1842	1843	6,873
1843	1844	7,639
1844	1845	7,584
1845	1846	7,725
1846	1847	8,232
1847	1848	8,332
1848	1849	8,697
1849	1850	8,356
1850	1851	8,274

The business despatched by the Lord Chancellor, included in those totals, was as follows:—

1842	218
1843	111
1844	164
1845	118
1846	153
1847	270
1848	219
1849	169
1850	226
1851	110

On the 21st Feb. 1852, the matters remaining to be heard were as follow:—

Lord Chancellor	27
Lords Justices	20
Master of the Rolls	77
Vice-Chancellor Turner	124
Vice-Chancellor Kindersley	165
Vice-Chancellor Parker	231
	644

INDUSTRIAL AND PROVIDENT PARTNERSHIPS.—A Bill in the House of Commons, bearing the names of Mr. Slaney, Mr. Sotheron, and Mr. Tufnell, has been published, "To Legalise the Formation of Industrial and Provident Partnerships." The object of this Bill is to enable working men to form societies to carry on joint trades, and to legalise such societies already in existence. The promoters of this measure propose to enact, that "It shall be lawful for any number of persons to form themselves into a society for the purpose of maintaining, relieving, educating, endowing, or otherwise benefiting themselves, their husbands, wives, children, or kindred, or for attaining any other purpose or object for the time being authorised by the laws in force with respect to friendly societies, by carrying on or exercising in common day labour, trade, or handicraft, or several labours, trades, or handicrafts, and that this Act shall apply to all societies already established for any of the purposes herein mentioned, so soon as they shall conform to the provisions thereof." Then the Bill provides for the regulation of such "Industrial and Provident Partnerships," as they are called.

THE GAZETTES.

Bankrupts.

Gazette, March 23.

BRANCH, JOHN, corn dealer, High street, Camberwell, March 27, at eleven, April 30, at one, Basinghall-st. Off. as. Whitmore. Sol. Wilson, Gresham-st. Petition, March 16.

CADMAN, JOHN, grocer, Derby, April 2, at half-past ten, April 30, at twelve, Nottingham. Off. as. Bittleston. Sols. Vallick, Derby; and Mottram and Co. Birmingham. Petition, March 11.

CARLISLE, ROBERT TOMLINSON, builder, Sheffield, Yorkshire, and Beighton, Derbyshire, April 3 and May 15, at ten, Sheffield. Off. as. Freeman. Sols. Bromhead, jun. and Farnell, Sheffield. Petition, March 18.

CHAMBERLAIN, RICHARD, draper, Staffordshire, April 3 and May 3, at half-past ten, Birmingham. Off. as. Bittleston. Sols. Cox, Size-lane, City; and Motteram and Co Birmingham. Petition, March 4.

FOSTER, GEORGE, builder, Chorlton-upon-Medlock, Lancashire, April 5 and 28, at twelve, Manchester. Off. as. Pott. Sols. Messrs. Whitworth, Manchester. Petition, March 19.

HARDY, ANSON, general and commission merchant, Liverpool, April 2 and May 6, at eleven, Liverpool. Off. as. Turner. Sol. Holden, Liverpool Petition, March 20.

LUXFORD, JAMES, draper, Market Rasen, Linco[illegible] April 14 and May 5, at twelve, Leeds. Off. as. [illegible] Sols. Tweed, Lincoln. Petition, March 6.

STEVENS, WILLIAM, upholsterer, High Holbo[illegible], April 2 and May 7, at twelve, Basinghall-st. Off. as. Cannan. Sol. Taylor, South-st. Finsbury-square. Petition, March 12.

TODD, WILLIAM and JAMES, provision merchants, Liverpool, April 5, at twelve, and April 26, at eleven, Liverpool. Off. as. Morgan. Sol. Holden, Liverpool. Petition, March 20.

WHITE, CHARLES HENRY, dealer in china, Southampton, March 29 and May 8, at twelve, Basinghall-st. Off. as. Nicholson. Sol. Braikenridge, Bartlett's-buildings. Petition, March 20.

WOOD, JOHN, brewer, Putney, Surrey, March 31, at half-past twelve, May 4, at twelve, Basinghall-st. Off. as. Graham. Sols. Lawrance and Co. Old Jewry-chambers. Petition, March 17.

Gazette, March 25.

GREEN, CHARLES, scrivener, Spalding, Holland, Lincoln, April 16 and 30, at half-past ten, Nottingham. Com. Balguy. Off. as. Bittleston. Sols. Jebb, Boston, Lincolnshire; and Jabet, Birmingham. Petition, March 8.

HALL, JOHN, confectioner, High-st. Croydon, Surrey, April 2, at eleven, May 7, at one, Basinghall-st. Com. Fonblanque. Off. as. Stansfeld. Sol. Healey, Basinghall-st. Petition, March 22.

HITCHMOUGH, PHILIP, corn dealer, Liverpool, April 14 and May 10, at eleven, Liverpool. Com. Perry. Off. as. Cazenove. Sols Mallaby and Townshend, Fenwick-st. Liverpool Petition, March 23.

KING, FREDERICK, perfumer and hair dresser, King's-road, Brighton, April 5, at one, May 6, at twelve, Basinghall-st. Com. Evans Off. as. Bell. Sols. Freeman and Bothamley, Coleman-st.; and Chalk, Brighton. Petition, March 13.

MORGAN, EDWARD, licensed victualler, Portman-market, Edgware-road, April 8 and May 6, at one, Basinghall-st. Com. Holroyd. Off. as Edwards. Sol. G. K. Pollock, Essex-st. Strand. Petition, March 19.

THOMAS, DAVID HENRY, draper, Tyntwyr, Caernarvonshire, April 6 and May 10, at eleven, Liverpool. Com. Perry. Off as. Morgan. Sol. Bunting, Manchester. Petition, March 18.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Brameld, J. T. glass dealer, first, new proofs, 2s. 3d. Groom, London.—*Burtan*, H. clerk, sixth, 5d. Pennell, London.—*Coates*, H. draper, first, 8s. 9d. Valpy, Birmingham.—*Cook*, H J. linendraper, third, 0½d. Graham, London.—*Davis*, F merchant, second, on new proofs, 1d. Groom, London.—*Fuller*, J. glass merchant, first, 4s. Pennell, London.—*Greenshields* and *Strange*, merchants, second, 1s. Morgan, Liverpool.—*Heilbronn* and *Harrison*, drysalters, first, 1s 10d. Whitmore, London.—*Higgins*, W. M, laceman, first, 1s. 1d. Valpy, Birmingham.—*Kyrke*, G lime burner, second, 5s. Morgan, Liverpool.—*McBurnie*, J. draper, first, 2s. Hirtzel, Exeter.—*Macdonald* and *Campbell*, fourth, sep. of Campbell, 1s. 3d. Pennell, London.—*Mason*, C. J earthenware manufacturer, first, 1s. 2¾d. Christie, Birmingham.—*Pownall*, W. silk manufacturer, second, 1s. 6d. Graham, London.—*Round*, E. and W timber merchants, final, 1s. 11d. Whitmore, Birmingham.—*Rutherford*, T. merchant, second, 1s. 2d. Pennell, London.—*Southee*, T. E. advertising agent, first, 2s. 5d. Whitmore, London.—*Stace*, A. R. ironmonger, first, 4s. 6d. Pennell, London.—*Summers*, R. pawnbroker, first, 9s. 11d. Graham, London.—*Sykes* and *Sykes*, woollen manufacturers, first, 4s. Freeman, Leeds. *Taylor*, R. ironmonger, new proofs, 3s. Bird, Liverpool.

Taylor and *Wylde*, flock and wadding manufacturers, first, 8d. Whitmore, London.—*Thompson*, H. E. bath manufacturer, first, 3d. Groom, London.—*Thornton*, E. ironmonger, first, 4d. Freeman, Leeds.

INSOLVENTS' ESTATES.

Besley, C. clerk, further, 1s. 3d. Apply to H. L. Hirtzel, off. as Exeter.—*Clough*, J. chicory manufacturer, first and final, 1s. Apply to F. R. Jones, jun off. as. Huddersfield.—*Entwhistle*, J. joiner, first and final, 8s. 1d. Apply to F. R Jones, jun. off as Huddersfield.—*Hayes*, H. W further 2s 3d. Apply to H. L. Hirtzel, off. as Exeter.—*Hugo*, S. stationer and printer, 5s. 3½d. Apply to F. Paynter, off. as. Penzance.—*Leech*, J. manager of a fancy manufactory, first and final, 10d. Apply to F. R Jones, jun. Huddersfield.—*Viner*, T. painter, first and final, 1s. 5d. Apply to F. R. Jones jun. off. as. Huddersfield.—*Sykes*, J. innkeeper, first and final, 1s. 6d. Apply to F. R. Jones, jun. off. as. Huddersfield.

Assignments for the Benefit of Creditors.

Gazette, March 16.

Clarke, H. G. bookseller and publisher, Strand, Middlesex, Feb. 19. Trust. R. Viccars, [illegible] in. lace manufacturer, Padbury. Sols. Bennett and Starke, Furnival's inn.—*Gardiner*, W. jun. grocer, Wokingham, Berks, Feb. 28. Trusts. J. Smith, grocer, Reading; J. D. Copeman, wholesale cheesemonger, Old Fish-st. London; and P. Davies, grocer, Reading. Sol. F. Soames, Wokingham.—*Ingledew*, E. draper, Warrington, Lancaster, March 12. Sol. J. Nicholson, Warrington.—*MacKerrow*, A. licensed hawker, Kingston-upon-Hull, Feb. 19. Trusts. J. Smith and I. MacCutchan, manchester warehousemen, both of London. Sol. J. C. G. Bennett, Size-lane.—*Nicholls*, P. grocer, Truro, Cornwall March 6. Trusts. H. Watben, merchant, London; T. Hitchens, merchant, St. Austell; and T. Barrett, grocer, Truro. Sols. Smith and Roberts, Truro.—*Sutcliffe*, W. worsted spinner and dyer, Bowling, Bradford, York, March 1. Trusts W. Crowther, manufacturing chemist, Gomersal; G Watkinson, wool stapler, and J. Sugden, drysalter, both of Halifax. Sols. Terry and Watson, Bradford.—*Tatam*, R. draper, Landport, Hants, Feb. 26. Trusts. H. Honey, Wood-st. and T. Mansbridge, Aldermanbury, warehousemen. Sols. Sole and Turner, Aldermanbury.—*Thompson*, A. coal dealer, Kingston-upon-Hull, March 12. Trusts. J. Skilbeck and T. Thorney, merchants, both of Hull. Sols. Thorney and Son, Hull.—*Thorburn*, J. hotel keeper, Bell Sauvage, Ludgate-hill, March 1. Trusts. J. Green, glass manufacturers, Upper Thames-st.; A. S. Chappell, house decorater, Walbrook; and J. Penny, wine merchant, Queen-st.-place. Sol. T. Parker, St. Paul's-churchyard.—*Wilson*, W. draper and grocer, Slingsby, York, March 10. Trusts. W. West, draper, Hull; H. M. Russell, merchant, New Malton; and J. C. Cass, merchant, York. Sol. H. Jackson, New Malton.

Gazette, March 19.

Archer, J. grocer, baker, and flour dealer, Liverpool, Feb. 20. Trusts. W. McCurtin, merchant, W. Thomas, cheese factor, and H. Pearson, grocer, all of Liverpool. Sols. Clibborn and Thomas, Liverpool.—*Austin*, E. grocer, Margate, March 2. Trust. J. D. Copeman, cheesemonger, Old Fish-st. Sol. J. E. Wright, Margate.—*Couldridge*, J. currier, Crediton, Devonshire, Feb. 9. Trust. J. Francis, tanner, Crediton; W. B. Gould, tanner, Broadclist; and W. Fisher, leather merchant, Maze Pond, Southwark. Sol. W. C. Cleave, Crediton.—*Davies*, H. leather seller, Liverpool, March 12. Trusts. A. Powell and E. Douglas, leather factors, Liverpool. Sols. Blundell and Sharman, Liverpool.—*Holmes*, J. draper, Cockermouth, Cumberland, Feb. 24. Trusts. J. Cooper, bank agent, Cockermouth; G. Holmes, sail maker, Liverpool; and E. B. Steel, gentleman, Cockermouth. Sols. J. and E. Steel, Cockermouth.—*Lee*, M. manufacturer, Staincliffe, Yorkshire, March 3. Trusts. J. Walshaw, woolstapler, Dewsbury; F. Popplewell, mill owner, Heckmondwike; and R. Clay, woolstapler, Dewsbury. Sols. Greaves, Scholefield, and Oldroyd, Dewsbury.—*Neild*, W. tailor and draper, Manchester, March 15. Trust. I. Neild, accountant, Manchester. Sol. T. T. Harding, Manchester.—*Rose*, J. grocer, Hoxton and Holloway, Feb. 20. Trusts. C. Hoare, Lime-st. and J. Dobson, Saint-Mary-at-Hill, tea and coffee dealers. Sols. Shaen and Grant, Kennington-cross.—*Rule*, W. decorator and grainer, Chiswell-st. St. Luke's, March 12. Trust. W. Dyke, clothier, Grafton-st. East, Fitzroy-square; and J. Linton, glass merchant, Bath-place, New-road. Sols. Philipps and Voss, Size-lane.—*Speakman*, J. woollen draper and tailor, High-st. Cheltenham, Feb. 20. Trusts. J. Costeker, Gresham-st. and T. Howse, Saint Paul's-churchyard, woollen warehousemen. Sols. Hardwick, Davidson, and Bradbury, Weavers' Hall, Basinghall-st.—*Turner*, W. builder, Prestwich, Lancashire, Feb. 23. Trust. C. Hunt, timber merchant, Salford; and J. Bedford, stonemason, Prestwich. Sols. Whitlow, Radford, and Whitlow, Manchester.—*Wylde*, J. grocer, Syston, Leicestershire, March 2. Trust. J. Roberts, grocer, Leicester. Sols. Stone and Paget, Leicester.

Partnerships Dissolved.

Gazette, March 9.

Baylis, A. J. and *Drewe*, A. H. W. attorneys and solicitors, Redcross-st. March 1.—*Bennett*, R. W. and *Elliott*, W. O. warehousemen, Trump-st. March 1. Debts paid by Elliott.—*Care*, C. and *Kolbe*, J. D. proprietresses of a school, Grantham, Jan 16.—*Catlow*, G. P., J. P. and J C. provision merchants, Manchester, March 5. Debts paid by J. C. Catlow.—*Choat*, H. and S. carriers, Thaxted, March 2.—*Clegg*, E and *Rea*, D. K. commis. agents, Manchester, March 24.—*Denham*, T. and J. linen drapers, Huddersfield. March 1. Debts paid by J. Denham.—*Dobson*, W. H. *Bateson*, J. and *Curtis*, J. woollen drapers, Leeds, as regards Bateson, Feb. 27. Debts paid by Dobson and Curtis.—*Dobson*, W. H. *Bateson*, J. and *Curtis*, J. woollen drapers, Sheffield, Feb. 27. Debts paid by Bateson.—*Fuller*, J. and *Wager*, J. cab proprietors and clock dealers, Sheinton, March 4. Debts paid by either.—*Fraser*, R. and *Osborne*, G. R. brandy and spirit rectifiers, Union-st. Borough, March 5.—*Gibb*, James and John, general warehousemen, Manchester, March 6. Debts paid by James Gibb.—*Grut*, T. C. and *Helmsing*, F. merchants, Hull, March 8. Debts paid by Helmsing.—*Hall*, W. R. and *Hopkins*, J. merchants, Liverpool, March 5.—*Harrison*, J., *Boothman*, S. and *Ball*, H. Longshaw Delf, Billinge, Feb. 14. Debts paid by Boothman.—*Hindley*, E. C. and *Mason*, H. grocers and teadealers, Liverpool, June 30. Debts paid by Mason.—*Holy*, G. and D. merchants, Sheffield, March 6. Debts paid by D. Holy.—*Horsfield*, G., *Fildes*, J. and *McKinnell*, J. manufacturers and printers, Manchester, as regards McKinnell, Jan. 1. Debts paid by Horsfield and Fildes.—*Hoskins*, E. H., *Ionides*, A. C., *Tolmodi*, A. and *Sgouta*, C. L. London and Manchester, Galatz, Ibrails, and Constantinople, as regards Hoskins, Dec. 31.—*Langdale*, C. and T. mustard manufacturers, Holland-st. Blackfriars-bridge, Feb. 24.—*Moore*, J. and *Wright*, K. waste and yarn merchants, Brick-lane, Whitechapel, and Manchester, March 2.—*Nock*, J. and *Holloway*, H. nail and gas tube manufacturers, Rowley Regis, March 4.—*Peake*, S. B. and F. M. drapers, Tottenham, March 9. Debts paid by F. M. Peake.—*Pidduck*, J. and *Taylor*, J. commission agents, Manchester, Feb. 27. Debts paid by Pidduck.—*Stockdale*, G., *Hall*, R. and *Stockdale*, J. bobbin turners and manufacturing chemists, Croston Clough, near Bury, as regards G. Stockdale, March 3.—*Webster*, C. and *Ryley*, H tea dealers and tallow chandlers, Uxbridge, March 4.—*Worsley*, N. and *Barnes*, E. cotton spinners and manufacturers, Edgworth, March 6. Debts paid by Barnes.

Gazette, March 16.

Armstrong, J. sen. and jun. attorneys, Carlisle, March 9.—*Baker*, W. G. and *Dunn*, H. common brewers, Newcastle, Oct 15.—*Berry*, J. H. and *Sutton*, G. brewers, Acresford, March 13. Debts paid by Berry.—*Boultbee*, C. and *Stedman*, J. B. surgeons, Whittlesey, March 1. Debts paid by Boultbee.—*Brown*, J. and *Axe*, H. slaters and timber merchants, Sheffield, March 12.—*Cook*, W. H. and *Morley*, J. drapers and mercers, Kingston-upon-Hull, March 10.—*Crossley*, J. and H. Woolwich, Jan. 7.—*Cummins*, T. and *Firbank*, J. painters, Gateshead, March 11.—*Dunmack*, E. B. *Thompson*, J. *Firmstone*, J. and *Blackwell*, J. K. coal and iron masters, Pontypool, March 12, as regards Blackwell. Debts paid by remaining partners.—*Hann*, J. *Clark*, W. and *Makinson*, A. W. civil engineers, New Palace Yard, Westminster, March 9, as regards Hann. Debts paid by remaining partners.—*Lewis*, T. and *Kerr*, G. drapers, Newport, March 13. Debts paid by Lewis.—*Matthews*, E. M. and *Stephenson*, J. ship chandlers and ropemakers, Tynemouth, March 13.—*Nouk*, E. and *Aaron*, P. Birmingham, March 8.—*Noble*, D. and *Fielding*, J. common brewers, Salford, March 12. Debts paid by [illegible]

by Nowell.—*Reeve*, L. A. and *Benham*, E. publishers and proprietors of the Literary Gazette, Henrietta-st. Covent-garden, Dec. 31.—*Shaw*, W. and J. and *Caudwell*, J. bakers and flour dealers, Manchester, Feb. 16, as regards Caudwell. Debts paid by remaining partners.—*Silk*, R. and *Brown*, T. coach builders, Long-acre, Jan. 10. Debts paid by Silk.

CONTENTS.

THE LAW TIMES.

SATURDAY, APRIL 3, 1852.

MAKING LAWS.

THEY who have never tried to construct a law can form no conception of the difficulty of so wording it as clearly to express the intention and to make provision for all that it is designed to embrace and to exclude. The framer is required to *anticipate*, not merely facts, and possible combinations of facts, but the doubts and quibbles of construction which ingenuity might start. It is easy to complain of the *wordiness* of a statute, but very difficult to avoid it.

A remarkable instance of this has just been afforded by no less accomplished a Lawyer than the LORD CHANCELLOR. In the spirit of a practical reformer, his Lordship was desirous of amending a defect in the law that regulates the mode of executing a Will. That law requires that it shall be signed on every page, and "at the foot or end thereof." Nothing could be seemingly more simple than this—it is brevity itself: some of our more radical law reformers, who would express a law as they write a letter, would have pronounced it the *beau ideal* of legislation.

Yet, upon the meaning of these few and apparently unmistakeable words, many questions have already arisen, which have produced much costly litigation, elicited some contradictory judgments from the Courts, and rendered many hundreds of Wills invalid. The point soon came to be mooted, what was the *foot* or *end* of a Will, or of any document? Clearly it could not be *anywhere* following it on the same paper. Thus, no person would assert that, if the Will were written on a sheet of paper and occupying the first page, a signature on the last page would be at "the foot or end thereof." Thus, then, it becomes a question of degree—of distance—of space. This conclusion attained, forthwith there necessarily followed a chaos of conflicting opinions as to the precise measure of space that would constitute a signing within the Act. The Ecclesiastical Courts construed it strictly: the Court of Chancery was more liberal. In such a conflict, it was impossible to say what Will was safe; and the LORD CHANCELLOR has come to the rescue with a measure to settle the question, by enacting that a Will shall not be rendered invalid by a defect in form, if substantially well executed.

But even Lord ST. LEONARDS great practical experience in writing law books has not enabled him to frame a short and simple law to effect his purpose. He has drawn a Bill, which now consists but of a single section, designed to render quite clear the manner in which a Will shall be executed. He finds that he cannot obtain his object by any description as an affirmative enactment, and so he is compelled to attain the end imperfectly by taking the various adverse decisions, and overturning them; that is, by enacting that the modes of signing, which by those decisions were declared to be insufficient, shall not be deemed to invalidate a Will.

Some of the other Law Lords objected to this mode of meeting the difficulty, but it is remarkable that none of them suggested any more practical method of overcoming it.

It was then proposed to submit the Bill to a select committee; but this was objected to, on the curious assertion that they would be sure not to agree upon the words in which the law should be expressed, so that the question would be no nearer a solution than before.

If this singular instance of the difficulties of law-making does not convince the reader that it is not a work for which *anybody* is competent who chooses to set up for a Legislator, let him take a pen and a sheet of paper, and try to put into words, whose meaning shall admit of no question, a simple direction as to the manner in which a Will shall be executed, and, having worded it, let him see how many holes he can pick in his own draft. After that he will perhaps be more lenient in his judgment upon, and more choice in his selection of, those to whom the task of constructing laws is confided.

THE ATTORNEYS' TAX.

WE fear that the distinction we last week endeavoured to draw between exacting pledges from candidates as to general questions, and as to particular grievances, was not sufficiently understood, and therefore we revert to it, for it is a point of considerable importance, the objection to pledges generally having occurred to the minds of many members of the Profession and restrained them from the only course by which justice is likely to be obtained.

We fully admit the impropriety of pledging a candidate to anything beyond *principles*, on any subject that affects the whole community, even in relation to a particular tax, provided that tax is one which is imposed fairly upon all, because it is impossible to anticipate what circumstances may arise to make change inexpedient.

But it is otherwise with a tax specially imposed upon a class. That is an injustice which *no* circumstances can render expedient, no State necessities justify; its existence is a *wrong*, the redress of which can never be unseasonable, never unwise, never to be deferred for the convenience of any person, or party, or Government. It is no answer to the demand for relief to say that the state of the revenue will not admit of it, that there are other taxes more urgent for repeal. If the revenue is deficient, it should not be made up by inflicting a tax upon one class, but by making all contribute in their fair proportions. The *first* duty of a Government, desirous of imposing taxes equitably, will be to repeal all taxes that are imposed inequitably, and to supply the deficiency thus occasioned by an equitable tax.

Therefore it is, that this case of a special tax upon a particular class is an exception from the general rule as to the impropriety and inexpediency of exacting pledges. Its right or wrong, its fitness or unfitness, its retention or repeal, do not depend upon any circumstances, or time, or season, or convenience, but are the same at all times and under any circumstances.

Thus, it would be wrong to exact a pledge from any candidate to vote for the repeal of the Income Tax, because circumstances may arise which might make its retention necessary, and being a tax imposed upon all having a certain amount of ability to contribute to the necessities of the State, its existence is not a question of right and wrong, justice and injustice, but only of expediency and propriety. But the Attorneys' Tax is inflicted upon a small class as *an addition* to the other taxes which they pay in common with their fellow citizens, and therefore the Attorney may rightfully insist upon those to whom they give their support at the elections distinctly pledging themselves to vote for the removal of the injustice that is thus done to those whose services and votes they are asking, nor can any candidate, who admits the injustice of such a special tax levied upon a small class, with any grace object to give a formal pledge to vote for its repeal, whatever the desires of Government or the requirements of party.

If he *should* hesitate, ply him with the arguments we have suggested.

CORRUPT PRACTICES AT ELECTIONS.

THE success that attended the St. Albans inquiry has suggested a new plan for the discovery and punishment of corrupt practices at elections, which will probably prove more efficient than any thing that has yet been attempted.

Hitherto the practical difficulty in the attainment of this object has proceeded from two causes: first, the unwillingness of either candidate or party to incur the cost of a petition, the expenses of pursuing the inquiry in London, and the limitation of that inquiry to the particular charge in the petition, excluding investigation of general corruption: second, our absurd law of evidence, which permits a witness to refuse to answer questions that might subject him to prosecution, instead of protecting his evidence and compelling him to answer.

When there was a real and earnest desire to discover the very truth, these difficulties were speedily and easily removed. Instead of bringing up witnesses to London, a Commission of Inquiry was sent down to the accused borough, and instead of sanctioning the plea of personal danger as an excuse for not speaking out, the more rational course was adopted of indemnifying witnesses who freely answered against any personal liabilities by reason of such evidence.

Why should not that, which has thus been found to promote the discovery of truth in one case, be made the general law of evidence and adopted in all cases? But this by the way.

A Bill is now before the House of Commons, which purposes to extend the provisions, that were specially enacted for the purpose of the St. Albans inquiry, to *all* cases in which the House of Commons shall be of opinion that an inquiry should be made into corrupt practices alleged to take place at elections. Without further trouble, and by virtue of this suggested law, her Majesty is empowered to appoint two or more Commissioners, for the purpose of making such inquiry. The Commissioners are to appoint a secretary, and so many clerks, messengers, and officers as may be thought necessary by one of the Secretaries of State, and to pay them such salaries as the Treasury may direct.

The Commissioners are to hold their inquiry in the borough, or within ten miles thereof, and to do so "by all such lawful means as to them appear best, with a view to the discovery of the truth, and *for such a period retrospectively as they think proper*," and in what manner "the last election of members or a member have or has been conducted, and whether any corrupt practices have been committed at such elections or any of them; and if so, whether by way of the gift or the promise

of the gift of any sum of money or other valuable consideration to any voter or voters, or to any other person or persons on his or their behalf, for the promise or the giving of his or their vote or votes, or for his or their refraining or promising to refrain from giving his or their vote or votes at any such election, or for his or their promising or undertaking to procure the votes of other electors at any such election, or whether by the payment of any sum of money or other valuable consideration whatsoever to any voter, or to any other person on his behalf, before, during, or after the termination of such election, by way of head-money, or in compliance with any usage or custom in such city, borough, or place, or how otherwise, and whether any sum of money or other valuable consideration whatsoever, has been paid to any voter, or to any other person on his behalf, after the termination of any such election, as a reward for giving, or for having refrained from giving his vote at such elections, or any of them."

Such is the extensive range of the proposed inquiry, and the names of persons proved to be guilty are to be reported to Parliament.

The 7th section gives to the Commissioners full powers to send for persons and papers. The 8th indemnifies persons implicated in corrupt practices, who may be examined, and shall make a faithful discovery; and the Commissioners are to give a certificate of such faithful discovery, which is to be a protection to the person against all actions or other proceedings then pending or thereafter taken against him for such practices. The inquiry is to be upon oath: appearance to a summons from the Commissioners is to be compulsory; false evidence is to be punishable as perjury; and the expenses are to be paid by the Treasury.

This Bill receives the support of the Government, and is to be made law *before* the dissolution; it will be in operation at the coming General Election, and it is right that our readers should remember what are the liabilities that will be incurred by any resort to the practices which of old time have too much prevailed in many of the cities and boroughs. They cannot now escape detection and punishment.

COUNTY COURTS AMENDMENT BILL.

This Bill has gone down to the Commons, having been much improved in its progress through the Lords. The provisions empowering the Lord Chancellor to direct accounts, inquiries, evidence, pleas, and answers, to be taken by Commissioners in Bankruptcy and Judges of the County Courts, remain unaltered, and it is a very valuable feature of the Bill that it empowers witnesses to be examined vivâ voce. The 8th section is important to our readers. It is as follows:—

8. So much of the 13th and 14th Vict. c. 61, s. 6, as provides that the expense of employing a barrister or an attorney shall not be allowed on taxation of costs unless by order of the Judge, is hereby repealed; but the Judges of the County Courts shall from time to time determine in what cases such expenses shall be allowed in taxation, giving public notice of their determination, to be affixed to the walls of the court-house wherein they sit.

The 9th section is that which we have already given *in extenso*, empowering the Lord Chancellor to appoint five of the County Court Judges "to frame a Scale of Costs and Charges to be paid to Attorneys in the County Courts, to be allowed as between Attorney and Client and as between Party and Party." This scale of costs is to be approved by three Judges of the Superior Courts of Common Law, and laid before Parliament. The costs are to be taxed by the Clerk of the Court, "and in case upon such taxation it shall be alleged by the Attorney whose costs are under taxation, that his client has agreed to allow any costs other than those which would be allowed upon such taxation, any such costs shall not be allowed unless such agreement be in writing and signed by the parties sought to be charged therewith. *But the Judge of such Court shall have power to review such taxation*; and direct that a greater or a smaller sum shall be allowed in the particular circumstances of the case than is allowed by such clerk."

The 10th section is also one of those which we have so long sought to procure to be enacted, as being essential to the due administration of justice in the County Courts. At present, whether disputed or not, the plaintiff is obliged to prove his debt. The section before us provides that the summons shall inform the defendant that, if he intends to dispute the demand, he must give notice in writing to the plaintiff or his Attorney six days before the day of hearing, and that if no such notice be given the defendant shall not be allowed then to dispute the debt, but that judgment shall be given for the plaintiff upon proof of service of the summons; with power to the Judge to adjourn the hearing and allow the defendant to defend, if he shall be satisfied that justice between the parties shall so require.

The next section is equally an improvement. It enacts that no cause is to be set down for trial unless the summoning officer has certified that the defendant has been duly served with the summons.

The 15th and 16th sections remove a difficulty that had arisen as to the hearing of appeals. They provide that appeals may be heard in term or out of term, and empower the Judges to make orders regulating appeals.

The 17th section gives power to the Court or a Judge at Chambers to make an order entitling plaintiff to costs in cases where concurrent jurisdiction is given to the Superior Courts, or where the Judge had certified that there was sufficient reason for bringing such action in the Superior Courts.

The 18th section affords additional protection to officers against actions.

The 19th proposes that the Lord Chancellor shall frame a scale of fees to be taken by County Clerks for Equity business under this Act.

The 21st section provides for a more effectual auditing of the Clerks' accounts in Insolvency.

The 23rd section repeals the 91st section of the County Courts Act, which relates to practitioners, and in lieu thereof the 24th section provides thus—

24. It shall be competent for the parties to any suit commenced in any of the said courts to appear to prosecute or defend the same on his or their own behalf personally, or by his wife, or by a clerk or servant bonâ fide in his actual employ, or by an attorney properly concerned therein, and retained and instructed by either of such parties, or by a counsel instructed by any such attorney, but by no other person.

The 27th section limits the salaries of Judges to 1,500*l*. and of Clerks to 700*l*. per annum.

The 28th and last section practically abolishes Assistant Clerks, by providing that "no clerk of a County Court shall henceforth be appointed for more than one district in which a Court is holden."

THE LEGISLATOR.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Monday, March 29.

Ecclesiastical Courts, Criminal Juridiction
Linen, &c. Manufactures, Ireland
Sheep, &c. Contagious Diseases Prevention
Belfast Custom House, &c.

Tuesday, March 30.

Law of Wills Amendment, Lords
Protection of Inventions Act 1851, Lords.

Thursday, April 1.

Exchequer Bills, 17,742,800*l*
Poor Law Board Continuance
Poor Relief Act Continuance
Ennis Improvement and Fergus Navigation.

BILLS READ A SECOND TIME.

Friday, March 26.

Mutiny
Marine Mutiny
Apprehension of Deserters from Foreign Ships.

Monday, March 29.

County Courts further Extension.

Tuesday, March 30.

Law of Evidence, Scotland.

BILLS READ A THIRD TIME AND PASSED.

Friday, March 26.

St. Albans Disfranchisement.

Thursday, April 1.

Mutiny
Marine Mutiny.

PETITIONS PRESENTED.

Attorneys' Certificates—For repeal of the duty thereon, —from Pwllheli.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A THIRD TIME AND PASSED.

Friday, March 26.

Liverpool Museum and Library.

Monday, March 29.

Liverpool Corporation Waterworks.

Thursday, April 1.

Belfast Gas
Bradford Piece Halls
Cheltenham Improvement and Health
Droitwich Junction Canal
Yaxley Drainage.

SESSIONAL PRINTED PAPERS.

Par. Numb.
154. Ballinrobe Union—Correspondence
179. New Zealand, Political Institutions—Correspondence
191. British Museum—Estimate, &c.
Poor Law Board—Fourth Annual Report
177. Strand Union—Correspondence
170. Dowie's Patent Boots—Copy of Report
175. Royal Schools, Armagh, &c.—Copies of Memorials
199. Committee of Selection—Fifth Report
208. Public Debt—Account
Turnpike Trusts—County Reports of the Secretary of State (No. 2, Surrey; No. 3, Sussex)
Irish Packet Station—Index to Report of Session 1851
Ecclesiastical Commissioners for England—Fourth Genera Report
137. Turnpike Trusts (Ireland)—Abstracts of General Statements of Income and Expenditure
160. Beer and Spirits—Return
176. Middlesex Sessions—Return
200. Colonies—Return
180. Bills—Suitors in Chancery Relief, a corrected copy, as amended
189. — Building of Churches, &c.
195. — Differential Dues
194. — Burghs (Scotland) (amended)
188. — Parish Constables
181. — Repayment of Advances Acts Amendment (Ireland)
206. — Corrupt Practices at Elections, amended
207. — Enfranchisement of Copyholds, amended
209. — Ecclesiastical Courts, Criminal Jurisdiction
210. — Linen, &c. Manufactures, Ireland
211. — Sheep, &c. Contagious Disorders Prevention
212. — Belfast Custom House, &c. Ireland
222. — Law of Wills Amendment
223. — Protection of Inventions Act, 1851, Extension of Term
Consolidated Annuities—Report by Sir C. Trevelyan
Foreign Refugees—Further Correspondence
173 Local Acts—Reports of the Admiralty
203. Malt—Account
214. Savings Banks—Return
224 Committee of Selection—Sixth Report
Borneo—Correspondence respecting Mr. Burns.

HOUSE OF LORDS.

Monday, March 29.—The Law of Wills Amendment Bill was read a third time and passed, on the motion of the Lord Chancellor.

DIGEST OF THE STATUTORY AND CRIMINAL LAW.

Tuesday, March 30.—Lord Brougham, in presenting a petition, of which we heard neither the prayer nor the place from which it came, availed himself of the opportunity to ask the noble earl at the head of the Government a question relative to the last report of the Commissioners of Common Law, and the intentions of the present Government to form a digest, first of the statutory and then of the criminal law. He had put the same question to his noble friend near him, the head of the late Government, but had never been able to extract from him an answer. After stating that the commission had already cost the country more than 60,000*l*. he insisted on the expediency of enabling it to bring its labours to a close by prolonging them for a certain limited time, so that the country might not lose the good money which it had already expended. He, therefore asked, first, whether the commission was to be continued, and next, whether the Government intended to form such a digest as he had already mentioned.—No answer was given to the question.

Thursday, April 1.—Lord Lyndhurst reminded their lordships that, in a statement with which he troubled them the other night, he complained of the great expense attending the administration of estates of persons found lunatic under commission. He had prepared a Bill for the purpose of remedying that evil, and proposed now to lay it on the table.—The Bill was read a first time.

HOUSE OF COMMONS.

CHARITABLE TRUSTS BILL.

Friday, March 26.—The Attorney-General explained the scope and objects of the measure, the whole merit of which, he said, was due to the late Government. Among the charities embraced by this Bill were 21,000 the income of each of which was less than 20*l*. a-year, and upwards of 13,000 with less than 5*l*. a-year. To charities of this kind the machinery of the Court of Chancery was wholly inapplicable, since it would absorb such small properties, which were therefore entirely unprotected. In order to appreciate the remedy proposed, it was necessary to bear in mind the existing state of the law, which mainly depended upon the statute of Elizabeth, by which the control over all charities was given to the Court of Chancery. From that

time down to the year 1786 nothing was done in the way of legislation. Sir Frederick then gave an exposition of the various Acts of Parliament and reports of commissioners and committees from that date down to the year 1851, when a Bill was brought into and passed the House of Lords, but did not reach the Commons until too late a period. The Bill before the House adopted the recommendations of the commissioners of 1839, and followed out the provisions of Lord Lyndhurst's Bills of 1844, 1845, and 1846. It proposed to establish a board of five commissioners, two of them to be paid, power being given to the Lord Chancellor to appoint a third paid commissioner. This board was to have no jurisdiction over charities, only powers of supervision, control, and advice; and it was proposed that no suit or proceeding should be instituted in respect to any breach of trust with reference to charities without the consent of the board. It was proposed to give jurisdiction in respect to small charities to the County Courts and district Courts of Bankruptcy. Provisions were inserted to enable trustees and others interested in charities to obtain the advice of the commissioners; and persons acting under such advice would be indemnified, though the decision of a Court should hold the advice to be erroneous. The commissioners would have power to send questions relative to charities under 30*l.* a-year to County Courts and district Courts of Bankruptcy, and to interfere and stay proceedings which they might think improperly conducted, and, by way of check, they would have no control over the Attorney-General acting ex officio. It was proposed to tax charities having 10*l.* a-year and upwards 2d. in the pound, no charity to pay more than 50*l.* This rate, it was computed, would raise 8,500*l.* a year, a sum sufficient for the support of the Board and its staff. The Bill would exempt from its operation the universities, collegiate and cathedral churches, the British Museum, and institutions supported wholly by voluntary contributions.—Sir A. Cockburn spoke warmly in favour of the Bill, and mentioned instances of gross abuse of charitable trusts.—Mr. Alderman Thompson protested strongly against subjecting Christ's Hospital, and other great charitable establishments in the metropolis, to the provisions of the Bill, and moved that it be referred to a select committee.—Sir R. Inglis seconded the motion, and claimed the exemption of the Royal Literary Fund. He admitted the expediency of legislation upon this subject; but this could be done without interfering with the great charities of London. — Mr. Alderman Sidney thought there was nothing derogatory in subjecting the royal hospitals and other great charitable institutions to inquiry; he would not exclude the universities, believing that all charitable trusts ought to be inquired into.—Sir W. P. Wood observed, that there seemed to be a misapprehension as to the powers of the commissioners, who would have no further control over the charities than that the latter were required to furnish statements of their accounts, which the commissioners had the power of investigating.—Mr. Freshfield supported the amendment.—Mr. Goulburn should give to the principle of the Bill his best support. Its provisions for the trial of cases obviated his objection to the former Bill. After some remarks by Mr. J. A. Smith and Mr. P. Howard, Lord J. Russell said he could not support the amendment, which would cause delay; but circumstances had been stated with reference to the royal hospitals which deserved consideration. He doubted the expediency of exempting them altogether; but perhaps some clause might be framed by which they could be protected from unnecessary interference. The amendment was withdrawn, and the House went into committee on the Bill; but the chairman immediately reported progress.

MILITIA BILL.

Monday, March 29.—Mr. Walpole moved that the Chancellor of the Exchequer, himself, and the Secretary at War, do prepare and bring in a Bill to amend and consolidate the laws respecting the militia —for which leave was given on the 20th of February. There were, he observed, three classes of objectors to a militia. One said, our defences were sufficient as they were; but Mr. Walpole shewed that while our army was very little larger than that of Belgium, notwithstanding the dimensions of our empire, in case of a sudden incursion not more than 25,000 men could be brought to bear upon any one point; and that our ships in commission at home consisted of only nine of the line, five frigates, one sloop, and seventeen steamers. Others said that there was no immediate necessity for preparation; but hasty preparations, while less perfect, would aggravate panic. The time of preparation and of action ought not to be simultaneous. The third class of objectors urged that we should increase our regular army. This would add greatly to the permanent expense, and both army and navy were instruments of attack as well as of defence, so that an augmentation of either would rouse suspicion and jealousy. The militia was a national institution—a force familiar to the country; we had actually at this moment a militia, for the law was only suspended. The militia had, moreover, done good service to the country, and in assuming the character of soldier, the militiaman did not renounce that of citizen. After a short review of the history of the militia laws, Mr. Walpole proceeded to develope the plan proposed by the Government; namely, first, to raise, if possible, without abandoning the ballot, a force of 80,000 volunteers, to be drilled and trained under the regulations of the 43 Geo. 3; 50,000 only to be raised the first year, and 30,000 the second year, the period of service to be five years. Secondly, it was proposed to raise these men by bounties of 3*l.* or 4*l.* either to be paid down at the time, or at the rate of 2s. or 2s. 6d. per month, the volunteer being at liberty to take it in one way or the other. Thirdly, with respect to the officers, it was proposed to dispense with the qualifications required by the 43 Geo. 3, in regard to all officers below the rank of major, and generally to consider the having been in the army equivalent to qualification. Fourthly, the Bill provided that the number of days' training required in the year should be twenty-one, the Crown having the power to extend the period to seven weeks, or to reduce it to three days. Lastly, with respect to the embodiment of the men, it was not proposed to make any alteration in the existing law. The expense required for bounty and equipment would be about 1,200,000*l.*; but if spread over five years, it would be about 240,000*l.* a year; except that during the first year the cost of equipment would raise the expense to 400,000*l.* including (as Mr. Walpole afterwards intimated) the clothing. This being a national defence, it was intended that the expense of the equipment, arms, and bounty should, save in districts which should not provide the proper quota, be borne by the public purse.

District Courts of Bankruptcy Abolition Bill.—On Thursday Lord Brougham's Bill was printed by order of the House of Lords to limit the jurisdiction of the Court of Bankruptcy, to abolish the Courts of Bankruptcy for the country districts, and to give to the Judges of the County Courts jurisdiction in matters of arrangement and of bankruptcy in certain cases. There are thirty-two sections in the Bill, and in addition to the same, there is what his lordship is pleased to call a "paper of observations explanatory of the objects of the Bill," extending to seventeen folio pages. It is proposed to appoint a "chief commissioner," of the Court of Bankruptcy, and to make alterations. The "eventual" annual saving is estimated at 67,370*l.* There is a portion of a provision of this Bill which might be introduced into another Bill on County Courts, which has already passed the Lords, and is now in the House of Commons. It is to the effect that no judge of any County Court is to be allowed to practise as a barrister-at-law. It is proposed to empower the Lord Chancellor by this Bill to appoint additional judges, not exceeding "fifteen." The 11th of October is fixed as the time when the Act, if passed, shall come into force.

Court of Bankruptcy.—The annual statement of the accounts for the year 1851, announces that 100*l.* were paid under the orders of the Lord Chancellor, 3,912*l.* under the orders of the Vice-Chancellors, and 202,818*l.* under those of the commissioners. On the dividend account the sum of 618,253*l.* was transferred, and 600,236*l.* paid out. The balances standing to the credit of the accountant are as follows:—General cash account, 112,865*l.*; bankruptcy fund, 1,270,819*l.*; unclaimed dividends, 303*l.* (in cash); chief registrar's account, 18,416*l.*

The Court of Bankruptcy.—Last year the per centage on assets of bankrupts' estates (as appears from a return just printed by order of the House of Lords) was 25,801*l.* 4s. 9d. and the amount of stamp duties for proceedings in bankruptcy, 12,626*l.* 8s. 10d. The interest on the bankruptcy fund account was 39,269*l.* 15s. 11d. Under the head of "Sundries, by registrar of meetings and others," 1,010*l.* 14s. 6d. and the payment in by Mr. Seton, clerk of her Majesty's Hanaper, 1,085*l.* 19s. 6d. The salaries paid were 63,082*l.* 18s. 1d. The compensations in the year were 21,426*l.* 17s. 4d. The retiring annuities, 2,333*l.* 6s. 8d. and the expenses, travelling, &c. and bank remuneration, 4,137*l.* 4s. 9d.

Beer and Spirits.—Mr. Hume has obtained some returns, which were yesterday printed, of the number of persons licensed for the sale of beer and spirits in each Excise collection in Scotland, in each year from 1831 to 1851, and similar returns for England and Wales; also in respect to the number of persons licensed for the sale of beer to be drunk and not to be drunk on the premises in each Excise collection in England and Wales during the same years. In Scotland, in 1831, the number licensed for the sale of beer and spirits was 17,611, and last year the number was only 14,672. In England, in the first year, the number was 50,547, and last year it had reached 60,579, to sell beer and spirits. In 1831 there were 30,978 persons licensed to sell beer to be drunk or not drunk on the premises (there was no difference made till 1835), and last year the number licensed to sell beer to be drunk on the premises was 37,598, and not to be drunk on the premises 3,293.

Suitors in Chancery Relief Bill.—This Bill (as amended in committee) has been printed. It contains fifty-one clauses. The principal provisions are directed to the reduction or abolition of fees, the payment of salaries from the consolidated or suitors' fee fund, and the collection of fees. All fees will be paid into the suitors' fee fund. The offices of Clerk of Hanaper, Secretary of Decrees, one of the gentlemen of the Chamber, the Chaff-wax, the Sealer, and their deputies, are abolished, and the compensations to be allowed them prescribed. The duties of the subpœna and affidavit offices will be performed in future by the clerks of records.

Friendly Societies.—The reports of the Registrars of Friendly Societies in Scotland and Ireland (presented to Parliament) have just been printed. In Scotland it is stated, on a rough estimate, that the registered societies distribute about 20,000*l.* annually in sickness, and that about 30,000 of the population are enrolled as members. The registrar is of opinion that many of the societies are not proceeding on sound principles. In Ireland it appears that the returns furnished shew that during the respective periods covered by them there had been expended in respect of deaths the sum of 115*l.* 2s.; sickness, 13*l.* 0s. 6d., and a total expenditure of 225*l.* 18s. 7d. It is stated that "the great excess in payments in respect of deaths over those in respect of sickness may be in some measure explained by its being stated that a sum of 72*l.* was paid in respect of deaths by one society, which does not provide relief in cases of sickness."

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

The powers of churchwardens and the rights of parishioners were brought under discussion in the Court of Chancery, in the case of *Woodman* v. *Robinson*, 19 Law T. Rep. 8. The ratepayers had formally voted in vestry resolutions to warm the church, by introducing warm air or water-pipes under the floor. The churchwardens proceeded to carry out these resolutions of the vestry. A single inhabitant of the parish, rated to the church-rate, filed a bill against the churchwardens, to restrain them from executing the intended works, alleging that the placing of hot pipes in the soil would engender noxious gases, dangerous to the health of the plaintiff and others attending the church, and that the churchwardens had not applied for a faculty from the ordinary. The Court *refused* the injunction.

The Court of Q. B. has decided that the orders of the Poor-law Board are binding upon the auditor and the overseers, as well as upon the guardians. Therefore, in *Reg.* v. *Greene*, 19 Law T. Rep. 9, where the guardians had appealed against the disallowance by the auditor of the salary due to an assistant overseer and collector of rates appointed by them, and the Poor-law Board had reversed the disallowance, it was held that at the next audit the auditor and overseers were bound to make the payment. In the same case, it was also decided, that the effect of sec. 61 of 7 & 8 Vict. c. 101, is to take away from the vestry this power of appointing an assistant overseer, where the guardians have already, in fact, appointed one under an existing unrescinded order of the Poor-law Board.

From the Oxford circuit, a point is reported of considerable interest, upon the construction of the 1st section of the 14 & 15 Vict. c. 100, which gives to the Court power to amend variances. It occurred in an indictment for *false pretences*. The pretence alleged was that defendant went to B. on behalf of the prosecutrix and served a certain order of affiliation on one C. and said that he was entitled to receive, for serving the said order, the sum of 5s. The evidence was, that prisoner said he had been with the order to B. to serve C. and left it with the landlady where C. lodged, he being out, and it was held that the evidence did not support the averment. It was held also not to be such a variance as the Court had power to amend, that power being limited to "the name or description of any matter or thing" named or described in the indictment. (*Reg.* v. *Bailey*, 19 Law T. Rep. 11.)

Expenses of Bailing Prisoners.—Mr. Mullings, M.P. in an address of some length, brought under the notice of the Court at Gl[illegible] Sessions, a complaint which had been laid [illegible] the Cirencester bench of magistrates by a man named Midwinter, under the following circumstances:—Midwinter's son had been committed to

the county prison for trial, but bail had been granted by the magistrates, and Midwinter proceeded to the county prison to procure the liberation of his son. While at the prison he stated he was referred to Mr. Brown, an attorney, although the necessary steps for the liberation of his son had been previously taken; that he subsequently obtained his son's release, but that he was charged a fee of 6s. 8d. by Mr. Brown, and also a fee by the magistrates' clerk, Mr. Commeline, which he had been led to expect he should not have been called upon for. Such being the facts of the case, Mr. Mullings thought the officers of the gaol had been guilty of an irregularity in giving Midwinter the name of an attorney to whom he was to apply; and that according to the scale of fees to be paid, Mr. Commeline ought not to have made any charge in this case. An inquiry, it seems, was made, when it appeared that Captain Mason, the governor of the gaol, had merely stated to Midwinter, in answer to his inquiry where he could find a county magistrate (knowing that Mr. Wintle, one of the county magistrates, and Mr. Brown were coming to the gaol to bail out another prisoner that day), that if he called upon Mr. Brown he would ascertain what time a magistrate would be at the prison, and that Midwinter inquired as he went out of the officer at the lodge where Mr. Brown lived, and that officer having some time since had a fancy card given him by Mr. Brown, merely for him to examine the printing, he had, without any idea of a recommendation, handed over the card to Midwinter as his best instruction where to find Mr. Brown. The 6s. 8d. which Mr. Brown had received he charged Midwinter as a fee for the part he took in going with him to Mr. Wintle. After some discussion, the Court arrived at the opinion that no blame whatever attached to the officers of the prison. With respect to the other subject of complaint, it appeared that inquiry had been made of Mr. Commeline, and he had stated that he always charged the fee he had on this occasion, considering himself entitled to it; but the opinion of the Court was against that view. No motion was, however, made by Mr. Mullings.

TITHE COMMISSION.

The following is a copy of the report of the Tithe Commissioners to her Majesty's Secretary of State for the Home Department, dated January 31, 1852, (For the year 1851):—

"Tithe Commission-office, Jan. 31.

"Sir,—It is our duty to report to you the progress of the commutation of tithes in England and Wales to the close of the year 1851.

"We have received notice that voluntary proceedings have commenced in 9,634 tithe districts; of these notices none were received during the year 1841.

"We have received 7,070 agreements, and confirmed 6,778; of these none have been received, and none confirmed during the year 1851.

"7,020 notices for making awards have been issued, of which 51 were issued during the year 1851.

"We have received 5,583 draughts of compulsory awards, and have confirmed 5,366; of these 51 have been received, and 106 have been confirmed during the year 1851.

"We have received 11,639 apportionments, and confirmed 11,530; and of these 296 have been received, and 254 confirmed during the year 1851

"In 12,141 tithe districts, as will be seen from the above statement, the rent-charges have been finally established by confirmed agreements or awards.

"809 altered apportionments were made by the tithe commissioners up to the 31st of December, 1851, of which 619 were confirmed.

"At that date exchanges of glebe lands were effected in 100 places, and 36 such changes were in progress.

"At the close of 1851 we had confirmed 13,160 distinct mergers of tithes or rent-charges.

"In our last report we submitted to you, for the consideration of the Legislature, that, to prevent delays, agitation, and expense, it might be expedient to deal with a few parishes in which the tithes belong to the landowners, or moduses or tithes of small value remain to be commuted, in a more summary manner, instead of by those regular processes by which the bulk of the tithes have been hitherto commuted.

"We stated that there were probably 100 cases in the north of England in which it would be impossible to complete a formal commutation at an expense amounting to less than from 50 to 100 years' purchase of the annual value of the rent-charge.

"We are aware that these cases must be disposed of before the work of commutation is complete, or before any Act declaring tithes to have ceased to exist can be passed; but we feel most reluctant to subject the parties to an expense which must inevitably be considered disproportioned to any benefit obtained.

"Up to this point we have the satisfaction of feeling that the business of commutation has been conducted with general tranquillity and harmony, and we are very unwilling that a work hitherto considered beneficial to all parties should close with any instance of individual hardship.

"The additional powers which we require are wholly for the purpose of preventing expense to the parties and the public; and we are of opinion that if these powers should be granted in the manner pointed out in our last report, tithes might be prospectively extinguished by one and the same Act.

"Assuming that the existing commission will expire with the session of 1854, we think we should by that time be able to present a report shewing how the tithes of each parish or township in England and Wales have been dealt with.

"If, in consequence of litigation before the Superior Courts, or from other causes, the tithes of any parish or district remain uncommuted, we would place such tithes in a separate schedule; and, with this exception, all others might be finally extinguished, and courts of justice precluded from entertaining claims for them.

"The Act itself would be sufficient notice to all tithe-owners whose tithes may not have been already commuted. If, notwithstanding the notices already given, and the inquiries repeatedly made, any claims to tithes should still be outstanding, a further opportunity would thus be given for effecting a commutation, and it would only be the neglect of the parties themselves if any tithes should be extinguished without an equivalent.

"We have the honour to be, Sir, your very obedient servants,

"Wm. Blamire,
"Thomas Wentworth Buller,
"G. Darby.

"To the Right Hon. Sir George Grey, bart. M.P. &c."

JOINT-STOCK COMPANIES' LAW JOURNAL.

The reader will remember the decision, some few months since, that where an agreement had been made with a landowner for the purchase of his land for a railway at a fixed sum to be paid, on consideration of which he withdrew his opposition to the Bill, and the railway was afterwards abandoned, it was held that he was entitled to specific performance of his contract, although the *quid pro quo* had neither been given nor was required. For the sake of *justice*, which was violated by that decision, we are pleased to see that the Lords Justices have, upon appeal, reversed the decision, and in *Webb* v. *The Direct London and Portsmouth Railway Company*, 19 Law T. Rep. 2, have refused specific performance, and left the landowner to his remedy at law for damages. Lord Cranworth expressed some doubt whether there was an absolute contract at all; if it was not, in fact, conditional upon the railway being made.

In *Peters* v. *The Dublin and Wicklow Railway Company*, 19 Law T. Rep. 12, the company's special Act had provided, that where contracts for land were in existence at the time of the passing of the Act the value need not be assessed as there directed, a mere *notice to treat* did not come within the exception.

WINDING UP.

Two little points of *practice* are to be noticed. In *Re The Arigna Iron and Coal Company*, 19 Law T. Rep. 8, the costs of opposing an order to wind up were refused to a party who had been present at a meeting at which it had been unanimously resolved that the affairs of the company should be wound up, and on which occasion he did not express any dissent from the proposition, but afterwards opposed the order.

In *Re The Pennant, &c. Mining Company*, 19 Law T. Rep. 8, the Court sanctioned an arrangement by which a notice of appeal had been withdrawn upon terms of paying the costs out of the estate.

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

Arigna Iron and Coal Company.—Appointment of Mr. George Croydon, 10, Coleman-street, to be official manager.—*Gazette*, March 30.

Wheal Providence Mining Company.—Appointment of William Quilter, of Coleman-street, to be official manager.—March 26.

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

It will suffice merely to direct attention to the case of *Mortimer* v. *Watts*, 19 Law T. Rep. 3, relating to the powers conferred upon trustees by certain provisions in a will. It cannot be shortly stated; but it will be read with interest.

In *Trotter* v. *Vining*, 19 Law T. Rep. 6, the question was as to a self-constituted trust. A. the wife of B. was entitled to an estate in her own right. Proceedings were taken against C. to recover it. He compromised the matter by paying a sum of money, which B. received, and invested in his own name, but regularly paid the dividends to his wife, and spoke of it as belonging to her. B. died, and the fund was held to be in trust for her separate use.

LATE CASES ON THE LAW OF LANDLORD AND TENANT.(a)

(*Continued from page* 199.)

In accordance with the intimation contained in our last essay on the above subject, we now resume it in the consideration of the law relating to distress, and the recent decisions thereon. And here we may remark that of the various remedies which the law affords to the landlord for the recovery of rent from his tenant, that by distress is at once the most ancient and the most summary in its nature. Lord Coke recommends it, in preference to others, as the most plain and certain. It is defined by Blackstone to be the taking of a personal chattel out of the possession of the wrongdoer into the custody of the party injured, to procure a satisfaction for the wrong committed. The thing itself taken by this process is also frequently called a distress. For all services a distress may be made of common right; for distresses were incident by the common law to every rent-service, and by particular reservation to rent-charges also, but not to rent secs, till the stat. 4 Geo. 2, c. 28, extended the same remedy to all rents alike, and thereby in effect abolished all material distinction between them. (Com. Dig. tit. "Distress," A. 1.) So that now we may lay it down as a universal principle that a distress may be taken for any kind of rent in arrear, the detention whereof beyond the day of payment is an injury to him that is entitled to receive it. A distress may also be made not only for the rent of land and leases, but also for the rent of any part of a house, as a single room or apartment therein, if it be the subject of a particular demise. And even if such an apartment be let furnished, a distress may be made for the whole rent reserved, because in contemplation of law it issues wholly out of the part of the demised premise, which belongs to the realty. (*Newman* v. *Anderton*, 2 New Rep. P.C. 224.) But a landlord has no right to distrain for double rent upon a weekly tenant who holds after a notice to quit. (*Sullivan* v. *Bishop*, 2 C. & P. 859.) And a landlord has no right to distrain, unless there be an actual demise to the tenant at a fixed rent; and therefore, where a tenant was in possession under a memorandum of agreement to let on lease, with a purchasing clause, for twenty-one years, at the net clear of 63*l.* the tenant to enter at any time on or before a particular day; it was held that this only amounted to an agreement for a future lease, and that no lease having been executed, and no rent subsequently paid, the landlord was not entitled to distrain. (*Dunk* v. *Hunter*, 5 B. & Ald. 322.) The only remedy in such a case is by an action for use and occupation.

In another case where, under an agreement for a lease at a certain rent, the tenant was let into possession before the lease was executed; it was held that the lessor could not during the first year distrain for rent, for there was no demise, express or implied. (*Hegan* v. *Johnson*, 2 Taunt. 148.) The plaintiff who had entered on the premises under an agreement for a lease admitted a charge of half a year's rent, in an account between him and his landlord. It was held that this constituted him a tenant from year to year, and liable to distress. (*Cox* v. *Bent*, 5 Bing. 185.) But where the plaintiff entered a farm under an oral agreement for a lease for ten years; though the time of paying

(a) By George Harris, Esq. Barrister-at-Law.

rent was settled, it did not appear what was the amount to be paid; the lease was never executed, but the plaintiff occupied according to the terms of the professed lease, and paid a certain rent for two years. It was held that the lessor might distrain. (*Knight* v. *Bennett*, 3 Bing. 361.) Where the occupier under an agreement for a lease at a certain rent pays the rent, he becomes tenant from year to year on the terms of the agreement, and the landlord may distrain. (*Main* v. *Lovejoy*, 1 Ry. & M. 355.)

At common law, it was not every reservation, though nominally of rent, which constituted a rent properly so called, and therefore nothing is distrainable within the statute of Geo. 2, already referred to, which is not such a reservation as would have been at least a rent-seck at the common law. Thus, in replevin, the defendant avowed, under a distress due from the plaintiff to him, upon an assignment of a lease for years to the plaintiff, in which assignment there was no clause of distress; it was held that this was not a rent for which a distress lay, there being no reversion in the defendant. *Curiâ*,—"There are two ways of creating a rent. The owner of the land either grants a rent out of it, or grants the land and reserves a rent: there is no such thing as a rent-seck, rent-service, or rent-charge, issuing of a term of years." (Bro. Det.e, pl. 39; ——— v. *Cooper*, 2 Wils. 375.)

If a person seised in fee grants out a lesser estate, saving the reversion of rent, or other services, the law gives him, without any express provision, remedy for such rent or services by distress. (2 Bac. Ab. 106.) But for a rent which issues out of an incorporeal inheritance, the reversioner cannot distrain; as if I have a right of common in another man's soil, and I grant it to A. reserving rent, if the rent be behind I cannot distrain the beasts of A. because that the right of common, which every man has, runs through the whole common. The king is, however, an exception to this rule; for he, by his prerogative can distrain upon all lands of his lessee. (Woodf. Land. and Ten.)

A person who has not the reversion cannot distrain of common right; but he may reserve to himself a power of distraining, or the reservation may be good to bind the lessee by way of contract, for the performance whereof the lessor may have an action of debt. (2 Bac. Ab. 106.) Thus, if the assignee of a term surrender to the original lessor, though he reserve a sum in gross to be paid annually, he cannot distrain for that or the original rent, but he may have an action of assumpsit for such sum in gross. (*Smith* v. *Mapleback*, 1 T. R. 441.) If a lessee for years assign his term, rendering rent, he cannot distrain for it without a particular clause for that purpose, because he has no reversionary interest. The only remedy that the assignor has is by an action on his contract. (2 Lev. 80; Co. Litt. 292; *Cooper's* case, 2 Wils. 375.) A termor who lets to an under-tenant cannot, after his term has expired, distrain for rent, if the latter refuses to acknowledge him as landlord, although he still retains the possession. (*Burn* v. *Richardson*, 4 Taunt. 720.) A devisee may distrain for rent devised to him out of the lands, if the land be charged with a distress, and not otherwise. (Shep. Touch. 439.) For a rent granted for equality of partition by one coparcener to another, or for a rent granted to a widow out of lands whereof she is dowable in lieu of dower, or for a rent granted in lieu of lands upon an exchange, the grantee may distrain without any provision of the parties, though he have no reversion; the law giving him a distress in these cases, lest the grantee should be without remedy. (Co. Litt. 169.) But if a man grant rent over to another, after arrearages incurred, he cannot distrain for such arrearages, because they are by the grant divided from the freehold of the rent. (*Ognel's* case, 4 Rep. 49; *Dixon* v. *Harrison*, Vaugh. 40.)

A mortgagee, after giving notice of the mortgage to the tenant in possession, under a lease prior to the mortgage, may distrain for the rent in arrear at the time of the notice (although he was not in the actual seisin of the premises, or in the receipt of the rents and profits at the time it became due), as well as for rent which may accrue after such notice, the legal title to the rent being in the mortgagee. (*Wood* v. *Tate*, 2 New Rep. C. P. 247; Brad. on Dist.)

A receiver appointed by the Court of Chancery may distrain for rent, where he sees it necessary, and need not apply first to that Court for a particular order for the purpose; because, as that Court never makes an immediate order, but appoints a future day for a tenant to pay, it might be an injury to the estate to wait till that time, as it would give the tenant an opportunity to convey his goods off the premises in the meantime. (*Pitty* v. *Snowden*, 1 Atk. 759; *Hughes* v. *Hughes*, 3 Bro. Chan. Cas. 87.) If, however, there be any doubt who has the legal right to the rent, then the receiver should make an application to that Court for an order, as he must distrain in the name of the person who has that right.

One joint tenant may distrain alone; but then he must avow in his own right and as bailiff to the other. (*Pullen* v. *Palmer*, 2 Mad. 73, 150, S.C.; 3 Salk, 207.) One of several joint tenants may sign a distress, if the others do not forbid him. If they, when applied to, merely decline to act, that will not prevent him from proceeding. (*Robinson* v. *Hoffman*, 3 C. & P. 234.) One tenant in common may distrain for his share of the rent upon the terre-tenant holding under him, and another tenant in common, where such terre-tenant has paid the whole rent to the other tenant in common after notice not so to pay it. (*Harrison* v. *Barnby*, 5 T. R. 246.) One of several co-heirs in gavelkind may distrain for rent due to him and his companions, without an actual authority from his companions. (*Leigh* v. *Shepherd*, 2 B. & B. 465.)

A man may distrain cattle without any express authority, and if he obtain the assent of the person in whose right he did distrain, his assent will be as effectual as his command could have been, if such assent shall have relation to the time of the distress taken. (2 Leon. 196; Gilb. Dist. 32.)

By the common law, the executors or administrators of a man seised of a rent-service, rent-charge, rent-seck, or a fee-farm, in fee-simple or fee-tail, could not distrain for the arrearages incurred in the lifetime of the owner of such rents. It was therefore enacted by stat. 32 Hen. 8, c. 37, s. 1, that the executors and administrators of tenants in fee, fee-tail, or for term of life, for rent-services, rent-charges, rent-seck, and fee-farms, may distrain upon the lands chargeable with the payment thereof, so long as such lands remain in the possession of the tenant who ought to have paid such rent or fee-farm, or of any other person claiming under him by purchase, gift, or descent. By sec. 3 of the same statute, it is enacted that if a man have in right of his wife any estate in fee-simple, fee-tail, or for term of life, or of or in any rents or fee-farms, and the same rents or fee-farms shall be due and unpaid at the death of his wife, such husband may distrain for the same arrearages in the same manner as if his wife had been living. By sec. 4 it is enacted that if any person have such rents or fee-farms for term of life or lives of other persons, he, his executors, or administrators may distrain for arrearages of such rent incurred at the death of the cestui que vie, in the manner as if such cestui que vie had been still living.

This statute is a remedial law, and extends to the executors of all tenants for life, as well to those executors who, before the statute, were entitled to an action of debt, as to those who had no remedy whatever. (*Hool* v. *Bell*, 1 Lord Raym. 172.) So that Lord Coke's idea, that the preamble concerning the executors and administrators of tenant for life is to be intended of tenant per auter vie, so long as cestui que vie lives, seems to be too narrow. (Co. Litt. 162, b.)

Where, however, a tenant for life of a rent-charge confessed a judgment which was extended by elegit, and the tenant for life dying, the conusee distrained, and in replevin avowed for the arrears incurred in the lifetime of the tenant for life, upon demurrer the distress was holden to be bad, and not warranted by the statute: first, because the case of the conusee is not enumerated in it; secondly, because he comes in in the *post*, and not under the tenant for life. (*Poole* v. *Duncombe*, Bull. N.P. 57.) Neither is the executor of a grantee of a rent-charge of divers years, if he so long live, within the statute. (*Powell* v. *Killick*, Bull. N.P. 57.) Lord Coke says, "If a man make a lease for life, or a gift in tail, reserving rent, this is a rent-service within the statute:" from whence it may be inferred that he thought that a rent reserved upon a lease for years was not within it; for the landlord is not tenant in fee, fee-tail, or for life, of such a rent; and it is the executors of such tenants only who are mentioned in the Act. However, in trespass, where it appeared that the defendant had distrained the plaintiff's goods for rent due to his testator upon a lease for years, Lord Chief Justice Lee held it to be within the statute, and the defendant obtained a verdict. (*Powell* v. *Killick*, Bull. N.P. 57.) This statute does not extend to copyhold rents, but only to rents out of free land. (*Appleton* v. *Doyley*, & W. 135.)

The statute in question is applicable to cases where the representative might have sued in debt at common law, as well as to those where he had no remedy. But if a tenant for life or in fee reserve rent upon a lease for years, although the rent follows the reversion, and, therefore, the owner cannot be said to hold it for years, yet he is not tenant of it in fee or for life, in such manner as the statute requires. (*Prescott* v. *Boucher*, 3 B. & Ad. 849.)

By the 3 & 4 Wm. 4, c. 42, s. 37, it is enacted that it shall be lawful for the executors or administrators of any lessor or landlord to distrain upon the lands demised for any term or at will, for the arrearages of rent due to such lessor or landlord in his lifetime, in like manner as such lessor or landlord might have done in his lifetime. Sect. 38 enacts that such arrearages may be distrained for after the end or determination of such term or lease at will, in the same manner as if such term or lease had not been ended or determined; provided that such distress be made within the space of one calendar month after the determination of such term or lease, and during the continuance of the possession of the tenant from whom such arrears became due. Provided also, that all and every the powers and provisions in the several statutes made relating to distresses for rent, shall be applicable to the distresses so made as aforesaid.

A landlord's right of distress formerly ceased at the expiration of the lease; but the stat. 8 Anne, c. 14, ss. 6, 7, enabled him to distrain for six calendar months afterwards, provided his title continued, and the distress was made during the tenant's possession; which possession, it has been decided, may be with the lessor's permission, and of part only of the demised lands. (*Nuthall* v. *Staunton*, 6 D. & Ry. 155.) It has been held that where, by the custom of the country, or by agreement, the tenant is entitled to the use of the barns for a certain period after the expiration of the lease, to house the last year's crop, the demise is to be considered as having continuance for this purpose during such occupation, and, therefore, that the crops are distrainable, though the lease has expired more than six months. (*Bevan* v. *Delahay*, 1 H. Bl. 5.)

As regards the things which may be taken under a distress, this process being anciently considered merely as a pledge in the hands of the lord to compel the tenant to perform the service or duty, could not at common law be sold, but was to be restored in the same plight to the owner when such service or duty was performed, and nothing could be distrained unless it could be returned *in specie* and undamaged. It follows that money cannot be distrained unless it be in a bag, for then it may be identified. (Roll. Abr. 666, pl. 4; 2 Bac. Abr. 109.) So milk, fruit, &c. cannot be distrained; nor, till made distrainable by statute, could hay or sheaves of corn be the subject of a distress, unless they were in a cart. (Gilb. Law of Distress, 34.) As to the things, however, which may be distrained, or taken in distress, we may lay it down as a general rule that all chattels personal are liable to be distrained, unless particularly protected or exempted. (3 Black. Com. 7.)

By stat. 2 Wm. 3, c. 5, it is enacted that it shall be lawful for any person having arrear of rent, to seize and secure any sheaves or cocks of corn, or corn loose or in the straw, or hay being in any barn or granary, or upon any hovel, stack, or rick, or otherwise upon any part of the land or ground charged with such rent, and to lock up or detain the same in the place where the same shall be found, until the same shall be replevied or sold. By stat. 11 Geo. 2, c. 19, s. 8, the landlord may take and seize as a distress for arrears of rent, all sorts of corn and grass, hops, roots, fruits, pulse, or other product whatsoever growing upon any part of the estate described, and the same may lay up, &c. on the premises, and in convenient time sell and dispose of the same towards satisfaction of the rent and the charges of such distress and sale. Provided that notice of the place where such distress shall be lodged shall, in one week after the lodging thereof, be given to the tenant.

Five different sorts of things were not distrainable at common law:—1. Things annexed to the freehold. 2. Things delivered to a person exercising a public trade, to be carried, wrought, worked up, or managed in the way of his trade or employ. 3. Cocks or sheaves of corn. 4. Beasts of the plough, and instruments of husbandry. 5. The instruments of a man's trade or profession.

By stat. 8 Anne, c. 14, it is provided that no goods shall be liable to be taken in execution, unless the party at whose suit the same is sued out, shall, before the removal of the goods, pay to the

landlord the rent due at the time of the taking, provided the arrears do not amount to more than one year's rent; and in case the arrears exceed one year's rent, then the party paying one year's rent may proceed to execute his judgment; and the sheriff is empowered and required to levy and pay to the plaintiff as well the money so paid for rent as the execution money.

Having considered the principles regulating the law of distress, we now proceed to the examination of the several cases recently determined on this important subject.

The landlord's remedy of distress for rent due before the commencement of a tenant's imprisonment, is not extinguished by the tenant's petition and discharge under the Insolvent Debtors Act, 1 & 2 Vict. c. 110, though the amount of rent was inserted in the schedule as a debt due to the landlord, and the distress was not made until after the discharge. The judgment confessed under sec. 8 of that statute operates to protect the insolvent from the ordinary remedy of a creditor by action, but does not extinguish the remedy by distress. That remedy is restrained by sec. 58. (*Phillips* v. *Sherill*, 14 L. J. 144, Q.B.) A distress cannot be made at common law, after the tenancy has been determined by notice to quit, though the rent may have become due before such determination, and an avowry for such rent must, therefore, be framed so as to bring the case within the 8 Anne, c. 14. (*Williams* v. *Stiven*, 15 L. J. 321, Q.B.) Though growing crops seized under a *fi. fa.* are protected from distress at common law, yet if the execution creditor, by reason of his claiming some things distrainable at common law, is driven to rely on the statute of 56 Geo. 3, c. 60, he is bound to bring himself in his pleading within the provisions of that statute; and therefore, in an action of trover for pigs, swine, wheat, straw, and other goods, &c. the defendant (the landlord of a farm) justified under a distress for rent, and the plaintiff, in his replication, set out a *fi. fa.* on a judgment recovered against M. C. (the tenant), and an assignment to him (the plaintiff) by the sheriff of all the crops, under an agreement by which the plaintiff agreed to use and expend the produce on the farm, according to the custom of the country, and alleged that the wheat, straw, &c. seized was the produce of the crops, and that the pigs and swine were kept to consume the straw and produce, under the provisions of the statute and the agreement. Held ill, for not shewing that there was no covenant or written agreement between the landlord and tenant within the third section. Secondly, the plaintiff's agreement, as set out in the replication, being that he would not sell or dispose of or carry off from the farm any straw, &c. except such as M. C. had a right to sell or dispose of in case the execution had not issued. Held, that the replication which did not negative that the straw, &c. was straw which M. C. had a right to dispose of, was, for this reason, also ill. Thirdly, the plea having stated the possession of M. C. the replication as to the residue of the goods, &c. stated that M. C. at the time when, &c. was in possession of part only, and not of the whole of the said farms, and the said residue was not the said part of the farm in the possession of M. C. Held ill, as being either an argumentative denial of M. C.'s possession, and of the cattle, &c. being on the farm, or an informal new assignment. (*Hutt* v. *Morrell and Another*, 16 L.J. 240, Q.B.)

To a declaration in replevin, for taking the cattle, goods, and chattels of the plaintiff, the defendant made cognisance as bailiff of W. M. and justified the taking for rent due to W. M. from the occupier J. T. (W. M.'s tenant). Plea in bar, that the premises in which the cattle, goods, and chattels were taken, were occupied by J. T. as tenant, at a yearly rent; that at the time of the making of the distress, J. T. was a "common public livery stable-keeper," and was used in his trade "as such" from time to time, to take in, to feed, to keep, and to clean all other persons' horses and carriages who placed the same with him; that it was necessary for the carrying on such trade that horses and carriages should be kept and taken care of on the premises, and that the cattle, goods, and chattels distrained were placed and remained on the premises to be managed and dealt with by J. T. in his said trade, as defendant well knew, &c. Held, that horses and carriages standing at livery may be distrained for rent. Semble, if articles are sent to remain at a place they are distrainable; if sent for a particular purpose, and the remaining at the place be an incident necessary for the completion of such purpose, they are not. (*Parsons* v. *Gingell*, *Lewis* v. *Gingell*, 16 L. J. 227, C.P.)

Where the sheriff seizes goods in execution, and assigns to the execution creditor, having notice that a year's rent is due to the landlord, though he may be liable to an action at the suit of the landlord, yet such landlord cannot distrain for his year's rent while the goods are in the possession of the sheriff or his assignee. Trespass, qu. cl. fr. of the plaintiff. Plea, entry to seize growing crops under a distress for rent. Replication, a previous seizure under a fi. fa. at the suit of the plaintiff against the tenant of the locus in quo, and an assignment to the plaintiff by the sheriff under it. Rejoinder, that the seizure was made after notice to the sheriff and to the plaintiff that a year's rent was due to the landlord, and that neither the plaintiff nor the sheriff paid such year's rent; wherefore the landlord (the defendant) distrained. Held, that the rejoinder was bad. Held also, that the replication was good, and was no departure from the declaration, which stated the closes to be the closes of the plaintiff; for, although the replication shewed a tenant from whom the rent was due at the time of the execution, yet such possession was consistent with the possession of the plaintiff at the time of the trespass. (*Wharton and Another* v. *Naylor and Another*, 17 L.J. 278, Q.B.)

(*To be continued.*)

COUNTY COURTS.

Summary.

We fear that the County Courts Amendment Bill, although sent to the Commons, and there undertaken by Mr. Fitzroy, will scarcely escape the fate to which all the projected Law Reforms have been condemned. An effort *is* to be made to carry it through, but unfortunately honourable members are just now thinking much more of their interests as candidates than of their duties as legislators.

The *Absconding Debtors Arrest Act* having, it seems, been frequently in requisition in the County Courts, and before the Bankruptcy Commissioners, Mr. Kerr, Assistant Judge of the Caernarvon District, has prepared for practical use a convenient little edition of it, in which he has given all the forms required for putting it into operation. It may be deemed a sort of supplement to *Cox and Lloyd's Practice of the County Courts.*

Insolvency cases alone offer themselves for notice this week. In *Re Cronen*, 19 Law T. Rep. 10, where partners applied for their discharge at the same time, and the petition of one was dismissed for suppression of property, his counsel was not permitted to examine the other partner (who was discharged), touching the partnership property.

In *Re Bevan*, 19 Law T. Rep. 10, Mr. Commissioner Law has arrived at the very important conclusion that an arrangement made in the Bankruptcy Court under the voluntary clause does not exclude the jurisdiction of the Insolvent Court.

In *Rochford* v. *Hackman*, 19 Law T. Rep. 5, A. had given a life interest in dividends to his son, and declared that if he should in any manner assign, incumber, or anticipate them, the bequest should cease, as if the same had not been mentioned, or if his son were dead. The son took the benefit of the Insolvent Act, and it was held that the life estate was forfeited, the parties in remainder entitled, and that it did not pass to his assignees.

The *Charitable Trusts Bill* now passing through the House of Commons, and which really has a prospect of becoming law even before this Parliament dies, contains some provisions interesting to the County Courts.

The 39th section of this Bill enacts that where "any charity of which the gross annual income for the time being shall not exceed 30*l*. shall be established or administered, or be applicable wholly or partially to or for objects or purposes within the district, or any two or more of the districts, of any district Court or Courts of Bankruptcy, *or of any County Court or Courts*, and the appointment of any trustees or trustee, or any other relief, order, or direction whatsoever concerning or relating to any such charity or the objects, management, application, or administration thereof, or the estate, funds, or property thereof," application may be made to such Court of Bankruptcy or County Court, who may hear the matter in open Court, and take such proceedings, and give such relief, and make such orders and directions," as the Court of Chancery might have given or made. And if the two County Courts have concurrent jurisdiction, the application shall be made to one of them only.

Where two Courts have concurrent jurisdiction, the Charity Commissioners are to direct which shall entertain the case; they are also empowered to direct cases within the jurisdiction of an Inferior Court to be taken before a superior tribunal in the first instance.

The district or County Court is not to settle a scheme or appoint trustees without previous notice by advertisement, and a copy of the scheme and order is to be transmitted to the Commissioners for registry; nor is any such scheme or order to be valid unless confirmed by the Commissioners, who may, if dissatisfied with any order, remit it for reconsideration, or transfer it to a Master in Chancery.

The orders of the Judge of the County Courts to be enforced as other orders under the County Courts Act.

An appeal is provided against the decision of the County Court.

The Commissioners, in case of doubt as to jurisdiction, may order what Court shall entertain the application.

The 50th section prohibits the County Court from trying any title.

Lands holden upon trust for a charity within the jurisdiction of the County Court may be vested in the Commissioners. A Deputy-Judge is not to have jurisdiction.

Orders regulating proceedings are to be made by the Lord Chancellor. The trustees of charities are to keep accounts and deliver them to the clerk of the County Court within whose jurisdiction they are.

The statement in the certificate of the Charity Commissioners of the amount of income of any charity is to be sufficient evidence for determining the jurisdiction. (Sec. 37.)

It would be interesting now to procure a list of the charities under 30*l*. annual value, which will thus be placed under the jurisdiction of the County Courts. Will any of our readers supply us with this information as to their own districts?

COUNTY CLERKS.

TO THE EDITOR OF THE LAW TIMES.

Sir,—The suggestion of one of your correspondents to exclude clerks of County Courts from practising in other branches of their Profession, is as impracticable as it would be unjust and undesirable. It may be all very well for those particular districts and places where there is a salary of 400*l*., 500*l*., or 600*l*. per annum, but if you inquire into the circumstances of a great many of the courts, you will find respectable attorneys (and there can be no doubt that clerks should, for the sake of the courts, the public, and the Profession, *all* be such) hold the office who do not realise more than 30*l*. or 40*l*. per annum, --sometimes less therefrom. What *kind* of clerks should we have to take office upon a salary which will certainly be given in proportion to this? I am rejoiced to see that attorneys and their clients are to be placed upon a proper footing in respect to their costs in our courts. Every clerk who understands the interest and respectability of his court will rejoice in this, and it is for the mutual interests of clerks (who have been very unjustly treated) and attorneys that they should care for each other.

I am, Sir, yours, &c. F. F.

COUNTY COURTS.—COMMITMENTS OUT OF THE DISTRICT.

TO THE EDITOR OF THE LAW TIMES.

Sir,—As you have always used your influence to promote the efficiency of the County Courts, I take leave to address you, on the subject of what I conceive to be a defect in the Act establishing the Courts (9 & 10 Vict. c. 95), in the hope that it may be remedied. In all cases of execution where the party or his goods are out of the jurisdiction of the Court, the high bailiff of the Court has to send the warrant, together with a warrant under his hand, to the clerk of the foreign court for execution within that district. It is to this method of executing commitments that I wish to draw attention. In many instances the defendant is unknown to the bailiffs of the foreign court, and thus escapes being arrested; and he may wander from one district to another with impunity, and disregard the process of the Court. I am acquainted with a case where, notwithstanding that two concurrent warrants were issued in different districts, the defendant could not be apprehended. He does not stay in one place for long together; and if a fresh warrant were to be issued to-morrow and sent to the district where he is then likely to be, it is more than probable that he could not be arrested there. This is exceedingly annoying to plaintiffs,

and moreover is very expensive also; and so long as the present method of dealing with commitments such as these under consideration is suffered to continue, so long will defendants be improperly protected. When a plaintiff has obtained a judgment, every reasonable facility should be afforded to him to prosecute it; and he ought not to be prejudiced because his debtor happens to be dishonest and unprincipled. *The remedy I propose is to allow the bailiffs of the Court issuing the commitment to execute it, in whatever district the party may be, provided that he originally dwelt or carried on business in the district of the Court from which the warrant issued.* Or, if this should be considered rather too extensive a power, the plan I mention might be advantageously exercised within a limit of twenty miles of the Court. A somewhat similar course used to be pursued in many of the old Courts of Requests, and was found to answer. The bailiff holding the warrant had to go before a justice, and make oath that he believed the party to be within the district for which the justice acted, whereupon the justice indorsed the warrant, authorising its execution within his district; and thus authorised the bailiff seldom failed to execute the warrant. In the case I have mentioned there is no doubt that if such a power had existed in the County Courts, the defendant would have been arrested long since, and the plaintiff saved considerable expense.

I am, Sir, yours, &c.

March 18, 1852. J. B.

THE LAWYER.

Summary.

ONE case only in *Equity Practice* was reported last week. It relates to the *Trustee Act.* A certificate of the Master had been obtained under the 38th section for the appointment of new trustees, and for a vesting order. The question was, what was the proper course under the 39th section to obtain confirmation of the certificate and consequential directions. The Court held that it may be done upon a motion, without petition. (*Re Evan's Settlement*, 19 Law T. Rep. 9.)

In *Re Catherine Hand*, 19 Law T. Rep. 12, where A. an unmarried girl, between sixteen and seventeen years old, had, since her father's death, with consent of her guardian, resided with her sister and B. her husband, the Court granted a *habeas corpus* on the application of B. alleging that she was detained from her family by a third party by means of fraudulent representations, the Court holding that B. stood to her *in loco parentis.*

We may at once state that the LAW TIMES editions of the Law Reforms now in progress will be published as soon as possible after they become law. The *Practice of the Common Law*, as regulated by the Procedure Bill, has been undertaken by R. MALCOLM KERR, Esq. Barrister-at-Law, and the *Chancery Reform Acts*, by OWEN TUDOR, Esq. Barrister-at-Law.

We have before us a copy of the Bill for regulating "the fees of certain officers in the Courts of Common Law, and to make provision for their pay ment by salary." It abolishes the office of Clerk at Nisi Prius in the Court of Q. B. and of Associate in the Courts of C. P. and Ex., and provides that their duties shall be performed and fees received by the Marshals of the said courts respectively, to whom also the records, &c. are transferred.

The Clerks of Assize, Judges' Clerks, and Crier, Marshal in the Q. B., Marshal in the C. P., and Marshal in the Ex. are to keep an account of all fees received by them, and render a quarterly account of them to the Treasury, which is to fix the annual amount to be receivable by such officers for their own use, and the balance is to be paid into the Treasury.

The 5th section empowers the Treasury to abolish fees wholly or in part, and to fix salaries for the officers, to be paid out of the consolidated fund. No additional person is to be employed in any such offices without the consent of the Treasury. Salaries are to be paid quarterly, and accounts are to be laid before Parliament.

With respect to the Marshals of the Puisne Judges, the Treasury is empowered to order that all the fees now payable to them shall be abolished, and to fix a sum to be paid to them in lieu of fees, such sum to be fixed for each of the circuits with regard to the ordinary extent and duration of the duties of the Marshal on such circuit, and to be paid out of the Consolidated Fund.

The Treasury is to certify the number of *Masters* required in each of the Common Law Courts.

Where any officer omits to perform in person the duties of his office (unless arising from temporary and unavoidable causes), the Treasury is to stop the salary and require all the fees received to be paid over.

The fee of 6s. 8d. payable to the Marshal on the entry of each cause is abolished, as well as all other fees and payments on circuit for the use of the Judges, and also the fees of Marshal's Man and Judges' Bailiff.

This Bill, we believe, is preparatory to a provision which it is proposed to introduce into the Procedure Bill, substituting a stamp upon proceedings for all fees of court.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In your paper of Saturday last I observe, under the heading "Faculty of Advocates," an intimation, quoted from the *Scotsman*, to the effect that the faculty had at a meeting "resolved, without a division, that those of their body who have once been Lord Advocate or Solicitor-General ought to retain precedence at the Bar, and appointed a committee to report as to the best method of carrying out this resolution;" and that the effect of that arrangement "is to place the late Lord Advocate and Solicitor-General in the position of leaders over all the members of the Bar, except their successors in office and the Dean of Faculty."

The statement contained in that paragraph is erroneous. The matter of precedence is at present under the consideration of a committee of the faculty; and whatever may be the resolution to which the faculty will come upon the report of that committee, precedence has not as yet, at least, been conferred on the late Lord Advocate and Solicitor-General.

The paragraph in the *Scotsman* is altogether unauthorised; and the editor refused to insert in the succeeding number of that paper a correction of the misinformation. I am, Sir, yours, &c.

A MEMBER OF THE FACULTY OF ADVOCATES

Edinburgh, March 25, 1852.

THE MERCANTILE LAWYER.

Summary.

THE reader is doubtless aware that as a general rule a surety is discharged by time being given to the principal. An extremely interesting question, arising out of this rule of law, has just been decided by the new Lord Chancellor, and was reported last week. The facts were these. A. (principal) and B. (surety) became bound to C. for payment of 400*l.* of which sum, by agreement between A. and B., the latter was to have 120*l.* B. repaid to C. that sum before the time limited by the bond for payment of the 400*l.* After the bond became due C. accepted from A. a note of two months for the remainder, on a *parol agreement* that the note was not to be considered as a discharge of or substitute for the bond. A. died insolvent. B. filed a bill against C. for a declaration that, under the circumstances, he might be released from the bond, or for an injunction to restrain proceedings on it. He was held *not* to be discharged. The LORD CHANCELLOR observed—"All the cases prove that if, after the execution of an instrument, a security is taken which might operate as a discharge of the surety by giving time, if the remedy is preserved as against the surety, there is no discharge;" and in this case the evidence was that the remedy had been expressly reserved. (*Wyke* v. *Rogers*, 19 Law T. 1.)

A point in the law of *Principal and Agent* is reported from Nisi Prius. A broker of the city of London is bound to enter the contract in his book forthwith, or to deliver a correct note of it to both buyer and seller, and is liable to his principal for any damage if he neglects to do so. And where he makes out a contract, and does not enter it, but delivers the bought and sold notes to the parties, and they so vary that an action cannot be maintained on the contract, he is liable for the damages occasioned by the invalidity of the contract and the costs unsuccessfully incurred by his principal in endeavouring to enforce it (*Sivewright* v. *Richardson*, 19 Law T. Rep. 10.)

LEGAL INTELLIGENCE.

Assizes.

WESTERN CIRCUIT.

TAUNTON, March 31.—The commission for holding the Assizes in the county of Somerset was opened here yesterday evening by Mr. Justice Erle. The calendar in point of crime is extremely heavy, as will be seen by the summary of the offences charged:—Murder, 9; manslaughter, 2; maliciously wounding, 3; arson, 6; assault and robbery, 7; burglary, 7; rape, 4; uttering forged notes, 1; uttering counterfeit coin, 1; stealing a post-office letter-bag, 1; sheep-stealing, 1; house-breaking, 4; bestiality, 2; assault, with intent, &c. 1; obtaining by false pretences, 1; larcenies, 39; misdemeanours, 4; total, 93. The cause list would appear to be very slight, only 11 cases, and only two of them marked for special juries.—Mr. Justice Erle this morning attended Divine service, and afterwards opened the Crown Court and disposed of some of the prisoners. Mr. Justice Talfourd did not arrive till this evening, having been in the court in Bodmin till twelve o'clock last night.

POST-OFFICE REGULATIONS FOR BOOK PACKETS.—During the preceding week the business at the General Post-office has materially increased, in consequence of the great facilities now afforded to publishers of printed books (works of every description), magazines, reviews, prints, maps, &c. and to the public at large, to forward them to and from every part of the United Kingdom through the post at the following reduced rates of postage, viz.— For packets not exceeding 1lb. in weight, 6d.; up to 2lb. 1s.; and not exceeding 3lb. 1s. 6d.; and so on, 6d. being charged for every complete pound or fraction thereon. No packet must exceed two feet in length (nor contain any letter, open or sealed), and the postage must be prepaid in full by affixing the proper number of stamps outside. One of the great advantages of this new arrangement is that prints and maps can be sent through the post-office on rollers, or markers for books, or whatever is requisite for the safe transmission of literary works and objects of art. The same may also be forwarded to Ceylon (either British or foreign) by the monthly India mails from Southampton *vid* Egypt, at the rate of 1s. per lb. British prices current, commercial lists, &c. may now be transmitted by packets or private ships direct to Denmark at the rate of 1d. each, and periodicals at 2d. per ounce up to 16 ounces. A box is about to be opened at St. Martin's-le-Grand specially for book parcels, so as to prevent the confusion they would make in the usual letter-boxes and newspapers. The advantages of the above facilities will be the cause of a great increase in the circulation of periodical works, which hitherto could not be sent through the Post-office, except at a heavy rate. It is stated that a new fourpenny and sixpenny stamp is shortly to be issued from the Stamp-office, which will save much trouble in the number of stamps required to be affixed on parcels.—*Observer.*

ARRANGEMENTS WITH CREDITORS UNDER THE BANKRUPTCY ACT.—On Saturday last Mr. Commissioner Fane delivered the following remarks upon this subject.—His Honour took occasion to observe that henceforward he would not attempt to act upon the clauses in question unless the parties interested should first put the case into a workable form by the assistance of the official assignee of the court, or of an efficient solicitor. He had found by experience that unless this were done debtors and creditors were only involved in expenses without being able to effect any object. In this case it was proposed to guarantee the payment to the partially secured creditors of a sum of 8s. 6d. in the pound upon that portion that was unsecured; but there was nothing to shew what that portion would be, as it was not proposed to sell the property held by the creditors. It would be impossible to carry out a petition thus brought before the Court, and he would not attempt to do so. What was the consequence in such cases? Creditors were brought together in large numbers (here there were eighty in that position) upon a fool's errand, and heavy costs were incurred to the debtor's estate. It was not his duty to throw out suggestions, but he had a floating idea in his mind that creditors should appoint some two persons to act for them, and give them power to have the proposal of the debtor modelled into a workable shape before its presentation to the Court. He thought it was the duty of the debtor's solicitor and the official assignee to see that petitions were thus presented, but, as he had said, it was no part of his duty to throw out suggestions; all that it was his duty to say at present was, that he would not attempt to act on the arrangement clauses in any

case where the petition did not come before him in a workable shape, very different to that in which they generally came before him.

THE GAZETTES.

Bankrupts.

Gazette, March 30.

BARNES, JOHN, commission agent, Liverpool, April 14 and May 10, at eleven, Liverpool. Off. as. Cazenove. Sols. Bagshaw and Sons, Manchester. Petition, March 25.

BATES, HENRY, common brewer, Warley, Halifax, Yorkshire, April 20 and May 24, at eleven, Leeds. Off. as. Hope. Sols. Wavell and Co. Halifax; and Courtenay and Compton, Leeds. Petition, March 25.

CHAMBERLAIN, RICHARD, draper, Uttoxeter, Staffordshire, April 3 and May 3, at half-past ten, Birmingham. Off. as. Bittleston. Sols. Jones, Sise-lane, London; and Mottram and Co Birmingham. Petition, March 4.

COLEMAN, SAMUEL LOVICK, draper, Norwich, April 8, at two, May 6, at one, Basinghall-street. Off. as. Groom. Sols. Sole and Co. Aldermanbury. Petition, March 19.

COPELAND, JAMES LUND, merchant, Liverpool, April 16 and May 6, at eleven, Liverpool. Off as Bird. Sols. Lowndes and Co. Liverpool. Petition, March 27.

FRASER, JOHN, draper, Great Suffolk-street, Southwark, April 15, at twelve, May 6, at half-past eleven, Basinghall-street. Off as. Bell. Sol. Sawbridge, Cheapside. Petition, March 27.

HAYMAN, HENRY, apothecary, Ottery St Mary, Devonshire, April 6 and May 11, at eleven, Exeter. Off. as. Hirtzell Sol. Gidley, Exeter. Petition, March 23.

HEARD, THOMAS, brewer, Woodbridge, Suffolk, April 20, at half-past eleven, May 18, at twelve, Basinghall st Off. as. Graham. Sols. Sole and Co. Aldermanbury; and Pownall, Ipswich. Petition, March 27.

HOOPER, MATTHEW SLADE, tea dealer, Billiter-st. City, April 14, at half-past one, May 14, at twelve, Basinghall-st. Off. as. Stansfeld. Sols. Messrs. Freshfield, New Bank-buildings. Petition, March 16.

JOHNS, FREDERICK GEORGE, fixture dealer, Great Queen-st. Lincoln's-inn-fields, April 3, at twelve, May 14, at one, Basinghall-st. Off. as. Whitmore. Sol. Story, Bedford-row. Petition, March 27.

JOHNSTON, ROBERT, silk manufacturer, Macclesfield, Cheshire, April 14 and May 5, at twelve, Manchester. Off. as. Fraser. Petition, March 16.

MARTIN, HENRY, currier, Liverpool, April 14 and May 10, at eleven, Liverpool. Off as. Morgan. Sol. Tyrer, Liverpool. Petition, March 26.

PUCKETT, ANN, lodging-house keeper, Melton-st. Euston-square, April 8 and May 6, at two, Basinghall-st Off as. Groom. Sol. Moxon, Southampton-buildings. Petition, March 20.

REEVES, JOSEPH CRAVEN, paint manufacturer, Rownham Mills, Long Ashton, Somersetshire, April 14 and May 12, at twelve, Bristol Off. as. Miller. Sol. Tyrer, Liverpool Petition, March 29.

SIMSON, CHARLES HUDSON, provision dealer, Bishopsgate-st. April 8, at half-past one, and May 6, at one, Basinghall-st. Off. as Johnson. Sol. Keighley, Basinghall-st. Petition, March 25.

YOUNGMAN, THOMAS, draper, Old-street-road, April 10, at one, May 8, at half-past twelve, Basinghall-st Off. as. Pennell. Sol. Jay, Bucklersbury. Petition, March 20.

Gazette, April 2.

HALL, JAMES, hat manufacturer, Denton, Ashton-under-Lyne, Lancashire, April 20 and May 11, at twelve Manchester. Off. as. Fraser. Sol. Royle, Cooper-st., Manchester. Petition, March 27.

HEWITT, WILLIAM, brewer, Great, Driffield, East Riding of York, April 21 and May 26, at twelve, Kingston-upon-Hull Com Ayrton. Off. as Carrick. Sol. Jarratt, Great Driffield. Petition, March 15.

HIGGINBOTHAM, WILLIAM, silk manufacturer, Macclesfield, April 22 and May 7, at eleven, Manchester Off. as Lee. Sols Higginbotham, Macclesfield, Johnson, Son, and Weatherall, Temple; and Hitchcock, Buckley, and Tidswell, Brown-st. Manchester Petition, March 29.

M'CULLOCH, JAMES SCOTT, draper and hosier, Church st. Liverpool, April 16 and May 6, at eleven, Liverpool Com. Stevenson. Off. as. Bird. Sols. Sole, Turner, and Turner, Aldermanbury, London; and Dodge, Union-court, Liverpool. Petition, March 23.

STINSON, HENRY, boot and shoe maker, Old Kent-road, Surrey, April 16 at half past twelve, May 14, at half-past eleven, Basinghall-st. Com Fane. Off as. Cannan, Sol. Atkinson, Swan Chambers, Gresham-st. Petition, March 30.

BANKRUPTCIES ANNULLED.

Gazette, March 23.

Wang, L. T. merchant, Sunderland, Durham. Dec. 12.

Gazette, March 25

Nutley, T. Reading, Berkshire, March 25.

Gazette, March 30

M'Dowall, R. draper, Worthing, March 27.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Avant, T music seller, 7d. Hernaman, Exeter.—*Banfield* and *Lewis*, wine merchants, first, 4s. 6d. Hernaman, Exeter.—*Barker*, J. cheesemonger, first, 6½d. Whitmore, London.—*Birch*, T. common brewer, first, 6s. 4d. Lee, Manchester. —*Blamey*, F. grocer, &c. first, 5s. Hernaman, Exeter —*Brown*, W S sen and jun. sail makers, second new proofs, 1d. and 2s. 11d. Edwards, London.—*Edwards*, W. carpenter, first, 1s. 5d. Edwards, London.—*Fraukeiss*, J. woollen draper, second, 11½d. Whitmore, London.—*Heardman*, R. wine merchant, first, 4½d. Pott, Manchester.—*Johnson*, E. merchant, third, ½d. Bird, Liverpool —*Keen*, S. brewer, first, 8s. 3d. Edwards, London.—*Langford*, W. brewer, first, 1s. 7d. Edwards, London.—*Law*, J. bookseller, first, 1d. Bird, Liverpool.—*Leigh*, E. cotton manufacturer, first, 2s. 5½d. Pott, Manchester.—*Mackenzie*, C. bookbinder, first, 1s. 4d. Edwards, London.—*McVicar*, D. merchant, third, 10½d. Bird, Liverpool.—*May*, J. H. draper, second, 5d. Whitmore, London.—*Phillips*, J. druggist and grocer, first, 11½d. Christie, Birmingham.—*Richter*, A. bookseller, third, 0½d. Edwards, London.—*Seymour*, R. linen draper, first, 4s. Baker, Newcastle.—*Slate*, T. E. bookbinder, first, 1s. 7½d. Whitmore, London.—*Vouillon*, F. F. court milliner, second, 2½d. Whitmore, London.—*Wileman*, T. hosier, first, 4s. 8d. Bittlestone, Birmingham.

INSOLVENTS' ESTATES.

Apply at the Provisional Assignee's Office, Portugal-street, Lincoln's-inn-fields, London, between the hours of eleven and three.

Allden, H. tailor, 1s. 4½d.—*Anderson*, J. R. comedian, 4½d.—*Cook*, J. nurseryman, 4s.—*Cookson*, W. railway clerk, 3s. 3d.—*Cotton*, T draper, 0½d.—*Davies*, H. widow, 1s. 8½d. —*Harris*, J dairyman, 1s. 1½d.—*Lowcay*, W. retired commander, royal navy, 2s. 10½d —*Murphy*, P. J. doctor of medicine, 5d.—*Nesbitt*, J. linendraper's assistant, 2s. 2d.—*Nutt*, D. clerk, 0½d.—*Poynton*, J. sen. carpenter and builder, 7½d —*Smith*, A. butcher, 5s. 3d.—*Wearing*, G. H. glass and china dealer, 8s. 6d.

Binfield, H. labourer, 1s. 5½d. Apply to R. G. Barton, Windsor.—*Newman*, T. R. G coachmaker, first and final, 1s. 1½d. Apply at the County Court, Newmarket.

Assignments for the Benefit of Creditors.

Gazette, March 23.

Booth, J cordwainer, Jackson-bridge, Foolstone, Kirkburton, Yorkshire, March 12 Trusts. B. Broadbent, widow, Shepley, Kirkburton; W. Haigh, grocer, Holmfirth; and J Smith, clothier, Kirkburton. Sol. M Kidd, Holmfirth. —*Barnet*, J. draper and tea dealer, Norley, Cheshire, Feb 28. Trust A. T. H. Dalziel, draper, Liverpool. Sol. T Woodburn, Liverpool —*Butler*, J. grocer, Marlborough, Wiltshire, March 13 Trusts. H Seymour, candle maker, and W. Neate, cheesefactor, both of Marlborough. Sols. T. B. and W Merriman and Gwillim, Marlborough.—*Gregg*, St. G brewer, Coleford, Gloucestershire, Feb 25 Trusts I Trotter, maltster, and M. Harris, innkeeper, both of Coleford Sol. J. L. Nicholas, Monmouth —*Hills*, C. B cheesemonger, Bethnal-green-road, Feb. 6 Trusts. E. Ronalds, wholesale cheesemonger, Upper Thames-st. Sols. Wright and Bonner, London st. Fenchurch st. —*Jones*, T. grocer, Oswestry, Shropshire, March 1 Trusts. W Taylor, wholesale grocer, Liverpool, and B Roberts, miller, Morda, Oswestry. Sols. T. and C Minshall, Oswestry —*McCrea*, W J. draper, Bristol, Jan 21 Trusts W Sadler, tea dealer, and J Candy, warehouseman, both of Bristol. Sol. W. Bevan, Bristol.

Gazette, March 26.

Broadbridge, S. linendraper, Windmill-st. Gravesend, March 5 Trusts. W Neville, warehouseman, Gresham-st West, and D. Smith, gent. Wood-st Sols Surr and Gribble, Lombard-st —*Marriott*, W manufacturing chemist, Huddersfield, Yorkshire, March 12. Trusts W. Crowther, manufacturing chemist, Gomersal, J Armitage, ironfounder, Bradley Mills, near Huddersfield, and H. Roebuck, stationer, Huddersfield. Sols. Brook, Freeman, and Batley, and Clough and Bantoft, Huddersfield. *Phillips*, James, alias James Benjamin Parker, builder, Hastings, March 2 Trusts. E Chatfield, timber merchant, Lewes; and C P. Hutchings, hotel-keeper, Hastings Sol W. B Young, Hastings —*Rogers*, A. grocer, Church-gate, Leicester, Feb. 28. Trusts. W. Wykes, grocer, and T. Laundon, baker, Leicester. Sol. J. Briggs, Leicester.—*Steel*, F. shoe dealer, Holborn, March 2 Trusts J. P Lloyd and F. Parker, Northampton; F. W. Fawcett, Lisle-st Westminster; and J. Williamson, Dover-road, shoe manufacturers. Sol. W. Dennis, Northampton.

Partnerships Dissolved.

Gazette, March 12.

Broster, A. V. and *March*, W. pocketbook manufacturers, Paternoster-row, March 11 —*Brown*, J and *Donaldson*, H. cutlers, Newcastle, March 9 —*Carter*, J. jun and E. warehousemen, Basinghall-st March 10 Debts paid by J. Carter.—*Denant*, E and *Fromael*, H. merchants, Liverpool, Feb 28 —*Fox*, H H and *Barrett*, J. architects and engineers, Leicester-square, and York-buildings, Adelphi, Dec 31. Debts paid by Barrett —*Gatliff*, C. and *De Carteret*, R. E. attorneys, Coleman-st March 9. Debts paid by Gatliff.—*Grimshaw*, J and J. S. and *Riley*, J. manufacturing chemists, Hapton, March 10. Debts paid by Riley.—*Guanziroli*, G. and L. lookingglass and artificial flower makers, Hatton-garden, March 10 —*Haworth*, W; and R. manufacturers of washing crystals, &c Oswaldtwisle, March 4 Debts paid by R. Haworth.—*Haywood*, W and J. merchants, Rood lane, Dec 31, 1849.—*Hesketh*, H and *Huxley*, T. wine and spirit merchants, Chester, Feb 26 Debts paid by Mr. Price, Chester —*Hudson*, G and *Burgess*, G. builders, Woolwich, March 8. —*Isherwood*, W. and *Whitworth*, S. smallware dealers, Ashton-under-Lyne, March 5. Debts paid by Isherwood

Jarvis, J S and *Thomson*, W contractors, Union-place, Lambeth, March 9 —*Jenkinson*, T. and *Manley*, H. woollen drapers, March 8 Debts paid by Jenkinson.—*Johnson*, W. *Edwards*, E and *Baker*, W. iron manufacturers, Broughton Hall Iron Works, as regards Baker, March 8 Debts paid by Johnson and Edwards.—*Main*, R and *Nicol*, A. coach makers, Liverpool, Feb 7. Debts paid by Main.—*Marshall*, J. and *Fawcett*, E. cab proprietors, Devonshire-mews West, March 9.—*Robinson*, A. *Russel*, J. S. and *Robinson*, R. A. engineers, Millwall, Poplar, March 10 Debts paid by Russel —*Rowlands*, C. and W. B. goldsmiths, Regent-st. March 11.—*Tew*, E. and *Leatham*, W. H. and E. A. bankers, Wakefield and Pontefract, as far as regards W. H. Leatham, Jan. 1.—*Welby*, C. A. and *Wood*, J attorneys, Nottingham, March 5.—*Wheeler*, W. F. and *Perkins*, E. wholesale stationers, Paternoster-row, March 10.—*Wilson*, S. and *Dawson*, E. milliners, &c. Hartlepool, Feb. 7.

Gazette, March 19.

Bankston, J. and J. jun. millers, Newcastle, millers, March 10.—*Bonser*, T. sen. jun. and W. J. meat salesmen, Newgate-market, as regards T. Bonser, jun. Feb 5. —*Brown*, J. and *Singleton*, H. livery-stable keepers, Preston, March 13. Debts paid by Brown.—*Clements*, E. and J. carvers and gilders, Liverpool, March 13. Debts paid by J. Clements.—*Cotbrill*, J. and *Large*, D. boat builders, Birmingham, March 10.—*Dalzell*, A. and *Gibson*, J. butchers, Whitehaven, March 13. Debts paid by Dalzell. —*Dickison*, B. and *Scott*, W. T. wine and commission merchants, Philpot-lane, March 17.—*Fairhurst*, I. and *Cunliffe*, H. makers-up and packers, Manchester, March 15. Debts paid by Cunliffe.—*Gale*, G. R. and G. L. farmers, Kimpton, March 13.—*Gillow*, W. and R. farmers, Woodnesborough, March 8. Debts paid by W. Gillow.—*Hardman*, M. and *Clegg*, D. cotton waste dealers, Heywood and Birtle-cum-Bamford, Oct. 22.—*Lacy*, J. G. and *Witton*, D. W. gun manufacturers, Great Saint Helen's, Bishopsgate-st. as regards Lacy, March 15. Debts paid by Witton.—*Law*, J. and *Harper*, A. merchants, Rio Grande, as regards Harper, Dec. 31.—*Levy*, R. and S. tailors and drapers, Manchester, March 17. Debts paid by R. Levy.—*Mills*, T. and *Billson*, J. manufacturers of gloves, Leicester, March 11.—*Palmer*, R. *Clayton*, J sen. and jun. printers, Crane-ct. Fleet-st. as regards Palmer and Clayton, jun. March 19. Debts paid by Clayton, sen.—*Pittcock*, G. and W. E. tailors and drapers, Deal, March 17.—*Radcliff*, C. and *Appleton*, W. curriers, Darlington, March 8. Debts paid by Radcliff.—*Ridsdale*, T. W. and *Holroyd*, J. twine manufacturers, Ironmonger-la. Jan. 17. Debts paid by Holroyd.—*Sherring*, E. M., J. and C. whitesmiths and ironmongers, Duke-st Grosvenor-sq. as regards C. Sherring, March 18. —*Standing*, S. and W. *Phillips*, S. J. and *Nunes*, B. P. with *Franklin*, J. deceased, potters, Brunton's Wharf, Commercial-rd. East, Dec. 24.—*Turner*, G. and *Reynolds*, W. coal dealers, Birmingham, March 17. Debts paid by Reynolds —*Wakefield*, G. W. and J. linen and woollen drapers, Sun-st. Bishopsgate, March 18.—*Whitney*, G. and G S chemists and druggists, Shrewsbury, Jan. 1.—*Wright*, W. and *Jackson*, D. riding-masters, Brighton, March 17. Debts paid by Jackson.

Gazette, March 23.

Balch, H. and *Knowlden*, H. water gilders, Lichfield-st. Soho, March 18 —*Butterfield*, H. *Fisher*, W. T. and *Rochet*, L. T. M. foreign merchants, Victoria-st London, and at Paris, Feb. 28. Debts paid in England by Butterfield, and in France by Rochet.—*Coulthart*, E. and *Coke*, A. travelling drapers, Blackburn, Jan. 23. Debts paid by Coulthart.—*Cox*, P. B. and K. lace manufacturers, Bishopsgate-st.-within, March 15.—*Dyer*, J. and *Wigley*, T joiners and carpenters, Belper, March 11. Debts paid by T. Jennison, butcher, Belper.—*Edwards*, J., A. L. and W. L. grocers and drapers, Colwyn, Nov. 14. Debts paid by W. L. Edwards, Abergele.—*Garlick*, J. and *Hirst*, J. coal merchants, Lockwood Berry Brow and Spring Wood, near Huddersfield, Aug. 16. Debts paid by Garlick.—*Gibbons*, J and S. and *Brown*, W. manufacturers, Salford, March 5, as regards J. Gibbons. Debts paid by remaining partners.—*Hainsworth*, B. and *Tetley*, W. common brewers, Liverpool, March 13.—*Hobbs*, W. and *Sidebotham*, W cotton spinners, Gibraltar Mills, near Hyde, March 10.—*Hughes*, J. and *Pack*, C. coffee-housekeepers, Aldersgate-st March 12.—*Kennedy*, J. F. and *Spence*, H. woollen drapers and outfitters, Kingston-upon-Hull, March 19. Debts paid by Kennedy —*Lewis*, S. *Allenby*, E. and *Whitehouse*, R silk mercers and haberdashers, Leamington Priors, Feb. 1. Debts paid by Whitehouse —*Mitchell*, J. and *Sykes*, T. E. colliery workers, Darfield, March 17. Debts paid by Mitchell —*Orrell*, J. B. and *Brierley*, J. J. fancy dress mixed goods manufacturers, Manchester, March 19. Debts paid by Orrell.—*Peate*, R. and D. C. and *Tomlin*, M. milliners and dress makers, Ashton-under-Lyne, March 19 Debts paid by R. and D. C. Peate.—*Roberts*, W. and *Wagner*, J manufacturers and importers of fancy goods, Bull's Head-court, Newgate-st. March 18. Debts paid by Roberts.—*Robinson*, W. J. and *Cullwick*, M. wholesale grocers, late of Birmingham, Feb. 23 —*Russell*, J. and G. tanners, Hoyland Nether, March 17. Debts paid by G. Russell.

Gazette, March 26.

Astins, W. and *Cawley*, C. wholesale paper dealers, &c. Fore-st March 25. Debts paid by Cawley.—*Bailey*, J. and *Warren*, J. bleachers, Langley-in-Sutton, Jan. 20. Debts paid by Bailey —*Barnes*, J. and J. ship brokers, Liverpool, Feb. 21. Debts paid by J. Barnes.—*Barr*, N. and *Turnbull*, S. cotton manufacturers, Manchester, July 1. Debts paid by Turnbull.—*Bedford*, I. H. *Geddes*, J. and *Kimberley*, E. N. B. cut glass manufacturers, Birmingham, Jan. 1. Debts paid by Bedford and Geddes.—*Bowler*, R. and *Mainstre*, H. confectioners, Langley-place, Commercial-road East, March 23.—*Burgess*, S. and *Turner*, J. quarrymen and stone merchants, also masons and contractors at Swinton and elsewhere, Swinton, Wath-upon-Dearne, March 23. Debts paid by Mr. Bamforth, solicitor, Rotherham.—*Child*, E. T. and *Lewis*, J. woollen spinners, Bottoms Mill, near Salterhebble, Halifax, Aug. 31. Debts paid by Child.—*Fletcher*, W. H. and *Bate*, J. auctioneers and estate agents, Kidderminster, Dec. 25.—*Holard*, M. *Stavely*, T. and *Dunn*, R. stone cutters, Lancaster, Feb. 14. Debts paid by Stavely.—*Leonard*, R. *Boult*, W. and *Finzel*, C. W. coal miners, Bristol, as regards Finzel, Feb. 17. Debts paid by Leonard, Boult, and Leonard.—*Lewis*, O. and *Owens*, O. millers and corn dealers, Melin Adda Mills and Cemaes Mills, March 16. Debts paid by Owens.—*McRaith*, H. and J. linen drapers, &c. Lancaster, March 20. Debts paid by J. McRaith.—*Mitchell*, J. and *Duthie*, A. carpenters and builders, Chester-mews, Grosvenor-pl. Dec. 25, 1850.—*Mitchell*, W. and *Watson*, H. Aldgate High-st. March 24. Debts paid by Mitchell.—*Morgan*, J. *Taylor*, G. *Morgan*, J. T. and W. *Williams*, W. L. *Marchant*, H. and W. under the style of the Barking Ice Company, Barking, as regards Taylor, March 12.—*Morris*, G. B. *Thomas*, W. *Hughes*, R. *Cook*, J. *Morris*, F. and C. H. tinplate manufacturers, as regards C. H. Morris, Dec. 18. Debts paid by remaining partners. —*Morris*, J. and *Wilkins*, A. N. flour-factors, Church-st. Shoreditch, and Coborn-st. Bow, March 22.—*Shaw*, J. and H. manufacturers of tin and iron plate goods, Huddersfield, March 23.—*Skidmore*, H. and *Tansley*, W. carriers, Loughborough and Nottingham, March 22.—*Slater*, J. and M. provision dealers, Droylsden, March 22. Debts paid by J. Slater.—*Taylor*, W. and *Fitzmaurice*, J. R. paviors and surveyors, Birmingham, March 20.—*Teale*, W. and *Best*, T. S. auctioneers and commission agents, Bradford, March 19. Debts paid by Best.—*Vink*, F. and *Speller*, J. ship chandlers, Wapping, March 25.—*Willmer*, H. and *Stocker*, R. surgeons, Baker-st. Marylebone, March 25. Debts paid by Stocker.—*Woolley*, M. *Ewen*, E. *Sanders*, E. and J. J. chemists and druggists, Maidstone, April 1, 1851.

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We cannot undertake to return rejected communications. Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith. No notice can be taken of anonymous communications.

THE LAW TIMES.

SATURDAY, APRIL 10, 1852.

THE NEW WILLS ACT.

The following is the New Wills Act as it has gone down to the Commons. We must confess that it is neither very succinctly nor very clearly expressed, and yet we cannot suggest an amendment that would improve it—such is the difficulty of describing in words the precise *form* in which an act shall be done :—

1. That where by 1 Vict. c. 26, it is enacted, that no will shall be valid unless it shall be signed at the foot or end thereof by the testator, or by some other person in his presence, and by his direction: every will shall, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed to be valid within the said enactment, as explained by this Act, if the signature shall be so placed at or after, or following, or under, or beside, or opposite to the end of the will, that it shall be apparent *on the face of the will* that the testator intended to give effect to the writing signed as his will by such his signature, *and that no such will shall be affected by the circumstance that the signature* shall not follow or be immediately after the foot or end of the will, *or by the circumstance that* a blank space shall intervene between the concluding word of the will and the signature, *or by the circumstance that* the signature shall be placed among the words of the testimonium clause or of the clause of attestation, or shall follow or be after or under the clause of attestation, either with or without a blank space intervening, or shall follow, or be after, or under, or beside the names or one of the names of the subscribing witnesses, *or by the circumstance that* the signature shall be on a side or page or other portion of the paper or papers containing the will, whereon no clause or paragraph or disposing part of the will shall be written above the signature, *or by the circumstance that* there shall appear to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature; *and the enumeration of the above circumstances shall not restrict the generality of the above enactment*; but no signature *under the said Act or this Act* shall be operative to give effect to any disposition or direction which is underneath or follows it, nor shall it give effect to any disposition inserted after the signature shall be made.

2. The provisions of this Act shall extend and be applied to every will already made, where administration or probate has not already been granted or ordered by a Court of competent jurisdiction in consequence of the defective execution of such will, or where the property, not being within the jurisdiction of the Ecclesiastical Courts, has not been possessed or enjoyed by some person or persons claiming to be entitled thereto in consequence of the defective execution of such will, or the right thereto shall not have been decided to be in some other person or persons than the persons claiming under the will, by a Court of competent jurisdiction, in consequence of the defective execution of such will.

3. The word "will" shall, in the construction of this Act, be interpreted in like manner as the same is directed to be interpreted under the provisions in this behalf contained in the said Act of the first year of the reign of her Majesty Queen Victoria.

4. This Act may be cited as "The Wills Act Amendment 1852."

We may here observe, that the writer of the article on this subject, that appeared last week, has evidently *per incuriam* spoken of signing a will at the end *of each sheet*, as if that were the requirement of *the law*, and not merely a form adopted in *practice* by cautious Solicitors, for better security against fraud. Our skilled readers will have detected the inadvertence of expression; to others, we would say, that the practice alluded to by our contributor, although not strictly necessary, is a *proper* one to be observed, especially where a will is written on several sheets of paper.

ENFRANCHISEMENT OF COPYHOLDS.

This Bill, as amended by the Committee, is before us, and as it will probably become law very nearly in its present shape, a sketch of its principal provisions will be interesting to our readers.

The enfranchisement is to take place *immediately after the next admittance*, from whatever cause, excepting only that of a trustee for sale.

Enfranchisement is to be thus effected.

Upon application, in writing, by any Lord or Tenant, to the Commissioners (unless some special directions are made by them), two valuers are to be appointed, one by the Lord, the other *by the newly admitted Tenant*, with power to appoint an umpire, whose decision is to be final; but if such umpire shall not give his decision, and deliver particulars thereof in writing to the Lord and Tenant, within forty-two days after the matter has been referred to him, the Commissioners are to act as umpire, and their decision is to be final. If the Lord or Tenant shall not appoint his valuer within twenty-eight days after admittance, and payment of the fines and fees thereon, the Commissioners are to appoint a valuer for him.

The valuers are to proceed thus :—

8. The valuers, sole valuer, or umpire shall proceed to determine the value of the manorial rights and incidents of tenure from which the lands proposed to be dealt with are to be enfranchised, and shall determine the compensation to be received by the lord for such enfranchisement in a gross sum of money; and the valuers shall frame a schedule of valuation or award, shewing the amount of compensation from and to be assessed upon the tenant, in respect of the several manorial rights and incidents of tenure from which the lands are enfranchised, and which amount shall be either paid in money forthwith after the completion of the enfranchisement, or, if the said Commissioners shall so direct, the same shall remain as a first charge, under the provisions of this Act, on the lands enfranchised, until the expiration of such time from the day of such completion as the said commissioners shall appoint, but not exceeding in any case ten years; and that interest at the rate of four pounds per centum per annum shall be payable thereon from the time of such completion as aforesaid half-yearly until full payment thereof: Provided always, that such enfranchisement may, at the discretion of the commissioners, on the application of the lord or tenant, be made for all or any of the considerations for which a commutation or enfranchisement may be made under the said recited Acts or any of them, and shall be paid and applied in like manner: Provided also, that where any portion of the consideration for enfranchisement shall be for the extinguishment of rights to timber and trees, such rights shall not vest in the tenant until such portion of the consideration assessed for such rights to timber and trees shall have been paid, or duly secured by a certificate of charge, under the provisions of this Act.

Valuers may, by consent, include agreements and statements of the parties relating to the rights of either. Questions of law or of fact may be referred to the Commissioners, who are to confirm and register the schedule of valuations and award. In making the valuation, the facilities for improvement, the customs of the manor, and all the incidents of the tenure, are to be taken into account, and due allowance made for them.

We can find no provision in the Bill for the form in which the compensation is to be given, whether in one sum or by a rent-charge upon the land enfranchised; but the form of the enfranchisement deed, which is set forth in the schedule, is framed so as to be applicable to either. We premise, therefore, that the Commissioners are to determine in what manner the compensation shall be paid. Sections, however, provide that the Lord and Tenant may agree that the rent-charge shall be confined to portions of the entire property enfranchised, and that a charge under the Act shall be a first charge, and have priority over all mortgages and incumbrances (tithe rent-charge excepted).

This will be extremely unjust if it applies to *existing* mortgages. But we have some doubt whether the intention is not to except them by a proviso at the end of this section (13) that "notwithstanding any such charge, any moneys already invested, or any moneys previously secured or charged thereon, may be continued on the security of the same, notwithstanding the imposition of the said charge under this Act." If this proviso refers to mortgages generally, and not merely to those of investing trustees, it ought to be more clearly expressed.

The charge is to be made by certificates of the Commissioners, to be called a Certificate of Charge, and is to state the amount, and the time, place, and manner of payment, either of principal or interest. These certificates are to be transferable by endorsements, and to pay the same stamp duties as mortgages or transfers.

Trustees are empowered to lend money on Certificates of Charge.

If the consideration be not duly paid, the Lord may take possession of the land charged.

The Steward is to be compensated for his "trouble about such enfranchisement, and for the extinguishment of his office with respect to such lands," such sum as the Commissioners may direct; or, if no direction by them, "such sum as will amount to one set of fees, or surrender and admittance for each of the tenements included in such enfranchisement, such fees to be calculated according to the reasonable custom or usage prevalent in the manor whereof such lands shall be parcel," and to include the deed of enfranchisement.

A series of necessary provisions follows, for ascertaining the title of the Lord, the identity of lands, and empowering the Lord to purchase lands in certain cases, and, if he has a limited interest, to charge the purchase-money on the manor.

Interest in arrear on rent-charges is to be recoverable as rent in arrear on a lease.

Where the Lord is a tenant for life, the Commissioners are to apportion the enfranchisement consideration between him and the reversioners.

The Act is not to extend to mines, minerals, fairs, rights of warren, piscaries, &c. unless with express consent in writing of the Lord; nor to copyholds for lives where the tenants have not a right of renewal.

Such is an outline of the principal provisions of this important measure. There are, of course, many minor ones for regulating the machinery, which it would be impossible to describe within our limits.

Upon the whole, it appears to be well adapted for the end designed. The introduction of the novel plan of certificates of charge, which are to be transferable securities, suggests some advantageous applications of a similar scheme, to which we will hereafter invite the reader's attention.

A plan has occurred to us, by which the proposed enfranchisement might be greatly facilitated through the medium of the *Law Property Assurance Society*, and which we also purpose to submit to the consideration of the Profession.

THE ATTORNEYS' TAX.

At length there is a fair prospect of success. A combination of favourable circumstances offers, at the present moment, chances for obtaining the justice so long desired such as have not occurred before, since we first roused the Attorneys to action, five years ago. A new Ministry, a new Chancellor of the Exchequer, an impending dissolution, the Law Officers of the Crown friendly to the cause, are facts from which the most favourable results may be anticipated. Mr. Disraeli has a considerable surplus of revenue to deal with, and he will not be averse to purchase a little—nay, *not* a little—popularity, with a body of persons who possess the largest influence at the elections,—by whom, in fact, the elections are conducted, and who will *not* be ungrateful to him for the boon which his predecessor denied, even in defiance of the repeated votes of the House of Commons. *Both* the Attorney and Solicitor General are *heartily* enlisted in the cause, and we know that the latter has promised, if relief should not be given to us now, himself to introduce and carry through the Commons, early in the next Parliament, a Bill for the entire relief of the Attorneys from the iniquitous impost to which they are subjected. A most satisfactory interview has been had with the Chancellor of the Exchequer, who heard patiently the representations of the deputation, and made many inquiries that indicated an interest in the question, and a desire to be fully informed as to its merits. Although, as a matter of course, nothing was *promised*, there was enough to create an impression among those who were present that something would be *done*, provided it could be done with safety.

Now, it is obvious that the Chancellor of the Exchequer, however inclined to serve us, cannot do so against the many other clamorous claimants upon his bounty, unless some pressure be put upon him from without, so that he may be able to shew cause for preferring one claim to another. Hence the *urgent necessity* for a flood of petitions praying for relief. The Easter Holidays will just afford time for getting them up in every part of the country, so that they may be poured into the House immediately on its reassembling, after the recess. All will depend upon *promptitude* in this. They must be presented *before* the budget, or, as in past sessions, they will come too late. Their very purpose and use is to remind the *Government* of the grievance, in time for its being taken into account when the financial scheme for the year is being framed. After that is done, they are of very little service; for it could scarcely be expected that the entire budget should be reconstructed for the sake of *one* tax, however unjust, nor, save in a very uncommon state of parties, such as existed two years ago, and which is not likely to occur again, would the House of Commons be induced to sanction such a mode of proceeding. It was the delaying of the question until the end of the session that was the real cause of its double defeat. Had those divisions taken place before the budget instead of after it, even Sir Charles Wood could not have dared to exclude it from his list of taxes to be repealed. Let us learn a lesson from experience, and now more wisely moot the question before Mr. Disraeli has brought out his budget. But to do this, not a day must be lost in any locality, for the preparation, signing, and despatching of a petition. Remember that the days of this Parliament are numbered, and that whatever is to be done, to be well done must be done quickly.

Again we subjoin instructions for petitions.

Write the following on a sheet of *paper*. Get all the Attorneys in your town and neighbourhood to sign it, or as many of them as you can. On or before the 17th of April, despatch the petition by post, writing upon it, "*Petition to Parliament*," to one of your representatives, either county or borough, being careful to *leave it open at the ends*, or it will be chargeable with postage.

The following short form will suffice:—

To the Honourable the Commons of Great Britain and Ireland in Parliament assembled.

The humble petition of the undersigned Attorneys practising at , in the county of

Sheweth,

That your Petitioners are subjected to a Poll Tax in the form of a Certificate Duty, which they pay in addition to the taxes imposed upon them in common with the rest of the community.

That such a tax is oppressive and unjust, and your Petitioners pray your Honourable House to repeal the same.

And your petitioners will ever pray, &c.

Longer forms are useless, for these petitions are never *read*. They are thrown into a basket, and in the report of the Petitions' Committee they all appear together under the general title of "Repeal of Certificate Duty:" so that eloquence and argument are quite wasted in them.

COMMITMENTS.

It is high time that something should be done to induce Magistrates to be more cautious in committing for trial on criminal charges. At every Assizes and Sessions cases occur in which there is no evidence whatever against the prisoner, who has perhaps been subjected to the degradation and ruin of imprisonment in a gaol, without any proof of guilt that could be listened to for a moment in a Court of Justice. We know that this has been lamented by many of the Judges; that complaints have been made by them of the improper commit tals that are brought under their notice; and that it is the desire of most of them that some plan should be devised, to prevent so grievous an abuse of the forms of justice.

At the Assizes just concluded, we witnessed some extraordinary instances of this recklessness of the power of sending men to gaol for trial on charges that could never be sustained. A respectable man, who had dealt for years in Taunton market, priced some fowls in the basket of a woman, who named the price at 3s. per couple. The fowls belonged to a man who was at her side, and he had already bargained for them with another person at 3s. 6d. a couple. The first man insisted upon his bargain with the woman, and took up the fowls as being a purchase by him according to the custom of the market; the owner collared him; his wife and cousin came to his assistance, and took the fowls from him: there was a struggle, each party claiming them, and then the owner charged the buyer with *stealing* them; and all the three were actually committed for the larceny by a foolish magistrate. Of course, the Judge immediately dismissed the case.

The very next trial at the same Assizes was no less remarkable. The prisoner was seen to take a spade out of a brook by a witness, to whom the prisoner went, and told him that he had found it; asked if he knew whether any person had lost a spade, and requested, that if he should hear any inquiry, he would say that he (prisoner) had found one. The spade had been lost from a field in the neighbourhood. On this evidence the prisoner was charged with stealing it, and *committed for trial*, and kept some weeks in gaol. He was instantly dismissed from the bar, and told that there was not a stain upon his character, and the Judge made some comments upon the committing magistrate, which he well deserved.

These are not solitary, nor rare, cases. They are familiar to every judge, and to all who practise, whether as Counsel or Attorneys, in the Criminal Courts. With whom the fault rests, whether with magistrates or their clerks, we know not; but this we know, that it is a terrible oppression, a source of immense mischief to the community, and that its result is, to ruin the unfortunate victim, and, probably, by unjustly charging him with theft, to make him a thief.

The duty of magistrates, in committals, we propose to consider in another article; but it is time that something should be done to stay the evil. The Home Secretary should send to all of them a Circular, describing their duties, and urging more caution. But something more than this is required. We want an Officer of the Crown, whose duty it should be to revise all the depositions immediately that a prisoner is committed, with power to direct the discharge of all against whom there is no case for a conviction; to order further inquiries, when the case appears to call for them; and to direct a prosecution to be conducted in due form by Counsel and Attorney, where he deems it a fit case to be sent to trial. This would be a perfect remedy, and a great improvement generally in the administration of criminal justice.

ADVERTISING ATTORNEYS.

The following extraordinary and most disreputable documents have been forwarded to us. The first is a printed circular, by one Mr. Nixon:—

"The County Courts and their Extension. From the great increase of cases brought before the County Court Judges, and the probability of the present Act of Parliament being extended to larger amounts, and embracing matters of equal importance with those of the superior Courts of Law; Mr. Nixon, who has been in practice for Twenty Years, and had considerable experience in the County Courts, has determined to appropriate a portion of his time, personally, to the business of the last mentioned Courts, upon such terms as will meet the views of the tradespeople and others, and satisfactory to himself.

The expense of Law has for many years past been a prevention, and indeed denial, to the equalization of justice—to obviate that difficulty, the County Courts were instituted, and whether they have met the views of the Public and the Legislature, is not here a matter of inquiry—we must take them as they are—Mr. N.'s object is to point out to the public, the method of obtaining cheap law, with, it is to be hoped its concomitant, justice; and with this intention, he proposes to transact the business of the Tradespeople and the Public in the County Courts by an individual Annual Subscription of One Guinea. For this subscription Mr. N. undertakes to advise and to attend the County Courts on the days of hearing, for Plaintiff or Defendant, on Summonses or Orders *pro* or *con*, thereby dispensing with the usual fee payable by the client, to him as the Attorney for the respective parties, as allowed by the Act of Parliament, Mr. N. thereby looking to the adverse party only for the costs.

J. E. Nixon.

Offices,—17, Wellington-square, King's-road, Chelsea.

Offices in London, 13a, Red Lion-square."

The other is an advertisement, which appeared in *The News of the World*, of the 28th inst. We know not, however, whether the worthy James Brent, Esq. is a *real* or a *sham* Lawyer. In the latter case he should be watched, detected in his practices, and prosecuted:—

"Cheap Legal Advice and Assistance.—Send me 13 postage stamps and a plain statement of your case, and I will give you a legal opinion thereon, and directions how to proceed. Send me copies of the examinations, on which the prisoner was committed for trial for any felony or misdemeanour, and I will draw up and arrange the best line of defence. Charge, 7s. 6d. or send me full instructions, and I will prepare your Will for 3s. 6d.—Address, by letter, James Brent, Esq. 12, Lucas-street, Commercial-road East, London."

THE LEGISLATOR.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, April 2.

Militia

Turnpike Roads, Ireland
Commons Inclosure Acts Extension.

Monday, April 5.

Proclamation for Assembling Parliament.

BILLS READ A SECOND TIME.

Friday, April 2.

Repayment of Advances Act Amendment, Ireland
Protection of Inventions Act, 1851, Extension of Time
Sheep, &c. Contagious Disorders Prevention.

Monday, April 5.

Exchequer Bills, 17,742,800*l*.
Law of Wills Amendment (Lords)
Commons Inclosure Acts Extension
Linen, &c. Manufactures, Ireland
Differential Dues
Ecclesiastical Courts, Criminal Jurisdiction
Poor Relief Act Continuance.

BILLS READ A THIRD TIME AND PASSED.

Friday, April 2.

Copyright Amendment
Municipal Corporations Acts Amendment.

Monday, April 5.

Protection of Inventions Act 1851—Extension of time
Common Law Fees Regulation.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A THIRD TIME AND PASSED.

Friday, April 2.

Bristol and Exeter Railway, Yeovil Branch
Barnsley Gas.

Monday, April 5

Stockton Extension and Improvement
Portsea Gas
Vale of Neath Railway
Macclesfield Improvement.

Tuesday, April 6.

Derby Gas
Lancaster Waterworks, &c.
Aberdeen Fire and Life Assurance.

PETITIONS PRESENTED.

ATTORNEYS' CERTIFICATES—For repeal of the duty thereon, —from Bristol, Galway, Liverpool, and Wakefield.

SESSIONAL PRINTED PAPERS.

Par. Numb.
149. Bankruptcy—Annual Statement
201. Slaves—Return
215. Trade and Navigation—Accounts
148. Turnpike Roads, South Wales—Account
204 Brewers, &c.—Account
226. Bills—Poor Law Board Continuance
227. — Poor Relief Act Continuance
228. — Ennis Improvement and Fergus Navigation, Ireland
234. — Militia
235. — Turnpike Roads, Ireland
236. — Commons Inclosure Acts Extension
229. — Kennington Common, &c. Improvement
233. — Passengers' Act Amendment, amended
National Education, Ireland—17th vol. 2, Appendices H. I. K. L. M. and N.

HOUSE OF LORDS.

ADMINISTRATION OF JUSTICE IN LUNACY.

Lord LYNDHURST made an interesting statement in moving for returns as a basis for extending the provisions of the Act passed in 1842 for the better administration of the estates of lunatics. It appeared that of all the parties engaged in an inquiry into the state of mind of any alleged lunatic—the solicitors and counsel, the commissioners, and even the jury—not one is interested in shortening the duration of the inquest. It is also an evil without corresponding good, that the inquiry always relates to the state of mind of the alleged lunatic at a long period past, as well as at the moment of inquiry: yet the finding is not conclusive on any person of the fact of lunacy, and any debtor may controvert the finding in a court of law by separate evidence in his own cause: surely it would be better to leave it to the discretion of the commissioners to narrow the limits of the inquiry. At present the jury is one of twenty-four, and a majority must agree: but the jurors are not of the character of a grand jury. It had been proposed on the one hand to do away with the jury, on the other hand to do away with the commissioner, and try by a judge and jury at the regular assizes; but Lord Lyndhurst disapproved of both suggestions; he thought no tribunal so fit as that of a jury of sensible ordinary men, to judge whether the lunatic is capable of managing his affairs; and he thought that a trial at assizes would often be of disastrous effect on the lunatic's mind; he proposed to retain the present tribunal, but to dispense with a jury in all cases where it is not specially demanded on behalf of the alleged lunatic. Referring to the case of Mrs. Cumming, and to the legal decision just given by the Lords Justices of Appeal on her right to traverse the verdict affirming her lunacy, he said he would propose to abolish the right of traverse as a matter of course, and to make it subject to the discretionary control of the Lords Justices. The cost of managing a lunatic's estate is greatly exaggerated by the cumbrous mode of acting. Nothing can be done without application to the Lord Chancellor and the payment of ruinous fees. He would propose to enable applications in the first instance to the Commissioners in Lunacy, and to make the steps more ready and inexpensive.—The LORD CHANCELLOR received with pleasure the various suggestions made; they nearly all appeared to him worthy of very serious consideration. The first and main object should be one which he feared had often been the last thought of, the securing of a sufficient maintenance for the lunatic.—Lord TRURO also expressed his pleasure to hear that Lord Lyndhurst had prepared some legislative propositions; many of his observations were founded on suggestions made by Lord Truro himself.—The returns were ordered as of course.—Lord LYNDHURST afterwards brought in a Bill on the subject, and it was read a first time on Thursday.

HOUSE OF COMMONS.

POOR LAW COMMISSION.

Sir JOHN TROLLOPE has obtained leave to bring in a Bill to continue the Poor-law Commission for two years.

CHARITABLE TRUSTS BILL.

In reply to Mr. MOORE, the ATTORNEY-GENERAL said, that though he was desirous of proceeding with this Bill with as little delay as possible, yet as he wished to have it fully discussed, and as he understood that certain persons were preparing some amendments, he should consent to postpone the Bill till after the recess; but he should fix it for the first day after the re-assembling of the house.

POOR RATING.

TUESDAY, April 6.—Mr. G. A. HAMILTON then obtained leave to introduce a Bill to continue the exemption of inhabitants from liability to be rated, as such, in respect of stock in trade or other property to the relief of the poor.

LOAN SOCIETIES.

On the motion of Mr. G. A. HAMILTON, leave was then given to bring in a Bill to continue and amend the laws relating to loan societies.

COURTS AT WESTMINSTER.

Mr. HEADLAM asked whether there was any intention on the part of the Government to allow any public money to be expended in providing new Courts at Westminster.—Lord JOHN MANNERS said that three or four months ago the late Government commenced the fitting up of temporary courts to replace those which had been removed. Those temporary courts were nearly completed, and would be kept for the reception of the judges next term. The fitting up of these courts did not preclude the general question of the maintenance of the courts at Westminster, or their removal, on which subject he was not authorised to express any opinion.

SUITORS IN CHANCERY RELIEF BILL.

The House went into committee on this Bill. Sir H. WILLOUGHBY said this measure was called the Suitors in Chancery Relief Bill, but he did not think the suitors in Chancery would get much relief by it. However, as the Bill was before the committee, he would try to make something out of it. It was proposed that a number of persons who had been paid by fees should in future be paid by salaries. They should take care that they gave salaries of a specific amount, and that they did not give salaries calculated on an average amount of fees for three years, of which they knew nothing. If they did not use proper caution, the same thing might occur as had formerly occurred in the case of the sworn clerks. He proposed as an amendment to the clause on this subject that those parties should be paid by salaries according to an amount to be fixed in a schedule annexed to the Act.—Mr. MULLINGS agreed in the principle that had been suggested by his honourable friend, but he must go further than that. He knew the complaints that were made with respect to the payments that were made to certain individuals who had been officers of the Court of Chancery, some of whom were receiving 7,000*l*. a-year, and it might be deemed desirable if, in the present case, the names of the parties could be inserted, with the salaries affixed to each of them.

COUNTY COURTS FURTHER EXTENSION BILL.

On the order for the going into committee on this Bill, the ATTORNEY-GENERAL suggested that as two-thirds of this Bill went to make the judges in County Courts Masters in Chancery, and as the Chancery Commission had recommended the abolition of the Masters' offices, it would be inexpedient to press a measure that went to make sixty new Masters in Chancery. He hoped the hon. and gallant member would postpone his Bill until the general measure of Chancery reform had been laid on the table.—Sir A. COCKBURN would concur in the recommendation of his hon. and learned friend, if he could hold out any definite or speedy prospect of the Chancery Reform Bill. — The ATTORNEY-GENERAL could not give a distinct answer on that subject, seeing the peculiar circumstances in which the Government and Parliament were placed. There was no doubt but that it would be brought in at the earliest possible moment.—In answer to a question from Lord R. Grosvenor, the ATTORNEY-GENERAL could not say when the Chancery Reform Bill might be expected.—Mr. WAKLEY could not understand, as both Bills had come from the Lords, why the Attorney-General should object to this one. In his opinion the best course would be to abolish the Court of Chancery altogether.—Capt. FITZROY said that the Bill, or one precisely similar, had passed the House last session, and therefore until more grave reasons were given than they had heard from the Attorney-General, he would persist with his motion.—Mr. J. STUART said that the Lords' votes announced a second County Courts Extension Bill. Looking at this fact and the report of the Chancery Commission, he hoped that the hon. and gallant member would not press his Bill.—Sir G. STRICKLAND hoped his hon. friend would persevere, as experience told him that hopes of reform in the Court of Chancery were generally fallacious. This Bill was likely to be extremely useful, and would not interfere with the Chancery reform.—Lord R. GROSVENOR was also anxious that the Bill should be proceeded with, as his constituents were very anxious for its success.—Mr. MULLINGS thought that the best course would be to postpone the Bill.—Sir A. COCKBURN advised his hon. and gallant friend to adopt the suggestion just made, and allow the chairman to report progress, and leave the Bill to be reprinted, so that it would be ready to be proceeded with if a bill for a reform in the Court of Chancery, and abolishing the Masters was not brought in, in accordance with the recommendations of the Chancery Commission.—After a few words from Mr. V. Smith, Captain FITZROY consented to allow the Chairman to report progress, and would reprint the Bill, and fix a day for going into committee again.—The CHAIRMAN then reported progress, and the House resumed.

LUNACY PROCEEDINGS EXPENSES.—Lord Lyndhurst's Bill to diminish the expenses of proceedings under commissions de lunatico inquirendo has just been printed by order of the House of Lords. The object of the Bill is to extend the provisions of the Act 5 & 6 Vict. c. 84, "with a view to lessen the expenses of administering the estates of lunatics." It is proposed to enact that after inquisition found, the Masters in lunacy should be empowered to make orders respecting the persons and property of lunatics. The Lord Chancellor is to be empowered to direct the matter of any lunacy to be exempted from the provisions of the Act. No orders of the Masters under this Act are to require confirmation except in certain cases, but are to have the same effect as if made by the Lord Chancellor. A Master may make a special report in order to be submitted to the Lord Chancellor. The Lord Chancellor is to make orders for carrying the measure into execution. There are ten concise clauses in the Bill.

POPULATION AND HOUSES.—A return to the House of Commons, obtained by Mr. Bouverie, of the population and houses in the counties and boroughs which return members to Parliament, has been printed. In the counties, the populations of Middlesex, South Lancashire, and the West Riding of Yorkshire are by far the greatest. These are respectively 1,886,576, 1,570,816, and 1,315,787. The number of inhabited houses in each is—Middlesex, 239,362; South Lancashire, 267,653; the West Riding, 352,423. In Rutland, the number of inhabited houses is only 4,588. Of the boroughs, the principal are—

	Population.	Inhabited Houses.
The Tower Hamlets	539,111	75,710
Liverpool	376,063	54,298
Marylebone	370,957	40,513
Finsbury	323,772	27,127
Manchester	316,213	53,024
Westminster	241,611	24,755
Birmingham	232,840	45,844
City of London	127,869	21,755
Leeds	172,270	36,165
Bristol	137,328	20,873
Lambeth	251,345	39,154
Southwark	172,863	23,751
Greenwich	105,784	15,401
Wolverhampton	119,748	22,284
Sheffield	135,210	27,099
Bradford	103,778	19,002
Hull	84,690	16,634

OFFICE OF MESSENGER TO THE GREAT SEAL ABOLITION BILL.—The first report of the committee of the House of Lords, appointed to inquire into various offices, has been printed. It states that the office of messenger to the Great Seal is a sinecure, the duties being performed by a deputy. The average annual amount of the fees and allowances for performing the duties attached to this office is 451*l*.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

AN important question, under the Municipal Corporations Act, was raised in the case of *Reg.* v. *Hammond*, 19 Law T. Rep. 21. It was

as to the meaning of the words "place of abode," in sec. 32. The voting-papers described the voter as of "Church-road, miller," his actual *residence* being in High-street, but his *place of business* being in Church-road. The Court held the place of residence to be wrongly stated, and the requirements of the Act *not* complied with. "We have been much pressed by the fact," said Lord CAMPBELL, "that in the present case the defendant was as well known by his place of business as by his place of residence; but if we were to hold that the place of business is sufficient, we must lay down a general rule upon the subject, which, if unqualified, would, in many instances, defeat the object of the Legislature; and if qualified with the condition that the candidate is as well known by his place of business as by his place of residence, might lead to great uncertainty and much litigation. We think it the safer and better course to conclude that the Legislature used the words in their plain and ordinary sense, and required that the voting-paper shall contain the candidate's place of residence, by which in all cases he may be easily identified."

CONSTABLES' CHARGES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I beg to acquaint you, for the information of your readers who are magistrates and magistrates' clerks, that the questions so long debated, and upon which a diversity of practice has prevailed throughout the kingdom since the passing of the 5 & 6 Vict. c. 109, s. 17, as to what parish is liable to pay the constables' charges in summary proceedings, and under what circumstances they can be included with the other costs of such proceedings, are likely to be set at rest during the present session by the important Bill introduced by Mr. Deedes "for amending the laws relating to the appointment and payment of parish constables."

On the notice being given that such a Bill was to be brought in, I communicated with Mr. Deedes, and subsequently, at his request, sent him the clauses following, which remove the doubts alluded to, with others, and which are, I understand, inserted in the Bill ordered to be printed, viz.:—

A. That the fees to parochial constables, not being paid constables at a salary, shall in all cases (except where charged by law upon the county-rate, or recovered or received from any other person) be a charge upon the poor-rate of the parish in which the offence was committed or matter arose, the constables employed being in all cases those appointed for such parish.

B. Orders to be made on overseers for the fees quarterly in a form given.

C. Costs of prosecuting vagrants by any constable (if not recovered from the offender) to be a charge on the poor-rate upon a like order. (See repealing clause I.)

D. Recovery of amount of order for constables' fees from overseers, or their successors, before justices, by a proceeding under 11 & 12 Vict. c. 43.

E. Constables' charges to be included with other costs in all proceedings before justices out of Quarter Sessions, independently of the ultimate charge on the poor-rate, if not recovered from the parties; proviso, that, where a paid constable, the amount shall be retained by the clerk to the justices, and by him paid to the overseers of the poor.

F. Any constable whatever may recover his fees from parties before justices, as in clause D; proviso enabling justices to remit fees on account of poverty or other cause, and in case of a parochial constable, to order same to be paid out of poor-rate.

G. Recovery of amount of order for justices' clerk's fees from overseers in County Court of the district wherein clerk resides.

H. No stamp-duty on constables' appointments.

I. Repeal of 18 Geo. 3, c 19, ss. 4, 5, 9. (See clause C.)

Your practical readers will be able to judge of the importance of these clauses, and probably to suggest others, or amendments therein; but that there are many advantages to be derived from the enactments proposed, cannot be denied.

I am, Sir, yours, &c.

Newmarket, April 3. GEORGE C. OKE.

THE NEW MILITIA BILL.—The Bill to Consolidate and Amend the Laws relating to the Militia in England has been printed by order of the House of Commons. There are thirty-two sections in the Bill, which is to be discussed after the Easter recess. It is declared to be expedient, "for better fulfilling the purposes of the institution of the militia with as little disturbance as may be to the ordinary occupations of the people, that the laws for raising and regulating the militia should be amended." The Secretary of State may make regulations as to the qualification and appointment of officers. The number of militia to be raised is 80,000, of which 50,000 are to be raised in the present, and 30,000 in next year. Orders in Council are to be made with respect to quotas of counties and other matters connected therewith. The militia is to be raised by voluntary enlistment. The bounty is not to exceed 6*l.* and no periodical payment or allowance is to exceed after the rate of 2s. 6d. per month during the term of service for which the volunteer shall be enrolled. All volunteers are to be sworn and enrolled, and where the men cannot be raised, her Majesty in Council may order a ballot. Persons after thirty-five years are not to be liable to the ballot. There are provisions empowering her Majesty to order regiments to be formed and officered, and how the men are to be exercised. In case of invasion, or imminent danger thereof, her Majesty may raise the militia to 120,000 men. When an additional number of men is raised, her Majesty is to issue a proclamation for the meeting of Parliament within fourteen days. The militia of the city of London is to be raised under the 1st Geo. 4, c. 100. The bounties stated are to be paid out of the Consolidated Fund.

POOR-RATES.—A Blue-book, containing 362 pages of closely printed matter, has been published by order of the House of Commons. It comprehends the separate assessments made in the parishes and townships of England and Wales, for the relief of the poor in the year ending 7th July, 1851; the amounts and numbers of the assessments of which the annual rateable value is from 1*l.* to 10*l.* and upwards, together with the gross number of persons so assessed to the poor-rates. The number of persons entitled to vote at the municipal elections in England and Wales is 224,375.

LAW OF SETTLEMENT.—The guardians and other officers of the East, West, and City of London Unions, have recently presented memorials to the Home Secretary and to the Poor-law Board, complaining of the unjust, partial, and oppressive effect of the existing law of settlement and the rating for the relief of the poor, and praying for the introduction of a measure into Parliament for a more equitable distribution of these burdens. The memorials were forwarded by Mr. Alderman Sidney, M.P.; and the following answer has been received from the President of the Poor-law Board:—

Poor-law Board, Whitehall, March 30, 1852.

My dear Sir,—I have received the petition you have forwarded me from various present and past officers of the City of London Union, and have carefully read the same and examined the tables included therein.

The subject has been for some time under the consideration of this Board, and opinions have been obtained with reference to the general question of settlement, and removal of the poor from the inspectors under its directions, but it is so comprehensive, and requires so much consideration, that no steps can be taken at present to bring it under the consideration of Parliament.

I am, my dear Sir, yours faithfully,

JOHN TROLLOPE.

Alderman Sidney, M.P. Ludgate-hill.

JOINT-STOCK COMPANIES' LAW JOURNAL.

WINDING UP.

THE new LORD CHANCELLOR has decided his first winding-up case. In *Ex parte Lawes*, 19 Law T. Rep. 14, it appeared that the deed of settlement of a joint-stock company provided the mode by which a shareholder, parting with its shares, was to be released from subsequent responsibility. At meeting of the company, resolutions were passed permitting any of the shareholders to withdraw from the company on certain conditions. A. did not then avail himself of this privilege. At a subsequent meeting, the conditions of withdrawing were modified and altered, and in pursuance of these altered conditions A. sold his shares to a nominee, one of the directors of the company. The transfer was duly entered in the share register book, as required by the deed. A.'s executors were nevertheless held to be contributories.

In *Ex parte Carpenter's Executors*, 19 Law T. Rep. 20, it appeared that, in a railway company, shares were allotted, deposits received, and the parliamentary contract and subscribers' agreement executed. The directors appointed five of their number to be a finance committee, with power for any three to draw cheques. Cheques were drawn and the money applied to the purchase of shares in the market. The Master charged the members of the committee who had signed the cheques with the amount thereof, giving them liberty to discharge themselves by shewing a proper application of the money. The Court discharged the Master's order. It said, "The vice of the order is this, it assumed that the five individuals, where there was no cheque forthcoming, or the three where there were cheques, were the parties who, as between these persons and the company, are solely and ultimately chargeable with the moneys misapplied. . . . It seemed to him that all persons who were implicated in the transaction were jointly and severally liable."

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

Camborne Consols Mining Company.—To appoint official manager on April 16. Creditors to come in and prove. (*Gazette*, April 6.)—Richards.

Oundle Union Brewing Company.—Call of 30*l.* on all contributories, to be paid on April 22.—Richards.

Patent Elastic Pavement and Kamptulicon Company.—Further call of 6*l.* per share on all the contributories, on April 26.—Tinney.

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

THE case of *Gooch* v. *Gooch*, 19 Law T. Rep. 18, is a report of some further points arising upon the construction of the will described in 18 Law T. Rep. 231. Certain trusts in favour of a daughter's grandchildren were held to be void for remoteness. But then the question was, whether, in consequence of the limitations over being void, the gifts to the children of the daughter, and the survivor of them, were not also cut down and destroyed, and the MASTER of the ROLLS held them *not* to be so.

In *King* v. *Malcott*, 19 Law T. Rep. 19, where a lessee had died, the representative of the lessor filed a claim to have the estate of the lessee administered, and a portion of the assets impounded, to answer any future breaches of covenant in the lease, although there was no present breach. The application was very properly refused, Vice-Chanceller TURNER explaining the principle on which the Court interfered in such cases:—"In the general decree for the administration of a testator's estate, the usual reference to the Master is to take an account of all debts due to and from the testator. If the testator be a lessee, no debt is provable under that decree by the lessor, if there be no rent *in arrear*. But suppose rent afterwards becomes due, and that proceedings are taken by the landlord, a sum of money will be set apart to answer his demand. That arises, not from the right of the creditor to come in under the decree, but from the *right of the executor to an indemnity* out of the assets. The creditor becoming such after the decease of the testator on account of the covenant, is not a creditor at the time of his decease, and therefore is not entitled to come in under the decree."

In *Renshaw* v. *Bean*, 19 Law T. Rep. 22, the question was, as to what constituted an obstruction of ancient lights. Within twenty years the plaintiff had added a story to his house, and enlarged the old windows in the lower stories. Afterwards the defendant added another story to *his* house, which was on the other side of a narrow courtyard, and for which obstruction the plaintiff brought his action. It was held that such action would not lie, inasmuch as the act of the plaintiff had made it impossible for the defendant to obstruct the new windows, or the unprivileged portions of the old windows, without also obstructing the privileged portions.

In *Fowlett* v. *Lee*, 19 Law T. Rep. 23, furniture let to a tenant was held by JERVIS, C.J. at Nisi Prius, not to be liable to be seized under an execution against the lessor.

ENFRANCHISEMENT OF COPYHOLDS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Near to my place of residence there are a considerable number of manors and copyhold estates. The fines on alienation vary to a great extent: in some merely nominal, as 3s. or 10s.; but in others heavy,—in some instances, far from rare, amounting to two years' improved *rent* or value (namely, the actual rack rent) of the property.

In your number of Jan. 10, pp. 145, 146, in an article on compulsory enfranchisement now proposed, you mention the principle of the commutation to be "a valuation at fifteen years' purchase of the amount of the fine." I happen to have myself a small copyhold property in one of these heavy-fined manors, the alienation fine being two years' rack rent, but which has, in fact, only been paid twice during the last thirty years or so.

My land lets for 10*l.* a year to the occupying tenant; and, if I read your paragraph correctly, I should have to pay *thirty years' full annual rent* of the entire land. In that case, what becomes of my interest in it? It will, in fact, be a present to the lord of the manor of the estate itself—an injustice that can scarcely be contemplated. Thirty years' purchase is considered hereabouts a fair and full price for fee-simple lands in possession, by one having no previous interest at all in them.

The figuring stands thus. For the last thirty years (or I believe more, if it were worth while to search) I and my predecessors in title have enjoyed this estate in like way as many others of the same copyholders have held theirs, and the total amount of fines legally and properly payable have been, two of 20*l.* each (that is, each fine being two years' rent of 10*l.*), making 40*l.*; and leaving to me, for my own benefit, the rent for the other twenty-six years; and I have no prospect of having to pay any fine *at all* during the rest of my life (aged thirty-seven); while, on the proposed enfranchisement, my commutation would appear to be 300*l.*—viz. the fine of 20*l.* at fifteen years' purchase, =300*l.*; being, in fact, the full value (thirty years' purchase) of the estate itself, if freehold. My obvious course in such a case is, to let the lord of the manor take the estate, and sacrifice all I paid for it, or to let it run waste. If it is made optional with the copyholder to call for an enfranchisement, or to go on upon his present holding, the case may be different; but I take it the lords of manors are making this law, and they do not seem to forget themselves.

I draw your attention to this, and leave it in your hands. I should say fully one-half the manors in my county and the neighbouring ones have heavy fines, but in practice they are not often paid.

I am, Sir, yours, &c.

A. B.

[Our correspondent misunderstood our proposition. We suggested fifteen years of the *annual* rent or fine, where such is paid. But where the fine is only on admission, then a sum equal to the amount of one fine. But the bill does not prescribe the terms of commutation. They are left to be estimated in each case by valuers.—Ed. L. T.]

Queries.

FEES.

Perhaps you or some of your readers can inform me what is the proper fee to pay a Master extra for taking an acknowledgment in the country to a deed for the purpose of having it enrolled in Chancery. The fee charged for taking an acknowledgment in town at the office is 6s. A Subscriber.

London, March 31, 1852.

PREPARING LEASES.

Will any of your subscribers be good enough to inform me whether the solicitor of a lessor has not "the right" to prepare the leases, and by so doing oblige An Old Subscriber.

30th March, 1852.

LATE CASES ON THE LAW OF LANDLORD AND TENANT. (a)

(Concluded from page 14.)

We resume the subject of distress for rent, in the examination of the cases recently decided on this point.

Where a broker, under a warrant from the landlord, authorising him to distrain the goods and chattels of the tenant, seized a fixture, which was afterwards sold, and the proceeds paid to the landlord, it was held, that the receipt of the proceeds did not make the landlord a trespasser, it not being shewn that he was aware of the illegal seizure. (*Freeman* v. *Rosher*, 18 L.J. 340, Q.B.)

In the year 1840, A. being the lessee of a warehouse and cellar, under a demise from B. and being also the lessee under C. of property comprising inter alia a vault, D. became tenant from year to year to A. of the warehouse and cellar, and vault, under an annual rent of 185*l.* made up of 140*l.* for the warehouse and cellar, and 45*l.* for the vault. On the 27th of October, 1845, A. became bankrupt, 92*l.* 10s. being at that time due as rent from D. to A. The assignees, upon being appointed, elected to take the property held under B.; and on the 26th of February, 1846, elected not to take the property held under C. At Christmas, 1845, rent to the amount of 114*l.* 7s. 6d. became due from A. to C. for which amount, on the 19th of February, 1846, C. distrained upon the goods in the vault held by D. who, to relieve himself from this distress, paid that sum to C. An action having been subsequently brought by the assignees of A. to recover the above sum of 92*l.* 10s. and also 35*l.* being one quarter's rent of the warehouse and cellar, due at Christmas, 1845, it was held that D. was not entitled in such action to avail himself of the payment of 114*l.* 7s. 6d. made by him to C. (*Graham and Others, assignees*, v. *Allsop*, 18 L. J. Ex. 85.)

A. the landlord of B. distressed on C. an under-tenant, for B.'s rent. After the formalities of a sale by auction had been gone through, and the goods of C. had been knocked down to a purchaser, A. by the consent of the latter, restored them to C. without receiving any portion of the price. It was held that B. was not entitled, as against A. to credit for what the goods nominally realized. (*Keough* v. *Power*, 2 Ir. Jur. 230, Q. B. of Ireland.)

The declaration in an action in the case against two defendants complained that they wrongfully and injuriously distrained upon the plaintiff's goods for more rent than was due; and also that they afterwards wrongfully sold the same for the alleged rent and the expenses of the distress. The defendants pleaded payment into court of 1s. and no damages ultra. The jury found for the plaintiff, damages 40*l.* There was no evidence given at the trial to connect one of the defendants with the acts complained of. It was held that no such evidence was necessary, as by the payment into court the defendant admitted a joint wrong, not only in respect of the alleged distress, but also of the subsequent sale, which was to be considered, not merely as matter of aggravation, but as an alleged substantive wrong. It was held, also, that case was a proper form of action; and that it was not necessary to allege in the declaration that the wrongs complained of had been done maliciously. (*Leyland* v. *Tancred and Another*, 19 L.J. 313, Q.B.)

It has lately been determined that a landlord cannot justify the breaking open the outer door of a stable to distrain for rent in arrear. (*Brown* v. *Glen*, 16 L. T. 341, Q.B.)

A notice of distress contained an inventory of certain articles which one intended to distrain, and concluded with these words, "and any other goods that may be found in and about the said premises, to pay the rent of the premises." It was held that such notice was bad. (See stat. 2 Wm. & M. sess. 1, c. 5, s. 2; *Kirby* v. *Harding*, 16 L. T. 504, Ex.)

A landlord having distrained without complying with the provisions of 9 & 10 Vict. c. 111, s. 10 (Ir.), the tenant replevied, and the landlord served notice that he did not intend to proceed with that distress, and subsequently he again distrained for the same rent. It was held that, the first distress being illegal and void, the second distress made for the same rent was not illegal. (*Clooney* v. *Watson*, 3 Ir. Jur. 195, Ex. Ireland.)

There is no obligation upon a landlord when he distrains for rent, to state for what amount he distrains; and if he makes a false statement of the amount, that does not give the tenant a cause of action, unless it be accompanied with special damage, overruling *Taylor* v. *Henniker*, 12 Ad. & Ell. 488. Where a declaration in case alleged that the defendants took the plaintiff's goods as a distress for certain arrears of rent, to wit, 45*l.* pretended to be due, and, under that pretence, wrongfully sold the goods as such distress for the said alleged arrears of rent and the costs, whereas a small part only of the said pretended arrears was due; it was held that there was no express or implied averment, that more goods were sold than were necessary to satisfy the arrears actually due, and that the whole declaration disclosed no cause of action. (*Tancred* v. *Leyland*, 17 Law T. Rep. 53, Ex.) Where goods are taken as a distress upon the farm of a person bound to spend its produce thereon, these goods ought not to be sold with reference to that covenant, but should be disposed of for the best price, if at all, irrespective of any covenant to spend the same upon the premises. (*Ridway* v. *Lord Stafford*, 17 Law T. Rep. 80, Ex.)

The levying a sum of money by distress, beyond the amount of the rent due and expenses, is not the subject of an action for money had and received, but of a special action on the case, on the stat. 2 W. & M. sess. 1, c. 5, s. 2, which directs that after sale of a distress, the overplus (if any) shall be left in the sheriff's, under-sheriff's, or constable's hands, for the owner's use. (*Yates* v. *Eastwood*, 17 Law T. Rep. 189, Ex.)

It has lately been determined that a landlord has a right to distrain upon his tenant at will. After the tenant at will entered into possession, there was an agreement for the lease of the premises, but no lease was ever prepared; on the back of the draft there was an endorsement made and signed between the parties. Rent had been paid, and a receipt given for the quarter's rent, and a distress also had been put in by the landlord upon the tenant. It was held not sufficient to alter the original tenancy at will into a tenancy from year to year. (*Doe dem. Benson* v. *Frost*, 17 Law T. Rep. 146, Ex.)

In the following case the premises were demised by A. to B. from the 25th of March, 1844, for a twelvemonth certain, and from thence until determined by a six months' notice from B. exp any quarter of a year, at the rent of 120*l.* per annum. It was held that the rent was payable yearly, and that A. could not recover in use and occupation for the quarter ending the 25th of December, 1845. (*Collett* v. *Curling*, 16 L.J. 390, Q.B.)

On the subject of fixtures it is perhaps necessary that we should say a few words before bringing this subject to a close. It may here be observed that the term "fixtures" is often used indiscriminately, and perhaps incorrectly, in allusion as well to those articles which are not by law removable when once attached to the freehold, as to those goods which are severable therefrom. In its correct sense the word "fixtures" signifies such things of a personal nature as have been annexed to the realty, and which may be afterwards severed or removed by the party who united them, or his personal representatives, against the will of the owner of the freehold. When the article annexed to the land is irremovable, it is viewed in law as part of the freehold, and is subject to all the rules and incidents of real property. (Chitt. Cont.) In any event the term "fixtures" naturally leads to an inquiry, first, what kind of annexation confers upon goods the character of fixtures? and, secondly, what particular rules or exceptions regulate the right of removal between persons standing in different relative situations towards each other in respect to the premises to which the goods have been united?

1. As regards the first of these points, it is to be observed that goods or even buildings of the most ponderous description, cannot fall within the operation of the law of fixtures if they are merely *laid* and *rest* upon the earth, without being *let into* it. The article must be *fixed* into the ground, or to some substance previously rendered a portion of the freehold, or it does not lose its personal nature. The mode of annexation is not, however, the sole criterion of the power of severance. In a case of doubt it is a good criterion whether the removal will cause any substantial injury to the freehold. (*Avery* v. *Cheslyn*, 3 A. & E. 75.)

2. Questions as to the right of fixtures principally arise between persons of three classes. 1. Between the *heir* and the *executor* of the party who put up or attached the article to the premises. 2. Between the executors of a tenant for life, or in tail, and the remainder-man, or reversioner. 3. Between landlord and tenant. The last only is the point with which we are here concerned. As a general principle, it is to be observed that the rule against severance is usually construed more strongly against the landlord than the tenant. It is not material in regard to the right of removal by a tenant whether he held for life or merely from year to year, &c.; and there is no distinction whether the tenancy is created by deed or parol agreement. Those fixtures that are removable must, generally speaking, be removed before the expiration of the tenancy, or its determination by forfeiture; although it seems if the tenant hold over even wrongfully after his tenancy has expired, he may sever and remove them while he continues in possession. (*Minshall* v. *Lloyd*, 2 M. & W. 456.) A contract on the subject of fixtures generally is ordinarily entered into between the parties. It has lately been decided that the mere removal and sale by a tenant, during the term of fixtures, which he does not immediately replace, but which can be replaced before the end of the term, is not in itself a breach of his covenant to repair and uphold the demised premises, and to deliver up the same at the end of the term, together with all things affixed thereto. (*Doe dem. Burrell* v. *Davis*, 15 Jur. 165; 16 Law T. 389, C. B.)

In bringing this subject to a close we shall ad-

(a) By George Harris, Esq. Barrister-at-Law.

vert to two or three miscellaneous cases which have been recently determined bearing on different points of the law of landlord and tenant. In *Griffiths and Another* v. *Pullston*, 14 L. J. 33, Ex. it was decided that a custom for an outgoing tenant to enter upon the land, and cut and carry away the growing crops after the determination of his tenancy, and to repair the fences until the crops are cut and carried, gives him possession of the land for that purpose, and not a mere easement; and therefore a subsequent tenant coming in under the landlord cannot maintain an action of trespass against him for entering upon the land for the purpose of cutting and carrying away the crops. In the following case a lessee applied to his lessor for a lease of a strip of land adjoining that which he already held. The lessor said he could not grant a lease, as the occupiers of other land had a right of way over it, but that the lessee might take it if he liked at his own risk. The lessor having inclosed it, it was held that it could not be considered inclosed for the benefit of the lessor, so as to become part of the demised premises, out of which the rent issued. (*Doe dem. Baddeley* v. *Massey*, 17 Law T. Rep. 221, Q B.)

The cases which follow have been decided in relation to stamps upon leases. The 4th section of the 7 & 8 Vict. c. 76 (repealed by the 8 & 9 Vict. c. 106), enacted that no lease in writing of any freehold, copyhold, or leasehold land should be valid, unless the same should be made by deed; but that any agreement in writing to let any such lands should be valid and take effect as an agreement to execute a lease. A memorandum of agreement, dated the 3rd of July, 1845, and made while that section was in force, whereby M. agreed to let, and B. agreed to take, certain premises from the 7th day of that month, for the monthly rent of 36s. to be paid every four weeks, was held to take effect as an agreement to execute a lease, and to be admissible in evidence without a stamp. (*Burton* v *Rewell*, 16 L. J. 85, Ex.) H. being seised in fee of certain land, contracted with B. to execute to him a lease of the land and a house to be built thereon by B. for ninety-nine years, at a rent of 9*l.* 5s. The house having been built, B. contracted with C. to sell him his (B.'s) interest in the land and house for 850*l.* which was accordingly paid. In order to effect this contract, B. procured an indenture to be made between himself, H. and C. whereby H. demised to C. the house and land for ninety-nine years, at the same rent. No mention was made in this instrument of the purchase-money. Held, that the lease was a conveyance within the Stamp Act, and that B. was liable to the penalties imposed by the 48 Geo. 3, c. 149, s 22, for omitting to set forth the purchase money. (*Attorney-General* v. *Brown*, 3 Ex. 662; 18 L. J. 336.) An instrument, not under seal, was executed by A. and B. whereby A. agreed with B. within twelve months then next, to demise to him by indenture certain lands, to hold same unto B. his heirs and assigns, during the lives of certain specified persons and the survivors, or for a term of thirty one years concurrent, at the rent of 32s. per acre, payable on the 25th of March and 29th of September yearly, during the demise, the first payment thereof to be made on the 29th of September next ensuing the date of the memorandum. The instrument then contained an agreement on the part of B. to perfect, at his expense, a lease, when required, with the usual covenants, clauses, and agreements in leases between landlord and tenant; and likewise that until such lease was perfected, to pay the said rent by the year on the days thereinbefore mentioned for the payment thereof. There was likewise an agreement on the part of B. not to alien, &c. without the consent of A. Held, that the above instrument was not a lease, but an agreement only, and was properly stamped as such (*Wyse* v. *Beresford*, 3 Ir. Jur. 226, Q.B. Ireland.)

COUNTY COURTS.

Summary.

The County Courts Bill has made no further progress. The Government has stated, in answer to a question put to them in the House of Commons, that it is not their intention to increase the salaries of the Judges and Clerks. Surely this is not fair dealing with them. Salaries were appointed for the performance of certain work. That work has been already doubled, and it is proposed to increase it yet further; but there is to be no addition to the remuneration. Is not this something like a breach of faith? If the Judges had been underworked before, there would be some excuse. But it was not so. They then worked harder than any other judicial officers in the employ of the public; and quite as much knowledge and ability were demanded for the accomplishment of their work. If their hard work is to be made still harder, it should be compensated by increased pay.

There is one *Insolvency* case to be noted. In *Re Flynn*, 19 Law T. Rep. 23, where an adjudication had been made on false evidence, the Court ordered that and the discharge to be annulled. It also permitted the insolvent to be examined on the rehearing, in order to disprove his former statement respecting his property.

Since the above was written, the Amendment Bill has gone into committee in the Commons, and found a very unwelcome reception. Mr. Fitzroy, who had taken charge of it, deliberately proposed to burke one half of it, by expunging all the clauses that had been inserted by the Lords, and which are, in fact, all that are of any value, and the Attorney-General proposed to expunge the other half, because the Chancery Reform Bill might possibly make them unnecessary. Thus, between the two, the whole measure was to be swept away. The end of the discussion was, that the Bill went through committee *pro formâ*, and the consideration of it was adjourned to some day after the recess, with the purpose scarcely concealed, of throwing it over for the session, to wait the Chancery Reform Bill, which is promised as something that may be expected at some future time. Indeed, we trust that with such intimations of hostility to its most useful provisions, it *will* be deferred until the next Parliament, when we hope it will find some more faithful and vigilant protector than it has yet found.

THE LAWYER.

Summary.

Equity Practice.—A point in the practice of *Appeal* is to be found in *Watkins* v. *Williams*, 19 Law T. Rep. 13, namely, that objections to a decree, not raised upon the petition of appeal, cannot be taken on the hearing.

Some other points to be noted are contained in the case of *Turner* v. *Turner*, 19 Law T. Rep. 15. First, a reference, on a petition, to the title of an Act of Parliament is sufficient to give the Court and the parties notice of its contents, and it is not an objection that it is not set out. Secondly, where a petition of rehearing states too much, no part of the prayer being founded on that portion of the petition, it can only be objected to as a ground for costs on the petition coming on to be heard.

In the *Law of Attorneys* we find some further proceedings in a case upon *Taxation of a Bill of Costs*, which has been already reported and commented upon in 18 Law T. Rep. 192. It is unnecessary here to repeat the whole case; it will suffice to remind the reader that it was that of a solicitor who had a partner and was appointed executor of a will, and was authorised by the will to make professional charges. The affairs of the executorship were conducted by the firm, and three bills of costs were delivered to the executors, who drew cheques for the amount, which were handed by one to the other in his capacity of solicitor. The Court held the delivery of these cheques to be a payment of two of the bills, and refused taxation, such payment having been made more than a year since; but payment of the third bill having been made within a year, it was ordered to be delivered for taxation The firm then delivered a bill, not in the name of the firm, but in the name only of the partner who was not executor, and the petitioner applied for an order to the Master to treat the bill as that of the firm, and not of the partner only. It was held, however, that the Court could not do so, but could only order taxation of the bill delivered, and on which the claim was made; that it must be treated as the bill of the partner alone, and that if anything should be found to be due from him, it would be ordered to be paid to the executors. (*Re Lethbridge and Another*, 19 Law T. Rep. 19.)

In *Pearce* v. *Cole*, 19 Law T. Rep. 21, it was held that, inasmuch as a married woman can take no proceedings in a cause, but in the name and with the concurrence of the next friend, where a motion was made on her behalf and no next friend was named in the notice of motion, the Court will compel the solicitor who made it to pay the costs thereby occasioned.

Common Law.—Where three actions were brought, under Lord Campbell's Act, by separate plaintiffs, to recover damages occasioned by the deaths of three persons, which occurred from the same cause, upon the same occasion, the Court refused either to compel the plaintiffs to consolidate their actions or to stay the proceedings in two of them until the third should be decided. (*Henderson* v. *Legaster*, 19 Law T. Rep. 24.)

COMMON LAW PROCEDURE.

TO THE EDITOR OF THE LAW TIMES.

Sir,—The interest you take in the progress of judicious reform in legal matters, induces me to ask why a clause could not be inserted in the Common Law Procedure Bill, about to be passed, enabling assignees of choses in action to sue at law in their own names?

As the utility of such a power is undoubted, both as regards the transfer of that species of property and the enforcement of legal proceedings to realise it, it seems to me that the desired object could easily be effected, and with great propriety, at the present time, when such sweeping alterations in our Common Law proceedings are on the eve of enactment.

I believe the Legislature has already had the subject in contemplation, particularly as regards assignments of life policies; but it might not be amiss again to call its attention to it, as otherwise the numerous subjects which must at this period occupy the consideration of Government will doubtless cause this, as well as other improvements of an equal, if not greater importance, to be forgotten.

I am, Sir, &c.

Robert Taylor Campion, one, &c.

Holloway-street, Exeter, April 5, 1852.

ARTICLED CLERKS.

TO THE EDITOR OF THE LAW TIMES.

Sir,—When Lord Brougham introduced a clause into the County Courts Extension Act, permitting *attorneys' clerks generally* to advocate in County Courts, and to which great objections were made, I did then think that a clause might be reasonably inserted permitting *articled clerks* to advocate in those Courts, either during the whole or some portion of their articles. I am still of that opinion, and do think that the 21th section of the Act now in the Commons may be, without any injury or injustice to either the public or the profession, but with incalculable benefit to articled clerks, so altered as to include articled clerks.

I am led to write to you on this subject in consequence of observing that on Friday last the Lord Chancellor presented a petition from some articled clerks in Northumberland, as well as from a wish I have that the education of that class of law students should be more cared for, and that they should not be pushed upon the public, on the expiration of their articles, without any practical knowledge of their profession.

I think that were articled clerks so privileged they would in general not drive their study of the law to within a few months of the time appointed for their examination and admission, as is now the case; but would at once enter with spirit upon the study of that part at least of their profession, to the practice of which they would in such case be entitled, and which threatens to be the mainspring of every common law action. The Legislature would then be providing for the education of the Profession, in a manner which would effect more improvement in the student by the training necessary for half a dozen cases of advocacy, than the five years' teaching of a solicitor in practice.

When I state that my chief reason for writing this letter is to obtain your opinion on the subject, you will wonder at my having presumed, first, to state my own. I am, Sir, yours, &c.

A Law Student.

Query.

May I request any of your readers to inform me, through the medium of your valuable journal, what are the necessary qualifications to enable a person to practise as an attorney in the United States of America, and whether there is the same distinction in that country of the profession of law into barristers and attorneys as there is in this? Also, if a person duly qualified to practise as an attorney in this country can do so in the colonies; and if not, what is the qualification required, and what are the rules regulating the respective practices of barristers and attorneys? Alpha.

COURT · PAPERS.

Court of Queen's Bench.

SPECIAL CASES AND DEMURRERS.

For Argument.

The Company of Proprietors of the Kennet and Avon Canal Navigation v. Witherington. Dem.
Wilson v. Eden (from Master of the Rolls Court). Special case
Broughton v. Jackson. N. O. V.
Brown and Others v. Von Uster. Dem.
Hargreaves, the younger, v. The Lancashire and Yorkshire Railway Company. Dem.
Bond v. The Eastern Union Railway Company. Dem.
The Cross-keys Bridge Company v. Commissioners of Meno Outfall. Special case
Smith v. James. Dem.
Fardon and Another v. Hornsby. Award
Sir T. R. Gage, Bart. v. The Newmarket Railway Company. Dem.
Drane v. Matthews. Dem.
Quarterman v. The Guardians, &c. of Oxford. Dem.
Bouverie and Another v. Perceval. Dem.
Starkey v. Marriott. Dem.
The Guardians of Chelmsford Union v. The Chelmsford Local Board of Health. Special case
Farrow and Another, Assignees, &c. v. Mayes. Special case
Morewood v. The Eastern Union Railway Company. Dem.
Heseltine v. Siely. Dem.
Ford and Another, Executors, v. Heale. Dem.
Boslock v. Sidebottom. Dem.
Lowndes v. Earl Stamford and Warrington. Dem.

ENLARGED RULES.

First day.

Richards v. Cameron's Coalbrook Steam Coal and Swansea and Loughor Railway Company
Merredith, survivor and Administratrix v. Gilders
Whitmore and Another, Assignees, &c. v. Crabb
Sigris v. Drummond
Re the London and North Western Railway Company and the Vestrymen of the Poor of the Parish of St. Pancras v. Bagley
Montgomery and Another v. Ross
Lloyd and Wife v. France
Re Wilde and Sheridan
Reg. v. Evan Griffin
Reg v. Dunnicliffe.

NEW TRIAL PAPER.

Liverpool—Mr. Justice Williams. Hayes v. Williams Atherton
,, Mr. Justice Williams. Rochdale Canal Company v. Radcliffe. Watson
Carmarthen—Mr. Justice Talfourd. Doe dem. Thomas Thomas. Allen, Serjt.

Tried during Michaelmas Term, 1851.

Middlesex—Mr. Justice Erle. Nere and Another, Executors, v. Hollands and wife. Bramwell
,, Mr. Justice Erle. Harrison (a pauper) Dunn. Parnell.

Hilary Term, 1852.

,, Lord Campbell. Harris v. Noyes. Crowder
,, Lord Campbell. Keene v. Stewart. Sir F. Thesiger
,, Mr. Justice Erle. Lane v. Hill. James
London—Lord Campbell. Avery v. Odanis and Another Bramwell
,, Lord Campbell. Rayner and Another v. Allhusen. Crowder
,, Lord Campbell. Rogers, Executrix, v. Harris. James
,, Lord Campbell. Beal v. Nye. Shee, Serjt.

Tried during Hilary Term, 1852.

Middlesex.—Mr. Justice Erle. Stapleton v. Croft. Humfrey.

STANDING FOR THE JUDGMENT OF THE COURT.

York.—Mr. Baron Platt. Martin v. Boyes and Others Atherton.

COUNTY COURT APPEAL.

,, Morville v. The Great Northern Railway Company. From the County Court of Yorkshire at Pontefract.

CROWN PAPER.

Yorkshire.—Reg. v. Charles Carr.
Gloucestershire.—Reg. v. The Great Western Railway Company.
Kingston-on-Hull.—Reg. v. The Hull Dock Company.
Yorkshire.—Reg. (on prosecution of Edmondson) v. The Leeds and Bradford Railway Company.
,, Reg. (on prosecution of Ratcliffe) v. Same.
Denbighshire.—Reg. v. The Rev. Edmund Williams.
Carnarvonshire.—Reg. v. Evan Williams.
Kent.—Reg. (on prosecution of Lewis Davis) v. Sir Thos. M. Wilson, bart. and Another, Justices.
West Riding of Yorkshire.—Reg. v. The Churchwardens and Overseers of Longwood.
Lincolnshire, Lindsey.—Reg. v. Inhabitants of Wickenby.
Lancashire.—Reg. (on prosecution of the Mayor, &c. of Ashton-under-Lyne) v. Edward Slater.
Leicestershire.—Reg. v. Inhabitants of Slawstone.

Court of Common Bench.

Sittings at Nisi Prius in Middlesex and London, before Sir JOHN JERVIS, Knt. in and after Easter Term, 1852.

IN TERM.—MIDDLESEX.

Tuesday, April 20 | Tuesday, April 27

AFTER TERM.

Monday, May 10.

IN TERM.—LONDON.

Thursday, April 22 | Thursday, April 29

AFTER TERM.

Tuesday, May 11.

N.B. The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

On Tuesday, the 11th of May, in London, no causes will be tried, but the Court will adjourn to a future day.

The Office of the Marshal and Associate is at the Lord Chief Justice's Chambers, Rolls-gardens, Chancery-lane. Hours of attendance during Term and sittings after Term are from eleven to five.

DEMURRER PAPER.

Tuesday, April 20.

Addison v. Mayor, &c. of Preston
Robinson v. Gill
Gladstanes and Others v. Allen and Another
Hayes v. Keene
Holmes v. Sparkes, esq. and Another.

REMANET PAPER—ENLARGED RULES.

To first day.

Bell (Public Officer) v. Fisk.

Enlarged generally.

In the matter of Sharpe (clerk) and Others v. All of Horbury—In prohibition.

New Trial of Michaelmas Term last.

Surrey—Hamilton v. Cochrane—Standing for arrangement

New Trials of Hilary Term last.

Middlesex—Dalby v. The India and London Life Assurance Company—Part heard, Jan. 31
London—Graham and Others (Assignees) v. Chapman
Jupe (Survivor, &c.) v. The Great Western Railway Company
Steadman v. Chappell
Adams and Another v. Avery (per Cur.) Feb. 9—To be taken on the first day of Easter Term.
Cur. adv. vult.
Belshaw v. Busk.

Exchequer of Pleas.

SITTINGS PAPER.

	Banc.	Nisi Prius.
Thursday, Ap. 15	Motions and Peremptory Paper	
Friday	Peremptory Paper and Motions	Midd. 1st sitting.
Saturday	Motions and New Trial Paper	
Monday . . 19	Ditto	
Tuesday . . 20	Ditto	
Wednesday	Special Paper .	
Thursday .	Motions and New Trial Paper	London 1st sitting
Friday 23	Ditto	Midd. 2nd sitting
Saturday . 4	Crown Cases, Motns. and N. Trial Paper	
Monday .. . 26	Special Paper ...	
Tuesday . 27	Errors, Motions, and New Trial Paper	
Wednesday . . 28	Special Paper	
Thursday . . 29	Motions and New Trial Paper	London 2nd sitting
Friday . 30	Ditto	Midd. 3rd sitting
Saturday, May 1	Ditto .	
Monday 3	Special Paper .	
Tuesday 4	Motions and New Trial Paper	
Wednesday .. 5	Ditto	
Thursday 6	Ditto	
Friday 7	Ditto	
Saturday 8	Ditto	

NEW TRIAL PAPER.

For Argument, moved Easter Term, 1851.

Kingston.—Lord Campbell. Griffin and Another . Humphrey. Chambers

Moved Michaelmas Term, 1851.

London.—Mr. Baron Alderson. Wallington v. Dale Crowder.
,, Mr. Baron Martin. Key and Others v. Cotesworth and Others. Sir F. Thesiger.
York.—Mr. Baron Platt. Wood and Others v. Ripley and Another. Knowles
Bristol—Lord Campbell. Fowles v. The Great Western Railway Company. Butt.

Moved Hilary Term, 1852.

Middlesex—Lord Chief Baron. Black v. Gompertz. Knowles
,, Lord Chief Baron. Marks v. Hamilton. Serjt Shee
,, Lord Chief Baron. Furgo v. Asker. Bovill
,, Lord Chief Baron. Barbat v. Allen and Another. Giffard
London—Lord Chief Baron. De Rothschild and Others v The Royal Mail Steam-Packet Company. Attorney-General
, Lord Chief Baron. Vincent v. The Shropshire Union Railway and Canal Company. Sir F. Thesiger
, Lord Chief Baron. The Galvanized Iron Company v. Westoby. Crowder
, Lord Chief Baron. Guest v. Warren. Serjt. Shee
, Mr. Baron Martin. Mitcheson v. Nichol. Bramwell
, Mr. Baron Martin. Couturier v. Hastie and Another. Cowling.

Moved after the 4th day of Hilary Term, 1852.

Middlesex.—Mr. Baron Platt. Copner (admix. &c.) v Copner. Hindmarch
,, Mr. Baron Platt. Thomas v. Cross. Brown
,, Mr. Baron Martin. Whitehead v. Lord (Administrator, &c.) Phipson

SPECIAL PAPER.

For Judgment.

Atkinson and Anor. v. Stephens. Part heard. Demurrer
Williams v. Roberts and Others. Heard. Demurrer
Miller v. Salomons. Heard. Special verdict.

&c.) v. South-Eastern ... r arrangement. Special case, by order of Mr. Justice Wightman
Burton v. White and Another. Case directed to be amended. Special case, by order of Vice-Chancellor Knight Bruce
Doe dem. Kimber v. Cafe. Part heard. By order of Mr. Baron Park
Thomas v. Watkins. Demurrer
Allcard v. Wesson. Demurrer
George v. Devereux. Demurrer.

APPEALS FROM COUNTY COURTS.

Remanet from Sittings after Hilary Term.

Stocker and Others v. Truscott. From the County Court of Cornwall, at St. Austell.

LEGAL INTELLIGENCE.

Assizes.

BODMIN, March 26.—The commission for Cornwall was opened here yesterday by Mr. Justice Erle and Mr. Justice Talfourd, after which both the learned judges attended Divine service. The business of the Assize commenced this morning at nine o'clock, Mr. Justice Erle presiding in the Criminal Court, and Mr. Justice Talfourd at Nisi Prius. The business is heavier than we remember for many years past, there being no less than 15 cases for trial, of which 5 are marked for special juries; the average number of causes here being from 5 to 6. The calendar contains a list of 55 prisoners for trial, but the offences charged are for the most part of a slight character. They are—rape, 1; attempt to procure abortion, 1; arson, 1; burglary, 1; cutting and wounding, 8; bigamy, 1; stealing in a dwelling-house, 3; robbery, 1; concealment of birth, 1; riot, 3; assaulting constables, 2; larceny, 30; false pretences, 1.

THE SENIOR AND JUNIOR BAR

TO THE EDITOR OF THE TIMES.

SIR,—I had a motion to submit to the Court of Chancery (as a junior barrister) last Wednesday week, March 24. In court every day, and generally all day long, from the 24th of March till this evening, I have been unable to bring on the motion (which might have occupied twenty minutes) in consequence of the liberty of senior counsel to exhaust all their motions before we can introduce one. The point is not of sufficient importance to authorise the expense of a "Q. C." (my fee is only one guinea), and accordingly there is an absolute denial of justice. The Court is now risen for the vacation. The motions of the Queen's counsel are not yet exhausted. On the 15th of April they will continue their motions; they will then add to them all their new ones, and many, many days hence, I may have a chance of being heard. Meanwhile, my clients and the solicitors for all the defendants in the suit have now been nine days in court, and will be many more—charging for each day, and swelling up the costs—about a point which is so unimportant, and so sure to be granted by the Court after twenty minutes explanation, that one guinea is the fee for asking it. When the remedy is so easy, so instantaneous—namely, by having a paper of motions as of petitions, thereby saving all the expense of so many attendances and all the discomfort of such delay, to say nothing of my absence (at one guinea for nine days) from chambers, where business daily required me,—it is surprising that those in office will not, by one stroke of a pen, allow a remedy which is in every one's mouth and to which no one objects. In default of that, the Queen's counsel might at least be limited to two motions each seal, in lieu of two motions each day, which, as an aid to the outer Bar, is meant (I presume) for a joke.

I am, Sir, your obedient servant,

Lincoln's-inn, April 2. RUSTICUS EXPECTANS.

CARE OF THE COURT OF CHANCERY FOR PROPERTY.—It will be observed, that by that time-honoured custom and fiction of law by which our Chancery is supposed to take care of all property that cannot take care of itself, the celebrated case of the old lady who has such a passion for cats is again before the public. It is not many weeks since Mrs. Cumming, of the mature age of seventy-six, and with the moderate fortune of something less than 500*l.* a year, was, upon solemn inquisition, formally found to be insane. The object of the inquiry was to take care of her property. It lasted sixteen days, employed a round dozen of lawyers, and abstracted from the property it was so anxious to protect no less a sum than 6,000*l.* . . . The Lord Chancellor now discovers, by a recent interview with the old lady, that her condition is at least sufficiently rational to justify her in demanding another inquisition. He expresses no opinion of her competence to spend her own money, but of her competence to dispute her own insanity he entertains no doubt whatever. Another inquiry is therefore ordered, and it is to be very economical, to

save the law from reproach. A satirical perso might remark that economy has become necessary were it but to save the lawyers their fees; but it would on every account be well were occasion taken of this flagrant case to settle whether the principle of expenditure in future commissions of lunacy is to be regulated by the chances of discovering the truth, or to be lavish simply in proportion to the extent of the estate.—Dickens's *Household Narrative*.

THE ATTORNEYS' CERTIFICATE TAX.—The *Cork Reporter* says:—" By the following communication which has been received by the secretary of the Local Solicitors' Society from the Incorporated Law Society, it appears that the exertions of the Profession are in a fair way of being successful, and that after the lapse of a short time we will be in a position to congratulate them on the abolition of the certificate tax:—

" Incorporated Law Society, U K.
" Chancery-lane, London, March 30, 1852

" Dear Sir,—I have the pleasure to inform you that the President and several of the Council of the Incorporated Law Society attended the Chancellor of the Exchequer, by appointment, on Saturday last, the 27th inst and were favoured by the presence and support of Lord Robert Grosvenor, Sir Wm. Vorner, Mr. Cowan, Mr. Mullings, and Mr. Bremridge. The deputation was favourably received, and, after hearing their observations, the Chancellor of the Exchequer made several inquiries into the state of the profession, the increase of its number, the effect of recent legislation on their emoluments, and the effect of the tax on the different classes of practitioners. These inquiries having been answered by different members of the deputation, the Chancellor of the Exchequer stated that he would give the whole subject his careful consideration, bearing in mind the decisions of Parliament already expressed, and the effect of the alterations in the law on professional emoluments, with a desire to come to a right conclusion on the merits of the case. It was understood that the financial statement will not be made until after the Easter recess The Bill will then be brought in by Lord Robert Grosvenor, seconded (as there is good reason to expect) by the present Attorney-General; both of whom, throughout the proceedings in Parliament, have so ably and kindly supported the claims of the Profession It is desirable that petitions in favour of the repeal of the duty should be presented by the different members representing such towns and districts as have not already petitioned, as soon as possible.—I am, dear Sir, yours very faithfully,

" R. MAUGHAM, Secretary."

POOR RELIEF ACT CONTINUANCE.—There is a Bill in the House of Commons to continue an Act of the fifteenth year of her present Majesty for charging the maintenance of certain poor persons in unions in England and Wales upon the common fund. The Act is to be continued until the 30th of September next, and to the end of the then next session of Parliament.

Mr. Philpotts, an attorney who was convicted of perjury at the Monmouth Assizes last year, and on whose behalf some legal points were reserved, has been committed to prison for twelve months, the objections having been overruled by the Court of Criminal Appeal.

JOURNAL OF PROPERTY.

MONEY MARKET.

ENGLISH FUNDS.	Sat.	Mo.				Fr.
Bank Stock	221†	..	216‡	217‡	218‡	
3 ℘ Cent. Reduced Annuities			98‡	98¾‡	98⅞‡	
3 ℘ Cent. Consols Annuities		98¾	99		99¼	
Consols for Account		98¾	99		99¼	
New 5 ℘ Cent. Annuities ..						
New 3½ ℘ Cent. Annuities ..			99⅛‡	98⅞‡	99⅛‡	
Long Annu. (exp. Jan. 5, 1860)			6⅝‡	6¼	6⅝‡	
Do. 30 yrs. (exp. Oct. 10, 1859)			6⅞‡	6⅞	6⅞‡	
Do. 30 yrs. (exp. Jan. 5, 1860)						
India Stock			264			
India Bonds (1,000*l*.)			..			
Do do. (under 1,000*l*.)....			81	79		
South Sea Stock............						
Do. do. New Annuities ..		..	109¾			
Exchequer Bills, 1,000*l*.		71*	71*		69*	
Do. do. 500*l*.		71*	71*	69*	69*	
Do. do. Small				69*	69	

* Premium. † For Account. ‡ Ex. div

THE GAZETTES.

Bankrupts.

Gazette, April 6.

BARNES, HENRY NORMAN, milkman, Margaretting, Essex, April 17, at half-past one, and May 21, at one, Basinghall-st. Off. as. Whitmore. Sol. Duffield, Devonshire-st. City, and Chelmsford, Essex. Petition, April 1.

BULL, THOMAS, licensed victualler, Greenwich, April 16, at one, and May 22, at eleven, Basinghall-st. Off. as. Nicholson. Sols. M'Leod and Cann, Paper-buildings, Temple; Cook, Greenwich and Furnival's-inn. Petition, March 20.

CHADWICK, GEORGE, grocer, Leeds, April 20, at twelve, May 10, at eleven, Leeds. Off. as. Hope. Sol. Upton, Leeds. Petition, April 1.

HAYNES, SAMUEL, wheelwright, London-st. Paddington, April 14, at two, May 14, at one, Basinghall-st. Off. as. Stansfeld. Sols. Lawrance and Co. Old Jewry-chambers. Petition, April 5.

MITCHELL, JOHN, and CLARKSON, EDWARD, worsted spinners, Horton, Yorkshire, April 22 and May 28, at eleven, Leeds. Off. as. Young. Sols. Northwood, Bradford; Courtenay and Compton, Leeds. Petition, March 27.

STIMSON, HENRY, bootmaker, St. Neot's, Huntingdonshire, April 16, at half-past twelve, May 14, at half-past eleven, Basinghall-st. Off. as. Cannan. Sol. Atkinson, Swan-chambers, Gresham-st. Petition, March 30.

TIMMINS, ISAAC, charter master, Dudley, Worcestershire, April 17 and May 8, at half-past ten, Birmingham. Off. as Valpy Sol Boddington, Dudley. Petition, April 2.

WILLIAMS, WILLIAM, iron manufacturer, Pentwyn Golynos and Pontnewynydd, Monmouthshire, April 20 and March 18, at eleven, Bristol Off. as. Hutton. Sol. Beaven, Bristol. Petition, April 3.

WOOD, THOMAS, grocer, Northwich, Cheshire, April 16 and May 13, at eleven, Liverpool. Off. as. Turner. Sols. Holt and Rowe, Liverpool. Petition, March 29.

WORMS, HENRY, boot maker, Blackfriars road, April 16 and May 14, at eleven, Basinghall-st. Off as. Cannan. Sols. Lawrance and Co. Old Jewry-chambers, City. Petition, April 2.

Gazette, April 9.

CHAMPION, CONSTANT, merchant, 147, Fenchurch-st. April 16 and May 13, at twelve, Basinghall-st. Com. Evans. Off as Bell Sols. Sole, Turner, and Turner, 68, Aldermanbury, London Petition, April 7

COWDREY, THOMAS, wine and spirit merchant and tobacconist, Western-road, Brighton, April 20, at half-past eleven, and May 17, at twelve, Basinghall-st. Com Fonblanque. Off as Graham Sols. Messrs. Linklaters, Sise-lane. Petition, April 8.

LAWRENCE, THOMAS BARTON, zinc dealer and manufacturer, 55, Parliament-st. Westminster, and 10, York-place, Lambeth, April 19, at eleven, May 22, at half-past eleven, Basinghall-st. Com. Goulburn Off. as Pennell Sols. Stevenson and Ley, 11, Victoria-st. Holborn-bridge.

TRICKETT, SAMUEL, stone and slate merchant, Victoria Stone Wharf, Isle of Dogs, April 19 and May 22, at twelve, Basinghall-st Com. Goulburn Off. as Nicholson Sol Cox, Pinner's-hall, Old Broad-st. Petition, April 7.

WILLIAMS, JOSEPH and WILLIAM, shopkeepers, Golynos and Varteg, Monmouthshire, April 26 and May 24, at eleven, Bristol Com Stephen. Off. as. Acraman Sol. Bevan, Bristol. Petition, April 3.

Dividends.

Official Assignees are given, to whom apply for the Dividends

Baker, J. boot maker, second, 1s. Pennell, London.—*Bond*, I silk manufacturer, first, 2s. 2d. Groom, London —*Bradford*, A victualler, first, 6s 1d Pennell, London. —*Edwards*, T earthenware manufacturer, third and final, ¾d Whitmore, Birmingham —*Chatterton*, J jun. lead merchant, first, 4d Bittleston, Nottingham —*Goddard*, ' brush manufacturer, first, 5s 6¾d. Bittleston, Nottingham —*Haywood*, W grocer, first, 7s. 6d Bittleston, Nottingham —*Leeming*, E T. hosier, first, 3s 7¼d Pott, Manchester *Lloyd*, L W builder, first, 2½d Stansfeld, London —*Tattersall*, H common brewer, second, 1s Pennell, London —*Watt*, C baker, first, 6d. Stansfeld, London —*Woodbridge*, W. colonial broker, first, 1s. 11d Groom, London —*Woods*, warehouseman, first, 2s. 6d. Stansfeld, London.

INSOLVENTS' ESTATES.

Apply at the Provisional Assignee's Office, Portugal-street, Lincoln's inn-fields, London, between the hours of eleven and three

Blow, J. G. F currier, 1s 8d —*Cann*, J. baker, 5s 4¼d —*Croxon*, W R cow keeper, 3s 6d —*Hopkins*, J cheesemonger, 11d —*Moses*, E. butcher, 2s. 4d.—*Piggott*, E C clerk, 1s 9¼d

Read, R jun tailor, 4s 3d. Apply to Mr. G. Turner, button maker, St. Martin's-lane.

Assignments for the Benefit of Creditors

Gazette, March 30

Appleby, W gentleman, Eastfield, Warkworth, Northumberland, March 5 Trusts J Marshall, Chatton-park, ' Scott, Beal, and G Hogg, Kyloe, gentlemen. Sols. Spours and Carr, Alnwick —*Collins*, T builder, Newland-terrace, Kensington, March 20. Trusts W. H. Collins and A. H Stanbury, builders, contractors, and ironmongers, Broad-st Birmingham Sols T J. Foord, Pinners-hall, Old Broad-st —*Gray*, W. hosier, Leicester, March 19 Trusts D Orange and S. D. Bromhead, worsted spinners, both of Leicester Sol T. Spooner, Leicester —*Ratcliffe*, G grocer, stationer, and baker, Ash-next-Sandwich, Kent, March 10. Trusts. T. S. Thorp, miller, Ash, and R Dickeson, wholesale grocer and tea-dealer, Dover. Sol R W Watson, Dover. —*Rice*, J. linen draper, Brighton, March 3. Trusts. J. Teulon, printer, Cheapside, and G Pocock, linendraper, Brighton Sols Finch and Shepheard, Moorgate-st.—*Wheeler*, linendraper, Stanhope-street, Clare-market, March 8. Trusts T. W. Elstob, Wood-st. and J. Bradbury, Aldermanbury, warehousemen. Sols. Hardwick, Davidson, and Bradbury, Weavers'-hall

Gazette, April 2.

Ashford, A. clothier, Woodbridge, Suffolk, March 12. Trusts W Knight, clothier, Halstead, and B. D Gall, chemist and druggist, Woodbridge. Sol R. A. Reeve, Woodbridge —*Garrett*, T. S. draper, Ossett, Yorkshire, March 19. Trusts J Clay and J M. Thompson, drapers, Dewsbury. Sols Greaves, Scholefield, and Oldroyd, Dewsbury.—*Hickman*, R. carpenter and builder, Bilston, Staffordshire, March 30. Trusts. J. Corbett, timber merchant, B Beebee, plumber, S. Holloway, timber merchant, and R Hutchinson, slater, all of Bilston. Sol. J. Mason, Bilston —*Houtson*, J. millwright and machine maker, now or late of the empire of Brazil (by J. Murray, iron master, Glasgow, his attorney). Trusts. J. Houtson, millwright, C Duffield, public accountant, and J. Carter, tin-plate worker, all of Manchester, and J. Murray, Glasgow. Sol. F Cunliffe, Manchester. —*Richards*, P. upholsterer, Bognor, Sussex, March 30. Trusts. J. Thomas, feather merchant, Bishopsgate-st.-Without, and E. T. Archer, paper stainer, New Oxford-st. Sol W. L Hanley, Wilson-st. Finsbury-square. —*Simmons*, J. china dealer, High-st. Portland-town, March 16. Trusts. C. Meigh, sen. china manufacturer, Hanley and J. Sparks, merchant, Thavies-inn. Sol. T. M. Catlin, Ely-place.

Partnerships Dissolved.

Gazette, March 30.

Allen, V. and *Thomas*, H. drapers and silk mercers, Newport, March 25. Debts paid by Thomas.—*Bennett*, S. and *Lloyd*, W. builders, bricklayers, plasterers, &c. Weymouth-terrace, Hackney-road, March 25. Debts paid by Lloyd.—*Buckland*, W. and *Hawes*, J. B. land and house agents, Walworth-place, Walworth, March 25.—*Bywater*, J. and *Brandis*, J. cocoa-nut fibre matting and mat manufacturers, Spa-road, Bermondsey, March 23.—*Chantry*, R. and W. farmers and graziers, Pinchbeck, March 9. Debts paid by R. Chantry.—*Charlton*, J. and H. merchants, &c. Birmingham, Newcastle, and Ely-place, Holborn, March 27.—*Drabble*, J. and *Saynor*, S. axletree manufacturers, Pancras-lane, March 26.—*Edger*, W. and *Harris*, E. W. linen drapers, Exeter, March 25.—*Fox*, M. G. and J. F. dealers in Berlin wool, &c. Devonport, March 25. Debts paid by J. F. Fox.—*Frost*, H. S. and *Elphick*, G. Poland-st Oxford-st. March 8.—*Gamble*, J. and *Cubley*, W. painters, &c. Derby, March 25.—*Howard*, J. and *Rayner*, E. bakers, St. John-st.-road, March 27.—*Ladbury*, J. E. and *Carter*, R. S. surgeons and apothecaries, Upper Fitzroy-st. March 25.—*Lunn*, W. and *Wright*, W. J. engineering surveyors, Greenwich, Jan. 31. Debts paid by Lunn.—*Ogden*, H. and *Shaw*, R. brass founders, Oldham, March 16. Debts paid by Ogden. —*Ogden*, J. and *Murtgatroyd*, J. worsted spinners, Keighley, March 26. Debts paid by Ogden.—*Pugh*, W. and C. linen drapers, &c. Sevenoaks and Tonbridge, March 17.—*Ridgway*, D. *Steel*, W. and *Mather*, S. plaster and box manufacturers, Newton Heath, near Manchester, March 19. Debts paid by Steel.—*Roads*, C. and E. H tallow chandlers, Greek-st. Soho-square, April 1, 1850.—*Stiles*, W. and J. E. bakers, Upper Marylebone-st. March 24. Debts paid by W. Stiles.—*Stone*, R. and *Marshall*, H. tailors and drapers, Worcester, March 19. Debts paid by Marshall.—*Wood*, K. and *Archer*, J. sail makers, canvas dealers, and insurance brokers, Maryport and Liverpool, March 31. Debts at Maryport paid by Wood, and at Liverpool by Archer.—*Whineray*, R. and T. curriers and leather dealers, Liverpool, March 25.—*Williamson*, J. C. *Livingston*, J. A. and *Dawson*, M. C. merchants and commission agents, Kingston-upon-Hull, as regards Livingston, March 25.—*Woodward*, D. B. jun. and *Crosley*, O. J. wine merchants, Crosby-hall Chambers, Bishopsgate-st. March 25.

Gazette, April 2.

Adams, F. B. and J. watch manufacturers, St. John's-square, Clerkenwell, March 29. Debts paid by J. Adams. —*Ainsbury*, R. *Clark*, T., W. and J. butty miners, Foxyards Colliery, Sedgley, March 16. Debts paid by Ainsbury.—*Ainsworth*, D. and *Davis*, W. manufacturers of fancy drills, Swinton, Dec. 31. Debts paid by Davis.—*Ainsworth*, D. and *Medcalf*, J. general warehousemen, Manchester, March 30. Debts paid by Medcalf.—*Balmain*, J. F. and *Cannan*, J. general commission agents, Manchester, March 26. Debts paid by Balmain —*Bateman*, J. P. and *Dickinson*, R. ironmongers, Liverpool, March 31. Debts paid by Bateman.—*Bettison*, W. and S. and *Ostick*, T. brewers and maltsters, Hull, as relates to S. Bettison, March 27.—*Brodie*, M., R. T. and W. woollen manufacturers, Morpeth, March 29. Debts paid by M. and R. T Brodie.—*Brown*, A. and H. slaters and plasterers, Liverpool, Jan. 14.—*Chantry*, R. and W farmers and graziers, Pinchbeck, March 9. Debts paid by R. Chantry.—*Crew*, S. and *Thorney*, A. M. victuallers, Netherton, March 9. Debts paid by Crew.—*Cryer*, J. and *Edmondson*, J. joiners and builders, Shipley, Bradford, Feb 16. Debts paid by Cryer.—*Darlington*, W. and *Everitt*, R. S. wine merchants, Liverpool, March 31.—*Dixon*, R. and *Dearden*, M. grocers and provision dealers, Burnley, March 27. Debts paid by Dearden.—*Findley*, J. and R brick-makers, Newcastle, March 29.—*Fladgate*, W. M. *Fynmore*, T. G. and *Clarke*, R. G. attorneys and solicitors, Craven-st. Strand, as regards Fynmore, March 31.—*Frost*, G. and W. Old Broad-street, April 1. Debts paid by W. Frost.—*Glover*, A. and *Hoare*, W. bricklayers and builders, Kentish-town and Hendon, Feb. 26.—*Greaves*, E and *Timmins*, T. spectacle makers and metal casters, Birmingham, March 30.—*Green*, W. and *Thompson*, F. coal merchants, Union-wharf, Pimlico, March 31. Debts paid by Thompson.—*Hardcastle*, J. and *Harrison*, W. J. cheesemongers, Aylesbury-st and St. John-st. Clerkenwell, March 29. Debts paid by Harrison. *Hasluck*, S. jun., F., R. and L. manufacturing goldsmiths and Gibraltar merchants, Hatton-garden, as regards L. Hasluck, March 31. Debts paid by remaining partners.—*Holbrook*, H. and *Stanistreet*, G. merchants, Liverpool, March 30.—*Johns*, T. and *Speary*, W. and R. merchants and general carriers, Newport, as regards Johns, March 24. Debts paid by W. and R. Speary.—*Meader*, G. C. *Foot*, C. and *Foster*, H. wine merchants, Idol-lane, Little Tower-st. as regards Foster. Debts paid by Meader and Foot.—*Neill*, J. and *Craik*, R. paper makers, Leeds, March 1. —*Rawsthorne*, T. *Forster*, M. *Braddyll*, T. R. G. *Green*, W. *Burrell*, J. and *Walker*, J. under the firm of the South Hetton Coal Company, Dec. 31, as regards T. Rawsthorne. —*Rawsthorne*, T. *Braddyll*, T. R. G. *Forster*, M. *Green*, W. *Burrell*, J. and *Forster*, P. under the firm of the East Hetton Coal Company, Dec. 31, as regards T. Rawsthorne. —*Reily*, G. and *Storer*, G. manufacturing silversmiths, Cary-lane, Goldsmiths'-hall, March 31. Debts paid by Reilly.—*Sagar*, O. and *Ward*, J. L. cotton spinners, Stonefield, near Haslingden, March 30. Debts paid by Sagar.—*Simpson*, J. and T. bakers and provender dealers, Everton, near Liverpool, March 31.—*Spettigue*, E. and *Farrance*, G. law booksellers, Chancery-lane, March 30.—*Spurr*, J. de W. and *Allison*, E. merchants, Liverpool, March 31.—*Stothert*, H. *Rayno*, G. and *Pitt*, R. engineers and ironfounders, Bath, March 23, as regards H. Stothert. Debts paid by remaining partners.—*Toy*, H. and *Bentley*, G. stampers, piercers, and manufacturers of press tools, Birmingham, Feb. 23. Debts paid by Bentley.—*Walch*, J. A. and J. commission agents, Manchester, Feb. 17.—*Walmsley*, J. *Heatley*, W. and *Kent*, E. mercers, drapers, and grocers, Wem, Nov. 10, 1849. Debts paid by Heatley.—*Woollard*, J. and *Forshaw*, D. law stationers, Birchin-lane, March 31. Debts paid by Woollard.—*Youngman*, E. and *Checkley*, J. Noble-st. Falcon-square, March 31. Debts paid by Youngman.

CONTENTS.

To Readers and Correspondents.

"ONE, &c."—*A report of the Perjury Case at Worcester has been procured, and will duly appear.*

"QUERIST."—*There is no present probability of the issuing of the Rules and Orders.*

"F. M."—*Yes.*

THE LAW TIMES.

SATURDAY, APRIL 17, 1852.

REMOVAL OF THE LAW COURTS.

IN another page will be found the petition of the Incorporated Law Society, praying for the removal of the Law Courts to a site somewhat more convenient to those who have business there. Certainly nothing can be more *in*convenient than the present locality and the present courts. Situate a mile and a half from the nearest point of the legal district of London, and more than two miles from its furthest extremity, a large waste of valuable time is incurred in the mere going to and fro; and often it happens that papers, &c. are unexpectedly required while a cause is in progress, which cannot be procured from the office, even with the assistance of a Hansom paid a treble fee for fast driving. There is, besides, the positive annoyance to the Attorney, of being taken away from his office for the better part of the day, even if he has but the most trifling business to transact in either of the courts.

Their structure, also, is as inconvenient as their site. They are built as if it was intended that they should be as unaccommodating as possible. There is no place for the public. The Counsel intrude upon the reporters. The Attorneys are thrust into a well. The witnesses have no place at all, and, if ordered out of court, must catch cold in Westminster Hall. Nothing pleads on behalf of the present courts but antiquity. Now, we have a great respect for antiquity, if it is not preserved at the positive sacrifice of comfort and convenience; but when a mere sentiment is thrown into the scale against the convenience of the whole Profession and all of the public who have any business in the courts, we think that the former should give place to the latter. Therefore we are desirous that new and more commodious Law Courts should be erected in the more accessible neighbourhood of Lincoln's-inn-fields.

REAL RELIEF FOR THE LAND.

THE advocates of Radical Law Reform, when they talk so glibly of making land as easily and cheaply transmissible as personal estates appear to forget the true cause of the existing obstacles to such transmission; namely, the power which the law gives the owner to charge the estate for long periods with claims other than those of the person in possession, and to carve other lesser estates out of his greater one. So long as this almost unlimited liberty of charging an estate is sanctioned by the law, it will be impossible materially to diminish the cost of conveyancing, for before any conveyance can be safely completed it will still be necessary to investigate the title, so as to be assured that no such charge exists, or if there has been such a charge, that it has been properly removed, and that all necessary proofs are supplied of those events upon the contingency of which the charges were dependant. The mere contraction by a few folios of the language of the deed itself, will afford but a very trifling relief to the landowner. Hence, we are unable to share the sanguine hopes of those Utopian Law Reformers who look forward to conveyancing being effected by a piece of parchment the size of one's hand, at the cost of a few shillings, and of land bought and sold in the market by a transfer of this parchment as readily and surely as a bale of cotton.

But we do not, therefore, assert that the present system is incapable of improvement, and we venture to suggest two plans that have occurred to us, which would much facilitate the clearing of titles, and thus release a vast quantity of land now practically excluded from the market by reason of the difficulties in the title making the cost of conveyance almost as great as the value of the property itself.

In the first place, let there be a *Court of Titles*, similar to the Incumbered Estates Court in Ireland, only that application to it for assistance shall be voluntary. Give to this Court all necessary powers for *clearing a title*. Let it protect all persons absent, or under disability of any kind—ascertain the value of their claims, obtain payment thereof, and invest the proceeds for the use of the parties so entitled, whenever they shall be competent to receive it; and having thus removed all existing incumbrances, and determined all doubts, let the Court grant a *certificate of title*, which shall be unimpeachable, and the foundation of future title. Such a Court with such powers would be the greatest boon ever conferred upon the landowner.

And something might be done to facilitate conveyancing, even without resort to the machinery of such a Court. Let the law recognise, more fully than now in practice it does, the saying that possession is nine points of it. Let the right of charging it be so far restricted that all charges not accompanied with actual possession of the land itself shall be redeemable at a valuation, at the option of the actual possessor of the soil, by payment of that value in money, either to the party entitled to the charge, or into the Court of Chancery, in trust for such party, should he be under disability, or if it cannot be clearly ascertained who *is* entitled. This of itself would effect a vast improvement, by removing that principal obstacle to the easy transmission of land—the number and variety of charges which each owner is permitted to impose upon it. We see in its adoption no difficulties that may not be overcome by the exercise of a little ingenuity on the part of the framer of such a measure. It would be far more efficient for its purpose than a Registration of Deeds; and the construction of it would be a worthy exercise for the legislative genius of the present LORD CHANCELLOR.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

SEVERAL questions of interest to *Municipal Corporations* were determined by the Court of Error in the case of *Jones* v. *Johnson*, 19 Law T. Rep. 31. It is not necessary to repeat the facts; it will suffice to state the points decided. It was held that borough justices may make a rate at an ordinary meeting of the town council, and are not required, like county justices, to make their rates at a public meeting. It questioned the authority of the case of *Woods* v. *Reed*, 2 M. & W. 777, which decided that a rate could not be made for *retrospective* expenditure, and determined that a rate was good although it was to pay compensation to a former town clerk and certain legal expenses incurred. Thirdly, that a warrant of distress to levy a rate was not the less the act of the mayor because he had also signed it as a justice, but that he might act in both characters.

From the Circuits we have two criminal cases of considerable interest. *Reg.* v. *Newall*, 19 Law T. Rep. 31, was an indictment for *perjury*, committed on the hearing of a summons, charging a man with being the father of an illegitimate child. It was held by WIGHTMAN, J. that in such case it was necessary to give evidence of the charge made by the mother, either by the production of the original order made thereon, or by giving the defendant notice to produce the summons, so as to let in secondary evidence of it; and that it was not sufficient to produce the minutes of the proceedings by the clerk to the magistrates.

In *Reg.* v. *Day*, 19 Law T. Rep. 35, PLATT, B. reviewed the practice of receiving the deposition of an absent witness, under the provisions of sec. 17 of 11 & 12 Vict. c. 42. It was held that, before such a deposition can be received, it must be proved *affirmatively* on the part of the prosecutor that it was taken in the presence of the accused, and that he, or his counsel or attorney, had full opportunity to cross-examine the witness; and that to afford him such full opportunity the examination must be taken, question by question, in his presence and in that of the magistrate, and that it is not sufficient to read over the statement of the witness previously taken and committed to writing in the absence of the magistrate. The accused must also be asked, if he has any question to put with reference to the statement of the individual witness. It was further decided in the same case, that it is *not* necessary that the witness whose deposition is used should be absolutely unable to travel: it suffices if his attendance would endanger his life.

Questions under the *Health of Towns Acts* have been singularly rare, considering the vast interests affected by them, and the number and variety of their provisions. The case of *Reg.* v. *Cross*, 19 Law T. Rep. 35, will therefore possess more than common interest. It was a question as to the election of a member of the Board of Health, and on the trial of the *quo warranto* before Lord CAMPBELL, C.J. it was held, that the office of chairman, who is Returning Officer, under the Act 11 & 12 Vict. c. 93, is judicial, and not merely ministerial. That the result of the poll, as certified by him, is final and conclusive. That the direction of the Act, that the Board shall meet at its office for the purpose of the election, is directory merely; and therefore, that when they had no regular office, they might meet at the office of the clerk.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Your article on "Commitments," in your paper of the 10th inst. mentions a case of an improper commitment for trial at the late assizes, arising out of a dispute in "Taunton market." I am anxious to have it clearly understood that it was not a Taunton commitment.

The prosecutor applied to me, and I certainly thought, on his statement, that he had been illused; but I at once told him that there was nothing like a felony in the matter, and that no magistrate of the Taunton bench would grant him a warrant. Accordingly, none of the proceedings took place in this division.

Allow me, however, in justice to the committing magistrates, to suggest that most probably the prosecutor afterwards materially modified his story; since he not only obtained first a warrant, and then a commitment for trial, but also ultimately a "true bill;" the latter being a conclusion to which the very intelligent grand jury would never

case come, if the evidence before them, at all vents, had at all resembled that given at the trial.

I am, Sir, yours, &c.

THE CLERK TO THE JUSTICES FOR THE DIVISION OF TAUNTON.

Taunton, April 12, 1852.

JOINT-STOCK COMPANIES' LAW JOURNAL.

WINDING UP.

Dale's case, 19 Law T. Rep. 25, is another decision upon *calls*. It appeared that by a call already made almost all the debts and expenses had been paid, but that the call was paid by the contributories in unequal proportions; that a further call was necessary, and had been made, each of the contributories who had already paid anything having credit given to him against the call for the sum so paid. Against this call the appeal was now made on various grounds of objection. But it was confirmed; the Lords Justices holding that it was quite unimportant whether the liabilities in respect of which the call was made were liquidated or not, or that if all the contributories had paid the call more money would be raised than was wanted to pay the outstanding debts and costs.

Vice-Chancellor PARKER has decided the important question, whether a bankrupt's certificate is a bar to liabilities under the Winding-up Acts. In *Ex parte Chappell*, 19 Law T. Rep. 29, the company was ordered to be wound up. Afterwards A. a shareholder, became bankrupt, and obtained his certificate. The Master placed him on the list of contributories, but the Court ordered his name to be expunged. "The Winding-up Acts," said the VICE-CHANCELLOR, "only appointed anothe mode of enforcing existing liabilities, and the calls now required to be paid by the bankrupt were in respect of a contribution really payable or due before the period of the bankruptcy."

In *Ex parte Yelland*, 19 Law T. Rep. 30, the company was registered. A. applied for shares and two were allotted to him. He paid his deposit and his name was returned as a shareholder to the registry office; but he did not execute the deed o settlement, which expressly provided that the liabilities and privileges of shareholders should commence on their execution of the deed. A. was held *to be* a contributory. "It appeared to him, said the VICE-CHANCELLOR, "that as A. had agreed to take shares, and had accepted them, h had authorised the company to put his name on the register without his execution of the deed."

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

Universal Gas Light Company.—Call of 2*l* 10s. per share on each contributory, by 19th inst.—Rose.

Pennant Craigwen Consolidated Lead Mining Company.—To settle list of contributories, on May 3.—Tinney.

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

A POINT of practice under the Copyholds Enfranchisement Act was reported last week. Where the tenant for life of a manor, in which lands were enfranchised, applied for the investment of the purchase-money paid into court, it was held to be the proper course to serve the commissioners with the petition, and the Court will order their costs to be paid by the petitioner, and added to his own, and deducted together out of the fund. (*Ex parte The Bishop of Hereford*, 19 Law T. Rep. 28.)

In *Strutt* v. *Braithwaite*, 19 Law T. Rep. 28, it appeared that by a marriage settlement an estate was conveyed to trustees on trust for husband for life, then to wife for life, and after decease of survivor, rents to be applied to the maintenance and education of the children until such child or children should attain twenty-one, and when and as such child and children respectively (if more than one) should attain twenty-one, then to convey the premises to such child or children in such manner, shares, and proportions, for such uses, &c. as husband and wife jointly, or the survivor, should appoint, and in default of appointment to convey same among such children equally. It was held that the power of appointment did not permit the exclusion of any of the children of the marriage, and that in default of appointment all the children, whether attaining twenty-one, or dying in their parents' lifetime or not, took equal vested interests in the estate in fee.

Where deeds were the evidence of title of two parties, on a bill of discovery to ascertain what had become of them, it was held that the defendant was bound to discover by his answer as to those deeds, even although it might be that the Court might decide at the hearing on some single point which would disentitle the plaintiff to a discovery. (*Hambrook* v. *Smith*, 19 Law T. Rep. 30.)

In *Blennerhasset* v. *Monsell*, 19 Law T. Rep. 36, a woman indebted by a judgment married, being at the time of her marriage entitled to a chose in action. She assigned it to a volunteer. The chose in action was not reduced into possession during the coverture. The husband survived the wife and took out administration. It was held that as assignee he could take only the surplus of the chose in action after payment of her debts. Also, that the statute of voluntary conveyances applies to the case of a conveyance to evade the creditors of a third person, as well as where it is made to evade the creditors of the debtor himself.

THE NEW WILLS ACT.

SIR,—As no one seems to be satisfied with the wording of this Bill, and no one seems to know how to improve it, and as you say it is neither very succinctly nor very clearly expressed, and yet you cannot suggest an amendment that would improve it - such is the difficulty of describing in words the precise *form* in which an act shall be done,—I ask, with due respect to the learned author of the Bill, why not get rid of the mystical words "at the foot or end thereof" altogether, and so let us fall back upon the law as it stood before, about which there was no difficulty or dispute? Thus, let the 9th section of the Act 1 Vict. c. 26, be repealed, and let it be re-enacted—

"That no will shall be valid unless it shall be in writing, and executed in manner hereinafter mentioned (that is to say), it shall be signed by the testator, or by some other person in his presence, and by his direction, and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form attestation shall be necessary."

I am, Sir, yours, &c.

J P.

THE LAWYER.

Summary.

EQUITY PRACTICE.—Some points in the Practice of Lunacy, decided by the new LORD CHANCELLOR, were reported last week. In *Re Chorley*, 19 Law T. Rep. 25, his Lordship observed that in all *ex parte* applications for orders affecting the property of lunatics he should require the strictest evidence of title, and he called upon the Bar to assist him by directing his attention to any authorities in point, and to shew that the parties claiming are strictly entitled to what they ask. In *Re Burridge*, 19 Law T. Rep. 25, his Lordship refused an application for sale of a lunatic's reversion where it appeared to be required for payment of costs of the commission, and not for the benefit of the lunatic; and in *Re Beavan*, 19 Law T. Rep. 25, he disallowed the costs of parties interested in the lunatic's estate who had attended the inquiry without leave of the Court.

The extreme vigilance over the interests of suitors and desire to protect them against unnecessary costs which in these and many other cases have been exhibited by Lord ST. LEONARD'S, is highly to be commended, and should not pass unrecorded by a legal journal.

In *Mackenzie* v. *Mackenzie*, 19 Law T. Rep. 28, an order had been made *in the matter of the Trustee Act* to transfer stock. In the affidavit of service the order was described as entitled of *the cause* only. A writ obtained on this affidavit was discharged for irregularity, on account of the difference between the title of the order and the description of it in the affidavit.

A point in the New Law of Evidence may be noted here. In *Reg.* v. *Cross*, 19 Law T. Rep. 35, Lord CAMPBELL held, at Nisi Prius, that the defendant in a *quo warranto* is a competent witness to prove his own qualification.

THE MERCANTILE LAWYER.

Summary.

WHERE money had been deposited in a bank, and the bankers agreed to pay three per cent. interest, and gave the depositor a deposit receipt with a memorandum at the foot "with three per cent. at fourteen days' notice," it was held not to support an allegation in a plea that the money was to be repaid to the depositor on request. The money so deposited consisted of notes of A.'s bank, payable at B. or in London. They were presented in London on the following day and dishonoured; but they would have been paid if they had been presented at B. the next day after they were deposited, the bank at B. being but a short distance from the bank at which they were deposited. The question was raised, but not decided, whether the bankers could set up the presentation and dishonour in London, in answer to an action for the money deposited. (*Timmins* v. *Gibbins*, 19 Law T. Rep. 31.) WILLIAMS, J. intimated *his* opinion to be that there was *no* laches on the part of the defendants.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

THE Lord Chancellor has appointed William Newton, of Newark-upon-Trent, gent. to be a Master Extraordinary in the High Court of Chancery.

The Right Hon. Sir John Jervis has appointed Granville Leveson Gower Ward, of the city of Durham, gent. to be one of the Perpetual Commissioners for taking the acknowledgments of deeds to be executed by married women, in and for the city of Durham; also in and for the county of Durham.

Sir J. E. Eardley Wilmot, Bart. has been appointed Recorder of Warwick, in the room of Mr. Mellor, Q.C. who has retired for the purpose of offering himself as a candidate for the representation in Parliament of that borough.

The Leicestershire justices have changed the payment of the Clerk of the Peace for the county from fees to a fixed annual salary of 1,000*l*.

Commission signed by the Lord-Lieutenant of the county of Flint.—John Offley Crewe Read to be Deputy-Lieutenant.

COURT PAPERS.

CHANCERY SITTINGS.

Sittings appointed in Easter Term, 1852.

The Courts will sit at Westminster at Ten each day.

Lord Chancellor's Court.

Thursday April 15 { Re Fawcott, Patent Petition, and Appeal Motions

Friday ....16 }
Saturday .... 17 } Appeals
Monday ....19 }

Tuesday.........21—Appeal Petitions

Saturday .... 24 }
Wednesday ... 28 }
Saturday ...May 1 } Appeals
Wednesday .. . 5 }

Saturday .... 8—Appeal Motions.

Lords Justices.

Thursday April 15—Appeal Motions and Appeals

Friday ....16 }
Saturday ....17 } Lunatic and Bankrupt Petitions (unopposed first), Appeal Petitions, and Appeals

Monday ....19 }
Tuesday ....20 } Appeals
Wednesday ......21 }

Thursday ....22 }
Friday ....23 }
Saturday ....24 } Appeal Motions, Lunatic and Bankrupt Petitions (unopposed first), Appeal Petitions, and Appeals

Monday............26 }
Tuesday............27 } Appeals
Wednesday ......28 }

Thursday [illegible] Appeal Motions and Appeals

Friday ....30 }
Saturday ...May 1 } Lunatic and Bankrupt Petitions (unopposed first), Appeal Petitions, and Appeals

Monday............ 3 }
Tuesday........... 4 }
Wednesday ...... 5 } Appeals
Thursday .... 6 }

Friday .... 7 — Lunatic and Bankrupt Petitions (unopposed first), Appeal Petitions, and Appeals
Saturday ... ... 8—Appeal Motions and ditto.

Vice-Chancellor Sir G. Turner's Court.

Thursday April 15—Motions and Claims
Friday ....16 — Unopposed Petitions, Short Causes, Short Claims, and Claims
Saturday ....17, Monday ....19, Tuesday ......20, Wednesday ......21 — Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions
Thursday ....22—Motions and Claims
Friday ....23 — Unopposed Petitions, Short Causes, Short Claims, and Claims
Saturday .... 24, Monday...........26, Tuesday ....27, Wednesday ......28 — Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions
Thursday ....29—Motions and Claims
Friday ....30 — Unopposed Petitions, Short Causes, Short Claims, and Claims
Saturday ...May 1, Monday .. .. 3, Tuesday .. .. 4, Wednesday ...... 5 — Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions
Thursday 6
Friday .... 7—General Petitions
Saturday .... 8 — Motions, Short Causes, Short Claims, and Claims.

Vice-Chancellor Sir R. Kindersley's Court.

Thursday April 15—Motions
Friday ....16 — Petition day. Cause Petitions (unopposed first)
Saturday .... .. 17—Short Causes, Short Claims, & Claims
Monday.. ..... .19, Tuesday........20, Wednesday ......21 — Pleas, Demurrers, Exceptions, Causes, and Further Directions
Thursday .. ..22—Motions
Friday ....23 — Petition day. Cause Petitions (unopposed first)
Saturday .. . .24—Short Causes, Short Claims, & Claims
Monday... ... 26, Tuesday .. ... 27, Wednesday ......28 — Pleas, Demurrers, Exceptions, Causes and Further Directions
Thursday . . ... 29—Motions
Friday .... 30 — Petition day. Cause Petitions (unopposed first)
Saturday .. May 1—Short Causes, Short Claims, & Claims
Monday .... 3, Tuesday...... ... 4, Wednesday ... 5 — Pleas, Demurrers, Exceptions, Causes, and Further Directions
Thursday ... . 6—Short Causes, Short Claims, & Claims
Friday ... 7 — Petition day. Cause Petitions (unopposed first)
Saturday ... 8—Motions.

NOTICE.—Unopposed Petitions, not exceding ten, every day except seal days.

Vice-Chancellor Sir James Parker's Court.

Thursday April 15—Motions
Friday ....16 — Pleas, Demurrers, Exceptions, Causes, and Further Directions
Saturday . . . . .17—Cause Petitions (unopposed first)
Monday . ... 19, Tuesday .. ....20 — Pleas, Demurrers, Exceptions, Causes, and Further Directions
Wednesday ... .21 — Short Causes, Short Claims, Claims, and Causes
Thursday ....22—Motions
Friday ... .23 — Pleas, Demurrers, Exceptions, Causes, and Further Directions
Saturday .... 24—Cause Petitions (unopposed first)
Monday .... 26, Tuesday ....27 — Pleas, Demurrers, Exceptions, Causes, and Further Directions
Wednesday . . . 28 — Short Causes, Short Claims, Claims, and Causes
Thursday ....29—Motions
Friday ... . .30 — Pleas, Demurrers, Exceptions, Causes, and Further Directions
Saturday . May 1—Cause Petitions (unopposed first)
Monday .... 3, Tuesday . ... 4 — Pleas, Demurrers, Exceptions, Causes, and Further Directions
Wednesday ...... 5 — Short Causes, Short Claims, Claims, and Causes
Thursday .... 6 — Pleas, Demurrers, Exceptions, Causes, and Further Directions
Friday .... 7—Cause Petitions (unopposed first)
Saturday .... 8—Motions.

Rolls Court.

Thursday April 15—Motions
Friday ....16—Petitions in General Paper
Saturday .. 17, Monday .. . 19, Tuesday ... ..20, Wednesday ..21 — Pleas, Demurrers, Causes, Claims, Further Directions, and Exceptions
Thursday .. ..22—Motions
Friday ... ..23, Saturday ... .24, Monday... ....26, Tuesday... ... .27, Wednesday ......28 — Pleas, Demurrers, Causes, Claims, Further Directions, and Exceptions
Thursday ... ...29—Motions
Friday 30
Saturday ...May 1, Monday.... .... 3, Tuesday.. .... 4, Wednesday .... 5, Thursday .... 6 — Pleas, Demurrers, Causes, Claims, Further Directions, and Exceptions
Friday .... 7—Petitions in General Paper
Saturday ... . 8—Motions.

Short causes, short claims, consent causes, unopposed petitions, and claims, every Saturday at the sitting of the Court.

NOTICE.—Consent Petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

CHANCERY CAUSE LIST.

List of Appeals standing for hearing in Easter Term, 1852.

Lord Chancellor's Court.

Saunders v. Hamilton
M'Intosh v. Great Western Railway Company
Jones v. Price (2)
Brown v. Cross (2), appeal and cause by order
Scrivener v. Smith
Monypenny v. Dering (2)
The Same v. The Same
M'Calmont v. Rankin, 3 appls.
Strong v. Strong
Pollard v. Doyle (2)
Mayor of Rochester v. Lee
Navalshaw v. Brownrigg
Adey v. Arnold
Abbott v. Sworder
Dykes v. Rendall
Powell v. Dodson (2), appeal and cause.

Lords Justices' Court.

Ballinger v. Hawes (2), part heard
Kynaston The Lancaster and Yorkshire Railway Company, two appeals, Trinity Term
Dean and Chapter of Ely v Bliss, equity reserved, stands over
Norris v. Wright (2)
Harrison v. Randall
Sims v. Helling, appeal on claim
Lord James Stuart v. London and North-Western Railway, appeal on claim
Money v. Jorden
Mayor, &c. of Berwick v. Murray (2), April 20
Attorney-General v. Harrow School
Hart v. Tulk (4)
Zulueata v Tyrie
Foley v. Smith
Price v. Macauley, appeal on 2 claims.

Rolls Court.

Cause-book for Easter Term, 1852.
"C." causes; "cl." claims; "ex." exceptions; "f. d. c." further directions and costs.

Judgments reserved.

Montagu v. Montagu (2), c.
Middleton v. Middleton f. d. c.
Butterfield v. Heath, ex.
Lake v. Currie, ex.
Ford v. Stuart (4 titles), c.
Hoghton v Hoghton (2), c.
Bell v. London and North-Western Railway Company, c.

Pleas and Demurrers.

Hatton v. Fairweather, ex. to answer.

Causes.

Baker v. Morgan, cl.
Bull v. Brooke, c.
Barlow v. Worthington, cl.
Bryan v. Collins, c.
Burds v. Sturgis, cl.
Horlock v. Wilson (2), c.
Horlock v. Horlock (2), c.
Stansfield v Hobson, cl.
Heath v. Clunes, cl.
Davis v Gray (2), ex.
Shrewsbury and Birmingham Railway Company v. London and North-Western Railway Company, c.
Hitchcock v. Beauclerk, cl.
Stonor v. Stonor (2), c.
Stonor v. Camoys (2), c.
Ward v. Homfray, f. d. c.
Jones v. Cadbury, c.
Rhodes v. Smith, cl.
Hudson v. Tarlington, cl.
Hares v. Stringer, cl.
Davis v. Gray (2), ex. f d c.
Hounsfield v. Hounsfield, cl.
Blakeney v Dufaur, c.
Brocklehurst v Flint, cl.
Liddiard v. Liddiard (2), c.
Mounsey v. Barnes, cl.
Attorney-General v. Donnington Hospital, cl.
Cheslyn v. Price (4), f. d. c. part heard
Lodge v. Prichard, cl.

Causes transferred.

Here follow the causes remaining unheard transferred from Vice-Chancellors Kindersley and Parker, by order of the Court of March 10, a list of which transfer has already appeared in the Law Notices.

New Causes.

Macnamara v. Dawe, c.
Plenty v. West (4) f. d. c.
Williams v. Jones, cl.
Troutbeck v. Foster, cl.
Littlewood v. Butterill, cl.
Reynolds v. Martin, cl.
Matthews v. Bagshaw (2), f. d. c.
Toplis v. Harrell, c.
Blake v. Grand Surrey Canal Company, ex.
Attorney-General v. Pugh, f. d. c.
Jowson v. Hart, f. d. c.
Curnick v. Adamson, cl.
Brown v. Cross, c.
Kilk v. Archer, cl.
Heaton v. Selby, cl.
Attorney-General v. Lord Bagot, c.
Attorney-General Long, f. d. c.
Archer v. Kelk, cl.
Fletcher v. Steel, cl.
Gelding v. Lowden, c.
Gladding v. Gladding, c.

PROCEEDINGS OF LAW SOCIETIES.

REMOVAL OF THE COURTS FROM WESTMINSTER TO THE INNS OF COURT.

THE following petition on this subject has been presented by the Incorporated Law Society:—

To the Honourable the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled.

The humble Petition of "The Society of Attorneys, Solicitors, Proctors, and others, not being Barristers, practising in the Courts of Law and Equity of the United Kingdom," incorporated by Charters of King William the Fourth and Queen Victoria.

Sheweth,—That evidence was taken before two Select Committees of your Honourable House appointed "to consider the expediency of erecting a building in the neighbourhood of the Inns of Court, for the Sittings of the Courts of Law and Equity, in lieu of the present courts adjoining to Westminster Hall, with a view to the more speedy, convenient, and effectual administration of justice," and which evidence is contained in the Reports of the Select Committee, bearing date respectively the 22nd July, 1842, and the 1st August, 1845.

That your petitioners find it proved, both by facts and by the opinions of the highest judicial officers, and other persons of great eminence and experience in the law, that the distance of the Westminster Courts from the law offices, and from the chambers of the barristers and solicitors, causes much delay in the administration of justice, and is thereby productive of great inconvenience to all classes of the Profession, and of great loss to the suitors of the courts.

That the Courts of Chancery sit at Westminster during two of the four Terms, and in the vacations in Lincoln's-inn, and that the Common Law Courts sit during all the four Terms and at the Sittings after Term at Westminster.

That, amongst other facts, it is shewn that little or no progress is made in the preparation of equity pleadings while the Courts sit at Westminster, and that during the same period the proceedings upon references in the Masters' offices, requiring the assistance of counsel, are totally suspended through the inability of counsel to attend them. It is also shewn that these causes of delay (which result solely from the distance of the Westminster Courts from chambers) are removed when the Judges adjourn their sittings to Lincoln's-inn; and it is shewn in like manner that the chamber business of the common law barristers is much hindered by the remoteness of the courts; and that their attendance on the judges at chambers, and on references pending before the common law Masters, and on consultations and conferences with attorneys and solicitors, is rendered difficult and uncertain; and that whilst the despatch of business thus urgently demands the attendance of counsel at or in the neighbourhood of the Inns of Court, the barristers are obliged to pass the greater part of their time at Westminster in comparative idleness, without the opportunity of employing their vacant intervals of time in any manner serviceable to the suitors or themselves.

That it is also shewn by such evidence that the attendance of the attorneys and solicitors at the Westminster Courts is subject to similar inconvenience and loss of time; that it draws them away, often for days together, from their various duties at their own chambers and the law offices, from their many engagements with clients, with counsel at chambers, with the Masters of the Courts, and with members of their own Profession, to the sacrifice of their own and others' time, to the delay of business, and to the great prejudice and inconvenience of their clients. That in consequence of such distance the principals are obliged to delegate to their clerks much important business which they would otherwise themselves superintend.

That the situation of the Westminster Courts is in many other ways at variance with the interests of the suitors: thus it is proved that Court business in Equity is transacted in a less perfect and satisfactory manner at Westminster than at Lincoln's-inn; —that books, papers, and information which may happen to be required from the public offices or from solicitors' chambers, during the hearing of a cause, and which are at hand in the latter case, cannot frequently be procured at the distance of Westminster. It is also shewn that the despatch necessary in urgent cases in drawing up the rules and orders of the Common Law Courts cannot be attained, and that the communication between the officers attending the Court and their offices is otherwise inconveniently interrupted.

That it is clearly proved that from these causes, and various other inconveniences of a like nature, arising from the situation of the Westminster Courts, the business of the law is done with more effort and waste of strength, with less accuracy, less precision, and less expedition than it might or ought to be, and that those evils diminish the relief whilst they increase the costs of the suitor.

That the present courts at Westminster, and the rooms and offices attached to them, are admitted by all to be inadequate to the purposes to which they are appropriated; and your petitioners submit that such inadequacy may well be now supplied, when the erection of new courts and offices is imperatively called for, and cannot be dispensed with.

That the Master of the Rolls and two of the Vice-Chancellors occupy only temporary Courts at Westminster; that the Court of Common Pleas has no Court in Term for the trials at Nisi Prius; and that the Queen's Bench and the Exchequer have no adequate Courts for the same purposes; that for want of better accommodation, consultations are frequently held in the robing-rooms and in the passages and avenues of the Courts; that those passages are dark and intricate;—that there are no rooms or places of waiting for jurymen, witnesses, and parties; that there is no library except a small one for the Equity Courts; no sufficient rooms for the Bar, and none for the attorneys; nor any sufficient consultation rooms.

That it is proved by the evidence of the Senior Masters in Chancery, and of others, that the offices of the Masters (independently of being separated from the Equity Courts) are wholly insufficient for the satisfactory transaction of business; and, by the evidence of the Senior Registrar in Chancery, that the Registrar's offices are so limited in space as not to afford a distinct room for each of those important officers.

That the offices of the Accountant-General of the Court of Chancery are very small and inconvenient; and that the whole of these offices and their contents, the books and accounts of the sixty millions of money now under the guardianship of the Court, and all the accounts of the past are (by the construction of the building, or otherwise) altogether unprotected from the casualty of fire; and that the records also in that part of the Registrar's Office, called the Report Office, the repository of the decrees and orders of the Equity Courts for centuries past, are in the same unprotected state.

That it appears by the evidence of Sir Charles Barry, the architect, that "the present plan for the new Houses of Parliament, if carried into effect, would leave no room whatever for any other public purpose," and that "no further space or increase of accommodation can be given to the Courts at Westminster without very much injuring his plan, as it regards the Houses of Parliament;" but that, if the courts were removed, "it would afford the means of making a very considerable improvement, both in the convenience and in the external character of the new Houses of Parliament."

That the facts before stated shew that a considerable outlay for providing accommodation for the Courts and the Chancery offices has become unavoidable; and your petitioners submit, that a remarkble variety of circumstances has combined to suggest the manner in which that outlay should be expended; namely, in a union of the Law and Equity Courts, and of the Masters, Accountant-General, Registrars, and other Chancery offices upon the same spot, in the vicinity of the Inns of Court.

That it is clearly established in evidence, that no public necessity exists for the courts of law being contiguous to the Houses of Parliament: it is shewn, that the judges are only called to attend the House of Lords when their Courts are not sitting at Westminster, and, that with reference to obtaining counsel on the hearing of appeals, and on Parliamentary Committees (besides that there is at present a distinct Parliamentary Bar), there is now no difficulty in obtaining the assistance of the ablest counsel, whether the Courts are sitting at Westminster or elsewhere; and it is the opinion of witnesses of the highest authority and weight, that no such difficulty would be experienced if the Courts were permanently fixed in the vicinity of the Inns of Court.

Your petitioners therefore humbly pray that your Honourable House will take this subject into your early consideration, with a view to the adoption of such measures to meet the existing evils, as to your Honourable House may seem meet.

And your petitioners will ever pray, &c.

LEGAL INTELLIGENCE.

EASTER TERM EXAMINATION.

The Examiners have appointed Tuesday, the 27th instant, to take the examination of the candidates for Easter Term. Sir Archer Denman Croft will preside.

In the printed List of Admissions, the numbers appear to be 168. Of these fifty-five were examined last Term, and others in previous Terms. A considerable number have given notice of examination only, and not of admission, which is a prudent and convenient course, because, if they should not be successful, their names will not be reiterated in the printed lists.

Allowing for the usual casualties, the probable number of candidates will be 100.—*Legal Observer.*

The Lord Chancellor.—It is with pleasure we are able to state that the Lord Chancellor, who for some time past has been suffering under an attack of influenza, has so far recovered that he will sit in his court this day (the first day of Easter Term) as usual.—*Morning Paper.*

We regret to hear of the illness of the noble ex-Lord Chancellor (Lord Truro). His lordship has been for some days confined to his bed. On Tuesday he was rather better.—*Morning Paper.*

At a sale of land held in Limerick, under the order of the Encumbered Estates Court, an estate, yielding a profit rent of between 700*l.* and 800*l.* sold for 12,620*l.* The incumbrances on the estate amounted to 20,000*l.*

During the past week the Incumbered Estates Commissioners paid out 66,000*l.*; making the total amount of funds distributed by them from the commencement of their duties, 2,041,000*l.*

Easter Term.—Yesterday, on the opening of the law offices after the holidays, the arrears for Easter Term, which commenced on Thursday, were exhibited. The present Term will be remarkable as the first in which the new Lord Chancellor (Baron St. Leonards) will preside at Westminster, and in which Mr. Justice Crompton will take his seat in Westminster Hall. The arrears of the three Common Law Courts, exclusive of Crown cases, number only 100. In the Court of Q. B. there are 55, consisting of 23 special cases and demurrers for argument, 17 enlarged rules, 13 rules for new trials, and 1 for judgment and 1 County Court appeal. In the Court of C. P. there are only 17 matters entered—7 demurrers, 3 enlarged rules, 6 new trials, and 1 for judgment. Whilst in the Exchequer there is 1 County Court appeal, 3 cases in the special paper for judgment, and 6 for argument, and 18 new trial rules for argument. In the Equity Courts there is a diminution in the number of the arrears.

The Court of Chancery.—It is stated that a meeting of the Equity judges will take place at the Lord Chancellor's residence to-day (Saturday) for the purpose of considering the new orders.

BIRTHS, MARRIAGES, AND DEATHS.

MARRIAGES.

Dickson, William, eldest son of William Dickson esq. of Alnwick, clerk of the peace for the county of Northumberland, to Dorothy, eldest daughter of Henry Manisty, esq. of Caroline-place, Mecklenburgh-square, barrister-at law, on the 14th inst at St Pancras New Church

Drake, T G Commander R N son of the late Colonel Thomas Drake, to Ellen Mary Catherine, fourth daughter of the Right Hon J W. Henley, M P on the 13th inst at St Margaret's Church, Westminster.

Boothroyd, Edward Hyde, esq solicitor, second son of the worshipful the mayor of Stockport, to Sarah, eldest daughter of John Makinson, esq solicitor, Manchester, on the 8th inst at the Cathedral Church, Manchester, by the Rev W Read, M A of South Mimms, Middlesex

Mortlock, Mr of Caxton, solicitor, to Miss Louisa Doewra, of Meldreth, on the 10th inst at St. Mary's, Newington.

DEATHS.

Cartwright, Richard Norton, esq of Ixworth Abbey, in the county of Suffolk, on the 10th inst aged 51.

Ewen, Catherine, wife of Thomas Ewen, esq advocate, and youngest daughter of the late Mr Alexander Soutter, Methill, county of Fife, on the 29th ult at 116, George-street, Aberdeen

Hildyard, Evelyn Thoroton, the infant daughter of Thos Blackborne Thoroton Hildyard, esq. M.P. on the 8th inst in Eaton place, aged six month

Panmure, the Right Hon. Lord, on the 13th inst. Brechin Castle

Spencer, the Lady Georgiana Frances, eldest daughter of Earl Spencer, on the 8th inst at Althorp.

JOURNAL OF PROPERTY.

MONEY MARKET.

English Funds.	Sat.	Mon.	Tues.	Wed.	Thurs.	Fri.
Bank Stock	218	218	218	218	218¾	219½
3 ℔ Cent. Reduced Annuities	98¾	98¾	98¾	98¾	99	99¼
3 ℔ Cent. Consols Annuities	99¼	99¼	99½	99½	99¾	100
Consols for Account.	99¼	99½	99½	99⅝	100	100
New 5 ℔ Cent. Annuities ..	..		.	.		..
New 3¼ ℔ Cent. Annuities.	99⅞	100⅜	100⅜	100½	100⅞	101
Long Annu (exp Jan 5, 1860)	6⅝	6¾	6¾	6¾	7	6¾
Do 30 yrs (exp Oct. 10, 1859)	.	6⅝	..	6½	6¾	6¾
Do 30 yrs (exp. Jan. 5, 1860)	6⅞	..	6¾	7	7	7
India Stock	.	..	265	265	..	..
India Bonds (1,000*l.*)		..	82	84	85	84*
Do do (under 1,000*l.*)....	80	83	..	81	85	82*
South Sea Stock.......... ...	.	..	..	.	..	110½
Do do. New Annuities ..	..	..		..	..	.
Exchequer Bills, 1,000*l.*	..	69*	65*	65*	67*	67*
Do. do. 500*l.*	68*	..	.	73*	64*	67*
Do. do. Small	..	70*	..	65*	64*	67*

* Premium.

Public Sales.

By Mr Moore, at the Mart, on Thursday, April 15—Capital corner premises, consisting of a six-roomed house and shop, situate on the Mercer's estate, and being No 49, Charles-street, Stepney, near to the Thames Police Court, Arbour square, let to an old tenant at the inadequate rent of 22*l* per annum, tenant paying taxes, term, 50 years, ground rent, 4*l*—produced 260*l*

Four brick-built five-roomed houses in a populous and improving neighbourhood, being Nos 10 to 13, Champion-street, Ben Jonson's-fields, Stepney, let at 72*l* 16s per annum, vendor paying taxes, term, 72 years; ground-rent, 7*l*—530*l*

Four houses in Triangle-place, Cambridge road; let at 62*l* vendors paying taxes; term, 64 years, rent, 20*l.* 10s. per annum—180*l.*

On the Mercers' estate, three brick built private dwelling houses with gardens, eligibly situate Nos. 23, 24, and 25, Dean-street, Commercial-road, East, let at 71*l* per annum; tenants paying taxes; term 36 years; rent 3*l* 10s; for the whole, produced 205*l*; and

A substantially-erected six-roomed residence, situate in a rapidly improving locality, being No 23, St. James's-terrace, Back-road, Shadwell; let at 25*l* per annum, vendor paying taxes; term 54 years: ground-rent 4*l.* per annum; produced 170*l.*

Six houses in John-street, Cambridge-road; let at 53*l.* 6s. vendors paying taxes; term 17 years; peppercorn rent; sold for 210*l.*

THE GAZETTES.

Bankrupts.

Gazette, April 13.

Ackroyd, Joseph Wood, worsted spinner, Bradford, Yorkshire, April 30 and May 28, at eleven, Leeds. Off. as. Young. Sols. Wavell and Co. Halifax. Petition, April 6.

Brookes, Samuel Hodgetts, wire manufacturer, Gwersyllt, Denbighshire, April 23 and May 20, at twelve, Liverpool. Off. as. Turner. Sols. Evans and Sons, Liverpool. Petition, April 10.

Luckie, David Fraser, Fenchurch-st. and George Town, Demerara, British Guiana, April 23, at half-past twelve, May 28, at eleven, Basinghall-st. Off as. Pennell. Sols. Sole and Turner, Aldermanbury. Petition, April 10.

Gazette, April 16.

Jones, William and Charles John, plumbers and glaziers, High-st. Islington, May 4, at two, and May 25, at twelve, Basinghall-st. Com Holroyd. Off. as. Groom. Sols Hill and Mathews, Bury-court, St. Mary Axe. Petition, April 16.

Lawson, William, chemist and druggist, Diss, Norfolk, April 26, at one, and May 25, at eleven, Basinghall-st. Com. Holroyd. Off. as. Edwards. Sols. Miller and Carr, Eastcheap. Petition, April 2.

Leader, James, joiner and builder, Liverpool, April 26, at twelve, and May 31, at eleven, Liverpool. Com. Perry. Off as Morgan. Sol. Tyrer, North John-st. Liverpool. Petition, April 14.

Rymer, John, paper manufacturer, Gateshead, Durham, March 19 and May 6, at eleven (and not on the 29th of April instant, at one, as before advertised), Newcastle-upon Tyne Com. Ellison. Off as Wakley. Sol. Harle, Southampton-buildings, Chancery lane; and Butcher Bank, Newcastle-upon-Tyne Petition, March 1.

Stutely, John, marble and stone mason, Salisbury-st. Stepney, April 23, at twelve, May 28, at one, Basinghall-st Com. Fane. Off as Whitmore. Sols. Lawrance, Plews, and Boyer, Old Jewry-chambers. Petition, April 8.

Todd, James and William, saddlers, ironmongers, and auctioneers, Yarm, Yorkshire, April 30 and May 28, at eleven, Leeds. Com West. Off as. Freeman. Sol. Middleton, Leeds. Petition, April 15.

BANKRUPTCY ANNULLED.

Gazette, April 16.

Green, W. builder, Coggeshall, Essex.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Alderson, T D. pewterer, fourth, 1s. 6d Graham, London—*Browning*, W. grocer, first, 1s. 6d Graham, London—*Core*, C. builder and brickmaker, second, 3d. Graham, London—*Craven*, W. road maker, &c 9d Turner, Liverpool—*Foakes*, J. land surveyor, first, 1s 1¼d Groom, London—*Guadiano*, A. G. and Co. merchants, 1s 5d and ⅞ths of a 1d. Nicholson, London.—*Glenny*, S. merchant, second, 1d. Turner, Liverpool.—*Hill*, J C. P. money scrivener, first, 2s. Nicholson, London—*Megarey*, T. coal merchant, sixth, 3d. and ⅞ths of a 1d. Stansfeld, London.—*Rhodes*, J and J. cotton spinners, first, 5s. 11⅜d. Mackenzie, Manchester.—*Robson*, E. boat builder, &c. 5s 3d (in addition to 4s. 6d. previously declared) Wakley, Newcastle—*Salkeld*, T. warehouseman, first, 1s. 9d. Nicholson, London.—*Seymour*, R grocer and farmer, first, 1s 8½d. Graham, London.—*Van den Ende*, P. woolstapler, second, 10d. Nicholson, London.

INSOLVENTS' ESTATES.

Thwaites, J 2s. 6d Apply at the County Court, Carlisle.—*Fishburn*, W. 3s. 9d. Apply at the County Court, Carlisle.

Assignments for the Benefit of Creditors.

Gazette, April 6.

Bourne, C. miller, Beddington-corner, Beddington, Surrey, March 10. Trusts. R. Wright, Marklane, and A. Basset, Fenchurch-st. corn factors. Sols McLeod and Stenning, London-st. Fenchurch-st.—*Clifton*, W. innkeeper, Beverley, Yorkshire, March 5. Trusts H. Johnson and W. T. Taylor, brewers, Beverley Sol T Crust, Beverley.—*Erby*, A. hosier, Oxford-st. March 17. Trusts. I Wilson, Milk-st. and H. A. Thompson, Wood-st. Cheapside, wholesale hosiers. Sols. Lepard, Bannatyne, and Gammon, Cloak-lane—*Fairbrother*, C. butcher, Potters Bar, South Mims, March 19. Trust. C Mossman, salesman, South Mims. Sol. T. George, Barnet—*Thompson*, T R grocer, Barnard Castle, Durham, March 10 Trusts. A. Thompson, yeoman, and H. A. Thompson, draper, both of Barnard Castle. Sol. J. D. Holmes, Barnard Castle.—*Pocock*, J. grocer, Bath, March 15. Trusts T. Weston, gent and E Lansdown, printer, both of Bath. Sol. R. H. Hellings, Bath.

Gazette, April 9.

Oliver, E. glass and china dealer, Regent st. St James, Westminster, March 16. Trusts. H. Minton, china and earthenware manufacturer, Stoke-upon-Trent; W. Bacchus, glass manufacturer, Birmingham, and F. Azemberg, agent, Hatton garden. Sols. C. T. Depree, Lawrance-la. Cheapside; G N. Emmett, Bloomsbury-sq; C M. Ingleby, Birmingham.—*Pickering*, J. printer, bookseller, and binder, Howden, Yorkshire, March 12. Trusts. W. Fitch, gentleman, and C Hutchinson, ironmonger, Howden. Sol. G. England, Howden.—*Whitehead*, J. gingham and corset manufacturer, Manchester, April 6. Trusts. W. Wilson, ironmonger, Manchester, and S. Diggle, loom maker, Radcliff Sol. J. Hall, Manchester.—*Widley*, M. cabinet maker, Berwick-st. Soho, and Portland Mews, Middlesex, March 29. Trusts. W. H. Latchford, Wardour-st. Soho, and W F Collinson, Berwick-st. Soho. Sol. R. G. Smith, New-inn—*Worner*, J. grocer, Shepton Mallett and Frome Selwood, Somersetshire, March 26. Trust. A. Worner, grocer, Yeovil. Sols. J. and W. Glyde, Yeovil.

CONTENTS.

To Readers and Correspondents.

"A SUBSCRIBER'S" *query is a point of law, not of professional practice, which alone is properly within our province. We do not profess to give advice gratis. Our correspondent should take an opinion upon the point in the regular way.*

The proposed substitute for Registration will receive due consideration.

"VERITAS'S" *complaint of a broker's bill should be addressed to a general newspaper. It is not the misdeed of a legal man, with which only we have any concern.*

"J. H."—*We believe he is liable to serve, but a parish will rarely appoint him to the office.*

solvent's schedule, with full practical directions for filling them up. The forms given in the body of the work are not repeated in the Appendix consecutively, as was originally intended, because it would have materially increased the expense of the work to subscribers without any corresponding benefit.

We cannot undertake to return rejected communications. Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith. No notice can be taken of anonymous communications.

THE LAW TIMES.

SATURDAY, APRIL 24, 1852.

A LAW UNIVERSITY.

IT is, perhaps, as well that the homœopathic measure of Reform proposed by the Committee of the Benchers should have been rejected by the collective body. It would have accomplished little good, and it would have stood in the way of something better.

There is but one remedy for the present defective state of legal education. We must have a Law University, founded upon an enlarged and liberal basis, and embracing the whole Profession. Of that University all Lawyers should be required to be members; according to their destinations, whether their purpose is to become Attorneys or Advocates, so should be the *curriculum* of legal studies. For some short period a common education must be pursued for all. Then the student should be required to make choice which branch of the Profession he will adopt, and thenceforth his studies should be directed accordingly, and an appropriate examination should test his fitness for admission to practise that branch of the Profession which he has chosen. Nor should this examination for either branch be limited to legal knowledge; it should extend to other acquirements; it should be an essential condition to practise as a Lawyer, whether as Advocate or Attorney, that the candidate should have had a liberal, even a large, education: he should know something of the classics, be read in history, in science, and in the arts.

The object of requiring such an education is not so much because it is necessary to a knowledge of the law, but as affording that which, to an Attorney, is equally requisite, a guarantee, to some extent, for *character*. It is of the foremost importance that an Attorney should be an honest and honourable man, for no man is so trusted as he, none so exposed to temptation. The best security for honour, next to religion, is position in society, which makes a man fear to do what would damage his reputation and cast him down from the place he holds. A liberal education gives the taste and the manners that secure such a social position, and therefore it is that we so strenuously insist upon the propriety of adding to the present course of *legal* examination, a further inquiry into the general acquirements of the candidate, and especially into the *literæ humanæ*, including the classics. This great improvement might be introduced even into the existing plan, but it would most properly form a portion of the scheme for a Law University, that should embrace the entire subject of legal education, and include the teaching, the examination, and the admission to practise of *all* members of the Profession—Barristers, Attorneys, Proctors. As we have already intimated, we are not blind to the advantages that accrue from the facilities of access of the Bar gathering to it many men of rank and fortune, who do not resort to it with any purpose of pursuing it as a profession. But these advantages are more than counterbalanced by the obvious evils of having a considerable portion of the business divided among those to whom it does no service, while it deprives the *real* Barrister, the man who goes to the Profession to work in it and live by it, of that which would have just helped him to a maintenance while he is fighting his way upwards. A strict examination would limit the Bar to those who contemplate living by the Bar. In like manner a strict examination of the Attorneys as to general acquirement would prevent many persons from coming among them who, having no social position to maintain, are regardless of the rules of professional life, and whose conduct it is that usually brings discredit upon the Lawyers and upon the law.

Look into any neighbourhood, note who are the discreditable Lawyers of the locality, and it will be found that nine out of ten of them would never have obtained admission to the Profession, had the examination comprised an inquiry into classical and general acquirements.

THE JEWS' QUESTION.

THE very able judgments of the Barons of the Exchequer in the case of *Miller* v. *Salomons* have not in the least shaken the opinion we submitted to our readers when first the question was mooted; and it is pleasing to find that in this opinion we have the concurrence of so acute an intellect as that of Baron MARTIN. The elaborate and learned argument of Baron PARKE has not convinced us that in either point the views here stated were wrong. It will be remembered that the position we took was this:—An oath consists of two parts, the *oath proper*,—that is to say, the pledge to do or not to do,—that something is or is not;—and the *sanction* of the oath, which is only *the form* in which the person swearing attests his veracity. Now, the Legislature has provided that every man who is required to make oath shall do so in the form most binding upon his conscience. This can only mean that, while the *substance* of the oath is preserved, the *sanction* of it may be altered to suit the conscience of the swearer. Plainly the words in the oath in question, "on the true faith of a Christian," are the *sanction*, and not the substance, of the oath, and therefore may be altered so as to meet the conscience of the party called upon to take it.

To this argument the only answer is, that the Legislature has prescribed the very words of this particular oath, and that only the Legislature can alter them.

The reply is, that the Law has, in other cases, required an oath to be in a given form, and yet the statute that permits an oath to be taken in the form most binding upon the conscience has been held to permit of an alteration in the form so prescribed by the law; and there is no reason for making this oath an exception, especially as the fact is notorious and undisputed that the form of it was framed with especial reference to Roman Catholics alone, and was designed for *their* relief, and not for the exclusion of any other persuasion. But then, it is said, that in construing laws the Judges must look only to the words of the statute, and not to the intentions of the framers. True, so it *ought* to be, but so it is not always found to be. To take a recent instance. In construing the new Evidence Act, the Judges have been guided, in the exclusion of the wife from the witness-box, by the known intention of the House of Lords so to exclude her, although, according to the words as they stand in the statute, she is admissible. Besides, the statute in question is remedial, and therefore should receive the most liberal construction in favour of the object for which it was enacted.

CHANCERY REFORM.

LORD ST LEONARD's has produced the first instalment of the promised Chancery Reform, in a Bill for the abolition of the Masters' offices. We refer the reader to the report of the proceedings in Parliament for a brief sketch of the measure as propounded by the LORD CHANCELLOR to the House of Lords. Suffice it, here, to say, that it proceeds upon the principle of requiring the entire business of a suit to be conducted by the Judge, who is to hear the whole of it in person, and thus prevent the delay that arises from sending a cause from Court to Court, from the Judge to the Master, and from the Master back again to the Judge.

Since all the great authorities in Law Reform appear to be agreed, that this is the real remedy for the evils of Chancery, we are bound to lay aside the doubts that certainly present themselves to our own mind, as to the propriety of the proposed remedy. We must confess, however, that we cannot see how the work is to be done, if the Judges are to do it all. If their whole time is occupied now in merely hearing arguments upon the facts ascertained by others, and deciding the law, it perplexes us to conjecture how they are to get through the work at all, if, in addition to their present duties, they are also to do the work now done by the Masters, whose hands and heads are likewise fully employed. Certainly some small allowance must be made for the increased facility with which they will proceed to judgment, having heard all the facts of the case at the trial; but the time thus gained will bear no comparison to the increase of the work.

Nor are we quite convinced that it is desirable, even if practicable, that the same Judge should investigate the facts and decide the law. It is said that the Judges of the Common Law Courts do so, and hence the greater facility with which suits are settled there. But neither is such altogether the fact, nor is the result produced by the cause alleged. The Common Law Judges do *not* at once try the facts and decide the law. On the contrary, in nine cases out of ten, where there is a question of law, the facts are tried by a jury, and the law is decided, *not* by the Judge who tried the facts, but by other Judges, upon a statement of the facts by counsel. In Westminster Hall, where, in truth, the *law* is decided, the Judges always determine the law without trying the facts. Then, again, the delays in Chancery, as compared with the speed of a Common Law Court, are

consequence so much of the procedure as of the nature of the questions to be determined. At Common Law we try a single issue. In Chancery, many issues are usually tried together. It is the necessity for having all parties interested in the subject-matter before the Court, so that the rights of all may be protected, that constitutes the true cause of the delay and expense of a Chancery suit. If, for instance, there is a question as to the title to an estate, upon which twenty different persons have charges, it would be clearly impossible to deal with it without ascertaining the precise amount of the claim of each; to do this each must be brought before the Court, and each must be heard, and a decision must be had upon the legal rights of each. This unavoidably occasions delays and expenses, and no alterations of procedure can materially diminish these, so long as the law with respect to charging property continues unchanged. *That* is the real defect, and *there* lies the *true* remedy. Some restrictions should be placed upon the power of charging property, as we suggested last week, or rather, perhaps, greater facilities should be given for *dis*charging it. Instead of permitting owners to grant *estates* in property to any but the actual possessor, let their right be limited to charging it with a liability, in the nature of a mortgage, which the person in possession should have *a right* at *any* time to pay off *in money*, leaving it to the law, after he has paid the money into court, to distribute it among the owners. *This* would be the true remedy for the grievances of Chancery, and the costs of conveyancing, and nothing less than this will give the redress demanded by the country.

We submit these views with great deference, for they are somewhat novel, and differ much from those adopted by other Law Reformers. But, as every contribution to the subject may help the end all have equally in desire, we could not refrain from hinting the doubts we feel of the success of the experiment about to be tried, and at the same time indicating what appears to us to be the true source of the mischief, and the true remedy that should be applied to it.

THE COUNTY COURTS BILL.

Acting upon the intimation of the Lord Chancellor, that the equity clauses of this Bill must be expunged until the Chancery Reform Bill is in operation, and it is seen how its provisions may affect the proposed new jurisdiction of the County Courts, Mr. Fitzroy has deferred the further progress of his Bill through committee until next week, that he may determine what course shall be adopted under these new circumstances, whether he shall abandon it altogether, or proceed with such portions of it only as relate to the improvement of the County Courts and of the procedure there. It seems that already the Bill has been subjected to considerable changes since it left the Lords, all of them made without discussion, and, as was the case last session, nobody knowing wherefore, or even the hand by which they have been effected, but still shewing the presence of a secret enemy, resolved that no *real* improvement shall be made, and maiming everything that might have a tendency to induce the country Attorneys to prefer the County Courts to the Superior Courts. It is very hard, that among the sixty-four Lawyers who have seats in the present House of Commons, not one can be found who will protect the interests of the Profession in the *country*. The Metropolitan Lawyers have many guardians in Parliament, and whatever *they* desire is promptly done. But let any thing be proposed for the advantage of the Profession in the *provinces*, and nobody looks to it or protects it against open or concealed enemies, and it is sure to be expunged or damaged in that convenient place for quiet jobbery to work its will,—the Committee. May they be more fortunate in finding friends in the *next* Parliament.

The clause relating to Advocates in the County Courts has been again materially altered, by whom, or how, or when, nobody knows. Certainly it is not improved, and it recognizes the very objectionable scheme of a Barrister practising uninstructed by an Attorney; in fact, doing the work, and therefore invading, the province of, the Attorney. On the other hand, it has expunged the provision that forbad an Attorney to invade the province of the Barrister by acting as Advocate for another Attorney; a very different matter, indeed, from conducting the case of his own client. The *altered* clause runs thus:—

21. And whereas, by the said Act passed in the 9 & 10 Vict. it was enacted, that no person should be entitled to appear for any other party to any proceeding in any of the said courts, "unless he be an attorney of one of her Majesty's Superior Courts of Record, or a barrister-at-law, *instructed by such attorney on behalf of the party*, or, by leave of the judge, any other person allowed by the judge to appear instead of such party, but that no barrister, attorney, or other person, except by leave of the judge, should be entitled to be heard to argue any question as counsel for any other person in any proceeding in any court holden under that Act:" Be it enacted, that the said last-recited enactment be repealed; and that it shall be lawful for the party to the suit or other proceeding, or for an attorney of one of her Majesty's Superior Courts of Record retained by or on behalf of the party, or for *a barrister retained by or on behalf of the party, on either side*, or, by *leave of the judge, for any other person* allowed by the judge to appear instead of the party, to address the Court, without any right of exclusive or pre-audience, but subject to such regulations as the judge may from time to time prescribe for the orderly transaction of the business of the Court.

This is a specimen of the manner in which the most important details of a Bill can be changed in committee, without the knowledge of the House, and, therefore, without discussion.

SKETCH OF THE SCOTTISH LAW COURTS.

PLEADING NOT SPECIAL.

ARTICLE SEVENTH.

The late Lord Abinger, in his impatience with those who ventured to depreciate the system of special pleading, once said, "Why not resort at once to the practice in Scotland of writing pamphlet in a popular manner upon the whole case?" The taunt had its sting, and to this day our best lawyers, bred up under our own stringent system, the perfect mastery of which may have been the labour of a lifetime, and is the staple of their own fame, do not scruple to comment on the alarming latitudinarianism of the Scotch pleaders—whose method, if the right one, no doubt covertly implies, that their own acquirements may be somewhat superfluous. An amusing illustration of this occurred no later than last session at the Bar of the House of Lords. Mr. Peacock was arguing a Scotch case on a Bill of Exceptions, and it was one of his points to make out, that a certain pleading, used in an Inferior Court in Scotland, which had been signed by one of the parties to a different suit, had been rightly admitted as evidence against that party at a jury trial as a declaration binding upon him. The following dialogue ensued—

Mr. Peacock.—My Lords, it is impossible such a document can be held to be a pleading. It seems nothing but a vague and rambling narrative. Thus it goes on to say, that he (who signed it) had been in the wars, and had received a wound in the leg! How can this be a pleading?

Lord Brougham.—It is all very well for you, Mr. Peacock, to say that. You are, of course, thinking of what a pleading is here. But in my time, I recollect, there used to be long quotations from "Shakspeare" in the Scotch pleadings. That was, to be sure, before the late changes, when written cases were used, and everything was urged in the way both of argument and illustration. They were, in fact, nothing but written speeches.

Lord Brougham here referred to the practice that prevailed till after the beginning of the present century, when "printed cases" used to be drawn up by the junior counsel, and submitted to the Court, oral argument being in little esteem. Lord Abinger, no doubt, had the old practice also in his eye. Of late, however, though there has been no approach to a direct admission of any fundamental error in principle on the part of our northern neighbours, the course of modern improvements sufficiently shews that, by gradually tightening and not relaxing their methods, they hope to save themselves much of the gratuitous raillery, inspired by the severe prudery of our own straitlaced and artificial system.

In describing the Scotch mode of pleading and its recent changes so far as they tend to reflect light on questions still unsettled here, it will best suit our purpose to give an outline of the state of practice as it stands under the last finishing touches given to it by the stat. 13 & 14 Vict. c. 36, reserving our observations on forms of actions and other incidental features of the system till afterwards.

The first step of the plaintiff is to issue a summons, which has always been in Scotland a formal document of a mixed nature, comprising not only all that is here implied by that name, but also what corresponds to our declaration. The Scotch, in fact, reach at one step what in our procedure is only attained by two. This summons, which was improved in form twenty-five years ago, still continued till the late statute to be somewhat vaguely and indefinitely drawn up. It was, however, theoretically divided into four parts. The first was the *premises* or narrative, which by way of inducement set forth the nature and extent of the demand. The second was the *subsumption*, which stated generally the refusal of defendant to satisfy the claim. The third was the *conclusions*, which specified the decree asked to be pronounced. The fourth was the *will*, which was the warrant to the bailiffs to serve the writ on defendant and cite him to appear on a given day. This summons was a writ which proceeded in the name of the Queen, and was addressed to the bailiff. To state briefly the pith of the form in an ordinary action of assumpsit, it would run thus:—"Victoria, &c. to (bailiff), greeting, whereas B. owes A. 100*l.* and although he has been often asked to pay he refuses, therefore he ought and should be decerned and ordained by our Court, &c. to pay the said 100*l.* Our will is herefore that you cite B. to appear before our Court on (a certain day), to see sentence pronounced, according to justice." In this form there used to be introduced and detailed under the first part the whole grounds of action, and simple allegations of fact were mixed up with a great deal of argumentative and irrelevant matter. The consequence was, that the summons was generally too vague and uncertain not to require a revisal, which was generally ordered by the judge of the first instance when it came before him. This new edition or revised summons was what was called a *condescendence*, and corresponded to our declaration. The condescendence, therefore, was invariably a mere reproduction of the summons slightly extended, and perhaps stripped of its surplusage, and as it came to be almost uniformly ordered by the Judge, the knowledge of this result had no other effect but to encourage a slovenly habit of framing the summons, since its defects could afterwards be so easily supplied. It is the practice for the attorney to draw the pleadings, except in cases of more than average difficulty, when they are sent to counsel for revisal. The evils of this loose and uncertain pleading were found to be too great, and the recent Act accordingly cut down the summons proper to the mere formal portions, and ordered to be added to it, and treated as part thereof, in future, what before constituted the condescendence. The document still retains its old name of a summons, though it is in reality our summons and declaration conjoined. It is divided into two parts,—the former comprising the names of the parties, the amount of money due or damages sought, or the redress claimed "in terms of the declaration hereunto annexed." This first part is not longer than our own summons. Then follows the declaration, or second part (called technically, the condescendence), which states in short and articulate paragraphs the facts, out of which the action arises. There seems to be no other rule for the framing of this pleading, than that it be restricted entirely to matter of fact, avoiding argument, and omitting no material allegation, the proof of which goes to the essence of the action. The statutory regulation indicates nothing more definite than this, and though it may be thought somewhat loose, yet in practice the judge of the first instance has so liberal a discretion in ordering amendments, striking out irrelevant matter, and giving costs, that this salutary control serves to keep the pleader as closely to the subject perhaps is practicable.

To the end of the summons and declaration must

be appended what are called "pleas in law," which are in fact the naked propositions or principles in law, which are supposed to be applicable to the state of facts disclosed at length, and with full circumstantiality in the declaration. They resemble, in some respects, the points for argument, which are required to be marked on the margin of our demurrer-books. It must be confessed, that though perhaps there is a looseness in the authorities as to how these "pleas in law" ought to be framed, yet they are of considerable advantage in informing the Court on what precise ground the parties seek to stand. There is also a very quaint practice still adhered to, of adding at the end of these "pleas in law" these singular words: "under protestation to add and eik," as if the pleader had run out of breath before he had exactly finished all he was about to say, but claimed to do so at a future time.

It must not be forgot, also, that the plaintiff, when he files his declaration, leaves with it in the hands of the Court all the documents, deeds, and writings, upon which he founds. These are all marked by the clerk of the Court with his initials, and numbered separately, and an inventory accompanies them. Accordingly, when the defendant comes to prepare his plea, his attorney has nothing to do but to go to the clerk of the Court and give his receipt, in return for which he is allowed to borrow and peruse all these papers. In this way discovery is seldom resorted to, and even when it is required, it is granted promptly and effectively, as we shall afterwards see.

The *service* of the writ of summons and declaration which is, as we have shewn, a single document, is a very different matter from what it is here. It is not in the hands of private individuals at all, neither the plaintiff nor his attorney, nor attorney's clerk, can serve it. The exclusive exercise of this function is the duty of a select class of persons who are dignified by the appellation of messengers-at-arms, while perhaps in plain prose they may be called "bum-bailiffs unattached." They exist in various localities throughout Scotland, and they not only have in their hands the service of writ of summons in civil actions, but also that of capias and bench warrants in criminal cases, and they are moreover entrusted with the delicate social duties of fi. fa. and ca. sa. Hence the summons is always addressed by the Queen to these messengers-at-arms. They are all under the control of the Lord Lyon King-at-arms, who maintains with them the same intimate and responsible relations as our sheriff of London with his bound bailiffs. This *entente cordiale* is of course always liable to be disturbed by the discovery of any flaw in their executions, when an immediate reference is made to the sureties who guaranteed their integrity and abilities. Neither are these messengers-at-arms confined to one locality. On the contrary, they have the run of all Scotland, and do not require to halt at the border of each county. The Common Law Commissioners recommend this obvious improvement also here.

The mode of service in Scotland is as different from ours as the persons who take charge of it. The primary and effective service is at the defendant's domicile, though of course personal service being a short cut to the same end, and also the written consent of defendent to hold the summons as served are always sufficient. What constitutes the domicile or dwelling-house for the purpose of service is very well understood, and to this place, or either, if there are two domiciles, the messenger at arms proceeds, having the original writ of summons in his possession. If he finds defendant's wife or servant willing to receive a copy, it is enough; if, however, they refuse, the officer has only to affix a copy to the door, after giving six audible knocks. A mysterious importance is attached to the latter part of the performance, and a half superstitious story runs, that without the knocking, service is null. If the defendant has no accessible habitation, or has departed and left no sign, and the most inventive wit cannot detect him, service at his last domicile, or, if he was a stranger casually passing, at lodgings where he remained forty days, is sufficient. In Scotland the tedious and harassing rites of distringas and outlawry are quite unknown, and as we have already imitated points in the procedure of the Scotch, it seems by the Report of the Common Law Commissioners, they are agreed that a great deal of superfluous trouble, time, and anxiety, was absorbed in these ceremonies. The third mode of service is peculiar to Scotland, and has flourished for two centuries there. It is also proposed by the Commissioners for our adoption, though it must be allowed with an improvement. The Scotch plan alluded to is the service of writs of summons on persons having real or personal property in Scotland, but residing abroad. This used to take place by proclamation at the market-place, and at the pier and shore of Leith, and is called an edictal citation. Since 1825 a substitution has been created by statute, which consists in filing the citation in a kind of Gazette, specially appropriated to that purpose, while regulations were made for giving it due publicity. The plan, however, proposed by the Comman Law Commissioners, which is borrowed from Chancery practice is still better, viz. to apply to the Court for leave to serve the defendant personally out of the jurisdiction.

The ordinary interval between service and entering appearance used to be twenty-seven and sixty days, according to distance; but now, by the late statute, these periods are reduced to fourteen and twenty-one days respectively. There are certain privileged summonses, however, which are allowed to be returnable in six days, on account of their peculiar urgency. The return-day having arrived, the plaintiff is bound to have previously put his cause on the list belonging to the particular Judge of the first instance, whom he originally selected. If this is not done, defendant can sue out a summary process, whereby he obtains three guineas costs, and the writ abates. If, however, plaintiff has duly enrolled the cause, and defendant has not entered appearance, a decree in absence can be had, which is so far in the nature of a judgment by default that execution can issue forthwith, though up to the last moment the defendant can set aside this judgment on payment of costs. If defendant has entered appearance, he has twelve days to put in his plea.

In our next paper we shall state the mode in which the plea is framed, how the record is made up, how it is dealt with by the judge, as well as other incidental matters connected with pleading.

THE LEGISLATOR.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Monday, April 19.

Grand Juries, Metropolitan District
Ballast Heavers, Port of London
Loan Societies
Stock in Trade.

BILLS READ A SECOND TIME.

Monday, April 19.

Turnpike Roads, Ireland
Secretary of Bankrupts Office Abolition (Lords)
Poor Law Board Continuance.

Tuesday, April 20.

Loan Societies
Stock in Trade.

Wednesday, April 21.

Parish Constables.
Industrial and Provident Partnerships.
Proclamation for Assembling Parliament (Lords).

BILLS READ A THIRD TIME AND PASSED.

Monday, April 19.

Law of Evidence, Scotland.

Thursday, April 22.

Linen, &c. Manufactures, Ireland.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A THIRD TIME AND PASSED.

Monday, April 19.

Barnstaple Markets and Fairs
Great Munster Fairs
Ilkley Waterworks
Rhyl Improvement
Skipton and Crass Road.

Tuesday, April 20.

Aberdeen Fire and Life Assurance Company
Accidental Death Insurance and Railway Assurance Companies Amalgamation
Londonderry and Coleraine Railway
Londonderry and Enniskillen Railway.

Wednesday, April 21.

Glasgow Union Arcade (Clause added)
Medina River Navigation (Amendment)
Rhyl Improvement (Clause added).

Thursday, April 22

Aberdare Market and Slaughterhouses
Dudley Waterworks
Eastern Counties and Newmarket and Chesterford Railway Companies
Glamford Briggs Waterworks
Great Southern and Western Railway, Ireland
Lockwood and Meltham Road
Norfolk Railway
Retford and Littleborough Road
South Essex Estuary and Reclamation
Stockton and Darlington Railway
Sunderland Waterworks.

PETITIONS PRESENTED.

ATTORNEYS' CERTIFICATES.—For repeal of the dut thereon, from Barton-upon-Humber, Dewsbury, Wem, Edinburgh, Berwick-upon-Tweed, Willington, Ledbury, Barnsley, Stowmarket, Tewkesbury, Norwich, Northern Division of the County of Northampton, Burnley, Bradford (Wilts), William Griffin, Cork, Wrexham, Castleford, Peterborough, Keighley, Somerton and Langport, Todmorden, Hertford, Birkenhead, Warminster, Wellington, Modbury, Ilfracombe, Worthing, Barnstaple, Midhurst, Bideford, Manchester, Thirsk, Melksham, Thorne, Margate, Coventry, Luton, Worcester, Portsea, Ross, Okehampton, Stratford-upon-Avon, Tenby, Narberth, Havrefordwest, Salisbury, Southmolton, Petworth, Durham, Brentwood, Thetford, Atherstone, Tenterden, Great Grimsby, Dunstable, Barton-upon-Humber, Rugby, Ashburton, Colne, Pontefract, Chorley, Hexham, Glamford Briggs, Witney, Lancaster, and Horncastle, to lie on the table.

SESSIONAL PRINTED PAPERS.

Par. Numb.
237. Warming and Ventilation of the House—Report of Mr. Goldsworthy Gurney
144. Exports and Imports, Colonies—Account
240. Ships, Navy—Return
178. Local Acts—Reports of the Admiralty
193. Highland Roads and Bridges—38th Report
225. Severn Navigation—Report of Mr. James Walker
243. Ventilation and Lighting of the House—1st Report from Committee
244. Poor Laws—Correspondence
113. Duchy of Cornwall—Account
186. Arterial Drainage, Ireland—Return
205. Hops—Account
241. Reading and Reigate Railway—Copy of Memorial
246. County Elections—Return
249. Mail Services, India and Australia—Copies of Tenders, &c.
152. Grand Jury Presentments, Ireland—Abstract of Accounts
190. Metropolitan Interments—Return
217. Wheat, &c.—Account
220. Duchy of Lancaster—Abstract of Accounts
232. Spirits—Accounts
Revenue, Population, and Commerce—Tables, Part 20, Sec. A.
242. Bills—Proclamation for assembling Parliament
251. — County Courts further Extension, amended
256. Loan Societies
257. — Stock in Trade
262. — Corrupt Practices at Elections, as amended in Committee, on Re-commitment, and on Consideration of Bill, as amended
253. — Grand Juries, Metropolitan District
255. — Ballast-heavers, Port of London
General Board of Health, Sewer Water and Town Manures—Minutes of Information
Turnpike Trusts—Reports of the Secretary of State
General Board of Health, Drainage—Minutes of Information
245. Emigrant Vessels—Return
213. Savings Banks—Return, Part 1
202. Poor Relief, Ireland—Returns
Commerce and Navigation, Belgium—Treaty
Fishery, Belgium—Convention
710. Session 1847—Indexes to Reports of Commissioners, &c. 1801—1843, Part 13, Agriculture
192. Committals, Ireland—Abstract of Returns
252. Warming and Ventilation of the House—Second Report of Mr. Goldsworthy Gurney
254. Public Income and Expenditure, Balance-sheet—Account
258. Committee of Selection—Seventh Report.

SESSION 1851.

679. Newfoundland—Correspondence.

HOUSE OF LORDS.

BILL FOR THE ABOLITION OF THE MASTERS' OFFICE.

MONDAY, April 19.—The LORD CHANCELLOR rose to lay on the table a Bill for the purpose of abolishing the office of Master in Chancery, and of substituting other officers in their stead. At present there were nine Masters in Chancery, and one Mastership vacant. He proposed to bring his Bill into operation as quickly as possible, with all due regard to existing interests; and he intended that the Master's office should be abolished, and that the Bill should come into operation on the first day of next Michaelmas Term. The four senior Masters would then be relieved of their offices, and the remaining five would be left for the duties devolving upon them, such as the winding up of all matters before them, and of all other matters which, up to the period of the new Bill's operation, the Lord Chancellor might think fit to confide to their decision. They would also derive from this powers with which they had never been invested before. It had always been considered one of the faults of the Master's office that they had no power to compel the parties to proceed with the matters which they brought before them. He should supply by this Bill the want of that power. He had already stated that the present scheme would lead to the dismissal of the four senior Masters, and he had taken great care that no favouritism should take place in the dismissal of the Masters. They would be dismissed according to their seniority, and would retain their full salaries when dismissed. The five remaining Masters would carry on the business of the Court, but under new powers. The new scheme was this—that the four judges in equity—namely, the Master of the Rolls, and the three Vice-Chancellors, each having one chief clerk, and each chief clerk having one second clerk under him, should carry on in chambers all the business of their respective courts hitherto transacted by the Masters. Henceforward there would be no references to the Masters—no re-

ports from the Masters—no statements of facts. All these matters of form were to be abolished, and the j[illegible] was to transact in chambers so much of the [illegible]ness of the court as was not now heard of. He would go into his chamber at whatever hour of the day he might think fitting or convenient, or even for the whole day, and there he would consult with his clerks as to what ought to be done. If a report should be necessary, he would either draw it up himself in his chambers, or would send for the registrar to draw it up for him. This Bill would also define the power which the judge was to have in chambers, for it was quite evident that, if the new scheme were to have any chance of success, you must work it out yourself, and see clearly what it was; for the mere fact of giving general powers was not a fair way of testing the merits of any new scheme. When the judge got into his chamber, each of them would have a chief clerk under him. He had only thought it right that each judge should have the power of appointing his own chief clerk; so that he should have the power of approving his exertions. He also intended to give the appointment of the second clerk to the chief clerk, for the same reason which induced him to give to the judge the appointment of his chief clerk,—namely, a desire to encourage a strong feeling of sympathy between those who had to appoint and those who had to obey. He also intended that, when this Bill came into operation, there should be some place provided where the judge could have at once the benefit of the co-operation of his chief clerk. He would not delay the operation of his Bill until fitting places were provided for such purposes. He should therefore propose that, for the present, the Master of the Rolls should meet his clerk at the Rolls'-office, and that each of the three Vice-Chancellors should be provided with commodious chambers in Lincoln's-inn until the country should furnish them better accommodation. Having made some allusion to the present chambers reserved for the Masters (which was not heard distinctly in the gallery), he said that he proposed to take a power to sell those chambers, believing that the money produced from such a sale would be sufficient to build three commodious courts for the three Vice-Chancellors, with rooms annexed for the accommodation of their clerks. He was most anxious that the new clerks should not find their way into Southampton-buildings; for if they were once placed there they would act as if they were Masters, and not clerks; and in that case the new scheme would not answer. He would not go further into the details of the Bill. He admitted that there was one inconvenience in the new scheme. In each of the Courts of Common Law there were at present five judges, and when one of them was absent at chambers the business of the Court proceeded, and was not disturbed. Yet in each of the Courts of Equity the judge might have to leave his court for a part of, or even for the whole day. In the latter case his court must be entirely closed, and then no business whatever could be carried on. He hoped, however, that the facility, the cheapness, the rapidity, and the ease which the suitor and the judge would both feel in the transaction of business would be more than a compensation for this inconvenience. His noble and learned friend had introduced into that House during the present session a Bill to extend the jurisdiction of the County Court. When he had the honour of ascending the woolsack, he found that Bill on the point of leaving the House, and had not time to consider it. He now felt that it would interfere with his own Bill, and it was therefore impossible to pass his noble and learned friend's Bill without first seeing how far it would fit in and dovetail to this. As no man could be more anxious than his noble and learned friend that this Bill for the abolition of the Masters' office should pass, he anticipated that his noble and learned friend would be the first to agree that his Bill should wait until it could be seen how far it would be an assistance, and not a hindrance to the present measure. This measure related wholly to the abolition of the Masters' office, and to the formation of a new judicial jurisdiction. There was, however, a still more important portion of the recommendations of the commissioners, relative not to the practice but to the procedure in Chancery, which would tend much to improve and cheapen the administration of the law. A Bill to carry out those recommendations was at that moment in progress; and he did hope that in the course of the next three weeks, with the assistance of his noble and learned friends near him, he should be able to lay before their lordships a measure which would carry into effect all the propositions which the commissioners had suggested. He would not detain their lordships further by going through the various clauses of the present Bill, but would conclude by expressing a confident hope that, so far as it went, it fully carried out the assurance given by his noble friend at the head of the Government, that every legal improvement which the public interests required would be fully, fairly, and effectually made.—Lord CAMPBELL having paid much consideration to the subject, conceived this Bill to be well worth the consideration of their lordships. A good deal had been said occasionally respecting the fusion of law and equity. He would not enter into that question then, but would content himself with laying down this great principle, which he trusted that his noble and learned friend on the woolsack would adopt, that one court should determine a cause from beginning to end, and that the suitors should not be sent from one court to another, almost at the caprice of the judges. He thought that the Court of Common Law, on the production of the judgment in such a case, should at once have the power of granting an injunction to prevent the repetition of such a nuisance. So, too, in cases where a copyright was once established, the Courts of Common Law should have at once the power of issuing an injunction to prevent all future violation of it.—The LORD CHANCELLOR would not enter at present into the discussion of the wide question just raised by his noble and learned friend the Chief Justice. He would, however, take the liberty of stating that the future Bill, which he intended to introduce for the improvement of the procedure in the Court of Chancery, would, in all probability, prevent the necessity of sending to a court of equity such cases as had been previously determined in a court of law. He had prepared a provision in that Bill for the purpose of carrying out that object; for instance, if, in an action of ejectment, it should appear that the estate was an equitable one, and that the common law judge was not inclined to decide upon it, then he proposed to remedy that inconvenience by giving the common law judge power to send a case to the court of equity to ascertain whether it was such an equitable estate as ought to be clothed with a legal estate. That would cost nothing, and the whole matter would be transacted very expeditiously.—The Bill was then read a first time.

HOUSE OF COMMONS.

CITY GRAND JURIES.

MONDAY, April 19.—The ATTORNEY-GENERAL rose to move for leave to bring in a Bill to render it unnecessary to summon grand juries within the metropolitan district, and for the amendment of the criminal law in other particulars. The subject of this Bill had excited a good deal of public attention; it could not be said to be new, for in the year 1846, when he had the honour of filling the same office which he now held, he suggested, amongst other things, to the then Government, a Bill of precisely similar character. The Bill was brought into Parliament in the year 1846; but, although a committee was appointed, and several witnesses were examined upon it, the committee only reported the evidence, and the Bill dropped. He would not trespass upon the time of the House by stating in detail the precise nature of the measure; but upon the second reading he would go fully into the reasons which induced him to propose this alteration in the law. Leave was then given to bring in the Bill.

INDUSTRIAL AND PROVIDENT PARTNERSHIPS BILL.

WEDNESDAY, April 21.—Mr. SLANEY, in moving the second reading, said this Bill was founded on the recommendation of two successive committees, and the object was to give persons associating together with small sums and common labour the power of obtaining a cheap tribunal. He had communicated with the right hon. gentleman the President of the Board of Trade, and had found that he assented generally to the principle of the Bill on the understanding that there was to be a reference to a select committee.—Mr. HENLEY said he was extremely glad that this subject had been brought under the consideration of the House, as a great number of persons took an interest in it, and appeared to think that they would derive great benefit from the passing of the measure. He sincerely hoped the House would be able to meet the wishes of such parties. It was, however, very important that a measure of that kind should go before a select committee, lest its operation should be to do mischief instead of conferring benefits. He should rejoice if it could be brought within the scope of the Friendly Societies Acts.—The Bill was then read a second time, and referred to a select committee.

ENFRANCHISEMENT OF COPYHOLDS BILL.

The House then went into committee on this Bill. Clauses 1 to 9, inclusive, were agreed to, with some amendments by Mr. MULLINGS, in which Mr. AGLIONBY, the promoter of the Bill, expressed his entire acquiescence. On clause 10, which provided that questions of law or fact might be referred to the commissioners, whose decision should be final, Mr. WALPOLE suggested that there should be a power of appeal.—Mr. AGLIONBY said he entertained very strong objections to that course, on account of the expense and delay which it was calculated to occasion; so much so, that for his own part he would rather have an unjust decision than the power of appeal with the chance of success.—Mr. WALPOLE said that perhaps the hon. gentleman's objections might be obviated by allowing parties the option of having the decision reversed where the commission certified that it was a proper case for appeal—the appeal being made to the Court of C. P.—Mr. AGLIONBY inquired whether the right hon. gentleman would have any objection, before the bringing up of the report, to consider the propriety of limiting the power of appeal to cases where the commissioners of their own free will should think that the opinion of a Superior Court was desirable?—Mr. WALPOLE replied, that he would consider the point. —The clause was thereupon agreed to. The remaining clauses were agreed to, with some alterations; and, the Bill having been reported to the House, was ordered to be read a third time on Tuesday.

STATE OF BUSINESS IN THE HOUSE OF COMMONS.

(*From the Spectator.*)

FROM the commencement of the session to Tuesday, the 6th April, when the Commons rose for the Easter recess, the period has been pretty equally divided between the Russell and Derby administrations. More accurately expressed, the Russell Government enjoyed two and a half weeks of office, their successors have had three and a half weeks: add three weeks of interregnum and preparation, and the entire period of nine weeks is accounted for. At their accession to office, the Derby Government found twenty-two bills on the tables of both Houses, the work of their predecessors. Four of these—the three Reform Bills and the Burgh Harbours (Scotland) Bill—were withdrawn by their authors. Of the eighteen which remain, sixteen have been adopted with more or less heartiness by the new Government. The remaining two—the bill to abolish Tests in the Scottish Universities, and another to facilitate the Drainage and Embankment of Lands —lie neglected. Of Bills of their own, the Derby ministry have brought in nineteen, and two more have been ordered. Of these nineteen, the most important is the Militia Bill, which awaits its second reading. The Bill for regulating the Repayment of Advances to Ireland will prove fertile in discussion; and so will the Bill to facilitate the Apprehension of Deserters from Foreign Ships.

Taking the aggregate of the Bills moving onwards under ministerial auspices, the stages reached are as follows:—

Waiting the Royal Assent(a)..........	4
Read a first time in the Lords (all of them have passed the Commons)(b)..	3
Read a second time in the Lords (including 3 which have passed the Commons)(c).........................	5
Read a first time in the Commons (including 1 which has passed the Lords) (d)	5
Read a second time in the Commons (including 1 which has passed the Lords) (e)	18
	35

A considerable number of those Bills which have been read a second time have made some advance towards the third reading. Twenty-five Bills are promoted by private members.

At the reassembling on Monday, the programme will stand in this way. The Miscellaneous Estimates have to be voted. The thirty-five Bills noted above have to be disposed of. The Committee on East-India Affairs has to be moved; Sir John Pakington has to bring in his measure for conferring representative institutions upon New Zealand; Mr. Napier's Tenant-right Bill for Ireland is looked for; Mr. Disraeli has to make his financial statement, and to tell, among other things, what he means to do about the renewal of the Income-tax. All this is independent of those measures which the new Administration are to put forth in conjunction with "Protection," as their passport to electoral favour, and which must be produced in a practical and mature shape, so as to allow their merits to be pronounced upon. All this (if actually undertaken) involves the absorption of much time. Up to Easter, the usual allowance of two evenings was allotted to Government business: Lord John Russell has suggested the addition of Thursday; but Mr. Disraeli,

(*a*) Indemnity; Protection of Inventions; Commons Enclosure; Personal Estates of Intestates.

(*b*) St. Alban's Disfranchisement; Copyright Amendment; Common Law Fees Regulation.

(*c*) Bishopric of Quebec; Patent Law Amendment (No. 2); Mutiny; Marine Mutiny; Common Law Procedure Amendment.

(*d*) Militia; Poor-Law Board Continuance; Kennington Common Improvement; Turnpike-roads (Ireland); Secretary of Bankrupts' Office Abolition.

(*e*) Law of Wills Amendment; Repayment of Advances Acts Amendment (Ireland); Apprehension of Deserters from Foreign Ships; Differential Dues; Linen, &c. Manufactures (Ireland); Sheep, &c. Contagious Disorders Prevention; Exchequer Bills; Poor Relief Act Continuance; Commons Enclosure Acts Extension; Suitors in Chancery Relief; Metropolis Water Supply; Improvement of Towns (Ireland); Passengers Act Amendment; Corrupt Practices at Elections; General Board of Health; Law of Evidence (Scotland); Charitable Trusts; Burghs (Scotland).

not being in a hurry to close the session, has not yet signified acceptance.

THE COURT OF BANKRUPTCY.—It appears, from a return ... Lord that in the course of last year the London commissioners sat at an average number of days, 120. The hours on an average were five. The average number of sittings 735, and the average number of adjudications 95. In the county districts the commissioners sat 163 days on an average; four hours was the average sitting. The average number of sittings was 522, and the average number of adjudications 40. It is, therefore, proposed by Lord Brougham, in his new Bill now in the House of Lords, to reduce the number of commissioners, both in London and the country.

ECCLESIASTICAL COURTS (CRIMINAL JURISDICTION).—There is a Bill in the House of Commons to abolish the criminal jurisdiction of the Ecclesiastical Courts in certain cases. The Acts of 5 & 6 Edw. 6, c. 4, and other statutes against quarrelling and fighting in churches and churchyards, as recommended by the ecclesiastical commissioners, are to be repealed. Further, it is proposed to enact that after the "passing of the measure no suit or proceeding shall be commenced or heard in any ecclesiastical court in England or Wales for defamation, or for quarrelling, chiding, or brawling by words only in any church or churchyard, or for smiting or laying violent hands upon any other in any church or churchyard, or for maliciously striking any person with any weapon, or for drawing any weapon with intent to strike another in any church or churchyard."

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

THE ATTORNEY-GENERAL has brought in a Bill to abolish Grand Juries in London and Middlesex. Why are they *not* abolished everywhere? The assigned reason for the distinction is, that the first examination of persons charged with crimes is taken in the metropolis by Magistrates who are Lawyers; that they exercise due caution in committing; and that it is a practical absurdity to call upon a Grand Jury of laymen to review the decision of the skilled Judge at the police office. But this argument is a two-edged sword: it is good for the abolition of an unskilled Magistracy as for that of an unskilled Grand Jury. Now we should be very sorry to see the unpaid Magistracy superseded by paid Police Justices. With all their defects, which are undeniable, they do substantial justice: it is no small advantage that our gentry should thus be induced to take part in the business of the country, and to acquaint themselves with the feelings and manners of the people, as by no other means could have been so well effected. Besides, it is a great security for liberty. If the entire administration of justice in the country were conducted, as in France, by paid agents of the Government, it would be easy for a despot who had the audacity to seize the reins of power at the central seat, to trample upon the liberties of the whole country. If, therefore, the Justices would exercise a little more caution in committals, we might dispense everywhere with the useless formality of the Grand Jury, and then, we hope, that the Common Juries would be improved by compelling all classes to serve upon them, paying them for the service.

If every gentleman who undertakes the office of a Justice of the Peace would but read twice over, before he takes his seat, Mr. SAUNDERS'S little volume of plain instructions as to his jurisdiction, his duties, and the rules that should guide him in his office, we should not hear so many complaints of what has been termed "Justices' Justice," nor would propositions for their abolition find such favour with the public.

One case is reported from the circuits. In *Reg.* v. *Dilmore*, 19 Law T. 50, it was queried by WIGHTMAN, J. whether, under the statute permitting the depositions of persons dead to be put in evidence (11 & 12 Vict. c. 42, s. 17), the deposition taken on a charge of stabbing could be read upon a trial of murder or manslaughter of the deceased.

TO THE EDITOR OF THE LAW TIMES.

SIR,—My attention has been called to a report of the trial of James Bartlett at the late assizes at Taunton, which appeared in *The Sherborne Journal*, of the 8th instant, and to your comments upon the case in the last number of the LAW TIMES.

In the former, Mr. Butt (who presided in the third court) is reported to have stopped the case, and to have expressed his regret that so utterly groundless a charge had been sent for trial, adding that it was one of the most frivolous cases he had ever seen presented to a court, and that he could only feel surprised that gentlemen, in the position of magistrates, should commit upon such facts, well knowing, as they must, that the mere fact of a man being sent for trial, however innocent he might be, was calculated to prejudice his character. How the case was presented to the court I am unable to state, but the following are the real facts.

During the night of Thursday, the 9th of March, a spade of the prosecutor was stolen from a drain in a field where he had been at work on the previous day. On the Saturday following, about nine o'clock a.m., the witness for the prosecution saw the prisoner go to the bank of a river, about 200 or 300 yards from the drain, take something from there, and go off with it.

The witness's suspicions being aroused, he hastened to the top of the adjoining field, in order to give the prisoner a meeting, but having failed in his object, he afterwards continued his pursuit, and found the prisoner, after an interval of three-quarters of an hour, at work in a field about half a mile distant, when the prisoner, being aware that he had been watched by the witness, and apparently anticipating a charge of having committed a felony, hastily and artfully addressed him, when at a distance of some yards, and said: "I found a spade down by the river yesterday morning, and I have been and fetched it this morning, and if any one own it, they are welcome to it, for it is'nt mine." The witness then requested to see the spade, when the prisoner conducted him to a spot in the direction of the river, where they found it secreted in a bramble bush in the bottom of a ditch, at a considerable distance from the spot where the prosecutor had left it, but very near the place of meeting; plainly, therefore, leading to the inference that it was deposited there with a view, not to convenience, but to secrecy.

Now the committing magistrate (whose judgment and discretion by the bye have never before been questioned) very naturally, and I think necessarily, concluded, from the apparently artful and suspicious course pursued by the prisoner, that the charge was neither "groundless" nor "frivolous," but that, on the contrary, there was strong evidence of his guilt. In this opinion the grand jury concurred, and consequently any reflections cast upon the magistrate fell with equal force on them; and if the case had been permitted to go to the petit jury, they might very possibly have come to the same conclusion. The excuse of having found the stolen property is one resorted to by almost every person in whose possession it is discovered.

I have not obtained the sanction of the committing magistrate to the insertion of these remarks. It is possible he might think it right to treat the imputation in a more dignified way, but acting on my own responsibility, as the magistrate's clerk on the occasion in question, I rely on your impartiality to give them a place in your next number; and, regretting that I could not compress my statement into a smaller compass,

I remain sir, yours, &c.,

JOHN SLADE.

Yeovil, 16th April, 1852.

Query.

CHURCH RATES.

WOULD any of your numerous readers kindly inform me whether glebe lands are liable to pay church-rates? A SUBSCRIBER.

14th April, 1852.

LAW OF SETTLEMENT.—The guardians and other officers of the East, West, and City of London Unions have recently presented memorials to the Home Secretary and to the Poor-Law Board, complaining of the unjust, partial, and oppressive effect of the existing law of settlement and the rating for the relief of the poor, and praying for the introduction of a measure into Parliament of a more equitable distribution of these burdens. The President of the Poor-Law Board has replied to these memorials, and states in his answer that "The subject has been for some time under the consideration of this Board, and opinions have been obtained with reference to the general question of settlement and removal of the poor, from the inspectors under its directions, but it is so comprehensive, and requires so much consideration, that no steps can be taken at present to bring it under the consideration of Parliament."

ABOLITION OF GRAND JURIES.—On Wednesday, Sir F. Thesiger's Bill to abolish the grand jury system, and also indictments within the jurisdiction of the Central Criminal Court, and within the Metropolitan Police District, was printed. In lieu of indictments informations are to be filed and the charges to be tried. A day is to be named when the alterations are to commence.

COUNTY ELECTIONS.—On Saturday a return to Parliament was printed, shewing the polling at contested county elections since 1844, in which year the custody of the poll-books was given to the clerk of the Crown. The last contested county election stated in the document was on the 24th of February last at Bedford, when 2,120 polled—1,717 on the first day, and 403 on the second. Mr. Alcock, M.P. who moved for the return, required the numbers polled to given from 1840 in each day, but the order could not be complied with, as the clerk of the Crown had not the custody of the books before 1844.

AMENDMENT OF THE CRIMINAL LAW.—On Wednesday, a Bill, now in the House of Commons, was printed, prepared by the Attorney-General, by which it is proposed to "amend" the criminal law, by empowering magistrates within the jurisdiction of the Central Criminal Court and the Metropolitan Police District, to imprison persons for a period not exceeding six months, for uttering counterfeit coin, or he may send the case to the sessions. In larcenies and misdemeanours, where the offence is confessed and summary punishment is desired, magistrates may imprison with or without hard labour for a period not exceeding twelve months.

JOINT-STOCK COMPANIES' LAW JOURNAL.

THERE has been a pause in the stream of joint-stock companies' cases, which a few months since occupied the larger portion of our columns of reports. Last week presented one only. In *Stuart* v. *The London and North-Western Railway Company*, 19 Law T. Rep. 43, the company had agreed with a landowner to buy so much of his land as should be required for the railway, at a fixed price per acre, in consideration of his not opposing their Bill, and the price as to one lot was to include consequent damages. The Bill passed, but the line was not made, and the company refused to perform the contract, contending that it was only conditional on the line being made. On a claim for specific performance, it was held, that the case was a proper one to be brought forward on a claim. The main question of the company's liability was not decided, but the reader will remember that, upon this question, there have been of late some decisions that appear considerably to modify the injustice of the law, as formerly understood.

WINDING UP.

THE LORDS JUSTICES have reversed the decision of Vice-Chancellor PARKER, in *Ex parte Manwaring*, 19 Law T. Rep. 42. The facts were, that on September 30, A.'s name was inserted in the list of provisional committee. The secretary informed him that, as such, he was entitled to 100 shares or a less number, on his signifying what number he would take. He wrote requesting 100 shares to be reserved for him. Afterwards, the secretary requested payment of the deposit on the 100 shares allotted. In reply, A. required information as to the deposits already paid, and stated that he would not hesitate to pay on being satisfied on the points inquired after. This was now held not to be an unconditional acceptance, and that A. was *not* a contributory. It seems, therefore, that to constitute liability, there must be an *absolute and unqualified acceptance of shares.*

CAMERON'S COALBROOK AND LOUGHOR RAILWAY.—Tuesday the claim of 4,000*l.* on behalf of the Law Life Assurance Company was brought in and discussed.

CAMBORNE CONSOLS MINING COMPANY.—Friday a meeting in this matter was held before Master in Chancery Richards, when candidates were proposed to fill the office of official manager. The Master postponed his decision as to the appointment.

CAMBORNE CONSOLS MINING COMPANY.—On Wednesday a numerous meeting in this matter was held before Master Richards, to appoint an official manager to settle and wind up its affairs and liabilities, which amount to about 7,000*l.* Mr. Bagshawe proposed Mr. Harding, Mr. Roxburgh, Mr. Turquand; Mr. Torr proposed Mr. Quilter; and Mr. H. Harris proposed Mr. Wryghte. Major Tyndal and Captain Harriott, two of the directors, were examined, and deposed that being unable to carry on the company's concerns, they had presented the petition to wind it up. After considerable discussion, the Master appointed Mr. Wryghte official manager, with Mr. Harris as his solicitor.

UNIVERSAL GAS LIGHT COMPANY.—A call of 10*l.* 10*s.* is required, to pay off the liabilities of this abortive company.

MONMOUTHSHIRE AND GLAMORGANSHIRE BANKING COMPANY.—The official managers appointed to wind up the affairs of this ill-fated company have issued a circular to the proprietors, calling for a payment of 60*l.* per share. It is expected by many that the whole of this amount will not be required, and that there will be some return ultimately made.

IMPERIAL SALT AND ALCALI COMPANY.—On Friday, the claim of Captain S. T. Jones, amounting to 2,000*l.* in respect of a patent alleged to have been sold by him to the company, was further considered by Master Tinney, who named a day on which he would disallow the demand, if Captain Jones did not produce further evidence.

MONMOUTH AND GLAMORGAN BANKING COMPANY.—At a meeting in this matter, on Saturday before Master Farrer, the managing accountant, Mr. M'Creeth, set forth that a call of 60*l.* per share would be necessary towards defraying liabilities, and the Master directed a meeting to be called for the 27th inst. to discuss it and determine on it.

BOSTON, NEWARK, AND SHEFFIELD RAILWAY. On Saturday, before Master Richards, Mr. Goderich, Solicitor, was examined on the affairs of this company, in respect of which the directors received a sum of 168,000*l.* from the shareholders in the shape of deposits, and for the application of which, the scheme not having been carried out, it is now sought to call on them to account.

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

Camborne Consols Mining Company.—Appointment of Mr. W. C. Wryghte, of 4, Sambrook-court, Basinghall-street, to be official manager. (April 21.)—Richards.

Cameron's Coalbrook Steam Coal and Loughor Railway Company.—To settle list of contributories, on 10th May.—Richards.

Hull Glass Company.—To settle list of contributories on 25th and 26th May.—Farrer.

Monmouthshire and Glamorganshire Banking Company.—Call on contributories of 60*l.* per share on 27th April.—Farrer.

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

A WIFE is entitled to a settlement out of her absolute equitable choses in action, whether against her husband or against his assignees in bankruptcy or insolvency, or against a particular assignee for valuable consideration. As respects the husband, the wife's claim to a settlement is considered a clear equity, and as respects those claiming under him, the rule applies that the assignee must take, subject to the equities of his assignor. Where a wife had joined her husband in assigning her reversionary interest in stock, and the assignee obtained a stop order, and the husband became insolvent, she was held to be entitled to have the whole fund settled on herself and children. (*Scott* v. *Spashett*, 19 Law T. Rep. 37.)

It is long since we have seen a new case on the old law of *hotchpot*. Last week's reports supplied one. A. devised his residuary estate, to be divided among his six children, and proceeded thus:—"And I direct that, in order to equalize my said residuary estate amongst my said six children, in case it shall appear by my private ledger that any or either of them my said children, &c. are indebted to me at my decease in any sum of money, such debt shall be considered as forming part of my residuary estate, and the shares of my said children shall respectively become liable to pay such debt." One of his sons owed him a large debt, but part of it was barred by the Statute of Limitations; it was, however, held, that *the whole* must be paid out of his share, and that it was a hotchpot clause. (*Rose* v. *Gould*, 19 Law T. Rep. 42.)

Another case on the construction of a will is reported from the Court of Error. In *Challis* v. *Evers*, 19 Law T. Rep. 47, C. devised real estates to his daughter B. for life, and after her death, to such of her children, if males, who should attain twenty-three; if females, who should live to the age of twenty-one, their heirs and assigns, as tenants in common; and in case all the children of B. should die under those ages, or if she had none, then to his son J. and his daughters S. and A. for their lives, and on their decease, the share of such of them so dying unto his or their children, if males, living to twenty-three, or daughters living to twenty-one, in fee. And in case of the death of J. or S. or A. without leaving a child who should, if a male, attain twenty-three, or if a female, attain twenty-one, then he gave the parts such children would have been entitled to, to the child or children of J., S. and A. having issue, if sons, living to the age of twenty-three; if daughters, to the age of twenty-one. B. died, having had no child, and afterwards A. died, never having had a child. S. and J. had several children who attained the prescribed ages. The devise over to the children of J. and S. after the death of A. was void for remoteness. It would have been valid if it had been a devise over in the single event of A. having no child at all; but as it *also* included the event of A having a child and the child dying under the prescribed age, it was void altogether.

A case under the *Wills Act* is reported from the Oxford Circuit. In *Doe dem. Caldwell* v. *Lee*, 19 Law T. Rep. 49, it appeared that the testator having requested B. to write his (testator's) name as his signature to his will, being unable through illness to do so, which B. did, and he and two others signed their names as attesting the execution, and B. subsequently affixed and signed the following—"Memorandum, I, B. signed the testator's name at his request." It was held by WIGHTMAN, J. to be *duly executed*.

In the Prerogative Court, in the case of *Brenchley* v. *Lynn*, 19 Law T. Rep. 50, a married woman made a will under powers contained in her mother's will and her marriage settlement, and covenanted not to revoke or alter such will. Afterwards she made several wills, and finally executed a codicil by which she revoked all former wills, and declared her intention to die intestate, and that her property should go to her next of kin according to the statute. This codicil was held to be a testamentary instrument, and entitled to probate.

COPYHOLD ENFRANCHISEMENT BILL.

OBSERVATIONS.

THE 1st section of the Bill provides that enfranchisements shall not take place until after the next admittance subsequently to the 1st July, 1853. This provision will operate unjustly upon copyhold tenants, as it will secure to the lords of manors where the fines, as in most cases, are arbitrary, a fine of two years' value previously to enfranchisement, and will also defer enfranchisements to a very lengthened period where the tenants are young and retain their estates.

It would be a fair principle of commutation to fix a standard value for the lord's interest, subject to increase or diminution, according to the age of the tenant. Supposing five years' net annual value to form the difference in value between freehold and copyhold estates, the standard of value might be fixed accordingly, and the variations regulated by percentage allowances calculated for periods of five or ten years each, and stated in a schedule to the Bill. The age of thirty-five would probably be deemed a fair pivot-point. The leading principles and terms of commutation would thus be at once settled by the Bill, and the annual value being adjusted by the rents, the troublesome and costly machinery of valuations would in nine cases out of ten be rendered unnecessary. The enfranchisements would then be proceeded with on the passing of the Bill. All special cases should be reserved for the consideration and decision of the commissioners.

The 8th section provides that the enfranchisement compensation shall be a *first* charge on the lands enfranchised.

The 13th section provides that the first charge shall have priority over all mortgages, charges, and incumbrances (tithe rent-charge excepted). The 21st section enables the lord to take possession of the lands enfranchised in default of payment of the enfranchisement money; and the following section authorises them to grant leases for seven years. The interests of mortgagees will be very materially prejudiced by these provisions. At present the lord of a manor can only recover his fine from the tenant by a suit at law. He has no charge on the land; but if these provisions remain in the Bill, the powers of the mortgagees to enforce their securities will be much weakened, and in a variety of instances, especially in cases of second mortgages and incumbrances, their interests may be entirely sacrificed. Copyhold estates will become much depressed in value and difficult of sale, and ineligible for mortgage securities.

The 20th section provides that the valuers shall take into account facilities for improvement. Under this provision of the Bill—that of giving to the tenant the benefit of future improvements—will be defeated. Besides which, the provision seems too indefinite and speculative. A valuer may imagine that the property is eligibly situate for building purposes; but the tenant may not contemplate dealing with it in that way, and may be decidedly averse to it. The lord in that case derive a profit from the estate not produced by it.

The 10th section should subject the decision of the copyhold commissioners to an appeal to a Court of law, in the manner provided by the Tithe Acts. Very important questions on the customs of manors affecting the relative interests of lords and tenants will constantly arise, and which ought not to be finally dealt with, except by the higher legal tribunals.

The 23rd section provides that in cases where the amount of the steward's compensation shall not be directed by the commissioners, the stewards shall be entitled to such a sum as will amount to one set of fees on surrender and admittance *for each of the tenements* included in such enfranchisement. A set of fees it is considered will average 5*l.* or 6*l.*

Now, in many manors, especially those which extend into parishes inclosed under modern Acts of Parliament, the subdivision of properties is very minute, comprising very frequently portions, even to a third and a fourth, of a rood of land, and which are regarded as distinct tenements, and so dealt with by the stewards.

It is by no means an uncommon occurrence for a person to be owner of from 50 to 100 tenements, and unless, therefore, the steward's claims should happen to be restrained by the commissioners, the commutation of fees will, in large manors, amount to enormous sums. And it is feared the commissioners might consider the steward's compensations settled on the basis of one set of fees for each tenement.

The 6th section should be extended so as to give the copyhold tenants a full right to investigate, free of cost as to the inspection of the court books, the customs of the manors and the titles to the lands to be enfranchised on all occasions when they may require to exercise it.

THE NEW WILLS ACT.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I have ventured with all deference to suggest the enclosed form, in lieu of your extract from the proposed alteration of the Wills Act. I would also ask,—would it not be desirable that "cancellation" should be made one of the means of revocation? As the Act now stands (sec. 20), "burning, tearing, or otherwise destroying" are the only modes of revoking a will. A will was struck through transversely, and "cancelled" written on it by the testator, still it was held to be unrevoked. This occurred very recently.

Again, the latter part of the 21st section of the present Act, which treats of alteration, enacts, "That a will, with the alterations it contains as a part thereof, shall be deemed to be duly executed if the signature of the testator, and the subscription of the witnesses be made in the margin," &c. Now, those words are open to the construction that a will, provided it contains alterations, may be executed in a different manner from that required by the 9th section,—*e. g.* by the 21st section it is not necessary that the testator and the attesting witnesses should each and all sign in the joint presence of each other, whereas the 9th section strictly enjoins their so doing. Might it not be of advantage to call the attention of those who have charge of the Bill in the Commons to these statements?

I am, Sir, yours, &c.

ONE ACQUAINTED WITH THE OPERATION OF THE PRESENT WILLS ACT.

"Whereas by an Act passed in the seventh year of the reign of his late Majesty Wm. 4 and the 1st year of the reign of her present Majesty Queen Victoria, intituled 'An Act for the Amendment of the Law with respect to Wills,' it was among other things declared, 'that no will shall be valid unless it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction;' and whereas doubts have arisen as to the meaning and intention of the words 'signed at the foot or end:' Be it therefore enacted, that every will shall be deemed to have been signed at the foot or end thereof, provided the signature of the testator shall be placed either immediately after the concluding words of such will, or in the margin of such will by the side of such words, or in either the testimonium or attestation clause, or by the side, or at the end of either of them, or above or below or by the side of, or between the names of the attesting witnesses to such will, or on any other part of the paper or other material on which such will shall be written, notwithstanding any blank space may intervene between the concluding words of such will, or the testimonium and attestation clause, or either of them, and the signature of the testator, and notwithstanding no part of the will, or of the testimonium or attestation clause be written on the same page or part of the paper or other material on which the will shall be written, as that on which such signature shall be placed; provided always, nevertheless, that no will or codicil, or any part thereof, or either of them, shall be valid, unless such

will or codicil, or such part thereof, shall have been written and concluded before the signature of the testator, together with that of the attesting witnesses, shall be placed thereto. And be it further enacted, that every will, apparently on the face of it signed within the provisions above named, shall be deemed to have been duly executed, unless it be proved by evidence upon the will, that such provisions have not been complied with; and that the onus of such proof shall lie on those who deny the due execution of such will."

Query.

LAW OF STAMPS.

In Mr. Hughes's work on the New Stamp Act, p. 78, under the head "Lease," he says, "The deed stamp is only applicable to assignments or surrenders where no consideration, or only a nominal one, is expressed."

Yet I find at p. 82, being part of the schedule of the Act, under the same head :—

"*Lease.*—Any assignment or surrender of a lease upon any *other* occasion than a sale or mortgage, duty equal to the ad valorem duty with which a similar lease would be chargeable under this Act; but in no case exceeding 35s."

I, therefore, apprehend that voluntary assignments of leases will only require the duty *applicable to such leases* under this Act. But I should be glad to be informed whether the same rule would apply to a voluntary conveyance *of a freehold lease*, it being remembered that at page 82 we only find the words "assignment" and "surrender," while an interest in leaseholds for lives is conveyed by re lease and not assignment.

The assistance of your readers on both points will oblige L. E. T.

PRACTICE.—COPYHOLDS.

Is it the practice for the assignees of a bankrupt or insolvent to be admitted to copyholds, and in case of non-admittance, is a double fine payable by the purchaser? It would seem not. J. L. S.

Answers to Queries.

PREPARING LEASES.

That the lessor's solicitor has "the right" to prepare the leases appears clear from the case of *Grissell* v. *Robinson*, 1 Bing. N. C. 10 S. C.; 5 L. J. Reports, N. S. 313, C. P.

In a case noticed in the first volume of the *Legal Observer* for 1844, p. 308, the lessor's solicitor was only allowed on taxation, "*such items as a lessee was liable to pay*," and not such "*as would be lessor's costs.*" I should be glad of an explanation what is meant by these last. R. G. S.

PREPARING LEASES.

It is "the custom" for the lessor's attorney to prepare the lease at the expense of the lessee; but I do not see how the lessor's attorney can claim it as "a right." I take it that the only way of enforcing the custom is by the lessor refusing to grant the lease unless it is prepared by his attorney. All the cases are cited in 2 Platt on Leases, p. 539.

14th April, 1852. G. W. G.

Duchy of Cornwall.—A return printed by order of the House of Commons, showing the receipts and disbursements of the Duchy of Cornwall, for the year ending 31st December, 1851, includes under the head of receipts, among other items, 8,609*l.* 15s. balance at the bankers, to the credit of the account of the council of his Royal Highness the Prince of Wales, on 31st December, 1850; rents and profits of courts, 27,018*l.* 9s. 7¾d.; produce of the royalties of coal mines in Somerset, and royalties and reservations of dues and rents of mines and quarries in Cornwall and Devon, 7,142*l.* 5s. 11d.; and annuity received from the consolidated fund under 1 & 2 Vict. c. 120, in lieu of tin coinage duties, post-groats, and white rents, 16,216*l.* 15s.; total receipts, 61,272*l.* 2s. 7d. The disbursements amounting to the whole to 53,595*l.* 16s. 2d., include, among other items, 39,902*l.* 10s. payment made to the trustees and treasurer of his Royal Highness, and 13,061*l.* 11s. 2d. for salaries, superannuation allowances and annuities, donations and charities, law charges, tithes, rates, taxes, income tax, and other incidental charges; leaving a balance on the 31st December last of 7,676*l.* 6s. 5d.

COUNTY COURTS.

Summary.

The Lord Chancellor has announced that he must reluctantly stay the progress of the County Courts Extension Bill, or at least of so much of it as relates to an equity jurisdiction, until his own measure of Chancery reform becomes law, as he is not sure whether the provisions of the two Bills might not conflict. This is not an unreasonable suggestion under present circumstances, and therefore so much of the Extension Bill in the Commons as relates to an equity jurisdiction must be deferred for the present. But it does not follow that the whole Bill should be withdrawn. It contains many provisions of great worth for the amendment of the practice of the County Courts, which have no connection whatever with that portion of the Bill sought to be deferred by the Lord Chancellor, and we hope that Mr. Fitzroy will not consent to the abandonment of the whole, because it is deemed desirable to expunge a part. The defects in the practical working of the County Courts which those provisions were framed to cure, are very serious impediments to justice, and their removal would be a great boon to the suitors, and to the Profession, and we therefore trust that Mr. Fitzroy will proceed with the bill, merely omitting the equity clauses, so that it may become law during the present session. In truth, the amendment of procedure clauses are practically of vastly more value than those which contemplate extension. An original equity jurisdiction would be an invaluable boon. But that is not contemplated by the Bill now before Parliament; it only gives to the judges the powers of the Masters' offices in such matters as the Courts above might remit to them. It was not expected that much use would be made of them, and their loss will not be regretted. But all would lament the postponement of the clauses that proposed to cure defects in the practice of the County Courts, the evils of which are daily experienced by all who appear there, whether as suitors or as lawyers.

A single case only is to be noted in *Macrae's Practice of Insolvency*. In *Re Bingham*, 19 Law T. Rep. 48, it was held that a petitioner who had lost his protection for not appearing at an adjourned examination, and being thereupon taken into custody by his creditors, must apply for discharge under the 28th, and not under the 6th, section of 7 & 8 Vict. c. 96.

Retiring Pensions to County Court Judges —The following new provision appears in the amended County Courts Further Extension Bill, which has just been printed. The Bill has passed the Lords, and the provision was added in committee by the Commons:—"That it shall be lawful for the Lord Chancellor, by any order or orders to be made by him from time to time, on a petition presented to him for that purpose, to order that there shall be paid quarterly out of the Consolidated Fund of Great Britain and Ireland to such of the judges of the County Courts as shall be afflicted with some permanent infirmity, disabling him from the due execution of his office, and who shall be desirous of resigning the same, an annuity or clear yearly sum of money for the term of his life, not exceeding two-thirds of the yearly salary which such judge shall be entitled to as a judge of a County Court at the time of presenting his petition."

THE LAWYER.

Summary.

Equity Practice.—In the case of *Re Cumming*, 19 Law T. Rep. 38, which has been reported at unusual length in consequence of its interest and importance, Lord St. Leonards has held that an inquisition in lunacy is traversable as a matter *of right*. His lordship personally examined the alleged lunatic, and obtained from her own lips the expression of her wish for a rehearing. The Lords Justices fully assented to the judgment.

In *Naylor* v. *Robson*, 19 Law T. Rep. 42, a supplemental claim was allowed to be filed for the purpose of correcting errors committed in carrying out the proceedings under an original claim; and in *Cooper* v. *Knox*, 19 Law T. Rep. 42, it was held that an application to discharge an order of course, obtained at the Rolls, ought to be made to the Court to which the cause is attached.

Two cases as to *Costs* are reported from Vice-Chancellor Parker's Court. It suffices to note them, without repeating them here; they will be found at p. 44; and the same remark applies to *Ex parte Wise*, 19 Law T. Rep. 44, which is a point of practice under the Trustee Act.

Common Law.—A point in *Evidence* is reported from the Circuits. It was a plea of *non tenuit* to an avowry for rent by the representatives of the heir-at-law of the lessor. The plaintiff set up the lessor's will, executed previously to the Wills Act, to defeat the heir's title. The defendants were permitted in reply to give evidence of the ancestor's purchase-deed, executed subsequently to the date of the will. (*Brown* v. *Ward*, 19 Law T. Rep. 49.)

REMOVAL OF THE COURTS FROM WESTMINSTER.

TO THE EDITOR OF THE TIMES.

Sir,—The recent petition of the Incorporated Law Society for the removal of all the Courts from Westminister to their natural locality of the inns of court has again drawn the public attention to this subject. That petition contains abundant and most forcible reasons for the change, but there is one omitted which I think will be of great weight with all law reformers. The fusion of law and equity, or, in other words, the administration of justice by one harmonious system, is daily gaining supporters; and the union of all the courts under one roof would most materially forward this desirable object. Each branch of the bar would then know more of the other, and would learn by actual experience the respective merits and defects of both systems. If, as is certain, the Common Law Courts will possess the power of granting injunctions, and of ordering specific performance, and on the other hand the Courts of Equity will avail themselves of *vivâ voce* examination of witnesses, the mere fact that all the Bar were close at hand would insure to litigants the attendance of counsel fully qualified for all their duties. Each would learn of the other, and each would be competing with the other, and the Profession no less than the public would be the gainers. Now, the mere distance often compels the suitor to forego the advantage of the counsel best qualified for his particular cause. The public may rely upon it the separation of the systems would not long survive the opening of the new palace of justice.

Trusting you may consider this hint worthy of insertion in your columns,

I remain, Sir, yours, &c.

Temple, A Barrister.

THE MERCANTILE LAWYER.

Summary.

A curious question on the application of the Statute of Limitations to Bills of Exchange was decided in *Webster* v. *Kirk*, 19 Law T. Rep. 46. An action was brought by the payee against the acceptor of three bills of exchange, to which the Statute of Limitations was pleaded. The facts were, that a brother of the drawer had been indebted to a banking company, to the plaintiff, and to the defendant; the bills had been drawn, in pursuance of an arrangement, by defendant on his brother, payable to the plaintiff, and then handed to the banking company. They fell due on 4th May, 1843; the company brought an action on them against the plaintiff in 1847, and signed judgment in December 1850. Early in 1851 plaintiff settled that action, and afterwards, in April 1851, the present action was commenced. It was held to be barred by the statute.

In *Bankruptcy*, a point is reported from the Appeal Court. It was held by the Lords Justices, that the Attorney of a creditor who has proved cannot, as a matter of right, demand under the 232nd section of the Act, to inspect the documents on which the adjudication is founded, for the purpose of impeaching its validity, "a *discretion* must be exercised as to the *reasonableness* of the application."

Scottish and Amicable Life Assurance Society.—London Offices, 43, Lombard-street.—At the Annual Meeting there was reported as new business in 1851,—policies, 1,079; income therefrom, 16,345*l.*; net increase after deducting all claims, surrenders, &c. policies, 882; net increase of income, 13,103*l.* The above is exclusive of all single premiums for annuities, &c. The present bonus is two per cent. per annum. Applications for agencies in town and country to be made to the resident Secretary in London.

LEGAL INTELLIGENCE.

The *Limerick Chronicle* says that Judge Perrin fined the sheriff of Dundalk 50*l.* for not having a dinner ready for him at the opening of the assizes.

Mr. Alfred Hill, managing clerk to the principal legal firm at Bridgewater, has absconded with 3,000*l.* in cash, the moneys of his employer.

INDISPOSITION OF THE LORD CHANCELLOR.—We are sorry to learn that the Lord Chancellor, who had been slightly unwell for some few days past, was seized in the course of last night with severe muscular pains in the back, and that he still continues suffering on the exertion of moving. Sir Benjamin Brodie and Dr. Owen Evans are in attendance on his lordship, and we trust he will soon be able to resume his judicial functions.—*Standard.*

JOURNAL OF PROPERTY.

MONEY MARKET.

ENGLISH FUNDS.	Sat.	Mon.		W	urs.	
Bank Stock	219½	220	220	219¼	220	219½
3 ⅌ Cent. Reduced Annuities	98¾	98¾	98¾		98¾	99⅛
3 ⅌ Cent. Consols Annuities	99⅛	99⅛	99⅛		99⅛	99¼
Consols for Account	99¼	99¼	99¼		99⅜	99¼
New 5 ⅌ Cent. Annuities ..			126			
New 3½ ⅌ Cent. Annuities ..	100⅛	100⅛	100⅛	100⅛	100⅛	100⅛
Long Annu. (exp. Jan. 5, 1860)	6⅝	6⅝	6⅝	7	6⅝	6⅝
Do. 30 yrs. (exp. Oct. 10, 1859)	6⅝			6⅝	6⅝	..
Do. 30 yrs. (exp. Jan. 5, 1860)	7			7	7	7
India Stock						
India Bonds (1,000*l.*)	83	86			86	85*
Do. do. (under 1,000*l.*)....	83	86	86			84*
South Sea Stock............	10¼	..	..		110⅛	110⅛
Do. do. New Annuities ..	..	..	..		98⅞	
Exchequer Bills, 1,000*l.*	68*	74*	68			
Do. do. 500*l.*	67*	65*	..			
Do. do. Small	67*	65*	74*			

* Premium.

THE GAZETTES.

Bankrupts.

Gazette, April 20.

BYRNE, PATRICK, tailor, Liverpool, May 4 and June 2, at eleven, Liverpool. Off. as. Cazenove. Sol. Yates, jun. Liverpool. Petition, April 17.

DARKIE, WILLIAM JOHN, and PORTER, JAMES, carpenters, Hayfield-place, Mile-end-road, May 4, at two, May 31, at eleven, Basinghall-st. Off. as. Edwards Sols. Surr and Gribble, Lombard st. Petition, April 8.

DAWSON, JOHN, surgeon, Tolleshunt Darcy, Essex, April 30, at half past eleven, June 4, at eleven, Basinghall-st. Off. as. Nicholson. Sol. Abell, Westminster and Colchester. Petition, April 17.

FOURACRE, MARY, innkeeper, Wigan, Lancashire, May 1 and 27, at twelve, Manchester. Off. as Mackenzie. Sol. Price, Wigan. Petition, April 14.

HODGE, WILLIAM, wholesale manufacturing stationer, Great Marlborough-st. Westminster, May 5 and June 8 at one, Basinghall-st. Off. as. Stansfeld Sols. Messrs. Linklater, Bucklersbury. Petition, April 20.

SPETTIGUE, EDMUND, and FARRANCE, GEORGE, booksellers, Chancery-lane, April 30 and June 4, at eleven, Basinghall-st. Off. as. Cannan. Sols. Tilson and Co. Coleman-st. Petition, April 17.

WATKINS, JOHN HINTS, grocer, Woolwich, April 29, at twelve, May 27, at eleven, Basinghall-st. Off. as. Bell. Sol. Batho, America-square. Petition, April 16.

Gazette, April 23.

BATES, HENRY, and WILLIAMSON, HENRY, common brewers, Warley, Halifax, May 24, at twelve, Leeds. Com. Ayrton. Off. as. Hope. Sols. Wavell, Philbrick, and Foster, Halifax. Petition, April 20

FOURACRE, MARY, innkeeper and colliery proprietor, Wigan, Lancashire, and of Standish-with-Langtree (and not Langhee, as before advertised), May 1 and 27, at twelve, Manchester. Off. as. Mackenzie. Sol. Price, Wigan. Petition, April 14.

LACY, JOHN GEORGE, gun manufacturer, Great Saint Helen's, Bishopsgate-st. May 1, at half-past one, June 12, at half-past eleven, Basinghall-st. Com Goulburn. Off. as. Pennell. Sols. Reed, Langford, and Marsden, Friday-st. Petition, April 23.

LAING, JAMES, coal merchant, Southampton, May 4, at one, June 8, at twelve, Basinghall-st Com. Fonblanque. Off. as. Graham. Sol. Harle, Southampton-buildings, and Philipson, Newcastle-upon-Tyne. Petition, April 14.

LAMPLOUGH, HENRY, chemist and druggist, Hamilton-place, New-road, May 1, at eleven, June 4, at twelve, Basinghall st. Com. Fane. Off. as. Cannan. Sols. Langley and Gibbon, Great James-st. Bedford-row. Petition, April 20.

LODER, WILLIAM, innkeeper and victualler, Wokingham, Berks, May 6, at two, June 8, at twelve, Basinghall-st. Com. Holroyd. Off. as. Groom. Sol. Soames, Old Broad-st.; and Wokingham, Berks. Petition, April 15.

MEEK, JOHN, victualler, Wolverhampton, May 3 and 24, at half-past ten, Birmingham. Com. Balguy. Off as. Bittleston. Sols. Kitson, Wolverhampton; and Motteram, Knight, and Emmet, Birmingham. Petition, April 19.

PEARCE, THOMAS, and THACKRAY, WILLIAM, timber merchants, Sunderland, May 11 and June 10, at twelve, Newcastle-upon-Tyne. Com. Ellison. Off as. Wakley. Sols. Messrs. Moore, 1, Hutchinson's-buildings, Bishop-wearmouth. Petition, April 15.

TODD, RICHARD WILSON, and HOBBS, RICHARD, ironmongers, Bath, May 6 and June 3, at eleven, Bristol. Com. Hill. Off. as. Miller. Sol. Hellings. Bath. Petition, April 20.

WELSH, THOMAS, joiner and builder, Burslem, Staffordshire, May 5 and 27, at half-past eleven, Birmingham. Com. Daniell. Off. as. Christie. Sols. Smith, Shelton, Staffordshire; and Motteram, Knight, and Emmet, Birmingham. Petition, April 14.

YANDALL, ELIZABETH ANN, inn-keeper and lodging-house keeper, Bath, May 7 and June 2, at eleven, Bristol. Com. Stephen. Off. as. Hutton Sol. Hellings, Bath. Petition, April 22.

BANKRUPTCY ANNULLED.

Gazette, April 20.

Cooke, H. hatter, Leamington Priors, Warwickshire

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Rufford, P. and *Wragge*, C. J. bankers, first, 1s. 6d. Whitmore, Birmingham.—*Webb*, G. and A. T. wine merchants, second, 2d. Groom, London.

INSOLVENTS' ESTATES.

Fry, R. 9s. Apply at the County Court, Torrington.—*Adams*, W J. printer, &c. 1s. 7½d. Apply to P. Hubbersty, Winksworth.

Assignments for the Benefit of Creditors.

Gazette, April 13.

Dunstan and *Hicks*, April 5. Trusts. E. B. Tweedy, esq. Falmouth; J. B. Read, Penryn; and W. Crouch, jun. gentleman, Falmouth. Sols. Smith and Roberts, Truro.—*Parnell*, J. grocer and tea dealer, Norton Folgate, March 2. Trusts. H. Constable, Great Tower-st. and F. Hicks, wholesale grocers, Mincing-lane. Sols. Sturmy, Simpson, and Bousfield, Philpot-lane.—*Shoosmith*, J. cattle salesman and appraiser, Eastbourne, Sussex, March 15. Trusts. R. B. Stone, draper and grocer, J. Haine, builder, both of Eastbourne, and G. Filder, grocer, Falmer. Sol. A. Whiteman, Eastbourne.—*Silverlock*, W. looking-glass manufacturer, Frith-st. Soho, March 17. Trusts. G. Sims, plate glass dealer, Aldersgate-st.; W. Borrow, gentleman, Savoy-st.; and H. Christie, gentleman, Hatton-garden. Sol. W. J. Barrett, Bell-yard, Doctors'-commons.

Gazette, April 16.

Barlow, C. patent agent, Chancery-lane, March 25. Trusts. W. Ward, printer's-ink manufacturer, Great New-st. Fetter-lane, and C. Barlow, gentleman, Serampore-terrace, Hammersmith. Sol. H. B. Clarke, Serjeant's-inn, Fleet-st.—*Condron*, C. silk manufacturer, Macclesfield, March 24. Trusts W. Fisher, Union-court, Old Broad-st. and W. Bullock, Macclesfield, silkmen. Sols. Brocklehursts and Bagshaw, Macclesfield.—*Hagger*, J. tallow chandler, New Brentford, March 1. Trust. E. Shackel, butcher, Old Brentford. Sol. T. Angell, Watling-st.—*Hoare*, W. plumber, Bath, March 26. Trusts. W. M Mackreth, Bristol, S. Cook, jun. plasterer and tiler, and J. Lester, timber merchant, both of Bath. Sol. J. F. Goodridge, Bath.—*Prestage*, F. brassfounder, Deptford, April 12. Trusts I. D. Le Mare, merchant, Basinghall-st. and F. Moser, ironmonger, High-st. Southwark. Sols. Walters and Son, Basinghall-st.—*Price*, S. livery-stable keeper, Prince's-mews, Lansdown road, and Fountain-buildings, Bath, Feb. 23. Trust. T. Symes, oil merchant, Bath. Sol. G. Cox, Bath.—*Thompson*, A. ship owner and sail maker, South Shields, March 20 Trusts. R Scurfield, ship owner, Sunderland, T. R. Edridge, ship broker, Fenchurch-st. and C. Allhusen, merchant, Gateshead Sols. W. Murray, London-st.; H. Shield, Clement's-lane, Lombard-st.; J. Fenwick, Newcastle; and G. Scurfield, Bishop Wearmouth.—*Williams*, H. upholsterer, Berners-st Oxford-st March 30 Trusts. E. Campion, farmer, Barking Side, and C. Nitingale, feather-bed manufacturer, Wardour-st. Oxford-st. Sols. Messrs. Hilloary, Fenchurch-st.

Partnerships Dissolved.

Gazette, April 6.

Arter, I. and *Douglas*, T. tailors and drapers, Bath, March 25.—*Barnes*, C. T and *Kerridge*, F. A. cheesemongers, Oxford-st. March 25. Debts paid by Barnes.—*Bates*, T. and *Sheard*, S. and J. millwrights and engineers, Halifax, April 3. Debts paid by J. Hoyle and C. Crossley, Halifax.—*Branford*, R and *Palmer*, J. H. jun. millers, Southtown, otherwise Little Yarmouth, April 5. Debts paid by Palmer.—*Branson*, T. and *Billinge*, A. confidential medical advisers, Bradford, March 30.—*Burgis*, S. and *Howell*, W. butchers, High-st. Norwood, Lambeth, March 31. Debts paid by Burgis.—*Burrell*, J. and H. N chemists and druggists, Wakefield, Aug. 16.—*Cartwright*, H *Nelson*, T. and *Bower*, W paper manufacturers and farmers, Orsdall, March 30.—*Clare*, J. and *Farrer*, J. tin-plate workers and gas-fitters, Salford, March 26. Debts paid by Farrer.—*Clegg*, R., T., W., and R. cotton spinners and manufacturers, Heywood and Manchester, March 20.—*Dalton*, J. and J. carpenters and joiners, Almondbury, March 31. Debts paid by Job Dalton.—*Finnis*, R. and F. ship store merchants and export oilman, Lime-st April 2. Debts paid by R Finnis.—*Graham*, J. and *Gray*, H. wine merchants, Arthur-st. west, March 1. Debts paid by Graham.—*Harrison*, J. L. *Stock*, A. *Clough*, S. and *Barrow*, J. B. coal proprietors, Ashton, Mackerfield, March 31, as regards Stock. Debts paid by remaining partners.—*Harvey*, R. W. and *Martin*, R N. dealers in mundic guano, Chacewater, March 30.—*Hotine*, B. and J. fishmongers, Lime-st.-passage, April 3. Debts paid by B. Hotine.—*Hughes*, T. and *Parry*, D. woollen drapers, Liverpool, March 20.—*Huxham*, J. B. C. and *Jackson*, R. E. solicitors, Lincoln's-inn-fields, March 25.—*Hynes*, P. J. and *Popham*, B. F. surgeons and medical doctors, Beeston, May 31. Debts paid by Hynes.—*Lambert*, A., J R. and S fruit merchants, Kingston-upon-Hull, April 3.—*Lambert*, J. R. and *Andrew*, R. ship and insurance brokers and commission agents, Kingston-upon-Hull, March 27.—*Lambert*, S. and J. R dealers in ship stores and grocers, Kingston-upon-Hull, April 3.—*Lawley*, G. and *Pocock*, G J M. wine and spirit merchants, Oxford-st. April 2. Debts paid by Lawley.—*Machell*, J. and W. corn merchants, Preston, April 2.—*M'Coy*, M. and *Hanson*, J. emery, &c. manufacturers, Hulme, April 1. Debts paid by M'Coy.—*Milligan*, J. *Ebsworth*, R. M. and *Lempriere*, W. R. merchants, Liverpool, Dec. 31.—*Naudet*, J. B and *Gillet* L cooks and confectioners, Albany-st. Regent's-park, April 2. Debts paid by Naudet.—*Norris*, S. *Sykes*, J. and *Fisher*, J. T. manufacturers and merchants, Marsden and Huddersfield, Jan. 2.—*Pilkington*, T. sen. and T. jun. woollen manufacturers and cotton spinners, Bury, Dec. 31.—*Sambourne*, E. M. and *Bell*, R. furriers, Saint Paul's Churchyard, April 6.—*Sands*, T. and S. ...... mission agents and general merchants, Liverpool, Jan. 3.—*Spafford*, G. and *McConnel*, F. commission agents, Manchester, March 31.—*Thompson*, W. and *Simmons*, C. brush manufacturers and warehousemen, Blackman-st. Borough, March 11. Debts paid by Thompson.—*Thornton*, E. L. and *Killick*, J. E. hosiers, glovers, and shirt makers, Ludgate-hill, April 1.—*Walker*, J. and H. J. chemists and druggists, Bath, Sept. 29.—*Waterhouse*, N. and *Gnosspelius*, A. J. merchants, Liverpool, April 1. Debts paid by Waterhouse.

Gazette, April 9.

Barber, G. and *Moon*, J. F. merchants and commission agents, Mark-lane, April 7. Debts paid by Barber.—*Chapman*, G. and C. G. wine merchants, Brewer-st. Golden-square, Jan. 1.—*Dawton*, S. and W. and *Blatchford*, J. paper makers, Aller, Newton Abbott, March 25. Debts paid by S. Dawton.—*Doucet*, E. and *Barlow*, S. French shirt makers, Regent-st. Dec. 31. Debts paid by Doucet.—*Duckworth*, N., *Mason*, J. and *Armstrong*, J. engravers to calico printers, Manchester, April 7. Debts paid by Duckworth and Armstrong.—*Fearfield*, J. and *Osborne*, J. lace manufacturers, Nottingham, April 3.—*Gadd*, E. and F. grocers and provision merchants, Chichester, April 3.—*Holmes*, W. and *Heywood*, J. worsted spinners, Bingley, April 5. Debts paid by Holmes.—*Horwood*, J. H. and *Watkins*, D. copper and steel plate printers, Upper Seymour-st. Euston-square, March 25.—*Lawe*, R. and *Sidgreaves*, J. bankers, Preston, Ormskirk, and Southport, March 25. Debts paid by Lawe.—*Mallinson*, J. and A. cloth merchants and provision dealers, Hillhouse, near Huddersfield, April 5. Debts paid by either.—*Marsden*, W., *Barker*, A. and *Marsden*, J. W. brass and iron moulders, Bradford, April 3. Debts paid by W. Marsden and Barker.—*Newey*, W. and T. grocers and provision dealers, Wolverhampton, April 5.—*Oldershaw*, J. and *Macqueen*, J. starch manufacturers, Nottingham, March 13.—*Parsons*, G. and *Terrill*, T. tin plate workers, Diddington-place, Islington, April 2. Debts paid by Terrill.—*Philbrick*, T. and *Tate*, F. S. surgeons and apothecaries, Louth, April 15.—*Pountney*, H. and *Cranstone*, G. ironfounders and engineers, Webber-st. Blackfriars, April 6. Debts paid by Pountney.—*Reeve*, F. and *Nichols*, J. printers and lithographers, Heathcock-court, Strand, Jan. 24.—*Relph*, T. and *Spedding*, M. wood hoop makers, Liverpool, April 6.—*Repton*, J. *Burrows*, J. and T. P. grocers and tallow chandlers, Stoke-upon-Trent, April 3. Debts paid by J. and T. P. Burrows.—*Ridley*, J. jun. and W. coal and timber merchants, Bury St. Edmund's, April 5.—*Robinson*, C. F. and Austin, W. R. wine and spirit merchants, King-st. Holborn, April 6.—*Scarlett*, G. and H. brewers and stone merchants, Huddersfield, March 2. Debts paid by either.—*Terry*, W. and J. and *Harrison*, J. and W. coal owners and miners, Birstal, March 31. Debts paid by either.—*Tofts*, J. and *Reeve*, T. millers, Hildersham, Sept. 30.

Gazette, April 13.

Bragg, T. P., T. and J. goldsmiths and jewellers, Birmingham, March 31. Debts paid by T. and J. Bragg.—*Burch*, G. and *Lucas*, J. tailors and drapers, King William-st. March 31. Debts paid by Burch.—*Constantine*, W. S. and *Ingham*, W. cabinet-makers, &c. Leeds, March 20. Debts paid by Ingham.—*Elkins*, S. S. and J. P silversmiths, &c. Salisbury-sq. April 1.—*Goodhall*, W. and *Roodhouse*, C. upholsterers and cabinet-makers, Leeds, April 10. Debts paid by Roodhouse.—*Grundy*, T. *Wright*, R. *Crossley*, J. and *Martin*, J. rice and corn millers, Liverpool, April 8.—*Hill*, W. (dec.) and T. and *Sutcliffe*, J. slate merchants, Bradford, April 6. Debts paid by T. Hill and Sutcliffe.—*Hindle*, J *Standeven*, T. and *Bates*, T. engineers and millwrights, Halifax, April 2. Debts paid by Standeven and Bates.—*Lafone*, S. and A. tanners, Liverpool, April 7.—*Lechevalier*, A. L. J. *Woodin*, J. and *Jones*, L Charlotte-st. Fitzroy-sq April 10.—*Marsh*, J. *White*, F. and *Haywood*, J. manufacturers of prussiate of potash, Wortley, Jan. 17.—*March*, W. *Illston*, G. F. and *Thickett*, J. ironfounders, Leicester, April 7. Debts paid by March and Illston.—*Moore*, J. and *Rigby*, W. Bolton-le-Moors, Feb. 23. Debts paid by Rigby.—*Parry*, B. and *Onions*, J. steam-engine and agricultural machine makers, Broomsgrove, April 2. Debts paid by Onions.—*Rossiter*, G. and G. F. wholesale clothiers, London-wall, April 12. Debts paid by G. F. Rossiter.—*Rowbotham*, J. and *Garner*, J. silk manufacturers, Manchester, April 8. Debts paid by Rowbotham. *Saul*, G. and R. P. coal proprietors, St. Helens, April 1.—*Servant*, A. and *Duffield*, W. cloth dressers, Leeds, April 1.—*Smith*, H. D. and *Boyle*, E. victuallers and wine and spirit merchants, Great Portland-street, April 7. Debts paid by Boyle.—*Turner*, J. and J. jun. brewers, Heneage-st. Brick-lane, April 12.—*Wheeler*, J. and *Astley*, S. manufacturers of corkscrews, boot hooks, &c. Birmingham, April 8. Debts paid by Wheeler.—*Widnall*, S. P. and *Dams*, T. nurserymen, &c. Cambridge, March 31. Debts paid by Widnall.—*Williams*, C. and *Stanley*, R. Hope-st. Hackney-road, April 6.

Gazette, April 16.

Brook, W. and J. stuff manufacturers and printers, Manchester, April 10.—*Castelli*, S. and *Giustiniani*, B. Constantinople, Dec. 31.—*Coate*, A. and H. and *Surell*, J. grocers and provision merchants, Sherborne, Dec. 31.—*Dawson*, S. jun. and *Archer*, R. guano and oilcake dealers, Ashborne, April 12.—*Dowson*, H. (deceased) mason, Bishop Auckland; *Harker*, G. and *Wandless*, L. Westerton Quarry, April 8.—*Drewry*, W. G. and *Adams*, H. drapers, Beverley, April 10. Debts paid by Drewry.—*Dyson*, M. *Wadsworth*, H. and *Moore*, J. and A. cloth finishers, Almondbury, as regards Dyson, Aug. 12.—*Greenhalgh*, R. and R. J. grocers and drapers, Iron Bridge, April 1.—*Harding*, T. and *Capper*, R. drapers, Ashton-under-Lyne, April 8. Debts paid by Capper.—*Hilliard*, G. R. and *Whatmough*, C. surgeons and apothecaries, Rayleigh and Wickford, Feb. 21. Debts paid by Hilliard.—*Hirst*, T. *Smith*, T. *Hanson*, J. *Quarmby*, J. and *Hirst*, J. scribbling millers and spinners, Clough Bottom Mills, Longwood and Golcar, as regards Smith and Hanson, April 6. Debts paid by remaining partners.—*Hitchins*, H. and F. civil engineers, Storey's gate, Westminster, King William-street, April 14. Debts paid by H. Hitchins.—*Jackson*, J. and *Goodman*, W. ale and porter merchants, Hull, April 13. Debts paid by Jackson.—*Lewis*, T. and *Salmon*, W. H. mercers and drapers, Nantwich, April 14. Debts paid by Lewis.—*Massey*, E. and E. manufacturers of patent logs and sounding machines, April 14.—*Noyes*, J. and *Ropes*, H. T. shoemakers, Manchester, and ice dealers, Liverpool, April 13.—*Ormiston*, J. *Williams*, J. and *Bower*, E. coal merchants and proprietors, of Flint, as regards Bower, March 27.—*Rayner*, R. W. and *Brown*, H. S. commission agents, Liverpool, Jan. 24.—*Small*, A. *Taverner*, J. and *Sharpe*, J. small ware manufacturers, Winshill, as regards Sharpe, March 31. Debts paid by Small and Taverner.—*Smith*, T. and H. agents, Pancras-lane. April 15.—*Squires*, E. C. and *Reeves*, J. bone boilers, New-road, Rotherhite, April 10.

CONTENTS.

To Readers and Correspondents.

"J. N."—*Just at the time of an election it would be indecorous to insert such a letter. It would look like an electioneering ruse.*

We cannot undertake to return rejected communications. Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith. No notice can be taken of anonymous communications.

TO SUBSCRIBERS.

The Index to the 18th Vol. being now published, the volumes may be sent to the office for binding as usual. As all are bound uniformly, it will not be necessary to send a pattern.

THE LAW TIMES.

SATURDAY, MAY 1, 1852.

TO READERS.

The great length of the report of the case of *Miller v. Salomons*, whose importance would not allow of its omission, and the first judgment of the new Lord Chancellor upon the Law of Winding-up, which will be read with the greatest interest by the whole Profession, have compelled us to devote a larger space than usual to the reports, and to omit much general intelligence.

LEGAL EDUCATION.

From the following conversation which passed in the House of Commons on Monday, it would appear that the Benchers of the Inns of Court have not abandoned their scheme for the improvement of Legal Education, as it had been reported of them; but that, on the contrary, they are about to carry it into immediate operation. The proceedings are thus reported:—

Mr. Ewart asked the Attorney-General whether any further proceedings have been taken on the part of the Inns of Court, in promotion of the question of legal education?

The Attorney-General stated, in answer to the hon. member's question, that the Benchers had, for a very considerable time past, devoted much attention to the subject of legal education, and they had ultimately unanimously agreed upon a plan which they believed would be of great public benefit. Professorships or readerships were to be established by different societies, and very liberally endowed, and lectures were to be given and classes formed for the purposes of instruction. Before a student was called to the Bar he should have a certificate, showing that he had attended the lectures, or that he had satisfactorily passed through a public examination; and for the purpose of encouraging the students to submit to the examination, marks of distinction would be held out to the most deserving and the most proficient.

So far the answer is satisfactory; but from the brief statement of the Attorney-General, the scheme resolved upon would appear to be substantially the same as that contained in the report of the Committee of the Benchers, which we have already laid before our readers. The objection to it is, that it does not go far enough; it halts in the good work just half way. It proposes for *education* nothing but lectures, and for admission to the Bar an examination, but only a *voluntary* one—still leaving it open to be resorted to by any person who can raise 100*l.* and eat sixty dinners—without other test of fitness. Still the Bar will continue to be the refuge for the destitute—the resort of those who join it, not as Lawyers, but as office-seekers—the nominal profession of men who have no pursuit. This it is that has so much degraded the Bar in public estimation, and lowered it in *fact*; this it is that deprives the *real* Barrister—the man whose actual calling it is, and who seeks to live by it,—from thriving as he should do, because the men who are Barristers in name only deprive him of some of the lesser business, and steal away by favour of patronage the offices that are the legitimate reward of those who labour at their calling. Until a strict examination shall exclude from the Bar all but those who join it with purpose to make it their Profession, reform in legal education will be only "a delusion, a mockery, and a snare."

Nor will it be perfect until provision is made for the education and more enlarged examination of the Attorney also. The same establishment of teachers, the same institutions, might serve for both branches of the Profession at one expense; both should be members of the same University, and at a certain period of their studies should be required to make choice which branch of the Profession they will pursue, that their education and their examination might thenceforth be conducted accordingly.

We would accept the proposed improvements of the Benchers as an instalment—but as an instalment only—of the reform required.

TREATING AT ELECTIONS.

A Bill is before the House of Commons, permitting a certain limited amount of refreshment to be given to electors voting at county elections.

From practical experience of such elections, we are induced entirely to approve of the proposition. Voters who come from the country to the polling-place must be fed, and they *are* fed, in fact, at the cost of the candidate. The law is always practically evaded, with this additional mischief, that, thus done, there is no limit to the amount of cost to the candidate, and the practice so evasively conducted may be, and is, extended to other more objectionable purposes. Sensible men know well that if an evil cannot be suppressed the next best course is to put it under regulation. If candidates are permitted to give voters refreshment on the day of election to a fixed amount, it will be done openly, with no advantage to either side, and no inducement to exceed it. Practically, while permitting a certain amount of harmless treating, it will be an effective measure for the suppression of treating that is not harmless.

THE MILITIA BILL.

An immense majority has voted the second reading of this Bill. The question is, indeed, one of extreme difficulty. We have a vivid recollection of the Militia as it *was*, of the excessive hardship it was *then* esteemed, and of the great delight with which its suspension was hailed. We were articled to a Clerk to a Deputy Lieutenancy, and thus have witnessed in our youth the practical working of the plan. If the feelings we then saw and heard were to be revived now, we fear that the peace of the country would be endangered.

Without substitutes, a militia would be intolerable, for, with all our liberal notions, Englishmen have a great deal of aristocracy in them. A master would not like to stand in the ranks shoulder to shoulder with his workman, and the workman would as certainly object to stand next to the chimney-sweep. If, on the other hand, substitutes are permitted, it becomes an injustice to the poor who cannot afford thus to buy exemption. A rich man pays his 10*l.* and has his duty to his country done by deputy: a poor man earning, perhaps, his 20s. a week, is obliged to exchange that for 10s.—to put his wife and family on short allowance, and, perhaps, find his place in the factory filled up on the expiration of his service.

But the Bill now before Parliament endeavours to shirk this difficulty by proposing a voluntary enlistment. It seems, however, to be forgotten, that such a force is not a militia, but only an imperfect standing army: it is not *self*-defence, but defence by a bad and ill-trained army, instead of by a well-trained one. It will be composed of the worst part of the community, who will not be improved by playing soldiers for fourteen days, and to whom we should be somewhat loath to intrust arms—who would certainly be much more dangerous to their fellow countrymen than to an invader.

Look at the question on what side we may it is encompassed with difficulties and objections, and the more they are examined, the more formidable do they appear.

THE CRIMINAL LAW AMENDMENT BILL.

The Attorney-General's Bill for abolishing Grand Juries in the Metropolitan District is not limited to that object, but contains some provisions of a general nature. It proposes to enact that after the abolition of the Grand Jury, no charge is to be tried without previous investigation before a justice of the peace. In lieu of an indictment, an information is to be filed by an officer of the Courts, which is not to be removed by *certiorari*, except upon affidavit that a fair trial cannot be had. Charges returned during a session are not to be tried during the same session, after a time appointed by the Court. A person in custody may be removed on justices' warrant. A person accused of larceny or any misdemeanor may, if he confess the charge and he so desire, be punished on summary conviction; and persons uttering counterfeit coin may, on summary conviction, be punished with six months' imprisonment; but the justices may, if they see fit, commit for trial.

All the above provisions are applicable exclusively to the metropolitan district.

The following is of *general* application.

Clause 12 provides that any Court of General or Quarter Sessions, upon proof of conviction and of notice to parties, may declare a recognisance to keep the peace or be of good behaviour to be forfeited; thus removing a great practical difficulty, which has hitherto impeded the enforcement of forfeited recognisances.

CHANCERY REFORM.

The second of the series of Chancery Reforms, the Lord Chancellor's Bill for the Abolition of the Office of Masters in Chancery, is now before us. It contains fifty-eight clauses.

The measure opens with an unqualified abolition of the office, the first four Masters in seniority to be released from their duties on the first day of Michaelmas Term next, but a power is reserved to them to wind up and settle proceedings now before them, and the Court to have power, on the Master's certificate or report, to make an order for the prosecution or final disposal of any suit, and for payment of costs.

When parties neglect to bring the Master's report before the Court, the solicitor to the suitor's fee fund is to bring the same.

No fresh references are to be made to the Masters, except in cases already before them, and in matters under the Winding-up Act, or in such cases as the LORD CHANCELLOR shall direct.

Power is then given to the MASTER of the ROLLS and the VICE-CHANCELLORS to sit at Chambers for the despatch of business, where they are to have the same powers and jurisdiction as when sitting in open court; orders made there are to have the same effect as orders of Court.

The Judges are to appoint two chief clerks to each Court to assist in the business of it, who are to have been chief clerks to Masters, or Solicitors or Attorneys of ten years' practice, and who are to appoint junior clerks.

Solicitors or Attorneys appointed to any office under this Act to be struck off the Rolls.

Clause 27 declares what business shall be disposed of in Chambers by Judges.

27. The business to be disposed of by the Master of the Rolls and Vice-Chancellors respectively while sitting at chambers shall consist of such of the following matters as the judge shall from time to time think may be more conveniently disposed of in chambers than in open court; videlicet, applications for time to plead, answer, or demur; for leave to amend bills or claims; for enlarging publication; and also applications for the production of documents; applications connected with the preparation of a cause or matter for hearing, or otherwise relating to the conduct of suits or matters; applications as to the guardianship and maintenance of infants; matters connected with the management of property; and such other matters as each such judge may from time to time see fit, or as may from time to time be directed by any general order of the Lord Chancellor.

Power is given to them to adjourn from open court to chambers, or *vice versâ*, for the consideration of any matter.

The proceedings before judges in chambers are to be by summons, as at Common Law. The judges may direct what matters shall be investigated by themselves and what by their chief clerks, but the suitor is to have power to bring any point before the judge. Proceedings before the chief clerk are to be embodied in the form of a short certificate, from which no exceptions are to lie, but parties are to be allowed to take the opinion of the judge upon any particular point.

The certificate signed and adopted by the judge is to be binding on all parties, unless discharged or varied.

Power is given to the LORD CHANCELLOR, with advice of judges, to make rules and orders for regulating the mode of procedure in chambers.

The judges at chambers are empowered to take the opinion of conveyancing counsel in certain matters; but parties may object to the opinion, and their objection is to be disposed of in chambers or in open Court. The LORD CHANCELLOR may nominate not less than six conveyancing counsel of ten years' practice for this purpose. A further power is also given to obtain the assistance, and act upon the certificate, of accountants, merchants, engineers, actuaries, &c.

The salary of the chief clerk is to be 1,200*l.* and of the junior clerk 250*l.*

The Masters' chief clerks, not appointed chief clerks to any of the judges, to claim compensation.

Many clauses regulate the mode of paying salaries and compensations; and others empower the appointment of a new VICE-CHANCELLOR as successor to Sir G. J. TURNER, almost repeating the Act under which his Honour was appointed.

THE LEGISLATOR.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, April 23.

Highway Rates
Ecclesiastical Jurisdiction.

Tuesday, April 27.

Ports and Harbours.

Wednesday, April 28.

Trustees Act Extension.

Thursday, April 29.

Patent Law Amendment
Episcopal and Capitular Revenues
Registration of Births, Deaths, &c.

BILLS READ A SECOND TIME.

Friday, April 23

Kennington Common, &c. Improvement.

Monday, April 26

Militia
Highway Rates
Ecclesiastical Jurisdiction.

BILLS READ A THIRD TIME AND PASSED.

Friday, April 23.

Sheep, &c. Contagious Disorders Prevention
Poor Relief Act, Continuance
Exchequer Bills, 17,742,800*l.*

Thursday, April 29.

Enfranchisement of Copyholds
Repayment of Advances Acts Amendment.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A THIRD TIME AND PASSED.

Friday, April 23.

Athlone Markets and Customs
Cheshire Constabulary
Cork and Bandon Railway
Dundalk and Enniskillen Railway
Eastern Counties Railway—Nene Branch
Eastern Counties Railway—Docks Junction
Glasgow, Kilmarnock, and Ardrossan Railway
Somersetshire Central Railway
South Wales Railway
Thetford Fen District Drainage
York, Newcastle, Berwick, Malton, and Duffield Junction Railways
York, Newcastle, Berwick, Malton, and Duffield Junction Railway—Thirsk Branch
Newmarket Railway.

Monday, April 26.

Forth of Clyde Navigation
London and Southampton Road
Manchester Sheffield, &c. Railway. No 1
Sheffield Bridges and Streets
York and North Midland &c. Railway.

Tuesday, April 27.

London (City) Small Debts Extension.

Thursday, April 29.

Bury (Sussex) Road
Deptford Gas.

PETITIONS PRESENTED.

ATTORNEYS' CERTIFICATES—For repeal of the duty thereon, from Wexford, Epworth, Belfast, Warrington, Warwick, Incorporated Society of Attorneys, Solicitors, and Proctors; Sudbury, Fermanagh, Reading, Saffron Walden, Down, Grantham, Society of Solicitors at Law, Edinburgh; Tipperary, Society of Solicitors in the Supreme Courts of Scotland, John Barron Bowker, Galway, Leeds, Gloucester, Fishguard, County of Limerick, Frome, Burslem, Oldham, Kendal, Darlington, North Walsham, Honiton, Ripon, Horsham, Stone, Ashby-de-la-Zouch, Southampton, Crickhowell, Wellington, Shepton Mallet, Swansea, Glastonbury, Easingwold, Alford, Beverley, Chichester, Bolton, Ramsgate, Gainsborough, Uttoxeter, Dover, Blackburn, Wareham, Newcastle Emlyn, Leighton Buzzard, Andover, New Malton, Fakenham, to lie on the table.

SESSIONAL PRINTED PAPERS.

Par. Numb.
216. Chancery Commission—Copy of Report and Correspondence
250. Consolidated Annuities, Ireland—Copies of Memorials
184. Business of the House—Return
221 Woods and Forests—Copies of Minutes and Papers
238. Civil Services—Estimates, Classes 1 to 7, and General Abstract of Grants
239. Civil Contingencies—Account and Estimate
259. Commissariat Chest—Account
173. Local Acts—Reports of the Admiralty
218. Shipping—Return
219 Registered Steam-vessels—Return
274. Harbours of Refuge—Return
231. Immigrants and Liberated Africans—Return
268. Guano—Return
271. Navy, Commissioned Officers—Returns
272. Kingstown and Holyhead Mails—Return
277 Bill Ecclesiastical Jurisdiction
276 — Highway Rate
281 — Secretary of Bankrupts Office Abolition, amended.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

A CASE on *Turnpike Law* was last week reported from the Q. B. An agreement for letting tolls recited the putting them up to auction by the trustees, and the taking of them by the renter; and, in the operative part, stated that A. (the clerk), agreed to let, &c. The agreement was signed by the clerk, and not by the trustees. It was held to be sufficient, and that the 3 Geo. 4, c. 126, s. 57, authorising an agreement in writing for letting tolls, without being by deed or under seal, was not affected by sec. 3 of 8 & 9 Vict. c. 106, which avoids all leases required by law to be in writing, unless the same be by deed. (*Shepherd* v. *Norman*, 19 Law T. Rep. 61.) A curious query was raised, but not decided, in *Tregarn* v. *Barns*, 19 Law T. Rep. 67, whether, when a warrant is directed to a *parish* constable only, it can be properly handed over to and executed by a *county* constable?

REWARDS BY THE GOVERNMENT.—From the detailed account of the Civil Contingencies paid last year, the rewards paid by the Government for the apprehension and conviction of offenders, it appears that 378*l.* 6s. 8d. was paid.

Answers to Queries.

CHURCH RATES.

IT appears quite clear that glebe-lands, whether in the occupation of the parson himself, or in the occupation of his tenant, are exempt from paying church-rates to the church of which they form any part of the endowment, the reason for this being that the parson is solely liable for the repair of the chancel. (See Burn's Ecclesiastical Law, vol. 1, p. 349; and see Anderson's Churchwardens.)

April 27th, 1852. W. B. J.

[Several similar replies have been received.]

JOINT-STOCK COMPANIES' LAW JOURNAL.

SOME curious questions have arisen with respect to the liabilities of English directors and shareholders of foreign railways. In *Kent* v. *Jackson*, 19 Law T. Rep. 55, English directors of a Belgian Railway, after retiring, returned the deposits to the English allottees, and purchased back for the company some of the allotted shares. They then laid an account of the transaction before the committee of management, to whom the balance due from the English directors was paid. The transaction was afterwards approved by a general meeting. It was held, that the meeting *had* power to sanction such a transaction, and therefore there was no ground for a suit in this country against the retired English directors.

In *Bear* v. *Bromley*, 19 Law T. Rep. 60, the Q.B. has decided that an unenrolled mutual society, having more than twenty-five members, and a fund raised by subscription for advancing to the members sums at five per cent. the sum so advanced being put up for competition to the highest bidder, is *not* a joint-stock company under the stat. and therefore not requiring registration. Another point in Joint-Stock Companies Law as raised in *Clay and Another* v. *Southen*, 19 Law T. Rep. 67. Two members of a company, not registered under the Joint-Stock Companies Act, entered into a contract in their own names for the benefit of the company. It was held that they might sue and be sued in their own names only on such contract.

WINDING UP.

A QUESTION of *costs* was raised in *Ex parte Croxton*, 19 Law T. Rep. 57. A trustee of a company, by order of the directors, executed a bond for money lent to the company, and was sued upon it, and compelled to pay it. On the winding-up the trustee brought in his account, and the Master disallowed it. The Court, on appeal, directed an issue, to try the trustee's right to be repaid, and it was decided in his favour. The Court now gave him all the costs and expenses of resisting the claim, and the costs of the motion of appeal from the Master and before the Master.

Ex parte Hill, 19 Law T. 57, was a question of a contributory. He had attended meetings of the provisional committee, of which he was a member. At one, at which he did not attend, the surveyor was appointed; at another meeting, at which he did attend, the report of the surveyor was adopted, and directed to be advertised. The project was afterwards abandoned, and the solicitor was directed to arrange with the surveyor as to his claim, which he did by paying him 1,300*l.* and this sum the solicitor claimed from the company. He was held to be a contributory.

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

Hull Glass Company.—To settle list of contributories on May 25 and 26.—Farrer.

Monmouthshire and Glamorganshire Banking Company.—Call on contributories of 60*l.* per share to be paid on 18th May.—Farrer.

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

THE LORD CHANCELLOR has confirmed the decision in the very interesting case of *Cutts* v. *Salmon*, 19 Law T. Rep. 53, which has been

already commented upon here, and every one of our readers should peruse his Lordship's judgment, which so distinctly declares the duties of a solicitor in dealing with the property of his client. "If a solicitor attends a sale, known to be the solicitor, and does not publicly mention the fact that he is buying for himself, and the public is led to believe, as they naturally would without evidence to the contrary, that he is bidding for the estate," the effect is to lower the price, and such a sale cannot be supported. "Is a solicitor to tell me that he is to maintain a sale against his client, when he has put that client in a condition to have his estate sold for anything it may fetch?" In no case, it was said, should a solicitor purchase from his client without the intervention of another solicitor.

In *Seymour* v. *Vernon*, 19 Law T. Rep. 58, where premiums had been paid by a receiver to keep up policies of fire assurance out of the rents and profits of the estate, to which A. was subsequently declared to be tenant in tail in possession, on the buildings being burnt down, it was held, that A. was entitled to the sums received from the office.

BOROUGH ENGLISH.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In reading over your paper (the LAW TIMES) of October 1851, I there discover that a gentleman of the name of George R. Corner wishes to know if there are any other places in which the tenure Borough English exists than the places there mentioned. I do not see the name of the parish of "Staverton," in Devonshire. I know this is a parish in which that custom exists from my own experience. Yours, &c.

RICHARD E. BISHOP.

Torquay, April 29, 1852.

Answers to Queries.

STAMPS.

IN reply to the question relating to the law of stamps contained in your last number, as to the duties upon voluntary assignments of leases, it appears that where such voluntary assignment is made of a *lease for years*, such an assignment being neither upon a sale or a mortgage, will require a duty equal to the *ad valorem* duty with which a similar lease would be chargeable under the Act 13 & 14 Vict. c. 97, but which in no case is to exceed 35s. But, as assignments and surrenders only are there mentioned, it seems that a voluntary conveyance of a *freehold lease*, which passes by a deed of release and not by assignment, will in all cares require a 35s. stamp.

Plymouth, April 24, 1852. WM. HUGHES.

COUNTY COURTS.

Summary.

THE County Courts Extension Bill, as amended by the Committee of the Commons, is now before us. We are pleased to find that our clause for giving costs to Attorneys in the County Courts remains intact, but the other we had framed, for requiring notice of defence to be given, has been struck out. Three clauses have been added; the first provides that, for Equity business in the Bankruptcy Courts, the same fees shall be taken as shall be allowed in the County Courts; the second is the altered clause relating to Practitioners in the Courts, which we extracted and commented upon last week; and the third empowers the LORD CHANCELLOR to order a retiring pension to be paid to the Judges afflicted with permanent infirmity, in amount not exceeding two-thirds of the salary.

A decision of the Q. B. on the County Courts Act was reported last week. In *Meredith* v. *Gittins*, 19 Law T. Rep. 59, an application for costs, under sec. 13 of 13 & 14 Vict. c. 61, had been refused by a Judge at Chambers in June, and an application was not made to the Court till January. It was held to be too late. "These applications," said Lord CAMPBELL, "must be made within a reasonable time, and I think they ought, at all events, to be made in the course of the ensuing Term."

THE LAWYER.

Summary.

EQUITY PRACTICE.—In *Paul* v. *Roy*, 19 Law T. Rep. 56, a very important question was decided as to the jurisdiction of a Court of Equity to enforce a foreign judgment, and a contract made between foreigners coming to reside here. It was held by the Master of the Rolls that our Courts have such jurisdiction, but then the judgment of the foreign Court must be the final decree of the Court, and not merely an interlocutory order made in course of litigation. It is not necessary to repeat the particular facts out of which the question arose.

In *The Attorney-General* v. *The Ludlow Charities*, 19 Law T. Rep. 58, where a suit had abated which from circumstances it was impossible to revive, the Court refused to give any costs.

COMMON LAW.—Term having begun, points of practice again revive in the reports, but they are few compared with former years. In *Stebbing* v. [illegible] davit on which

be insufficient, and the rule was discharged with costs. In *Re Connell*, 19 Law T. Rep. 63, the Court refused a writ of habeas corpus to bring up the body of an infant, because the affidavit did not shew that she was detained against her will. *Steadman* v. *Chappell*, 19 Law T. Rep. 64, was an action by an attorney on his bill. At the trial plaintiff produced a written retainer signed by defendant, and the cause was proceeding as undefended, when defendant suddenly appeared, and swore that it was not his handwriting, and obtained a verdict. The Court granted a new trial on the ground of *surprise*, but on payment of costs.

At last a full Court has heard and decided the much-disputed question as to the admissibility as a witness of the wife of a party. The Court of Ex. has unanimously held that she is *not* competent; but the reasons given for the decision do not appear to be very satisfactory. The argument of Mr. Justice ERLE was not answered, and, indeed, their Lordships appear to have been mainly influenced by what they know to have been the *intention* of the Legislature rather than by what it has actually done. But then in *Salomon's* case they took the opposite course, and held themselves to be bound by the words, contrary to that which they believed to be the intent. In the same case (*Barbat* v. *Allen*, 19 Law T. Rep. 65), after an objection made to the admission of a witness, it was waived, but the Judge refused to hear such witness, even with consent, holding her to be inadmissible; and it was held that he had rightly done so. From this it appears, that a witness incompetent by law cannot be rendered admissible, even by consent.

In *Lane* v. *Hill*, 19 Law T. Rep. 60, it was held that a mere acknowledgment that a debt is due, with no amount mentioned, is not evidence of an account stated, so as to entitle the plaintiff even to nominal damages. "A general admission of liability to a pecuniary demand," said Lord CAMPBELL, "without stating any sum, does not amount to an account stated."

Query.

ABOUT two years since a person then, and now, living in Scotland, and not likely to return to England, was outlawed for the amount of a bill of exchange. He is now in a position to pay the money, but refuses. Can he be sued in the Scotch Courts for the *debt, interest, and costs of outlawry*, or only for the debt and interest? In either case, which is the *best way*, and *who* should be instructed to proceed? If he can *only* be sued for the *debt and interest*, is there any means (supposing he again returns to England) to enforce the costs of the outlawry from him, after proceeding in the Scotch Courts? J. A.

THE MERCANTILE LAWYER.

Summary.

A DECISION of some interest is to be noted in *Hertslet's Law of Master and Servant*. In *Floyd* v. *Weaver*, 19 Law T. Rep. 58, which came before the Court in the form of a County Court appeal, it was held that a man employed and working as a collier in a coal mine, dismissible at a month's notice, and paid according to the quantity of coal raised, but not bound to hours, and employing other men under him, is nevertheless an "artificer or workman," within the meaning of the Truck Act.

Neve v. *Hollands and Wife*, 19 Law T. Rep. 59, was an action against husband and wife jointly, upon the wife's promissory note, *dum sola*, to which the Statute of Limitations was pleaded. It was proved that the wife had paid interest upon it within the six years, but without the knowledge of her husband, and it was held that such payment did not take it out of the statute. "Payment by the maker of a note," said ERLE, J. "is equivalent to an express promise to pay; but, supposing that the female defendant had expressly promised to pay, it was clearly during the coverture, when she was incapable of making any contract. A payment by the husband during coverture would create a new liability; it would be evidence of a separate and original promise by him on the fresh consideration of forbearance to him, and would be different from the mere taking up of the wife's liability by marriage."

In *Hine* v. *Dewdney*, 19 Law T. Rep. 61, the following instrument was held to be neither

A. and Co. merchants in London, shipped at New York a quantity of oil-cake on board a vessel chartered for London, of which defendant was owner. It was consigned to B. and Co. brokers; and the terms agreed with the captain were, for a lump weight of 500 tons 500*l*. half to be paid in cash on delivery, and half in bills. On the arrival of the vessel, the brokers duly reported her, made out the freight notes, and received 133*l*. for freight from A. and Co. Whilst the goods were being delivered to plaintiffs' barges, the captain, hearing that the brokers were insolvent, refused to allow the barges to be removed until plaintiffs had given him an indemnity. They had already paid freight to the brokers. The Judge was held to have rightly directed the jury, at the trial, that the plaintiffs were authorised to pay freight to the brokers, unless they had previously received notice that the authority of the brokers was revoked. (*Odams* v. *Avery*, 19 Law T. Rep. 63.)

Grisewood v. *Blayne*, 19 Law T. Rep. 64, was a question as to *Share Jobbing*. An agreement for the sale and purchase of railway shares, which amounted, in fact, to a bargaining for the payment of the difference, was held to be a gambling transaction within the stat. 8 & 9 Vict. c. 105, s. 8, and in such case the proper question to leave to the jury is, "Did either party intend to buy or sell?"

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Right Honourable Sir John Jervis has appointed John Taylor, of Bradford, in the county of York, gent. to be one of the Perpetual Commissioners for taking the acknowledgments of deeds to be executed by married women, in and for the West Riding of the county of York.

LINCOLN'S-INN, April 27.—The undermentioned gentlemen were this day called to the degree of barrister-at-law by the Honourable Society of Lincoln's-inn, viz. Duncan Stewart, esq. and Joseph Warrin Dobbin, esq.

COMMISSIONS SIGNED BY THE LORD-LIEUTENANT OF THE COUNTY OF DEVON.—William Mackworth Praed, esq. and William Arundell Yeo, esq. to be Deputy-Lieutenants.

Sir John Eardley Eardley Wilmot, bart. of Lincoln's Inn and the Midland Circuit, has been appointed Recorder of the borough of Warwick, vice Mr. Mellor, resigned.

COURT PAPERS.

QUEEN'S BENCH.

NEW RULE OF COURT.

MASTER ROBINSON read the following rule of Court which had been made by their lordships:—

"REGULA GENERALIS. EASTER TERM, 1852.

"It is ordered that whenever a defendant shall be required by law and the practice of this Court to give recognizance to appear and answer to any indictment found in this court, or removed, or to be removed into the same, it shall be added to the condition of every such recognizance that the defendant shall personally appear from day to day on the trial of such indictment, and not depart until he shall be discharged by the Court before whom such trial shall be had; unless this Court or a judge shall think fit to dispense with such additional condition.

"By the COURT."

Lord CAMPBELL said the object of the Court in framing this order was, to remedy the inconvenience which had been experienced from the defendant in a misdemeanour not appearing to receive sentence when the trial took place at Nisi Prius. By an Act passed a few years since, the judge who tried the cause at Nisi Prius was authorised to pronounce sentence instantly, without waiting till the following Term. It was of the greatest importance that sentence should be immediately passed upon defendants, in the face of the country, and in the presence of those who had heard the evidence. It happened, however, that justice was defeated by the defendant not appearing to receive the sentence, and compromises were frequently made between the prosecutor and the defendant. The prosecutor got the warrant, and, instead of executing it, used it as a means of extortion, and made a private bargain with the defendant, whereby justice was defeated. The object of the Court was, that the defendant should appear in person to receive the sentence of the law.

EXCHEQUER CHAMBER.

(*Sittings in Error.*)

THIS morning the Judges assembled in the Exchequer Chamber for the purpose of appointing the days for the "Sittings in Error" after the present term.

The Judges in attendance were—the Chief Justice of the Court of Common Pleas, Mr. Baron Alderson, Mr. Justice Coleridge, Mr. Justice Wightman, Mr. Justice Cresswell, and Mr. Baron Platt.

The Chief Justice of the Common Pleas intimated that the Court would take cases in Error from the Court of Queen's Bench, on Monday, May 10; cases in Error from the Court of Common Pleas, on Tuesday, May 11; and cases in Error from the Court of Exchequer, on Wednesday, May 12. His Lordship further stated that if it were found necessary to do so the Court would sit in Error on other days, to be appointed on a future occasion.

PROCEEDINGS OF LAW SOCIETIES.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

ON Wednesday week the annual general meeting of the members of this association took place at the offices of the association, 8, Bedford-row; Mr. E. W. Field, the chairman of the committee, in the chair. A detailed report from the committee of management was read by the secretary, Mr. W. Shaen, giving an account of the labours of the committee during the past year, to promote reforms in the law, and to uphold the interests of the Profession. The committee entertain strong hopes that the annual certificate duty may be repealed this year; the present Chancellor of the Exchequer having, last year, supported Lord Robert Grosvenor's motion for the repeal. The report also contained analytical criticisms upon several of the more important Law Bills at present before Parliament, in which the committee are endeavouring to introduce various amendments. After the report had been received and adopted, thanks voted to the various honorary officers, and the committee for the ensuing year appointed, a discussion took place upon the position and prospects of the Profession generally, in the course of which a suggestion was made by Mr G. Thorley, of Manchester, that the association should, from time to time, hold aggregate meetings of the Profession in some of the principal provincial towns throughout the kingdom. The suggestion was supported by Mr. J. Sudlow, of Manchester, and Ryland, of Birmingham, and will probably be acted upon. The association is composed of practising attorneys and solicitors throughout the kingdom, and its active and influential committee have always guided all their proceedings on the maxim that the welfare of the Profession, in order to be solid and permanent, must be founded upon the interests of the clients. The balance-sheet shews the funds of the association to be in a healthy condition.

LEGAL INTELLIGENCE.

CAMBRIDGE, April 27.—The Regius Professor of Laws has given notice, that the lectures on Roman law will be resumed on Friday, April 30. The subject of this portion of the course will be the Law of Contracts and Offences. The lectures will be delivered in the Law School on Mondays, Tuesdays, Thursdays, Fridays, and Saturdays. The hour of attendance will be eleven a.m. On Wednesday, May 12, an examination will be holden of those gentlemen who attended the professor's lectures in the Lent term with the view of obtaining a professorial certificate. Candidates for the certificate are requested to present themselves in the Law School at ten a. m.

EXPENSES OF LAW AND JUSTICE.

THE miscellaneous estimates, just issued, contain the following expenditure under this head:—

Law charges paid by the Solicitor to the Treasury	17,000	13,000	21,000
Mint prosecutions relating to coin	8,555	8,670	
Sheriff's expenses, officers of the Court of Exchequer, &c.	17,700	17,700	17,700
Insolvent Debtors' Court . .	10,330	9,080	8,830
Criminal prosecutions and other law charges, Scotland . .	84,324	87,840	121,165
Criminal prosecutions and other law charges, Ireland	63,761	60,000	57,710
Police of Dublin	35,500	35,500	36,500
Prosecutions at assizes & quarter sessions, formerly paid from county rates	240,000	200,000	240,000
Estimates for prisons and convict services at home and in the colonies:—			
General superintendence . .	14,550	15,472	16,196
Government prisons & convict establishments at home	237,224	251,269	261,522
Maintenance of prisoners in county gaols and Bethlem Hospital	135,848	117,190	159,123
Expenses of transportation .	119,230	98,860	101,041
Convict establishments in the colonies......	200,147	183,030	253,587

It appears to be determined that the separate sittings of the Lord Chancellor and of the Lords Justices are to be continued, and that it has been found expedient to postpone, if not to abandon, the sittings of a Court of Chancery composed of the Lord Chancellor and the Lords Justices. Workmen are now employed in preparing a portion of the old Hall of Lincoln's-inn for the reception of the Lords Justices in the sittings after Term. The courts of the Lord Chancellor and of the Lords Justices will thus be more conveniently connected with those of the Vice-Chancellors, and the disturbance created by using the Hall as a promenade put an end to. This disturbance was so serious as to form a constant ground of complaint from Lord St. Leonard's, and we have no doubt it influenced in some measure the resolution to set apart a portion of the space for the Lords Justices.

JOURNAL OF PROPERTY.

MONEY MARKET.

ENGLISH FUNDS.

		M				Fri
Bank Stock	220	220½	220½	220½	220¼	219¾
3 ℘ Cent. Reduced Annuities	99	98⅞	98⅞	98¾	98⅞	98¾
3 ℘ Cent. Consols Annuities	99⅝	99⅝	99⅝	99⅝	99⅝	99¼
Consols for Account ..	99¼	99¼	99⅝	99¼	99¼	99¼
New 5 ℘ Cent. Annuities	..	..	..	..	.	..
New 3¼ ℘ Cent. Annuities ..	100⅝	100⅝	100⅝	100⅝	100⅝	100⅝
Long Annu (exp Jan 5, 1860)	6¾	6¾	6¾	6¾	6¾	6¾
Do. 30 yrs. (exp Oct. 10, 1859)	6⅝	6	6¾	6⅝	6⅝	6¾
Do. 30 yrs (exp. Jan. 5, 1860)	7	7	7	7	.	7
India Stock		..	266	266		..
India Bonds (1,000l.)				83		80*
Do do. (under 1,000l.)..			81		83	82*
South Sea Stock......... .		110⅝	.	110⅝	111¼	110⅝
Do. do New Annuities		..	98½	99	.	
Exchequer Bills, 1,000l. ..	67*		73*	63*	62*	
Do. do. 500l ...		66*	71*	63*	65*	
Do. Small		..	71*	67*	65*	

Premium

THE GAZETTES.

Bankrupts.

Gazette, April 27.

BENJAMIN, JOSEPH DAVID, dealer in cigars, Southampton-st Bloomsbury square, May 7 and June 11, at one, Basinghall st Off as. Whitmore. Sol Graham, Chancery lane Petition, March 20.

DAVIES, HUMPHREY, leather seller, Liverpool, May 13 and June 3, at eleven, Liverpool. Off. as. Bird. Sols. Blundell and Sharman, Liverpool. Petition, April 15.

LAWSON, THOMAS, draper, Lancashire, May 10 and June 7, at twelve, Manchester Off. as. Fraser. Sol. Grundy, Bury Petition, April 23.

M'COSKRIE, JAMES, merchant, Liverpool, May 11 and June 7, at eleven, Liverpool. Off as. Cazenove. Sols. Neale and Martin, Liverpool. Petition, April 23.

MASON, ALFRED, ironmonger, Kimbolton, Huntingdonshire, May 7, at half-past twelve, June 11, at twelve, Basinghall-st Off as Cannan. Sols Skilbeck and Hall, Southampton-buildings, Chancery-lane, and Prescott, Stourbridge, Worcestershire Petition, April 1.

MILLS, THOMAS, grocer, Llanidloes, Montgomeryshire, May 11 and June 7, at eleven, Liverpool. Off as. Mo[illegible] Evans and Son, Liverpool Petition April 19

NEWHAM, LUND, draper, Sheffield, May 15 and 29, at ten, Sheffield. Off. as. Freeman Sols. Sale and Co. Manchester, and Gould, Sheffield. Petition, April 23.

PLUMMER, HENRY, jun wood turner, Golden-lane, St. Luke, May 3, at eleven, June 19, at half-past eleven, Basinghall st. Off. as. Pennell. Sols. Terrell and Matthews, Basinghall-st. Petition, April 26.

[illegible]son, JOHN, and NORTON, EDWIN, corn millers, Hoyland Nether, Yorkshire, May 7 and June 11, at eleven, Leeds. Off. as. Freeman. Sols Marshall, Barnsley; and Bond and Barwick, Leeds. Petition, April 3.

Gazette, April 30.

COLLINS, WILLIAMS, draper, Marlborough, Wiltshire, May 10, at twelve, and June 10, at eleven, Basinghall-st. Com. Evans. Off. as. Johnson. Sols. Sole and Turners, Aldermanbury. Petition, April 27.

GIBSON, WILLIAM THOMAS, baker, High-st. Islington, May 13, at twelve, and June 8, at one, Basinghall-st. Com. Holroyd. Off. as. Edwards. Sols. Vallance and Vallance, Essex-st. Strand. Petition, April 26.

GULLICK, JAMES, licensed common brewer, Yalding Brewery, Yalding, Kent, May 14, at half-past one, June 18, at eleven, Basinghall-st. Com. Fane. Off. as. Cannan. Sols. Nicholls and Doyle, 2, Verulam-buildings, Gray's-inn; C. Morgan, Maidstone, Kent. Petition, April 29.

McKERROW, ALEXANDER, draper, Kingston-upon-Hull, May 26 and June 16, at twelve, Kingston-upon-Hull. Com. Ayrton. Off. as. Carrick. Sols. Neild, Manchester; and Shackles and Son, Hull. Petition March 14.

NEWBOLD, JOSEPH, innkeeper, Barton-under Needwood, Staffordshire, May 10 and June 7, at half-past ten, Birmingham. Com. Balguy. Off. as. Valpy. Sols. Bass, Burton-upon-Trent; and Messrs. Wright, Waterloo-st. Birmingham. Petition, April 17.

WARREN, JOHN, manufacturer of brass and iron, High-st. Brentford, and dentist, George-st. Hanover-sq. May 8, at half-past eleven, and June 11, at one, Basinghall-st. Com. Fane. Off as. Whitmore. Sol. Tate, Basinghall-st. Petition, April 26.

WYMARK, WILLIAM, wharfinger, Misley, near Manningtree, Essex, May 14 and June 11, at twelve, Basinghall-st. Com. Fonblanque. Off. as. Stansfield, Sol. J. J. Hubbard, 18, Bucklersbury. Petition, April 22.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Atkinson, T. grocer, first and final, 2s. 1d. Hope, Leeds —*Barlow*, G. iron and coal merchant, second, 1s. 1d. Graham, London.—*Dixon*, J. dyer, second, 4d. Young, Leeds.—*Dixon*, S. draper, 5s. 1½d. (on account of the first dividend of 11s) Whitmore, London.—*Dawhurst*, J. provision dealer, 7d. and 55-64ths of 1d. Mackenzie, Manchester.—*French*, N. B merchant, second sep 1s 5½d. Graham, London.—*Ground*, E. draper, first, 8s. 6d. Whitmore, London.—*Johnson*, J. grocer, 1s. 2d. Morgan, Liverpool.—*Kaye*, J. coal merchant, second, 4½d. Whitmore, London.—*Kaell*, M. A. coffee-house keeper, 8s. Morgan, Liverpool—*Nock* and *Williams*, goldsmiths, first, 1s. 6d. and first sep. of Williams, 4s. 1d. Whitmore, London.—*Selby*, R wine merchant, second, 6d. Graham, London.—*Small*, G tailor, first, 5s 4d. Graham, London. *Thompson*, B. woollen draper, first, 1s. 2½d. Bittleston, Nottingham —*Wilkinson* and *Bentley*, tailors, &c. sep. of Wilkinson, 6d. Morgan, Liverpool —*Wilkinson*, J builder, 1s 2d. Morgan, Liverpool.—*Wyon*, B. engraver, first, 1s 9d. Groom, London.

INSOLVENTS' ESTATES.

Apply at the Provisional Assignee's Office, Portugal-street, Lincoln's-inn-fields, London, between the hours of eleven and three.

Alford, H. clerk, 2s. 9½d.—*Ayton*, R. undertaker, 3s. 4d. —*Bonus*, J. C ironmonger, 3s 1½d —*Dalton*, T builder, 1s 9½d —*Jenkins*, J oilman, 1s 1½d *Ladd*, W F tailor, 1s 3½d —*Lewin*, H. surgeon, 9½d. —*Matthews*, A saddler, 1s 3½d —*Miller*, W. T. E. clerk H M.'s dockyard, 3s 6½d. —*Peers*, J. hat manufacturer, 8d —*Tytherleigh*, C. L. grocer, 3s 3d —*Underwood*, C. F compositor, 5s. 8½d.— *Wilson*, J. F. lieut in the army, 4s. 8d.

Assignments for the Benefit of Creditors.

Gazette, April 20.

Bateman, J farmer, beer seller, and shop keeper, Ramsey, Huntingdon, Feb 25. Trusts. T. Bower, merchant, Buckden, and T. Sykes, common brewer, Huntingdon. Sol. J. Serjeant, Ramsey.—*Bayley*, J. T. grocer and tea dealer, Silk st. Salford, March 27. Trust. J Redford, accountant, Manchester Sol. W. Mawson, Manchester. —*Collins*, W. draper, Marlborough, Wilts, April 14. Trusts H. Sturt, Wood st. and J. Howell, Ludgate-hill, warehousemen. Sols. Sole and Turner, Aldermanbury.— *Crossley*, W. cheesemonger, Holborn Bars, City of London, April 6. Trusts. R. Morgan, cheese factor, George-yard, Snow-hill; J. Sangster, merchant, Harp lane, Tower-st.; and J Lunham, High st. Southwark. Sols Pontifex and Moginie, St. Andrew court —*Garbutt*, J. chemist, druggist, and grocer, Birmingham, March 31. Trusts. J. Suckling, jun provision merchant, Dale End, Birmingham. Sol H Southall, Edgbaston, near Birmingham.— *Hunt*, J draper, Clevedon, Somerset, March 27. Trusts. J. Nutting general warehouseman, and C Minifie, hosier, both of Bristol. Sol. G. F. Prideaux, Bristol.

Gazette, April 23.

Arminson, W. linen draper, Pavement, York, April 10. Trusts W. Davies and R. Hall, merchants, Manchester. Sols. H C. Wilson, York; J. H. Hampson, Manchester. —*Armitage*, J. farmer, Ingmanthorpe, Yorkshire, April 15. Trusts. T. Skilbeck, yeoman, Belton; T. Daniel, tanner, Whixley, and J. Whitehead, gentleman, Boston Spa. Sol. J Coates, Wetherby.—*Bromley*, J. jun. ironmonger, Whitechapel-road, Middlesex, April 7. Trusts. H. P. Andrews, North st.-mews, John-st. Fitzroy-square; J. S. Nettlefold, High Holborn, ironmongers, and C. R. Wood, commission agent, Bartholomew-close. Sols. Finch and Shepheard, Moorgate-st.—*Child*, W. grocer, Chertsey, Surrey, March 25. Trusts. W. Buss, wholesale cheesemonger, Great Trinity-lane, and C. Teede, wholesale grocer, Warners-yard, Mincing-lane. Sols. Tucker and Sons, Threadneedle-st.—*Parsons*, W. beer shop keeper, Mermaid-inn, Merton, Surrey, March 30. Trusts. F. L. Bland, gentleman, Park-street, Southwark, and C. Sharp, grocer, Merton. Sols. Taylor and Hurford, Castle-st. Holborn.—*Squire*, E. bookseller and stationer, Louth, Lincoln, March 30. Trusts. F. Whittaker and J. M. Larder, grocers, Louth. Sols. Goe and Wilson, Louth.— *Willmott*, W. ship owner and ship builder, Newport, Monmouth, April 3. Trusts. J. Morgan, timber merchant, Pontypool; G. W. Jones, ship broker, Newport; J. D. Moore, rope manufacturer, Bristol; T. B. Batchelor, timber merchant, Newport. Sol. T. M. Llewellin, Newport.

CONTENTS.

To Readers and Correspondents.

"A. B. C."—*It is only a suggestion of our own; we are not aware that the authorities contemplate its adoption.*

We have received several letters which are not inserted or noticed, because the writers have not observed our rule, that requires the name and address of the correspondent in all cases—for the sake of authenticity, however, and not necessarily for publication.

"A. B. C"—*Such an engagement on the part of the publisher would be a defence to a demand of the whole sum agreed to be paid for the advertisement. But the plaintiff would be entitled to so much as a jury might consider the work actually done to be worth.*

The County Court case forwarded by "W. B." *has been sent to Mr. Lloyd, the Editor of the* County Courts Chronicle. *Other more urgent claims upon our space prevent our inserting it here.*

SCALE OF CHARGES FOR ADVERTISEMENTS.

Under Fifty Words	£0 5 0
For every additional Ten Words	0 0 6

Advertisements from the Country should be accompanied with an order upon the Agent in Town, or a Post-office order (payable at 180, Strand) for the amount.

Advertisements ordered for the first page are charged one-half more. If not so ordered, they will take the chance of position.

We cannot undertake to return rejected communications. Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith.

No notice can be taken of anonymous communications.

TO SUBSCRIBERS.

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the volumes may be sent to the office for binding as usual. As all are bound uniformly, it will not be necessary to send a pattern.

THE LAW TIMES.

SATURDAY, MAY 8, 1852.

THE ATTORNEYS' TAX.

THE Chancellor of the Exchequer has adopted that which, in the present position of the Government, was obviously the most prudent course to be pursued; he has resolved to make no change whatever in the taxes during the present Session. Of course, in such circumstances, there is no hope of redress for the Attorneys, nor indeed, could they well ask it. They must be content to bear their burden for another year.

But Mr. Disraeli has distinctly pledged himself, should he be then in office, next year to undertake a complete revision of the entire scheme of taxation, with a view to its adjustment and equalization. Of such a scheme the repeal of the Attorneys' Tax must be a part, for there is none more unjust or more onerous. We may, therefore, look forward, with more well-grounded hope than we have yet been enabled to entertain, that in another twelvemonth the object for which we have been so long striving will be won.

In the meanwhile, we doubt the prudence of renewing the Bill of Lord Robert Grosvenor, during the short remainder of this Session. As it is, we stand in an excellent position, with several majorities to boast of, and even the last division a victory. Should the Bill be introduced now, many will oppose it who are friendly to its object, on the plea that, after the acceptance of the resolution of the Government to make no present changes in taxation, it would be wrong to vote for any. The consequences would be that we should come before the Chancellor of the Exchequer next year with a minority instead of a majority, defeat instead of a victory. *Now* we have the claim upon his regard in the financial schemes of next year, that the House of Commons has already certified thrice to the validity of that claim. A struggle at this time would be an unwise waste of labour, for success would give us no substantial advantage which we have not now, while defeat would be disastrous. It is a good old rule to "leave well alone."

NOT SO BAD AS WE SEEM.

IT is the fashion with mob orators and writers in newspapers to abuse the Attorneys. Even our brethren of the Bar are too much accustomed to resort to this cheap method of winning the ear of a jury, when arguments fail. In Parliament, they are usually ill-spoken of, and any accidental good word for them is greeted with "a laugh."

This proceeds upon the assumption that they are unpopular with the public; that there is a natural enmity between attorneys and clients; and that a Lawyer is viewed with mingled dislike and fear in the locality wherein he is supposed to be the missionary of strife, and the promoter of litigation.

Now, let us see what is *the fact.*

There are *five* Attorneys in the House of Commons—*all* of them representing the places in which they have lived and practised!

To these a sixth has just been added, in the person of Mr. LASLETT, who has been returned for the city of Worcester, without opposition. We are informed that Mr. LASLETT has made a large fortune in his native city by his own exertions, and raised himself to a high social position among his neighbours by his industry, integrity, and intelligence. His fellow citizens have certified their respect and regard for him by an almost unanimous choice of him to be their representative.

Now it is remarkable that no other Profession or calling in the House of Commons can boast so many members returned from the localities in which they have lived, and where they must be best known and most truly judged. There are eleven times more Barristers in the House, thirteen times more officers of the army and navy, seven times more railway-men, and about six times more merchants and traders, yet can none of these classes boast so many members elected by their native towns as can the Attorneys, who are reported to be so unpopular.

The fact contradicts the assumption. That so many cities and towns should choose for their representatives Attorneys who are now or have been *actually practising* among them, is proof positive that Attorneys are *not* so unpopular as newspapers and orators imagine and assert. The fact is gratifying to the Profession, which is raised *as a Profession* in public esteem and social status by the honours achieved by so many of its members; and it is most creditable to the individuals who, by their integrity, have so won the confidence and regard of the community of which they have been the advisers, as to obtain from them the highest testimonial of esteem which can be bestowed upon a fellow-citizen.

A PETTY LARCENY.

OUR readers will remember that some time since we proposed and proceeded to the formation of a *Law Reversionary Interest Society.* We have incurred considerable expenses and obtained a large number of shareholders, and it is still in progress.

It was extensively advertised, so that its existence must have been known to every member of the Profession.

What, then, was our surprise to receive, a few days ago, a prospectus of a *Law Reversionary Interest Society*, the facsimile in name and plan to that which we had planned, promoted, registered, and advertised? In fact, to call it by the mildest term, an unblushing piracy—perhaps it will be deemed by the Profession to deserve a harsher name.

We caused immediate inquiries to be made why and by whom our invention had been thus appropriated.

From the registry office we learn that the person who has done this is one Mr. EWART.

We are bound to say that the respectable Solicitors whose names are associated with this very disreputable plagiarism expressed their surprise and regret.

Mr. EWART's excuse for this proceeding is simply that we had omitted to re-register the projected company at the end of twelve months, as in strictness of law we were bound to do, and that, therefore, he had a legal right to appropriate to himself our title and scheme.

We must admit that he had a *legal* right to do so—that we cannot obtain an injunction to restrain this appropriation of our property, because we had inconsiderately omitted to comply with the strict requirements of the statute.

But our moral claim remains intact. It is not the less our property in reason and justice. Honesty equally forbids a stranger to appropriate it to his own use, without our knowledge and consent first obtained. Even if it were not a question of common honesty, honour and courtesy would seem to demand of a man that, before he takes advantage of a defect in a legal form to seize and appropriate another man's property he should ask him if he had resigned to abandon it.

No excuse can be offered for this proceeding on the score of ignorance of what we had done. Our plan was re-registered at the beginning of last year, and up to October last advertisements of it appeared in the LAW TIMES, almost weekly, so that the promoters of this plagiarism must have known that our scheme was not abandoned.

We leave the transaction to the judgment of the Profession, only stating, that the establishment of our Law Reversionary Interest Society is *not* abandoned, and protesting against the piracy of its name, or plan, by any other person, who wants the wit to invent one for himself.

LAWYERS IN PARLIAMENT.

THERE are sixty-nine Lawyers in the present House of Commons. It is said that no less than one hundred and thirty are candidates for the next Parliament. If half of the new aspirants should be elected, we shall have nearly one hundred Lawyers in the Commons, —about one-sixth of the whole House.

This is a remarkable state of things. Its causes and its consequences may well challenge inquiry from the thoughtful.

Its effect upon the interests of the *public* is rather a question for the newspapers; but, so far as it concerns the Profession, it is a matter peculiarly within our own province.

What does this crowd of Lawyer candidates indicate?

Obviously it is the sign and the consequence not of the prosperity, but of the decline, of the Profession. It is a well-known paradox of the Profession, but established by experience, that although a Lawyer in large practice, who has no time to spare for legislative work, is permitted to go into the House of Commons without sacrificing his practice, a junior who does so is supposed to abandon the practice of his profession—at all events, the practice always abandons him. It is thought, we presume, that by going into Parliament before he has established himself in a leading practice, he proclaims his purpose to be to abandon his professional pursuit, in obedience to his parlia-

mentary duties. This is the only *rationale* we can trace of the strange contradiction, which assumes that the duties of Parliament are too onerous to permit a junior, who has little to do, to pursue his profession, while they are not deemed to be impediments to a senior, who has a great deal to do.

Whether it be a mere prejudice, or the wisdom of experience, the fact is not the less patent; and so well is it understood in the Profession, that it may be set down as a conclusion, that when any Barrister, who has not arrived at the dignity of a leader, goes into Parliament, he does so knowing that he thereby practically abandons all prospect of rising in his Profession. If he does not desire to desert it, it will certainly desert him.

The rush of Barristers from Westminster-hall to the hustings is, therefore, a significant symptom of the present state and prospects of the Profession. So many men would not be found to throw away their chances of Professional success, in the chase after the unprofitable honours of Parliament, if they did not despair of the former. Were the Bar flourishing, and ability tolerably certain to obtain a livelihood there, instead of one hundred and twenty wigs seeking to migrate from Westminster-hall to St. Stephen's, there would not have been twenty.

And if the cause be such, what are the consequences? Is the Profession likely to be advantaged by it? Judging by the experience of the past, we fear that it is not. Certainly, up to this time, the Lawyers in Parliament have been wonderfully self-denying. It cannot be said that they have taken care of themselves, as other classes have done. They have not prevented, if they did not promote, the alterations in the law which have cut off their emoluments and produced the migration we are now witnessing. The sixty Lawyers in the present House of Commons might have done something for the Profession, if they had been so inclined, were it only in the way of prevention of mischief. Should their numbers be doubled, they could not do more than *might have been* already done. Either the will or the power was wanting. Are these likely to be supplied in the next Parliament? We shall see.

However, their brethren out of doors must not suppose them to be altogether so blameworthy as they appear. They have a difficulty, not known to the public, but which it is right that the Profession should know. The Lawyers are positively hated in the House of Commons. To be a Lawyer is an actual impediment to success there; it is an evil reputation, which can only be overcome by repeated proof that it is not *as a Lawyer* the honourable member sits and talks. If he makes a good speech, he obtains no credit for it,—it is his business to make speeches. If he sides with the Government, he seeks promotion; if against it, notoriety. His arguments may be ever so sound, they carry no weight, because they are supposed to be the skilfulness of an Advocate, who could argue equally well on either side. Thus it is that the Lawyers in Parliament, although numerically strong, are weak in influence, and perhaps it is on this account that they are enabled to do so little in the way of service to the Profession.

It is certainly to be regretted that any cause should be given for an ill reputation that deprives the Lawyers of the advantages to which their numbers would entitle them. It is hard that all should be suspected, because some are self-seeking. To prevent this, we would remove the cause of the suspicion; we would take away all temptations to Lawyers to enter Parliament in expectation of any professional promotion, by passing an Act to disqualify a member of the House of Commons from taking any judicial or other office in the law, except those of Judge Advocate and Attorney and Solicitor General, and for six months after he shall have ceased to be a member.

Such a law would give the Lawyers a better position in the Legislature, it would remove many temptations from them, and it would enable the Government to exercise more independence than now they can in the choice of Judicial Officers. The Seat of Justice would then always be filled, not, as now, by the keenest politician, but by the best Lawyer.

We trust that, in the next Parliament, this hint will be taken, and such a law proposed. Should an opportunity offer to us, the experiment shall certainly be tried.

THE LEGISLATOR.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Tuesday, May 4.

Stamp Duties (Ireland) Continuance
Property Tax.

Thursday, May 6.

New Zealand Government.

BILLS READ A SECOND TIME.

Monday, May 3.

Registration of Births, Deaths, &c.

Thursday, May 6.

Stamp Duties (Ireland) Continuance
Grand Juries Metropolitan District
Property Tax.

BILLS READ A THIRD TIME AND PASSED.

Thursday, May 6.

Stock in Trade.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A THIRD TIME AND PASSED.

Friday, April 30.

British Empire Mutual Life Assurance.

Monday, May 3.

Kelvin Bridge (Glasgow) and other works
Ponthdulluen and Nanthwyvant Roads
South-Eastern and Reading, &c. Railway
Southam to Kineton Road.

Thursday, May 6.

Bedford and Kimbolton Road
Romsey, Broughton, &c. Road
Ipswich Dock
London, Tilbury, &c. Railway.

PETITIONS PRESENTED.

ATTORNEYS' CERTIFICATES—For repeal of the duty thereon, from Walsall, Upton-upon-Severn, Deddington, Boston, Pickering, Bridgnorth, Stamford, Louth, Chairman and Committee of the Metropolitan and Provincial Law Association, Lancaster, Kingston-upon-Hull, Brighton, Workington, Wrexham, Richmond (York), and Northampton.

SESSIONAL PRINTED PAPERS.

Par Num.
167. Incumbered Estates Commission, Ireland—Return
266 Schools, Scotland—Return
275 National Debt—Annual Account
278. National Debt, Capital that did not pay Income Tax for the year 1850—Account
173. Local Acts, Tyne Improvement—Report of the Admiralty, a Corrected Copy
270. Poor Law, Alverstoke with Gosport—Report of W. H. T. Hawley, esquire
283 Metropolitan Interment Act—Return
290 Court of Chancery—Returns
293. Committee of Selection—8th Report
282. Bills Ports and Harbours
286. — Trustees Act Extension
Valuation, Ireland
305. Stamp Duties, Ireland—Continuance
306. Property Tax
301. Registration of Births, Deaths, and Marriages
280. Commons' Inclosure Acts Extension, amended
299. Patent Law Amendment
300. Episcopal and Capitular Revenues, &c.
Public General Acts—Caps 1, 2, 3, 4, 5, 6, 7, and 8.
173. Local Acts—Reports of the Admiralty
267. Manufactured Articles and Agricultural Produce—Return
General Board of Health—Second Report of Quarantine, Yellow Fever
173 Local Acts—Reports of the Admiralty
281 Metropolitan Interment Act - Second Annual Report
302 Trade and Navigation—Accounts
173 Local Acts—Reports of the Admiralty
261. Consolidated Annuities, Ireland—Returns
265. Kanturk Union—Return
84 Corn, &c.—Account
Emigration, North American Colonies—Papers
New Zealand, Proposed Constitution—Papers
Census of Ireland for the year 1851—Part I. County of Carlow, delivered on the 30th April, 1852.

HOUSE OF LORDS.

MASTERS IN CHANCERY.

MONDAY, April 26.—Lord CAMPBELL rose to offer a short explanation of a remark which he had made on a former evening relative to the Masters in Chancery. He regretted that what he had then said had been misunderstood by those learned and respectable individuals, who had been chosen by the Lord Chancellor to fill their respective offices on account of their excellent character for learning and integrity. He had referred, in what he had then said, not to the individuals, but to the system under which they acted. He had used the expression, that cases rested in their offices, not merely from year to year, but from generation to generation; but he had not said that they did not transact with despatch a great deal of business. Whenever they could use despatch in the transaction of business they did so. As a proof of it, he would give a return of the despatch used in one of their offices,—he meant that of Master Tinney. In the year 1851 he had made no less than 204 reports; and on looking to the dates of the references made to him, he found that 70 of the references were made to him before 1850, but very shortly before that year. 68 were made in 1850; and the remaining 62 were made in 1851. This shewed how rapidly, after the references were made, the reports were made disposing of those references. This was a fair average sample of the despatch observed in the Masters' offices; but, unfortunately, in other instances cases did sometimes linger, and, notwithstanding the exertions of the Masters, did sleep from year to year, and sometimes from generation to generation. This arose from no fault of the Masters, but from the system. He heartily rejoiced that the Bill for the abolition of the Masters' offices had been brought into Parliament.

HOUSE OF COMMONS.

MILITIA BILL.

MONDAY, April 26.—After a long debate, the second reading of this Bill was carried by a great majority, the numbers being, for the second reading, 316; against it, 165; majority, 150.

PETITION OF THE ATTORNEYS.

Mr. MULLINGS moved that the petition of the Society of Attorneys, Solicitors, Proctors, and others incorporated by Charters of King William the Fourth and Queen Victoria (presented 23rd April) be printed with the votes.—Mr. THORNELY opposed the motion, on the ground that the substance of the petition had already been printed in the ordinary way in the report of the committee on public petitions.—The House divided, when the result was—

For the motion	12
Against it	44
Majority against the motion	—32

REFRESHMENT AT ELECTIONS.

Sir E. N. BUXTON moved for leave to bring in a Bill to allow candidates to give refreshment to voters at county elections to a limited amount.—A rather spirited discussion ensued, and, Sir JOHN PAKINGTON supporting the motion, it was, on division, carried by 58 to 19: majority, 39.

THE TRUSTEES ACT.

TUESDAY, April 27.—Sir W. P. WOOD moved for and obtained leave to bring in a Bill to extend the provisions of the Trustees Act of 1850.

ECCLESIASTICAL COURTS.

Mr. HORSMAN wished to ask the Home Secretary whether the Government had, either in preparation or in contemplation, any measure for the reform of the Ecclesiastical Courts?—Mr. WALPOLE (who spoke in a very low tone) was understood to reply that the Queen's Advocate had been at great pains to prepare a draft Bill with reference to the reform of the Ecclesiastical Courts; but whether the Government would feel justified in adopting that particular measure, or any other, he could not—seeing that it was a subject of difficulty, and very complicated—undertake at the present moment positively to say.

ENFRANCHISEMENT OF COPYHOLDS.

THURSDAY, April 29.—Mr. AGLIONBY moved the third reading of this Bill.—Sir G. STRICKLAND opposed the Bill, and moved that it be read a third time this day three months.—The gallery was cleared for a division, but none took place; and the amendment being withdrawn, the Bill was read a third time, and passed amidst some cheering.

LEGAL EDUCATION.

MONDAY, May 3.—In reply to Mr. Ewart, the ATTORNEY-GENERAL stated that the contemplated examination of candidates for the bar would be voluntary, but that, in order to induce students to submit to it, it was proposed to establish studentships as rewards for the greatest proficiency.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

THE rating of a dock appears to be almost as difficult a matter as the rating of a railway. Several questions have already arisen as to the *principle* of such a rate, and now we have one upon the mode of assessment where the dock extended into different parishes. In *Reg.* v. *The Hull Dock Company*, 19 Law T. Rep. 85, four different docks, communicating with one another, extended into different parishes, but one toll was paid for the privilege of using the whole or any part of the docks. The rate upon the tolls was held to be dis-

tributable among the several parishes according to the *proportion of land* of the docks in each parish.

Jervis's Act, 11 & 12 Vict. c. 43, has been decided to be *retrospective*. The subject-matter of the complaint arose in 1847, but the complaint was not made until nearly four years afterwards. The justices made an order upon it. The Court quashed it, under sec. 11 of the above statute, as having been made on a complaint the matter of which arose six months before the order. (*Reg. v. The Leeds and Bradford Railway Company*, 19 Law T. Rep. 86.)

The question, who has the management of a public road so as to be entitled to sue for a penalty imposed by the Railway Clauses Consolidation Act, sec. 57, was raised in *Reg. v. Wilson*, 19 Law T. Rep. 86. It was decided that he must be a person clothed with some *public* duty,—as trustee, commissioner, surveyor, &c.; and that one who had dedicated the road to the public, who voluntarily repaired it, made sewers under it, and whose consent had always been obtained by parties wishing to interfere with the road, was not such a *person*.

In *Walker v. The British Guarantee Association*, 19 Law T. Rep. 87, the sureties of a treasurer of a building society were held not to be liable upon a covenant for his duly accounting for all moneys received on account of the society, where the treasurer had received money for the society which it was his duty to pay to the bank, but was robbed of it by irresistible violence, without any default of his own, before he could pay it to the bank.

It is now decided in *Reg. v. The Justices of Lancashire*, 19 Law T. Rep. 87, that an appeal against an order for the maintenance of a lunatic pauper *must* be made to the Sessions within whose jurisdiction *the parish* is situate *from which the pauper was removed* to the asylum.

The Court of Ex. has supported the decision of the Q. B. in *Re Brown*, 18 Law T. Rep. 238, and has decided that the *Vagrant Act* does not render a suspected person or reputed thief, who may be found frequenting a street with intent to commit a felony, liable, unless the street be, and be described as being, a street leading to some river, canal, or navigable stream, dock, or basin, quay, wharf, or warehouse, near or adjoining thereto, or a place of public resort, or place adjacent to some public resort, or avenue leading thereto. Therefore, where the conviction stated the person to be a reputed thief who was found frequenting "Regent-street, in the county of Middlesex," with intent to commit a felony, it was held to be insufficient. (*Reg. v. Jones*, 19 Law T. Rep. 94.)

We have also an interesting case to note relating to *Highways*. In *Bateman v. Black*, 19 Law T. Rep. 95, the question was, what is a sufficient dedication to the public? The owner of a passage and court leading from the street to thirteen cottages, with gates at the entrance, and without a thoroughfare, had requested the commissioners for paving the parish to pave the court, which they did, and placed a public gas-lamp there. This was held to be strong evidence of a dedication to the public. COLERIDGE, J. said—"I shall direct the jury that this passage may be a public highway, though there is no thoroughfare."

The power of the Court to amend, under Lord CAMPBELL'S Act, was mooted in the Court of Criminal Appeal, in the case of *Reg. v. Vincent*, 19 Law T. Rep. 96. The facts were these. A. was sent by his master, a carman, to the London Dock Company, for two hogsheads of sugar, the property of B. The company, by mistake, delivered two hogsheads belonging to C. On the road from the premises of the company to B.'s, A. broke bulk, and abstracted some sugar. The indictment laid the property in A.'s master, but, *during the trial*, the Court amended, and laid the property in the company. It was held, first, that the Court had power to do so; and, secondly, that it was rightly laid in the company.

POLLING BOOTHS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In the recent election for the eastern division of this county, I was much assisted in my duties as sheriff's deputy for one of the polling places by Mr. Cox's book on the *Practice of Elections*. I introduced his new plan for polling booths, for the first time I believe in this county: and they proved very convenient; an alteration which I made was such a manifest improvement, that I shall not apologise for suggesting it to you. It was the addition of a passage, about three feet wide, at the back of the booths,—running from end to end,—with a door at one end only. This gave me easy access to all the booths, and my own seats and desks I had at the back of the poll clerk in each booth. I admitted messengers and committee men into the passage by ticket, thus preventing any crowding at the desks in front, which I kept clear by constable. In future, I should make another alteration, by having a passage through at the back into the front desks; this will be very convenient for the clerks and inspectors to get to and from their places, without going out at the voters' entrance place. The booths cost more than the old-fashioned straight line of desk, cutting into more stuff, and I found it necessary to have two constables at each booth, and these had to be paid. However, the very important object of keeping the voter from interruption whilst giving the vote was attained, and all connected with the polling approved highly of the new booths.

I am, Sir, yours, &c.

AYERST HOOKER.

Faversham, April 30, 1852.

JOINT-STOCK COMPANIES' LAW JOURNAL.

SOME valuable expositions of the law of Joint-Stock Companies will be found in the very interesting and instructive judgment of Lord ST. LEONARD'S in the case of *Re North of England Joint Stock Banking Company*, 19 Law T. Rep. 78. We direct attention to some of the most important of the points adverted to, but we recommend our readers to peruse the entire judgment. "If directors not pursuing or obeying the directions of their Act, in respect of particular transactions choose to adopt a new rule and hold out to the public that their plan is a binding one, and men advance their money on the faith of that dealing," as where they admit a shareholder without going through all the formalities prescribed by the Act or by their deed, such a course of dealing will be binding upon both parties. Where in such a transaction instruments are executed which are professed to be binding as for the transfer of shares, and the party is permitted to receive dividends as if he was the owner of the shares, and to which he would not have been entitled but for such supposed assignment, it will be binding on both parties. "If a man, by representation that he is entitled to be registered, becomes registered and is admitted *de facto* as a shareholder, he is not at liberty to refer to any invalidity and insist that he is not a shareholder against those persons who did not dispute his liability. If the directors themselves do an irregular act and admit a man and treat him as a shareholder, they are both bound."

The liabilities of railways as carriers were considered in *Crouch v. The North Western Railway Company*, 19 Law T. Rep. 90. The company gave notice that they would not be responsible for packed parcels, nor carry them unless *the contents* were declared, and that the senders would be taken to warrant that they were not packed parcels. The plaintiff sent a packed parcel, declining to give particulars. The company took it in, and it was lost. The question was now whether this notice formed a special contract. The Court held it to be insufficient, and that the company were bound to prove an assent to the terms of their notice.

IT will scarcely be necessary to recommend our readers to peruse with care the elaborate and very learned judgment of Lord ST. LEONARD'S, in the case of *Ex parte Straffon's Executors*, 19 Law T. Rep. 78. It is a review of the entire law of liability of contributories, set forth with the usual clear yet close, argument of that distinguished Judge.

The precise question at issue in the case is of little importance, for it exhibits no novelty, and it would be impossible to present here anything like an abridgement of the argument. But two or three of the more important points may be noticed briefly The facts were, that A. had purchased 120 shares in a banking company; and in respect of ten of them his grandson, as his agent, executed the deed of transfer. No transfer was made of the other 110. Dividends were received by A. upon the entire 120. He was held to be rightly a contributory in respect of all the 120 shares. Besides these A. had purchased of the directors 580 shares, on which also he had received dividends. The strict formalities required by the deed of settlement had not, however, been complied with. His executors were held to be contributories in respect of these also. His Lordship held, that it was not necessary, in order to constitute a person a *contributory*, that he should be a *member* of the company. He may be such if liable to the losses and demands of the company, even although not a member of it. The word "contributory" has a much wider meaning than the word "member." "All I have to consider, in deciding whether a man is a contributory or not is to ascertain whether he is liable in any manner whatever to contribute to the debts, liabilities, and losses of the company."

Three questions of *practice* are also reported. In *Re The British Alkali Company*, 19 Law T. Rep. 83, where the company had ceased to carry on business, but the governing body were bona fide endeavouring to wind up the affairs of the company under the provisions of the deed of settlement, the Court refused to make an order under the Winding-up Act, although a creditor to a large amount was in a position to issue immediate execution. In *Re the German Banking Company*, 19 Law T. Rep. 84, where contributories had successfully resisted a claim against the company, the Court allowed their costs to be paid out of the estate; and in *Re The Universal Gas-light Company*, 19 Law T. Rep. 84, a provisional committee-man claiming as a creditor in respect of debts of the company paid by him, was allowed to prove the debts, but not the costs of defending actions brought against him for those debts.

MONMOUTHSHIRE AND GLAMORGANSHIRE BANKING COMPANY.—Tuesday a crowded meeting of contributories and others was held before Master Farrer, on the subject of a proposed call of 60*l*. per share on all the contributories settled on the list. The affidavit of the official managers stated that they believed that such a call would produce about 268,000*l*. out of which an instalment of 1s. 8d. in the pound, amounting to 17,000*l*. would have to be paid to the compounding creditors by the 30th of June. The number of shares settled on the list was 17,385, but it was stated that out of these it was expected that nothing would be got from 7,200, owing to death, insolvency, and other causes. The gross amount of liabilities was 855,000*l*. to meet which there was about 250,000*l*. of available assets. The losses had amounted to 587,890*l*. This was at the time that the matter came into the hands of the official managers. At present the gross liabilities came to 807,000*l*. and the estimated deficiency, in March 1852, was 268,000*l*. After hearing the objections urged against the call, the Master ordered the call of 60*l*. per share to be made, observing that he understood that it was the intention of the official managers to enforce it as leniently as possible against those shareholders who had already paid something, and for which they would now be credited.

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

IT is understood to be a rule that conditions in restraint of marriage are void, as being against the policy of the law. But this must be taken with a limit. In *Lloyd v. Lloyd*, 19 Law T. Rep. 84, it has been held that the rule does not extend to the restraint of marriage of a testator's widow. "The law," said Vice-Chancellor KINDERSLEY, "recognises in the husband that species of interest in the widowhood of his wife which makes it lawful for him to restrain a second marriage, that is to say, that the provision he has made shall cease. I have no doubt also that with respect to either his wife or a stranger a testator may give an annuity, to continue so long as she remains single and unmarried; but as to a person not a wife, if he first gives her a life or other estate and then appends a condition to defeat that estate if she marries, that would not be good." This distinction should be noted by the student. Therefore, where there was a condition, if testator's wife and another woman should both marry, with a gift over, it was held to be void, for the reason above stated. In the same case it was also held that a condition to keep a tomb in repair is not a charitable use, and therefore not illegal. But otherwise of a devise of rents to the minister and churchwardens of a parish upon trust, first, to take 5*l*. to themselves and then to repair the tomb. This *was* a charitable use, and therefore void.

A point in the *Practice of Wills* was decided *In the Goods of Thompson*, 19 Law T. Rep. 96. The treasurer for the time being of a charity was appointed executor of a will. The person who filled the office at the time of testator's death had ceased to do so at the time of the probate; but he was held to be entitled to the grant.

AMENDMENT OF THE LAW OF WILLS.

The following is a copy of the Wills Amendment Bill as it is passing through the House of Commons:—

A Bill intituled "An Act for the Amendment of an Act passed in the First year of the Reign of her Majesty Queen Victoria, intituled 'An Act for the Amendment of the Laws with respect to Wills.'"

Whereas the laws with respect to the execution of wills require further amendment: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal and Commons, in this present Parliament assembled, and by the authority of the same (as follows):

1 *Vict. c.* 26.—*When signature to a will shall be deemed valid.*—1. Where by an Act passed in the first year of the reign of her Majesty Queen Victoria, intituled "An Act for the Amendment of the Laws with respect to Wills," it is enacted that no will shall be valid unless it shall be signed at the foot or end thereof by the testator, or by some other person in his presence, and by his direction: every will shall, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed to be valid within the said enactment, as explained by this Act, if the signature shall be so placed at or after, or following, or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will, and that no such will shall be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will, or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature, or by the circumstance that the signature shall be placed among the words of the testimonium clause or of the clause of attestation, or shall follow or be after or under the clause of attestation, either with or without a blank space intervening, or shall follow or be after, or under, or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature shall be on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will shall be written above the signature, or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature under the said Act or this Act shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made.

2. *Act to extend to certain wills already made.*—The provisions of this Act shall extend and be applied to every will already made, where administration or probate has not already been granted or ordered by a Court of competent jurisdiction in consequence of the defective execution of such will, or where the property, not being within the jurisdiction of the Ecclesiastical Courts, has not been possessed or enjoyed by some person or persons claiming to be entitled thereto, in consequence of the defective execution of such will, or the right thereto shall not have been decided to be in some other person or persons than the persons claiming under the will, by a Court of competent jurisdiction, in consequence of the defective execution of such will.

3. *Interpretation of "will."*—The word "will" shall, in the construction of this Act, be interpreted in like manner, as the same is directed to be interpreted under the provisions in this behalf, contained in the said Act of the first year of the reign of her Majesty Queen Victoria.

4. *Short title of Act.*—This Act may be cited as "The Wills Act Amendment Act, 1852."

Sales of Incumbered Estates.—After a short vacation the Court sat again for the purpose of effecting sales of estates, three of which were put up for competition, and all disposed of at various rates of purchase. The estate of Mr. James Nugent, lying in the county of Westmeath, containing 599 acres, with a mansion house and demesne, subject to a headrent and other charges amounting to 196*l.* a year, leaving an annual profit rent of 212*l.* was sold to an English gentleman (Captain Dixon) for 1,500*l.* or but little over seven years' purchase. A property in Galway and Roscommon, producing a net rent of 241*l.* per annum, realised 3,200*l.* or over 13 years' purchase. The residue of the Clare estates of Letitia J. Hickman, containing 968 statute acres, yielding a profit rent of 414*l* per annum, was disposed of in two lots, which together produced the sum of 5,650*l.* or nearly 14 years' purchase.

The Incumbered Estates Commission.—From a return to parliament, just printed, it appears that up to the 1st of February the sales effected by the Irish Incumbered Estates Commission amounted to 4,682,877*l.* 2s. 3d. The number of acres sold was 698,328, and the cash payments made by the commissioners 1,971,029*l.* 14s. 1d.

Stamp Duties (Ireland) Continuance.—A Bill which has been printed, is now before the House of Commons to continue the stamp duties granted under the 5th and 6th Vict. c. 82, for one year, to commence on, and be computed from, the 10th of October, 1852.

COUNTY COURTS.

Summary.

Three County Court cases were reported last week. In *Hayes* v. *Keene*, 19 Law T. Rep. 90, on a judgment and order to pay debt and costs by instalments, and in default a judgment summons served; and the defendant not appearing, a warrant of commitment, under rule 121, which directs that "such warrant shall bear date on the day on which the order of commitment was made, and shall continue in force for three calendar months, and no longer." The warrant authorised commitment "for the term of ten days from the date of the arrest." It was dated 19th September, 1851. The debtor was arrested on December 16, and kept in prison till the 25th, being seven days beyond the three months during which the warrant was to be in force. For this the debtor brought an action against the gaoler, who pleaded a justification under the warrant. The plaintiff replied in the words of the 121st rule, above described. But the Court held it *not* to be an answer to the plea, because, although the warrant was to remain in force only three months from the date of the order of commitment, the debtor, having been arrested within that period, was to be imprisoned for the number of days specified in the warrant, although the three months during which it had force were expired before the term of imprisonment was completed.

Justice v. *Gosling*, 19 Law T. Rep. 91, was a County Court Appeal, but not a question of County Court Law. The decision of the Court appears to have turned, not upon the point intended to be raised, but upon an omission of the judge to state certain material facts in the case. The Court refused to send back the case to be amended, but decided it upon the imperfect facts as stated.

Gurney v. *Harris*, 19 Law T. Rep. 94, was a very serious point upon the construction of sect. 11 of the *Extension Act*, which provides that if in action of trespass plaintiff shall recover a sum "*not exceeding 5l.*" he shall have no costs, while the 12th section enacts that if plaintiff shall recover "a sum less than the sum in that behalf hereinbefore mentioned," and the judge shall certify, he shall be entitled to costs. The plaintiff recovered the precise sum of 5*l.* and it was held that the judge *had power to certify* for costs under the 12th section.

There is also an *Insolvency* case of some importance to be noted in *Macrae's Practice*. In *Beavan* v. *Walker*, 19 Law T. Rep. 92, an Insolvent, to whom protection had been granted after verdict obtained against him in an action of tort, was held not to be protected from arrest on a judgment signed after the protection was granted.

The words "protection from *all process*," under section 4, were held to mean, from all process arising out of the subject-matter of the Insolvent Debtor Acts, which do not deal with actions of tort. In *Re Leathall*, 19 Law T. Rep. 96, where an assignee had been chosen at an adjourned first examination and had died before final order granted, a day was named for the creditors to proceed to the choice of another assignee *de novo*.

LATE CASES ON THE LAW AND PRACTICE OF THE COUNTY COURTS.(a)

The large amount of business which is now carried on in the County Courts, the increasing importance of these tribunals, and the numerous questions of difficulty relating to cases tried before them which have engaged the attention of the Superior Courts, have determined us to take a general review of the law relating to different matters connected with the Law and Practice of the County Courts. This subject we shall consider in a series of independent articles, which will be from time to time presented to our readers, as occasion shall call for them, and the space requisite for them in our columns will allow. In each of these articles we propose to examine, in the first place, into the general principle of the law bearing on the particular subject under discussion; then to present before the reader the leading cases which have been determined on this matter; after which we shall proceed to cite the various recent decisions which have been made on this point by the Superior Courts. By this means we hope to be able to afford to the practitioner in these Courts a general guide as to the course which in the particular cases referred to he ought to pursue, and, from time to time, to insure his acquaintance with all the leading points which have engaged the attention of the judges of the Superior Courts relative to the Law and Practice of the County Courts. At all times we shall be glad to receive the suggestions and communications of our readers, and of those whose practice may lead them to a more particular acquaintance with this department of the Profession.

As naturally occurring first in the order in which we should consider them, we come, therefore, at once to the examination of

1. CASES ON QUESTIONS OF JURISDICTION.

The question of jurisdiction, as regards the nature of the cases which the County Courts are entitled to try, is one of the most important in the law regulating these courts, and is one moreover which gives rise to very frequent discussion. In many instances, indeed, the denial of the jurisdiction of the Court is resorted to as the ground of defence to an action; and the uncertainty of the law here must in many cases prevent a recourse to proceedings in the County Courts. We hope, therefore, to present to our readers a brief general review of some of the recent decisions on this point, a knowledge of which must necessarily be essential to every practitioner in them.

Before entering on the subject immediately before us, it will, however, be desirable to advert to the provisions respecting jurisdiction contained in the several statutes relating to the County Courts, to which we may have occasion from time to time to refer, and which we shall do as concisely as possible.

The words of the 58th section of the original County Courts Act (9 & 10 Vict. c. 95) are what determine the jurisdiction of these courts as to the nature and amount of the causes to be tried in them. It is by this section enacted that "all pleas of personal actions, where the debt or damage claimed is not more than 20*l.* whether on balance of account or otherwise, may be holden in the County Court." Certain causes of action, which are specifically set forth are then prohibited from being entertained by these courts; being those of ejectment or in which the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise, shall be in question, or in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed, or for any malicious prosecution, or for any libel or slander, or for criminal conversation, or for sedition, or breach of promise of marriage.

By section 60 it is provided that the summons of commencing an action in the County Court may issue in any district in which the defendant, or one of the defendants, shall dwell or carry on his business at the time of the action brought; or by leave of the court of the district in which the defendant, or one of the defendants, shall have dwelt or carried on his business at some time within six calendar months next before the time of the action brought, or in which the cause of action arose, such summons may issue in such last-mentioned courts. Sect. 63 provides that demands shall not be divided for the purpose of bringing two or more suits; but that a plaintiff may abandon the excess above 20*l.* and bring his action for the remainder. Sect. 64 enables minors to sue for wages. Sect. 65 enacts that the jurisdiction of the County Court shall extend to the recovery of any demand not exceeding 20*l.* which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of a distributive share under an intestacy, or of any legacy under a will. Sect. 66 provides that it shall be lawful for any executor or administrator to sue and be sued in the County Court. Sect. 68 provides that one out of several persons jointly liable may be sued.

A mode of proceeding is given by secs. 122-127, for the recovery of any house, land, or other incorporeal hereditament, where the yearly value or rent shall not exceed 50*l.* upon the ending or determination of the term or interest of the tenant.

By sec. 128 it is enacted, that all actions and proceedings which before the passing of this Act might have been brought in any of the Superior Courts,

(a) By George Harris, Esq. Barrister-at-Law.

where the plaintiff dwells more than twenty miles from the defendant, or where the cause of action did not arise wholly or in some material point within the jurisdiction of the court within which the defendant dwells or carries on his business at the time of the action brought, or where any officer of the County Court shall be a party, except in respect of any claim to any goods taken in execution, may be brought in such Superior Court at the election of the party. Sec. 129 prevents plaintiff suing in any of the Superior Courts, when he might have sued in the County Court, from recovering any costs where he does not recover above 20*l.* unless the judge certifies that the action was proper to be tried in such Superior Court.

By the Act of 13 & 14 Vict. c. 61, to extend the Act for the more easy recovery of small debts in England, it is enacted, sec. 1, that the jurisdiction of the several courts to be holden under the former Act shall extend to the recovery of any debt, damage, or demand, not exceeding the sum of 50*l.* and to all actions in respect thereof, save and except the several actions specified in the proviso in sec. 58 of the same Act, already referred to; and that the provisions in the former Act shall extend to all debts not exceeding 50*l.*

It is provided by sec. 17 of this Act, that if both parties shall agree by a memorandum, signed by them or their attorneys, that the County Court shall have power to try any of the actions therein mentioned, in which the sum sought to be recovered shall exceed 5*l.* by the said recited Act, or 50*l.* by that limited, or any action in which the title to land, whether of freehold, copyhold, leasehold, or other tenure; or to any title, toll, market, fair, or other purchase shall be in question, then the Court shall have jurisdiction to try such action, provided that in the memorandum it shall be stated that the parties or their attorneys know the action to be above such sums, or that they know such title to come in question; and provided that all local actions be brought in that jurisdiction in which the lands are situate.

By the 10 & 11 Vict. c. 10, ss. 4 and 6, the jurisdiction of the Courts of Bankruptcy in the case of insolvent debtors is transferred to the Court for the Relief of Insolvent Debtors, and to the County Courts.

These comprise the whole of the enactments which relate to the jurisdiction of the County Courts. We shall next proceed to examine into the determinations of the Superior Courts, which have been made upon the various questions which have arisen on the subject.

On the general subject of the jurisdiction of the County Courts, it was decided by Mr. Justice ERLE, while sitting in the Bail Court, that if the Judge of the County Court has jurisdiction to enter upon the cause, he has jurisdiction to decide it. The want of jurisdiction, if existing at all, exists at the commencement of the trial. (*Stevenson* v. *Shickle*, 1 Cox & Mac. 187.)

Questions as to what constitutes a sufficient residence within the jurisdiction of the County Court, and what is a sufficient description of residence, have on several occasions been raised. A warrant of commitment by the Judge of the Sheriffs Court, in London, under sec. 1 of 8 & 9 Vict. c. 127, recited that T. K. "of Fleet-lane, &c. in the City of London," being indebted, &c. and then being at Fleet-lane, &c. and within the jurisdiction of this Court, was summoned, &c. and having appeared, was ordered to pay by instalments of 2*l.* per month; and that the first instalment had not been paid; and then ordered the said T. K. to be imprisoned in the debtors' prison for the City of London, "being the city in which the said T. K. hath been resident." It was held (PATTESON, J. dissentiate), that the statement of residence was sufficient,—first, because the Act of Parliament intended a committal to the gaol of the district which had original jurisdiction in the matter, and not of that in which the debtor resided at the time of commitment; and, secondly, because, if not, still the words, "hath been resident," imported a continuance of residence up to the time of the commitment. (*Ex parte Thomas Kinning*, 1 Cox & Macrae.) It has been held that the deputy-sealer, whose duty it is to affix the Great Seal to instruments, and who attends the Lord Chancellor for that purpose, sometimes at Westminster Hall, sometimes at the House of Lords, and sometimes at Lincoln's-inn, and who at other times attends at the Great Seal Patent Office, in Quality-court, Chancery-lane, is not a person who carries on his business in any definite locality, so as to be entitled to enter a suggestion under the County Courts Act. (*Rolfe* v. *Learmouth*, 1 Cox & Mac. 267.) A clerk to the Board of Admiralty, in the General Registry Office of Seamen, No. 70, Lower Thames-street, is not a person carrying on his business in the City of London within the meaning of 10 & 11 Vict. c. 71, s. 113. (*Buckley* v. *Dann*, 1 Cox & Mac. 269.) It has also been decided, that a clerk in the Office of Privy Council, residing in another district, does not "carry on his business" at the Privy Council Office, within the meaning of the County Courts Act, so as to bring him within the jurisdiction of the Court of the district in which the office is situate. (*Sangster* v. *Kay*, 1 Cox & Mac. 328.) A. who was a remote indorsee, of a bill of exchange, sued B. the drawer, and recovered less than 20*l.* Upon a motion to enter a suggestion to deprive the plaintiff of costs, it was held that the giving notice of dishonour was a material point in the cause of action, and as the plaintiff and defendant lived within twenty miles of each other, the cause of action, in a material point, arose within the district, and the defendant was entitled to have a suggestion entered. (*Heath* v. *Long*, 1 C. C. Cas. 334.) In an action by the indorsee against the drawer of a promissory note for less than 20*l.* the defendant traversed the notice of dishonour. It was proved that the bill had been drawn and indorsed within the jurisdiction of the County Court in the district of which the defendant resided, but the notice of dishonour had been given in another district. It was held that the cause of action arose in a material point within the jurisdiction of the County Court, and leave was given to enter a suggestion to deprive the plaintiff of costs. (*Betteley* v. *Buck*, 1 Cox & Mac. 236.) Upon an application to enter a suggestion to deprive the plaintiff of costs, the defendant made an affidavit that the contract upon which the action was brought was made in the district of the Windsor County Court. The plaintiff, in his affidavit, denied this, and stated facts in support of his assertion. There being no other testimony on either side, the Court, upon these facts, refused the rule. (*Caterer* v. *Dean*, 1 Cox & Mac. 335.)

Orders for advertisements were given at a newspaper office within the jurisdiction of the Westminster County Court, and the defendant also resided within the jurisdiction, but the newspaper was published within the city of London. The plaintiff brought his action for the charges of the advertisements in the Superior Court and recovered 6*l.* 5*s.* A rule to enter a suggestion to deprive him of costs was made absolute. (*Ghislin* v. *Dean*, 1 Cox & Mac. 195.) In the Court of Kingston-upon-Hull, an action of assumpsit had been brought, and the declaration stated that the defendant was indebted to plaintiff within the jurisdiction of the Court, for freight due and payable from defendant to plaintiff, for the carriage of goods from Marseilles to Kingston-upon-Hull, and there delivered to defendant within the jurisdiction aforesaid, at defendant's request. It was held that the delivery was the consideration for the promise, and that both the consideration and the cause of action were within the jurisdiction of the Court. (*Kemp* v. *Clark and Another*, 1 Cox & Mac. 190.) It has been decided that a plaintiff, who dwells more than twenty miles from the defendant, may sue in the Superior Courts from a defendant under 20*l.* even although he comes on business within that distance by means of an agent, who sold the very goods that were the subject of the action. (*Shiels* v. *Kate*, 1 Cox & Mac. 192.)

The case which follows has been decided in relation to the cause of action. The Court having determined in *Grimbley* v. *Ackroyd*, 1 Cox & Mac. 79, that the whole of a tradesman's bill constitutes one cause of action within the 63rd section of the County Courts Act, if any one item of the bill arises within the jurisdiction of the County Courts Act, the cause of action arises in some material point within that jurisdiction, under the 128th section. (*Wood* v. *Perry*, 1 Cox & Mac. 208.)

With regard to what fixes the amount of the sum over which the County Courts have jurisdiction, it has been held, upon an application under sec. of the 9 & 10 Vict. c. 95, that the County Court has jurisdiction, though the sum exceeds 20*l.* (*Byrne* v. *Knipe*, 1 Cox & Mac. 182.) In another case a plaint was entered in a County Court to recover 20*l.* penalty for practising as an apothecary. The particulars stated the cause of action thus:— "Action to recover 20*l.* for that on or divers other days and times the defendant did act and practise as an apothecary, &c. at A. in the county of C., A. in the county of N., B. in the county of C. and B. in the the county of N. by then and there attending on E., F., G. and H. whereby he has forfeited 20*l.*" &c. It was held that such particulars did not disclose a cause of action exceeding 20*l.* and that, therefore, the County Court had jurisdiction. (*The Apothecaries' Company* v. *Burt*, 1 Cox & Mac. 281.) A. entered a plaint in a County Court to recover 20*l.* for damages done to his field by certain lime-kilns of B. during the period from November 10, 1843, to October 30, 1849. That plaint having been removed to this Court by certiorari, on the ground that the lime-kilns were of greater value than 20*l.* and that B.'s property in them would be destroyed if A. were to succeed. A. entered a second plaint in the County Court for 5*l.* for the same cause of action, laying the period of the injury to be from November 10, 1843, to November 30, 1849. It was held that the County Court had jurisdiction to entertain the second plaint, and that, therefore, prohibition would not lie, and that a certiorari could not issue, as the cause of action did not exceed. (*Edwards* v. *Nogos*, 1 Cox & Mac. 279.) It has, however, been held that it is competent to a plaintiff to reduce a claim below 5*l.* for the purpose of preventing the plaint from being removed by certiorari into a Superior Court. Debts and demands of less than 5*l.* are not removable by certiorari, even although it be sworn that difficult questions of law are likely to arise. (*Green* v. *Arundel*, 1 Cox & Mac. 289.)

Cases where the original demand has been reduced by a set-off, so to reduce it within the jurisdiction of the Court, must next be considered. In the following case the plaintiff brought his action in a Superior Court against the defendant, for and proved a debt of more than 20*l.* There were cross-accounts between the parties, which had not been balanced. The defendant pleaded and proved a set-off, which reduced the plaintiff's claim below 20*l.* and the verdict passed accordingly. A rule nisi having been obtained under 9 & 10 Vict. c. 95, s. 129, for leave to enter a suggestion upon the roll to deprive the plaintiff of his costs, on the ground that he ought to have sued in the County Court; it was held that the case did not come within the Act. (*Woodham* v. *Newman*, 1 Cox & Mac. 231.) An action was brought in the County Court for the balance due upon some bills of exchange, the full amount of which would exceed 20*l.* At the trial the defendant contended that the judge had no jurisdiction, inasmuch as the plaintiff had no right, under the circumstances, to treat his claim as a balance. The judge, however, thought that he had. Upon a rule for a prohibition, it was held, that as the question of jurisdiction involved the whole merits of the case, it being, in fact, whether there was a balance or not; and as the judge clearly had power to enter into the facts which raised that question, and as the affidavits were conflicting, the Court of Q. B. would not interfere with the judgment of the judge of the County Court. (*Joseph* v. *Henry*, 1 Cox & Mac. 366.) Where the plaintiff's amount exceeded the limit of the County Court jurisdiction, and he sought to bring it within, by having an agreement that cross accounts was to be set off between him and the defendant's testator (the defendant being sued as executor), and the judge of the County Court proceeded in that view of the case, and found for the plaintiff; but there was no evidence of any binding agreement to that effect, and the Court of Q. B. granted a prohibition to restrain all further proceedings in the County Court. (*Wilson* v. *Franklin, Executor*, 1 Cox & Mac. 497.)

We shall take an early opportunity of resuming this important subject, in the consideration of the other points arising out of questions raised respecting these courts, already referred to.

Query.

INSOLVENCY.

WILL you, or any of your readers through you, have the kindness to supply me with a copy bill of costs in an Insolvency protection case in the country, where the solicitor has a journey of ten or twelve miles to the County Court town to attend hearings?

May 5, 1852. AN OLD SUBSCRIBER.

THE LAWYER.

Summary.

COMMON LAW.—Where an indorsee of a bill brought actions against both the drawer and acceptor, whereupon the drawer paid the principal, interest, and costs of the action against him under a judge's order, which was resisted

by the plaintiff, who then continued his action against the acceptor for the costs of *his* writ, the plaintiff was held to be entitled so to do. (*Randall* v. *Moon*, 19 Law T. Rep. 92.)

In an action of ejectment, where two Terms had elapsed since the service of the declaration, the Court refused a rule *nisi* for judgment against the casual ejector, although it was shewn that the delay arose from indulgence given to the tenant. (*Doe dem. Panton* v. *Roe*, 19 Law T. Rep. 92.)

The Q. B. has now also decided, in *Stapleton* v. *Croft*, 19 Law T. Rep. 88, that the wife of a party is inadmissible under the new Evidence Act. ERLE, J. alone dissented from this reading of it. He maintained, by an argument which certainly carries conviction to our mind, that the law formerly excluded the wife only on the ground of *interest*, as being one with her husband, and that the removal of the husband's disability on such ground is, in fact, the removal of hers also. By the by, the argument arising out of the reading of the Evidence Acts, which we have more than once explained to our readers, does not appear to have been submitted to either of the Courts in which this question has been raised. It is at least worth consideration.

In *Broughton* v. *Jackson*, 19 Law T. Rep. 89, a plea to an action for false imprisonment, and putting plaintiff in irons, stating certain suspicious facts, and that defendant *believed* plaintiff to be guilty of stealing certain money, and that putting in irons was a reasonable mode of detainer, was held to be a good plea after verdict found.

Answers to Queries.

RECOVERY OF DEBT IN SCOTLAND.

THE debtor (in "J. A.'s" query of LAW TIMES of May 1) can be sued only for the *debt and interest*, if the creditor proceed against him on the *bill* by the expeditious and inexpensive process peculiar to Scotland for recovering the amount of bills and notes. If the creditor proceed by an ordinary action on the English judgment he may do so, and recover the *debt and costs up till judgment*. He may also, perhaps, recover the costs of *outlawry*, if he can shew that proceeding to have been in the circumstances proper or necessary. We venture to suggest to "J. A." that there are several gentlemen, familiar with Scottish law and practice, settled in or near the Temple, who would possibly answer his query more satisfactorily than we have done. J.

THE MERCANTILE LAWYER.

Summary.

IN *Anderson* v. *Hillies*, 19 Law T. Rep. 92, where a balance was due from a broker to the owner of a vessel, which was settled between the broker and the master, if the broker offered to pay it to the master in cash, but he preferred to take it by bill, such payment was held to be good against the owner.

Two decisions in *Bankruptcy* are to be noted. In *Re Wilson*, 19 Law T. Rep. 96, Mr. Commissioner AYRTON has decided that proceedings after an adjudication of bankruptcy are not void because there exist clerical errors and omissions in the duplicate served on the bankrupt; and in *Re Norwood*, 19 Law T. Rep. 96, that the Bankrupt's Attorney has a lien on books deposited with him for a proper purpose prior to the act of bankruptcy.

COURT PAPERS.

Court of Queen's Bench.

Sittings at Nisi Prius in Middlesex and London, before the Right Hon. LORD CAMPBELL, in and after Trinity Term, 1852.

MIDDLESEX.—IN TERM.

1st sitting (at 10 o'clock), Tuesday, May 25.
Any Common Jury cause may be taken at this sitting.
2nd sitting (at 10 o'clock), Thursday, June 3
Any Common Jury cause may be taken at this sitting.
3rd sitting (at 10 o'clock), Thursday, June 10, for undefended causes only.

AFTER TERM.

Monday, June 14.

LONDON.—IN TERM.

1st sitting (at 10 o'clock), Tuesday, June 1.
2nd sitting (at 10 o'clock), Tuesday, June 8.
Any Common Jury cause may be taken in Term.

AFTER TERM.

Tuesday, June 15, to adjourn only.

The Court will sit at half-past nine o'clock on every day after Term.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

The office of the Marshal and Associate is at the Lord Chief Justice's Chambers, Rolls-gardens, Chancery-lane. Hours of attendance eleven o'clock to five during Term and the sittings after Term; eleven o'clock to two during the rest of the year.

NOTICE.—The London adjournment day after Easter Term is fixed for Friday, May 14.

Court of Common Bench.

Sittings at Nisi Prius in Middlesex and London, before Sir JOHN JERVIS, Knt. in and after Trinity Term, 1852.

MIDDLESEX.—IN TERM.

Friday, May 28 | Friday, June 4.

AFTER TERM.

Monday, June 14.

LONDON.—IN TERM.

Tuesday, June 1 | Tuesday, June 8.

AFTER TERM.

Tuesday, June 15.

N. B. The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

On Tuesday, the 15th of June, in London, no causes will be tried, but the Court will adjourn to a future day.

The Office of the Marshal and Associate is at the Lord Chief Justice's Chambers, Rolls-gardens, Chancery-lane. Hours of attendance during Term and sittings after Term are from eleven to five.

QUESTIONS AT THE EXAMINATION.

Easter Term, 1852.

I. PRELIMINARY.

1. WHERE, and with whom, did you serve your clerkship?
2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.
3. Mention some of the principal law books which you have read and studied.
4. Have you attended any, and what, law lectures?

II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

5. What is the difference between a simple contract debt and a specialty debt? and when are they respectively barred by the Statute of Limitations?
6. What actions ought to be brought in the County Court, and what penalty is imposed when an action, which ought to be so brought, is brought in a Superior Court?
7. In what actions have the County Courts concurrent jurisdiction with the Superior Courts?
8. If the defendant wishes to inspect a deed in the possession of the plaintiff, what course is to be adopted? and what course was it necessary to adopt previous to the recent alteration of the law in this respect?
9. If a Judge of a County Court proceed to hear a plaint after it is proved before him that he has not jurisdiction, has the defendant any, and what, means of staying the proceedings?
10. A. gives a bond to B. of 1,000*l.*; B. assigns the bond to C. Is it necessary to sue A. on the bond: in whose name must the action be brought?
11. Can a plaintiff be nonsuited against his will? and in what respect is it more advantageous to him that he should be nonsuited, than that a verdict should pass for the defendant?
12. What is the effect of withdrawing a juror on a trial? and does it prevent a plaintiff bringing another action for the same cause?
13. In an action on a bill of exchange, drawer against acceptor, the defendant pleads payment only, what must the plaintiff prove?
14. If the only witness to a deed is dead, how is the execution of it to be proved?
15. Plaintiff obtains a verdict, which is set aside, and a new trial granted. Plaintiff neglects to give fresh notice of trial; what course should the defendant take to make an end of the action?
16. Can anything besides goods be taken in execution? If so, state what, and in whose hands, and by what modes of proceeding?
17. What is a sequestration, and to what species of property does it apply?
18. A. recovers against B. 15*l.* for his debt and 25*l.* for costs. Can he issue execution against the body as well as the goods of the defendant?
19. In what cases can a plaintiff be called upon to give security for costs?

III. CONVEYANCING.

20. What difference would it make, either at law or in equity, if the purchase-money of an estate had been contributed in unequal shares?
21. Under what circumstances is a tenant for life entitled to cut timber for his own benefit, or to grant leases?
22. When money is directed by a deed or will to be laid out in the purchase of lands directed to be entailed, may a tenant in tail, who would be entitled to the lands when so purchased, gain possession of the money without carrying such direction into effect? and if so, by what means?
23. Is a tenant for life bound to pay off incumbrances on the inheritance, or to keep down the interest? and if a tenant for life discharge incumbrances, what is the consequence? and what if a tenant in tail discharge them?
24. Will a chattel interest support a remainder?
25. How is property legally classed, and how denominated, and upon what principle is it that property is so classed or distinguished?
26. What is the difference between a jointure and a dower, and how is the former constituted, and how does the latter arise?
27. What is a voluntary settlement; and can it be defeated in any and what manner?
28. If the grantee of an annuity employ the grantor's attorney to prepare the deeds, is such attorney bound to disclose any circumstances that may affect the security?
29. Before completing a purchase, what search should be made? and what would be the consequence of not making such a search? and where and for what period should the search referred to be made?
30. What is an equity of redemption?
31. In a register county where the vendor of real estate is both heir-at-law and devisee, is it material that the will should be registered? and is it material if he should be devisee only?
32. What is meant by "the Protector of the Settlement" in the late Statute for the Abolition of Fines and Recoveries?
33. In any and what case of appointment will strict compliance with the terms of the power be dispensed with?
34. To vest an estate in fee simple what are the requisite words in the habendum of the conveyance, and what are the covenants in such conveyance, on the part of a vendor?

IV. EQUITY, AND PRACTICE OF THE COURTS.

35. Explain the origin and nature of the equitable jurisdiction of the Court of Chancery?
36. What is the ordinary form of a bill in Chancery?
37. State the ordinary modes of defence to a bill in Chancery, and the cases in which they are respectively applicable?
38. In what cases may a suit be instituted by claim instead of by bill?
39. What is the mode of defence to a claim?
40. Has the Court of Chancery any jurisdiction in any and what form of proceeding to declare its opinion upon any and what questions without proceeding to administer any relief consequent upon such declaration?
41. Is there any and what mode of proceeding by which the personal representatives of a deceased person may obtain protection through the medium of the Court of Chancery in respect of the debts and liabilities of the parties whom they represent without an administration suit?
42. Enumerate the several cases in which a defendant may move to dismiss a bill for want of prosecution?
43. Can a defendant in any and what cases set down a cause to be heard instead of moving to dismiss the bill for want of prosecution?
44. Explain the mode in which witnesses are examined in the Court of Chancery, and state in what case evidence by affidavit is admissible?
45. What is meant by an equitable mortgage, and to what remedy, as against the mortgagor, is an equitable mortgagee (by deposit of title-deeds) entitled in the Court of Chancery?
46. What is the proper mode of proceeding to appoint new trustees in the place of deceased trustees of a will or settlement containing no power to appoint new trustees?
47. Can a solicitor who is a trustee charge the trust estate for his professional services or loss of time in any and what circumstances?
48. Explain and illustrate the general principles on which the Court of Chancery acts in adjudicating on dealings and transactions between a solicitor and his client.
49. Define the nature and extent of a solicitor's lien on papers in his hands belonging to his client, and also of his lien on a fund recovered in a suit?

V. BANKRUPTCY, AND PRACTICE OF THE COURTS.

50. State generally the object of the Bankruptcy Laws: 1st, as regards creditors; 2ndly, as respects the bankrupt himself?
51. What description of persons are subject to the jurisdiction of those laws?

52. What facts should be ascertained by a solicitor before petitioning for an adjudication in bankruptcy?

53. State generally the proceedings necessary to be taken, and by whom, in order to obtain a London adjudication.

54. What are the facts necessary to be proved before the commissioner to warrant an adjudication?

55. Is a trader entitled to any and what notice of an adjudication in bankruptcy, and any and what time to dispute the same?

56. What is the mode of proceeding for making a debtor bankrupt under the Act for abolishing Imprisonment for Debt on Mesne Process?

57. What are the facts necessary to be stated in the petitioning creditor's affidavit of debt?

58. What is the lowest amount of debt which must be owing to a creditor to enable him to obtain an adjudication?

59. Will acts of buying only, or of selling only, constitute a sufficient trading, and under what circumstances?

60. What acts of a trader, with any and what intent concerning his creditors, are deemed acts of bankruptcy?

61. Within what period, prior to the date of the adjudication, must the act of bankruptcy be committed?

62. State what acts of a trader are deemed acts of bankruptcy?

63. How can a trader, being summoned, avoid committing an act of bankruptcy?

64. What particulars are necessary to be stated in an affidavit or deposition to prove a debt under an adjudication?

VI. CRIMINAL LAW, AND PROCEEDINGS BEFORE MAGISTRATES.

65. What are the Courts of Criminal Juris diction?

66. How can an indictment be removed from an Inferior to a Superior Court?

67. Is there any mode of compelling the attendance of a witness resident in Scotland or Ireland to give evidence before a Criminal Court in England?

68. Is disobedience to an Act of Parliament where no penalty is imposed a punishable offence?

69. If a magistrate refuses to take bail, what step can be taken to have the accused admitted to bail?

70. In what cases must a peer be tried by his peers, and in what cases by a jury?

71. What is a writ of *procedendo*?

72. What is the nature and jurisdiction of the Court of Quarter Sessions?

73. What is the difference between an indictment and an information, and state how the latter can be obtained.

74. What is the proper mode of laying the venue for an offence committed within the jurisdiction of the Central Criminal Court?

75. What other pleas than that of Not Guilty are admissible in criminal cases?

76. Can one person only be indicted for conspiracy?

77. What is the nature of the jurisdiction and duty of the coroner?

78. How can evidence in a foreign country be obtained in criminal cases?

79. What are the cases in which a statutory declaration must be substituted for an affidavit?

PROCEEDINGS OF LAW SOCIETIES.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

THE Annual General Meeting of this Association was held on Wednesday, the 21st inst. at the Offices, 8, Bedford-row. E. W. Field, esq. in the chair.

A detailed report from the committee of management was read by the secretary, Mr. W. Shaen, giving an account of the labours of the committee during the past year. After which the following resolutions were proposed and adopted:—1. That the report of the committee of management be received and adopted, and that it be printed and circulated, under the direction of the committee. 2. That the following members of the Association be elected members of the committee of management for the ensuing year. 3. That the best thanks of the association be presented to Mr. E. Benham and Mr. W. H. Ashurst, jun. for their services as auditors for the past year, and that Mr. Ashurst and Mr. W. H. Domville be requested to accept the same office for the ensuing year. 4. That the cordial thanks of the association be presented to the committee of management for their labours during the past year. 5. That the resignation of Mr. John Sudlow, as honorary secretary to the Northern Circuit Committee, has been received by the committee with much regret, and that the cordial thanks of the association be presented to him, for the zealous and able way in which he has performed the duties of the office during the past four years.

LEGAL INTELLIGENCE.

GRAY'S INN, May 6.—Mr. William David Lewis, the Lecturer of this Society on the Law of Real Property and Conveyancing, Devises, and Bequests, having signified his intention of resigning his Office after Trinity Term next, the Masters of the Bench have issued a notice requesting that Gentlemen desirous of becoming Candidates for the Office, and who must be Barristers, will communicate their desire to that effect to the Treasurer of the Society, at the Steward's Office, South-square, on or before the last day of Trinity Term next, and that any information required upon the subject may be obtained at the Steward's Office.

THE INNER TEMPLE, April 30.—The following gentlemen were this day called to the Bar by the Hon. Society of the Inner Temple:—Mr. Andrew Fairbairn, B.A.; Mr. John Henry Jenkinson, B.A.; Mr. James Sewell White, B.A.; Mr. Frederic George Adolphus Williams, B.A.; Mr. William Hardman, B.A.; Mr. Henry McNiven, M.A.; Mr. Alfred Henry Pechell, B.A.; Mr. Thomas Francis William Walker; Mr. Joseph Sharpe, S.C.L.; Mr. Salisbury Baxendale, B.A.; Mr. John Donald Campbell, B.A.; the Hon. George Edwin Lascelles; Mr. Rowland Jones Bateman; Mr. Francis Morgan Nichols, B.A.; Mr. Charles Gregory Wade, B A.

The dissolution is now expected to take place in the first week of June, that date being convenient for her Majesty, who intends, as soon as the close of the session sets her free, to make a marine excursion along the coast of Wales, and perhaps, also, to Ireland.—*Scotsman.*

THE TAXING MASTERS OF THE COURT OF CHANCERY.—According to a return to Parliament, printed on Monday, it appears that the annual amount of compensation, in the event of Mr. Baines, the Taxing Master of the Court of Chancery, ceasing to hold the office, is 5,403*l.* 2s. 9d. and the annual sum to be paid for seven years after his death is 2,701*l.* 11s. 5d. To Mr. Gatty, on his ceasing to hold a similar office, 5,421*l.* 14s. 1d. a-year is to be paid, and 2,712*l.* 7s. 2d. for seven years after his death. To Mr. Mills, Taxing Master, 4,935*l.* 9s. 7d. a-year is to be paid in the event of his ceasing to hold the office, and 2,467*l.* 14s. 10d a-year for seven years, to his personal representative after his death; and to Mr. Wainwright, 4,500*l* 5s. 1d. a-year, and 2,250*l.* 2s. 7d. for seven years to his representative after his death.

THE LATE SWORN CLERKS OF THE COURT OF CHANCERY.—It seems from a Parliamentary document (printed on Monday) that the total sums paid in salary and compensation to the four late sworn clerks (Mr. Gatty, Mr. Baines, Mr. Wainwright and Mr. Mills), appointed Taxing Masters under the Act 5 & 6 Vict. c. 103, to the 25th November last was 236,296*l.* 11s. 3d. of which 64,108*l.* 13s. 8d. was salary, and 172,187*l.* 17s. 7d. compensation.

PROPERTY TAX.—A Bill, which is printed, has been introduced into the House of Commons by Mr. Bernal, the Chancellor of the Exchequer, and Mr. G. A. Hamilton, to continue the duties on profits arising from property, professions, trades, and offices. It provides that the several rates and duties granted under the 5th and 6th Vict. c. 35, shall be continued from the 5th of April, 1852, for one year then next ensuing, and until the assessments made, or which ought to be made, shall be completed, levied, and paid.

PROCLAMATION OF OUTLAWRY.—At the Sheriffs' Court, the following persons were called upon to surrender, under penalty of outlawry:—Joseph Benson, John Pounds, John Hugh Wadham, Pigott Smyth Pigott, the Hon. Brownlow Cecil (Lord Brownlow Cecil), George Dracato Papanicolas, John Lloyd, Alfred Lewis, Mary Sabina de Melfort (Countess de Melfort), Algernon Massingberd, Osborn H. Sampays, William H. Smith, W. David Shirreff, and William Smith.

NOTICES OF NEW LAW BOOKS.

The Principles of the High Court of Chancery, and the Powers and Duties of its Judges: designed as the Student's First Book on Equity Jurisprudence. By T. A. ROBERTS, Esq. of the Middle Temple, Barrister-at-Law.

THE relative importance of the Court of Chancery has for many years past been on the increase, and its jurisdiction in some way or other affects all the most important transactions of life. Equity is no longer the humble handmaiden of the Common Law, but it is for us an important portion of the judicial system of the country, and a knowledge of its principles has become an indispensable portion of the education of the Common lawyer. Whether in years to come the separation of law and equity be abolished or not, the principles, and even the details, as already established by the decisions of the Courts, will always continue an integral branch of our jurisprudence.

The subject of legal education has of late interested the public mind, and a more philosophical spirit has already begun to prevail. It is felt that a man, to become a thorough lawyer, should be well instructed in the principles of jurisprudence, and should have a general idea of the whole system, in order the more readily to understand its different parts. The publication of Blackstone's Commentaries was the first important step in this direction, and the invariable advice to the student of the Common Law is, "read 'Blackstone' as your first book." The chapter there devoted to Equity is, however, extremely meagre; and the student is even now at a loss how to find the means of mastering the principles of Equity. The excellent treatises of KENT and STORY, it is true, are invaluable to the practitioner and the advanced student, but the beginner scarcely knows where to turn for information.

We are happy to say, however, that a little book has just been published, the object of which is to supply this deficiency, and to afford to the beginner that instruction which he can only with difficulty obtain elsewhere. Mr. ROBERTS'S *Student's First Book on Equity Jurisprudence* we can recommend to our readers as an able and comprehensive treatise on the principles of Equity: it gives a general idea of the whole system, and enables the student to form an idea for himself of the extent of study required of him.

History of Trial by Jury. By WILLIAM FORSYTH, M.A. late Fellow of Trinity College, Cambridge. London: J. W. Parker and Son.

MANY circumstances conspire to give peculiar value to such a history at this time. The grand jury system is mortally stricken, a Bill being before the Legislature, introduced by a Conservative Government, to abolish it within the metropolitan districts, and being thus confessed to be worthless, it cannot linger long in the provinces. The common jury system is being seriously discredited by the remarkable testimony which the County Courts bear to the state of public opinion with respect to that much lauded institution; for we find that where a resort to it is made optional with the suitors, in ninety-nine cases out of a hundred they prefer to have their causes tried by the judge alone. When we thus see the practice of men conflicting with their theory, it becomes a question of no little interest to what this difference is due; why it is that we make so great a boast of our "trial by jury," and yet individually seek to escape from it when we are permitted to do so. The anomaly results, no doubt, from confusion of terms. We recognise the value of juries in certain cases, but have not exercised due discrimination to draw the line, so as to indicate the degrees of their usefulness, and in what cases they are desirable, and when they are rather hindrances than helps to justice. In truth, they are useful to protect *the liberty of the subject,* and, therefore, requisite in criminal cases; but they are unfit instruments for deciding questions of disputed rights and demands between individuals. Common sense, therefore, prescribes that we should retain them in criminal cases, not because they are the best judges of the truth, but because the protection of personal liberty against the possible oppressions of power is to be preferred even to the best method of arriving at the truth; but that in civil cases it should be left to the choice of the suitors, that if they need its *protection* they may have it, but that if they do not require its inferior wisdom they should not be compelled to resort to it.

Mr. FORSYTH has employed great research in the gathering of the materials for his valuable volume, which every constitutional lawyer ought to read. He has contrived to make a very *amusing* book out of a subject which seemed to promise anything but attraction for the general reader. Not the lawyer alone will find in it much novel information, much curious narrative, and many themes for reflection; the social philosopher may glean from it facts that will be found to be fraught with instruction. The author has treated his subject very fully, tracing the jury system from its origin in the ancient tribunals of Scandinavia, through those of old Germany down to the Anglo-Saxons, and then through the Anglo-Normans to the time of the Plantagenets, when they ceased to be witnesses and became judges. He then reviews the provinces of the grand jury and the petit jury, describes the origin of the rule as to unanimity,

and in distinct chapters presents accounts of the jury system in Scotland, in America, in France, and other parts of the continent. He illustrates its practice by citations from the state trials; and, in conclusion, he considers it as a social, political, and judicial institution; estimating it, as it seems to us, somewhat too highly for its direct and avowed purpose, the judging of the truth, but not overrating its worth as a safeguard for liberty, and its indirect uses as educating the middle-class in the art of self-government. The remedy we would prescribe for the prevalent aversion to a jury in civil cases is to improve their character by abolishing the special jury, and requiring all classes to serve on the common juries, being paid fairly for such service, and hence more frequent Assizes.

But for the many more urgent claims upon our space at this moment, when all the Courts are sitting, we could cull from the volume before us some interesting and instructive passages. As it is, we must be content with cordially commending it to the notice of our readers.

JOURNAL OF PROPERTY.

MONEY MARKET.

English Funds.	Sat.	Mon.	Tues.	Wed.	Thurs.	Fri.
Bank Stock	Holiday at the Stock Exchange.	219	220	219½	219½	219¾
3 ℔ Cent. Reduced Annuities		98¾	98¾	98⅝	98⅝	98⅝
3 ℔ Cent. Consols Annuities		99⅝	99¾	99¾	99⅝	99¾
Consols for Account		99⅝	99¾	99⅝	99⅝	99⅝
New 5 ℔ Cent. Annuities		..	..	..	..	..
New 3½ ℔ Cent. Annuities		100¾	100⅞	100¾	100⅞	100⅞
Long Annu (exp Jan 5, 1860)		6¼	6¼	6¼	6¼	6¼
Do. 30 yrs. (exp. Oct. 10, 1859)		6⅞	6⅝	..	6⅜	6⅝
Do. 30 yrs. (exp. Jan. 5, 1860)		..	..	..	7¼	7⅛
India Stock		270	.	270	..	..
India Bonds (1,000*l*.)		..	83	..	.	80*
Do. do. (under 1,000*l*.)		84	80	83	83	..
South Sea Stock		..	..	..	..	110¾
Do. do. New Annuities		..	..	..	..	98⅜
Exchequer Bills, 1,000*l*.		65*	65*	65*	65*	..
Do. do. 500*l*.		65*	62*	68*	..	65*
Do. do. Small		65*	..	62*	..	..

* Premium.

THE GAZETTES.

Bankrupts.

Gazette, May 4.

BRINAMS, SAMUEL, jun. grocer, Hereford, May 18 and June 15, at half-past eleven, Birmingham. Off. as. Whitmore. Sols. Prichard, Hereford, and Bloxham, Birmingham. Petition, April 28.

EARP, JOHN, brewer, Uttoxeter, Staffordshire, May 15 and June 5, at half-past ten, Birmingham. Off. as. Whitmore. Sols. Duignan and Hemmant, Walsall; and Messrs. Wright, Birmingham. Petition, April 14.

FRANK, JAMES, merchant, Walsall, Staffordshire, May 18 and June 15, at half-past eleven, Birmingham. Off. as. Christie. Sols. Duignan and Hemmant, Walsall, and Messrs. Wright, Birmingham. Petition, April 23.

RITCHIE, CHARLES, jeweller, Oxford-st May 13 and June 10, at twelve, Basinghall-st. Off. as. Johnson. Sol. Fraser, Dean-st. Soho. Petition, April 30.

WATSON, WILLIAM ARTHUR, builder, Whitacre, Warwickshire, May 18 and June 15, at half-past eleven, Birmingham. Off. as. Valpy. Sols. Dabbs, Atherstone, and Hodgson, Birmingham. Petition, April 27.

WOODHOUSE, JAMES THOMAS, scrivener, Leominster, Herefordshire, May 15 and June 5, at half-past ten, Birmingham. Off. as. Whitmore. Sols. Motteram and Co. Birmingham. Petition, April 1.

Gazette, May 7.

BURLINGHAM, JOHN, milliner and draper, St. Helen's, Worcester, May 18 and June 16, at half-past eleven, Birmingham. Com. Daniell. Off. as. Valpy. Sol. Corles, Worcester; and Messrs. Wright, Birmingham. Petition, April 29.

HARDING, ROBERT, grocer and draper, Road, near Beckington, Somersetshire, May 18 and June 8, at eleven. Com. Hill. Off. as. Acraman. Sols. Cornish and Parnel, Bristol. Petition, April 24.

MANDENO, JAMES, oil and colourman, 162, Shoreditch, May 18, at one, June 22, at eleven, Basinghall-st Com. Holroyd. Off. as. Edwards. Sols. Parker, Rooke, Parker, and Whitehouse, Bedford-row. Petition, April 22.

THOMAS, JOHN, builder, Little Stanhope-st. Mayfair, May 17, at half-past twelve, June 15, at twelve, Basinghall-st. Com. Fonblanque. Off. as Graham. Sol. Staniland, Bouverie-st. Fleet-st. Petition, May 7.

WOODWORTH, CHARLES W. licensed victualler, Liverpool, May 19 and June 18, at eleven, Liverpool. Com. Stevenson. Off. as. Bird. Sol. Yates, jun. Fenwick-st. Liverpool. Petition, April 27.

BANKRUPTCY ANNULLED.

Gazette, April 30.

Harris, W. draper, Kingston-upon-Hull, April 27.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Abrahams, I. tailor, 4s. Turner, Liverpool.—*Bayliffe*, C. surgeon, first, 3s. 10d. Miller, Bristol.—*Benning*, W. law bookseller, first, 4d. Whitmore, London.—*Boniface*, J. maltster, first, 1s 0½d. Cannan, London.—*Cummins*, J. linendraper, first, 3s. 6d. Freeman, Leeds.—*Edwards*, J. A. boarding-house keeper, first, 7d. Turner, Liverpool.—*Eyre*, J grocer, first, 1s. Freeman, Leeds —*Fowke*, R. chemist, first, 3s 4d. Whitmore, Birmingham.—*Geary*, C C C cheesemonger, first, 1s. 7½d. Whitmore, London.—*Grant*, G. J. J. tobacco broker, first, 1s. Bird, Liverpool.—*Harrison*, T. trimming manufacturer, first, 2s. 5d. Cannan, London.—*Harrop*, J. clothier, first, 3¼d. Cannan, London.—*Hazard*, R. and F. R. victuallers, first, 8d. Miller, Bristol.—*Hopkinson*, G. coach builder, first, 2s. 6d. Turner, Liverpool.—*Levy*, W. maccaroni manufacturer, first, 4s. Stansfeld, London.—*Napier*, J jun. oil merchant, &c. first on new proofs, 5s. 6d. Freeman, Leeds.—*Nash*, W. warehouseman, first, 1s. Stansfeld, London.—*Pim*, G. and S. corn merchants, first, 1s. 8d. Bird, Liverpool.—*Reid*, J. merchant, first, 5s Hope, Leeds.—*Rumsey*, J. money scrivener, second, 1d. Cannan, London —*Storey*, J. draper, first, 6d. Wakley, Newcastle.—*Sutcliffe*, R. cotton manufacturer, first, 2s 3d. Pott, Manchester.—*Unsworth*, J joiner and builder, third, 2½d. Morgan, Liverpool.—*Waldron*, D. H. grocer, first, 4s. 3d. Christie, Birmingham.—*Wawn*, C. A. lime burner, second sep. 4d. Wakley, Newcastle.—*Welsh*, R. woollen-cloth merchant, first, 3s. 4d Freeman, Leeds.—*Wood*, W. provision merchant, first, 7s 6d. Miller, Bristol —*Woodhouse*, J. draper, first and final, 2s. 10d. Hope, Leeds.

INSOLVENTS' ESTATES.

Buxton, M. victualler and stone mason, 6d. Apply to T. Walker, official assignee, Court-house, Dudley.—*Devonshire*, L. (otherwise L. *Sargeant*,) 1s 10d. Apply at the County Court, Wellingborough—*Dumolo*, T. provision dealer, 10d. Apply to T. Walker, official assignee, Court-house, Dudley.—*Lemon*, R. C. cabinet maker, 5s. Apply to John Pidsley, official assignee, Townhall, Newton Abbot.—*Lombardini*, F jeweller, &c 2s. 3d Apply to John Pidsley, official assignee, Townhall, Newton Abbot—*Perry*, S cable chain-maker, 1s. 2d Apply to T. Walker, offical assignee, Court-house, Dudley.—*Sewell*, W carver and gilder, 1s. 6½d Apply to John Pidsley, offical assignee, Townhall, Newton Abbot.

Assignments for the Benefit of Creditors.

Gazette, April 27.

Child, S shopkeeper and general dealer, Ewhurst, Surrey, April 1. Trusts J. Elliott, yeoman, Alfold; T. Wood, grocer, Dorking; and E. Kensett, draper and clothier, Guildford. Sol. J D Sadler, Dorking—*Evans*, J. J. ironmonger, and dealer in gutta percha and india rubber goods, Newport, co Monmouth, April 1. Trusts W. Gough, factor, Birmingham; P Hardy, ironfounder, Worcester; and S. M Phillips, merchant, Newport. Sol. F. Mole, Birmingham—*Fryer*, E. brewer, Great Driffield, York, March 19 Trust T. Wheatley, gentleman, Hull Sol. W. O. Jarratt, Great Driffield—*Gunn*, I. licensed victualler and builder, Thorpe, Essex, April 21. Trusts. R. C Salmon, gentleman, Beaumont Hall, Essex; and F. Folkard, builder, East Bergholt. Sol. J T. Ambrose, Manningtree—*Hirst*, G. E merchant, Halifax, York, April 6. Trusts. R. Crossley, dyer, Halifax; G. Stansfield, and W. Thomas, woollen manufacturers, Bradford. Sols. G. and G H. Edwards, Halifax.—*Mourilyan*, J gentleman, Sandwich, Kent, April 23 Trusts. E. F. S. Reader, and J. Wood, Esqs. Sandwich Sol J. N. Mourilyan, Sandwich—*Webb*, W carver and gilder, Leeds, April 19 Trusts. S T. Newington, cut glass manufacturer, and J. W. Smith, tailor and draper, Leeds. Sols. Payne, Eddison, Ford, and North, Leeds.

Gazette, April 30.

Austin, R. L. cheese factor, Liecester, April 21. Trusts. T. Nunneley, wholesale grocer, S. Mather, grocer, and H. Allen, grocer, all of Leicester. Sols. T. Miles and W. Gregory, both of Leicester.—*Barker*, R. tanner, Otley, Yorkshire, April 6. Trusts W. Ackroyd, manufacturer, Otley; W. Musgrave, currier, Otley; and G. Broom, accountant, Coleman-st. Sols. Cariss and Cudworth, Leeds.—*Bonner*, J. miller, Lenton, Nottinghamshire, April 12. Trusts. W. Savile, banker's clerk, and J. Thorpe, corn factor, both of Nottingham Sol J. Wadsworth, Nottingham.—*Corer*, S timber dealer, Horsham, Sussex, April 21. Trusts. T. Child, timber merchant, Slinfold, and H. Figg, gent Horsham. Sol. W. Stedman, Horsham.—*Finns*, R. B. saddler, Piccadilly, April 26. Trust. T. W. Callow, whip maker, Park-lane. Sol. J. Fallows, Piccadilly.—*Horne*, T. brass founder and image manufacturer, Birmingham, April 7. Trusts. W. Sharp, esq. Handsworth, S. Rawlins, leather merchant, Birmingham, and T. Lingham, ironmonger, Worcester Sol. Haywood, Birmingham—*Lowe*, J Church-st. Greenwich, April 7. Trusts. J. Bradbury, Aldermanbury, and E. Ansted, Gutter-lane, warehousemen. Sols. Hardwick, Davidson, and Bradbury, Weavers'-hall, Basinghall-st.—*Mason*, T. cheese factor, Lincoln, April 20. Trusts. S. Harrison, grocer, Lincoln, and A. Goodliffe, provision dealer, Nottingham. Sols. Mason and Dale, Lincoln.—*Spearpoint*, T. linendraper, Folkstone, Kent, April 20. Trusts. G. A. Lewis, draper, Asford, and J. Kynaston, warehouseman, Gresham-st. Sols. Sole, Turner, and Turner, Aldermanbury—*Thompson*, F. F surgeon and apothecary, Tenbury, Worcestershire, April 6. Trusts. J. Cooke, gent. Wilden, and E. Swann, farmer, Tenbury. Sol. F. W. Preston, Tenbury.

Partnerships Dissolved.

Gazette, April 20.

Bernard, F. and *Lewsson*, A. importers of foreign goods, Manchester, April 18—*Brown*, T. and *Nottle*, J. T. ship brokers and commission merchants, Sunderland, March 23.—*Crabtree*, B. and *France*, J. dyers, Gomersal, April 3. Debts paid by France.—*Daniel*, H. *Outram*, R. and *Buckle*, J. S. manufacturers, Manchester, April 15. Debts paid by Outram.—*Daniels*, T. and *Haddelsey*, G. R. F. auctioneers, Kingston-upon-Hull, April 16.—*Davis*, H. S. and *Watson*, W. G. export oilmen, Leadenhall st as regards Davis, March 31. Debts paid by Watson.—*Fletcher*, W. and *Lockett*, T. linen drapers, Longnor, April 15.—*Galloway*, T. and *Brown*, R flour and provision dealers, Newcastle, April 8. Debts paid by Galloway.—*Haigh*, J *Collinge*, J. (deceased) *Barrowclough*, J. *Edmondson*, B. *Green*, J. *Lee*, E. *Haigh*, J. and *Green*, J. cotton spinners, Portsmouth, near Todmorden, as regards Barrowclough, Jan. 1. Debts paid by remaining partners.—*Halsey*, A. and P. linen drapers, East Budleigh, April 19. Debts paid by P. Halsey.—*Harrison*, J. and *Hardcastle*, J. colonial agents, East Cheap, Dec. 31.—*Lewis*, W. and A. King William-st. and Regent-st. March 25. Debts paid by A. Lewis.—*Moss*, J. and *Hatton*, W. L. family linen drapers, Featherstone-st. St. Luke's, April 16.—*M'Queen*, J. and J. B. drapers and tea dealers, Southampton, April 2.—*Peters*, D. and *Purves*, J. W. railway contractors, Balsall-heath, April 17.—*Peverelle*, C. and *Skidmore*, W. wholesale and retail dealers in London, Birmingham, and Sheffield goods, Birmingham, April 17. Debts paid by H. Parker, accountant, Birmingham.—*Powell*, T. and *Warburton*, J. grocers, Warrington, April 16. Debts paid by Warburton.—*Scaife*, C., G. and J. tailors, drapers, grocers, and druggists, Barton, as regards G. Scaife, March 11. Debts paid by remaining partners.—*Shand*, A., S. W., and F. merchants, Liverpool, as regards A. and S. W. Shand, March 31.—*Smith*, T. and *Beswick*, W. C. sail makers and ship chandlers, Liverpool, April 17. Debts paid by Smith—*Spreckly*, J. and *Asling*, B. chemists and druggists, Spalding, April 6.—*Warner*, W. J. and *Armstrong*, H. gas meter manufacturers, Upper North-pl. Gray's-inn-rd. April 19. Debts paid by Warner.—*Whaley*, J *Turnbull*, T. *Stead*, J. plumbers, &c. Bradford, as regards Stead, April 17.—*Wilkinson*, J. and S. W. cotton spinners, Stockport and Manchester, March 31.

Gazette, April 23.

Barlow, J. S. and W. H. hatters, Leeds, April 20.—*Barratt*, J. J. and O O. pastry cooks, &c. Albert-place, City-road, April 19.—*Bruce*, J. and *Wilby*, C. manufacturers of hosiery, Leicester, April 20. Debts paid by Bruce.—*Cross*, E. and *Makinson*, T. joiners and builders, Higher Broughton, April 17. Debts paid by Makinson.—*Graham*, W. and I. and *Town*, A. innkeepers, Goosenaigh, March 25. Debts paid by Town.—*Greenhalgh*, D. and *Kenyon*, T. calico printers, Stubbings and Manchester, April 21. Debts paid by Greenhalgh.—*Hammond*, E. and *Arney*, G. A. gelatine manufacturers, Mitcham Common, March 26.—*Ineson*, John and Joseph, rag merchants, Norwich, April 19 Debts paid by Joseph Ineson.—*Leonard*, R. *Warren*, W. R. and *Leonard*, J. H. wholesale ironmongers, Bristol, as regards R. Leonard, March 31. Debts paid by W. R. Warren and J. H. Leonard.—*Lister*, J. *Mills*, E. and *Fletcher*, E. civil engineers, Birkenhead, Jan. 1. Debts paid by Mills and Fletcher.—*MacNaughtan*, —. *Potter*, S. and *Barton*, T. calico printers, Manchester and Birkacre, as regards Potter, April 22. Debts paid by MacNaughtan and Barton.—*Moorhouse*, M. H., P. H. and I. cloth manufacturers, Thurlstone, April 15. Debts paid by P. H. Moorhouse.—*Rhodes*, S. and *Thorns*, J. joiners and wood merchants, Wakefield, April 19. Debts paid by S. Rhodes.—*Roberts*, W. and *Thomas*, J. attorneys and solicitors, Oswestry, Oct. 8, 1839.—*Siddeley*, J. jun. and W. brassfounders and coppersmiths, April 20. Debts paid by Siddeley, jun.

Gazette, April 27.

Atkinson, B. and *Proctor*, W. joiners and builders, Leeds, or elsewhere, April 22. Debts paid by Atkinson.—*Bennett*, G. and W. and *Sinkins*, E. painters and glaziers, Kingsbridge, April 13.—*Bradley*, R. and T. licensed victuallers, April 22.—*Crispe*, C. and *Elliott*, R. linen drapers, &c. Tunbridge Wells, April 19. Debts paid by Elliott.—*Curtis*, R. L. and E. C. builders, Stratford, April 26.—*Dashper*, M. and *Dallyn*, W. R. linen drapers, Torquay, April 21. Debts paid by Dashper.—*Harding*, G. P. *Dando*, J. and *Goodes*, G. and S. manufacturers of the patent spiral fastening for buttons, studs, pins, brooches, &c. Hatton-garden, as regards Harding and Dando, April 23.—*Hayward*, T. B. and A. B. tailors and drapers, Liverpool, April 7. Debts paid by T. Hayward.—*Longdon*, R., F. and R. jun. silk hosiers and glovers, Derby, Jan. 1. Debts paid by F. Longdon.—*Mackay*, J., H., A. F., and D. coal proprietors, Liverpool, April 22, as regards J. Mackay.—*Marriott*, G. and E. M. drapers, Melton Mowbray, March 19.—*Owen*, J. *Matthews*, W. and *Poulson*, G. tobacco manufacturers, Liverpool, April 19.—*Parkinson*, J. and *Green*, H. H. ship builders and ship smiths, Kingston-upon-Hull, April 23.—*Ritchie*, A. *Mackay*, J. and *Germaine*, J. E. timber merchants and commission agents, Bristol, April 16, as regards J. Mackay.—*Ritchie*, A. and *Mackay*, J. timber merchants and commission agents, Liverpool, April 16. Debts paid by Ritchie.—*Swarbrick*, T. *Popple*, R and C. cotton spinners, Kingston-upon-Hull, March 16.—*White*, J., R., and A. drapers, &c. Kingsland, April 24, as regards R. White. Debts paid by remaining partners.—*Whitehead*, W. and *Anderson*, W. tailors, drapers, &c Limehouse, April 17. Debts paid by Anderson—*Wilson*, J. and *Smith*, J. furniture dealers, &c. Albion-place, King's-cross, April 24. Debts paid by Smith.

Gazette, April 30.

Ball, E. C. and *Eykyn*, R. dealers in beer and flour and commission agents, Silver-st. Bloomsbury, April 28.—*Bell*, J. and *Prest*, J. woollen drapers, Bradford, April 24. Debts paid by Bell.—*Bibby*, R. *Jones*, J. F. and *Conroy*, C. rope manufacturers, Wavertree, as regards Conroy, April 26.—*Candy*, E. and *Peters*, S. grocers and drapers, Mark, April 27. Debts paid by Peters.—*Carter*, R. and *Bonus*, J. ship and insurance brokers, Leadenhall-st. April 30.—*Cavanagh*, W. and *Adams*, W. Belvidere, Cambridge-road, April 29. Debts paid by Cavanagh.—*Cole*, W. and *Bull*, C. sen. pickle, sauce, and ketsup manufacturers, Liverpool, March 31. Debts paid by Bull, sen.—*Coullate*, E. and *How*, S. brokers, Liverpool and Manchester, Dec. 31.—*Dunnicliff*, J. and *Compton*, R. linen drapers, Uttoxeter, April 22.—*Harrison*, J. and J. cabinet makers, Wigan, April 24.—*Horsley*, H. and C. linen and woollen drapers, and hatters, York, April 3.—*Hunt*, G. and *Cox*, J. jun. boot and shoe makers and leather sellers, Frome Selwood, March 25. Debts paid by Cox, jun.—*Lucas*, T. and *Simpson*, W. painters and glaziers, West Derby, Liverpool, April 26.—*Mackay*, J., H., A. F., and D. coal proprietors, Liverpool, April 22, as regards J. Mackay.—*Maiden*, J. and *Fish*, J. cloggers, Accrington, April 26.—*Marsden*, T. and *Clayton*, J. cotton manufacturers, Wardle, Rochdale, April 27. Debts paid by Clayton.—*McDonald*, W. *Hales*, R. and *Jerry*, R. victuallers, Drury-lane, April 24.—*Parsons*, W. H. and E. victuallers, Shoemaker-row, Blackfriars, April 29. Debts paid by W. H. Parsons.—*Staley*, G. and *Fryer*, J. drapers, grocers, and ironmongers, Cromford, April 22.—*Sutcliffe*, W. and *Walsh*, J. stonemasons and builders, Halifax, April 16. Debts paid by Sutcliffe.—*White*, J., R. and A. drapers and haberdashers, High-st. Kingsland, April 24, as regards R. White. Debts paid by J. and A. White.—*Woolley*, G. M.D. and *Christian*, J. S. M.D. surgeons, Brompton-row, Brompton, April 30.

CONTENTS.

To Readers and Correspondents.

"SIGMA."—*His letter has been sent to the writer of the article, who states that 5l. is the amount stated in 13 & 14 Vict. c. 61, s. 17, but it is probably an error in drawing the Act. The name of the case is a misprint, a D has been substituted for an H. The other case is correctly cited.*

"G. M."—*The report of the case in the County Courts is sent to the Editor of the* County Courts Chronicle.

"J. R."—*The question is one of* Law *and not of* Practice, *and therefore inadmissible.*

ERRATA.—In last week's number, p. 105, col. 1, line 38, *for Harrison* v. *Cortauld*, 3 B. & *Ald.* 36, *read* 3 B. & *Ad.* 36; and at p. 109, in the judgment of *Doe d. King* v. *Grafton*, col. 1, line 45, *read* "but none of the cases to which we have been referred shew that. Mr. Warren has failed to make out," &c.

We cannot undertake to return rejected communications. Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith. No notice can be taken of anonymous communications.

TO SUBSCRIBERS.

The Index to the 18th Vol. being now published, the volumes may be sent to the office for binding as usual. As all are bound uniformly, it will not be necessary to send a pattern.

THE LAW TIMES.

SATURDAY, MAY 15, 1852.

THE LAW REFORM BILLS.

PRESENT prospects are not promising. The Bill for the Abolition of the Masters' Offices has only just got into Committee in the Lords. There is no chance of its going through the Commons before the dissolution. The other Bills for Chancery Reform were introduced on Monday; for them there is still less hope. The *Fees* Bill *may* pass.

Of the Common Law Procedure Bill nothing is known. It is undergoing the ordeal of a Select Committee of the Lords, with what results we are not informed, but it will doubtless come out of it much changed in shape and substance. There is not to be even a pretence of an endeavour to make this law during the present Session.

Of the *Copyholds Enfranchisement Bill* there *is* some hope, unless the Lords should throw obstacles in its way. It will pass the Commons in sufficient time to become law, if the Lords are inclined to help it forwards.

As to the *Charity Estates Bill*, it is manifestly intended *not* to pass. It moves slowly: it has yet to travel through some of its more important stages in the Commons. It may be looked upon as lost for the Session.

Perhaps it is well that it should be so. A dying Parliament, whose members are thinking only of the hustings, is not competent to deal with questions that demand so much calm thought and deliberate discussion.

THE DISSOLUTION.

EVERYBODY asks when the Dissolution will take place. Everybody has a decided opinion upon it, which differs from the decided opinion of everybody else.

We, too, have our opinion, based, however, not upon any information with which we have been favoured, but upon a consideration of circumstances. There is nothing left for the House to do, save the Militia Bill. The supplies are all granted, the Mutiny Bill has passed, the Income Tax Bill only awaits the third reading in the Commons. Talkative members have said their say upon all possible and impossible topics. The annual motions on ballot, taxes, suffrage, and some other regular themes for field nights have been disposed of; the "necessary business" of the country is done, all that is now doing is unnecessary. The country is heartily sick of debates that end in nothing. The most barren Session on record must soon die of atrophy unless Lord DERBY takes alarm at the spectacle of do-nothing anility which it is exhibiting, and put a summary end to so discreditable an existence.

For these reasons we have no doubt that the Dissolution will take place in the first or second week in June.

LAWYERS IN PARLIAMENT.

SOME correspondents have questioned our assertion that when a junior barrister goes into Parliament he thereby abandons his Profession, or rather his hope of making a business in it and rising by it. But our friends do not attempt to shew that it *is* not in fact as we stated, but only that it *ought* not to be so. They give good reasons why that which is deemed to be permissible in an overworked Leader should not be deemed objectionable in an underworked Junior, and to these we fully assent. But still the *fact*, however unpleasant to aspirants, remains unanswered and unanswerable—such *is* the tradition of the Profession—a prejudice probably, but not therefore to be neglected by those who do *not* contemplate a choice between forensic and senatorial honour, but who hope to grasp both, and to make the latter a stepping-stone to the former.

In this world we must deal with things as we find them, and not as we should wish them to be; and finding that such a prejudice exists and that it *has* hitherto annihilated the *professional* prospects of *every* Junior who has ever entered the House of Commons, the prudent course for our correspondents will be, to accept it as a very unpleasant fact, and take it into their account when making their final choice of a career. If they prefer senatorial enterprise, good—let them seek it; but they must not flatter themselves that they will have the other also; they will purchase the former at the price of Professional success—all past experience says so, and no new circumstances affect the calculations for the future.

The prejudice is undoubtedly to a considerable extent unreasonable, and when limited in its application to Juniors, it becomes positively absurd. But it must be admitted that it is not altogether without foundation. The work of Parliament is considerable; it demands much time and thought; attendance at the Law Courts is almost incompatible with it. It would be difficult to do *justice* to one without neglecting the other. The Law is a jealous mistress, and will not endure a rival, and she is peculiarly jealous of Parliament. Thus, it is not altogether a prejudice. Like most popular beliefs, it has its foundation in fact.

Our correspondents must, therefore, seek for consolation in the proud consciousness of self-sacrifice. If they give up the substantial profits of professional business, for the unsubstantial honours of the Senate, and are content to serve their country without serving themselves, they are entitled to far more esteem than the herd of members who go to Parliament simply because they have nothing else to do, or are fit for nothing else. So far from looking upon the crowd of Lawyers who are seeking seats in the House of Commons as being incited thereto by hopes of pecuniary advantage, it should be understood by the scoffers among the public, that in truth no men will enter the House with less doubtful motives, for they will do so at the sacrifice of their professional prospects, and renouncing all hopes of the substantial rewards of Westminster Hall. The public ought to know this, in justice to the Lawyers.

LAW REVERSIONARY INTEREST SOCIETY.

WE have received from Mr. EWART a positive assurance, upon his honour, that he registered his project in entire ignorance that we had already promoted, registered, and were proceeding with the formation of a Society under the same name for the same purposes.

We accept that explanation, as we are bound to do, and we are rejoiced to find that the name and plan were not, as they appeared, a plagiarism, but a coincidence; two persons chancing to hit on the same idea, only that it occurred to Mr. EWART some time after it had occurred to us, and we had published it.

The course which ought to be taken by him and the promoters is plain. Now that they have learned that their title has been anticipated, and that they are not its original inventors, they are bound in fairness to change their name. We accept their assurance that they have *hitherto* acted in ignorance of our prior right, and therefore we withdraw reproaches based upon the assumption that they must have known a fact which had been published to the whole Profession for two years. But if, being now informed of the fact, they should continue the appropriation innocently made at first, they will be justly exposed to the reproofs from which, so far, they have excused themselves by the explanation they have given.

DEFENCES.

SOME remarks by LORD CAMPBELL, in sentencing a prisoner who had been convicted after a defence which was an *invented*, and not a *true* one, and in which he treated that defence as an aggravation of the crime, has produced a controversy in the newspapers as to the limits of the duties of those who defend prisoners.

Is it permissible to set up a defence not true in fact? May counsel put to the jury an inference from the evidence, if he knows that the truth of the case is otherwise?

The answer is plain; he may *not* do so, because he is thereby asserting a falsehood, or, more properly speaking, he insinuates it, which is as bad as uttering it.

But if counsel *knows* that a man is guilty in fact, but the evidence, as it is presented, entirely fails to establish his guilt, may he argue that the prisoner is not guilty?

The newspapers say that he may not: but in this they fall into a fallacy. They commit the common error of confusing legal guilt with moral guilt; they forget that the object of a trial is not to determine if the prisoner is guilty, as an abstract fact, but if he is *proved to be guilty according to law*. The jury are sworn to try and a true verdict give, *according to the evidence;* therefore, if they had in their own minds the most certain assurance of the prisoner's guilt, they would be bound to acquit him if the *evidence* did not show him to be guilty.

The purpose of a trial defines the duties of counsel and removes the ap-

his position, between his duty to his client to make out the best defence for him, and his moral duty to maintain the truth only.

Counsel, therefore, may not *assert* the innocence of the prisoner, if he knows him to be guilty, or set up as a *fact* a defence which he knows not to be true; but he may, and it is his bounden duty to his client, shew by argument upon the evidence, and by inferences from it, that there is not the necessary legal proof to justify a conviction. It is never necessary to contend that he is not guilty in fact; it is sufficient to shew that he is not *proved to be guilty*, and this argument he may sustain by shewing that the evidence would point to other inferences, because, if it permitted of two inferences, the rule of law is, that the inference of innocence shall be assumed in preference to that of guilt.

SKETCH OF THE SCOTTISH LAW COURTS.

ARTICLE EIGHTH.

PLEADING NOT SPECIAL—*continued.*

INVASIONS ON TRIAL BY JURY.

In our last paper we stated the mode in which the Scotch declaration or summons (for they are one and the same bipartite document) is framed, by whom and in what manner service is executed, and we had arrived at the stage when the defendant, having entered appearance, is ready to put in his plea.

The plea (or "the defences," as it is technically called in Scotland), is framed much in the same manner as the declaration, and is, in fact, nothing more than a counter declaration, or, in the language of the Ecclesiastical Courts, a responsive allegation. It is divided into two parts. The first consists of a series of answers, article by article, to the successive paragraphs of the declaration. These answers are often models of a sort of taciturn brevity. The fear uppermost in the mind of the pleader, who, by the way, is generally the attorney, assisted in the more difficult cases by the revisal of counsel, is always lest he should inadvertently make too liberal admissions, which once made are not allowed to be retracted. Hence the following are specimens of the curt and cautious manner in which the allegations of the declaration are answered:—"1. Denied. 2. Not known, and not admitted. 3. Admitted under reference to defendant's statement of facts. 4. Admitted that John Doe wrote the letter referred to, *quoad ultra*, denied," &c. It is needless to observe, that if the defendant were restricted merely to answering the plaintiff's statement in this style, no satisfactory information could be given of the particular grounds on which the defendant relies. Hence, in the second part of the plea, he is allowed to tell his own story, and make up a separate statement of facts by way of a counter-declaration, which, of course, necessarily varies considerably from that of the plaintiff. This statement is set forth, like the declaration, in articulate propositions, which are numbered consecutively, and the same qualities of brevity, pointedness, and non-argumentativeness are exacted under the penalty of future costs for impertinence. In the same manner, also, "pleas in law," which we formerly described as being appended to the declaration, are appended to the plea, containing the bare and abstract points in law on which the defence rests.

Both parties having thus stated their case, the one in the delaration (or summons), the other in the plea (or defences), the plaintiff, after perusing the plea, considers whether it would be for his advantage or not to have an opportunity of revising his declaration. If he is content to stand by it as it is, he or his counsel endorses his consent to that effect on the plea, which in fact amounts to his agreeing at once to close the record. It is, thereupon, the duty of the Master of the Court to transmit the pleadings to the Judge of the first instance for his examination. If, however, the plaintiff wishes first to revise his declaration before closing the record, then he has the power at once to do so without getting any rule of Court. He can amend his declaration in the freest manner, and he must at the same time answer seriatim that part of the plea which contains the defendant's own original and independent statement of facts. After the plaintiff has chosen thus to revise his declaration, the defendant has the corresponding power to revise his plea, and to answer any new matter that has been introduced. For the purpose of these mutual revisals, the parties can always agree without troubling the Court as to giving each other time, and in the event of a difference one of the parties may apply to the Judge, and on special cause shewn, the latter has power to grant further time once only and not oftener.

The plaintiff has thus the power to stop short after the plea is put in, and express his wish to close the record, or the parties revise their respective pleading once, in either of which events it becomes the duty of the Master of the Court to transmit the pleadings to the Judge of the first instance, whose duty in turn it becomes to examine them, and to appoint the parties to attend him at chambers within six days. Counsel generally attend on this occasion. If the Judge thinks the pleadings are not sufficiently explicit, precise, and pointed, so as to develop the issues either of fact or law, he orders certain alterations or amendments to be made within a given time. He suggests deficiencies in either party's pleading, and states how it may be remedied, or if facts are evaded without being either admitted or traversed, he may require one thing or the other to be done, and he may state whether the points in law are ample enough to cover the state of facts and to raise a proper issue. If, therefore, after these alterations have been made, or if at first the Judge found the pleadings were well framed and nothing further required to be done in the way of revising, or re-revising, he pronounces an interlocutor, closing the record. Formerly this used to be done by requiring the counsel of both parties to appear before the Judge and state their consent in writing, and in his presence, to that effect; but this was found to be a superfluous and expensive ceremony, and the Judge now declares the record closed of his own authority. If either of the parties, however, is dissatisfied, an appeal now lies to the Court of Review, whose decision is final, and who will remit the case to the Judge with whatever directions they think necessary.

As no judgment can be given on the merits of a case until the record has been closed, this is necessarily an important stage, being the limit at which the parties are foreclosed from advancing new statements or amendments. There is, however, always an exception in the event of new matter having come to light since the action was commenced. Both the plaintiff and defendant have respectively a right to set this forth as part of their pleading, and certain conditions are imposed with the view of guaranteeing bona fides, and of preventing mere negligence being the source of the ignorance alleged. Hence a much more ample provision is made for unavoidable accidents of this description than our system allows, which admits of nothing on the one side but a plea to the further maintenance, and on the other side a new assignment, which, however, is intended only to define and not to amplify the plaintiff's case.

Such being the manner in which the record is prepared and the pleadings brought to a termination in the Scottish Courts, it is now necessary to consider what provision is made for getting rid of the different issues left standing between the parties.

In any possible system of pleading the issues raised must be either issues in law, issues in fact, or both conjoined. These issues must ultimately be arrived at, either by the operations of the parties themselves proceeding according to fixed and definite rules, such as tend inevitably to that result, or the issues may be disentangled by the Judge, with the viva voce assistance of the parties. The former method is that of special pleading, and involves a higher degree of special skill on the part of the practitioners; the other is what prevails in Scotland, where the Judge supplies the methodical arrangement of the matter which the parties furnish. Special pleading consists in a series of progressive alternating statements, which promptly and gradually strip each other of all consentaneous matter, and leave outstanding a single point, which one party directly affirms and the other directly denies. The Scottish pleadings, instead of being thus plaited over each other, so to speak, consists of a single pair of ex parte statements, lying parallel, and discharged at each other broadside, without much method. The Judge, a highly skilled officer, comes to the rescue, and foreseeing the narrow issue between the disputants, tells them to clear away and extinguish the immaterial matter, by express denial and admission, so as to leave exposed the real and single points which lie at the root. The effect of the two systems is of course quite the same, the modus operandi being different. If we were to compare them to a familiar process, we should say, that taking the corpus of each lawsuit to be an arithmetical problem, special pleading is like solving the problem by algebra, both parties being bound, and supposed, to know that science; whereas in Scotland it is the Judge alone who requires to know the algebra. He translates (obviously a difficult thing) the gross arithmetical details supplied by the parties into algebraic language—he eliminates immaterial quantities—plants the positive and negative signs before their appropriate admissions and denials—and indicates the result.

Issues of law are most easily disposed of. As these are for the exclusive consideration of the Court, nothing is necessary except that they be clearly developed by the pleadings. To effect this, as we have seen, the skill of the Judge is put in requisition. He peruses the declaration and the plea: if they do not meet each other point blank—by direct denial and unqualified admission, and yet it is apparent there is no real dispute at bottom as to facts, he tells the parties who are before him what points must be either admitted or denied, before the record can be closed, and orders revisal accordingly. When the pleadings have been adjusted, and the record closed, it remains only for the Judge of the first instance to give judgment.

It is obvious that all pleas or defences to an action must, under any system of pleading, resolve themselves into the well-known division of dilatory and peremptory; pleas by way of abatement and pleas in bar. This is a distinction which exists in the nature of things, and accordingly is found in the Scotch pleading as well as our own. In Scotland, however, all kinds of pleas are pleaded at once and together, and there is no restriction as to their number. But while the number is not limited, we do not mean that it is increased by artificial rules, and that the changes are rung upon a state of facts in the licentious manner that used to prevail here, where the pleader exhausted every possible combination of assumptions under the apprehension that at least one might turn out correct. Much more regard is had to the truth of the matters pleaded, as might be expected under so liberal a discretion to amend on the part of the Judge, as well as of the parties. Hence, though the pleas are not given on oath, and emanate from the conscience, like an answer to a bill in Chancery, yet the fact of Equity and Common Law being subject to one procedure, has generated a middle course, which better reconciles the just freedom of statement which litigants ought to possess with at least a substantial regard for truth. Here a plea is a mere device to raise an issue; and what a party pleads is in no degree binding on him in an action with another person on a different subject matter. But in Scotland, much more weight is attached to a plea, and a statement contained in it is, unless the merest and most trivial inducement, admitted in evidence as a representation made by the party. While, therefore, in Scotland the defendant is allowed to plead both dilatory and peremptory pleas in a broad cast fashion, it is the business of the Judge of the first instance to marshal them, and single out the one class from the other, which is reckoned by no means an easy task. After this division has been made, the mode in which the dilatory pleas are disposed of is substantially the same as what prevails here.

With regard to issues in fact, the turn which the Scotch procedure has taken will be thought somewhat peculiar, and we are left far behind by the novelty and boldness of its innovations. We shall not allude to the history of trial by jury in Scotland, at present, further than to say, that since it was introduced in 1815, under the superintendence of a Judge trained in our courts, and acknowledged to have been well fitted for his position, it has struggled in vain to naturalise itself, and has at last degenerated into hybrid forms. The present state of the law, which on this subject has been quite revolutionised by the recent statute in 1850, is the following:—After the Judge of the first instance has examined the pleadings, as before mentioned, and ordered what amendments he thinks proper, he finds there are certain fundamental differences as to the facts outstanding between the parties, he then orders the plaintiff to prepare a draft of such issues as the latter thinks essential for his case; and in like manner he orders the defendant to prepare what issues are essential for his defence. Both parties are ordered to attend the Judge at Chambers on a future day, when the Judge receives these issues, hears counsel, if necessary, upon them, and then finally adjusts them, so as to bring out fairly the case on both side. Sometimes the adjustment of the issues is a difficult task, and a second appointment may be necessary for that purpose; and

even if the parties are not satisfied with the manner in which the Judge has settled the matter, they may appeal to the Court of Review. When the issues have at last been adjusted and approved, the Judge appoints the time and place of trial, both of which conditions are regulated by the reasonable convenience of the parties, the distinctions of venue being unknown. In general, the time of trial, unless on special cause shewn, is not later than three weeks from the adjustment of the issues: the place is the metropolis, unless the expense of witnesses forbids it. The Judge of the first instance, who has superintended the case from the first, in general presides at the trial, and to him all applications are made respecting it.

Such is the ordinary way in which a case goes before a jury in Scotland, the issue being given out by the Court as it is here by the Court of Chancery. The composition of the jury, however, is the feature, which the Scotch have so boldly tampered with. In the first place the parties, if they think proper, may dispense with a jury altogether, and have the trial proceeded with as if the Judge embodied their functions in his own proper person. The same person may be both judge and jury. In cases where the expediency of such a course seems questionable to the Judge, he may relieve his conscience by reporting the wishes of the parties to the Court of Review, and if the latter offer no objection, he proceeds to gratify the litigants. On such occasions the presiding Judge is bound to take notes of the evidence, and as far as counsel and witnesses are concerned, the proceedings are the same as if twelve men were empannelled. Eight days after trial the Judge is to pronounce an interlocutor in which he must state specifically what he finds in point of fact, and either party may, within eight days thereafter, bring such interlocutor under the review of the Judge who pronounced it, and on his own notes of the evidence, and he is bound to hear the parties on the subject. He may, thereupon, either correct his interlocutor as regards the finding in fact, or grant a new trial. Otherwise such findings, in point of fact, unless they appear to have proceeded on some erroneous view of the law, are final; but either party may appeal to the Court of Review as to any question of law which may be competently raised on the evidence in the same manner as if a bill of exceptions had been tendered. Not only may the Judge thus try issues in fact which have been duly adjusted in the manner formerly described, but he may, if the parties consent, try any special facts which arise incidentally out of the pleadings, without having previously drawn up any formal issues.

A second important invasion on trial by jury consists in the parties being allowed to select their own jurors. Thus, if they agree on any *one* person, or any *three*, *five*, or *seven*, they may empanel such one or more as a jury, and proceed with the trial before the Judge in the usual way. In this case the verdict of the majority of the jury is to have the same effect as that of a unanimous jury. Either party is entitled to tender exceptions, but he is precluded from moving for a new trial, on the ground of the verdict being against evidence, or any other ground implying miscarriage on the part of the jury.

Lastly, it is now competent for the Judge of the first instance to grant the united request of the parties that part or the whole of the evidence necessary may be taken by commission; and even if one of the parties object to this, the other party may move the Court of Review, and if, on considering the report of the Judge of the first instance, the Court shall grant the rule, it shall be made absolute, and the Judge shall take the evidence by commission accordingly.

These invasions on the system of trial by jury having only been recently authorised by statute, it would be premature to express any opinion as to their probable success, but we shall from time to time recur to the subject for the purpose of reporting progress upon so interesting an experiment.

THE LEGISLATOR.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, May 7.

County Elections Polls.

Monday, May 10.

Nisi Prius Offices.

BILLS READ A SECOND TIME.

Wednesday, May 12.

Trustees Act Extension.

BILLS READ A THIRD TIME AND PASSED.

Friday, May 7.

Highway Rates

Ecclesiastical Jurisdiction.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A THIRD TIME AND PASSED.

Friday, May 7.

Deeside Railway

Edinburgh and Glasgow Railway

Merthyr Tydvil Waterworks.

Monday, May 10.

Aberdeen Boys' and Girls' Hospitals

Dumfries and Maxwelltown Waterworks

Eastern Counties Railway (East Anglian)

Haw Bridge and Roads

London Gas Light (Amendment)

Portrush Harbour

Runcorn Improvement

St. Helen's Gas.

Tuesday, May 11.

Tyne Improvement.

Wednesday, May 12.

Ulverstone Waterworks.

PETITIONS PRESENTED.

ATTORNEYS' CERTIFICATES—For repeal of the duty thereon, from Trowbridge, Abergavenny, Usk, Spalding, Members of the Committee of the Society of Attorneys and Solicitors of Ireland, Weymouth, Malmesbury.

SESSIONAL PRINTED PAPERS.

Par. Num.

312. British Museum, Receipts and Expenditure—Accounts
173. Local Acts—Reports of the Admiralty
230. Metropolitan Commission of Sewers—Account
291. Freight Money, Greenwich Hospital—Return
315. Bills—Belfast Custom-house, &c. as amended by the Select Committee
263. — Vestries
311. — County Rates, as amended in Committee and by the Select Committee
313. — Metropolis Water Supply, as amended by the Select Committee
314. New Zealand Government
328. County Elections Polls
329. Sunk Island Roads.

HOUSE OF LORDS.

CHANCERY REFORM.

MONDAY, May 10.—The LORD CHANCELLOR moved the second reading of the Masters in Chancery Abolition Bill. He would not now occupy much of their lordships' time, because on a former occasion he had stated the general features of the measure, and future opportunities would be afforded for the due consideration of this measure in connection with another Bill brought into their lordships' House. He proposed to read the measure a second time now, and afterwards refer it to a select committee.—Lord CRANWORTH observed that no part of the recommendations of the commissioners was more in consonance with the general feeling of the public or more useful in itself than that which recommended the substantial abolition of the office of Masters in Chancery—substantial, he said, for many of their functions would still remain. He must own, however, that he did not quite concur that the mode in which it was proposed to carry out the recommendations of the commissioners was the best.—After a few words from Lord LYNDHURST and Lord CAMPBELL, the Bill was read a second time, and ordered to be referred to a select committee.—The Lord CHANCELLOR rose to lay on the table a second Bill, which proposed to carry into execution another part of the recommendations of the commissioners. This Bill contained various provisions which were deemed necessary to improve the procedure of the Court of Chancery. What he proposed to their Lordships was, that as soon as it was printed he should meet all the equity judges, and submit its clauses to their consideration. As soon as that was done, he should then move that it be read a second time, and referred to a select committee. He wished that the provisions of both Bills should be referred to a select committee, and then sent down to the other House.—After a few words from Lord LYNDHURST, the Bill was laid on the table and read a first time.—The LORD CHANCELLOR had to lay on the table a third Bill framed to provide a remedy for a defect which had been found to exist in Lord Shaftesbury's Bill, relative to the appointment of guardians of the persons and receivers of the property of lunatics.—Read a first time.—The LORD CHANCELLOR laid on the table a fourth Bill to amend Lord Lyndhurst's Bill, and enable the sale of lunatics' estates for payment of costs and debts.—Read a first time.

HOUSE OF COMMONS.

THE BETTING OFFICES.

MONDAY, May 10.—Mr. STANFORD wished to ask the Secretary of State for the Home Department whether his attention had been called to the rapid increase of a species of low gambling houses, called betting houses, in all parts of the metropolis, and whether he intended to apply any legislative remedy to this evil?—Mr. WALPOLE said that his attention had been called to this subject, but he was not prepared to say that he would introduce any measure with respect to it.

PARISH CONSTABLES BILL.

WEDNESDAY, May 12.—On the motion that the House go into committee on this Bill, a conversation took place between Mr. Rice, Mr. Frewen, Sir W. Joliffe, Captain Harris, and Mr. Deedes (the promoter of the Bill), respecting a proposal made by Mr. Rice that the Bill should be postponed. Ultimately the Bill was committed pro formâ; amendments were inserted by Mr. Deedes; and Tuesday, the 25th, was named for the further consideration.

THE PROPERTY QUALIFICATION BILL.

Mr. HUME asked Mr. Hayter whether the Bill introduced under the auspices of the late Government, in reference to the abolition of the property qualification for Members of Parliament, was to be persevered with during this session. He (Mr. Hume) hoped not, for to press such a Bill would necessarily delay the dissolution.—Mr. HAYTER replied, that he had been unsuccessful in his attempts to take the sense of the House on the Bill; and at this period, and under the circumstances, he would not think it right to persevere with the Bill. He withdrew it, however, most reluctantly.—On the motion of Mr. HAYTER the order for the second reading of the Bill was discharged.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

THE last number was rich in reports of cases upon this branch of the law.

First, as to *the Poor-Law*. In *Reg.* v. *The Inhabitants of Slawstone*, 19 Law T. Rep. 105, it was held that in computing the fourteen days within which notice of appeal against an order of removal is to be given, where it is sent through the post, the time is to be reckoned from the date at which in due course of post the depositions would be *received* by the person to whom they were addressed. In *Reg.* v. *The Inhabitants of Wickenby*, 19 Law T. Rep. 105, notice of appeal against an order for maintenance of a *lunatic pauper* was given on June 30, after the time limited by law had expired. On July 4 a notice to produce documents was served on the appellants by the attorney for the respondents. At the trial, on July 8, the Sessions found as a fact that the notice to produce was a waiver of the irregularity in the notice of appeal. The Court held it to be a question of *fact* for the Sessions, which it would not review.

2ndly. On the *Tithe Commutation Act*. In *Reg.* v. *Williams*, 19 Law T. Rep. 105, an order of Justices, under sect. 16, recited a complaint made before them by the tenant of certain lands charged with one amount of tithe rent-charge, but belonging to two owners in several portions, that he had paid the whole, and that defendant had not paid his just proportion, stating the sums; and proceeded, "and we having examined into the merits, &c. determine that the just proportion to be contributed by the defendant is 10s. 6d. per annum," and ordered payment of the sum due and costs. This order was held to be *bad*, because it did not adjudicate that the matters of the complaint were true. What a farce of justice is this!

3rd. As to *the Practice of Magistrates*. In *Reg.* v. *The Justices of Suffolk*, 19 Law T. Rep. 167, these were the facts. One of the magistrates present at the hearing of an appeal against an order of removal was a ratepayer in the appellant parish, and during the hearing he pointed out documents and made remarks to the chairman, but he took no part in the decision of the case. Nevertheless the Court rightly held that his interference invalidated the order. Lord Campbell said, "There can be no doubt that this gentleman was an interested party, and his duty was to have withdrawn from the Bench during the hearing of the appeal. That is the example set by the Judges of the superior Courts, which magistrates at sessions would do well to follow." This should be noted in Saunders's *Duties and Practice of Magistrates*.

4th. On the *Law of Rating*. In *The Justices of Bedford* v. *The Overseers of St. Paul's, Bedford*, 19 Law T. Rep. 112, houses occupied by the governor and warden of the gaol, outside the gaol, but proper and convenient for the performance of the duties of the gaol, were held to be rateable; and in *The Justices of Bedford* v. *The Commissioners of Bedford Improvements*, 19 Law T. Rep. 112, where a local Act empowered a rate for repair of the streets to be levied "for every yard of running length in front" of buildings, and the gaol had two fronts which were accessible, but all its four sides abutted on streets, it was held to be rateable for *each* of its four sides.

5th. In *Bastardy*. In *Ex parte Harrison*, 19 Law T. Rep. 114, it was held to be no objection to an order of affiliation that it was made after twelve months from the birth of the child, if in fact the *complaint* had been duly made within that period; nor that the summons was not issued till many months after the application for it; nor that it directed payment of weekly sums for a longer period back than thirteen weeks; nor that it was made more than forty days after service of the summons, the hearing having been adjourned from time to time, and the first hearing having been in due time.

COUNTY ELECTIONS POLLS.—There has been printed, by order of the House of Commons, a Bill to limit the time of taking the poll in counties at contested elections for knights of the shire to serve in parliament in England and Wales to one day. By the Reform Act two days were allowed, but now it is proposed to limit the time as in borough elections to one day, from eight o'clock to four o'clock. The Bill was brought forward by Lord R. Grosvenor and Mr. B. Denison.

JOINT-STOCK COMPANIES' LAW JOURNAL.

AGAIN the Court of Appeal has refused to compel specific performance of an agreement to take lands at a price for the purpose of a railway, on condition of the seller abandoning his opposition to the bill, the railway not being made through the land in question, and therefore the company not requiring it, leaving the plaintiff to his remedy at law. The reasons were, that complete relief might be obtained at law if the parties were entitled to any, and the principle of mutuality wholly failed. The facts, in the present case, did not vary much from those in the former one, but we are glad to see so just a principle established against one of the most inequitable rules that ever a Court of Equity had promulgated. (*Lord James Stuart* v. *the London and North Western Railway Company*, 19 Law T. Report, 99.)

A shareholder cannot transfer his shares until all calls due upon them are paid. In *Hall* v. *the Norfolk Estuary Company*, 19 Law T. Rep. 101, the secretary had refused to register a deed of transfer of such shares. It was held that he had rightly done so. "The effect," said COLERIDGE, J. "of s. 16, is, that whilst calls remain unpaid the shareholder has no right to transfer them; and as on the 13th of March a call was unpaid, the deed of transfer of that date is altogether void for the purpose of registration by the company."

A question on the validity of a transfer of shares in a mining company, and of subsequent liabilities, was raised in *Northey* v. *Johnson*, 19 Law T. Rep. 104. The defendant was a shareholder in a mine, conducted on the cost-book principle. He had, by word of mouth only, agreed to transfer his shares to another partner, who had agreed to take them. He was held not to be liable for goods subsequently ordered by the superintendent. But it should be observed that this was decided upon the special circumstances of the case, and not upon any general principle recognised by the Court as to the right so to transfer shares.

In *Reg.* v. *The Liverpool, &c. Railway Company*, 19 Law T. Rep. 108, a mandamus to register the transfer of shares was refused, where the project had been virtually abandoned, the compulsory powers expired, and it appeared that the object of the purchaser was not the *bonâ fide* one of becoming owner of shares, but of opposing the company, and assisting the purchaser's father, who had taken proceedings against it in Equity.

An important case on the liability of railways to keep fences in repair, was that of *Ricketts* v. *The East and West-India Docks, &c. Railway Company*, 19 Law T. Rep. 109. Sheep had escaped from the plaintiff's close through his own fence into the close of A. and thence through the fence of the railway company into the railway where they were killed by a train, and for this the action was brought. The Railways Consolidation Act, s. 68, requires railway companies "to make and maintain sufficient fences for separating the land taken for the use of the railway from the adjoining land not taken, and for protecting such land from trespass, or the cattle of the owners or occupiers thereof from straying thereout." It was held that this extended only to fencing against the owners or occupiers of adjoining lands, and not against strangers. And also that the obligation imposed by the statute to keep fences, is only only co-extensive with the common law obligation.

CAMERON'S COALBROOK AND LOUGHOR RAILWAY.—On Monday, a general meeting in this matter was held before Master in Chancery Richards, to settle the list of shareholders liable to contribute to discharge the company's liabilities. Mr. Roxburgh and Messrs. Galsworthy appeared for Mr. Turquand, the official manager; Mr. Taylor for the petitioners and other shareholders; and Mr. Lewis for the seceding shareholders. The Master placed 138 shareholders on the list, and adjourned the consideration of the remainder, consisting of what are termed the seceding shareholders, who dispute their liability from a certain date, until 7th June next.

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

Borough of Saint Marylebone Joint-Stock Banking Company.—Creditors to come in and prove: Dated 10th May.—Farrer.

Direct West-end and Croydon Railway Company.—Call of 50*l.* per share on contributions in class 1 (on 1st June).—Tinney.

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

OUR readers will peruse with peculiar interest the judgment in *Munro* v. *Taylor*, 19 Law T. Rep. 97, which was a case of *specific performance*. A. had agreed to sell to B. premises partly freehold and partly leasehold, the latter being held under a renewable lease from an ecclesiastical corporation. Before the contract A. had applied to renew, and the lessors required a plan of the premises to be inserted in the new lease. After the contract, a plan was found of an old surrendered lease of 1810, in which the quantity was stated to be two roods. The lessors insisted that this was incorrect, and that the quantity should be ascertained by measurement, and refused to grant the lease unless the words were omitted "of the superficial quantity of two roods." Upon that B. refused to complete the sale, and A. filed a bill for specific performance. The lease was held sufficiently to shew the dimensions, but that such uncertainty was not an objection to specific performance. Nor was it an objection to a decree that the description of the property in the contract was, "partly leasehold and partly freehold." But that the vendor was bound to shew the purchaser what is leasehold and what freehold.

Another case of *specific performance*, is that of *Gregory* v. *Wilson*, 19 Law T. Rep. 102. It was an agreement to take a piece of land, and build a house, and to repair and insure it, the lease to contain a proviso for re-entry, on nonpayment of rent, or non-observance of the covenants. A draft lease was prepared, which the tenant perused, and made pencil-marks upon, but none was executed. The tenant entered, built, and had thirty years' possession. He did not insure nor pay rent. The landlord gave notice that he should proceed by ejectment for the breach of covenants. The lessee had died, and his representatives filed a bill to restrain the action, and praying specific performance, which was *refused*, because, if the lease had been made, it might have been determined for the breach of covenants.

Doe dem. King v. *Grafton*, 19 Law T. Rep. 108, was a question on the law of *Landlord and Tenant*. On April 19th, by agreement, premises were let at the yearly rent of 12*l.* payable quarterly, the first payment of 7*l.* 13*s.* 6*d.* to be made on the 24th of June next, being the proportion of rent due up to that time. The lessee to hold until one of the parties should give the other six months' notice to quit, and at the expiration of "any" such notice, to leave the premises in as good condition, &c. This was held to be a *half-yearly tenancy*, commencing from the 24th of June, and a notice to quit given at Midsummer and expiring at Christmas to be valid. *Heap* v. *Barton*, 19 Law T. Rep. 110, was another case in the same branch of the law. A. a mortgagee, who had dealt with the defendants as yearly tenants, demanded possession. On February 4, the tenants, B. and C. disclaimed the tenancy. Upon this A. brought ejectment. On February 19, A. by agreement, undertook not to issue the writ of possession until the 25th of March, on condition of B. and C. not appearing to the action. B. and C. afterwards removed tenant's fixtures, for which an action was brought against them, and it was held, that they were not entitled to do so.

COPYHOLD ENFRANCHISEMENT BILL.

TO THE EDITOR OF THE TIMES.

SIR,—In a certain district in the county of Norfolk, called Marshland, there are (which is not generally known) seven large and extensive parishes, in which are divers manors, comprising several hundred messuages, cottages, and acres of land of copyhold tenure of the custom of gavelkind, as in Kent, descending in case of intestacy to all the sons or brothers, as the case may happen, equally as co-heirs; and numerous instances of such descent are recorded on the Court Rolls, and one occurred the other day by the accidental death of a copyhold tenant, who has left three brothers his co-heirs in gavelkind.

I shall feel obliged by any of your numerous readers informing me whether, in case the present Enfranchisement Bill, now before Parliament, should pass into a law, whereby the above copyhold estates will become freehold, the same will in all future cases of intestacy descend to the eldest, in exclusion of all the other gavelkind sons or brothers; thereby altering the ancient customary law of descent in the above manors. A LORD OF A GAVELKIND MANOR.

INCUMBERED ESTATES COMMISSION (IRELAND).—A Parliamentary paper, printed by order of the House of Commons, contains a return of the proceedings of the Commissioners for the sale of Incumbered Estates in Ireland, from their commencement up to the present time. The amount of sales, provincially arranged, was—Leinster, 1,325,896*l.*; Munster, 1,698,487*l.*; Ulster, 950,135*l.*; Connaught, 708,357*l.* The number of estates, or parts of estates, sold was 559; the number of lots was 2,968; and of statute acres, 698,328. The total amount distributed up to Jan. 31, 1852, was 2,002,803*l.*, including 237,931*l.* allowed to incumbrancers who became purchasers; and from that time to the 9th of March, 1852, including 39,496*l.* allowed to purchasers who were incumbrancers, was 245,655*l.*, making a total allowed to incumbrancers of 277,428*l.* There were 739 purchasers to the value of 1,000*l.* and under; 315 to the value of from 1,000*l.* to 2,000*l.*; 387 from that amount to 5,000*l.*; 130 from 5,000*l.* to 10,000*l.*; 69 to the amount of 10,000*l.* and upwards.

COUNTY COURTS.

Summary.

ONE case in County Courts Law was reported last week. In *Stansfield* v. *Hellawell*, 19 Law T. Rep. 112, the judge of a County Court took the replevin bond required by the 127th section of the County Courts Act to himself, instead of to the other party to the action, as thereby required. It was held that the judge might nevertheless sue upon it, being treated as a trustee; also, that by declaring in the court above, the other party had waived the irregularity.

In *Insolvency*, there is one important case to County Court practitioners. In *Re Costa*, 19 Law T. Rep. 116, it was held that a prisoner who has been already legally discharged by his detaining creditor, may be discharged by the Court.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In the case of *Owens* v. *Breese*, reported in 17 Law T. 285, it was decided, that although the County Court, as established by 9 & 10 Vict. c. 95, is a Court of Record, yet that it was not such for all purposes, and not such as was contemplated by the 3 & 4 Wm. 4, c. 42, s. 17. I beg to doubt the correctness of this decision, and my reason for so doing is, that by the 19th section of the 14 & 15 Vict. c. 100, power is given to any judge or deputy judge of any County Court before whom any writ of trial from any of the Superior Courts shall be executed, to commit any person who shall appear to him to have been guilty of wilful or corrupt perjury in any evidence given before him, and give a certificate to entitle the prosecutor to the costs of the prosecution. Now this enactment, I submit, would be wholly superfluous if a writ of trial could not be directed to and executed before a judge of such County Court. I am, Sir, yours, &c. J. S.

Chichester, May 13, 1852.

THE LAWYER.

Summary.

COMMON LAW.—Another case has been decided on *Inspection of Documents*, under the Evidence Act. A railway company answered to a mandamus to make a railway that they had no funds. The prosecutor pleaded that the company had funds, and on

this issue was joined. The affirmative being with the prosecutors, they were held to be entitled to inspect, and take extracts from all the books of the company relating to the matter in question. (*Reg.* v. *The York and North Midland Railway Company*, 19 Law T. Rep. 108.)

When plaintiff joined issue to a plea of nul tiel record, and gave notice on Saturday of his intention to produce the record on the following Monday, it was held to be sufficient notice. (*Macquire* v. *Kincaid*, 19 Law T. Rep. 113.)

An interesting case on the *Law of Attorneys* is that of *Whitehead* v. *Lord*, 19 Law T. Rep. 113. When is an attorney entitled to maintain an action for his fees? "Until some communication is made by the attorney to his client, or the suit determined, an action cannot be brought," said POLLOCK, C.B. "The attorney," said PARKE, B. "is to bring the suit to a determination as far as he can . . . or on reasonable notice that he should discontinue the suit unless supplied with funds." The Statute of Limitations will, therefore, now only form such a determination of the suit.

In *Small* v. *Batho*, 19 Law T. Rep. 115, it was held by WIGHTMAN, J. that a party cannot claim the costs of having qualified a witness to give evidence, as for loss of time by witnesses engaged in searching after defendant in order to identify him.

A case of considerable hardship to a party occurred in *Earl* v. *Dowling*, 19 Law T. Rep. 115. A cause stood No. 6 on the list. It was reached in due course before eleven o'clock. Neither defendant's attorney nor counsel was present, and it was taken as undefended, and a verdict given for the plaintiff. A new trial was refused even on payment of costs, although defendant swore that he was present with his witnesses, because no reasonable cause had been assigned for the absence of the attorney.

A case of considerable interest on the practice with respect to *Bills of Exceptions*, is reported from the House of Lords (*Hutchinson* v. *Ferrier*, 19 Law T. Rep. 116); but it is not necessary to repeat here the points decided: it should, however, be noted in the reader's text book on the Law of Evidence.

EDUCATION OF ATTORNEYS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—After reading your article of the 1st inst. on legal education, I cannot refrain from offering a few observations on the education of attorneys. You say—"The same establishment of teachers, the same institutions, might serve for both branches of the Profession, at one expense; both should be members of the same University," &c. Looking at the present practice of attorneys, I must say that a university education is not the education required for that class; and that to compel the attendance, in any particular place, for any particular time (merely to obtain a theoretical knowledge), of persons studying to practise as attorneys, would impede rather than promote their education as practical lawyers. Besides, a university education cannot be applied in *directing* the study of the practical lawyer in the first instance—it can only be used to give a theoretical finish to his practical knowledge. It matters little where barristers reside during their term of study, inasmuch as they want no local training; but one-half of the education of attorneys is to be had in that place only in which they intend to practise.

All persons in any manner interested in the well-being of the legal profession, will, however, admit that a better standard of education than that at present possessed by attorneys would be of considerable advantage to the Profession, not only in practice as individuals, but as a means of raising that branch of the liberal sciences of which they are members, to its equitable position in the estimation of the public.

The principal question is, how is this object to be attained? I speak of attorneys only, and for them, I think, something may be done to improve the system of instruction, by adding theory to practice, without taking them from practice.

The point at which I will start, is the examination previously to admission. I would suggest that this examination be much stricter than it is, and that each candidate be examined *orally* on his written answers. This I would require for the ordinary examination necessary for admission as an attorney.

If either of the candidates wish to go beyond this, let him be at liberty to take up there and then, without more expense than a small fee for examination, a degree of Bachelor of Laws, or, if competent, the degree of Doctor of Laws; or let him try for a studentship, as is suggested for Barristers, of 100*l.* or so, and be eligible for examination for those degrees, without any certificate from the universities, so that he may pursue the study necessary for his examination without interruption of his usual office business. I think, were this plan adopted, many students would avail themselves of the opportunity thus afforded them of obtaining an honorary distinction in the Profession, and would cheerfully employ their leisure hours in obtaining that knowledge of the classics which would be necessary thereto, though at present neither their time nor means admit of their attending even a local college, for the purpose of obtaining the necessary certificate, much less the University of Oxford, Cambridge, or London. The distinctive honours, also, will be brought before the minds of the students for a period of five years, and will in many cases promote a thirst for knowledge which, under the present regulation, they have not.

A practical local knowledge is what attorneys chiefly want, and a more strict examination on something like the present system will answer for an ordinary lawyer; but, if legal education is to be promoted, it should be encouraged, and a reward given to the diligent student who, without money, has gained the required knowledge, rather than to the idle spendthrift whose riches have brought him to despise it.

No one connected with the Profession, who has read your continued articles on legal education, can fail to foresee the advantage which must ultimately result from your constantly keeping the subject in view; nor can it be denied that the education of attorneys as well as barristers should be put on a better footing. The education of attorneys should be *encouraged*: this, however, cannot, in my opinion, be done by sending them to colleges, and I hope it will not be attempted, but it may be by a five years' compulsory service under articles, with a strict compulsory examination, partly written and partly oral, added to a voluntary honorary examination. The theoretical university education is, doubtless, suited to the barrister. The practical local education is that which is alone suited to the attorney.

A LAW STUDENT.

Manchester, May 5, 1852.

THE MERCANTILE LAWYER.

Summary.

FEW questions have produced more litigation, or upon which a greater number of cases are to be found in the books, than as to what constitutes an agreement requiring a stamp, and what is an agreement for sale of goods, exempt from stamp. In *Chatfield* v. *Cox*, 19 Law T. Rep. 104, A. was indebted to B. B. wrote to A. requesting him to supply C. with goods to the amount of his debt, and charge same to his credit. A. wrote, "In consideration of the above, I agree to supply goods to your order." This was held to be an agreement for sale of goods, and therefore not subject to stamp.

Lloyd v. *Oliver*, 19 Law T. Rep. 108, was a question on a *bill of exchange*. In an action by indorsee against acceptor, the instrument was in this form. "London, July 17, 1851. Two months after date I promise to pay to E. R. L. or order, 99*l.* 16*s.* value received." Signed H. O. In the corner was the defendant's name, and his acceptance was written across the instrument. It was held that, as against the drawer, it might be treated either as a bill or a note, and that it might have been treated as a bill *even before it was accepted*, because it was directed to J. E. O.

In *Smith* v. *Winter*, 19 Law T. Rep. 111, it was decided that where it had been agreed that the amount due on a settlement of accounts, should be carried to next account, and worked out, it was a good answer to an action brought on a subsequent account, under the general issue.

The Court was divided in opinion upon a very nice point in *Thomas* v. *Cross*, 19 Law T. Rep. 114. Defendant being indebted to plaintiff on a bill of exchange then due, for 25*l.* handed to him 9*l.* and another bill for 17*l.* in payment. Plaintiff kept the 9*l.* but returned the bill, refusing to take both in payment, or to return the 9*l.* The question was, whether the 9*l.* so paid was a payment of part of the debt, or could only be treated as a set off. The Court was equally divided, so that there was no rule. On the one side it was said that plaintiff had no right to keep the money if he did not receive it as payment, and that having kept it, it was not competent to him now to repudiate the payment. On the other, that the plaintiff did not take it on the bargain, as it was offered, and the defendant could have brought an action to recover it back.

THE LAW AND THE LAWYERS.

LIMITS AND ABUSES OF ADVOCACY.

(From the *Examiner*.)

WITH reference to the remarks made by us last week upon a recent judgment of Lord Campbell's,—in which he denounced the criminal's defence as an aggravation of his crime, and yet found no fault with the professional advisers by whom it was got up,—a much respected correspondent asks what a barrister is to do in such cases; and whether we are prepared to lay it down as a rule "that no advocate should attempt to persuade a jury to believe that of which he is not himself satisfied."

If this question were asked by way of objection to what we said, it would be enough to reply, that whatever it may be the advocate's duty to *do* in such cases, there is one thing which it is his duty *not* to do. He ought not to do that which was done in the case to which we referred,—and is done, we may add, in almost every case of the kind where the woman is the injured party; he ought not to assist in a proceeding, the object or effect of which is to add a fresh injury to the injury already inflicted. If a particular line of defence be one which the accused party is not justified in pursuing, it is also one which his legal adviser is not justified in suggesting, advising, preparing, or maintaining. That the defence in question was one of this description, we assumed upon the authority of Lord Campbell; that the question whether it should or should not be set up, depended not upon the client, but upon his professional advisers, we assumed as a thing notorious. With what branch or what individual member of the profession the responsibility rested, we did not presume to determine, and therefore mentioned no names. We assumed only that it rested among them; and that it concerned the honour of the Bar to justify the act if it can be justified, or to denounce it if it cannot.

Now it may be that Lord Campbell was wrong in this case. It may be that the witnesses spoke the truth, or what the attorney believed to be the truth; it may be that the counsel acted upon instructions which he was not at liberty to disobey. If so, let it be said so. All we know at present is, that, according to the report in the newspapers, a gross injury has been committed; that it has been committed, if not by the advice, at least by the consent and help, of the members of a profession which claims to be considered an honourable one; yet that nothing has been said or done to make those who were concerned in it feel that they have done wrong, or to deter them from doing the same thing to-morrow. Without pretending to determine generally the lawful limits of advocacy, we can have no doubt that, if this report be correct, they have in this instance been transgressed.

We do not, however, understand our correspondent as meaning to dispute this conclusion. We understand him rather as wishing to follow the inquiry up by raising the larger and more difficult question, which stands next in order. What ought to be the rule of duty for an advocate in defending a bad case? Ought he to be forbidden to argue in favour of the side which he himself believes to be wrong? To this we can have no hesitation in answering, no. We believe that the true ends of justice are best served by having each side of the case presented successively to the jury, by a man whose special duty it is to make the most that can fairly be made of all the arguments on that side.

But what, we shall be asked again, is the most that can *fairly* be made? Who shall draw the line between what is fair in an argument, and what is unfair?

To this we reply by another question. How is the line drawn between fair and foul dealing in the ordinary business of life? Is it not by the common sense and natural justice of ordinary men, when allowed to express itself naturally and freely? When we see a man trying to cheat his neighbour, we dislike him, and shew that we dislike him by looks and words; and when he sees the same dislike in the faces of all around him, he is ashamed of himself and desists. Why should not lawyers, when they see one of their brethren bullying a witness in order to perplex his evidence, or endeavouring by sophistry to make a jury believe something which is not true, express their disapprobation in the same way? In extreme cases, they do so; and their disapprobation has its natural effect; for such extreme cases are very rare. Why should not every lawyer do it, in every case where he feels that wrong is done? Upon their own points of honour, barristers are as sensitive as other men. What imputation does a lawyer fear more than that of having done something which is "unprofessional?" Let it then be considered "unprofessional" in an advocate to defend a cause by the evidence of wit-

nesses whom he has reason to believe perjured, or by reasoning which he feels to be false, and which, therefore, he cannot hope to make tell in his favour except by misleading and abusing the understandings of the jury. Let all lawyers feel that it is due to their own character, conscience, and profession, to express their dislike of such practices; let the judges especially, who have the best means of understanding where fair play ends and foul play begins,—under whose eyes these iniquities are practised, and whose deliberate discountenance, which ought to be only the natural expression of their inward aversion, would have such great effect in checking them,—let the judges use the authority of their place for the same purpose; and we will answer for it that the abuses of advocacy will begin at once to abate, and will in the end be indefinitely reduced both in quality and quantity. The line between fair and unfair will be drawn,—not exactly, indeed, not in express words, nor for every possible case, but justly in the main,—according to that common sense of right and wrong with which all men are endowed.

We cannot illustrate our meaning better than by an anecdote, for the truth of which we can vouch; and which, as affording an instance of the highest conduct at the Bar, ought to be recorded as well for his honour who practised it, as for an example to the Profession.

Lord Truro, when at the Bar as Mr. Serjeant Wilde, was retained to defend a person accused of a crime depending on the oath of a single witness, the accuser. Mr. Serjeant Wilde accepted the brief, and prepared for the trial. At the consultation he was told that the accused, thinking probably that he would be safer if his counsel knew the real truth, had confessed that the charge was true. "Then," said Mr. Serjeant Wilde, "I cannot hold his brief; you must take it elsewhere:" adding, in answer to the surprise of his informant at so unusual a scruple, these words, or words to this effect: "The single question at the trial will be, Is the defendant guilty? or is the witness perjured?—I will not defile my mind by attempting to persuade a jury that a witness is perjured whom I know to be speaking the truth."

Now this is precisely the conduct which we wish to see *expected* of every barrister. We wish to see such scruples *not* unusual,—matters of course, not matters of surprise. What Mr. Serjeant Wilde did, every lawyer might do; and if every lawyer would but take the same course himself, and applaud it when taken by another,—each according to the light of his own conscience,—we are convinced that we should soon cease to hear of the abuses on which we have been commenting.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Lord Chancellor has appointed Mr. John Stuart, jun. of Lincoln's-inn, barrister-at-law (son of Mr. John Stuart, Q.C. member for Newark), to be his secretary-in-chief, in the place of Mr. Simmons.

The Right Hon. Sir John Jervis has appointed William Wilding, of Montgomery, in the county of Montgomery, gent. to be one of the Perpetual Commissioners for taking the acknowledgments of deeds to be executed by married women, in and for the county of Montgomery, also in and for the county of Salop.

COURT PAPERS.

COURT OF CHANCERY.

NEW ORDER OF COURT.—INVESTMENT OF DIVIDENDS AND ACCUMULATIONS.

The 4th day of May, 1852.

WHEREAS under and by virtue of an Act, passed in the 36th year of the reign of his Majesty King George the Third, chap. 52, intituled An Act for repealing certain Duties on Legacies and shares of Personal Estates and for granting other Duties thereon in certain Cases, and of An Act passed in the 37th year of the reign of his said Majesty, chap. 135, to explain and amend the said Acts, it is enacted that monies paid in under the first-recited Act into the Bank of England with the privity of the Accountant-General of the High Court of Chancery, when paid in, be laid out by the said Accountant-General without any formal request for that purpose in the purchase of Bank 3*l.* per cent. Annuities. By virtue of the powers contained in the last mentioned of the said Acts, and of all other powers enabling him in that behalf. The Right Honourable Edward Burtenshaw, Lord St. Leonards, Lord High Chancellor of Great Britain, doth hereby order and direct that the Accountant-General be at liberty, unless he shall have received on behalf of some party claiming to be entitled, notice in writing of an intended application to the Court for otherwise disposing of the fund, from time to time to lay out and invest the Dividends on such Stock when so purchased, and all Accumulations thereon as the same shall accrue due, in the purchase of like Bank 3*l.* per cent. Annuities, without any formal request for that purpose, and place the Stock purchased with such Dividends to the said several matters and accounts to which the original sums of Stock respectively stand, and the Accountant-General is to declare the trust thereof when purchased, subject to the further order of this Court, and for the purposes aforesaid the Accountant-General is to draw on the Bank according to the forms prescribed by the Act of Parliament and the General Rules and Orders of the Court in that case made and provided.

ST. LEONARDS, C.

CHANCERY SITTINGS.

Sittings appointed in Trinity Term, 1852.

Rolls Court.

Saturday . May 22—Motions
Monday. .. .24—Petitions in General Paper
Tuesday . ..25 } Pleas, Demurrers, Causes, Claims, Further Directions, and Exceptions
Wednesday . 26 }
Thursday . . 27—Motions
Friday . .... 28 }
Saturday ..... .29 }
Monday .... . 31 } Pleas, Demurrers, Causes, Claims, Further Directions, and Exceptions
Tuesday June 1 }
Wednesday – }
Thursday . . 3—Motions
Friday . . 4 }
Saturday . . 5 }
Monday . . 7 } Pleas, Demurrers, Causes, Claims, Further Directions, and Exceptions
Tuesday . 8 }
Wednesday 9 }
Thursday 10 }
Friday 11—Petitions in General Paper
Saturday 12—Motions.

Short cau[ses], short claims, consent cause[s], [un]opposed petiti[o]ns, and claims, every Saturday at the sitt[in]g of the Court.

NOTICE.—Consent [pet]ions must be presented, and [c]opies left with the [Secret]ary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

Court of Common Bench.

List of London Causes for Trial at the Sitting after Easter Term.

REMANETS

Biggenden *v.* May, injunc.
Rhodes *v.* Allfrey, stayed
Somerville and Another *v.* Fawkes, stayed
Cleland *v.* United Guarante and Life Assurance Company, S.J. injunction
Stephens *v.* Kemp, commission
Beckett *v.* Agg, remanet t[o] Trinity Term, 2nd sittin[g]
Wilson *v.* Belcher, S.J.
Vidie *v.* Smith, S.J.
Borthwick *v.* Botcherby, S.J.
Reid and Another *v.* Fairbanks and Others
Higginson *v.* Commissioners of Admiralty, S.J.
Bell (P.O.) *v.* Adams
Gilbert *v.* Howard
Vincent *v.* Smith.

NEW CAUSES

Felton *v.* Stannard, S.J.
Charter (executrix), pauper, *v.* Myers
Beed [*v.*] Gibbons
Barry *v.* Forster, S.J.
Knott *v.* Dennison
Bradshaw *v.* Emmett
Sharwood *v.* Richards
Whaley *v.* Magnus
Lockwood *v.* Manby
Simpson *v.* Eastern Counties Railway Company
Schulze and Others *v.* Lumley
Smith *v.* Page
Doe dem. Beaman *v.* Smith
Johnson *v.* Langsley
Vaughan and Ors. *v.* Davis
Curtis *v.* The General Steam Navigation Company
Sadgrave *v.* [Ba]ker
Angus *v.* Phillips
Kersley *v.* The Corporation of the Royal Exchange Assurange Company
Grant *v.* Prinsep.

Exchequer of Pleas.

Sittings at Nisi Prius in Middlesex and London, before the Right Hon. Sir FREDERICK POLLOCK, in and after Trinity Term, 1852.

IN TERM.—MIDDLESEX.
1st sitting, Tuesday, May 25
2nd sitting, Wednesday, June [2].
3rd sitting, Wednesday, June 9.

AFTER TERM.
Monday, June 14

IN TERM.—LONDON.
1st sitting, Tuesday, June 1.
2nd sitting, Tuesday, June 8.

AFTER TERM.
Tuesday, June 15, to adjourn only.

The Court will sit during and after Term at ten o'clock.
The Court will sit in Middlesex at Nisi Prius in Term, by adjournment from day to day until the causes entered for the respective Middlesex sittings are disposed of.

PROCEEDINGS OF LAW SOCIETIES.

WEST RIDING LAW SOCIETY.

INAUGURATION OF THE PORTRAIT OF THOMAS PITT, ESQ.

IT having been decided by the members of the West Riding Law Society to present the lady of their respected honorary secretary, Thomas Pitt, esq. of this town, with a portrait of that gentleman, as a token of the esteem and regard in which Mr. Pitt is held by the Profession throughout the West Riding, the duty of presenting the portrait to Mr. Pitt's children and grandchildren (Mrs. Pitt herself being confined to her bed by indisposition) was performed on Thursday last, when Thomas Badger, esq. of Rotherham (the president of the society), A. G. Eastwood, esq. of Todmorden, one of the vice-presidents; M. Sykes, esq. C. S. Floyd, esq. M. Kidd, esq. and W. Dransfield, esq. waited upon Mr. Pitt at his residence for the purpose of formally presenting this token of their esteem. The portrait in question, which is a full-length, is from the easel of Mr. Hemingway, of Robertown, and is admirable for its facile resemblance and truthfulness, while as a work of ark it is all that could be desired. We may add that Mr. Pitt has been the honorary secretary of this important society since the year 1819, when he was mainly instrumental in its establishment; he has now been forty-nine years connected with the Profession, and has attended at Pontefract Sessions for the last forty-six years, without ever being once absent. To mark their sense of his high integrity and zeal in the discharge of his public duties, this society presented Mr. Pitt with a handsome silver cup in the April of 1822, which graced the board on this gratifying occasion, and out of which the deputation pledged Mr. Pitt, his lady, and family. Mr. Pitt received the deputation in the drawing-room, where the painting had been suspended, surrounded by a large "family party," embracing children and grand-children, to whom, in the absence of Mrs. Pitt by indisposition, the presentation was made by the president of the society, who spoke evidently under deep emotion.

The PRESIDENT (Thomas Badger, Esq. of Rotherham), turning to Mr. Pitt's family, who had assembled in the drawing-room, said: "As president for this year of the West-Riding Law Society, of which I have been a member for more than thirty years, and not from any merit of my own, the pleasant duty has devolved upon me of paying a highly-deserved compliment to one whose path in life you have many years cheerfully shared. No one will feel more worthy pride, more deep and true satisfaction at this proof of the high estimation in which her husband is held, than the wife who has lightened, by dividing with him, all the trials of life, and from whose affection (as all men must do) he has derived much of the determination and perseverance with which he has been able to overcome the obstacles, at one time or other, besetting every man's path. Your husband, in his continued intercourse for many years, principally with a class of men who, from their profession, must necessarily possess some amount of discrimination and insight into character, and possibly less of that 'charity which endureth all things,' has earned and maintained a character for integrity and urbanity which has won for him the respect and esteem of all with whom he has come into contact. During many years in which your husband was engaged in the public business of this great riding as the representative of that highly-respectable firm (Messrs. Foljambe and Dixon), in his official capacity as high constable, and in his more private post as secretary to the West Riding Law Society, which he has held for about 32 years, he has proved himself an excellent man of business, and has secured the esteem, respect, and confidence of all parties. As an acknowledgement of these services, we wish you to accept at our hands this portrait of your husband, which is painted by Mr. Hemingway, one who stands deservedly high in his profession. We wish you to consider this as the most honourable vehicle which we could devise for the expression of our respect and esteem for your husband. Could we have decided upon one more complimentary to you or to him, it would have been adopted. But we feel certain that you will agree with us on this point, that you will set a high value upon this picture, and that you, your children, and your grandchildren will look upon it with those deep emotions of pleasure with which a good wife and an affectionate family always regard any token of the high estimation which the devoted husband and father has secured from those around him. That you and your husband may happily pass many more years together, cheered by the delight of the happy family I see around me, cheered also by the conviction of possessing the respect and esteem of your numerous friends, is, I am certain, the unanimous wish of the large body of gentlemen of whom to-day I have the honour to be the sincere though unworthy spokesman. We will, if you please, gentlemen, with every good wish, drink in a bumber the health of Mr. and Mrs. Pitt."

The other members of the deputation having joined their good wishes with those of the president for Mrs. Pitt's speedy recovery, and with hearty good wishes for the success in life of his wife and family,

Mr. PITT rose to respond, but, after the utterance of a few words, he was overcome by emotion; and, at the request of the deputation, Mr. Cousins, his son-in-law, read the following reply in his behalf:—

"Mr. President and Gentlemen,—I am afraid you will make me proud—there you see that splendid and shining memorial before you (a silver cup) that

was presented to me thirty years ago by your society, and you are now following that kindness up by a second memorial. Gentlemen, this portrait of myself to my wife is invaluable. How am I to express my feelings on the part of her, my children, and grandchildren, and of myself for this repeated token of your kind favour? I can better conceive in my mind than speak of it with my tongue, how it should be done than do it. You, sir (Mr. Badger), thirty years ago, were on the committee to present the cup, and here you are now, I hope in good health. Gentlemen, be pleased to accept the warmest thanks of my wife through me, she being very unwell, and not able to meet you to return her personal thanks for this splendid portrait. My children and grandchildren also wish me, on their part, to express the same kind feeling. You all know that I am an old servant and officer of the West Riding, having served as such for half a century (save one year), *i. e.* nearly twenty years in the office of the Clerk of the Peace, and thirty years as the High Constable of the Upper Division of Agbrigg. I believe I am the oldest officer that attends the Sessions. I may say that all the magistrates that were then (in 1803) upon the list as acting magistrates, are deceased, with the exception of Mr. Hugh Parker. The Bar during that period has had many changes, as also the attorneys. Now, gentlemen, my time is getting near a close: how uncertain whether I shall ever meet you again at Pontefract Sessions, where I have attended the court with very great pleasure for forty-six years, without being absent once; but three score years and eleven are past, and my shadow is going down. I have the greatest reason to be thankful to a kind Providence for the good degree of health I have enjoyed. I would here (though late) add that I have always received the kindest attention from the Bench, Bar, and the Profession, during the whole period. Gentlemen, I will now conclude by expressing my earnest wishes for the prosperity of the West Riding Law Society."

At the conclusion of these interesting proceedings, the deputation, with Mr. Pitt, and several other members of the society, adjourned to the George Hotel, where the annual dinner of the society took place, under the able presidency of Mr. Badger, the vice-chair being occupied by Mr. Eastwood, one of the vice-chairmen of the society. The repast was of the most sumptuous character, and served up in Mrs. Wigney's well-known style of profusion and taste. After the cloth had been drawn, the usual loyal, professional, and complimentary toasts were given from the chair, and elicited brilliant addresses from the professional gentlemen present, and after doing justice to the ladies and "our noble selves," the proceedings terminated in the most harmonious and agreeable manner.

LEGAL INTELLIGENCE.

RESIGNATION OF THE LORD JUSTICE GENERAL OF SCOTLAND.—The Right Hon David Boyle, of Shewalton, has resigned the conjoint offices of Lord Justice General of Scotland and Lord President of the Court of Session, which he has held since the retirement of the late Right Hon. Charles Hope, of Granton, in 1841. Various rumours are in circulation as to the probable changes his lordship's retirement may occasion among the legal dignitaries of Scotland, but that which obtains most general credence is, that the Right. Hon. John Hope, Lord Justice Clerk, will be promoted to the highest legal offices, and which were for a long time filled by his late father; that Lord Colonsay (formerly Duncan M'Neill, M.P.) will be appointed Lord Justice Clerk; and that Adam Anderson, esq. Lord Advocate, will be elevated to the Bench.

APPEALS TO THE HOUSE OF LORDS.—The Lord Chancellor was unable, from indisposition, to preside in the House of Lords on Tuesday, but, in justice to his lordship it should be stated that it was with the greatest reluctance he relinquished his intention of sitting, and that, by his express direction, every precaution was taken to prevent any inconvenience to the various individuals concerned in the hearing of the causes appointed for that day, and due information was, at the earliest possible moment, conveyed to the agents in those causes.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

LONG.—On the 9th inst. at Windsor, Berks, the wife of G. H. Long, esq. of a son.

VERULAM.—On the 11th inst. at 40, Grosvenor-square, the Countess of Verulam, of a son and heir.

WOODHOUSE.—On the 6th inst. at the Willows, near Abergavenny, Mrs. William Secretan Woodhouse, of a daughter.

MARRIAGES.

NORWOOD, Mr. Edward, of Charing, Kent, solicitor, to Mary Ann, only daughter of the late Mr. Edward Norwood, of Dover, surgeon, on the 6th inst. at St. Andrew's, Holborn.

DEATHS.

BERENS, Henry, esq. formerly of Lincoln's-inn, barrister-at-law, on the 12th inst. at his house, Sidcup, Kent, aged 76.

GODWIN, Mrs. relict of Henry Godwin, esq. late Town clerk of Winchester, on Saturday, the 8th inst. in S Thomas-street, in that city.

HUMFREY, Libbens Charles Humfrey, esq. of Great Queen-street, Westminster, and St. Peter's, Isle of Thanet, one of Her Majesty's Counsel, and a Bencher of Lincoln's-Inn, on the 11th inst. at his town residence, aged 54.

REID, Major-General George Alexander, M.P. of Bulstrode-park, Bucks, on the 12th inst. of remittent fever at 28, Portland-place.

WELLARD, Major Nicholas, for many years an active magistrate and deputy-lieutenant of the county of Sussex, on the 12th inst. at his residence, the Greys, Eastbourne, Sussex, aged 78.

JOURNAL OF PROPERTY.

Public Sales.

By Mr. MOORE, at the Mart.—A freehold semi-detached cottage, No. 1, Urn Villas, Howard's-road, Plaistow, Essex, containing nine rooms, with garden, and the usual offices. Also a piece of freehold ground, opposite to the house. Annual value, 50*l.* fixtures included.—650*l.*

A precisely similar cottage, adjoining, No. 2, Urn Villas, with a piece of freehold ground opposite. Annual value 50*l.*, fixtures included.—630*l.*

Three freehold houses, one a corner shop, with stabling, &c., in Howard's-road, Plaistow. Let at 55*l.* 9*s.*, vendor paying taxes.—570*l.*

Two leasehold semi-detached cottages, Nos. 5 and 6 Wellington-road, Bedford New-road, Clapham Rise, each contains six rooms and garden. Let at 34*l.*; term, ninety-four years; ground rent, 9*l.*, fixtures included —240*l.*

By CHINNOCK and GALSWORTHY, at the Mart.—One 21 share in freehold houses, ground-rents, and building land, at Stockwell and Bermondsey, including the Swan Tavern, producing a rental of 32*l.* per annum, progressively increasing till 1889, when it will amount to 120*l.* per annum.—850*l.*

Leasehold investment of 194*l.* per annum, for 17 years well secured on property situate in Sloane-street, being a residence with two wings forming shops —940*l.*

Leasehold residence, with stabling, 41, Upper Bedford place, annual value, 130*l.*; term, 75 years.—1,100*l.*

Freehold house and shop, 13, Portugal-street, annual value, 70*l.*—860*l.*

Leasehold stabling, in Little Grosvenor-mews, let at 100*l.* per annum; ground-rent, 45*l.*—550*l.*

Freehold ground-rents amounting to 304*l.* per annum, secured on a square at Notting-hill, with a piece of building-land for 11 houses.—By private contract, 8,500*l.*

Improved ground-rents amounting to 424*l.* per annum secured upon leasehold houses, forming the whole of Sydney-street, King's-cross, River-terrace, &c including several shops in the main road, of the rack annual value of 2,120*l* per annum.—Privately, in one lot, 7,700*l.*

MONEY MARKET.

ENGLISH FUNDS.	Mon.	Tues.	Wed.	Thurs.	Fri.
Bank Stock	220½			220½	210⅝
3 ℔ Cent. Reduced Annuities	98¾	98¾	98⅞		
3 ℔ Cent. Consols Annuities	99¼	99¾	99⅜		
Consols for Account	99⅜	99⅞	99⅞		
New 5 ℔ Cent. Annuities ..					
New 3½ ℔ Cent. Annuities ..	100¼	100⅜	.. 100⅜	100⅜	100⅜
Long Annu. (exp Jan. 5, 1860)			6⅞		6
Do. 30 yrs. (exp. Oct. 10, 1859)					
Do. 30 yrs. (exp. Jan. 5, 1860)			6⅞	6⅞	
India Stock	..	268			
India Bonds (1,000*l.*)	83	..	81	81	
Do. do. (under 1,000*l.*)....	..	81	81		
South Sea Stock					
Do. do. New Annuities ..					
Exchequer Bills, 1,000*l.*	62*	..	63	63	66*
Do. do. 500*l.*	62*	..	63*	63	
Do. do. Small	62*	..	66*	63*	

* Premium.

THE GAZETTES.

Bankrupts.

Gazette, May 11.

COLLINS, JOHN HENRY, draper, Halifax, Yorkshire, May 28 and June 25, at eleven, Leeds. Off. as. Young. Sol. Brierly, Halifax. Petition, May 6.

HADLAND, RICHARD, glass manufacturer, St. Helen's Lancashire, May 17 and June 15, at eleven, Liverpool Off. as. Morgan. Sols. Hayward, Birmingham, and Dodge, Liverpool. Petition, May 6.

WETHERFIELD, GEORGE MANLEY, Gresham-st. May 21, at twelve, June 25, at eleven, Basinghall-st. Off. as. Cannan. Sol. Munday, Strand. Petition, May 5.

Gazette, May 14.

ABSELL, JAMES, upholsterer and cabinet maker, Cambridge-place, Hackney-road, May 22, at half-past one, June 26, at eleven, Basinghall-st. Com. Goulburn. Off. as. Nicholson. Sols Norton and Son, New-st. Bishopsgate. Petition, May 8.

BANKS, HENRY, carpenter and builder, Bethnal-green-road, May 25, at half-past two, June 29, at twelve, Basinghall-st. Com. Holroyd. Off. as. Groom. Sols. Jones and Clarke, 30, Bury-street, St. James's. Petition, May 12.

BROADBENT, HIRAM, grocer, draper, and provision-dealer, Dukinfield, Chester, May 27 and June 17, at twelve, Manchester. Off. as. Lee. Sols. Darnton, Ashton-under-Lyne; Sale, Worthington, and Shipman, Manchester. Petition, April 21.

COLLINS, WILLIAM, draper, Marlborough, Wiltshire, May 27 and June 24, at half-past twelve, Bristol. Com. Hill. Off. as. Hutton. Sols. Sole, Turner, and Turner, London. Petition, April 27.

DUBBINS, EDWARD, common brewer, Colchester, Essex, May 21 and June 22, at twelve, Basinghall-st. Com. Fonblanque. Off. as. Graham. Sols. Wire and Child, Swithin's-lane; Barnes and Neck, Colchester, Essex. Petition, May 10.

FRANKISH, WILLIAM BARNARD, linen-draper, Kingston-upon-Hull, June 3 and 23, at twelve, Kingston-upon-Hull. Com. Ayrton. Off. as. Carrick. Sol. Bell, Hull. Petition, May 12.

HOBLYN, WILLIAM, surgeon and apothecary, Cambridge, May 25, at two, June 29, at twelve, Basinghall-st. Com. Holroyd. Off. as. Edwards. Sols. Messrs. Linklater, 17, Sise-lane, Bucklersbury. Petition, May 11.

HOBLYN, FRANCIS PARKER, surgeon and apothecary, Cambridge, May 25, at two, June 29, at twelve, Basinghall-st. Com. Holroyd. Off. as. Edwards. Sols. Messrs. Linklater, 17, Sise-lane, Bucklersbury. Petition, May 11.

HEAD, THOMAS, Apothecary, Hanley, Staffordshire, May 24, and June 14, at half-past ten, Birmingham. Com. Balguy. Off. as. Bittleston. Sol. Cowdell, Hinckley. Petition April 29.

MONSARRAT, FREDERICK GEALE, wine-merchant, Duke-st. Grosvenor-sq. May 21, at one, and June 25, at twelve, Basinghall-st. Com. Fonblanque. Off. as. Stansfield. Sols. Messrs. Linklater, Sise-la. Bucklersbury. Petition, May 12.

OSBORNE, JOSEPH, butcher, Leigh, Essex, May 21, at half-past twelve, July 3, at eleven, Basinghall-st. Com. Goulburn. Off. as. Pennell. Sols. Messrs. Linklater, Sise-lane, Bucklersbury; and Woodard, Billericay, Essex. Petition, May 14.

TRIPP, STEPHENS, money scrivener, bill-broker, and commission-agent, Serjeant's-inn, Fleet-st. May 25, at half-past twelve, and June 14, at eleven, Basinghall-st. Com. Evans. Off. as. Bell. Sols. Lawrance, Plews, and Boyer, Old Jewry-chambers. Petition, May 10.

THAME, THOMAS, innkeeper and cattle dealer, late of Buckingham, May 28, at half-past twelve, June 26, at one, Basinghall-st. Com. Fane. Off. as. Whitmore. Sol. S. Risley, Mecklenburgh-sq. Petition, May 4.

WHITE, ROBERT, and BOWLER, JOHN, scale-board cutters and fancy box makers, Gloucester-st. Curtain-road, May 22 and June 26, at twelve, Basinghall-st. Com. Fane. Off. as. Whitmore. Sols. Norton and Son, New-street, Bishopsgate. Petition, May 12.

BANKRUPTCIES ANNULLED.

Gazette, May 11.

Haworth, J. cotton spinner, Burnley, Lancashire, May 8.

Gazette, May 14.

Wilkinson, J. brace and purse manufacturer, Nottingham, March 11.—*Youngman*, T. draper, 12, Old-street-road, May 8.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Astle and *Sons*, bookbinders, second, 1s. 8½d. Nicholson, London.—*Bunny*, G. victualler, first, 2s. 8d. Pennel, London —*Christie*, J. fourth, 3d. Pennel, London.—*Clarke*, *Buckles*, and *Inchbold*, brick-makers, first of Clarke and Buckles, 14s. 3d. Fraser, Manchester.—*Cogle*, J. miller, first, 3s. 6d. Hernmann, Exeter.—*Duggan*, J. draper, first, 3s. 8d. Baker, Newcastle. — *Forbes*, R. M. first, 4s. 3d. Edwards, London.—*Hayhow*, W. shoemaker, first, 4s. 10d Edwards, London.—*Howard*, J. silk manufacturer, first, 1s. 11d. Lee, Manchester.—*Howard* and *Gibbs*, money scriveners, tenth, 8½d. Groom, London.—*Ingram*, J. nurseryman, first, 6s. 8d. Nicholson, London.—*King*, J. and J. F. builders, third, 1s. Pennell, London.—*Laslett*, W. hay and corn dealer, first, 1s. Nicholson, London.—*Mashman*, W. builder, first, 3s. 4d. Pennell, London.—*Milward*, T. miller, first, 5s. 6d. Hernaman, Exeter.—*Parkins*, J. tailor, first, 11½d. Pennell, London.—*Powell*, C. J. draper, first, 3s. 6d. Groom, London.—*Read*, C. wine-merchant, first, 2s. 6d. Carrick, Hull.—*Salter* and *Evans*, tailors, first, 3s. 9d. Groom, London.—*Smith*, B. copper smelter and silversmith, third, 5½d. Whitmore, London.—*Smith*, G. jun. corn merchant, first, 5s. 3d. Nicholson, London.—*Snelling*, C. hairdresser, first, 6d. Nicholson, London.—*True*, F. ironmonger, third, 5d. Whitmore, London.—*Whitehead*, G. printer, third, 1s. 8d. and on new proofs, 5s. 2d. Edwards, London.

INSOLVENTS' ESTATES.

Apply at the Provisional Assignee's Office, Portugal-street, Lincoln's-inn-fields, London, between the hours of eleven and three.

Broom, W. gunner, 2 s. 11d.—*Davies*, P. grocer, 1s. 3½d. —*Hook*, H. glass dealer, 1s. 5½d.—*Howlett*, H attorney, 's. 0½d.—*Moore*, J. seedsman, 3s. 2d.—*Thompson*, J. H. wheelwright, 3s. 3d.—*Thompson*, S. farmer, 11½d.

Assignments for the Benefit of Creditors.

Gazette, May 4.

Atkinson, A. maltster, tanner, butcher, and farmer, Dalton in Furness, Lancashire, April 20. Trusts. W. Postlethwaite, merchant, Ulverstone; J. Jackson, tanner; and G. Ashburn maltster, both of Dalston in Furness. Sol. T. Woodburne, Ulverstone.—*Dobell*, W. solicitor's clerk, Hastings, April 29. Trusts. G. O. Jones, builder, T. Pickering, builder, and C. J. Womersley, auctioneer, all of Hastings. Sol. H. Bishop, Hastings.—*Fearn*, W. R. draper, Dale End, Birmingham, April 26. Trusts. W. Butterfield and J. Sidebottom, both of Manchester, merchants. Sol. W. Sale, Manchester.—*Ford*, W. draper, Exeter, April 12. Trusts. J. Smith, G. F. Barber, and B. Smith, warehousemen, Saint Martin's-le-Grand. Sols. Mardon and Pritchard, Christchurch-chambers, Newgate-street.—*Hadand*, R. glass manufacturer, Lancashire, April 7. Trusts. J. Peuketh, timber merchant, Saint Helen's; W. Thompson, coal proprietor, Cowley-hill, near Saint Helen's; R. Sherratt, joiner and builder, Saint Helen's; and E. More, slate-merchant, Saint Helen's. Sols. Audell and Haddock, Saint Helen's. —*Martin*, M. K. bootmaker and tobacconist, Oxford, April 13. Trusts. J. Coleman and W. Tagg, carriers, Oxford; and S. Stern, merchant, of the Pavement, Finsbury.

Sols. W. Woodford, jun. Oxford, and G. W. C. Dean, New-street, Bishopsgate.—*Stanley*, G. silversmith, Westgate-street, Gloucester, April 19. Trusts. H. Rogers and W. G. Maysey, ironmongers, Gloucester. Sol. G. Wilkes, Gloucester.

Gazette, May 7.

Heard, J. merchant and commission-agent, Manchester, April 20. Trusts. P. Bateman and J. Johnson, Manchester, and P. Martin, Bolton-le-Moors, merchants. Sol. E Cunliffe, Manchester.—*Henson*, J. and *Walker*, J. plumbers and glaziers, Manchester, April 28. Trusts. H. Bestwick and T. Storey, brass-founders, and G. Lucas, engraver, Manchester. Sol. J. Morris, Manchester.—*Michael*, J. cattle-dealer, Hessle, Yorkshire, April 23. Trusts. E. Wells, South Somercotes, and W. Michael, Alvingham, farmers. Sols. Thorney and Son, Hull.—*Pate*, W. merchant, Spalding, Lincolnshire, April 29 Trusts. H. Nicholson, Peterborough, merchant, and R. P. Pratt, farmer, Deeping Fen Sol. C. Harvey, Spalding.—*Robinson*, C. F. and *Austin*, W. R. wine and spirit merchants, King st. Holborn, April 29. Trust J. P. Gassiot, Mark-lane, merchant. Sols. S. Gale and C. Bannister, Basinghall-st.—*Wells*, F. butcher and farmer, Chipping Norton, Oxfordshire, April 13. Trusts. W Baker and C. Durning, Brailes, and S Guy, Chipping Norton, yeomen. Sols. Tilsley and Wilkins, Chipping Norton.

Partnerships Dissolved.

Gazette, May 4.

Adams, E. and E. tobacconists, snuff and cigar dealers, Liverpool, April 29. Debts paid by Adams.—*Alexander*, R. *Ellerman*, C. F. and *Lempart*, L. merchants, Fenchurch-street, March 31.—*Booth*, R. and *Patterson*, J. brick and tile manufacturers, Scotforth, Jan. 26. Debts paid by Booth.—*Boss*, W. jun. and *Wileman*, W jun. coal merchants, Measham, April 23.—*Butler*, H., M., T. W., and T. farmers and graziers, Ivychurch, March 17.—*Cornthwaite*, P. *Stubbs*, G. and *Bredt*, F. tea merchants, Liverpool, April 30. Debts paid by Stubbs and Bredt.—*Courtney*, W. C., C. B., W. C., and C B coach builders, Chandos-street, Covent-garden, April 14—*Crofts*, T and *Heath*, J. railway contractors, Preston Brook, June 21 Debts paid by Adams.—*Dawlings*, J. *Gibson*, S. and *Walker*, W. auctioneers and nurserymen, Ebenezer Nursery, Shacklewell, April 24.—*Dervalque*, N. and *Tibeyrant*, A. hotel keepers, Panton-street, Haymarket, May 3 Debts paid by Tibeyrant.—*Dicken*, J. and *Beardsworth*, J. timber merchants, brewers, and tanners, Wrexham, Chester, or elsewhere, May 1.—*Eveson*, T sen. and jun., J. and C. Shepherd's Brook Iron Works, Worcestershire, April 19.—*Gregory*, J. and *Bascome*, E. Wyke House, Brentford, Feb. 14, 1851.—*Hall*, S. C *Salisbury*, E G. *Virtue*, G. and *Fairholt*, F. W. proprietors and publishers of the works called the Art Journal and Vernon Gallery, Wellington-st. Strand, as regards Hall and F. Fairholt, April 16—*Highmore*, J N. and *Matthews*, W. V. publishers and printers, Yeovil, April 29—*Holland*, C. *Davies*, H. *Hall*, J. V. and *Horrocks*, J. of Rio Grande and Porto Alegre, in the Brazils, as regards Davies and Horrocks, April 30—*Hughes*, J. and *Dacock*, T. manufacturers and agents, Manchester, May 1.—*Hunt*, T. and *Marsland*, C cotton manufacturers and cotton spinners, Brinksway Mills, Cheadle Bulkeley, April 24.—*Kell*, W. G. and *Chaffers*, A. attorneys and solicitors, Bedford-row, April 30—*King*, B. and *Clarke*, J. farmers, Grove Farm, Kentish-town, and Bulsden Farm, near Ongar, Dec. 25, 1850. Debts paid by King.—*Malkin*, M. and *Hill*, G. silk manufacturers and throwsters, Macclesfield, April 29. Debts paid by Hill—*Norman*, C. and *Brooks*, W. milliners and dress makers, Kingston, March 25.—*Peppercorn*, G. and A. butchers, porkmen, and poulterers, Deptford, Feb. 8.—*Perks*, H. and *Boote*, T cheesemongers, Gracechurch-st. May 3—Debts paid by Boote.—*Philippsthal*, M. and *Plarton*, C. ship brokers, commission agents, and merchants, Kingston-upon-Hull, April 29. Debts paid by Philippsthal.—*Sands*, G. J. and *Jackson*, W. F. printers, Bride-court, Fleet-street, Sept. 23. Debts paid by Sands—*Scott* J. and *M'Intosh*, J. nurserymen and seedsmen, Menott and Crewkerne, March 31.—*Sharland*, W and T. M C Chreton Fitzpaine, April 10. Debts paid by T. M C. Sharland—*Twelvetrees*, A. and H. general merchants, Holland-st. Blackfriars-road, May 1. Debts paid by A. Twelvetrees.—*Whittaker*, E. and J. engineers and millwrights, Rochdale, April 29. Debts paid by Whittaker.

Gazette, May 7.

Bosley, M. and S. milliners and dress makers, Worcester, May 4. Debts paid by M. Bosley—*Broadbent*, J., J. and R. scribbling millers and woollen cloth manufacturers, Longwood, Huddersfield, May 4. Debts paid by J. and R. Broadbent—*Cousin*, G. and *Roberts*, R manufacturers of regatta stripes, shirtings, &c Manchester, April 30. Debts paid by Cousin.—*Dickins*, W. and W. jun curriers and shoe manufacturers, Daventry, May 4. Debts paid by Dickins, jun.—*Dyson*, J. *Ambler*, W H *Cooper*, J. and *Aconley*, R. linen drapers, Huddersfield, April 29.—*Elliott*, S. F. and J. coach and harness manufacturers, Westminster-bridge-road, Lambeth, April 24.—*Elston*, W sen. and jun. builders, Wormwood-st. May 7.—*Haigh*, J. *Williams*, E. G. and *Goldstein*, M. commission merchants, Huddersfield, Bradford, and Leeds, as regards Williams, May 1.—*Kirby*, D. and *Brown*, S. D. tailors, Hanover-st. Hanover-square, March 27. Debts paid by Kirby—*Lane*, W F and J. cabinet makers, Plymouth, April 30. Debts paid by W. Lane.—*Lawson*, J. and G. corn merchants and commission agents, Preston and Dundalk, May 3.—*Lightoller*, R. and *Wood*, J. millwrights and general ironfounders, Manchester, April 30. Debts paid by Lightoller—*Livesley*, G. and W. bobbin makers, Manchester, April 6. Debts paid by W. Livesley.—*Lowes*, G. and *Pett*, J. butchers, Sandgate, Cheriton, March 19.—*Padmore*, E. and *Hickes*, oil merchants and refiners, Salford, March 4, 1851.—*Pearson*, John and James, stonemasons and quarrymen, Golcar, Huddersfield, May 1. Debts paid by John Pearson.—*Porter*, J. and *Prest*, J. B. wine and spirit merchants, Sheffield, May 1. Debts paid by Prest.—*Smith*, S. and T dyers, Horton, Bradford, May 1.—*Sutton*, J. and *Brocklehurst*, G. blacksmiths, Macclesfield, May 6, Debts paid by Brocklehurst.—*Popley*. A. and O. drapers, Ilkeston, May 4.—*Taylor*, J and *Neill*, R. corn merchants, Liverpool, Feb. 21 Debts paid by Taylor.—*Toyne*, M. D. and *Rhodes*, E. land agents, and general commission agents, Sheffield, March 31.—*Taylor*, W. and *Chivers*, D. bookbinders, Bath, May 6. Debts paid by Taylor.

CONTENTS.

To Readers and Correspondents.

"A LAW STUDENT;" "A SUBSCRIBER;" "C. R. G.;" "AN ATTORNEY;" "G. J.;" *and other correspondents, shall have attention next week.*

ERRATUM.—In last week's number, p. 126, col. 3, in the head-note to *Wilde* v. *Sheridan*, *for* "B. having indorsed it, and paid it on its being dishonoured, sued A." *read*, "A. having indorsed it, and paid it on its being dishonoured, sued B."

TO SUBSCRIBERS.

The Index to the 18th Vol. being now published, the volumes may be sent to the office for binding as usual. As all are bound uniformly, it will not be necessary to send a pattern.

THE LAW TIMES.

SATURDAY, MAY 22, 1852.

DISSOLUTION OF PARLIAMENT.

WE believe we are correct in stating that the Dissolution, so long protracted, will take place on the 20th of June. It will be seen that the Charitable Trusts Bill is finally abandoned for the session.

POSITION AND PROSPECTS OF THE BAR.

A JUNIOR has published his lamentations upon the present state and prospects of the Bar, with some suggestions for staying the decline that has begun, and the fall that is impending. (a)

He asserts the undeniable fact, that the mass of the business has flown from Westminster Hall to take refuge in the County Courts; that of the business that remains Juniors can have but a small share, because its importance compels the Attorney to intrust it only to the experienced. Hence, a Junior has now no opportunity for learning his business, and acquiring the experience necessary for the conduct of such heavier cases as yet linger in the superior Courts, while the prohibitory clause of the County Courts Act has practically excluded him from the Courts whither the smaller business has gone. The consequence is, that the Bar no longer offers to its younger members even the hope of a maintenance. A Junior cannot live, much less thrive, by his profession. The future promises no improvement. If it is bad now, it will be worse hereafter.

In these desperate circumstances, our Junior comes forward with a pamphlet, promising some suggestions, by which he proposes to prop the falling fortunes of the Bar, and as *in extremis*, when the wisest confess themselves baffled, every adviser is entitled to a hearing, we submit these hints to the consideration of our readers.

First, he proposes that the expenses of going to the Bar should be diminished. In this we cannot agree with him. There is no profession so cheaply entered. If anything, its cheapness is a defect, to be amended by increasing the cost. The cheapness of the Bar has made it a sort of refuge for the destitute; the resort of those who cannot set up any other calling. A man *can* be called to the Bar, at an expense of less than 200*l.* True, that other larger expenses are usual, but they are not *necessary*. Chambers are not *requisite* to studentship, nor is pupillage with a conveyancer or a pleader an *indispensable* preliminary to a call. To eat sixty dinners, deposit 100*l.* and pay some 40*l.* of term fees, is the sum of disbursements that constitutes a qualification. All beyond this is luxury. Our Junior sets down the total cost at 1,700*l.*; but he includes in this a college education, which is not only not necessary, but is not, in fact, enjoyed by one in three of all who are called to the Bar. If, indeed, the writer were correct in his estimate, we should be the better pleased, for such an outlay would much tend to diminish the superfluous members, and to increase the fading respectability of the Bar.

With more justice he complains of the extravagant cost of Chambers and of other expenses which, after his call, are necessary to his practice. But even here he exaggerates the cost. "The garrets," he says, "in the highest part of the buildings in the most inaccessible courts will command sums averaging from 35 to 50 guineas annually." We know not on what data this calculation is based, but we do know many Chambers, very decent but small, the rents of which vary from 15*l.* to 25*l.*

He proposes that all these expenses should be reduced. But suppose the rent of Chambers diminished by one-fourth, the condition of the Bar would not be much improved. The complaint is not that the expenses are disproportioned to the business, but that there is no business to maintain the expenses. No change in the *costs* of Counsel will help him; he wants some practical hints for *bringing back* the business that has passed away from him.

As to Quarter Sessions, our Junior thinks that nothing is to be got out of *them*. "It takes," he says, "a very great number of briefs to make up the sum of fifty or seventy guineas."

There remains for the young Barrister nothing but the County Courts. But County Courts' fees are not better than those of Quarter Sessions, and it will take an equal number of briefs to make up a like sum there. Still, says our Junior, though not profitable, "they may be the means of bringing many a young man into notice." But, we ask, what is the use of his getting into notice if there is no business to be obtained by notoriety? And when the question is, How is he to *live?* is it not disappointing to be told only that the utmost he can hope for is the opening to him of "more frequent opportunities of developing his talents,"—without profit, and without object?

The writer then reviews the various propositions that have been already before the Profession for regulating the practice of advocacy in the County Courts, and he agrees with us in condemnation of all of them, as fraught with danger to the *character* of the Bar, and in conclusion he submits his own remedy.

He proposes that a scale of fees should be established in the County Courts, to be paid to the Advocate, regulated by the amount of debt or damages sought to be recovered, and to be "payable alike to Attorney, Advocate, or Counsel, giving the public the option of selecting their advisers."

The consequences which he anticipates from this alteration, slight as it is, are thus stated:

> Surely, if Counsel are not expected to volunteer their services gratuitously, such a scale of fees is not a cause of complaint to the public; particularly when it is to be presumed that the Attorney-advocates do not perform their double duties under the present system at a single fee.
>
> Again, there is no reason why a clause with a prospective aspect which should establish such a fixed scale of fees as that proposed should not during the present session be introduced into the "County Courts Extension Act;" nor why another clause should not be framed, which should, to *a certain extent confine the duties of Advocates to their proper representatives* under such a new system of emoluments; and it is to be hoped that some similar scheme will not entirely escape the observation of our legal members of Parliament; the establishment of which would be, moreover, a further check on the cupidity of those who would exclude the Barrister from his proper sphere of business, and prevent, to a great extent, the recurrence of similar *agreements* as that before alluded to. If, then, the Barrister and Attorney were thus placed on a level and fair footing, it is easy to foresee the result in the speedy formation of local "Bars" throughout the country. This would be desirable on more accounts than one, for in addition to the relief it would afford to the over-crowded state of the Superior Courts of the metropolis, by abstracting a numerous band of competitors for the "remanets" which there so "scanty bloom;" it would benefit the country districts generally wherein such a "Bar" would arise. The Courts would be attended regularly by a class of men both well educated and talented, whose professional services would always be at command at a very small expense, and who would be able to carry up *to the Superior Courts of Westminster, on appeal* without further intervention and consequent expense, any causes on which a legal dispute might arise on technicalities, or a verdict be given contrary to the rules of evidence or the requirements of justice.

Considering the greatness of the evil to be grappled with, the remedy proposed certainly appears ridiculously small. The Bar is threatened with extinction; no Junior can live by it now, or can hope to do so henceforth; and the only remedy that can be suggested by our Junior, in a pamphlet of 31 pages, is that, instead of the fixed fee of 21s. or 42s. as at present allowed to Barristers, there shall be *a scale of fees proportioned to the sum recovered!* What a mountain! What a mouse!

THE LAW REFORMS.

IT is as we had anticipated. All the Law Reforms are abandoned for the session. The illness of the LORD CHANCELLOR is the excuse; the causes are, the imminency of a dissolution, the position of the Government, and the manifest impropriety of submitting measures of so much importance to the House of Commons, that is thinking only of the coming elections. The ATTORNEY-GENERAL expressed a feeble purpose to forward the Charity Estates Bill, but the tone betrayed a foregone conclusion—there was no hope in it. The Militia Bill will be the single product of four months of legislative labour, and that will not be a work of which any party will have cause to be proud; imperfect in its structure, insufficient for its objects, likely to be unpopular, and certain to be troublesome. The session is now fast drawing to a close; it can scarcely be protracted beyond the second week in June.

LAWYERS IN PARLIAMENT.

THE suggestion we made, a fortnight since—for securing a better, wider, and more impartial selection of judicial officers, by removing from the Government the temptation to give a preference to partisans, and from Lawyers [illegible] inducement to seek legal honour thro[illegible] illegitimate path of politics—appears [illegible] excited a good deal of interest in the [illegible] sion. We have received several letter[illegible] sing warm approval of the design: and [illegible]

(a) *Thoughts of a Junior on his Position and his Prospects: with a few Hints to Reformers.* London: Simpkin and Co.

an opportunity offer in the next Parliament for submitting the proposition to the House of Commons, it shall assuredly not be forgotten. The more the subject is considered, the more will its propriety appear.

But it is not merely as a matter affecting the judgment-seat that we would recommend this question to the support of the Lawyers; it is one of considerable professional concern. It would immensely increase the influence of the Lawyers in the legislature, if they were relieved from all suspicion of interested motives. It is *not* true, in fact, that all the Lawyers who go into Parliament do so for the purpose of obtaining judicial office as rewards for their political services; but because *some* do so, the suspicion attaches to all, and all suffer in the esteem of the public, and lose a portion of the confidence of the fastidious audience to whom they address themselves. If, however, the law would make it *impossible* for any Lawyer to gain *judicial* office by *political* services, this suspicion would be removed from the *entire class;* and instead of a Lawyer being less esteemed in the House because he is a Lawyer, he will be the more esteemed, and the more influential, because it will be known that, so far from being there with interested motives, he has thereby sacrificed his chances of promotion, and put himself *out* of the path of judicial honour.

Thus, not only the administration of justice, but the character and position of the Lawyers, their respectability in the House of Commons, and their credit out of it, would be promoted by a law that should effectually prevent politics and Parliament being made a stepping-stone to the Bench.

AN ABUSE.

WHIPPING has been recognised by the Legislature as an appropriate punishment for *juvenile* offenders, and it is usually awarded as a *substitute* for imprisonment, in cases where it is feared that the contamination of a gaol and the social degradation that follows an imprisonment, may be more injurious than otherwise to a youth not yet hardened in crime. This use of the punishment of the lash is strictly observed by all the Judges of Assize, by all Recorders, and by most of the Chairmen of Quarter Sessions.

But there is one exception. In the county of Devon it is the practice of the Quarter Sessions to award whipping almost indiscriminately. We have seen grown men sentenced to it—aye, married men—fathers of families!

At the last assizes, Mr. Justice TALFOURD, in sentencing a little boy to be whipped, told the gaoler to give him moderate correction, and then went on to say that, for many reasons, the punishment of flogging had been discontinued save with young boys, and he used very strong language of disapproval of the lash.

He little thought that in the very Court, in which he was uttering his invective, magistrates were wont to set the practice of the Judges at defiance, and to inflict flogging upon grown men.

The attention of the Home Secretary ought to be called to this malpractice of the Devon Sessions. If the fact were stated in the House of Commons, it would scarcely be credited. There it would excite universal and righteous indignation. We earnestly direct to it the attention of such of our readers as are members of that House. We would respectfully ask Lord CAMPBELL, or Lord BROUGHAM, to bring it under the notice of the House of Lords. The proper course of proceeding would be, to move in both Houses for a return, from the County of Devon, of all the prisoners sentenced to . . . during the last two years, with the date of the sentence, and the age of each prisoner so punished. This would supply the facts, which the Legislature would undoubtedly visit with indignant reprobation; and if the Government would not interpose its authority, a power so abused should be limited by a law.

LEGAL EDUCATION.

THE scheme of improved legal education announced by the Inns of Court does *not* extend to a *compulsory* examination previously to admission to the Bar. The student will be permitted, as a matter of grace and favour, to submit himself to an examination for the purpose of obtaining a prize, or a certificate of competency. But of what advantage to him will that be beyond the limits of his Hall, or what security will it give to the public that he is a real Lawyer, and not a mere be-wigged place-seeker? He cannot pin the benchers' certificate to his gown, or advertise it in the LAW TIMES, or post it in his window, to give the world assurance that he is what he *is*. Still, among the circle of wigs at the Bar table, there will be no distinction to mark the man who has proved his fitness to be there from the man who has not proved it, because in truth he is *not* fit. Still the mischief will remain, if a Bar crowded with men who join it, not with any purpose of practising the profession, but of grasping through interest the offices and honours that *ought to be* the reward of those who work for them; still these waiters upon Providence will carry off enough of the lesser business, which connection can command, to leave little for the real Lawyer, taking that which "not enriches them," but leaves their fellows "poor indeed." Still the Bar will be thronged by those who, not being there from any legitimate motives, ought not to be there at all.

An examination, to be effective, must be *compulsory:* it must be made the condition of a call, and it must be a stringent, not a sham, examination. It is required in every other profession. A man is not permitted to practise Divinity or Medicine without proving his competency. He cannot become a clergyman, a physician, a surgeon, or even an attorney, without a strict examination. Why should the Barrister alone be privileged to be ignorant of the science he professes to practise?

SHAM LAWYERS.

THE following specimen of the productions of one of this fraternity has been sent to us. It is a lithographed circular:—

Manchester, 8th May, 1852.

Mr. Thos. Buckley,

Sir, I am instructed by Messrs. J. and A. Hannay, of 72, Grosvenor-street, to apply to you for the sum of 12s. 10d. and costs; if the same is not paid, or arrangements made for the payment thereof within six days from this date, I shall commence an action against you in the Ashton County Court, without further notice. I am, &c.

JAMES HALL, Agent.

P.S. No farther notice will be given.—J. H.

THE LEGISLATOR.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, May 14.

Public Works
Turnpike Acts Continuance
Turnpike Acts Arrangements.

Monday, May 17.

Poor Law Board (Ireland) Continuance
Encumbered Estates (Ireland).

Thursday, May 20.

Metropolitan Burials
Ireland Revenue Office
Hereditary Casual Revenue in the Colonies
Excise Summary Proceedings
Colonial Bishops.

BILLS READ A SECOND TIME.

Monday, May 17.

Nisi Prius Offices
Burgh Harbours, Scotland, No. 2
Works.

Wednesday, May 19.

County Elections Polls

Thursday, May 20.

Turnpike Acts Continuance
Turnpike Trusts Arrangements.

BILLS READ A THIRD TIME AND PASSED.

Friday, May 14.

Stamp Duties (Ireland) Continuance
Property Tax
Registration of Births, &c.
Turnpike Roads, Ireland
Commons' Inclosure Acts Extension.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A THIRD TIME AND PASSED.

Friday, May 14.

Abbey Tintern, &c. Roads
Battle and Robatsbridge Road
Blyth and Tyne Railway
Claussen's Patent Flax Company
Lambart's Estates
Lancashire and Yorkshire and York and North Midland Railway
Leeds Waterworks (No. 2)
London (City) Improvements
Londonderry Bridge (No. 1)
Ditto ditto (No. 2)
Middlesborough and Guisborough Railway
Preston and Garstang Road
Railway Passengers' Assurance Company
Sharples and Hoghton Road
Shillingford, Wallingford, &c. Road
Shields and Morpeth Roads
Yeovil and Ilchester Turnpike Trusts
Belfast Custom House, &c.
Cork Improvement.

Monday, May 17.

Great Western Railway, No. 1
London and North-Western Railway, No. 2
Belfast Harbour.

Wednesday, May 19.

Macclesfield and Buckstone Road
Greenfield and Shepley-lane Head Road
Kirkby Stephen and Hawes Road
Leeds, Bradford, and Halifax Junction Railway
Leek and Hassop and Middlehills and Buxton Road
Wakefield and Denby Dale Road
Worcester and Hereford Railways.

Thursday, May 20.

Blackburn and Preston Road and Bridge
Bramley and Ridgewick Road
Bury and Little Bolton Road
Frome, Yeovil, and Weymouth Railway, No. 1
Lancashire and Yorkshire Railway
Leven Railway
North-Western Railway
Stockport and Marple Road
York, Newcastle, and Berwick Railway (Deviation of Bishop Auckland Branch, &c.)
Kennington Common, &c. Improvement.

PETITIONS PRESENTED.

ATTORNEYS' CERTIFICATE DUTY—For the repeal of, from Chapel-en-le-Frith, Chatham, Congleton, Epsom, Kilkenny, Loughborough, Maidenhead, and Portsmouth.

SESSIONAL PRINTED PAPERS.

Par. Num.
273. Exports to Turkey, &c.—Returns
310. Mint—Copy of a Letter
326. Rates in Aid (Ireland)—Account
196. Finance Accounts—Classes 1 to 8
308. Mercantile Marine Fund—Account
341. Kitchen and Refreshment Rooms (House of Commons)—First Report from Committee
296. Sugar and Molasses—Return
298. Exchequer—Account
330. Bills—Nisi Prius Officers.
337. — Kennington Common, &c Improvement (as amended by the Select Committee
343. Thames Embankment
344. Burgh Harbours, Scotland, No. 2
350 Public Works
348. Passengers' Act Amendment, as amended in committee, and on re-commitment
349. Suitors in Chancery Relief, as amended in committee, and on re-commitment
351. Turnpike Acts Continuance
352. Turnpike Acts Arrangements
304. Apprehension of Deserters from Foreign Ships—Amended
306. Incumbered Estates, Ireland
307. Huddersfield Burial Ground, as amended by the Select Committee
324. Spirits—Return
331. House Tax, London—Return
304. Naval, Military, or Regimental Schools—Return
309. Poor Relief, Ireland—Return
319. Poor Rate—Return
325. Religious and other Institutions—Returns
Education—Minutes of the Committee of Council, &c. Vols. 1 and 2.
New Zealand—Further Papers
285. Turnpike and Bridge Trusts, Scotland—Return
317. Arctic Expedition—Return
325. Religious and other Institutions—Returns (a corrected copy)
342. Victualling Stores—Copy of Report
353. Moneys in the Exchequer—Account
355 (1). Colonial Church Legislation, &c.—Copies of Petitions, &c. (Mediterranean and African Possessions) Part I.
355. (2.) Ditto, ditto, North American Colonies, Part 2
355. (3.) Ditto, ditto, Australian Colonies, Part 3
Netherlands and Ionian Islands—Convention
198. Increase and Diminution of Salaries, &c. Public offices—Abstract of Accounts
356. Laws and Institutes of Ireland—Report of Commissioners
337. Eastern Archipelago Company—Return
Post Office Communication—Additional Articles to Convention with France

SESSION 1851.

279. (1) Duncan Chisholm, alias George Matthews—Returns

HOUSE OF LORDS.

COMMON LAW PROCEDURE BILL.

Tuesday, May 18.—Lord LYNDHURST wished to know, from his noble and learned friend opposite, what progress the committee on the Common Law Procedure Bill had made?—Lord CAMPBELL was glad that the question had been put to him, because he had heard it hinted that the Bill was to be abandoned for the present session, which he should look upon as a great calamity. The Bill was the result of the labours of some of the greatest men who had ever applied themselves to the amendment of the law. The operations of the committee had been delayed in consequence of the illness of the late Lord Chancellor, Lord Truro; but the committee would meet on Wednesday, at two o'clock, and they would certainly proceed with the Bill, and be actively employed in considering and amending it.

HOUSE OF COMMONS.

CHARITABLE TRUSTS BILL.

FRIDAY, May 14.—Mr. W. PATTEN asked whether it was the intention of Government to press this Bill?—The ATTORNEY-GENERAL said it was their (the Government's) most anxious wish that the Bill should pass during the present session. Of course its position in the paper was not under his control. It depended entirely on the state of public business. He regretted the inconvenience that members had been put to in watching the Bill. At the same time he hoped that an opportunity would be afforded him of making progress in committee.

SUITORS IN CHANCERY RELIEF BILL.

The House went into committee on this Bill.—On clause 1,—Mr. WALPOLE said that he had altered the compensation part of the clause in such a manner that the amount of compensation would be fixed by the Lords of the Treasury instead of by the Lord Chancellor.—Mr. W. WILLIAMS would rather see the precise amount stated in the Bill.—The clause was then agreed to.—The remaining clauses were agreed to, and the Bill passed through committee.

COUNTY COURTS FURTHER EXTENSION (COMPENSATIONS, &c.)

Monday, May 17.—The House, in committee of the whole House, passed a resolution empowering payment of compensations for abolished offices.

CHARITABLE TRUSTS BILL.

Wednesday, May 19.—Mr. WALPOLE, in reply to a question by Mr. Rice, stated that, considering the number of amendments of which notice had been given with reference to this bill, and considering at the same time the state of public business, the Government had come to the determination not to go on with the Bill during the present session.

COSTS IN CROWN PROSECUTIONS.

THURSDAY, May 20.—Mr. LENNARD wished to know from the Attorney-General whether, in consequence of what fell from him the other night, he had any intention of introducing a measure during the present Parliament, not with the view of passing it at present, but merely of considering it, for the purpose of doing away with the obnoxious privilege now enjoyed by the Crown, of not paying costs whe there was a verdict against it?—The ATTORNEY-GENERAL said, that in the course of the discussion to which the hon. gentleman had referred, he certainly stated that his attention had been called to the question of the payment of costs in prosecutions by the Crown, and he took occasion to correct a misapprehension which prevailed on the subject, it being generally supposed that the Crown received costs, but did not pay any, the fact being that the Crown neither received nor paid cost. Undoubtedly cases had arisen of very considerable hardship, where parties who had had a verdict in their favour had been obliged to pay costs; but when the hon. member suggested an amendment of the law it was his (the Attorney-General's) duty to call attention to the circumstance, that any alteration in respect to the payment of costs in Crown cases must be reciprocal, and that defendants who had verdicts against them must in that case be made to pay costs; and his experience led him to say that in nine cases out of ten the Crown was successful, care being generally taken that no prosecution was instituted without good grounds, so that it became a question whether it was desirable to make an alteration of the law which would, doubtless, remove inconvenience and hardship in particular cases, but which in the large majority of cases would impose a greater hardship upon defendants than now existed.—Mr. LENNARD gave notice that he would, if possible, introduce a Bill, and lay it upon the table for consideration in the present Session, to take away on the one hand the privilege now enjoyed by the Crown of not paying costs in cases of adverse verdicts, and on the other hand to enable the Crown to receive costs in cases where it obtained verdicts in its favour.

LUNACY PROCEEDINGS EXPENSES BILL.—Lord Lyndhurst's Bill to diminish the expenses of proceedings in lunacy has been printed. It contains eleven clauses. The Lord Chancellor is empowered to direct inquiries by fiat, in lieu of a commission, and the Masters in Lunacy will, after the inquisition, make orders and give directions respecting the persons and properties of lunatics, as well as make a special report or order to the Lord Chancellor, to whom an appeal will lie. The costs of all proceedings will be at the discretion of the Masters, and will be made under their order.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

WE had occasion to notice last week a very absurd specimen of technicality pushed to an injustice,—a formal document of a magistrate avoided, because it did not, in precise words, express something which was not necessary for any practical purpose, and even without which no two persons could have differed as to the meaning of the document. We have now to notice a decision equally repulsive to common sense, though in strict accordance with *the law*.

In *Ex parte Haylock*, 19 Law T. Rep. 125, a warrant of commitment for writing up offensive words calculated to cause a breach of the peace, was set aside, because, although it stated the *offence* distinctly, it did not distinctly state that the *adjudication* was for that offence,—the offence being, the writing of something tending to produce a breach of the peace, and the adjudication that he should enter into recognizances to keep the peace. What puerilities!

Reg. v. *The Recorder of Leeds*, 19 Law T. Rep. 126, was a curious case in the law of *Bastardy*. A. was adjudged to be the father of *twins*, and *two separate orders* were drawn up and served. Having given notice of appeal, he entered into two recognizances, and sent a single notice, which stated "that he had entered into a recognizance, &c. to try an appeal, &c. against an order dated, &c. whereby he was adjudged to be the putative father of two bastard children." Two appeals were entered, but it was objected that the notice of recognizance was not good, as there was no such order and no such recognizance as mentioned in the notice. The Court, however, held the notice to be good, and that the Sessions should have heard the appeal.

What has become of the *Expenses of Prosecutions Act?* It was passed, with representations of urgency, early in the last session of Parliament, but no proceedings have been taken for carrying its provisions into effect. Mr. WALPOLE, indeed, is new to office, and has had a great deal to do, as well as much to learn, so that no fault can be found with *him* for having neglected it. But Sir GEORGE GREY, who was its author, had quiet possession of his place for some months after the Bill became law, and yet nothing was done with it. It is strange, that after such a fuss made about this Bill in its progress, it should have been laid upon the shelf as soon as it became law; and stranger still that the subject has not been mentioned in the House of Commons, and the Home Secretary questioned about it. Was the Act found to be unfit for use when it came to be practically applied, or is it thwarted by some powerful but invincible influences?

TO THE EDITOR OF THE LAW TIMES.

SIR,—I have read with pleasure your strictures upon the *Examiner's* article on the (so termed) "Abuses of Advocacy."

Allow me, as one who is most intimately acquainted, from personal knowledge, with ALL the facts of the case which gave rise to the *Examiner's* remarks, to state most emphatically and distinctly that the charge against counsel is in this case entirely unfounded.

The defence was, to my *knowledge*, a "true," and not an "invented" defence. A judge who but seldom errs, did in this case err grievously in his estimate of the credibility of the witnesses for the defence. This will be substantiated elsewhere; but in the meantime it is but just to the council and others who urged the "defence" in question, that they should be cleared, as far as possible, in *this* stage of the matter, from the imputation of either inventing a defence, or in any way endeavouring to pervert, prevent, or distort truth.

I enclose my name and address, and am,
Sir, yours, &c.
City, 19th May, 1852. J. M. D.

SUPPLY OF BOOKS TO WORKHOUSE SCHOOLS.—The Poor-law Commissioners, with a view of promoting the introduction of suitable books into workhouse schools, for the use of scholars and teachers, have made arrangements with several publishers to supply for the use of such schools books and maps, at prices varying from 32 to 55 per cent. the average being 43 per cent. under the price at which the books are sold to the public. Among the subjects embraced in the list of books are reading lessons, grammar, arithmetic, geography, English history, mensuration, vocal music, &c.; orders for which are to be transmitted to the Poor-law Board, who will direct their booksellers to supply such as may be ordered.

MUNICIPAL CORPORATIONS.—By an order in Council dated May 15, 1852, her Majesty has been pleased to direct that petitions from the inhabitants of Brighton, Sussex, and from the town of Middlesborough, in the North Riding of the county of York, praying that charters of incorporation may be granted to them, be taken into consideration.

SUMS LEVIED FOR POOR-RATES.—A return to the House of Commons has been printed, shewing the sums levied for poor-rates in England and Wales for the last 22 years. The largest amount, 8,622,920*l.* was in 1832, when the average price of wheat was 63s. 4d. Last year the amount was only 6,778,914, when the average price of wheat was 39s. 11d. per quarter.

On Wednesday a communication was received by Messrs. Lewis and Lewis, solicitors for Thomas Robert Mellish, from the Home-office, to the effect that Mr. Secretary Walpole had advised her Majesty to grant a free pardon to him, and he has been liberated from Newgate.

AN EX-SHERIFF COMMITTED FOR FORGERY.—The ex-sheriff of Gloucester, William Henry Barrett, who absconded to the United States about this time last year, and was brought back to England, as already reported, last week, was brought before the Gloucester magistrates on Wednesday, for final examination on several charges of forgery. Four cases of forgery of acceptances for amounts reaching some thousands of pounds in the aggregate, were gone into, and at the close of the examination, which lasted nearly the whole of the day, the prisoner was fully committed for trial at the next Gloucester assizes on all four charges. It would seem from what transpired at the examination, that the acceptances forged were those of the prisoner's customers, with whose handwriting he had become acquainted; that he was in the habit of dealing largely in bills, and that on his absconding to America, several of these bills became due, and then the forgery was discovered. The court was crowded to excess during the examination.

JOINT-STOCK COMPANIES' LAW JOURNAL.

A SHAREHOLDER filed a bill against the directors of a company established by royal charter, alleging that the charter had been obtained by misrepresentation and fraud, and that the terms of it had not been complied with, and praying that the directors might be decreed to repay to the plaintiff the moneys paid upon his shares, and the company prohibited from proceeding against him for further calls. Such decree was refused; first, because plaintiff's case was that of all the other shareholders, and he had asked relief only for himself; secondly, that as he had taken shares after the grant of the charter, he could not ask relief merely because the directors and the other shareholders had concurred in the alleged illegal acts; and, generally, it was laid down that one member of a company cannot call upon the Court to compel repayment of his advances on the ground of an alleged fraud by the directors of the same copartnership. (*Macbride* v. *Lindsay*, 19 Law T. Rep. 120.)

In *Carr* v. *The Lancashire and Yorkshire Railway Company*, 19 Law T. Rep. 124, the effect of a special contract upon the general liabilities of a railway company as carriers came under consideration. The plaintiff sent a horse by railway, and by a special contract

agreed "to take all risks of conveyance whatsoever or howsoever caused." The horse was killed during the journey, through the *gross negligence* of the company's servants. Did the express contract extend to an injury so caused? The Court, with one dissentient, held that it *did.* "The contract is," said PARKE, B. "that the owner shall abide by all the damage done." "All that the company were bound to do was to find their own carriage in the ordinary way provided by them for the regular conveyance of horses upon the railway, and the owner is then to take all risk of conveyance whatsoever."

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

Direct West-end and Croydon Railway Company Call 50*l.* on 1st of June, on contributories in class 1. May 7.—Tinney.

DIRECT LONDON AND MANCHESTER RAILWAY.—Yesterday some further claims under this estate were taken and considered before Master in Chancery Senior. Mr. Turquand, the official manager, applied to be permitted to make a partial distribution among the shareholders of the assets in hand, and realised by recovery from the directors, but the Master declined to direct any division until all outstanding matters were closed, so that any division of the funds should be final.

REAL PROPERTY LAWYER AND CONVEYANCER.

STAMP ON TRANSFER OF MORTGAGE, WITH FURTHER ADVANCE AND FURTHER SECURITY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—As questions on the New Stamp Act are of material importance to the Profession, I am induced to submit the following case for the opinion of your readers, in the hope that as similar cases are likely to have already occurred to some of them in practice, they may be able to give information as to the proper stamp to be used.

A. being seised of the fee of Nos. 1 and 2, mortgaged No. 1 to B. for 400*l.* for a term of 1,000 years. A. subsequently conveys the equity of redemption in the fee of Nos. 1 and 2 to C. subject as to No. 1 to the mortgage to B. and further subject as to Nos. 1 and 2 to an annuity to A. for life. C. wishing to obtain a further advance of 100*l.* and to transfer the old mortgage, a deed is prepared, by which, in consideration of payment of the mortgage debt due to B. he assigns the mortgage debt and No. 1 for the residue of the 1,000 years to D. subject to the same equity of redemption, and with same powers as B. held same, and both A. and C. confirm same; and in consideration of further advance of 100*l.* paid by D. to C., A. and C. convey the fee in Nos. 1 and 2 to E. upon fresh trusts for sale for securing to D. the original mortgage debt of 100*l.* and the further advance of 100*l.* and interest: new covenants by C. for title and payment of the money are entered into.

The question for consideration is, What stamp will this latter deed require? It is clearly a transfer of the old mortgage with a further advance; but this further advance is made not to the original mortgagor, but to a quasi purchaser from him; and inasmuch as the fee and another estate (No. 2) is conveyed, and a fresh covenantor for payment is inserted, it is also a further and additional security.

It would appear from the recent Stamp Act (see title "Mortgage," "Transfer," &c.), that a simple transfer of a mortgage for 100*l.* without any additional advance, would require a 10s. stamp, but if on such a transfer a further advance of 100*l.* was made, then the only stamp required would be 2s. 6d. This certainly appears strange; but it is the plain reading of this clause. The natural supposition would have been that the Act would have imposed in the latter case the stamp of 2s. 6d. in addition to the stamp of 10s.; but the words of the Act appear not to admit of this construction.

It would also appear clear, *from* the proviso at the end of the clause relating to transfer of mortgage, that the deed containing further and additional security or covenants, such as the conveyance of the fee, an additional estate and a new covenantor and mortgagor, would not make it liable to a further stamp than 2s. 6d.

But before concluding, I should draw attention to the part of the Stamp Act immediately following the last-mentioned part, and which refers to and makes mortgages made as additional or further security for sums under 1,100*l.* liable to the same duty as on a mortgage for the amount thereof, and in any other case to a stamp of 1*l.* 15s and particularly to the proviso following it, which provides merely for cases where, on a further advance, a further or additional security is given by the mortgagor, or by any person entitled to the property mortgaged, by descent, devise, or bequest from such mortgagor. Now in the case in question, although A. the original mortgagor, joins in the deed, yet C. the purchaser from him, has the beneficial interest; and to him the further sum is advanced: he neither takes by descent, devise, or bequest from A. and consequently is not within this proviso (unless he could be said to be the mortgagor within the meaning of the above), and therefore this deed may be said to come under the operation of the words "in any other case," and liable to a 1*l.* 15s. stamp. But here it is submitted that the deed comes also within the first-mentioned proviso, and as such would only be liable to a 2s. 6d. stamp. The question, therefore, is, which proviso is to govern the case put? It appears clear that both or either proviso might apply to the deed, and that both provisoes would generally apply to all cases of transfer, with an additional advance, as there would, in all such cases, be at any rate fresh powers and new covenants given. Here a 1*l.* 15s. stamp would be greater than the stamp on a new mortgage for the full amount secured. Your obedient servant and subscriber

Exeter, 17th May, 1852. R. H. E.

COPYHOLDS ENFRANCHISEMENT BILL.

TO THE EDITOR OF THE TIMES.

SIR,—In answer to a question put by a correspondent signing himself "A Lord of a Manor," as to whether the present Bill before Parliament, for the extension of the provisions of the Copyhold Acts, alters the mode of descent in cases where the lands to be enfranchised descend by custom of borough English, gavelkind, &c. I beg to say that the Bill, as it stands amended by the Commons' committee, contains no clause altering the mode of descent, &c. It is merely declaratory of the mode in which the enfranchisement shall be carried out.

Of the existing Copyhold Acts, viz. 4 & 5 Vict. c. 35, 6 & 7 Vict. c. 23, and 7 & 8 Vict. c. 55, the first one only alters the mode of descent of borough English, gavelkind, &c. and that, too, in cases of commutation only, and not of enfranchisement. It states (s. 79) that the "lands shall thenceforth (after commutation) cease to be subject to the customs of borough-English or gavelkind, or any other customary mode of descent, or to any custom relating to dower, or freebench, or tenancy by the courtesy of England; and all the laws relating to descents, or to estates of dower, or estates by the courtesy of England, which shall for the time being affect and be applicable to lands held in fee and common soccage, shall thenceforth affect and be applicable to the lands included in every such commutation."

Section 80 is the proviso of section 79, and excepts the county of Kent, as to its gavelkind lands, from the operation of section 79. Section 81 applies to cases of enfranchisement only, and enacts that the lands enfranchised "shall become and be in all respects of freehold tenure." This expression, "freehold tenure," does not exclude tenures of gavelkind, &c. which are varieties of "freehold tenure." The above enactments are the only ones in the Copyhold Acts which have particular reference to change in the mode of descent, and from them it will be seen that at present it does not follow, because an estate is enfranchised under these Acts, that therefore its peculiar mode of descent is altered by the enfranchisement.

I remain, Sir, yours truly,

Middle Temple. W. T.

INCUMBERED ESTATES IN IRELAND.—It is proposed, by a Bill in the House of Commons, which was printed on Thursday week, to continue the powers of applying for a sale of lands under the Act for facilitating the Sale and Transfer of Incumbered Estates in Ireland. Within four years after the passing of the Act, applications for sale of lands under the Act relating to incumbered estates may be effected.

COUNTY COURTS.

Summary.

ANOTHER question of jurisdiction has arisen where plaintiff sues by leave of the judge for the district in which the cause of action arose under sec. 60 of the County Courts Act. It seems that the *whole* cause of action must have arisen in such district.

Where, therefore, A. resident in Norwich, drew a bill of exchange on B. who resided in London, at which place he accepted it, and transmitted it back to A. at Norwich; and B. having indorsed it, paid it; and on its being dishonoured sued A. in the County Court; it was held by COLERIDGE, J. in the Bail Court, that the County Court had *not* jurisdiction. "The contract was made in London, therefore the whole cause of action did not arise in Norwich." (*Wilde* v. *Sheridan*, 19 Law T. Rep. 126.)

MIDDLESEX COUNTY COURT.

(Before ARTHUR POLLOCK, Esq.)

Marylebone, May 13.

Sarah Newton, administratrix of the estate and effects of Joseph Hobbs, deceased, plaintiff, v. *William Houlton, defendant.*

Non-appearance of plaintiff—Withdrawal of plaint.

Quære, What is reasonable notice to the defendant of the withdrawal of the plaint?

Held, that where notice of the withdrawal of the plaint is given to defendant's attorney on the evening of the day preceding that upon the afternoon of which the cause is to be heard, the full costs of the defendant for the day will be allowed.

Macrae appeared for the defendant, and applied for his costs, as he had just been informed by Mr. M'Duff (of Castle-street, Holborn), the defendant's attorney, that he had received a letter by post, at 7 o'clock P.M. on the preceding evening, of the withdrawal of the plaint, and the defendant himself had only received a similar notice by post, at 7 o'clock that morning. They had two witnesses in attendance, and counsel had been instructed some days previously. Under these circumstances, he submitted that it would be reasonable to allow the defendant his full costs of the day.

The learned DEPUTY JUDGE made an order for the plaintiff to pay the defendant the full costs of the day's attendance.

The 13 & 14 Vict. c. 61, s. 10, enacts "that in every case where the plaintiff shall not appear either by himself or his attorney upon the day of the return of any summons for hearing, or *at* any continuation or adjournment of the said hearing, and the defendant shall appear either by himself or his attorney upon such day of hearing, continuation, or adjournment, it shall be lawful for the judge to award to the defendant or to his attorney, by way of *costs of his attendance and satisfaction for his trouble,* such sum as the judge in his discretion shall think fit; and the sum so awarded shall be recoverable from the plaintiff by such ways and means as any debt or damage ordered to be paid by the same Court can be recovered."

This would appear to be an unlimited discretion, and such costs might exceed those allowed by the Act to counsel and attorneys. It was, no doubt, intended to secure defendants against being put to needless trouble by litigious plaintiffs. See Cox and Lloyd's C. C. Practice, p. cxlviii.

THE LAWYER.

Summary.

IN order to obtain a commission to examine as witnesses the parties to an action resident abroad, it is not sufficient to shew that they are so resident, but it must be made out to the satisfaction of the Court that it would be conducive to the due administration of justice. (*Castelli* v. *Groom*, 19 Law T. Rep. 121.) In this case the application was refused. Lord CAMPBELL well observed that "if the rule were to prevail in all cases, the parties would only have to sail across the Channel, and then they might insist on being examined on interrogatories."

A plaintiff had issued execution for debt and costs, at the time when 1 & 2 Vict. c. 110, came into operation. Afterwards he issued a fresh writ of execution for the interest on the judgment debt only, and subsequently received, under the first execution, the debt and costs. It was held that the defendant was not entitled to enter up satisfaction on the judgment until the interest was paid under the second writ. (*Bishop* v. *Hatch*, 19 Law T. Rep. 122).

An interesting question upon the reception in evidence of an unstamped document, which was both an agreement and a receipt, was decided by the LORD CHANCELLOR in *Evans* v. *Prothero*, 19 Law T. Rep. 117. The judges of the Courts of Common Law had differed upon the point, but Lord ST. LEONARD'S has now thrown the weight of his opinion into the scale. He says,—"This long litigation has been occasioned by the want of an additional sixpenny stamp, for, if it had been properly stamped, there would have been an end to all dispute. The want of this additional stamp has had the effect of rendering this document inadmissible as a receipt; but at the outset of these trials we find that this document was tendered in evidence as a receipt, but was rejected by the judge. Now

is this document to be treated as a nullity simply because it is on a sixpenny instead of a shilling stamp? If this paper is not receivable as a receipt, in consequence of the defect in the stamp, why should it not be so received as an agreement?"

THE MERCANTILE LAWYER.

Summary.

WHERE a man enters into a contract avowedly as agent for another, but having, in fact, no authority to do so, it appears from *Lewis* v. *Nicholson*, 19 Law T. Rep. 122, that the other party to the contract cannot sue him upon the contract itself, but his remedy is to sue him for the *deceit*, in representing that he had such authority. Lord CAMPBELL corrected a prevailing error on this point, to which we would ask the attention of the reader. He said, "It has been reported that BAYLEY, B. laid down the general rule, that where an agent makes a contract in the name of his principal, and it turns out that the principal is not liable, for the want of authority in the agent to make such a contract, the agent is personally liable *on the contract*. I must dissent from that doctrine. I think it must be confined to cases where the party professing to give the undertaking *could* undertake...... I go further, and say that where a party clearly and expressly contracts in the name of, and as agent for, another, he *cannot* be sued upon the contract.

In *Lyth* v. *Ault*, 19 Law T. Rep. 124, it was held to be a good defence to an action against A. and B. for goods sold, that defendants A. and B. were partners, and the goods for which the action was brought were bought by them as such; that A. was about to retire from the partnership, and it was agreed that he should pay plaintiff 12*l*., for which plaintiff agreed to abandon his claim against A. for the residue and that B. should be solely and separately liable to plaintiff for the said residue. The possible advantage of being able to sue one instead of both appears to have been deemed by the Court a sufficient consideration to support the agreement.

THE MERCANTILE MARINE ACT.—The first report to Parliament under the Mercantile Marine Act (13 & 14 Vict. c. 93) was printed on Friday. The total income for the year 1850-51 was 21,631*l*. 13s. 7d.; and the expenditure, 25,129*l*. 4s. 7d. The excess of expenditure over the income was 491*l*. 11s.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

Her Majesty has appointed Alban Lewis Gwynne, of Monachty, esq. to be Sheriff of the county of Cardigan, in the room of John Inglis Jones, of Derry Ormond, esq.

The vacant office of Solicitor-General for Scotland has been conferred upon Mr. Charles Neaves, who has to resign the sheriffship of Orkney, which has, it is said, been given to Mr. W. E. Aytoun.

Her Majesty having been pleased to appoint the Right Hon. John Frederick Earl Cawdor to be Lord Lieutenant and Custos Rotulorum of the County of Carmarthen, his lordship this day took the oaths appointed to be taken thereupon, instead of the oaths of allegiance and supremacy.

We hear that her Majesty, at the recommendation of her Ministers, is about to confer the honour of a baronetcy on Lord Boyle, late Justice General and President of the Court of Session, as a reward for his long and valuable services on the bench of Scotland. It is also reported that a like honour will be conferred on Professor Alison, on account of his distinguished literary attainments.—*Standard.*

The Queen has been pleased to appoint Duncan McNeill, esq. one of the Lords of Session and of Justiciary, to be Lord Justice General and President of the Court of Session in Scotland.

MEMBERS RETURNED TO SERVE IN THIS PRESENT PARLIAMENT.—County of Carmarthen: David Jones, of Pantglâs, in the said county, esq. in the room of the Hon. George Rice Trevor, now Lord Dinevor, called up to the House of Peers.—Town of Perth: The Hon. Arthur Fitzgerald Kinnaird, Hyde-park-gardens, London, in the room of the Right Hon. Fox Maule, now Lord Panmure, called up to the House of Peers.

Lord Colonsay (Mr. Duncan M'Neill), one of the permanent Lords Ordinary of the Court of Session in Scotland, is appointed Lord Justice-General and President of the Court, in the room of the right hon. David Boyle, resigned. Mr. Adam Anderson, Lord Advocate, is appointed a Lord of Session of the Outer House, in the room of Lord Colonsay. Mr. John Inglis, Solicitor-General for Scotland, is appointed Lord Advocate, in the room of Mr. A. Anderson.—*Observer.*

The Rev. Zachariah Barry is appointed Colonial Chaplain for Western Australia. The Rev. Owen Emeric Vidal is appointed Colonial Chaplain at Sierra Leone.—*Ibid.*

COURT PAPERS.

CHANCERY SITTINGS,

Appointed in Trinity Term, 1852.

The Courts will sit at Westminster at Ten each day.

Lord Chancellor's Court.

Saturday. .May 22—Appeal Motions
Wednesday . .26—Appeals
Monday .... 31—Appeals
Tuesday ...June 1—Appeals
Wednesday ...... 2—Lunatic and Appeal Petitions
Thursday ...... 3 }
Friday .. .. .. 4 } Appeals
Wednesday .. . 9 }

Lords Justices.

Saturday ..May 22—Appeal Petitions
Monday .... 24 }
Tuesday .... 25 } Appeals
Wednesday .... 26 }
Thursday .... 27—Appeal Motions and Appeals
Friday .... 28 { Petition day. Petitions in Lunacy Bankruptcy and Appeal Petitions
Saturday ...... 29 }
Monday .... 31 }
Tuesday ...June 1 } Appeals
Wednesday ...... 2 }
Thursday 3—Appeal Motions and Appeals
Friday ... 4 { Petition day. Petitions in Lunacy Bankruptcy, and Appeal Petitions
Saturday 5 }
Monday .. }
Tuesday .... 8 } Appeals
Wednesday ...... 9 }
Thursday . ....10 }
Friday ....11 { Petition day. Petitions in Lunacy Bankruptcy, and Appeal Petitions
Saturday ...... 12—Appeal Motions and ditto.

Vice-Chancellor Sir G. Turner's Court.

Saturday May 22—Motions
Monday ...... 24 }
Tuesday ...... 25 } Pleas, Demurrers, Exceptions, Causes Claims, and Further Directions
Wednesday ... 26 }
Thursday ....27—Motions and Claims
Friday ....28 { Unopposed Petitions, Short Causes Short Claims, and Claims
Saturday ...... 29 }
Monday ...... 31 }
Tuesday . June 1 } Pleas, Demurrers, Exceptions, Causes Claims, and Further Directions
Wednesday ...... 2 }
Thursday ...... 3—Motions and Claims
Friday .... 4 { Unopposed Petitions, Short Causes Short Claims, and Claims
Saturday ...... 5 }
Monday .... 7 }
Tuesday ...... 8 } Pleas, Demurrers, Exceptions, Causes Claims, and Further Directions
Wednesday .... 9 }
Thursday ....10 { Short Causes, Short Claims, Claims and Causes
Friday .... 11—General Petitions
Saturday ...... 12—Motions and Claims.

Vice-Chancellor Sir James Parker's Court.

Saturday. .May 22—Motions
Monday .... 24—Adjourned Petitions
Tuesday ....25 { Pleas, Demurrers, Exceptions, Causes, and Further Directions
Wednesday ... .26 { Short Causes, Short Claims, Claims, and Causes
Thursday ....27—Motions
Friday .... 28 { Pleas, Demurrers, Exceptions, Causes and Further Directions
Saturday .... 29—Petitions, unopposed first
Monday .... 31 } Pleas, Demurrers, Exceptions, Causes
Tuesday ...June 1 } and Further Directions
Wednesday ...... 2 { Short Causes, Short Claims, Claims, and Causes
Thursday .... 3—Motions
Friday .... 4 { Pleas, Demurrers, Exceptions, Causes, and Further Directions
Saturday .... 5—Petitions, unopposed first
Monday........ 7 { Pleas, Demurrers, Exceptions, Causes,
Tuesday........... 8 { and Further Directions
Wednesday ...... 9 { Short Causes, Short Claims, Claims, and Causes
Thursday ....10 { Pleas, Demurrers, Exceptions, Causes, and Further Directions
Friday ....11—Petitions, unopposed first
Saturday ....12—Motions.

Vice-Chancellor Sir R. Kindersley's Court.

Saturday...May 22—Motions
Monday...... .....24 }
Tuesday............25 } Pleas, Demurrers, Exceptions, Causes, and Further Directions
Wednesday ......26 }
Thursday ....27—Motions
Friday ....28 { Petition day. Cause Petitions (unopposed first)
Saturday ....29—Short Causes, Short Claims, & Claims
Monday........... 31 }
Tuesday . June 1 } Pleas, Demurrers, Exceptions, Causes, and Further Directions
Wednesday ...... 2 }
Thursday .... 3—Motions
Friday .... 4 { Petition day. Cause Petitions (unopposed first)
Saturday . ... 5—Short Causes, Short Claims, & Claims
Monday...... ...... 7 }
Tuesday .. .. 8 } Pleas, Demurrers, Exceptions, Causes, and Further Directions
Wednesday ...... 9 }
Thursday .... 10 { Short Causes, Short Claims, Claims, & Causes
Friday ....11 { Petition day. Cause Petitions (unopposed first)
Saturday ....12—Motions.

NOTICE.—Unopposed Petitions, not exceeding ten, every day except seal days.

COMMON LAW CAUSE LIST.

Court of Queen's Bench.

Trinity Term, 1852.

NEW TRIAL PAPER.

Mardell v. Thellusson and Others
The Same v. The Same
Mallalieu v. Anglo-Californian Gold Mining Company
Blackall v. Bremer
Burlington v. Richardson
Timmins and Wife v. Gibbons
Reg. v. Whitehouse and Another
Keyse v. Powell
Meech, executrix, v. Dawe
Palk, bart. v. Skinner
Vaughan v. Stevens
Reg. v. Avery
Doe dem. Travanione v. Lambe
Lowe v. London and North-Western Railway Company
Barron and Another v. Robinson and Others
Crosthwaite v. Gardner
Reg. v. The Inhabitants of Denton
Jones v. Evans
Robinson v. Jones, clerk, &c.
Reg. v. Lloyd and Others
Bateman v. Bluck
Stewart v. Anglo-Californian Gold Mining Company (standing for judgment)
Arnott v. Holding, ditto.

ENLARGED RULES.

In the matter of Thomas Griffin Philpotts, gent.
Glyn, bart. and Others v. Wilson and Another
Glyn, bart. and Others v. Elliott and Another
Reg v. The Manchester, Sheffield, and Lincoln Railway Company
Reg. v. The Justices of Middlesex
Reg. v. The Great Western Railway Company (second day)
Reg. v. The Great Western Railway Company (June 1)
Reg v. The late Sheriff of Chester, and Birkenhead, &c. Railway Company (last day but one of Term).

SPECIAL CASES AND DEMURRERS.

Hargreaves v. The Lancashire and Yorkshire Railway Company
Tallis v. Tallis
Cobbett, pauper, v. Hudson
Martyn, administratrix, &c. v. Clue
Cooke v. Laslett
Mason v. Wilkinson
Weston v. Weston
Partridge v. Badham
Westley v. Everett
Mackenzie v. Sligo and Shannon Railway Company
Lowndes v. Earl Stamford and Warrington
Wilkinson v. Anglo-Californian Gold Mining Company
Kernot v. Pitts
Doe dem. Winstone and Wife v. Morgan.

Court of Common Bench.

ENLARGED RULES.

Holmes v. Sparks and Another (first day)
Gregory v. Duke of Brunswick and Another (enlarged general)
In the matter of Sharp, clerk, and others, of Horbury (in prohibition).

NEW TRIAL PAPER.

Hamilton v. Cochrane (for arrangement)
Dalby v. East India and London Life Assurance, &c.

CUR. ADV. VULT.

Belshaw v. Bush
Fisher and Another v. Bell and Another.

DEMURRER PAPER.

For Special Argument, May 28.

Edwards v. Champion | Boden v. Wright.

Exchequer of Pleas.

PEREMPTORY PAPER.

To be called on the first day of Term, after the motions, and to be proceeded with the next day, if necessary, before the motions.
Hartley v. Hadland
Whitaker v. Wisby
In the matter of Edward Jennings, gent.
Montagu v. Kater
Escritt v. Mason the younger
Baron and Others v. Roscow and Another

Horton v. The Westminster Improvement Commissioners
Grimham and Another v. Card and Others
In the matter of G. J. Heald, gent.

SPECIAL PAPER.

Staff v. Morrison
Governors of the Bedford General Infirmary, appellants; Commissioners of Bedford Improvements, respondents
Guardians of the Bedford Union, appellants; Commissioners of Bedford Improvements, respondents
Padwick v. night and others

COUNTY COURT APPEAL.

Shepherd v. The Great Northern Railway Company, from Sheffield.

NEW TRIAL PAPER.

For Judgment.

Wallington v. Dale
Black v. Gompertz
De Rothschild and Others v. Royal Mail Steam-packet Company
The Galvanized Iron Company v. Westoby
Couturier v. Hastie and Another

For Argument.

Vincent v. Shropshire Union Railway and Canal Company	Evans v. Attwood and Others
Mitcheson v. Michell	Saunders v. Davies and Wife
Pelichet v. Loader	M'Kennan and Another v. Penson
Haddon v. Lancaster	Bradstreet v. Hammond and Others
Hartley v. Hadland	Same v. Same
Hill v. Philp	Colquhoun v. Sylvester
South-Eastern Railway Company v. London and South Western Railway Company	Ward v. Ward
Gant v. Patrick	Doe dem Benham v. Benham
Gant v. Groom	Frugard v. Barnes and Anor
Gray v. Lewthwaite	Frognett v. Moore
Jackson and Another Chichester	Perry v. Doidge and Wife
Holmes v. Sixsmith	Roskringe v. Caddy and Anor.
Coe v. Platt and Another	Ponting v. Watson
Thoyte and Another (assignees) v. Hobbs	Doe dem. Jones and Wife v. Hughes
Jolly v. Hancock and Anor	Pearson (clerk) v. Beck
	Butler v. Aldar
	Fowles v. The Great Western Railway Company.

CROWN PAPER FOR TRINITY TERM.

Reg v. George Price Lloyd and Others, from Merionethshire
Reg. v. Stephen Street and Others, overseers of Ringwood, from Hants.
Reg. v. The Overseers of the Poor of Salford, from Lancashire
Reg v. The Rev F. Temple, from Middlesex
Reg. v. The Inhabitants of St. James's, Clerkenwell, from Middlesex
Reg on prosecution of Burton and Another v. The York and North Midland Railway Company, from Yorkshire
Reg. v. Samuel Owen, from Anglesea.

PROCEEDINGS OF LAW SOCIETIES.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

We take some of the most interesting passages from the Fifth Annual Report of this Society.

RENEWING CERTIFICATES.

The committee have procured an alteration in the practice of attorneys renewing their annual certificates, which will give to the council of the Incorporated Society increased facilities in performing the duty which is entrusted to them as registrar of attorneys and solicitors, of raising any proper question before the judges, on any such application. When certificates are first taken out, or renewed, in the regular way, each application must, of course, come under the notice of the registrar; but, until the present time, when an application was made to a judge at chambers, for leave to renew a certificate without the regular notices—and it is precisely in such cases that supervision is most likely to be needed—the application was ex parte, and, if duly supported by affidavit, was granted almost as a matter of course. The committee, therefore, suggested that, in all such cases, a summons to shew cause should be served upon the registrar of attorneys; and they are happy to say that the judges, concurring in the expediency of the adoption of his practice, have given the necessary directions for that purpose.

PROSECUTIONS BY MAGISTRATES' CLERKS.

Most of the members are no doubt aware that there is a difference, for which there does not appear to exist any substantial reason, between the privileges of the clerks to magistrates in boroughs and those in counties; inasmuch as, while the latter are generally employed somewhat extensively in conducting prosecutions, the former are, by the 162nd section of the Municipal Reform Act, expressly prohibited from being concerned in prosecutions. On the occasion of the passing of the "Act for Providing for the Expenses of Prosecutions" last session, the Association of Clerks to Magistrates endeavoured to get this prohibitive clause repealed, and the committee was requested to assist that endeavour. After carefully considering the question, however, they felt compelled to decline moving in the matter on two grounds—first, that it was a question of privilege, not between the profession, as a whole, and any other body attempting to effect an encroachment, but between one class of the profession and another, and that the effect of the repeal would, practically, be to give to the magistrates' clerks, from the advantages incident to their position, almost a monopoly of that branch of criminal business—a result which, whether in itself desirable or not, the committee felt was certainly not within their province to promote. But, secondly, the committee, upon the merits of the question, would be more inclined to advocate the extension of the prohibition to the clerks of county magistrates than its repeal with regard to those of boroughs; for it is, in their opinion, so important to keep the office of prosecutor entirely separate from that of judge, that they think it wise to provide that an officer, who, like the clerk to the magistrates, frequently exercises a deciding influence upon the question of whether an accused party shall be committed, shall not be open to the possibility of having any pecuniary interest connected with the prosecution.

COUNTY COURTS ABUSES.

In the course of the year the committee have had communicated to them several instances in which, as it appears to them, judgments delivered in different County Courts have been clearly illegal. They think that it would be very advantageous to form a collection of such cases, and also any cases of peculiar hardship resulting from the present scale of cos allowed, for the purpose of their being, at a proper time, submitted to Parliament. They have therefore prepared a register for the purpose, and they invite their subscribers to communicate to them any instance that may occur within their own immediate knowledge. The only mode of checking these illegal decisions, and making the law uniform throughout England in matters within the jurisdiction of the County Courts, is, to give in all cases a right of appeal to the superior Courts. A clause for this purpose was introduced into the Bill, as brought into the House of Lords this Session, but was afterwards struck out. The Committee have endeavoured to have the clause re-inserted in the Bill in the House of Commons.

COUNTY COURTS EXTENSION BILL.

The County Courts Further Extension Bill of last year was returned from the Commons to the Lords, in a shape so entirely different from that in which it had passed the Lords, that, there being only a day or two of the Session left, the Bill was allowed to drop. At that time, the Bill provided that barristers might be heard, if instructed by or on behalf of a party, though without any exclusive or preaudience, and Lord Brougham this year introduced the Bill in the same shape. The provision was, however, objected to by several of the law lords, and especially by Lords Truro and Campbell, and Lord Brougham at length unwillingly consented to the present law being only qualified by the introduction of a clause, that attorneys shall not appear as advocates unless they are instructed directly by the parties in the case. In most other respects, the Bill left the Lords very nearly in the same shape as it was left in by the Commons last year; it is, however, clumsily drawn up, and the committee have placed in the hands of Mr. Mullings several suggestions for its improvement. Since it has been in the Commons, it has been a good deal altered, and, the committee regret to say, rendered decidedly more objectionable. The right of attorneys are proposed to be sacrificed, on the one hand, by permitting barristers to be instructed directly by the parties; and, on the other, by confirming the objectionable practice of the original Act, of allowing any party, whether in the profession or not, and whether n tl e employ of the party or not, to appear and plead by leave of the judge. A clause passed by the Lords to provide for judgments by default, which would have been a great boon to the suitors, has been struck out; while, on the other hand, clauses have been inserted to increase the salaries of the judges, and to provide for them retiring pensions. The committee would not object to these clauses if justice were done to all parties; but, in its present shape, the Bill is certainly open to very serious animadversions. One other point is sufficiently important to be noticed here. The advocates of the County Courts have from time to time, obtained returns of the amount of money sued for in these courts, the amount recovered, and the amount of costs allowed, and it has been taken for granted that these returns show the total expense at which, by means of the new machinery, debts may now be recovered. The representations and expostulations of attorneys have been either unnoticed altogether, or considered untrustworthy, as being the interested complaints of men who have been deprived, for the benefit of the suitors, of the remuneration they had been previously receiving for the performance of merely technical and unnecessary labour. It has been overlooked that those returns of costs, with the exception of the small proportion composed of the ...cate's fee, includes no costs on either side except fees and witnesses' expenses. It is true, that by one of the most objectionable provisions of the Acts, the suitors are compelled to commit some important portions, of what ought to be the business of the attorney, to officers of the court not selected by, or practically, at any rate, responsible to them, and to pay them by court fees; yet, in every case in which either plaintiff or defendant requires professional assistance in preparing his case, he must himself bear the expense of obtaining such assistance, whatever be the result of the trial. It does not require any great experience to know, that with the exception of the simplest cases of "small debts," which, under any system, would be collected by the parties themselves, some professional assistance is needed in "getting up" almost every case that is submitted to a court of justice. But, besides what may be strictly termed professional assistance, the majority of plaintiffs, if compelled to conduct their own legal business themselves, must either provide a special staff of assistants for that purpose, or withdraw some portion of their establishment, from time to time, from their regular duties; and, of course, in either case, will be subjected, without compensation, both to trouble and expense. In every way, therefore, in which the subject can be looked at, we must come to the conclusion that the ordinary principle on which the settlement of legal disputes should be founded, is that which has always obtained in our Superior Courts; namely, that each party should be allowed to obtain professional assistance, and that he who is declared by the ultimate judgment to be in the wrong, must pay all the reasonable expenses incurred in consequence of his own default.

PUBLIC INDEXES.

The imperfect and inconvenient way in which the various public indexes are kept, is a practical evil which more or less affects solicitors throughout the country. It would seem, also, to be capable of a simple and easy remedy, as it cannot be the interest of anyone that the indexes should remain imperfect, and the expense necessary for their improvement would be provided from the search-fees. The committee have, therefore, collected information as to the mode in which the various public indexes are at present kept, and are preparing a short bill to provide that they shall in future be all kept upon a system which shall facilitate searches, and, as far as possible, prevent mistakes. In many cases where the entries are not frequent, the lexicographical form may be completely carried out; and in all it might be so, as far as the initial letter and first vowel. The committee find that the index kept in the Legacy-Duty Office by Mr. Trevor, the nature of which is explained in the evidence given by that gentleman to the Registration commissioners, although dealing with complicated materials, yet affords great facility for reference.

ECCLESIASTICAL COURTS.

The subject of the Ecclesiastical Courts has continued in abeyance; and, considering the extent and variety of the schemes for Law Reform, to which the committee have had to give their attention in almost every other department, they think that this may be considered a fortunate circumstance. For, although their conviction of the absolute necessity for a thorough reform of these Courts remains unabated, yet the subject is one of such magnitude, that they would be glad to see it dealt with at a time when a greater amount of careful consideration could be bestowed upon it. In the meantime, it can hardly be doubted that the reforms which are taking place in all the other Courts, will render it certain that when the subject is taken up—as it must be—by Government, a more complete and satisfactory scheme will be proposed than could have been hoped for, had it been the first instead of the last of the series.

(*To be continued.*)

THE NEWCASTLE-UPON-TYNE LAW STUDENTS' DEBATING SOCIETY.

The first half-yearly meeting of this society was held in the committee-room of the Literary and Philosophical Institution, on Thursday, the 13th inst. when a report of its proceedings was read by the secretary, from which it appeared that the society was in every respect in a flourishing condition, and that the discussion on the various subjects which had come under consideration had been productive of much benefit to the members.

NOTICES OF NEW LAW BOOKS.

Mr. George Coode has published a second edition of his treatise on *Legislative Expression*, written with the laudable purpose of improving the composition of Acts of Parliament. The subject is one of great importance, and of great perplexity. It is easy to indicate faults, but he who has ever tried the experiment of *writing a law*, will admit the difficulty of avoiding them. Mr. Coode proposes to do so by the observance of certain rules of construction, which he has described specifically. He suggests that a law should state, first, the legal subject; secondly, the legal action. But we doubt the advantage of any such rules. Before we can

determine how to express a law, it is necessary to understand precisely in what manner law is construed by the Judges. Will they look to its spirit or to its letter only? Will they regard it as an enemy to be cabined and confined, or as a friend to be treated in a friendly spirit, and with a resolve to advance its design?

Is a law to be read technically or liberally;—as if it were in an alien language, or as the expression, in the English tongue, of certain purposes designed to be described by Englishmen to Englishmen, and to be understood as those words would be understood in every-day life? It must have occurred many times to our readers to notice the remarkable difference between the old statutes and the modern ones, and how much the former excel the latter, not only in brevity, but in clearness of expression. We create confusion by our attempts to be more express and explicit than language will permit; in vain endeavours to say all we mean, and to provide for all contingencies, we introduce new difficulties and doubts; we create the confusion we seek to avoid. Nobody will say that he understands the meaning of the curt statutes of our ancestors less perfectly than that of one of our own verbose laws; usually they would be better understood. And if their *meaning* is palpable, their object is accomplished, and they are as effective as if they had sought to express that meaning in a multiplicity of words.

We recommend Mr. COODE's pamphlet to the perusal of our readers, who must desire to see the language of our laws redeemed from its present perplexity and redundancy. We have not space now to follow him through his able arguments and illustrations, but we shall take some early opportunity of recurring to the subject, and throwing out some further thoughts upon the important and interesting question of the *composition* of statutes.

LEGAL INTELLIGENCE.

TRINITY TERM EXAMINATION.

THE Examination of persons applying to be Admitted Attorneys will take place on Thursday, the 3rd of June next, at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery-lane. The examination will commence at ten o'clock precisely.

The articles of clerkship and assignments, if any, with answers to the questions as to due service, according to the regulations approved by the judges, must be left on or before Saturday, the 29th instant, at the office of the Law Society, Chancery-lane.

Where the articles have not expired, but will expire during the Term, the candidate may be examined conditionally, but the articles must be left within the first seven days of Term, and answers up to that time.

If part of the Term has been served with a Barrister, Special Pleader, or London Agent, answers to the questions must be obtained from them, as to the time served with each respectively.

A paper of questions will be delivered to each candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity, and Practice of the Courts. 5. Bankruptcy, and Practice of the Courts. 6. Criminal Law and Proceedings before Justices of the Peace.

Each candidate is required to answer all the Preliminary Questions (No. 1); and it is expected that he should answer in three or more of the other heads of inquiry,—Common Law and Equity being two thereof.—*Legal Observer.*

CAPTURE OF A FRAUDULENT BANKRUPT. GLOUCESTER, TUESDAY.—Some months ago Mr. W. H. Barrett, corndealer and miller of this city, and who, a short time previously, had been elected sheriff of Gloucester, absconded to America, taking with him a large sum of money, which he had raised chiefly by the use of forged bills, the names of several merchants with whom he had had transactions, and others having been forged to acceptances by him. He was traced to the United States, where he was captured, and he was brought to this country in custody, arriving by steamer at Liverpool, on Sunday. He was immediately brought down to Gloucester by railway, and lodged in gaol, and yesterday he was taken before the mayor and magistrates for examination on the charge of forgery. Acceptances amounting to some thousands of pounds, all of which are alleged to have been forged by the prisoner, were produced against him, and, after the examination of several witnesses, he was remanded for a week, to give time for the production of further evidence.

THE DISSOLUTION OF PARLIAMENT.—The prevalent opinion has been that the present Parliament would be dissolved on or about the 10th of June. A later day seems now probable, since it appears that the Queen intends to hold another drawing-room about the 3rd of June, and contemplates giving a state ball about the 18th of the same month at St. James's Palace. A grand ceremonial like a state ball is not likely to be given *after* the dissolution.—*Daily News.*

PROCLAMATION OF OUTLAWRY.—At the Sheriff's Court yesterday the following persons were called upon to surrender to the custody of the sheriff under penalty of outlawry:—Algernon Massingberd (at three suits), Osborn H. Sampayo, W. David Sherriff, Wm. Frederick Smith (at two suits), Wm. Thomas Thornton, Wm. Wilson the younger, Augustus Mayhew, George Cowie, the Rev. John Prendergast Walsh, Henry H. Griffin, John Cruickshank, Sidney W. Alston, Thomas Griffiths, Mary Sabina Melfort (commonly called the Countess de Melfort), John Armine Morris, Alfred Lewis, Joseph Benson, Thomas Barrett Lennard the younger, Walter Lockhart Scott, Hon. Brownlow Cecil (commonly called Lord Brownlow Cecil), John Hugh Wadham Pigott Smyth Pigott, John Lloyd, and George Dracato Papanicolas.

THE GAZETTES.

Bankrupts.

Gazette, May 18.

BANISTER, JAMES, brassfounder, Birmingham, May 20 and June 19, at half-past ten, Birmingham. Off. as. Whitmore. Sol James, Birmingham. Petition, May 15.

CALVERT, HENRY, woollen draper, Southampton, May 29, at twelve, July 3, at half-past eleven, Basinghall-st. Off. as. Pennell. Sol. Low, Chancery-lane. Petition, May 5.

PASSMAN, JOHN, currier, Stockton-upon-Tees, May 27, at half-past twelve, July 2, at one, Newcastle-upon-Tyne. Off. as. Baker. Sols Harle, Southampton-buildings and Newcastle-upon-Tyne; Allison, Darlington. Petition, May 8.

RUSSELL, WILLIAM, draper, Bethnal-green-road, May 21, at half-past one, June 29, at twelve, Basinghall-st. Off as. Graham. Sols. Ashurst and Son, Old Jewry. Petition, May 7.

WASS, CHARLES WENTWORTH, picture dealer, Bond-st. June 3, at two, June 29, at eleven, Basinghall-st. Off as. Johnson. Sol. Hughes, Chapel-st. Bedford-row. Petition, May 15.

Gazette, May 21.

BATES, THOMAS, and SHEARD, SCHOFIELD and JOHN, engineers and millwrights, Halifax, Yorkshire, June 7 and 28, at eleven, Leeds. Com Ayrton. Off. as. Hope. Sols. Wewell, Philbrick, and Foster, Halifax. Petition, May 11.

CROCKER, THOMAS, [illegible] maker and ship chandler, Wisbeach, Ely, June 1, at twelve, and June 29, at two, Basinghall-st. Com. Holroyd. Off as Groom. Sols. Bennett and Paul, Sise-lane, Bucklersbury. Petition, May 11.

CUFF, JOHN, hotel and tavern keeper, Manchester, June 1 and 22, at twelve, Manchester. Off as Fraser. Sols Sangster, Leeds; and Rigson and Robinson, Manchester. Petition, May 18.

FEARN, WILLIAM ROYDE, draper, Dale End, Birmingham, June 2 and 29, at half-past eleven, Birmingham. Com. Daniell. Off. as. Christie. Sol Hodgson. Petition, May 10.

HEALEY, JOHN MATTHEW, draper, Dewsbury, Yorkshire, June 10 and 25, at eleven, Leeds. Com. West. Off. as Young. Sols Scholes, Dewsbury; and Courtenay and Compton, Leeds. Petition, May 15.

ROBERTS, JOSEPH, draper, Aberystwith, Cardiganshire, June 2 and 30, at eleven, Bristol. Com Stephen. Off as Miller. Sols. Sale, Worthington, and Shipman, Manchester; and Leman and Humphrys, Baldwin-st Bristol. Petition, May 12.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Baynes, W. flax spinner, first, 1s ¾d. Young, Leeds.—*Broadbent*, J. woollen manufacturer, first and final, 1½d Hope, Leeds.—*Clark*, A. plumber, &c. first, 1s. 8d. Edwards, London.—*Cole*, W. estate agent, &c first, 1s 10½d Morgan, Liverpool.—*Cox*, T. chemist, first, 4s 8d. Groom, London.—*Davy*, C. artists' colourman, first sep 20s Edwards, London.—*Gladwin*, H. draper, first, 5s. Bittleston, Nottingham.—*Jackson*, R. butcher, first, 4s. 7d Bittleston, Nottingham.—*Jearrad*, R. W. jun. carpenter, &c. first, 3s. 8d. Edwards, London.—*Molkentin*, R. shoe manufacturer, first, 10d. Edwards, London.—*Mouat*, A wine merchant, first, 1s 10d Groom, London.—*Nesbitt*, J. *Stewart*, E and *Nesbitt*, J jun. merchants, seventh 1½d. Whitmore, London.—*Padgett*, J. cloth manufacturer, first, 2s. 6d. Young, Leeds.—*Peverley* and *Charlton*, shipbuilders, first, 7s. Baker, Newcastle.—*Pryde* and *Jones*, sailmakers, &c first sep. of J. Gibb, 20s; first sep. of G. Pryde, 2s. 8½d; first sep. of D Jones, 20s. Morgan, Liverpool.—*Robinson*, W. grocer and draper, first, 1s. 6d. Groom, London.—*Simmonds*, W. grocer, &c. first, 2s. 8d. Edwards, London.—*Taylor*, J. B. ship broker, 1s. 0d. Turner, Liverpool.—*Thompson*, H. draper, first, 0s. Bittleston, Nottingham.—*Thorman*, R. engine builder, first, 1s. Wakley, Newcastle.—*Wilkinson* and *Bentley*, tailors and drapers, first, 4s. 7d. Morgan, Liverpool.

INSOLVENTS' ESTATES.

Marshall, J. clerk, 4s. 2d. Apply to Mr. Miller, solicitor, Clifford's-inn (in addition to former div. of 12s. 0d.). [illegible] P. victualler, 13s. 6d. Apply to J. G. Hobbs, [illegible] Bristol.—*Wardle*, J. clerk, first, 3s. 7d. Apply to G. B. Nelson, Leeds.

ASSIGNMENT DIVIDEND.

Wignall, J. ironmonger, first and final, 5s. 9½d. Apply to Mr. Welsby, solicitor, Ormskirk.

Assignments for the Benefit of Creditors.

Gazette, May 11.

Atkins, G. jun. grocer and draper, Cattistock, Dorsetshire, April 19. Trusts. W. Dingley, draper, Sherborne; William James, grocer, Dorchester; and George Atkins, grocer, Charminster. Sols. Garland and Fear, Dorchester.—*Braddon*, W. draper, Devonport, April 21. Trusts. J. Bradbury, warehouseman, Aldermanbury; and Henry Sturt, warehouseman, Wood-street. Sols. Hardwick, Davidson, and Bradbury, Weaver's-hall.—*Davis*, J. wheelright and shopkeeper, Crewkerne, Somersetshire, April 30. Trusts. E Plowman and S. Clarke, saddlers, both of Crewkerne. Sol. W. Sparkes, Crewkerne.—*Fisher*, T. blanket manufacturer, Dewsbury Moor, Dewsbury, Yorkshire, May 5. Trusts. R. Clay, woolstapler, Dewsbury; and G Cardwell, manufacturer, Birstal. Sols. Greaves, Scholefield, and Oldroyd, Dewsbury.—*Garratt*, G. grocer, Parrock-street, Gravesend, Kent, April, 27. Trusts. J. Ackworth, tallow chandler, Chatham; and G. Penson, cheesemonger, Newgate-street, London. Sol. C. Crouch, Southampton-buildings.—*Jones*, E. druggist, draper, and grocer, Ruabon, Denbighshire, March 19. Trusts. J. Edisbury, gentleman, Bersham; and J. Lea, miller, Weston. Sol. T. Hughes, Wrexham.—*Nash*, J. carpenter, Highstead, Chislett, Kent, April 17. Trusts. J. G. Drury and W. H. Biggleston, ironmongers, both of Canterbury; and R. G. Stone, timber merchant, Faversham. Sol. R. Walker, Canterbury.—*Warne*, N. and *Miller*, H. builders, Hastings, Sussex, May 6. Trusts. J. Walder, timber merchant, and J. Winter stone-mason, both of Hastings. Sol. H. Bishop, Hastings.

Gazette, May 14.

Bowler, S T. and G. cotton manufacturers, Preston, May 7. Trusts. J. Sutcliffe, commission agent, Manchester; T J Garrington and W. Parkinson, cotton spinners, both of Preston. Sol. R. Ascroft, Preston.—*Brattle*, J. T. plumber, painter, and glazier, West Malling, Kent, May 10. Trusts. R. Sergeant, oil and colour merchant, Maidstone; and W. G. Dean, butcher, West Malling. Sols. Selby and Norton, West Malling.—*Brown*, H. draper and travelling merchant, Rochdale, April 27. Trusts. G. Booth, merchant, and T Lorimer, accountant, both of Manchester. Sol. E. Brookes, Manchester.—*Dean*, W. grocer, Ashton-under-Lyne, May 3. Trusts I. Warburton, grocer, and P. Roylance, commission agent, both of Manchester. Sols Mellor and Son, Ashton-under-Lyne.—*Johnson*, W. Baker and grocer, St. Margaret's, Leicester, April 24. Trusts. T. Nunneley, wholesale grocer, Leicester; J. Baker, miller, Barnwell-mills, Northampton; and J W. Clark, druggist, Leicester. Sol. J. B. Haxby, Leicester.—*Spear*, R. grocer [illegible] tea dealer, Selby, Yorkshire, May 11. Trusts. J. Dobson, bank manager, and J. Richardson, wine and spirit merchant, both of Selby. Sols Wedell and Parker, Selby.

Partnerships Dissolved.

Gazette, May 11.

Bax, T. and *Pearson*, W. corn and seed merchants, Bishopsgate-st. without, and Wapping, April 30. Debts paid by Bax.—*Becket*, C. and *Young*, J. tea-dealers and grocers, High st. and Upper-st. Islington, May 8.—*Denn*, A. and *H.* F. diamond-work manufacturers and jewellers, Frith-st. Soho, Dec. 31.—*Goulton*, W J. and *Turner*, G flax retters and flax-factors, Selby and Hemingbrough, May 6.—*Hammond*, A and F. hosiers, Piccadilly, March 25.—*Knight*, W. and *Willoughby*, J. tallow chandlers, Nottingham, May 8.—*M'Kenna*, W. and *Turner*, R. manufacturers, Salford, March 18. Debts paid by M'Kenna.—*McTear*, T. and *Vining*, R. shipbrokers and shipowners, Liverpool, May 8.—*Newman*, C. and F. drapers, Poole, April 8.—*Pickup*, J and *Lord*, S. and J. cotton manufacturers, Green's Mill, Bacup, April 24. Debts paid by Pickup.—*Smith*, K. and *Lewis*, F. schoolmistresses, Kew, May 8.—*Stott*, J. *Porter*, D *Nicholl*, T., H. and J. worsted-spinners, Halifax, May 5.—*The School Governess, Family, and Clerical Agency*, Soho-sq May 8. Debts paid by J. Waghorn.—*Toomy*, W. and *Kitchen*, J auctioneers and appraisers, Leeds, June 6. Debts paid by Toomy.—*Watson*, G and *Parkhouse*, T. W. hop merchants, Southwark, April 30. Debts paid by Watson.—*Wickham*, F. and *Brooke*, W. wine and spirit merchants, Bristol, Sept. 30. Debts paid by Brooke.

Gazette, May 14.

Beatty, H and W carvers, gilders, and decorators, Leamington Priors, May 10. Debts paid by W. Beatty.—*The Broadfield Coal Company*, Mold, Flintshire, Oct. 14.—*Burgess*, T., W. and A woolstaplers, Leicester, Mar. 4, as regards W. Burgess.—*Clegg*, E. T. and *Lewis*, E. chemists and druggists, Liverpool, May 10.—*Fielding*, W. and *Bromley*, J. bleachers and rag dealers, Manchester and Turton, May 10.—*Flower*, G. J and *Lewis*, A cheesemongers and butchers, Hope-ter. Three-Colt st. Limehouse, May 12.—*Gibson*, W. and G. and *Anson*, W. J. cloth merchants, Leeds, May 13, as relates to Anson. Debts paid by remaining partners.—*Gordon*, C and *Salisbury*, J. silk throwsters, Derby, Dec 10.—*Holden*, I. and J P architects and surveyors, Manchester, May 13. Debts paid by I Holden.—*Hunt*, S and G builders and timber merchants, Evesham, March 16.—*Jobling*, M. L. and *Fleming*, J. attorneys and solicitors, Newcastle, April 30.—*Lambe*, A. *Le Page*, L and *Lambe*, M. C. manufacturing chemists, Wakefield and Bradford, May 11.—*Lewis*, E. L and *Pattson*, W maltsters, brewers, and wine and spirit merchants, Whitehaven, May 1. Debts paid by Pattson.—*Lord*, J and J. dyers, Halifax, May 12. Debts paid by Jas. Lord.—*Peace*, T. and *Raddenberry*, J. florists, Bristol, May 1. Debts paid by Raddenberry.—*Prodger*, W. sen. and J. plumbers, glaziers, and painters, Eastbourne, May 1.—*Robinson*, W. and C. stuff and woollen printers, Leeds, Jan. 1. Debts paid by W. Robinson.—*Rush*, W. and *Edwards*, G. E. wholesale staymakers, Ipswich, May 8.—*Salmon*, J. and *Goutley*, J. Edgware-rd. May 10.—*Shore*, S. and T. millers, cornfactors, bakers, and dealers in corn and grain, Totness and Exwick, May 8. Debts paid by T. Shore.—*Squires*, E. C. and *Lawrie*, W. naphtha refiners and varnish makers, Lower-rd. Deptford, May 10.—*Thomas*, W. and *Richards*, R. carpenters and builders, St. John's Wood, April 17.

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TO

POINTS REPORTED DURING THE LAST EIGHT WEEKS,

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To Readers and Correspondents.

Double the published price is offered for Nos. 339 *and* 342 *of the* LAW TIMES. *Any subscriber having these copies to spare will oblige by sending them to the publisher.*

ERRATA.—In last week's number, in the case of *Reg.* v. *Uthwaite*, p. 136, col. 3, line 22 from bottom, *for* "*lands*," *read* "*hands*;" and line 37 from bottom, *for* "*cash*," *read* "*each*."

TO SUBSCRIBERS.

The Index to the 18*th Vol. being now published, the volumes may be sent to the office for binding as usual. As all are bound uniformly, it will not be necessary to send a pattern.*

THE LAW TIMES.

SATURDAY, MAY 29, 1852.

THE NEW LAWS OF THE SESSION.

THE LAW TIMES' Editions of the New Laws of the present Session, will be published as soon as possible after its close. Should the Law Reform Bills pass, the series will comprise:—

- The Militia Act, with the Statutes embodied in it, with Notes, Forms, and Index. By THOMAS W. SAUNDERS, Esq. Barrister-at-Law; Author of "The Supplement to Burn and Archbold," "The Duties of Magistrates," &c.
- The Common Law Procedure Act. By R. M. KERR, Esq. Barrister-at-Law.
- The Chancery Reform Act. By OWEN TUDOR, Esq. Barrister-at-Law; author of "Leading Cases in Equity," &c.
- The Practical Statutes of 1852. By WILLIAM PATERSON, Esq. Barrister-at-law—in continuation of those for 1850 and 1851—with Notes and Index.
- The General Highways Act, with the subsequent Statutes, Cases, Forms, and Practical Notes. By WILLIAM FOOTE, Esq. of Swindon.
- The Copyhold Enfrachisement Act, with Practical Notes and Index. By WILLIAM HUGHES, Esq. Barrister-at-Law; author of "The Practice of Sales," "Concise Precedents in Modern Conveyancing," &c.

Orders should be sent as soon as possible, that the Publisher may make his arrangements accordingly.

FLOGGING IN DEVONSHIRE.

AGAIN we beg respectfully to ask the attention of Lord CAMPBELL, Lord BROUGHAM, Lord CRANWORTH, Lord LYNDHURST, or either of the other Law Lords who honour the LAW TIMES with a perusal, to the circumstances which we described last week, relating to the monstrous abuse, in Devonshire, of the punishment of flogging. The Session ought not to pass without an inquiry into it, and as a first step, a return should be ordered from the clerk of the peace of that county, of the persons sentenced to flogging during the last two years, *and their ages.*

COPYHOLD ENFRANCHISEMENT AND THE ATTORNEYS.

AFTER passing quietly and with universal approval through the Commons, the Bill for the Enfranchisement of Copyholds has met with an unexpected opposition in the Lords. It seems that some of the Lords of Manors are unwilling to part with their feudal privileges, and object to the compulsory provisions of the Bill, although voluntary enfranchisement has been tried for several years and has failed.

We regret, also, to see that the noble obstructives have found a champion in the LORD CHANCELLOR, and that, at his instance, the Bill is to be sent to a Select Committee, which, at this period of the Session, is, as Lord CAMPBELL observed, equivalent to its defeat. The country would have much preferred an open opposition to this sort of covert hostility.

The *Times*, we observe, very unjustly attributes the opposition so suddenly shewn by the Government, to the promptings of the country Attorneys, thus pampering the public prejudice against the Lawyers. But the fact is entirely otherwise. So far from opposing the Enfranchisement of Copyholds, *the country Attorneys are its warmest advocates, and have been and are among its most energetic promoters;* and among no class of the community will the proceedings of the Government in the obstruction and delay of this Bill produce more indignation, and give more real vexation, than among the country Attorneys.

Should the issue be, as now is to be feared, that this Bill will be lost for the session, the promoters of it should not only enlist popular feeling for a still more energetic demand for copyhold enfranchisement in the next session of Parliament, but they should take care that the same favourable terms be not offered then as now. The proposal for compensation to the Lords of Manors contained in the present Bill is extremely liberal. If they should reject it, let them see that they are playing a losing game, and that every successive offer will be less favourable than its predecessor. Only thus can unreasonable men be brought to reason.

THE CHANCERY REFORMS.

AFTER it had come to be generally understood that these Bills were abandoned for the session—when half of the members of the House of Commons are canvassing, when the real business of the session was supposed to be almost done, the LORD CHANCELLOR has suddenly announced that it is his purpose to endeavour to make these Bills law before the dissolution. We doubt the propriety of this, even if it be practicable. They *must* be hurried through their stages without examination or discussion. The Commons must take them as they come, without even a committee, or they cannot be carried. But is it right that measures of such moment should be introduced at all into a dying Parliament, whose members are dispersed, whose thoughts are otherwise occupied, who *cannot* give them attention if they would? Will it be to the advantage or credit of the measures themselves, that they should be hurried into laws without even the consideration usually given to Bills of the smallest public concern? Ought legislation like this to be sanctioned by such a precedent for keeping back important measures to the end of a session, and then trying to carry them through in a rush? Chancery Reform is much to be desired, and we should lament its delay; but we should still more regret if it were to be imperfectly and hurriedly effected—dragged through a deserted Parliament, instead of being carried formally through a full House, with due deliberation.

FORMA PAUPERIS.

A REMARKABLE instance of the abuse of this privilege has been brought under the notice of the House of Lords, by Lord CAMPBELL.

A petition was presented by Mr. JESSE OLDFIELD, stating that he had been reduced from wealth to poverty by a series of actions *in formâ pauperis*, that had been brought against him by a Mr. CORBETT, and that no less than *seven* of such actions were now pending against him.

More than once we have directed the attention of our readers to the great abuse of that which was intended to be a great privilege. The law designed for the benefit of the poor has been perverted to the purposes of oppression; for inasmuch as a pauper suitor pays no costs, it is in the power of any man, by swearing that he is not worth 5*l.* to ruin any other man against whom he has a grudge, by harassing him with lawsuits. In the Profession, it is well known that this form of action is often used for the mere purpose of extorting money, the defendant knowing that although successful in defeating the pauper plaintiff, he must pay his own costs, and therefore it is cheaper to buy off his persecutor.

It was doubtless supposed that the certificate of a Barrister, that in his opinion there is a good cause of action, and which is a necessary preliminary to obtaining permission to sue as a pauper, would be a sufficient protection against wrongful suits. In practice it is found not to be so. Unfortunately, the Bar contains many disreputable men, who have no characters to lose, and still more ignorant men, who are incompetent to determine what *is* a good cause of action,—such being, indeed, the natural consequences of the facility of access to it, and the absence of all checks upon admission to an honourable and learned profession,—and from one or the other of these it is always easy to obtain a certificate.

A remedy for the mischief ought not to be delayed. It might be introduced into the Common Law Procedure Bill, now passing.

We have already proposed, as a cure, that all actions *in formâ pauperis* should be brought in the County Court, on the principle that a party who claims the privilege of suing another on such unequal terms as paying no costs if he fails, while he obtains them if he succeeds, should be compelled to go to the *cheapest* tribunal,—giving to the defendant the option of taking the case to the Superior Courts if he should prefer them, and even permitting the plaintiff to remove it, with leave of the Court above, on good cause shewn.

This would be the *best* remedy. But if this should be objected to, then we would suggest that there be a clause introduced into the Procedures Bill,—1st. Abolishing the certificate of counsel, and instead of it requiring leave from a Judge in Chambers, *on good cause shewn*, to sue *in formâ pauperis.* 2nd. Providing that, inasmuch as the plaintiff sues *gratis*, he shall recover no other costs than the money paid to witnesses for their attendance. (This would prevent speculative pauper suits, by Attorneys who take the chance of *gain*, knowing that they can *lose* nothing.)

We commend these hints to Lord CAMPBELL, who has interested himself in the case of Mr. OLDFIELD. If acted upon, they would prevent such abuses for the *future.* As for the past, could not the Court interfere to stay proceedings in actions manifestly vexatious, unless security be given for *the costs?*

WHAT'S TO BE DONE?

THIS is what our correspondents of the Junior Bar continually ask of us.

We fear that we can honestly return but one answer. *Quit the Profession.* It does not, it

cannot, and it will not, give you a maintenance. It is vain to wait and hope. *There is no hope.* The fact is palpable, that there is an enormous superabundance of Barristers; and until the demand and supply are brought to their fair proportions, a large number must pine in idleness. It is folly to disguise the fact, that law has declined; that Lawyers are not so much in request as they used to be; and that in exact proportion to the falling off in the demand for them, the supply of Lawyers has *increased*.

The consequences are obvious, and they are inevitable.

But what *to do?* If we cannot live by the law, how are we to live?

Emigrate. Go to "the diggins." Cultivate wool in Australia, or corn in Canada. Take to some honest employment at home. Anything, rather than rust your life away in idleness or uselessness,—a burden to yourself and others. Happily, at this time all other callings are prosperous. There is no lack of employment. Hands are wanted everywhere, especially if they are linked with a head that can guide them. Labour will soon have capital at its mercy. It will dictate its own terms; appoint its own wages. A thousand ways are opened, and are daily opening, for industry and ability to thrive—in almost everything but *the law*. Trade is extending; agriculture is improving; the law alone is declining and drooping. The reason is, that the public have grown wiser, and prefer to settle their disputes without going to law; and this tendency is rapidly increasing. Upon the Attorneys, the effect has been comparatively trifling; for only a small fraction of *their* business was composed of law-suits, while they have found compensation for the decline of writs in the many *new* demands for their assistance, in their character of general agents, or advisers, growing out of the increased occupations of other classes. But to the Bar, whose business was almost entirely the product of actual litigation, the decline of this form of strife has been a falling off in employment that nothing can compensate, and no reforms can restore.

Until the numbers of the Bar are reduced to some reasonable proportion to the reduction of the business for which barristers are required, it will be the most unprofitable and hopeless profession for any man to adopt as a means of obtaining a livelihood; and therefore it would be wise for all who have not a fortune to maintain them, to hasten the restoration of the balance between the business to be done and the wigs to do it, by betaking themselves, as soon as possible, to some more profitable and promising occupation, either at home or abroad.

COMMON LAW PROCEDURE BILL.

This Bill has been revised and much reformed by the committee of the Lords and is sent down to the Commons, but whether with any hope of its becoming law this session we do not know.

It was very strange that, after the Law Reform Bill had been abandoned, the Government should have changed its mind, and suddenly resolved to make an endeavour to thrust them through Parliament at the end of the session, when the House of Commons is almost deserted, and the business was thought to have been completed.

As to the Common Law Bill, it does not matter much whether it become law this year or next. It does little towards restoring the lost business. It will cheapen the cost of an action enough to destroy the present small profits of the Attorney, without so cheapening it as to induce suitors to prefer the Superior Courts to the County Courts. The real cause of the preference for the County Courts is the speed with which a trial can be had there, and the small cost of bringing up witnesses. The Common Law Bill does not propose to supply these requisites, to enable the Superior Courts to compete with the inferior ones. It makes no provision for more speedy trial, by more frequent Assizes; nor for diminution of cost by sending the Judge to the witnesses instead of the witnesses to the Judge: without these provisions, no reform in procedure will be of any material advantage to the suitor or to the Profession, nor will it save the Common Law Courts from desertion.

THE LEGISLATOR.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, May 21.

[B]ishopric of Quebec (Lords)
Scutch Mills for Flax, Ireland.

Monday, May 24.

Bishopric of Christchurch
Navy Pay.

Thursday, May 27.

Woods, Forests, and Land Revenues.

BILLS READ A SECOND TIME

Friday, May 21.

New Zealand Government.

Monday, May 24.

Inland Revenue Office
Hereditary Casual Revenues (Colonies)
Excise Summary Proceedings
Bishopric of Quebec (Lords).

Thursday, May 27.

Valuation, Ireland
Patent Law Amendment (Lords)
Scutch Mills for Flax, Ireland
Poor-Law Board Continuance, Ireland.

BILLS READ A THIRD TIME AND PASSED.

Monday, May 24.

Corrupt Practices at Elections
Differential Dues.

Thursday, May 27.

Public Works.

PRIVATE BUSINESS TRANSACTED.

Friday, May 21.

Liskeard Roads
Great Western and Gloucester Railways Companies
North British Flax Company (Claussen's)
Rotherham and Pleasley Road
London Necropolis and National Mausoleum
Huddersfield Burial Ground.

Monday, May 24.

Great Western and Shrewsbury and Chester Railways' Amalgamation
Manchester, Sheffield, and Lincolnshire Railway
Manchester, Buxton, and Midlands Junction Railway
Pedmore and Rowley R[oad]
Stroud and Besley Road
Framore Embankment
Marsden, Gisburne, &c. Roads.

Tuesday, May 25.

Stockton and Hartlepool, &c. Railway
Limerick Improvement and Market.

Thursday, May 27.

Beaconsfield and Redhill-road
Eastern Union Railway
Humber Conservancy and Hull Docks
Kettering and Northampton Road
Kingston and Sheetbridge Roads
Hull Dues and Docks
Manchester House of Recovery
Nene Valley Drainage and Navigation.

PETITIONS PRESENTED.

Attorneys' Certificate Duty—For the repeal of, from Bungay, Cupar, Fife, Clare, Clitheroe, Cardigan, Edinburgh, Falmouth, Framlingham, Glasgow, Holywell, Knaresborough, County of Montgomery, Monmouth, F. B Morris, Ottery St Mary, Plymouth, Redruth, St. Andrews, and Wicklow.

SESSIONAL PRINTED PAPERS.

Par. Num.

213 (1). Savings Banks—Return (Part 2)
Oxford University Commission—Report
173. Local Acts - Reports of the Admiralty
218. Arctic Expedition - Report of Dr Rae
316 Wheat, Oats, and Barley (Ireland)—Return
335. Railway Accidents—Return
279. Hackney Carriages (Metropolis)—Returns
297. Alverstoke (Gosport) Incorporation—Copy of Letter
365. Bills—Poor Law Board Continuance (Ireland)
368. -- Industrial and Provident Partnerships (as amended by the Select Committee)
369. -- Grand Juries, Metropolitan District, as amended by the Select Committee
370. Pharmacy, as amended by the Select Committee
380 — Metropolitan Burials
382. — Hereditary Casual Revenues in the Colonies
383. — Excise Summary Proceedings
384. — Colonial Bishops, No. 2
385. — Bishopric of Quebec
381. — Inland Revenue Office
392. — Militia, amended
393. — Pimlico Improvement
394. — Scutch Mills for Flax, Ireland
345. — Parish Constables, amended
396. — Bishopric of Christchurch, New Zealand
401. — Trustees Act Extension, amended
403. — Navy Pay
327. Post Horse Duties—Returns
333. Corn, &c.—Account
New Zealand, Proposed Constitution—Further Papers
Church Estates Commissioners—First General Report
171. Assurance Companies—Return, Session 1849, reprinted
Census of Ireland for the year 1851—Part I. County of Kildare
171 (1) Assurance Companies—Return
339. Dr. Miller—Proceedings of a Court of Inquiry
360. Houses—Return
362. Income-tax—Return
372. Passports—Return

HOUSE OF LORDS.

COMMON LAW AMENDMENT.

Monday, May 24.—Lord Cranworth brought up the report of the committee on common law proceedings, and moved that it be received.—Lord Lyndhurst would trouble their lordships by calling their attention to a rumour that had obtained circulation, to the effect that this measure was distasteful to the Government, and that they had retarded its progress through the select committee, to prevent its passing into law during the present session; and he (Lord Lyndhurst) thought it right to say that there was not the slightest foundation for this rumour. The Bill had been introduced by his noble and learned friend who lately held the great seal; it was read a second time, and referred, as a matter of course, to a select committee. The members of that select committee examined the Bill, clause by clause, for several days; a change then took place in the Government, and for a short time the meetings of the select committee were suspended for the purpose of ascertaining what course the new Government intended to pursue with respect to this Bill. The Bill, as a matter of course, came under the consideration of the Government; the sittings of the committee were then renewed, and continued until the indisposition of his noble and learned friend. As the Bill had been framed by him, it was considered proper and respectful that the sittings of the committee should be suspended during his illness; but in order that no delay should take place, such of the law lords as were members of the committee met in private, to continue the examination of the clauses, so that when the committee again met, the measure should be as mature as possible, and no further delay should take place. When his noble and learned friend was in a condition to attend the committee the Bill with all the amendments was considered, and adopted, and now reported to their lordships' house. He thought that after that statement their lordships would be of opinion there was not the slightest foundation for the report that had been in circulation respecting the hostility of the Government. He begged the House would indulge him while he made a few observations on the Bill itself, because little had been said of it in its progress through the House. The object of the Bill and of the select committee was to simplify and abridge the proceedings in the superior courts of common law, as far as was consistent with a due regard to justice; and he thought those objects had been successfully accomplished. He would not go through all the clauses of the Bill, but there were a few points to which he would refer. It was a well-known fact, that of actions commenced in the superior courts, not more than two per cent. or one in fifty, were contested; and when he told their lordships that by the operation of the Bill, in all that numerous class of cases the costs would never exceed 3*l.* their lordships would admit that the labours of the committee had been very beneficial to the country. The case in which hitherto there had been more perplexing technicalities than any other was in action for slander or defamation; but all that would be required by the present Bill was, that the statement of the defamatory words should be placed upon the record with the injury plaintiff attributed to them, and all the jury would have to find was, were the words spoken, and the sense they applied to them. It had been a question whether it was desirable to retain the forms of action, or whether it would not be better to allow each party to state his own case in his own words. The question was much considered by the committee, and, after a careful examination, they were of opinion that it was not advisable to adopt the latter course of proceeding. In the first place, it was said, that from inadvertence, carelessness, or ignorance of the law, errors would arise; and, again, if they let a party state his own case in his own words, a great deal of unnecessary matter would be introduced, and a great deal of perplexity would ensue. The consequences would be—what the committee was desirous to avoid—applications to the judges in chamber to strike out unnecessary matter. The committee therefore had adhered to the ancient forms, but they had struck out every word that was unnecessary. There was another point, and a material one, to which he would refer, with respect to the plurality of pleading. It was supposed by the public that nothing could be more inconvenient than to allow the defendant to resort to a great variety of different pleas. The abuse had been carried to a very great extent; but at the same time, if a party had two good defences, and was obliged to abandon one and select the other, it would be the greatest

possible injustice. The committee had therefore allowed double pleas in cases of that description. A party against whom a claim was made might contest a claim and say there was no foundation for it, and he might also rely upon a set off; and it would be an injustice to say that a party who had thus a double defence should be compelled to rely only upon one of them. There was another point to which he also desired to call attention, which had not originated with him, but with his noble friend the late Lord Chief Justice. It had reference to the law of ejectment, and he had received a communication from his noble and learned friend that if the third reading were fixed for Thursday, he would be able to attend and urge the amendments he desired to have adopted. In order to obviate the inconvenience that might arise from bringing forward those amendments on the third reading, his noble and learned friend had sent to him the form of notice which he proposed to place upon the votes; that notice would be printed before the discussion came on, so that noble lords might know the points to which he meant to refer. Lord CRANWORTH was rejoiced, in common with their lordships, to hear the statement that had been made by the noble lord; but he hoped their lordships would not conceive that the points to which he had adverted were the only important points in the Bill. They might fairly be taken as samples of the amendments, which would have a tendency to make the law in the Superior Courts of law more cheap and intelligible. He did not give credence to the general notion that the Government were opposed to this measure. He considered that it was looked upon as a question unconnected with party, and that the measure would lead to beneficial results.

The motion was then agreed to.

FORMA PAUPERIS.

Lord CAMPBELL presented a petition from Mr. Jessie Oldfield, complaining of the losses to which he has been subjected through the proceedings of Mr. William Cobbett, under the Habeas Corpus Act, and under the law enabling a party to sue *in forma pauperis*, and praying their lordships would enact a law to prevent the monstrous abuses now perpetrated by means of writs of *habeas corpus* and actions *in forma pauperis*.—The LORD CHANCELLOR thought that writs of *habeas corpus* had been issued more liberally than they ought to have been, and had been converted into instruments of persecution against this unfortunate man.—Lord CAMPBELL begged leave to move for a return of the number of writs of *habeas corpus* issued by Mr. William Cobbett since the 1st of October, 1839, and the result, and likewise for a return of the number of actions brought by him since that day, suing *in forma pauperis*, and the judicial result of them.

COPYHOLD ENFRANCHISEMENT.

TUESDAY, May 25.—Lord CRANWORTH moved the second reading of the Copyhold Enfranchisement Bill, and after entering into a detail of the absurdities and inconveniences of the existing system, concluded by stating that the object of the Bill was to enable lords to compel tenants, and tenants to compel lords, to enfranchise under certain modifications, which would not operate with hardship upon either lord or tenant.—The LORD CHANCELLOR admitted the great inconvenience resulting from the existing system, but thought the Bill in its present shape could not with safety be allowed to pass, and therefore proposed that it be referred to a select committee.—Lord CAMPBELL had hoped that the Bill would have become law during the session, but feared the speech of the Lord Chancellor was fatal to it.—After some further discussion, in which the LORD CHANCELLOR assured the House that the Government had no intention, when they proposed that the Bill should be referred to a select committee, of throwing it over for another session, the Bill was read a second time, and ordered to be referred to a select committee. — Some other Bills were also forwarded a stage, and their lordships adjourned.

ENFRANCHISEMENT OF COPYHOLDS BILL.

THURSDAY, May, 27.—The LORD CHANCELLOR named the select committee on this Bill.—Lord CAMPBELL was understood to decline to act on the committee. He did not think that under the circumstances there was any chance of passing the Bill this session, and there was no use, therefore, in going into the details.—The names were then agreed to, Earl Fitzwilliam being substituted for Lord Campbell.

COMMON LAW PROCEDURE AMENDMENT BILL.

Lord TRURO, on moving the third reading of this Bill, highly eulogised the report of the commissioners upon which it was founded, and stated that the object of the Bill was to facilitate justice and lessen its cost. He did not expect that it would be found to be a perfect measure, but a power was reserved to the judges to correct any errors which might be found to exist, and carry into full effect the objects of the Bill; not an absolute power to be exercised by them in the first instance, but subject to the approbation of Parliament. The noble and learned Lord, in conclusion, said he should propose a clause giving power to the judge of a superior court to verify warrants issued from inferior courts, with a view to seize the goods or persons of defendants in any other county to which they may have removed.—Lord DENMAN was exceedingly happy to bear testimony to the merits of the Bill.—Lord CAMPBELL expressed his gratification at hearing that his noble and learned friend approved of the Bill. He believed that it would effect a vast improvement in common law procedure.—The LORD CHANCELLOR said he should be very glad to see this Bill, if found to work well in England, extended to Ireland.—The Bill was read a third time, and two clauses, one moved by Lord Truro and the other by Lord Denman, having been added, the Bill passed.

REFORM OF THE COURT OF CHANCERY.

FRIDAY, May 28. — The LORD CHANCELLOR moved the second reading of the Improvement of the Jurisdiction of Equity Bill, and that it should be referred to the same select committee as had already under consideration the Bill for the Abolition of Masters in Chancery.—Lord CRANWORTH said, that although he approved of the Bill in the main, he must not be supposed to commit himself to the approbation of all the details. The Bill had only been recently printed, nor had there yet been adequate time for fully considering it. Should any difficulties arise when it was under consideration before the select committee, and should it therefore be found impossible to pass it during the present session, he hoped that would not be allowed to impede the progress of the Bill for the Abolition of the Masters in Chancery.—The LORD CHANCELLOR said, that he could hardly conceive any circumstances which could arise to prevent this Bill going on. Although there had been despatch there had been no hurry in the preparation of this measure. In the first place this Bill, and that for the abolition of the Masters in the Court of Chancery, were the result of the labours of a commission appointed by the Crown, which had not only upon it the most able persons to direct its proceedings and to carry them into effect, but which gave the utmost time and deliberation to the subject. He had himself taken every possible care that a man should with regard to so important a measure. He had that day gone through the whole of its provisions with the equity judges, and as all the law lords were members of the select committee to which it was proposed to refer it, they would have the fullest means of meeting any difficulty, should such arise. This Bill, and that for the abolition of the Masters' office, were so connected that he was not disposed to press one without the other, as in that case the judges might find themselves placed in a situation in which it would be very difficult for them to carry on the due and proper administration of justice in the country.

The Bill was then read a second time, and referred to the select committee on the Bill for the abolition of the Masters in Chancery.

HOUSE OF COMMONS.

GRAND JURIES ABOLITION.

MONDAY, May 24.—In answer to a question put by Mr. FRESHFIELD, the CHANCELLOR of the EXCHEQUER said that he did not see any reason for giving compensation to clerks of the peace or clerks of arraigns, in consequence of the abolition of grand juries. The case of the crier was, however, different, and he was not aware of any objection to the transfer of the fees of 6d. paid upon swearing witnesses before grand juries, at present received by the crier, to oaths administered in court, and upon which no fee was now taken by that functionary.

LAW OF WILLS AMENDMENT BILL.

THURSDAY, May 27. — The House went into committee. Mr. BETHELL objected to the wording of the first and principal clause of the Bill, and proposed to substitute an amended clause. After a debate of some length, a motion to report progress was negatived upon a division, and ultimately the Bill passed through the committee without amendment.

PUNISHMENT OF CRIMINALS.

FRIDAY, May 28.—Mr. CARTER wished to ask the Secretary for the Home Department, if he was aware that men above thirty years of age, married men, and fathers of families, are subjected to the degradation of whipping, as part of their punishment, on conviction of larceny or other petty offences; and, if there is any law or statute the intent of which was to authorize county magistrates to inflict the lash on such persons of mature age?—Mr. WALPOLE was aware that by the statute of Geo. 4 persons convicted of felony or larceny were liable to be ordered to be whipped at the discretion of the Court before whom they were tried.

INCOME TAX.—A return of the House of Commons, which has been printed, states that the amount of property and income tax refunded for all the schedules, in the year 1850, was 105,959*l.* under the following heads:—On incomes under 150*l.* 65,002*l.*; on errors, &c. 1,675*l.*; on hospitals, schools, &c. 11,337*l.*; on ecclesiastical bodies under schedule A, 4,618*l.*; on friendly societies, 19,863*l.*

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

THE following facts were held to be evidence of *a settlement* by payment of rates, and renting. A. and B., father and son, were joint tenants of a farm of requisite value. B. lived in the farm-house, but the rent was paid by the hands of A. During the year of occupation, three rates were made, which were demanded of A. and paid by him. In the rate-book the property was rated for the first two rates in the name of "Mr. A." and to the last in that of A. (*Reg.* v. *Inhabitants of Uthwaite*, 19 Law T. Rep. 136.)

There has been no end to doubts and difficulties arising out of the various opinions of the Judges, as to what constitutes a threat or inducement, such as to exclude a prisoner's confession. One of the questions has now been before the Criminal Appeal Court. The constable, on apprehending the prisoner, said,—"You need not say anything to criminate yourself. What you do say will be taken down, and used in evidence against you." Many previous decisions of single judges had held this to be a threat or inducement. But the Court of Criminal Appeal has at length determined otherwise, and that it does not exclude a confession that the prisoner has been told it will be used against him at his trial. POLLOCK, C.B. said,—"I deem it important, for the protection of innocence, that every man when he is charged with an offence should be distinctly told the nature of it, and that attention should be paid to anything which at that moment he may choose to say with regard to it, as he may be in a situation to make some statement which may ultimately lead to the proof of his innocence; but it is also important that he should be reminded that he is under no obligation to criminate himself, and that if he does state anything to criminate himself, it will be given in evidence against him." (*Reg.* v. *Baldry*, 19 Law T. Rep. 146.)

JOINT-STOCK COMPANIES' LAW JOURNAL.

THE House of Lords has taken very nearly the same rational and just view of the claims of land owners against companies which we have lately noticed as being prevalent in the Courts of Equity. In *Anstruther* v. *The East of Fife Railway Company*, 19 Law T. Rep. 130, a landowner had agreed to withdraw his opposition to the Bill on his claims being referred to arbitration. The Bill passed, but the railway was never made, and therefore the land was not required. But, nevertheless, a bill was filed to restrain the company from dissolving and returning the money to the shareholders because the plaintiff's claim was unliquidated, that is, a claim for nothing rendered on his part. But the House of Lords, almost with indignation, rejected the application. "It has never been established," said the judgment, "that a mere landowner, as such, can come and ask that a company, not having taken a single step towards the execution of the intended project, and I speak now of a railway, shall be compelled to execute that railway."

The Lords Justices have decided on appeal the questions raised in the Court below, and already commented upon here in the case of *Sparrow* v. *The Oxford, &c. Railway Company*, 19 Law. T. Rep. 131, holding that land adjoining a manufactory, and taken for the purpose of being covered with buildings in extension of it, formed a part of the manufactory itself, within the meaning of the 92nd sec. of the Lands Clauses Act; and, therefore, the company was bound to take the *whole*. Tunnelling under the manufactory was also held to be taking a part of it.

In the same case the general rule was asserted, that in construing an Act of Parliament under

which property is to be compulsorily taken, it will be read most favourably to those who seek to defend the property from innovation

A question as to the liability of *a railway company as carriers*, was raised in the form of an appeal from the County Courts. In *Morville* v. *The Great Northern Railway Company*, 19 Law T. Rep. 140, the facts were, that a horse had been sent to be conveyed from A. to B. The owner signed a ticket, which stated that he was "to bear all the risk of injury by conveyance, and other contingencies," and "to see to the efficiency of the carriages before he allows his horses or live stock to be placed therein." And then the owner certified that he had "inspected the carriages, and was satisfied with their sufficiency and safety." The horse was injured. The Court of Q. B. held it not to be a mere notice under sec. 4 of the Carriers Act, but a general contract within sec. 6, and protected the company from damage done even through their own negligence.

WINDING UP.

The winding-up litigation is gradually declining. No further attempts are likely to be made to apply these statutes to the cases for which they were not designed, as they are entirely inapplicable to companies projected only, and not formed. For the winding up of real companies, having a positive existence, so that their members can be readily ascertained, and whose respective liabilities are unquestionable, these statutes are most useful and efficient, they have only failed when sought to be applied to illegitimate purposes.

It seems from *Re the Staffordshire, &c. Railway Company*, 19 Law T. Rep. 106, that unless a party having money of the company in his possession *admits* it to be the company's money, he will not be *ordered* to give it up; sec. 66 of the Winding-up Act not being applicable to a case in which a party admitted that he had money of the company in his hands, but *said* he had parted with it.

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

Sligo and Shannon Railway Company. Call of 3l. 7s. 6d. per share, on 1st June, on contributories included in a "Reduced List." 22nd May.—Senior.

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

No less than five cases on *Wills* were reported last week. Most of them turn on nice points of construction of particular words, and involving no general principle, do not require to be noticed in this summary, which is designed to present such only of the new decisions as should be remembered or noted by practitioners. In *Edwards* v. *Edwards*, 19 Law T. Rep. 133, the Master of the Rolls stated a rule which may be conveniently borne in mind, viz. that when a bequest over is in case of the legatee's death, and no other reference can be made, the period taken is the life of the testator; but where another can be found, that will be preferred, in order to avoid the supposition of the testator having contemplated and provided against the lapse. A preceding gift for life, or any other interest less than the gift of the property, will furnish this reference.

In *Wilson* v. *Eden*, 19 Law T. Rep. 137, a will made before the new Wills' Act, but republished by a codicil made after it, was held to come within the provisions of that statute, so that, by the 26th section, leaseholds passed under a general devise of real estate, no contrary intention appearing, and in considering whether such did appear, the Court said, "We are not to look at any mere technicalities, but taking into account the facts which existed, and which are applicable to the explanation of the will, we must see, if we can, what was the intention of the testator as it appears by his will."

In *The Attorney-General* v. *Lord Henniker*, 19 Law T. Rep. 144, A. gave power to B. to appoint 2,000l. to his wife, if he thinks fit, and in the same instrument he imposed on her the condition of relinquishing her dower or free bench. Was this a *purchase* of the dower, or a *condition* on receipt of a legacy, so as to be liable to legacy duty? It was held to be only an appointment of the legacy with a condition, and liable to the duty.

In *O'Grady* v. *Buist*, 19 Law T. Rep. 147, all the children of an intestate were advanced. But it was held that this did not take the case out of the 2nd section of the Statute of Distributions, but that the assets must be brought into hotchpot and distributed equally.

Query.

Sir,—Can you, or any of your readers, inform me whether it is necessary that a woman, who is a trustee under a will, and after the death of the testator marries, should, on a mortgage by her of part of the trust estate, acknowledge the deed?

Manchester, May 20, 1852. G. J.

Sales of Encumbered Estates.—Three properties were sold yesterday at rates which indicate a steady improvement in the state of the Irish land market. Twenty acres of building ground situated in the township of Rathmines and suburbs of Dublin, subject to 247l. per annum head rent, and yielding a profit rent of 121l. sold for 1,620l. over 13 years' purchase. The Meath estates of Mr. Edward Knox, comprising 120 statute acres, partly unset, and producing a net rental of 192l. a-year, but estimated b the Poor Law valuation at but 364l. realised 9,100l. equal to 18½ years' purchase on the rental, or years, according to the lower valuation. The estate of Lady Hesketh, also lying in the county of Meath occupying 2,770 statute acres, yielding a net rent o 2,713l. per annum, to be sold subject to a jointure o 461l. 10s. 9d. produced the large sum of 51,190l or 19 years' purchase. The gross amount of the day's sale was 61,910l.

COUNTY COURTS.

Summary.

The Reports of the last week abound in County Court cases, most of them *appeals*.

The first we have to notice is a decision of very great interest to practitioners. It had long been moot point whether execution could be had for the residue of debt and costs, or for costs only, where judgment had been obtained, and an order made thereon, to pay the debt and costs into Court, bu a portion of the sum so ordered has been paid to the plaintiff out of Court. The Q. B. has now decided that execution *may* issue in such case for the residue. "It is obvious," said Lord Campbell, C. J. "that the plaintiff's power of settling with the defendant, without an execution, may be the means of saving expense; by so settling for a part, he does not, in our judgment, incur any incapacity in respect of obtaining execution for the remainder. I wish it to be understood that it is our clear opinion, that if the whole of the debt has been paid, there may be execution for *the costs*: and if a part has been paid, there may be execution for the *residue and for the costs*." (*Reg.* v. *The Clerk of the County Court of Surrey*, 19 Law T. Rep. 136.)

The *duty of the clerk* in orders to pay by instalments was considered in *Robinson* v. *Gill*, 19 Law T. Rep. 142. An action was brought against A. and B. A. did not appear, and in his absence judgment was given for plaintiff, and an order made for payment of debt and costs, by weekly instalments. The clerk prepared an incorrect notice of the order, which was served on A. and, upon his nonpayment, according to the terms of the original order, his goods were seized. For this he brought an action against the clerk. But the C. B. held that he was *not* liable, inasmuch as no such duty is imposed upon the clerk as the preparation of a notice of an order for payment by instalments. It was contended that the 114th rule threw this burden upon him. But Jervis, C. J. said "In our opinion this rule has no such operation. It does not enlarge the duties of the County Court clerk beyond the provisions of the Act of Parliament, but was formed merely for the purpose of pointing out by whom service was to be made. The orders which require service within the provisions of the statute, or by the practice of the Court, do not include judgments. *The rules of practice drawn up by the Judges are not an exposition of the statute.*"

There are two other cases of appeals from the County Courts, but as they relate wholly to questions of *general law*, and not to the law and practice of the County Courts, they are noticed in their proper departments.

A very curious point in *Insolvency* has been raised, but not decided, in *Re Hunter*, 19 Law T. Rep. 147, viz. whether where the Court has no power to enforce a compulsory setting aside of the pay of an East India Company's officer, it can enforce a *voluntary* undertaking to do so in order to avoid opposition by creditors.

THE LAWYER.

Summary.

Common Law Practice.—In an *Anonymous case*, 19 Law T. Rep. 148, it was intimated that where an attorney states, in entering an appearance, a place to be his residence, a notice may be served at such place, although the inhabitants state that he does not reside there, and refuse to take any papers for him.

In *Williamson* v. *Livesay*, 19 Law T. Rep. 148, a witness attending a petty sessions to give evidence was held to be privileged from arrest.

A question of *Evidence* was decided in a County Court appeal, although the real question intended to be raised was upon the Truck Act. In an action for wages by a collier, it was proved that he had received the sum due, in coin, at a pay-office adjoining a shop kept by his employers for the sale of goods to their own workpeople and others, and that immediately on receipt of it he had spent the money in the shop. To prove that he had dealt at the shop under compulsion evidence was offered of a conversation between the plaintiff and the overlooker under whom he worked. The overlooker was not authorized to employ or dismiss the men under him, which was the proper duty of the coal agent, but he stated that he had received a paper from a clerk in the office of the coal agent, whose principal duty was to ascertain the amount of the work done by the men, containing a list of the persons whom he was to remember as not dealing at the shop; that this paper contained the plaintiff's name, and that he produced it at the time of the conversation, in which the overlooker threatened the plaintiff with his employers' displeasure if he did not deal more largely at their shop. The Court of Q. B. held, that this statement was not admissible as evidence against the employers, he having no authority to make it. "If," said Coleridge, J. "a person employed in a subordinate situation does or says something within the scope of his employment, it may fairly be presumed that he has a general authority, which renders such declarations binding on his employers; but when he goes beyond the sphere of his duties, and still more, if he does something illegal, and attended with penal consequences, it would be very unjust and unreasonable to hold his employer bound by his acts." (*Olding* v. *Smith*, 19 Law T. Rep. 140.)

THE MERCANTILE LAWYER.

Summary.

Where a merchant, resident abroad, desires to preserve his right in property transmitted to England, until certain bills drawn by him to cover the purchase-money are accepted, the bill of lading should be transmitted by him *indorsed in blank to an agent*, to be delivered over, when the bills have been so accepted. Where this precaution was neglected, the property in the goods was held to have vested at once in the consignee. (*Key* v. *Cottesworth*, 19 Law T. Rep. 145.)

In *Ex parte Harris*, 19 Law T. Rep. 146, Mr. Commissioner Ayrton has decided that the Court of Bankruptcy cannot annul with the creditor's consent, except under secs. 130 and 131; and that even if it had such jurisdiction, it would not so annul, where the bankrupt may have to be prosecuted for offences against the bankrupt law.

PROMOTIONS, APPOINTMENTS, ETC.

The Queen has been pleased to grant the office of Solicitor-General for Scotland to Charles Neaves, esq. Advocate, in the room of John Inglis, esq. appointed her Majesty's Advocate for Scotland.

The Queen has been pleased to grant the place of one of the Lords of Session in Scotland to Adam Anderson, esq. her Majesty's Advocate for Scotland, in the room of Duncan M'Neill, esq. resigned.

The Queen has also been pleased to nominate and appoint the said Adam Anderson to be one of the Lords of Justiciary in Scotland, in the room of the said Duncan M'Neill.

The Queen has been pleased to grant the office of her Majesty's Advocate for Scotland to John Inglis, esq. her Majesty's Solicitor-General for Scotland, in the room of Adam Anderson, esq. appointed a Lord of Session and of Justiciary in Scotland.

MEMBER RETURNED TO SERVE IN THIS PRESENT PARLIAMENT.—Borough of New Windsor.—Charles William Grenfell, of Belgrave-square, Westminster, esq. in the room of George Alexander Reid, esq. deceased.

COMMISSIONS SIGNED BY THE LORD-LIEUTENANT OF THE COUNTY OF HUNTINGDON.—John Bonfoy Rooper, esq. to be Deputy-Lieutenant; John Moyer Heathcote, esq. to be Deputy-Lieutenant.

Mr. A. Boyd Fenton is appointed Queen's Advocate at the Gambia. Mr. Joseph Thos. Commissiong, collector of customs at Sierra Leone, is appointed a member of the Council in that colony.—*Observer.*

COURT PAPERS.

Court of Chancery.

LIST OF APPEALS FOR HEARING, TRINITY TERM, 1852.

(Before the LORD CHANCELLOR.)

Saunders *v.* Hamilton
M'Intosh *v.* The Great Western Railway Company
Jones *v.* Price (2)
Brown *v.* Cross
Same *v.* Same, cause by order
Scrivener *v.* Smith
Monypenny *v.* Dering (2)
Same *v.* Same
M'Calmot *v.* Rankin (3)
Strong *v.* Strong
Pollard *v.* Doyle (2)
Mayor of Rochester *v.* Leo
Navalshaw *v.* Brownrigg
Adey *v.* Arnold
Abbott *v.* Sworder
Dyke *v.* Rendall
Powell *v.* Dodson (2)
Clowes *v.* Beck.

Lords Justices.

Foley *v.* Smith
Kynaston *v.* The Lancashire and Yorkshire Railway Company (2)
The Dean and Chapter of Ely *v.* Bliss, equity reserved (stands over)
Newman *v.* Hutton, appeal and motion
Price *v.* Macaulay, appeal on two claims
Holliday *v.* Overton, appeal on claim
Hughes *v.* Morris (2)
Whitworth *v.* Brogden (2)
Phipps *v.* Stone, appeal on claim
Southby *v.* The Great Western Railway Company (ditto)
Walker *v.* Tipping (ditto)
Smith *v.* Mules
Bell *v.* Barchard.

COURT OF CHANCERY.

ORDER OF COURT, MAY 7, 1852. — INVESTMENTS UNDER TRUSTEES RELIEF ACT.

THE Right Honourable Edward Burtenshaw Lord St. Leonards, Lord High Chancellor of Great Britain, with the assistance of the Right Honourable Sir John Romilly, Knight, Master of the Rolls, doth hereby, in pursuance of an Act of Parliament passed in the 10th and 11th year of the reign of her present Majesty, intituled "An Act for better securing Trust Funds, and for the relief of Trustees," and in pursuance and execution of all other powers enabling him in that behalf, order and direct in manner following, that is to say :—

Where any trustee, desiring to pay money or transfer stock or securities into the name of the Accountant-General of the Court of Chancery, under the said Act is, under a General Order of the said Court, dated the 10th day of June, 1848, directed to file an affidavit, intitled in the matter of the Act and the trust, setting forth certain matters and things in the said Order of Court specified and declared, in future such affidavit in every case *where the parties deem it necessary to have the money*, or the dividends, or interest of stock or securities *invested* in the mean time, shall further contain a statement to that effect; and *if the affidavit shall contain no such statement*, the Accountant-General shall be at liberty to invest, as soon as conveniently may be, the said cash in Bank 3*l.* per cent. Annuities, in the matter of the particular trust; or in cases of dividends or interest on stock or securities transferred, such dividends or interest in the like stock, and all accumulations of the dividends of the stock in which such cash shall be invested, and of the dividends or interest on such stock or securities as aforesaid, from time to time in the like matter, *without any special order*, made by the Court in that behalf, and *without any formal request* for that purpose: and the Accountant-General is to declare the trust thereof when purchased subject to the Order of this Court. And for the purposes aforesaid the Accountant-General is to draw on the bank, according to the form prescribed by the Act of Parliament and the General Rules and Orders of this Court in that case made and provided.

Provided always, that if at any time a *request* in writing, by or on behalf of any party claiming to be entitled, *that such investment be discontinued*, shall be left with the Accountant-General, he shall be at liberty to cease making any further investment in the particular trust until the Court shall have made some order in their behalf.

(Signed) ST. LEONARDS, C.
JOHN ROMILLY, M. R.

ECCLESIASTICAL COURTS, DOCTORS' COMMONS.

Sittings appointed in Trinity Term.

Arches Court.

First session, Saturday, May 22; second session, Wednesday, June 2; third session, Thursday, June 10; fourth session, Saturday, June 19. Bye-day, Wednesday, June 30.

Admiralty Court.

First session, Tuesday, May 25; second session, Friday, June 4; third session, Friday, June 11; fourth session, Tuesday, June 22. Bye-day, Friday, July 2. Default days, Friday, August 6, Friday, September 3; Friday, October 8.

Prerogative Court.

First session, Wednesday, May 26; second session Saturday, June 5; third session, Tuesday, June 15; fourth session, Thursday, June 24. Bye-day, Tuesday, July 6. Caveat days, Thursday, August Thursday, September 2; Thursday, October 7.

Appeals Court.

First session, Thursday, May 27; second session, Tuesday, June 8; third session, Wednesday, June 16; fourth session, Friday, June 25. Bye-day, Wednesday, July 7.

Consistory Court.

First session, Friday, May 28; second session, Wednesday, June 9; third session, Thursday, June 17; fourth session, Tuesday, June 29. Bye-day, Thursday, July 8. Extra Court days, Friday, August, 6; Friday, September 3; Friday, October 8.

SUMMER CIRCUITS OF THE JUDGES, 1852

THE judges of the several Courts of Queen's Bench, Common Pleas, and Exchequer, assembled, according to custom, in the Exchequer Chamber, for the purpose of determining the several circuits upon which they would proceed to hold the ensuing Assizes of Oyer and Terminer and General Gaol Delivery, in and for the several counties of England and Wales, when the following arrangements were finally determined upon :—

NORTHERN.—The Right Hon. Lord Campbell and Mr. Justice Wightman.

HOME.—The Lord Chief Justice of the Common Pleas, Sir John Jervis, and Mr. Justice Maule.

NORFOLK.—The Lord Chief Baron, Sir Frederick Pollock, and Mr. Baron Parke.

MIDLAND.—Mr. Baron Alderson and Mr. Justice Coleridge.

OXFORD.—Mr. Justice Cresswell and Mr. Justice Williams.

WESTERN.—Mr Baron Platt and Mr Baron Martin.

NORTH WALES AND CHESTER.—Mr. Justice Talfourd.

SOUTH WALES AND CHESTER.—Mr. Justice Crompton.

Mr. Justice Talfourd joins Mr. Justice Crompton at Chester.

ATTORNEYS ADMITTED.

Easter Term, 1852.

Acworth, George Brindley—articled to G. Acworth
Allen, John—W. Allen; H. A. Beaumont
Arkwright, Loftus Wigram—J. Maynard
Atkins, George—T. Parker, jun.
Ayliff, Edward George—T. Ayliff; R. Caparn
Baker, George—W. Machin
Bannister, Henry—R. Ashcroft; G. Bannister
Batten, James Brend—J. P. Bell
Blyth, Edmund Kell—W. H. Reece; E. W. Field
Booth, Samuel Barker—S. Barker
Buckland, John Albemarle—J. Barney
Buse, Richard Henry—W. H. E. Burnard
Cattlow, John Reynolds—J. Cattlow; W. H. Trinder
Chambers, Henry Thomas—J. Moore
Clarkson, George Palmer—C. J. Palmer
Clements, Charles—T. Toulmin
Coleman, John Sherard—C. Richardson
Conington, Henry James—White and Lindsay
Cooke, William Lawrence—B. Bubb; E. Washbourn
Crallan, Richard Nelson—W. Hodson; J. Bridges
Cripps, William Charles—W. Gorham
Currey, Benjamin Scott—W. Currey; T. W. Nelson
Derry, William Smith—C. Smale
Ellman, James Boys—H. Whitmarsh; J. Lewis
Finch, William Newton—W. Stephens
Fowler, Robert—G. Leeman
Gates, Richard Smythe—T. Coppard; S. Davidson
Gell, Robert, jun.—G. Leeman
Gillow, John—C. Willis
Graham, Charles—G. H. Kinderley
Gregory, Henry Lewis—J. H. Gregory
Gross, Benjamin Lillistone—S. B. Jackaman
Hadfield, Samuel—G. Hadfield
Hawley, Frederick—N. Overbury
Hawley, John—Sir J. B. Williams, knt.; R. Medcalf
Hazard, Thomas—W. Hazard
Head, John Oswald—J. B. Simpson
Heald, Thomas Mangnall—E. Scott
Hickley, Thomas Allen—L. Desborough
Hillyer, George—E. Farn
Holden, James Henry—T. Holden
Hughes, George Martin—F. Scudamore
Jennings, Richard Francis—G. Brace
Johns, Bradford—J. H. Todd; E. Lyne; W. H. Brown
Johnstone, Harry Bell—H. Richardson
Jones, James Webb—P. G. Jones
Letts, John, jun.—J. Letts
Leverson, Montague Richard—W. H. Dickson; W. T. Elliott
Maudox, John Mortimer—C. I. Shirreff; C. M. Stretton
March, Owen—E. Rossiter
Mason, William Ludlam—T. P. Waite
Maynard, William Roper—J. Maynard
Murray, George James—H. Radcliffe
Newman, Mitchell William—R. J. Ticehurst; J. Croft
Norris, Henry—W. Ruck
Page, William Sutton—W. T. Paris; E. Witchell
Parry, John Arthur—G. Parry
Plumbe, Henry—W. J. Ward
Prickard, Hugh Powell—J. Roberts; B. P. Squance; Williams
Raby, Richard Stephens—C. Childs
Redfern, Thomas, jun.—T. Redfern, sen.
Richardson, William Benson, B.A.—W. Richardson
Roberts, Thomas—W. H. Brown
Sabine, Charles Edwyn—C. Sabine
Salaman, Joseph Seymour—T. Tilson
Shepherd, Edwin, Perkins—C. Willis, jun.
Standring, John, jun.—H. Whitehead
Suckling, John, jun.—J. Suckling
Talley, William—W. Burridge; R. T. Head
Turner, Frederick Holden—J. H. Turner
Warden, George—J. Suckling
Waterhouse Robert jun.—E. Bramley
Westall, Harry John—W. C. Crattwell; J. W. Dawe
Wilkinson, John—W. Gray
Williams, William Benman—D. Smart; E. Walker
Willoughby, William Arthur—E. Willoughby
Wilson, Jonathan—W. Stone
Winterbotham, William—J. B. Winterbotham
Wright, John—E. Proctor
Yewdall, Henry—E. Hailstone

PROCEEDINGS OF LAW SOCIETIES.

SOLICITORS' AND GENERAL LIFE ASSURANCE SOCIETY.

THE sixth annual general meeting of the Proprietors of this Company was held on Thursday, 27th inst. at the Gray's Inn Coffee-House, for the purpose of presenting the annual report and accounts, and for the election of officers.

WM. MURRAY, Esq. was called to the chair.

Mr. GILL (the Secretary) read the advertisement calling the meeting, and the minutes of the last meeting, which latter having been confirmed,

Mr. NEISON read the following

REPORT.

The Directors, in submitting their Sixth Annual Report, beg to state, that since the last meeting of the shareholders of this Society, the number of new policies issued has been 161 for Assurances, amounting to ...... £64,316 and yielding annual premiums to the extent of 2,132

During the same period six annuities, of the value of .... 2,308 have been granted.

In connection with the above statement, the Directors feel a pleasure in bringing under the consideration of the meeting the amount of business transacted by the Society since its commencement, for, although the new policies effected during the past year have not yielded so large an income as those of preceding years, the general result of the Society's operations cannot be looked upon in other than a favourable light, and must be considered to hold out most encouraging prospects both to the shareholders and to the assured, as evinced by the following analysis of the business which has been done, and of the present condition of the Company :—

Total number of policies issued since the commencement of the Society, exclusive of 18 annuities		1,195
Number of policies since discontinued and lapsed	212	
Number of policies become claims, assuring 29 lives	32	
		244
Number of policies now in force		951
The amount of assurances effected since the commencement		£564,577
Assurances since lapsed and discontinued	£122,204	
Assurances under policies which have become claims	13,310	
		135,514
Total amount of policies now in force		£429,063
The amount of yearly premiums payable under the whole of the policies from the beginning was		£17,875
Deduct the yearly premiums payable on lapsed and discontinued policies	£3,294	
Also the yearly premiums on policies which have become claims	496	
		3,790

The existing yearly premiums on policies now in force	£11,095
In addition to the above, 18 annuities have been granted, of the value of	6,113
The following is a succinct statement of the present engagements and funds of the Society:—	
Amount of Assurances in force	420,063
Annuities of the value of	6,113
Capital realized and invested	53,700
Annual income derivable from premiums and investments	16,200
It has been stated that claims have arisen to the extent of	13,310
but at the same time the premiums which have been received on lapsed and discontinued policies have been no less than	7,155
Consequently the actual loss sustained by the Society, which is to be met from other sources, has been only	6,155

Fifteen policies on twelve lives have become claims during the past year, for assurances amounting to 7,612*l* being an average of 635*l*. on each life, or an average of 507*l* on each policy, but this amount of loss, though much larger than that experienced in any previous year, can only be considered as accidental, and due to the fluctuations to which small numbers are always subject, and should fairly have been expected from the natural reaction of the very low rates of mortality which prevailed in the former years.

The gross amount of claims has averaged about 2,220*l*. yearly, and the surplus of claims over premiums received in respect of lapsed and discontinued policies has averaged no more than 1,027*l*. yearly.

Notwithstanding the greater amount of losses, the Society has increased its funds during the past year to no less a sum than 10,700*l*. thus placing at its disposal a largely increased amount of capital, for which advantageous employment has been found.

The Directors have the satisfaction of announcing that the whole of the Society's shares are fully subscribed for, thus affording to the assured the security of a subscribed capital of one million, without subjecting them to any liability for interest on capital or guarantee fund.

The Directors cannot refrain from calling attention to the fact that this office has been enabled so to employ the paid-up capital as to make it a source of profit, the whole being invested on good securities, yielding interest at the rate of 5 per cent. per annum, while the interest payable to the proprietary in respect of it is 4 per cent. per annum, and therefore (its amount being 25,000*l*.) adds 250*l*. per annum to the profits of the Society.

It will have been seen by the annual account transmitted to the shareholders that an unusual item of expenditure appeared there under the head of "Extension Expenses;" and the directors, in calling attention to it, have to remark that it was an expense unwillingly incurred by them but considered necessary, inasmuch as the active competition for life business, caused by the establishment of several new, and the revived energy of the older offices, did not allow them to depend, as heretofore, on the shareholders alone for the introduction of business, but compelled them to devise some means by which the advantages offered by the society could be prominently brought under the notice of the profession, and which they had reason to believe would be best accomplished by sending agents throughout the country, to explain those advantages, and to solicit the co-operation of the profession.

The Directors cannot, however, but feel that the expense referred to has been, in a great measure, forced upon them; for had the shareholders more actively exerted themselves in furthering the business of the office, consisting as they do of 392 members, it would only have been necessary to have kept the society in the view of the public by occasional advertisements.

The Directors, however, must not be understood to regret the expense to which they have specially referred, inasmuch as the promises of support which have been given by the solicitors in the counties visited cannot ultimately fail to produce most beneficial results; no less than 1,170 members of the profession having subsequently required the necessary forms and instructions for effecting insurances, and intimated their intention of favouring the office with business.

The Directors have great pleasure in informing the shareholders that they have succeeded in obtaining a long lease of most eligible premises in Chancery-lane, and that the business of the office will be transacted there by the end of the current year, at which time the lease of the chambers now occupied will expire. The Directors have every confidence that the change into the new house, which will be entirely devoted to the requirements of the Society, will also be productive of good consequences, as, independent of other advantages, the premises themselves, from their advantageous position, will keep the Society continually in view of the profession and the public—a point not lost sight of by elder offices, as is manifested by the situation and appearance of their respective establishment.

The statement of the receipts and expenditure of the Society for the year ending the 31st of December last, duly audited, has been forwarded to every member of the Society.

The Directors retiring by rotation are Messrs. William Jones, John Smale Torr, Charles Wordsworth, and John Michael Morris, who are eligible for re-election, and offer themselves accordingly.

Since the last meeting of the proprietors a vacancy has occurred in the direction which the Board have refrained from filling up *pro tempore*, but have left the election entirely in the hands of the proprietary; Thomas Butts Tanqueray Willaume, esq. of New Broad-street; and William Roberts Harris, esq. of Essex-street, Strand, both being shareholders duly qualified, are candidates to fill up the vacancy.

In the terms of the deed of settlement all the auditors go out of office, but are eligible for re-election, and offer themselves accordingly, and Charles Horsley, esq. of Staple-inn, also offers himself as a candidate for the office of auditor for the ensuing year.

In conclusion, the Directors cannot too strongly urge upon the shareholders the necessity of their co-operation, feeling assured that if the influence of so large a number of the legal profession were fairly exerted in extending the business of the Society, they would, at the next meeting, when the profits will be declared, have to give a flattering and satisfactory account of their stewardship.

The CHAIRMAN, in moving that the report be received and adopted, stated that the number of general board meetings during the past year had been fifty-three, and the aggregate attendances of directors 487, shewing an average attendance of nine directors at each board. He also corrected an error in the last year's balance-sheet; under the head assets, the 3¼ per cent. stock was carried out as 13,000*l*. 8s. 1½d. instead of 13,486*l*. 10s. 6d. the auditors having taken the balance of the sale of long annuities in the interval, without having ascertained the cost of the 3¼ per cent.

Mr. J. THOMPSON, referring to the item of 819*l*. 10s. for "business extension expenses," wished to know whether that expenditure had left behind it any permanently beneficial result to the society, in the appointment of local agents; or whether it was merely so much money sunk, and no tangible good derived from it? He also wished to know the amount of the building contract; and whether it was to be paid for out of the profits of the past, or distributed over future years' business.

The CHAIRMAN replied, as to the first question, that the expenses stated had been incurred in sending gentlemen of experience and ability round the country, to communicate with the solicitors in the provincial towns, and urge them to support the society; the directors thinking personal communication by such means better was than by circular. The expenses had been greater than the directors had at first contemplated; but they had very good reason to believe that the money was not thrown away, and that it would have its desired effect on future years. With reference to the building contract, the estimated amount was 1,100*l*. which the directors would adhere to as nearly as they practically could. The amount, whatever it was, would be borne by future profits.

A SHAREHOLDER thought that the solicitors were a body quite strong enough to carry out their purpose without spending their money for travelling expenses in hawking about the country the utility of their society, with the view of increasing its income.

Mr. THOMPSON did not agree with the objection of the last speaker, because he had been informed that the Anchor Assurance Office employed a gentleman entirely as travelling director, who, wherever he went, left permanent fruits behind him, by the establishment of local agencies in Manchester, Liverpool, and other leading towns of the country, thus creating a nucleus around which the solicitors in the district might rally. This gentleman's exertions had been stated to be worth all the cost of his expenses, and the office which he had promoted had made great and rapid strides in the estimation of the public. Therefore he (Mr. Thompson) considered it a very judicious expenditure of money.

The CHAIRMAN, in replying to these observations, agreed with the gentleman who said that the solicitors ought not to require canvassers for the office, but it was because they did not as a body do their duty that the directors, in the exercise of their best discretion for the interest of the society, had thought fit to take the step now commented upon. If the shareholders would be their own advertisers they would save the expense of employing others to do what they ought to do themselves; and if they did not exert themselves they ought not to complain at the annual meeting that the directors, in sending round the country gentlemen to canvass the solicitors quietly, were doing wrong. He should be most happy to move the discontinuance of the expense of advertising, if each shareholder would undertake to forward to the office one policy during the ensuing year. The return at present was, that eighteen policies had been gained, and the expenses of advertising saved.

Mr. HORSLEY wished to test the expenses of the society by those of the "Clerical and Medical," and "National Provident" Societies, the former of which was three and a quarter, and the latter three and three-quarters per cent.

The CHAIRMAN said, the "Clerical and Medical" office was nearly thirty years of age.

Mr. HORSLEY observed, that the "National Provident was only two years older than "The Solicitors'" office.

The CHAIRMAN admitted that the question was a very important one, but the application of it might be quite misunderstood. There never was an instance of an office, of an age of the present society, managing so large an amount of business upon such a very reduced scale of expenditure. Both the offices named had been most unprecedentedly successful, but the expenses of the management of this company for the corresponding periods of both those societies was much less than either of them. One of those offices was known not to be a type of economy; but it was not properly a life office or trading company: it was, strictly speaking, a Friendly Society, and in consequence of that had evaded Acts of Parliament, which had made it popular, and against those evasions petitions had been presented to both Houses of Parliament. Having acquired a very enormous revenue, that revenue required very little more expense for management and control, than a young company like the "Solicitors'" was obliged to incur; it was, therefore, very difficult to compare the expenses of two such institutions. As to the "Clerical and Medical," the high rate of its premiums was such that its revenue was enormous—110,000*l*. a year; but a larger expenditure was not required for its management. The solicitors were a body of men so intimately connected and identified with their own office, in carrying policies to it, that he had no doubt when it was as old as the "Clerical and Medical," it would have a much larger revenue. Besides, in another point of view, the comparison would not hold good, for the "Clerical and Medical" was not a remarkably successful project in its infancy. It was impossible to confine the expenses to 3 per cent. upon the revenue. The same question which had been asked as to how the building expenses were to be charged, would apply to the general expenses of management, and could only be properly answered when a valuation was made of the net liabilities. He knew of no office where more economy was practised than in the "Solicitors'," and, in fact, it was its extreme economy which retarded its progress.

Mr. THOMPSON was quite satisfied with the economical management of the office, but he would have been more satisfied if he had seen some tangible return for the sum of 819*l*. spent in the travelling expenses of canvassers. While he agreed that it was desirable to advocate the claims of the office to the support of the country solicitors, by means of a travelling agent, he thought it might be better done by paying such agent a very liberal commission on all policies which he collected.

The motion for receiving and adopting the report was then put, and carried.

Messrs. W. Jones, John Smale Torr, Charles Wordsworth, and John Michael Morris, the retiring directors, were then re-elected.

Mr. JONES, in returning thanks as the senior director, assured the meeting that nothing that transpired in the way of inquiry at the office or at the meetings of the society could be otherwise than satisfactory to the feelings of the directors. There must be always differences of opinion as to the best means of acquiring business for such a society. Some persons said the directors ought to spend 100*l*. a year in advertisements; others suggested that, in consequence of the great competition which was going on throughout the country in establishing local boards and agencies, the directors ought to send gentlemen of intelligence and good address to wait upon the solicitors, and inform them of the advantages of insuring in the society. He confessed (though he was opposed to it) that the directors had felt themselves called upon to incur the expense that had been alluded to, because they really did feel that there had not been those exertions made by the members of the society throughout the country that there ought to have been. If they only multiplied the premiums already received, the expense would soon be recouped, and there was no reason to doubt that that would be the case, from the returns made to the board. It was not intended to be a continuing expense, but the plan was merely tried as an experiment, under the best advice, with the greatest consideration, and he hoped on sound judgment and discretion. In conclusion, he assured the meeting that he knew of no body of men who were more anxious to protect their interest than the directors of the Solicitors' and General Life Office, as the attendances during the past year would amply testify.

Mr. FLOWER then proposed the election of Mr. Thos. Butts Tanqueray Willaume, in the place of Mr. J. C. Symons, who had retired from the direction.

Mr. WARE seconded the motion.

Mr. J. THOMPSON proposed Mr. Wm. Roberts Harris as a candidate for the vacant seat in the direction, and in doing so, stated that he was himself in some degree responsible for the contest about to take place; but when he was applied to by a gentleman to assist him upon grounds which he could not resist, he could not advise him to withdraw, merely because another gentleman had been nominated; and, therefore, he felt that that was a sufficient justification for putting the society to the expense of the contest, and for bringing to the meeting such an unusually large attendance of members. He never had had any other feeling than that of confidence in the management of the society, and in proposing Mr. Harris, he did not desire to cast any reflection upon those who had proposed another gentleman for the office of director, but he introduced Mr. Harris to the meeting because he was supported by a very large and influential body of persons in the country, who were unable to attend the meeting. Since Monday last, he had had placed in his hands a list of the shareholders of the society, and he was much surprised to find that so large a proportion were country members, and so few resided in London, which gave him the notion that the Soli-

citors' Insurance Society was substantially a country society. Therefore, when he turned to the deed of settlement, and found in it a clause which had the effect of swamping the influence and the votes of the country members of the society, he was indeed surprised, and was anxious to find out how such a clause came to be interpolated in the deed, as that by which any member was prohibited from holding more than three proxies. Supposing sixty of the members resided in the country, and forty in London, why should the influence of the provincial members be swamped if they could not get independent members to hold their proxies? He thought it was a most unjust clause. Since the formation of the society three directors had gone out of office—Mr. Bowstead, Mr. Cox, and Mr. Symons, all barristers; and he had understood, though it was not so expressed in the deed of settlement, that the members of the bar should form one-third of the directors; he could not understand why one branch of the profession should be nominated in preference to the other. He had been told that the society did not want barristers for directors, as it was said barristers brought no business to the office; but he had heard a clergyman say that it was a Solicitors' Society, and, therefore, he would not join it,—so that both classes had their objectors. Was it true, he asked, that barristers brought no business to the office? Did they not insure their lives, perhaps, to a greater extent than any other class of the community? Now, there had been some vacancies with regard to the auditors. But, at the very same time that the members received the notice of those vacancies in the office of directors and auditors, they were also informed of gentlemen who were candidates for the vacant offices. The very circular convening the meeting was dated the 6th of May, which was the first intimation the shareholders got of there being any vacancy at all (hear, hear), and yet in three weeks the general meeting was to be held, and there was in small print at the bottom of the circular a notification that unless within fourteen days previous to the meeting a member sent in a written notice of his intention to become a candidate for the office of director, he could not be allowed to stand; therefore allowing only six days to prepare for a possible contest. That was sharp practice, to say the least of it, and contrary to the course pursued by other societies, who sent round a notice of the vacancies a very considerable time before the election; thus affording to the members ample time to certify to the directors who were fit persons to be elected. A more extended time was especially necessary for this office, which had so many country members. Mr. Harris finding this state of things to exist, sent round a notice to the country members, and received a very large number of promises; and upon seeing the extent of those promises and his testimonials he confidently proposed him, as a gentleman, from his extensive connections and business habits, well fitted to promote the prosperity of the society.

Mr. D. T. EVANS seconded the nomination.

The CHAIRMAN postponed the ballot till the close of the meeting, and proposed the re-election of Messrs. Ayrton, Blandy, Gossett, Hand, and Nation, as auditors, who were accordingly duly re-elected.

Mr. GOSSETT returned thanks.

Dr. WADDILOVE moved "That the sum of 500*l.* be awarded to the directors for their services during the past year," and in doing so expressed his approval of the wise course adopted by the directors in sending gentlemen into the country to promote the society.

Mr. THOMPSON said that the most pleasing duty he had to perform that day was in seconding this motion, and he did so with great pleasure, because he had had the honour of moving on a former occasion that the sum should be increased from 300*l.* to 500*l.* and he had never had reason to regret it.

The motion was carried unanimously.

Mr. HORSLEY remarked that the Chairman had not alluded to the fact of his being a candidate for the office of auditor. He had written a letter to the directors to that effect, from a feeling that it was desirable to infuse new blood into the management of the society, and avoid anything like the appearance of a family compact. Although he had not been nominated on this occasion, he trusted to be more fortunate in future.

The CHAIRMAN then moved "That the sum of ten guineas be paid to each of the auditors for their attendance during the past year, in addition to their travelling expenses, and that the thanks of the society be presented to them for their services."

The motion was unanimously agreed to.

The meeting here adjourned for the purpose of proceeding to the ballot, and on re-assembling

The CHAIRMAN announced the result to be—

For Mr. Willaume............ 456

Mr. Harris 205

Consequently, he declared Mr. Willaume to be elected.

Thanks were then voted to the scrutineers, Mr. Flower and Mr. Thompson.

Mr. HARRIS, in alluding to the result of the poll, stated that it had not caused him any surprise, although he had received promises of support from upwards of 100 shareholders, holding the largest number of votes, also letters from fifty leading solicitors in the country; therefore he felt quite justified in going to it. He also said that he had received a letter, intimating that he would be objected to because he was connected with a rival office; he now ... to disavow any connection whatever with an ... company. He returned his thanks to the shareholders who had voted for him, and hoped they would support him on a future occasion, when he trusted he should not again be opposed by the personal canvass of one of the directors and the solicitor of the company.

A vote of thanks was unanimously given to the directors for their valuable services during the past year.

Mr. MAYNARD, in returning thanks, assured the meeting that the directors would always devote their most zealous services to the interests of the society.

Mr. D. T. EVANS said, that before the meeting separated, it was, he considered, the duty of the society to express its regret at the retirement of Mr. Symons from the direction. That gentleman had rendered valuable services to the society, at its commencement, and down to the period when his duties precluded his further attendance at the board. His name was one which had reflected credit on the direction; for he was widely and honourably known as an able writer on some of the most important, social, and political questions agitated in our times. He concluded by moving, "That this meeting expresses its regret at the retirement of Mr. Symons from the direction, and tenders to him a vote of thanks for his services."

Mr. HARRIS seconded the motion, which was then put and carried unanimously.

Thanks were then voted to the chairman, and the meeting separated.

LEGAL INTELLIGENCE.

THE LATE LORD JUSTICE-GENERAL OF SCOTLAND.—The retirement of the Lord Justice-General is an event which the country will learn with less surprise than regret. Some days ago the venerable judge tendered to her Majesty his demission of his high offices of Lord Justice-General of Scotland and Lord President of the Court of Session; and we now learn that the resignation has been formally accepted. The right hon. David Boyle, second son of the hon. Patrick Boyle, and grandson of John, second Earl of Glasgow, was born on the 26th of July, 1772, and has thus all but completed his 80th year. He was called to the Scotch bar towards the end of the year 1793; was appointed Solicitor-General under the Duke of Portland's administration in 1807; and was chosen member for the county of Ayr in the spring of the same year. He continued to sit in Parliament and to hold the office of Solicitor-General for Scotland until February 1811, when he was appointed a Lord of Session and of Justiciary. He took the title of Lord Boyle, but was not long known by that style, for at the end of seven months (in October 1811) he was promoted to the office of Lord Justice-Clerk, which had been vacated by the elevation of the late right hon. Charles Hope to the Presidency of the Court of Session. Lord Justice-Clerk Boyle had filled the chair of the second division of the Court of Session, and presided in the High Court of Justiciary for thirty years, when, in October 1841, the resignation of the distinguished judge whom he had succeeded as Lord Justice-Clerk opened to him the still higher honours of Lord Justice-General of Scotland and Lord President of the Court of Session. These offices he held until a few days ago, having thus presided over one or other of the divisions of the Court of Session for the unusual period of more than forty years. Although now in his eightieth year, and not altogether exempt from the infirmities of that great age, his lordship retains in a remarkable degree the full possession of all his faculties, and great vigour both of body and mind. It may almost be said of him that "his eye was not dim, nor his natural force abated." Yet it might be seen that the severe pressure of the last winter session, though he went through it without being one day absent from the court, made it perilous to attempt a much longer strain upon his powers; and the conscientious resolution which we believe his lordship had long formed not to retain office a day after he should be unfit for the full discharge of its duties, has induced the step which we have now to record. The late Lord Justice-General was called to the chair of one of the divisions of the Supreme Court at an earlier age than fell to the lot of most of his predecessors. But his remarkable energy and industry, his habits of acute observation, and his retentive memory, soon supplied that experience which alone was wanting to make him a distinguished judge. In the Criminal Court he was almost without an equal for the patience and pains with which he discharged his laborious duties, as well as for his thorough acquaintance with our criminal jurisprudence. In the Civil Court he displayed some of the greatest excellences of the judicial character: a clear and strong perception of the side where truth and justice lay—a perfect acquaintance with life and affairs—a studious anxiety to understand and administer the law as it is, without being led into plausible speculations or subtle over-refinements—an earnest desire to hear all that could be said, and to master all that had been decided—an utter absence of any undue attachment to his own opinion; these, with the still higher qualities of assiduous and devoted application, and an unsullied integrity, that was at once an instinct and a principle, have endeared this eminent judge to all who know him, of whatever party and profession, and have made his name an expression for all that is venerable and exemplary in a public man. His lordship—who has been twice married, and has a numerous issue—succeeded to the paternal estate of Shewalton, in Ayrshire, on the death of his elder brother in 1837. On the 8th of April, 1820, he was appointed a privy councillor—being the first person on whom that honour was conferred by King George IV.—and we are assured that we only give voice to a very general feeling when we express a hope that some farther and more enduring mark of honour may be in store to show the sense which his sovereign and the country entertain of the long and distinguished services of the right hon. David Boyle.—*Edinburgh Courant.*

LEGAL EDUCATION.—The council appointed by the four Inns of Court on the subject of legal education, apprise us that notices of the intention of the council to proceed to the election of a Reader on Constitutional Law and Legal History, have been published in the halls and libraries of the respective inns, and that it is the desire of the council that applications and testimonials for the appointment be made, and sent to Lincoln's Inn, addressed to the council, on or before the 7th day of June next.

INDISPOSITION OF THE CHIEF BARON.—We understand that the Chief Baron was prevented from attending Divine service at St. Paul's with the other judges, in accordance with the universal custom, in consequence of a rheumatic attack, which likewise prevented him from appearing at her Majesty's State ball, and at that of the Duke of Wellington, recently given in honour of the Princess Mary of Cambridge.

PUBLIC OFFICES.—A Parliamentary document, which has been printed, states that the increase of persons employed during the year 1851 in all the public offices was 732, of whom 647 were added to the Post-office, and 71 to the convict establishment; the consequent increase of expense was 54,469*l.* The diminution which was effected during the same period in the number of officials was 122, and in the expenditure the decrease amounts to 51,442*l.*

THE COURT OF SESSION.—Lord Anderson completed his trial as Lord Probationer on Saturday last, by hearing and delivering judgment on a case before the First Division, after which his lordship was formally installed as a senator of the Supreme Court, by taking his seat on the bench in presence of the assembled judges. On Monday, Mr. Neaves presented his commission, appointing him Solicitor-General to the Court, and, having had the oaths of office administered to him, took his seat within the bar.

COURT OF SESSION.—On Friday, Mr. Anderson, the new judge, passed a portion of his trials, and he is to undergo the remainder to-day, and to take his seat in the outer house on Tuesday. He intends to adopt the title of Lord Anderson, and will, we understand, supply the vacancy in the Court of Justiciary caused by the transference of Lord Colonsay to the place in that court occupied by Lord Justice-General Boyle.—*Scotsman.*

DEATH OF THE HON. JOHN TALBOT, Q.C.—On the assembly of the committee on the Watford Water Bill, at the House of Commons, Mr. Serjeant Wrangham, in a very affecting address, stated that he was unable to proceed with the case in consequence of the death of his learned friend, Mr. Talbot, Q.C. who was also engaged in it. The learned serjeant added that the melancholy event occurred at Brighton. The information was received with deep regret by the bar and the hon. members present, and the committee almost immediately afterwards broke up.

DRIVERS OF HACKNEY CARRIAGES.—From a return to the House of Commons (printed on Monday), it appears that on the 1st September last there were 6,039 drivers of hackney carriages licensed, including 1,061 proprietors. The amount received for the licenses, at 5s. each, was 1,509*l.* 15s.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

DALE.—On the 24th inst. at Church-terrace, Lee, Kent, the wife of James Murray Dale, esq. of a daughter.

POOLE.—On the 19th inst. at Southam, Warwickshire, the wife of Edward Poole, esq. solicitor, of a son.

MARRIAGE.

HOBSON, James, esq. of Kilkea, in the county of Kildare, Ireland, third son of John Hobson, esq. of Eaton Socon, Bedfordshire, to Mary Dorothea, eldest daughter of O. R. Wilkinson, esq. of Eaton Socon, solicitor, on the 20th inst. at St. Marylebone Church.

DEATHS.

Blake, Laura Anna, only daughter of James J. Blake, esq. 79, Blackfriars-road, on the 21st inst. after nine hours' illness.

Grahame, Archibald, esq. advocate, eldest son of Archibald Grahame, esq. of Great George-street, Westminster, on the 24th inst. at Greenwich, aged 30.

Henrietta, Amy, the beloved child of John Holland, esq. barrister-at-law, on the 23rd inst. at Bognor, Sussex, aged twenty months.

Lawes, Edward, esq. barrister-at-law, eldest son of the late Mr. Serjeant Lawes, on the 22nd inst. at his residence, Sydenham-hill, Kent, aged 36.

Mann, the Right Hon. James, Earl Cornwallis, on the 21st inst. at Linton-park, Kent, aged 73.

Sawyer, Henry, esq. solicitor, upwards of fifty-two years vestry clerk of that parish, on the 26th inst. at Enfield, aged 79.

Talbot, Hon. John C., Q.C. on the 26th inst. at Brighton, aged 46.

Warren, Harriet, relict of the late J. W. Warren, esq. on the 10th inst. at her residence, Wilton, Taunton.

Williams, Thomasine Elizabeth, wife of John Price Williams, esq. barrister-at-law, on the 21st inst. at 10, Woburn-square, aged 27.

Wood, Alexander, esq. writer to the Signet, youngest surviving son of Lord Wood, one of the Judges of the Court of Session in Scotland, on the 21st inst. at 1, Royal Circus, Edinburgh.

JOURNAL OF PROPERTY.

MONEY MARKET.

English Funds.	Sat.	Mon.			Thur.	Fri.
Bank Stock	+	220	221	221		
3 ₱ Cent. Reduced Annuities	99	99	99	99	99½	99½
3 ₱ Cent. Consols Annuities	99⅞	99¼	99⅞	99		99⅞
Consols for Account	99⅞	99	99⅞	99		
New 5 ₱ Cent. Annuities	..		124	.		
New 3¼ ₱ Cent. Annuities	100⅞	101	101	101⅛	101	101⅛
Long Annu. (exp. Jan 5, 1860)		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Do. 30 yrs. (exp. Oct. 10, 1859)			..	..		6⅞
Do. 30 yrs. (exp. Jan. 5, 1860)				..	7½	7¼
India Stock			72	272		271
India Bonds (1,000*l.*)			7[illegible]	.	8[illegible]	87*
Do. do. (under 1,000*l.*)			84	..	83	86*
South Sea Stock			..	.	111⅛	110⅛
Do. do. New Annuities						
Exchequer Bills, 1,000*l.*	68*	66*	66*			
Do. do. 500*l.*						
Do. do. Small						

* Premium. † 272¼ for ac[count].

THE GAZETTES.

Bankrupts.

Gazette, May 25.

Babb, Eliza, dressmaker, Grosvenor st West, Eaton-sq. June 8, at two, and July 5, at eleven, Basinghall-st. Off. as. Edwards. Sols Coombe and Nickoll, Bridge-st. Westminster. Petition, May 18.

Bowrin, Josiah, currier, Walsall, Staffordshire, June 8 and 30, at half-past eleven, Birmingham Off as Christie Sols Brittain, Bristol; Moore, Walsall, and James, Birmingham. Petition, May 20.

Brett, Henry, grocer, Portsea, Hampshire June 4, at half-past twelve, and July 9, at twelve, Basinghall-st. Off as Cannan. Sols Low, Chancery-lane, and Low and Son, Portsea Petition, May 22

Bridges, Henry, licensed victualler, Canterbury at half-past twelve, July 9, at one, Basinghall Off as. Whitmore. Sols. Venour, Gray's-inn, and Fu[rley] and Mercer, Canterbury. Petition, May 21

Burnley, John, cloth manufacturer, Batley, Yorkshire, June 10 and July 9, at eleven, Leeds Off as Freeman. Sol. Blackburne, Leeds. Petition, May 20.

Capper, John Bailey, chemist, Blackheath, 3, at one, June 29, at two, Basinghall st Off as. Johnson. Sol Atkinson, Quality-court, Chancery-lane. Petition, May 21.

Hick, John, corn merchant, Wakefield, Yorkshire, June 8 and 29, at eleven, Leeds. Off as Hope Sols. Bond and Barwick, Leeds Petition, May 17

Matthews, William Veale, druggist, Yeovil, Somersetshire, June 3, at one, June 29, at eleven Exeter Off as. Hernaman. Sols Slade and Viming, Yeovil and Terrell, Exeter. Petition, May 15

Pinnenberg, Albert, builder, Hertford, May 2[?] at half-past one, and July 3, at twelve, Basinghall-st Off as Nicholson Sols. Piercey and Hawks, Three Crown-court, Southwark. Petition, May 14

Randall, John Davis, and Dicks, George Thomas, leather sellers, Greek-street, Soho, June 5, at eleven and June 29, at twelve, Basinghall-st Off as Johnson Sol Fraser, Dean-street, Soho Petition, May 20

Sadler, Francis, furnishing undertaker, Fore-st. June 5, at one, and July 9, at two, Basinghall-st Off as Whitmore. Sol. Lloyd, Cheapside Petition, May 20

Stanley, Charles, tailor, Hastings, Sussex, June 1, at twelve, and June 29, at one, Basinghall-st Off as. Bell. Sol. Fraser, Dean-st. Soho. Petition, May 20.

Gazette, May 28.

Buck, Robert, builder, church-st. Hackney, June 6, at one, July 16, at eleven, Basinghall-st. Com. Fane. Off as Cannan. Sol. Poddell, 12, Cheapside. Petition, May 26

Evans, Henry, carpenter and wheelwright, and shopkeeper, Ilchester, Somersetshire, June 8, at eleven, July 2, at one. Com. Bere. Off. as. Hirtzel. Sols. Garland and Fear, Sherborn; and Terrel, Exeter. Petition, May 22.

Higginbottom, William Howard, hosier and salesman, Manchester, June 11 and July 2, at twelve, Manchester. Off. as. Lee. Sols. Sale, Worthington, and Shipman, Manchester. Petition, May 19.

Hill, William Rowland, silversmith and jeweller, Birmingham, June 7 and 19, at half-past ten, Birmingham. Com. Hill. Off. as. Whitmore. Sol. Stanbridge, Birmingham. Petition, May 26.

Leake, John Simpson, salt merchant, Sandbach, Cheshire, June 10 and July 8, at eleven, Liverpool. Com. Stevenson. Off as. Bird. Sols. Keary and Sheppard, Stoke-upon-Trent, Staffordshire. Petition, May 20.

Marsden, Thomas, and Clayton, John, cotton manufacturers, Rochdale, Lancashire, June 11 and July 2, at twelve, Manchester Off. as Mackenzie. Sols Harris, Rochdale; Sutton, 24, Princes-street, Manchester. Petition, May 18.

Millar, Thomas Francis, publisher and music seller, Bath, June 10 and July 13, at eleven, Bristol. Com. Hill Off. as. Miller. Sol. Hellings, Bath. Petition, May 26.

Whiteman, Robert Harland, apothecary, High-st Putney, June 5 and July 3, at one, Basinghall-st Off. as. Pennell. Sols Lawrence, Plews, and Boyer, Old Jewry-chambers. Petition, May 26.

BANKRUPTCIES ANNULLED.

Gazette, May 28

Curtis, E cheesemonger, Blackfriars-road, May 25.—*Elborough*, A. coal-merchant, Crescent-road, Millbank. April 26.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Beattie and *Macnaghten*, merchants, third, 7d. Graham, London. *Billings*, B victualler, first, 1s 6d. Graham, London —*Byshe*, H. builder, first, 2d. Graham, London —*Ellis*, H. J [iron]monger first, 1s. 8½d Stansfeld, London —*Foster*, W [co]nfectioner, first, 3s [?]d Lee, Manchester —*Gausden*, C H victualler, first, 1s 8½d Graham, London *Hag[?]* [?]*d*, J watch-maker, first, 2s 3d Groom, London *M*[?], N porter brewer, first, 1s. 8½d Christie, Birmingham —*Nicholas*, J J second, 3s 6d (together with first d[ividend] of 10s. 6d upon new proofs), Miller, Bristol —*Parker*, J innkeeper, 10s Mackenzie, Manchester —*Rayner*, J J. tailor and wollen draper, first, 2s Mackenzie, Manchester —*Richards*, W B grocer, first, 2s. Valpy, Birmingham —*Sequoon*, R linen draper, second, 1s. (in addition to 1s previously declared).

INSOLVENTS' ESTATES.

Apply at the Provisional Assignee's Office, Portugal street, Lincoln's-inn-fields, London, between the hours of eleven and three.

Allen, J captain on half-pay, 2s. 3d —*Copland*, J. miller, 20s —*Denham*, E. B smith, 6½d *Evans*, J attorney, 2s 0½d —*Glover*, J S. grocer, 1s 1d —*Hardy*, J farmer, 1½d *Hobbs*, W farmer, 1s 1½d —*Hooker*, J. provision merchant, 7s 7d —*King*, W fisherman, 1s. 5¼d —*Marsh*, C carrier, 2s 6¼d —*Smith*, A grocer, 2½d —*Smith*, M. widow, 20s —*Webber*, J baker, 2s 8½d *Wells*, H. fruiterer, 10¾d.—*Brabridge*, H. farmer, ¾d —*Bull*, F draper, 7½d —*Dancer*, C baker, 1s 1½d —*Darnell*, T P. stationer, 1s —*Rumer*, J 9d —*Stokes*, J gardener, 2d —*Williams*, T S first, 2s. 6d —*Windsor*, J boot and shoemaker, 1s. 3½d.—*Withers*, E. dressmaker, 5d.

Assignments for the Benefit of Creditors

Gazette, May 18

Clark, J innkeeper, Bank Top, Darlington, Durham, May 13 Trusts R Coates, innkeeper, and J Hodgson, solicitor's clerk, both of Darlington Sols Mewburn, Hutchinson, and Mewburn Darlington —*Kenyon*, J shopkeeper, Wooley Bridge, Derby, April 28 Trusts J. Ridgway, corn-merchant, Staley Bridge, and J Windle, corn-miller, Wortley. Sol J Janion, Manchester —*Neale*, J. and *Wilson*, J builders, Grantham, Lincoln, April 30. Trusts J Hardy, banker, Grantham, H. Youle, timber-merchant, Nottingham, and E. L. Hough, chemist and druggist, Grantham. Sol W G. Wagstaff, Grantham —*Sandbach*, R grocer, Manchester, May 30. Trusts J. Crossfield, whole-sale tea and coffee dealer, and J. Fletcher, tobacco manufacturer, both of Liverpool, Sols. Barlow and Blackhurst, Manchester. —*Stillwell*, G. J Alfred-street, Vauxhall-bridge-road, and *Fletcher*, W. Leader-street, Chelsea, saw-makers and copartners, carrying on business at Thomas-street, Oxford street, under the name of J. Taylor. May 6 Trust M Fadon, Sheffield, cutler. Sol J. H. Jones, Hart-street, Bloomsbury-square —*Vine*, J. grocer and shopkeeper, Frampton, Dorset, May 10 Trusts. E. Steele, draper, and T Bennett, grocer, Dorchest Sols Garland and Fear, Dorchester.

Gazette, May 21.

Barker, W hosier, Liverpool, April 27 Trusts W Boyd, Liverpool, and J A Walker, Manchester, warehousemen Sol W. K Tyrer, Liverpool —*Evans*, D L grocer and provision dealer, Newport, Monmouthshire, April 29 Trusts J Lang, corn-miller, Hambridge Mills, Carrey Rivell, and S C Grimes, corn-merchant, Newport Sol G Blakey, Newport —*Foster*, J chemist and druggist, Horncastle, May 12 Trusts. J Gillson, grocer, Newark-upon-Trent, and R Briggs, saddler, Horncastle. Sol. R. Clitherhow, Horncastle —*Hayles*, J W grocer, Oxford, April 29 Trust R Clarke [?] jun. tobacco manufacturer, Whitechapel, Sol J d J H Laul later, Size-lane —*Jones*, J grocer and draper, Bryan[?], April 29 Tru J Nutting, general warehouseman and J. Corwardine, soap and candle manufacturer, Bristol Sol. G. F Prideaux, Bristol —*Mountcastle*, E. Latter, King William-street, London, and Greenwich May 3 Trusts. W. Mayhew, Union-street, Southwark, and J Fuller, Long-lane, Bermondsey, hat manufacturers. Sol J. Matthews, Basinghall street —*Rycroft*, J. and *Brooke*, J. S. manufacturers, Bradford, May 10 Trusts W. Crabtree, machine-maker, J Rawson, cotton-spinner, and J Holdsworth, agent, Bradford. Sols. Terry and Watson, Bradford.

Partnerships Dissolved.

Gazette, May 18.

Britton, J. and *Waddams*, A. gun implement makers, Birmingham, Dec. 31, 1846 —*Burnett*, D. P. and *Wynne*, J. navy agents, Surrey-st. Strand, as regards Wynne, May 18.—*Cooke*, S N. and *Williams*, S. M. Berlin wool and general fancy dealers, Birmingham and Newcastle, May 11. —*Crowhurst*, H. W. *Allwork*, C. and *Tucker*, G. B. hotel keepers, Cheapside, as regards Tucker, May 15.—*Dakers*, T. and *Emmerson*, N. mercers and drapers, Bishop Auckland, April 29.—*Darbyshire*, T. and J. grocers and confectioners, Manchester, May 3.—*Fitton*, T. and *Barker*, H. machine and tool makers, Manchester, May 8. Debts paid by Barker.—*Gottschalck*, A. and *Schroder*, A. Basinghall-st. May 15.—*Hannay*, J. and A. drapers and tea dealers, Chorlton-upon-Medlock, May 13.—*Heaps*, J. and *Turner*, J. fire brick and tile makers, merchants, &c. Bradford, May 11 Debts paid by Turner.—*Jull*, R. and E. grocers and tea dealers, Tonbridge Wells, April 28.—*Oldacres*, T. and *Geary*, H. surgeons and apothecaries, Market Bosworth, May 1. Debts paid by Oldacres.—*Parker*, E. and M. A dealers in china and glass, High st. Islington, May 15 —*Pearson*, F. and *Ridyard*, J. F. warehousemen, Birmingham, May 15. Debts paid by Pearson.—*Perress*, J. and *Dallimore*, R. linen and woollen drapers, mercers, and hosiers, Newport, Isle of Wight, and Yarmouth, May 11.—*Salmon*, J. and *Goatley*, J. Edgeware-road, May 10.—*Smith*, G. and *Duckworth*, J. O. millers, maltsters, and corn factors, Coddington-mills, May 15. Debts paid by Smith —*Speechly*, J. and *Dolman*, S. brick and tile manufacturers, Spalding, April 6.—*Stead*, E. *Simpson*, E. and *Nickols*, R. patent leather manufacturers, Sheepscar, Leeds, as regards Nickols, May 14. Debts paid by remaining partners.—*Sutcliffe*, J. and *Platt*, J. warping mill and heck makers, Rochdale, May 17. Debts paid by Platt.

Gazette, May 21.

Adams, A. and *Allott*, W. G. shear and blister steel manufacturers, Rotherham, May 19. Debts paid by Allott. —*Birtwistle*, T. *Mercer*, J. jun. and R C. and *Haydock*, J. cotton manufacturers, Great Harwood, as regards Birtwistle, May 12. Debts paid by remaining partners. *Burrill*, J. and *Topham*, M. painters and glaziers, Warwick-st Pimlico, Jan. 6.—*Cooper*, James, Joseph, and B. pianoforte makers, Moorgate-st City, as regards B Cooper, May 19.—*Demetrio*, A. di, *Christodulidi*, S. *Demetrio*, D A di, and *Neroutso*, G. D. merchants, Trieste, Cairo, and Manchester, as regards Neroutso, Jan. 31. Debts paid by remaining partners.—*Gell*, E. and *Mohun*, S schoolmistresses, Hove, near Brighton, May 18.—*Glendinning*, T H and *Bellot*, H. nankeen manufacturers, Levenshulme, May 18. Debts paid by Glendinning.—*Ince*, J. and *Meates*, W. C. surgeons, &c Lower Grosvenor-place, Pimlico, May 17.—*Jenkins*, W. and *Dawson*, T. malleable iron founders, Cherry Garden-st. Bermondsey, May 18 —*Kelly*, E. *Porter*, T. and *Kelly*, J. provision dealers, Liverpool, May 12. Debts paid by E. and J. Kelly —*Lafuente*, F. and *Webster*, J. merchants, Liverpool, May 15 Debts paid by Webster.—*Lloyd*, S. and L. timber merchants, Liverpool, May 14 —*Mayor*, G. and *Scrivens*, W H. Little Distaff-lane, Jan. 1. Debts paid by Scrivens —*Moore*, E. and *Holt*, H. dressmakers and milliners, Petworth, April 12 —*Pye*, J. and *Nunn*, L emigration agents, Liverpool, May 14.—*Ritchie*, A *Mackay*, J *Munro*, G. A. *Grant*, John, and James, timber merchants and commission agents, Swansea, as regards Mackay, April 16.—*Ritchie*, A *Mackay*, J. *Grant*, John, and Grant, James, timber merchants and commission agents, Newport and Cardiff, as regards Mackay, April 16.—*Simmons*, G. jun. and *Simmons*, H mast and block makers, Milton-next-Gravesend, Oct. 1, 1850. Debts paid by G. Simmons, jun —*Sparrow*, S and *Holmes*, E finishers, makers up, and packers, Manchester, May 18. Debts paid by Sparrow.—*Walling*, E. and *Shorelton*, J. tailors, Storrington, May 13. Debts paid by Shovelton —*Wheeler*, J. and *Badcock*, R. linen drapers, Abingdon, May 15. Debts paid by Badcock.

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To Readers and Correspondents.

"H. J. W."—*Yes.*

"Q. P."—*There is no general Act relieving from oaths.*

"H. S."—*We have received no such case from the reporter. But the Chancery Reports, from their great length and number, are unavoidably somewhat in arrear. If it involves any point of law it will be reported, if only a question of fact it will not. That is the rule that guides the reporters.*

"A SUBSCRIBER" (Plymouth).—*We believe it stands for judgment.*

"A SUBSCRIBER" (Uttoxeter).—*We do not know the name of the bankrupt's attorney.*

We cannot undertake to return rejected communications.
Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith.
No notice can be taken of anonymous communications.

THE LAW TIMES.

SATURDAY, JUNE 5, 1852.

THE WIG AND GOWN.

IT must be admitted that many sincere friends of improved legal education object to a compulsory examination before admission to the Bar, and they adduce reasons for that objection.

They say that an examination would exclude a great number of persons who now join the Bar, not for the purpose of practising, but for other purposes.

That the public does not require the protection of an examination, because the duties of a Barrister are exercised publicly, and incompetency is at once detected, and the employers of Barristers are not the unskilled clients, but the skilled Attorneys, who are able to form a judgment of the abilities they retain.

Undoubtedly an examination would exclude many who now go to the Bar. But we contend that such a result would not only be no disadvantage, but a positive boon, to the Profession. Of what use is a crowded table of wigs, of whom only a small fraction are competent to conduct the business of the Court? What credit is conferred upon the calling by the presence of a number of men who know nothing about it, and do not seek to know?

But if no advantage comes of it, there is much disadvantage. True, they join the Bar, professing to be Lawyers, without being really such, for *other* objects. What are those objects? *Offices*, which if they obtain, it is upon a false pretence. When the Legislature has required certain posts to be filled by "Barristers of five (or seven) years' standing," it has intended, by this term, *real* Barristers, not mock ones,—men who have *studied* and *practised* the profession for the requisite number of years, and not men who are entirely ignorant of it, and who have joined it in *name* for the very purpose of obtaining these offices. In truth, it is a fraud upon the Legislature and the community, and no less so upon the Profession itself, for thereby these *pretenders* obtain the honour and emoluments which are properly the reward of industry and ability, dedicated to the study and practice of the law. Thus the system inflicts an injustice alike upon the public and upon the Lawyers, and there will be no real reform in the organization of the Profession, which does not extend to its entire destruction.

It is notorious that many gentlemen who have influential connections, eat their dinners and are called to the Bar, with no other object in view than nominally qualifying themselves for the acceptance of some office which a Barrister must fill. They join a circuit, and, through their connections, command a few briefs in small prosecutions, and such like unimportant matters, which are supposed to be within the compass of anybody. They look out for all the "good things" that fall vacant, and through *interest* secure them over the heads of the men to whom they properly belong, and who have *earned them* by their devotion to *the law*.

Formerly this was not so serious a matter as it is now, because an industrious and competent Junior could hope to make a comfortable bachelor's livelihood by the junior business of the Bar. That cannot now be done, and will not be in future. For Juniors, therefore, the only prospect that the Profession offers, to help them through the period of juniorship, is the possibility of a windfall in the shape of a revising barristership, or a commissionership, or perchance an arbitration now and then. If these are still to be filched from them by persons who are Lawyers only in name, and who have donned the gown and wig with no other purpose, the Bar itself must go to decay; for no man who has not an independence will be enabled to endure the cost of waiting in idleness the dying off of his seniors. Even the few briefs that these Lawyers in pretence are enabled, by their connections, to pick up, worthless almost to themselves individually, in the aggregate constitute a considerable sum, which, if confined to the *real, working* Lawyers, the *true* members of the *Profession*, would be an addition to their small incomes which would, perhaps, just enable them to exist through the period of probation that must precede the flowing of the tide of practice.

For these reasons we have no hesitation in holding that the Profession and the Public are equally interested in the establishment of a *strict* examination as the condition of a call to the Bar.

We should then see fewer Wigs and Gowns, but more Lawyers.

FLOGGING IN PRISONS.

THE HOME-SECRETARY has been questioned in the House of Commons upon the practice of flogging in prisons, and answered that it was authorized by statute. We did not complain that the Magistrates were acting *illegally*, but only that they were departing from the practice of the Judges, and carrying the punishment of the whip beyond the limits contemplated by the Legislature, recognised by the authorities, or that would be sanctioned by public opinion. The question put to Mr. Secretary WALPOLE was not that we had desired. It was not necessary to ask him if the law allowed the flogging of grown men, fathers of families; but if it was the practice of the Court to award it, and if that practice had received the consideration of the Government, and was approved by them. We repeat, that it is a most objectionable practice; that the Judges deem it so, because they strictly limit the application of flogging to *boys*, that the flogging even of young men *has* been condemned from the Bench, and that if brought under the notice of the public, it would excite general and deserved complaint. The proper course for directing attention to it, and for making it the subject of Parliamentary consideration, will be to move for a return of the floggings, to which prisoners have been sentenced in Devonshire, as well at the Assizes as at the Sessions, with the ages of the convicts, and then, with the facts before him, it will be competent to any member of either House who interests himself in the criminal law and its improvement, to destroy the abuse we have described, by restricting the punishment of flogging to youths under the age of sixteen.

Since the above was in type, Mr. CARTER has obtained an order for the return we have suggested. We see among the Parliamentary proceedings of Thursday the following:—

On the motion of Mr. CARTER, an address was agreed to for a return of all the prisoners sentenced to be whipped during the last three years in this kingdom at the various Courts of Quarter Sessions, oyer and terminer, and gaol delivery, and by summary jurisdiction, the date of the sentence, and the offence for which awarded, with the age of each prisoner so punished.

This will provide the materials upon which further proceedings can be taken to put an end to this terrible abuse of magisterial power.

LAWYERS IN PARLIAMENT.

NOBODY *will* give a Lawyer credit for a desire to be useful to the Public by going into Parliament, but only for a design to serve himself.

Unjust and unfounded as is this aspersion, we cannot ignore its existence, and it is felt even more inconveniently within the House of Commons than without: it destroys a great deal of the usefulness of the Lawyers in Parliament, and is, perhaps, the reason why their influence bears no proportion to their numbers.

We have already shewn that, in the vast majority of instances, it must be an unfounded suspicion, because, in truth, a Lawyer who goes into Parliament before he is a Leader certainly sacrifices his Profession. To be a candidate for Parliament is practically to announce to the world that he is going to quit the pursuit of the Law in the Courts at Westminster for the more exciting duties of the House of Commons. Manifestly, he cannot do duty in *both*. He *must* neglect either his clients or his constituents. Experience has shewn in all cases which has the preference, and therefore it is that, for a Junior to be in Parliament, he must practically retire from the active labours of his Profession—that is, from such of them as require his continual presence in the Courts or on Circuit.

Now, it is unjust to charge with interested motives a man who makes such a sacrifice of all his Professional profits and prospects. He has nothing to gain and everything to lose by the choice he has made, and he is entitled to the credit of a test such as no other class of members in the House has been subjected to.

Nevertheless, so long as judicial offices *can* be made the rewards of political prowess, the Lawyers will not emancipate themselves from the prejudice which now destroys so much of their usefulness as Legislators. It is not enough that they should declare themselves disinterested; while *some* of them are not so, and offices are to be thus acquired, the world will be uncharitable enough to attribute to *every* Lawyer who seeks to enter Parliament the illegitimate object of looking for a place.

Hence it would be as desirable for, and as creditable to, the Profession, as it would be beneficial to the public, were the proposition to be adopted, which we suggested some time ago, for prohibiting the acceptance of *any* judicial office by any person who is a member of Parliament, and for six or even twelve months after he shall have ceased to be a member. It would purify the judgment-seat, increase the respect in which its occupants

will be held, insure better appointments, and compel those who seek the *honours* of the Profession to do so in the legitimate path, *in* and *through* the Profession. Indeed, for the sake of the purity of Parliament and the protection of the constituencies, as well as for the dignity, and reputation, and true Parliamentary influence, of the Profession itself, we would exclude from all legal appointments whatever, except the two *political* offices of Attorney and Solicitor-General, all who may be liable even to the temptation of reaching them through politics.

We trust that the opinion of the next House of Commons will be taken on this question. The proposal has been heartily applauded by the Profession generally, and we do not think it will find a less cordial welcome from the public.

LAW OF COPYRIGHT.

A CASE of much interest to the musical world, and of considerable importance to the Profession, as settling a curious point on the law of Copyright, was lately decided in the Common Pleas—we allude to the case of *Novello v. Sudlow*, of which a full report will be found under the head of that Court in the present number. The question in dispute between the parties came before the Court on a special case. It appears that the plaintiff is the proprietor of a musical work called "Benedict's Part-songs," which is published periodically. One of the numbers contained a song called "The Wreath," the notation of the four vocal parts being expressed not on separate cleffs, but given together. A copy of the work was purchased by the Liverpool Philharmonic Society, which consists of a large number of members, who occasionally give public concerts, to which strangers are admitted on payment of an entrance-fee. A committee existed for conducting the affairs of the institution, of which the defendant was a member. It having been determined by the committee that "The Wreath" should be performed at one of the concerts of the society, and as it was necessary the several parts should be provided for the orchestra and voices, the defendant, to carry out that purpose, caused the parts to be copied separately for the trebles, altos, tenors, and basses, had them printed in lithography to the number of 235, and then distributed them amongst the performers. After the concert the several parts were collected, and it was admitted that they had not since been used. The plaintiff hearing of these circumstances, then wrote to the society, requiring the delivery to him of the lithographed copies, and that they should take of him a number of copies of his original work equal to those they had caused to be lithographed. This having been refused by the society, the plaintiff brought an action on the case, and the facts having been agreed on, the special case now under notice was submitted for the opinion of the Court. The case appears to have been very fully and ably argued by the counsel on both sides; and the Court, referring to the importance of the question, took time to consider their judgment. By the statute 8 Anne, c. 19, copyright is expressed to be "the sole right and liberty of printing." The last Copyright Act, 5 & 6 Vict. c. 45, extends the privilege; for by sec. 2 "copyright" is defined to mean, "the sole and exclusive liberty of print ing *or otherwise multiplying copies* of any subject to which the said word is in the Act applied." The remedy for infringement is given in the 15th section, which enacts that if any person "shall print, or cause to be printed, either for sale or exportation, any book in which there shall be subsisting copyright, without the consent in writing of the proprietor, or shall import for sale or hire any book so unlawfully printed, or shall sell, publish, or expose for hire any such book, or shall have in his possession for sale or hire any such book so unlawfully printed or imported, such offender shall be liable to a special action on the case, at the suit of the proprietor of such copyright." Such being the statute law, the question arose whether, as the act of the defendant was not a printing for sale, hire, or exportation, nor indeed, within either of the cases directly provided for in the 15th section, the plaintiff could maintain his action? For the plaintiff it was contended that the common-law right for infringement was not necessarily taken away by the statute; and that if it was, still there was sufficient in the statute, not merely in consideration of its spirit and purpose (which the preamble states to be to afford greater encouragement to the production of literary works), but in the statement that copyright, after the passing of the Act, was to secure to the proprietor "the sole and exclusive liberty of printing or otherwise multiplying copies," to entitle the plaintiff to recover as for an infringment of his copyright. On the other hand, it was urged for the defence, that the Legislature had, in the 15th section of the Act, clearly defined to what cases of infringement the prescribed remedy by action should apply, and it was limited to those cases alone; and whether there existed copyright at common law or not, the Legislature, if it ever existed, had abolished it by the statute, and in lieu thereof had made sufficient provisions for all rights which it intended should be perpetuated. The Court, however, held, that the remedy by action on the case was not confined to the particular injuries expressly specified and provided for in the 15th section of the Act, but applied to an infringement such as that before the Court, and accordingly gave judgment for the plaintiff. With respect to the restriction of a plaintiff's right, by the 15th section, the language of the judgment is clear and strong; and as it embodies the entire effect of the decision, we give place to it here:—

"We cannot think that such a restriction could be in the purpose of the Legislature, which would have been directly accomplished by omitting to introduce the words "otherwise multiplying," and therefore we conclude that it is impossible to gather from the 15th section that clear intention to limit a right expressly given, which is necessary to the argument for the defendant. It may also be observed that the following section, 16, when requiring the defendant to give notice of his objection to the author's clause, 'in any action for printing any such book for sale, hire, or exportation,' implies that an action will lie for printing for hire, to which the special action on the case, given by the 15th clause, is not in terms applied, and thus fortifies the conjecture that the 15th section was not intended, by enumerating certain cases of infringement, to take away the common law remedy in all others. It is, however, enough for us to determine that we cannot collect from this or any other clauses of the Acts, an intention of the Legislature to restrict the right which in express terms it gave. It is admitted that the plaintiff preserves the right; the act of the defendant in multiplying copies of his work without his consent for extensive, though gratuitou circulation, is a violation of the right; the remedy by action on the case therefore attaches, on principles which are not disputed, and the plaintiff is conse quently entitled to our judgment."

This decision will no doubt be regarded with very different feelings by the proprietors of copyright and the general public; but its soundness can hardly be questioned; for if the argument for the defence were to prevail, and it had been held that the right of action is limited to the cases provided for in the 15th section, the statute would be wholly inoperative, the remedy it affords not being co-extensive with the grievances which arise in transactions affecting copyright.

LEGAL EDUCATION.

THE Benchers of the Inns of Court are at least resolved to carry out vigorously the limited reform they have resolved upon. The Benchers of the Middle Temple have revived the Lectureship on *Jurisprudence and Civil Law*, and they are now ready to receive applications for the office from competent men. The salary is to be 300*l.* per annum, but the addition of the fees will probably make it equal to 600*l.* an acceptable post for a Barrister, in the present prospects of that branch of the profession.

SHAM LAWYERS.

A NEW class of practitioners, under the title of County Court Agents, has lately arisen. We trust that the Judges of the County Courts will spoil their trade by refusing to hear, or to recognise them in any way. They are swarming now in all the courts. Here is a specimen of one. They are *printed* forms of application.

[No. 2,052.]
No. 11, Waymouth Terrace, near Canal Bridge, City-road.

SIR,—I am directed to apply to you for 17s. due to Mr. Butler, of Abchurch-lane, and have to request your immediate attention to the same, so as to prevent further application, as well as further expense. —Waiting your early reply, I am, Sir, yours respectfully, BENJAMIN JONES, Agent to the New County Courts for the Collection of Rates, Rents, and Debts.

P.S.—At home, from 8 till 9 in the morning, and from 7 to 8 in the evening.

London, May 14th, 1852.

[No. 2,063.]
LAST APPLICATION.
No. 11, Waymouth-terrace, City-road, Near the Canal Bridge.

SIR,—I again apply to you for 17s. due to Mr. Butler, of Abchurch-lane, and unless the amount is sent to me by nine o'clock on Wednesday morning, the 26th day of May, I shall, without further notice, commence proceedings for the recovery of the same. Trusting your immediate attention will render such a step unnecessary, I remain, Sir, yours respectfully, BENJAMIN JONES, Agent for attending the New County Courts for the collection of Rates, Rents, and Debts.

At home from 8 till 10 in the Morning, and from 7 till 8 in the evening.

London, May 22nd, 1852.

THE COMMON LAW PROCEDURE BILL.

THIS Bill, as amended by the Committee of the Lords, and by their Lordships sent down to the Commons, is now before us.

Great changes have been made in it by the Law Lords. It is, in fact, a new measure, vastly improved in its details; a *real* reform, to some extent, which it certainly was *not* when it left the hands of the Commissioners.

But it is still very far indeed from being perfect. It goes further than the timid Commissioners, but not far enough to accomplish its object,—a cheap and speedy trial of a dispute. Still it leaves the County Courts to be preferred by suitors to the Superior Courts.

Hence its practical effect upon *the Profession* will be to diminish their profits in each case, without compensating by increase of business. The reforms effected will go to the point of taking away from the Practitioner without going so far as to attract more suitors. As for the Bar, its operation will be utterly to destroy the Juniors, for it sweeps away all that has hitherto constituted their support while waiting for fame and seniority.

The Bill consists of 230 sections, of which it would be a waste of space to give even an analysis just now, when it may possibly be subjected to other alterations. Suffice it to say, for the present, that it is to come into operation on the 1st of November next. Should it become law, we shall, of course, devote the interval to making its provisions, and the practical application of them, familiar to our readers in a series of articles, which will explain to them the changes thus effected, and describe the practice *as it will be.* For this purpose an experienced and skilful writer will be retained.

From a rapid glance at its contents, it appears to us that the most useful portion of the measure is that which relates to the obtaining of judgment and execution in debts and undisputed demands. In this it accomplishes a great improvement, and for such purpose will make the Superior Courts far preferable to the County Courts. It provides that a special indorsement of particulars of debts or liquidated *demands* may be made upon the writ, and then, in default of appearance, final judgment is to pass *upon the writ*, without any declaration or other intermediate process, so that the entire cost of judgment and execution in an undisputed action will not exceed 3*l.*

It is obvious at a glance how vastly superior a

process is this to the tedious one of the County Courts, where a plaintiff is compelled to produce his witnesses, and prove his debt, even though the defendant does not dispute it. Strange to say, by some mysterious agency, and by a hostile influence that cannot be explained, a clause which we were fortunate enough to procure to be inserted in the County Courts Amendment Bill, now in the Commons, and which had passed the Lords with unanimous approval, providing that judgment shall go in default of notice of defence, has been expunged in Committee. Could not some one of our M.P. readers procure its re-insertion? If it be not restored, we shall have the practical absurdity of a judgment and execution being procurable for large sums in the Superior Courts in eight days, while, in the County Court, a small sum cannot be recovered without the trouble and cost of a formal proof, and a delay of some weeks.

At all events, there should be a clause in this Bill giving concurrent jurisdiction to the superior Courts in all cases above 10*l.* so that suitors may go to the Court they may prefer. Hitherto the objection to this has been, that a plaintiff should not be permitted to put a defendant to the greater costs of the Superior Courts; but now that the costs will *not* be more, the objection is removed, and so should the prohibition.

So far the reform is admirable and perfect. It is in the procedure *when a demand is disputed* that the measure is imperfect, and it is in *this* that the County Courts are so excellent.

In the trial of a dispute, two objects are to be sought—simplicity in the pleadings, speed in the trial. No measure of Law Reform that does not effect *both* of these will be of much value to the public, or benefit to the Profession.

The Bill before us certainly *does* fail to effect *either* of these objects.

It retains, with little alteration, the existing system of pleading. By *consent*, indeed, questions may be tried without pleading; but otherwise there is still to be the writ, the declaration, the plea, the demurrer. Express *colour* and special traverses are abolished; repetitions and needless averments are not to be made; objections by special demurrer are prohibited; profert and oyer are expunged; and needless words and formulas are struck out of the pleadings; but still several matters may be pleaded; still one new assignment is to be allowed: in fact, we do not see in what respects pleading has been materially improved or simplified.

The truth probably is, that pleading is incapable of simplification; that its *abolition* is the only remedy for its abuses. In the County Courts they do very well without it. No practical inconvenience is experienced from its absence. Save in very rare instances (one in a thousand, perhaps), the plaintiff contrives to state his demand, and the defendant understands him; and the Court eviscerate real question at issue between them out of a few lines in the summons and particulars of demand, with at least as much ease as the Judges can construe the more formal pleadings of the Superior Courts. To this it must come. We believe that if a system of pleading is to be retained at all, it would be difficult to make it more simple than this Bill proposes it. But it will fail to *secure* simplicity.

And the Bill is yet more defective in the absence of all provisions for securing *more frequent trial.* We ask again, of what use is it to reduce the procedure to *fourteen days*, if the trial cannot be had for *eight months?* We shall not cease to reiterate, that without more frequent Circuits, a quarterly assize, at least, all improvements of procedure are of the least practical value. They will not enable the Superior Courts to compete with the County Courts, that sit monthly, and where six weeks is the longest interval that can elapse before a dispute can be brought to trial.

A schedule of forms of pleading is appended to the Bill. These consist of the very forms that are to be found in CHITTY, with a few superfluous words struck out.

GOSSIP OF WESTMINSTER HALL.

BY ONE OF THE BRIEFLESS.

HAVING but little business left to us, with probability of less, we juniors have time to listen to the Legal Gossip that is always floating about Westminster Hall. In lack of more profitable employment, I propose to collect the most interesting that reaches my ears, for the information and amusement of your distant readers.

Whether the LORD CHANCELLOR's New Wills Act will have the effect of setting at rest the *vexata quæstio* of how a will should be executed, time alone will shew. The disputes between the learned members of the Legal Profession who took part in the debate of the 27th ult. are somewhat ominous upon the point. Before the measure has passed into a law, they are divided as to the meaning to be attached to its words. Sir P. WOOD unceremoniously called one of its clauses "a farrago of words;" a criticism to which Mr. J. STUART replied by observing that it was not becoming to hear a Bill, which had been drawn up by "one of the greatest of living lawyers," styled "a farrago of words;" a defence which may be very courteous, but is very unsatisfactory. Great lawyers are oftentimes the very worst of draughtsmen; their habit of refining (called by the uninitiated "quibbling") upon words, rendering them utterly incapable of expressing themselves in a plain and straightforward manner. It is a well-known fact that the will of a very accomplished and celebrated conveyancer gave rise to an enormous amount of doubt and litigation. It is very desirable that the execution of a will should be clothed with as little ceremony as possible; for all that is requisite is, that conclusive proof should be given that the paper writing offered for probate is the expressed will of the testator, and anything beyond this becomes merely a snare to the unwary.

The excellent and well-reasoned decision delivered by Lord ST. LEONARD's, on the 26th ulto. has at last set the *Wagner* case at rest for ever. The decision of the LORD CHANCELLOR will, we feel convinced, be hailed with extreme satisfaction by all rightly-thinking men; for the public can much more easily afford to lose for one season, or even for perpetuity, the advantages of listening to Mdlle. WAGNER's singing, than to the reproach that solemn contracts and deliberate engagements can be broken with impunity in this country. Commenting upon the subterfuges resorted to by her advisers, Lord ST. LEONARD's made use of these severe but impressive words:—"*He must tell Mdlle. Wagner that she was mistaken if she thought she could for such reasons, escape from the contract, for the Court declared that she was not released from any of the obligations of it. She had no reason to complain of the manner in which she had been treated; and it would be folly on her part now to attempt to escape from the performance of her agreement.*" Pondering over these words, WAGNER, *père*, may return to Berlin a sadder but a wiser man; for he may learn from them that England has somewhat else to boast of besides *her money*, namely—an incorruptible spirit of justice. Rumour says that Mr. BETHELL is more disappointed than any one else at the result of the appeal, as it was at his expense, instance, and in consequence of his special and confident advice, that it was undertaken.

The enormous quantities of bullion pouring over the Atlantic from California, and the intelligence we have received of the inexhaustible gold-fields of Bathurst, cause much disquietude as to the condition of the currency. In long leases for terms of years, conveyancers have in some cases lately inserted a proviso that the rent *shall be paid in silver if demanded*, with the view of guarding against the effect of any serious depreciation in the value of gold.

THE LEGISLATOR.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, May 28.

Masters in Chancery Abolition (Lords)
Improvement of the Jurisdiction of Equity (Lords)
Common Law Procedure (Lords)
Metropolis Buildings
Corrupt Practices at Elections (No. 2).

Thursday, June 3.

Whittlebury Forest.

BILLS READ A SECOND TIME.

Friday, May 28.

Navy Pay.

Thursday, June 3.

Common Law Procedure (Lords)
Master in Chancery Abolition (Lords)
Improvement of the Jurisdiction in Equity (Lords)
Protestant Dissenters (Lords).

BILLS READ A THIRD TIME AND PASSED.

Friday, May 28.

Proclamation for Assembling Parliament
Ecclesiastical Courts (Criminal Jurisdiction).

Thursday, June 3.

General Board of Health
Law of Wills Amendment
Industrial and Provident Partnerships.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A THIRD TIME AND PASSED.

Friday, May 28.

Oxford, Worcester, &c. Railway, No. 1.

Thursday, June 3.

Great Western Railway, No. 2
London and North-Western and Bucks Railways
Monmouthshire Railway and Canal
Shrewsbury and Birmingham Railway
Shrewsbury and Chester Railway
Swansea Local Board of Health
Wycombe Railway.

PETITIONS PRESENTED.

Attorneys' Certificate Duty—Repeal of, from Kildare.

SESSIONAL PRINTED PAPERS.

Par. Num.
294. Ballinrobe Workhouse—Return
307. Agricultural Produce, Ireland—Return
340. Coals, Cinders, and Culm—Account
375. Foreign Books—Copy of Memorial
386. Postage Label Stamps—Report from Committee
173. Local Acts—Reports of the Admiralty
332. Patagonian Missionary Society—Copy of Despatch
371. Warming and Ventilation of the House—Third Report of Mr. Goldsworthy Gurney
388. Rochester Grammar School—Copies of Communications
209. Aldborough Harbour of Refuge and Improvement Bill—Report by the Inspector
295. Tulla Union—Copies of Correspondence
374. Education (Ireland) — Annual Report of Commissioners
402. Ventilation and Lighting of the House—Second Report from the Committee
289. Greenwich Hospital Schools—Annual Report
391. Governors of Colonies—Return
408. Bills—Sunk Island Roads—amended
409. Woods, Forests, and Land Revenues
416. Protestant Dissenters
421. Master in Chancery Abolition
422. Improvement of the Jurisdiction of Equity.
424. Metropolis Buildings
425. Corrupt Practices at Elections, No. 2
423. Common Law Procedure
405. British Guiana—Copies of Despatches
419. Borneo—Copies of Despatches
Emigration, Australian Colonies—Papers
Exhibition of 1851—First Report of the Commissioners.

HOUSE OF LORDS.

FRIDAY, May 28.—The Royal assent was given by commission to the following Bills:—Property-Tax Continuance, Copyright Amendment, Poor Relief Act Continuance, Loan Societies, Repayment of Advances Acts (Ireland) Amendment, Ecclesiastical Jurisdiction, Stock in Trade, Highway Rates. About fifty other Bills, local and private, also received the Royal assent.

MASTERS IN CHANCERY ABOLITION BILL.

On the motion that this Bill be read a third time, Lord CAMPBELL presented a petition from the Metropolitan Solicitors' Association, suggesting some defects in the companion Bill to this (Improvement of the Jurisdiction of Equity Bill), and objecting to the proposition for printing papers in the Court of Chancery.—The LORD CHANCELLOR concurred with the petitioners on the subject of the printing, and added, that at a meeting of judges at his house the majority were against the alteration.—Bill read a third time and passed.

IMPROVEMENT OF THE JURISDICTION OF EQUITY BILL.

On the order for the third reading of this Bill, Lord TRURO said, that although this Bill might not be without defects, it would yet confer great and important advantages on the country, and he would remind the most respectable body of gentlemen who had petitioned against some of its provisions, that it was a step in the right direction, and would facilitate their object in obtaining further reform. He congratulated their lordships on the fact, that although the present was a short session, more important steps had been taken in the improvement of the law than by any Parliament since the time of Edward III. They had completed full and searching inquiries, both into equity and common law, and the result was (partly) the Bill they were then discussing. No time had been lost when he (Lord Truro) held the Great Seal, or by his successor, the noble and learned lord now on the woolsack, in preparing measures founded on the reports of the commissioners.—Lord CRANWORTH approved of the Bill, as a whole, as tending to improve the administration of justice. With respect to the question of printing, he differed from his noble and learned friend on the woolsack, and thought that it would ultimately be found to be the cheapest plan. Although approving of the general scope of the Bill, he had strong objections to clause 50, and should at the proper time move its omission.—The Bill was then read a third time.

HOUSE OF COMMONS.

CHANCERY REFORM.

FRIDAY, May 28.—Mr. WALPOLE said he had to move the first reading of a Bill of some importance, which had just come down from the Lords—namely,

the Masters in Chancery Abolition Bill. He had also to move the first reading of the Improvement of Equity Jurisdiction Bill.—Agreed to.

COMMON LAW PROCEDURE.

Sir F. THESIGER said he had to move the first reading of a Bill which had that evening come down from the Lords : namely, a Bill for Amending the Course of Practice and Pleading in the Superior Courts of Common Law.—Agreed to.

COMMON LAW PROCEDURE BILL.

THURSDAY, June 12.—The ATTORNEY-GENERAL moved the second reading of this Bill, expressing a hope that the House would allow it to be advanced a stage, and that the discussion would be taken on another occasion.—Sir A. COCKBURN did not wish to throw any obstruction in the way of the Bill, but could not help expressing his regret that one of the most important features had been struck out, namely, that portion which was intended to get rid of forms of action, which had nothing to do with the furtherance of justice. But, notwithstanding that objection, he considered the measure to be one of the most important that had ever been introduced into Parliament. It must not, however, go forth to the public that the commissioners had discharged the whole of the duties imposed upon them, in bringing forward this measure. This was only the first instalment in the way of the removal of technical difficulties, which were so great an obstruction to the administration of justice. He trusted the Government would not stop here, but that a mixed commission of members of the departments of law and equity would be appointed, with a view of seeing how far they could remedy the evils existing in both courts, and amalgamating the two systems. The present state of the law was most disgraceful. It was a sealed book to the subjects of the realm, and required the life of a man to understand it. It was not sufficient to improve the mode of procedure. The law must be codified, and made intelligible to the people. The Bill was then read a second time.

FLOGGING PRISONERS IN GAOLS.

Mr. CARTER moved an address for a return of all the prisoners sentenced to be whipped, during the last three years, in this kingdom, at the various Courts of Quarter Session, Oyer and Terminer, and Gaol Delivery, and by summary jurisdiction, the date of the sentence, and the offence for which awarded, with the age of each prisoner so punished. —Agreed to.

CHANCERY REFORM.

On the motion of the SOLICITOR-GENERAL, the Abolition of Masters' Offices and the Equity Procedure Bills were read a second time.

MILITIA BILL.—This Bill (as amended in committee) has been printed. Six clauses have been added. By the first, personal property is to be deemed equivalent to landed, in conferring a qualification for deputy-lieutenants, majors, and officers of a higher rank. By the second, a supplemental corps may be raised by voluntary enlistment in one county, where the full number has been enrolled, to supply a deficiency in another. The next two clauses refer to publication of lists, notices of meetings, and appeals. By the fifth, Quakers are not to be committed to gaol when they do not possess property sufficient to be distressed. The sixth relates to the raising of the miners of Cornwall and Devon, under 42 Geo. 3, c. 72.

METROPOLITAN BURIALS BILL.—The Bill brought in by Lord John Manners and Mr. Walpole to amend the laws concerning the burial of the dead in the metropolis has been printed. It extends to forty-five clauses and two schedules. It is proposed to repeal the Metropolitan Interments Act, passed in 1850. On representation by the Secretary of State, her Majesty in council may order the discontinuance of burials in any part of the metropolis. The bodies of inhabitants of a parish in which the burial-ground is closed are not to be buried in other parishes, or in non-parochial grounds (except as otherwise provided), without the penalty of misdemeanour being incurred. Exceptions are made in favour of interments in St. Paul's or Westminster Abbey, under the royal sign manual, and in new burial-grounds, which must have been previously approved of by the Secretary of State. The vestries will appoint burial boards, and the expenses will be charged on the poor-rates. The Public Works Loan Commissioners may advance money for the purposes of the Act. Moneys raised and the income arising from the burial-ground to be applied towards defraying expenses.

REFUNDS PROPERTY-TAX.—A Parliamentary paper has been issued (procured by Mr. Alcock) of the amount refunded under income-tax for the year 1850. The total was 105,959*l.* 16s. 0¾d. The sums were repaid under the following heads: —On incomes under 150*l.* per annum, 65,002*l.* 1s. 11d; on dividends on foreign and colonial funds the property of foreigners, 616*l.* 10s. 1d.; on errors and double assessments, 1,675*l.* 10s. 5¼d; on hospitals, schools, &c. 11,327*l.* 14s. 7d; on ecclesiastical bodies, under Schedule A, 4,618*l.* 12s. 3d.; on friendly societies, 19,863*l.* 11s. 5d.; on diminution of income, 2,707*l.* 0s. 11½d.; and on overpayment by collectors, 148*l.* 14s. 5d.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

THE case of *Whitaker* v. *Wisbey*, 19 Law T. Rep. 150, is of considerable interest to our readers, for it determines a question upon which considerable doubt has hitherto prevailed in the Profession, viz. up to what period a prisoner on a criminal charge can safely assign property, so as to evade the barbarous law of forfeiture. It was generally understood that inasmuch as the entire Assizes are treated as one day in law, after the opening of the commission no such assignment would be valid. But after an elaborate argument, the Court of C. B. has held otherwise. WILLIAMS, J. observed,—"The result contended for by the defendant would be, that the Court is constrained by an arbitrary rule of law to say that the conviction, which in point of fact took place on the 24th of March, was on the 19th. I do not think this is so. The conveyance is *perfectly good if made before the actual conviction of the person executing it.*"

As forfeiture is thus easily evaded, and in point of fact, almost always is so, and as it is an extreme cruelty, to say the least of it, to innocent families, would it not be better to abolish it, and to substitute restitution of the value of the property taken from him, or compensation for the injury done to the prosecutor or party robbed or injured? This would be much more equitable and rational.

LONDON CORPORATION REFORM BILL.

THE committee to whom this Bill was referred have declared the preamble not proved, and the Bill will, therefore, be lost.

The Corporation of the City of London was, it will be remembered, exempted from the general Act, 5 & 6 W. 4, c. 76, and formed, in 1837, the subject of a separate report of the Municipal Corporation Commissioners, which has, up to the present time, given rise to no *Government measure* for effecting the suggested reforms.

The present Bill was brought before Parliament as *a private Bill*, on the petition of the lord mayor, aldermen, and common council, and its principal object was to invest the resident ratepayers with the municipal franchise, a change which was strongly opposed by the livery companies.

Mr. *Talbot*, Mr. *Hope*, and Mr. *Clerk* conducted the promoter's case; and *Sergeant Wrangham*, Sir *Walter Riddell*, and Mr. *Pulling*, were counsel for the *Mercers' Company*, on behalf of the liverymen of London generally.

The case set up on the part of the *livery* was that, as against a mere private Bill, they were entitled to retain their franchises, and to oppose the surrendering the control of the civic property to *non-freemen*. It was contended that the grants of the franchises and estates of the corporation were made exclusively to the freemen of the city of London, of whom the livery were the better and most numerous class.

The witnesses for the promoters all agreed that the present members of the corporation were as respectable as could be looked for under the proposed change; and though some evidence of bribery at city elections, &c. was given, it appeared that this was principally practised by the celebrated *long-shore-men*, who were, for the most part, not liverymen at all.

The committee—after sitting several days, and hearing a mass of evidence as to the constitution of the corporation, the number of electors, &c. the provisions of the various charters by which the civic franchises were confirmed, and hearing the speeches of counsel, pro and con—declared their opinion that the promoters had not made out their case.

Query.

ATTORNEY MAGISTRATES.

CAN any of your correspondents inform me what has been the practice of Home Secretaries or Lord Chancellors respecting the appointment of attorneys to the commission of the peace under the Municipal Act? Are not attorneys excluded from the commission for counties by Act of Parliament? And was not a Bill brought into the House of Commons by the late Lord Nugent (about 1830), to extend this exclusion to the borough magistracy? Y. S. N.

May 25, 1852.

JOINT-STOCK COMPANIES' LAW JOURNAL.

THE House of Lords has decided some interesting points of considerable practical importance to the directors and officers of companies, in the case of *Inglis* v. *The Great Northern Railway Company*, 19 Law T. Rep. 149. After bringing an action for calls, the company, under the powers of their Act, forfeited and cancelled the shares and issued new shares in lieu thereof. This was held *not* to be a good plea in bar to the action, but the Court should stay proceedings, on the defendants paying the excess of the sum due beyond the value of the new shares, with costs.

In the same case it was determined that when the register of shareholders was kept in several volumes, it was sufficient if the last volume of the series was authenticated by the seal of the company.

A meeting of the committee of directors was adjourned and only the minute of the adjourned meeting was signed by the chairman of both meetings, but subsequent minutes treat both as one meeting. It was held that the unsigned minute was admissible as evidence of the first day's proceedings, and that what took place there could also be proved by a witness who was present, sec. 98 of 8 & 9 Vict. c. 16, which makes the signed minute evidence, *not excluding* evidence *aliunde*.

It was also intimated, although not expressly decided, that where a call had been made by a finance committee of the directors, it must be proved, in an action for calls, that the committee were duly appointed.

In *Gage* v. *The Newmarket Railway Company*, 19 Law T. Rep. 155, the company had by deed contracted with an opposing landowner, that in the event of the Bill passing they would, before entering on any part of the lands, pay him 4,500*l.* for any portion they might require, and 7,100*l.* for damages by the severance of the land. The Court of Q. B. held that the company were not bound to pay either of these sums before taking possession, and that to do so would be an illegal misapplication of the funds of the company.

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

Royal Thames Steam Navigation Company.—Call of 5*l.* per share on 10th June.—Rose.

Boston and Thorp Arch Bath Company.—Call of 3*l.* 10s. per share on contributories, on whom notice for a further call has been served, by 5th July.—Horne.

Pennant and Craigwen Consolidated Lead Mining Company. —To settle supplemental list of contributories, on 21st June.—Tinney.

A RAILWAY IN DIFFICULTIES.—A circumstance, perhaps unprecedented in railway annals, has, within the last few days, occurred to the Preston and Longridge Railway, the result of which has been that the line has been unavoidably closed, the locomotive power, carriages, and all the rolling stock having been taking possession of and sold under a warrant of execution.

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

AN important case on the construction of the *Trustee Acts* was that of *Re Boden's Estate*, 19 Law T. Rep. 150. The facts were, that a mortgagee in fee died intestate as to the mortgaged premises, but appointed an executor. The heir-at-law could not be found. On a petition by the executor, the Court held that, under the 19th sec. of this Act, it had jurisdiction to make an order vesting in him the mortgaged premises, subject to the equity of redemption, thus providing for the case of a convey-

s generally, and not confining it to the simple case of a reconveyance.

There are some cases worthy of note on the construction of wills. In *Bainbrigge* v. *Cream*, 19 Law T. Rep. 151, where the devise was of certain freeholds and leaseholds to testator's wife for life, or until she should marry again, and on her death or her marriage, he gave same to trustees, in trust to sell and divide the proceeds among certain nephews and nieces, or "such of them as should be living at the death of his wife," and the wife married again, it was held that the nephews and nieces living at the time of the second marriage, took vested interest in the proceeds of the sale. In *Webb* v. *Woolls*, 19 Law T. Rep. 153, it was laid down that where the latter words of a sentence in a will go to cut down an absolute gift contained in the first part of the sentence, and are *unconnected with it*, the Court will, *if it can*, give effect to the absolute gift.

In *Durrant* v. *Friend*, 19 Law T. Rep. 152, certain articles were specifically bequeathed by a will, but both the testator and the articles were lost in a shipwreck. The articles were insured. It was held that the *insurance money did not belong to the legatees*. In the same case a manifest injustice was done through adhesion to the letter of the law, which does not recognise illegitimate children. Property was given to A. the interest to be paid to her half-yearly, until her first-born son should attain twenty-one; one half for the said son, the other half for the mother. She had an illegitimate son, who was maintained by the testator. There could be no doubt as to the *intention*. Nevertheless, it was held that the illegitimate son had no interest in the property.

A point in the law of *Vendor and Purchaser* was determined in the case of *Wallis* v. *Sorel*, 19 Law T. Rep. 152, which should be noted in the text books. A reversionary interest, subject to a life estate, was put up for sale by order of the Court. One of the conditions was, that if *from any cause whatever* the purchase-money should not be paid on the day named, the vendor should pay interest at five per cent. The abstract was not delivered until long after the day fixed by the condition. It was held that the condition did not apply, but that the purchaser having had the benefit of the wear of the lives should pay interest at four per cent. only.

An extremely able and interesting judgment, by Lord Campbell, C. J. on the law of *voluntary conveyances* is reported from the Q.B. and should be read by every student and practitioner. His Lordship stated that, "the principle on which voluntary conveyances have been held uniformly to be fraudulent and void, as against subsequent purchasers, appears to be that by selling the property for a valuable consideration the seller so entirely repudiates the former voluntary conveyance and shews his intention to sell, that it shall be taken conclusively against him and the person to whom he conveyed that such intention existed when he made the conveyance, and that it was made in order to defeat the purchaser. Such deeds had been held fraudulent and void, as against such purchasers, even when they have had notice of them. Where the *same person* executes the voluntary conveyance, and afterwards sells and conveys the property, the application of the principle is obvious and easy; but where the seller is a *different person* from him who executed the voluntary conveyance, it is quite otherwise, for the act of one man cannot shew the mind and intention of another." After reviewing all the cases that bear upon the point, his Lordship concluded, "Upon the whole, we are all clearly of opinion that a purchaser from the devisee of one who has made a voluntary conveyance in his lifetime is *not* within the statute." (*Doe dem. Newman* v. *Rusham*, 19 Law T. Rep. 153.)

In *Whittaker* v. *Wisbey*, 19 Law T. Rep. 156, an assignment of property by a prisoner on a charge of felony made after the commission day, but before conviction, was held to be valid.

Wadsworth v. *Weaver*, 19 Law T. Rep. 158, was a question on the 46th section of the *Building Act* (7 & 8 Vict. c. 84). A party-wall was built partly on the plaintiff's and partly on the defendant's land; the expenses had been paid by the plaintiff and none by the defendant. The plaintiff brought an action of trespass against the defendant for letting jambs into the part of the wall within his boundary. It was held that the Buildings Act only vests the wall in the builder of it, for the purpose of enabling him to recover his expenses, by proceedings under the Act, and not so as to enable him to maintain trespass against the other party using it.

In *Flory* v. *Denny*, 19 Law T. Rep. 158, it was held that a *chattel* may be *mortgaged* without a deed.

STAFFORDSHIRE, ETC. RAILWAY.

TO THE EDITOR OF THE LAW TIMES.

Sir,—In the summary of "Winding-up" law, in the Law Times, 29th ult. you have mis-stated the effect of the judgment in this matter, as you will see by referring to your report, 19 Law T. Rep. 106 (as stated in the summary, but in reality 136). So far from Mr. Archibald having money of the company "in his possession," it was clearly proved that he *had not*, and that was the ground of the judgment.

The question in dispute was, whether a *constructive* possession of the funds was sufficient to bring the case within the 66th section of the Winding-up Act; and the constructive possession was made out thus:—Mr. Archibald admits he had, at one time, the funds in his possession, but says he afterwards parted with them; we (the company) say you, Mr. A. had no authority or right to do so, and are consequently liable to us for the amount, therefore you must be held still to have possession of the funds, because you ought to have possession. The Master agreed to this proposition, which the Court dissented from. The knowledge of your anxiety and desire for correctness in every part of your valuable paper, is my reason and apology for thus addressing you.

I am, Sir, yours, &c.

William Boorman,

Clerk to the Solicitors for Mr. Archibald.

23, Throgmorton-street, City, 2nd June, 1852.

COPYHOLD ENFRANCHISEMENT.

(From the *Spectator*.)

Amid the noisy but resultless bickerings of ministers and their opponents, a Bill to abolish the tenure of copyhold—a relic of feudalism relinquished in every other kingdom of Europe—has been steadily keeping the noiseless tenour of its way through Parliament. It passed with prosperous gales through every stage in the Commons, and was about to clear the straits of the second reading in the Lords, when a storm has arisen that threatens to sink it almost within sight of port.

The Bill is to enact, that in the event of a fine falling due on any copyhold lands after July 1853, the lands shall be enfranchised on the application either of tenant or lord, by commissioners named by the Crown, who shall award an equivalent for the lord's rights. This Bill is the result of a compromise between two rival measures, remitted last session to a Select Committee of the Commons, over which Mr. Aglionby, the champion of copyhold enfranchisement, presided, and in which both the owners of manorial rights and the advocates of free trade in land were duly represented. Thus sanctioned by all parties, and approved by Government, the Bill has in this session passed through the House of Commons without opposition; it was read a first time in the Lords, and a day fixed for the second reading, without any serious demonstrations of hostility. But then the Chancellor began to doubt whether the enfranchisement should be compulsory even to the small extent provided by this Bill: a week's postponement was conceded to allow Lord St. Leonards time to dispose of his doubts; and while he is dubitating the Earl of Ellesmere gives notice of a motion to remit the Bill to a select committee, with authority to hear counsel against the Bill! If a committee to be nominated after Tuesday next is to sit on the Bill, and listen to the long-winded wranglings of lawyers, it cannot pass this session; and if the enfranchisement is not to be compulsory, the Bill need not be passed at all, for laws merely permitting law reforms have never proved effectual.

The last unlooked-for rally of the lords of manors is utterly unaccountable. The annoyance to the copyholders, and the deterioration to their property resulting from this mode of tenure, are glaring and notorious; but the benefits accruing to the lords of manors are precarious, and fruitful sources of litigation. Lord Ellesmere and his noble allies are in fact contending for a shadow. Their friends in the Commons, by the stand they made last session, induced the copyholders to consent to pay for enfranchisement: if the Bill based upon this compromise be rejected, the next (and another is sure to be brought in) may have the compensation clause omitted. Copyholders, lawyers, farmers, all are bent upon the abolition of a mischievous tenure, which Sir Robert Peel called "a blot on the law of this country." Ultimately the lords of manors must give in, and the longer they cling to their privileges the less chance they have of being bought off.

Query.

STAMPS.

Will any of your practised readers be so good as to answer the following.

Suppose there be a deed of eighty-eight folios—purchase-money 5,000*l.*—the regular stamps should be 25*l.* ad. val. and four followers, each 10s. making in all five skins, and the entire duty 27*l.*

But instead of five skins being used, there are only three employed, the first stamped 25*l.* and each of the other two with one pound single stamps, and not double followers. Full duty 27*l.*

Is the deed properly stamped, or is it necessary for the followers to be stamped as *double* followers, and if not, why?

T. C. M.

Answers to Queries.

ACKNOWLEDGMENT OF DEEDS BY MARRIED WOMEN.

It is the practice for married women who are merely trustees to acknowledge any deed executed by them, and this practice is adopted in the Masters' offices. There is no doubt but that a married woman should acknowledge a deed in which she joins as trustee only, unless she has a power of appointment vested in her, and which she exercises by the deed. In the case put by "G. J." the married woman must formerly have joined with her husband in levying a fine, and the effect of the Fines and Recoveries Abolition Act is, that in all cases where a fine was formerly required, an acknowledgment is now substituted.

June 1, 1852. G. W. G.

I would call the attention of your correspondent "G. J." writing from Manchester, to the following passage in 1 Pr. Ab. 337, last edit.:—"But as the law does not take any notice of trusts, the better opinion, sanctioned by uniform practice, is, that as to the estates of freehold, which a married woman has as trustee, no effectual conveyance can be made by her without a fine or common recovery." From this it would appear that in the case put by your correspondent, the married woman should acknowledge the mortgage-deed.

Sale of Incumbered Estates.—Another satisfactory proof of the rapid rise in the value of land was afforded by the sale of the extensive estates of the late Mr. Robert Hedges Eyre. This property is situate in the town and county of Galway, and was put up for competition in no less than forty lots. Of these thirty-two composed the town estates, consisting of townlands and houses, the net annual rental of which was estimated at 2,400*l.* Every lot was keenly disputed for, the whole realising the sum of 45,485*l.* or equal to 19 years' purchase. The county estates contained 1,905 statute acres, which were divided into eight lots, the gross value of which was 556*l.* a-year. The sum produced was 9,210*l.* or 16½ years' purchase. The town estates were sold subject to two annuities, one for the life of a lady aged sixty, the other for the life of a man aged forty-five. The average purchase-money of both estates was at the rate of 18¾ years.

Sale of Incumbered Estates.—The estates of Mr. Penrose Fitzgerald, situate in the county of Cork, were sold on Friday, in Cork, by order of the commissioners. They were offered in seven lots, two of which were reserved, the sum required to discharge the incumbrances having been realized by the sale of five only. The gross rental of those disposed of was about 900*l.* per annum, which produced the sum of 16,255*l.* The prices obtained averaged twenty years' purchase.

St. Pancras Freehold Land Society.—In addition to the several estates already purchased by the above society at Walthamstow, Sudbury, and Peckham, a further purchase has just been effected of the most valuable building land, situate in the High-road, Upper Holloway, at a cost of 10,000*l.*

COUNTY COURTS.

Summary.

It willl be observed that in the case of *Re Clabburn*, 19 Law T. Rep. 160, Mr. Commissioner Law has decided that the *Insolvent Court* has *not* the power to order the rehearing of a case in the County Court, as formerly it had to order the rehearing of a case before the Commissioner on Circuit. But such a rehearing may be ordered by the County Court.

THE STATUTE OF LIMITATIONS AND THE COUNTY COURTS.

TO THE EDITOR OF THE LAW TIMES.

Sir,—Some eight or ten days before a simple contract debt would have been barred by the Statute of Limitations, I issued a summons against the debtor in one of the metropolitan County Courts, and on my searching the cause a day or two before the hearing, I was informed that the defendant's residence was *just out of the jurisdiction of that Court*, at the same time receiving back the money

that I had paid for the summons. The six years had then expired about a week.

Can any of your readers inform me whether, under these circumstances, this debt is barred by the statute, or whether, on my giving proof that I issued the summons before the six years had expired, it will be sufficient to prevent the statute from running or the defendant from pleading it, as it was certainly not my fault that the summons was issued in the wrong court, but that of the County Court authorities for not being better acquainted with the boundaries of their court. I have not yet issued another summons in (what I am informed is) the right court.

While on this subject I would suggest that the County Courts Extension Bill, now under consideration, should extend the hours of attendance at the clerks' office at all the courts till *five* instead of *four*, as it would be a very great convenience to such of us as practise in them, and would not be a later hour than that of the attendance at the offices of the Superior Courts during term.

I am, Sir, yours, &c.

City, June 2, 1852. C. J. W.

THE LAWYER.

Summary.

EQUITY PRACTICE.—Where a sole plaintiff becomes bankrupt, the defendant may move that the assignees shall elect either a fixed time to file a supplemental bill, or proceedings stayed. It is not necessary to file a bill of revivor, and proceed with the cause. (*Clark* v. *Tipping*, 19 Law T. Rep. 151.)

In *Trilley* v. *Keefe*, 19 Law T. Rep. 151, the service of an order limiting the period for application to set aside a decree, taken *pro confesso* on a defendant out of the jurisdiction, was held to be a sufficient notice under the 87th order.

Where the next friend of a married woman, plaintiff in a suit, went to reside out of the jurisdiction, the Court, in *Alcock* v. *Alcock*, 19 Law T. Rep. 152, required security for costs by him, or that a new next friend should be appointed.

COMMON LAW.—We are always glad to be able to adduce instances of the Judges' setting their faces against objections merely technical, when employed to defeat the ends of justice. Such an one occurred last week. In *Whittaker* v. *Wisbey*, 19 Law T. Rep. 159, counsel was raising a miserable technical objection to a motion that ought to have been treated only on its merits, upon which POLLOCK, C.B. said, "In these days of legal reform, it may be taken generally, that the Court will set its face against objections calculated to involve the parties in useless and unnecessary expenses." These words should be printed in letters of gold, and posted in all the Courts at Westminster.

In the *Law of Evidence* there is a case worth noting. Plaintiff and another person had entered into an agreement as to the terms of a bet on a horse-race. A fraud was practised upon the plaintiff, for which he brought an action against the defendant, who was stakeholder, to recover back the money. The question was, whether this agreement could be put in evidence without being stamped. The Court held that it might be received. "If," said POLLOCK, C.B. "the agreement in this case had to be used as an agreement to uphold the terms of it, no doubt it should have been stamped; but if not used *as an agreement*, but merely to identify it with the scheme which it was the plaintiff's case to shew was practised upon him, then I think it was properly admissible. In the same way, if it had to be used for any criminal purposes, such as to prove forgery, &c. it would not require any stamp." (*Holmes* v. *Sixsmith*, 19 Law T. Rep. 159.)

The Law of Liability of an Attorney for negligence in not obtaining for his client a proper security was, as it seems to us, pushed to an extreme of harshness, almost to positive injustice, in the case of *Cooper* v. *Stephens*, 19 Law T. Rep. 155, which, strange to say, was a County Court Appeal. The facts were, that an Attorney, instructed by his client to recover a debt after threatenings, and obtaining no payment, advised his client to accept from the debtor a mortgage security, which he did. The Attorney made no inquiries, except from the debtor, whether he had been insolvent, although there was some evidence that he had a suspicion of it. But, in fact, he had petitioned the Insolvent Court, and obtained a protection order, and all the debts in his schedule were unpaid. The Court held this to be some evidence to go to the jury of negligence.

LAWYERS IN PARLIAMENT.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Cordially agreeing with the spirit of your remarks on this subject, I cannot see that your remedy would "effectually prevent politics and parliament being made a stepping-stone to the bench." The stability or instability of a government is generally so well known, as to make its proceedings for the next six months (the time you propose should elapse before legal ex-M.P.'s shall be eligible for appointment to the "high places" of the profession) tolerably clear; and a lively picture might be drawn of the opposition M.P. lawyers, anticipative of a dissolution—forgetting their promises, their constituencies, everything but themselves—and in a body accepting the Chiltern Hundreds, that they might, on the accession of their party, obtain some substantial reward for services rendered, as the appointments happened to fall in.

The subject, however, is a very important one, as much so to the Profession as the public; and I hope you will continue to draw attention to it.

I am, Sir, yours, &c.

S.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

MEMBER RETURNED TO SERVE IN THIS PRESENT PARLIAMENT.—Town and Port of Sandwich: Charles Pelham Pelham Clinton, commonly called Lord Charles Pelham Pelham Clinton, in the room of Charles William Grenfell, esq. who has accepted the office of Steward of her Majesty's manor of Hempholme.

COMMISSIONS SIGNED BY THE LORD LIEUTENANT OF THE WEST RIDING OF YORK.—Sir John Rumsden, bart.; William Vavasour, esq.; George Sanders, esq. M.P.; and the Hon. Egremont William Lascelles, to be deputy-lieutenants.

COMMISSION SIGNED BY THE LORD LIEUTENANT OF BERKS.—Henry William Vincent, esq. to be deputy-lieutenant.

COURT PAPERS.

EXCHEQUER CHAMBER, TUESDAY, JUNE 1

(*Sittings in Error.*)

This morning the judges assembled in the "Exchequer Chamber" for the purpose of appointing the days on which their lordships would sit "in Error" after the present Term. The days appointed were as follow:—

For "errors" from the Court of Queen's Bench, to sit on Monday, June 14, and Tuesday, June 15.

For "errors" from the Court of Common Pleas, to sit on Wednesday, June 16, and on Thursday, June 17.

There are no "errors" from the Court of Exchequer for these sittings.

SUMMER CIRCUITS OF THE JUDGES, 1852.
NORTHERN CIRCUIT.

ON Thursday Lord Chief Justice Campbell and Mr. Justice Wightman signed the precepts for holding the ensuing Summer Assize for the several counties, cities, and towns comprised in these circuits, as follows:—

YORKSHIRE.—Saturday, July 10, at the Castle of York.

CITY OF YORK.—The same day, at the Guildhall of the City of York.

DURHAM.—Saturday, July 24, at Durham.

NORTHUMBERLAND.—Thursday, July 29, at Newcastle-on-Tyne.

TOWN AND COUNTY OF NEWCASTLE.—The same day, at the same place.

CUMBERLAND.—Monday, August 2, at the Castle at Carlisle.

WESTMORELAND.—Thursday, August 5, at Appleby.

NORTHERN DIVISION OF LANCASHIRE.—At the Castle of Lancaster, Saturday, August 7.

SOUTHERN DIVISION OF LANCASHIRE.—At Liverpool, Wednesday, August 11.

ATTORNEYS ADMITTED.

EASTER TERM.

The following were accidentally omitted from the list of last week.—

Garrard, George Henry.
G. P. Arden, Halstead.
W. W. Aldridge, Gray's-inn.

ATTORNEYS TO BE ADMITTED.

Trinity Term, 1852.

QUEEN'S BENCH

Abbott, Charles Edward, 28, Surrey Street; Cambridge Street; and Bury St. Edmunds—articled to C. Hinnell, Bury St. Edmunds

Andrews, Edward, 95, Guilford Street, Russell Square; and Cambridge—G. Andrews, Weymouth; and Melcombe Regis

Armstrong, Charles, London Wall; and Norwood—G. W. Armstrong, Old Jewry

Arnison, William Burra, 23, Great Percy Street, Pentonville; and Penrith—L. Harrison, Penrith

Aston, David, 15, Burton Crescent; and Longton—George L. Robinson, Longton

Babington, John, 37, Store Street, Bedford Square; and Alfred Place—E. Babington, Horncastle; J. Scott, Lincoln's Inn Fields

Bailey, John Rand, Holford Square; Upper Vernon St.; Wharton Street; and North Leverton—G. Marshall, East Retford

Baker, George, 5, Lowther Cottages, Holloway; Richmond Terrace; and Audlem—W. Machin, Audlem

Bannister, Henry, 66, Gibson Square, Islington; Baker Street, Lloyd Square; and Accrington—R. Ascroft, Preston; G. Bannister, Accrington

Barlow, Charles, Manchester—J. Barlow, Manchester

Barr, Frederick Horatio, 32, Swinton Street, Gray's Inn Road—F. Talbot, Bedford Row

Barrett, Charles Prentice, 30, Burton Crescent; and Eton—S. G. Hornidge, Eton; and 30, Burton Crescent

Batten, James Brend (articled as James Batten), 30, Burton Street, Burton Crescent; Cheltenham—J. P. Bell, Cheltenham

Baxter, Dudley, 15, Windsor Terrace, Pimlico; and Atherstone—S. S. Baxter, Atherstone

Baxter, Robert Dudley, Doncaster—R. Baxter, Doncaster

Beaumont, Henry, 63, Trinity Square, Staplehurst; and East Bridgeford—W. N. Ottaway, Staplehurst

Bickersteth, John Pares, Willesden; Liverpool; and Sefton—R. Radcliffe, Liverpool; A. T. Squarey, Liverpool

Blagg, Michael Ward, 9, Hunter Street, Brunswick Square; and Cheadle—J. M. Blagg, Cheadle

Blick, John, jun. 3, Bury Place, Bloomsbury; and Dodderhill—S. Tombs, jun. Droitwich

Blyth, Edmund Kell, Upper Berkeley Street West; Upper Charlotte Street; and Edgbaston—W. H. Reece, Birmingham; E. W. Field, Bedford Row

Booth, Samuel Barker, 51, Tavistock Square—S. Barker, Tavistock Square

Bridgman, Joseph, Chester—S. J. Roberts, Chester

Brown, Lancelot Charles, 4, Halkin Street, Belgrave Sq.—J. Leman, Lincoln's Inn Fields

Brundrit, Robert Wright, Gray's Inn Square; South Bank, Runcorn; and Manchester—J. Stevenson, Manchester

Buse, Richard Henry, 23, Lawrence Pountney Lane; Stanhope Street; and Bideford—W. H. E. Burnard, Bideford

Butlin, Thomas, 24, Great Smith Street; Great College Street; and Cowley Street—G. Eddowes, Nottingham

Capes, Henry Hawkesley, Boroughbridge—Wm. Hirst, Boroughbridge

Carnell, George Frederick, 5, Newman's Row, Lincoln's Inn Fields; Bedford Square; and Sevenoaks—T. Carnell, Sevenoaks

Carrington, Charles James, 2, Cambridge Terrace, Islington; and Stretford, near Manchester—J. Barlow, jun. Manchester

Cattlow, John Reynolds, 22, Calthorpe Street; Chadwell Street; and Greenhill—J. Cattlow, Greenhill; W. H. Trinder, John Street, Bedford Row

Chamberlin, Charles Henry, Great Yarmouth—H. Palmer, Great Yarmouth

Cheyne, Talbot, Red Lion Street; Hemingford Terrace, Hemingford Cottages; and Highgate—L. Richmond, Ashton-under-Lyne

Christmas, Thomas Saunders, 2, Oakley Square, Chelsea; and Cambridge—Messrs. E. and E. Foster, Cambridge

Clark, John, 39, Lorn Road, Brixton—W. Dudley, 1, Anchor-terrace, Southwark

Clarke, George, 4, Devonshire Street; 14, New Ormond Street; and Worcester—T. Hyde, Worcester

Clarkson, George Palmer, Wandsworth Common—C. J. Palmer, Bedford Row

Clements, Charles, 42, Kelham Place, Lambeth; and Liverpool—T. Toulmin, Liverpool

Coleman, John Sherard, 45, Westbourne Park Road, Bayswater—C. Richardson, Golden Square

Conington, Henry James, Boston—F. T. White and R. F. Lindsay, Boston

Cook, Charles Henry, 4, Essex Court, Temple—C. Cook, New Inn

Cooke, Thomas W. Tahourdin, 10, Store Street, Bedford Square—W. Everest, Epsom; J. Smith, Maidenhead; J. Currie, Lincoln's Inn Fields

Cooke, William Lawrence, 29, Cloudesley Square; and Cheltenham—B. Bubb, Cheltenham; E. Washbourne, Gloucester

Courtenay, Richard, Lewisham and Lee—G. Atkinson, Church Court, Lothbury

Crallan, Richard Nelson, Hornsey Lane, Highgate—W. Hodson, King's Road; J. Bridges, Red Lion Square

Cripps, William Charles, 17, Cecil Street; and Tonbridge—W. Gorham, Tonbridge

Curtis, Charles John, 12, Great Titchfield Street—E. G. Randall, Welbeck Street

Curtis, Thomas John, 35, Holford Square—C. A. Curtis, Abingdon

Daubeny, Robert, 21, New Ormond Street; and Bristol—J. R. Hoyte, Bristol

Derry, William Smith, 6, Windsor Terrace, Vauxhall Road—C. Smale, Bideford

Drew, Charles Thomas, Balham Hill, Surrey—S. William, Bedford Row

Edell, James, Ivy Cottage, Barnes Common; and Minories—C. Harvey, Spalding; L. Desborough, Size Lane

Ellis, William Moreton, 9, Lower Calthorpe Street; Walsall; and Sedgley—H. Barnett, Walsall

Ellman, James Boys, Great Percy Street; Bow Hill Terrace, North Brixton; Landport, near Lewes—H. Whitmarsh, Battle and Rye; J. Lewis, Lewes

Fowler, Robert, 8, Ebury Street, Chester Square; Elm Place; Trevor Square; and York—G. Leeman, York

Fox, John, jun. 24, Guildford Street, South Crescent; Ashborne; and Manchester—J. Saunders, Manchester; —John Fox, Ashborne

Fryer, William, Dorset Cottages; Richmond Terrace, Dalston; Chatteris; and Sandbach—W. Latham, Sandbach

Gaitskell, Alfred Ashley, Streatham—T. Pryor, Artillery Place; W. S. Gaitskell, Upper Stamford Street; T. H. Devonshire, Austin Friars

Gell, Robert, jun. York—G. Leeman, York

Geoghegan, M. J. jun. 178, Regent Street—W. E. Goatly, Cork Street

Gillow, John, 11, New Ormond Street; Great Ormond Street; and Cranbrook—C. Willis, Cranbrook
Gray, Charles Travers, 39, Keppel Street; and Woburn Place—W. G. Robinson, Bank Buildings
Hadfield, Samuel, 65, Bayham Street South, Camden Town; and Manchester—G. Hadfield, Manchester
Hamber, Frederick Marsh, King's Arms Yard—F. Dimsdale, King's Arms Yard
Hammond, Henry, jun. Wentworth Lodge, Finchley—H Hammond, sen. Furnival's Inn
Harris, John Henry, Clapham—W. G. Pennington, Serjeant's Inn; G. H. Williams, Margaret Street
Hawley, Fred. 17, Shepperton Cottages, Islington—N. Overbury, Frederick's Place
Head, John Oswald, 8, Ampton Street, Gray's Inn Road; John Street; and Richmond—J. B. Simpson, Richmond
Heald, Thomas Mangnall, 15, Arlington Street, Camden Town; and Wigan—E. Scott, Wigan
Hewitt, William Henry, Ormonville, Higher Broughton; and Manchester—R. Needham, late of Manchester; J. Hewitt, Manchester
Hickley, Thomas Allen, Ivy Cottage, Barnes Common; Fulham Place; and Paddington—L. Desborough, Size Lane
Hughes, George Martin, 32, Holford Square, Pentonville; and Yalding, Kent—F. Scudamore, Maidstone
Huxley, Frederick, 26, Camden Street North, Camden Town; and Liverpool; J. B. Lloyd, Liverpool
James, Thomas Lloyd, 23, Ely Place, Holborn—E. W. James, Ely Place, Holborn
Jennings, Edward Billet, 28, Grove Place, Brompton—T. T. Dibb, Leeds
Johns, Bradford, 16, Chadwell Street, Pentonville; and Myddleton Square; J. H. Todd, Winchester; E. Lyne, Liskeard; W. H. Brown, Swansea
Jones, James Webb, Surrey Street; Dorchester Place; Cecil Street; and Carmarthen—P. G. Jones, Carmarthen
Jones, Thomas, Brecon—H. Maybery, Brecon
Kelsall, Frederick Henry, 14, Upper Porchester Street, Paddington—J. Robinson, Liverpool
Kent, Benjamin, Newcastle-upon-Tyne—N. Kent, Newcastle-upon-Tyne
Kent, Edmund, jun. 6, Albion Terrace, Sydenham Park—E. Kent, sen. Fakenham
Kent, Thomas Russell, 11, Essex Street, Strand; Bath Place, Kensington—B. Blundell, Mitre Court Chambers; P. Nelson, Essex Street
King, William Henry, Phoebe Place; New Ormond Street; Wakefield Street; and Salisbury—G. B. Townsend, Salisbury
Koe, Ralph Pemberton, Darlington; and Neasham—J. H. Mousley, Derby; F. Mewburn, jun. Darlington
Lett, Edward, 1, Stockwell Crescent, Stockwell—R. G. Burford, King's Bench Walk; E. Thompson, Salter's Hall
Maddox, John Mortimer, 18, Southampton Buildings; and Hornsey—C. I. Shirreff, Lincoln's Inn Fields; C. M. Stretton, Southampton Buildings
Mauder, Charles John, 38, Ladbrook Square; Cordwainers' Hall; and Little Ealing—J. J. Millard, Cordwainers' Hall
March, Owen, Newbury; Gloucester Place, Tachbrook Street; and Taunton—E. Rossiter, Taunton
Marshall, John Stewart, 12, Ampthill Square; and Wigan—R. Leigh, Wigan
Mason, William Ludlam, 8, St. Thomas Street East, Southwark; and Louth—T. P. Waite, Louth
Mawson, William Willmott, Manchester—T. Taylor, Manchester
May, Henry, 4, Thorney Place, Oakley Square; and Robert Street, Hampstead Road—J. Fraser, Dean Street, Soho
Melmoth, William Toogood, 7, Mornington Place, Camberwell New Road; and New Inn—J. Y. Melmoth, Sherborne
Meyler, Thomas, Ashmeade-house, Gloucester; Amwell Street; and Lloyd Square—R. Wilton, Gloucester
Minor, William, 12, Store Street, Bedford Square; and Cumberland Place—J. Lane, Chancery Lane
Morres, Thomas Furley, 9, Compton Street East, Regent Square; Wells Street; and Sidmouth Street—J. R. Wheeler, Wokingham; J. S. Gregory, Bedford Row
Nesson, John, 3, Claremont Place, Dalston; and Doncaster—F. Fisher, Doncaster; F. W. Fisher, Doncaster
Newman, Charles, 127, Albany Street; and Hemingfield—J. Birks, Hemingfield
Norris, Henry, 23, Upper Gower Street, Bedford Square—W. Ruck, Lime Street
Page, William Sutton, 16, Soley Terrace; Stroud; Baker Street; and Cambridge, near Dursley—W. T. Paris, Stroud; E. Witchell, Stroud
Palmer, Gillies Charles, Grantham—W. Ostler, Grantham
Palmer, Robert, jun. 37, Maddox Street; Regent Street; and Stokesley—G. Grenside, Stokesley; R. Palmer, Stokesley
Parmeter, Robert, Booton Hall, near Reepham, Norfolk, and Chichester—R. F. Dalrymple, Parliament Street; E. W. Johnson, Chichester
Philips, James, 7, Milton Terrace, Wandsworth Road—H. Philips, Size Lane
Phillips, Thomas, 35, Cambridge Terrace, Clapham Road; and the General Post Office—M. B. Peacock, General Post Office
Phillips, William Henry, 39, Frederick Street; and Wolverhampton—T. M. Phillips, Wolverhampton
Ponsonby, John, Oldham—J. H. Hulme, Manchester.
Poole, Fenwick Thomas, 12, Kennington Green; and Frome—T. E. Poole, Frome
Preston, John, 31, Frederick Street, Gray's Inn Road; and Kirkby Lonsdale—T. Eastham, Kirkby Lonsdale
Raby, Richard Stephens, 28, Claremont Square and Myddleton Square—C. Childs, Liskeard
Reynolds, Reginald, 2, King Street, Portman Square; and Clifton—T. Edwards, Bristol; C. E. Ward, Bristol
Rice, Francis John, 13, Clifford's Inn—G. Annesley, Lincoln's Inn Fields
Roberts, Thomas, Chester—W. H. T. Brown, Chester
Rodd, Richard Robinson, 2, Great Percy Street, Islington—R. Rodd, East Stonehouse
Rutter, George, Manchester—E. C. Milne, Manchester; W. S. Rutter, ditto
Sabine, Charles Edwyn, 23, Houghton Street, Strand; and Oswestry—C. Sabine, Oswestry
Salaman, Joseph Seymour, 36, Baker Street, Portman Square—T. Tilson, Coleman Street
Slater, William, jun. 2, Milman Street, Bedford Row; and Manchester—W. Slater, Manchester
Smith, Sidney Philip, 6, Paradise Place, Stoke Newington—R. E. Smith, Serjeant's Inn; T. H. Street, Brabant Court
Smith, William, 21, New Ormond Street; and Weston-super-Mare—H. Davies, Weston-super-Mare
Standring, John, jun. 25, Forston Street, Hoxton; and Rochdale—H. Whitehead, Rochdale
Stansfield, John, 27, Great College Street, Westminster; and Todmorden—T. E. Hammerton, Todmorden
Stevenson, James Richard, 8, Ampton Street, Gray's Inn Road; King's Road; and Birkenhead—C. Falcon, Liverpool
Steward, Frederick Fisher, 2, Cambridge Terrace; Whitehaven; and Great Ormond Street—H. Perry, Whitehaven; W. Perry, ditto; G. Helder, Great James Street
Stone, William Way, 16, Great Ormond Street—J. Rose, Aylesbury; R. Rose, ditto
Stubbs, Edward Phillips, 55, Grove Place, Brompton—F. Scudamore, Maidstone
Suckling, John, jun. 13, Dalby Terrace, City Road; and Birmingham—J. Suckling, Birmingham
Talley, William, 4, Spencer Street, Garnault Place; and the Briars, near Exeter—W. Burridge, Wellington; R. T. Head, Exeter
Teebay, Richard, Everton, near Liverpool—J. Yates, Liverpool
Thistlethwaite, William, jun. 2, Cowley Street, Titchborne Street; and Furnival's Inn—J. Fearenside, Burton; J. Raw, Furnival's Inn
Thomas, William Thomas, 15, Union Street, Carmarthen—L. Morris, Carmarthen
Turner, George, 2, Great Percy Street; and Great Torrington—W. A. Deane, Great Torrington; F. J. Cotton, King's Arms Yard
Turner, Hubert Francis, Kilburn—W. Turner, Brighton; G. M. Gray, Staple Inn
Utterton, Edwin, Earl's Wood, Reigate—Messrs. Dawes and Sons, Angel Court
Warden, George, 8, Shaftesbury Crescent, Pimlico; Kenton Street; and Egbaston—J. Suckling, Birmingham
Waterhouse, Robert, jun. 61, Acton Street, Gray's Inn Road; and Sheffield—E. Bramley, Sheffield
Watts, Edward, Gravesend—G. Crafter, Blackfriars Road, E. H. Hooke, Brabant Court
Waugh, George, jun. Worthing—G. Waugh, sen. Great James Street; R. Edmunds, Worthing
Weekes, Charles Henry, 4, High Street, Bloomsbury; and Lamerton—G. W. Snell, Callington; J. V. Bridgman, Tavistock
Welford, Thomas William, Hexham; and Newcastle-upon-Tyne—E. D. Welford, Newcastle-upon-Tyne
Westall, Harry John, Herne Hill; Rodney Terrace; and Frome—W. C. Cruttwell, Frome; J. W. D. T. Wickham, Frome
Whitefield, John Charles, 34, Penton Place, Pentonville; Cumberland Terrace; and Bristol—W. Gresham, Castle Street, Holborn; W. B. Cooper, Hatton Garden; G. W. Whitaker, Heathcote-street; W. Bartholomew, Gray's Inn; W. Bevan, Bristol
Wilkinson, John, 7, Maddox Street, York—W. Gray, York
Williams, William Benman, Corwen, Merioneth—D. Smart, Ruthin, Denbighshire; E. Walker, Corwen
Wilson, Jonathan, 1, Ampton Street, Lloyd Square, and Tunbridge Wells—W. Stone, Tunbridge Wells
Wilton, Thomas, Bilston—J. Willim, Bilston
Winterbotham, William, 2, Burton Crescent, and Cheltenham—J. B. Winterbotham, Cheltenham
Wratislaw, Theodore Marc, 6, South Street, Middle Queen's Buildings, and Rugby—W. F. Wrattislaw, Rugby; C. P. Allen, Carlisle Street
Wright, John, 5, Alfred Place, Brompton, Halsey Street, and Macclesfield—E. Procter, Macclesfield.

Added to the List pursuant to Judge's Orders.

Barker, Charles Munro, Sunderland—J. J. Wright, Sunderland.
Cobby, Cecil, 10, Warwick Court, Holborn; and Brighton—C. Cobby, Brighton
Edwards, Henry Richard, Farlington House, near Havant; and Scilly Islands—T. Surr, Lombard Street
James, Thomas, Huntingdon, and 15, Manor Place North, Chelsea—W. Fowler, Huntingdon
Mossman, George R. junior, Bradford, Yorkshire—G. R. Mossman, Bradford
Naters, Henry Trewhitt, Nassau Street, Soho; Sunderland; and Dorchester Place—G. W. Wright, Sunderland; F. Turner, Aldermanbury
Overton, Edward Francis, 15, Green Terrace, Clerkenwell; and Lanthetty Hall, Brecon—G. Overton, Merthyr Tydfil
Prickard, Hugh Powell, Briar Cottage, Putney; and Dderw House—J. Roberts, Truro; B. P. Squance, Coleman Street; E. Williams, Rhayader
Selby, James Addison, 17, Clifford's Inn; East Street, Albany Street; and West Malling—T. Selby, West Malling
Snowball, George Sunderland—G. W. Wright, Sunderland
Taylor, Matthew William, 2, Benyon Cottages, De Beauvoir Town; and Englefield Cottages—R. W. Beioley, Old Jewry Chambers; H. W. Vallance, Tokenhouse Yard; W. Cox, Pinner's Hall.

LEGAL INTELLIGENCE.

A Scene in Court.—On Tuesday afternoon, about two o'clock, considerable excitement prevailed in the principal Law Courts at Westminster Hall, in consequence of the following extraordinary conduct of Mr. Feargus O'Connor, one of the representatives of Nottingham. The honourable gentleman having a few minutes before the above-named hour entered Westminster Hall, he walked at a slow pace through the building, as far as the Lord Chancellor's Court, when, as if suddenly recollecting something, he stopped, gave his right leg a slap, and immediately entered the court. His conduct immediately became exceedingly strange, and, making towards his lordship, he was about to address him, when the learned judge told him to be seated. Instead, however, of doing so, the hon. member for Nottingham made his exit, and having entered the Court of Exchequer, he commenced beating a tune on the seats, &c. and, addressing the judge, said, "Ah, Sir Frederick, how are you? I am glad to see you." From the Exchequer he went to the Court of Common Bench and the Court of Appeal, where he looked wildly round. Many persons who had read of his previous extraordinary conduct in America, and believing him still to be in that country, could not be persuaded that the actor was the hon. member for Nottingham. Having left the court, Mr. O'Connor made his way out of Westminster Hall, when he walked gently down Parliament-street, followed by a number of persons. The unfortunate man looked very dejected, and not the least doubt can now be entertained that his intellect has become more impaired than ever.

A Treasury Warrant in Tuesday's *Gazette* formally arranges the rates of postage for letters and newspapers to the Falkland Islands and Monte Video.

Money Order Offices.—The following notice has been issued by the authorities of the General Post Office:—On the 1st June, the receiving office at Walham-green, Fulham, county Middlesex, served from London, will be opened as a major money-order office; and on the 8th June, the sub-post office at Wolverton, county Buckinghamshire, served from Stoney Stratford, will be opened as a major money-order office. Minor money-order offices will be opened at the under-mentioned places on the respective dates named—Beeston, Nottinghamshire, June 1; Darlaston, Staffordshire, June 6; Sandgate, Kent, June 1; Upper Mill, Lancashire, June 1; Wainfleet, Lincolnshire, June 1.—N.B. Postmasters are informed that Allendale, Hessle, and Reepham, mentioned in the Instructions No. 17, 1852, are respectively served from Carlisle, Hull, and Norwich, and they must supply the omission in their lists. Postmasters are also informed that in the new list of money-order offices recently forwarded to them it was erroneously stated that Oldbury was served from Dudley, instead of from Birmingham, and that Cranbourn was served from Dorchester, instead of from Salisbury. The necessary corrections must be made in the lists.

The Law Reform Bill.—A correspondent of the *Times* thus writes:—Sir, Having been in the House of Lords in a more favourable situation for hearing than your reporter, I beg to state precisely what took place on the important subject of Law Reform on Thursday evening. The Bill having been read a third time, Lord Truro inserted a clause on the subject of warrants for execution. Lord Denman then moved an amendment on the subject of the action of trover, which was carried. He then placed on the table two other clauses, one for the abolition of forms of action, in accordance with the recommendation of the Commissioners, and the Bill as it was first drawn; another for making the proceedings in ejectment similar to those in other actions, so that both parties may have placed upon the record the facts which they are to dispute or admit on the trial, and have full knowledge of the issue raised by the record. Both these amendments were placed upon the journals with a view to their full consideration in the next session, when Lord Denman promised that he would introduce a measure for their enactment. Of course they were not pressed but negatived, on Thursday last.

Precedence at the Scottish Bar.—In March last a committee was appointed by the Faculty of Advocates, to consider the question of precedence at the bar in the case of those who have held the office of Lord-Advocate or Solicitor-General. The committee, having considered the matter, reported to a meeting of the faculty last week in the following terms:—"The committee have considered the subject remitted to them by the faculty, with a full sense of its great importance, and an anxious desire to carry into effect the leading resolution on which the remit proceeded, by any eligible means that would command the general concurrence of the faculty. But they regret to report that, after the fullest deliberation, they find that the adoption of any step by the faculty for regulating precedence at the bar, so as to accomplish the object in view, is attended with such serious difficulties that they are under the necessity of recommending to the faculty not to take any such steps, but to leave the rules of precedence as they have hitherto stood." The meeting unanimously approved of the report, so that, as formerly, no counsel has precedence at the Scotch bar except the Lord-Advocate, the Solicitor-General, and the Dean of Faculty.

Governors of Colonies.—A list has been printed in a Parliamentary paper, of the names and salaries of the governors of colonies. There are forty-eight names in the list. The highest salary is given to the Earl of Elgin, as Governor-General of

Canada, who has 7,000*l.* a year, and the lowest to the Lieutenant-Governor of New Ulster, who has 400*l.* a year. There are three governors at 7,000*l.* a year, and several at 5,000*l.* a year.

ECCLESIASTICAL JURISDICTION.—The new Act (15 Vict. cap. 17), is to continue until the 1st of August 1853, and to the end of the next session of Parliament, the Act for continuing certain temporary provisions concerning ecclesiastical jurisdiction in England.

KENT MUTUAL (LIFE) ASSURANCE SOCIETY.—The annual meeting of the members of this society was held in the offices, Old Jewry, on the 26th ult. Mr. George Harrison presiding. Since the formation of the Society, up to the 31st day of March last, there have been received 540 proposals for the assurance of 131,839*l.* 0s. 5d. Of these proposals 420 have been accepted and completed, assuring 103,739*l.* 14s. and yielding in premiums 3,663*l.* 17s. 11d. The remainder have either been declined, not taken up, or now await completion. Upon the deaths which have occurred, the claims amount to 1,325*l.*

EXCISE SUMMARY PROCEEDINGS.—A Bill, which is now printed, has been prepared by Mr. Hamilton and the Chancellor of the Exchequer, to amend the Excise laws in this particular. By it the Commissioner of Inland Revenue may determine the penalties and forfeitures under the Act within the limits of the chief office.

JOURNAL OF PROPERTY.

Public Sales.

By Messrs. CHINNOCK and GALSWORTHY, at the Mart, June 3.—A reversionary interest falling in on the death of a lady, aged 58, to three policies of assurance for 2,100*l.* in the Equitable, Economic, and Union offices, several moieties of leasehold property at Lambeth and Islington, and freehold houses in Barbican and Princes-street, subject to certain contingencies—1,800*l.*

Freehold ground rents, amounting to 95*l.* 10s. per annum, secured on a public-house and twelve houses in Princes-road, Notting-hill—2,530*l.*

A freehold house, No. 4, Norland-place, Notting-hill; let at 65*l.* per annum, with fixtures—940*l.*

Leasehold house and shop, 57, North-street; let at 45*l.*, ground rent, 10*l.* 10s.; term 99 years, from 1822—410*l.*

Ditto house and shop, No. 58, North-street, same term, and ground-rent—410*l.*

MONEY MARKET.

ENGLISH FUNDS.

Bank Stock	221½		222	221	222	221¾
3 ℔ Cent. Reduced Annuities	99½	99¾	99⅝	99¼	99⅞	99⅞
3 ℔ Cent. Consols Annuities	100¾	100⅝	100¾	100⅝	100⅝	100¾
Consols for Account	100¾	100⅝	100⅝	100⅝	100½	100⅝
New 5 ℔ Cent Annuities ..	.	..	124	.		.
New 3½ ℔ Cent. Annuities ..	101⅞	102¼	102⅛	102¼	102¼	102¼
Long Annu. (exp Jan 5, 1860)	6⅞		6⅞	7		
Do. 30 yrs. (exp Oct. 10, 1859)						6¾
Do. 30 yrs. (exp. Jan. 5, 1860)						7¼
India Stock						276
India Bonds (1,000*l.*)		90				90*
Do. do. (under 1,000*l.*)....		85				93*
South Sea Stock						
Do. do. New Annuities ..						
Exchequer Bills, 1,000*l.*		72*	81*		81*	
Do. do. 500*l.*					81*	
Do. do. Small			75*	75*		

* Premium.

BIRTHS, MARRIAGES, AND DEATHS

BIRTHS.

CLARKE.—On the 30th ult. at Westbourne-grove, the wife of William Clarke, esq. of Bloomsbury-square, solicitor, of a daughter.

DE MORGAN.—On the 27th ult. at 11, Cavendish-road, St. John's Wood, the wife of George de Morgan, esq. barrister-at-law, of twin daughters, one of them still-born.

GURNEY.—On the 28th ult. Mrs. Sidney Gurney, of a son.

HOLLINSHEAD.—On the 31st ult. at Billinge Scar, near Blackburn, Lancashire, the wife of Henry Brock Hollinshead, esq. of a son.

HARRIS.—On the 29th ult. the wife of Stanley Harris, esq. solicitor, Barnet, Herts, of a daughter.

LOTT.—On the 30th ult. Mrs. Lott, of Bow-lane, City and Carlton-villas, Camden-road, of a son.

OAKLEY.—On the 28th ult. at Wonaston-court, Monmouthshire, the lady of Thomas W. Oakley, esq. of Lydart, Monmouthshire, of a son.

TAYLOR.—On the 28th ult. at 6, Eccleston-square, the wife of John Pitt Taylor, esq. barrister-at-law, of a daughter.

TOWNSEND.—On the 31st ult. at Swindon, the wife of J. Copleston Townsend, esq. of a son.

WYVILL.—On the 26th inst. at 13, Chester-street, the wife of M. Wyvill, jun. esq. M.P. of a son.

MARRIAGES.

BOWNAS, George, esq. solicitor, Newcastle-upon-Tyne, to Ellen, widow of the late Joseph Baylis, esq. of Mincing-lane, and daughter of the late Joseph Raw, esq. of Eastcheap, and Fitzgrove place, North Brixton, on the 18th ult. at St. Michael's, Stockwell, Surrey.

JARVIS, Lewis Whincop, esq. solicitor, son of Lewis Weston Jarvis, esq. to Emma, youngest daughter of the late Alexander Bowker, esq. by the Rev. Canon Wodehouse, on the 10th inst. at St. Margaret's Church, in King's Lynn, Norfolk.

DEATHS.

ALLAN, Louisa Maude, wife of George W. Allan, esq. of Toronto, Canada, and daughter of the Hon. Chief Justice Robinson, on the 13th ult. at Rome, aged 26.

BUTT, William, solicitor, on the 29th ult. at Ryde, Isle of Wight, aged 54.

BURNABY, Col. John Dick, formerly of the 1st Regiment of Foot or Grenadier Guards, and for upwards of thirty years a deputy-lieutenant and justice of the peace for the county of Leicester, on the 1st inst. at Evington, Leicestershire, aged 76.

CASWALL, Alfred Clarke, second son of Alfred Caswall, esq. barrister-at-law, on the 2nd inst. at Binfield, Berkshire, aged 5.

HUTCHINSON, John Massey, esq. barrister-at-law, of Heversham, Bucks, and Codrum, county of Cork, Ireland, on the 25th inst. at Luno-villa, Lancaster.

REID, Hugh, esq. town-clerk of Ayr, Scotland, on the 8th ultimo.

SLOAN, Mr. Thomas, law-stationer, of Mitre-court, Temple, on the 30th ult. aged 68.

TEED, Elizabeth, the wife of John Godfrey Teed, esq. Q.C. in Upper Harley-street, on the 30th ult.

THE GAZETTES.

Bankrupts.

Gazette, June 1.

BAKER, GEORGE, and GEORGE, jun. stock and share brokers, Threadneedle-st. June 11, at half-past one, and July 13, at eleven, Basinghall-st. Off. as. Stansfeld. Sols. Howard and Dollman, Fenchurch-st. Petition, May 31.

DOVER, GEORGE, builder, Cheltenham, June 16 and July 14, at eleven, Bristol. Off. as. Acraman. Sols. Price and Stuart, Wolverhampton; and Bevan, Bristol. Petition, May 25.

HILL, WILLIAM ROWLAND, silversmith, Birmingham, June 7 and July 3, at half-past ten, Birmingham. Off. as. Whitmore. Sol. Stanbridge, Birmingham. Petition, May 26.

JONES, JOSEPH, coal owner, Macken, Monmouthshire, June 16 and July 14, at twelve, Bristol Court. Off. as. Hutton. Sols. Abbot and Lucas, Bristol; and Birch and Davies, Newport. Petition, May 27.

JUTSUM, JOHN, licensed victualler, Trafalgar-road, Greenwich, June 17, at two, and July 13, at twelve, Basinghall-st. Off. as. Groom. Sols. Martineau and Reid, Gray's-inn. Petition, May 29.

KRETZSCHMAR, EMIL, manufacturing jeweller, King-square, Middlesex, June 17, at one, and July 5, at eleven, Basinghall-st. Off. as. Groom. Sol. Leverson, St. Helen's-place. Petition, May 25.

PARSONS, WILLIAM, retailer of beer, Merton, Surrey, June 8, and July 13, at eleven, Basinghall-st. Off. as. Graham. Sol. Upward, Throgmorton-st. Petition, May 17.

Gazette, June 4.

BLAKE, JOHN, innkeeper, Attleborough, Norfolk, June 15, at one, July 20, at twelve, Basinghall-st. Com. Fonblanque. Off. as. Graham. Sol. Anderson, Bargeyard chambers, Bucklersbury. Petition, June 2.

JENKINS, THOMAS, innkeeper, Tredegar, Monmouthshire, June 16 and July 14, at twelve, Bristol. Com. Stephen. Off. as. Miller. Sols. Abbott and Lucas, Albion Chambers, Bristol. Petition, June 3.

MARSDEN, JOHN, laceman, Manchester, June 14 and July 13, at twelve, Manchester. Off. as. Pott. Sols. Mottram, Knight, and Emmett, Birmingham. Sale, Worthington, and Shipman, Manchester.

WEBB, JOHN, brazier, Rugby, Warwickshire, June 15 and July 13, at half-past eleven, Birmingham. Com. Daniell. Off. as. Valpy. Sols. Smith and Small, Buckingham; and E. and H. Wright, Waterloo-st. Birmingham. Petition, May 18.

BANKRUPTCY ANNULLED.

Gazette, June 4.

Lackie, D. F. merchant, Fenchurch-st. June 4.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Anderson, T. U. mercer, first, 9s. 11½d. Valpy, Birmingham.—*Bacon*, C. tailor, first, 3s. 1d. Hirtzel, Exeter.—*Barker*, J. merchant, first and final, 5¼d. Baker, Newcastle.—*Bate*, J. builder, first, 10s. Whitmore, London.—*Boobbyer*, D. ironmonger, first, 9s. Hirtzel, Exeter.—*Cockings*, S. timber-merchant, first, 3½d. Hirtzel, Exeter.—*Cook*, J. builder, first, 1s. 3½d. Whitmore, London.—*Common*, M. draper, first and final 1s. 10½d. Wakley, Newcastle.—*Dalton* and *Edwards*, iron founders, first, 2s. 9½d. Whitmore, Birmingham.—*Elliott*, J. builder, further (on account of first of 7s. 3½d.) 7½d. Whitmore, London.—*Harris*, T. grocer, first, 4s. 6d. Hirtzel, Exeter.—*Laws*, G. linen draper, first, 2s. 7d. Edwards, London.—*Long*, F. importer of lace, first, 1s. 3d. Groom, London.—*Meales*, C. L. grocer and oilman, first, 1s. Whitmore, London.—*Morris*, H. grocer, second, 3s. 6d. Valpy, Birmingham.—*Notting*, J. currier, third, 10d.; and on new proofs, 6s. 7d. Edwards, London.—*Player*, A. E. grocer, &c., second, 2d. Whitmore, London.—*Robson*, E. boat builder, final, 8d.; and first and second on new proofs, 9s. 9d. Wakley, Newcastle.—*Wadley*, J. first, 1s. 3d. Groom, London, [illegible] colonial broker, [illegible] and final, 1½d.

INSOLVENTS' ESTATES.

Apply at the Provisional Assignee's Office, Portugal-street, Lincoln's-inn-fields, London, between the hours of eleven and three.

Byrom, H. contributor to newspapers, 2s. 8½d.—*Davies*, E. builder, 4d.—*Farrow*, E. plumber, 5¼d.—*Gandell*, F. civil engineer, 5½d.—*Hunter*, W. cheesemonger, 1s. 6½d.—*Mant*, W. baker, 1s. 0½d.—*Tompkins*, H. farmer, 1s. 2½d. *Wood*, B. jun. spirit merchant, 11½d.

Crouch, W. butcher, 9½d. Apply at the County Court, Hastings.—*Goodchild*, J. farmer, 3s. Apply at the County Court, Reading.—*Holroyd*, W. umbrella maker, first, 2s. 7½d. Apply at the County Court, Rochdale.—*Philips*, P. H. corn chandler, 3½d. Apply at the County Court, Hastings.—*Pickford*, J. retailer of beer, dealer in horses, and toll-gate keeper, 4½d. Apply at the County Court, Hastings.—*Simes*, E. labourer, 2½d. Apply at the County Court, Hastings.

Assignments for the Benefit of Creditors.

Gazette, May 25.

Beaumont, G. schoolmaster, Southport, Lancashire, May 20. Trust. Mr. Welsby, Southport.—*Hall*, H. eatinghouse keeper, Manchester, May 15. Trust. H. F. Pankhurst, auctioneer and valuer, Manchester. Sol. W. M. Atherton, Manchester.—*Hollis*, W. provision dealer, Chapel-st. Salford, Lancashire, April 30. Trust. J. Thomas, auctioneer and appraiser, Manchester. Sol. T. G. Blain, Manchester.—*Jeavons*, P. innkeeper, New Vauxhall, Queen's-cross, Dudley, Worcestershire, May 11. Trusts. G. J. England and W. Smith, maltsters, Dudley; W. S. Kinsey, general commission agent, Birmingham; and W. Granger, Queen's-cross, builder. Sols. Robinson and Fletcher, Dudley.—*Jones*, J. staymaker, Highst. Poplar, April 27. Trusts. G. Hodges, victualler, Finch-lane, and J. Darbyshire, King-st. Cheapside. Sol. R. Cole, Takenhouse-yard.—*Smith*, H. B. brewer, Well-end, Shenley, Hertfordshire, May 18. Trusts. J. Hall, maltster, London Colney, and G. W. Miller, builder, Barnet. Sol. J. I. Hindmarsh, Crescent, Jewin-st.—*Sprent*, H. J. grocer and tea dealer, Chatham, April 5. Trust. A. Fincham, wholesale tea dealer, Martin's-lane, Cannon-st. Sols. Wright and Bonner, London-st. Fenchurch-st.—*Street*, J. grocer, Westbourne-place, Bishop's-road, Paddington, May 18. Trusts. J. I. Travers, St. Swithin's-lane, and T. Conway, Maiden-lane, wholesale grocers. Sols. H. Webb, Piccadilly, and M. Travers, Throgmorton-st.—*Sutcliffe*, J. grocer, Heaton Norris, Lancashire, and tailor and draper, Stockport, Cheshire, under the firm of Sutcliffe and Son. Trusts. I. Warburton, grocer, and P. Rowlance, butter merchant, Manchester. Sol. T. Sutton, Manchester.

Gazette, May 28.

Billings, R. draper, Torquay, Devonshire, May 21. Trusts. F. Dennant and J. Bradbury, warehousemen, Aldermanbury. Sols. Sole, Turner, and Turner, Aldermanbury.—*Fitzhugh*, J. and *Cornforth*, W. H. salt merchants, Liverpool, May 19. Trusts. W. J. Fernie, ship broker, and H. C. Baloo, accountant, both of Liverpool. Sol. W. Pritt, Liverpool.—*Miller*, J. W. hatter, Tipton, Staffordshire, May 11. Trusts. C. Gillham, hat manufacturer, Liverpool, and J. Marks, cap manufacturer, Birmingham. Sol. W. P. Allcock, Birmingham.—*Roberts*, J. innkeeper, Wrekin Tavern, Broad-court, Drury-lane, May 25. Trust. S. M. Hawkes, brewer, Walham-green. Sol. W. Shaen, Bedford-row.

Partnerships Dissolved.

Gazette, May 25.

Cartwright, W. and *Evans*, G. iron founders, Tipton, April 28. Debts paid by Evans.—*Coward*, E. sen. and *Melland*, W. E. manufacturers of checks and striped and other cotton goods, Manchester, Dec. 31. Debts paid by Melland and E. Coward, jun.—*Fisher*, J. and *Joce*, T. wine, spirit, and ale and porter dealers, Barnstaple, May 15. Debts paid by Fisher.—*Freeman*, J. W. and *Hart*, W. coal merchants, Dover, May 18.—*Hickman*, A. *Pearson*, J. H. and *Hickman*, G. H. iron and timber merchants, Bilston, May 21.—*Leaq*, S. and *Pope*, W. H. shipwrights and boat builders, Liverpool, May 22.—*Lord*, W. and *Warburton*, W. cotton waste dealers, Shaw, near Oldham, May 19.—*Newman*, H. A. and *Robinson*, B. wholesale clothiers, Jewry-st. Aldgate, May 24.—*Newton*, G. H. *Wilkin*, R. and *Edwards*, W. F. cement dealers, Liverpool, as regards Wilkin, May 24. Debts paid by remaining partners.—*Payne*, E. R. and C. goldsmiths, silversmiths, jewellers, and appraisers, Bath, May 21. Debts paid by Payne.—*Roberts*, T. J. and T. provision dealers, Manchester, May 14. Debts paid by T. J. Roberts.—*Sarsfield*, H. and *Downing*, S. metal merchants, Liverpool, April 30. Debts paid by Sarsfield.—*Steele*, W. and *Forrester*, T. brickmakers, Trentham, May 25. Debts paid by Steele.—*Stillwell*, G. J. and *Fletcher*, W. saw makers, Thomas-street, Oxford-street, May 6.—*Summers*, T. and F. gold and silver beaters, Little Britain, May 22.—*Swales*, R. and *Lodley*, J. rope makers, Whitby, Jan. 10. Debts paid by Swales.—*Taylor*, W. *Parkin*, S. *Hamblet*, T. and *Warren*, G. glass manufacturers, Brotherton, as regards Taylor, May 22.—*Thrupp*, R. *Henshaw*, C. and *Thrupp*, H. E. (dec.) coach makers, Portman-sq. as regards Henshaw, May 17. Debts paid by Thrupp.—*Vaughan*, J. and *Sheldon*, E. merchants, Austin Friars, May 22. Debts paid by Sheldon.—*Wild*, A. and *Spencer*, J. cotton warp sizers, Bradford, May 21.—*Wood*, W. J. and *Walker*, W. and P. jun. shirt and stocking manufacturers, Manchester, May 19. Debts paid by W. and P. Walker.

Gazette, May 28.

Caldicot, A., A. jun. and E. *Powell*, W. J. and *Willcocks*, J. Cheapside, May 26. Debts paid by continuing partners.—*Davies*, R. *Williams*, J. jun. and *Williams*, W. limestone traders, Ystradgynlais, May 25.—*Dufton*, J. and *Hattersley*, C. painters, Armley, Leeds, May 25. Debts paid by Dufton.—*Ferguson*, W. and R. butter, bacon, and cheese merchants, May 20. Debts paid by W. Ferguson.—*Hay*, W. and *Paget*, W. licensed victuallers, Kent street, Southwark, May 24.—*Holmes*, H. and F. linen drapers, Bradford and Bingley, April 23. Debts paid by F. Holmes.—*Hooper*, R. V., J. K. and J. K. jun. importers of foreign wines and spirits, Queenhithe, as regards R. V. Hooper, Dec. 31. Debts paid by J. K. Kooper and J. K. Hooper, jun.—*Longfield*, W. and C. linen drapers, Bradford, May 10. Debts paid by C. Longfield.—*Longridge*, M., W. S., R. B., C. J., J. A. and H. G., *Lambe*, D. and D. jun. *Reynolds*, J. W. and *Beghie*, T. S. engineers and iron founders, Bedlington, as regards J. A. Longridge and J. W. Reynolds, April 1.—*Ogley*, F. and *Thompson*, C. H. Hill Top brewery, near Conisbrough, May 20, 1851. Debts paid by Ogley.—*Oppenheim*, H. and *Joyce*, J. A. commission merchants, Broad-street, May 13. Debts paid by Joyce.—*Pawling*, W., H., A. and M. farmers, Shrivenham, March 25.—*Sears*, J. and J. N. booksellers, stationers, &c. Penton-street, Pentonville, May 20.—*Smith*, S. and *Fox*, E. mill owners, Batley Carr, near Dewsbury, May 1. Debts paid by Smith.—*Staniforth*, T. and J. with H. (dec.) scythe and sickle manufacturers, and farmers, Hackenthorpe, as regards J. Staniforth, May 5. Debts paid by T. and H. Staniforth.

THE NEW LAWS OF THIS SESSION, 1852.
THE LAW REFORMS.

NOTICE.—The following important *New Laws of the Session*, including the New Procedure Acts, will be published as soon as possible after they become laws.

Each will be transmitted by the next post after publication (paid) to those Members of the Profession who will *immediately* forward their orders to the Publisher, so as to enable him to regulate the impression, and make his arrangements accordingly.

CONTENTS.

To Readers and Correspondents.

"A. B.'s" *question is purely of law and not of practice, upon which a formal opinion should be taken.*

"G. G."—*Certainly* not. *It is useless to publish the query.*

"A COPYHOLDER" (Lincoln's-inn).—*We withhold his letter until the fate of the bill is known.*

"A. B."—*He is not actually ineligible, but he would find great difficulty in being called.*

THE LAW TIMES.

SATURDAY, JUNE 12, 1852.

THE LAW REFORM BILLS OF THE SESSION.

AT length, after much delay and doubting, it has been determined that all the pending measures for the Reform of the Law shall be passed during the present Session, which, barren in all beside, will thus result in producing greater changes in the practice of the Law than have been effected before in a whole century of legislation. An entire revolution is to be made in the practice both of the Common Law Courts and of the Equity Courts. The Lawyers will have to learn their lesson afresh, and, what is harder still than learning, to *unlearn*. In this it will be the endeavour of the LAW TIMES to give them effective assistance, for the which purpose we have made arrangements with very competent writers to supply a series of papers, that will clearly and minutely describe the changes that will have been effected, and give the fullest instructions to practitioners in what manner they will be obliged to proceed in future. Our learned contributors will also make it their business to introduce the new rules and orders, and to shew their bearings upon practice, as well as watch the decisions of the Courts upon the new procedure, and point out the manner of their operation. To the Attorneys more particularly, who are required often to proceed at once, without opportunity for obtaining advice and assistance, and especially to the *country Attorneys*, such a series of instructive papers on the *new practice* of their Profession will, we trust, prove to be useful and acceptable, as it will be our aim to keep the Profession in the provinces as well informed upon the progress of the new law as if they were themselves watching it in Westminster Hall.

THE ATTORNEYS' TAX.—DUTY OF THE ATTORNEYS.

THE Attorneys have now the power to help themselves. Will they use it? Justice is within their reach. Will they secure it? They may *command* success. Will they do so?

They have a special grievance inflicted upon them as a class, and which has nothing to do with political or party differences. As a *class*, they are bound to seize the opportunity that now offers itself to procure complete redress.

A general election is the time for such an effort. Almost every Attorney is engaged in it. In counties and in boroughs the services of the Profession are required. Let the condition of such service everywhere be a pledge to vote for the repeal of the Attorneys' Tax. No matter what party the candidate professes, whether he be a Conservative, a Whig, a Radical, or a Chartist; whether a supporter or an opponent of the Government, it is a duty which an Attorney owes to himself and to his Profession to exact from him an unequivocal promise, at all times, and under any circumstances, to vote for the repeal of the Attorneys' Tax.

Because it is a measure of *justice*, and justice does not depend upon circumstances. A tax levied upon one class, from which other classes are exempted, and which that class is required to pay in addition to the other taxes to which it is subjected in common with the rest, is an essential injustice, an unqualified wrong, which no argument of expediency can justify. It is not an excuse that the revenue is wanted, because the State has no right to supply its wants out of the purses of one class for the relief of the rest. If the money is necessary, it should be raised by an *equal* levy.

This is the foundation upon which we base our exhortation to the Attorneys, to avail themselves of the opportunity that now offers, without any consideration of party or politics, but as a matter of personal right, to require of *every candidate*, as a condition of their support and assistance, a pledge to vote for the repeal of the Attorneys' Tax.

THE COUNTY COURTS AMENDMENT BILL.

THIS Bill has passed through committee, and is to become law during the present session.

One amendment has been introduced, which we cannot see without deep regret.

Mr. SCHOLEFIELD has inserted a provision that Articled Clerks may practise as Advocates in the Courts, on the same footing as Barristers and Attorneys.

This has been, we are aware, very earnestly desired by many of the Articled Clerks, on whose instance Mr. SCHOLEFIELD acted. Many letters have been addressed to us by our young friends upon the subject, supporting this concession to them, and combatting the objections we had made to it. But the more we have considered the subject, the more strongly do we feel the impropriety of the arrangement.

Articled Clerks should not forget that they will soon become Attorneys; that they have but five years of clerkship, and thirty or forty years of attorneyship. However pleasant such an importance given to them may be during *three* years of their clerkship, they should not forget that it will be very *un*pleasant to them during their *thirty* years of attorneyship. They are, in fact, sacrificing the future to the present: the respectability of a lifetime to gratify the vanity of three years of boyhood.

It seems to be forgotten, also, that Articled Clerks usually *end* their clerkship at the age of twenty-one. Thus, the *whole* of that period of probation is but boyhood. As soon as they become men, they cease to be clerks, and become Attorneys.

Now, we put it to them and to the Profession, whether it is in accordance with principle, if it is respectful to the Courts, if it is not throwing something like ridicule upon the Profession itself, to permit boys, who are only learning their profession—who are as yet but pupils in it—to practise there with and against the Barrister and the Attorney. If the Bill passes as it is now, a boy of fifteen may go into the court and claim as a right to practise there, to talk of a grey-headed Attorney as "my learned friend," and bandy arguments with Barristers of standing. This will doubtless be "good fun" for them, so long as they are but clerks; but when they become Attorneys, they will feel very differently. They will then be painfully conscious of the inconvenience always, and often the ridicule, of going into court, to conduct a cause against one who is a boy in age, a pupil in position, whom etiquette and the custom of the world will not permit them to treat as an equal, and whom politeness to one of the same rank in society would forbid them to snub.

Besides, the reason that limits the practice to Counsel and Attorneys is, that they are *skilled*; the reason why all persons who pleases to do so are not permitted to go into the County Courts and practise there, is that they are *unskilled*. Surely that reason applies equally to a Clerk. He is only a learner: he is *seeking* knowledge, he has not got it; and why should an *unskilled* Articled Clerk be permitted there more than a *skilful* writing clerk, or an accountant, or an unskilled agent?

Again, even an Articled Clerk is *a servant*, and, upon principle, we should object to *any* servant being permitted to practise as an Advocate in *any* court. The responsibilities of advocacy are so great, that only a principal should be allowed to undertake them.

Nor is this all. The County Courts particularly require to be sustained, and not to be lowered, in public esteem. Respect is much dependent upon appearances. Clerks are not permitted to practise in any other courts in the kingdom, even the lowest. To permit them to do so in the County Courts, will be to convey to the public mind the impression that the County Courts are a *lower* grade of tribunal than any other. It will be argued, not unnaturally, nor illogically, that a tribunal before which a boy of fifteen is allowed of right to be heard as an advocate, must be a very insignificant and despicable tribunal, or such child's play would not be permitted there. And, as is always the case, they will soon *become* what they appear.

The better portion of the Profession will not like to subject themselves to conflicts with boys, or with the servants of their rivals in the same town, and so will withdraw themselves from practice in the County Courts. The Bar will do the same, and they will either be left in the hands of the Clerks, or a few of the least reputable of the Attorneys alone will enter them.

Then it is easy to foresee the *frauds* that will be practised under cover of this provision. A concocted clerkship will be a cloak for most convenient arrangements between a silent Attorney and a talkative County Court Agent. There is no reason why an articled clerkship should not be indefinite in its terms. It does not necessarily end in five years; it may be extended to twenty, or to a lifetime.

To *genuine* Clerks it will be of the smallest present advantage, because they could not so practise for more than two or three years, against which they must set off the inconvenience that will be felt by them, as soon as they cease to be Clerks and become Attorneys. It is only to *sham* Clerks, by arrangements so purposely made, that the privilege will be of any *substantial* worth, and their gain will be at the cost of the *real* Clerks themselves, when, in their turn, they are admitted into the Profession.

For these reasons we trust that a provision, inserted without discussion, and probably in ignorance of its real bearing upon the interests of the Profession and the reputation of the Courts, will be rescinded on the third reading of the Bill, or struck out by the House of Lords, when it shall go back to them for their consent to the amendments.

And those members of the Profession who agree with us in opinion as to its impropriety should petition the Lords to this effect *without delay*.

PROFESSIONAL PROSPECTS.

"It is sport to you; but it is death to us."

It is very well for the newspapers to make merry at a scene in the C. P. in the midst of Term, the Judges entering in state, received by one wigged and two unwigged counsel, a bow made and returned, and their Lordships walking out again, *because there was nothing to do.* The incident is a serious *fact*, and deserves to be treated seriously. It is a public proof given of that which we, who are "behind the scenes" of the Profession, have long foreseen, have often foretold, have, we believe, been ridiculed for prophesying. We have watched its gradual coming for many years. We have warned our brethren over and over again of the ruin that was approaching. We were not content with indicating the danger,—we took some pains also to point out the path of safety. *Before* the County Courts were established, we told them that the country was bent upon having cheaper justice and simpler law; we shewed in detail how this might be given without, at the worst, much injury to the Profession, and, as we believed, with positive advantage to it. We laid before them a carefully digested plan for a complete system of local courts by a very simple, very inexpensive, but very efficient, improvement in the *existing* machinery of justice, by the remodelling of the Courts of Quarter Sessions, giving to them paid chairmen and a civil jurisdiction. The plan was universally approved, but none would *exert* themselves to bring it before the Legislature, and to offer it as the *voluntary* contribution of the Lawyers to Law Reform. Some were averse to change, others would not take the trouble, and so it died in its inception. The consequences we have seen. As the Lawyers would not take the initiative in Law Reform, the country took it out of their hands, and made a law that had no regard for the Lawyers. The County Courts were established; they speedily became formidable rivals of the still unreformed Superior Courts; they stole away the best of the business; they have reduced them to the condition in which we now behold them—one Court without business in the second week of the Term, the others almost exhausted, the Bar already half destroyed, and the prospect darker even than the dark present.

In such a condition of affairs, is it not melancholy to read of some thirty-five *calls to the Bar* during the past week? What madness impels men to enter in such crowds a Profession already so overstocked that it cannot yield a maintenance but to a small fraction of its members? How strange that, just when the Bar requires to be reduced by four-fifths, in order to equalize supply and demand, thirty-five new men should be found to join it in one week, and thus to increase the evil, which cannot be cured but by a long and painful process of suffering—the heart-sickness of hope deferred,—the depressed energies,—the wanton waste of so much good youth, of hands and heads that might be employed so happily for themselves and so usefully to others—the consciousness of not being *wanted* —the feeling that there is not a future even to dream of! Such *is* now the condition of the young Barrister: he is not called to honour and profit, but to idleness, poverty, and hopelessness.

However, there is one consolation. The demand for employment in almost all other occupations is unusually great. Never before were so many and such various fields of enterprise open to industry and energy. The overflowing numbers of the Bar may be reduced to some better proportion to the diminished amount of business, without all that misery which would have attended the process of thinning, a few years since. Our colonies have opened an indefinite demand for assistance, with almost certainty of fortune. To the many who have asked our advice in their present straits, we repeat the exhortation, not to waste the best years of their lives in a pursuit that offers no present livelihood, and little prospect of future advantage, but to seek for fortune where she may be more surely found.

COMMON LAW PROCEDURE BILL.

It is not to be doubted now that this Bill will in a few days receive the assent of the House of Commons, and in due course become law. With all its deficiencies and imperfections, we accept it as an improvement, so far, on the present system. If it knocks off one or two trifling half-guinea fees, hitherto paid to the Bar, and never felt by the suitor, it also does away with the barbarous, though generally harmless, absurdities of profert and express colour; if it preserve a system of pleading, worthy only of a barbarous age, it at all events permits suitors to state these pleadings in the language of the nineteenth, instead of, as hitherto, in that of the sixteenth, century. But if we be asked whether the Common Law procedure of Westminster has been so simplified or cheapened as to induce suitors to come to the Superior Courts, we unhesitatingly answer that it has not. The Superior Courts had a last chance of recovering the legal business of the country, and if their procedure had been at once adapted to the ideas, the feelings, and the necessities of the times, it is extremely likely that suitors would again have sought the enlightened law of the Judges at Westminster, instead of the rough and ready justice of the County Courts; and the junior Bar would have regained a practice in which they would have been educated for the important duties of the Bench. But, in our view, this last chance is irretrievably gone, and nothing remains now but to confer a bankruptcy and an original equity jurisdiction on the County Courts, to which it will be better that, as soon as possible, five-sixths of the junior Bar should finally resort. A *local* administration of justice, cheap and speedy, if even it be not of first-rate quality, is evidently that on which the people of this country have resolved, and the law reformers of the capital and the House of Lords refuse to give such advantages to the suitor seeking justice in the Superior Court as may counterbalance the necessary extra expense and delay of a centralized system. We must henceforth, therefore, look upon the Legal Revolution, for such the adoption of the local principle may be termed, as a *fait accompli*. The only remedy for the pauperised junior Bar we have already pointed out; the other sufferers will be the agency houses here; but they will meet with little sympathy indeed. The country Attorneys all over England will be the great gainers, in point of emolument, by the extension of the new local system; but the whole public will be also gainers by the change, if it be in nothing else than "knowing the worst of it," when they lose a cause in the County Court.

We are induced to make these observations in the shape of reply to several communications that have been addressed to us in reference to the probable effects of the Common Law Procedure Bill. That Bill, when it becomes law, and the procedure under it, will form, as we have intimated already, the subject of a series of articles explanatory of its provisions. In the meantime, we may inform our correspondents and readers generally, that the new system will only come into operation on the 1st of next November; and long before then, the Law Times edition of the Act will be in the hands of the public. We have to thank one or two of our readers for suggestions, which we will transmit to the editor of the Act. It would clearly be inopportune to prepare a "Practice," properly so called, for it will be some time before the Courts at Westminster will have opportunities of giving any decisions regulating the new procedure. But this edition of the Act will be as complete a "practice" as circumstances will admit of, and will contain all the forms of proceedings likely to be useful or necessary, or which ought to be found in a hand-book for the Profession.

THE LAST OF THE GIANTS.

The equanimity of the Court of Common Pleas was last week rudely disturbed by the appearance of a monster law-suit, such as those that live in the legends of Westminster Hall, are talked of at the Bar mess, or form topics of the reminiscences of veteran attorneys, discoursing to the juniors at their clubs of the faded glories of the law. There *were* giants in the earth in those days. The race is not even yet quite extinct. One has lived to this time, and its apparition in Westminster Hall has set many a briefless listener lamenting that he had not the good fortune to have existed half a century ago, and reflecting that in a few months such god-sends to the Profession will be swept away for ever. The story is thus condensed by one of the newspapers:—

In the Court of Queen's Bench at Westminster, on Monday, there was argument about a wonderful bill of costs. Mr. Parker the carrier, sued the Great Western Railway, for surcharges on parcels during four years; and he was successful. The notice of particulars in the action referred to twenty-one thousand distinct carrying transactions; it was written on forty-one folio volumes, of which the twenty-first part was exhibited to the Court, and was charged in the bill of costs at 1,300*l.*; it had taken an attorney and nine clerks three years (6,666 hours) to prepare it. Other items were somewhat in proportion to this, but not quite so amazing. The Master had disallowed the charge of 1,300*l.* and allowed only 200*l.*—100*l.* for the draught, 175*l.* for one copy, and 25*l.* for paper; and the plaintiff now sought to get a better allowance. The Judges of the Court were all extremely excited at the affair: they thought the Master had allowed too much—the proving of these matters need not have cost more than 20*l.*; and they refused to help the plaintiff.

Think of this—thirteen hundred pounds charged for a *notice of trial!* Imagine the

cruelty of the Court that could reduce such fee to a paltry 100*l.* and call *that* too much. What degenerate days are these; what petty minds men have! How the Judges have contracted their notions; how the Bar has fallen to look upon the reduction of 1,300*l.* to 100*l.* as a matter for a jest; and how shrunken the conceptions of a fat case by the Attorneys, when any one of them could be found to object to 1,300*l.* as too large a fee for giving notice of trial, and tender 100*l.* in full!

But the last of the Giant Law-suits has been slain by the ruthless hands of Sir JOHN JERVIS and his brethren of the Court of C. P. The monster shewed, indeed, only a part of himself, but it was enough to insure his destruction. If so vast was his little toe,—all of him that he could squeeze into the court,—if *that* measured so much, what must have been his whole body? Is it possible to guess. Can any of our readers calculate? *Ex pede Herculem.* Give Dr. GRANT the smallest bone in the body of an extinct animal, and he will tell you precisely what were the dimensions of its whole carcase. Can no comparative anatomist, learned in the physiology of the law, inform us what must have been the entire cost of an action in which the notice of trial was 1,300*l.*? But the sum must not be stated in figures, or it will not be comprehended. Let it be put in a measurable and intelligible shape, as we convey a notion of the girth of the globe, or the distance of the sun. How many times round the world would stretch the shillings required to pay it, each placed side by side; how many men would it take to number them in twenty years, each counting so many per minute.

This would preserve to future ages some record of the last of the Legal Giants, in the shape of a law-suit, who has made his appearance, strange to say, immediately before the extinction of the race by the ruthless and reckless artillery of the Common Law Procedure Bill.

GOSSIP OF WESTMINSTER HALL.

BY ONE OF THE BRIEFLESS.

WHETHER from the scarcity of business now brought into the Superior Courts, or from the celerity with which it is despatched when brought there, the junior Bar have positively *nothing* to do. Some idea of the hopeless want of work that has come upon us may be derived from the fact, that within little more than a week the Court of C. P. has twice adjourned, because it had nothing else to do. The scene on Friday, the 4th ult. was both humourous and melancholy. JERVIS, C.J. CRESSWELL, J. and TALFOURD, J. had taken their seats as usual, when an ominous silence pervaded the Court. The Bar was all but deserted;—three learned gentlemen, wigless, and one learned Serjeant professionally adorned. After waiting due time, the Judges mildly demanded of the Bar if they had anything to move, and the Bar as mildly made reply that they had not, upon which, as there was nothing to be moved but themselves, their Lordships immediately moved off. It is also a well-known fact, that when Term closes on Saturday night, there will not be three important matters undisposed of in all the three Common Law Courts, an occurrence unprecedented in legal history. If this state of things betokened that her Majesty's subjects were become less litigious than of yore, less inclined to "take the law" of their enemies, we might regard it without repining, even with congratulation: but it is not so; the County Courts are filled with business to overflowing; that business, thanks to Sir JOHN JERVIS, is altogether in the hands of the Attorneys, and the sooner we of the Bar assume the pick of the Australian miner or the crook of the Australian shepherd, the sooner will we avert the catastrophe impending imminently over our heads.

The room in which the Nisi Prius Court is held is very inconvenient, and up four flights of stairs. Mr. Justice WILLIAMS made, on Thursday, some very severe remarks upon this, and characterised it as utterly unworthy of the administration of justice for any country. It is to be desired that this evil should speedily be remedied, and fitting accommodation provided for the Judge sitting at Nisi Prius.

The most interesting case that has occupied the attention of the Courts during the past week has been an application to the Court of Q. B. by General Sir CHARLES NAPIER, G.C.B. for a *mandamus*, directed to the Honourable East India Company, requiring them to pay him 2,019*l.* being a sum stopped by them out of his pay as Commander-in-chief of the Indian army. The circumstances of the case may be shortly stated, as follows:—

During Sir CHARLES NAPIER'S command in Scinde the army acquired very considerable booty, which was ceded by the Crown to the East India Company for distribution amongst the capturing army. In making this distribution, it is alleged that the officials of the Company, by an error in distributing the portions, omitted to assign to the Ameers of Scinde the share which ought to have been allotted to them. In consequence of this error, it is alleged that Sir CHARLES and the rest of the army received a larger proportion than they were entitled to. After the discovery of the mistake, the East-India Company forcibly detained from the accruing pay of the officers and soldiers the amount of the alleged overpayment. Taking advantage of Sir CHARLES'S subsequent appointment to supersede Lord GOUGH in 1849, they have deducted, in furtherance of the forcible restitution, the sum which now forms the subject of dispute. On behalf of the army of India, many of whom have greatly suffered by their arbitrary proceedings, Sir CHARLES determined to bring the matter under the notice of an English Court; but having no sufficient contract with the East-India Company to found a legal right to his pay, his application has not been successful. In pronouncing its decision, the Court has laid down the doctrine, that as between the Indian Army and the East-India Company no legal liability can be fastened upon the latter to pay any member of the army. This decision certainly places the Indian army in a somewhat precarious position: it may be very consoling to the feelings of the brave men who peril their lives in the service of the Company to reflect that their profession has been pronounced to be without doubt an honorary profession; but such a reflection will be very far from welcome to the widows and orphans, whose little all is thus abandoned to the caprice of the powers that be in Leadenhall-street.

ERRATUM.—Owing to an accident which prevented the writer from correcting the proof of his former article, a rather absurd error was suffered to creep in. As the article was printed, it asserted that the appeal of the WAGNER party from the decision of Vice-Chancellor PARKER, was at the "*expense*, instance," &c. of Mr. BETHELL: this is, of course, not so, the sentence was intended to read "at his *express* instance."

THE LEGISLATOR.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Monday, June 7.

Metropolitan Sewers.

BILLS READ A SECOND TIME.

Monday, June 7.

Corrupt Practices at Elections.

Wednesday, June 9.

Disabilities Repeal.

Thursday, June 10.

Appointment of Overseers
Woods, Forests, and Inland Revenues.

BILLS READ A THIRD TIME AND PASSED.

Monday, June 7.

Scotch Mills for Flax (Ireland)
Militia Bill
Passengers Act Amendment.

Thursday, June 10.

Navy Pay
Poor Law Board Continuance (Ireland).

PRIVATE BUSINESS TRANSACTED.

BILLS READ A THIRD TIME AND PASSED.

Monday, June 7.

Birkenhead, Lancashire, and Cheshire Junction Railway
Chester and Holyhead Railway
Clarkson's Estate
Commercial Gas Company and British Light
Midland Great Western Railway of Ireland
Shrewsbury and Birmingham and Shrewsbury and Chester Railway
York and North Midland Railway
Asthall and Bushland Road.

Tuesday, June 8.

Watson's Hospital Estates
South Yorkshire Railway and River Dun
Exeter Roads.

Wednesday, June 9.

Cambridge and Ely Roads.

Thursday, June 10.

Balmoral Estate
Lyth Inland Roads.

SESSIONAL PRINTED PAPERS.

Par. Num.
197. Superannuations, &c. in Public Departments—Accounts
Spirits—Return
389. Navy—Return
414. Westminster Bridge—Copy of Mr. Walker's Letter
415. New Palace, Westminster (the Great Clock)—Memorial
318. Royal Mail Steam Packets—Return
359. Ships—Accounts
411. Custom Houses (Canada, &c.)—Return
417. Pimlico Improvement Bill—Plan and Estimate
420. Marble Arch, &c.—Returns
395. Metropolis Water Supply Bill and Chelsea Waterworks Bill—Minutes of Evidence
Census of Ireland for the year 1851—Part 1 (County of Kilkenny)
Mr. Erskine Mather—Correspondence
Hostilities with Burmah—Papers
431. Bills—Savings Banks (Ireland)
439. — Disabilities Repeal
430. — Whichwood Forest
432. — Whittlebury Forest
415 — Metropolitan Sewers
Surrender of Criminals—Convention with the French Republic
361. Education, India—Return
406. Customs, Excise, &c.—Account
427. Wine and Spirits—Account
188. Outrages, Ireland—Report from Committee
Census of Ireland for the year 1851, Part 1 (King's County)
378. Vessels in the Coasting Trade—Accounts
390. Arctic Expedition—Copy of Further Correspondence
395(1). Metropolis Water Bills—Minutes of Evidence
358(4). Colonial Church Legislation, &c.—Copies of Petitions, &c. Part 4 (Ceylon and Hong Kong).
407. Consolidated Annuities (Clare)—Copy of Memorial
National Vaccine Establishment—Report.

HOUSE OF COMMONS.

FLORINS.

WEDNESDAY, June 9.—Mr. THORNELY inquired whether there was a prospect of the long-promised issue of florins, or 2s. pieces.—Mr. G. A. HAMILTON answered that the press of business at the Mint had delayed the issue, but the Master of the Mint fully expected that the first issue of florins would take place in the week after next.

COUNTY COURTS FURTHER EXTENSION BILL.

The House went into committee on this Bill, resuming at clause twenty-five, which empowers the Lord Chancellor to give pensions to retiring judges. —Mr. STANFORD said, before the House took any step to increase pensions, they should have some good reason. He moved to add the following words: —"Provided that such judge, at the time of such resignation, shall have served the office of judge for a period of not less than fifteen years." There are about sixty equity court judges, and they were by this clause to empower the Lord Chancellor to grant pensions, not exceeding two-thirds of the salary, to any of the judges, without any restriction. The Act giving power to grant pensions to the Judges of the Superior Courts provided that no such pensions should be allowed unless such judges had served fifteen years, or are afflicted with some infirmity rendering them incapable of fulfilling their office. He did not see why this principle should be departed from in the case of County Court Judges.—Mr. FITZROY said the object of the retiring pension was to induce the retirement of judges who, from age or other cause, should be incompetent. If the hon. gentleman had moved that the pension should be given only in case of infirmity, or having served fifteen years, he should not have objected to it. — Mr. STANFORD said that they had already provided for bodily infirmity, and what he wanted to do was to prevent pensions being granted to judges who have not served for fifteen years.—Mr. WALPOLE said this amendment would prevent pensions being granted even in cases of permanent infirmity rendering the judge unfit to fulfil his office. After some further discussion the amendment was withdrawn.—Two other clauses were then agreed to, one moved by Mr. HEADLAM, giving effect to warrants issued in one jurisdiction when the defendant has moved into another; and a second, moved by Mr. MULLINS, forbidding County Court judge to practise at the Bar, as special pleader, or equity draftsman, or as conveyancer, notary public, solicitor, attorney, or proctor; and an amendment moved by Mr. SCHOLEFIELD in the 21st clause, adding the words "articled clerk."—The bill then passed through committee.

RAILWAY ACCIDENTS.—On Saturday, the 22nd ult. the usual return relating to railway accidents for the half-year ending the 31st of December last, printed. The number of passengers was 47,509,9[illegible]. The number of persons killed was 113, and 264 injured. There were 8 passengers killed and 213 injured from causes beyond their own control; 9 passengers were killed and 14 injured owing to their own misconduct or want of caution; 30 servants of companies or of contractors were killed and

17 injured from causes beyond their own control; 32 servants of companies or of contractors were killed and 11 injured owing to their own misconduct or want of caution; 33 trespassers and other persons, neither passengers nor servants of the companies, were killed and 9 injured by crossing or walking on railways. There was one suicide. The length of railways open on the 30th June, 1851, was 6,698 miles, and on the 1st December last 6,890 miles, being an increase during the half-year of 192 miles.

THE HOUSE-TAX.—Lord John Manners has obtained a return to the House of Commons of the number of houses rated to the new house-tax at 50*l.*; at 40*l.* and under 50*l.*; at 30*l.* and under 40*l.*; at 20*l.* and under 30*l.* in certain districts of the metropolis. It appears that the largest number under the several heads were in St. Pancras, in which parish 925 houses were rated at 50*l.*; 2,665 at 40*l.* and under 50*l.*; 3,380 at 30*l.* and under 40*l.*; and 3,862 at 20*l.* and under 30*l.* It would seem that in Marylebone there are 803 houses rated at 50*l.*; 1,641 at 40*l.* and under 50*l.*; 1,698 at 30*l.* and under 40*l.*; and 1,950 at 20*l.* and under 30*l.*

CAB LICENSES.—From a return just printed, it appears that from January to September there were 691 licenses granted to work hackney carriages, being a great increase on the preceding year, on account of the Great Exhibition, making 3,548 hackney carriages licensed on the 1st of September last.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

SOME points on the *practice* of *municipal elections* were decided in *Reg.* v. *Avery*, 19 Law T. Rep. 164. A voting-paper was held to be sufficiently signed by the initials of the voter's christian names, and it is not necessary that those names should be signed in full. A street in parish B. was known *as well* by the name of "the street," as by that of "B. street." The property in respect of which the burgess voted was held to be sufficiently described as in "the street."

Reg. v. *Street*, 19 Law T. Rep. 165, has decided that it is not a valid reason for the auditor's disallowing an overseer's accounts, that certain expenses were incurred by them in litigation with a railway company, as to the assessment of the company to the poor-rate, that they did not, before incurring those expenses, summon a vestry to consider the propriety of doing so.

In *Re The Governor of the Bedford General Infirmary*, 19 Law T. Rep. 170, an infirmary was held to be a public building within the provisions of a local Improvement Act, which required such buildings to be rated according to their frontage, and that such frontage was to be measured as abutted against a footway, as well as that abutting on a highway. In a subsequent case from the same town, an Act of one year had exempted the workhouse from all rates: by an Act of the following year, the above rate was imposed on all public buildings, without excepting the workhouse. It was held that the latter Act repealed the provisions of the former one.

Reg. v. *The Overseers of Salford*, 19 Law T. Rep. 165, was a question on the Excise Laws. It was held that *certiorari* will not lie to remove a licence for the sale of beer, granted by a collector or supervisor of excise, although it was so granted without first requiring the production of the overseer's certificate, according to the 2nd section of 3 & 4 Vict. c. 61.

On an indictment for perjury, which was removed by certiorari, and the defendant found guilty and sentenced, the prosecutor was held be entitled to his costs, under 5 & 6 W. & M. c. 11, s. 3, as "a party grieved or injured," even although the perjury was not successful. (*Reg.* v. *Major*, 19 Law T. Rep. 171.) In *Reg.* v. *James and Others*, 19 Law T. Rep. 171, the Court refused to grant a *certiorari* to remove an indictment not yet found, *when* found at the ensuing assizes, because thereby it would prevent the trial of it at those assizes, and it declined to hear any suggestion of possible prejudice on the part of the jury.

A case of some importance to Magistrates is that of *Reg.* v. *The Justices of Surrey*, 19 Law T. Rep. 171. The facts were these. The surveyors were summoned for nonrepair of a road. On their disputing their liability, the justices made an order for an indictment against the inhabitants. The defendants pleaded the liability of an occupier of a certain farm to repair, *ratione tenuræ*, and the jury found for the defendants. The prosecutor applied to the Sessions for his costs, and was refused. On application to the Court above for a mandamus, it appeared that one of the justices who made the order for the indictment was landlord of the farm in question. But it did not appear that anything was said before the justices as to the liability of the tenant of the farm, nor did any collusion appear between the justice, who [illegible] the landlord, and the prosecutor. The Court, however, held, that the justices were acting *ministerially* in making the order, and that the interest of the justice was not such as to avoid the order, and the prosecutor was entitled to his costs.

MANAGEMENT OF AN ELECTION.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Will you allow me to suggest an addition to the excellent arrangements of the committee-room on the day of election, suggested in Mr. Cox's valuable *Practice of Elections*, pp. 218 to 222 (6th edition) namely, that it should be the sole business of a trusty clerk, or still better of one of the agents, to keep before him a copy of the ruled register of electors, described at p. 219, and as the poll-clerks' slips come in, to strike his pen through the names of such as have polled; and that he should be continually making out, on slips ready ruled, of which a supply should be provided, lists of the voters still unpolled, which should be handed to those whose duty it is to see that they are brought to the poll. I made this addition, at the last election, to the admirable system described in Mr. Cox's *Practice;* and as it may be useful at the coming elections to others who adopt the same plans, I submit it to my professional brethren.—Yours faithfully,

2nd June, 1852. AN OLD ELECTIONEERER.

MAGISTRATES' CLERKS.

WILL any of your correspondents give their opinions on the following practice?

At the town of G. there are two gentlemen clerks to the magistrates of the petty sessional division. Those gentlemen are in partnership, and on occasions when one of them acts as clerk to the Bench, the other acts as advocate before the same Bench, in cases wherein the justices have *summary jurisdiction*. Is this fair or proper? B.

[Certainly not.—ED. LAW T.]

PRACTICE OF ELECTIONS.—POLLING BOOTHS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I observe Mr. Cox has published a sixth edition of his useful *Practice of Elections*, which contains a "Plan of Polling Booths." This is probably the same as I sent you in 1849, and for which I received a letter of thanks from the learned author.

I am glad to have been the means of drawing attention to the matter, but th[e] very satisfactory lett[er] of Mr. Ayerst Hooker, induces me to think that I can *still usefully* add some observations upon the plans used by him.

It appears to me that Mr. Hooker fell into the great mistake of not having the front of his desk and seats boarded up. I never contemplated any person but the voter and constables being in the voter's entrance on any pretence.

I supposed that the check clerks, inspectors, &c. would so far accommodate each other, as to let others pass them to and from their seats.

I could have made my plans much more complete as to the convenience of the booths, but then I had in my mind that very word "cost," used by Mr. Hooker. My object was to make an improvement upon the old plan (which appeared to require it), and at the same time keep it compact, and of little, if any, additional expense in construction.

I collect that Mr. Hooker's booths were side by side. This I think objectionable, [a]s it tends to concentrate the mob at one place. It is better, where it can be done, to have the booths some fifty or sixty yards apart. But if they must be adjoining each other, it is better to place them back to back, as this divides the mob; and a back passage in that case will not add much to the expense,—but it must be subject to all the drip.

As you have the plates, do you not think it would be a good plan to print some on separate sheets of paper for the use of undersheriffs and others,—I mean, so that parties giving orders for the erection of booths might be able to put one of these plans into the hands of the carpenter, who would otherwise not know how to set about it. The tracing I now send you is taken (with the addition of the back seat) from a sketch I had made for the town clerk of this borough, who orders the booths here, and whose attention I intended to draw to the matter when the proper time arrived.

I have been sheriff's deputy in this county, in both divisions, and my experience is that a seat and desk for the deputy is quite unnecessary; he can always find room when his presence is required.

I am, Sir, yours, &c.

Mr. Crockford. H. F. NAPPER.

[The plan contained in *Cox's Practice of Elections*, 6th edition, is that which Mr. Napper suggested. Some copies of it shall be struck off on separate sheets for the use of carpenters, &c., as proposed, and supplied with the volume, at twopence each.—*Publisher of the Law T.*]

LOAN SOCIETIES.—By an Act which received the Royal assent a few days back, the Act to amend the laws relating to loan societies was further continued until the 1st of October next year, and to the end of the then next session of Parliament.

PROPERTY AND INCOME TAX.—A return has been printed, giving to the House of Commons a statement of the amount of property assessed under the different schedules of the Property and Income Tax Act in Great Britain. In 1814 and 1815 the total amount of the property assessed under the several schedules was 168,234,808*l.* In 1843, 227,710,444*l.*; in 1844, 221,101,717*l*; in 1845, 220,464,968*l.*; in 1846, 227,853,132*l.*; in 1847, 228,937,702*l.*; in 1848, 229,868,226*l.*; in 1849, 231,957,690; in 1850, 229,226,929*l.*; and in 1851, 230,416,293*l.* In Scotland, in 1814 and 1815, the property assessed was 14,462,958*l.*; and in 1851, 26,980,267*l.*

NEW METROPOLITAN INTERMENT BILL.—This Bill, which was introduced on Thursday by Lord John Manners and Mr. Walpole, has just been printed. By it the present Interment Act is to be repealed. Powers are given to parishes severally to elect burial boards, to consist of not more than seven persons nor less than three. These boards are to be permitted to purchase new burial-grounds, to be paid for out of the poor-rates. Powers are also given to parishes to combine for the purpose of providing interment accommodation, and in that case there is to be a joint board, to be composed of the several burial boards of the different parishes so combining. The Secretary of State, without inspection, has power to close any or all of the grave-yards of the metropolis. He can issue such regulations as may seem to him proper to the protection of the public health, and has a veto on all the proposed sites for new cemeteries. Such is a general outline of the provisions of the Bill, which, it is said, will not be pressed this session.

A treaty for the extradition of criminal offenders has just been concluded and signed by the representatives of the Governments of France and of England. This new treaty provides ample remedy for the defects which rendered the treaty of 1843, concluded by the Earl of Aberdeen, almost a dead letter as far as regarded England. If it prove efficient, this treaty will be immediately accepted as a model by the Governments of Prussia, Sardinia, and Holland, who are anxious to conclude treaties with our Government for the international extradition of criminal offenders as speedily as may be.—*Morning Post.*

THE PASSPORT SYSTEM.—Sir Henry Davie has just obtained a return on the passport system. It appears that in the year ending the 22nd of February, 1851, when the charge was 2*l.* 7*s.* 6*d.* on each passport, the number issued from the Foreign-office was 1,178, of which 893 were paid for, and in the year ending the 22nd of February last, the number was 7,304, under the new system, at 7*s.* 6*d.* for each passport, of which 6,912 were paid for. The largest number issued in one day under the old system in 1850-51 was 14, and under the new system, in 1851-52, was 76. The net revenue from the passport system in 1850-51, was 2,189*l.* 15*s.* and in 1851-52, 2,537*l.* 10*s.* 6*d.*

POOR LAW RELIEF CONTINUANCE ACT.—The Act to continue the 14 and 15 Vict. c. 105, for charging the maintenance of certain poor persons in unions in England and Wales upon the common fund was yesterday printed. The law is to continue in force until the 30th of September, 1853, and to the end of the then next session of Parliament.

JOINT-STOCK COMPANIES' LAW JOURNAL.

WINDING UP.

Two questions as to the liabilities of *contributories* were reported last week. In *Ex parte Greenshields*, 19 Law T. Rep. 162, A. a shareholder, became bankrupt on the 30th October, 1848. The company stopped on October 1, 1849. The Master placed A.'s name on the list of contributories liable to contribute to the losses *subsequent* to his bankruptcy. But Vice-Chancellor PARKER held that this was wrongly done. "It seemed to him that the bankruptcy had dissolved the partnership, even though it were a partnership for a fixed term, and it was not possible to put the case higher than that." In *Ex parte Burton*, 19 Law T. Rep. 162, the facts were, that in July

1849, A. for the purpose of being an agent, took five shares in a projected company, and signed a power of attorney to B. to execute the deed of settlement for him. In the following month he wrote to request that his connection with the company might be put an end to. The directors released him from the agency, but refused to do so as to the shares, but were willing to allow him to nominate another person to take them. In October, B. executed the deed. He was rightly held to be a contributory.

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

Pennant and Craigwen Consolidated Lead Mining Company.—To settle supplemental list of contributories, on 31st June.—Tinney.

Nister Dale Iron Company.—Call of 15*l.* per share, on 24th June, on contributories at present settled.—Farror.

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

Meggeson v. *Lady Glamis*, 19 Law T. Rep. 168, will be read with some interest. The owner of an estate, who was lessee of the tithes, agreed to demise it, after the Tithe Commutation Act had passed, to a tenant, at a certain rent, tithe free. No deed was executed, and rent being in arrear, a distress was levied for the whole, including the sum that would have been payable in respect of the tithe rent-charge. It was held that, although there was no letting of the tithes to the tenant by deed, yet as sec. 80 of the Act provides that any tenant who holds his lands under an agreement that the same shall be holden by him free of tithes, and who shall pay any such rent-charge, shall be allowed the same in account with the landlord, the distress had been rightly taken.

In *Jolly* v. *Hancock*, 19 Law T. Rep. 170, a purchaser objected to a title that the certificate and affidavit of the acknowledgment of a deed by a married woman had not been duly filed with the proper officer, under 3 & 4 Wm. 4, c. 74. The Court held that the title *was* in this respect defective, and that the purchaser could recover back his deposit money. "The several sections," said Pollock, C.B. "of the Act make it essential that this document should be not only acknowleged, but the proper certificate and affidavit should be duly filed of record in the Court of C. P. and on filing the same, the deed of relation is to take effect from the time of its acknowledgment; the officer with whom they are lodged is to make an index of the same, and to deliver out copies of such certificate so filed, which is to be received as evidence of the acknowledgment of the deed to which such certificate shall refer. . . . . We are all now of opinion that to make the title perfect these documents should be filed of record, according to the provisions of the Act of Parliament." Let practitioners look to this, not only in passing such deeds, but in the acceptance of all titles in which there are deeds acknowledged by married women.

STAMP ACT, LEASES, AND COUNTERPARTS.

TO THE EDITOR OF THE LAW TIMES.

Sir,—In the report of the Committee of Management of the Metropolitan and Provincial Law Association for the present year is the following sentence:—

"The Committee have had pressed upon their attention the very serious inconvenience resulting from the clause in the new Stamp Act requiring a denoting stamp to be affixed to all counterpart leases after both lease and counterpart have been executed," &c. &c.

The above is to me perfectly inexplicable. I have never been in the habit of having a denoting stamp affixed to the counterpart of a lease, except in those cases where the lease requires a stamp duty of 5*s.* or upwards.

The provision in the Stamp Act, under the head "Duplicate or Counterpart," says "Provided always, that in such latter case, the duplicate or counterpart shall not be available unless stamped with a particular stamp for denoting," &c.

The words "in such latter case" referring to the previous clause, where the duty on the lease amoun to the sum of 5*s.* or upwards.

Nothing, in my opinion, can be plainer than the words of the Act; but as they are controverted by the high authority alluded to, I shall be glad to hear the opinion of some of your intelligent readers on the subject. I am, Sir, yours, &c.

June 7, 1852. J. R. W.

Query.

COPYHOLDS.

A. being possessed of copyholds, wishes to give them to a small chapelry by way of endowment. I should be obliged if any of your readers could tell me the best way of effecting this. Can it be done under any, and if so, which, of the Church Building Acts. The 1 & 2 Vict. c. 107, does not seem to apply to copyholds. E.

Answers to Queries.

STAMPS.

There is no doubt whatever but that, if the deed of eighty-eight folios had been written on one skin of parchment, and stamped with a 27*l.* stamp, it ould have been perfectly good. The question as to the proper stamp impressed on a purchase or mortgage-deed always is, what is the amount of the stamp impressed? and not, in what particular manner is the deed stamped? The case put by T. C. M. is every-day practice. G. W. G.

7th June, 1852.

Incumbered Estates Sale.—The sale of a part of the extensive unsettled estates of the Earl of Belmore, situated in the county of Tyrone, and held in fee simple, took place recently, at the court in Henrietta-street. The entire estate comprises sixty-nine lots; but the only portions offered on this occasion were Lots 1 to 19, and Lots 21 to 24, both inclusive. No explanation could be given as to the reasons for withholding the other lots, but it was rumoured that private offers had been made to the commissioners, who, however, did not feel themselves justified in closing with the parties tendering. The net profit rent of the twenty-three lots put up was estimated at 2,917*l.* per annum, and the gross sum produced amounted to 52,860*l.* or over eighteen years' purchase. The competition was spirited beyond all former precedent, and, had the whole property been set up, there is but little doubt that every lot of the sixty-nine would have been readily bought up. Previous to the sale of the Belmore property, a small estate in the county of Longford was set up for competition. The net rent was 227*l.* per annum, which realised the sum of 3,860*l.* equal to seventeen years' purchase. The new owner is Dr N. J. M'Cann, of Parliament-street, London.

Spoilt Stamps.—For the convenience of merchants, bankers, and traders in the City, the Board of Inland Revenue have made arrangements whereby spoilt stamps will be allowed in future at the Sea Policy-office, 3, New Bank-buildings, on every Monday, between the hours of eleven and two, under the same regulations which apply to the allowance of spoilt stamps at the head office, Somerset-house.

COUNTY COURTS.

Summary.

But one case relating to the County Courts was reported last week, and that is a decision on *Insolvency*. A person in insolvent circumstances parted with all his goods, except about 10*l.* worth, by a bill of sale to defendant, one of his creditors, for a debt then due, and the goods were conveyed away by night. More than three months after, he filed his petition in the Insolvent Court, and the plaintiff, as assignee, brought an action for the goods so taken. But he was held *not to be entitled to recover*, as the bill of sale was made more than three months before the filing of the petition, and it was not shewn that, at the time he gave it, the insolvent had any intention of petitioning the Court for protection. "In order to render it void," said Pollock, C.B. "in reference to that proviso, he must have had at the time a then present intention of petitioning the Court, or distinctly expecting to do so by some distinct pressure, and not with a view to any expectant pressure." (*Thoyts* v. *Hobbs*, 19 Law T. Rep. 169.) This appears to us to be a too lenient view of these transactions. The fact of a man assigning his goods to one creditor, giving him a preference, ought to be deemed as at least presumptive evidence of contemplated insolvency—perhaps, even, it should be conclusive, for in truth it is a fraud upon the rest, and could only be so designed.

The Westminster County Court was occupied on Tuesday with proceedings instituted by Captain Ackerly, against Sir Alexander Cockburn as Attorney-General, Mr. Smedley as High Bailiff, and Mr. Bowen as Chief Clerk of the Exchequer, for infractions of the laws. Captain Ackerley conducted his own case. "As a sworn officer of the Crown," he accused Mr. Smedley, "under the 5 & 6 Wm. 4, c. 63, s. 31," of unduly placing a stamp on a summons. The Captain had been sworn in under the Weights and Measures Act in 1837, and he now instituted proceedings "to relieve his own conscience," and "to keep faith with that chief"—an American Indian who accompanied the prosecutor, and whom he called Peter. He contended that "the original County Court Act" placed the judge "in the same position as the Court of Ex." The Court, however, after much argumentative chat with the prosecutor, decided that it had no jurisdiction. The second case being similarly disposed of, the third was not pressed; and Captain Ackerley, having "relieved his conscience from compromising a felony," left the court with Peter.

THE LAWYER.

Summary.

Equity Practice.—Where a defendant had gone out of the jurisdiction, so that an attachment could not be served on him, he was held to have absconded for the purpose of the suit, and a day was appointed on which the bill should be taken *pro confesso* against him, unless he then appeared, and notice was held to be sufficiently served on his solicitor. (*Soltau* v. *De Held*, 19 Law T. Rep. 162.)

Common Law.—It will be observed that in an *Anonymous* case, 19 Law T. Rep. 167, the Court of C. P. refused a distringas where the object was not to compel an appearance, but for the indirect purpose of compelling payment of the attempts to serve.

In *Tambisco* v. *Pacifico*, 19 Law T. Rep. 170, the Court refused to compel a plaintiff, who was a foreigner, to give security for costs, he being at the time actually in this country, and making an affidavit stating that he intended to remain here until the action was concluded.

SHAM LAWYERS.

TO THE EDITOR OF THE LAW TIMES.

36, Basinghall-street, 10th June, 1852.

Sir,—I attended a sale yesterday at the Auction Mart, and purchased a small property, when the enclosed card was put into my hands by a person attending there, stating that, if I were not particularly engaged, the party would prepare my conveyance. This Mr. Hodges's name does not appear in the Law List, amongst the certificated conveyancers.

Can nothing be done to put a stop to such impositions on ignorant purchasers? Your exposure of such impostors may tend to put purchasers at auctions on their guard.

I am, Sir, yours very obediently,
S. Walters.

"MR. HODGES,
"*Conveyancer.*
"32, Brunswick-street, Hackney-road."

COUNSEL'S FEES.

TO THE EDITOR OF THE LAW TIMES.

Sir,—Can you advise me of any plan or method of making an attorney pay a barrister's fees? An attorney in London owed my late brother a considerable sum for fees, a list of which I delivered after his decease, and offered to strike off any that he thought ought not to be charged. He never objected, however, to any one, and promised at different times to pay. I have written twice to him within the last twelve months, and he now does not condescend to reply. He is in good practice, and perfectly able to pay. Perhaps you would be so kind as to give me a hint on this in your next week's answers to correspondents.

I know I cannot sue, and so *does he*; but if I could, part are now out of date. Trusting you will pardon the trouble,—I am, Sir, yours, &c.

Durham, May 19, 1852. An Attorney.

[We regret that the Law will not assist our correspondent to justice in such a case. But perhaps

shame would do what the Law will not: why does he not publish the name of the defaulter?—Ed. Law T.]

Mr. Commissioner Goulburn gave judgment on Saturday in the case of David E. Columbine, a solicitor and "money-scrivener" of Carlton Chambers. The bankrupt's conduct has been most extraordinary; and almost every sentence of the commissioner's judgment was a severe censure. For four years Columbine has been dragging his creditors and the assignees through the Equity and Common Law Courts, in a vain attempt to make out that he should not have been adjudged a bankrupt: one portion of the litigation is still in Chancery. The fiat was issued in 1847: from that time the bankrupt fought his assignees inch by inch, availing himself of every means of opposition and procrastination which the forms of the courts permit. The case has been before the Vice-Chancellor in Bankruptcy, before the Court of Chancery, before the Courts of C. P. Ex. and Q. B. It has been heard before juries in the Common Law Courts, and before those Courts sitting in Banco; all sorts of issues have been tried, and all kinds of exceptions made, argued, and overruled. It is still before the Court of Chancery, and it is not very likely to be brought to a close there for years to come. Lord Denman, when Chief Justice of the Q. B. Lord Truro, when Chief Justice of the C. P. Mr. Justice Patteson, and many other judges, had pronounced judgment in the case in various forms; and the most eminent counsel have been engaged in it, the present Attorney-General and the present Chief Justice of the C. P. having been Mr. Columbine's advocates. At length it was decided, after years of litigation and thousands of pounds being expended, that Columbine was really a bankrupt, and the petition to annul the fiat was dismissed. There is now nothing in the hands of the official assignee, who is very likely only to have "his labour for his pains." Columbine, before the fiat was issued, assigned away a large amount of money—really not his own property, but the property of his creditors. In January 1846 he settled 2,520*l.* on his mother; in January 1847 he settled 11,030*l.* on a woman with whom he had lived, marrying her directly after. In March he was made a bankrupt—he had gone abroad with 1,600*l.* in cash. The creditors allege that the settlements were fraudulent: the Commissioner agrees with them. Only about 100*l.* has been realised by the assignees for the creditors, whose claims are 29,000*l.* The bankrupt has rendered four successive accounts—all varying, all "wilfully false," said the Commissioner; the bankrupt's object being to endeavour to shew that he was in a position to make the settlements. He shewed such "art and contrivance" that Commissioner Goulburn himself was at first misled—he thought the man had been harshly dealt with. But now, on the ground that he believed the accounts to be wilfully untrue, he adjourned the final examination sine die.

THE MERCANTILE LAWYER.

Summary.

The Court of Appeal has laid down some valuable principles of *Patent Law* in the case of *Newall* v. *Wilson*, 19 Law T. Rep. 161. It determined that it would grant an injunction in the first instance, where the plaintiff had been already successful both at law and equity against other persons, even although some doubt as to the validity of the patent might exist. Also, that the allegation not being denied that the defendant's circumstances were such as to render it improbable that he would be able to meet the demands to which he would be liable if unsuccessful at law, was an additional reason for granting such injunction.

We need but name here, as an extremely important case on the construction of the Copyright Act, *Novello* v. *Sudlow*, 19 Law T. Rep. 166, for a careful abstract of the points decided by it has been already given in a leading article last week.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

Downing-street, June 8.—The Queen has been pleased to appoint Abraham Boyd Fenton, esq. to be Queen's Advocate and Police Magistrate for her Majesty's Settlements in the River Gambia; also, been pleased to appoint Richard Grosvenor Butts, esq. to be Inspector-General of Police for the colony of British Guiana.

Metropolitan Sewers Commission.—We are informed that the Lord Chancellor has appointed Richard Jebb, esq. of Old-square, Lincoln's-inn, as chairman of the commission. This gentleman is a near relative to Lieut.-col. Jebb, R.E. surveyor-general of prisons.

The Temple, June 8.—The after-mentioned members of the Hon. Society of the Middle Temple were called to the degree of barristers-at-law this evening:—Mr. Weston Joseph Sparkes, Mr. Horace Lloyd, Mr. William Palmer Hale, Mr. John Digby, Mr. Richard Doddridge Blackmore, Mr. Henry Charles Butler, The Hon. James Master Owen Byng, Mr. John Smith, Mr. Thomas Wilson Barnes, Mr. David M'Lachlan, Mr. Hans Stuart Hawthorne.

The Temple, June 7.—The after-mentioned members of the Hon. Society of the Inner Temple were called to the degree of Barrister-at-Law this evening:—Arthur Dyott Thomson, M.A.; James Lennox Hannay, M.A.; Frederick Dumergue; Edward Yates, B.A.; John Richard Fowler, B.A.; Edward Thoroton, B.A.; Cecil Smith, B.A.; Arthur George Macpherson, M.A.; David Kitcat, B.A.; Edward Carthew; James Holy Fernley; Joseph Holdsworth Fernley; George William Latham, M.A.; John Foster Gresham, B.A.; Edmund Powell, B.A.; George Samuel Fereday Smith, M.A.; Eugene Sherwood; Joseph Beaumont; John Elliott Boileau, B.A.; the Hon. Edw. Berkeley Portman; Henry Charles Lopes, Samuel Wordsworth Barber.

Lincoln's-inn, June 7.—The after-mentioned members of the Hon. Society of Lincoln's-inn were called to the degree of barrister-at-law this evening:—William Williamson Kerr, M.A.; Edward Goodall Stewart Griffiths; William Stigant, B.A.; James George Lawson; George Long, jun.; Francis Housman; Richard Pearse Rosier; Edward Brooksbank, LL.B.; Thomas Woodbine Hinchliff, M.A.; William Dundas, M.A.

Gray's-inn, June 7.—At a pension of the Hon. Society of Gray's-inn, holden this day, Morgan John O'Connell, esq. B.A.; William Irving Hare, esq.; James Sheil, esq. B.A.; Charles James Coleman, esq.; and Henry Williams, esq. were called to the degree of barrister-at-law.

Commissions Signed by the Lord Lieutenant of Middlesex.—Sir George Edmund Hodgkinson, John Bentley, esq. William Evans, esq. David Waddington, esq. and Thomas Clark, esq. to be Deputy Lieutenants. Nicholas McCann, gent. to be Surgeon in the Royal West Middlesex Regiment of Militia.

COURT PAPERS.

SUMMER CIRCUIT OF THE JUDGES.

OXFORD CIRCUIT.

Judges—The Hon. Mr. Justice Cresswell and the Hon. Mr. Justice Williams.

Berkshire—July 12, at Abingdon. Oxfordshire—July 14, at Oxford. Worcestershire—July 17, at Worcester. City of Worcester—The same day, at the Guildhall of the city. Staffordshire—July 21, at the Castle of Stafford. Shropshire—July 27, at Shrewsbury. Herefordshire—July 30, at Hereford. Monmouthshire—Aug. 2, at the Castle of Monmouth. Gloucestershire—Aug. 5. City of Gloucester—The same day, at the Guildhall of the City of Gloucester.

NORTH WALES AND CHESTER CIRCUIT.

Judge—The Hon. Mr. Justice Talfourd.

Montgomeryshire—July 17, at Newtown. Merionethshire—July 21, at Dolgelly. Caernarvonshire—July 26, at Caernarvon. Anglesey—July 28, at Beaumaris. Denbighshire—July 31, at Ruthin. Flintshire—Aug. 4, at Mold. Cheshire—Aug. 7, at the Castle of Chester. City of Chester—The same day, at the Guildhall of Chester.

COURT OF QUEEN'S BENCH.

TRINITY TERM, 15TH VICT.

June 8, 1852.

This Court will hold sittings on Friday, the 18th, and Saturday, the 19th, days of June inst. and will on those days take, in the first instance, the cases (if any) remaining undisposed of in the New Trial Paper, and the cases in the Special and Demurrer Paper, and give judgment in cases ready for judgment.

By the Court.

COURT OF EXCHEQUER.

Trinity Term, 15th Victoria.

Wednesday, the 9th day of June, 1852.

This Court will hold a sitting on Saturday, the 26th day of June instant, and will, at such sitting, give judgment in all matters then standing for judgment.

Fred. Pollock, E. H. Alderson,
T. J. Platt, Saml. Martin.

ADMISSION OF SOLICITORS.

Notice.—The Master of the Rolls has appointed Thursday, the 10th inst. at the Rolls Court, Chancery-lane, at half-past four o'clock in the afternoon precisely, for swearing solicitors. Every person desirous of being sworn on the above day must leave his common law admission, or his certificate of practice for the current year, at the secretary's office, Rolls-yard, Chancery-lane, on or before Wednesday, the 9th inst.

DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

Advertised in the "Law Times."

Day.	Place.	Auctioneer.	Where Advertised.	Property.
Tuesday, June 15	Auction Mart	Winstanley	June 12, p. 46	Building Land, near Croydon.
Wednesday, June 16	Garraway's	Green	May 29, p. 40	House at Greenwich.
	Ibid.	Do.	Ibid.	Botleigh Grange Estate, Hunts.
	Ibid.	Do.	Ibid.	Freehold Land, Cheltenham.
	Ibid	Do.	Ibid.	Brent Lodge, Finchley.
	Vaults, Cross Keys Tavern	Haines and Son	June 12, p. 46	Wines.
Thursday, June 17	Auction Mart	Bullock	June 5, p. 44	Park Villas, Ealing.
	Ibid.	Do.	Ibid.	Two Residences, Leipsic-road.
	Ibid.	Lerew	June 12, p. 48	Two Residences, Castle-terrace.
	Ibid.	Do.	Ibid.	Rent on Property at Kensall New Town.
	Ibid.	Do.	Ibid.	Residence at Camden-square.
	Ibid.	Do.	Ibid.	Reversion to Share of a Leasehold Estate.
	Ibid.	Do.	Ibid.	Residences in Harrow road.
Friday, June 18	Ibid.	Lahee	June 12, p. 46	Lease, Bentinck-street, Cavendish-square.
	Garraway's	Compton	Ibid.	Building Ground, near Cheshunt.
Saturday, June 19	Ibid.	Do.	Ibid.	Four Life Policies.
	Mart	Drivers	June 12, p. 48	Queen's Hotel, Cheltenham.

LEGAL INTELLIGENCE.

Scotch Barristers.—The Faculty of Advocates on Tuesday proceeded to the consideration of two motions, tabled at a previous meeting by Mr. Alex. M'Neill, to the effect—1st. "That a committee be appointed to consider and report, whether an humble memorial should not be presented by the Faculty to the Queen, praying that her Majesty may be graciously pleased to nominate, from time to time, such members of the Bar as may seem to her Majesty deserving of the honour, to be her counsel next in rank after her Majesty's Advocate-General and the Solicitor-General, and that the members so nominated may have that rank and precedence at the bar of Scotland which are possessed by her Majesty's counsel in the kingdoms of England and Ireland." 2nd. "That an humble memorial be presented to his Royal Highness, guardian of his Royal Highness Albert Prince of Wales, praying that his Royal Highness, as guardian foresaid, may be pleased to appoint counsel in Scotland to the Prince of Wales, according to the ancient and established usage of Scotland, and the undoubted rights of the Prince of Wales." Mr. M'Neill supported his motion at length, founding chiefly on the great benefits which the exercise of the prerogative had conferred on the English bar and public, and the certainty that the same exercise in Scotland would remove anomalies which were found to operate prejudicially in our practice. Mr. Currie opposed the motion, on the ground that our own system had prevailed for centuries, and had given all the advantages that could be desired. The Faculty then proceeded to a vote on the first motion, when it was negatived by a majority of 25 to 19. The Lord-Advocate and Solicitor-General declined to vote, as did also the late Lord-Advocate and Solicitor-General. On the next motion being put, the Lord-Advocate suggested to the mover whether it would not be better to leave the matter in the hands of Government, and he would undertake to put himself in communication with Government on the subject. Mr. M'Neill cordially agreed to this course. Mr. Sandford moved the appointment of a committee to consider the best means of obtaining a clause inserted in the bill for the renewal of the East-India Company's charter, enabling Scotch barristers not only to practice at the colonial bars, but also judicial situations in all the colonies.—Unanimously agreed to.—*Scotsman.*

The Law Courts.—The Common Law Courts in Westminster-hall have all been deserted. The benches which used to be occupied by a full Bar are

now empty, and even the sight-seekers, who used to flock in shoals to the courts, no longer throng the passages leading to the courts, or crowd the courts when their Lordships are sitting. As an illustration of the present state of business in the courts, we may mention that on Wednesday morning, when Lord Chief Justice Jervis, Mr. Justice Cresswell, and Mr. Justice Talfourd took their seats on the Bench in the Common Pleas, there were only three Barristers present, viz.: Mr. Serjeant Channell, Mr. Scott (who was not in his wig and gown), and Mr. Evans (who was also without a wig and gown). Upon their Lordships taking their seats the Chief Justice, as usual, asked "Brother Channell" if he had anything to move, and "Brother Channell" gave a negative bow. It would have been out of the ordinary practice for the professionally undressed to be addressed by their Lordships. The Court then adjourned.—*Globe.*

THE LATE LORD PRESIDENT.—We have learned from undoubted authority that the Right Honourable David Boyle, lately Lord Justice-General, and President of the Court of Session, to whom her Majesty offered the title of a baronet on his retiring from office, has respectfully begged liberty to decline the dignity.—*Glasgow Constitutional.*

LAW-SUIT ABOUT A HAT.—The civil tribunal of Chateau Thierry has lately had a rather singular case brought before it, the object in dispute being neither more nor less than the hat worn by the Emperor Napoleon in the Russian campaign. This relic fell into the possession of the late M. Evrard, his valet-de-chambre, and the litigants are the widow of that gentleman, who claims a right to retain the hat, and the other branches of the family, who demand that it shall be sold with the other property, and the proceeds go into a common fund for division. Counsel on both sides were heard, and the Court, after a short deliberation, decided that the hat should not be sold with the other property left by the deceased, but be put up for sale amongst the members of the family themselves, and remain in possession of the widow until that should be effected.

SUPERANNUATIONS.—The annual account of the allowances or compensations granted as retired allowances or superannuations in all public offices and departments remaining payable on the 1st of January, 1851, and of the amounts which were granted or ceased during that year, have been printed by order of the House of Commons. The annual amount of compensations payable on the 1st January, 1851, was 233,477*l.* The amount granted during the year was 13,387. The amount which ceased was 16,045*l.* The annual amount of superannuation allowances payable on 1st January, 1851 was 496,064*l.* The amount granted during the year was 51,631*l.* whilst the amount which ceased was 38,046*l.* Total of both payable on the 1st of January, 1852, was 740,470*l.* subject to deductions, which make the public charge 687,531*l.*

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

GRIFFITHS.—On the 6th inst. at Cheltenham, the wife of Edward G. S. Griffiths, esq. Barrister-at-Law, of a son.

MARTIN.—On the 5th inst. at North-lodge, near Erith, Kent, the wife of Thomas Martin, esq. solicitor, Gracechurch-street, of a son.

PARSONS.—On the 4th inst. the wife of Thomas Parsons, esq. Barrister-at-Law, of a daughter.

SMALLPIECE.—On the 3rd inst. at Shalford, near Guildford, Mrs. Frederick Smallpiece, of a daughter.

MARRIAGES.

BEALE, Frederick George, esq. solicitor, to Annette Josephine, only daughter of Joseph Carter, esq. solicitor, Gloucester, on the 8th inst. at the parish church of Hempstead, Gloucestershire.

BEESTON, J. D. W. esq. Solicitor, of Wellington, to Eliza Ann, daughter of William Nock, esq. Solicitor of the same town, on the 1st inst. at All Saints' Church, Wellington, Shropshire.

BLACK, James Tait, second son of Adam Black, esq. to Charlotte, third daughter of Maurice Lothian, esq. procurator fiscal for the county of Edinburgh, on the 4th inst at 28, Drummond-place, Edinburgh.

JACQUES, Mr. F. V. of Bristol, Solicitor, to Emma, only daughter of Mr. John Whitwell, of Peterborough, on the 3rd inst. at St. John's, Peterborough.

WHITE, Robert, esq. writer to the signet, to Anne, daughter of the late Thomas Macmillan Fogo, esq. M.D. Senior-surgeon, Royal Artillery, on the 3rd inst. at Edinburgh.

DEATHS.

CHITTY, P. M. esq. of Shaftesbury, solicitor, on the 2nd inst. at Frome, suddenly.

FITZHERBERT, Ellen, eldest daughter of E. H. Fitzherbert, esq. on the 8th inst. at 25, Torrington-square, aged 6.

MILLETT, John Fortescue, esq. solicitor, on the 29th ult, at Marazion, Cornwall, aged 48.

MOORHOUSE, Thomas, esq. solicitor, of Halifax, on the 4th inst. aged 39.

SAWYER, Henry John, barrister-at-law, third son of Charles Sawyer, esq. of Heywood, in the county of Berks, on the 1st ult. at George-town, Demerara, aged 32.

JOURNAL OF PROPERTY.

Public Sales.

By Mr. MOORE, at the Mart.—Two seven-roomed houses, in Skidmore-street, Mile-end, let at 19*l.* 19*s.* each; terms 61 years; ground-rent, 2*l.* 10*s.* each.—190*l.* each.

Three six-roomed residences, known as Forest Cottages, and six cottages known as Providence Cottages, Wanstead-flat, Essex, let at 94*l.* 16*s.*; term, 90 years; ground-rent, 21*l.* for the whole.—520*l.*

Nineteen houses, yards, and workshop, in Butcher-row, Old King-street, Deptford; annual value, 182*l.* 8*s.*; term, 12 years; ground-rent, 55*l.*—110*l.*

Ten brick-built houses, in the Grove, Brooksby-walk, Homerton, let at 132*l.* 12*s.*; term, 71 years; ground-rent, 22*l.* 10*s.*—730*l.*

An improved rent of 10*l.* 13*s.* 9*d.* per annum, secured on a dwelling-house in Alfred-street, Stepney, and the reversion at end of term.—150*l.*

Eleven houses (two with shops) in Victoria-grove, Hackney, let at 183*l.* 18*s.*; term, 71 years; ground-rent, 36*l.* 15*s.*; in three lots.—Lot 1, 920*l.*; Lot 2, 175*l.*; Lot 3, 170*l.*

Four dwelling-houses, on the Mercers' estate, being in Margaret street, Limehouse, let at 96*l.*; term, 42 years; ground-rent, 13*l.*—495*l.*

Four houses (one a corner shop), in William-street, Mile-end-road, let at 72*l.* 16*s.*; term, 93 years; ground-rent, 14*l.*—300*l.*

A seven-roomed house, with garden, on the Mercers' estate, situate 49, King-street, Stepney, let at 21*l.*; term, 60 years; ground-rent, 4*l.*—255*l.*; and,

In three lots, three six-roomed dwelling-houses, Nos. 11, 12, and 13, Beresford-terrace, Walworth, let at 23*l.* each; term, 61 years; ground-rent: No. 11, 5*l.*; Nos. 12 and 13, 3*l.* each.—No. 11, 195*l.*; No. 12, 200*l.*; No. 13, 200*l.*

MONEY MARKET.

ENGLISH FUNDS.			Tues.		Thurs.	Fri.
Bank Stock	221⅞			221	222	223
3 ℔ Cent. Reduced Annuities	99½	99⅞	99¾	99⅞	99⅞	100⅛
3 ℔ Cent. Consols Annuities	100⅛	100⅛	100⅛	100⅛	100⅛	100¼
Consols for Account	100¼	100⅛	100¼	100⅛	100⅛	101⅛
New 5 ℔ Cent. Annuities ..	..	..	124	..	..	..
New 3¼ ℔ Cent. Annuities .	101⅞	102⅛	102	102¼	102¼	102⅛
Long Annu. (exp. Jan 5, 1860)			6⅞	7	6⅞	
Do 30 yrs. (exp. Oct. 10, 1859)						
Do. 30 yrs. (exp. Jan. 5, 1860)		..	7⅛			
India Stock		..	276			
India Bonds (1,000*l.*)		90	..			
Do. do. (under 1,000*l.*)....		85	..	88		
South Sea Stock............						
Do. do. New Annuities ..						
Exchequer Bills, 1,000*l.*	73*	72*	81*	75*		
Do. do. 500*l.*	73*	..	..	75*		
Do. do. Small	70*		75*	75*		

* Premium.

NOTICES OF NEW LAW BOOKS.

Pauperism and Poor-laws. By ROBERT PASHLEY, Q.C.

THIS is not strictly a law-book; and we should scarcely have deemed it to be within the proper range of works claiming notice in a legal journal that devotes itself to the practical rather than to the theoretical—to an exposition of the law *as it is*, rather than to disquisition of the law as it should be, but that the learned author has long occupied a conspicuous place in the reports of cases in our volumes that relate to the Poor Law and its administration; he has been the great picker of holes and flaw-finder in Poor Law legislation, the terror of magistrates' clerks, the *bête noir* of the Q.B. on Crown Paper days, and even has been honoured with the special hostility of the Legislature itself, inasmuch as the statute that succeeded at last in extinguishing technical objections to Poor Law papers and proceedings was termed in Westminster-hall "An Act for the better Suppression of PASHLEY."

Whatever the design, the object was accomplished. Poor Law appeals shrunk to a shadow, the Crown Paper was reduced to a skeleton of its former self, and PASHLEY, the Poor-law persecutor, took refuge in a silk gown, and sought to exercise his subtle intellect in the higher regions of the Common Law. But he was unable to abstract his mind altogether from the subject upon which it had been so long engaged, and so he set himself to write a book upon the theory and practice of Poor Laws—embodying the results of his much reflection and long experience.

That is the [illegible] fore us. It is not a practical exposition of the English Poor Law, but an essay on Poor Laws in general, comprising a vast collection of statistics, laboriously gathered from the experience of our own country from the earliest times, and of other countries, especially of France. He details the numbers and cost of paupers in England and in the metropolis, describes the peculiar characteristics of pauperism in the agricultural and manufacturing districts, narrates the origin and progress of Poor Law legislation down almost to the [illegible]; and then he discourses with great power and earnestness on the necessity for a total repeal of the Law of Settlement and Removal, suggesting, as a substitute for them, a union settlement, a union rating, and money orders. We scarcely need to say that Mr. PASHLEY's great knowledge of the subject he has so elaborately treated in this volume entitles him to be respectfully heard upon a system which every body feels should not be permitted to remain as it is, but which nobody knows how to amend without hazarding greater evils than are now endured.

THE GAZETTES.

Bankrupts.

Gazette, June 8.

COKER, JOHN, merchant, Saltash, Cornwall, June 17, at one, and July 22, at eleven, Exeter. Off. as. Hernaman. Sols. Rooker and Lavers, Plymouth. Petition, May 31.

ELLIOTT, JAMES, carrier, Derby, June 18 and July 9, at ten, at the Birmingham Court, held at Nottingham. Off. as. Bittleston. Sols. Smith, Derby, and Reese, Birmingham. Petition, June 2.

FENTON, ALEXANDER, stationer, Coventry-street, Westminster, June 15 and July 20, at eleven, Basinghall-st. Off. as. Stansfeld. Sol. Hussey, Queen-st., Cheapside. Petition, June 4.

M'CONNELL, DANIEL, joiner, Liverpool, June 18 and July 16, at eleven, Liverpool. Off. as. Turner. Sol. Frodsham, Liverpool. Petition, May 15.

SHARMAN, EDWARD, bricklayer, Manchester, June 22 and July 14, at twelve, Manchester. Off. as. Pott. Sol. Morris, Manchester. Petition, May 29.

SUTTON, FREDERICK, furnishing ironmonger, Kingston-upon-Hull, June 30 and July 21, at twelve, Kingston-upon-Hull. Off. as. Carrick. Sols. Cariss and Cudworth, Leeds. Petition, June 3.

Gazette, June 11.

BATHGATE, THOMAS, draper, Birmingham, June and July 19, at half-past ten, Birmingham. Com. Balguy. Off. as. Valpy. Sols. Motteram, Knight, and Emmett, Birmingham. Petition, June 10.

BOYLE, SAMUEL, manufacturer of china and earthenware, Fenton, Stoke-upon-Trent, June 26 and July 19, at half-past ten, Birmingham. Com. Balguy. Off. as. Whitmore. Sol. Hodgson, Birmingham. Petition, June 7.

CARR, WILLIAM THOMAS, ironmonger, quarryman, and steel roller, Barnsley, Yorkshire, July 1, at one, July 23, at eleven, Leeds. Com. West. Off. as. Freeman. Sols. Tyas and Harrison, Barnsley; and Bond and Barwick, Leeds. Petition, June 8.

DALLOW, JOHN, cooper, Wolverhampton, June 24 and July 20, at half-past eleven, Birmingham. Com. Daniell. Off. as. Valpy. Sols. Price and Stuart, Wolverhampton. Petition, June 5.

DIEGER, THEODORE, general dealer, Bradford, June 24, at one, and July 23, at eleven, Leeds. Com. West. Off. as. Young. Sols. Hodgson, Bradford; Bond and Barwick, Leeds. Petition, June 8.

GABRIELLI, ANTONIO, and EDMOND, THOMAS, merchants, 37, Old Broad-st. June 17 and Aug. 7, at eleven, Basinghall st. Com. Goulburn. Off. as. Nicholson. Sols. J. Wadsworth, Nottingham; and Reed, Langford, and Marsden, Friday-st. Cheapside. Petition, May 22.

HOTTEN, JOHN THOMAS, watchmaker and silversmith, Penzance, Cornwall, June 22 and July 13, at eleven, Exeter. Com. Bere. Off. as. Hernaman. Sols. Rooker and Lavers, Plymouth; and Stogdon, Exeter. Petition, June 2.

HURN, JAMES, miller and baker, Gedney hill, Lincolnshire, June 25 and July 23, at half-past ten, Nottingham. Com. Balguy. Off. as Bittleston. Sols. Sturton, Key, and King, Holbeach, Lincolnshire; Motteram, Knight, and Emmet, Bennett's-hill, Birmingham. Petition, June 1.

KENNETT, DAVID FURMINGER, licensed victualler, 181, Oxford-st. June 19, at one, Aug. 7, at half past eleven, Basinghall-st. Com. Goulburn. Off as. Pennell. Sols. Bicknell and Bicknell, 79, Connaught-terrace, Edgware-road. Petition, June 7.

LEVERS, THOMAS, woollen cloth warehouseman and factor, Basinghall-st. June 22, at half-past twelve, July 22, at eleven, Basinghall-st. Com. Evans. Off. as Bell. Sols. Messrs. Linklaters, 17, Size-lane, Bucklersbury. Petition, June 8.

REEVES, JOHN FRY, coal merchant and carrier, Fitzhead, Somersetshire, June 22 and July 13, at eleven, Exeter. Com. Bere. Off. as. Hirtzel. Sols. Dommett and Canning, Chard; and Daw, Exeter. Petition, June 1.

WHEATLEY, JOHN, stable keeper and job-master, Kennington-cross, June 19, at half-past one, Aug. 7, at twelve, Basinghall-st. Com. Goulburn. Off. as. Pennell. Sol. C. Cutler, 5, Bell-yard, Doctors'-commons. Petition, June 9.

WILDSMITH, JOHN, and LONGLEY, ROBERT, boat builders, Worsborough Dale, Yorkshire, June 24, at one, and July 23, at eleven, Leeds. Com. West. Off. as. Young. Sols. Westmorland and Taylor, Wakefield. Petition, May 31.

BANKRUPTCY ANNULLED.

Gazette, June 8.

Absell, J. cabinet maker, Cambridge-place, Hackney-road, June 5.

Dividends.

BANKRUPT ESTATES.

Alexander and *Bardgett*, merchants, second sep. of Bardgett, 1s. 9d. Pennell, London.—*Andrews*, E. T. ironmonger, third, 2d. Pennell, London.—*Ashton*, E. woollen draper, first, 4s. Carrick, Hull.—*Beswick*, M. wine merchant, first, 5s. 1d. Pennell, London.—*Burgin*, C. steel manufacturer, second and final, 11½d.; and on new proofs, 2s. 11½d. Freeman, Sheffield.—*Byrom*, W., *Taylor*, H. and *Byrom*, T. coal proprietors, first sep. of T. Byrom, 3s. 9d. Lee, Manchester.—*Clark*, J. miller, first, 2d. Graham, London.—*Copland*, J. tea dealer, first and final, 5s. 3d. Hernaman, Exeter.—*Daw*, B. miller, first, 5s. Hernaman, Exeter.—*Fegan*, J. draper, first, 2s. 6d. Carrick, Hull.—*Harrison*, G. ironmonger, first, 6s. 9d. Graham, London.—*Rutty*, J. draper, first, 1s. 3d. Graham, London.—*Jones*, S. E. R. apothecary, first, 1s. Valpy, Birmingham.—*Senior*, G. apothecary, first, 4s. 6d. Graham, London.—*Spalding*, J. ironmonger, first, 1s. 4d, Stansfeld, London.—*Stirling*, T. and W. slaters, first, 3½d. Pennell, London.—*Warren*, M. silk dyer, first, 5s. Lee, Manchester.—*Willmott*, W. clerk, third, 8s. 7d. Pennell. London.—*Winch*, F. tailor, first, 2s. 7d. Pennell, London. —*Woolf* and *Lyons*, umbrella manufacturers, first, 1s 7d. Stansfeld, London.—*Wright* and *Lockwood*, corn factors, third, 5⅝d. Pennell, London.

INSOLVENTS' ESTATES.

Brinkman, W. 6½d. Apply at the County Court, Aylesbury.—*Bury*, S. farmer, first, 4s. Apply at the County Court, Altrincham.—*Holt*, J. shoemaker and shopkeeper, 1s. Apply at the County Court, Tenbury.—*Hooper*, S. grocer, &c. 4d. Apply at the County Court, Tenbury.—*Perrins*, E. farmer, &c. 7½d. Apply at the County Court, Tenbury.

Assignments for the Benefit of Creditors.

Gazette, June 1.

Crowther, J corn miller, Elland, Yorkshire. Trusts. J. Hick, corn factor, Sandal Magna, and W. Simpson, corn miller, York. Sols. Westmorland and Taylor, Wakefield. —*Down*, S. ironfounder, Plymouth, May 26. Trust. J. S. Crocker, accountant, Devonport. Sols Little and Billing, Devonport.—*Edmunds*, C. grocer, St. Mary-st. Southampton, May 6. Trusts. J. Cooksey, provision merchant, Southampton, and T. Waters, merchant, Bishopsgate-churchyard. Sol. W. H. Mackey, Southampton.—*Fuller*, G. F. grocer and tea dealer, Cheltenham, May 7. Trusts. T. Wedmore, wholesale grocer, Bristol, and H. Crosfield, merchant, Liverpool. Sols. F. Short, Bristol, and D. Evans, Liverpool.—*Horton*, W. ironmonger and blacksmith, Thame, Oxfordshire, May 17. Trust. J. Newitt, yeoman, Thame. Sol. G. F. Druce, Oxford.—*Stuart*, G. merchant, late of Nicholas-lane, City, trading there and elsewhere as Stuart and Co. May 8. Trusts. G. Combo and F. S. Brown, merchants, Penang. Sols. Simpson and Cobb, Moorgate-st.—*Wright*, G. F. grocer, Chipping Ongar, Essex, May 10. Trusts. A. Filch, wholesale cheesemonger, Rood-lane, and J. S. Buck, wholesale grocer, Leadenhall-st. Sols. Linklaters, Sise-lane.

Gazette, June 4.

Chatterton, T. baker, Rye, Sussex, May 21. Trusts. J. Smith, gentleman, W H. Chatterton, pawnbroker, and C. Furby, bricklayer, all of Rye. Sols. E. N Dawes, Rye. —*Clements*, J. miller, Ramsey, Huntingdonshire, May 29. Trusts. W. Staffurth, gentleman, and T. Darlow, jun. grocer and draper, both of Ramsey. Sol J. Sergeant, Ramsey.—*Newman*, H. A. and *Robinson*, B, wholesale clothiers, Jewry-st. May 24. Trusts. J. and D Parker, warehousemen, Wood-st. Sols. Sole, Turner, and Turner. Aldermanbury.—*Perry*. J. ironmonger, Pontypool, Monmouthshire, May 5. Trusts. J. Williams, factor, Birmingham, and R. Cross, iron merchant, Bristol. Sol J. Phillpotts, Newport.—*Robinson*, J. tailor and draper, Manchester, May 14. Trust. J. Lees, accountant, Manchester. Sols. Claye, Welsh, and Claye, Manchester.

Partnerships Dissolved.

Gazette, June 1.

Bailey, T. sen. and T. jun. booksellers, printers, and stationers, Cockermouth and Keswick, May 28. Debts paid by Bailey, jun.—*Ballard*, J. and T. paper-hanging manufacturers, Duke-street, Manchester-square, May 31. Debts paid by T. Ballard —*Byles*, D. and *Stokes*, S. chemists and druggists, Langley-place, Commercial-road-east, May 28.—*Castello*, S. and Guistiniani, B. London and Constantinople, Dec. 31.—*Coglan*, J. and *Marshall*, T. R. tailors, Jermyn-st. June 1. Debts paid by Marshall.—*Creswick*, T., J. and N. and *Irving*, N. and *Creswick*, J. G. A. silversmiths and silver platers, Craven-st. and Sheffield, March 31. Debts paid by J. and N. Creswick and Irving —*Day*, C. and Young, E. surgeons and general practitioners, Gravesend, May 23.—*De La Rue*, T. and *Co.* wholesale stationers and manufacturers, Bunhill-row, as regards A. A. Fry, Jan. 10.—*Edmonds*, C. H. and *Jones*, J. attorneys and solicitors, Eldon-chambers, Devereux-court, Temple, May 25.—*Gallaway*, B. and *Wilson*, S. K. ship insurance and custom-house agents, Mincing-lane, May 20. Debts paid by Gallaway.—*Jackson*, W. and *Seal*, W. T. builders and carpenters, King's-road, Chelsea, May 29. Debts paid by Seal. —*Lowe*, C. and *Wiseman*, T. W. wholesale stationers, engravers, and printers, Perry's-place, Oxford-st. May 23. —*Plowright*, N. J. and *Going*, J. merchants, Springfield, May 28. Debts paid by Going.—*Ricards*, R. and B. upholsterers, auctioneers, general commission agents, &c. Bath, Somersetshire, May 13. Debts paid by B. Ricards. —*Seekings*, G. and *Ferguson*, J. ale and porter brewers and retailers of beer, Albert-place, High-st. Stratford, May 28.—*Wardle*, J. jun. and *Mockett*, F. gold thread and plate manufacturers, Preston, May 27. Debts paid by Wardle.—*Wilson*, J. M. and *Turner*, J. worsted spinners and manufacturers, Cross-hills, near Keighley, May 29. Debts paid by Wilson.

Gazette, June 4.

Bayliss, J. and *Eckersley*, W. railway contractors, Strabane, Ireland, and Liverpool, May 31.—*Beverley*, B. and *Halstead*, H. fancy cloth manufacturers, Huddersfield, May 31.—*Boyd*, W. S. and A. P. and *Thomas*, W. H. merchants, Moorgate-st. May 22.—*Bradbury*, G. and *Lowe*, H. engineers and machine makers, Manchester, May 31. Debts paid by Bradbury.—*Brodribb*, J. D. and U. grocers, wine and spirit merchants, and maltsters, Warminster, June 1. Debts paid by J. D. Brodribb.—*Clayton*, W. and *Voorst*, H. V. perfumers, Watling-st. May 24.—*Davies*, R. C. and *Forsaith*, W. S. bankers, Shoreditch, June 3.—*Gottschalck*, G. and *Goldschmidt*, commission merchants, Manchester, June 1.—*Greaves*, C. and *Reeves*, C. jun. sword cutlers, Birmingham, Jan. 1. Debts paid by Reeves.—*Hodghon*, J. and *Edington*, J. pawnbrokers, St. Petersburgh, Russia, and Preston, June 30.—*Howe*, H. W. and E. F. (his wife), and *Moore*, A. milliners and dress makers, Birmingham, June 1. Debts paid by H. W. Howe.—*Irving*, J. and *Brown*, J. G. coal merchants, Broken Wharf, Wapping. May 31. Debts paid by Irving.—*Lindop*, G. and R. ironmongers, Crewe, May 31. Debts paid by G. Lindop.—*Lowden*, J. and *Robertson*, G. stuff and woollen finishers, Bradford, as concerns Robertson, June 1. Debts paid by Lowden. —*Lyon*, J. sen. and jun. veterinary surgeons, Prescot, Jan. 1, —*M'Clymont*, P. and *Stewart*, W. tea dealers and drapers, Blandford Forum, May 8.—*McGeorge*, M. and R. drapers, Portsea, June 2. Debts paid by M. McGeorge.—*McMullen*, J. and *Allen*, J. C. farmers, Aston, May 29.—*Muller*, C. F. and *Wohark*, P. foreign goods importers, Bloomsbury, June 2.—*Nairn*, H. and P. merchants, Newcastle and Waren-mills, near Belford, North Sunderland, May 31.— —*Purchase*, F. W. and *Binge*, F. auctioneers and appraisers, Bath, May 27 —*Pym*, G. and W. linen drapers, Britannia-place, Wandsworth-road, April 27. Debts paid by G. Pym.—*Roots*, J. and G. clamp brick makers, Luton, Chatham, Jan. 1.—*Skyrme*, J. J. and *Micklethwaite*, R. newspaper proprietors, printers, and publishers, Huddersfield, May 31. Debts paid by Skyrme.—*Stirk*, J. and *Turton*, G. coal dealers, Wolverhampton, May 24. Debts paid by Turton.—*Wackerbarth*, G. and *Colling*, J. sugar refiners, St. George's-st. St. George's-in-the-East, June 2.—*Wagner*, C. H. *Baker*, D. and *Finnemore*, J. steel pen makers, Birmingham, May 31.—*Wenck*, C. H. and *Deekens*, F. A. commission merchants, Liverpool, May 31.—*Wragg*, J. and *Wilcock*, J. confectioners, Barnsley, June 1. Debts paid by Wilcock —*Wray*, W. and J. whitesmiths, engine-builders, and ironfounders, Darlington, May 22. Debts paid by J. Wray.

CONTENTS.

THE NEW LAWS OF THIS SESSION, 1852.
THE LAW REFORMS.

NOTICE.—The following important *New Laws of the Session*, including the New Procedure Acts, will be published as soon as possible after they become laws.

Each will be transmitted by the next post after publication (paid) to those Members of the Profession who will *immediately* forward their orders to the Publisher, so as to enable him to regulate the impression, and make his arrangements accordingly.

To Readers and Correspondents.

"X." *should consult some Ecclesiastical Court Lawyer; such a marriage is certainly not* void, *only voidable.*

"E. C. L."—*There is no modern work on the subject, and there being so little practice in it, we fear it would not pay to publish one; but we will talk it over with some of our friends conversant with that branch of the law.*

"O. M.'s" *queries are all of them difficult questions of law, and not of professional practice, and therefore excluded by the very proper rule that limits them to the latter. They are questions properly for the opinion of counsel, and would require great research to answer. It is necessary to draw a line somewhere, and the distinction we make is that the opinion of our readers may be asked through these columns upon matters that relate to the* practice of the Profession *upon which* experience *is the only or the best authority.*

"A SUBSCRIBER."—*The same answer applies to him also. It would take a treatise to answer him.*

The Secretary of the Birmingham Committee is informed that the provision having been withdrawn it is not necessary to publish the letter inclosed to us. Lord Campbell had promised to oppose it, had it gone up to the Lords.

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We cannot undertake to return rejected communications. Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith.

No notice can be taken of anonymous communications.

NOTICE.

Mr. Crockford will give full price for the following Numbers of the LAW TIMES:—*Nos.* 339, 312, 344, 346, 347; *Index to Vol. VIII. He will also be glad to purchase some copies of Vols. I. IV. and XIV.*

THE LAW TIMES.

SATURDAY, JUNE 19, 1852.

THE LAW REFORMS.

GREAT progress has been made during the past week. The Equity Reform Bills went through committee in one night. This evening (Friday), the Common Law Procedure is to pass through the same stage, we hope, with the same facility. The County Courts Extension Bill has passed the Commons, and only waits the sanction of the Lords to the amendments made there. The Wills Act Amendment Bill has become law. The Copyholds Enfranchisement Bill has escaped from the Committee of the Lords, much altered in its favour, perhaps improved; but still accomplishing its end—the abolition of this last remnant of feudalism. It is to become law this Session. The Ecclesiastical Courts Criminal Jurisdiction Bill has been thrown out, but only upon the understanding that it is to be a part of a general measure for the Reform of the Ecclesiastical Courts, which Lord DERBY has pledged himself to introduce into the next Parliament, should he be in office—which, it is said, it is now almost certain that he *will be.*

This is a goodly catalogue for one week.

And these are not the limits of change. The changes now made will compel still greater ones. We are only at the beginning of the journey.

Friday Night.—As we had anticipated, the Common Law Procedure Bill has to-day passed through committee with only a few amendments, one of which was a provision to meet a mischief we have denounced here, the abuse of the privilege of suits *in formâ pauperis.*

THE COUNTY COURTS BILL.

THIS Bill has passed the Commons, and is sent back to the Lords for their assent to the amendments made in the lower House.

As, by a very objectionable rule, the "*Lords' Papers*" are not accessible to the public, like those of the Commons, we have been unable to obtain an inspection of the Bill as it passed the Commons, but we are assured that, at the last moment, Mr. SCHOLEFIELD'S clause, permitting Articled Clerks to practise in the County Courts, was removed, its objectionable character having been discovered, but which was not recognised when his proposition was hastily made in the committee.

It will be some satisfaction also to the Profession to be informed that, even if it had finally passed the Commons, it would have been struck out by the Lords, for we ventured immediately to direct to it the attention of the Law Lords, who instantly disapproved it, and would have saved the County Courts from the humiliation with which they were threatened just at the moment when they were being made, as we shall have occasion to shew hereafter, the most important courts in the country to the public and the most profitable to the Profession.

It is greatly to be regretted that, although there are so many Lawyers in the House of Commons, there are none who will look after the interests of the Profession. There are many earnest law reformers, and many who are hostile to all reform. Both of these parties are zealous in promoting or opposing changes in the law, but none makes it his care, while supporting improvements, to see that they are effected without utter disregard to the well-being of the Profession, and which in the long run will be found to be no less for the real interests of the public. It will be an evil day for the public that shall witness the social degradation of the Lawyers as a class; and without a fair remuneration for work requiring skill, integrity, and much costly education, no class could maintain its *status* in a wealthy and highly civilized country like ours.

THE NEW ERA.

PROBABLY, before the appearance of our next number, a New Era for the Law and the Lawyers will have been inaugurated. In the course of another week, the Law Reform Bills will have become statutes, and a *revolution* will have been effected in the practice of the Law, and in the position and prospects of the Lawyers. The extent of those changes, and the manner in which they must affect the Profession, will, for a long time to come, engage our attention in these columns, with purpose to assist the Practitioner in adapting himself to the new order of things, and to facilitate those alterations of the professional code which will be rendered necessary by the revolution effected in the Practice of the Courts.

But our present design is only to prepare the way for the consideration of the subject, by impressing upon our readers the general result of the reforms we shall so soon witness. The Common Law Courts and the Equity Courts will be subjected to material changes in their Procedure, all tending to brevity and cheapness; but also materially diminishing the emoluments of the *Profession*—almost annihilating the fees hitherto enjoyed by the Bar, and reducing those of the Attorneys. But then the Attorneys will be compensated, possibly advantaged, by the increased quantity of business thereby induced, but from which the Bar will reap none, or a very trifling, benefit.

Simultaneously with these alterations in procedure, the County Courts have been improved to some extent, and thus rendered even more attractive to suitors than before.

And it is remarkable that the very month that will witness the accomplishment of this revolution will record a circumstance which has not occurred for a century, but which is most significant of the actual condition of legal affairs, and of their prospects—the rising of all the Common Law Courts, with their lists cleared, and not a single case remaining unheard.

The kind of revolution which this combination of circumstances indicates is unmistakeable. The admininstration of the law will henceforth cease to be limited to the metropolis: it will become localised in the provinces, not merely for the recovery of debts and the trial of small demands, but for *all* purposes, both of Equity and of Law.

This, again, will have its influence upon the Profession, in taking them from London and distributing them over the provinces. They will follow the business, and that business being unmistakeably and irrecoverably lost to London and dispersed throughout the country, we shall soon see in every centre of a County Court circuit a regular cluster of practitioners, belonging to both branches of the Profession, just as now they swarm in the metropolis, where hitherto the administration of the law has been centred.

The new Procedure in the Superior Courts, making such fearful havoc with fees, and the enlarged and more profitable business of the County Courts, will probably demand a revision of the rules that hitherto have regulated the Profession as to fees and as to some matters of etiquette, for rules that were good at Westminster may not be so applicable to a provincial town.

Thus will a great number of interesting and important questions grow out of the alterations that next week will probably witness. It is desirable that our readers should comprehend their magnitude and understand their tendency, that they may enter with us upon the serious discussions which must now be pursued, as to what further changes will be necessary to perfect those that have been effected, and how the Profession can be best adapted to the exigencies of the *New Era* in the law that is so soon to be inaugurated.

CLERKS IN THE COUNTY COURTS.

We have received a very earnest remonstrance, from an intelligent Articled Clerk in Manchester, against the objections which we last week felt it to be our duty to urge in opposition to the proposal for permitting Clerks to practise as Advocates in the County Courts. His letter is much too long for insertion, which we regret, for it is a fair and candid statement of his case in answer to that which we have preferred on behalf of the Profession and of the Courts. But having given to his arguments the most careful consideration, we cannot find that any one of our objections has been answered, or that the claim of the Clerks stands upon any other foundation than this, that the County Courts would be a good *school* for them. That is the only substantial reason advanced by our clever correspondent in support of his proposition.

But that is also *one* of the principal grounds of our objection. We object to the County Courts being converted into a *school for Clerks*, just as we should object to surgeons' apprentices being permitted to perform operations on living subjects in hospitals, as means of learning their profession. *They* practise upon the dead body. Let Clerks by all means practise themselves in debating societies with sham trials, but why should the County Courts be made the subjects for the experiments of their "'prentice hands?"

But, says our correspondent, only the skilful will try it; the incompetent will not expose themselves to the shame of ridiculously making their appearance as Advocates.

This assumes what is not the fact, that persons are conscious of their own incapacities. Even bearded men are proverbially ignorant of themselves. But boys of eighteen! Did there ever exist a boy of eighteen who did not think a great deal more of himself than does any man of fifty?

Again, says our young friend, you speak of boys of fifteen going into the Courts. But it is not designed for them, but only for those who are much older, whose service has almost expired.

To this there are two answers:—1st. The proposed provision made no limit of age, it applied to Articled Clerks generally. 2nd. If it be confined to the last two years of service, is that worth the violation of all recognised rules that hitherto have regulated the relationship of teacher and pupil, master and apprentice—the removal of all the distinctions that hitherto have been observed between the boy and the man, the servant and the master, the student and the professor, the learner and the teacher, by putting them on an equal footing in the practice of their particular science, and setting the one to compete with the other as an equal? It is certainly quite a novel claim, an extreme application of the levelling doctrines so much in vogue, but for which the time is not yet ripe,—and we hope will not be for many a year.

Our young friend says:—

> The argument is not good, that because Clerks are not allowed to appear in the lowest courts in the kingdom they should not appear in the County Courts, inasmuch as, in the first place, Attorneys themselves are not allowed of right to appear in the lowest courts; and, in the second place, the County Courts are of different constitution altogether, and not being formed to suit the Attorneys, it follows that the Attorneys must be formed to suit them; and as the County Courts are now established, and have become a necessity, the Advocates required for those courts, suitable to their construction, are become a necessity also.

But, admitting that the Attorneys must adapt themselves to the Courts, we do not see how it follows that therefore Clerks should practise in them. A Barrister does not learn his business in the Superior Courts by practising in them while a student. Yet, if the claim of the Clerks is good for the County Courts being made a school for them, not less should the student for the Bar go to *his* school in Westminster Hall or the Assize Courts.

Lastly, to permit this would be, in fact, to make the same persons at once *practitioners* and *pupils*; it would be to convert the Clerk into an Attorney. Would this be right or reasonable?

We have received many other letters on the same subject, but all repeating the same arguments.

ASSURANCE OFFICES.

A question was put to the President of the Board of Trade, in the House of Commons, by Mr. Foster, whether the Government contemplated any amendment of the Joint Stock Companies Registration Act; to which Mr. Henley replied that he had the subject under his consideration.

On a subsequent evening Mr. Foster explained, that his question had reference solely to the Life Assurance Offices, many of which were notoriously in a bankrupt condition.

Mr. Foster's assertion is quite true, and we direct the particular attention of our readers to the fact thus announced in the House of Commons, because it is one which we have many times repeated here, by way of warning to the Solicitors, who will be responsible morally, and perhaps legally, for carelessly hazarding the fortunes of their clients by assuring in offices whose responsibility and respectibility they have not previously ascertained. It may not be so well known to our country readers, but in London it is notorious, that many of the new Life Assurance Offices have been started by penniless adventurers, without capital, without responsible shareholders, with directors who have neither position, nor character, nor cash to lose, and nothing but heads or tails to their names, which they thus systematically sell, and which the ignorant, who see a Lord, or a Baronet, or an M.P. upon the board, take to be a guarantee for the respectability of a concern which those who know the men know to be a gigantic bubble. Mr. Foster said truly that many of the new Assurance Offices are bankrupt. Some of them have not a shilling in their coffers, although they have received thousands from assurers and hundreds from shareholders, and such men of straw are the shareholders, that they could not, between them, pay the *debts* of the concern, much less its liabilities. An Assurance Office is the easiest of all means for fraud, because the *receipts* are *immediate*, while the *payments* are *deferred*, so that the speculators can go on for a long time receiving large sums of money without shewing their insolvency. Hence the great number of new offices that have lately started.

In these circumstances, and with a crash coming which will involve thousands in ruin, we venture once again to warn the Profession to extremest caution in effecting their Insurances. We recommend them not to be attracted by *names*, for it is well known here how these are obtained, but to look to *the balance sheet*. That is the only test of the solvency and security of an Assurance Office. They need but inquire into *two* items in the account, viz. what sum the office has received in *premiums*, and what sum it has *invested* in *securities*. If the moneys invested cover the premiums, and so long as they do so, the office is a *safe* one. If they do *not* this, if the investments are small or nothing, the office is *unsafe*. The reason is obvious. The basis of Assurance is a calculation that *if a certain sum per annum be invested at compound interest, it will, at the end of any given time, yield a certain larger sum*. If *all* the moneys received from assurers for premiums be not invested immediately, and kept so invested, yielding interest, the office *loses* by the bargain; still greater is the loss, leading to certain bankruptcy, if the moneys received from assurers are not invested at all, but are applied to the general expenses of the office.

Bearing this in mind, our readers will have no difficulty in forming a judgment as to the responsibility of any office, and the safety with which they may assure in it. But let them, as they regard the interests of their clients, avoid any new office which cannot satisfy them that its *investments* are equal to the *premiums* it has *received*.

It is certainly most desirable that the Legislature should interfere to protect the public in this matter. The remedy is not difficult. Let there be an *Official Auditor*, whose duty it should be yearly to investigate the affairs of *every* Assurance Office, and report them to Parliament and the public. The fees now paid by the offices to their own auditors would be an ample salary for such a public officer. Publicity given to the true state of affairs in each office would of itself be a sufficient safeguard; but to this must be added the American and Continental plan of requiring a certain amount of paid-up capital to be invested in Government or other approved securities, before a licence is granted to an Assurance Office.

So urgent do we feel to be the importance of this, that if it should be then neglected by others, and the opportunity should offer to us in the next Parliament, we shall venture to obtrude it upon the notice of the Legislature in the form of "A Bill for the better Regulation of Assurance Offices."

THE LEGISLATOR.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, June 11.

Representative Peer for Scotland Act Amendment
Master in Chancery Abolition
Public Health Act, 1848, Amendment
Distressed Unions, Ireland.

Tuesday, June 15.

Militia Pay
Consolidated Fund
Militia Ballot Suspension
Crime and Outrage, Ireland.

Thursday, June 17.

School Sites Acts Extension (Lords)
Property of Lunatics (Lords).

BILLS READ A SECOND TIME.

Friday, June 11.

Master in Chancery Abolition
Metropolitan Sewers.

Monday, June 14.

Public Health Act (1848)—Amendment
Representative Peers for Scotland Act Amendment (Lords).

Wednesday, June 16.

Bishopric of Christchurch, New Zealand.

Thursday, June 17.

Metropolitan Burials
Consolidated Fund
Militia Ballots Suspension
Militia Pay
Distressed Unions, Ireland.

BILLS READ A THIRD TIME AND PASSED.

Friday, June 11.

Turnpike Acts Continuance.

Monday, June 14.
County Courts Further Extension (Lords).
Thursday, June 17.
Southwark and Vauxhall Water Company
New Zealand Government
Hereditary Casual Revenues in the Colonies
Appointment of Overseers
Pharmacy.

BILLS READ A THIRD TIME AND PASSED.
Friday, June 11.
Chelsea Waterworks
New River Company
Fees Conservancy.
Monday, June 14.
Torquay Extramural Cemetery.
Tuesday, June 15.
Presbyterian Ministers' Widows' and Orphans' Fund
East London Waterworks, Amendment
Torquay Market and Slaughterhouses.
Thursday, June 17.
British Electric Telegraph Company
Hawkins's Divorce
Grand Junction Waterworks.

PETITIONS PRESENTED.

Attorneys' Certificates—for Repeal of the Duty thereon—from Harleston, Whitby, Wigton, and Wolverhampton

SESSIONAL PRINTED PAPERS.

Par. Num.
260. Army, &c.—Abstract of Return
429. Iron, Copper, &c.—Account
440. Poor Relief—Return
444. Militia Estimates—Report from the Committee
303. Preserved Meats, Navy—Report from the Committee
377. Northern Lighthouses—Abstract of Accounts
461. Incumbered Estates, Ireland—Return
446. Bills—Appointment of Overseers
452. — Friendly Societies, No. 2, amended
455. — County Courts further Extension, as amended in Committee and on re-commitment
475. — Protestant Dissenters, amended
477. — Militia Ballots Suspension
478. — Crime and Outrage, Ireland
473. — Improvement of the Jurisdiction of Equity, amended
474. — Nisi Prius Officers, amended
483. — Master in Chancery Abolition, amended
456. — Holloway House of Correction
464. — Representative Peers for Scotland Act Amendment
465. — Thames Embankment, as amended by the Select Committee
466. — Public Health Act, 1848, Amendment
467. — Distressed Unions, Ireland
412. Cheese—Account
436. New Churches—Account
Census of Ireland for the year 1851—Part 1, County of Longford
Census of Ireland for the year 1851—Part 1, County of Meath
334. Parish Cess, Dublin—Tabular Returns
447. Coast Guard Service—Return
449. Small Tenements Rating Act—Return
453. Library of the House—Report from the Committee
Mr. Erskine Mather—Further Paper
Prisons—Seventeenth Report of the Inspectors, Part 3, Southern and Western District
356 (5). Colonial Church Legislation, &c.—Copies of Petitions, &c. Part 5, Mauritius
Turnpike Trusts—Reports of the Secretary of State
418. Management of the Poor—Returns
435. Fire Insurance—Account
460. Terence Rafferty—Correspondence.

HOUSE OF LORDS.

ENFRANCHISEMENT OF COPYHOLDS BILL.

THURSDAY, June 17.—The House having gone into committee upon this Bill, Lord LYNDHURST congratulated the House and the country that it had been referred to a select committee, and that it now appeared before them in a greatly improved shape; for it had come up from the Commons full of anomalies, and in such a form as that it was calculated to inflict great injustice, in some cases upon the lords, and in other instances upon the tenants of copyhold manors. His noble and learned friend on the woolsack was entitled to the sincere thanks of all of them, for it was by his exertions that most of the blemishes which had defaced the measure had been removed.—Lord CAMPBELL said, if he had thought that the Bill could have passed in the present session, he should certainly not for a moment have opposed its going to a select committee, for he had always applauded that mode of proceeding in that House, particularly when an alteration of the law was involved. He could only say that he now rejoiced that the Bill had been referred to a select committee, for he admitted that it had been greatly improved by that tribunal, and that the Government, having, he presumed, attended to the counsel of his right hon. friend the Home Secretary, were now prepared to give it their countenance and support, and to aid in passing it into a law with as little delay as possible.—The LORD CHANCELLOR would have been well pleased to have been spared any observations on this subject, for he had hoped that his noble and learned friend would have withdrawn that censure which he had seen fit to pass upon him, and to pass after he had denied the imputation that he was professing and declaring one thing when he meant another. There was nothing which he so much desired to avoid as a controversy with any of their lordships. In the office which he held he considered it to be his positive duty to tell their lordships what his real and sincere opinions were upon the measures which came before them. He was not to ask whether those opinions were popular or unpopular, but to give them his real opinion, and, if any man had ever expressed the real opinion which he had entertained for years, and after laborious study and attention, upon any subject, he had stated his real and sincere opinion to their lordships with respect to this Bill. In accepting this measure he felt that he was taking a choice of evils. That public opinion called for a remedy of the evils which now existed nobody denied; but their lordships could not pass this measure without inflicting very considerable injuries on large classes of the people. To that committee their lordships were indebted for the Bill as it now appeared before them. No sooner had it got into the select committee than his noble and learned friend (Lord Campbell) declared that it was the very worst drawn Bill he had ever seen. He (the Lord Chancellor) had taken a great deal of trouble with it both in and out of the committee. There was not a clause in it that had not been cut about in every direction. Some eight or nine new clauses had been added. In fact, he had never seen a Bill more hacked and mutilated by a select committee, and he had never seen one that more required it.—Lord CAMPBELL said, that no doubt the Bill was greatly improved, but still it was a measure for carrying out the enfranchisement of copyholds, to which enfranchisement the Lord Chancellor had, in the outset, decidedly objected.—The Earl of STRADBROKE said, it would have been quite impossible to accept the Bill as it came from the other House.—Lord BEAUMONT said, the subject was a very difficult one indeed, requiring to the utmost all that careful attention which it had received at the hands of the noble and learned members of the committee. He believed, however, that, as it now stood, the measure would do very little harm and a great deal of good.—Lord CRANWORTH testified to the earnest, unremitting, and impartial endeavours on the part of the committee to do justice to both lords and tenants. It might have been anticipated, perhaps, that a committee of that House would have tended rather to a bias in favour of the lords, but he could conscientiously say that what he had observed on the part of the committee was rather a sensitiveness in favour of the tenants.—The clauses were then agreed to, and the Lords resumed.

ECCLESIASTICAL COURTS CRIMINAL JURISDICTION.

Lord WODEHOUSE moved the second reading of the Ecclesiastical Courts Criminal Jurisdiction Bill, which proposed to remove from those tribunals the cognizance of cases of defamation and brawling in the church or churchyard.—The Bishops of Salisbury and Oxford opposed the measure, which was supported by Lord CAMPBELL and Lord FITZWILLIAM.—The Earl of DERBY hoped that Lord WODEHOUSE would not press the second reading of the Bill, and promised that the Ecclesiastical Courts should receive the earliest and most anxious attention at the hands of the Government.—Lord WODEHOUSE having declined to withdraw the Bill, the House divided, when the numbers were—

For the second reading	45
Against	80
Majority	—35

The Bill was therefore lost.

ROYAL ASSENT.

The Royal assent was given by commission, at half-past three o'clock, to the Stamp Duties (Ireland) Continuance Bill, the Turnpike Roads (Ireland) Bill, the Proclamation for Assembling Parliament Bill, the Law of Wills Amendment Bill, the Registration of Births, Deaths, and Marriages Bill, the Apprehension of Deserters from Foreign Ships Bill, the Law of Evidence (Scotland) Bill, the Public Works Bill, the Kennington-common, &c. Improvement Bill, the Belfast Custom-house Bill, the Kelvin-bridge (Glasgow) and other Works Bill, the Somersetshire Central Railway Bill, the Newmarket Railway Bill, the Athlone Market and Customs Bill, the Glasgow, Kilmarnock, and Ardrossan Railway Bill, the St. Helen's Gas Bill, the Ulverstone Waterworks Bill, the Abbey Tintern and Bigswear Roads Bill, the London (City) Improvements Bill, the Middlesborough and Guisborough Railway Bill, the Sharples and Houghton Road Bill, the Shields and Morpeth Roads Bill, the Merthyr Tydvil Waterworks Bill, the Battle and Robertsbridge Road Bill, the London (City) Small Debts Extension Bill, the South Essex Estuary and Reclamation Bill, the Runcorn Improvement Bill, the Shillingford, Wallingford, and Reading Road and Shillingford Bridge Bill, the London, Tilbury, and Southend Railway Bill, the Lancaster Waterworks and Gas Bill, the Portrush Harbour Bill, the Manchester, Sheffield, and Lincolnshire Railway (No. 1) Bill, the London Gaslight Company (Amendment of Acts, &c. No. 2) Bill, the Stockport and Marple Road Bill, the Pedmore and Rowley Roads Bill, the Stroud and Bisley Road Bill, the Macclesfield and Buxton Road Bill, the Kirkby Stephen and Hawes Road Bill, the Marsden, Gisburne, and Long Preston Roads Bill, the Bury and Little Bolton Road Bill, the Bramley and Ridgewick Road Bill, the Wakefield and Denbydale Road Bill, the Rotherham and Pleasley Road Bill, the Leven Railway Bill, the Lancashire and Yorkshire and York and North Midland Railways Bill, the Beaconsfield and Red-hill Road Bill, the Manchester, Buxton, Matlock, and Midlands Junction Railway Bill, the Kettering and Northampton Road Bill, the Railway Passengers Assurance Company Bill, the Greenfield and Shepley-lane-head Road Bill, the Leeds Waterworks (No. 2) Bill, the Tramore Embankment Bill, the Limerick Markets Bill, the South-Eastern and Reading, Guildford, and Reigate Railways Bill, the Ipswich Dock Bill, the Tyne Improvement Bill, the South Wales Railway Bill, the Londonderry-bridge (No. 1) Bill, the Londonderry-bridge (No. 2) Bill, the Edinburgh and Glasgow Railway Bill, the Yeovil and Ilchester Turnpike Trusts Bill, the London and North-Western Railway (No. 2) Bill, the Eastern Counties Railway (power to use the East Anglian Railways, &c.) Bill, the Leek and Hassop and Middlehills and Buxton Road Bill, the York, Newcastle, and Berwick Railway (deviation of Bishop Auckland branch, &c.) Bill, the Presbyterian Ministers, Widows, and Orphans Fund Bill, the Bowden-park Estate Bill, the Clarkson's Estate Bill, the Watson's Hospital (Edinburgh) Estate Bill, and the Balmoral Estate Bill—seventy Bills in all.

HOUSE OF COMMONS.

EQUITY REFORM BILL.

FRIDAY, June 18.—The House went into committee upon the Improvement of the Jurisdiction of Equity Bill.—The 12th clause, enacting that before the name of any person shall be used in any suit as next friend of any infant (unless father, mother, brother, sister, or testamentary guardian), such person shall obtain leave from the Court in a summary way, was struck out, at the suggestion of the Master of the Rolls, who objected likewise to the 59th clause, which enacts that in any proceeding at law for recovery of real or personal property, if the defendant insists that the plaintiff cannot recover by reason of his estate being only equitable, the Court may direct a case to be sent for the opinion of the Court of Chancery.—Sir F. KELLY agreed that this clause was hardly within the scope of the Bill, and it was struck out.—The MASTER of the ROLLS moved the insertion of a new clause, to the effect that no suit shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and that the Court may make binding declarations of right without granting consequential relief. This clause was agreed to, and added to the Bill.—The MASTER of the ROLLS moved another clause, to the effect that a Court of Chancery shall not send cases to the Court of Common Law, but shall have power to determine any questions of law.—Mr. WALPOLE thought this a most valuable clause, which was likewise added to the Bill. The Bill thus amended was reported.

The House then went into committee upon the Master in Chancery Abolition Bill. In clause 2, releasing four Masters from their duties, on the motion of the MASTER of the ROLLS the number "two" was substituted for "four." The other clauses were agreed to, with certain amendments, and some new clauses were added to the Bill, which was reported to the House.

JOINT-STOCK COMPANIES.

MONDAY, June 14.—Mr. FORSTER rose to ask the President of the Board of Trade whether the attention of that department had been drawn to the operation of the Act 7 & 8 Vict. c. 110, for the regulation of joint-stock companies, to the frequent evasion of the provisions of that Act, and to the state of the affairs of some of the companies registered under it as shewn by the return of the registrar, and ordered by the House to be printed on the 19th day of March last, and whether it was the intention of the Government to propose a revision of the Act, to prevent further danger to the public from the abuse of it?—Mr. HENLEY said his attention had been drawn to the state of the joint-stock companies generally, and he was bound to say that in very many particulars the law was in a very unsatisfactory state, that it wanted amendment in many cases, and that there were also many cases in which its provisions were evaded, and no very direct means by which they could be enforced. And, certainly, if he continued to hold his present situation, he would endeavour to have some of those evils remedied.

JOINT-STOCK INSURANCE COMPANIES.

TUESDAY, June 15.—Mr. FORSTER felt called upon to explain the question he yesterday put to the President of the Board of Trade respecting Joint-stock Insurance Companies. His question was supposed to refer to joint-stock companies generally, and one of the papers had headed his question 'Joint-stock Banks." But joint-stock banks were regulated under a separate Act. The return to

which his question referred related to insurance companies exclusively; and from which it appeared that many of them, particularly life insurance companies, had been established without capital, and that some of them were apparently in a state of actual bankruptcy.

ROMAN CATHOLIC PROCESSIONS.

[*From Tuesday's Gazette.*]

BY THE QUEEN—A PROCLAMATION.

VICTORIA R.

Whereas by the Act of Parliament, passed in the 10th year of the reign of his late Majesty King George the Fourth, for the relief of his Majesty's Roman Catholic subjects, it is enacted, that no Roman Catholic ecclesiastic, nor any member of any of the religious orders, communities, or societies of the Church of Rome, bound by monastic or religious vows, should exercise any of the rites or ceremonies of the Roman Catholic religion, or wear the habits of his order, save within the usual places of worship of the Roman Catholic religion, or in private houses; and whereas it has been represented to us, that Roman Catholic ecclesiastics, wearing the habits of their orders, have exercised the s and ceremonies of the Roman Catholic religion ... highways and places of public resort, with many persons in ceremonial dresses, bearing banners and objects, or symbols, of their worship, in procession, to the great scandal and annoyance of large numbers of our people, and to the manifest danger of the public peace; And whereas it has been represented to us that such violation of the law has been committed near places of public worship during the time of Divine Service, and in such a manner as to disturb the congregations assembled therein; We have, therefore, thought it our bounden duty, by and with the advice of our Privy Council, to issue this our Royal Proclamation, solemnly warning all those whom it may concern, that, whilst we are resolved to protect our Roman Catholic subjects in the undisturbed enjoyment of their legal rights and religious freedom, we are determined to prevent and repress the commission of all such offences as aforesaid, whereby the offenders may draw upon themselves the punishments attending the violation of the laws, and the peace and security of our dominions may be endangered.

Given at our Court, at Buckingham Palace, this 15th day of June, in the year of our Lord, 1852, and in the 15th year of our reign.

God save the Queen.

THE LABOUR OF THE SESSION.—From a Parliamentary paper, it appears that during the session, and up to Saturday last, there were 126 public Bills brought before Parliament, which have been disposed of in the following manner: 20 had received the Royal assent, 12 were introduced by the present Government now in progress, and 11 by the late Government now in progress. There were 31 Bills brought forward by private members of both houses, and 22 Bills had been rejected or withdrawn, making the total 126.

NEW STATUTES.

15 VICTORIA, A.D. 1852.

[In this record of Legislation only the Statutes practical utility are given at length. Of the other an abstract or the titles only are presented.]

CAP. I.

An Act to apply the sum of Eight Millions out of the Consolidated to the Service of the Year, 1852. (March 30, 1852.)

CAP. II.

An Act to Authorise the Inclosure of certain Lands, in pursuance of the Seventh Annual and also of a Special Report of the Inclosure Commissioners for England and Wales. (April 20, 1852.)

CAP. III.

An Act to Provide for the Administration of Personal Estates of Intestates and others to which her Majesty may be entitled in right of her Prerogative, or in right of her Duchy of Lancaster. (April 20, 1852.)

CAP. IV.

An Act to Indemnify such persons in the United Kingdom as have omitted to qualify themselves for offices and employments, and to extend the time limited for those purposes respectively. (April 20, 1852.)

The annual Indemnity Act.

CAP. V.

An Act further to explain and amend the Acts for the Regulation of Municipal Corporations in England and Wales, and in Ireland. (April 20, 1852.)

We give this statute entire:—

5 & 6 *Wm.* 4, *c.* 76—3 & 4 *Vict. c.* 108.—Whereas by an Act passed in the session of Parliament holden in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," it is (among other things) enacted, that no person shall be qualified to be elected or to be a councillor or an alderman of any borough during such time as he shall have, directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council of such borough: And whereas by another Act passed in the session of Parliament holden in the third and fourth years of the reign of her present Majesty, intituled "An Act for the Regulation of Municipal Corporations in Ireland," it is (among other things) enacted, that no person shall be qualified to be elected or to be a councillor, or an alderman, or a municipal commissioner of any borough, during such time as he shall have, directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of any such council, commissioners, or charitable trustees of such borough: and whereas doubts have arisen whether the said enactments may not be deemed to extend to the persons hereinafter mentioned, and it is expedient that such doubts should be removed: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same,

1. *Proprietors of newspapers not to be deemed contractors by reason of advertisements.*—That from and after the passing of this Act, no person shall be deemed to have had or to have an interest in a contract or employment with, by, or on behalf of such council, commissioners, or trustees, by reason only of his having had or having a share or interest in any newspaper in which any advertisement relating to the affairs of any such borough, council, commissioners, or trustees may have been or may hereafter be inserted.

2. *Suits commenced for certain penalties under recited Acts may be stayed on payment of costs out of pocket.*—That immediately from and after the passing of this Act, it shall be lawful for any person or persons against whom any original writ, suit, action, plaint, or information shall have been sued out, commenced, or prosecuted on or before the day of the passing of this Act, for the recovery of any pecuniary penalty or penalties incurred under the said enactments (by reason only of any extension of the words "contract" or "employment," therein contained, to the case of any such insertion of advertisements in any newspaper as aforesaid) to apply to the Court in which such original writ, suit, action, bill, plaint, or information shall have been sued out, commenced, or prosecuted, or to any judge of one of the Superior Courts at Westminster or Dublin, as the case may be, for an order that such writ, suit, action, bill, plaint, or information shall be discontinued, upon payment of the costs thereof out of pocket incurred to the time of such application being made, such costs to be taxed according to the practice of such Court; and every such Court or Judge is hereby authorised and required, upon such application, and proof that sufficient notice has been given to the plaintiff or plaintiffs, or to his or their attorney, of the application to make such order as aforesaid, and upon the making such order, and payment or tender of such costs as aforesaid, such writ, suit, action, bill, plaint, or information shall be forthwith discontinued.

3. *Suits, &c. renewed or continued may be discontinued on payment of costs out of pocket.*—Provided always, That in all cases in which any such writ, suit, action, bill, plaint, or information sued out or commenced on or before the fifth day of February, one thousand eight hundred and fifty-two, shall have been renewed or continued before the passing of this Act, or upon which any declaration shall have been filed or delivered, or other proceedings had, after the said fifth day of February, and before the passing of this Act, it shall be lawful for such Court or Judge, upon such application and proof as aforesaid, to make such order as aforesaid for discontinuing the same, upon payment of the costs out of pocket of all proceedings had on or before the said fifth day of February, to be taxed as aforesaid, and such costs out of pocket (if any) of any proceedings had after the said fifth day of February, as the Court or Judge making such order shall think fit to direct, and upon making such order, and upon payment or tender of such costs, such writ, suit, action, bill, plaint, or information shall be forthwith discontinued.

4. *Court may make order for discontinuing suit, without payment of costs.*—Provided also, that in all cases in which any such writ, suit, action, bill, plaint, or information shall have been sued out or commenced at any time subsequent to the said fifth day of February, it shall be competent for such Court or Judge as aforesaid to make such orders as aforesaid for discontinuing the same, without payment of any costs; and upon making such order such writ, suit, action, bill, plaint, or information shall be forthwith discontinued.

5. *Judgments not to be affected.*—That nothing herein contained shall extend to any action, bill, plaint, or information, or any legal proceeding of any kind whatsoever, in which any judgment shall have passed on or before the day of the passing of this Act, but such proceedings may be thereupon had and taken, and any such judgment may be dealt with in all respects as if this Act had not passed.

6. *Proprietors of newspapers not disqualified from election to municipal offices by reason of advertisements, &c.*—That from and after the passing of this Act no municipal commissioner, councillor, alderman, or mayor, in any municipal corporation within the provisions of either of the said Acts, shall be deemed to have been or to be disqualified to be elected or to be such municipal commissioner, councillor, alderman, or mayor, by reason only of his having had or having any share or interest in any newspaper in which any such advertisement as aforesaid may have been or may be inserted, but all elections of municipal commissioners, councillors, aldermen, or mayors as aforesaid shall be deemed and taken to have been and to be valid (unless in cases where judgment may have been obtained before the passing of this Act), notwithstanding any such share or interest as aforesaid.

CAP. VI.

An Act for extending the Term of the provisional Registration of Inventions under "The Protection of Inventions Act, 1851." (April 20, 1852.)

14 *Vict. c.* 8.—Whereas by "The Protection of Inventions Act 1851," it was provided that the provisional registration of any new invention registered thereunder should continue in force for the term of one year from the time of the same being so registered; and whereas it is expedient that the said term should be extended: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. *Provisional registration under the recited Act to continue in force till 1st Feb.* 1853.—The registration of every invention provisionally registered under the said Act shall continue in force until the first day of February, one thousand eight hundred and fifty-three, in like manner, and with the like effect and consequences, as if every such registration had been continued in force till that day by the said Act, instead of for the term of one year from the time of the invention being registered as therein mentioned.

CAP. VII.

An Act for punishing Mutiny and Desertion, and for the better payment of the Army and their Quarters. (April 20, 1852.)

CAP. VIII.

An Act for the Regulation of Her Majesty's Royal Marine Forces while on shore. (April 20, 1852.)

CAP. IX.

An Act to Disfranchise the Borough of St. Alban's. (May 3, 1852.)

CAP. X.

An Act for raising the sum of seventeen millions seven hundred and forty-two thousand eight hundred pounds by Exchequer Bills, for the service of the year 1852. (May 3, 1852.)

CAP. XI.

An Act to continue an Act of the 12th year of her present Majesty, to prevent the spreading of contagious or infectious Disorders among Sheep, Cattle, and other animals. (May 3, 1852.)

This continues the 11 & 12 Vict. c. 107 to 1st September, 1853.

CAP. XII.

An Act to enable her Majesty to carry into effect a Convention with France on the Subject of Copyright; to extend and explain the International Copyright Acts; and to explain the Acts relating to Copyright in Engravings. [May 28, 1852.]

We give the statute entire:—

7 & 8 *Vict. c.* 12.—Whereas an Act was passed in the seventh year of the reign of her present Majesty, intituled "An Act to amend the Law relating to International Copyright," hereinafter called "The International Copyright Act:" and whereas a convention has lately been concluded between her Majesty and the French Republic, for extending in each country the enjoyment of copyright in works of literature and the fine arts first published in the other, and for certain reductions of duties now levied on books, prints, and musical works published in France: And whereas certain of the stipulations on the part of her Majesty contained in the said treaty require the authority of Parliament: And whereas it is expedient that such authority should be given, and that her Majesty should be enabled to make similar stipulations in any treaty on the subject of copyright which may

hereafter be concluded with any foreign power: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. *Partial repeal of* 7 & 8 *Vict.* c. 12, *s.* 18.—The eighteenth section of the said Act of the seventh year of her present Majesty, chapter twelve, shall be repealed, so far as the same is inconsistent with the provisions hereinafter contained.

2. *Her Majesty may by order in Council direct that the authors of books published in foreign countries may for a limited time prevent unauthorised translations.*—Her Majesty may, by order in Council, direct that the authors of books which are, after a future time, to be specified in such order, published in any foreign country, to be named in such order, their executors, administrators, and assigns, shall, subject to the provisions hereinafter contained or referred to, be empowered to prevent the publication in the British dominions of any translations of such books not authorised by them, for such time as may be specified in such order, not extending beyond the expiration of five years from the time at which the authorised translations of such books hereinafter mentioned are respectively first published, and in the case of books published in parts, not extending as to each part beyond the expiration of five years from the time at which the authorised translation of such part is first published.

3. *Thereupon the law of copyright shall extend to prevent such translations.*—Subject to any provisions or qualifications contained in such order, and to the provisions herein contained or referred to, the laws and enactments for the time being in force for the purpose of preventing the infringement of copyright in books published in the British dominions, shall be applied for the purpose of preventing the publication of translations of the books to which such order extends which are not sanctioned by the authors of such books, except only such parts of the said enactments as relate to the delivery of copies of books for the use of the British Museum, and for the use of the other libraries therein referred to.

4. *Her Majesty may by Order in Council direct that the authors of dramatic works represented in foreign countries may for a limited time prevent unauthorised translations.*—Her Majesty may, by Order in Council, direct that authors of dramatic pieces which are, after a future time, to be specified in such order, first publicly represented in any foreign country, to be named in such order their executors, administrators, and assigns, shall, subject to the provisions hereinafter mentioned or referred to, be empowered to prevent the representation in the British dominions of any translation of such dramatic pieces not authorised by them, for such time as may be specified in such order, not extending beyond the expiration of five years from the time at which the authorised translations of such dramatic pieces hereinafter mentioned are first published or publicly represented.

5. *Thereupon the law for protecting the representation of such pieces shall extend to prevent unauthorised translations.*—Subject to any provisions or qualifications contained in such last-mentioned order, and to the provisions hereinafter contained or referred to, the laws and enactments for the time being in force for ensuring to the author of any dramatic piece first publicly represented in the British dominions the sole liberty of representing the same shall be applied for the purpose of preventing the representation of any translations of the dramatic pieces to which such last-mentioned order extends, which are not sanctioned by the authors thereof.

6. *Adaptations, &c. of dramatic pieces to the English stage not prevented.*—Nothing herein contained shall be so construed as to prevent fair imitations or adaptations to the English stage of any dramatic piece or musical composition published in any foreign country.

7. *All articles in newspapers, &c. relating to politics may be republished or translated: and also all similar articles on any subject, unless the author has notified his intention to reserve the right.*—Notwithstanding anything in the said International Copyright Act or in this Act contained, any article of political discussion which has been published in any newspaper or periodical in a foreign country may, if the source from which the same is taken be acknowledged, be republished or translated in any newspaper or periodical in this country; and any article relating to any other subject which has been so published as aforesaid may, if the source from which the same is taken be acknowledged, be republished or translated in like manner, unless the author has signified his intention of preserving the copyright therein, and the right of translating the same, in some conspicuous part of the newspaper or periodical in which the same was first published, in which case the same shall, without the formalities required by the next following section, receive the same protection as is by virtue of the International Copyright Act or this Act extended to books.

8. *No author to be entitled to benefit of this Act without complying with the requisitions herein specified.*—No author, or his executors, administrators, or assigns, shall be entitled to the benefit of this Act, or of any Order in Council issued in pursuance thereof, in respect of the translation of any book or dramatic piece, if the following requisitions are not complied with; (that is to say),

1. The original work from which the translation is to be made must be registered and a copy thereof deposited in the United Kingdom in the manner required for original works by the said International Copyright Act, within three calendar months of its first publication in the foreign country:
2. The author must notify on the title page of the original work, or if it is published in parts, on the title page of the first part, or if there is no title page, on some conspicuous part of the work, that it is his intention to reserve the right of translating it:
3. The translation sanctioned by the author, or a part thereof, must be published either in the country mentioned in the Order in Council, by virtue of which it is to be protected, or in the British dominions, not later than one year after the registration and deposit in the United Kingdom of the original work, and the whole of such translation must be published within three years of such registration and deposit:
4. Such translation must be registered, and a copy thereof deposited in the United Kingdom within a time to be mentioned in that behalf in the order by which it is protected, and in the manner provided by the said International Copyright Act for the Registration and Deposit of original Works:
5. In the case of books published in parts, each part of the original work must be registered and deposited in this country in the manner required by the said International Copyright within three months after the first publication thereof in the foreign country:
6. In the case of dramatic pieces the translation sanctioned by the author must be published within three calendar months of the registration of the original work:
7. The above requisitions shall apply to articles originally published in newspapers or periodicals if the same be afterwards published in a separate form, but shall not apply to such articles as originally published.

9. *Pirated copies prohibited to be imported, except with consent of proprietor, provisions of* 5 & 6 *Vict. c.* 45, *as to forfeiture, &c. of pirated works, &c. to extend to works prohibited to be imported under this Act.*—All copies of any works of literature or art wherein there is any subsisting copyright by virtue of the International Copyright Act and this Act, or of any order in council made in pursuance of such Acts, or either of them, and which are printed, reprinted, or made in any foreign country except that in which such work shall be first published, and all unauthorised translations of any book or dramatic piece the publication or public representation in the British dominions of translations whereof not authorised as in this Act mentioned shall for the time being be prevented under any order in council made in pursuance of this Act, are hereby absolutely prohibited to be imported into any part of the British dominions, except by or with the consent of the registered proprietor of the copyright of such work or of such book or piece, or his agent authorised in writing; and the provision of the Act of the sixth year of her Majesty "to amend the Law of Copyright," for the forfeiture, seizure, and destruction of any printed book first published in the United Kingdom wherein there shall be copyright, and reprinted in any country out of the British dominions, and imported into any part of the British dominions by any person not being the proprietor of the copyright, or a person authorised by such proprietor, shall extend and be applicable to all copies of any works of literature and art, and to all translations the importation whereof into any part of the British dominions is prohibited under this Act.

10. *Foregoing provisions and* 7 & 8 *Vict. c.* 12, *to be read as one Act.*—The provisions hereinbefore contained shall be incorporated with the International Copyright Act, and shall be read and construed therewith as one Act.

11. *French translations to be protected as hereinbefore mentioned, without further Order in Council.*—And whereas her Majesty has already, by Order in Council under the said International Copyright Act, given effect to certain stipulations contained in the said convention with the French Republic; and it is expedient that the remainder of the stipulations on the part of her Majesty in the said convention contained should take effect from the passing of this Act without any further Order in Council: during the continuance of the said convention, and so long as the Order in Council already made under the said International Copyright Act remains in force, the provisions hereinbefore contained shall apply to the said convention, and to translations of books and dramatic pieces which are, after the passing Act, published or represented in France, same manner as if her Majesty had issued her O in Council in pursuance of this Act for giving e to such convention, and had therein directed such translations should be protected as her... before mentioned for a period of five years from the date of the first publication or public representation thereof respectively, and as if a period of three months from the publication of such translation were the time mentioned in such order as the time within which the same must be registered and a copy thereof deposited in the United Kingdom.

12. *Recital of* 9 & 10 *Vict. c.* 58—*Rates of duty not to be raised during continuance of treaty, and if further reduction is made for other countries it may be extended to France.*—And whereas an Act was passed in the tenth year of her present Majesty, intituled "An Act to amend an Act of the Seventh and Eighth Years of Her present Majesty, for reducing, under certain Circumstances, the Duties payable upon Books and Engravings:" And whereas by the said convention with the French Republic, it was stipulated that the duties on books, prints, and drawings published in the territories of the French Republic should be reduced to the amounts specified in the schedule to the said Act of the tenth year of her present Majesty, chapter fifty-eight: And whereas her Majesty has, in pursuance of the said convention, and in exercise of the powers given by the said Act, by order in council declared that such duties shall be reduced accordingly: And whereas by the said convention it was further stipulated that the said rates of duty should not be raised during the continuance of the said convention; and that if during the continuance of the said convention any reduction of those rates should be made in favour of books, prints, or drawings published in any other country, such reduction should be at the same time extended to similar articles published in France: And whereas doubts are entertained whether such last-mentioned stipulations can be carried into effect without the authority of Parliament: Be it enacted, that the said rates of duty so reduced as aforesaid shall not be raised during the continuance of the said convention, and that if during the continuance of the said convention any further reduction of such rates is made in favour of books, prints, or drawings published in any other foreign country, her Majesty may, by Order in Council, declare that such reduction shall be extended to similar articles published in France, such order to be made and published in the same manner and to be subject to the same provisions as orders made in pursuance of the said Act of the tenth year of her present Majesty, chapter fifty-eight.

13. *For removal of doubts as to construction of schedule to* 9 & 10 *Vict. c.* 58.—And whereas doubts have arisen as to the construction of the schedule of the Act of the tenth year of her present Majesty, chapter fifty-eight: It is hereby declared, that for the purposes of the said Act every work published in the country of export, of which part has been originally produced in the United Kingdom, shall be deemed to be and be subject to the duty payable on "works originally produced in the United Kingdom, and republished in the country of export," although it contains also original matter not produced in the United Kingdom, unless it shall be proved to the satisfaction of the commissioners of her Majesty's customs by the importer, consignee, or other person entering the same that such original matter is at least equal to the part of the work produced in the United Kingdom, in which case the work shall be subject only to the duty on "works not originally produced in the United Kingdom."

14. *Recital of* 8 *Geo.* 2, *c.* 13; 7 *Geo.* 3, *c.* 38, 17 *Geo.* 3, *c.* 57; 6 & 7 *Wm.* 4, *c.* 59—*For removal of doubts as to the provisions of the said Acts including lithographs, prints, &c.*—And whereas by the four several Acts of Parliament following; (that is to say) an Act of the eighth year of the reign of King George the Second, chapter thirteen; an Act of the seventh year of the reign of King George the Third, chapter thirty-eight; an Act of the seventeenth year of the reign of King George the Third, chapter fifty-seven; and an Act of the seventh year of King William the Fourth, chapter fifty-nine; provision is made for securing to every person who invents, or designs, engraves, etches, or works in mezzotinto or chiaro-oscuro, or, from his own work, design, or invention, causes or procures, to be designed, engraved, etched, or worked in mezzotinto or chiaro-oscuro, any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, and to every person who engraves, etches, or works in mezzotinto or chiaro-oscuro, or causes to be engraved, etched, or worked any print taken from any picture, drawing, model, or sculpture, notwithstanding such print has not been graven or drawn from his own original design, certain copyrights therein defined: and whereas doubts are entertained whether the provisions of the said Acts extend to lithographs and certain other impressions, and it is expedient to

remove such doubts: it is hereby declared, that the provisions of the said Acts are intended to include prints taken by lithography, or any other mechanical process by which prints or impressions of drawings or designs are capable of being multiplied indefinitely, and the said Acts shall be construed accordingly.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

The last number was unusually rich in reports of cases falling under this branch of the law, and on a great variety of subjects.

The first was a *rating* case. In *Reg.* v. *The East London Waterworks Company*, 19 Law T. Rep. 182, Paving Commissioners were by their Act of Parliament authorised to rate all persons, inhabiting, holding, occupying, &c. any land, &c. or other tenement or hereditament. A water company was held to be rateable in respect of its pipes as occupiers of land under that enactment, although some control over the position of the pipes was given by the Act to the Paving Commissioners.

Under the *Friendly Societies Act* it has been held, in *Reg.* v. *The Registrar of Friendly Societies*, 19 Law T. Rep. 182, that a friendly society cannot hold its meeting in any other county than that in which it was established. Coleridge, J. said, "Nothing is more clear than that these societies were intended to be local. For one particular purpose, viz. with regard to the place of meeting, there is good reason why they should be locally confined. The general meetings should be held in the county where the members reside."

The case of *Reg.* v. *The Mayor, &c. of Preston*, 19 Law T. Rep. 181, was a question under the *Municipal Corporations Act*, the 92nd section of which enacts that, "after the election of the treasurer in any borough, the rents and profits of all hereditaments, and the interest of all moneys belonging to the corporation shall be paid to the treasurer, and by him carried to the account of the "borough-fund," which fund shall be applied towards payment of the salary of the mayor, &c. and of the respective salaries of the town-clerk and treasurer, and of every other officer whom the council shall appoint. A "judge and assessor" having been appointed by the corporation, with a fixed salary, he brought his action to recover it, as being payable out of this specific fund. The Court held, that the action would not lie. Williams, J. said, "The plaintiff in this case has no general right to payment out of the corporation property: he has no right to payment of his salary here, except out of the borough-fund; and if that fund is incapable, for want of assets, of paying the salary, he must, by some means or other, procure that it shall become capable, by means of a rate, before he can get his salary. I think that, in this state of things, there is no foundation for an action of debt against the corporation."

An important point in the *Law of Constables* was decided in *Freyard* v. *Barns*, 19 Law T. Rep. 188, namely, that when a warrant is directed to a *parish* constable only it should be executed by him and *not* by a police constable of the *county*.

The provisions of the *Factory Act* were considered in *Coe* v. *Platt*, 19 Law T. Rep. 189. Sec. 21 enacts that every fly-wheel directly connected with a steam-engine or water-wheel, or other mechanical power, whether in the engine-house or not, and every part of the steam-engine and water-wheel, &c. and all parts of the mill-gearing in a factory shall be securely fenced, and the said protection of each part shall not be removed while the parts required to be fenced are in motion by the action of the steam-engine, water-wheel, or other mechanical power for any manufacturing process. It was held that the mill-gearing in each separate room is distinct from the mill-gearing in any other room, and requires fencing only while some manufacturing process is going on in *that* room, and it is in motion for that purpose.

In the *Criminal Law* we have a decision of the Appeal Court. In *Reg.* v. *Greenwood*, 19 Law T. Rep. 191, it was held that if two persons are engaged in the common purpose of uttering counterfeit coin, and in pursuance of that purpose one, in the absence of the other, puts off some pieces of counterfeit coin, both are principals, an absent participator in misdemeanour being a principal.

HEALTH OF TOWNS ACT, 11 & 12 VICT. c. 63—HIGHWAY-RATE — SURVEYORS OF HIGHWAYS.

In the edition of the Highway Act (5 & 6 Wm. 4, c. 50), just published by Mr. Foote, in a note to sec. 27, he has stated, it is a question whether under the 11 & 12 Vict, c. 63, the local board ought not, as surveyors, to lay a distinct rate for the repairs of the highways; the question being one of importance, as by sec. 88 of that Act, under the general district rate, the occupier of land is to be assessed only in proportion of *one-fourth* of the net annual value. By sec. 117, it is enacted, "that the local board shall, *exclusively of any other person*, execute the office of and be surveyor of highways, and have all such powers, authorities, duties, and liabilities as any surveyor of highways is or may hereafter be invested with by the laws in force for the time being, except so far as such powers, duties, or authorities are or may be inconsistent with the provisions of this Act? By sec. 87, the board have power to make a general district rate, "for defraying such expenses as are charged upon that rate, by this Act, and such other expenses of executing this Act in any district as are not provided for by any other rate, or defrayed out of the said district fund account." As there seems to be no direction in the Act that the highways shall be repaired either out of the general district rate, or out of the special rate, and inasmuch as all the powers and duties of a surveyor (under the 5 & 6 Wm. 4, c. 50) are vested in the local board, they (as such substituted surveyors), appear to be invested *with the power of making a rate for the repair of the highways, and under the provisions of the 5 & 6 Wm. 4, c. 50*, and independent of the general district rate; there being no words specially to charge that rate with such repairs: the local board being, in fact, surveyors, acting under the powers of the Highway Act.

The question is one of very considerable importance in towns wherein the Health of Towns Act is in operation, for the reason stated in the above view of it, which has been taken by Mr. Foote, that land would be assessed under that Act at only *one-fourth* of its net annual value. We have, since the publication of Mr. Foote's work, been favoured with two opinions which had been taken by the General Board of Health on the point, from which it will be seen that the joint opinion of the late Attorney-General and Solicitor-General disagrees with the joint opinion on the same point which had been given by their predecessors in office, whilst at the same time it confirms the construction which has been given by Mr. Foote.

COPY OF OPINION OF LAW OFFICERS.

Questions submitted:—

1st. Whether a general district rate may be levied under the Public Health Act for defraying the expenses of repairing the highways, or whether the Local Board of Health is bound to levy a highway rate for that purpose under the General Highway Act, 5 & 6 Wm. 4, c. 50.

2nd. Whether the Local Board of Health may exercise a discretion whether they will levy a general district rate or a highway rate under the General Highway Act.

We are of opinion—

1st. That a general district rate may be levied under the Public Health Act for defraying the expenses of repairing the highways, and that the Local Board of Health is not bound to levy a rate for that purpose under the General Highway Act, 5 & 6 Wm. 4, c. 50.

2nd. That the Local Board of Health is not invested with a discretion whether it will levy a general district rate or a highway rate, but that for the repair of the highways it is bound to levy a general district rate under the Public Health Act; and that a rate under the General Highway Act can only be levied in respect of matters of which the expenses cannot be provided for by rates under the Public Health Act.

(Signed) John Jervis.
John Romilly.

It appears to us that the opinion given by the law officers of the date of 15th June, 1850, is erroneous, and cannot be sustained. It appears to have proceeded on the ground that the expenses of the local board, in maintaining the highways, are necessarily to be defrayed by the district rate provided for by section 87, and which by section 88 is to be assessed as therein is prescribed. *We think this view incorrect.*

The 87th section evidently contemplates the levying of other rates, besides the district rate; for it enables the local board to make and levy when occasion may require, in addition to any other rate, a rate or rates, to be called "general district rate," for defraying such expenses as are charged upon that rate by this Act, and such expenses of executing this Act in any district as are not provided for by any other rate, or defrayed out of the district fund account.

By the 117th section, the office of surveyor of highways, with its incidental duties and powers, is transferred to the local board, except so far as the same may be inconsistent with the provisions of the Act. One of the powers incidental to the office is that of making a highway rate. Is the exercise of that power inconsistent with the provisions of the Act? We do not see how that can be said, seeing that the 87th section clearly *refers* to other rates, and grants the district rate as supplemental thereto.

But what in our judgment places the matter beyond a doubt is the proviso at the end of sec. 117 that "neither the allowance of justices nor the signature of the Local Board of Health shall be necessary in the case of any rate made by the Local Board of Health under the Act." Now this allowance and signature are rendered necessary to a rate made by a surveyor by 5 & 6 Wm. 4, c. 56, s. 27. It would not be necessary in the case of a rate made under sec. 87 of the Public Health Act. It may, therefore, fairly be inferred that the Legislature contemplated that rates might be made by the Local Board in their character of surveyors of highways, independently of the general district rates provided for by sec. 86.

In making a rate other than one under sec. 86, the board would not be bound by the principle of assessment provided by sec. 88.

If our opinion be not well founded it would certainly seem that the law is unjust and ought to be amended.

(Signed) A. E. Cockburn.
W. P. Wood.

Temple, Feb. 23, 1852.

Answers to Queries.

BOROUGH JUSTICES.

Your correspondent Y. S. N. asks what has been the practice of Home Secretaries or Lord Chancellors respecting the appointment of attorneys to be magistrates under the Municipal Act. Lord John Russell, soon after the passing of the Municipal Act, appointed Mr. Tottie to be a magistrate for the borough of Leeds, and Mr. Gray to be a magistrate for the city of York, and both most excellent magistrates. So much for practice; and I know no law against it: why should there? The class of attorneys from whom the above gentlemen were selected, have nothing to do with what is called "Justice Business."

The lord mayors, mayors, and aldermen, are very much selected from the leading attorneys of the provincial towns, which shews the high esteem in which, as a class, they are held by their fellow citizens. I hope this short answer will be satisfactory to your correspondent. A Provincial.

Lunatics at Large.—The Earl of Shaftesbury has laid on the table of the House of Lords a Bill (which has just been printed) to amend the law concerning lunatics at large, and dangerous lunatics. It is proposed to enact that any justice, on information upon oath, may order lunatics at large to be apprehended and brought before him, and upon the certificate of a medical man that such person is insane, may order him to be received into a lunatic asylum, &c. Further, it is proposed that dangerous lunatics may be removed from licensed houses, or registered hospitals, by an order of a justice, who may order their removal to a lunatic asylum. There are several provisions and forms to carry out the object of the intended law.

The Poor Laws.—On Saturday last was printed a return, shewing the amount of money expended for in-maintenance and out-door relief in 607 unions and single parishes in England and Wales during the half-years ending Lady-day, 1851 and 1852. In the half-year ending Lady-day, 1851, the expenditure was 1,678,065*l.*; and in the corresponding half-year of the present year, 1,620,647*l.* The decrease, after deducting the increase in the last half-year given, was 57,418*l.*

The Appointment of Overseers.—A Bill brought forward by the Government (printed on Monday), now in the House of Commons, is to explain two former Acts concerning the appointment of overseers, and the authority of justices of the peace to act in certain matters relating to the poor in cities and boroughs. It provides that justices

having jurisdiction in other matters in any city or place may act in cases relating to the relief of the poor.

THE CORPORATION OF LONDON AND BETTING-OFFICES.—On Thursday the Court of Common Council, after a full discussion of the subject, adopted a petition to both Houses of Parliament, praying them to pass an Act in the present session for the suppression of betting-offices in the City of London.

JOINT-STOCK COMPANIES' LAW JOURNAL.

THE Court of Q.B. has decided that, under the 51st section of the Joint-Stock Companies Act, a holder of shares who has not signed the deed of settlement is not entitled to demand of the company a certificate of proprietorship. (*Wilkinson* v. *The Anglo-Californian Gold Mining Company*, 19 Law T. Rep. 181.)

The liability of a railway company to keep a highway in repair, under the provisions of the 58th sec. of the Railway Clauses Consolidation Act, was considered in *Ex parte The Exeter Road Trustees*, 19 Law T. Rep. 190. Under their Act, the company had pulled down a county bridge, and thus absolved the county from the duty of repairing the approaches to it. The company rebuilt the bridge, and entered into an agreement with the trustees to repair such road approaches to the bridge. The company neglecting to repair the road, a mandamus was applied for under the said 58th sec. as being an "interference" with the road. But WIGHTMAN, J. refused it, remarking that, "without interfering with the road, they have taken down the bridge. This is not such an *interference*, as it appears to me, as comes within the section. The company may be liable under some agreement, but certainly not so as to be the subject of a mandamus."

WINDING UP.

ANOTHER case upon the liability of a Provisional Committee-man was decided in *Ex parte Markwell*, 19 Law T. Rep. 177.

In September 1845, A. on the application of the solicitor and agent of a proposed railway, agreed to become a member of the provisional committee, on condition that he was to be free from liability. The business of the company was transacted by a committee of management, and A. did not attend any meeting. In October he applied for 200 shares, and although the allotment was not proved, two letters from him were produced, asking time for payment of calls. He was held to be rightly placed on the list of contributories. He was a member of the provisional committee, and he accepted shares That was the principle in *Upfill's* case, and it was decisive of this.

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

Dover and Deal Railway, Cinque Ports, Thanet, and Coast Junction Company.—Call for 2*l.* 2*s.* per share, on June 21.—Brougham.

Sligo and Shannon Railway Company.—Call of 3*l.* 7*s.* 6*d.* per share, on contributories in "reduced list," marked with the letter B, on July 13.—Senior.

Eastern Counties Junction and Southend Railway Company. Call for 2*l.* per share, on June 30 —Horne.

London and Manchester Direct Independent Railway Company (Remington's line).—Notice to parties claiming to participate in division of assets.—Senior.

Tontine Life Assurance Company.—Meeting to make a call of 7*s.* 6*d.* per share, Thursday, June 24, at two.—Horne.

Liverpool Union Crown Glass Company.—Meeting to make a call of 9*l.* per share, on Wednesday, June 30, at twelve.—Blunt.

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

THE principle upon which a mortgage to a building society might be redeemed was determined by Lord Chancellor TRURO, in *Seagrave* v. *Pope*, 19 Law T. Rep. 173, reversing the judgment of Vice-Chancellor BRUCE, which was fully reported 14 Law T. 524. The question at issue appears to have been substantially this, whether the mortgage might be redeemed on payment only of the principal and interest remaining due after deducting the payments already made, or whether it included, in fact, all payments which, as a member of the society, the mortgagor was liable to make in respect of his shares. Vice-Chancellor BRUCE took the former view of it; but Lord Chancellor TRURO said:—"I am satisfied that the security is a security to the society that he would continue to make the payments that he ought to do, and which he would have done if the society had continued on the simple plan on which it was founded,—that nobody should receive anything till all had paid up their 100*l.*" His Lordship said that he would give a fuller judgment to the parties if desired. Should he have done so, we should feel much obliged to either of them for such judgment, which we should like to give in full.

The case of *The Attorney-General* v. *Murdock*, 19 Law T. Rep. 173, is both important and interesting, as it affects the interests of Dissenters in *charities*. One or two principles laid down in the very elaborate and learned judgment are worth particular notice. Thus it was held that where a trust is created for religious worship, and it cannot be discovered from the deed creating the trust what was the nature of the religious worship intended by it, it is to be *implied from the usage of the congregation*. That congregation may introduce into their system and constitution new regulations not subversive or opposed to the trusts of the deed, but even their unanimous votes could not convert a Trinitarian into a Socinian foundation, or a Protestant into a Popish one, and so forth. If in a chapel a particular doctrine had been uniformly preached and maintained for a long time as an essential part of the object for which the chapel was founded, the Court will not permit a doctrine opposed to it to be preached there.

The rule in the construction of *a will* is, that "where there is a mistake or an omission in a will, all that the Court has to do is to see whether it is possible to reconcile that part with the rest, and whether it is perfectly clear upon the whole scope of the will that the intention cannot stand with the alleged mistake or omission." "Wherever there is a clear mistake, or a clear omission, recourse is to be had to the general scope of the will, and the general intention to be collected from it; but the first thing to be proved is, that there is a mistake. Wherever there is a doubt, the safest way is to adhere to the words. The application of this rule to a particular state of facts will be seen in *Walker* v. *Tipping*, 19 Law T. Rep. 177, where a promissory note for 350*l.* had been given by a testatrix to A. and B. and on the same day she, by will, directed that "the debt of 350*l.* which I owe to A. and B. and for the security of which I have given them my promissory note, and all other my just debts, funeral and testamentary expenses, shall be paid by my executors hereinafter mentioned," and she gave the residue of her estate "to be applied towards establishing a school in connection with the Baptist chapel at S." and it was intimated by the testatrix to them that she had handed the note to them for the use of the said chapel,—the question was, was the note *a legacy* or *a debt?* The VICE-CHANCELLOR held it to be a legacy for such purposes as A. and B. could apply it to. (*Longstaff* v. *Rennison*, 19 Law T. Rep. 192.)

In *Crane* v. *Rebello*, 19 Law T. Rep. 192, the Prerogative Court granted administration, with the will annexed, to a residuary legatee, and refused it to a creditor. The circumstances under which this was done will be seen in the report, but it was in pursuance of the principle thus stated in the judgment. "It is the general rule that administration should be granted according to the *interest*, and that in all cases, whether without or within the Statute of Distributions, *the Court should intrust the management of the estate to those who have the greatest interest in it.*"

RESERVATION OF RENTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In your paper of the 5th instant, I observe an article headed "Gossip of Westminster Hall, by one of the Briefless," containing, amongst other information for "distant readers," the announcement that in long leases for terms of years conveyancers have in some cases lately inserted a proviso that the rent shall be *paid in silver, if demanded*, with the view of guarding against the effect of any serious depreciation in the value of gold.

The expediency of inserting such a clause in mortgage-deeds has, to my knowledge, been urged upon some of your distant readers by their clients; but I know of no instance in which it has been resorted to, on account of an opinion that such a proviso would be illegal. The 11th and 12th sections of the 56 Geo. 3, c. 68, provide that gold coin only shall be a legal tender for amounts above 40*s.* and that silver shall not be allowed to be a legal tender for any larger sum.

If, however, conveyancers in London of any eminence hold that a contract may be entered into for discharge of a debt or obligation, "*in silver, if demanded,*" notwithstanding the express enactment I refer you to, it would seem that a new light has been thrown upon the subject; and the gentleman who modestly styles himself "One of the Briefless," would further oblige your distant readers by stating more particularly in your next number what the practice in London really is, and how the difficulty occasioned by the Act is got over. E. H.

Query.

COULD any of your correspondents inform me whether, where a solicitor is concerned for each party, it is the practice for the solicitor to the mortgagee or the mortgagor to prepare the schedule of deeds to be given up on completion, with the receipt and undertaking to return them? W. B.

Manchester, June 10, 1852.

COUNTY COURTS.

Summary.

AGAIN we have to notice only an *Insolvency* case. In *Re Boyd*, 19 Law T. Rep. 192, where a plaintiff in an action for assault, indebted for the costs, applied for relief under the Protection Acts, the Court refused to name a day for the final order.

LATE CASES ON THE LAW AND PRACTICE OF THE COUNTY COURTS.(a)

II. CASES RESPECTING QUESTIONS OF TITLE.

As immediately connected with the subject of the jurisdiction of the County Courts, we are next led to consider the recently decided cases relating to title to lands, and the recovery of tenements under the powers contained in the County Courts Act, 9 & 10 Vict. c. 95, and which will serve to illustrate what cases do not come within the exceptions to which we alluded in our previous article, as contained in the 58th section of the above Act.

And first as regards questions relating to title to lands. The point at issue in the following case was, whether a church-rate was a matter in which the title to corporeal or incorporeal hereditaments was in question, under the 58th section of the Act already quoted. It was here decided that where a statute had authorised the levying of a church-rate, for a specific purpose, and enacted that the occupier or tenant should pay the rate in the first instance, and deduct it from the rent; and that "every such landlord should allow such deduction accordingly, notwithstanding any agreement to the contrary," and a lease was produced having such agreement; it was held that this was not a matter "in which the title to any corporeal or incorporeal hereditaments" was in question, under the 58th section of 9 & 10 Vict. c. 95, so as to take an action of recovery by the tenant from his landlord out of the jurisdiction of the County Court. (*Gwynne* v. *Knight*, 1 Cox & Mac. 47.) PARKE, B. observed in this case, while delivering the judgment of the Court, that "as to the meaning of the statute imposing the rate, it merely must be, that the landlord is to be liable, notwithstanding any existing agreement to the contrary. It does not go on, like the Property-tax Acts, to say that every such agreement shall be void. But I do not think this is a case in which an incorporeal hereditament is in question. No question of title was raised in fact; and the language of the 58th section is not that the Court shall not have cognisance where a hereditament *may* be in question, but only where it *shall* be in question; that is, where it shall be *bonâ fide* raised in the action." Here it was never raised at all.

In order to oust the jurisdiction of the County Court by a claim of title to hereditaments, under the proviso contained in the 58th section of the County Court Act, such claim must be *bonâ fide*, and substantial; and in order to determine if it be so, it is competent for the judge to hear the evidence, that he may ascertain if the case be within the terms of the proviso. The mere assertion of title by the defendant is not, of itself, sufficient to oust the jurisdiction of the County Court. When, however, the judge has heard and determined that

(a) By GEORGE HARRIS, Esq. Barrister-at-Law.

the case is within his jurisdiction, this Court will review his decision upon that point only, and if of opinion that he has wrongly decided, and that the case came under the proviso in the 58th section, a prohibition will be granted. (*Lilley* v *Harvey*, *Owen* v. *Pierce*, 1 Cox & Mac. 115.) WIGHTMAN, J. in delivering the opinion of the Court upon these two cases, observed, that they both related to the power of a judge of the County Court to proceed after the defendant had stated that the question involved the right to incorporeal hereditaments. The question is, whether the title to hereditaments came into question, so as to take the cases out of the jurisdiction of the County Court. The demand was for use and occupation, and the defendant objected to the jurisdiction, on the ground that he claimed the premises as his own, and consequently that the title was in question. The judge of the County Court examined the defendant, who stated that he believed the premises were his, and he purchased them. The judge went on with the and decided for the plaintiff, being of opinion that the title did not come in question, and I am of opinion that there was no real ground for the objection. The defendant did not pretend that he had any conveyance, or that he had possession, or that he had paid for them; on the other hand, the plaintiff had been in possession for five-and-twenty years; he had a conveyance, and had paid the purchase-money; and the defendant, in 1842, had taken the premises of the plaintiff as tenant, and had paid rent to him till 1846; and it further appeared that in June 1847, the plaintiff had distrained the goods of the defendant for the arrears of rent, and the goods were sold without a replevin. On a subsequent occasion, when there was a question whether the defendant's son was not a joint tenant with him, the defendant had sworn that he had taken the premises alone. It was contended for the defendant, and this is common to both cases, that it was enough for the defendant to state on oath that he believed the premises were his, to bring the cases within the proviso, and that the judge had no authority to interfere further. It appears to me that the judge has authority to inquire whether or not the title is in question. It is difficult to define the limits to which his inquiry may go. It was hardly intended that the mere assertion of the defendant will suffice to take away the jurisdiction; the judge must be satisfied that the title is in question, and he must inquire into so much of the case as to satisfy him upon that point. Where there are special pleadings, and the question is raised upon them, the judge can go no further; but if the question is not raised upon the pleadings, but merely suggested by the defendant, the judge must inquire into the case before he can be satisfied that the title can come in question. If he is wrong, and assumes a jurisdiction when the title is really in question, the defendant may come to a Superior Court, and he will be entitled to a prohibition. Each case must depend upon its own circumstances. The cases that have been decided on the 53 Geo. 3, c. 127, s. 7, are authorities for this view of the case. The terms of the provisoes in the two statutes are not the same; but the point in question is common to both. In the case of *Rex* v. *Wrottesley*, 1 B. & Ad. 618, it was considered that the justices must be satisfied that there is a bonâ fide intention to dispute a rate before they are bound to consider that the title was really in question. In the present case, I consider the judge of the County Court was right, and the rule must be discharged, in *Lilley* v. *Harvey*, with costs. There were doubts with respect to the case of *Owen* v. *Pierce*, because there it appears there was an action of trespass for taking the plaintiff's cattle. The defendant, upon appearing in the court, took an objection that he had a prescriptive right for his cattle to stray into the land of the plaintiff, there being a countervailing right on the part of the plaintiff, that his cattle might stray into the lands of the defendant, and without there being a liability of trespass on either side. It is not necessary to decide the law upon the matter: the question before the County Court was, whether the claim of incorporeal hereditament did really come in question; the Court seemed to be of opinion that it did not come in question as between the parties. As is usual in these cases, the defendant made the objection, and stated he claimed a right by prescription; for he adopts the very term suggested in the case in the Q. B.—prescriptive right for any cattle to stray on the plaintiff's land. On the other hand, there were some circumstances tending to show that there was no foundation for the objection taken by the defendant; and in the first place, it seems that was the first time he had ever set up such a claim. It does not appear that he had ever, down to this time, claimed such a right; and it also appeared he had offered to give 5s. a year as compensation for the trespass, which the plaintiff had refused. I think, upon the whole, there is no sufficient ground for assuming that the title came in question. It is not for the judge to determine whether the title was well founded, but whether it came in question.

Where a party to an action in the County Court sets up an assertion of title, and claims exemption therefore from the jurisdiction under the proviso in the 58th section of the County Courts Act, the Court is not, by the mere assertion of such claim, forthwith ousted of its jurisdiction, but the judge may proceed to hear and determine if such claim of title be bonâ fide and substantial; and if of opinion that it is not so, he may go on to judgment. In answer to an action of trespass, the defendant claimed for himself, as an inhabitant of the town of B. a right by immemorial custom to enter the plaintiff's land to take fish. It was held that no such custom of profit *à prendre* in the soil of another can exist in law, and that the jurisdiction of the Court could not be ousted by pretence of a custom that has no existence. It was held also, that the 58th section would not extend to such a case as this, inasmuch as the claim in question is not to a hereditament corporeal or incorporeal, and therefore it would not be one of the exceptions from the jurisdiction of the County Courts. (*Lloyd* v. *Jones*, 1 Cox & Mac. 111.) WILDE, C.J. in the course of his judgment in this case, observed that the jurisdiction of the Court cannot be excluded by a pretence of a custom which has been long and solemnly determined to have no valid existence. But further, supposing any question could arise regarding the custom, still the circumstances would not bring the case within any of the cases referred to, over which the jurisdiction of the County Court is excluded by the 58th section, inasmuch as that section excludes the jurisdiction in cases of poreal hereditaments; and the claim in question is not properly a claim to a hereditament. Hereditament is defined in the text-books and authorities to signify all such things, whether corporeal or incorporeal, which a man may have to him and his heirs, by way of inheritance, which, if they were not otherwise bequeathed, would come to him, that is, as next of blood, and not pass to executors and administrators, as chattels do (See *Termes de Ley*, Co. Litt. 6 *a*, and Co. Litt. 6 *b*.) It is obvious, the right claimed under the custom alleged is not a claim to a hereditament, and therefore not such as to exclude the jurisdiction of the County Court.

On a rule for a prohibition to the judge of a County Court, on the ground that the title to the premises sought to be recovered came in question, it appeared that the defendants occupied the premises under a written agreement with the owner, for the purchase of the premises for 150*l.* The sum of 8s. per week was to be paid until the whole of the purchase money was paid up, the 8s. weekly to go in liquidation of the pur held, that the ordinary relationship of landlord and tenant did not exist, and that the County Court had no jurisdiction. (*Banks and Another* v. *Rebbeck and Wife*, 1 Cox & Mac. 180.)

It was decided by the case of *Thomson* v. *Ingham*, 1 Cox & Mac. 318, that it is the duty of the County Court judge, in the first instance, to determine whether the title to land is in question, so as to come within the 58th section of the 8 & 9 Vict. c. 95; but if he decide improperly, the Superior Court will issue a prohibition. PATTESON, J. observed in this case, in the course of his judgment, that the law on this subject, so far as regards the analogous case of magistrate's convictions, was fully discussed in *Reg.* v. *Bolton*, 1 Q B. 66, and it was then held that when the charge is such is within the magistrates' jurisdiction, the finding of the facts afterwards by the magistrate is conclusive; but when the charge is not such as, if true, would be within the magistrate's jurisdiction, no finding of facts can alter it. The present case is between those so put. The judge had clearly jurisdiction primâ facie to try a plaint for use and occupation. The pleadings, if there were any in the County Court, would not shew that the title is in question; the point whether it is or not, must of necessity arise upon the evidence, and as soon as it appears that it is, the jurisdiction of the County Court ceases; the judge must of necessity determine that point for the time, because on it depends whether he hears it on the merits. Is then this determination conclusive? We think that it is not. The objection is analogous to a plea of the jurisdiction in other courts, which is indeed determined in the first instance by the Court in which it is pleaded, but is subject to a writ of error. The County Courts Act gives no writ of error, or appeal of any sort, but then it is presumed that the Court deals only with matters within its jurisdiction. If a doubt arises as to that question, we think it impossible to contend that any of the provisions of the Act make the solution of that doubt by the Court itself final. If so, the question must be open to one of he Superior Courts on motion for a prohibition on affidavit, and if that Court, as in the present case, directs that the party should declare, then the question becomes one of evidence.

THE LAWYER.

Summary.

EQUITY PRACTICE.—The Court has again set its face against attempts to bring on, as *short causes*, what, in fact, would be long ones. In *Marshall* v. *Scott*, 19 Law T. Rep. 178, it was stated that if counsel on either side personally certified to the Court that the hearing would occupy any considerable time, it would be ordered to be restored to the original paper.

COMMON LAW.—Where in an action on a mortgage deed plaintiff excused himself in the declaration from making profert by alleging that the deed was in the possession of the defendant, the defendant was permitted to plead that it was *not* so, and this in addition to pleas in bar, *non est factum*, &c. (*Porch* v. *Creswell*, 19 Law T. Rep. 189.)

It is pleasant to see the Judges so steadily leaning against technicalities. In *Watson* v. *Humphreys*, 19 Law T. Rep. 190, which was an action of debt, two issues were joined, the plaintiff obtained an order to try before the sheriff, and in the order and writ of trial the direction was to try the "*issue*," instead of the "*issues*." At the trial the defendant appeared and objected to the irregularity, but the plaintiff elected to proceed, and thereon the defendant protested and withdrew, and judgment went against him. An application to set it aside was held to be *too late*, for as the defendant knew of the irregularity as soon as he was served with the order, he should have taken advantage of it before plaintiff proceeded to trial. This is satisfactory so far, but would it not be much better to hold such a trifling clerical error *not* to be an irregularity, giving the Judge at the trial power to amend it? It could not possibly have misled anybody.

Two interesting cases in the *Law of Evidence* are reported from the Court of Ex. In *Dwyer* v. *Collins*, 19 Law T. Rep. 186, a defendant was required to prove the identity of a bill of exchange; he had given no notice to produce, but asked plaintiff's attorney in court if he had the bill with him. The attorney said he had. He was then required to produce it, but refused. A notice to produce was then served on the spot. The bill not being then produced, secondary evidence of its ntents nd it was held to be *admissible*. It was held, also, that plaintiff's attorney had been rightly compelled to answer the question, if he had the bill in court. "We think the plaintiff's alleged principle is not the true one, on which the notice to produce is required, but that it is merely to give sufficient opportunity to the opposite party to produce it if he pleases, and thereby to secure the best evidence of its contents; and the request to produce it immediately is quite sufficient for that purpose, if the document be in court." Then, as to the privilege of the attorney, the Court said, "The relation of attorney and client prevents the former from disclosing any communication made to him in the ordinary course of his employment, and on the faith of the confidence which the client reposes in his legal adviser. But that privilege does not extend to matters of fact which the attorney knows by any other means than confidential communication with his client, though if he had not been employed as an attorney he would probably not have known them."

The other was an interesting question on the new v as to *inspection of documents*. It was held that in order to obtain this, the affidavit must shew, first, that a suit is pending, and what is its nature and the question to be tried in it, and that the applicant has just grounds to maintain or defend it. Second, it must state, with *distinctness*, the reason for the application and the nature of the documents required to be inspected, in order that it may appear to the Court or Judge that they are applied

for in order to enable him to *support his own case, and not to find a flaw in the case of his opponent.* To this the opponent may answer by swearing that he has no such documents, or that they relate exclusively to his own case, or that he is for any sufficient reason privileged from producing them, or he may submit to shew parts, covering the remainder, on affidavit that the part concealed does not in any way relate to the plaintiff's case." (*Hunt* v. *Hewitt*, 19 Law T. Rep. 187.)

In the *Law of Attorneys* there is a case reported from the Lord Chancellor's Court. In *Chard* v. *Chard*, 19 Law T. Rep. 173, his Lordship expressed himself very strongly against the irregularity of a solicitor acting, either by himself or agent, as solicitor for more than one party in the same suit. "Now I must say," remarked his Lordship, "the Court does not, and will not, countenance one solicitor acting for all parties, and I fear there is a very general practice, but one not at all to be approved of, for a solicitor who is concerned for several parties, to represent some of them by one of his clerks, who may have been admitted an attorney. This course I consider reprehensible, and one that ought to meet the censure of this Court." This should be carefully noted in *Pulling's Law of Attorneys*.

Query.

Will any of your readers be pleased to give information on the following?

Mr. S. as solicitor for M. approved a title, and prepared a mortgage security. Some years after, M. instructed another solicitor to sell the property under the power of sale contained in the mortgage, which was effected. Lately, on a re-sale, an inquiry has arisen as to title, and S. has supplied information prejudicial to the purchaser under M. to the advantage of another person lately become his client. I presume this mode of proceeding is contrary both to practice and law, and consequently a solicitor is answerable for so doing. If so, is there any means of bringing S. to account for his unprofessional practice? G.

THE MERCANTILE LAWYER.

Summary.

A case of considerable importance to bankers is *Timmins* v. *Gibbons*, P. O. 19 Law T. Rep. 181. A. deposited with a banker notes of a country bank, and received a memorandum acknowledging the receipt of so much money, "for which we are accountable," the bank agreeing to pay interest thereon. Before the banker could present the notes for payment the bank failed, of which the banker gave immediate notice to A. In an action brought by A. upon the deposit note for the money so acknowledged to be received, it was held, that he could not recover it, the consideration for the banker's promise having wholly failed.

Wallington v. *Dale*, 19 Law T. Rep. 187, was a *patent law* case, in which it was decided that, after having assigned his patent, a patentee may disclaim as to part of it.

An extremely interesting and important case on the *Statute of Limitations* is reported to us from Ireland. In *Dawson* v. *Nash*, 19 Law T. Rep. 192, it was replied to a plea of the statute, that within six years from the accruing of the cause of action a writ of summons had been sued out, and that the plaintiff died within four months from its date; that within a year after plaintiff's death his executor sued out another writ of summons, to which the defendant appeared, and the present plaintiff declared thereon. It was held to be sufficient, that the facts stated brought the case within the equity of the exceptions from the statute. But it was also intimated that the mere fact of a person dying within the six years, is not sufficient to enable his personal representative, after the six years, to sue, although it be done within a reasonable time from the testator's death, unless the deceased had, within the six years, and before his death, instituted proceedings.

A question in *Bankruptcy* as to *Reputed Ownerships* has been decided by Mr. Commissioner Ayrton, whose careful and learned judgment we commend to the perusal of our readers. In *Re Ashton*, 19 Law T. Rep. 191, he held that goods sent on sale or return, but not actually delivered at the shop of the bankrupt at the time of the bankruptcy, are *not* in the reputed ownership of the bankrupt.

English Debtors in France.—The English debtors now in the prison of Clichy have addressed a petition to the President with a view to obtain a construction and an application of the laws of France, relative to the "contrainte par corps," more in accordance with the Code Napoleon. The liability of Englishmen to a sudden arrest without process or judgment, and to a subsequent period of incarceration at least double that awarded to their French fellow prisoners, they submit are not only in direct opposition to the Code Napoleon, but are, in fact, totally inconsistent with the latest enactments and decisions of the law courts touching the "contrainte par corps." The Code Napoleon declares explicitly that in matters of debt, foreigners shall be treated as Frenchmen are treated in the countries to which the foreigners respectively belong.

DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

Advertised in the "Law Times."

Day.	Place.	Auctioneer.	Where Advertised.	Property.
Wednesday, June 23	Garraway's	Godwin, F.	June 12, p. 46	Dwelling-house, Hatton Garden.
"	Ibid.	Do.	Ibid.	Leasehold Messuages, Radnor-street, Chelsea.
"	Ibid.	Do.	Ibid.	Leasehold Cottages, Stockwell.
"	Ibid.	Do.	Ibid.	Leasehold Ground Rents of 300*l*. per annum.
"	Mart	Lahee, S.	Ibid.	Cheshunt Cottage, Haverstock Hill.
"	Ibid.	Do.	Ibid.	Six Freehold Houses in Kingsland-road.
"	Ibid.	Do.	Ibid.	House and Premises, 14, Manchester-square.
"	Ibid.	Cam, J.	June 19.	Freehold Estate known as Cheam House.
Thursday, June 24	Ibid.	Glasier, A. W.	June 12, p. 46	Freehold Ground Rents at Bermondsey.

COURT PAPERS.

JUDGES' CIRCUITS.

The LORD CHIEF BARON POLLOCK will remain in Town.

SUMMER CIRCUITS, 1852. Last Days for full Notice of Trial.	Commission Days	Northern. Ld. Campbell J. Wightman	Home. L C J Jervis J. Maule	Norfolk. LCB Pollock B. Parke	Midland. B Alderson J Coleridge	Oxford. J. Cresswell J. Williams	Western. B Platt. B Martin.	N. Wales. J. Talfourd.	S. Wales. J. Crompton.
June 25	Tuesday, July 6	...	...	..	Oakham....	....	...	....	....
26	Wednesday 7	....	...	...	Northampton	...	....	....	....
30	Saturday ..10	York	Hertford ..	.	Lincoln and	..	...	...	....
July... 2	Monday .. 12	....	..	..	[City	Abingdon ..	Devizes ..	..	....
3	Tuesday . 13	....	..	Aylesbury ..	....	..	..	....	...
3	Wednesday 14	....	..	...	Nottingham	Oxford	..	...	...
5	Thursday .. 15	...	Chelmsford	..	and Town	....	Winchester	....	....
6	Friday 16	..	.	Bedford ..	....	...	...	.	Cardiff
7	Saturday 17	..	.	.	Derby......	Worcester &	...	Newtown ..	....
9	Monday 19	..	..	Huntingdon	....	[City	..		..
10	Wednesday 21	...	Lewes	Cambridge	Leicest. and	Stafford ..	Dorchester	Dolgelly....	Carmarthen
13	Friday .. 23	....	..	....	Borough Coventry ..	...	...	....	....
14	Saturday . 24	Durham....	Maidstone .	..	Warwick ..	...	Exeter and	....	Haverford-
16	Monday .26	....	..	Norwich and	....	....	[City	Carnarvon..	west & In
17	Tuesday ..27	....	....	City	...	Shrewsbury	....	...	....
17	Wednesday 28	....	...	....	....	....	....	Beaumaris	Cardigan
19	Thursday . 29	Newcastle ..	.	....	..	...	....	....	....
20	Friday 30	....	..	Ipswich	....	Hereford ..	Bodmin	.. .	....
21	Saturday . 31	...	Guildford ..	...	....	...	...	Ruthin	Brecon ....
23	Mond. Aug 2	Carlisle	..	..	....	Monmouth	...	....	....
24	Wednesday 4	..	..	....	....	...	Wells......	Mold	Presteign ..
26	Thursday .. 5	Appleby	....	....	...	Gloster and	....	....	....
28	Saturday .. 7	Lancaster ..	....	..	....	[City	....	Chester and	Chester and
31	Tuesday... 10	....	....	...	....	....	Bristol	[City	[City
31	Wednesday 11	Liverpool ..	....	....	...	...	....	....	....

Exchequer of Pleas.

Sittings at Nisi Prius in Middlesex and London, before the Right Hon. Sir Frederick Pollock, after Trinity Term, 1852.

MIDDLESEX.

Monday .. June 14 }
Tuesday .... 15 }
Wednesday . 16 } Common Juries
Thursday .... .17 }
Friday .... .18 }

Saturday .... 19 }
Monday ....21 }
Tuesday ....22 }
Wednesday .....23 } Special Juries, and Common Juries, if necessary
Thursday . ... 24 }
Friday ....25 }
Saturday ....26 }

LONDON.

Monday ...June 28—Adjournment day, Common Juries

Tuesday . ... 29 }
Wednesday .... 30 } Common Juries
Thursday . July 1 }
Friday .... 2 }

Saturday . . 3 }
Monday .. ... 5 }
Tuesday ... 6 }
Wednesday .. 7 } Special Juries, and Common Juries, if necessary.
Thursday .... 8 }
Friday .... 9 }
Saturday . 10 }

The Court will sit at Ten o'clock.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Lord Chancellor has appointed Samuel Hadfield, of Manchester, gent. to be a Master Extraordinary in the High Court of Chancery.

Mr. John George Phillimore, Q.C. has been elected by the Council of Legal Education, representing all the Inns of Court, to the chair of Con-

stitutional Law and Legal History founded by the four Inns of Court.

William Henry Willes, esq. has been appointed by the Inns of Court lecturer on the branches of the common law which are not included in constitutional law, the law of real property, and conveyancing, devises and requests.

In the Court of Aldermen, Guildhall, on Tuesday, the 8th instant, the Right Hon. the Lord Mayor, with the unanimous consent of the aldermen present, nominated for election by the livery, on the 24th instant, Thomas Grissell, esq. late of the firm of Grissell and Peto; and George Moore, esq. of Bow Churchyard, to be sheriffs for London and sheriff of Middlesex, for the ensuing year.

MEMBER RETURNED TO SERVE IN THIS PRESENT PARLIAMENT.—County of Huntingdon,—The Right Hon. William Drogo Montagu, commonly called Viscount Mandeville in the room of George Thornhill, esq. deceased.

PROCEEDINGS OF LAW SOCIETIES.

LAW PROPERTY ASSURANCE SOCIETY.

THE Second Annual General Meeting of the Society was held at the offices, 30, Essex-street, Strand, on Friday, the 11th instant, Edward W. Cox, esq. in the chair.

The meeting having been opened with the usual formalities, the Secretary read the following

REPORT.

The directors have great satisfaction in again meeting the shareholders of the Law Property Assurance and Trust Society, and reporting its continued and increasing prosperity

During this second year, 284 policies have been issued, upon which 2,711*l*. 1s 4d have been actually r[eceive]d in premiums, and yielding an annual i[ncome] of 3,621*l* 19s

In addition to this, annuities to the amount of 150*l* has been granted, for which 1,760*l*. purchase-money has bee received.

Only one policy, and that for the small sum of 50*l*. has become a claim since the establishment of the Society.

The total number of proposals received to this time is 612, of which 476 have been completed, 1 has become a claim, 7 have lapsed, and 25 remain to be completed, and the total annual income of the Society, on the 17th May, 1852, amounted to 5,366*l* 14s 8d , composed of 5,053*l*. 19s. 4d. from policies, and 312*l*. 15s. 4d. interest on money invested.

Your directors invite attention to the fact, which they believe is almost unprecedented with so young an office, that they have already invested the sum of 6,255*l* 7s. 5d. upon good securities, yielding five per cent. interest. Thus more than the entire amount of premiums received has been kept constantly reproductive, the subscribed capital being alone employed in the business of the office. The security thus afforded to assurers will be obvious.

Your directors have continued to observe the strictest economy consistent with the due promotion of the business of the society, by advertisement and otherwise; but at the same time they have deemed that a prudent liberality in the conduct of its affairs would not be unacceptable to the shareholders, and they have not avoided any reasonable expenditure that was likely to advance the welfare of the Society.

A local committee has been formed at Manchester, comprising the leading members of the Legal Profession in that important locality, from whose labours and influence the Society may anticipate large results

Your directors refer to the general balance sheet, which will, they are assured, give as much confidence to the public as gratification to the shareholders.

If your directors were enabled last year to offer their congratulations to the shareholders, much more may they do so now that the business and prospects of the Society have been steadily improving, and it has attained a position that entitles it to the increased confidence and support of the Profession and the public.

In conformity with the deed of settlement, Mr Cox and Mr. Young retire by succession, and being eligible, offer themselves for re-election.

The auditors, Mr. Kelsey and Mr Hutton, also retire, and being eligible, offer themselves for re-election.

WILLIAM NEISON, Actuary and Secretary

The CHAIRMAN, in proposing the adoption of the Report, said that he had now a most pleasing duty to perform, for their meeting to-day could be but an exchange of congratulations on the success that attended the Society, and the position it had already attained. It had been in existence only two years; it had the disadvantage of novelty in some of its plans; it had to combat the prejudice that always prevails against anything new, and yet such was the soundness of its foundation that in this short time it had passed out of youth into maturity, and had established itself in a business that had exceeded that of many offices of much greater age. Already their income exceeded 5,000*l*.; already they had effected nearly 500 policies; and the business was daily increasing, as the reputation of the Society spread and its many and great uses to the public were becoming better understood. If they had done so much in spite of the necessary disadvantages of youth, and the prejudice against novelty, what might they not hope to do when their popularity becomes known to the world; when it is seen that their plans are entirely successful; when thus it is seen by their financial condition that the public may feel the utmost confidence and security in availing themselves of the many advantages offered by the Society. There was one feature in the balance-sheet to which he was particularly desirous of directing the attention of the shareholders and of the public, because it is a rare one with young offices, and because its importance does not appear to be generally understood. He alluded to the item that stated the money which the Society now had invested in good securities, yielding five per cent. interest. It exceeded 6,000*l*.—a larger sum than they had received in premiums. This was not often found in young offices, and yet it is the only safe mode of conducting assurance, the only security for assurers. The very principle of assurance was this, and its calculations were based upon the assumption that all the premiums paid by the persons assuring are immediately invested, and yield interest. If this is not done, a loss must accrue upon the policy. The profit of the Society arises from the difference between the interest which it is calculated that the money so received and invested might produce and that which it actually yields. The calculations proceed on a basis of three per cent. compound interest. But practically the Society obtains more than this, and that excess is the profit of the Society. Now, it is quite obvious that if any portion of the moneys so received from assurers is not made to yield interest, it becomes a loss and not a profit to the Society. In truth, the Society has no right to deal with that money at all; it merely receives it, like a banker, as a deposit, to be afterwards accounted for with interest. All that an assurance company has a right to use for its own purposes is its own subscribed capital, and any office that trespasses beyond this, and uses the money paid by the assured, instead of investing it, is an unsafe office, and will be shunned by prudent men. They might, therefore, almost always ascertain the safety of an office by inquiring what amount of premium it has received from the commencement of its business, and what sum it has invested. If these are equal, the office may be deemed a safe one, but if the total amount of premiums received is greater than the sum invested, then the business has not been properly conducted, and the office may be deemed unsafe. Having recognised this as the true principle upon which an assurance office should be conducted, the Directors of the *Law Property Assurance Society* had from the beginning resolved to carry it out strictly, and always to keep profitably invested every sixpence received from persons who assure with them, using only the subscribed capital of the shareholders for the establishment of the business; and it was to this that they were, perhaps, mainly indebted for the proud and satisfactory position in which they stood, and the rapidity with which they had been enabled to secure the confidence of the Profession and of the Public. If any had doubted before, here in the balance-sheet was the answer. Here were all the premiums received, to the uttermost sixpence, invested, and returning an interest of five per cent. and the same rule would continue to guide them in future. He hoped that in all future annual reports it would be distinctly stated what was the total of premiums received, and what the sum invested, as the best guarantee for safety to assurers, and it would be well if the same were required from all assurance offices. He now desired to draw their attention to two or three of the peculiar plans of this Society, whose uses do not appear even yet to be properly understood. In the first place there was the *assurance of leaseholds*. They had issued several of such policies, but not so many as, from the many and great advantages of this form of assurance, ought to have been effected. He would repeat them. Hitherto a leasehold was always a depressed property in the market, because it was difficult to ascertain its precise value, and the feeling that when the term expires he will lose both the property and the money paid for it, always, to some extent, affects a buyer, and it is always an obstacle to a mortgagee. This difficulty is entirely met by the plan of *assurance of leaseholds* in this Society. If you want to buy a leasehold, say of thirty years, and you want to know how much it is worth, what you can safely give for it, you come to this Society, and are informed for what annual premium the society will grant you a policy for repayment of the purchase-money at the end of the term. To ascertain its value, you first deduct from its annual proceeds the interest on the purchase-money, then the premium to be paid for the return of the money at the expiration of the lease; and if the interest and the premium together are covered by the rental, then you may be sure that you give only the value, because thus you will obtain five per cent. for your purchase-money so long as the lease continues and the money itself is returned to you when the lease expires. Nor is it useful only to purchasers of leaseholds. How great are its advantages for the purpose of mortgage. Who will advance much upon property which is daily becoming of less value, and is certain at a fixed time to be lost altogether? But if the leasehold is assured in this office it is as good as a freehold, for either buyer or mortgagee, because, when the property goes the money comes; nay, it is better, for a freehold may diminish in value—an insured leasehold cannot do so—the policy fixes its value, and a mortgagee may lend upon it safely, almost to its entire value. (Hear.) He was sure that this only wanted to be understood to secure for them a large amount of that business, for its uses were obvious. There was another of their branches of business founded on the same principle, *the redemption of mortgages and loans*. It is too true that few, when they contract a loan or mortgage, make any provision for its repayment. Even if they intend to do so, and perhaps begin to do so, they very rarely continue it; temptation to spend any little fund they might accumulate is sure to be too strong to be resisted. But if a man desires to redeem his loan, this office enables him to do so by assuring him against his own weakness. He calculates how much he can afford to pay yearly towards the liquidation of his debt, and the society grants a policy by which it agrees to pay the amount of the loan at the end of a fixed time, on his making such annual payment. Having to pay this sum on his policy regularly, he saves it—he sets it down as part of his annual expenditure, like rent and taxes, and regulates his other expenses accordingly, and the thing is done. As a further security to him, for a small additional premium the Society further agrees, if he desires it, to pay the amount of the loan or mortgage should he die before the time appointed, so that he may be sure that his family will be left unincumbered by the debt. (Hear, hear.) There was another branch of their business not yet sufficiently understood—the *Assurance of Titles*. Very vague and wild notions prevailed as to this. He hoped, however, it would be understood that they did not assure *bad* titles, but only such as were *unmarketable* by reason of some defect, but which were perfectly good *holding* titles. An immense amount of property in this country could neither be sold nor mortgaged in consequence of some difficulties in proof of certain facts, or because the cost of proving them would be too great to be borne. In such cases the Society, after investigation, grants a policy guaranteeing the title against the particular defect, and thus releasing it from its bondage, and making it both marketable and mortgageable. So where a property was sold in such small lots that it would not pay to make out a separate title, and give an abstract or attested copies to each, the Society would investigate the title, and grant a policy to each purchaser guaranteeing that title. (Hear, hear.) These were some of the new applications by this Society of the principle of assurance, and they were found to work very well in practice, and he hoped their uses would soon become better understood by the Profession and by the public generally. In the business of Life Assurance the Society was flourishing beyond expectation, and that they had done a *safe* business was shewn by the fact that in two years only one life had dropped. For the flourishing position in which they found themselves he believed they were much indebted also to the unanimity and zeal which had prevailed at the Board. They had pulled heartily together, working diligently at their duties, and while they exercised a prudent economy, they did not shrink from judicious expenditure when they believed that the business of the Society would be promoted by it. (Hear, hear.) They were averse to the penny wisdom and pound foolishness that was too much the fashion, and they had avoided the wanton mode of expenditure that had marked the first stages of some of the many young assurance offices. (Hear, hear.) Lately, they had established a Local Board at Manchester, and although as yet it had not begun to help them, the shareholders might anticipate great results from their labours, for it was composed of some of the principal members of the Profession in that town, each of whom could from his own office issue many policies in the course of the year, and doubtless the results will be seen swelling their next year's report. (Hear, hear.) He was bound to say for his colleagues, that the Society was deeply indebted to all of them for the attention they had given to their duties, as the results proved. To Mr. Macauley they were indebted particularly for the time and care he had given to that important portion of their business, the investigation of the titles offered for assurance; as an equity lawyer of great ability, his advice had been of much service, and he had spared no pains in the performance of that arduous duty. There was another person whom he was bound to name to them as entitled to the thanks of the shareholders—their actuary and secretary, Mr. Wm. Neison. Nothing could surpass the zeal, the industry, the energy, and the ability with which he performed his duties, and he was sure that in this all the board would agree with him. (Hear, hear, hear.) It only remained for the shareholders to do their part in promoting the prosperity so well begun, by making known to their friends the flourishing state and prospects of the Society, the security it offers to assurers, the practical uses of its plans of assurance, and, by bringing to it and recommending to it all who have occasion to avail themselves of the

benefits of assurance, whether upon their lives or their property. (Hear, hear.) He now proposed the adoption of the report.

It was adopted unanimously.

The auditors' balance-sheet was then adopted.

Mr. HOLMES proposed a vote of thanks to the Directors for their services; the report, the balance-sheet, and the highly satisfactory state of the business of the Society were the best proof that they had done their duty.

Mr. KELSEY seconded the motion. As auditor, he had been behind the scenes. He had an opportunity of witnessing the attention and zeal bestowed by the directors on the affairs of the Society, which, from the investigations imposed upon him in his office, he knew and he could assure them were in a most satisfactory, secure, and flourishing condition. (Hear, hear.)

Carried unanimously.

Mr. CHANDLER returned thanks. They had done their utmost, and they were rewarded by the success that had attended their exertions—the business had more than met their most sanguine expectations. (Hear, hear.) If the shareholders, and he might say the Profession generally throughout the country, better understood their plans, the business would rapidly multiply; for he could speak from his own experience as to the utility of many of them. He had extensively adopted the *Assurance of Leaseholds*, and thus greatly facilitated the mortgages and sales of his clients. By the *Assurance of Titles* he had found immense assistance in the conduct of sales—it had been of the utmost professional service to him. One case, out of many he might name, would shew the uses of the Society to the owners of property and to their solicitors. He had advertised a sale of property. A pretended claimant, for the purpose of putting them to expense and trouble, served notices, moved injunctions, and endeavoured by these means to deter purchasers. In such circumstances it was impossible to proceed to a sale, although the matter was urgent. But he applied to this Society,—they investigated the title, they were fully satisfied with it, and they agreed to assure that title to any purchaser at a price named. Accordingly he so announced in his advertisements, all objections were removed, and the property sold without difficulty, in reliance on the guarantee of this Society. (Hear, hear.) Another great advantage he had found from it. Sometimes it happened that property was to be sold in lots, parcels of a large estate, having a costly title, which would be ruinous to purchasers to investigate, or to vendors to furnish abstracts and attested copies. In such case the Society afforded an easy remedy. It investigated the title once for all, and the vendor went into the market with a condition that, instead of a title ruinous to both parties, he would supply a policy of assurance from this Society guaranteeing the title. (Hear, hear.) If the Profession and the public would send the business to them, the Board would transact it carefully and securely to all parties.

Mr. AUSTIN proposed a vote of 250*l.* to the directors for their services during the past year. They would all agree that it had been well deserved. (Hear, hear.)

Mr. DOVE seconded the motion, which was carried unanimously.

Mr. WORRELL proposed a vote of 21*l.* to the auditors. He had been much pleased with the balance-sheet, not only in the gratifying results which it exhibited, but for the clear and intelligible manner in which it was set out, so that the real state of the society could be seen at once by the shareholders and the assured.

Mr. BUTCHER seconded the motion, which was carried unanimously.

Mr. KELSEY returned thanks. They had devoted great attention to their duties, and were pleased that they had given so much satisfaction. Their task had, indeed, been an easy one, so well had all the accounts been kept, and so prudent had been the management of the affairs of the society. He hoped the shareholders would increase their labours indefinitely, by sending a still increasing business to the office.

Mr. WORRELL proposed the re-election of Mr. Edward W. Cox and Mr. Robert Young as directors.

Mr. ST. PATRICK seconded the motion. He would take this opportunity of asking if the Board contemplated an addition to their numbers? The motion was carried unanimously.

Mr. COX, in returning thanks, said, that in reply to Mr. St. Patrick's question, he should state that the Board had such an intention. They were, however, desirous of not doing so hastily, because they wanted to obtain the best men, whose names would be a guarantee to the public at a distance. They might easily have filled their seats with a set of men who are about London, who have handles to their names, and use them to get a sort of living by directorships—men who might be termed Professional Directors; but the Board conceived that such persons did not give either respectability to the Society or confidence to the public, even though they might be lords or M.P.'s. (Hear, hear.) The best men, those who were really desirable, were not so easily to be obtained. They would not join a society until they saw how it was going on. The Board hoped, now that they could shew themselves to be established, and to be going on with certainty of success, that they should be able to induce two or three of such really desirable persons to join them. But for the purposes of business they did not need an addition: much of their success was due to the unanimity and promptitude of a small Board. His experience had shewn him that a large board was an evil and an obstruction to business. (Hear, hear, hear.) They were, therefore, desirous to proceed as cautiously in this as they had done in the other affairs of the Society. (Hear.)

Mr. WORRELL proposed the re-election of the auditors. They were greatly indebted to the services of those gentlemen.

Mr. HICK seconded the motion, which was carried unanimously.

Mr. KELSEY returned thanks. Their endeavours had been to present accounts in figures that should be clear, intelligible, and true (hear, hear).

Mr. F. G. P. NEISON proposed a vote of thanks to the auditors. He was much pleased with their balance-sheet. Seldom had so complete a document been laid by a company before its shareholders. It shewed the precise condition of the company in various forms, so that no person could misunderstand it. (Hear.) The office of auditor will become more and more important every year, and it was well that they had commenced with so clear and perfect a mode of exhibiting the state of their affairs—it would be easily followed, and it would give great confidence to the public, and satisfaction to the shareholders. (Hear.) As to the progress of the Society, it must be most gratifying to them. He hoped that with the same energy, and the increased confidence that must flow from success, the revenue of the next year would be doubled, for although the rivalry of new offices was increasing, many assurance companies could not shew, at the end of ten or twelve years, the same amount of business as this one at the end of its second year. Success can only be secured now-a-days by making it known, and adopting every legitimate means of bringing its uses and advantages before the public. Some of the features of this company were really novel, which could not be said of most of those put forward by other companies. He believed that, in fact, notwithstanding all the promises and puffings of young offices, not a single novelty had been introduced into assurance for the last century—all those boasted new plans being slight modifications of life assurance. Hence it was that none of them had been found to answer. But two, at least, of the plans of this Society were new and original—the Assurance of Property by assuring Leaseholds and Titles. As to the assurance of titles, some had objected that there were no data—but there were no data as to fire assurance, and yet it was profitably conducted. But in the form of title assurance adopted by this Society the risk was little or nothing, for they only insured titles that were good to hold, although not marketable. (Hear, hear.) That the novel features of this Society should be slow in becoming understood would surprise no person acquainted with the history of life assurance. Nearly a century elapsed after its introduction before it came to be much adopted—indeed it is only within twenty-five years that the public has fully recognised its utility and importance. Hence the directors of this company should look after the Life Assurance and Guarantee of Fidelity—branches which are understood, and leave the others to time and experience to shew their value and their usefulness, and counting them only as additions to their two great branches of *Life Assurance* and *Guarantee*,—placing their main reliance on these latter. (Hear, hear.)

Mr. BROCKMAN seconded the motion, which was carried unanimously.

Mr. KELSEY, in returning thanks, said that the more or less of difficulty that auditors had in the discharge of their duties depended upon the diligence and skill of the officers of the Society, and especially of the secretary. Having experienced the value of Mr. Wm. Neison, having investigated all his work and witnessed his industry and ability, he felt that the Society could not too highly appreciate the services of such an officer, whose capacities were equal to his zeal. He was sure that they would unanimously join in a vote of thanks to him.

Mr. H. PAULL seconded the motion. As a director he also could bear his testimony to the value of Mr. Neison to the Society. He had almost daily opportunities of observing him, for there were few days on which he did not come to the office to see how the business was progressing, and he had always found their actuary busily engaged in their work, always ready to give information, always seeking how he might best advance the interests of the Society. His knowledge of the science of assurance was greater than that possessed by most secretaries, and he was always willing to impart it to others. And not only did he labour for them by day, but his time there being much occupied by persons calling, he laboured far into the night in the actual business of the office. (Hear. hear.)

Mr. W. NEISON (actuary and secretary), returned thanks. Although he had been brought up in the school of assurance, this was the first office with which he had been connected in a post of prominence, and he hoped they should long continue the connection. His best exertions would be devoted to the interests of the Society, and he had so little objection to labour that the more proposals they could send him the better he should be pleased, and he should consider them his best reward. (Hear.)

Mr. BROCKMAN proposed a vote of thanks to Mr. Colley, the solicitor to the Society, who had been of great service to them by his diligence and attention, and he was bound to say that on all occasions when the regular legal charges bore heavily upon the Society, or upon any person transacting business with it, Mr. Colley had shewn the utmost readiness to make any abatement on those charges that the circumstances of the case seemed to call for. (Hear, hear.)

Mr. DOVE seconded the motion.

Mr. COLLEY, in returning thanks, said, that he had steadily endeavoured to promote the interest of the Society, and he should continue to do so, and to accommodate himself to any arrangements that would further its progress and promote its business.

Mr. ST. PATRICK proposed a vote of thanks to the medical officer, which was seconded by Mr. KELSEY, and carried.

Mr. PAULL said that Mr. Macann was absent in Ireland, where he had been purchasing some property under the Incumbered Estates Act, or he would have been present to return thanks in person.

Mr. KELSEY proposed a vote of thanks to the Chairman for his conduct in the chair. He had given them a lucid statement of the principles of assurance, and of the uses of the various plans of the office, which he hoped the shareholders would take care to repeat to their friends. Their Chairman had more than a common interest in the Society—for he was its parent (hear, hear), and he felt the interest of a parent in its prosperity. They were much indebted to him for his exertions.

Mr. CHANDLER seconded the motion. As a director he could testify to the diligent attendance of their chairman, who, when not called out of town by other duties, never failed to be in his place at the board. When they remembered what his avocations were, this zeal in their service would be appreciated. All the shareholders of the Society, of whose plan he was the inventor, and the success of which must be very gratifying to him, would, he was sure, heartily wish him success in the new enterprise in which he was now engaged, and would be pleased to welcome him there in another character. (Hear, hear.) He hoped their thanks would be given to him by acclamation.

Mr. COX returned thanks. As the parent of the Society he was proud of its prosperity, and as he had zealously wrought to promote it so far, so would his best services continue to be given to it—for it was a pet of his—he had for many years thought over the plans, and being confident that they were as practicable as they were undoubtedly useful, he took the first opportunity that circumstances permitted to him to put them into operation, and now that they had proved successful in practice, he was gratified to find that he had not erred in his anticipations. Should success attend him in the enterprise to which Mr. Chandler had alluded, it would not prevent him from continuing his exertions for the society, or taking his place among them. Whether in his public or in his private capacity, he should still seek to promote the prosperity that had made so excellent a beginning.

The meeting then separated.

UNITED LAW CLERKS' SOCIETY.—The twentieth anniversary of this institution was celebrated on Wednesday evening at the Freemasons' Tavern, Great Queen-street, under the presidency of Sir John Jervis, supported by Sir J. Patteson, Mr. Bramwell, Mr. Rogers, Mr. Wilcocke, and other members of the Bar; and was well attended by the Profession. The report, which was read by the secretary (Mr. Rogers), stated that in the past year twenty-one members had during illness received a sum of one guinea per week, involving an expenditure of 260*l.* and that of these cases three terminated fatally; that at the commencement of the year there were six members in the receipt of the superannuation allowance, varying from 26*l.* to 36*l.* 8*s.* two of whom had since died, while on their decease the family of each received 50*l.*; that during the year the number of deaths amongst the members had been seven, to whose widows and families 350*l.* had been paid; that the receipts of the year amounted to 2,209*l.* and the expenditure to 1,007*l*; and that the general fund had been increased to 4,640*l.* It was further stated that the members themselves had during the year contributed upwards

of 1,200*l.* The relief afforded out of the casual fund amounted to 32*l.* and the balance in hand under that head was 93*l.* The chairman, in proposing "Prosperity to the Society," bore strong testimony to the honourable character of law clerks generally, and expressed his belief that, notwithstanding the temporary depression of the Profession in consequence of law reforms, they would maintain their past reputation. The toast was most enthusiastically received, and immediately after the donations were announced, which included twenty-five guineas from the chairman. The toast of "The Lord Chancellor and the other Patrons of the Society" was chiefly remarkable for the hearty reception given to Mr. Justice Patteson. The evening was altogether an extremely pleasant one.

LEGAL INTELLIGENCE.

GRAY'S-INN, June 11.—The annual examination in law, instituted by this society, took place in the Hall, on Friday and Saturday, the 4th and 5th inst. and the following is the class list of the successful candidates for honours on that occasion, which was published this evening in the presence of Lord Justice Knight Bruce, the benchers and members of this society, and the members of the other Inns of Court:—

1. Mr. Boswell Hensman.
2. Mr. William Pearson.
3. { Mr. Alfred G. Henriques, / Mr. Francis Housman, } Æquales.
4. Mr. Theodore Ryland.
5. Mr. Hubert Lewis.

Mr. Hensman received from the lecturer, W. D. Lewis, esq. his prize, consisting of a complete set of the Reports of Vesey, jun. (20 vols.). After the announcement of the successful candidates, Mr. Lewis delivered his farewell address, whereupon the treasurer, on behalf of the bench and society, expressed their perfect satisfaction at the efficient manner in which he had discharged the arduous duties of his office, and the great success that had attended his exertions.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

CHAMBERS.—On the 7th inst. at 7, Great Cumberland-street, Hyde-park, the wife of Thomas Chambers, esq. barrister-at-law, of a daughter.

PARSONS.—On the 4th inst. the wife of Thomas Parsons, esq. barrister-at-law, of a daughter.

MARRIAGES.

BOUCHER, Mr. John, to Isabella Butt, of No. 4, Clapham-rise, second daughter of the late John Butt, esq. solicitor, on the 3rd inst. at St. Mark's, Kennington.

EDGER, Thomas Stamp, esq. M.D. of Startforth-hall, near Barnard-castle, one of her Majesty's Justices of the Peace for the county of Durham, to Laura Sophia, youngest daughter of the late Warren Maude, esq. of Sunniside, at Kirkleatham, Yorkshire, on the 10th inst.

BYLANDT, Count Alfred Edouard, son of Lieut.-Gen. Count de Bylandt, K.C.H. &c. to Anne Charlotte, youngest daughter of T. P. Vokes, esq. late chief magistrate of police, Limerick, Ireland, at St. Mary Bryanstone-square, on the 12th inst.

HAGGARD, Thomas Trenchard, esq. Bombay artillery, third son of John Haggard, of Doctors'-commons, LL.D. to Emily Frances, second daughter of Thomas Holme Bosworth, esq. of Westerham, on the 15th inst. at Westerham, Kent.

MARSHALL, John Long, esq. youngest son of G. S. Marshall, esq. late H. B. M. Consul at Calais, to Anne Burgess, youngest daughter of Colonel Potter Macqueen, late M.P. for the county of Bedford, and niece of the late Right Hon. Lord Hastings, at St. Peter's, Eaton-square, on the 15th inst.

NEWARK, Viscount, son of Earl Manvers, to Georgina Jane Elizabeth Fanny, second daughter of the Duc and Duchesse de Coigny, on the 15th inst. at St. George's, Hanover-square.

STEVENSON, the Hon. Mr. Justice, one of the judges of the Supreme Court in Jamaica, to Caroline Octavia, youngest daughter of the late Joseph Seymour Biscoe, esq. of Pendhill, in the county of Surrey, on the 10th inst. at Barnwood Church, Gloucestershire.

STOCK, Sydney Frederick, esq. of Bristol, to Catherine Margaret, daughter of the late John Baynes Hayward, esq. solicitor, Bath, on the 7th inst. at Wotton-under-Edge.

WATKINS, Col. L. V. of Permoyre, Brecknockshire, Lord Lieutenant for the county, and M.P. for the borough, to Eliza Luther, widow of Brigadier-General Hughes, C.B. on the 10th inst. at Walcot Church, Bath.

WISLON, Mr. Richard, late of Leeds, Solicitor, to Ellen, only child of the late Mr. John Wilson, both of Camberwell, on the 16th inst. at St. Mark's, Kennington.

DEATHS.

BAILEY, Edward, esq. solicitor, second son of Edward Bailey, esq. of 85, Lonsdale-square, Islington, at Sydney, New South Wales, January, 1852, aged 41.

BELLAMY, Samuel, esq. solicitor, at Gainsborough, on the 5th inst. aged 54.

BROWN, William, esq. magistrate of Chester, on the 13th inst. at his residence in Boughton, aged 63.

BUTLER, Gamaliel, esq. solicitor, formerly of London, on the 31st of January last, at Hobart Town, Van Diemen's Land.

CAMPS, Rebecca, youngest daughter of the late William Camps, esq. High Sheriff of the counties of Cambridge and Huntingdon, on the 4th inst. at Wilburton, Cambridgeshire.

KEYSER, Henry, esq. of the Middle Temple, Barrister-at-Law, on the 9th inst.

ROBINSON, Harriet, the wife Charles Francis Robinson, esq. of the Crown-office, and of Effingham, Surrey, on the 13th inst. very suddenly, at Balcombe.

WRIGHT, Henry, esq. solicitor, Knutsford, on the 14th inst. aged 48.

MONEY MARKET.

ENGLISH FUNDS.	Sat.	Mon.	Tues.	Wed.	Thurs.	Fri.
Bank Stock	221½	..	222	221	223½	..
3 ℔ Cent. Reduced Annuities	99¼	99⅜	99⅞	99⅞	100⅛	100½
3 ℔ Cent. Consols Annuities	100¼	100⅜	100⅜	100⅝	shut	..
Consols for Account	100¼	100⅜	100½	100⅜	..	..
New 5 ℔ Cent. Annuities	..	..	124	..	..	..
New 3¼ ℔ Cent. Annuities	101⅞	102⅛	102¼	102¼	103	103⅛
Long Annu (exp Jan 5, 1860)	6⅞	..	6⅞	7	6⅞	6⅞
Do. 30 yrs. (exp. Oct. 10, 1859)	..	..	..	..	..	6⅞
Do 30 yrs (exp. Jan. 5, 1860)	..	..	7⅛	..	..	..
India Stock	..	..	270	..	..	..
India Bonds (1,000*l.*)	84	90	..	..	86	..
Do. do. (under 1,000*l.*)	..	85	..	88	89	86*
South Sea Stock	..	..	..	..	..	..
Do. do. New Annuities	..	..	..	..	..	..
Exchequer Bills, 1,000*l.* June	73*	72*	81*	75*	81*	77*
Do. do. 500*l.* June	73*	..	..	75*	81*	.
Do. do. Small, June	70*	..	75*	75*	..	68*

* Premium.

THE GAZETTES.

Bankrupts.

Gazette, June 15.

ALANSON, THOMAS GEORGE, wine merchant, Liverpool, June 24 and July 23, at eleven, Liverpool. Off. as. Bird. Sol. Banner, Liverpool. Petition, June 11.

BROWN, CORNELIUS, flax spinner, Kingston-upon-Hull, June 30 and July 21, at twelve, Kingston-upon-Hull. Off. as. Carrick. Sol. Thorney and Son, Hull. Petition, June 3.

CHALLEN, JAMES, brewer, Brixton, July 1 and 27, at one, Basinghall-st. Off. as. Edwards. Sol. Jay, Bucklersbury. Petition, June 4.

HIGGOTT, JOSEPH, miller, Cromford, Derbyshire, June 25, at ten, July 16, at twelve, Nottingham. Off. as. Bittleston. Sols. Brewster, Nottingham; and Motteram, Knight, and Emmett, Birmingham. Petition, June 8.

HORTON, SAMUEL, builder, Carlton-road, Asylum-road, Old Kent-road, June 24, at one, July 24, at twelve, Basinghall-st. Off. as. Nicholson. Sols. Messrs. Linklater, Sise-lane, Bucklersbury. Petition, June 13.

HUMPHREYS, HENRY NOEL, bookseller, Dorchester-pl. Blandford-sq. June 24, at half past eleven, Aug 7, at half-past twelve, Basinghall-st. Off. as. Nicholson. Sol. Moxon, Southampton-buildings, Chancery-lane. Petition, May 8.

MORLEY, THOMAS, silversmith, High Holborn, June 23, at one, July 27, at twelve, Basinghall-st. Off. as. Stansfeld. Sol. Peddell, Cheapside. Petition, June 11.

MOUNTCASTLE, EDWARD, hatter, King William-st. City, and Greenwich, June 25 and Aug 13, at one, Basinghall-st. Off. as. Whitmore. Sols. Terrell and Matthews, Basinghall st. Petition, June 13.

SEVERS, THOMAS (and not LEVERS, as before advertised), woollen cloth warehouseman, Basinghall-st. June 22, at half-past twelve, July 22, at eleven, Basinghall-st. Off. as. Bell. Sols. Messrs. Linklaters, Sise-lane, Bucklersbury. Petition, Jun

WALKFOOT, HOLT TAYLOR, coal dealer, near Newchurch, Lancashire, June 26 and July 22, at eleven, Manchester. Off. as. Mackenzie. Sol. Harris, Rochdale. Petition, June 1.

Gazette, June 18.

HADAWAY, EDWARD MATTHEW, grocer and tea dealer, Newcastle-upon-Tyne, June 30, at twelve, July 28, at one, Newcastle-upon-Tyne. Com. Ellison. Off. as. Wakley. Sol. Hodge, Grey-street, Newcastle-upon-Tyne. Petition, June 15.

MANICO, EDWARD SOLE, merchant, Mark-lane, June 24, at one, July 29, at eleven, Basinghall-st. Com. Evans. Off. as. Bell. Sols. Messrs. Linklater, Sise-lane, Bucklersbury. Petition, June 14.

WALTHEW, JOHN, drysalter, Manchester, June 29 and July 14, at twelve, Manchester. Off. as. Fraser. Sol. Slater, Manchester. Petition, June 9.

WHEELER, WILLIAM, innkeeper, Abergavenny, June 29 and July 27, at eleven, Bristol. Com. Hill. Off. as. Acraman. Sols. Batt, Abergavenny; and Bevan, Bristol. Petition, June 2.

WOOD, WILLIAM, timber merchant, Hoyland Nether, Wath-upon-Dearne, Yorkshire, July 5 and 26, at twelve, Leeds. Com. Ayrton. Off. as. Hope. Sols. Marshall, Barnsley; and Bond and Barwick, Leeds. Petition, June 3.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Bailey, G. ribbon manufacturer, second, 3s. 0½d. Whitmore, Birmingham.—*Chew*, J. stuff manufacturer, first, 2s. 6d. Mackenzie, Manchester.—*Clarke*, E. S. baker, first, 3s. 7d. Graham, London.—*Forman* and *Frow*, joiners and builders, first and final, 2s. 4½d.; first and final sep. of Forman, 20s.; first and final sep. of Frow, 20s. Carrick, Hull.—*Godfrey*, J. P. paper maker, first, 1s. 4d. Hirtzel, Exeter.—*Lawrence*, W. grocer, first, 1s. Graham, London.—*Lopes*, M. wine merchant, second, 1½d. Graham, London.—*Mason*, S. draper, first, 6s. Whitmore, Birmingham.—*Pearse*, S. coal merchant, first, 1s. 3d. Hirtzel, Exeter.—*Preedy*, F. E. innkeeper, first, 3s. Hirtzel, Exeter.—*Ross* and *Ogilvie*, army agents, seventh and final, 9-16th of 1d. Groom, London.—*Remington, Stephenson*, and *Co.* bankers, sixth sep. of R. Stephenson, 17-64ths of 1d. Stansfeld, London.—*Robinson*, J. dyer, first and second, 3d.; on new proofs, and second and final, 2d. Hope, Leeds.—*Taylor*, T. epsom salts manufacturer, first, 7½d. Baker, Newcastle.

INSOLVENTS' ESTATES.

Edwards, J. clerk and grocer, 1s. 1½d. Apply to M. G. Fluder, solicitor, St. John-st.-road.—*Mason*, T. fishmonger and dealer in game, 9½d. Apply to B. Frear, official assignee.

Assignments for the Benefit of Creditors.

Gazette, June 8.

Beattie, W. railway carriage builder, Liverpool, May 10. Trusts. H. Steele, timber merchant, Liverpool, S. Lloyd, ironmaster, Wednesdbury, and D. Bromilow, coal agent, St Helen's. Sol. S. Booker, Liverpool.—*Bidewell*, A. (widow,) leather seller, Ely, Cambridgeshire, May 31. Trusts. S. Morris, King William-st. and J. H. Smith, Bermondsey, leather sellers. Sol. G. Legge, Ely.—*Bishop*, H. gentleman, Hastings, Sussex, May 26. Trusts J. Amore, grocer, and G. Meadows, solicitor's clerk, both of Hastings.—*Froom*, W. J. chemist druggist, and grocer, Exeter, June 3. Trusts. J. C. Sercombe, merchant, and G. Down, accountant, both of Exeter. Sols. Geare, Mountford, and Geare, Exeter.—*Marriott*, T. maltster and farmer, Kirton, Suffolk, June 1. Trusts. B. P. Green, farmer, Little Blakenham, T. B. Ross, auctioneer and estate agent, and J. M. Dawson, farmer, Bucklesham. Sol. W. Daniel, Ipswich.—*Peacock*, C. M. grocer, draper, and general dealer, Cinderford, Gloucestershire, May 13. Trusts. S. Moses and E. Davis, wholesale clothiers, Aldgate High-st. London. Sols. Jacobs and Forster, Crosby-sq.

Gazette, June 11.

Dowling, W. grocer, Humberstone Gate, Leicester, June 4. Trusts. A. T. Field, grocer, Leicester, and W. Dowling, jun. ribbon manufacturer, Warwick. Sol. F. J. Hawker, Leicester.—*Finch*, W. H. timber merchant, Barnstaple, Devonshire, May 15. Trusts. T. Hodge, linen-draper, Barnstaple, and W. Letheren, timber dealer, North Tawton. Sol. R. Mortimer, Barnstaple.—*Griffin*, W. innkeeper, White Hart Inn, Winchcomb, Gloucestershire, May 28. Trusts. E. Lloyd, spirit merchant, Gloucester, and J. Hall, miller and baker, Winchcomb. Sol. G. P. Wilkes, Gloucester.—*Hawkes*, P. cooper, Aldham, Essex, May 22. Trust. T. Moore, wholesale grocer, Colchester. Sols. Barnes and Neck, Colchester.

Partnerships Dissolved.

Gazette, June 8.

Atkinson, T. and *Haworth*, T. power-loom manufacturers, Higher Mill, Bury, June 2. Debts paid by Haworth.—*Atkinson*, J. G. and *Smith*, G. A. attorneys and solicitors, Peterborough, June 5. Debts paid by Smith.—*Carlisle*, R. J. and T. *Smith*, J. W. and *Atherton*, J. general merchants and commission agents, Liverpool, Buenos Ayres, and Monte Video, Dec. 31.—*Cliff*, J. S. and *Buckroyd*, W. grocers and provision dealers, Leeds, May 31.—*Ellis*, J. W. and *Martin*, G. cloth merchants, Leeds, June 4.—*Griffin*, C. F. and G. F. Beal's Wharf, Southwark, Oct. 12. Debts paid by G. F. Griffin.—*Frackelton*, G. and *Jury*, E. T. carcase butchers and commission meat salesmen, Newgate Market, June 27.—*Horne*, T., N. and G. coal merchants, Holland-st. Blackfriars, as regards G. Horne, May 31. Debts paid by remaining partners.—*Hoyle*, J. and *Salisbury*, W. sizors, Burnley, June 4. Debts paid by Salisbury.—*Morris*, J. and *Wheeldon*, S. road contractors, Ladderedge and Endon, June 5.—*Reeves*, O. and A. and *Channing*, H. attorneys and solicitors, Taunton, June 5. Debts paid by Channing.—*Smith*, J. *Leggett*, W. and *Smith*, W. furniture dealers, &c. Albion-place, King's-cross, as regards J. Smith, June 2.—*Warne*, W. T. and *Carles*, J. hat and cap manufacturers, Strand, June 7.—*Woodson*, W. and *Summerson*, G. fancy shawl manufacturers, &c. Leeds, as regards Summerson, June 1.

Gazette, June 11.

Baber, F. and *Clarke*, F. wholesale grocers, Great Tower-st. June 10.—*Bamford*, T. and W. coal proprietors, Blatchinworth and Calderbrook, Rochdale, June 7. Debts paid by W. Bamford.—*Barrett*, B. and *Mellor*, J. wool and waste dealers, Stainland, Halifax, June 8.—*Beswick*, T. and *Renshaw*, J. C. joiners and packing case makers, Salford, June 1.—*Brockelbank*, L. and *Finch*, A. patent metallic box and chemical light manufacturers, Bucklersbury, June 8.—*Brookman*, H. and *Mitchell*, W. pawnbrokers, Wolverhampton, June 9. Debts paid by Mitchell.—*Brown*, D. and *Townend*, J. carriers and wharfingers, Nottingham, June 9.—*Caton*, J. and *Ladds*, E. printers, Cambridge, June 1.—*Conen*, G. and *Irvine*, T. D. pocket-book makers, Spencer-st. Clerkenwell, June 9. Debts paid by Conen.—*Cooke*, E. and *Hewitt*, E. W. corn and flour dealers, Newcastle, May 31.—*Cropper*, E. and *Procter*, T. miners and coal merchants, Moal Hall and Welbatch Colliery, near Shrewsbury, Dec. 31. Debts paid by Messrs. Shorthouse and Proctor.—*Edmonds*, C. H. and *Jones*, J. attorneys and solicitors, Devereux-court, Temple, May 25.—*Hallewell*, T. and E. woollen manufacturers, Skircoat-green, near Halifax, March 1, 1851.—*Le Mesurier*, A. V. and *Stienen*, C. commission merchants, Ancona, as regards Le Mesurier, May 1. Debts paid by Verkruzen and Stienen.—*Lloyd*, H. and *Thislethwaite*, R. tobacconists and dealers in segars and snuffs, Tichborne-st. St. James, May 28. Debts paid by Thislethwaite.—*Nokes*, J. and *McBryde*, J. glass cutters, Birmingham, May 27. Debts paid by Nokes.—*Parkinson*, R. *Oddie*, J. *Duerden*, W. and *Lancaster*, W. power-loom cloth manufacturers, Preston, June 5.—*Perry*, J. B. and *Tebbutt*, C. bleachers and dyers, Mansfield, March 23.—*Price*, J. and *Roberts*, J. grocers and tobacco and snuff manufacturers, Chester, June 9. Debts paid by Price.—*Randall*, J. and *Harvey*, C. ship owners and coal merchants, Dover, June 8.—*Rowell*, J. and T. B. cab proprietors and job masters, Ipswich, June 9. Debts paid by Rowell.—*Thornton*, T. and *Booker*, J. linen drapers, London-terrace, Hackney-road, June 10.—*Timmins*, J. and C. D. Carmarthen, June 1. Debts paid by J. Timmins.—*Tindall*, E. O. and L. ironmongers and general hardwaremen, Scarborough, June 7.—*Tonkin*, J. and *Morgan*, J. tailors and drapers, Bristol, June 10. Debts paid by Morgan.—*Trueman*, W. and *Thompson*, W. grocers, chemists, and druggists, Durham, June 8. Debts paid by Trueman.—*White*, J. and *Wood*, J. stereotypers, Red Lion-court, Fleet-st. June 10.—*Wigfall*, W. and *Fishbourne*, C. dealers in combs, brushes, and fancy work, Sheffield, June 10.—*Wood*, R. and *Penny*, R. and H. manufacturers, Manchester, Jan. 30. Debts paid by Wood and R. Penny.

CONTENTS.

To Readers and Correspondents.

"K. J. C."—*Such are some of the chambers in the Middle Temple-lane.*

"R. A."—*It appears to us that he was right in his objection.*

"A Clerk."—*The Bill has passed: his suggestion comes too late.*

"Y. S. N,"—*There is no use in repeating these questions, as the information has been already supplied.*

"A Puzzled Student."—*We cannot undertake to explain the judgments of the Courts, or to contest them.*

We cannot undertake to return rejected communications. Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith.

No notice can be taken of anonymous communications.

THE LAW TIMES.

SATURDAY, JUNE 26, 1852.

TO READERS.

A pressure of reports and other matter of immediate moment, compels us to defer several leading articles and some correspondence that were in type.

The series of articles explanatory of the new Procedure Acts will be commenced as soon as the Acts are issued by the Queen's printers.

The Law Times' editions of the New Laws of the Session are all in progress.

Mr. Foote's *Highways Acts* is now ready.

Mr. Allnutt's edition of *The New Law of Wills Act* will be ready on Monday.

Mr. Cox and Mr. Lloyd's edition of the *County Courts Amendment Act* will be ready by Saturday next, if the Bill should receive the royal assent on Monday. A complete Digest of all the County Courts cases decided since the publication of the last (4th) edition of their *Law and Practice of the County Courts*, will be added to this edition of the new statute, so that it will form a complete and useful appendix to that volume,—with the remaining copies of which it will be bound up, without any increase of the price.

THE COUNTY COURTS AMENDMENT ACT.

So long as this measure was in suspense we refrained from any show of exultation, fearing, should it become known to the public that the interests of the Lawyers were largely involved in its provisions, that the newspapers, which omit no occasion to abuse and injure the Lawyers, would have raised the cry of opposition, and procured the defeat of that which would have been falsely assumed to be injurious to the public, *because* it was beneficial to the Profession.

But now that the provision to which we allude has become law, we may heartily congratulate our readers on the great advantage they have secured.

We refer, of course, to the clause in the new *County Courts Amendment Act*, which directs the Judges to frame a Table of Fees to be taken in the County Courts.

The practical effect of this provision is to repeal the absurd, unjust, and insulting restriction of the fee for professional services to a few shillings, without any reference to the amount of labour and skill required for the preparation and conduct of the case, and to substitute formal charges for the business done, regulated in amount by a Table of Fees to be constructed by the Judges, and to be taxable by the Court and payable by the losing party, precisely as it is in the Superior Courts.

The vast advantage of this to the Profession is sufficiently obvious. It will make the practice of the County Courts more profitable than that of the Superior Courts, for even if the items of the fees allowed be somewhat less, the larger amount of business transacted there, and the *non*-participation of agents in those fees, will produce an immense accession of income to the practitioners.

Nor will it be less beneficial to the public. Hitherto, in consequence of the costs recoverable in the County Courts being limited to the fixed fee for conducting the case in Court, the costs of preparing the case for trial—all those, in fact, which were incurred *out of Court*—fell, not upon the losing party, but upon the innocent plaintiff or defendant, as the case might be. Thus were the County Courts rendered far more costly to the suitors who were compelled to resort to them, than were the Superior Courts.

It would be difficult to calculate the sum of the benefit thus secured to the Profession in the provinces. It will make the County Courts *their* most profitable resort, for now they will obtain therein a fair remuneration for their skill and toil.

Very gratifying has been to us the success we have thus achieved. It is a boon to the Lawyers for which we had long striven. It is now nearly four years since we first suggested its propriety and advocated its adoption. But it was of small service to prove its justice upon paper; a personal effort was necessary to secure the object. Accordingly, we personally suggested it in the proper quarter. The suggestion was approved, and we framed a clause to effect the desired objects. That clause was inserted in the Bill of last year; it was accepted unanimously by the House of Lords, but by some secret agency it was expunged in the Commons. We were resolved, however, not to be daunted by defeat and delay. When the Bill was again in preparation, we took some pains to procure the reinsertion of the clause. This time it found a better fate. In the Lords, it was supported by Lord Lyndhurst in an energetic speech, in which he instanced, by proofs, the practical injustice to plaintiffs of the law that restricted the fee to a few shillings, without reference to the amount of work required. The clause was again sent down to the Commons. Fearing that the same fate might attend it there, from the same secret but influential foe, whose identity we suspected though we could not prove it, we took some pains to find protectors who should watch it in its progress through the Committee, and prevent its destruction this second time, at least without a debate and a division. But the enemy was conscious that he was watched, or he deemèd opposition hopeless; he did not appear, the clause passed through the Commons *sub silentio*, and is now the law.

The history of this provision, so small in appearance, so great in its practical results and real importance, proves how easily the interests of the Profession might be protected and advanced by watching with that purpose the *details* of Law Bills in their progress through Parliament. If the efforts of an individual *out* of Parliament could effect thus much for the good of the Profession, what might not be done by all the Lawyers *in* Parliament, if they would look a little more after the welfare of their Profession, advancing its just claims, and warding off unjust attacks upon it?

THE PROFESSION IN THE COUNTY COURTS.

The *Advocates' Clause*, as it is termed in the County Courts Amendment Act, repeals the provision of the original County Courts Act, which gave to Counsel a right to appear only when instructed by an Attorney, and merely provides that "a Barrister retained by or on behalf of the party, on either side," may "appear instead of the party to address the Court, without any right of exclusive or preaudience."

There can be no question that the original enactment was an improper one, for that which is merely a matter of professional etiquette ought not to have been converted into a law; it was almost an insult to the Bar, and how such a provision was permitted to creep into the Act, and why both Houses of Parliament passed it without an objection, is now inexplicable.

But although the enactment was so objec-

tionable in itself, there were equal objections to its repeal. Formally to rescind it was to give the *appearance* of sanction by the Legislature to a repeal of the *rule of etiquette* within the Profession itself, a course which has been and is unfortunately advocated by a considerable section of the junior Bar. It was, therefore, that we read with much pleasure the remarks with which the LORD CHANCELLOR and Lord CAMPBELL accompanied their assent to the repealing clause, and which will be found among the Parliamentary intelligence in another column. These two heads of the Profession, whose experience, as well as their position, entitles their opinions to the greatest weight, agreed in protesting against any inference being drawn, from the repeal of the restriction in law, that they therefore approved of its being repealed in fact; and they expressed a most earnest desire that the same rules as hitherto should continue to regulate the relationship of the two branches of the Profession, and that neither in the County Courts nor elsewhere would the Bar take briefs without the intervention of an Attorney.

In this we must express our most cordial concurrence. We are convinced that immense mischiefs would arise to the Profession if the Barrister were to receive his instructions directly from the client. The inevitable result, in no long time, would be to convert the Barrister into an Attorney. If instructed by the client, he must take those instructions in writing, and receive the evidence from the party and his witnesses, and make notes of it, and, in short, perform all the functions of an Attorney. This would lead in its turn to further invasions of the province of the latter, until the distinction of duties will be so imperceptible, that even the scrupulous will find it difficult to know where to stop. Scattered about as are the County Courts over the whole face of the land, the Bar would be distributed in small groups, where the curb of professional feeling will be scarcely felt, with the temptations of rivalry and perhaps more urgent needs. It is certain that, after a time, a low class of Barristers will grow up in such localities, who will use illegitimate means to obtain business, just as now is seen in some of the less reputable courts in the metropolis, and the result will be the degradation of the whole Bar as a class.

The more we reflect upon these consequences of any invasion by the Bar of the province of the Attorney, of any opening being given in the County Courts to the abolition of the *reasonable* regulation which now forbids a Barrister to accept a brief without the intervention of an Attorney, save in very rare and exceptional cases, the more earnestly do we express our hope and confidence that the repeal of the restrictive clause in the County Courts Act will not be construed by any portion of the junior Bar into an assent or approval by the Legislature of the change of practice which many of them so much desire, but which, if they succeed in introducing, they will certainly regret, when it will be too late to undo the mischief they have done.

SHAM LAWYERS.

THE following *card* is as audacious an advertisement as any we have recorded:—

HUMPHREYS AND FULLER,
HOUSE AGENTS,
AND GENERAL
COLLECTORS OF RENTS, DEBTS,
&c. &c.
90, SNOWHILL, BIRMINGHAM.
Wills, Indentures, Agreements, Deeds, &c. drawn up, on the most reasonable Terms.
The utmost punctuality observed in repayments.

The following is another specimen of the fraternity. We are informed that the writer calls himself an accountant:—

"To Miss ——,

"Madam,—I have received instructions from Mr. Jas. Arkwright to inform you, that unless some arrangement be immediately entered into to liquidate the balance due to him, I shall take the usual legal proceedings for the recovery thereof.

"I am, yours respectfully,
"J. BALMFORTH."
"Blackburn, June 10, 1852.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, June 18.

neral Board of Health—No. 2.

BILLS READ A SECOND TIME.

Friday, June 18.

Cr e and Outrage—Ireland
In nbered Estates—Ireland
School Sites Act Extension
Property of Lunatics (Lords).

Monday, June 21.

General Board of Health—No 2.

Tuesday, June 22.

Colonial Bishops (Lords).

BILLS READ A THIRD TIME AND PASSED.

Friday, June 18.

Representative I rs for Scotland Act Amendment
County Rates
Protestant Dissenters (Lords)
Savings Bank, Ireland
Inland Revenue.

Monday, June 21.

Poor Law Board Continua
Metropolis Water Supply
Disabilities Repeal.

Tuesday, June 22.

Militia Ballot Suspension
Militia Pay
Consolidated Fund (Appropriation)
Common Law Procedure
Nisi Prius Offices
Master in Chancery Abolition (Lords).

Wednesday, June 23

Public Health Act (1848), Amendment
Friendly Societies, No 2
Crime and Outrage, Ireland
Patent Law Amendment (Lords)
Incumbered Estates, Ireland
School Sites Act Extension
Property of Lunatics (Lords)
Distressed Unions, Ireland
Metropolitan Sewers.

Thursday, June 24.

Valuation, Ireland
Woods, Forests, and Land Revenues
Excise Summary Proceedings
Secretary of Bankrupts Office Abolition (Lords)
Bishopric of Quebec (Lords)
Colonial Bishops (Lords)
Bishopric of Christchurch, New Zealand (Lords).

PRIVATE BUSINESS TRANSACTED.

BILLS READ A THIRD TIME AND PASSED.

Friday, June 18.

Thames Embankment.

Monday, June 21.

Aberdeen Hammermen Incorporation
Adams's Estate
Gelding's Estate
Leith Exchange Buildings
Magdalen College, Oxford, Estate
West Middlesex Waterworks
Holloway House of Correction.

Tuesday, June :

Earl of Portarlington's Estate
Elwes' Estate
Fleming's Estate
Howe s Charity
Wexford Harbour Improvement (No. 1)
Wexford Harbour Improvement (No. 2)
Pimlico Improvement.

Wednesday, June 23.

Spalding's Estate.

PETITIONS PRESENTED.

ATTORNEYS' CERTIFICATES—For repeal of duty thereon, from Martock and Stoke-under-Hambdon.

SESSIONAL PRINTED

Num.
448 Outrage (Ireland)—Return
472 Education—Copy of Minute of the Committee of Privy Council
428. Soap—Accounts
476 Army, Navy, Ordnance, and Miscellaneous Services (1848-9 to 1852 3)—Account
490 Police—Return
100. Army, Commissariat, and Ordnance—Accounts
486. Bills—Patent Law Amendment (amended by the Select Committee)
487 — Property of Lunatics
488. — School Sites Acts Extension
494. - General Board of Health, No 2
496. — Public Health Act, 1848, Amendment, amended
507. — Enfranchisement of Copyholds, as amended by the Lords
508. — Corrupt Practices at Elections, as amended by the Lords
457. Ships, West Coast of Africa—Return
458. Colonial Bishops—Return
459. Ecclesiastical Government and Discipline, Australia—Correspondence
497. Incumbered Estates, Ireland—Further Return
Guano Islands—Correspondence
Public Records—Thirteenth Report of the Deputy Keeper
Factories—Reports of the Inspectors.
Colonial Land and Emigration Commission—Twelfth General Report
Abyssinia—Treaty of Friendship and Commerce
267 (1). Manufactured Articles and Agricultural Produce—Abstract of Returns
426. Ship Birkenhead—Papers
448. Sir James Brooke—Return
481. Lighting of the House of Commons' Libraries—Copy of Mr. Gurney's Memorial
Mr. Erskine Mather—Additional Paper
463. Sugar, &c.—Return
469 Grain (Ireland)—Return
470. Army Prize Money—Account
Census of Ireland, 1851, Part I.—County of Louth
Ditto ditto Queen's County
Ditto ditto County of Westmeath
Danish Succession—Treaty
Public General Acts—Cap. 9 to 30, both inclusive
281 Mails, West Coast of Africa—Correspondence
461. Oyster Dredging, &c—Copy of Memorials, &c.
Messrs. Edward, Wingate, and Smith—Correspondence.

HOUSE OF LORDS.

THE COUNTY COURT PRACTICE.

MONDAY, June 21.—Lord BROUGHAM presented a petition from 130 members of the Inner Bar, to whose high position his lordship bore testimony, in favour of the clause introduced into the County Courts Further Extension Bill, to enable barristers to practise in those courts without the intervention of an attorney. The noble lord read a letter from a gentleman who had signed the petition, but requested the withdrawal of his name, as "he could not allow it to remain without incurring almost certain ruin. He was aware that there was a combination of all classes of attorneys to exclude those who signed the petition from practice, but he was not so fully prepared for the personal threats since held out of the withdrawal of support by those who were principally his clients."—Lord CAMPBELL expressed his opinion that the alteration would be attended with the most mischievous results, and that a large number of the County Court Judges were convinced the worst consequences would follow the admission of barristers to practise without the intervention of attorneys.—Lord BROUGHAM complained that his noble and learned friend had entered on the merits of the case before the amendment in the Bill came to be considered, and stated that he had the authority of Lord Denman to say that that noble lord concurred in thinking the alteration desirable.—Lord LYNDHURST said he should reserve his observations until the amendment came to be read from the woolsack.

COUNTY COURTS EXTENSION BILL.

Lord BROUGHAM moved the consideration of the Commons' amendment to this Bill. The most important of these amendments the noble lord stated consisted in the introduction of provisions increasing the salaries of the judges of the County Courts to a minimum of 1,200*l.* per annum, and restraining the judge from practising either as counsel, barrister, special pleader, conveyancer, attorney, or proctor. With the principle of these amendments he fully concurred, but thought that some words should be introduced which would have the effect of postponing the operation of the Bill for a short time, in order to enable those of the judges who had professional business on hand to complete it. A period of six months from the passing of the Act would, he thought, amply suffice for this purpose. There was also an amendment of considerable importance, the effect of which was to place the County Courts upon a totally different footing from any other courts in the country, with respect to barristers and advocates receiving their instructions direct from their clients. The rule of the Profession was against a barrister going into court as an advocate uninstructed by an attorney or solicitor. The rule, however, was not without an exception, and admitted of a barrister seeing a client at chambers, and consulting with him upon any private or delicate matters. The heads of the Profession, however, discountenanced barristers receiving instructions, except through the intervention of an attorney or solicitor. It rested entirely on usage and professional etiquette, and there was no provision of common or statute law against the practice of receiving instructions directly from the client. He thought that it would have been better if the County Courts had been left as other Courts, subject to usage and professional etiquette. He thought it disrespectful to the professional body to interfere by any statutory regulations in the conduct of their professional duties. He was fully prepared to admit that there were cases where it would be necessary for a barrister in self-defence to break through the ordinary rule, and instanced the case of a barrister who, in consequence of some remarks which he had made in the House of Commons, had given umbrage to a numerous body of solicitors. These gentlemen, feeling themselves aggrieved, had issued circulars to the general body of solicitors, inviting them to shew their sense of the conduct of the barrister in question in whatever way they might have it in their power to do so. This meant of course that they should withdraw their briefs from that counsel upon the circuit to which he belonged. self-defence, Mr. So-and-So, finding that

there was nothing but the etiquette and usage of the Profession to forbid it, at once gave notice that he would open his doors to clients, and see them without the interposition of attorneys. Numerous other barristers concurred with him in the propriety of his conduct, pledged themselves to stand by him, and, if need were, to join him in that course. The consequence was that there was at once an end of the combination. He knew that it was now said by some attorneys and solicitors that it was as much as a barrister's profession was worth to cross the threshold of the County Court, and that if he did so, they, the attorneys, would not give him any briefs in any other court. The consequence, however, of any attempt to carry out this threat would be, that the attorney conducting the case for his client would be beaten by the superior skill and address of the barrister, and there would, consequently, soon be an end of the threat. The amendment in the Bill had received the assent of the law officers of the present and late Government in the House of Commons; and although he was certainly anxious to have seen the County Courts placed in this respect upon the same footing as other courts, still he did not wish to run any danger of losing the Bill by proposing any alterations which would be likely to interfere with an amendment upon which the House of Commons evidently set great store.—The LORD CHANCELLOR said, that while he admitted that the importance of this Bill could not be overrated, he could not but regret that the House of Commons had sought by statutable regulations to interfere with the professional etiquette and usage of the Bar. Members of the Bar were amenable to the statutes of their own society, and the very air which they breathed, the society with which they associated, ensured their obedience to their rules. He should much rather have seen the practice of the County Courts, as in all others, left to the high and honourable feelings of the members of the Profession, rather than have been dealt with by the Legislature. If he were asked, however, to be a party to the repeal of any portion of an Act such as that which they were now discussing, he confessed he should feel considerable difficulty in giving his assent to such a course. The provision in the Bill having received the assent of the law officers of the Crown and of the House of Commons, he felt unwilling to join in any course which might appear to be in opposition to the opinion thus clearly expressed of that branch of the Legislature. At the same time, if he found that the consequences of the alteration of the law would be to bring the Bar into disrepute by the conduct of any of its members, he should be as ready as any member of the Profession to strike at such conduct, and to restore the Bar to the high position which it had previously held in the public estimation. He should like to see each party occupying its proper position—he would not allow attorneys to enact the part of barristers, nor the barrister to degrade himself—he did not use the term in the slightest degree offensively—to the position of an attorney. With these observations he would give his assent to the amendment.—Lord LYNDHURST said the ground on which he would support the amendment was, that it would go to defeat that combination by attorneys against barristers in the County Courts, and put barristers in those courts in the same position in which they were in the Superior Courts.—Lord CAMPBELL said, after what he had heard in the course of the discussion, he would withdraw his opposition to the amendment.—Lord CRANWORTH said he would adopt the same course. The Commons' amendments, as further amended, were then agreed to.

SUITORS IN CHANCERY RELIEF BILL.

THURSDAY, June 24.—The House went into committee on this Bill.—Lord LYNDHURST proposed the restoration of a clause which had been struck out of the Bill in the Commons, with the view of providing due compensation to certain clerks and other officers in the offices attached to the Court of Chancery.—The Earl of DERBY and the LORD CHANCELLOR objected to the introduction of the amendment.—The proviso was negatived, and the Bill passed through committee.

ACTS OF PARLIAMENT.—It appears from a parliamentary document, that in the last fifty years 14,924 Acts of Parliament passed. In the present session that number will be comparatively small—under 100 public Acts.

WRITS OF HABEAS CORPUS.—The House of Lords has ordered a return, which has just been printed, on the application of Lord Campbell, shewing the number of writs of habeas corpus issued by Mr. Cobbett out of the Court of Chancery since the establishment of the Record and Writ Clerks' Office, on the 28th October, 1842, to the 28th May last inclusive. The number was "thirty-two," of which the usual fee was paid on ten, and for twenty-two no fee was paid, or which were issued by the said William Cobbett as suing or depending in formâ pauperis.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

IN *Padwick* v. *Knight*, 19 Law T. Rep. 206, it was held that there cannot exist, by *custom*, a right to take soil from the close of another, for the purpose of repairing highways; but MARTIN, B. said, "I am not so clear but there might be a *prescription* in the inhabitants of a parish to take soil from the close of another for the repair of roads repairable by them."

The extent to which a corporation can contract without seal has been much contested. In *Clark* v. *The Guardians of the Cuckfield Union*, 19 Law T. Rep. 207, an action is brought against the guardians of a union for certain waterclosets supplied to the workhouse upon the order of the guardians. There was no contract under seal; but it was nevertheless held to be good, for the general rule, that a corporation aggregate can only contract by deed under seal, yet that "whenever the purposes for which a corporation was created render it necessary that works should be done or goods supplied to carry such purposes into effect, as in the case of the guardians of a poor-law union, and orders are given at a Board regularly constituted, and having general authority to make contracts for work or goods necessary for the purposes for which the corporation was created, and the work is done or goods supplied and accepted by the corporation, and the whole consideration for payment executed,—the corporation cannot keep the goods or the benefit, and refuse to pay, on the ground that though the members of the corporation who ordered the goods or work were competent to make a contract and bind the rest, the formality of a deed or of affixing the seal is wanting, and therefore no action lies, as we are not competent to make a parol contract, and therefore avail ourselves of our own disability. I come to this conclusion, though not without much doubt, from the authorities being in some respects contradictory."

By a statute of this session, 15 Vict. c. 5, p. 92, proprietors of newspapers are to be exempted from the provision of the Municipal Corporations Act, which makes contractors with the corporation ineligible to offices in it, so far, at least, as regards contracts or orders for advertisements; and it stays proceedings in all actions for penalties which are now pending, for the violation of this law, on payment of costs out of pocket.

JOINT-STOCK COMPANIES' LAW JOURNAL.

Summary

A CASE reported from the Rolls Court involves the important question of membership of an established company. In *Shortridge* v. *Bosanquet*, 19 Law T. Rep. 196, the deed provided that a shareholder, on obtaining the consent of the board, there being a quorum, might transfer his shares in the manner there directed; that a certificate specifying the shares should be given by the board, and a receipt of the holder for the same, and then the transferee should be entitled to have his name entered on the register; that after such entry the former owner should cease to be a shareholder and be discharged from the covenants, &c. of the deed; that every entry, &c. in the same register should, as between the company and the last holder, be conclusive and binding on him; that the register should be conclusive evidence of his being a shareholder, and that the register should be open to the inspection of no one without permission of the board. A. applied to have a transfer, took the necessary steps, the purchaser's name was entered in the register, and the usual return was made to the Stamp Office, in which A. was stated to have ceased to be a shareholder. Subsequently the bank suspended payment, and, for the purpose of making A. responsible, the company made an entry in the register to the effect that the transfer was invalid, because not made with the consent of a board duly constituted, but only by three directors individually, and so it was returned to the Stamp Office. It appeared, however, that it was the practice to admit transfers without such formal consent. A creditor bought a *sci. fa.* against A. and at law he was held to be liable, because his name appearing on the register was conclusive against him. He now filed his bill for relief in equity, and it was held that *he was entitled to it*, for in equity he must be deemed to have ceased to be a shareholder; that the shareholder was under no obligation to see that the transfer was sanctioned by the board in the formal manner required by the deed; that the clause giving the directors power to make entries, erasures, &c. did not justify them in putting on the list a name that had been taken off in the ordinary way; and a perpetual injunction was granted to restrain that and every action against A. the bank to be compelled to remove the entry of his name from the register, and A. to have all his costs.

It was held in *Lowe* v. *The London and North Western Railway Company*, 19 Law T. Rep. 200, that assumpsit for use and occupation may be maintained against a railway company who has recently occupied the plaintiff's land with his permission; for the Companies Clauses Consolidation Act having given directors power by parol to enter into such a contract for the occupation of land, the Court will presume that there was such a contract unless the contrary is proved.

The Court refused an interpleader where a company having registered what was alleged to be a forged transfer of shares, an action was brought against it by the original shareholder for dividends, and another was threatened by the alleged transferee. "If the transfer is *not* forged," said MAULE, J. "the company has a defence to this action; if it is, it has been negligently registered, and the company is answerable." (*Dalton* v. *The Midland Railway Company*, 19 Law T. Rep. 204.)

A question of equal importance to guarantee societies and the parties guaranteed, was decided in *Benham* v. *The United Guarantee and Life Assurance Society*, 19 Law T. Rep. 206. One of the questions put to the employer was as to the period at which the accounts of the servant were examined, and what was his salary. The answer was, that "the accounts would be examined every fortnight." The policy recited that those questions had been answered, and the answers being believed to be true, formed the basis of the contract. In an action on the policy for the amount guaranteed, it was proved that the accounts of the servant were not examined fortnightly, as stated in the answer to the question. But the Court held that, although the question and answers were in terms made the basis of the contract, they did not amount to a warranty. "They only indicate," said POLLOCK, C.B. "the probable course to be adopted by the employers of the party whose honesty was the subject of assurance, and if they were meant to be treated as a direct warranty, the observance of which was to be a condition of the validity of the policy, the company could very easily so state it in the policy." In self-protection it will, therefore, be necessary for guarantee companies to provide in their policies, that it is the express condition of the policy that the statements contained in the answers to the questions are true, and that if they, or any of them, should not be true, or any of the facts there stated should cease to exist, then the policy to be void. It is manifest that, without such a provision, there would be no security against negligence by employers, who, in reliance upon the guarantee of the company, would cease to trouble themselves to keep close accounts with their servants.

WINDING UP.

THE LORD CHANCELLOR has decided another question on the liability of provisional committees. A. was member both of the provisional and of the managing committee. By a resolution, 250 shares were offered to each member of the provisional committee, who was requested to state by a given day, if he would take "that or any less number," and a further 250 shares were offered to the members of the managing committee. By another resolution, letters of allotment were to be sent out for 100 shares only, with an intimation that it was only part of the 250 offered to the managing committee, and that the committee intended to adhere to their original resolution to apportion 250 shares to each member of the provisional committee, if they should be enabled to do so. By another resolution the committee of allotment were to make an allotment according to a scheme by which A. and B. would have 500 shares each. A minute signed by the chairman, but not entered, reported that they had completed the allotment according to the scheme. The names of A. and B. appeared as allottees for 100 shares each. The company

requested that the directors should execute the deed in respect of the 100 shares allotted to them, and A. and B. did so. They were now held to be contributories in respect only of the 100 shares. The judgment of the LORD CHANCELLOR is remarkable for taking a different view of *Upfill's* case from any reading of it that we have seen. Contrary to the general understanding of its purport, Lord ST. LEONARD'S affirms "that case does *not* establish the fact, that because a man agrees to be a provisional committee-man, and has accepted shares, without any other act done, or liability incurred (except those two circumstances), he is to be a contributory." So it is then to be understood that there must be something more—some other Acts constituting liability? And, if so, what? This seems to throw open again the whole question. (*Ex parte Sharp* v. *James*, 19 Law T. Rep. 193.)

In *Stock's* case, 19 Law T. Rep. 199, where a person had applied for shares, signed a written warrant to act as provisional committee-man, paid a deposit and a sum of money by way of contribution towards the expenses, *but had taken no shares*, he was held *not* to be a contributory.

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

Tontine Life Assurance Company.—Call on contributories of 7s. 6d. per share, on 24th June.—Horne.

Direct Exeter, Plymouth, and Devonport Railway Company.—Call of 277l. 10s. 5d. on Edward Woolmer; of 358l. 15s. 5d. on S. L. Bastard; 359l. 18s. 5d. on J. E. Kingdon; 151l. 1s. on L. B. Ellis; 196l. 6s. 3d. on W. R. Tanner; 515l. 18s. 5d. on Lieut.-Col. B. D. Urban; 550l. 9s. 9d. on B. Salter, on 26th June.—Horne.

Liverpool Union Crown Glass Company.—Call of 9l. per share on 30th June.—Blunt.

Royal Thames Steam Navigation Company.—Call of 5l. on 10th July.—Rose.

Oxford and Worcester Extension and Chester Junction Railway, with Branches to Shrewsbury and Nantwich, Company. Call of 1l. 10s. per share on contributories in first class, on 1st July. Rose.

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

AN interesting case in the *Law of Mortgage* is *Elry* v. *Norwood*, 19 Law T. Rep. 198. In 1830, A. mortgaged land in fee, and covenanted for payment of principal and interest. He died intestate, and his heir filed a bill to redeem. It was held that although *the land* was chargeable only with six years' arrears of interest, the *heir* was liable, under the covenant, to twenty years' arrears, and that, as against the heir, the mortgagee might tack the liability to the covenant. This should be noted in *Hughes's Practice of Mortgages.*

A decree that A. was entitled to an annuity, to be charged on and issuing out of real estate to the amount of the land-tax redeemed thereon, and that B. should execute proper deeds for securing same, was held to be a legal charge upon the estate. (*Ware* v. *Polhill*, 19 Law T. Rep. 198.)

In *Re Horner's Estate*, 19 Law T. Rep. 199, stock in which the purchase-money for land was invested under 5 & 6 Wm. 4, c. 69 (relating to the purchase of lands by Poor-law Guardians), was held to be real and not personal estate.

In the practice under the *Fines and Recoveries Act*, that Court has determined not now to direct the officer to complete the fine unless the state of the property and the consent of the parties be clearly shewn. "There may have been dealings since, and as the fine would operate from the date of it," a clear case should be made out. (*Re Scales*, 19 Law T. Rep. 203.)

Where the committee of a lunatic let a house to a person who had just before been made bankrupt, but had obtained his certificate, and who, both before and after the bankruptcy, acted as solicitor to the committee, both in the lunacy and in his own private affairs, and being suffered to remain some years in the house before he took any steps to obtain payment of rent, or to eject the tenant, it was held, that there had been wilful neglect on the part of the committee, and that his administrator was bound to make good the loss thereby occasioned. (*Re Swindell*, 19 Law T. Rep. 195.)

Answers to Queries.

IF Mr. S. as solicitor for M. accepted the title on his own perusal of the abstract, he is responsible if it contains any palpable defect; and the proper course for M. to pursue is to bring an action against S. for negligence; but if S. laid the abstract before counsel he is safe, and no action can be brought. See *Ireson* v. *Pearman*, 3 Barn. & Cress. 799; 5 Dowl. and Ry. 687, and 3 L.J.K.B. 119. H.

INCUMBERED ESTATES IN IRELAND.—A further return respecting the Incumbered Estates Court has been issued. On the 12th inst. the number of petitions in which absolute orders for sale had been made, any portion of the lands included in which remained unsold, was 931. The total estimated rental of such lands so remaining unsold is stated at 600,000l.

COUNTY COURTS.

LATE CASES ON THE LAW AND PRACTICE OF THE COUNTY COURTS.(a)

III. CASES RESPECTING THE RECOVERY OF TENEMENTS.

IN our last article on the subject of the recent cases relating to the Law and Practice of the County Courts, we reviewed those respecting questions of title. We now proceed to examine those which have been decided in questions relating to the recovery of tenements.

By sec. 122 of the County Courts Act, 9 & 10 Vict. c. 95, it is enacted, "That when and so soon as the term and interest of the tenant of any house, land, or other corporeal hereditament, where the value of the premises, or the rent payable in respect of such tenancy did not exceed the sum of 50l. by the year, and upon which no fine shall have been paid, shall have ended, or shall have been duly determined by a legal notice to quit, and such tenant, or, if such tenant do not actually occupy the premises, or occupy only a part thereof, any person by whom the same or any part thereof shall be then actually occupied, shall neglect or refuse to quit and deliver up possession of the premises, or of such part thereof respectively, it shall be lawful for the landlord or his agent to enter a plaint in the County Court, and thereupon a summons shall issue to the person so neglecting or refusing; and if the tenant or occupier shall not thereupon appear at the time and place appointed, and shew cause to the contrary, and shall still neglect or refuse to deliver up possession of the premises, or of such part thereof of which he is then in possession to the said landlord or his agent, it shall be lawful for such landlord or agent to give to the Court proof of the holding, and of the end or other determination of the tenancy, with the time or manner thereof, and where the title of the landlord has accrued since the letting of the premises, the right by which he claims the possession; and upon proof of service of the summons, and of the neglect or refusal of the tenant or occupier, as the case may be, it shall be lawful for the judge to issue a warrant, under the seal of the Court, to any bailiff of the Court, requiring and authorising him, within a period to be therein named, not less than seven or more than ten clear days from the date of such warrant, to give possession of the premises to such landlord or agent; and such warrant shall be a sufficient warrant to the said bailiff to enter upon the premises, with such assistants as he shall deem necessary, and to give possession accordingly. Provided always, that entry upon any such warrant shall not be made upon a Sunday, Good Friday, or Christmas-day, or at any time except between the hours of nine in the morning and four in the afternoon. Provided also, that nothing in that Act contained shall be deemed to protect any person by whom any such warrant shall be sued out of the County Court from any action which may be brought against him by any such tenant or occupier for or in respect of such entry and taking possession, where such person had not, at the time of suing out the same as aforesaid, lawful right to the possession of the same premises. Sec. 123 points out the manner which the summons shall be served; and sec. 124 provides that judges, clerks, bailiffs, or other officers of the Court, shall not be liable to action on account of the proceedings taken. Sec. 125 provides, that where the landlord has a lawful title, he shall not be deemed a trespasser by reason of irregularity.

Section 126 enacts that in every case in which the person by whom any such warrant shall be sued out of the County Court had not at the time of suing out the same the lawful right to the possession of the premises, the suing out of any such warrant as last aforesaid shall be deemed a trespass by him against the tenant or occupier of the premises, although no entry shall be made by virtue of the warrant; and in case any such tenant or occupier will become bound, with two sufficient sureties to be approved by the clerk of the Court, in such sum as to the judge shall seem reasonable, regard being had to the value of the premises and to the probable cost of such action, to sue the persons by whom such warrant was sued out, with effect and without delay, and to pay all the cost of proceeding in such action in case a verdict shall pass for the defendant, or the plaintiff shall discontinue or not prosecute his action, or become nonsuited therein, execution upon the warrant shall be stayed until judgment shall have been given in such action of trespass; and if upon the trial of such action of trespass a verdict shall pass for the plaintiff, such verdict and judgment thereupon shall supersede the said warrant. Section 127 provides for the proceedings on the bond for staying the execution of such warrant of possession.

Where a tenant appeared to a summons under the 122nd section of the County Courts Act, and stated some "cause to the contrary," which the judge considered to be insufficient; it was held that the term "shew cause," was such cause as, in the opinion of the judge, constitutes a defence, and that is a question within his jurisdiction. A good notice to quit being necessary to determine the tenancy, and it being contended that this was necessary to give jurisdiction, and that, in the present case, the notice was bad; it was held that the sufficiency of the notice to quit, and the consequent determination of the tenancy or otherwise, was a question wholly for the consideration of the judge, and within his jurisdiction. (*Fearon* v. *Norval*, 1 Cox & Mac. 127.)

If the rent of premises do not exceed 50l. per annum, the County Court has jurisdiction under sec. 122 of the 9 & 10 Vict. c. 95, though the annual value is greater than that amount. Upon the hearing of a plaint under the foregoing section, the County Court pronounced judgment in favour of the landlord, directing possession of the premises to be given up at a certain day several months after. The landlord treating this judgment as a nullity, for its not being conformable to the Act, and the rules made under it, declined to act upon it, but commenced another action, and again recovered judgment. Upon a motion for a prohibition, moved upon the ground that a prior judgment, unreserved, was pending; it was held that, as the first judgment was a nullity, the landlord was justified in treating it as such, and in commencing a fresh action. (*Fearon* v. *Norvall*, 1 Cox & Mac. 174.) PATTESON, J. in delivering the judgment of the Court in this, observed that he was clearly of opinion, that if the rent did not exceed 50l. it was immaterial how great might be the value of the premises.

In *Jones* v. *Owen*, 1 Cox & Mac. 176; 18 L. J. 8, Q. B. it was held, that the 122nd section of the County Courts Act, contemplates the ordinary relationship of landlord and tenant, and not that of mortgagor and mortgagee; and that therefore a mortgagor cannot recover possession under that section from a person who has entered into the occupation subsequently to the mortgage, and has not become tenant to the mortgagee.

Where the property itself is situate out of the jurisdiction of the County Court, proceedings cannot be taken there for the recovery of possession under sec. 122 of the County Courts Act, although both plaintiff and defendant are residing within the jurisdiction. (*Ellis* v. *Peachey*, 1 Cox & Mac. 241.) In this case, upon motion of a prohibition, it appeared that the defendant resided within the jurisdiction of the Hertford County Court, but that the tenement of which possession was sought was situate out of the jurisdiction, and that a judgment had been given for a warrant to the bailiff of the court to recover possession. WIGHTMAN, J. in delivering judgment, expressed it to be his opinion that as the bailiff had no power to execute the warrant out of his own district, the rule for a prohibition must be made absolute. The 122nd section authorises the judge to issue a warrant to any bailiff of the court to give possession. A warrant under this section would have no force beyond the district of the court. With respect to warrants against the goods of a

(a) By GEORGE HARRIS, Esq. Barrister-at-Law.

person, there is a power by sec. 104 to transmit them to the high bailiff of other courts; but no such power is given with respect to warrants for possession of tenement. It is not necessary to decide that the issue of a summons ought to be prohibited; but it is clear that it is almost useless to proceed to judgment in a district where effective execution of such judgment cannot be had.

A certiorari does not lie to remove a plaint entered under sec. 122 of the County Courts Act for the recovery of a tenement. A question of title is not necessarily involved in a plaint for the recovery of tenement. (*Price* v. *Price*, 1 Cox & Mac. 333.)

THE LAWYER.

Summary.

COMMON LAW.—In *Howes* v. *Barber*, 19 Law T. Rep. 201, where the plaintiff, a seafaring man, had been detained in England for the purpose of being examined as a witness on his own behalf, the Master was permitted to allow him subsistence-money as in the case of any other witness.

It was held in *Reg.* v. *Scaife*, 19 Law T. Rep. 201, that any Judge in chambers has jurisdiction to grant a writ of *procedendo* to send back an indictment removed by certiorari into the Q. B. from sessions.

In *Doe dem. Howson* v. *Roe*, 19 Law T. Rep. 202, the stat. 3 & 4 Wm. 4, c. 67, s. 2, was held to be applicable to the writ of possession in ejectment as well as to the other writs of execution, and therefore that it may be made returnable immediately after its execution.

Where a Judge, by consent of Counsel, discharged a jury, unable to agree, earlier than he would without such consent, the party succeeding on the second trial was held not on that account to be entitled to the costs of the first. (*Bostock* v. *The North Staffordshire Railway Company*, 19 Law T. Rep. 202.)

It seems that the privilege of arrest, *eundo et redeundo*, enjoyed by an attorney, does not extend to his clerk. In *Phillips* v. *Pound*, 19 Law T. Rep. 205, where a clerk was arrested on a *ca. sa.* whilst going from the Master's office to a Judge's chambers, for the purpose of making an application relative to a pending suit, he was held to have been *properly* arrested.

Our readers will note the following decision as to *affidavits*. In *Ex parte Cullemore*, 19 Law T. Rep. 207, an affidavit sworn before the attorney, who was at the time retained to obtain a rule founded on that affidavit, was held to be void.

The right to begin is with the party on whom is the affirmative of the issue. But it is often difficult to determine where the affirmative lies. Thus, in *Edge* v. *Hillary*, 19 Law T. Rep. 208, which was assumpsit for goods sold and on an account stated. Pleas, except as to 171*l.* non-assumpsit; as to that sum, acceptance of a bill then remaining due. The particulars claimed only 171*l.* The right to begin was held by Lord CAMPBELL, C.J. to be with the defendant. "The plaintiff claims only 171*l.* by his particulars of demand, and, therefore, the second plea of the defendant would, if proved, be substantially an answer to the whole action. The burden of the proof of that plea being with the defendant, he must begin."

In *Cobbett* v. *Hudson*, 19 Law T. Rep. 208, a plaintiff who conducted his own cause was not allowed to be a witness also.

SHAM LAWYER.

TO THE EDITOR OF THE LAW TIMES.

DEAR SIR,—Enclosed we send you a letter written by a person who is a debt collector in this city, and writes these letters for the express purpose of getting an admission of the debt, and puts the unfortunate debtor into the County Court, where he is allowed to appear as a sort of advocate by the judge. Can you suggest some means whereby such practices can be put a stop to?—We are, Dear Sir, yours, &c.

MILLER and SON.

Surrey-street, Norwich, June 21, 1852.

"Norwich, 18th June, 1852.

"Mr. Jackson,

"Sir,—I am instructed by Mr. S. J. Carman, of St. Faith's, to apply to you for the sum of two pounds fifteen shillings, and unless paid to me on or before Thursday, the 24th inst. proceedings will be commenced against you, in the County Court, for the recovery of the same; trusting you may deem it prudent to pay the amount and thereby avoid the expenses to which you will otherwise be liable,

"I am, yours, &c. "GEORGE S. BARDWELL,

"No. 1, Priest's-buildings, St. Stephen's-road.

"Debt due, 2*l.* 15s.

"Office hours—Morning, from 10 till 4; Evening, from 6 till 8."

[We can suggest no remedy. Can any of our readers? The subject is really a very important one.—Ed. L. T.]

THE MERCANTILE LAWYER.

Summary.

PRETENDED sales of goods for the purpose of evading the claims of creditors are so common in practice, that every case relating to them is of great interest to the profession. In *Lott* v. *Booth*, 19 Law T. Rep. 203, a young lady under age had furnished a house to keep a school. Owing for rent, she received an advance from a furniture-broker, to whom she executed an instrument purporting to be a sale of her furniture, and another memorandum purporting to be a hire from him of the furniture, and 3s. a week to be paid, not for the use of the furniture, but for interest of the money. She afterwards removed from the house, and the furniture was given to the broker to keep for her. He sold it, and she brought an action against him for the recovery, and the Court held "that the delivery of the goods to the defendant was not in pursuance of the sale, whether a good contract or not (which was not decided), but for another purpose, namely, that the plaintiff might afterwards get them back, and that, therefore, the property did not pass."

An extremely interesting bankruptcy case was *Cannon* v. *The South-Eastern Railway Company*, 19 Law T. Rep. 204. Previous to his bankruptcy a party had deposited a quantity of timber on the wharf of the defendants, to be kept by them for him, and redelivered on payment of wharfages. On February 7, 1848, the fiat issued; on the 9th an official assignee was appointed; on the 13th the adjudication was published in the *Gazette*, on the 23rd the creditor's assignee was appointed. Between September, 1848, and January, 1849, defendants, at the request of the bankrupt, delivered the timber to a purchaser from the bankrupt, without notice of fiat, adjudication, or Act of Bankruptcy from the defendants. They were held to be protected against the claim of the assignees by the 81th sec. of 6 Geo. 4, 16, for that the issuing of a fiat in bankruptcy is not *ipso facto* notice to all the world of its issuing; "we ought to hold," said the Court, "*notice of an act done* to be knowledge of it brought home to the mind of the person to be affected by it."

THE ECCLESIASTICAL LAWYER.

IN *Shepherd* v. *The Marquis of Londonderry*, 19 Law T. Rep. 179, the Court of Q. B. decided that a suit between two rival claimants to the ownership of tithes, admitted to be payable to *somebody*, is not "a suit touching the right to any tithes," within the meaning of 6 & 7 Wm. 4, c. 71, s. 45. Therefore, where the tithes of B. belonged to a lay impropriator, and on proceedings taken for commutation, it was objected by the owner of certain lands, which, under an Act of Parliament, had been allotted to him in respect of burgage tenements, of the tithe of which he was the owner, that a suit in equity was pending "touching the right to the tithes," and therefore that the jurisdiction of the Tithe Commissioners was taken away until the matters in difference were determined; but the suit being in fact between the lay rector who claimed the tithes of the allotment and the owner, who claimed the tithes as well as the land, the Court held that the 45th section above cited did not apply to this case, and that the Commissioners had jurisdiction to make the award.

Ex parte The Rev. T. Rose, 19 Law T. Rep. 183, was a case under the *Church Discipline Act*. Proceedings were instituted under sec. 3, and the Commissioners reported, under sec. 5, that there was a *primâ facie* ground for further proceedings, but the defendant consented to the Bishop pronouncing sentence without further proceedings, and the Bishop sentenced to deprivation for three years, with a condition that, at the end of that time, the party should produce to the Bishop a certificate (to be approved by him) from three clergymen, of his having conducted himself well during the suspension. At the end of the three years he produced such a certificate, but the Bishop declined to receive it, on the ground that one of the clergymen who signed it was incompetent to judge of the party's conduct during that time. On a prohibition, moved to restrain the Bishop from carrying out the sentence, the Q. B. held it to be a legal sentence, and that the Bishop had not exceeded his jurisdiction.

In *Crane* v. *Rebello*, 19 Law T. Rep. 192, for the reason there assigned, administration with the will annexed of an insolvent estate was refused to a creditor, and granted to the residuary legatee.

Where it appears to have been the practice for a long series of years for the vicars choral of a cathedral to be excluded, during the year of their probation, from a share of some of the emoluments of their office, and no document could be found shewing that any regulation had been made, a regulation will be presumed out of which the practice originated. (*Shoulbridge* v. *Clark*, 19 Law T. Rep. 203.)

THE ECCLESIASTICAL COMMISSIONERS.—By an order of Council, dated Buckingham Palace, June 15th inst. her Majesty has been pleased to ratify the following schemes proposed by the Ecclesiastical Commissioners in pursuance of the powers granted to them by statute, viz.—A scheme for augmenting the income of the archdeaconry of Stow, in the diocese of Lincoln, by an annual payment of 170*l.* out of the common fund mentioned in the 3rd and 4th Vict.; a scheme for authorizing them (the said commissioners) to sell and convey certain lands, tenements, &c. belonging to the deanery of York; a scheme for causing a correct account to be delivered to them (the said commissioners) shewing the moneys due and payable to the dean and canons of the cathedral of Lichfield, in order that the surplus shall be paid to their (the commissioners') credit at the Bank of England; and if it should appear that the amount due and payable in the case of the dean of the said cathedral be less than 1,000*l.* or in the case of a canonry 500*l.* then in every case to be paid by them (the said commissioners) to the treasurer on account of such dean or canon, such sum of money as shall make up the deficiency.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Lord Chancellor has appointed Abel Hyde Shaw, of Stalybridge, in the county palatine of Lancaster, gent. to be Master Extraordinary in the High Court of Chancery.

The Lord Chancellor has placed upon the commission of peace for the borough of Newark, in the parish of Newark-upon-Trent, in the county of Nottingham, Benjamin Nicholson, esq.; Wm. Thompson, esq.; James Snow, esq.; Joseph Gilstrap, esq. Joseph Branston, esq.; and John Handley, esq.

The Right Hon. Sir John Jervis has appointed John Boodle, of Southampton, gent. to be one of the Perpetual Commissioners for taking the acknowledgments of deeds to be executed by married women in and for the town and county of the town of Southampton, also in and for the county of Hants.

COMMISSIONS SIGNED BY THE LORD-LIEUTENANT OF NORFOLK.—Sir William Foster, bart.; Sir Robert Buxton, bart.; and Sir Charles Rowley, bart. to be deputy-lieutenants.

COMMISSION SIGNED BY THE LORD-LIEUTENANT OF RADNOR.—Thomas Prickard, esq. to be deputy-lieutenant.

COMMISSIONS signed by the Lord-Lieutenant of the county of Gloucester, and of the city and county of the city of Gloucester, and of the city and county of the city of Bristol.—The Most Noble Henry Charles Fitzroy Somerset, commonly called Marquis of Worcester; Sir John Francis Davis, bart.; Joseph Randolph Mullings, esq.; Thomas Frobisher, esq.; James Webster, esq.; Lewis Griffiths, esq.; Thomas Pilkington, esq.; John Hughes, esq.; Robert Hume, esq.; The Rev. Henry Cripps; Thomas Anthony Stoughton, [illegible] John Curtis Hayward, esq.; John Bransby Purnell, esq.; Corbett Holland Corbett, esq.; and David Ricardo, esq. to be deputy-lieutenants.

COMMISSION SIGNED BY THE LORD-LIEUTENANT OF NAIRN.—The Hon. John Frederick Vaughan Campbell, Viscount Emlyn, Sir James Alexander Dunbar, bart.; Arthur Forbes, esq.; Col. James Ketchen, and Major Hugh Robertson Murray, to be deputy-lieutenants.

DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES."

		Auctioneer.	Where Advertised	
Monday, June 28	Mart.	Dodd.	June 19, p. 52	Val Freehold Premises, 10, Bolt-ct. Fleet-st.
,,	Ibid.	Do.	Ibid.	Freehold Property, in village of Pembury.
Tuesday, June 29	Ibid.	Driver.	June 12, p. 48	Freehold Estate, Upton and Ringstead Farms.
,,	Ibid.	Do.	Ibid.	St Leonard's Forest Estate, near Horsham.
,,	Ibid.	Do.	Ibid.	Orleans House, Twickenham.
,,	Greyhound Inn, Richmond.	Cain, James.	Ibid.	Ten semi-detached Villa Residences
Thursday, July 1	Mart.	Godwin, F.	Ibid p. 16.	Lease of Family Residence, 74, Gower-st.
	Ibid.	Do.	Ibid.	Family-house, Kensington Park, Notting-hill.

COURT PAPERS.

CHANCERY SITTINGS,

Appointed after Hilary Term, 1852.
The Courts will sit at Lincoln's-inn at Ten each day.

Lord Chancellor's Court.

Thursday June 24—1st Seal. Appeal Motions
Friday .... 25 { Petition day. Lunatic and Cause Petitions
Saturday .. 26 }
Monday .... 28 }
Tuesday ...... 29 } Appeal Motions
Wednesday 30 }
Thursday ...July 1 }
Friday .... 2 { Petition day. Lunatic and Cause Petitions
Saturday .. 3 }
Monday .. .. 5 } Appeals
Tuesday...... 6—2nd Seal. Appeal Motions
Wednesday ... .. 7 }
Thursday .... 8 } Appeals
Friday .... 9 { Petition day. Lunatic and Cause Petitions
Saturday ...... 10 }
Monday... .. 12 }
Tuesday... ....13 } Appeals
Wednesday ......14 }
Thursday ....15 }
Friday ....16 { Petition day. Lunatic and Cause Petitions
Saturday .... 17 }
Monday............19 } Appeals
Tuesday......... ..20—3rd Seal. Appeal Motions
Wednesday ..... 21 }
Thursday ....22 } Appeal Motions
Friday .... 23 { Petition day. Lunatic and Cause Petitions
Saturday . ..... .24 }
Monday... ...... 26 }
Tuesday . .. ... .27 } Appeals
Wednesday .... 28 }
Thursday . ... 29—4th Seal. Appeal Motion
Friday .. . 30—General Petition day.
The days his Lordship attends the House of Lords excepted.

Lords Justices.

Thursday June 24 { 1st Seal. Appeal Motions and Motions by order
Friday .... 25 }
Saturday .... .26 }
Monday .... 28 } Appeals
Tuesday .. .... .29 }
Wednesday ......30 { Petition day. Petitions in Lunacy, Bankruptcy, and Appeal Motions
Thursday .. July 1 }
Friday .... 2 }
Saturday .... 3 } Appeals
Monday. .... 5 }
Tuesday........ 6 { 2nd Seal. Appeal Motions and Motions by order
Wednesday .. 7 { Petition day. Petitions in Lunacy, Bankruptcy, and Appeal Petitions
Thursday .... 8 }
Friday .... 9 }
Saturday .... 10 } Appeals
Monday.... ......12 }
Tuesday .. .. 13 }
Wednesday .. 14 { Petition day. Petitions in Lunacy, Bankruptcy, and Appeal Petitions
Thursday . 15 }
Friday . ..16 }
Saturday 17 } Appeals
Monday ... .. 19 }
Tuesday .... .20 { 3rd Seal Appeal Motions and Motions by order
Wednesday ... 21 { Petition day. Petitions in Lunacy, Bankruptcy, and Appeal Petitions
Thursday .. ....22 }
Friday ....23 }
Saturday ... ...24 } Appeals
Monday...........26 }
Tuesday ....27 }
Wednesday ......28 { Petition day. Petitions in Lunacy, Bankruptcy, and Appeal Petitions
Thursday . . 29—4th Seal. Appeal Motions & Motions
Friday .... 30—Petition day. Petitions and Motions

Rolls Court.

Thursday June 24—Motions
Friday .... 25 }
Saturday .. .. 26 }
Monday . 28 }
Tuesday . 29 } Pleas, Demurrers, and Further Directions, until all the Further Directions are disposed of, and then the General Cause Book
Wednesday . . 30 }
Thursday ...July 1 }
Friday .... 2 }
Saturday .... 3 }
Monday........... 5 }
Tuesday ... 6—Motions
Wednesday
Thursday
Friday .. 9
Saturday 10 }
Monday .. 12 }
Tuesday 13 } Pleas, Demurrers, and Further Directions, until all the Further Directions are disposed of, and then the General Cause Book
Wednesday 14 }
Thursday . 15 }
Friday ... 16 }
Saturday . 17 }
Monday 19 }
Tuesday 20—Motions
Wednesday . 21
Thursday }
Friday .. 23 }
Saturday ... ...24 } Pleas, Demurrers, and Further Directions, until all the Further Directions are disposed of, and then the General Paper
Monday... . . 26 }
Tuesday }
Wednesday 28 }
Thursday . 29—Motions
Friday . .. 30—Petitions in General Paper
Saturday . 31 }
Monday Aug 2 }
Tuesday . ... 3 } Remaining Motions and Petitions, and then the General Cause Book.
Wednesday .. 4 }
Thursday ... 5 }
Friday 6
Short causes, short claims, consent causes, unopposed petitions, and claims, every Saturday at the sitting of the

NOTICE.—Consent Petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

Vice-Chancellor Sir G. Turner's Court.

Thursday June 24—1st Seal. Moti
Friday .... 25 { Unopposed Pe Short Claims, and adj. Petitions
Saturday . ... 26 }
Monday . .. 28 } Further Directions previous to Pleas, Demurrers, Exceptions, Causes, & Claim
Tuesday 29 }
Wednesday 30 }
Thursday . July 1
Friday .... 2 { Unopposed Petitions, Short Causes, Short Claims, and Claims
Saturday 3 { Further Directions previous to Pleas, Demurrers, Exceptions, Causes, & Claims
Monday .. . 5 {
Tuesday .. .... 6—2nd Seal Motions
Wednesday .... 7 { Further Directions previous to Pleas, Demurrers, Exceptions, Causes, & Claims
Thursday . 8 {
Friday ... 9 { Unopposed Petitions, Short Causes, Short Claims, and Claims
Saturday ... . 10 }
Monday .. 12 } Further Directions previous to Pleas, Demurrers, Exceptions, Causes, & Claims
Tuesday . 13 }
Wednesday 14 }
Thursday . 15 }
Friday 16—Petition day, Cause Petitions
Saturday 17 { Further Directions previous to Pleas, Demurrers, Exceptions, Causes, & Claims
Monday . 19 {
Tuesday 20—3rd Seal. Motions
Wednesday ..21 { Further Directions previous to Pleas, Demurrers, Exceptions, Causes, & Claims
Thursday . 22 {
Friday . .23 { Unopposed Petitions, Short Causes, Short Claims, and Claims
Saturday . . . 24 }
Monday . 26 } Further Directions previous to Pleas, Demurrers, Exceptions, Causes, & Claims
Tuesday 27 }
Wednesday 28 }
Thursday 29—4th Seal. Motions
Friday 30—General Petitions.

Vice-Chancellor Sir R. Kindersley's Court.

Thursday June 24—1st Seal Motions and Causes
Friday .. 25 { Petition day. Cause Petitions (unopposed first)
Saturday 26 { Short Causes, Short Claims, Claims, and Causes
Monday 28 }
Tuesday 29 } Pleas, Demurrers, Exceptions, Claims, Causes, and Further Directions
Wednesday 30 }
Thursday July 1
Friday .... 2 { Petition day. Cause Petitions (unopposed first)
Saturday 3—Short Causes Short Claims, & Causes
Monday.... 5 { Pleas, Demurrers, Exceptions, Claims, Causes, and Further Directions
Tuesday... .... 6—2nd Seal Motions
Wednesday ..... 7 } Pleas, Demurrers, Exceptions, Claims,
Thursday . . . 8 } Causes, and Further Directions
Friday .... 9 { Petition day. Cause Petitions (unopposed first)
Saturday ....10—Short Causes, Short Claims, & Causes
Monday........... 12 }
Tuesday........ ... 13 } Pleas, Demurrers, Exceptions, Causes,
Wednesday ......14 } Claims, and Further Directions
Thursday ....15 }
Friday ... .16 { Petition day. Cause Petitions (unopposed first)
Saturday ....17—Short Causes, Short Claims, & Causes
Monday............19 { Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions
Tuesday.. ... .20—3rd Seal. Motions
Wednesday ...... 21 { Pleas, Demurrers, Exceptions, Causes,
Thursday .... 22 { Claims, and Further Directions
Friday .... 23 { Petition day. Cause Petitions (unopposed first)
Saturday ....24—Short Causes, Short Claims, & Causes
Monday ....26 }
Tuesday .. ..27 } Pleas, Demurrers, Exceptions, Causes,
Wednesday .....28 } Claims, and Further Directions
Thursday ... .29—4th Seal. Motions
Friday ... . 30—Petitions.
NOTICE.—Unopposed Petitions, not exceding ten, every day except seal days.

Vice-Chancellor Sir James Parker's Court.

Thursday June 24—1st Seal. Motions
Friday ... .25 { Pleas, Demurrers, Exceptions, Causes, and Further Directions
Saturday .... 26—Cause Petitions, unopposed first
Monday ... .. .28 }
Tuesday... ... . 29 } Pleas, Demurrers, Causes
Wednesday . . 30 { Short Causes, Short Claims, Claims, and Causes
Thursday }
Friday .... 2 } Pleas, Demurrers, Exceptions, Causes, and Further Directions
Saturday .. .. 3—Cause Petitions, unopposed first
Monday..... 5—General Cause Paper
Tuesday . .. 6—2nd Seal. Motions
Wednesday ... 7 { Short Causes, Short Claims, Claims, and Causes
Thursday .. . 8 } Pleas, Demurrers, Exceptions, Causes,
Friday . . 9 } and Further Directions
Saturday . . . 10—Cause Petitions (unopposed first)
Monday . . . 12 } Pleas, Demurrers, Exceptions, Causes,
Tuesday . . 13 } and Further Directions
Wednesday ......14 { Short Causes, Short Claims, Claims, and Causes
Thursday . ...15 } Pleas, Demurrers, Exceptions, Causes,
Friday ....16 } and Further Directions
Saturday .. 17—Cause Petitions (unopposed first)
Monday .. .. 19—General Cause Paper
Tuesday... ....20—3rd Seal. Motions
Wednesday ... ..21 { Short Causes, Short Claims, Claims, and Causes
Thursday . 22 } Pleas, Demurrers, Exceptions, Causes,
Friday ... ... 23 } and Further Directions
Saturday . 24—Cause Petitions (unopposed first)
Monday . 26 } Pleas, Demurrers, Exceptions, Causes,
Tuesday . 27 } and Further Directions
Wednesday ... .28 { Short Causes, Short Claims, Claims, & Causes
Thursday ..29—4th Seal. Motions
Friday . .. 30—Petitions.
Unopposed Petitions, not exceeding ten, every day except seal days.

QUESTIONS AT THE EXAMINATION.

Trinity Term, 1852.

I. PRELIMINARY.

1. Where, and with whom, did your serve your clerkship?

2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.

3. Mention some of the principal law books which you have read and studied.

4. Have you attended any, and what, law lectures?

II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

5. State some of the principal forms of action at Common Law.

6. A father and his child, aged ten, receive injuries by a collision on a railway. State by whom an action must be brought for compensation for these injuries, and whether it must be by one or more actions.

7. A servant is driving a cart (for the master's benefit), and runs over and injures a man. Would the master be liable, and if so, what must be the form of action? If the master was himself present, and sanctioned the particular act which caused the injury, would that make any difference in the form of action?

8. A defendant keeps out of the way, and cannot be served with a writ of summons. Has the plaintiff any remedy by which he can proceed without effecting such service, and, if any, explain the same, and how it can be done?

9. A Judge gives a plaintiff leave to arrest his debtor, who is about to leave the country, upon mesne process. What steps must be taken, and upon what process is such arrest to be effected, and when the defendant is arrested has he any mode of getting out of custody if he intends to dispute the debt?

10. A defendant is served with a writ of summons, and the plaintiff proceeds no further. What steps must the defendant take, and when, to enable him to terminate such suit?

11. What is an action of ejectment? Is there any

difference in commencing that and an action of trespass?

12. If an action of ejectment is brought against a tenant, can the landlord come in and defend his interest in the premises, and how?

13. In an action of ejectment, a defendant obtains a verdict. Is the plaintiff's claim to the premises sought to be recovered barred by such verdict?

14. A. has an action brought against him by B. a carpenter, for, say, 250*l.* A. considers the charges exorbitant, and proposes through his attorney to pay B. 170*l.* and his costs then incurred. B. declines it. This is at an early stage of the cause,—say after writ served, or after declaration, and before plea. Is there any mode by which A. can pay or offer to pay that amount to B. so as to prevent his being liable to further costs, provided B. does not succeed in recovering more than the 170*l.*?

15. A defendant demurs to part of a declaration, and pleads issuably to the remainder. What course must the plaintiff take, and how is the action to be continued?

16. Has any alteration been made lately by the Legislature with regard to evidence, and as to the competency of interested parties as witnesses.

17. A plaintiff is a foreigner residing out of the jurisdiction of the Court. Has the defendant any mode of preventing the loss of his costs, in case the plaintiff fails in his action?

18. In an action of trespass, defendant pleads the general issue, and a justification to the whole declaration. Verdict for the defendant on the justification, and for the plaintiff on the plea of general issue without damages. What party will be entitled to the costs?

19. State the result as to the costs in the following cases:—Where a juror is withdrawn on the trial of a cause. Where, in an action of libel, the plaintiff recovers only 5s.

III. CONVEYANCING.

20. In the case of a purchase of lands by B. the conveyance being made to A. and his heirs to the ordinary uses, to bar dower in favour of B. (the purchaser), with a power of *appointment* given to B. with which of them should the covenants for title, &c. be entered into? and why?

21. Against whom is a voluntary conveyance good, and under what circumstances does it cease to be a flaw in a title?

22. For what periods is accumulation of income allowed, and when are trusts for accumulation void in toto, and when only partially void?

23. How are estates tail in copyholds barred, distinguishing between the modes of barring legal and equitable estates tail?

24. In what cases is it now not necessary that the formalities required by the instrument creating a power should be observed, when the power is exercised, and what formalities must be substituted in such cases? Before the recent Wills Act was there any exception to the rule that required a strict adherence to the prescribed formalities?

25. When property is limited (not in contemplation of marriage) to the separate use of an unmarried woman, without power of anticipation, what are her rights in such property while she remains unmarried, and what are her rights and those of her husband in it if she subsequently marries without a settlement?

26. What is the difference between Common Law dower, and dower as regulated by the 3 & 4 Wm. 4, c. 105?

27. In what case will a devise or bequest of real or personal estate not lapse by reason of the death of the devisee or legatee in the lifetime of testator.

28. Define contingent remainders; how were they formerly capable of being destroyed, and what means were usually adopted to preserve them? Has there been any recent change in the law in these respects?

29. A married woman, by deed enrolled and acknowledged and executed by her and her husband, conveys and assigns her reversionary interest in real and personal estate to a purchaser for valuable consideration. What is the effect of this deed on the real, and what on the personal, estate?

30. What are emblements?

31. What change has recently been made in the law with respect to claims for emblements, where tenancies determine by the death of the landlord such landlord being tenant for life?

32. A. by his will, gives and bequeaths a legacy of 200*l.* to B. (a stranger), and directs his executors to pay it on B.'s attaining twenty-one. B. dies under twenty-one, after the death of A.—who is entitled to the legacy, and why?

33. In what court or courts should a will of personalty be proved, where testator leaves bona notabilia in different dioceses?

34. Is anything, beyond probate of the will, necessary, in order to perfect the title of a person to whom a leasehold estate (for years) has been given by will?

IV. EQUITY, AND PRACTICE OF THE COURTS.

35. If property be given to the separate use of a woman unmarried at the time of the gift, will the separate use be enforced on her subsequent marriage; and what will be the effect on her separate use of the death of her subsequent husband, and what the effect of it in case of her contracting a second marriage?

36. Explain the difference between legal and equitable assets, and the rule according to which they are respectively administered among creditors.

37. What is meant by the term "Tacking" as applied to mortgages? and can a second mortgagee prevent a first mortgagee from tacking, and how?

38. What is meant by "Equitable Waste?" Will a tenant for life without impeachment of waste be restrained from committing it?

39. A. and B. claim property which is in C.'s hands, but in which C. has no interest. How can C. protect himself? If C. had himself any interest in the property, would it make any difference in the nature of his proceedings?

40. What is an injunction? Mention the different kinds of injunctions.

41. How does the remedy afforded by Courts of Equity for breaches of contract differ from that afforded by Courts of Common Law in like cases?

42. Explain the method in which evidence is usually taken in Equity.

43. In what cases must a subpœna be served on the party? and in what cases will service on the solicitor of the party suffice?

44. If a defendant, being served with a subpœna to appear and answer, should not do so within the time allowed, what steps would you advise the plaintiff to take?

45. What is the effect of enrolling a decree, and are decrees generally enrolled?

46. If a solicitor be appointed a trustee or executor, is he entitled under any and what circumstances to make professional charges against his cestui que trust or testator's estate?

47. If a plaintiff neglect to prosecute his suit, state the proper course for the defendant to adopt.

48. When a person out of the jurisdiction of the Court sues in Chancery, will he be placed under any and what terms for the protection of the defendant?

49. What is the process for compelling a corporation to answer a bill in equity?

V. BANKRUPTCY, AND PRACTICE OF THE COURTS.

50. What are the requisites to support a petition by a creditor for an adjudication in bankruptcy, and to obtain adjudication thereon?

51. Has the trader any and what time to dispute the adjudication?

52. State the usual course and routine of proceedings at the several public meetings under an adjudication in bankruptcy.

53. What is the effect of the bankruptcy of one of several traders in partnership?

54. Describe the course of proceding against a trader debtor, by demand of debt and summons in bankruptcy.

55. What course is open to the trader debtor to take upon being so summoned, in order to avoid committing an act of bankruptcy?

56. How are corporate bodies or public companies to prove their debts in bankruptcy?

57. How, and by whom, are assignees chosen, and what jurisdiction has the Court of Bankruptcy over the choice of assignees?

58. Is any, and what priority allowed to any creditors?

59. What is the law with respect to property held by a bankrupt as trustee?

60. In what circumstances is a settlement made by a trader invalid?

61. When can goods sold to a trader be stopped in transitu? State instances.

62. What securities held by a creditor must he realise before he can prove his debt, and what securities may he retain, and yet prove?

63. How is he to proceed in order to realise such securities as he must realise, before he can prove?

64. What is the present law with respect to the bankrupt's certificate of conformity?

VI. CRIMINAL LAW, AND PROCEEDINGS BEFORE MAGISTRATES.

65. What is burglary, and within which of the twenty-four hours must it be committed in order to constitute the offence?

66. Can husband and wife be evidence for or against each other in criminal cases?

67. Is an attorney liable to serve as a juror on a coroner's inquest, or on the trial of a criminal matter?

68. By whom and in what manner is a person appointed a justice of the peace for a county; and is it necessary that he should possess any and what property qualification for the office?

69. Is a private as well as a public nuisance indictable?

70. If a person pick up a thing when he knows he can find the owner, and instead of returning it to the owner, converts it to his own use, would he be guilty of larceny or merely subject to a civil action?

71. Are persons stealing dogs, or in the possession of dogs knowing them to have been stolen, liable to any and what penalty or punishment?

72. Is the stealing or destroying title deeds a criminal offence, or only actionable "as savouring" (as Blackstone expresses it) "of the realty?"

73. Can a landlord in any and what case, and in any and what manner, recover the possession of premises which is withheld after the Term has ended or been determined by legal notice without bringing an action of ejectment?

74. Can the owner or occupier of land expel by force any person found trespassing upon it, or is the only remedy by action?

75. Is there any and what act for the apprehension of persons trespassing and doing damage, and can they be taken before a magistrate without a warrant?

76. Is it lawful to set a man-trap, spring-gun, or other engine which is calculated to destroy human life, or to inflict bodily harm, in any and what place or places, and during what time of the twenty-four hours?

77. Under what circumstances may persons playing on musical instruments in the public streets be required to desist? and if they refuse to do so, what is the mode of proceeding to compel them?

78. Have justices jurisdiction over apprentices, where no premium is paid, and within what amount where one is paid?

79. What are the different modes by which a parochial settlement can be gained? How and before whom is the disputed settlement of a pauper to be tried and decided, and if the appellant or respondent is dissatisfied with the decision, does appeal lie to any other, and what tribunal?

LEGAL INTELLIGENCE.

MR. WILLIAM COBBETT.—Three returns have just been printed by order of the House of Lords, in addition to the one already noticed, shewing the writs and applications for writs of habeas corpus and the number of actions brought by Mr. William Cobbett in the Common Law Courts. In the Crown side of the Court of Queen's Bench five writs of habeas corpus were issued, and out of the plea side nineteen. In formâ pauperis there were fourteen cases, and in person five, making the nineteen. In the same side were seven actions brought. In the Court of Common Pleas four writs of habeas corpus were issued, besides which ten applications for writs were made to the Court sitting in banco, all of which, with the exception of one, were refused. In the same Court two actions were brought, and no further steps taken. In the Court of Exchequer forty-two applications were made by Mr. Cobbett or on his behalf, out of which nineteen were refused. Mr. Cobbett brought seventeen actions in the Court of Exchequer. The return already noticed shewed that thirty-two writs of habeas corpus had been applied for out of the Court of Chancery by Mr. Cobbett.

PROCLAMATION OF OUTLAWRY.—At the Sheriffs' Court the following persons were called upon by Mr. Hemp, the bailiff, to surrender to the custody of the sheriff under penalty of outlawry:—Margaret Coleman, John D. Hinxman, George Chitty, Gilbert Ainslie Young, Augustus Nugent, the Rev. John Prendergast Walsh, Ernest Henry Lane (at two suits), Sir John Malcolm, bart. Algernon Massingberd (at three suits), William Thomas Thornton (at three suits), O. H. Sampayo (at two suits), Augustus Mayhew, William Wilson, the younger, William David Sheriff, William Frederick Smith (at two suits), William Burt, Sydney William Alston, Frederick John Manning (at two suits), John Armine Morris, esq. John Cruickshank, and Walter Lockhart Scott.

THE LATE SIR JAMES MACKINTOSH.—A meeting was held on Saturday last, at Lansdowne House, for the purpose of raising a fund in order to erect a monument to the late Right Hon. Sir James Mackintosh; and on the motion of the Right Hon. T. B. Macaulay, seconded by Viscount Mahon, it was resolved that immediate measures be taken with that view. On the motion of Mr. Henry Hallam, seconded by Lord Broughton, a committee was appointed to carry this intention into full effect, Lord Lansdowne consenting to act as chairman, and Sir R. H. Inglis as secretary. A list of subscriptions will be advertised shortly.—*Globe.*

FIRE INSURANCE.—Colonel Sibthorp has obtained his annual return respecting the sums paid into the Stamp-office on insurance from fire. The duty amounted last year to a very considerable sum. The largest sum in one quarter by one office (the Sun) was 44,381*l.* In England, farming stock, which is exempt from duty, was insured in the last quarter of 1851 to 54,935,053*l.*

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

BROCKMAN.—On the 13th inst. at Bargrove, Kent, the wife of F. H. Brockman, esq. of a daughter.

PEMBERTON.—On the 18th inst. at Eastbourne-terrace, Hyde-park, the wife of Charles Pemberton, esq. of a son.

WEBB.—On the 22nd inst. the wife of C. Locock Webb, esq. barrister-at-law, of a daughter.

MARRIAGES.

DAY, Mr. Archibald, son of William Day, esq. of Norwich, to Emily Martha, eldest daughter of William Thomson, esq. of Brixton, Surrey, on the 19th inst. at St. Pancras.

EVANS, Mendham Freke, eldest son of R. M. Evans, esq. of Wateringbury, to Frances Mary, only child of James Woodbridge, esq J P. of Wateringbury-lodge, Kent, on the 23rd inst. at Wateringbury Church.

RAVEN, John, esq Solicitor, of Hawkshead, Windermere, to Sarah, second daughter of the late William Johnson, esq. of Macclesfield, on the 17th inst. at St. Saviour's Church, Manchester.

DEATHS.

CROOKSHANK, Mary, eldest and last surviving daughter of the late Right Hon. Judge Crookshank, of Newtown park, county of Dublin, Ireland, on the 14th inst. at Budleigh Salterton, Devon, aged 80.

JOHNSTON, Priscilla, the wife of Andrew Johnston, esq. and eldest daughter of the late Sir T. Fowell Buxton, bart. of Northrepps-hall, Norfolk, at Halesworth, on the 18th inst.

HAMPDEN, Renn, esq formerly of the Manor-house, Little Marlow, Bucks, and M P. for the borough of Great Marlow, on the 8th ult. in the Island of Barbadoes.

WHELDON, Mary, widow of the late Thomas Wheldon, esq of Barnardcastle, in the county of Durham, on the 19th inst. at 14, Northwick-terrace, St. John's-wood-road.

JOURNAL OF PROPERTY.

Public Sales.

By Messrs CHINNOCK and GALSWORTHY, on Thursday, at the Mart.—Eighty lots of freehold building ground, ranging from one quarter to four acres, forming portions of the Wimbledon Park Estate. The sale called together a large attendance, and great competition was evinced throughout. Nearly all the lots were sold at prices ranging between 350*l.* and 600*l.* per acre; being far beyond the prices hitherto realized for similar plots of land upon this estat The total result of the sale amounts to upwards of 10,900*l*

Eight freehold houses in Clapham-park-terrace, let to yearly tenants, at 35*l* per annum each, sold in lots, and realised 3,810*l* exclusive of fixtures

A piece of freehold allotment land at Putney, about half an acre—315*l*.

The Putney College estates, including the cedars, and about 18 acres of freehold land fronting the Thames, were bought in at 13,500*l*.; the last offer being within 700*l*.

MONEY MARKET.

ENGLISH FUNDS.

		Mo	Tu	We		
Bank Stock		222½	222	224	224	223½
3 ℘ Cent. Reduced Annuities	100⅞	101	101⅛	101⅛	100	101⅛
3 ℘ Cent. Consols Annuities	..	.	shut	.	*	..
Consols for Account	100⅞	100⅞	100⅞	100⅞	100⅞	..
New 5 ℘ Cent Annuities ..	.	..	.	.	.	.
New 3¼ ℘ Cent. Annuities .	103⅞	103⅞	104⅛	104⅛	104⅛	104⅛
Long Annu (exp Jan 5, 1860)			6⅞			6⅞
Do. 30 yrs. (exp Oct. 10, 1859)						
Do. 30 yrs. (exp. Jan. 5, 1860)	.	..	..	..	..	..
India Stock	..	..	..	[illegible]	..	..
India Bonds (1,000*l*.)	86		..	.	91	..
Do. do. (under 1,000*l*.)....	89	90	..	88	91	88*
South Sea Stock............	..	..	..	..	.	..
Do. do. New Annuities ..		..	..	..	..	.
Exchequer Bills, 1,000*l*. June		69*	72*	72*	72*	72
Do. do. 500*l*. June .		69*	72*	72*	72*	72
Do. do. Small, June		72*	72*	72*	72*	72

* Premium.

THE GAZETTES.

Bankrupts.

Gazette, June 22.

BLACKBURN, WILLIAM FREDERICK, bookseller, St. George's-place, Knightsbridge, and Motcombe-st Belgrave-square, July 1, at twelve, Aug. 5, at half past eleven, Basinghall-st. Off as. Bell. Sols. Hadley and Filder, Gresham-st. Petition, April 21.

CLARIDGE, JOSEPH, jeweller, Bristol, July 6 and Aug 3, at eleven, Bristol. Off. as. Hutton. Sol. Hobbs, Bristol. Petition, June 4.

KELLY, CHARLES LOUIS, grocer, Woolwich, July 6, at two August 3, at twelve, Basinghall-st. Off as Edward Sol. San om, Duke-st. Southwark, and Deptford. Petition, June 17.

RICHARDSON, WILLIAM, merchant, [illegible]ard st City, June 30, at one, Aug. 3, at twelve, [illegible]hall st. Off as. Stansfeld. Sols. Messrs. Vallance, Essex-st Strand. Petition, June 18.

REEVES, JOHN FRY, JOHN FREDERICK, ORLANDO, and ARCHIBALD, scriveners, Taunton, July 6 and 27, at eleven, Exeter. Off. as. Hirtzel. Sols Dommett and Canning, Chard; and Daw, Exeter Petition, June 11

RUTLAND, GEORGE, straw bonnet manufacturer, Luton, Bedfordshire, and Falcon-sq. City, July ., at twelve, Aug. 6, at one, Basinghall-st. Off as. Whitmore Sol. Lawrence, Bread-st. Cheapside. Petition, June 21.

THOMAS, JOSE ALFONSO, flour merchant, Thavies-inn, Holborn, June 29, at half-past one, Aug 5, at eleven, Basinghall-st. Off. as. Johnson. Sol. Chidley, Gresham-st. Petition, May 28.

Gazette, June 25.

BRICKNELL, SAMUEL, jun. master mariner and ship-owner, Exmouth, Devonshire, July 7 and 28, at eleven, Exeter. Com. Bere Off. as Hernaman. Sols. Bracey, Old Broad-st London Laidman, Bedford-circus, Exeter, Petition, June 15.

BUCKLEY, SAMUEL, and SHORTRIDGE, GEORGE, millers and corn-dealers, Macclesfield, July 8 and 29, at eleven, Manchester. Off. as. Lee Sols Higginbotham, Macclesfield; Hitchcock, Buckley, and Tidswell, Manchester. Petition, June 23.

CARTER, WILLIAM RICHARD, wine merchant, Ingram-court, Fenchurch-st. City, July 6, at half-past two, Aug. 10, at one, Basinghall-st. Com. Holroyd. Off. as. Groom. Sols. Messrs. Linklater, 17, Size-lane, Bucklersbury. Petition, June 25.

CROSS, RICHARD, watchmaker and jeweller, Southampton, July 2, at one, Aug. 6, at eleven, Basinghall-st. Com. Fane. Off. as. Cannan. Sols. Taylor and Collisson, Great James-st. Bedford row. Petition, June 16.

CURSON, SARAH and GEORGE, booksellers and stationers, High-st. Exeter, July 6 and 27, at eleven, Exeter. Com. Bere. Off. as. Hirtzel. Sols. Turner, Cathedral-yard, Exeter; and Laidman, Bedford-circus, Exeter. Petition, June 22.

EARDLEY, SAMUEL, joiner and builder, Tunstall, Staffordshire, July 5 and 26, at half-past ten, Birmingham. Com. Balguy. Off. as. Whitmore. Sols Cooper, Tunstall, Staffordshire; and Motteram, Knight and Emmet, Bennett's-hill, Birmingham. Petition, June 18.

GREEN, GEORGE COURTHORPE, paper manufacturer and wholesale stationer, Bread street-hill, City, and Postford Mills, Surrey, July 5, at one, Aug. 3, at eleven, Basinghall st. Com. Holroyd. Off. as Edwards. Sols Messrs. Linklater, 17, Size-lane, Bucklersbury. Petition, May 5.

HALCRO, RICHARD, provision merchant, Sunderland, July 8 and Aug. 5, at one, Newcastle-upon-Tyne. Com. Ellison. Off as. Baker Sols. Burn, jun. Sunderland; Lawrence Crowdy, and Bowlby, 25, Old Fish-st. London Petition, June 18.

JONES, WILLIAM, chemist and druggist, Conway, Carnarvonshire, July 6 and 27, at eleven, Liverpool. Com. Perry. Off. as Cazenove. Sols. Christian and Jones, Harrington-st Liverpool. Petition, June 7.

MATTHEWSON, THOMAS, merchant, Hartlepool, July 8, at eleven, and Aug 5, at twelve, Newcastle-upon-Tyne. Com. Ellison. Off. as Wakley. Sols. Turnbull, Hartlepool, Forster, Newcastle-upon-Tyne Petition, June 19.

WILSON, JOHN, linen-draper, Sheffield, July 10 and 31, at ten, Sheffield Com West. Off as Freeman. Sols. Parker and Smith, Sheffield. Petition, July 19.

BANKRUPTCIES ANNULLED.

Gazette, June 22.

W[illegible]man, T. merchant, Birmingham, June 21.

Gazette, June 25

Sy[illegible]es, J O. printseller, 39 A, Wigmore-st. Cavendish-square, June 21.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Cornell, F ironmonger, first and final, on new proofs, 1s. 6d Groom, London.—*Hunt*, J. draper, second, 2½d. Whitmore, London —*Longbottom* and *Fawcett*, cloth merchants first, 4s , first sep. of Fawcett, 6s ; first sep of Longbottom, 1d Freeman, Leeds —*Shuttleworth*, H ironmonger, &c first, 4s 2d. Edwards, London —*Smith*, J Y ship and insurance broker, first and final, 9s 9d. Baker, Newcastle —*Warren*, Z miller, first, 2s. 8d Stanfold, London —*Wooley*, W. victualler, first, 2s. 9½d. Valpy, Birmingham.

INSOLVENTS' ESTATES.

Dewey, J cabinet maker, 3s 2d Apply at the County Court, Brighton —*Yorke*, W farmer, further, 7d. Apply to Mr. W. Summers, Thrapston.

Assignments for the Benefit of Creditors.

Gazette, June 15

Coulborn, J tailor and draper, Manchester, June 9. Trust. W. Pashley, ironmonger, Manchester. Sol M Atherton, Manchester —*Hoors*, T loom maker and builder, Coventry, May 5 Trusts W. Dickinson, timber merchant, A Rotherham, late draper, both of Coventry Sol R H Minster, Coventry —*Roberts*, H. B. tailor and draper, Nicholas lane, Lombard-st City, and Ann-st. Britannia fields, June 9 Trusts W Arthur, Marylebone-street, Golden-square, and E Firth, Aldgate High-st. woollen drapers Sol J. D Thomson, Lincoln's-inn-fields. —*Temple*, W drysalter and oilman, Bristol-st Birmingham, May 17 Trust W Canning, chemist and druggist, Birmingham. Sol. T. L. Parker, Birmingham.

Gazette, June 18.

Bickerton, W. innkeeper and spirit merchant, Howden, Yorkshire, June 4. Trusts W. Crow, gentleman, Howden, and H Foster and T. Sanderson, wine merchants, both of Kingston-upon-Hull Sol G England, Howden. —*Brooke*, J shipbuilder, Liverpool, June 4. Trust E. Roberts, accountant, Liverpool. Sol S Booker, Liverpool.—*Dodd*. T. draper and tea dealer, Sedbergh, Yorkshire, June 14. Trusts. H. Sykes, draper and grocer, and T Hall, auctioneer, both of Sedbergh. Sol. R Smith, Sedbergh —*Gilbert*, F. bookseller and stationer, Tunbridge Wells, June 15 Trusts. T. Lovell, innkeeper, and J. Langley, linendraper, both of Tunbridge Wells S[illegible] R F[illegible] Tunbridge Wells —*Hensman*, W and J. cabinet makers and upholsterers, Birmingham, May 19. T[illegible] W Smee, upholsterer, London. Sol. J Hollan[illegible] Min[cin]g-lane —*Knight*, J A draper, High st Clapham, June [illegible] Trusts C Warwick, Cheapside, and C Evans, Ludgate st warehousemen Sols. Reed, Langford, and Marsden, Friday st Cheapside —*Todd*, A. stationer, Oxford-street, June 16 Trusts. T. J Smith, wholesale stationer, Cheapside, and W S Orr, publisher, Amen-corner, Paternoster row Sol. J. J Field, Guildford-st. Russell-sq —*Vincent* J miller and baker, Speldhurst Mills, Kent, May 28. Trusts G. Lambert, corn dealer, Tunbridge, and J. Cooke, farmer, Speldhurst. Sol. G. D. Austen, Tunbridge Wells.

Partnerships Dissolved.

Gazette, June 15.

Beasley, M. and W. J .... spirit merchants, Torquay, June 9. Debts paid by W J. and F. Beasley.—*Benjamin*, A. and J. tailors and outfitters, Strand, June 14. —*Brown*, G. and *Lawrence*, W. muslin manufacturers, Chorley, May 5. Debts paid by Brown.—*Casper*, J. and A. tailors and drapers, Manchester, June 10. Debts paid by J. Casper.—*Clarkson*, T. and *Walton*, T. plumbers, Bradford, June 9. Debts paid by Clarkson.—*Dobson*, W. and J. seed crushers, Selby, and *Haycock*, E. merchant, Birkenhead, late manufacturers of Deylan's Patent Lubricating Oil, Liverpool, as regards Haycock, June 9. Debts paid by remaining partners.—*Foster*, W. and *Mawson*, J. cabinet makers and upholsterers, Bradford, June 9. Debts paid by Foster.—*Gardiner*, T. and *Pugh*, S. W. commission merchants, Dunster-ct. Mincing-la. June 10.—*Lamb*, G., *Brooks*, J. and W., *Challis*, W. and *Metcalfe*, W. C. attorneys and solicitors, Basingstoke and Oldham, as regards Metcalfe, June 1.—*Nicholson*, J. P. and *Simpson*, M. ship builders and sail makers, Glasson-dock, near Lancaster, June 11. Debts paid by Nicholson.—*Salisbury*, F. N. and *Bennett*, W. printers and stationers, Bouverie-st and Primrose-hill, June 12. Debts paid by Salisbury.—*Saxty*, R., J., and S. linen and woollen drapers, hosiers, and tailors, Trowbridge, June 11. Debts paid by J. and S. Saxty.—*Scott*, W. S. and *Pearson*, P. commission agents, Gould-square, July 12. Debts paid by Scott.—*Spencer*, J. and *Capper*, W. J. woollen and linen drapers, Newcastle-upon-Tyne, March 1. Debts paid by Spencer.—*Stow*, E and *Schwartz*, M. wholesale clothiers and outfitters, 140, Minories, June 11. Debts paid by Stow.—*Wilkinson*, J. and *Baker*, R. tobacconists and dealers in snuffs and cigars, Myddleton-st. Clerkenwell, June 11.—*Woods*, W. and *Schofield*, W. farmers, Pemberton, June 4. Debts paid by Schofield.

Gazette, June 18.

Anderson, T , A. D. and G. Liverpool, June 11.—*Bird*, G. and *Horton*, J. ship brokers, &c. Cardiff, June 3 —*Booth*, W. and *Tindall*, E. J. auctioneers and house agents, Portland-terrace, Regent's-park, June 16. Debts paid by Tindall.—*Cayley*, C & A. stationers and newspaper agents, Opera-arcade, June 14. Debts paid by A. Cayley.—*Cowen*, M. *Wood*, C. and *Walker*, G. moulders, Manchester, June 5. Debts paid by Cowen and Walker.—*Dilks*, J. and *Hart*, J. engravers and printers, Nottingham, June 15. Debts paid by Dilks.—*Garlick*, H. and J. butchers and farmers, Malmsbury and Westport, April 10. Debts paid by J. Garlick.—*Hall*, R. and *Gordon*, T. calico printers and merchants, Tottington and Manchester, June 30, 1850. Debts paid by Gordon.—*Hawksley*, G. *Hukin*, J. and *Haslam*, C silversmiths, Sheffield, as regards Hukin, June 15 —*Henry*, T., D. and W. G. P. sail cloth manufacturers, Mark-lane and Dundee, as respects W. G. P. Henry, Jan 1.—*Ibbett*, G. and *Smith*, J. auctioneers and house agents, Worship-st. Shoreditch, June 16.—*Jackson*, W. M. and *Cooper*, J. R. printers, High Holborn, Jan 29 —*Lang*, W. P. and *Menhinick*, H. builders, Lillington st. Vauxhall-bridge-road, June 12.—*Marsden*, R and *Whitehead*, J. merchants and commission agents, Manchester, May 23, 1850.—*Marsden*, R. *Glover*, W. and R H. and *Marsden*, R. N. merchants, Manchester and Gibraltar, Dec 31 —*Oglesby*, R. and *Spurr*, G. oil cake and bone merchants, Boston, June 17. Debts paid by Spurr.—*Peel*, J *Bell*, T. and *Lamport*, H merchants, Alexandria, May 31.—*Polglase*, R. and *Wilkins*, W. engineers, &c. Ratcliff Foundry, Commercial-road-east, June 12. Debts paid by Polglase —*Ransome*, R. and J. A *May*, C and *Sims*, W. D. iron founders and engineers, Ipswich, and Great George-st. Westminster, as respects May, Dec. 31.—*Robinson*, J. and *Burrowcliffe*, jun. timber merchants, Stainforth and Bawtry, June 12.—*Thompson*, J. and J. general dealers, Peterborough, Oct. 11. —*Thornton*, A. and *Wright*, W. R grocers and general dealers, Croston, June 12 —*Turner*, W. and *Thornley*, E. tailors and drapers, Radcliffe-bridge and Prestwich, June 15. *Webster*, J sen and jun. builders, Cambridge, Jan. 1. Debts paid by Webster, sen.

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THE NEW LAWS OF THIS SESSION, 1852.

THE LAW REFORMS.

NOTICE.—The following important *New Laws of the Session*, including the New Procedure Acts, will be published as soon as possible after they become laws.

Each will be transmitted by the next post after publication (paid) to those Members of the Profession who will *immediately* forward their orders to the Publisher, so as to enable him to regulate the impression, and make his arrangements accordingly.

We cannot undertake to return rejected communications. Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith. No notice can be taken of anonymous communications.

THE LAW TIMES.

SATURDAY, JULY 3, 1852.

THE ATTORNEYS' TAX.

WE make one more last and urgent appeal to our readers to seize the opportunity that now offers itself for *securing* the redress of *their* greatest grievance.

Four or five years may elapse before such an occasion will recur as that which now invites them to "help themselves"—always so much safer a reliance than the help of others. The game is now in their own hands. They may *certainly* win it, if they will. If they throw it away, they will deserve the disappointment that will be in store for them.

There is no time for pause, for hesitation, for deliberation. What is done must be done quickly. Before next Saturday the greater portion of the town elections will be concluded: the members will be returned for the next Parliament, and it will be too late to command their attention, or solicit their support.

Let not the pungent saying be forgotten, too true often, but of almost universal application in politics, that "*gratitude* is a keen sense of *favours to come*." This is the moment when that *gratitude* of candidates will be most liberally bestowed. The Attorneys have votes, and their influence is far greater than their votes. Those votes and that influence are just now eagerly sought. Let them make it a *condition* of the grant to any candidate of any party that he shall solemnly promise, in all contingencies and at all times, to give *his vote* against the Attorneys' Tax.

We have already stated more than once the reasons why such a pledge as *this* may be fairly exacted. The tax in question is not a matter of general interest, or of public concern; it is purely a special grievance inflicted upon a particular class; an indefensible injustice, which the many have imposed upon the few, and which those who are thus oppressed may rightly use all lawful means to throw off. In such a case appeals to the sense of public justice are useless, for the public will not readily consent to shift a burden from other shoulders to their own. The only hope of redress lies in the exercise of that power which the law has placed in the hands of th[e] oppressed, and which it is not their right only, but their duty, to employ, so as to wring relief from those who cannot be persuaded or reasoned into fair dealing.

Why should not *every* Attorney in the land, before *Tuesday* evening, make a point of seeing the candidates for the city, borough, or county in which he lives, and putting the question to each of them, "Will you vote for the repeal of the unjust Attorneys' Tax?" and requiring an explicit, unequivocal reply, "Aye" or "Nay," and let him withhold his support from any one, however on other points he may agree with him, who will not promise by his vote to remove this great wrong done to the Profession.

If *every one* of our readers will do this *before Tuesday night*, the repeal of the Attorneys' Tax will be accomplished.

If this be *not* done, we may have to endure another six years of injustice—of petitioning—of delay—and of defeat.

Once again we repeat the truth we have so often urged, that "Heaven helps those who help themselves."

There has not been a time, since we first agitated this question, at which the Attorneys could so effectually have helped themselves as now, and if they fail to do so they will have none but themselves to blame. We shall have done our duty in this endeavour to rouse them to the performance of theirs.

THE LAWYERS AT SCHOOL.

THE Lawyers must go to school again, with a double task to *unlearn*, as well as to learn. There is nothing more difficult than this. The *Practice* of the Law has become ingrained by long use. It was implanted in Clerkship, and continual cultivation has made it almost a part of the Lawyer's being. Its nice technicalities were acquired with labour, and therefore are the more deeply rooted, and will be with difficulty eradicated. For some time to come there will be infinite perplexity in every legal mind between the law as *it was* and as *it is*. Herein the beginner will have a positive advantage over the experienced practitioner, for he will have need only to master the new practice. It would be well if all of us could consign to oblivion the knowledge we possess. But we cannot. Once written upon the memory it remains there, and will not be obliterated at pleasure. The question comes, then, and it is a very serious one for those who are to *un*-learn, how they might most readily accomplish the object? Let us give them a few hints as to this. They should begin with a resolve to forget. They must start by clearing the mind as much as possible of its past impressions. They must not attempt to learn the new law by comparisons of it with the former practice, and vain endeavours to dovetail them together in their memories. That would only result in confusion. Let them take the *new* law and study *that*, with the slightest possible reference to the *old* law. Let them begin at the beginning, as if they were now reading for the first time, and trace the procedure as now provided, precisely as they would study a book that taught the law of a strange country. Unless they do this they will create for themselves infinite perplexities.

It is in accordance with this view of the requirements of the Lawyers that we propose to construct the series of papers that will describe to them the changes made in the practice of the Law. We shall avoid, as much as possible, mixing up of the law as it is with the law as it was; referring to it only when one may be necessary to make the other intelligible. We design a minute and careful description of the future duties of the practitioner; and preparatory to commencing, we ask him to give some thought to the question we have here suggested, and partially answered, as to the easiest methods by which, when he goes to school again, he may *unlearn* as well as learn.

THE NEW ERA.

THE tendency of the changes in the law is towards *decentralization*. It is necessary for the Profession thoroughly to understand this, that it may prepare itself for the changes that must follow. It is of no use to waste further time, thought, or toil, in fighting against the tide. The direction of the current is plain enough, and if we are wise we shall swim with it, and perhaps use it to help us to a new and not less advantageous position.

Henceforth the administration of justice will be *local*. The County Courts, as the established provincial tribunals, will be the machinery by which law will be dispensed, and the Courts of Westminster will become little more than Courts of Appeal from the local tribunals. This is the certain *future*. How long it may be before it is fully realised will depend upon many accidents, but it is certain every succeeding year will throw increased duties upon the County Courts. Bankruptcy, an Equity Jurisdiction, the trial of petty crimes, must ere long be confided to them. The public will not be content with partial justice; they will ask why they should be sent to London to settle a question of equity, or a matter of account, or the quarrels of a partnership, when they can obtain, almost at their own doors, a cheap and speedy settlement of other

disputes. This change in the distribution of business will necessarily work a great change in the Profession. It will now be our best policy to make the local courts as efficient as possible, with most extensive jurisdiction; for the better they are the more they will be resorted to, and the larger will be their productiveness to the Profession. It will not be in future as hitherto it has been, when all that was allowed to the Attorney for any case, however laborious, was a paltry fee of a few shillings. The provision of the new Act, that substitutes a regular *scale of fees* for County Courts business, practically assimilates them to the Superior Courts so far as respects the remuneration to be obtained there; for even if the Judges should form a scale of fees somewhat lower than those allowed in the Superior Courts, it is to be remembered that these will *not* be shared with agents, but all will go into the pockets of the country Attorneys. If bankruptcy and equity be added to the jurisdiction, there can be no doubt that the County Courts will, under the new regulations as to costs, yield to the Profession a far greater revenue than all the other courts in the kingdom together.

With such a prospect not distant, the Profession must prepare for great changes. There will be an extensive emigration from London to the provinces. As for the Bar, nine-tenths, at least, of its members will be unable to live by it, and they must, and gradually they will, be thinned down to something like proportion between supply and demand, by the prudence of some and the necessities of others, who will quit a hopeless pursuit for something of more promise, either abroad or at home. The Attorneys have not *this* fate to fear. The changes in the law will not materially affect *their* profits; probably they will be increased in total amount. But the Attorneys also must change their localities. The business of agency being now almost extinguished, there must be an emigration from the dusty chambers of Chancery-lane to the purer atmosphere of the country. They must follow the business that is passing away from them. It will be inconvenient and disagreeable to migrate from their old haunts, but it is inevitable. *The law has ceased to be centralized.* This fact cannot be ignored, and therefore it is best to meet it manfully. They will prosper most who recognise the new condition of affairs, and adapt themselves to it with cheerfulness and resolution. The change will be attended with losses and grief to many, and with more or less of inconvenience to all; but we are inclined to think, that when the Profession shall have accommodated itself to its novel position, it will be found to have gained in social standing, in public esteem, and in positive income, by the revolution whose progress we are recording.

COSTS IN THE COUNTY COURTS.

The clause in the County Courts Act, which makes provision for costs being chargeable and recoverable in the County Courts, upon a scale to be settled by the Judges, has been materially altered from the form in which we had originally drawn it, although the substance remains. Some changes were made in it before the Bill was introduced into the Lords. The Commons made many more changes, which are certainly improvements. As it stands, the provision is sufficiently simple and intelligible. It runs thus:—

That it shall be lawful for the Lord Chancellor from time to time to appoint five of the judges of the courts holden under an Act of the ninth and tenth years of her Majesty, cap. 95, intituled "An Act for the more easy Recovery of Small Debts and Demands in England," from time to time to frame a scale of costs and charges to be paid to attorneys in the County Courts, to be allowed as between attorney and client, and as between party and party; and such scale of costs and charges as shall be certified to the Lord Chancellor under the hands of the judges so appointed or authorised, or any three of them, shall be submitted by the Lord Chancellor to three or more of the judges of the Superior Courts of Common Law at Westminster, of whom the Chief Justice of the Court of Queen's Bench or Common Pleas, or the Chief Baron of the Court of Exchequer, shall be one, and such judges of the Superior Courts may approve or disallow, or alter or amend, such scale of costs and charges; a day to be named by such last-mentioned judges shall be in force in every County Court; and all costs between party and party, and attorney and client, shall be taxed by the clerk of the court; but his taxation may be reviewed by the judge upon the application of either party; and in no case, upon the taxation of the costs between attorney and client, shall any charges be allowed, not sanctioned by the aforesaid scale, unless the clerk is satisfied by writing under the hand of the client that he has agreed to pay such further charges, and no attorney shall have a right to recover at law from his client any costs or charges not so allowed on taxation; and the judges of the County Courts so appointed shall possess the same powers of making rules for regulating the practice of the Courts, and of settling doubts on the construction of any Acts relating to County Courts, as were conferred on the judges to be appointed by the Lord Chancellor for that purpose by the twelfth section of the twelfth and thirteenth Victoria, c. 101, unless otherwise specially provided.

Our readers who experience the inconvenience of the existing practice, by which a plaintiff is obliged to come to the County Court, with all his witnesses, to prove his demand, whether it be disputed by the defendant or not, will learn with regret that the Commons have expunged the other clause we had procured to be introduced into the Bill, and which was unanimously approved and passed by the Lords, for permitting judgment by default unless notice that he intends to dispute the demand be given by the defendant. Why this was expunged, and by whom, is not known. But it would be difficult to invent a good reason for putting plaintiffs in the County Courts to so much needless cost and trouble, now that in the Superior Courts a debt is to be recoverable upon the mere service of a writ with particulars of demand. Certainly if the facilities for the recovery of debts are to be so much greater in the Superior Courts than in the County Courts, there ought to be a concurrent jurisdiction for debts above 5*l.* so that suitors may resort to either as their preference might be. As the practice in the County Courts is, and that of the Superior Courts is to be, the former will be more costly and inconvenient than the latter, for the purpose of recovery of debts.

THE LEGISLATOR.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, June 25.

Colonial Church.

Wednesday, June 30.

Suitors in Chancery Relief, No. 2.

BILLS READ A SECOND TIME.

Wednesday, June 30.

Patent Law Amendment
Suitors in Chancery Relief, No. 2.

BILLS READ A THIRD TIME AND PASSED.

Friday, June 25.

Metropolitan Burials
General Board of Health. No. 2.

Wednesday, June 30.

Suitors in Chancery Relief. No. 2.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A THIRD TIME AND PASSED.

Friday, June 25.

Jarvis's Charity Estate
Thornhill's Estate
Mill's Estate.

Tuesday, June 29.

Birkenhead Dock Trustees.

SESSIONAL PRINTED PAPERS.

Par. Num.
471. Savings Banks—Return
512. Standing Orders Revision—Report from Committee
443. Woollen Manufactures, &c.—Accounts
509. Coal Mines—Report from Committee
520. Trade and Navigation—Accounts
441. Population and Houses—Return
[illegible]. Sweets or Made Wines, &c.—Returns
480. Income Tax—Return
480. Holyhead and Kingstown Mail Packet Service—Return
492. Articles of Foreign Production—Account
514. Bill—Metropolitan Burials, as amended in Committee, and on Consideration of Bill, as amended
530. — Colonial Church
354. Income and Property Tax—First Report from Committee
498. Customs—Report from Committee
Hungarian Refugees—Further Correspondence
China—Copy of Ordinances issued in 1850 and 1852
Australia, Recent Discovery of Gold—Further Papers
Court of Rome—Further Papers
373. Census of Ireland, Comparative View, 1841—1851—Return
Loan Fund Board of Ireland—Fourteenth Annual Report
386. Postage Label Stamps—Report and Evidence
Colonies, Naval, Ordnance, and Commissariat Establishments, &c.—Reports.

HOUSE OF LORDS.

INNS OF COURT.

Friday, June 25.—Lord Lyndhurst rose to put a question to his noble and learned friend the Lord Chief Justice of the Court of Q. B. He wished to know whether his noble and learned friend, as visitor of the inns of court, was satisfied with the scheme of education which had been adopted by the benchers of the different inns of court?—Lord Campbell was sorry that his noble and learned friend had not given notice of his intention to ask this question. He had the honour to be visitor of the inns of court; he rejoiced exceedingly that the benchers were at last taking steps on this subject in the right direction. He had been labouring for the last twenty years in the hope of inducing them to do so. He had always thought that the state of legal education in this country was disgracefully bad. He was therefore very eager to see it amended. He rejoiced that something had at last been done which would lead to its amendment. He thought, however, that much still remained to be done. It was, nevertheless, satisfactory that the benchers had done so much. He thought that the judges would not be justified in interfering, now that they saw the good disposition which the benchers had shewn in the commencement of this good work. He hoped that they would still go on, so that there might be some opportunity of gaining a sound legal education in this country, as well as in the other civilised countries of the world.—Lord Lyndhurst, who was all but inaudible, was understood to ask whether the system of education now adopted was to be voluntary, or whether there was to be a compulsory examination of students before they were called to the bar?—Lord Brougham said that, as a bencher, he was confident that a disposition existed among the brethren of the bench, at least so far as one of the inns of court, namely, Lincoln's-inn, was concerned, to carry still further the important measures which they had commenced for the improvement of legal education; but he agreed with his noble and learned friend that there would be little good effected by the new system unless the degree of barrister sought for by the student were only conferred after a compulsory examination, and that, too, as the result of that examination.

TURNPIKE TRUSTS.

Monday, June 28.—The Earl of Powis moved for a statement of the estimated amount of toll which mail coaches, mail carts, and horse posts would be liable to pay on each turnpike trust if not exempted by the general turnpike Acts; also, a return of the amount of aid contributed by parishes to turnpike trusts in England and Wales in each year from 1848 to 1851, both inclusive; and also, a return of the several routes travelled by mail carriages drawn by more than one horse, stating the termini and length of each of such routes, and the number of horses drawing such carriages.—The Earl of Hardwicke, while not opposing the motion of his noble friend, the object of which was to subject mail coaches to toll, could not hold out any hope that the Crown would abandon those rights which it possessed to the use of the public highways. It was matter of regret that in the early stages of the railway system the Crown did not secure to itself similar powers over railways. The motion was then agreed to.

Thursday, July 1.—The fifth session of the third Parliament of the reign of her present most gracious Majesty was closed by the Queen in person, preparatory to its dissolution.

HOUSE OF COMMONS.

SUITORS CHANCERY RELIEF BILL.

Wednesday, June 30.—The House of Lords having altered one of the many clauses of this Bill, and the usual consequences of such a step having followed, a new Bill, embodying the proposed alteration, was now introduced. It went through all its stages, and was passed without amendment.

IMPROVEMENT OF THE JURISDICTION OF EQUITY BILL.

Mr. Walpole moved that the House disagree with the Lords' amendment on this Bill. While the Bill was before the Commons a clause was introduced carrying out one of the recommendations of the Chancery Law Commission, the object being to make the Court of Chancery complete in its juris-

diction for deciding all cases brought before it, and to avoid the expense and delay consequent on referring questions once, twice, and, as occasionally happened, thrice to a court of common law. Having the highest respect for the judgment of the noble lords at whose instance that clause was struck out, he should have been disposed, but for the recommendation of the commission, and that the subject had been fully considered by the House, to suggest the adoption of the amendment their lordships had made; but as it was, he felt bound to move that it be not concurred in.—Mr. BETHELL seconded the motion, which was agreed to, and a committee appointed to hold a conference with the Lords.

NEW STATUTES.

15 VICTORIA, A.D. 1852.

[In this record of Legislation only the Statutes of practical utility are given at length. Of the other an abstract or the titles only are presented.]

CAP. XIII.

An Act to amend and continue certain Acts relating to Linen, Hempen, and other Manufactures in Ireland. (May 28, 1852.)

CAP. XIV.

An Act to continue an Act of the fifteenth year of Her present Majesty, for Charging the Maintenance of certain Poor Persons in Unions in England and Wales upon the Common Fund. (May 28, 1852.)

This merely continues 14 & 15 Vict. c. 105 to the 30th September, 1853.

CAP. XV.

An Act to continue an Act to amend the Laws relating to Loan Societies. (May 28, 1852.)

This merely continues 3 & 4 Vict. c. 110 to 1st Oct. 1853.

CAP. XVI.

An Act to amend the Acts relating to the Repayment of Advances made to Districts in Ireland. (May 28, 1852.)

CAP. XVII.

An Act for further continuing certain Temporary Provisions concerning Ecclesiastical Jurisdiction in England. (May 28, 1852.)

This continues 10 & 11 Vict. c. 98 to 1st Aug. 1853.

CAP. XVIII.

An Act to continue the Exemption of Inhabitants from Liability to be Rated as such in respect of Stock in Trade, or other Property, to the Relief of the Poor. (May 28, 1852.)

This continues 3 & 4 Vict. c. 89 to 1st Oct. 1853.

CAP. XIX.

An Act to continue an Act for authorising the Application of Highway Rates to Turnpike-Roads. (May 28, 1852.)

This continues 4 & 5 Vict. c. 59 to Oct. 1, 1853.

CAP. XX.

An Act to continue the Duties on Profits arising from Property, Professions, Trades, and Offices. (May 28, 1852.)

This continues the Income Tax Acts for one year.

CAP. XXI.

An Act to continue the Stamp Duties granted by an Act of the Fifth and Sixth Years of her present Majesty, to assimilate the Stamp Duties in Great Britain and Ireland, and to make regulations for collecting and managing the same. (June 17, 1852.)

CAP. XXII.

An Act to continue certain Acts for regulating Turnpike Roads in Ireland. (June 17, 1852.)

CAP. XXIII.

An Act to shorten the time required for assembling Parliament after a Dissolution thereof. (June 17, 1852.

We give this statute entire.

Parliament may be appointed to meet thirty-five days after the date of the proclamation.—Whereas the time required by law to intervene between the date of the proclamation for assembling Parliament and the day appointed for the meeting thereof may be reasonably shortened: Be it declared and enacted, therefore, by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that so often as her Majesty shall, by her royal proclamation, appoint a time for the first meeting of the Parliament of the United Kingdom of Great Britain and Ireland after a dissolution thereof, the time so to be appointed may be any time not less than thirty-five days after the date of such proclamation, the Act of the fifth year of Queen Anne, chapter eight; or the Act of the seventh and eighth years of William the Third, chapter twenty-five, or any other law or usage, to the contrary notwithstanding.

CAP. XXIV.

An Act for the Amendment of an Act passed in the First Year of the Reign of Her Majesty Queen Victoria, intituled "An Act for the Amendment of the Laws with respect to Wills." (June 17, 1852.)

We give this statute entire.

Whereas the laws with respect to the execution of wills require further amendment: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same (as follows):—

1. 1 *Vict. c.* 26—*When signature to a will shall be deemed valid.*—Where by an Act passed in the first year of the reign of her Majesty Queen Victoria, intituled "An Act for the Amendment of the Laws with respect to Wills," it is enacted, that no will shall be valid unless it shall be signed at the foot or end thereof by the testator, or by some other person in his presence, and by his direction: every will shall, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed to be valid within the said enactment, as explained by this Act, if the signature shall be so placed at or after, or following, or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will, and that no such will shall be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will, or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature, or by the circumstance that the signature shall be placed among the words of the testimonium clause, or of the clause of attestation, or shall follow or be after or under the clause of attestation, either with or without a blank space intervening, or shall follow or be after, or under, or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature shall be on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will shall be written above the signature, or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page, or other portion of the same paper on which the will is written to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature under the said Act or this Act shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made.

2. *Act to extend to certain wills already made.*—The provisions of this Act shall extend and be applied to every will already made, where administration or probate has not already been granted or ordered by a Court of competent jurisdiction in consequence of the defective execution of such will, or where the property, not being within the jurisdiction of the Ecclesiastical Courts, has not been possessed or enjoyed by some person or persons claiming to be entitled thereto in consequence of the defective execution of such will, or the right thereto shall not have been decided to be in some other person or persons than the persons claiming under the will, by a Court of competent jurisdiction, in consequence of the defective execution of such will.

3. *Interpretation of "will."*—The word "will" shall, in the construction of this Act, be interpreted in like manner as the same is directed to be interpreted under the provisions in this behalf contained in the said Act of the first year of the reign of Her Majesty Queen Victoria.

4. *Short title of Act.*—This Act may be cited as "The Wills Act Amendment Act, 1852."

CAP. XXV.

An Act to amend an Act for registering Births, Deaths, and Marriages in England. (June 17, 1852.)

CAP. XXVI.

An Act to enable her Majesty to carry into effect arrangements made with Foreign Powers for the Apprehension of Seamen who desert from their Ships. (June 17, 1852.)

CAP. XXVII.

An Act to amend the Law of Evidence in Scotland. (June 17, 1852.)

CAP. XXVIII.

An Act to amend an Act of the Fourteenth and Fifteenth Years of her present Majesty for the direction of Public Works and Buildings; and to vest the buildings appropriated for the accommodation of the Supreme Courts of Justice in Edinburgh in the Commissioners of her Majesty's Works and Public Buildings. (June 17, 1852.)

CAP. XXIX.

An Act to empower the Commissioners of her Majesty's Works and Public Buildings to inclose and lay out Kennington Common, in the County of Surrey, as Pleasure Grounds for the recreation of the public. (June 17, 1852.)

CAP. XXX.

An Act to empower the Commissioners of her Majesty's Customs to acquire certain Lands and Houses in the Borough of Belfast for the purpose of erecting a Custom House and other Offices and Buildings required for the public service in the said Borough. (June 17, 1852.)

The fifth session of the 15 & 16 Vict. whose career terminated on the 1st inst. though comparatively a brief one, has endured longer than at one period could have been anticipated. It was opened by the Queen in person on the 3rd of February, and has, therefore, lasted four calendar months and twenty-eight days, being one month and six days shorter than its predecessor of 1851. The House of Commons has sat during that period on 80 days, their sittings occupying in all 580 hours, or an average of 7¼ hours each. The number of hours sat past midnight was 55½. The Lords during the same period have sat on only 69 days, and their sittings occupied 157 hours, being an average of 2¼ hours each. There have been during the session 121 divisions in the Commons and 5 in the Lords. The phenomenon known in parliamentary language as a "no house," has occurred but once—on the 18th of May. The "count outs" have been four in number. They were as follow: April 6, when the House was in committee upon the Suitors in Chancery Relief Bill (to which the Royal assent was on Wednesday given); April 26, of pure exhaustion, at half-past one o'clock in the morning; April 27, on a motion of Mr. Anstey's relative to Col. Outram; and, again, June 15, on a motion by the same hon. gentleman, relative to the expulsion of British subjects from the Austrian dominions.

NEW ACT TO ASSEMBLE PARLIAMENT AFTER A DISSOLUTION.—The new Act to shorten the time required for assembling Parliament after a dissolution has just been printed. It is declared that the time required by law to intervene between the date of the proclamation for assembling Parliament, and the day appointed for the meeting thereof may be reasonably shortened. It is, therefore, enacted "That so often as her Majesty shall by her Royal proclamation appoint a time for the first meeting of the Parliament of the United Kingdom of Great Britain and Ireland after a dissolution thereof, the time so to be appointed may be any time not less than thirty-five days after the date of such proclamation, the Act of the 5th year of Queen Anne, chapter 8, or the Acts of the 7th and 8th years of William III. chap. 25, or any other law or usage to the contrary notwithstanding."

THE PROROGATION OF PARLIAMENT.—The Parliament which was prorogued on Thursday, assembled on the 18th of November, 1847. The last Parliament, which was dissolved on the 23rd of July, 1847, was in existence five years, eleven months, and four days, which was the longest period since the 7 Geo. 4. In a recently issued document by the House of Lords it is stated, "that the average duration of a Parliament may be estimated at four years." According to the new Act, Parliament may be appointed to meet thirty-five days after the proclamation for the assembling of the same.

ELECTIONS WITHOUT HUSTINGS.—Sir William Clay has put on the paper of the House of Commons for next session a notice of motion for a select committee, "to consider whether it be not expedient that provision should be made for taking the votes of parliamentary electors as the votes are now by law taken i the elections of poor-law guardians—namely, at the residence of the electors."

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

ANOTHER *Rating* case was reported last week. In *Reg.* v. *The Trustees of Birkenhead Docks*, 19 Law T. Rep. 215, land was used for docks, with power to take dues, &c. and lower or raise them from time to time, the sums received to be applied to the expenses of keeping the docks in repair, paying officers, and otherwise carrying into execution the Act by which they were incorporated, and also to payment of money borrowed, under such regulations as they should think fit. They were held to be ratcable to the poor-rate. Trustees who occupy even for public purposes are liable, unless specially exempted, and there was no exemption in the statute that incorporated them.

A short time ago we reported a very important decision upon the right of a prisoner charged with felony to assign his property at any time before conviction. We have now to direct attention to a case arising out of the same law of forfeiture. A. bequeathed to B. a promissory note, not to be sued upon or made available until he (B.) became of age. Before he came of age B. was convicted of felony. Did this note pass to the Crown by forfeiture? The Court of Q. B. thus stated the law to be:—"Before the conviction the legal interest in this promissory note was vested in the executors, and not in B. and the conviction does not take the legal interest out of the executors and vest it in the Crown. The executors became thereby trustees for the Crown as to the interest which A. had; but, as he had not the legal interest, the conviction did not vest the legal interest in the Crown, though the executors, when they recover the money, will be trustees of it on behalf of the Crown." (*Bishop* v. *Curtis*, 19 Law T. Rep. 217.)

A question as to *Larceny* is reported from the Court of Criminal Appeal. A. pretending that he was about to pay to B. a sum of money due to him, produced a receipt-stamp and placed it before B. who wrote upon it, at A.'s request, a receipt for the amount. A. then took up the paper and carried it away, but never paid the money. It was held *not* to be a larceny by A. as he never had a property in, or possession of, the stamped paper (*Reg.* v. *Smith*, 19 Law T. Rep. 220.)

A curious point, arising out of a conflict of statutes, was raised in *Reg.* v. *The Inhabitants of Denton*, 19 Law T. Rep. 216. The 59 Geo. 3, c. xxii. s. 1, enacts that in any indictment for non-repair of a highway, it should be sufficient to allege generally that such township, &c. ought to repair, &c. without setting forth any custom or presumption, &c. An indictment under this statute was prepared and found by the grand jury. *Before the trial*, this statute was repealed by 14 & 15 Vict. c. x. which relates to the same highways, but the provision relating to the pleading was not repealed. It was held that the conviction could not be sustained, the counts of the indictment being bad at Common Law, and the statute that authorised them being repealed.

EXPENSES OF PROSECUTION ACT

TO THE EDITOR OF THE LAW TIMES.

SIR,—With reference to the observations in your paper of a few weeks since on this Act (14 & 15 Vict. c. 55), I addressed a letter to Mr. Secretary Walpole a few days since, inquiring whether the regulations which the Secretary of State is authorised to make under sec. 5 of the Act were likely to be made, and come into operation at the next assizes. The answer given is, "that Mr. Secretary Walpole fears that he will not be able to give the subject all the consideration it requires before the next assizes."

I am, Sir, yours, &c.

June 28, 1852. A CLERK TO MAGISTRATES.

Query.

CAN you, or any of your readers, state if a magistrate (a clerical one) is liable to any or what penalty for acting as J.P. who has been suspended by the ordinary, and deprived, I believe of the benefits of his cure for two or three years, in other words, should he not qualify again J. R.

24th June, 1852.

POLICE.—On Saturday were printed, in a parliamentary paper, some returns relating to the police in England and Ireland. This is a reprint of a return to the House of Lords made a few days ago. The constabulary of Ireland consists of 12,321 persons, including resident magistrates, and the total charge for the same is 519,782*l.* 19s. The charge for the year, ended the 31st of March last, for the Dublin metropolitan police force, was 60,5[illegible] [illegible] 6s. 5d. The total charge for the metropolitan [illegible] England, of 5,625 persons, for one [illegible] 318,587*l.* 3s. 1d.

JOINT-STOCK COMPANIES' LAW JOURNAL.

WINDING UP.

IN *Re The Oxford, &c. Junction Railway Company*, 19 Law T. Rep. 214, the Court discharged the order for a call where several contributories had been struck off the list upon appeal after the call was made.

In the same case, the House of Lords has again considered the provisional committee question, this time with the aid of the Judges, and practically they have reversed the famous and much-disputed decision in *Upfill*. [illegible] at least, they have put upon that case a different construction from that generally understood by the Profession to be its purport. It had been taken for granted, that the principle established by *Upfill's* case was, that although being a member of a provisional committee did not of itself constitute liability, nor taking shares, of itself, yet, that when the two non-liabilities were combined, they constituted a liability. This illogical conclusion we were compelled at the time to question and combat, and every Court before which a similar question arose acknowledged the apparent absurdity of the reasoning, but declared itself to be bound by the judgment of the Lords. But now the Lords themselves have practically reversed their former judgment, or rather, we should say, they have drawn a nice distinction between the facts of *Upfill's* case, treating that, not as a decision of the principle it was supposed to decide, but as turning upon its special facts. In the case of *Hutton* v. *Bright*, in which there was nothing but the combination of the two facts of being a provisional committeeman and taking shares, paying the deposit upon them, it has been decided that Mr. BRIGHT was *not a contributory*. He had been a member of the provisional committee, and had taken shares, and paid the deposit upon them; but he had never acted, nor was a party to any orders. *He is not a contributory.* This decision will again compel a revision of almost all the lists of contributories; for there are few in which persons have not been included upon that which is now stated to be the *erroneous* understanding of the principle in *Upfill's* case.

The law, therefore, must *now* be taken to be, that *a provisional committeeman who has never acted as such, or taken any part in the management of the affairs of the company, is not liable as a contributory, although he may have taken shares and even paid the deposits upon them.*

As we are desirous of giving a full and careful report of this very important case, we have requested our reporter not to prepare it too hastily, but to obtain the various judgments from the highest sources. In the meanwhile, the above sketch of the principle decided, or, more properly, *undecided*, in this important case, will suffice to put our readers in possession of the *present* law of liability of provisional committeemen to be contributories.

The House of Lords has at length determined the much debated question whether companies only registered provisionally are within the province of the Winding-up Acts. This was submitted to the Judges of the Common Law Courts, who, on Saturday gave their unanimous opinion that such incompleted companies *are* within the statutes. Their opinion, with the judgment of the Lords, will be reported in due course; but as the decision is of more importance and interest than the reasons for it, we sh[illegible] give precedence to [illegible]eports of immediat[illegible] [illegible]gency.

The LORD CHANCELLOR has confirmed the decision of the VICE-CHANCELLOR in *Croxton's* case, 19 Law T. Rep. 209, where C. sold shares to A. By th[illegible] deed of settlement no member, as between [illegible] [illegible]ll and the company, was to be liable for and [illegible] demands after he should have ceased to be a member, save only, except for and in respect of any sum or sums which he shall or may be liable to pay by reason of any forfeiture, penalty, or misconduct;" and by another clause he was to be discharged from all liabilities, save only such as "shall have been previously incurred." The sale took place two years prior to the order for winding up. He was held *not* to be a contributory. "The point is, I think," said his Lordship, "open to no dispute."

In this case the Court refused to give costs against the official manager, who had brought the appeal with the sanction of the Master, his Lordship considering that the Act gave him no power [illegible] do so.

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

THE devices that are attempted for the purpose of evading the law that forbids accumulations, known by the name of the Thellusson Act, would form a curious record of ingenuity. The case of *Jones* v. *Maggs*, 19 Law T. Rep. 213, is interesting as an instance of the manner in which an accumulation to a considerable extent may be made without infringing the statute. Money was bequeathed to trustees, to accumulate at compound interest until a child of A. should attain twenty-one, and then to divide the fund among all the children of A. who should then be living, and if but one, the whole to be paid to that one. The residue was given to A. A. had one child living at the date of the will, and at the death of the testatrix, but who died under twenty-one. On a claim by A. for the money and interest, it was held not to be a portion within the meaning of the Thellusson Act. "Is this," said the Court, "a provision for *raising portions* within the fair meaning of the Act? I do not conceive that it is. Portions for children are sums of money secured to them out of property, out of the income of which a provision is made for the parents; and although gifts have been held to be protected, as being portions within the meaning of this exception, in some cases, where the parents took no interest in the subject-matter of the gift, still this will only be where there is some settlement on the parent, and where the nature of the gift or of the context shews that the gift ought to be so held to be within the exception."

In *Holliday* v. *Overton*, 19 Law T. Rep. 211, a point was decided which is worth noting. An estate was limited, in default of appointment, in trust for the children of A. equally to be divided between them as tenants in common, and not as joint tenants. There were no words of limitation, and in default of such, it was held that, there being no appointment, the children took only *life estates* in the property.

In *Martin* v. *Pycroft*, 19 Law T. Rep. 213, where A. had, by writing, agreed to grant a lease to B. and by parol it had been agreed that B. should pay 200*l.* premium, the Court refused specific performance, on the ground that a material part of the agreement had been omitted from the written contract.

STAMPS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I think you some time since asked your readers to report to you the result of any adjudication made by the Commissioners of Inland Revenue under the last Stamp Act, and therefore I send you the following facts.

A. in consideration of the *surrender* by B. of a former lease of the hereditaments *and of the yearly rents* (in all 13*l.* 8s. 1d.) thereinafter reserved and contained) demised to B. for 99 years, determinable with the life of the survivor of three persons.

The lease was stamped with the advertisement duty of 1s. 6d.; but a question having been raised whether it should not have been impressed with a deed-stamp, as containing other considerations than the yearly rents, the opinion of the commissioners was taken, when they adjudged *that it was duly stamped*.—I am, Sir, yours, &c. G. C. S.

[We shall feel obliged for similar communications from our readers.—ED. L. T.]

THE WILLS ACT AMENDMENT ACT.—This Act, which received the Royal assent last week, is now in force. Its object is to render valid the signatures to wills where the same are not placed above the disposition or direction as to any property. Until the law was altered, the position of a signature was very material, and a good deal of litigation has been caused by it not being placed in a particular manner [illegible] the instrument. The Act, which is the result of a measure brought forward by the Lord Chancellor, is to extend to certain wills already made, where administration has not been granted or ordered on account of the defective execution of such wills.

COUNTY COURTS.

SOME County Court appeals were reported last week. *Barnes* v. *Marshall*, 19 Law T. Rep. 217, was a question as to the place where the cause of action arose. A. by written contract, undertook to carry for B. by canal to London, timber lying in a field not far from A.'s wharf. When B.'s horses happened to be near, the timber was hauled to the wharf by them; at other times by A.'s horses. The place of delivery of the timber was not within the County Court district, nor did B. dwell within it. Where did the cause of action arise? It was held to arise only on the delivery of the timber in London, and that there was no distinct cause of action in respect of the hauling of the timber to the wharf.

Templeman v. *Haydon*, 19 Law T. Rep. 218, was entirely a question of fact for the Judge,

which the Court above refused to review. MAULE, J. stated the duties of the Judge in such cases. "Where parties leave law and facts to the decision of the Judge, he alone has to determine upon those mixed matters, and the Court above, having no means or power to separate them, cannot review his judgment."

There is one case to be noted in *Insolvency*. A final order is no protection against imprisonment for damages obtained in an action on the case, unless the costs are taxed and judgment signed before the final order is granted. (*Re Walker*, 19 Law T. Rep. 220.)

LATE CASES ON THE LAW AND PRACTICE OF THE COUNTY COURTS.(a)

IV. CASES RELATING TO POINTS OF GENERAL PRACTICE.

The questions which bear on the particular branch of this subject now introduced to the consideration of the reader are among the most conflicting and the most complicated which have occupied the attention of our courts. We have nevertheless endeavoured to classify and to reduce to a system, as far as possible, these different decisions, and to deduce from them a consistent principle for the regulation of the practitioner. Reference must in this case, of course, be always had to the rules promulgated by the judges relative to the practice of the County Courts, and on which certain of the following cases are decided :—

The first of the cases to which we shall call the reader's attention is one relating to the service of the summons, with which every action in the County Court necessarily commences. To an action of trespass for false imprisonment, the defendant pleaded a justification under process out of a County Court in a suit there by the defendant against the plaintiff. It was proved that the defendant, having a debt due from one W. T. sent a bill by a messenger, who by mistake delivered it to the plaintiff. A plaint was afterwards entered in the County Court against W. T. by name, and a summons issued against W. T. by name; but that summons was also served upon the plaintiff. Upon proof of service, judgment was obtained ex parte against W. T. by name, and afterwards another judgment summons was issued against W. T. by name, and on non-appearance an order was made for committal of W. T. by name. All the proceedings were served upon the plaintiff (who throughout informed those who served him that he was not W. T.), by direction of defendant. It was held, that the plea was not proved, inasmuch as the process had been issued by the defendant against W. T. and the allegation that the defendant issued the summons against the plaintiff was material, and was contrary to the fact. It was held also, that as the process had been executed against the plaintiff by direction of the defendant, he was responsible in trespass. (*Walley* v. *McConnel*, 1 Cox & Mac. 257.) Where a party who has been duly summoned to answer a plaint in a County Court holden under 9 & 10 Vict. c. 95, fails to appear, on which the case is heard in his absence and judgment given against him, and drawn up, to pay the plaintiff's demand with costs forthwith, execution may issue immediately, without previous service of the judgment. (*Ely* v. *Monk*, 20 L.J. 29; 16 Law T. 239, Ex.)

The case which follows has reference to the determination of the class of actions which fall within the jurisdiction of the County Court, and the practice of the Superior Courts in dealing with such questions. It was by the case in question determined, that the Court of Exchequer will not, on a motion for a suggestion, decide whether or not a bill of exchange is within the jurisdiction of the County Court. (*Butler* v. *Coney*, 1 Cox & Mac. 111.) In *Nind* v. *Rhodes*, 1 Cox & Mac. 167, it was also determined, that bills of exchange are not within ... 129 of the County Courts Act, so as to give the plaintiff the option of suing upon them in the Superior Courts, as having no *locality* attached to them.

The case which follows relates to the time within which an application for a suggestion to deprive a plaintiff of his costs ought to be made. Final judgment on a verdict of less than 20*l*. was signed on the 17th of May. A summons at chambers was taken out to shew cause why the defendant should not enter a suggestion to deprive the plaintiff of costs, and was dismissed for insufficiency of the affidavit. Two other summonses were afterwards taken out, and also dismissed, on the ground that the matter had been previously disposed of by another judge. Then an application was made to the Court within the first four days of Term. It was held, that the application was in time, and was not precluded by the previous application at chambers. (*Peterson and Another* v. *Davis*, 1 Cox & Mac. 148.) In this case the affidavit in support of the application for leave to enter a suggestion stated that the defendant, at the time of bringing the action, carried on his business at No. 133, Fenchurch-street, in the city of London, and dwelt and carried on his business in the city of London aforesaid, and that the plaintiff, at the commencement of the suit, did not dwell more than twenty miles from the defendant, but, on the contrary, did dwell within the distance of one mile from the defendant: it was held to be insufficient, inasmuch as it did not shew that the action was not one in which there is a concurrent jurisdiction with the Superior Courts under sec. 112 of the City of London Act (10 & 11 Vict. c. 71), and which is there given in cases where the plaintiff dwells more than twenty miles distant from the defendant. It appears doubtful whether a suggestion may be entered where the plaintiff does not dwell more than twenty miles from the defendant's place of business, although he dwells more than twenty miles from defendant's dwelling. In the above case of *Nind* v. *Rhodes*, 1 Cox & Mac. 167, it was decided that, upon an application to enter a suggestion upon the roll to deprive a plaintiff of costs, on the ground that the action should have been brought in the County Court, it is not necessary to negative that the Judge of the Superior Court certified that the action was fit to be brought in such Superior Court. (9 & 10 Vict. c. 95, s. 121.)

In the case which follows, a defect with regard to the summons was cured through the defendant waiving it by appearing upon it.

In December 1847 an order was made by a Judge of a County Court, under sec. 60 of the 9 & 10 Vict. c. 95, for suing the defendant, who was then residing out of the jurisdiction. It did not appear whether thereupon any summons issued, but in January 1850 a summons in an action, in which the same parties were plaintiff and defendant, issued, and was served, together with the before-mentioned order, upon the defendant, who was then residing out of the jurisdiction. Upon this the defendant gave notice, as provided for by sec. 76, of his intention to plead the Statute of Limitations; but before the day of trial he moved the Court of Q.B. for a prohibition, on the ground that the County Court had no jurisdiction, there being no valid order to support the summons: it was held that, whether or not the order of 1847 was sufficient to support the summons in 1850, the defendant had waived the objection by appearing and giving notice of his plea. (*Jones* v. *Jones*, 1 Cox & Mac. 290.)

At the trial before the undersheriff, plaintiff recovered 9*l*. 2*s*. 1*d*. only, and the judge refused to stay proceedings to enable the defendant to apply for a suggestion to deprive the plaintiff of costs; the plaintiff thereupon signed judgment, and levied execution for damages and costs; afterwards, defendant obtained leave to enter a suggestion, but did not at that time move to set aside the judgment. In a subsequent Term, the defendant moved to set aside the judgment and execution, and for the plaintiff to refund the money paid upon the execution. It was held that the defendant might do so. (*Read* v. *Blayney*, 1 Cox & Mac. 337.)

After prohibition issued, the judge proceeded, and committed defendant to prison for nonpayment of instalments, in pursuance of an order upon a judgment. For this an action was brought against him for false imprisonment, and the Judge by whom it was tried charged the jury that if the defendant, in making the order, had acted under a bonâ fide belief that his duty as a Judge of the County Court made it incumbent on him to do so, notwithstanding the prohibition that had issued, the act so done must be considered as done in pursuance of the statute, and that he was entitled to notice of action under the provisions of the 138th section of the County Courts Act. It was held to be a right direction, and that it was for the jury to say if the judge reasonably believed he was so bound to proceed, and that if "reasonably" meant anything but good faith, it was used in contradistinction to "capriciously." (*Booth* v. *Clive*, 1 Cox & Mac. 439.)

Notice of action to the clerk and bailiffs of a County Court stated that the action would be brought in the Court of C. P. It was held that it would not support an action in the Q. B. (*Estob* v. *Wright and Others*, 1 Cox & Mac. 527.) The notice in this case was for breaking plaintiff's house and taking furniture therein, without expressly claiming the furniture as belonging to the plaintiff. It was held that it would not support an action for breaking the plaintiff's house and for taking her goods. It would seem that the notice in such a case should state the special damage, if any is to be claimed, in the declaration; and that if execution issues from the County Court against the goods of A. and the goods of B. are taken, and his house is broken, by mistake, the clerk and the bailiffs are, under 9 & 10 Vict. c. 95, s. 138, entitled to notice of action.

In the case of *Reg.* v. *Andrew Amos, esq.* 1 Cox & Mac. 467, the Court of Q. B. laid it down that there may be corruption without a bribe, and there may be a misdemeanor committed by a Judge without malice, or without seeking a pecuniary advantage. A wrong act committed with a bad motive is corruption. Upon the facts as stated and answered, the Court acquitted Mr. Amos of the charge of corrupt and oppressive conduct in the discharge of his duties, but declared that more frequent sittings of the County Court should be holden, so as to prevent so great an accumulation of business in one day. The Court also laid it down, that it is wholly contrary to law, and the practice ought not to be allowed by the judges of the County Courts, for an attorney to practise in these Courts as an advocate, taking briefs from other attorneys. This latter point has, however, since been made the subject of a specific enactment.

With respect to the obligation of a judge of a County Court to produce before a Superior Court the notes taken by him at the trial of a plaint before him, it has been decided that there is nothing to exempt a judge from the duty of obeying a subpœna; but that the Superior Courts will discourage the practice of subpœnaing the judges of the County Courts to produce their notes to prove what took place before them on the hearing of any plaint. (*Reg.* v. *Dutton*, 1 Cox & Mac. 482.)

It seems doubtful whether a writ of trial, under 3 & 4 Wm. 4, c. 42, s. 17, can be sent to the judge of a County Court held under 9 & 10 Vict. c. 95. A judge's order directing such a writ to be issued to the judge of the County Court, and to be returned by the sheriff, is bad. (*Bresse* v. *Owens*, 17 Law T. Rep. 97, Ex.)

It has recently been held, that the production of a certificate in bankruptcy, granted to a defendant after the obtaining of a judgment against him in a County Court, is a sufficient answer to a summons, under the 98th sec. of stat. 9 & 10 Vict. c. 95. (*Buchanan* v. *Blowers*, 15 Jur. 758, Q. B.)

By the 39th rule of practice for the County Courts, the claimant of goods taken under the County Court process is to deliver a particular of the goods claimed by him, and the grounds of his claim. Such grounds need not appear on the face of them to be valid; and therefore a claim to certain goods, stating that they had been assigned to the claimant by deed, was held to be sufficient, although it did not appear that the deed was good as against creditors. If a judge of a County Court refuses to adjudicate upon a claim, under sec. 118 of stat. 9 & 10 Vict. c. 95, in consequence of a mistake as to the sufficiency of a notice, or other preliminary matter, a mandamus will be granted to compel him to hear and determine the claim. (*R.* v. *Richards*, 15 Jur. 358.)

The law of set-off, which has been so frequently referred to in the determination of plaints in the County Courts, and the recent cases adjudicated upon it, will next claim our attention.

(a) By GEORGE HARRIS, Esq. Barrister-at-Law.

CITY SMALL DEBTS ACT.

THE following is an abstract of the essential sections of this Act.—Repeal of Acts 10 & 11 Vict. c. 71, and 11 & 12 Vict. c. 152. Actions to be hereafter commenced in Sheriffs' Court for sums not above 50*l*. to be heard and determined under the provisions of this Act. In certain cases, on agreement of parties, Court shall have power to try causes, although the matter be beyond its jurisdiction. Court to be held at Guildhall. Common Council to appoint day and place for holding Court. Judges of Sheriffs' Court to preside in actions under this Act. Chamberlain of the City to be treasurer. Clerk of the Court to be appointed by Mayor. Officers not to act as attorneys in the court. Appointment of bailiffs. Duties of bailiffs. No action to be brought against bailiffs, &c. acting under the order of the Court, without notice, and clerk of the court to be made defendant in the suit. Treasurers, clerks, and

bailiffs to give security. Fees to be taken according to schedule, and tables to be exhibited. Officers of court may be paid by salaries instead of fees. No compensation on abolition of court. Fees and fines to be accounted for to treasurer. Clerk's accounts to be settled and audited by treasurer. Treasurer of court to render accounts to Common Council. Clerk to send to Common Council an annual account of all sums baid by him to treasurer. Court-house, offices, &c. to be provided. Any gaol in the City may be used. Courts to be held when the Common Council shall direct. Notice to be given. Summons may issue if defendant dwells or carries on business in the City. Places within or adjoining the liberties of the city of London to be deemed parts thereof. Processes out of district may be served by bailiff of any other court. As to service of process of County Courts in the city of London. Proof of service out of district, or in the absence of the bailiff. Demands not to be divided for the purpose of bringing two or more suits. No second suit for the same cause. Minors may sue for wages. Cases of partnership and intestacy. Executors may sue and be sued. No privilege allowed. One of several persons liable may be sued. Judge alone to determine all questions, unless a jury be summoned. Actions may be tried by jury when parties require it. Party requiring a jury to make a deposit. Who shall be jurors. Number of the jury. Proceedings on hearing the plaint. No evidence to be given of cause of action not in the summons. Notices of special defences to be given to the clerk, who shall communicate the same to the plaintiff. Confession of debts, or parts of debts, &c. and judgments thereupon. Agreement as to the amount of debt, and conditions of payment. Suits may be settled by arbitration. Forms of proceeding in court to be framed by recorder, and to be approved by the Chief Justices. Proceedings if plaintiff does not appear or prove his case. If the [illegible] torney do not appear [illegible] hearing, costs may be awarded to defendant. Proceedings if the defendant does not appear. Judge may grant time. Defendant may pay money into court. Notice to be given. Parties and others may be examined. Punishing persons giving false evidence. Summons to witnesses. Penalty on witnesses neglecting summons. Fines, how to be enforced and accounted for. Costs to abide the event of the action. Judgments, how far final. No actions to be removed into Superior Courts but on certain conditions. No actions to be removed in any case into the Lord Mayor's Court, Court of Hustings, or before the Lord Mayor by markment. Parties aggrieved may appeal. Appeal to be in the form of a case agreed on by both parties, but if they cannot agree, judge to sign it. No certiorari to be allowed. Who may appear for any party in the court. Court may make orders for payment by instalments. Cross-judgments. Court may award execution against goods. Execution not to issue till after default in payment of some instalment, and then it may issue for the whole sum due. What goods may be taken [illegible] execution. Securities seized may be held b[illegible] bailiff. Parties having obtained an unsatisfied judgment may obtain a summons on charge of fraud, commitment for frauds, &c. Power of judge to rescind or alter orders. Power to examine and commit at hearing of the cause. Imprisonment not to operate as a satisfaction for the debt, &c. How execution may be had out of the jurisdiction of the court. How execution out of any County Court may be had within the jurisdiction of this Court. Power to judge to suspend execution in certain cases. Regulating the sale of goods taken in execution. As to the liability of goods taken in execution under 8 Anne, c. 14, and the power of landlords. No execution to be stayed by writ of error. Execution to be superseded on payment of debt and costs. Debtor to be discharged from custody on payment of debt and costs. Power of committal for contempt. Penalty for assaulting bailiffs, or rescuing goods taken in execution. Bailiffs made answerable for escapes and neglect to levy execution. Remedies against and penalties on bailiffs and other officers for misconduct. Penalties on officers for taking fees besides those allowed. Claims as to goods taken in execution to be adjudicated in court. Actions of replevin may be brought in the court. How actions of replevin may be removed. Possession of small tenements may be recovered by plaint in this court. If tenant, &c. neglect to appear, or refuse to give possession, judge may, on proof of service of summons, issue a warrant to enforce the same. Judges, clerks, bailiffs, or other officers not liable to actions on account of proceedings taken. When the landlord has a lawful title he shall not be deemed a trespasser by reason of irregularity. How execution of warrant of possession may be stayed. Proceedings on the bond for staying warrant of possession, &c. Concurrent jurisdiction with Superior Courts. As to actions brought for small sums in Superior Courts. Plaintiffs recovering in the Superior Courts sums less than 20*l.* in actions of contract, or 5*l.* in actions of tort, over which the Sheriffs' Court has jurisdiction, to have no costs. Judge at the trial may certify to entitle the plaintiff to costs. If the Court, or a judge at chambers, make an order, the plaintiff to have costs. Penalties and costs to be recovered before a justice, and levied by a distress. In default of security offender may be detained till return of warrant of distress. In default of distress offender may be committed. Justices may proceed by summons in the recovery of penalties. Form of conviction. Proceedings not invalid for want of form. Limitations of actions for proceeding in execution of this Act. Judges may hear applications for writs of prohibition either in term or in vacation. Before whom affidavits may be sworn. Provision for the protection of officers of the court.

THE LAWYER.

Summary.

Equity Practice.—The Lord Chancellor has promptly corrected a mistake into which the Profession had fallen with respect to a direction he had given, that a decree should not be enrolled without motion after notice to the other party. He explained in *Nowlan* v. *Walsh*, 19 Law T. Rep. 210, that this was intended only of decrees of long standing and not for recent ones.

In *Hyder* v. *Coleman*, 19 Law T. Rep. 213, the Taxing Master was directed to take notice of un necessary statements in an unopposed petition. In *Hartland* v. *Dancocks*, 19 Law T. Rep. 213, where the issue directed at the hearing was abandoned by the defendants, the proper course was stated to be, that plaintiff should give notice of motion that the issue should be taken pro confesso, on which motion coming on, an order would be made to the effect that the trial of the issue would be dispensed with, and the claim would be in the same situation as if the issue had been tried and found for the defendant.

Common Law.—In *Bryant* v. *Short*, 19 Law T. Rep. 209, it was held that a plaintiff could not be asked on cross-examination whether he did not tell his attorney that his drunkenness would be set up by the defendant in answer to the action. "It is," said Martin, B. "the very sort of inquiry which the rule of professional confidence is meant to exclude. Y[illegible] cannot put any question to the plaintiff relating to what he communicated to his attorney. Everything that passes between a client and an attorney relating to his cases, ought to be free from inquiry."

It was also held in the same case, that where the declaration alleged that A. and B. were jointly possessed of a house, and the cellar door-trap being improperly left open, the plaintiff fell through, and it appeared that A. was the tenant, and that B. was employed by the landlord to repair it, and that during the repairs plaintiff fell through the cellar door; there was no joint cause of action against A. and B. and the plaintiff was put to his election.

A HINT.

TO THE EDITOR OF THE LAW TIMES.

Sir,—It would save time and trouble in country offices, if, whenever a writ is sent from London, it were accompanied by a *printed copy*, on paper, for service. The additional expense to the London office would not be more than a halfpenny in each case. Most country offices do not keep printed copies of writs of summons.

I am, Sir, yours, &c.

June 23, 1852. A Country Attorney.

The Law of Evidence in Scotland.—Among the last Acts which received the Royal assent was one to amend the law of evidence in Scotland. Persons who have been convicted of crime are not to be excluded from being witnesses, neither are agents, unless they have a substantial interest. The object of the Act is to relax the law of evidence in Scotland, which has been found too rigid to attain the end of all law, the establishment of right, and the prohibition of wrong.

Case of Mr. Alderman Salomons.—It is said that, immediately after the return of the singular verdict in the case of *Chubb* v. *Salomons*, in the Court of Ex. a few days since, another writ was issued against Mr. Alderman Salomons to recover penalties for voting in the House of Commons without having taken the oaths. Mr. Alderman Salomons was not to be found, so that personal service of the writ of summons could not be effected, and the plaintiff had to proceed by distringas. The action cannot be tried until November. In the case of *Chubb* v. *Salomons*, the plaintiff is about to move for a new trial, on the ground that the verdict was perverse, and against the evidence; that the learned judge had improperly rejected oral and documentary evidence; and that he had misdirected the jury.—*Standard.*

THE MERCANTILE LAWYER.

Summary.

An extremely interesting and important question upon the effect of the Ship Registry Acts is reported from the Court of Appeal. A statute, 8 & 9 Vict. c. 89, s. 34, has provided that when a ship or any part of the property in it is sold, it shall be transferred by bill of sale, or other instrument in writing, containing a recital of the certificate of registry of such ship or vessel, or the principal contents thereof, otherwise such transfer shall not be valid *either in law* or equity, provided that no bill of sale shall be deemed void by reason of any error in such recital, &c. if the *identity* of the ship or vessel intended be effectually proved thereby. In *Hughes* v. *Morris*, 19 Law T. Rep. 210, a part of a vessel which had been registered was contracted to be sold by an agreement in writing, which did not in any way recite the certificate of registry. The question upon this was whether such an agreement could be enforced in equity. The Court held that it could *not*. "Whether it was a sale or a contract for a sale can make no difference. A contract for a sale is, in the view of a Court of Equity, a sale; whether an actual transfer is made is of no importance, actual transfer was agreed to be made."

In *Mardell* v. *Thellusson*, 19 Law T. Rep. 217, it has been held that where an action is brought against an executor for a debt which became due during the testator's lifetime, the executor *may* set off a debt due to him as executor for money had and received by the plaintiff since the testator's death.

THE ECCLESIASTICAL LAWYER.

The Ecclesiastical Commissioners.—By an Order in Council, dated Buckingham Palace, June 15th inst. her Majesty has been pleased to ratify a scheme prepared by the Ecclesiastical Commissioners, relating to the episcopal income of the Bishop of Worcester, in which it is agreed, in pursuance of the Acts of Parliament therein set forth, between the said Ecclesiastical Commissioners and the said Bishop of Worcester, that the said Bishop shall, from the 1st day of January last past, receive an annual income of 5,000*l.* in lieu of the present or future income arising from his see, or of any other ecclesiastical profits or emoluments of any kind or description whatever.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Queen has been pleased to direct letters patent to be passed under the Great Seal, granting the dignity of a Baronet of the United Kingdom of Great Britain and Ireland unto Joseph Bailey, of Glanusk-park, in the county of Brecon, esq. and to the heirs male of his body lawfully begotten.

Edward Smirke, esq. barrister-at-law, has been appointed Attorney-General of his Royal Highness the Prince of Wales, in the room of the Hon. John Chetwynd Talbot, deceased.

COURT PAPERS.

Court of Chancery.

List of causes, &c. transferred from the cause-book of Vice-Chancellor Sir J. Parker to that of Vice-Chancellor Sir G. Turner, by order of the Lord Chancellor, dated June 18, 1852.—

Doody *v.* Higgins
Densem *v.* Elworthy
M'Cullock *v.* Gregory (2 titles)
Cole *v.* Miles
Cole *v.* Muddle
Chandler *v.* Mato
Coates *v.* Coates
Grieves *v.* Rawley
Prance *v.* Nelmes
Goldsmid *v.* Stonehower
Smith *v.* Tito
Young *v.* Hodges (3 titles)
Lane *v.* Niblett
O'Brien *v.* Osborne
Wells *v.* Luxford
Taylor *v.* Smith (2 titles)
Ashford *v.* Tustin
Hall *v.* May
Hardy the Elder *v.* Guyler
Downing *v.* Picking (2 titles)
Robinson *v.* Governors of the London Hospital
Craven *v.* Craven
Shepherd *v.* Hughes (2 titles)
King *v.* Simons
Donnet *v.* Earl Talbot
Goodbody *v.* Ward
Bennett *v.* Salthouse
Otway *v.* Hind
Charrington *v.* Duck
Graham *v.* Greaves
Robson *v.* Adcocks
Allatt *v.* Bailey (2 titles)
Henny *v.* Fenton
Alcock *v.* Hall
Spicer *v.* St. George's Hospital

Mann v. Anderson
Boyer v. Anderson
Sterriker v. Matthews
Walker v. Broughton (4 titles)
Bellamy v. Sabine
Barry v. Barry
Whittington v. Corder
Obbard v. Cohen
Hinder v. Strecten
Knight v. Sterry
Foster v. Foster
Bishop v. Saunders
Davies v. Davies
Lacy v. Fewkes
Dixon v. Fletcher
Keyse v. Heyden
Argles v. Hardwick
Smith v. Le Maitre
Houchen v. Porter
Da Costa v. Mackillop
Smith v. Gibbons
Ford v. Ford (4 titles).

Court of Queens Bench.

List of London Causes for Trial at the Sittings after Trinity Term.

REMANETS.

Lloyd v. Underwood, S.J.
Walker v. Clements (stayed)
Corcoran v. Gurney, S.J.
Mackenzie v. Steward and Another, S.J.
Persse v. Prescott and Others, S.J.
Castrique v. Zuliani
Von Muller v. Browning, S.J.
Mason v. Prole
Hastings v. Brown, S.J.
Catley and Others v. Wedmore and Another, S.J.
Mollett v. Harriss and Others, S.J.
The Trinity House v. The General Steam Navigation Company, S.J.
Ingram v. Hall, S.J.
Reg. v. The Mayor, &c. of London, S.J.
Felton v. Bignold and Others, S.J.
The Same v. Bleakley and Others, S.J.
The Same v. Lord and Others, S.J.
Reg. v. Wilson, S.J.
Newall v. Wilson, S.J.
Shiers v. Adair, S.J.
Mitchell v. Bruff, S.J.
Morewood and Another v. Eastern Union Railway, S.J.
Robinson v. Smith, S.J.
Constable v. Michiels, S.J.

NEW CAUSES.

Maclae and Others v. Sutherland and Others, S.J.
Tacker v. Harvey
Schwann v. Morewood and Another, S.J.
Losh and Another Brockett, S.J.
Poirier v. Morris and Ors. S.J.
Wardell v. Beale, S.J.
Reyner and Another v. Allhusen, S.J.
Esdaile v. Rennie and Anor.
Boccius v. Lane, S.J.
Aunger v. Pitcheck
Higgs and Another v. Bennett
Brown v. Potts
Knox and Others v. Horseby
Nutting v. Teighe
Rock and Others v. Doyle
Doe dem. Waller v. Crowley, S.J.
Eveson and Ors. v. Williams
Morgan and Others v. King
Wilett v. Swift and Another
Wickham v. Black
R. J. Smith v. Smith
Betts v. Betts, S.J.
Groves v. Guy, S.J.
M'Rae v. M'Leary
Bessell v. Wilson, S.J.
Lelong v. Paschall, S.J.
Griffith v. Wallis
Hine and Another v. Ponflet
Myatt v. Jackson
Abram v. Crawley
Graham and Others v. Bowers and Others, S.J.
Brown v. Temple, S.J.
Garner v. Holloway
Gane v. Robinson
Czellin v. Fulford
Clyburn v. Maclean and Anor.
Potter and Others v. Cohen
Job v. Harrison
Prance v. Salmon
Pryer v. Dackombe
Hayne v. Tyler
Losh and Another De Russett, S.J.
Stredder v. Peppiatt
Curtis v. Warre
Heywood and Ors v. Potter
Wright v. Hetherington
Spry v. Greene, clerk
Bainewell v. Dickson
The Same v. Rannie
Webb and Others v. Darling
Richards v. Norcott
Lomas v. Whitehead
Imperial Gas Light and Coke Company v. Simpson, S.J.
Browning v. Lambert.

Exchequer of Pleas.

List of London Causes for trial at the sittings after Term.

REMANETS.

Baker and Ors. v. Mott, S.J.
Barber v. Webster, S.J.
Watney v. Dennison, S.J.
Whalley and Anor. v. Brown and Others
Morgan v. Clifton, S.J.
Benson v. Avery, S.J.
Boyd v. Sutherland, S.J.
Kreeft v. Gilkes & Ors. C.J.
Penson v. Wilkinson
Dobson v. Brocklebank, S.J.
Lambe and Anor. v. Dunn, S.J.
Cobb and Anor. v. Enthoven, S.J.
Hammond v. Ricketts and Others, S.J.
Vincent v. Zulueta, S.J.
Guardians of Romford Union v. British Guarantee Association
Magnus v. Harvey and Another, S.J.
Brown v. Young
Russell v. Ives, S.J.
Wilson v. Lowther.

NEW CAUSES.

Malthouse v. Calvert
Great Central Gas Consumers' Company v. Tallis
Curtis v. Hyde, S.J.
The Same v. King, S.J.
Curtis and Another v. Heingman, S.J.
Thompson and Another Letts and Another
Duff and Others v. Gant, S.J
Richardson v. Sadler and Another, S.J.
Montgomery v. Vaughan
Bush v. Fox, Knight, and Others, S.J.
Benson v. Nicholson an Others, S.J.
Holford v. Cohen
Corser v. Ludlow
Rugg v. Swabey
Thomas v. Lamb and Anor.
Calisher v. Joel, S.J.
Cozens and Anor. v. Marlow
Beare v. Purchase
Harrap v. Jowers
Curtis and Ors. v. Bradburne
Physick v. Gladstone and Others
Pennell and Ors. v. Borham
DeClermont v. Bradbury and Another
Sadler v. Sidey
Stevens v. Temple
Playford and Anor. v. Berlin
Wiggins v. Stuart and Anor.
Fenton v. Rogers
Brandus v. Lumley
awson v. Hakewell
Murphy and Another v. Hakewell
Chipp v. Shipp
Gough v. Bell
Bartholomew v. Boyntun
Pennell and Others, Assignees, &c. v. Sherwood, S.J.
Gibson v. Shaw
Hudson and Ors. v. Brooker
Kelley v. Fleming
Daintree v. Johnson
Pennell and Others, Assignees, &c. v. Sherwood, S.J.
Burland v. Lawton
Thompson and Another v. Letts and Another
Mortimer and Another v. Harvey
Phillips and Another v. Goldsmid, bart.
The Dublin and Wicklow Railway v. Grevile
S. Abrahams v. Lewis
Crother and Wife, Administratrix, &c. v. Lundy
Gibbon v. Thompson and Another
Hutton v. Rosenborg
Hiatt v. Holloway
Aylmore v. Hopkins
Wright v. Attenborough
Loveday and Others v. Ross
Langman v. Quintin
Offer the Younger v. Args
Keene v. Arundel
Snell v. Johnstone.

ATTORNEYS ADMITTED.

Trinity Term, 1852.

Abbott, Charles Edward—articled to C. Hinnell
Andrews, Edward—G. Andrews
Armstrong, Charles—G. W. Armstrong
Arnison, William Burra—L. Harrison
Aston, David—G. L. Robinson
Atkins, John, jun.—J. Atkins, sen.
Baddeley, Thomas, jun.—T. Baddeley
Bailey, John Rand—G. Marshall
Barker, Charles Munro—J. J. Wright
Barlow, Charles—J. Barlow
Barrett, Charles Prentice—S. G. Hornidge
Baxter, Dudley—S. S. Baxter
Baxter, Robert Dudley, B.A.—R. Baxter
Beaumont, Henry—W. N. Ottaway
Bickersteth, John Pares, B.A.—R. Radcliffe; A. T. Squarey
Bridgman, Joseph—S. J. Roberts
Capes, Henry Hawksley—W. Hirst
Carnell, George Frederick—T. Carnell
Chamberlin, Charles Henry—S. Palmer; H. Palmer
Cheyne, Talbot—L. Richmond
Christmas, John Sanders—E. Foster, jun.
Clark, John—W. Dadley
Clarke, George—T. Hyde
Cook, Charles Henry—C. Cook
Cooke, Thomas William Tahourdin—W. Everest; J. Smith; J. Currie
Courtenay, Richard—G. Atkinson
Curtis, Charles John—E. G. Randall
Curtis, Thomas John—C. A. Curtis
Daubeny, Robert—J. R. Hoyte
Drew, Charles Thomas—S. Williams
Earle, Charles—G. Sperling
Edell, James—C. Harvey; L. Desborough
Edwards, Henry Richard—T. Surr
Ellis, William Moreton H. Barnett
Fox, John, jun.—J. Saunders; J. Fox
Fryer, William—W. Latham
Gaitskell, Alfred Ashley—T. Pryer; W. S. Gaitskell; T. H. Devonshire
Geoghegan, Michael John, jun.—W. E. Goatly
Hamber, Frederick Marsh—F. Dimsdale
Hammond, Henry, jun.—H. Hammond, sen.
Hearn, Henry—Hearn and Nel
Hewitt, William Henry—R. Needham; J. Hewitt
Holmes, George Penfold—E. C. Holmes
Huxley, Frederick—J. B. Lloyd
James, Thomas—W. Fowler
James, Thomas Lloyd—E. W. James
Jones, Thomas—H. Mayhery
Kent, Edmund, jun.—E. Kent, sen.
Kent, Thomas Russel—B. Blundell; P. Nelson
King, William Henry—G. B. Townsend
Kitchener, William Orbell—W. C. Kitchener
Lett, Edward—R. G. Burfoot, E. Thompson
Mander, Charles John—J. J. Millard
Marshall, John Stewart—R. Leigh
May, Henry—J. Fraser
Newman, Charles—J. Birks
Palmer, Robert, jun.—G. Grenside; R. Palmer
Phillips, Thomas—M. B. Peacock
Phillips, William Henry—T. M. Phillips
Ponsonby, John—J. H. Hulme
Poole, Fenwick Thomas—T. E. Poole
Preston, John—T. Eastham
Rankin, William—E. G. Craig
Reynolds, Reginald—T. Edwards; C. E. Ward
Rodd, Richard Robinson—R. Rodd
Slater, William, jun.—W. Slater
Smith, Sidney Philip—R. E. Smith; T. H. Street
Smith, William—H. Davies
Stansfield, John—T. E. Hammerton
Stevenson, James Richard—C. Falcon
Steward, Frederick Fisher—H. Perry; W. Perry; G. Helder
Stubbs, Edward Phillips—F. Scudamore
Taylor, Mathew William—R. W. F. Beioley; H. W. Vallance; W. Cox
Thomas, William Thomas—L. Morris
Turner, George—W. A. Deane; F. J. Cotton
Wates, Edward—G. Crafter; E. B. Hooke
Weld, Samuel—G. P. De Rhe Philipe
Welford, Thomas William—E. D. Welford
Wilton, Thomas—J. Willim
Wratislaw, Theodore Marc—W. F. Wratislaw; C. P. Allen; W. F. Wratislaw.

LEGAL INTELLIGENCE.

TESTIMONIAL TO SIR JOHN PATTESON.—A committee from the body of Common Law Clerks have waited upon the Right Hon. Sir John Patteson, at 13, King's Bench Walk, Temple, and presented to him a very handsome silver inkstand, as a mark of their great respect, and of their gratitude for the uniform courtesy with which he had treated them while he officiated as judge in the Court of Q.B. The testimonial was presented by Mr. Breeze, chairman of the committee, who expressed himself on the occasion in very complimentary terms. Mr. Urquhart, the hon. secretary, then read and handed to Sir John the following address:

The Common Law Clerks of the metropolis, to whom, as a body, your Lordship has shewn so much kindly feeling and courtesy, desire, upon your retirement as a judge of the Court of Queen's Bench, to testify the sentiments of respect they entertain towards your Lordship.

The urbanity experienced by them in your administration of that part of their professional duties transacted at chambers, combined with your perfect knowledge upon all the subjects submitted to your consideration, materially aided them in affording satisfaction to their principals, and in obtaining unquestionable justice for the client, and converted a somewhat unpleasant employment into an agreeable occupation.

As humble members of the community, they venture to form an estimate of your Lordship's character, and respectfully to tender their tribute to the uprightness, learning, and logical discrimination which so distinguished your Lordship while at the bar and upon the judgment-seat.

They lament that by reason of a single bodily infirmity you should have felt it right to retire from that bench of which you were so long an ornament; but it is a consolation to know that your valuable services will at least be preserved in that sphere of judicial usefulness to which her Majesty has been pleased to appoint you.

That you may long be spared to discharge those new duties, and, under Divine Providence, to enjoy every happiness this life can afford, is the earnest hope of those who have now the honour to address you.

And your Lordship is solicited to accept in expression of these feelings the testimonial which accompanies this address.

Sir John appeared much gratified, and said that hardly any thing since his retirement from the bench had given him greater pleasure than this mark of the consideration in which he was held by a numerous and important body in the Profession.

COURT OF QUEEN'S BENCH, Saturday, June 26.—Lord Campbell stated, that during the present sittings the attendance of special jurors had been extremely unsatisfactory, but he had abstained from fining them because a Bill had passed both Houses of Parliament, to which he hoped her Majesty would give her assent, and which would place the special jury system upon a more satisfactory footing. Lord Campbell also said he wished, among other legal improvements, they would have a court in which they could sit without inconvenience, and without suffering in their health. He himself had suffered very much during a late trial, and he feared there were others who had suffered also. It was most lamentable. His lordship, as was noticed in the House of Lords last night, was very hoarse, a mischief occasioned perhaps partly by the fatigue of the Achilli trial; but partly also by the strange and trying alternations of heat and cold to which this "well ventilated" court is subject.

THE LAST GENERAL ELECTION.—In 1847, Parliament was prorogued on Friday July 23, and dissolved by Royal Proclamation, published in a supplement to the *Gazette* of the same evening. Parliament was ordered to assemble on the 21st of September, 1847, but was then adjourned, and did not meet till the 18th of November. This year the prorogation is earlier by twenty-two days, and the period of assembling again is shortened by the Act of this Session, which substitutes thirty-five days for the fifty that were hitherto required to elapse between the dissolution of the old and the assembling of the new Parliament; so that the writs for election of the new Parliament will be returnable about the 5th of August, but the Parliament will not be called together before October.

THE CHANCES OF LIFE.—Among the interesting facts developed by the recent census, are some in relation to the laws that govern life and death. They are based upon returns from the state of Maryland, and a comparison with previous ones. The calculation it is unnecessary to explain; but the result is a table from which we gather the following illustration:—10,268 infants are born on the same day and enter upon life simultaneously. Of these, 1,243 never reach the anniversary of their birth. 9,025 commence the second year, but the proportion of deaths still continue so great, that at the end of the third year only 8,183, or about four-fifths of the original number, survive. But during the fourth year the system seems to acquire more strength, and the number of deaths rapidly decreases. It goes on decreasing until 21, the commencement of maturity, and the period of highest health. 7,131 enter upon the activities and responsibilities of life—more than two-thirds of the original number. Thirty-five come to the meridian of manhood; 6,302 have reached it. Twenty years more and the ranks are thinned. Only 4,727, or less than half of those who entered life fifty-five years ago, are left. And now death comes more frequently. Every year the ratio of mortality steadily increases, and at seventy there are not a thousand survivors. A scattered few live on to the close of the century, and at the age of 106 years the drama is ended. The last man is dead.—*New York Tribune.*

BOOKS BY POST.—The Post-office authorities are rapidly extending the privilege of sending books, pamphlets, magazines, and reviews, &c. at 6d. per half-pound weight, to all our colonies and dependencies. The privilege is already extended to the West Indies, Canada, Cape Town, Nova Scotia, Ceylon, Malta, Gibraltar, Ionian Islands, Mauritius, Bermuda, Heligoland, Newfoundland, and Hong-Kong. There is no doubt that the privilege will be extended shortly to Australia.

ACCIDENT TO LORD CAMPBELL.—On Thursday evening, at about a quarter past eight o'clock, as Lord Campbell was riding across Southwark-bridge, attended by his groom, his horse, startled by the noise made by the gate on the Surrey side through which foot passengers pass, became restiff and threw him. His lordship was cut in the head by the fall, but is, we hope, not otherwise seriously injured. He was conveyed at once in a cab to his residence.

THE LATE HON. J. C. TALBOT, Q.C.—The Duke of Buccleuch, the Earl of Harrowby, the Earl of Carlisle, Mr. Whateley, Q.C. and other influential gentlemen, have been formed into a committee for the purpose of taking steps to perpetuate by some lasting memorial the remembrance of this lamented gentleman's public and private virtues. It is intended at once to found one or more scholarships or exhibitions, bearing Mr. Talbot's name, for boys educated at the Charterhouse, in the Universities of Oxford and Cambridge, and these will constitute the proposed memorial.

The benchers of the Middle Temple having reason to believe that some misapprehension has prevailed as to the existence of a vacancy in the readership of their society, have adjourned the election of a reader on jurisprudence and the civil law until Wednesday, the 14th July, and they have also enlarged the time for receiving the testimonials of candidates until Monday, July 12th. Full particulars of the duties and salary of the reader will be communicated by the under treasurer to all gentlemen desirous of becoming candidates.—Treasurer's Office, Middle Temple, June 28, 1852.

ACTS OF PARLIAMENT.—The Public Acts passed in the present session, up to Thursday, number thirty, and the Local Acts 117.

NOTICES OF NEW LAW BOOKS

AMONG the many pamphlets on topics connected with the law which are continually issuing from the press, but, we fear, finding few readers, some deserve more attention than they receive. Such is a "Letter on Lord Brougham's Bill to abolish the District Courts of Bankruptcy," by a District Commissioner. It opposes the scheme for transferring Bankruptcy to the County Courts, the arguments for which are two-fold,—first, saving of expense; second, the having 398 places, instead of seven, at which the business of Bankruptcy will be conducted, to the infinite convenience of all the parties concerned. The writer of this pamphlet contends that there will be no saving of costs. Grant that he is right in this, it is a very secondary consideration. He argues also that the present distribution of Courts is satisfactory. He should ask those who live at a distance from a court town. Probably the writer has the good fortune to reside in a town where a Commissioner is located. If so, he cannot comprehend the inconvenience experienced by distant places. We have seen it and felt it. To the Profession it is a great grievance for an Attorney living at a distance from the court to be compelled either to travel to the court at great cost to his client, or to commit his case, whether of support, or opposition, or proof, to an Attorney in the court town. But if the business were transferred to the County Courts, almost every Attorney would be enabled to conduct his own bankruptcy business. As to the alleged unfitness of the County Court Judges for the business, it is a needless fear. They have proved themselves quite competent to the Insolvency business, why should they not with equal ease master that of Bankruptcy. It is not, and it needs not to be, more difficult. He who knows the one will with the utmost facility learn the other. Then he asserts that they will not have time to give it attention. For this, there would be the easy remedy of an increase in the number of the Judges. That would be no increased expense to the country, for the fees of the County Courts produce a greater revenue than their expenditure, so that they really cost the country nothing at all. If the business of bankruptcy were added, so would be the fees, and that would more than pay the cost of more Judges. In truth, no substantial objection can be urged against the transfer of Bankruptcy to the County Courts. The local business of the country will more and more be required to be done in the place where it arises, and where those interested in it can transact it without the formidable expense of journeys. The County Courts have given a taste for this localisation of tribunals, and the public will not, and ought not, to be satisfied, until they can procure justice there in *all* matters of *administrative* law, and in *judicial* business of small value or importance—whether it be the trial of demands, or the settlement of disputes, and whether at law, in equity, in bankruptcy, or in insolvency.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

EBRINGTON.—On the 26th ult. in Grosvenor-square, Viscountess Ebrington, of a daughter.

HOOKER.—On the 26th ult. at Faversham, the wife of Mr. Ayerst Hooker, solicitor, of a son, still-born.

LACEY.—On the 25th ult. at Baynard Castle, Gravesend, the wife of Edward Lacey, esq. J.P. of a son.

LYNCH.—On the 27th ult. in Queen Anne-st. Cavendish-square, the wife of M. Staunton Lynch, esq. barrister-at-law, of a son.

MARRIAGES.

MORGAN, the Rev. Lewis, vicar of Llandybie, to Mary Ann Lucas, daughter of J. L. Popkin, esq. solicitor, Llandilo, on the 23rd ult. at Landilo-fawr.

MURPHY, P. M. esq. Q.C. and Assistant Barrister for the county of Cavan, to Jane, widow of the late Thomas Tench Vigors, of Erindale, esq. Deputy Lieutenant of the county of Carlow, at St. George's, Hanover-square.

POLLOCK, Charles Mason Innes, esq. third surviving son of the late Sir David Pollock, to Charlotte, eldest daughter of Captain John Henry Wilson, formerly of the Indian Navy, on Wednesday, the 19th ult. at the Cathedral, Bombay.

SAW, Mr. Samuel, solicitor, Greenwich, to Matilda, eldest daughter of Mr. James Bassell, Woolwich, on the 25th inst. at Woolwich.

DEATHS.

DENMAN, the Right Hon. Lady, on the 28th ult. at Parsloes, Essex, aged 73.

MCADAM, Sir James Nicoll, knight, Tindon-end, Great Sampford, Essex, on the 30th ult. at his residence, 17, Finchley-road, St. John's-wood, aged 67.

JOURNAL OF PROPERTY.

MONEY MARKET.

ENGLISH FUNDS.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Bank Stock	224½	224½	225	225	225	225½
3 ₽ Cent. Reduced Annuities	101¼	101¼	101¼	101	101	100⅞
3 ₽ Cent. Consols Annuities	†		.		shut	.
Consols for Account	100½	100½	100⅝	100⅝	100½	100⅝
New 5 ₽ Cent. Annuities ..	..	.	.			
New 3¼ ₽ Cent. Annuities .	101⅞	101⅞	101⅞		101⅞	101⅞
Long Annu. (exp. Jan. 5, 1860)	6⅞	6⅞	.			
Do. 30 yrs. (exp. Oct. 10, 1859)	.	.	..			
Do. 30 yrs. (exp. Jan. 5, 1860)	.	..	..			
India Stock	.	..	..			
India Bonds (1,000l.)				91		
Do. do. (under 1,000l.)...	88			91	89	
[illegible]uth Se[illegible] ck						
[illegible] do. New Annuitie[illegible]						
Exchequer Bills, 1,000l. June	72*	69*		69*	69*	
Do. do. 500l. June .	.	69*		69*		
Do. do. Small, June	..	69*		69*		

101 · With div. for May.

THE GAZETTES.

Bankrupts.

Gazette, June 29.

A[illegible] ANSLEY, [illegible] tanner, Bolton-in-Fur[illegible] Lancashire, July 12 and Aug 4, at twelve, Manchester. Off. as. Pott. Sols. Haigh, Liverpool, and Sale and Co. Manchester. Petition, June 24.

CURTIS, ROBERT LEARMOUTH, and EDWARD CHARLES, builders, Stratford, Essex, July 5 and Aug 12, at twelve, Basinghall-st. Off. as. Whitmore. Sols. Newbon and Evans, Wardrobe-place, Doctors-commons. Petition, June 26.

DOWLING, WILLIAM, grocer, Leicester, July 9 and 30, at ten, Nottingham. Off. as. Bittleston. Sols. Messrs. Finkleton, Size-lane, City, and Hodgson, Birmingham. Petition, June 25.

DREW, JOHN BROWN, [illegible]penter, William's-building, Old-street-road, July 12, at one, and Aug 10, at two, Basinghall-st. Off. as. G[illegible]. Sol. Brown, Finsbury-place. Petition, June 11.

HOLROYD, FREDERICK, twine spinner, Leeds, July 19 and Aug 9, [illegible], Leeds. Off. as. Hope. Sol. Simp[illegible]. Petition, June 24.

MORGAN, HENRY, ironmonger, Union-st. East, Bishopsgate, July 12 and Aug 10, at eleven, Basinghall-st. Off. as. Stansfeld. Sol. Boyle, New-square, Lincoln's-inn. Petition, June 26.

WARD, MARTIN, corn and malt merchant, Mark-lane, City, July 7, at one, Aug [illegible] twelve, Basinghall-st. Off. [illegible] Graham. Sol. Messrs. Winslaw, Gray's-inn-square; and Robinson, Hadleigh, Suffolk. Petition, June 14.

WHITTAKER, JOHN, draper, Park place, Mile-end-road, July 8, at one, Aug 12, at eleven, Basinghall-st. Off. as. Cannan. Sol. Mason, Ironmonger-lane, Cheapside. Petition, June 28.

Gazette, July 2.

MOTTRAM, JOHN, hop merchant, Shrewsbury, July 12 and Aug 2, at half-past ten, Birmingham. Com. Balguy. Off. as. Bittleston. Sols. Cooper and Brougham, Shrewsbury; Motteram, Knight, and Emmet, Bennett's-hill, Birmingham. Petition, June 21.

PERRY, RICHARD, hatter, Leeds, July 15 and Aug 13, at [illegible], Leeds. [illegible] West. Off. as. Young. Sol. Upton, Leeds. Petition, June 19.

SANDERWELL, GEORGE and CHARLES, and BARNES, THOMAS, auctioneers, Bristol, July 15, at half-past eleven, and Aug 12, at eleven, Bristol. Com. Hill. Off. as. Acraman. Sols. Whittington and Gribble, Bristol. Petition, July 1.

WALKER, GEORGE WOOD, and WALKER, WILLIAM HENRY, silk throwsters and copartners, [illegible]silverdale, Staffordshire, July 13 and Aug 3, at half-past eleven, Birmingham. Com. Daniell. Off. as. Christie. Sols. Stanier, Udall, and Knight, Newcastle-under-Lyme; and Motteram, Knight, and Emmet, Bennett's-hill, Birmingham. Petition, June 18.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Bavin, J. draper, second, 2s. 4d. Pennell, London.—*Dalton*, W. grocer, first, 3d. Stansfeld, London.—*Holloway*, N. J. clock manufacturer, first, 1½d. Pennell, London.—*Marshall*, J. coal merchant, second, 2s. 10d. Whitmore, London.—*Norris*, R. innkeeper, first and final, 9¼d. Carrick, Hull.—*Reeve*, R. N. woollen draper, first, 1s. Pennell, London.—*Rowlandson*, M. and L. drapers, third, 4¾d. Pennell, London.—*Shaw*, D. and J. manufacturers, first, 2s. 6d. Young, Leeds.—*Valentine*, J. grocer and tea dealer, first, 1s. 5¼d. Whitmore, London.—*Youngman*, R. miller, first, 2s. 3¾d. Pennell, London.

INSOLVENTS' ESTATES.

Apply at the Provisional Assignee's Office, Portugal-street, Lincoln's-inn-fields, London, between the hours of eleven and three.

Allen, G. B. tailor, 20s.—*Ball*, H. geologist, 3s. 10d.—*Bramelow*, E. bobbin turner, 2s. 11½d.—*Chapman*, E. farmer, 11d.—*Everest*, J. farmer, 4s. 7d.—*Flynn*, D. E. tailor and draper, 3s. 3d.—*Fuller*, T. currier, 5½d.—*Hales*, S. clerk, 1s. 6d.—*Hickes*, G. cheesemonger, 4s. 6d.—*Humberstone*, G. cooper, 5s. 10d.—*Jones*, E. farmer, 1s. 4½d.—*Longley*, W. carpenter, 1s. 11½d.—*Palmer*, G. H. engineer, 3s. 8d.—*Percival*, T. clerk, 5s.—*Richards*, G. captain Royal Marines, 2s. 10d.—*Rogers*, G. doctor of medicine, 1s. 10½d.—*Schöbble*, P. clockmaker, 2s. 8¼d.—*Welsford*, G. grocer, 1s. 5d.

Bayley, J. attorney, second and final div. 6d. Apply to W. Nicholson, official assignee, Warrington.—*Bullbrook*, T. A. (otherwise T. Brown), first and final div. 10d. Apply at the County Court, Ramsgate.—*Matthews*, S. brewer, 10s. 7d. Apply to P. Pearce, official assignee, East Stonehouse.

Assignments for the Benefit of Creditors.

Gazette, June 22.

Coron, J. warehouseman, dyer, and dresser, Philadelphia-place, Hackney-road, June 1. Trusts. T. Oliver (of the firm of Oliver and Sons), cotton spinner and doubler, Bollington, near Macclesfield, and G. Swindells, cotton spinner and doubler, Bollington-mills, near Macclesfield. Sol. R. Bagshaw, Macclesfield.—*Kingsford*, S. linen draper, Newland-road, June 9. Trusts. C. Loope, linen draper, Sloane-st. and E. Caldecott, warehouseman, Cheapside. Sol. S. Shuttleworth, South-square, Gray's-inn.—*O'Hara*, J. bootmaker, Conduit-st. Regent-st. June 2. Trusts. A. Rymer, jun. Nassau-st. Soho, and T. Perrin, Westbury-on-Trym, curriers. Sol. C. M'Duff, Castle-st. Holborn.—*Parker*, J. boot and shoe maker, Gainsborough, Lincolnshire, June 18. Trust. J. Fidell, timber merchant, and M. Parker, draper, both of Gainsborough, and R. Hargrave, jun. paper-hanging and colour manufacturer, Bradford. Sol. T. Oldman, Gainsborough.—*Smith*, J. linen and woollen draper, Ledbury, Herefordshire, May 27. Trusts. H. Moore, banker, and T. S. Hill, farmer, both of Ledbury. Sol. D. Moore, Ledbury.—*Swinburne*, T. builder, Gateshead, Durham, June 2, Trusts. J. J. Fleek, grocer, and J. Pearson, builder, both of Gateshead. Sol. J. W. Swinburne, Gateshead.—*Thomas*, D. chemist and druggist, Llangadock, Carmarthenshire, June 7. Trusts. W. Morgans, farmer, Cae-Sarah, Llangadock, and J. Thomas, land valuer and auctioneer, Llangadock. Sol. T. Parry, Carmarthen.—*Thompson*, W. bookseller and printer, Berwick-upon-Tweed, June 5. Trusts. O. Owens, ironmonger, and J. Beveridge, fish curer, both of Berwick-upon-Tweed. Sol. J. Rowland, Berwick-upon-Tweed.—*Wells*, D. silk manufacturer, Manchester and Failsworth, June 18. Trusts. W. F. Chadwick, and E. Hilton, silk merchants, both of Manchester. Sol. W. Foster, Manchester.

Gazette, June 25.

Errington, H. widow of M. Errington, grocer, Highgate, June 9. Trusts. C. Tede, wholesale grocer, Warner's-yard, Mincing-lane; and T. Errington, saddler, White-st. Cripplegate. Sols. Tucker and Sons, Threadneedle-st.—*Hilton*, J. grocer and provision merchant, Cocking, Sussex, May 27. Trusts. J. Gosden, miller, Easebourne, and J. Cooper, grocer, Chichester. Sol. E. Albery, Midhurst.—*Scott*, J. grocer, Wellingborough, Northamptonshire, June 17. Trusts. J. Hobson, farmer, Barton Seagrave; and P. Harlock, draper, Thingdon, otherwise Finedon. Sol. W. Murphy, Wellingborough.—*Thompson*, P. bacon factor, Devizes, Wiltshire, May 29. Trusts. J. Glass, corn dealer, and R. Maysmoor, banker, both of Devizes. Sol. A. Meek, Devizes.—*Turner*, T. general shopkeeper, Cuckfield, Sussex, May 26. Trust. J. Turner, farmer, Newland. Sol. J. T. Auckland, the Cliffe, near Lewes.—*Wilson*, F. G. and *Hall*, R. cotton and tin plate manufacturers, Radcliffe-bridge, Lancaster, June 17. Trusts. J. Gettings, iron master, Bilston; J. Farrar, grocer, Bury; and W. H. Spencer, commission agent, Manchester. Sols. Hulton and Brett, Salford.

CONTENTS.

To Readers and Correspondents.

The letter on the County Courts next week.

Erratum.—*In the last number of the* Law Times, *page* 113, *in the letter on "Stamps," for* "advertisement" *duty, read* ad valorem *duty.*

We cannot undertake to return rejected communications. Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith. No notice can be taken of anonymous communications.

VOL. XIX.—No. 484.

THE LAW TIMES.

SATURDAY, JULY 10, 1852.

TO OUR READERS.

This being Election week, both for the convenience of our readers and of ourselves, we abbreviate the Leading Articles and other general matter, and take advantage of the pause to bring up a portion of the very heavy arrear of reports which the extraordinary industry of all the Courts during the last half-year has accumulated upon our table, and which we shall clear off as fast as possible; but three numbers of the Law Times in the week would not have enabled us to keep pace with the *eleven Courts* that have been actively at work during the last two months.

ADVOCACY IN THE COUNTY COURTS.

We have just seen a copy of the County Courts Improvement Act, and with great surprise we find a very important alteration in the "Advocates' clause," which must have been made in the House of Lords, after the Bill had been sent back by the Commons. The section now stands thus:—

10. And whereas by the said Act passed in the ninth and tenth years of her present Majesty it was enacted, that no person should be entitled to appear for any other party to any proceeding in any of the said courts, "unless he be an attorney of one of her Majesty's Superior Courts of Record, or a barrister-at-law, instructed by such attorney on behalf of the party, or, by leave of the judge, or any person allowed by the judge to appear instead of such party, but that no barrister, attorney, or other person, except by leave of the judge, should be entitled to be heard to argue any question as counsel for any other person in any proceeding in any court holden under that Act:" be it enacted, that the said last-recited enactment be repealed; and that it shall be lawful for the party to the suit or other proceeding, or for an attorney of one of her Majesty's Superior Courts of Record being an attorney acting generally in the action for such party, *but not an attorney retained as an advocate by such first-mentioned attorney*, or for a barrister retained by or on behalf of the party, on either side, but without any right of exclusive or pre-audience, or, by leave of the judge, for any other person allowed by the judge to appear instead of the party, to address the Court, but subject to such regulations as the judge may from time to time prescribe for the orderly transaction of the business of the court.

The words introduced at that latest stage of the measure were those which we have put in *italics*. It will be remembered that the Court of Q. B. some time ago expressed a very decided opinion that it was illegal for an Attorney to act as advocate retained by another Attorney, and that his only right to appear *in any* Court was *as Attorney for the party*. The new provision thus introduced converts the law, as pronounced by the Judges, into statute law; it does not make a new *law*, it merely confirms the *law* previously existing.

But it makes a considerable change in *practice*; for, notwithstanding the law, it was the universal *custom* of the Attorneys to give briefs to one another in the County Courts as well as in other inferior Courts. An Attorney able to talk conducted the case for the Attorney not so gifted with words.

The new provision in the County Courts Act, *expressly* forbidding such a practice *there*, cannot thus be tacitly set aside by the custom of the Profession. The County Court Judges will be *compelled* to take notice of it; and a contravention of it would probably cause the Attorney who did so to be struck off the rolls. As the law now *is*, an Attorney *must* conduct his own case in the County Court; or if he employs another to be an advocate for him, he must employ Counsel. If it be desired that the case shall be conducted by an Attorney, it will be necessary that *the client* shall retain (and for safety he should do so in writing) the very Attorney who is to appear in Court, and by him must the preliminary proceedings in the case be conducted. But we see no reason why it should not be competent for the Attorney, so retained by the client to be both Advocate and Attorney for him *in the particular case*, to employ the Attorney whose client the suitor is in other matters, as *his* agent, to assist him in getting up the case, so that the entire advantage of it may not go to the former.

Our readers must observe that this law is now actually in force, and act accordingly.

Undoubtedly in many instances very great inconvenience will result from the new provision. It is equally to be enforced in Courts where Counsel do and do not practise. Even if there be no Counsel, an Attorney cannot employ another Attorney to plead for him. He *must* conduct his own case in person. Our readers will understand the difficulty in which many of them will thus be placed. If it was necessary to declare by statute what is the law of advocacy by Attorneys, it should at least have been accompanied with the proviso, that it should be applicable only in such Courts as are attended by *four* Counsel at least, for a less number will not give to the suitor a fair choice of advocates.

Again we repeat our most anxious hope that, under no circumstances, will the Bar be tempted to take briefs in the County Courts but through the intervention of an Attorney. The new statute does not alter the rules of the Profession, it merely leaves to their sense of propriety that which had been improperly made a rule of *law*.

SOMETHING NEW.

We have received from Birmingham the following extraordinary document, which has been printed for circulation. We are informed that the place named as being the office of the Society, "34, St. Paul's-square," is the private residence of Mr. Kennedy, whose name appears as one of the counsel. Before we make any comment upon this, we desire to give to Mr. Kennedy, Mr. Grace, and Mr. Jones, an opportunity of publicly repudiating the document, if they can:—

MUTUAL LAW ASSOCIATION.

The object of this Society is to afford to Members the best legal advice and assistance without unreasonable charges.

Wills, Leases, Agreements, all kinds of Conveyancing, besides Court business, will be charged for on a system intelligible to the client, whereby the cost will be greatly diminished.

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(With power to add to their number.)
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Charles Rann Kennedy, Esq.
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Solicitors are attached to the Society, who will transact the business of their department upon regulated terms. One important feature of the system is, that members may have personal access to Counsel for advice.

Any householder, in Birmingham or the neighbourhood, may become a Member, entitled to the advantages of the Society, on paying 5s. a year.

Quarterly meetings will be held, whereof due notice will be given.

For all particulars apply to the Secretary.

Office—34, St. Paul's-square.

Birmingham, 1852.

GOSSIP OF WESTMINSTER HALL.

BY ONE OF THE BRIEFLESS.

An incident which occurred shortly [illegible] end of last Term will serve to exemplify [illegible] of business in the Common Law Co[illegible], before the motions were called on, [illegible] Campbell, C.J. took occasion to remark th[illegible] it to be known to the Bar that every mo[illegible] any point at all discussible, must be b[illegible]

the notice of the full Court, and not moved before a single Judge in the Bail Court, which remark, in plain English, means this: "We are in a very destitute condition indeed; business is at a dreadfully low ebb; and we must make much of what little business we have left."

Before these remarks are published the ceremony of dissolving Parliament will have been completed. In the words of the *Times*, the legal reforms that have been effected during its session "will procure it lasting and honourable mention in the books of lawyers and the mouths of suitors. It has extended the operation of the County Courts; at the powerful instigation of Mr. JACOB OMNIUM (well-bragged THUNDERER!) it has abolished the Palace Court; it has made that alteration in the law of evidence which enabled Dr. ACHILLI to oppose his single testimony to that of a host of witnesses; it has relieved the Court of Chancery by the appointment of two Lords Justices; it has abolished the office of Masters in Chancery; and has made various other extensive reforms in the administration of Law and Equity, the true value of which time alone can shew." These and other legal reforms have been effected, and whether they are to be considered as improvements time alone can indeed shew; but in Westminster Hall it is anticipated that the amount of "honourable mention" as to some of these measures to be found "in the books of lawyers," will be small indeed. The boasted extension of the County Courts may indeed find eulogists in future works by Lord BROUGHAM and Sir JOHN JERVIS, but the junior Bar will not join very loudly in chorus. It would be well if some self-styled reformers of these days would hold ever present to their minds these excellent words of the great Lord HALE:—"The business and amendment of the laws is a choice and tender business, neither wholly to be omitted when the necessity requires, and yet very cautiously and warily to be undertaken, though the necessity may, or at least may seem, to require it."

The poor "Masters of the Chauncerie;" and they too are doomed! Theirs is an ancient office, and respectable for many associations. Associates and assistants to the Lord Chancellor, at one time they used to sit in the House of Lords, as also did the king's counsel. I imagine that Doctor BARKLEY, that Master of Chancery who, "sitting in the parliament-house, upon occasion of speeche amongst the lords of certaine officers to have certaine priviledges, without askinge leave, got up, and entred into a speeche of desiringe, that the Masters of the Chancery might alsoe bee comprised in the sayed priviledge then on foote;" I imagine that stout upholder of the dignity of his office would have stared to see a Bill introduced for reducing both him and it into nonentities.

THE LEGISLATOR.

HOUSE OF LORDS.

LAW REFORM.

THURSDAY, July 1.—On the question that the Consolidated Fund Appropriation Bill be read a third time, Lord BROUGHAM rose and said that, having on the previous day recommended her Majesty's Government to issue a commission for the purpose of inquiring into the practice and jurisdiction of County Courts, he begged now to suggest further, that the frame of that commission should be similar to that which was issued last year on the subject of Chancery reform. He begged also to take that opportunity of expressing his regret that County Court judges were not enabled to act as magistrates in counties without any other qualification than that of their judgeship. He believed that great advantage would be derived from the justices in quarter sessions being enabled to avail themselves of the assistance of the County Court judges, in the same way as the magistrates in Ireland were enabled to avail themselves of the services of the assistant-barristers in that country. There were several things in the practice not merely of the local judicatures, but of the Superior Courts, which he hoped and trusted not many years, he hoped even not many months, would elapse before he saw a remedy applied to them. He particularly alluded to that most grievous omission in the practice of our Courts of Law whereby they were left without a public prosecutor. Nothing could be worse, he maintained, than the present arrangement, by which the judges performed the incompatible duties of both prosecutors and judges. This was a reform which it required no legislative measure to initiate. It merely required the direction of the Secretary of State and the consent of the magistrates. When he (Lord Brougham) held the Great Seal, in 1834, his noble friend, Lord Besborough (then Home Secretary), and himself, had arranged to introduce the matter gradually, and had intended to commence with the Central Criminal Court, but their arrangement, unfortunately, was not carried into effect. In many counties the clerk of the peace acted as public prosecutor, and in Yorkshire and Lancashire the magistrates were in the habit of employing the same counsel to perform the office of public prosecutor.—The MARQUIS of SALISBURY said, he could only repeat what had been said on the previous day by the noble earl at the head of her Majesty's Government, viz. that the subjects to which the noble and learned lord had called their attention should not be lost sight of.

THE NEW MILITIA ACT.—The New Militia Act, containing thirty-eight clauses, has been printed. By the 14 & 15 Vict. c. 32, all proceedings for, and relating to, the balloting or enrolment of militia men, stands suspended until the 1st of October next, subject to the power of her Majesty, by order in council, to direct proceedings before the expiration of that period, "And whereas it is expedient for the better fulfilling the purposes of the institution of the militia with as little disturbance as may be to the ordinary occupations of the people, that the laws for raising and regulating the militia should be amended." The Act proceeds to state that regulations may be made by the Secretary of State as to the officers of the militia. The number of private militia men is not to exceed 80,000, of whom 50,000 may be raised in the present year, and 30,000 in 1853, by voluntary enlistment. The bounty money is not to exceed £6, and the periodical payment or allowance is not to exceed after the rate of 2s. 6d. per month during the term of service for which the volunteer is enrolled. Where men cannot be raised by voluntary enlistment, her Majesty in council may order a ballot. Men not liable to the ballot after thirty-five years of age. The militia may be called out for training more than once a year. In case of inv[illegible] or imminent danger Her Majesty may raise t[illegible] militia to 120,000 men.

THE NEW CHANCERY ACTS.—The three new Chancery acts passed in the late session have been printed. The first, which received the Royal assent on the 30th ult. is "An Act to abolish the Office of Master in Ordinary of the High Court of Chancery, and to make Provision for the more speedy and efficient Despatch of Business in the said Court." This Act contains 61 clauses, working out the preamble, which declares that "proceedings before the Masters in ordinary of the High Court of Chancery are attended with great delay and expense, and it is expedient that the business now disposed of in the office of such Masters should be transacted by and under the more immediate direction and control of the judges of the said court." On the first day of Michaelmas Term (November 2), Masters Farrer and Brougham are to be released from their duties; and as the state of business shall allow, other Masters are to be released. The salaries are to be paid as compensation allowances. The second Act, which received the Royal Assent on Thursday last, is "An Act to amend the Practice and Course of Proceedings in the High Court of Chancery." There are sixty-seven clauses in this Act, which will take effect from and after the 1st of November next. This Act discontinues the practice of engrossing Bills on parchment, and writs of subpœna and summons are abolished. Printed bills are to be served. The third Act, which received the Royal Assent on the same day, is "An Act for the Relief of the Justices of the High Court of Chancery." The object of this statute, which contains fifty-six clauses, is to abolish certain fees and emoluments now paid to officers of the court for business transacted by them. The officers are to be paid by salaries, and the fees paid, until otherwise ordered, and after order made, the fees are not to be received in money, but by means of stamps. The Act, which will principally take effect from the 28th of October, abolishes certain offices, &c. for the benefit of the suitors.

PARLIAMENTS.—The following is a list of the duration of the fifteen Parliaments that have existed for the last fifty years.—

	Assembled.	Dissolved.
1.		June 29, 1802.
2.	November 16, 1802	October 24, 1806
3.	December 15, 1806	April 29, 1807
4.	June 22, 1807	September 29, 1812
5.	November 22, 1812	June 10, 1818
6.	January 14, 1819	February 29, 1820
7.	April 21, 1820	June 2, 1826
8.	November 14, 1826	July 24, 1830
9.	October 26, 1830	April 23, 1831
10.	June 14, 1831	December 3, 1832
11.	January 19, 1833	December 30, 1834
12.	February 19, 1835	July 17, 1837
13.	November 15, 1837	June 23, 1841
14.	August 11, 1841	July 23, 1847
15.	November 18, 1847	July 1, 1852.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

LORD CAMPBELL'S Act (14 & 15 Vict. c. 100, s. 11) was designed to meet the difficulty that arose in the famous case of the *Birds*. A question has now arisen upon that. By this Act, on an indictment for robbery, if the jury are satisfied that there was an assault with intent to rob, they might so find, and the defendant might be punished as if he had been convicted upon an indictment for an assault with intent to rob. But several clauses in the former statute impose different punishments in such a case, one section limiting it to three years' imprisonment and others extending it to transportation for life. In *Reg.* v. *Mitchell*, 19 Law T. Rep. 221, the question was whether transportation could be inflicted upon a conviction under the above section of Lord CAMPBELL'S Act. The Court of Criminal Appeal stated the law thus. Lord CAMPBELL said, "Where the robbery charged is of an aggravated description, the assault with intent to rob may be punished with transportation as an aggravated assault. If the indictment was for simple robbery it could not include such an assault as would justify that punishment."

FOREIGN DESERTERS ACT.—The new Act, to enable her Majesty to carry into effect arrangements made with foreign powers for the apprehension of seamen who desert from their ships has just been issued, and is in force. Her Majesty may, "by order in council, declare that deserters from foreign ships may be apprehended, and carried on board their respective ships." After the publication of such orders in the *London Gazette*, all magistrates are to aid in recovering deserters from the ships of foreign powers, and may apprehend them and send them on board. Further, it is enacted that "if any person protects or harbours any deserter who is liable to be apprehended under this Act, knowing or having reason to believe that he has deserted, such person shall, for every such offence, be liable to a penalty not exceeding 10*l.*; and every such penalty shall be recovered, paid, and applied in the same manner as penalties for harbouring or protecting deserters from British merchant ships." The Act is to be cited the "Foreign Deserters Act, 1852."

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

THE House of Lords, in *Macpherson* v. *Macpherson*, 19 Law T. Rep. 221, has laid down the following rule of construction for a will, and which the reader should note carefully, for it overrules and modifies materially a series of cases. It was here determined that where a testator directs his estate to be converted and laid out in a particular investment, without any special direction, to accumulate or add interest to capital, the tenant for life is entitled to the interest actually accruing from the moment of testator's death, though the investment so directed was not made.

In *Palk* v. *Skinner*, 19 Law T. Rep. 228, upon a traverse of the right of way in an action for obstruction, plaintiff proved enjoyment for twenty years; but during portions of the twenty years the servient tenement was held under leases for years exceeding three years. The user commenced antecedently to the granting of any of the leases, and no proceedings were taken by the reversioner within three years after the determination of such user to resist the plaintiff's action. It was held that there was evidence for the jury of the right claimed, and that sec. 8 of the Prescription Act applies only to cases where an enjoyment for forty years is relied upon as giving an absolute right, and not to cases where twenty years' user only is set up.

The new Wills Act is given in our last. It is very short, but we fear not very intelligible.

JOINT-STOCK COMPANIES' LAW JOURNAL.

WINDING UP.

A. by will devised his real estate to B. and appointed C. his executor, who received the dividends on

his share in a Joint-Stock Banking Company for many years. At the death of A. the company had no existing debts. Afterwards debts were incurred. D.'s name was placed on the list of contributories, but having shewn that he had administered the personal estate, the MASTER put B.'s name on the list as the devisee of A. He was held by the LORD CHANCELLOR to have rightly done so, because by 3 & 4 Wm. 4, c. 104, debts of every description are charged on the real estate of a testator; consequently, a future debt, arising out of a previous obligation, is a debt within its provisions. (*Ex parte Harmer's Devisees*, 19 Law T. Rep. 223.)

The case of *Ex parte Yelland*, 19 Law T. Rep. 224, was that of a shareholder in a company completely registered. Two shares were allotted to A. on which he paid the deposit, and his name was returned to the registry-office as a shareholder, but he never executed the deed of settlement. The deed provided that, immediately on its execution, &c. the party should assume the liabilities and privileges of a shareholder, but not before. Nevertheless he was held *to be* a contributory. He had made a contract which was binding in equity.

DIRECT BIRMINGHAM AND OXFORD. — On Tuesday a meeting in this matter was held before the Master in Chancery Brougham, to make a call on the members of the managing committee, amounting to 500*l*. each, to discharge the debts, and a further call of 250*l*. on each to defray the expenses of winding up; the total sum to be provided for, as set forth in the report of Mr. Hutton, the official manager, under both these heads, being about 10,000*l*. The call proceeds upon the principle just laid down by the House of Lords, in the appeal of *Hutton* v. *Bright*, the effect of it (which will now be the governing law in all these long vexed cases) being to make members of provisional or managing committees liable for such debts as they authorised to be contracted; but all members of provisional committees, whose cases are similar to that of Upfill, and who only took shares, are only to be held liable to the extent of the deposits on those shares, the Lords having left the question undecided as to whether the latter are to be liable to contribute their proportion for the expense of winding matters up. Acting upon this principle yesterday, his Honour Master Brougham, made the proposed call on all the members of the managing committee, with the exception of General Fitzgerald, Mr. Spottiswoode, and Major Amsinck, who are to be at liberty to shew cause against it at the next meeting, the Master observing, that the only way to deal with these difficult questions was upon the general principle of ascertaining whether, in connection with the constitution of these bodies, the members composing them gave sufficient authority, either direct or implied, to render them liable for expenses incurred. The parties on whom the call was to be made, would in every case have credit given them by the official manager for what they had already paid.

DIRECT WEST-END AND CROYDON.—A call of 50*l*. per share was made by Master in Chancery Tinney, to pay off the debts of this company. An application was made by Capt. T. Graves, a member of the provisional committee, accepting 100 shares, to be taken off the list of liability, on the ground that, having been abroad, he could not answer to his case in court. Mr. H. Harris, solicitor to the company, stated that, during the last two years the necessary legal notices had been received at Captain Graves's residence, and also by his agents, whereupon the Master refused the application with costs.

EASTERN COUNTIES AND SOUTHEND.—A call of 2*l*. per share has been declared by the Master in Chancery Sir W. Horne, to pay off a sum of 6,206*l*. declared by the official manager necessary to be provided for, giving credit to each contributory for the amount he has already paid.

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week]

Universal Gas Light Company.—Call of 3*l*. per share on 15th July.—Rose.

Tontine Life Assurance Company.—Call of 7s. 6d. per share on 28th July.—Horne.

COUNTY COURTS.

Summary.

THE *County Courts Improvement Act* is now before us, and it is in actual operation at this moment.

Originally it was an *Extension Bill*, for it contemplated giving a certain jurisdiction in Equity to the County Courts. That position of it was, however, expunged in consequence of the Reforms in Equity Procedure, with which it would have interfered, and therefore it is *not* now an *extension* Act, but only that which it is entitled, "*An Act to facilitate and arrange Proceedings in the County Courts*," and as a short title we have given to it the name of the "County Courts Improvement Act," by which we shall describe it for the future.

The two principal features of this measure we have already particularly introduced to our readers in leading articles, namely, the provision that gives costs to the Attorneys in the County Courts, and that which regulates the practice of advocacy there.

The *costs* section cannot be carried into operation until the five Judges are appointed to frame the scale of fees, and are approved by the Lord Chancellor. The Advocates' clause is now in force, and it is commented upon in a leading article in another column. The practitioners must therefore take care to make all their arrangements in accordance with the unexpected alterations it has introduced.

The other provisions of the new Act, which consists of nineteen sections only, merely permit appeals to be heard out of Term, and give the Judges power to make rules for regulating them; enable a Judge at chambers to give costs in cases of concurrent jurisdiction, &c.; permit the re-issuing of warrants of distress; give further protection to officers; empower the Queen to order Courts of Local Jurisdiction to be excluded from the jurisdiction of the County Courts; provide a more efficient audit of the clerks' accounts; limit, or rather extend, the amount of the salaries of the Judges to 1,500*l*. and of the clerks to 700*l*. per annum; enable the LORD CHANCELLOR to give retiring pensions to Judges; forbid Judges to practise at the Bar or as special pleaders, and direct that no clerk shall in future be appointed for more than one district; and establish a registry of County Courts judgments for sums above 10*l*.

All these are improvements, so far as they go, but they are only a portion of those that are required to make the County Courts as efficient as they should and might be made, and to which, before the next session of Parliament, we shall ask the attention of our readers, in hope to be as successful in promoting future improvements as we have been in promoting those now described.

THE LAWYER.

ENGLISH INSTRUMENTS SENT ABROAD.

I HAVE been informed that a written instrument prepared in England, and sent to be used (as evidence?) in a foreign court, requires to be written on one sheet of paper (stitching not being allowed); and that any clerical errors it contains must be verified by a magistrate or other officer of the law.

Will you, or any of your readers, favour me by stating the rule applicable in this case, by referring to an authority, by saying whether the sheets of any such instrument may be pasted together or not, and by naming the country or countries to which the rule applies? J. L.

THE MERCANTILE LAWYER.

Summary.

Lowndes v. *The Earl of Stamford*, 19 Law T. Rep. 227, was a question as to the apportionment of a salary. A. covenanted with B. to pay him 1,800*l*. a-year, half-yearly payments, so long as he should hold the office of manager of his estates. But if A. should revoke the appointment without just cause, to pay B. from and after such revocation 1,000*l*. yearly by half-yearly deposits. A. did revoke the appointment, *in the middle of one of the half years*, without just cause. It was held that B. could not recover a proportionate part of the half-year's salary which was claimed under sec. 2 of 4 & 5 Wm. 4, c. 22. It was not an office within the meaning of the statute, not being of a public nature, and no rent or payment issuing. "The time fixed by the statute when the apportionment is made recoverable is, when the entire of which such apportionment shall form part shall become due and payable. This contemplates a case where the party who has to pay will have to pay for the whole period to some one, and not a case where the payment entirely ceases with the determination of the interest of the person receiving the apportionment, and where the entire portion, of which this forms a part, never does become due and payable."

The case of *Rothschild* v. *The Royal Mail Steam Packet Company*, 19 Law T. Rep. 229, which involved the question as to the liability of carriers for loss of property stolen from them upon a railway, upon their undertaking to deliver, loss by Queen's enemies, robbers, and dangers *of the sea, roads, and rivers, of whatever nature or kind soever excepted*" has been decided by the Court of Ex. *against* the company of carriers. The exception was held not to include *theft*, but only robbery by violence. This is a very important decision, for if carriers intend to protect themselves against loss by *pilfering* they must introduce a special proviso for that purpose.

In *Micheson* v. *Nicoll*, 19 Law T. Rep. 229, the charterer of a vessel was held to be entitled to stow as many goods as the vessel can reasonably convey in her hold and other parts usually appropriated to cargo. If more is shipped, so as to occupy the cabin, the shipowner is entitled to freight for the excess at the current rate of the day *at the place of shipment*.

In *Bankruptcy*, it has been decided that the commissioner cannot grant a certificate of conformity under the arrangement clauses, unless the resolution and agreement have been carried into effect, and the creditors of the petitioning trader satisfied. (*Allcard* v. *Wesson*, 19 Law T. Rep. 230.)

It seems that many of the almanacs and pocket-books are in error with respect to the proper stamp upon a promissory note payable on demand. It was ruled in *Escrit* v. *Mason*, 19 Law T. Rep. 232, that they are subject to a 5s. and not to a 3s. 6d. stamp, as is generally understood.

ASSURANCE CHRONICLE.

THE value of the farming stock in England insured in the various fire offices throughout the kingdom in the year ending the 25th of December, 1851, was 54,935,053*l*. The amount insured in Scotland within the year was 4,069,308*l*.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Lord Chancellor has appointed Timothy Crosby, of Stockton, in the county palatine of Durham, gent. to be a Master Extraordinary in the High Court of Chancery.

COMMISSIONS SIGNED BY THE LORD LIEUTENANT OF CARDIGANSHIRE.—George Williams Parry, esq. and John Propert, esq. to be deputy-lieutenants.

J. M. Herbert, esq. judge of the County Court of Monmouthshire, has appointed, under the sanction of the Lord Chancellor, Horace Shepherd, esq. of Usk, clerk to the County Court of Tredegar, in the county of Monmouth, in the place of Richard Waters, esq. resigned.

GRAY'S-INN, July 7.—At a pension of the Honourable Society of Gray's-inn, holden this day, Reginald Robert Walpole, esq. was elected to the office of reader of the society upon the law of real property and conveyancing, devises, and bequests.

NEW SERJEANTS-AT-LAW.—On Wednesday last Mr. Ralph Thomas, of the Oxford Circuit, and Mr. R. Matthews, of the Northern, were called to the degree of Serjeants-at-Law, and sworn in before the Lord Chancellor.

LEGAL INTELLIGENCE.

The Lord Chancellor by the "Master in Chancery Abolition Act" being empowered to nominate conveyancing counsel to be the standing Conveyancing Counsel to the Court according to one of the provisions of this Act, enabling the Court of Chancery or a judge of the Court at chambers to act upon the opinion of conveyancing counsel in cases in which it has been usual for the Master to take such an opinion for his assistance on questions of title or on settlement of draughts, the Lord Chancellor has appointed the following gentlemen to fill those positions in the first instance—Mr. Brodie, Mr. Coote, Mr. Christie, Mr. Hayes, Mr. Jarman, and Mr. Lewin.

INCUMBERED ESTATES COURT.—The only sale yesterday was that of the estate of the Rev. Thomas Brady, consisting of a perpetual rent-charge of 64*l*. 12s. 3d. and the advowson and right of presentation to the rectory of Tomgrany, with 6,995 statute acres of land in the county of Clare. The net profit rent was estimated at 1,135*l*. per annum, but according to the Commissioners' valuation, it was rated at a much higher figure, namely, 1,728*l*. The gross sum realised by the sale of the entire property sold, subject to a jointure of 462*l*. a year for the life of Mrs. Anne Brady, aged fifty-six years, was 20,440*l*. equal to eighteen years' purchase on the net rental, but nearly one-third less, assuming the Commissioners' valuation to be the correct one.

DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES."

		AUCTIONEER.	WHERE ADVERTISED.	PROPERTY.
Tuesday, July 13	Mart.	Winstanley.	July 3, p. 60	Residence of C. Woodcock, esq. St John's-wood
Thursday, July 15	Ibid.	Dean, W. H.	June 26, p. 56	Freehold Dwelling-houses, &c. Saffron-hill
Wednesday, July 14	White Horse Inn, Great Yarmouth.	Butcher.	July 10, p. 64	Freehold Property, known as Caister Hall Estate, within 3 miles of Great Yarmouth.
Thursday, July 15	Mart.	Moore.	Ibid.	House and Shop, 4, Mile-end-road
"	Ibid.	Do.	Ibid.	Freehold Land, with Crop of Barley, Barking
	Ibid	Do	Ibid.	Eight Houses, Terrace-place, Stepney
	Vere Lodge, Old Brompton.	Furber.	Ibid.	Vere Lodge, Old Brompton
In July	Mart.	Winstanley.	July 3, p. 60	Estates in the County of Hants
	Ibid.	Do.	Ibid.	Freehold and Copyhold Prop near Brentford

PROCEEDINGS OF LAW SOCIETIES.

SOCIETY FOR AMENDMENT OF THE LAW.

The annual dinner of this society was held on Saturday. Lord Brougham in the chair. The following are passages from the speeches:—

LOCAL COURTS.

Lord BROUGHAM said he might draw their attention, specially, to the subject of local judicatures, on which they now had six or seven years' experience,—not a long experience certainly, but one on which ample reliance might be placed from the wide surface over which during that period it had been spread. The great, invaluable, and necessary light of experience was indispensable to any safe and salutary reform of the legal system, and having now had the benefit of that light let their aim be to correct existing defects, and do all that could be done to correct and extend the local judicatures. In "bringing justice home to every man's door," they ought not to depart so far from a due centralization as to run the risk of injuring the general system of our jurisprudence or ruining the profession of the law, and one of the most important and difficult inquiries which would be intrusted to that commission, which he hoped to see issued on the subject would be to reconcile the due distribution of local judicatures with the general interests of our jurisprudence, and the welfare of that Profession with which, as supplying the judges of the land, Lord Denman in his letter had well observed, the interests of the community at large were bound up. Between the interests of the Bar and those of the suitors God forbid that there should be any hesitation, but he believed that by improving the proceedings of the Superior Courts both suitors and the Profession would be great gainers, and no sacrifice of either to the other would be required. Whatever improvements, however, might be effected in this way, he held it to be impossible to dispense with local courts.

TRANSFER OF LAND.

Mr. J. STEWART, whose name was coupled with the toast of "the Free Transfer of Land," in acknowledging the toast, said that that question had received a very considerable accession of strength from the labours of the present Parliament. The Act for the Enfranchisement of Copyholds was a very important measure, and might now be regarded as settled by the deliberations of the committee of the House of Lords on principles which secured a complete and satisfactory adjustment of the whole question. Those principles were applicable to freeholds as well, for they had all been striving to obtain a shorter form of conveyancing. While a sixty years' title to land was requisite, the number of purchasers must be comparatively small; and if the title were shortened the number of purchasers must be proportionally increased. The Copyhold Enfranchisement Bill had shewn that this could be done. While the purchase of land was surrounded by such enormous expenses as was at present the case, the value of the land must suffer proportionally; and on this point he complimented the Lord Chancellor for having inserted a clause to tax and moderate the charges connected with copyhold enfranchisement. A similar provision ought to be made with reference to the transfer of freehold property. Consols were now at thirty-three years' purchase, while land in the most favoured situations was only at thirty years' purchase. Now, he would venture to ask if the transfer of land was placed on a proper footing it would raise its value to forty years' purchase ten years hence? Why should land across the Channel be at forty years' purchase when in this favoured country it stood at thirty, and, though a better and safer investment, was under the price of Consols? The improvements which he advocated would not only increase the value of his property to the owner, but benefit all classes connected with the soil, down even to the agricultural labourer.

THE GAZETTES.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for Dividends.

Chadwick, W paper manufacturer, first, 1s. 8½d. Pott, Manchester.—*Elliott*, C. W. grocer, first, 2s. 6d. Groom, London.—*Hatch*, J. J. wholesale furrier, first, 2s. 8d. Groom, London.—*Jones*, E woollen draper, first, 2s 6d. Stansfeld, London.—*Keele* and *Budel*, merchants, first, 1s. Graham, London.—*Nerineckx*, L. J. laceman, first, 9d. Groom, London.—*Northover*, R. lint manufacturer, third, 9d Graham, London.—*Sharp*, W. merchant, first, 6d. Turner, Liverpool.—*Troughton*, E. J merchant, 5d; on account of first div. 5¾d. Whitmore, London.—*Woolf* and *Lyons*, umbrella manufacturers, first sep. of Lyons, 17s. Stansfeld, London.

INSOLVENTS' ESTATES.

Berry, D retailer of beer, first and final, 3d. Apply at the County Court, Huddersfield.—*Hoyle*, E innkeeper, first and final, 1s. Apply at the County Court, Huddersfield.—*Heppenstall*, G retailer of beer, first and final, 2s 10d. Apply at the County Court, Huddersfield.—*Howard*, T grocer, first and final, 2s. Apply to T. C. Hall, official assignee, Queen-st. Deal.—*Re*[illegible] R. lieutenant, R N. half pay, 2s 10¼d. Apply at the County Court, Newton Abbot.—*Ward*, F commission agent, 9s 8d. Apply to Mr. T. D Keighley, solicitor, Basinghall-st.—*Woodruff*, W. T. baker, first and final, 2s. 3d. Apply to T. C. Hall, official assignee, Queen-st. Deal.

Bankrupts.

Gazette, July 6.

BASKETT, JAMES RICHARD, corn factor, Cardiff, Glamorganshire, July 19 and Aug 18, at twelve, Bristol. Off as Acraman. Sol Bevan, Bristol. Petition, June 28.

BLUCK, JAMES, wine merchant, Bucklersbury, City, July 14, at twelve, and Aug 18, at eleven, Basinghall-st. Off as Graham. Sols Gregson and Co. Angel-court, Throgmorton-st. Petition, July 1.

CORKIN, ARCHIBALD, watchmaker, Oswestry, Shropshire, July 20 and Aug 11, at half past eleven, Birmingham. Off as Christie. Sols Davis, Coventry; Weeks, Cook's court, Lincoln's Inn; and Hodgson, Birmingham. Petition, May 28.

FISHER, BENJAMIN, currier, Gloucester, July 19 and Aug. 16, at twelve, Bristol. Off. as Miller. Sols. Smith, Newnham, Gloucestershire, and Bridges, Bristol. Petition, July 3.

KNIGHT, SAMUEL, cheesemonger, Fore-street, Cripplegate, July 16, at one, Aug 16, at twelve, Basinghall-st. Off as Whitmore. Sols Messrs Linklater, Sise-lane, Bucklersbury. Petition, July 5.

PALMER, EDWARD, maltster, Ware, Hertfordshire, July 20, at one, Aug 17, at twelve, Basinghall-st. Off as Edwards. Sol Nind, Clement's lane, Lombard-st. Petition, June 9.

ROBINSON, JOHN, wholesale clothier, Nassau-place, Commercial-road, and Cannon-st.-road, July 14, at one, Aug 18, at twelve, Basinghall-st. Off. as Stansfeld. Sols Messrs. Linklater, Sise-lane, City. Petition, July 3.

Gazette, July 9.

BRITTON, CHARLES, chemist and druggist, Birmingham, July 20 and Aug 19, at half-past eleven, Birmingham. Com. Daniell. Off as Christie. Sols Christian and Jones, Liverpool, and Hodgson, Cherry-st. Birmingham. Petition, July 3.

HARR, JULIUS, jeweller, Liverpool, July 21 and Aug. 16, at eleven, Liverpool. Com. Perry. Off. as. Cazenove. Sols. Dodge, 3, Union-court, Castle-st. Liverpool. Petition, July 6.

HASWELL, ANN, milliner, Bath, July 20 and Aug 17, at eleven, Bristol. Com. Hill. Off. as. Miller. Sol. Hellings, Bath. Petition, June 29.

JACKAMAN, HENRY, builder, July 20 and August 19, at half-past eleven, Birmingham. Com. Daniell. Off as Whitmore. Sol. Hodgson, Cherry-st. Birmingham. Petition, July 7.

PACE, ROBERT, ship owner, Liverpool, Aug. 2 and 17, at eleven, Liverpool. Com. Perry. Off [illegible] Sols Harvey, Falcon, and Harvey, Castle-st. Liverpool. Petition, May 4.

PADGETT, SAMUEL, draper, Preston, July 23 and Aug 13, at eleven, Manchester. Off. as Mackenzie. Sols Sale, Worthington, and Shipman, Manchester. Petition, July 1.

PERRY, JOSIAH, and BROADHURST, WILLIAM KNIGHT, earthenware manufacturers, Fenton, Staffordshire, July [illegible] and August 9, at half past ten, Birmingham. Com Balguy. Off as. Whitmore. Sols Messrs. Clarke, Longton, Staffordshire; and Motteram, Knight, and Emmet, Bennett's-hill, Birmingham. Petition, June 29.

RICHARDS, THOMAS WEBBER, linen draper, Goswell-road, July 17 and Aug. 19, at one, Basinghall-st. Com Fonblanque. Off as. Stansfeld. Sols Hardwick, Davidson, and Bradbury, Weavers'-hall, Basinghall-st. Petition, July 3.

SCOTT, WILLIAM, clock and clock-case maker, 58, Percival-st. Clerkenwell, July 20, at half-past one, Aug. 23, at eleven, Basinghall-st. Com. Holroyd. Off as. Edwards. Sol. W. R. Buchanan, 8, Basinghall-st. Petition, July 5.

SMITH, GEORGE, flax spinner and patent thread maker, Leeds, July 29 and Aug. 20, at eleven, Leeds. Com. West. Off. as. Young. Sol. Shackleton, Leeds. Petition, July 6.

SPIVEY, JAMES WOODHOUSE, cloth merchant, Huddersfield, Aug. 3, at twelve, Aug. 24, at eleven, Leeds. Com. Ayrton. Off. as. Hope. Sols. Bond and Barwick, Leeds. Petition, July 1.

TIMOTHY, JOHN, flour and provender dealer, baker and beer-house keeper, Liverpool, July 21 and Aug. 16, at eleven, Liverpool. Com. Perry. Off. as. Morgan. Sol. Taylor, 5, Wellington-buildings, South Castle-st. Liverpool. Petition, July 6.

Assignments for the Benefit of Creditors.

Gazette, June 29.

Atkins, J. shoe maker, Upper East-st. Southampton, June 4. Trusts. G Davis, Fish-st.-hill, and R. Muckleston, Great Dover-st. Southwark, shoe manufacturers. Sol. J. H. Wright, Swithin's-lane.—*Campbell*, A. draper, Dudley, Worcester, June 7. Trusts. J. Campbell, draper, Dudley, J. Shannon, warehouseman, Walsall, and T. Hunter, Manchester warehouseman, Manchester. Sol. W. Barns, Dudley.—*Gilmour*, D. E. printer, Winchester, June 4. Trusts. D. Kidd, wholesale stationer, Fleet-st. and T. Jolland, publisher, Poultry. Sol. R. W. Simonds, Winchester.—*Grove*, H. victualler, Hat and Feathers, Gravel-lane, Southwark, June 7. Trusts. F. L. Bland, gent. Park-street, Southwark, and O. F. Esse, gent. Vine-st. Bloomsbury. Sols. Marson, Dadley, and Marson, Anchor-terrace, Southwark.—*Guest*, R flour factor, Manchester, June 16. Trusts. J Miller, clerk, Manchester, and J. Lofthouse, accountant, Broughton. Sols. J. and B. Whitworth.—*Hissey*, T. draper, Wantage, Berkshire, June 21. Trusts. J H. Ansell, banker, Wantage, and W. Stephens, warehouseman, Saint Martin's-le-Grand. Sols. W. Mardon, Newgate-st.; W. Ormond, Wantage.—*Jones*, H. A cheesemonger, Commercial-place, Old Kent-road, June 23. Trusts. J. Freeman, jun. wholesale cheesemonger, High-street, Southwark, and J. Jennings, butter salesman, Newgate-st. Sol. C. Weilborne, Duke-st London-bridge.—*Mossman*, T. linendraper, Welwyn, Hertfordshire, June 14. Trust. T Shepperson, warehouseman, Cheapside. Sol T C Allin, Angel-court.—*Newman*, H. draper, Pimlico, June 3. Trusts S Wreford, Aldermanbury, and J F Pawson, St Paul's Church-yard, warehousemen. Sols. Sole, Turner, and Turner, Aldermanbury.—*Scholes*, G. B. tailor and draper, Manchester, June 8. Trusts. D. Percival woollen draper, Manchester, and J. Brez, accountant, Chester. Sols. Claye, Welsh, and Claye, Manchester.

Gazette, July 2.

Barton, J miller, Benenden, Kent, June 29. Trusts T Wightwick, gent. T. Kingman, butcher, and J. Morris, collector of rates, Benenden. Sol. W. G. Mace, Tenterden.—*Branson*, J. clothier, Ely, Cambridgeshire, June 21. Trusts J Sykes, Little Tower Hill, and J. R Bousfield, wholesale clothier, Houndsditch. Sol. S. Prentice, Whitechapel-road.—*Franklin*, M. L fringe seller, Shudehill, Manchester, June 4. Trusts. H Woolf, boot and shoe manufacturer, Houndsditch; and A. Baumann, cap manufacturer, London Wall. Sol H. Harris, Moorgate-st.—*Goodman*, F shopkeeper, Dunstable, Bedfordshire, June 1. Trust. J. Field, straw-bonnet manufacturer, City. Sol. E. C. Seaman, Pancras-lane.—*Harrison*, J. boiler maker and ironfounder, Derby, June 26. Trusts. T. Fountain, wine merchant, W. G. Wheeldon, corn factor, and T Clarke, corn factor, Derby. Sol. F. Baker, Derby.—*Milner*, J. currier and leather cutter, Newcastle-upon-Tyne, May 1. Trusts. H. Angus, Newcastle, and J. R. Proctor, North Shields, tanners. Sol. G. Bownas, Newcastle.—*Parker*, J. draper, grocer, and clothier, Castle Donington, Leicestershire, June 5. Trusts. J. Swain, provision merchant, and J Crofts, hosier, Leicester. Sol R. and G. Toller, Leicester.—*Roofe*, Mrs. S. boot and shoe maker, Colchester, Essex, June 18. Trust. R. Sanders, tailor and draper, Colchester. Sols Smythies and Goody, Colchester.—*Sayce*, J. tailor, Cornhill, June 22. Trusts. T Jones, Vigo-st. Regent-st. and O. Roberts, woollen drapers, Marylebone-st. Sol. O. Richards, Warwick-st. Regent-st.—*Taylor*, H. B. lamp lustre cut glass manufacturer and oil merchant, Piccadilly, June 30. Trusts. F Bacon, gas fitter, Elizabeth-st. Eaton-square and H. Bowen, poulterer, George-st. Portman-square. Sol A. S. Edmunds, South-square, Gray's-inn.—*Wellsman*, J. farmer, Kentford, Suffolk, June 23. Trusts. J. Isaacson, auctioneer and surveyor, Clare; and J. Wilson, shop keeper, Gazeley. Sols. Isaacson, Gillson, and Button, Newmarket.—*Wigg*, G wine merchant, Fish-st.-hill, City, June 5. Trusts. G. H. Child, wine importer, Mark-lane; A. J Vieira de Magalhaens, wine merchant, Fenchurch-st.; and G. Daille, wine merchant, Mark-lane. Sol. J. Butler, Tooley-st.

Partnerships Dissolved.

Gazette, June 29.

Barron, J sen and jun and T. *Rylands*, B *Tillotson*, J. and J[illegible] *Wilson*, J. glass bottle manufacturers, Mexborough, June 24. Debts paid by Barron and Sons.—*Braham*, H. J and L. opticians, Bristol, June 24. Debts paid by L Braham.—*Cheesebrough*, J and *Steel*, S. lime-burners, Knottingley, June 22. Debts paid by Cheesbrough.—*Chesneau*, A. *Worswick*, W. and *Osborn*, W. H. oil merchants, Leicester, June 24. Debts paid by Worswick.—*Cleaver*, J and *Ellis*, J. drapers and general shopkeepers, Pembroke, June 18. Debts paid by Cleaver.—*Greenwood*, John, sen. Robinson, John, jun. and James, millers and corn merchants, Burnley, as respects James Greenwood, May 12. Debts paid by remaining partners.—*Hammond*, R and J. furniture dealers, &c. Bell-yard, Lincoln's Inn, and Chancery-lane, June 25.—*Huntsman*, R. and *Corfield*, D. manufacturing chemists, Thrawl-st. Spitalfields, June 24.—*Matthews*, R. H. *Walker*, T. and *Hope*, G. C. surgeons, Lower Seymour st. June 23.—*Shannon*, T. and *Welch*, W. manufacturers, Newton-heath, near Manchester, May 1. Debts paid by Shannon.—*Simpson*, T. and *Gilbert*, A. booksellers, stationers, and printers, Walsall, June 24.—*Skelton*, A. and T. stone delvers, Mount Tabor, near Halifax, June 26. Debts paid by T. Skelton.—*Taylor*, S., M. and A. milliners and dressmakers, Leeds, as regards S. Taylor, June 15.—*Taylor*, T. and *Williams*, J joiners, builders, and general contractors, Manchester, June 19.—*Waterhouse*, J. and *Midgley*, J. W. worsted spinners, Newsholme, Keighley, June 24. Debts paid by Midgley.

CONTENTS.

To Readers and Correspondents.

"D. C."—*The* ad valorem *stamp.*

"J. O."—*The case sent will appear in* The Magistrate. *Here we can only report cases that are* authorities, *and citable as such*

"STUDENT."—*The publication of "The Advocate" is delayed until the elections are over.*

"A CLERK."—*Yes. A new edition, introducing the alterations made by the recent statute, of "Cox and Lloyd's County Courts Practice," is in the press.*

The queries of "J." "R. S." *and* "Sigma" *are on points of abstract law, and not on the* practice *of the Profession.*

"Subscriber," "D." "Reader," "An Admirer," "One, &c." "D. L." "J. F." "R. M. D." *Thanks for the kind expressions of regret. Defeat was due to the most shameless breach of promises—thirty-one in the whole—how produced will be readily imagined. Should a vacancy occur within the knowledge of our friends we shall be ready to supply it at any moment.*

"O. P."—*It was an oversight. It is desirable, but not necessary, to deliver them within the period named.*

THE LAW TIMES.

SATURDAY, JULY 17, 1852.

LAW REFORMS.

WE hope we have given the best proof that the LAW TIMES is friendly to rational Law Reform, by not only framing and proposing some not unimportant improvements in the law, but by procuring them to be proposed to Parliament in the positive form of Bills, and obtaining for them the sanction of the Legislature. But we are equally desirous that there should be no misunderstanding as to the *kind* of Law Reform we are desirous of promoting. We are for reform, not for destruction. Recognising the Conservative *principle* in this, as in other duties of statesmanship, we are averse to many of the wild projects that are put forth by persons of more enthusiasm than judgment, and whose schemes, if carried out, would certainly annihilate the Profession, and be of very questionable advantage to the public.

Now, we do not, and cannot, forget that the LAW TIMES is the Journal and Advocate of *the Profession.* It is our duty and our vocation to protect and promote the interests of the Profession, and to oppose resolutely whatever is calculated to inflict upon it material injury. The Lawyers are not called upon to commit suicide. They are no more to be expected to immolate themselves upon the altar of that very ungrateful deity, the public, than any other class of men; nor are we, as representing the Lawyers, and watching over their interests, bound to do more than to advance whatever *improvements* may be made without any serious injury to them. The public interests have abundance of advocates and protectors in the entire newspaper press of the country, and to their zealous, and often not very unscrupulous, advocacy we may safely commit them. Projects of Law Reform are broached now, and supported in high quarters, the inevitable consequences of which, if successful, would be to destroy utterly the present *status* of both branches of the Profession. All such schemes will find no favour here. *We* shall steadily promote *practical* improvements in the law, as we have done already, but with equal steadiness we shall resist those measures of destruction which would sweep away the Law and the Lawyers together—a consummation, doubtless, eagerly desired by a considerable portion of the country, but which ought not to find favour and support from any who have regard for the well-being of the Profession.

As Law Reforms of all kinds will for a long time to come continue to be projected alike by dreamers and schemers and by practical men, we are desirous that it should be well understood by all our readers what is the course we purpose to take, the principle that will guide us in considering propositions and the objects we shall keep in view in all that we support or oppose; that is to say, *improvement,* not revolution; and the *preservation* and *advancement* of the Profession, and not its *destruction.*

THE PROFESSION IN THE LOCAL COURTS.

THE extraordinary document from Birmingham which we published last week appears opportunely, to give warning of the danger that will arise from any departure by the Bar from those rules that have hitherto governed its relationship with the other branch of the Profession. We have protested, and we shall continue to protest, against the project that has been mooted, and even now, we believe, is in progress, for setting aside the professional law that forbids a Barrister to accept a brief without the intervention of an Attorney; and if evidence be demanded of the sources of our alarm, we could not produce more startling proof than that afforded by the prospectus of the cheap Law Society sent to us from Birmingham.

Two gentlemen have chosen to emancipate themselves from obedience to the established code of the Profession; they have *done* what others are now preparing to do; they have dispensed with the instructions of an Attorney. It was obvious that they could not stop there. In the absence of an Attorney, they *must* do a great portion of the Attorney's work; they *must* take the evidence from the witnesses, and set it down upon paper; they must listen to the story of the client, and take a note of *that.* Call it by what name they will, this is *a brief;* not the less so, because inartistically drawn, and not quite so full, accurate, and instructive as if it had been prepared by a skilful Attorney. The ice broken, it is easy to fall through. Having thus set aside the Attorney in one of his functions, why not in others? *Facilis est descensus Averni.* The boundary once removed that separates by an unmistakeable line the duties of Barrister and Attorney, who shall set up another? Every man must be to himself his own guide, and will place the barrier just where it suits his own convenience. Some may possibly stop at the mere receipt of *a brief* from the suitor in person; others, less scrupulous, will take the statements of the suitors and witnesses, and prepare their own briefs; others will go a step or two further, and at last there will be found men who will even have the effrontery to get up societies for cheap law to be done by contract at so much per week! *Ecce signum!*

What has been done at Birmingham will now be done everywhere, if the Bar should become localized, and enter into *competition* with the Attorneys, instead of acting with them upon the old terms of relationship. Removed from the great centre, where the professional check operates most forcibly, they will first cease to feel, and then come to disregard it. In the fierce struggle for existence, the less scrupulous will begin, and the more delicate minds will be tempted, nay, almost compelled to follow the example. If, for instance, there be six or eight Barristers at Birmingham forming a *local* Bar in the County Court and Bankruptcy Court, and they should resolve to adhere strictly to the rules of the Profession, and *not* to advise a client or accept a brief, except through the intervention of an Attorney, and two of their body, setting these rules at defiance, announce that they will see clients and conduct cases on the instructions of the party, without an Attorney, it is certain that the public will go to the cheapest shop for their law, and the *regular* practitioners will be deserted for the offices of the Society whose prospectus we published last week. In such case what are the men to do by whom the rules are observed? They lose their business certainly. Few purses of Barristers are deep enough, or their tempers firm enough, to endure the trial; they must meet their rivals on equal terms, or yield to them. It will not be difficult to foresee the end of the conflict. All will be degraded together.

We are confident that the localization of the Bar will have the effect of lowering its character, even under the most auspicious circumstances. But if this change in its distribution be accompanied with a change of practice in its relationship to the Attorneys, it will be irretrievably ruined. A low-class Barrister is a lower class of man than the low-class Attorney. The greater the height from which a man falls the deeper his plunge. Reputation and *status* once forfeited cannot be recovered, and the lost man is careless about the limits of his perdition. In this, as in most other affairs of life, it is the *first* step that is fatal. Blot out the existing barrier, and before a new one can be erected the flood will have poured in, and the Bar, as an honourable and honoured institution, will be swept away.

And whatever lowers the position of one branch of the Profession will injure the *status* of the other. The Bar cannot be degraded without the Attorneys being affected, nor could the Attorneys be lessened in esteem without the Bar partaking of the popular odium. Both, therefore, have the deepest interest in preserving from invasion on either side the privileges, duties, and functions of both. Doubtless, the Bar is doomed to a mighty change, and a diminution that will almost be an extinction. If this fate be inevitable, let it be endured with dignity, but let it not strive to maintain a dishonoured existence by invading the province of the Attorneys. If it must die, let it be with decency, folding its robe, and looking manfully into the face of heaven.

A COMMISSION FOR THE COUNTY COURTS.

AT the close of the Session Lord BROUGHAM suggested to the Government the propriety of issuing a commission similar to those which have overhauled the Procedure in the Equity and Common Law Courts, for the purpose of investigating all *local* tribunals, with a view to the consolidation of the law that regulates them, and the improvement of procedure thereon.

Such an inquiry would be most useful, and could not fail to yield valuable fruit. The County Courts were an experiment; they have succeeded to some extent; but they are still capable of immense improvement. The col-

lected experience of the Judges, the officers, and the practitioners, could now provide the necessary materials for extending the jurisdiction of the County Courts to many matters in which a cheap and speedy process is necessary for the ends of justice, and for improving the procedure there in divers particulars in which it is now very defective. And not only would the County Courts be within the purview of such a commission; it would inquire also into the uses of Quarter Sessions, and if they are worth retaining, now that there is nothing left to them but criminal business, which might so easily and advantageously be transferred, the lesser offences to the County Courts, and the larger ones to the Judges of Assize, taking more frequent circuits.

If it should be deemed desirable, and few would seriously question its propriety, to make the County Courts a perfect system of local tribunals, with power to determine disputes of *all* kinds, and to administer justice in *all* matters with no other limit than *value*; if they are to have a jurisdiction in Bankruptcy, in Equity, in Criminal Law, there must be more Judges; the officers must be better paid and confined to their official duties; the whole system must be improved, and instead of stationary Judges they should, as in the Superior Courts, be sent from London to the County Courts circuits. Once let it be a recognised fact that the County Courts *are* the local tribunals of the land; that they are *established* now beyond all possibility of overthrow; that opposition to them is a waste of time and labour; and that the wise course will now be to make the best of them, and it will not be difficult to suggest many ways in which they might be improved and extended so as to do good service to the Profession as well as to the public.

We trust, therefore, that Lord BROUGHAM's hint will be taken, and such a commission issued as he has suggested. It is a wide and interesting field for inquiry, and great benefit must result from its labours.

THE LAW DIGEST.

THE new Part of WISE and EVANS's *Law Digest*, containing all the cases decided during the last half-year, so arranged that the practitioner can find in a moment what is the latest law on any subject, is now ready. Great exertions have been made to bring it out in time for the Assizes.

CORRUPT PRACTICES AT ELECTIONS.

THE *Times* has circulated a string of questions which it asserts may be put to Members on an investigation into alleged bribery. But it was not stated that this sort of investigation could only be pursued under certain circumstances, and hence a general impression has been produced that there has been some alteration in the ordinary law of Election Petitions, by which the detection and punishment of corruption will be greatly facilitated. As this is quite an error, we hasten to set our readers right upon it, lest they should lead their clients into a difficulty.

The Corrupt Practices at Elections Act, which has just become law, makes *no alteration* in the law of Election *Petitions*, by which alone the returns can be questioned and Members unseated or seated. The effect of that statute is merely to institute a searching inquiry into a borough reported as guilty of general corruption, with a view to its disfranchisement. It is only upon *such* an inquiry under this statute that the questions published by the *Times* could be put to a Member or Candidate. Under an Election *Petition*, the procedure remains as before, with *one* important exception—that *now*, by the new Law of Evidence Act, the Sitting Members are "competent and compellable" to be witnesses against themselves.

But their examination will be subject to all the rules of evidence. They might, if they dare to do so, claim the privilege of refusing to answer questions that would make them liable to prosecution, and a wide field for ingenuity will be opened in the devising of questions the replies to which would not endanger the witness, and yet produce the desired revelations. It is quite certain that if the Member were to claim the protection, a very small proportion of the published queries could be put to him. He may be asked *what* money he spent, but not *how* he spent it. The greatest advantage will arise from the ready proof of *agency*, which will be thus supplied. It must be remembered, too, that still the privileged communication between attorney and client will be an obstacle as great as ever it was to the discovery of the *very* truth.

The Law of Evidence will not be perfected until all evidence given in a Court of Justice is protected and treated as a privileged communication, so far that it should never be used against the person giving it, and then the claim of individual witnesses for protection, by which so much truth is now concealed, might be abolished, and no other exemption from answering allowed than in such matters as the law properly permits to be *privileged*, — actual communications between husband and wife, attorney and client, doctor and patient, and a few others which are necessary for the conduct of the business of life and the intercourse of man and man. We subjoin the string of questions suggested by the *Times*, as they may be useful hereafter:—

1. Who were your agents at the election? 2. Will you swear that there were none other employed by you or by your solicitors? 3. Who were your solicitors, and what clerk of theirs attended the election? 4. Will you swear that A. was not your agent? 5. Do you not know that A. was actually engaged in promoting your election? (All particulars as to acquaintance and connection with A. will be inquired into.) 6. Will you swear that you do not believe that A. acted for you? 7. Have you never spoken of him to any one as either employed, or at least acting on your part in the election, or immediately previous to it? 8. Do you believe that B. never received any money, or any promise of money, to act for you, from your committee, or from any one else taking part for you? 9. Who were your committee? 10. Will you swear that you never spoke to or communicated with any of your committee during the election, or during the imme- [...]1. How did you happen to stand for the borough? 12. With whom did you communicate on the subject before agreeing to stand? 13. Who besides were present? 14. Was anything, and what, said about the expenses? 15. How much did you undertake to give, or to become answerable for? 16. Did any person, and who, on your behalf, communicate with persons having interest in the borough? 17. What passed between you and that person before the communication? 18. What report did he make to you after the communication? 19. What agreement or undertaking was finally come to? 20. Will you swear that nothing further was said or written about expenses? 21. How much did you suppose the legal expenses to be? 22. What were the particulars stated of those expenses? What steps were taken by you, or directed to be taken, in order to ascertain whether or not the expenses stated to be required were real expenses? (All the details of the alleged expenses will then be minutely gone into.) 23. Will you swear that you did not believe more was paid by some persons on your behalf than the sum you had agreed to pay? 24. Will you swear you had no suspicion that more was paid by some one, and by whom? 25. How much have you paid in all? 26. Has any more been demanded, and by whom? Do you not believe, or at least suspect, that some such demand has been made on your solicitor, or agent, or on your committee, or on some person connected with you in some way? 27. Will you swear that you do not apprehend or expect to have more to pay? 28. Who were your bankers before the election? 29. Had they any correspondent in the borough? [An examination of the banker's account, and of each item which could by possibility have relation to the election, will then be gone into, and the party will be called on to explain every particular, and state his knowledge, his belief, his suppositions, his suspicions, his conjectures, as to each item, and the proceedings of the persons found to have received money, and as to his knowledge of and connection with those persons.] 30. Do you believe, suppose, conjecture, or suspect that any of your committee or any other person taking an interest in your election ever promised any one that you would use your influence to obtain any place or favour from the Government for him or any of his relations? (This question will be divided into several, of course.) 31. Have you been applied to, either immediately before or since the election, for your influence to obtain any place or favour for persons connected with the borough? 32. Do you believe, suppose, conjecture, or suspect, that any one, and who, gave or promised any money or other valuable thing to any person connected with the borough, with a view to secure your election? (Question divided as in 30.) 33. Have you, or has any one connected with you, or acting in your interest, promised to pay any money on account of the election after the trial of the petition is over? 34. Has there been any undertaking of this kind come to by you or your friends? 35. Do you not believe or apprehend that you will have to pay money on account of the election after the trial is over? 36. Do you not believe, conjecture, or suspect, that some person on your behalf has been called on since the election to pay for your expenses connected with it? 37. Do you not believe or suppose that some person has engaged to pay, or come to an understanding that he will pay, something on your account after the trial is over, and who?

ENFRANCHISEMENT OF COPYHOLDS.

THE Act for effecting this object was much altered in the House of Lords, and all the changes were accepted by the Commons. The following is an outline of the new statute. It will be seen to differ materially from the scheme that was sent up from the Commons, of which a description was then given in these columns.

At any time *after the next admittance*, after the 1st July, 1853, the tenant so admitted, or the lord, may compel enfranchisement, by giving notice in writing to the other of such his desire, and the consideration to be paid for it is to be determined, if they cannot agree, by two valuers, one to be appointed by the lord, the other by the tenant, with power to appoint an umpire. The award is to be made within forty-two days after the appointment. If either party neglect, within twenty-eight days after notice, to appoint a valuer, the commissioners are to appoint one, and if the valuers cannot agree and do not appoint an umpire within a week, the commissioners are to appoint one.

The valuers are to determine the compensation thus:—

The valuers shall determine the value of the manorial rights and incidents of tenure from which the lands proposed to be dealt with are to be enfranchised, and shall determine the compensation to be received by the lord for such enfranchisement in manner hereinafter mentioned; that is to say, where such enfranchisement shall have been effected at the instance of the tenant, the compensation shall be a gross sum of money to be paid at the time of the completion of the enfranchisement, or in cases where the compensation exceeds twenty pounds, the same, if the said commissioners shall so direct, and if all persons (if any) who shall have any mortgage, charge, or incumbrance affecting the lands enfranchised, and which shall have been in existence at the time of the passing of this Act, shall consent thereto, may remain as a first charge, under the provisions of this Act, on the lands enfranchised, until the expiration of such time from the day of such completion as the said commissioners shall appoint, but not exceeding in any case ten years; and interest at the rate of four pounds per centum per annum shall be payable thereon, or on such part thereof as shall from time to time remain unpaid, from the time of such completion as aforesaid half-yearly until full payment thereof, and where such enfranchisement shall have been effected at the instance of the lord the compensation shall be an annual rent-charge to be issuing out of the lands enfranchised: provided always, that the parties to any enfranchisement under this Act may in any case, with the sanction of the commissioners, agree that the compensation shall be either a gross sum of money to be paid or charged as aforesaid, or a yearly rent-charge, or a conveyance of land to be settled to the same uses as the manor of which the enfranchised lands are holden is settled, as provided in the said recited Acts, with respect to enfranchisements effected by virtue thereof; and in every case the valuers shall frame an award showing the amount, nature, and particulars of the compensation which shall be in full satisfaction of all manorial rights whatsoever, save as hereinafter mentioned.

Agreements and statements may, by consent, be included in the valuation; objections, both in law and fact, may be referred to the commissioners, who may direct an appeal upon any point of law. The award is to be confirmed by the commissioners.

Any charge under this Act is to be a *first* charge, and to have priority in *title* over all prior incumbrances, but so as not to affect the *moneys* thereby charged. Then follows the singular proviso which appears to undo the previous part of the section, that no such charge shall have priority without the consent of the persons entitled to the mortgage, &c. which it may be presumed will seldom be given. The commissioners should have power to determine whether such charge *ought* to have the priority or not.

The schedule gives the form of an enfranchisement.

The *charge* is to be by *certificate* under hand and seal of the commissioners, to be called "A Certifi-

cate of Charge," and it is to specify the amount of principal money to be charged on the lands enfranchised, and the place for payment of the principal and interest, and the certificate may, if the parties desire it, provide that such principal money, or any part of it, shall continue upon the security of such certificate for a period not exceeding ten years, and it is to be entered on the rolls of the manor.

These certificates will be transferable by indorsement, so that they will go into the market like other securities, and will become excellent investments.

In making his valuation, the valuer is expressly required to take into account the particular circumstances of each case, as the facilities for improvement, the custom of the manor, &c. and the advantages that might arise therefrom.

The compensation of the steward is to be such a sum as the commissioners may direct, or if they give no direction, then a sum equal "to one set of fees on surrender and admittance for each of such tenements embodied in such enfranchisement, such fees to be calculated according to the reasonable custom or usage prevalent in the manor," for which the steward is to prepare and deliver the deed of enfranchisement without charge.

The title of the lord is to be shewn by declaration of the lord or steward, and the commissioners are empowered to approve such title *for the purposes of the Act*, so that the *enfranchisement* shall be good in law against all claimants.

In manors where heriots are by custom due from tenants of freehold lands of such manors, either lord or tenant may compel extinguishment of it, in like manner, at any time after a heriot shall have become due after July 1, 1853.

Interest due on enfranchisement considerations is to be recoverable as rent.

After enfranchisement, the customary modes of descent are to cease, and the lands to descend, &c. as freehold; provided that nothing in the Act shall affect the custom of gavelkind in Kent.

The lord is empowered to sell his rent-charge. Owners may pay the consideration money and receive from the commissioners a certificate that it is paid, and the rent-charge redeemed. Provision is made for payment in case of owners under disability.

A power is given to commute or enfranchise at fixed prices on rentcharges, not varying with the price of grain. Tenants may pay and deduct rent-charges from their rents. Enfranchisement is not to affect previous leases or demises, nor are commonable rights to be affected by the Act, nor rights under any will or settlement.

The Act is *not* to extend to mines or minerals, nor to copyholds for lives where the tenants have not a right of renewal.

The Act is not to affect enfranchisements now in progress, nor any private agreements for enfranchisement which are or may be made between lords and tenants.

Such are the principal features of this valuable measure. In this sketch of the scheme, we have, of course, omitted the lesser details. Our purpose is only to lay before our readers an outline of the plan upon which the Enfranchisement of Copyholds is to be conducted, and great credit is due to those by whom so very feasible a settlement of a most difficult question has been constructed, and to the House of Lords for the improvements introduced into it at the last moment.

It will be observed that it does not come into operation until the 1st of July, 1853.

BILL AND NOTE STAMPS.

WE have received a great number of letters questioning the report of the case of *Escrit* v. *Mason*, 19 Law T. Rep. 232, and have referred the doubt thrown upon it by our correspondents to the reporter, Mr. DASENT, inquiring if the report be strictly correct. In reply, he assures us that it is so.

He adds that the case was moved afterwards by the defendant, and fully argued; but no mention was made of the decision upon the stamp, so satisfied were Counsel that it was right.

We now present one of the letters, that states most explicitly the objections that have been taken to the report by so many of our correspondents.

Sir,—Will you have the kindness to call the learned reporter's attention to the case of *Escrit* v. *Mason*, p. 232 of the present vol. of the Law Times. The marginal note states that "All promissory notes and bills drawn payable on demand, are subject to a 5s. stamp, and not to one for 3s. 6d. as erroneously stated in some pocket-books." The action appears to have been brought upon a promissory note payable on demand for 50*l*.; but the learned reporter omits the most material part of the question (that is), whether the note is payable "*to the bearer* on demand," or "in *any other manner than to the bearer on demand*." In the former case ("to the bearer on demand"), a 5s. stamp would be necessary for a 50*l*. bill or note, but in the latter case ("in any other manner than to the bearer on demand"), a 2s. 6d. stamp would be sufficient for a 50*l*. bill or note ("not exceeding two months after date, or sixty days after sight"); and the cases of *Moyser* v. *Whittaker*, 9 B. & C. 409, and *Armitage* v. *Berry*, 5 Burg. 501, decide that a note to A. B. or to A. B. on demand, or to A. B. or order on demand, is a note payable in other manner than *to bearer* on demand within the class of stamps last above referred to. To these cases may be added those referred to in the learned reporter's note to *Escrit* v. *Mason*. I have been quite unable to discover under what provision of the Stamp Act a 5s. stamp is necessary for "All promissory notes and bills drawn payable on demand," and have no doubt that a mistake has arisen, and which a reference to the point omitted in the report will correct. The importance of this question to the mercantile world will, I am sure, excuse me for troubling you.

12 July, 1852. J. D. S.

For our own part, we are inclined to think that our correspondent is right, and that there is some misunderstanding as to the form of the note in question.

As it is a matter of great importance, perhaps the Attorney or agent for either of the parties in the action would oblige the profession and ourselves with *a copy* of the promissory note that was the subject of the action, which will settle the doubt in a moment.

SCOTTISH AFFIDAVITS.

WE call the attention of some of our readers to an important decision in the Court of Session in Scotland. Affidavits to be used in the Courts in Scotland are generally made before a Justice of the Peace, who may administer the oath wherever he may happen to be at the time, whether in his own county or not; the justice in such circumstances exercising what is called a *voluntary jurisdiction*. Where affidavits have been required to be made in England, it has been doubted whether they could be made before Scottish magistrates resident here; and doubts also have arisen as to the power of English magistrates to administer oaths in other cases than those in which a jurisdiction was specially conferred upon them to do so. The former doubt as to the Scottish magistrate's power to take affidavits here is now settled, by the case of *Kerr* v. *The Marquis of Ailsa*, lately before the Court of Session in Scotland. Henceforth, therefore, in Scottish proceedings, where an affidavit is to be made, it will be the safer and better course to apply to a Scottish magistrate resident here to take the deposition, a course which has this further advantage, that it costs *nothing*, while in taking affidavits here (before a police magistrate, for instance, as a J. P.) a fee of 5s. is exacted.

SHAM LAWYERS.

THE following has been forwarded to us from Manchester. We will endeavour to procure the insertion of a clause in the next County Courts Bill, to protect the public and the Profession against the "County Courts agents," so fast increasing:—

"16, Princess-street, Manchester, April 30, 1852.

"Sir,—I am directed by Mr. Henry Hockenhall to apply to you for the sum of 10*l*. as damages, for an assault committed (at your instigation and by your orders) upon him last evening at a beerhouse in the occupation of Mr. Thomas Fletcher, and situate in George-street, Hulme, he being then and there, by the authority of Mr. Tennant, of Sheffield, brewer, in possession of the stock in trade, fixtures, and furniture.

"And unless the same be paid to me in the course of to-morrow, proceedings will issue for the recovery thereof.—I am, yours obediently,

"GEO. MCALLESTER."

"Mr. John F. Cowell, John Halton-street, Manchester."

Here is another printed circular of the same class:—

'Church-street, Wellington, 185 .

"I am requested by Mr. to inform you, that unless your account is paid, or some satisfactory arrangement made for payment thereof, on or before the day of next, he will, without further notice, place it in the County Court.—I am, yours respectfully,

"THOMAS WILLIAM JONES, Accountant."

THE LEGISLATOR.

NEW STATUTES.

15 VICTORIA, A.D. 1852.

[In this record of Legislation only the Statutes of practical utility are given at length. Of the others an abstract or the titles only are presented.]

CAP. LIV.

An Act further to facilitate and arrange Proceedings in the County Courts. (June 30, 1852.)

The great importance of this statute induces us to insert it at the earliest opportunity, and before it is due in the numerical order of publication.

Whereas it is expedient further to facilitate and arrange proceedings in the County Courts: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. *Lord Chancellor to appoint five judges of Courts held under 9 & 10 Vict. c. 95, to frame a scale of fees, to be submitted to judges of Superior Courts for approval. Costs to be taxed by clerk of Court, subject to review.*—That it shall be lawful for the Lord Chancellor from time to time to appoint five of the judges of the Courts holden under an Act of the ninth and tenth years of her Majesty, chapter ninety-five, intituled "An Act for the more easy Recovery of Small Debts and Demands in England," from time to time to frame a scale of costs and charges to be paid to attorneys in the County Courts, to be allowed as between attorney and client and as between party and party; and such scale of costs and charges as shall be certified to the Lord Chancellor under the hands of the judges so appointed or authorised, or any three of them, shall be submitted by the Lord Chancellor to three or more of the judges of the Superior Courts of Common Law at Westminster, of whom the Chief Justice of the Court of Queen's Bench or Common Pleas, or the Chief Baron of the Court of Exchequer, shall be one, and such judges of the Superior Courts may approve or disallow or alter or amend such scale of costs and charges, and the scale of costs and charges so approved, altered, or amended shall, from and after a day to be named by such last-mentioned judges, be in force in every County Court; and all costs between party and party and attorney and client shall be taxed by the clerk of the court; but his taxation may be reviewed by the judge upon the application of either party; and in no case, upon the taxation of the costs between attorney and client, shall any charges be allowed, not sanctioned by the aforesaid scale, unless the clerk is satisfied by writing under the hand of the client that he has agreed to pay such further charges, and no attorney shall have a right to recover at law from his client any costs or charges not so allowed on taxation; and the judges of the County Courts so appointed shall possess the same powers of making rules for regulating the practice of the courts, and of settling doubts on the construction of any Acts relating to County Courts, as were conferred on the judges to be appointed by the Lord Chancellor for that purpose by the twelfth section of the twelfth and thirteenth Victoria, chapter one hundred and one, unless otherwise specially provided.

2. *So much of 13 & 14 Vict. c. 61, s. 14, as limits the sitting of Court of Appeal to a time out of Term repealed: appeals to be heard in Term as well as out of Term.*—So much of the thirteenth and fourteenth Victoria, chapter sixty-one, section fourteen, as limits the Court of Appeal to the puisne judges of the Superior Courts of Common Law at Westminster, and the sitting of the said Court of Appeal to a time out of Term, is hereby repealed; and all appeals now depending or hereafter to be brought before the said Superior Courts shall be heard and determined in Term by the judges, thereof, as part of the ordinary business of such courts, or out of Term by any two or more of the judges of the said Superior Courts sitting as a Court of Appeal for that purpose.

3. *Power to judges of Superior Courts to make orders regulating appeals.*—The judges of the said Superior Courts, or any five of them, of whom a chief of one of the said Superior Courts, shall be one, may from time to time make general orders for regulating the proceedings on appeals, which orders shall be as valid as if included in this Act, but shall not be in force until the end of the session of Parliament next after the promulgation thereof.

4. *Power to the Court or a judge at chambers to make an order entitling the plaintiff to recover his costs.*—The thirteenth section of the thirteenth and

fourteenth Victoria, chapter sixty-one, is hereby repealed; and in any action in which the plaintiff shall not be entitled to recover his costs by reason of the provisions of the eleventh section of such Act, whether there be a verdict in such action or not, if the plaintiff shall make it appear to the satisfaction of the Court in which such action was brought, or to the satisfaction of a judge at chambers, upon summons, that such action was brought for a cause in which concurrent jurisdiction is given to the Superior Courts by the one hundred and twenty-eighth section of the ninth and tenth Victoria, chapter ninety-five, or for which no plaint could have been entered in any such County Courts, or that such action was removed from a County Court by certiorari, or that there was sufficient reason for bringing such action in the court in which such action was brought, then and in any of such cases the Court in which such action is brought, or the said judge at chambers, shall thereupon, by rule or order, direct that the plaintiff shall recover his costs, and thereupon the plaintiff shall have the same judgment to recover his costs that he would have had if the before-mentioned Act of the thirteenth and fourteenth Victoria, chapter sixty-one, had not been passed.

5. *Re-issuing warrants of distraint.*—That in all cases where a warrant of execution shall have been issued against the goods and chattels of any person, or an order for his commitment been made, and such person or his goods and chattels shall be out of the jurisdiction of the Court, and such warrant or order shall have been sealed and stamped by the clerk of another County Court, pursuant to the one hundred and fourth section of the Act of the ninth and tenth Victoria, chapter ninety-five, it shall be lawful for the said clerk of such other Court to re-issue the said warrant or order to the high bailiff of such other Court, and thereupon such high bailiff shall be authorised and required to act in all respects in the execution of the said warrant or order within the jurisdiction of the Court to which the same shall have been so sent in the same manner, with the same powers, and subject to the same rules as if the district to which the warrant or order shall have been sent were within the limits of the Court which originally issued the warrant or order.

6. *Protection to officers.*—If any action or suit shall be brought against any person for anything done in pursuance of this Act, or of any other Act relating to County Courts, such person may plead the general issue, and give the special matter in evidence; and the warrant under the seal of the County Court, being produced in any such action or suit, shall be deemed sufficient proof of the authority of the said County Court previous to the issuing of such warrant; and in case the plaintiff in such action shall have a verdict pass against him, be nonsuit, or discontinue the action or suit, the defendant shall in any of the said cases be allowed full costs as between attorney and client.

7. *On petition to her Majesty, the jurisdiction of court of local jurisdiction may be excluded from that of the County Court in concurrent causes.*—If the council of any city or borough, or a majority of the ratepayers of any parish, within the limits of which a court of local jurisdiction other than a County Court is established, under the said Act of the ninth and tenth Victoria, chapter ninety-five, or into the limits of which the jurisdiction of such court of local jurisdiction shall extend, shall petition the Queen in Council that the jurisdiction of such court of local jurisdiction may be excluded in any causes whereof the County Court hath cognizance, and if notice of such petition shall be given two months before it is presented, by public advertisements in such city, borough, or parish, and in some newspaper therein circulated, her Majesty, by order in council, may declare such exclusion of the jurisdiction of such court of local jurisdiction throughout the whole or any part of the district assigned or which may hereafter be assigned to such County Court, if no petition against declaring such exclusion be presented, and no caveat be entered at the council office; and if any counter petition be presented, or any caveat be entered, then her Majesty may refer such petition and counter petition to the judicial committee of the privy council, upon whose report her Majesty may make such order in council as she shall be advised touching the matter of the said petitions, in respect of excluding the jurisdiction of such court of local jurisdiction, and may award compensation to any person or persons entitled to the franchise of appointing officers of such court, or to any officers thereof appointed before the passing of this Act, to be given by the Commissioners of her Majesty's Treasury, who are hereby empowered to pay the same.

8. *As to audit of clerk's account.*—The treasurer of the County Court in which any insolvent's estate shall be administered, at the audits of the account of the clerk of such court, shall also audit and examine the books and accounts of the clerk in all matters relating to such estate, and shall make a report to the judge of the Court, stating whether a dividend should be made, and the general result of such audit; and the judge shall examine the said clerk on oath as to the correctness of such accounts, and may make such order as he may deem requisite respecting a dividend or other matter relating to such estate and accounts; and the treasurer shall thereafter, at his future audit require and examine the receipts of the several creditors for any dividend; and the Commissioners of her Majesty's Treasury shall have power to make rules to be observed by the treasurers of County Courts respecting the audit of the clerk's accounts of insolvent estates, and shall have the same power of making rules for securing the balances and other sums of money in the hands of any officer of the County Courts under the last-mentioned Act, and for the due accounting and application of such balances and other sums, that they have with respect to balances and other sums in the same hands under the Act of the ninth and tenth Victoria, chapter ninety-five.

9. *Account of fees to be delivered.*—The clerk and the high bailiff of every County Court shall deliver quarterly to the treasurer, in such form as the treasurer, by direction of the said commissioners, shall require, a full account in writing of the fees from time to time received by them respectively under the Act of the ninth and tenth Victoria, chapter ninety-five.

10. *Provision of 9 & 10 Vict. c. 95, as to persons qualified to practise before County Courts not to extend to this Act.*—And whereas by the said Act passed in the ninth and tenth years of her present Majesty it was enacted, that no person should be entitled to appear for any other party to any proceeding in any of the said courts "unless he be an attorney of one of her Majesty's Superior Courts of Record, or a barrister-at-law, instructed by such attorney on behalf of the party, or, by leave of the judge, any other person allowed by the judge to appear instead of such party, but that no barrister attorney, or other person, except by leave of the judge, should be entitled to be heard to argue any question as counsel for any other person in any proceeding in any court holden under that Act:" Be it enacted, That the said last-recited enactment be repealed; and that it shall be lawful for the party to the suit or other proceeding, or for an attorney of one of her Majesty's Superior Courts of Record being an attorney acting generally in the action for such party, but not an attorney retained as an advocate by such first-mentioned attorney, or for a barrister retained by or on behalf of the party, on either side, but without any right of exclusive or pre-audience, or, by leave of the judge, for any other person allowed by the judge to appear instead of the party, to address the Court, but subject to such regulations as the judge may from time to time prescribe for the orderly transaction of the business of the Court.

11. *Hundred Courts of Offlow and Hemlingford abolished.*—From and after the passing of this Act no action or suit shall be commenced in the Hundred Court of Offlow, in the county of Stafford, or in the Hundred Court of Hemlingford, in the county of Warwick, and the authority and jurisdiction of the said courts shall cease, and all actions or suits depending in the said courts shall be transferred, with all the proceedings thereon, to the County Court for the district in which the respective defendants shall then reside; and such actions and suits shall be dealt with and decided, as to the costs of the same, as well as in other respects, according to the practice of the County Court or of the said Hundred Courts, according to the discretion of the judge of the County Court, which Court shall for the purposes of such actions or suits be deemed to have all the power and jurisdiction possessed by the said Hundred Courts before the passing of this Act.

12. *Compensation to officers of Hundred Courts.* Every person who is legally entitled to any franchise or office in or in respect of the said Hundred Courts shall be entitled to make a claim for compensation to the Commissioners of her Majesty's Treasury within six months after the passing of this Act, and the said commissioners, in such manner as they shall think fit, may inquire what was the nature of the franchise or office, and what was the tenure thereof, and what were the lawful fees and emoluments in respect of which such compensation should be allowed; and the said commissioners in each case shall award such gross or yearly sum, and for such time, as they shall think just to be awarded, upon consideratian of the special circumstances of each case: provided always, that if any person holding any office in the said Hundred Courts shall be appointed to any public office or employment, the payment of the compensation awarded to him under this Act, so long as he shall continue to receive the salary or emoluments of such office or employment, shall be suspended, if the amount of such salary or emoluments be greater than the amount of the compensation, or, if not, shall be diminished by the amount of such salary or emoluments.

13. *Compensations to be paid out of Consolidated Fund.*—The several compensations herein-before granted shall be paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and the Commissioners of her Majesty's Treasury of the said United Kingdom are hereby empowered to pay the same accordingly.

14. *Limiting salaries of judges and clerks.*—After the passing of this Act the greatest salaries to be received in any case by the judges and clerks of the County Courts respectively shall be one thousand five hundred pounds by a judge, and seven hundred pounds by a clerk, but in no case shall any judge be paid a less salary than twelve hundred pounds: provided always, that the salary of any judge or clerk acting in the same capacity before the passing of the Act of the ninth and tenth Victoria, chapter ninety-five, in any court mentioned in schedule (A) to that Act, shall not be limited to any sum less than the average amount of the fees and emoluments of his office during the seven years next before the passing of the said last-mentioned Act.

15. *Lord Chancellor may order retiring pension to be paid to County Court judges.*—That it shall be lawful for the Lord Chancellor, from time to time, on a petition presented to him for that purpose, to recommend to the Commissioners of Her Majesty's Treasury that there shall be paid quarterly out of the Consolidated Fund to such of the judges of the County Courts as shall be afflicted with some permanent infirmity, disabling him from the execution of his office, and who shall be desirous of resigning the same, an annuity or clear yearly sum of money for the term of his life, not exceeding two-thirds of the yearly salary which such judge shall be entitled to as a judge of County Court at the time of presenting his petition; and such annuity or sum shall be paid out of the said Consolidated Fund quarterly or otherwise, as the said Commissioners may direct.

16. *Judges of County Courts not to practise at the Bar or as Special Pleaders.*—After three months from the passing of this Act, no judge of the said County Courts shall practise at the bar, or as a Special Pleader or Equity Draftsman, or be directly or indirectly concerned as a conveyancer, notary public, solicitor, attorney, or proctor.

17. *No clerk to be appointed for more than one district, except in certain cases.*—No Clerk of a County Court shall henceforth be appointed for more than one district in which a Court is holden, unless from there being no attorney resident within the district of the court in which the office of clerk is vacant, or from any other reason, the Lord Chancellor, or, where the whole of the district is within the duchy of Lancaster, the chancellor of the duchy, shall deem it expedient to order otherwise.

18. *A registry of County Courts judgments to be established.*—That a registry of every judgment entered in the County Courts for the sum of ten pounds and upwards shall be formed in such manner, in such place, and under such regulations as the Commissioners of her Majesty's Treasury shall appoint, and that for the inspection of the said register when formed such fees shall be charged to persons desirous of inspecting the same as shall be appointed by the said commissioners, and the proceeds of such fees shall be applied in such manner as the said commissioners shall appoint, in paying the expenses incurred in establishing and maintaining the said register, and the surplus of such fees, after providing for the payment of such expenses, shall be paid over to the credit of the Consolidated Fund of the United Kingdom of Great Britain and Ireland.

19. *No other persons to be appointed clerks of the Bristol Court until all the present clerks shall die, resign, or be removed.*—Upon the death, removal, or resignation of any of the persons now in possession of the office of clerk of the County Court of Gloucestershire holden at Bristol, the remaining person or persons holding such office at the time of such death, removal, or resignation shall be the sole clerk or clerks of such court, and no other person shall be appointed to such office of clerk, jointly or otherwise, until all the persons holding such office at the time of the passing of this Act shall have died, resigned, or been removed.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

PROPERTY AND INCOME TAX.—A Parliamentary paper just issued states that the assessment made under the above taxes was, in 1843, 1,681,852*l.* and the net amount received 1,609,801*l.*; in 1844, the assessment was 1,581,510*l.* and the net amount 1,526,377*l.*; in 1845, the assessment was 1,578,769*l.* and the net return 1,542,075*l.*; in 1846, the assessment was 1,717,123*l.* and the net amount 1,683,181*l.*; in 1847, the assessment was 1,768,420*l.* and the net produce 1,731,883*l.*; in 1848, the assessment was 1,754,363*l.* and the net amount 1,698,064*l.*; in 1849, the assessment was 1,584,601*l.* and the net amount was 1,517,406*l.*; in 1850, the assessment was 1,570,781*l.* and the net amount 1,529,611*l.*; in 1851, the assessment was 1,593,728*l.*; and the return 1,553,615*l.*

CRIMINAL OFFENDERS.—The annual tables, showing the number of criminal offenders in the year 1851, have been printed. 27,960 persons were committed for trial or bailed in England and Wales, of which 21,579 were convicted, and 6,359 acquitted. 70 were capitally convicted, of whom 10 only were executed, 52 having had their sentence commuted into transportation for life, and the rest into minor punishments, with the exception of one free pardon. 124 were transported for life, and 2,702 for minor periods. Of the offenders 22,391 were male, and 5,569 females. The total number of criminals in 1850 was 26,813; in 1849, 27,816; and in the five years ending 1851, 141,771. In the five years ending 1846, 136,852. In Scotland 4,001 persons were committed for trial or bailed, 2,892 male, and 1,109 females; of these one only was capitally convicted, 15 transported for life, and 487 for shorter periods. 3,070 cases resulted in convictions, 907 in acquittals.

IRISH CONSTABULARY FOR AUSTRALIA.—It is stated in generally well informed quarters that her Majesty's Government intend to send 2,000 of the Irish constabulary to Australia, to aid the civil power in that colony in performing the arduous duties now requisite for the protection of life and property, owing to the discovery of the gold fields.

SLOANE, THE SPECIAL PLEADER, who, with his wife, was convicted in February 1851, at the Central Criminal Court, of cruelty to Jane Wilbred, his servant, died on Tuesday morning after a lengthened illness. The sinking condition of the unhappy man had been observed for some time past, and through the kindness of the Rev. Mr. Davis, the ordinary of Newgate, the attention of some humane persons was drawn to the case. A medical examination took place, and certificates having been given by the proper medical officers shewing that any further imprisonment would be fatal to his existence, a free pardon was obtained about a week since through the Home Secretary, and Mr. Sloane was removed to private lodgings in Goswell-street-road, where he expired from the effects of illness arising from mental anxiety and confinement. The latter few months of his existence have been made as comfortable as the prison regulations would allow.

Some years ago, a servant girl who had robbed her mistress, a milliner in London, was transported to Sydney for a term of years. Since the discovery of the Bathurst Plains, the female convict has written to her former mistress that the colony was good place; that, as she now kept her carriage, she was happy to return the amount which she had stolen, with interest; that she earnestly recommended the milliner to come out and set up shop, in which case she should be happy to extend her patronage to a lady for whom she had so great an esteem.

THE METROPOLITAN TURNPIKE ROADS.—The total receipts on account of the metropolitan turnpike roads in the year ended the 25th of March, 1852, was £73,415 11s. 6d., and the expenditure was £63,001 7s. 8d., leaving a balance in hand of £10,441 3s. 10d.

THE NEW CITY PRISON AT HOLLOWAY.—By an Act of Parliament just printed (15 & 16 Vict. c. 70), the New City Prison and House of Correction is legalized to be a "good and valid prison," as if the same had been erected out of the county rates.

DRUNKENNESS, &c.—A return to the House of Commons, which has been printed, states that 8,754 persons were taken into custody in 1851 by the Metropolitan Police for drunkenness, and 194 by the City Police; in 1850, 9,718 were taken up by the former, 241 by the latter; in 1849, 8,622 by the former, and 170 by the latter.

JOINT-STOCK COMPANIES' LAW JOURNAL.

WINDING UP.

THE LORD CHANCELLOR has affirmed the decision of Vice-Chancellor BRUCE in *Crossfield's* case, 19 Law T. Rep. 236, and which was fully commented upon when reported from the Court below, in 17 Law T. Rep. 340. The Master may review his decision as to the liability of a contributory. The case seems so clear, that it is strange there should have been an appeal.

In *Ex parte Hall*, 19 Law T. Rep. 244, it was held that where the costs of an application to the Court were not disposed of at the time when the order was made, the application for them should be made to the Master in the first instance.

The unsettling of the decision in *Upfill's* case is producing, as might be expected, a great deal of confusion among lists of contributories that were settled in accordance with that case. All these must now be revised upon the rule of liability which we have stated as *now* the decided law. At last it has come back to the precise position in which we have from the first steadily maintained the law of liability of contributories in imperfect companies to stand,—namely, that it is purely a common law liability, to be determined by the law of principal and agent, and that each contributory is answerable only for so much as he has personally ordered, or authorised others to order on his account, and that the call can be made upon each only for such portions of the whole debts of the concern as could be recovered from him individually in an action at law. If, therefore, the Master has any doubt as to the liability for any particular debt, he should direct an issue to try it.

CAMERON'S COALBROOK AND LOUGHOR.—On the 7th inst. an inquiry took place before the Master in Chancery Richards with reference to the liability to be placed on the list by Mr. Turquand, the official manager, of what are termed the "seceding shareholders," who retired from the company at a certain period, and on whom it is proposed to make a call to pay off the debts of the company *pro ratâ* with the other shareholders.

DIRECT BIRMINGHAM AND OXFORD RAILWAY.—On Friday Master Brougham, on the application of Mr. Colley, solicitor to Mr. Hutton, the official manager, confirmed the call of 750*l.* on each of the members of the committee of management to discharge the liabilities, Mr. Spottiswoode, through his counsel, consenting to be made liable in conjunction with his co-partners, and not to contest his liability to the call.

METROPOLITAN RAILWAYS JUNCTION. — On Friday a meeting in this matter was held before Master Brougham to settle the admissibility or otherwise of several claims upon the company, which at the instance of the Master were referred to Messrs. Lake, the solicitors to the official manager, for adjudication. There being a sum of 1,811*l.* in the hands of Mr. James, the official manager, received from the bankers and other sources, it is conceived that this sum will be sufficient to pay off the company's liabilities in the event of a compromise being come to with Mr. Ashpitel in respect of a claim of about 1,000*l.* for moneys alleged to have been paid by him as a director to creditors under actions brought.

DIRECT WEST-END AND CROYDON.—The Master has recommended a compromise of the claims of all parties in this company, to save further delay and litigation, subject to the enforcement of certain outstanding calls on members of the provisional committee.

DIRECT CHICHESTER AND PORTSMOUTH.—The Master having the winding up of this company has also recommended that a compromise be entered into.

DOVER AND DEAL.—On Tuesday a meeting was held before Master Brougham, to make a call of two guineas a share in liquidation of outstanding liabilities. Mr. Dimsdale, who appeared for the official manager, stated that these liabilities amounted to between 3,000*l.* and 4,000*l.*, and the expenses of winding up the company to 1,000*l.* Counsel for Lord Londesborough, Mr. Mowatt, M.P. holder of 1,200 shares, and others, opposed the making of the call, which, after a desultory discussion, was made only in part by the Master to the extent of 5s. per share, to meet the cost, 1,000*l.*, of the official manager, leaving the 1,000*l.* or 5,000*l.* for liabilities to be provided for.

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

Liverpool Union Glass Company.—Call for 9*l.* per share, on contributories in the "settled list," on July 30.—Blunt.

Cameron's Coalbrook Steam Coal, and Swansea and Loughor Railway Company.—Call for 1*l.* per share, on contributories already settled, on July 19.—Richards.

Camborne Consols Mining Company.—To proceed, and finally settle list of contributories, on July 30.—Richards.

REAL PROPERTY LAWYER AND CONVEYANCER.

ALREADY there has been a decision under the *New Wills Act*. A will had been rejected in December last for not having been duly signed at "the foot or end." The motion for probate was now renewed, on the ground that the new Act had removed the objection of the 1st section, and by the 2nd section had provided that it should apply to every will already made, where probate had not been granted. The Court held it to fall within the provisions of the new Act, and granted probate accordingly.

The case of *Curson* v. *Belworthy*, 19 Law T. Rep. 233, in the House of Lords, is a remarkable one for its facts, but it determines no question of law, other, perhaps, than this, that in order to set aside a purchase something more than mere inadequacy of price must be shewn; there must be some *evidence* of fraud and gross misrepresentation. Although in this case their Lordships were of opinion that advantage had been taken of a pauper's ignorance by the superior knowledge of the purchaser of the estate, as it did not amount to positive fraud, they refused to interfere with it.

An interesting case in the *Law of Vendor and Purchaser* has been decided by the LORDS JUSTICES. At a sale by auction two lots, six and seven, were described as "valuable freehold estate." Lot seven was described as "a reservoir and waterworks, &c. which yielded a yearly rental of 60*l.*" By the sixth condition any mis-statement as to quality, tenure, outgoings, or other particulars was to be the subject of compensation only. By the second condition all objections were to be taken within a month from the delivery of the abstract or to be considered as waived. The abstracts were delivered on June 30. It turned out that the property was copyhold, not freehold, and that the pipes from the reservoir passed by permission through the property of others, to whom 5s. and 10s. were paid yearly for such permission. Upon a claim for specific performance it was held that the misdescription of tenure was a subject for compensation only. But that as to the misstatement of rental of the reservoir, specific performance could not be sustained, as this was not a matter of title, and, therefore, not waived by the defendant omitting to take the objection within the time specified by the conditions. (*Price* v. *Macaulay*, 19 Law T. Rep. 238.) Another case in the same branch of the law is reported from V. C. TURNER'S court. In *Flint* v. *Woodin*, 19 Law T. Rep. 240, an auctioneer sold his own estate, but did not disclose the fact that he was the vendor. Before the sale the purchaser intimated that he should bid a certain price; the estate was knocked down at that sum. The particulars of sale stated that the property was let on a repairing lease, but the vendor could not shew in whom this lease was vested. The purchaser objected on this ground, but the Court decreed specific performance. "The auctioneer," said the Vice-Chancellor, "may properly hold the character of owner." "The instant a party knows that there is an objection which affects the contract, it is his duty *immediately* to insist upon that objection, if he means to rely upon it. He cannot treat the contract as subsisting at one time and at a subsequent period say there was no contract."

In *Wilson* v. *Bennett*, 19 Law T. Rep. 243, the VICE-CHANCELLOR said that the case of *Cooke* v. *Crawford*, 13 Sim. 91, had been often misunderstood. "It was not an authority that a trustee might not devise trust estates, but that if a trustee had an estate, and also a power, he might devise the estate, although he might not devise the power."

The Court laid it down, in *Re Coke's Trust*, 19 Law T. Rep. 243, that, as a general rule, it will not appoint a tenant for life a trustee.

In *Drake* v. *Whitmore*, 19 Law T. Rep. 243, where the Court had directed money to be raised by mortgage, it refused an application that a power of sale should be inserted in the mortgage. The VICE-CHANCELLOR said "he did not consider that he could delegate such a power to a mortgagee."

A. was by decree in a cause declared to be tenant in tail in possession of certain real estates, and a receiver was appointed, with directions to pay assurances against fire upon the buildings, and to pay the surplus of the rents to A. A portion being burnt down, A. was held to be entitled to the moneys arising from the insurance. (*Seymour* v. *Vernon*, 19 Law T. Rep. 244.)

There are three decisions in our last number upon the *construction of wills*, but they turn upon the particular facts, and determine no point of law, and therefore we do not consider it necessary to notice them here, our purpose in these summaries being only to direct the attention of the busy reader to the decisions of some importance, which the practitioner ought to be acquainted with, and to note in his memory or his books.

Query.

STAMPS ON COPYHOLD ADMISSIONS.

Can any of the readers of the LAW TIMES state whether they have submitted a case to the Commissioners under the 14th section of the late Stamp Act, as to the stamp on an admission to copyhold estates under a bargain and sale, on a purchase from donees of a power under a will, and, if so, the result? It seems to me that the heading "Copyhold Estates and Customary Estates passing by surrender and admittance, or by admittance only, and not by deed: instruments relating thereto upon the sale and mort-

gage of any such estates;" should be read as if a semicolon was inserted after "Copyhold Estates," as was the case in 55 Geo. 3; and that the words "and not by deed," having reference to customary estates only, a 2*s.* 6*d.* stamp would be sufficient; but the steward of the manor thinks that the words "and not by deed," have reference also to copyhold estates, and that therefore the £1 stamp, under 55 Geo. 3, is still requisite.

13th July, 1852. R. W. S.

COUNTY COURTS.

Summary.

The Lord Chancellor has confirmed the decision of the Court below in *Re Atkinson*, 19 Law T. Rep. 237, that the rule requiring notice to complete an equitable assignment applies between the provisional assignee of an insolvent, and a subsequent assignee for value. He had always considered it settled that the provisional assignee took whatever the insolvent had, subject to all the equities to which the insolvent was liable; he was not aware of any positive rule of law which gave to a subsequent purchaser who had given notice to a trustee priority over a prior purchaser who had failed to do so. "The present case," said his Lordship, "ought to teach assignees to be more diligent in making inquiries as to the property of insolvents. If proper inquiries were made, as in the present case, among the families and friends of insolvents, interests of this kind could not be overlooked or concealed."

In *Re John Higgs*, 19 Law T. Rep. 248, the Insolvent Court has held that it has no power to order the discharge of an insolvent committed by a County Court for nonpayment of a debt from which he had been discharged by an adjudication under 1 & 2 Vict. c. 110.

We have no information as yet as to the course which the Attorneys who practise in the County Courts are taking to evade the difficulties imposed upon them by the suddenly-introduced provision of the new Act. Necessarily, many will be averse to adopt the only means by which they can at once attain their object, and escape the danger of a violation of the law by taking their clients to another Attorney, retained not by them, but by the client. But there is no help for it. Wherever there is not a Bar, or the Attorney prefers to have his case conducted by an Attorney, he must now submit to the inconvenience of handing over his client altogether, to a rival it may be, who might possibly *keep* the client so obtained. This is one of the practical difficulties of the provision not foreseen by its framers. It was doubtless proposed on the assumption that every County Court would be attended by a Bar sufficiently large to offer a fair choice of Advocates. But in extensive districts of the country this is not the case now, nor is it likely to be, as the business there would not support a Bar. Where this occurs, perhaps the Judge might with propriety exercise the power vested in him to hear any person, by hearing an Attorney instructed by an Attorney. It would be unjust to suitors, no less than to the Attorneys, to deprive them of the assistance of an Advocate-Attorney, where there is no Barrister to be obtained, or no fair choice of wigs.

It must now be for the consideration of the Bar whether they will not adapt themselves to the County Courts by a new scale of fees, permitting of half-guinea fees in cases below 10*l.* Suitors for small sums cannot be expected to pay a guinea and a half for the assistance of Counsel and Attorney. But we trust that this reduction will be accompanied with an express condition that no brief is ever taken without the intervention of an Attorney.

THE LAWYER.

Summary.

Equity Practice.—Under sequestration against A. for contempt, sums had been paid into court, and invested. A. had been ordered to pay certain costs to plaintiff, but A. being out of the jurisdiction, they could not be obtained. The Court, upon petition, charged these costs upon the sequestration account. (*Westby* v. *Westby*, 19 Law T. Rep. 243.)

Whether a case and opinion submitted to Counsel are privileged documents, and when, is a frequent subject of discussion, and the rule does not appear to be very clearly settled. In *Enthoven* v. *Cobb*, 19 Law T. Rep. 243, A. and B. having a common cause of action against C. brought separate actions against him, which were still pending. A. obtained Counsel's opinion on his case, and gave a copy of it to B. C. filed a bill of discovery against B. who admitted the possession of it. On a motion by C. for its production, it was held to be privileged.

In *Re Richards's Estate*, 19 Law T. Rep. 244, some useful hints were given as to the proper service of notices under the Trustee Act. The Vice-Chancellor said, "that section (38th) spoke of persons beneficially interested. *Primâ facie*, all the parties interested should receive notice, but if that were impracticable, a case should be made for proceeding as to particular parties with notice." In *Re Levett's Trusts*, 19 Law T. Rep. 244, it was ruled that a petition under this Act should state in terms the affidavit made on payment into Court of the money.

In *Hood* v. *Bridport*, 19 Law T. Rep. 244, it was decided that there should be a reference to ascertain if repairs to be done are for the benefit of an infant party to the cause.

Common Law.—It has been determined by Coltman, J. in chambers, that the lessor of the plaintiff, in an action of ejectment, is a "litigant" within sec. 6 of the new Evidence Act, and as such entitled to inspection of documents in the possession of the defendant. (*Doe dem. King* v. *Holmes*, 19 Law T. Rep. 248.)

Answers to Queries.

ENGLISH INSTRUMENTS SENT ABROAD

TO THE EDITOR OF THE LAW TIMES.

Sir,—In reply to your correspondent's letter under this head, I beg to state that, from considerable experience which I have had in the business of foreign Law Courts, I can say that there is no fixed rule as to the formalities with which documents of other countries should be clothed, to be admissible in evidence there. This observation applies to the Continent of Europe generally, but more particular rules may possibly prevail in some of the small German states.

The great point to be attended to is the *legalisation of the consul* for the country in which the document is to be used, which is obtained, as a matter of course, here, but is regarded in the foreign country as authenticating not only the document itself, but, in very many cases, the contents also.

However, I have frequently sent over documents without even that legalisation, and never had any objection raised.

In the absence of fixed rules on the subject, such evidence is entirely in the discretion of the Court, and in the exercise of that discretion much will, of course, depend upon the nature of the instrument, and the points sought to be established by it.

Under these circumstances, it is impossible to fix upon any particular practice; but the most formal manner in which a document can be prepared for the purpose, is to have it signed by a *magistrate*, whose signature is authenticated by *a notary public*, and his signature, in turn, authenticated or legalised by the *foreign consul*.

There is no necessity for its being on one sheet of paper, but where there are more than one, care should be taken to have a riband or other fastening running through the whole, and the ends secured under the notarial seal.

As regards clerical errors, if the instrument will admit of it, the alterations should be enumerated in an attestation clause, and where that cannot be done, the initials of the parties set opposite will suffice; but this, as well as the previous observations, must materially depend upon the kind of instrument it is desired to use in evidence.

I am Sir, yours, &c.

G. S. B.

THE MERCANTILE LAWYER.

Summary.

The Privy Council has determined some interesting points in *Maritime Law* in the case of *The Bold Buccleugh*, 19 Law T. Rep. 235. A Scotch steamer ran down an English barque lying in the Humber, and kept out of the jurisdiction of the Court of Admiralty. The owners were then sued in Scotland, and the steamer was arrested there and sold without notice of this unsatisfied claim. While the Scotch suit was pending, she appeared in England and was arrested under an Admiralty warrant, and an action for damages was entered in the Admiralty Court here, and instructions sent immediately to abandon the Scotch suit. The owner pleaded the *lis pendens* and the purchase without notice. The first plea was held to be bad, as the suit in Scotland was substantially a proceeding *in personam*, while this one was *in rem*, and that the ship was liable into whose hands soever she came. The law was stated to be, that when a vessel at sea causes damage, an inchoate lien arises, and when the amount of damage is judicially ascertained by a proceeding *in rem*, the lien relates back to the period when it first attached, and takes priority, to the extent of the then value of the ship, over all other liens, and travels with her wheresoever she goes; but this lien may be lost by negligence or delay, where the rights of third parties are compromised. We recommend the attentive perusal of this case to our readers interested in maritime law, and especially to students.

In *Bankruptcy*, Mr. Commissioner Fonblanque has held, in *Anonymous*, 19 Law T. Rep. 248, that under sec. 211 an order for protection to a day named, instead of "until further order," is irregular, but not void, and may be amended.

Secretary of Bankrupts' Office Abolition Act.—An Act of Parliament received the Royal Assent on the 30th ult., by which the office of Secretary of Bankrupts was abolished "from and after the 1st June, 1852," nearly a month before the Act was passed. The office of clerks of enrolments is also abolished with compensation. The Act provides that Mr. John Campbell shall be the chief registrar of the Court of Bankruptcy and for other matters connected with the office.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

On Wednesday the Benchers of the Middle Temple appointed Henry Sumner Maine, esq. LLD. Regius Professor of Civil Law in the University of Cambridge, to the Readership in General Jurisprudence and Civil Law recently established by the Inns of Court.

Commissions signed by the Lord-Lieutenant of the County of Surrey.—The Hon. William John Monson and William Beckford, esq. to be deputy-lieutenants.

Messrs. Whiting, Leeman, and Pugh, chief clerks to the Masters in Chancery, who retire, have received the appointment of chief clerks to the new equity judges.

COURT PAPERS.

HIGH COURT OF CHANCERY.

On Monday, the 12th inst. the Lord Chancellor made the following Order to the suitors in Chancery respecting the closing of the Accountant-General's books:—

Whereas it is proper that the accounts kept by the Accountant-General of this Court should be examined and compared, in order to settle the same, and it will require considerable time to perfect such examination, and it is necessary that a time should be appointed for closing the books of accounts of the said Accountant-General, for the purposes aforesaid, his Lordship ordered that the books of the said Accountant-General be closed from and after Thursday, the 19th day of August next, to Thursday, the 28th day of October next inclusive, in order to adjust the accounts of the suitors with the books kept at the Bank, and that during that time no draught for any money, or certificate for any effects under the care and direction of this Court, be signed or delivered out by the said Accountant-General, or any Stocks or Annuities accepted or transferred by him relating to the suitors of this Court, and that no purchase, sale, or transfer be made by the said Accountant-General, unless the order, request, or registrar's certificate be left at his office on or before Thursday, the 12th day of August next, and that no order for the payment of any money out of court which may be then in court be received at the Accountant-General's office after Saturday, the 14th; and to the end that the suitors may have notice hereof, and apply to the Court as there shall be occasion, to have money paid to them out of the Bank, or Stocks or Annuities transferred to them before the said 19th day of August next.

DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES."

	PLACE.	AUCTIONEER.	WHERE ADVERTISED.	
Tuesday, July 20	Garraway's.	Mason.	July 10 and 17, pp. 61, 68,	House and Shop, Anthony-st. corner of Chapple-st. City-road
	Ibid.	Ibid.	Ibid.	Three Residences, Great Cambridge-street, Hackney-road
	Ibid.	Ibid.	Ibid.	Residences at Highbury
	Ibid.	Ibid.	Ibid.	Eight Houses in High-st. Stoke Newington
	Ibid.	Ibid.	Ibid.	Three Houses, Mansfield-st. Kingsland-road
	Ibid.	Ibid.	Ibid.	Six semi-detached Residences, Stoke Newington-road
Thursday, July 22	Mart.	Quallett and Lewis.	p. 60.	Villa Residence, St. John's-wood Park
"	Ibid.	Ibid.		Two Leasehold Residences, Nos. 1 and 3, Clifton-terrace, Notting-hill
Wednesday, July 23	George Inn, Penrith.	Calvert Varty.	July 3 and 10, pp. 60, 64.	Estates of the late Col. Lacy, situated in Cumberland
Tuesday, July 27	Garraway's.	Price.	July 10, p. 61.	Three Freehold Houses, Adelaide-square, King's-road, Windsor, Berks
"	Ibid.	Ibid.	Ibid.	Fifteen Messuages, Great Titchfield-street, &c.
Wednesday, July 21.	Mart.	Palmer.	July 17, p. 68.	Valuable Life Interest and Reversion
	Ibid.	Ibid.	Ibid.	The Absolute Reversion to 440*l.* 15s. payable on the death of a lady in her 66th year
	Ibid.	Ibid.	Ibid.	Absolute Reversions
	Ibid.	Ibid.	Ibid.	Valuable Leasehold Estate, land-tax redeemed, producing 210*l.* per annum
	Ibid.	Ibid.	Ibid.	Freehold Cottages, land-tax redeemed
	Ibid.	Ibid.	Ibid.	Five Leasehold Houses.

NOTICES OF NEW LAW BOOKS.

A Manual of the Parliamentary Election Law of the United Kingdom of Great Britain and Ireland. By SAMUEL WARREN, Esq. F.R.S London: Butterworth.

UNFORTUNATELY this volume, bulky as it is, contains only a portion of the Parliamentary Law. It omits entirely all that relates to the proceedings subsequent to the return of the members, such as the petition, the committee, the punishment of bribery and treating, and the disfranchisement of the guilty borough through the machinery of the Act passed during the Session just closed. Two-thirds of the portly volume are occupied with a reprint of the various statutes relating to elections, which fill no less than 362 closely-printed pages, while nearly fifty pages are devoted to a Digest of the Registration Appeals decided by the Court of C. P. but which ought to have appeared in the portion of the volume that treats of the franchise and of registration. The bulk of the book is thus swollen by the introduction of all the statutes that relate to Ireland and Scotland alone, and which, being useless to the English Lawyer, might have been advantageously omitted from a work designed for him. Thus, practically, this formidable volume of Election Law resolves itself into 269 pages of *treatise*, and if this original portion of it had appeared alone, without being burdened by an appendix twice as bulky as itself, we should have had little else than approbation to bestow upon the work. Nevertheless, the truth must be told that even these 269 pages of treatise are to be subjected to further curtailment before the extent of *practical* information here to be found can be ascertained. It opens with an Introduction of 31 pages, an essay upon the British Constitution rather than a legal exposition of the Law of Elections—a sketch of the rise and progress of the representative system, very interesting and very ably written, but better adapted for the library of the general reader than for that of the Lawyer, and altogether out of place in a *practical* law book. Whole pages are extracted from the speeches of Lord John Russell and others on the subject of Parliamentary Reform. Then 27 pages more are given to an account of the Parliamentary Election Law of Scotland and Ireland; and it is not until we arrive at the 60th page that the *legal* treatise commences, and, as it concludes at page 269, the whole of the *practical* law of the volume is thus found to be contained in just 209 pages.

These alone are of real interest to the legal reader, and of these we can speak with great commendation. Arranging his subject after the manner of all his predecessors, Mr. WARREN treats, first, of the franchise; then, briefly, of the registration; then of incapacities to elect; then of the qualifications and disqualifications for being elected; then of the duties of the returning officer; then of the election, and of the incidents by which it may be affected—as bribery, treating, interference, intimidation, and violence. These are described very fully and clearly, with the author's wonted copiousness of quotations, and in a style whose grace and beauty will be acknowledged by every reader. The list of incapacities to elect is conveniently arranged in alphabetical order. The greatest defect of this portion of the volume is, the omission from it of so many of the decisions of the Court of Appeal, and placing them together at the end, reference to and fro being always troublesome. In another edition we would recommend the introduction of these in their proper places, and the omission of all the merely Irish and Scotch statutes, thus materially diminishing the bulk and cost of the volume, without in any way impairing its usefulness. Mr. WARREN apologises in his preface for the haste with which it was brought out to meet the present demand. It has come too late even for that, and there will now be ample leisure for perfecting it. So much of it as the author was enabled to complete is well done. It only wants to be made a little more practical and a little less discursive, to be an excellent book upon an important subject.

The County Courts Improvement Act: with Notes, a Digest of all the recent County Courts Cases, an Abstract of the City Small Debts Act, and a copious Index. By E. W. COX and M. LLOYD, Esqrs. Barristers-at-Law. London: LAW TIMES Office.

An Appendix to the Fourth Edition of Cox and Lloyd's Practice of the County Courts, containing the above. London: LAW TIMES Office.

THE new Act for improving the County Courts contains some provisions of peculiar interest to the Profession; but it is not, as it is termed by the Queen's printer, an *Extension* Act. All those clauses were struck out; but so hastily and carelessly that the old title was suffered to remain. As this is likely to mislead, the editors of the present edition of it have given to it the more appropriate name of "The County Courts Improvement Act," to distinguish it from preceding Acts. To make it more complete, they have added a digest of all the cases relating to the practice of the County Courts decided since the publication of the last (the fourth) edition of *Cox and Lloyd's Law and Practice of the County Courts*, to which it forms a useful and necessary appendix. The City Small Debts Act is included, and a copious index gives ready access to any part of it. The digest of cases is arranged in the order of the original work, to the pages of which reference is made.

A new jurisdiction has been given to the County Courts by an Act of last session, for regulating partnerships among workmen. The sections of this statute are also introduced here.

LEGAL INTELLIGENCE.

Assizes.

WESTERN CIRCUIT.

DEVIZES, July 13.—This circuit commenced yesterday, when the commission was opened by Barons Platt and Martin. The business is exceedingly light, there being only eighteen prisoners for trial, and two nisi prius causes.

OXFORD CIRCUIT.

ABINGDON, July 13.—The cause list presents an entry of six cases, which were all disposed of in about half an hour. Four were undefended actions for goods sold, money lent, &c.; another, a new trial, and marked as a special jury cause, was settled under a judge's order; and in the other cause, a plea puis darrien continuance, alleging an agreement, in the nature of an accord and satisfaction of the causes of action, entered into on the commission day, was tendered on the part of the defendant. The plea having been verified and received, the cause stands over until the next assizes. In the Crown Court, the calendar contained the names of twenty-eight prisoners, charged with the following offences:—Child murder 1 (subsequently ignored by the grand jury); manslaughter, 4; robbery with violence, 4; housebreaking, 1; arson, 2; indecent assaults, 2; false pretences, 1; and larceny, 12.

ABINGDON, JULY 12.—This afternoon the commission for the assizes for Berkshire was opened by Mr. Justice Cresswell and Mr. Justice Williams. The most important cause in the Nisi Prius Court is that of *Thoyts* v. *Hobbs*, which is an action of assumpsit by the assignees of a Francis Goddard, an insolvent, to recover the value of property amounting to nearly 1,000*l.* stated to have passed to Hobbs just prior to Goddard's insolvency. This cause was tried at the Lent assizes, at Reading, and a verdict given for the plaintiff for 404*l.* It was subsequently, however, set aside by the Court of Exchequer on the ground of misdirection on certain points by Mr. Justice Wightman before it was tried. The criminal business appears to be heavier than for many years past at a summer assize. The calendar contains the names of twenty-one prisoners for trial, of whom 1 is for infanticide; 4 for manslaughter; arson, 1; highway robbery and assault, 3; burglary, 1; firing a plantation, 1; and the remainder are for petty offences.

MIDLAND CIRCUIT.

LINCOLN, July 12.—Mr. Baron Alderson entered the city on Saturday, and forthwith opened the commission in the city and county courts, and then adjourned the business till this morning. Justice Coleridge arrived last evening, he having gone to Oxford to vote at the University election. The calendar is light, and the cause list contains only seven entries.

NOTTINGHAM, July 14.—Mr. Baron Alderson arrived here in the middle of the day, and proceeded to open the commissions for the town and county. The county calendar contains the names of 21 prisoners, and include one charge of murder, two of cutting and wounding, one of rape, one of assault, one of concealment of birth, one of bigamy, one of arson, one of night-poaching, one of burglary, and one of robbery with violence.

NORFOLK CIRCUIT.

AYLESBURY, July 14.—The Chief Baron and Baron Parke arrived yesterday. The calendar contains the names of 20 prisoners, charged with serious offences, for the most part, but the cause-list presents only three causes, two of them being virtually but one cause.

NORTHERN CIRCUIT.

YORK, July 12.—Lord Campbell and Mr. Justice Wightman arrived in this city on Saturday. The criminal calendar contains the names of 126 prisoners,—of whom 4 are charged with murder, 1 with attempt to murder, 9 with manslaughter, 26 with assault and robbery, 9 with rape, 25 with burglary, 4 with forgery, 5 with perjury, 4 with cutting and wounding, and the rest with minor offences. The cause list is expected to be very light. The list for the North and East Ridings has 18 entries; the West Riding list will not be published until to-morrow.

HOME CIRCUIT.

HERTFORD, July 12.—The commission for the county of Herts was opened on Saturday. The calendar and the cause-list are both very light, which is usually the case in summer, and the general election also tends to prevent the entry of civil cases. Both Courts proceeded to business this morning, but no cases of any importance were disposed of.

THE RECORDERSHIP OF WINDSOR.—At the quarterly meeting of the Windsor town council, on the 1st inst. the town clerk announced that he had received a communication from Allan Maclean Skinner, esq. of the Oxford Circuit, intimating that he had been appointed to succeed the late Honourable J. C. Talbot, Q.C. as recorder of the borough. At the same meeting the following resolution was passed:—"That this Court deeply deplores the loss which this town has sustained by that solemn dispensation of Providence which has recently deprived this borough of the valuable services of the Hon. John Chetwynd Talbot, Q.C. as recorder; and feels it incumbent to give a permanent expression of the high sense the members of the town council entertain of the exalted virtues, the undeviating rectitude, and those high and ennobling qualities which were constantly exhibited by the late Mr. Talbot, as a private gentleman, a member of the Bar, and the highest legal officer of this borough." It was also agreed that each member of the council should subscribe one guinea, and transmit the total amount, in the name of the mayor and coporation, towards the Talbot scholarship.

It is anticipated that a larger number of election petitions will be presented in the forthcoming session than for many years, and doubtless many seats will be exchanged. It is rumoured that an eminent Queen's counsel has already received twenty-five retainers.—*Globe.*

THE GAZETTES.

Bankrupts.

Gazette, July 13.

BINGHAM, CHARLES EDWARD, printer, Mount-st. Grosvenor-square, July 21, at one, Aug. 25, at eleven, Basinghall-st. Off. as. Graham. Sol. Murrough, New-inn, Strand. Petition, July 2.

BUCK, JAMES, engraver, Manchester, July 26 and Aug. 9, at twelve, Manchester. Off. as. Fraser. Sols. Vickers and Diggles, Manchester. Petition, July 10.

HYDE, GEORGE EDWARD, cloth merchant, Halifax, July 29 and Aug 20, at eleven, Leeds. Off. as Freeman. Sols. Edwards, Halifax, and Bond and Barwick, Leeds. Petition, July 5.

MITCHELL, SAMUEL, boot maker, Stepney-gate, Commercial-road East, July 28, at one, Aug 23, at eleven, Basinghall-st. Off. as. Edwards. Sols. Miller and Horn, King William-st. Petition, July 3

STEPHENS, ROBERT PEARCE, ship owner, Liverpool, July 28 and Aug 23, at eleven, Liverpool. Off. as. Morgan. Sol. Thomson, Liverpool. Petition, July 6.

Gazette, July 16.

EDWARDS, JOHN WILLIAM, cheesemonger, Marchmont-st Brunswick square, July 24, at eleven, and Sept. 1, at twelve, Basinghall-st. Com Fonblanque. Off as. Stansfeld. Sols. Ford and Lloyd, Bloomsbury-square. Petition, July 11

MORRIS, [illegible] manufacturer of india-rubber pavement and matting, and rectifier of naphtha, 13, King William-st Strand, July 26, at twelve, and Sept. 2, at one, Basinghall-st. Com Fane. Off as Cannan Sol. Buchanan, 8, Basinghall-st. Petition, July 10.

NICHOLSON, WILLIAM, timber merchant, ironmonger, joiner and builder, Shotley-bridge, Durham, July 23 and Sept. 3, at one, Newcastle-upon-Tyne Com Ellison Off Baker. Sols. Hodgson and Burton, 10, Salisbury-st. Strand; Joel, 61, Grey-st. Newcastle-upon-Tyne Petition, July 6.

STEPHENS, ROBERT PEARE (and not ROBERT PEARCE STEPHENS, as before advertised), ship-owner, Liverpool, July 28 and Aug. 23, at eleven, Liverpool. Com Perry. Off. as. Morgan. Sol. Thomson, High-st. Liverpool. Petition, July 6.

STREETER, JONATHAN, corn and coal merchant, North-st. Brighton, July 30, at one, and Sept 2, at twelve, Basinghall st Com Fane. Off. as Whitmore. Sol Kennett, Brighton; Sowton, 6, Great James-st. Bedford-row Petition, June 15

WILSON, JOHN, coach proprietor, Gateshead, July 21, at eleven, Aug 20, at twelve, Newcastle-upon Tyne Com Ellison. Off. as. Wakley. Sols. Watson, 26, St Nicholas Churchyard, Newcastle-upon-Tyne, Shield and Harwood, 10, Clement's-lane, Lombard st. Petition, July 12.

BANKRUPTCY ANNULLED.

Gazette, July 13

Fenton, A. stationer, Coventry-st Haymarket, July 8.

Gazette, July 16

Challen, J. brewer, Brixton, July 15.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Billing and *Billing*, brickmakers, first, 2s 6d; first sep. of Billing, jun 12s.2d Stansfeld, London.—*Cole*, J grocer, first and final, 1s 2½d Baker, Newcastle —*Hardman*, R. merchant, fourth, 0¼d. Bird, Liverpool —*Howell*, J bookseller, first, 2s. 1d. Bird, Liverpool —*Ingham*, F. grocer, &c. first, 5s. Freeman, Sheffield —*Ismonger* and *Ismonger*, merchants, first joint, 3s 6d; and sep. of each, 20s. Pennell, London —*Lane*, J tailor, first, 2s Pennell, London —*Lucas*, *Wilkinson* and *Bond*, calico printers, first, 14s; first sep of Bond, 2s 3d Lee, Manchester —*Moffatt*, T. merchant, second, 0¼d. Bird, Liverpool.—*Pinhorn*, H and R. tailors, first, 1s. Stansfeld, London.—*Pinhorn*, R. tailor, first, 3s. 10d Stansteld, London —*Rennie*, G. merchant, first, 2s 2d Bird, Liverpool —*Rippon*, G lime burner and coal merchant, second and final sep 2½d. Wakley, Newcastle —*Russell*, W. merchant, third, 0½d. Bird, Liverpool —*Ryder*, E. H jeweller and pawnbroker, first, 1s. 4d. Whitmore, Birmingham —*Todd*, J. and W saddlers' ironmongers, first, 2s Freeman, Leeds —*Walker* and *Webb*, india rubber warehousemen, first, 3s Pennell, London —*Whalley* R mercer and draper, first, 6½d Lee, Manchester —*Wheeler* G grocer and cheesemonger, first, 11½d. Stansfeld, London.

INSOLVENTS' ESTATES.

Kenrick, T. no business, 1s. 10d. Apply to W. Bird, off. as. South Castle-st. Liverpool.

Assignments for the Benefit of Creditors.

Gazette, July 6.

Elfick, W. S. butcher, Northiam, Sussex, June 4 Trusts. E. Lord, farmer, Northiam, and J. T Mittell, butcher, Rye. Sol. E. N. Dawes, Rye.—*Stampters*, J. E. gas manufacturers, St. Stephen's, St. Albans, June 10. Trust G Beament, miller, St. Stephen's. Sols. Thompson, Debenham, and Brown, St. Albans —*Turner*, J. corn dealer, Lime st. City, June 18. Trust. T. Reynolds, corn dealer, Enfield. Sols. Thompson, Debenham, and Brown, Salter's hall, St. Swithin's-lane.—*Vincett*, J. butcher, Beakly, Sussex June 21. Trusts. J. T. Mittell, butcher, Rye, and E Bowlin, jun. blacksmith, Beckley. Sol. E. N. Dawes, Rye.

Gazette, July 9.

Bosbery, T. linendraper, Regent-st. June 25. Trusts. A. Hunter, Watling-st. and J. Hadland, Cheapside, warehousemen —Sols. Heather and Moger, Paternoster-row.—*Martin*, J. paper manufacturer, Leeds, June 21. Trusts. J. Whitham, engineer; J. Kirk, rag merchant; and J. Lupton, banker's clerk, Leeds. Sols. Payne, Eddison, Ford, and North, Leeds.

Partnerships Dissolved.

Gazette, June 22.

Archer, W. and *Godwin*, T. jacquard machine makers, Little Bolton, June 16 —*Arliss*, J. C. and W. W. ale and porter dealers, Plymouth, June 16.—*Asquith*, W. and J. and *Dean*, J cloth dressers, Leeds, as regards Dean, June 15 Debts paid by remaining partners.—*Belcher*, C., *Estcourt*, S. and *Stanley*, F. woollen warehousemen, St. Martin's-lane, May 17. Debts by remaining partners.—*Blorsome*, E. jun. and *Atkins*, T. attorneys and solicitors, Dursley, June 1.—*Braddock*, J. and *Rhodes*, G. coal proprietors, Mottram, Longdendale, June 12. Debts paid by Braddock —*Chapman*, E. and *Turner*, J. M. schoolmistresses, Warrington, June 19.—*Drewett*, E., H., M. and S. fancy warehouse keepers, Guildford, June 16, as regards S. Drewett Debts paid by the remaining partners.—*Dixon*, J. *Leech*, E. and *Kruttschnitt*, J. New Orleans, America, June 22, as regards Leech.—*Duke*, W. and *Dackborn*, S. tailors and drapers, Liverpool, June 16.—*Dyson*, J. and *Ambler*, W. H. linen drapers, Huddersfield, June 10. Debts paid by Dyson —*Hall*, R and *Gorton*, T. calico printers and merchants, Tottington and Manchester, June 30, 1850.—*Hall*, T. and *Tebbutt*, R. starch manufacturers, Lenton, May 6. Debts paid by Hall.—*Hamilton*, J. sen. and J. B. Roman cement and Paris plaster manufacturers and merchants, Liverpool, June 1. Debts paid by Hamilton, sen.—*Horner*, J. and *Cornell*, E. cornfactors and seedsmen, Saffron Walden, June 18. Debts paid by Cornell.—*Humphreys*, J. E. and *Kelly*, R. plumbers and brass founders, Chester, June 16 Debts paid by Humphreys —*Hutchinson*, R. and W. ship builders and ship repairers, Bishopwearmouth, June 16. —*Mills*, Joseph, William, and James, cotton spinners and manufacturers, Stalybridge, June 16. Debts paid by W and J. Mills —*Pearse*, F. and *Hanson*, F. wine and spirit merchants, Bush lane, Cannon-st, June 1. Debts paid by Pearse —*Poole*, W. *Randall*, W. *Parkins*, J. and W. W. tailors, Cheapside, as regards Poole, June 19 —*Powles*, J. D. and W. *Wilson*, P. *Crosthwaite*, A and *Wilson*, J. merchants, Barranquilla. New Granada, as regards A W. Powles, Dec. 31.—*Powles*, J D and A W, *Wilson*, P., and *Crosthwaite*, A. merchants, Bogota and Medellin, New Granada, Dec. 31, as regards A W Powles —*Richards*, M., and *Quilter*, H. G. grocers, Birmingham, June 16.—*Skilbeck*, J. and *Mason*, J. Kingston-upon-Hull, Sept. 1.—*Smith*, S. and *Ormerod*, W. bricklayers or builders, Manchester, June 18. Debts paid by Ormerod. —*Spark*, R. and *Comfort*, J potato salesmen, Farringdon-st. and Farringdon Market, June 17 Debts paid by Comfort.—*Thompson*, W *Hook*, C. and *Hague*, J. cotton spinners, Micklehurst Mottram, June 12 —*Thrale*, W. and *Hagur*, A. paper dealers, Nottingham, June 12. Debts by Thrale.—*Tattersall*, I. and *Lightoller*, C. W. cotton manufacturers, Manchester, June 17.—*Vincent*, W. and *Stibbard*, G D. wine and spirit merchants, Leadenhall-st. June 18. Debts paid by Stibbard —*Walton*, F. *Walker*, S. and *Walton*, A. factors, brass founders, and wholesale ironmongers, Wolverhampton, June 19, as regards F. Walton. Debts paid by remaining partners.—*Wickens*, G. jun. and *Johnson*, H hop merchants, Custom-house-chambers, Lower Thames-st June 19 —*Yewdall*, D. and *Edmonson*, J. scribbling and fulling millers, Calverley, June 17. Debts paid by Yewdall.

Gazette, June 23.

Allaire, L and *Chabert*, T whitsters or laundrymen, Grove House, Fulham, June 22 —*Bell*, J and *Tomlins*, C. J. commission agents and general dealers, Accrington, June 21. Debts paid by Tomlins.—*Bellamy*, J. M. and W. E. wine and spirit merchants, Abergavenny, June 12. —*Biden*, C. and *Moorey*, E carpenters and builders, Richmond, June 24 —*Broadhurst*, J. and *Green*, W earthenware manufacturers, Longton, Stoke-upon-Trent, June 23 Debts paid by Green —*Cooper*, G. and J. V. plumbers, New Windsor, June 24 Debts paid by J. V. Cooper.—*Driver*, J. and G tile makers, Castleford Pottery, June 21 —*Eccles*, J and *Culip*, T. marble and stone masons, Leeds, June 22 Debts paid by Culip —*Ellison*, J. and *Warring*, J spindle and flyer makers, Salford, June 7 —*Firmstone*, G, H. O, and W. C iron and coal masters, Kingswinford, June 12 —*Glenton*, H and *Chapman*, D. ironmongers, braziers, stove grate and range manufacturers, New Bond-st. April 6. Debts paid by Glenton.—*Gorham*, H. and J B. grocers, Trowbridge, June 11 —*Halliday*, W. and *Bywater*, J joiners and builders, Leeds, June 22. Debts paid by Halliday.—*Hugo*, J. and *Walker*, R. chemist and druggist, Maidenhead, Jan. 1. Debts paid by Walker. *Hindle*, W. B. *Longbottom*, J and *Smith*, E tailors and drapers, Leeds, June 18.—*Lake*, J. H. and R G booksellers, printers, stationers, and general merchants, Falmouth, Oct 31 —*Lane*, W. and *Gordon*, T. A. commission agents and dealers, Manchester, June 22. Debts paid by Gordon —*Leighton*, C., A., and S. coal merchants, Great Cambridge-st Hackney-road, as regards A Leighton June 16 —*Leveaux*, E H and *Cort*, W wine and spirit merchants, Liverpool, June 5. Debts paid by Leveaux.—*Matthews*, R. H. *Walker*, T. and *Hope*, G. C. surveyors, Lower Seymour-st June 23 —*Nicholl*, D. and *Binns*, W. hatters, Halifax, June 21. Debts paid by Nicholl —*Pearce*, A. and *Jenkins*, A. S milliners, Harriett-st. Lowndes-sq. Chelsea, June 23. Debts paid by Pearce.—*Prosser*, W. *Hadlow*, G. *Lamsdale*, C. and *Brock*, S Chipstone-st Fitzroy-sq June 23. Debts paid by Brock.—*Ramsden*, J. and J. C worsted manufacturers, Bradford, June 19. Debts paid by J. Ramsden.—*Rhodes*, J Old Accrington, and *Cardiff*, R New Accrington, railway contractors, Aug 30, 1849.—*Sharratt*, M A and E innkeepers Windsor, June 23. Debts paid by M. A. Sharratt —*Shoults*, E., F. and H. carpenters and builders, Maze, Southwark, as regards H. Shoults, June 19.—Debts paid by E. and F. Shoults.—*Simpkin*, E and T. tea dealers and grocers, Alfred-terrace, Bayswater, June 22.—*Stead*, G. and *Butler*, G stonemasons, Hillhouse, Huddersfield, June 19. Debts paid by Stead. —*Thompson*, S. *Penney*, R. H. *Wattake*, T. flax spinners, sail cloth and rope manufacturers, and general merchants, Fordingbridge, Romsey, and Poole, May 1, as regards Penny. Debts paid by remaining partners.—*Turner*, A. *Kippax*, J. *Noble*, D. and J. and *England*, J. stonemasons, builders, and contractors, Holmfirth, June 22, as regards England. Debts paid by remaining partners.—*Winskill*, W. and *Good*, J, joiners, builders, and undertakers, Great Grimsby, June 16.—*Yoxall*, J. and *Aston*, R. mercers and drapers, Nantwich, June 24. Debts paid by Yoxall.

Gazette, July 2.

Armitage, G. and *Keighley*, J. dyers, Bradford, June 30. Debts paid by Armitage.—*Ashbee*, E. W. and *Tuckett*, J. lithographers, engravers, and printers, Bread-court, Long-acre, June 24.—*Bailey*, G. and *Peacock*, R. warehousemen, Manchester, July 1.—*Banks*, J., *Peacock*, J. and *Wilson*, T. warehousemen, Friday-st. July 1. Debts paid by Banks and Peacock.—*Bethune*, F. C. proprietress of the seminary for young ladies, Westbrook-house, Farringdon, June 24.—*Bossey*, L. and *Douglas*, J. R. A. general medical practitioners, Brunswick-place, City-road. Debts paid by Bossey.—*Brenan*, J. and *Dewing*, W. E. lard refiners, Old Montague-st. Whitechapel, as regards Brenan, June 22.—*Broadbent*, J. and A. waste dealers, Oldham, June 30. Debts paid by A. Broadbent.—*Carr*, D. and J. Warwick-street, St. James's, July 1. Debt paid by Carr. — *Glazebrook*, N. S. and *Helsham*, C surgeon and apothecaries, West Derby, June Debts paid by Glazebrook.—*Goodier*, J. and *Peacock*, R. warehousemen, Manchester, July 1. — *Cooper*, J. and *Davis*, E. J. hay and straw salesmen, West Smithfield, June 29.—*Egton*, J., J. J. and T. house decorators and painters, Bishopsgate-st. June 24, as [illegible] Debts paid by remaining partners.—*Griffith*, R., *Cox*, E., *Griffith*, R. E., *Cox*, E. W. and *Palethorpe*, J. L. general brokers, Liverpool, July 1.—*Haigh*, T., S. W. and J. cotton spinners, Huddersfield, June 26. Debts paid [illegible] S. W. and J. Haigh.—*Hartley*, J. and *Barnshaw*, J. sellers, printers, and bookbinders, Colne, June 30, —*Hoyter*, E. and *Donaldson*, T. linen warehousemen, Wood-street, Cheapside, June 30 —*Hinds*, E. and *Sanderson*, F. I. tailors and drapers, Bradford, Yorkshire, June 28. Debts paid by Hinds.—*Horwarth*, J. and *Hinings*, G. manufacturing chemists, Pudsey, June 18.—*Huxley*, J. E. *Heriot*, J. J. and *Huxley*, C. ironmongers, Castle-st. Long-acre, as relates to Huxley, June 30. Debts paid by J. E. and J J. Huxley.—*King*, E. and W. carpenters and builders, Tonbridge, April 6. Debts paid by King.—*Lewis*, A., E. and B. milliners, dressmakers, and stationers, Cardigan, as regards A. Lewis, June 24 —*Litherland*, T. and *Lindsey*, G. joiners and builders, Salford, June 26. Debts paid by Litherland.—*Loveridge*, J. and *Brown*, A. H. haberdashers and dealers in trimmings and berlin wools, Brighton, July 30. Debts paid by Loveridge.—*Matthews*, W. and M flannel manufacturers, Newtown, June 28.—*Morton*, G. and *Price*, F. manufacturing chemists, Thwaites, Keighley, June 24.—*Naylor*, J. and R. C. bankers, Liverpool, June 30.—*Nichols*, W. *Brownbridge*, W. and *Bramham*, W. cloth finishers, Leeds, as relates to Brownbridge and Bramham, June 30. Debts paid by Nichols.—*Parkin*, S. *Humblet*, T. *Warren*, G. and *Dobson*, N. W. glass manufacturers, Brotherton, as regards Parkin, June 26. Debts paid by remaining partners.—*Paterson*, J. N. and *Williamson*, D. H. carpenters, builders, and house agents, East-st. Finsbury-market, March 17.—*Roberts*, R. and *Dobson*, R. G. engineers and machine and tool makers, Manchester, June 30 Debts paid by Roberts.—*Stevens*, W. H. and *Perrin*, J. Myrtle-st. Hoxton, June 30.—*Stokes*, S. and *Trewollah*, H. plumbers, &c. Bath, June 26. Debts paid by T. Harvey, Northumberland-buildings, Bath.—*Vernon*, G. C. and *Minshall*, L. attorneys and solicitors, Bromsgrove, June 30.—*Wells*, G. and *Ostler*, W. commission merchants and corn factors, Kingston-upon-Hull, June 30. Debts paid by Wells.—*Wiggins*, E. *Teape*, H. and *Loder*, R. Aldgate, as regards Louder, June 30.—*Wood*, J. and *Hinchliffe*, J. woollen cloth manufacturers, Thurstone, Penistone, Jan. 1. Debts paid by Wood.

Gazette, July 6.

Ascroft, H. and E. stone masons, Bootle, June 18 Debts paid by E. Ascroft.—*Barnes*, T. and J. carpenters, builders, undertakers, plumbers, &c. Lower Queen's-row, Pentonville-hill, July 5. Debts paid by T. J. Barnes.—*Barrett*, J. and *Fielding*, W. E. coal merchants, Davies' Wharf, Tooley-st. June 30. Debts paid by Fielding.—*Barton*, R. W. and A. *Robinson*, C. R. *Appleby*, J. and *Sidebotham*, J. calico printers, Staines and Manchester, as regards Robinson, Jan. 1.—*Barton*, R. W. and *Robinson*, C. R. merchants and manufacturers of patent washing machines, Manchester, April 15.—*Burrell*, S. and F. S. and *Foley*, W. H. drapers and silk mercers, Vere-st. June 30.—*Buttress*, J. J. and J. silk manufacturers, S[illegible] square, July 5. —*Corah*, J., T., and W. hosiers and hosiery manufacturers, Leicester and Birmingham, as regards J. Corah, March 28.—*Gee*, R. F. and *Dix*, R. improved patent hydraulic lead-pipe and window-lead manufacturers, Bristol, June 30. Debts paid by R. F. Gee.—*Goodson*, W. and J. silk manufacturers, Steward-st. Spitalfields, June 19. Debts paid by W. Goodson.—*Hardman*, G. and *Threlfall*, J. cotton spinners and manufacturers, Salford, June 24. —*Hardy*, T. W. and *Jackson*, H. drapers and grocers, Holbeach, June 16. Debts paid by Hardy.—*Horner*, J., J. J., and R. corn millers, corn merchants, and flour dealers, Wakefield and Manchester, June 30. Debts paid by J. Horner.—*Horsfall*, W. J., T. B., G. H., and *James*, T. manufacturers of steel and iron, and iron merchants, Liverpool, as regards James, June 30.—*Horton*, E. and *Corbett*, I. A. wine and spirit dealers, Darlaston, July 1. Debts paid by Horton. —*Huntriss*, W. and G. worsted spinners and machine wool combers, Halifax, June 30. Debts paid by W. Huntriss. —*Laurence*, W. sen. and jun. butchers, Isleworth, July 3. Debts paid by Lawrence, sen.—*Lees*, R. and *Torkington*, H. lime merchants, Clitheroe, July 1. Debts paid by Torkington.—*Lowe*, W. T. and *Broad*, S. E. surgeons and apothecaries, Aldersgate-st. July 1.—*Lythall*, R. and *Adney*, J. painters, &c. Birmingham, March 31.—*Morton*, E. and *Frost*, C. plumbers, painters, and glaziers, Cleveland-st. and Foley-st. Fitzroy-square, July 1.—*Nickels*, C. and B. *Wheeler*, T. *Lakes*, T. *Sowter*, F. J. L. and *Bunn*, L. St. L. manufacturers of articles of india rubber and its compounds, Lambeth, as regards B. Nickels, May 8. Debts p[illegible] partners.—*Nickels*, C. and B. *Wheeler*, T. *Lakes*, T. and *Sowter*, F. L. J. india rubber webb manufacturers, Leicester, and Goldsmith-st. London, as regards B. Nickels, May 8. Debts paid by remaining partners.—*Nickell*, J. *Maunders*, J. and *Andrews*, J. S. ship brokers and general agents, Liverpool, as regards Andrews, June 30.—*Pack*, J. and W. E. drapers and grocers, Haverhill, June 7.—*Pullin*, H. and *Chambers*, W. wine and spirit merchants, and chemists and druggists, Uxbridge, July 1.—*Royston*, W. and *Robertson*, C. railway carriage makers, contractors, and builders, Manchester, June 30.—*Smith*, J. and *Blackburn*, E. painters, Burnley, June 12. Debts paid by Blackburn.

CONTENTS.

To Readers and Correspondents.

"T. C., Portsea."—*Cordially agreeing in our correspondent's opinion, that the true remedy is to establish for both branches of the Profession a high standard of general as well as legal knowledge as a title to admission to practice, we shall not fail to make use of his hints, for which we thank him. His letter has been mislaid; hence the delay in noticing it.*

"ARTICLED CLERK."—*It would scarcely be required of him that he should master the new law by Michaelmas Term. But it would be as well to study it, so as to be prepared.*

"W. B."—*The series is intended to be continued as soon as the recent changes in the law, which are of urgent importance, shall have been fully laid before our readers.*

"STUDENT."—*The Equity Statutes will be issued as soon as the new Orders are ready by which they are to be carried into effect. Without them they are unintelligible and worthless.*

THE LAW TIMES.

SATURDAY, JULY 24, 1852.

TO READERS.

THE great importance of all the cases decided in the Courts of Appeal, especially those in the House of Lords, makes it incumbent upon us to supply the Profession with the most *complete* and *accurate* reports of them. But accuracy and completeness, without which they would be worthless either for perusal, or citation as authorities, cannot be attained without giving to them considerable space. Hence the unavoidable length of many of the recent cases and of many yet to come, for which we have been unable as yet to find room. The cause of this unwonted influx of important cases is found in the fact that the House of Lords before its rising cleared off its entire list of appeals; the Common Law Courts exhausted their lists, and the Lord Chancellor and the Lords Justices are striving to do the same. The value to the practitioner and the student of such a collection of reports as the present year will yield, presenting as they do, in almost every case, the *judgments verbatim*, will, we trust, more than compensate for the inevitable encroachment thus temporarily made upon other departments of the LAW TIMES, and for the postponement of some, where all come crowding together in numbers far exceeding the limits even of our extensive weekly sheet.

We could, of course, cut them down to mere short *notes of cases*; but this, we presume, would not be satisfactory to any of our readers, as they could not then profit by present reading of them, nor would they be of *any* value for future reference.

The case of *Lumley* v. *Wagner*, reported from the Lord Chancellor's Court, occupies a considerable space, but it is one of the most important and able of the judgments of the present Chancellor, being a complete review of the law of injunction, and laying down some new principles. It will henceforth be a *leading case*, and therefore we were unwilling to abbreviate it.

THE FIRST BLOW.

WITH profound regret we learn from a periodical, which avows itself to be conducted by, and to be the organ of, the Junior Bar, that their design is by no means abandoned of practising without the intervention of an Attorney. The 'plan' recommended to the Junior Bar is, however, not that of an open attack upon the Attorneys, a bold and brave endeavour to supplant them and to do without them; but the battle is to be begun by a covert warfare,—the approaches to the *end sought* are to be made by stealthy steps. The Junior Bar are advised by their organ to open the campaign by undertaking, *without the aid of an attorney*, the cases of poor suitors in the County Courts, that, having thus obtained a footing there and become accustomed to dispense with an Attorney, they may teach the public and satisfy themselves at the same time that an Attorney is not necessary, and that the Bar *can* do the suitor's work without the Attorney's help. It will be the thin point of the wedge; the rest will certainly follow. This is the suggestion of the organ of the Junior Bar—the *Legal Examiner*:—

> We venture to express our opinion that, considering the nature and objects of the County Courts, there are cases in which the Bar ought to relax the rule of etiquette. Where a party is poor, especially in the case of a defendant, and when the answer to a plaintiff's claim is one of a simple character, but to which the party himself is unable to do justice, we really think it to be *the duty of the Bar* to lend their assistance in court, without the formality of *instructions by an attorney*.

We do most earnestly deprecate the object *thus* sought to be attained, because we believe it will be fraught with the deepest injury to the Profession, the two branches of which will thus be converted into hostile camps of rivals and competitors, to the damage and discomfiture of both. But even more than to the object sought are we averse to the manner in which it is proposed to be pursued. It is a question upon which men may fairly differ in their opinions, whether it be desirable to link together the Bar and the Attorneys, or whether the two branches of the Profession should enter the lists in a struggle for clients, one against the other. Howsoever we may differ in our conclusions as to the propriety of either course, we have no right to find fault with those who think otherwise, or to blame those who advise or act upon the principle, that the Bar should assert its entire independence of the Attorneys, and that open war should be proclaimed between them. But it is impossible to approve the sort of *covert* warfare thus proposed. Let not the approach be made under a masked battery. The project is right or it is wrong. If right, let it be openly and plainly advocated and pursued; if wrong, let it be openly abandoned. We have so often stated our reasons for opposing the proposition of the Junior Bar, and we have such high authorities to adduce in support of those objections,—no less than the LORD CHANCELLOR, the LORD CHIEF-JUSTICE OF ENGLAND, and Lord CRANWORTH,—that we need not now repeat them. Our present purpose is only to enter our instant and earnest protest, on the part of the Profession, against the adoption of *the first step* that has been proposed on behalf of the Junior Bar by its organ, towards that which, we verily believe, would lead, in no long time, to the destruction of *both* its branches. If the Bar should invade the province of the Attorneys, the Attorneys will be justified in a similar attack upon their invaders, and the public, who have no love either for the one or for the other, will take advantage of their common weakness (produced by an internecine warfare) to annihilate both.

THE COMMON LAW PROCEDURE ACT.

THERE has been much anxious consultation with Mr. KERR, who has undertaken the LAW TIMES edition of this Statute, whether it should be prepared and printed hastily, with only a few notes, a short introduction, and an index, to serve merely for present reading and to be thrown aside when a more perfect one could be produced, or if, at the cost of two or three weeks' delay, he should annotate it carefully, shew in what the new law has altered the old law, give practical instructions, present a sketch of an action as *it will be* under the altered procedure, introduce the necessary forms, and, in short, place in the hands of the Lawyers a book of real value and *permanent* utility. It was a question of *time*. Clearly, it would be impossible to produce anything more than a reprint of the Act itself, with a few notes, if it was to be prepared, printed, and published in three weeks from its becoming law. On the other hand, if made a book of substantial worth, its publication *must* be delayed for two or three weeks. This was the choice before us. After much deliberation, it was determined that the LAW TIMES edition of so important a statute should not be merely an ephemeral and almost worthless reprint, but a careful and complete book upon the new Procedure, such as should be useful to the Profession and creditable to the editor; and we trust that the decision will be approved by those who have ordered it. But as they may be desirous in the meanwhile of making some acquaintance with the statute itself, we have in this number commenced the publication of it entire, so that, while waiting for Mr. KERR's copiously annotated edition, they may gather from the text of the law itself a general knowledge of the changes it has effected.

It may be stated that Mr. KERR confidently expects to complete his labours by the end of next week, and all the arrangements are made for rapid printing and instant delivery to the subscribers.

ADVOCACY.

THE *Legal Observer* questions the correctness of our statement, that by the strict law as it was *before* the recent alteration, an Attorney was not entitled to appear as Advocate for another Attorney, although such was the practice of the Profession, custom having sanctioned what the strict law prohibits.

Our authority is the Court of Q. B.; the judgment, that of the Lord Chief Justice of England; the case, that of Mr. AMOS, on the occasion of the criminal information that was moved against him by Mr. CARTER. Lord CAMPBELL then explicitly declared it to be the opinion of the Court that it was *illegal* for an Attorney to appear as an Advocate, instructed by another Attorney.

No reasons were assigned for this *dictum*, but they are sufficiently obvious. It results from the well-known rule of law, *delegatus non potest delegari*. An Attorney is the agent of the client, and he cannot delegate his agency to another. If he employs another Attorney to conduct a case for him as an Advocate, he can so employ him only in his character of Attorney, for in no other character has he *a right* to appear in the Court. But, if he appears *as an Attorney*, it must be as an Attorney *of the client*, and not as the Attorney of the Attorney, or the rule above stated would be violated. Try it thus.

The Attorney is legally responsible for the conduct of his client's case, and an action will lie against him *for negligence*. Now, suppose that the actual Attorney in the case had instructed another Attorney to appear for him, to conduct it as an Advocate, and the Advocate-Attorney were to be guilty of gross negligence, and an action were to be brought against *him*, would not his answer be, that he was *not* the Attorney in the case? And would not that be a sufficient answer? But, if he be not the Attorney in the case, he clearly could have no *right* to appear in it, for the right to appear in any case does not belong to the Profession generally, but to the particular Attorney in the case then before the Court, and to no other.

We are now only stating what is *the law*, and the reasons for it; we are not vindicating its propriety. So far from approving it, we think that it might be advantageously modified; that its enforcement will operate unjustly and injuriously over many parts of the country, where there is not now, nor is there likely to be, for a long time to come, an efficient Bar; and therefore we would suggest the propriety of some such alteration as this, namely, to *authorise* the employment by one Attorney of another, as an Advocate in *all courts* in which a Bar of not less than *four* Counsel shall not be in regular attendance. Attorneys and suitors are equally entitled to require that there shall be a reasonable choice of Advocates, if compelled to take them from one class only.

Such an arrangement would probably reconcile all interests, for then there would be an option in the County Courts to have as an Advocate either

The Attorney actually concerned in the case, and instructed by the client; or

One of four Counsel regularly attending;

Or, if there be no Counsel, or less than four,

An Attorney instructed by the Attorney in the case.

COSTS IN THE COUNTY COURTS.

The Lord Chancellor has not yet appointed the five Judges who are to frame the new scale of Attorneys' costs in the County Courts, under the first section of the new Act.

The whole value of this provision to the Profession will depend upon the liberality with which that scale is constructed.

Having obtained this boon for the Attorneys, we feel, of course, more than common interest in its full and efficient adoption, and we shall not relax our vigilance until it is completed.

The next step to be taken will be to prepare such a scale of costs, to be submitted to the committee of the Judges when appointed, as may be at once satisfactory to the Profession and just to the public.

Necessarily, it must be a somewhat *lower* scale than that adopted in the Superior Courts; but it may be framed without curtailing the profits of the practitioners, for there will be no agents to share them.

We ask our *practical* readers to direct their attention to this important subject, and if they will send us such scales of fees as each may consider fair, we will consider and compare them, and from the whole construct one, which we will publish here for the purpose of taking upon it the opinion of the Profession, previously to submitting it to the committee of the Judges.

LAWYERS IN PARLIAMENT.

The list of Lawyers in the new Parliament is not so formidable as it threatened to be, from the long array of legal candidates for that honour. Very nearly one-half of them were defeated at the polls. The actual increase of their numbers, as compared with those in the last Parliament, is trifling. The wonder is how, in the present state of the Profession, so many of its members were enabled to provide for the unavoidable expenses of an election. It would seem to shew that the Lawyers are not so badly off as they appear to be; or is it that, in a fit of desperation, they have been staking *all* upon a last chance?

We wait the completion of the returns before we present to our readers a complete list of the Lawyers in the new Parliament. But there is one very creditable fact which we may note now, as falling within our personal sonal knowledge.

No less than eight members of the Western Circuit have been elected, all of them for towns within their circuit; three of them for their native places, viz. Mr. Phinn for Bath, Mr. Collier for Plymouth, and Mr. Carter for Tavistock. This is highly creditable to the men so chosen, and to the towns that have chosen them. They have been preferred where they are best known by their friends and neighbours, who, instead of feeling jealous at their rise, have deemed that honours won by their fellow townsmen are, in truth, reflected upon themselves. These instances have proved that, in the West of England, at least, there are noble exceptions to the saying, that "a prophet has no honour in his own country."

THE NEW EQUITY REFORMS.

The Equity Reform Acts of last session are only skeletons. Everything is to be *done* by *Orders*, which, we understand, are in a forward state, and will be issued before the Vacation. The Acts alone being worthless without them, the announced edition by Mr. Tudor will not be published until they can be made intelligible and useful by the introduction of the Orders that are to give them effect.

AN ABUSE OF THE LAW.

The following is a copy of a Broker's Bill for a distress for rent taken at Manchester on the property of a poor widow. Is it possible that these can be the *usual* charges in that town? If so, the law on this subject requires immediate amendment, and we direct to it the attention of the Law Reformers in Parliament:—

1852			£	s.	d.
March	26.	Levy for 60*l*. rent due 25th March inst.	2	2	
,,		Paid Advertising sale . ..	1	17	
,,		Printing bills	1	15	
,,		Posting ditto	0	10	
,,		Bill on exchange	0	1	
	31.	Oath	0	1	
,,		Valuation (two appraisers) .	2	10	
April	1.	Porters	0	10	
,,		Clerk	0	10	
,,		Brokers	1	0	
,,		Possession	3	10	
,,		Attending to sell when sale was postponed until April 8	2	2	
	2	Paid bills and posting	2	5	
,,		Advertising	1	17	
	8.	Possession	3	10	
,,		Advertising sale *was* postponed	0	11	
,,		Commission	5	5	
	20.	Paid possession, 12 days at 5s.	3	0	
			£32	19	6

PROMISSORY NOTE STAMP.

We are glad to be able to set at rest the question as to the effect of the decision in *Escritt* v. *Mason*. The attorney for one of the parties has favoured us with a copy of the note in question, and it proves to be, as our various correspondents had suggested, and not as our reporter had supposed. It *was* payable to bearer *on demand*, and does not, therefore, support the point stated in the head-note of the report. The following communication speaks for itself:—

ESCRITT v. MASON.

TO THE EDITOR OF THE LAW TIMES.

Sir,—As the attorney having the conduct of the trial of this cause in London, I beg to inclose you a copy of note on which the action was brought. You will observe that the same is made payable to bearer on demand, which rendered it liable to the higher stamp-duty. The defendant alleged that the note was copied from a country bank note, which, of course, would be capable of being reissued, and therefore liable to the higher duty.

I am, Sir, yours, &c.

Samuel Shuttleworth.

Gray's Inn, 21st July, 1852.

"(Stamp, 3s. 6d.)—We promise to pay the bearer fifty pounds on demand for value received of Moses Escritt, of Broughton, this ninth day of May, 1849.

"Witness our hands this ninth day of May, 1849.

"George Empson.
£50 0 0 "Wm. Mason, jun.
"C. Hunsley."

A correction appears in the reports.

SHAM LAWYERS.

Here is another from a Manchester paper:—

Important to the Embarrassed.—T. Dawson may be consulted, free of expense, with a view to effect private arrangements with creditors; or by virtue of the Bankrupt, Insolvent, or Arrangement Acts, to obtain immediate protection, thereby avoiding imprisonment. County Court cases attended to. Offices, 28, Brown-street, Market-street.

THE LEGISLATOR.

NEW STATUTES.

15 Victoria, A.D. 1852.

[In this record of Legislation only the Statutes of practical utility are given at length. Of the others an abstract or the titles only are presented.]

Cap. LXXVI.

An Act to amend the Process, Practice, and Mode of Pleading in the Superior Courts of Common Law at Westminster, and in the Superior Courts of the Counties Palatine of Lancaster and Durham. (June 30, 1852.)

Whereas the process, practice, and mode of pleading in the Superior Courts of Common Law at Westminster may be rendered more simple and speedy: be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. *Commencement of Act.*—The provisions of this Act shall come into operation on the twenty-fourth day of October in the year of our Lord one thousand eight hundred and fifty-two.

Writs for commencement of actions.—And with respect to the writs for the commencement of personal actions in the said Courts against defendants, whether in or out of the jurisdiction of the Courts, be in enacted as follows:—

2. *Personal actions, when defendant resides within the jurisdiction, to be commenced by writ of summons in form No. 1 of Schedule A.*—All personal actions brought in her Majesty's Superior Courts of Common Law, where the defendant is residing or supposed to reside within the jurisdiction of the said courts, shall be commenced by writ of summons in the form contained in the schedule (A.) to this Act annexed, marked No. 1, and in every such writ and copy thereof the place and county of the residence or supposed residence of the party defendent, or wherein the defendant shall be or shall be supposed to be, shall be mentioned; and such writ shall be issued by any one of the officers of the said courts respectively by whom like process hath been heretofore issued from such court, or by such other officer as the Court shall direct.

3. *No form or cause of action to be mentioned in writ.*—It shall not be necessary to mention any form or cause of action in any writ of summons, or in any notice of writ of summons, issued under the authority of this Act.

4. *Writ to state names of all defendants, and for only one action.*—Every writ of summons shall contain the names of all the defendants, and shall not contain the name or names of any defendant or defendants in more actions than one.

5. *Writ to be dated of day of issuing, and tested in the name of chief or senior judge.*—Every writ of summons shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Lord Chief Justice or Lord Chief Baron of the court from which the same shall issue, or in case of a vacancy of such office, then in the name of a senior puisne judge of the said court.

6. *Writ to be indorsed with name and abode of attorney, or a memorandum that writ has been sued by plaintiff in person.*—Every writ of summons shall be indorsed with the name and place of abode of the attorney actually suing out the same, and in case such attorney shall not be an attorney of the court in which the same is sued out, then also with the name and place of abode of the attorney of such Court in whose name such writ shall be taken out; and when the attorney actually suing out any

writ shall sue out the same as agent for an attorney in the country, the name and place of abode of such attorney in the country shall also be indorsed upon the said writ; and in case no attorney shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff in person, mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of such plaintiff's residence, if any such there be.

7. *Attorney on demand to declare whether writ issued by his authority, and to declare name and abode of his client if ordered—If writ issued with out authority of attorney, proceedings to be stayed.*—Every attorney whose name shall be indorsed on any writ issued by authority of this Act shall, on demand in writing, made by or on behalf of any defendant, declare forthwith whether such writ has been issued by him or with his authority or privity and if he shall answer in the affirmative, then he shall, also, in case the Court or a judge shall so order and direct, declare in writing, within a time to be allowed by such Court or judge, the profession, occupation, or quality, and place of abode of the plaintiff, on pain of being guilty of a contempt of the Court from which such writ shall appear to have been issued; and if such attorney shall declare that the writ was not issued by him, or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the Court or a judge.

8. *Indorsement of debt and costs on writ and copy of writ for a debt, with notice that proceedings will be stayed on payment within four days.*—Upon the writ and copy of any writ served for the payment of any debt the amount of the debt shall be stated, and the amount of what the plaintiff's attorney claims for the costs of such writ, copy, and service, and attendance to receive debt and costs, and it shall be further stated that upon payment thereof within four days to the plaintiff or his attorney, further proceeding will be stayed; which indorsement shall be written or printed in the following form or to the like effect:—

"The plaintiff claims £ for debt, and £ for costs, and if the amount thereof be paid to the plaintiff or to his attorney within four days from the service hereof further proceedings will be stayed."

But the defendant shall be at liberty, notwithstanding such payment, to have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff's attorney shall pay the costs of taxation.

9. *Concurrent writs may be issued.*—The plaintiff in any such action may, at any time during six months from the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear teste of the same day as the original writ, and to be marked with a seal bearing the word "concurrent," and the date of issuing the concurrent writ; and such seal shall be provided and kept for that purpose at the offices of the Masters of the said courts, and shall be impressed upon the writ by the proper officer of the court out of which the original writ issued: Provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force.

10. *From commencement of this Act certain provisions of 2 Wm. 4, c. 39, are repealed.*—From the time when this Act shall commence and take effect, so much of a certain Act of Parliament passed in the second year of the reign of his late Majesty King William the Fourth, intituled "An Act for Uniformity of Process in Personal Actions in his Majesty's Courts of Law at Westminster," as relates to the duration of writs, and to alias and pluries writs, and to the proceedings necessary for making the first writ in any action available to prevent the operation of any statute whereby the time for the commencement of any action may be limited, shall be repealed, except so far as may be necessary for supporting any writs that have been issued before the commencement of this Act, and any proceedings taken or to be taken thereon.

11. *Renewal of writs of summons to save the Statute of Limitation, and for other purposes.*—No original writ of summons shall be in force for more than six months from the day of the date thereof, including the day of such date; but if any defendant therein named may not have been served therewith, the original or concurrent writ of summons may be renewed at any time before its expiration, for six months from the date of such renewal, and so from time to time during the currency of the renewed writ, by being marked with a seal bearing the date of the day, month, and year of such renewal, such seal to be provided and kept for that purpose at the offices of the Masters of the said Superior Courts, and to be impressed upon the writ by the proper officer of the court out of which such writ issued, upon delivery to him by the plaintiff or his attorney of a præcipe in such form as has heretofore been required to be delivered upon the obtaining of an alias writ; and a writ of summons so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ of summons.

12. *Renewal of writs issued before this Act.*—Where any writ of summons in any such action shall have been issued before, and shall be in force at, the commencement of this Act, such writ may at any time before the expiration thereof be renewed under the provisions of and in the manner directed by this Act; and where any writ, issued in continuation of a preceding writ according to the provisions of the said Act of his late Majesty King William the Fourth, shall be in force and unexpired, or where one month next after the expiration thereof shall not have elapsed at the commencement of this Act, such continuing writ may, without being returned non est inventus, or entered of record according to the provisions of the said act of his late Majesty King William the Fourth, be filed in the office of the court within one month next after the expiration of such writ, or within twenty days after the commencement of this Act; and the original writ of summons in such action may thereupon, but within the same period of one month next after the expiration of the continuing writ, or within twenty days after the commencement of this Act, be renewed under the provisions of and in the manner directed by this Act; and every such writ shall after such renewal have the same duration and effect for all purposes, and shall, if necessary, be subsequently renewed, in the same manner as if it had originally issued under the authority of this Act.

13. *Production of renewed writ evidence of commencement of action.*—The production of a writ of summons purporting to be marked with the seal of the court, shewing the same to have been renewed according to this Act, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes.

14. *Writ may be served in any county.*—The writ of summons in any action may be served in any county.

15. *Indorsement of service to be made.*—The person serving the writ of summons shall and he is hereby required, within three days at least after such service, to indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed under this Act; and every affidavit of service of such writ shall mention the day on which such indorsement was made.

16. *As to service of writ on corporation and inhabitants of hundreds and towns.*—Every such writ of summons issued against a corporation aggregate may be served on the mayor or other head officer, or on the town clerk, clerk, treasurer, or secretary of such corporation; and every such writ issued against the inhabitants of a hundred, or other like district, may be served on the high constable thereof, or any one of the high constables thereof; and every such writ issued against the inhabitants of any county of any city or town, or the inhabitants of any franchise, liberty, city, town, or place not being part of a hundred or other like district, on some peace officer thereof.

17. *Proceedings where personal service cannot be effected, but defendant knows of the writ, and evades service.*—The service of the writ of summons, wherever it may be practicable, shall, as heretofore, personal; but it shall be lawful for the plaintiff to apply from time to time, on affidavit, to the court out of which the writ of summons issued, or to a judge; and in case it shall appear to such court or judge that reasonable efforts have been made to effect personal service, and either that the writ has come to the knowledge of the defendant, or that he wilfully evades service of the same, and has not appeared thereto, it shall be lawful for such court or judge to order that the plaintiff be at liberty to proceed as if personal service had been effected, subject to such conditions as to the court or judge may seem fit.

18. *As to actions against British subjects residing out of the jurisdiction of Superior Courts.*—In case any defendant, being a British subject, is residing out of the jurisdiction of the said Superior Courts, in any place except in Scotland or Ireland, it shall be lawful for the plaintiff to issue a writ of summons in the form contained in the schedule (A.) to his Act annexed, marked No. 2, which writ shall bear the indorsement contained in the said form, purporting that such writ is for service out of the jurisdiction of the said Superior Courts; and the time for appearance by the defendant to such writ shall be regulated by the distance from England of the place where the defendant is residing; and it shall be lawful for the Court or judge, upon being satisfied by affidavit that there is a cause of action, which arose within the jurisdiction, or in respect of the breach of a contract made within the jurisdiction, and that the writ was personally served upon the defendant, or that reasonable efforts were made to effect personal service thereof upon the defendant, and that it came to his knowledge, and either that the defendant wilfully neglects to appear to such writ, or that he is living out of the jurisdiction of the said Courts, in order to defeat and delay his creditors, to direct from time to time that the plaintiff shall be at liberty to proceed in the action in such manner and subject to such conditions as to such Court or judge may seem fit, having regard to the time allowed for the defendant to appear being reasonable, and to the other circumstances of the case: Provided always, that the plaintiff shall, and he is hereby required to, prove the amount of the debt or damages claimed by him in such action, either before a jury upon a writ of inquiry, or before one of the Masters of the said Superior Courts in the manner hereinafter provided, according to the nature of the case, as such Court or judge may direct; and the making such proof shall be a condition precedent to his obtaining judgment.

19. *As to actions against foreigners residing out of the jurisdiction of Superior Courts.*—In any action against a person residing out of the jurisdiction of the said courts, and not being a British subject, the like proceedings may be taken as against a British subject resident out of the jurisdiction, save, that in lieu of the form of writ of summons in the schedule (A) to this Act annexed marked No. 2, the plaintiff shall issue a writ of summons according to the form contained in the said schedule (A.) marked No. 3, and shall in manner aforesaid serve a notice of such last-mentioned writ upon the defendant therein mentioned, which notice shall be in the form contained in the said schedule also marked No. 3; and such service shall be of the same force and effect as the service of the writ of summons in any action against a British subject resident abroad, and by leave of the Court or a judge, upon their or his being satisfied by affidavit as aforesaid, the like proceedings may be had and taken thereupon.

20. *Omission to insert or indorse matters in or on writ not to nullify it.*—If the plaintiff or his attorney shall omit to insert in or indorse on any writ or copy thereof any of the matters required by this Act to be inserted therein or indorsed thereon, such writ or copy thereof shall not on that account be held void, but it may be set aside as irregular, or amended, upon application to be made to the Court out of which the same shall issue, or to a judge; and such amendment may be made, upon any application to set aside the writ, upon such terms as to the Court or judge may seem fit.

21. *Substitution by mistake or inadvertence of one form of writ for another may be by judge without costs.*—If either of the forms of writ of summons contained in the schedule (A.) to this Act annexed, and marked respectively Nos. 1, 2, and 3, shall by mistake or inadvertence be substituted for any other of them, such mistake or inadvertence shall not be an objection to the writ or any other proceeding in such action, but the writ may, upon an ex parte application to a judge, whether before or after any application to set aside such writ or any proceeding thereon, and whether the same or notice thereof shall have been served or not, be amended by such judge without costs.

22. *Writs for service within and without jurisdiction may be concurrent, and vice versâ.*—A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service but of the jurisdiction, and a writ for service out of the jurisdiction may be issued and marked as a concurrent writ with one for service within the jurisdiction.

23. *Affidavits in certain cases may be sworn before a consul.* Any affidavit for the purpose of enabling the Court or a judge to direct proceedings to be taken against a defendant residing out of the jurisdiction of the said courts may be sworn before any consul-general, consul, vice-consul, or consular agent for the time being, appointed by her Majesty at any foreign port or place; and every affidavit so sworn by virtue of this Act may be used and shall be admitted in evidence, saving all just exceptions, provided it purport to be signed by such consul-general, consul, vice-consul, or consular agent, upon proof of the official character and signature of the person appearing to have signed the same: provided always, that if any person shall forge the signature of any such affidavit, or shall use or tender in evidence any such affidavit with a false or counterfeit signature thereto, knowing the same to be false or counterfeit, he shall be guilty of felony, and shall upon conviction be liable to transportation for seven years, or to imprisonment for any term not exceeding three years, nor less than one year, with hard labour; and every person who shall be charged with committing any felony under this Act may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed in the county or place in which he shall be apprehended or be in custody; and every accessory before or after the fact to any such offence may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed, in any county or place in which the principal offender may be tried: provided also, that if any person shall wilfully and corruptly make a false affidavit before such consul-general, consul, vice-consul, or consular agent, every person so offending shall be deemed and taken to be guilty

of perjury, in like manner as if such false affidavit had been made in England before competent authority, and shall and may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed in any county or place in which he shall be apprehended or be in custody, as if his offence had been actually committed in that county or place.

24. *Distringas to compel appearance or to proceed to outlawry abolished.*—From the time when this Act shall commence and take effect, so much of the said Act of his late Majesty King William the Fourth as relates to the writ of distringas, and the proceeding thereon, whether for the purpose of compelling appearance or for proceedings to outlawry, shall be repealed, except so far as may be necessary for the purpose of giving effect to proceedings already taken, or to be taken after the commencement of this Act, under or by reason of any writ of distringas issued before the commencement of this Act, or under any rule or order authorising the issuing of such writ, and made before the commencement of this Act.

25. *Special indorsement of the particulars of debts or liquidated demands may be made on the writ—Special indorsement to stand for particulars of demand.*—In all cases where the defendant resides within the jurisdiction of the Court, and the claim is for a debt or liquidated demand in money, with or without interest, arising upon a contract, express or implied, as, for instance, on a bill of exchange, promissory note, or cheque, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money, or in the nature of a debt, or on a guarantee, whether under seal or not, where the claim against the principal is in respect of such debt or liquidated demand, bill, cheque, or note, the plaintiff shall be at liberty to make upon the writ of summons and copy thereof a special indorsement of the particulars of his claim, in the form contained in the Schedule (A.) to this Act annexed, marked No. 4, or to the like effect; and when a writ of summons has been indorsed in the special form hereinbefore mentioned, the indorsement shall be considered as particulars of demand, and no further or other particulars of demand need be delivered, unless ordered by a Court or judge.

And with respect to the appearance of the defendant, and proceedings of the plaintiff in default of appearance, be it enacted as follows.

26. *Appearance according to provisions of Acts of 12 Geo. 1, c. 29, and 2 Wm. 4, c. 39, abolished.*—From the time when this Act shall commence and take effect, so much of a certain Act of Parliament passed in the twelfth year of the reign of his late Majesty King George the First, intituled "An Act to prevent frivolous and vexatious Arrests," and so much of the said Act of his late Majesty King William the Fourth as relates to the entering an appearance for the defendant by the plaintiff in any action in any of the said Superior Courts, shall be repealed, except so far as may be necessary to support proceedings heretofore taken, and no appearance need be entered by the plaintiff for the defendant.

27. *Final judgment upon writ specially indorsed in default of appearance.*—In case of non-appearance by the defendant, where the writ of summons is indorsed in the special form hereinbefore provided, it shall and may be lawful for the plaintiff, on filing an affidavit of personal service of the writ of summons, or a judge's order for leave to proceed under the provisions of this Act, and a copy of the writ of summons, at once to sign final judgment in the form contained in the schedule (A.) to this Act annexed, marked No. 5 (on which judgment no proceeding in error shall lie), for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified, if any, to the date of the judgment, and a sum for costs (to be fixed by the Masters of the said Superior Courts, or any three of them, subject to the approval of the judges thereof, or any eight of them, of whom the Lord Chief Justices and the Lord Chief Baron shall be three), unless the plaintiff claim more than such fixed sum, in which case the costs shall be taxed in the ordinary way; and the plaintiff may upon such judgment issue execution at the expiration of eight days from the last day for appearance, and not before: Provided always, that it shall be lawful for the Court or a judge, either before or after final judgment, to let in the defendant to defend upon an application, supported by satisfactory affidavits accounting for the non-appearance, and disclosing a defence upon the merits.

28. *Judgment for non-appearance where the writ is not indorsed in the special form.*—In case of such non-appearance, where the writ of summons is not indorsed in the special form hereinbefore provided, it shall and may be lawful for the plaintiff, on filing an affidavit of personal service of the writ of summons, or a judge's order for leave to proceed under the provisions of this Act, and a copy of the writ of summons, to file a declaration indorsed with a notice to plead in eight days, and to sign judgment by default at the expiration of the time to plead, so indorsed as aforesaid; and in the event of no plea being delivered, where the cause of action mentioned in the declaration is for any of the claims which might have been inserted in the special indorsement on the writ of summons hereinbefore provided, and the amount claimed is indorsed on the writ of summons, the judgment shall be final, and execution may issue for an amount not exceeding the amount indorsed on the writ of summons, with interest at the rate specified, if any, and the sum fixed by the Masters for costs, as hereinbefore mentioned, unless the plaintiff claim more, in which case the costs shall be taxed in the ordinary way: Provided always, that in such case the plaintiff shall not be entitled to more costs than if he had made such special indorsement, and signed judgment upon non-appearance.

29. *Appearance to be entered at any time before judgment.*—The defendant may appear at any time before judgment, and if he appear after the time specified either in the writ of summons, or in any rule or order to proceed as if personal service had been effected, he shall, after notice of such appearance to the plaintiff or his attorney, as the case may be, be in the same position as to pleadings and other proceedings in the action as if he had appeared in time: Provided always, that a defendant appearing after the time appointed by the writ shall not be entitled to any further time for pleading or any other proceeding than if he had appeared within such appointed time.

30. *Appearance by the defendant in person to give an address at which proceedings may be served.*—Every appearance by the defendant in person shall give an address, at which it shall be sufficient to leave all pleadings and other proceedings not requiring personal service; and if such address be not given, the appearance shall not be received; and if an address so given shall be illusory or fictitious, the appearance shall be irregular, and may be set aside by the Court or a judge, and the plaintiff may be permitted to proceed by sticking up the proceedings in the Master's office without further service.

31. *Mode of appearance to writ of summons.*—The mode of appearance to every such writ of summons, or under the authority of this Act, shall be by delivering a memorandum in writing according to the following form, or to the like effect:—

"A, Plaintiff, against C. D. | The defendant C. D. appears in person.
or
against C. D. and another, | E. F. attorney for C. D. appears for him.
or
against C. D. and others.

"[If the defendant appears in person here give his address."]

"Entered the day of , 18 ."

Such memorandum to be delivered to the proper officer or person in that behalf, and to be dated on the day of the delivery thereof.

32. *Proceedings mentioned in writ or notice may be had and taken.* All such proceedings as are mentioned in any writ or notice issued under this Act shall and may be had and taken in default of a defendant's appearance.

33. *Proceedings where only some of the defendants appear to a writ specially endorsed.*—In any action brought against two or more defendants, where the writ of summons is indorsed in the special form hereinbefore provided, if one or more of such defendants only shall appear, and another or others of them shall not appear, it shall and may be lawful for the plaintiff to sign judgment against such defendant or defendants only as shall not have appeared, and before declaration against the other defendant or defendants, to issue execution thereupon, in which case he shall be taken to have abandoned his action against the defendant or defendants who shall have appeared; or the plaintiff may, before issuing such execution, declare against such defendant or defendants as shall have appeared, stating, by way of suggestion, the judgment obtained against the other defendant or defendants who shall not have appeared, in which case the judgment so obtained against the defendant or defendants who shall not have appeared shall operate and take effect in like manner as a judgment by default obtained before the commencement of this Act against one or more of the several defendants in an action of debt before the commencement of this Act.

And with respect to the joinder of parties to actions, be it enacted as follows:

34. *Nonjoinder and misjoinder of plaintiffs may be amended before trial.* It shall and may be lawful for the Court or a judge, at any time before the trial of any cause, to order that any person or persons, not joined as plaintiff or plaintiffs in such cause, shall be so joined; or that any person or persons, originally joined as plaintiff or plaintiffs, shall be struck out from such cause, if it shall appear to such Court or judge that injustice will not be done by such amendment, and that the person or persons to be added as aforesaid, consent, either in person or by writing, under his, her, or their hands, to be so joined, or that the person or persons to be struck out as aforesaid were originally introduced without his, her, or their consent, or that such person or persons consent in manner aforesaid to be so struck out; and such amendment shall be made upon such terms as to the amendment of the pleadings (if any), postponement of the trial, and other [illegible] ment is made shall think proper; and when any such amendment shall have been made, the liability of any person or persons, who shall have been added as co-plaintiff or co-plaintiffs, shall, subject to any terms imposed as aforesaid, be the same as if such person or persons had been originally joined in such cause.

35. *Nonjoinder and misjoinder of plaintiffs may be amended at the trial, as in cases of amendments of variances under 3 & 4 Wm. 4, c. 42.*—In case it shall appear at the trial of any action that there has been a misjoinder of plaintiffs, or that some person or persons, not joined as plaintiff or plaintiffs, ought to have been so joined, and the defendant shall not, at or before the time of pleading, have given notice in writing that he objects to such nonjoinder, specifying therein the name or names of such person or persons, such misjoinder or nonjoinder may be amended, as a variance, at the trial by any Court of Record holding plea in civil actions, and by any judge sitting at Nisi Prius, or other presiding officer, in like manner as to the mode of amendment, and proceedings consequent thereon, or as near thereto as the circumstances of the case will admit, as in the case of amendments of variances under an Act of Parliament passed in the session of Parliament, held in the third and fourth years of the reign of his late Majesty King William the Fourth, intituled "An Act for the further Amendment of the Law, and the better Advancement of Justice," if it shall appear to such Court, or judge, or other presiding officer, that such misjoinder or nonjoinder was not for the purpose of obtaining an undue advantage, and that injustice will not be done by such amendment, and that the person or persons, to be added as aforesaid, consent, either in person or by writing, under his, her, or their hands, to be so joined, or that the person or persons, to be struck out as aforesaid, were originally introduced without his, her, or their consent, or that such person or persons consent, in manner aforesaid, to be so struck out; and such amendment shall be made upon such terms as the Court, or judge, or other presiding officer, by whom such amendment is made, shall think proper; and when any such amendment shall have been made, the liability of any person or persons, who shall have been added as co-plaintiff or co-plaintiffs, shall, subject to any terms imposed as aforesaid, be the same as if such person or persons had been originally joined in such action.

36. *Upon notice or plea of nonjoinder of plaintiffs, proceedings may be amended.*—In case such notice be given, or any plea in abatement of nonjoinder of a person or persons as co-plaintiff or co-plaintiffs, in cases where such plea in abatement may be pleaded by the defendant, the plaintiff shall be at liberty, without any order, to amend the writ and other proceedings before plea, by adding the name or names of the person or persons named in such notice or plea in abatement, and to proceed in the action without any further appearance, on payment of the costs of, and occasioned by such amendment only, and in such case the defendant shall be at liberty to plead de novo.

37. *Misjoinder of defendants may be amended before or at trial.*—It shall and may be lawful for the Court or a judge in the case of the joinder of too many defendants in any action on contract, at any time before the trial of such cause, to order that the name or names of one or more of such defendants be struck out, if it shall appear to such Court or judge that injustice will not be be done by such amendment; and the amendment shall be made upon such terms as the Court or judge, by whom such amendment is made, shall think proper; and in case it shall appear at the trial of any action on contract that there has been a misjoinder of defendants, such misjoinder may be amended, as a variance, at the trial, in like manner as the misjoinder of plaintiffs has been hereinbefore directed to be amended, and upon such terms as the Court, or judge, or other presiding officer, by whom such amendment is made, shall think proper.

38. *Upon plea in abatement for nonjoinder of defendants, proceedings may be amended.*—In any action on contract where the nonjoinder of any person or persons as a co-defendant or co-defendants has been pleaded in abatement, the plaintiff shall be at liberty, without any order, to amend the writ of summons and the declaration, by adding the name or names of the person or persons named in such plea in abatement as joint contractors, and to serve the amended writ upon the person or persons so named in such plea in abatement, and to proceed against the original defendant or defendants, and the person or persons so named in such plea in abatement: provided that the date of such amendment shall, as between the person or persons so named in such plea in abatement and the plaintiff, be con-

sidered for all purposes as the commencement of the action.

39. *Provision in the case of subsequent proceedings against the persons named in a plea in abatement for nonjoinder of defendants.*—In all cases after such plea in abatement and amendment, if it shall appear upon the trial of the action that the person or persons so named in such plea in abatement was or were jointly liable with the original defendant or defendants, the original defendant or defendants shall be entitled as against the plaintiff to the costs of such plea in abatement and amendment; but if at such trial it shall appear that the original defendant or any of the original defendants is or are liable, but that one or more of the persons named in such plea in abatement is or are not liable as a contracting party or parties, the plaintiff shall nevertheless be entitled to judgment against the other defendant or defendants who shall appear to be liable; and every defendant who is not so liable shall have judgment, and shall be entitled to his costs as against the plaintiff, who shall be allowed the same, together with the costs of the plea in abatement and amendment, as costs in the cause against the original defendant or defendants who shall have so pleaded in abatement the nonjoinder of such person: provided that any such defendant who shall have so pleaded in abatement shall be at liberty on the trial to adduce evidence of the liability of the defendants named by him in such plea in abatement.

40. *Joinder of claims by husband and wife, with claims in right of husband.*—In any action brought by a man and his wife for an injury done to the wife, in respect of which she is necessarily joined as co-plaintiff, it shall be lawful for the husband to add thereto claims in his own right, and separate actions brought in respect of such claims may be consolidated, if the Court or a judge shall think fit: provided that in the case of the death of either plaintiff such suit, so far only as relates to the causes of action, if any, which do not survive, shall abate.

And with respect to joinder of causes of action, be it enacted as follows:

41. *Different causes of action may be joined, but separate trials may be ordered.*—Causes of action, of whatever kind, provided they be by and against the same parties and in the same rights, may be joined in the same suit; but this shall not extend to replevin or ejectment; and where two or more of the causes of action so joined are local, and arise in different counties, the venue may be laid in either of such counties; but the Court or a judge shall have power to prevent the trial of different causes of action together, if such trial would be inexpedient, and in such case such Court or judge may order separate records to be made up, and separate trials to be had.

And for the determination of questions raised by consent of the parties without pleading, be it enacted as follows:

42. *Questions of fact may, after writ issued, by consent and leave of a judge, be raised without pleadings.*—Where the parties to an action are agreed as to the question or questions of fact to be decided between them, they may, after writ issued, and before judgment, by consent, and order of a judge (which order any judge shall have power to make, upon being satisfied that the parties have a bonâ fide interest in the decision of such question or questions, and that the same is or are fit to be tried), proceed to the trial of any question or questions of fact without formal pleadings; and such question or questions may be stated for trial in an issue in the form contained in the Schedule (A.) to this Act annexed, marked No. 6, and such issue may be entered for trial and tried accordingly, in the same manner as any issue joined in an ordinary action, and the proceedings in such action and issue shall be under and subject to the ordinary control and jurisdiction of the Court, as in other actions.

43. *Agreement may be entered into for the payment of money and costs according to the result of the issue.*—The parties may, if they think fit, enter into an agreement in writing, which shall not be subject to any stamp duty, and which shall be embodied in the said or any subsequent order, that upon the finding of the jury in the affirmative or negative of such issue or issues, a sum of money fixed by the parties, or to be ascertained by the jury upon a question inserted in the issue for that purpose, shall be paid by one of such parties to the other of them, either with or without the costs of the action.

44. *Judgment to be entered according to the agreement, and execution issued forthwith, unless stayed.*—Upon the finding of the jury in any such issue, judgment may be entered for such sum as shall be so agreed or ascertained as aforesaid, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless the Court or a judge shall otherwise order for the purpose of giving either party an opportunity for moving to set aside the verdict, or for a new trial.

45. *Proceedings upon issue may be recorded.*—The proceedings upon such issue may be recorded at the instance of either party, and the judgment, whether actually recorded or not, shall have the same effect as any other judgment in a contested action.

46. *Questions of law may be raised after writ issued, by consent, &c. without pleading.*—The parties may, after writ issued, and before judgment, by consent, and order of a judge, state any question or questions of law in a special case for the opinion of the Court, without any pleadings.

47. *Agreement as to payment of money and costs, according to judgment upon special case.*—The parties may, if they think fit, enter into an agreement in writing, which shall not be subject to any stamp duty, and which shall be embodied in the said or any subsequent order, that upon the judgment of the Court being given in the affirmative or negative of the question or questions of law raised by such special case, a sum of money, fixed by the parties, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of such parties to the other of them, either with or without costs of the action; and the judgment of the Court may be entered for such sum as shall be so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed by proceedings in error.

48. *Costs to follow the event, unless otherwise agreed.*—In case no agreement shall be entered into as to the costs of such action, the costs shall follow the event, and be recovered by the successful party.

And with respect to the language and form of pleadings in general, be it enacted as follows:

49. *Fictitious and needless averments not to be made.*—All statements which need not be proved, such as the statement of time, quantity, quality and value, where these are immaterial; the statement of losing and finding, and bailment, in actions for goods or their value; the statement of acts of trespass having been committed with force and arms, and against the peace of our lady the queen; the statement of promises which need not be proved, as promises in indebitatus counts, and mutual promises to perform agreements; and all statements of a like kind, shall be omitted.

50. *Judgment upon demurrer to be given according to the very right of the cause.*—Either party may object by demurrer to the pleading of the opposite party, on the ground that such pleading does not set forth sufficient ground of action, defence, or reply, as the case may be; and where issue is joined on such demurrer, the court shall proceed and give judgment according as the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, omission, defect in, or lack of form; and no judgment shall be arrested, stayed, or reversed for any such imperfection, omission, defect in, or lack of form.

51. *Objections by way of special demurrer taken away.*—No pleading shall be deemed insufficient for any defect which could heretofore only be objected to by special demurrer.

52. *Pleadings framed to embarrass may be struck out or amended.*—If any pleading be so framed as to prejudice, embarrass, or delay the fair trial of the action the opposite party may apply to the court or a judge to strike out or amend such pleading, and the court or any judge shall make such order respecting the same, and also respecting the costs of the application, as such court or judge shall see fit.

53. *Four days' notice substituted for rule to declare, reply, or rejoin.*—Rules to declare, or declare peremptorily, and rules to reply, and plead subsequent pleadings, shall not be necessary, and instead thereof a notice shall be substituted requiring the opposite party to declare, reply, rejoin, or as the case may be, within four days, otherwise judgment, such notice to be delivered separately or indorsed on any pleading to which the opposite party is required to reply, rejoin, or as the case may be.

54. *Pleadings to be dated and entered as of time of pleading, unless order to the contrary.*—Every declaration and other pleading shall be entitled of the proper court, and of the day of the month and year when the same was pleaded, and shall bear no other time or date, and every declaration and other pleading shall also be entered on the record made up for trial and on the judgment roll under the date of the day of the month and year when the same respectively took place, and without reference to any other time or date, unless otherwise specially ordered by the court or a judge.

55. *Profert and oyer abolished.*—It shall not be necessary to make profert of any deed or other document mentioned or relied on in any pleading; and if profert shall be made it shall not entitle the opposite party to crave oyer of or set out upon oyer such deed or other document.

56. *Document may be set forth, and be considered a part of the pleading in which it is set forth.*—A party pleading in answer to any pleading in which any document is mentioned or referred to shall be at liberty to set out the whole or such part thereof as may be material, and the matter so set out shall be deemed and taken to be part of the pleading in which it is set out.

57. *Performance of conditions precedent may be averred generally.*—It shall be lawful for the plaintiff or defendant in any action to aver performance of conditions precedent generally, and the opposite party shall not deny such averment generally, but shall specify in his pleading the condition or conditions precedent the performance of which he intends to contest.

And with regard to the time and manner of declaring, and particulars of demand, be it enacted as follows:—

58. *Plaintiff to declare within a year.*—A plaintiff shall be deemed out of Court, unless he delare within one year after the writ of summons is returnable.

59. *Forms of commencement, &c. of declaration.*—Every declaration shall commence as follows, or to the like effect:—

> [Venue.] "A.B. by E.F. his attorney [*or in person, as the case may be*], sues C.D. for [*here state the cause of action*];"

And shall conclude as follows, or to the like effect:—

> "And the plaintiff claims £ [*or, if the action is brought to recover specific goods*, the plaintiff claims a return of the said goods or their value, and £ for their detention.]"

60. *Commencement of declaration after plea of nonjoinder.*—In all cases in which, after a plea in abatement of the nonjoinder of another person as defendant, the plaintiff shall, without having proceeded to trial on an issue thereon, commence another action against the defendant or defendants in the action in which such plea in abatement shall have been pleaded, and the person or persons named in such plea in abatement as joint contractors, or shall amend by adding the omitted defendant or defendants, the commencement of the declaration shall be in the following form, or to the like effect:

> [Venue.] "A. B. by E. F. his attorney [*or in his own proper person, &c.*], sues C. D. and G. H. which said C. D. has heretofore pleaded in abatement the nonjoinder of the said G. H. for," &c.

61. *Declaration for libel or slander.*—In actions of libel and slander the plaintiff shall be at liberty to aver that the words or matter complained of were used in a defamatory sense, specifying such defamatory sense without any prefatory averment to shew how such words or matter were used in that sense, and such averment shall be put in issue by the denial of the alleged libel or slander; and where the words or matter set forth, with or without the alleged meaning, shew a cause of action, the declaration shall be sufficient.

And as to pleas and subsequent pleadings, be it enacted as follows:—

62. *Rules to plead and demand of plea abolished.*—No rule to plead or demand of plea shall be necessary, and the notice to plead indorsed on the declaration or delivered separately shall be sufficient.

63. *Time for pleading, where defendant is within jurisdiction, to be eight days.*—In cases where the defendant is within the jurisdiction, the time for pleading in bar, unless extended by the Court or a judge, shall be eight days; and a notice requiring the defendant to plead thereto in eight days, otherwise judgment may, whether the declaration be delivered or filed, be indorsed upon the declaration, or delivered separately.

64. *Express colour abolished.*—Express colour shall no longer be necessary in any pleading.

65. *Special traverses abolished.*—Special traverses shall not be necessary in any pleading.

66. *Formal commencement and prayer of judgment unnecessary.*—In a plea or subsequent pleading it shall not be necessary to use any allegation of actionem non, or actionem ulterius non, or to the like effect, or any prayer of judgment, nor shall it be necessary in any replication or subsequent pleading, to use any allegation of precludi non, or to the like effect, or any prayer of judgment.

67. *Commencement of plea.*—No formal defence shall be required in a plea, or avowry, or cognisance, and it shall commence as follows, or to the like effect:—

> "The defendant, by his attorney [*or in person, or as the case may be*], says that [*here state first defence*];"

and it shall not be necessary to state in a second or other plea, or avowry, or cognisance, that it is pleaded by leave of the Court or a judge, or according to the form of the statute, or to that effect; but every such plea, avowry, or cognisance shall be written in a separate paragraph, and numbered, and shall commence as follows, or to the like effect:—

> "And for a second [*&c.*] plea the defendant says, that [*here state second, &c. defence*];"

or if pleaded to part only, then as follows, or to the like effect:—

> "And for a second [*&c.*] plea to [*stating to what it is pleaded*], the defendant says that," *&c.*

and no formal conclusion shall be necessary to any plea, avowry, cognisance, or subsequent pleading.

68. *Plea of matter subsequent to action.*—Any defence arising after the commencement of any action shall be pleaded according to the fact, without any formal commencement or conclusion; and any plea which does not state whether the defence thereon set up arose before or after action shall be deemed to be a plea of matter arising before action.

69. *Plea puis darrein continuance, when and how to be pleaded.*—In cases in which a plea puis darrein continuance has heretofore been pleadable in Banc or at Nisi Prius, the same defence may be pleaded, with an allegation that the matter arose after the last pleading; and such plea may, when necessary, be pleaded at Nisi Prius, between the tenth of August and twenty-fourth of October; but no such plea shall be allowed unless accompanied by an affidavit that the matter thereof arose within eight days next before the pleading of such plea, or unless the Court or a judge shall otherwise order.

70. *Payment into court in certain actions.*—It shall be lawful for the defendant in all actions (except actions for assault and battery, false imprisonment, libel, slander, malicious arrest or prosecution, criminal conversation, or debauching of the plaintiff's daughter or servant), and, by leave of the Court or a judge, upon such terms as they or he may think fit, for one or more of several defendants to pay into court a sum of money by way of compensation or amends: provided that nothing herein contained shall be taken to affect the provisions of a certain Act of Parliament passed in the Session of Parliament holden in the sixth and seventh years of the reign of her present Majesty, intituled "An Act to amend the Law respecting defamatory Words and Libel."

71. *Payment into court how pleaded.*—When money is paid into court, such payment shall be pleaded in all cases, as near as may be, in the following form, mutatis mutandis:—

"The defendant, by his attorney [*or in person, &c.*] [*if pleaded to part say,* as to £ parcel of the money claimed], brings into court the sum of £ and says that the said sum is enough to satisfy the claim of the plaintiff in respect of the matter herein pleaded to."

72. *No order to pay money into court.*—No rule or judge's order to pay money into court shall be necessary, except in the case of one or more of several defendants, but the money shall be paid to the proper officer of each court, who shall give a receipt for the amount in the margin of the plea, and the said sum shall be paid out to the plaintiff or to his attorney, upon a written authority from the plaintiff, on demand.

73. *Proceeding by plaintiff after payment into court.*—The plaintiff, after the delivery of a plea of payment of money into court, shall be at liberty to reply to the same by accepting the sum so paid into court in full satisfaction and discharge of the cause of action in respect of which it has been paid in, and he shall be at liberty in that case to tax his costs of suit, and, in case of nonpayment thereof within forty-eight hours, to sign judgment for his costs of suit so taxed, or the plaintiff may reply that the sum paid into court is not enough to satisfy the claim of the plaintiff in respect of the matter to which the plea is pleaded; and, in the event of an issue thereon being found for the defendant, the defendant shall be entitled to judgment and his costs of suit.

74. *Pleas to actions partaking both of breach of contract and wrong.*—Whereas certain causes of action may be considered to partake of the character both of breaches of contract and of wrongs, and doubts may arise as to the form of pleas in such actions, and it is expedient to preclude such doubts: Any plea, which shall be good in substance, shall not be objectionable on the ground of its treating the declaration either as framed for a breach of contract, or for a wrong.

75. *Payment, set-off, and other pleadings which can be construed distributively, shall be so construed.*—Pleas of payment and set-off, and all other pleadings capable of being construed distributively, shall be taken distributively, and if issue is taken thereon, and so much thereof as shall be sufficient answer to part of the causes of action proved shall be found true by the jury, a verdict shall pass for the defendant in respect of so much of the causes of action as shall be answered, and for the plaintiff in respect of so much of the causes of action as shall not be so answered.

76. *Traverse of the declaration.*—A defendant may either traverse generally such of the facts contained in the declaration as might have been denied by one plea, or may select and traverse separately any material allegation in the declaration, although it might have been included in a general traverse.

77. *Traverse of plea, or subsequent pleading of defendant.*—A plaintiff shall be at liberty to traverse the whole of any plea or subsequent pleading of the defendant by a general denial, or, admitting some part or parts thereof to deny all the rest, or to deny any one or more allegations.

78. *Traverse of replication or subsequent pleading of the plaintiff.*—A defendant shall be at liberty in like manner to deny the whole or part of a replication or subsequent pleading of the plaintiff.

79. *Joinder of issue.*—Either party may plead, in answer to the plea or subsequent pleading of his adversary, that he joins issue thereon, which joinder of issue may be as follows, or to the like effect:

"The plaintiff joins issue upon the defendant's 1st [*&c. specifying what or what part*] plea:"

"The defendant joins issue upon the plaintiff's replication to the 1st [*&c. specifying what*] plea;"

and such form of joinder of issue shall be deemed to be a denial of the substance of the plea or other subsequent pleading, and an issue thereon; and in all cases where the plaintiff's pleading is in denial of the pleading of the defendant, or some part of it, the plaintiff may add a joinder of issue for the defendant.

80. *As to pleading and demurring together.*—Either party may, by leave of the Court or a judge, plead and demur to the same pleading at the same time, upon an affidavit by such party, or his attorney if required by the Court or judge, to the effect that he is advised and believes that he has just ground to traverse the several matters proposed to be traversed by him, and that the several matters sought to be pleaded as aforesaid by way of confession and avoidance are respectively true in substance and in fact and that he is further advised and believes that the objections raised by such demurrer are good and valid objections in law, and it shall be in the discretion of the Court or a judge to direct which issue shall be first disposed of.

81. *Several matters may be pleaded at any stage of the pleadings.*—The plaintiff in any action may, by leave of the Court or a judge, plead in answer to the plea, or the subsequent pleading of the defendant, as many several matters as he shall think necessary to sustain his action; and the defendant in any action may, by leave of the Court or a judge, plead in answer to the declaration, or other subsequent pleading of the plaintiff, as many several matters as he shall think necessary for his defence, upon an affidavit of the party making such application, or his attorney, if required by the Court or judge, to the effect that he is advised and believes that he has just ground to traverse the several matters proposed to be traversed by him, and that the several matters sought to be pleaded as aforesaid by way of confession and avoidance are respectively true in substance and in fact; provided that the costs of any issue, either of fact or law, shall follow the finding or judgment upon such issue, and be adjudged the successful party, whatever may be the result of the other issue or issues.

82. *Judge's order to plead several matters sufficient.*—No rule of court for leave to plead several matters shall be necessary where a judge's order has been made for the same purpose.

83. *Objections to pleadings to be heard on summons to plead several matters.*—All objections to the pleading of several pleas, replications, or subsequent pleadings, or several avowries or cognisances, on the ground that they are founded on the same ground of answer or defence, shall be heard upon the summons to plead several matters.

84. *Certain pleas may be pleaded together without leave.*—The following pleas, or any two or more of them, may be pleaded together as of course, without leave of the Court or a judge; that is to say, a plea denying any contract or debt alleged in the declaration; a plea of tender as to part; a plea of the Statute of Limitations, set-off, bankruptcy of the defendant, discharge under an Insolvent Act, plene administravit, plene administravit præter, infancy, coverture, payment, accord and satisfaction, release, not guilty, a denial that the property an injury to which is complained of is the plaintiff's, leave and licence, son assault demesne, and any other pleas which the judges of the said Superior Courts, or any eight or more of them, of whom the chief judges of the said courts shall be three, shall by any rule or order, to be from time to time by them made in Term or Vacation, order or direct.

85. *Signature of counsel.*—The signature of counsel shall not be required to any pleading.

86. *For pleading several matters without leave, judgment may be signed.*—Except in the cases herein specifically provided for, if either party plead several pleas, replications, avowries, cognizances, or other pleadings, without leave of the Court or a judge, the opposite party shall be at liberty to sign judgment; provided that such judgment may be set aside by the Court or a judge, upon an affidavit of merits, and such terms as to costs and otherwise as they or he may think fit.

87. *One new assignment only allowed in respect of the same cause of action.*—One new assignment only shall be pleaded to any number of pleas to the same cause of action; and such new assignment shall be consistent with and confined by the particulars delivered in the action, if any, and shall state that the plaintiff proceeds for causes of action different from all those which the pleas profess to justify, or for an excess over and above what all the defences set up in such such pleas justify, or both

88. *Pleas not to be repeated.*—No plea, which has already been pleaded to the declaration, shall be pleaded to such new assignment, except a plea in denial, unless by leave of the Court or a judge; and such leave shall only be granted upon satisfactory proof that the repetition of such plea is essential to a trial on the merits.

89. *Form of demurrer and joinder in demurrer.*—The form of a demurrer, except in the cases herein specifically provided for, shall be as follows, or to the like effect:—

"The defendant, by his attorney [*or,* in person, &c. *or,* plaintiff] says, that the declaration [*or,* plea, &c.] is bad in substance;"

and in the margin thereof some substantial matter of law intended to be argued shall be stated; and if any demurrer shall be delivered without such statement, or with a frivolous statement, it may be set aside by the Court or a judge, and leave may be given to sign judgment as for want of a plea; and the form of a joinder in demurrer shall be as follows, or to the like effect:—

"The plaintiff [*or,* defendant] says that the declaration [*or,* plea, &c.] is good in substance."

90. *Time for pleading after amendment.*—Where an amendment of any pleading is allowed, no new notice to plead thereto shall be necessary; but the opposite party shall be bound to plead to the amended pleading within the time specified in the original notice to plead, or within two days after amendment, whichever shall last expire, unless otherwise ordered by the Court or a judge; and in case the amended pleading has been pleaded to before amendment, and is not pleaded to de novo within two days after amendment, or within such other time as the Court or a judge shall allow, the pleadings originally pleaded thereto shall stand and be considered as pleaded in answer to such amended pleading.

And whereas it is desirable that examples should be given of the statements of causes of action, and of forms of pleading, be it enacted as follows:—

91. *Forms of schedule may be adopted.*—The forms contained in the schedule (B.) to this Act annexed shall be sufficient, and those and the like forms may be used, with such modifications as may be necessary to meet the facts of the case; but nothing herein contained shall render it erroneous or irregular to depart from the letter of such forms, so long as the substance is expressed without prolixity.

And with respect to judgment by default, and the mode of ascertaining the amount to be recovered thereupon, be it enacted as follows:—

92. *Rule to compute abolished.*—No rule to compute shall be necessary or used; but nothing in this Act contained shall invalidate any proceedings already taken or to be taken by reason of any rule to compute made, or applied for, before the commencement of this Act.

93. *Judgment by default for liquidated demands final.*—In actions where the plaintiff seeks to recover a debt or liquidated demand in money, judgment by default shall be final.

94. *Inquiry of damages may be directed to take place before the Master.*—In actions in which it shall appear to the Court or a judge that the amount of damages sought to be recovered by the plaintiff is substantially a matter of calculation, it shall not be necessary to issue a writ of inquiry, but the Court or a judge may direct that the amount, for which final judgment is to be signed, shall be ascertained by one of the Masters of the said Court; and the attendance of witnesses and the production of documents before such Master may be compelled by subpœna, in the same manner as before a jury upon a writ of inquiry; and it shall be lawful for such Master to adjourn the inquiry from time to time, as occasion may require; and the Master shall indorse upon the rule or order for referring the amount of damages to him, the amount found by him, and shall deliver the rule or order, with such indorsement, to the plaintiff; and such and the like proceedings may thereupon be had as to taxation of costs, signing judgment, and otherwise, as upon the finding of a jury upon a writ of inquiry.

95. *Judgment for money demands without distinction between debt and damages.*—In all actions where the plaintiff recovers a sum of money, the amount to which he is entitled may be awarded to him by the judgment generally, without any distinction being therein made as to whether such sum is recovered by way of a debt or damages.

96. *Saving as to certain provisions of 8 & 9 Wm. 3, c. 11.*—Nothing in this Act contained shall in any way affect the provisions of a certain Act of Parliament passed in the session of Parliament holden in the eighth and ninth years of the reign of his Majesty King William the Third, intituled "An Act for the better preventing frivolous and vexatious Suits," as to the assignment or suggestion of breaches, or as to

ment for a penalty as a security for damages in respect of further breaches.

And with respect to notice of trial and inquiry, and command thereof, be it enacted as follows:—

97. *Time for notice of trial and inquiry.*—Ten days' notice of trial or inquiry shall be given, and shall be sufficient in all cases, whether at Bar or Nisi Prius, in town or country, unless otherwise ordered by the Court or a judge.

98. *Notice of countermand.*—A countermand of notice of trial shall be given four days before the time mentioned in the notice of trial, unless short notice of trial has been given, and then two days before the time mentioned in the notice of trial, unless otherwise ordered by the Court or a judge, or by consent.

99. *Costs of day.*—A rule for costs of the day for not proceeding to trial, pursuant to notice, or not countermanding in sufficient time, may be drawn up on affidavit, without motion.

And with respect to judgment for default in not proceeding to trial, be it enacted as follows:

100. *Statute 14 Geo. 2, c. 17, as to judgment in case of nonsuit, repealed.*—The Act passed in the fourteenth year of the reign of His Majesty King George the Second, intituled "An Act to prevent Inconveniences arising from Delays of Causes after Issue joined," so far at the same relates to judgment as in the case of a nonsuit, shall be and the same is hereby repealed, except as to proceedings taken or commenced thereupon before the commencement of this Act.

101. *Proceeding where plaintiff neglects to bring on the cause to be tried.*—Where any issue is or shall be joined in any cause, and the plaintiff has neglected or shall neglect to bring such issue on to be tried, that is to say, in town causes where issue has been or shall be joined in, or in the Vacation before, any Term, for instance, Hilary Term, and the plaintiff has neglected or shall neglect to bring the issue on to be tried during or before the following Term and Vacation, for instance, Easter Term and Vacation, and in country causes where issue has been or shall be joined in, or in the Vacation before Hilary or Trinity Term, and the plaintiff has neglected or shall neglect to bring the issue on to be tried at or before the second assizes following such Term, or if issue has been or shall be joined in, or in the Vacation before Easter or Michaelmas Term, then, if the plaintiff has neglected or shall neglect to bring the issue on to be tried at or before the first assizes after such Term, whether the plaintiff shall in the meantime have given notice of trial or not, the defendant may give twenty days' notice to the plaintiff to bring the issue on to be tried at the sittings or assizes, as the case may be, next after the expiration of the notice; and if the plaintiff afterwards neglects to give notice of trial for such sittings or assizes, or to proceed to trial in pursuance of the said notice given by the defendant, the defendant may suggest on the record that the plaintiff has failed to proceed to trial, although duly required so to do (which suggestion shall not be traversable, but only be subject to be set aside if untrue), and may sign judgment for his costs; provided that the Court or a judge shall have power to extend the time for proceeding to trial, with or without terms.

And with respect to the Nisi Prius Record, be it enacted as follows

102. *Nisi Prius record not to be sealed or passed.*—The record of Nisi Prius shall not be sealed or passed, but may be delivered to the proper officer of the Court in which the cause is to be tried, to be by him entered as at present, and remain until disposed of.

103. *Trials in counties palatine.*—Records of the Superior Courts of Common Law shall be brought to trial and entered and disposed of in the counties palatine in the same manner as in other counties.

And with respect to juries and jury process, be it enacted as follows:

104. *Jury process abolished.*—The several writs of venire facias juratores, and distringas juratores, or habeas corpora juratorum, and the entry jurata ponitur in respectu, shall no longer be necessary or used.

105. *Precept by judges of assize to summon jurors for civil as well as criminal trials.*—The precept issued by the judges of assize to the sheriff to summon jurors for the assizes shall direct that the jurors be summoned for the trial of all issues, whether civil or criminal, which may come on for trial at the assizes; and the jurors shall thereupon be summoned in like manner as at present.

106. *A printed panel to be prepared, and annexed to the record.*—A printed panel of the jurors summoned shall, seven days before the commission day, be made by the sheriff, and kept in the office for inspection; and a printed copy of such panel shall be delivered by the sheriff to any party requiring the same, on payment of one shilling; and such copy shall be annexed to the Nisi Prius record.

107. *Sheriffs of London and Middlesex to summon common jurors, and prepare a panel, to be annexed to the record.*—The sheriffs of London and Middlesex respectively shall, pursuant to a precept under the hand of a judge of any of the said Superior Courts, and without any other authority, summon a sufficient number of common jurors for the trial of all issues in the Superior Courts of Common Law, in like manner as before this Act; and seven days before the first day of each sittings a printed panel of the jurors so summoned for the trial of causes at such sittings shall be made by such sheriffs, and kept in their offices for public inspection; and a printed copy of such panel shall be delivered by the said sheriffs to any party requiring the same, on payment of one shilling; and such copy shall be annexed to the Nisi Prius record; and the said precept shall and may be in like form as the precept issued by the judges of assize, and one thereof shall suffice for each Term, and for all the Superior Courts; and it shall be the duty of the sheriffs respectively to apply for and procure such precept to be issued in sufficient time before each Term to enable them to summon the jurors in manner aforesaid; and it shall be lawful for the several courts, or any judge thereof, at any time to issue such precept or precepts to summon jurors for disposing of the business pending in such Courts, and to direct the time and place for which such jurors shall be summoned, and, all such other matters as to such judge shall seem requisite.

108. *Special jurors, not exceeding forty-eight in number, to be summoned to try all special jury causes at assizes.*—The precept issued by the judges of assize as aforesaid shall direct the sheriff to summon a sufficient number of special jurymen, to be mentioned therein, not exceeding forty-eight in all, to try the special jury causes at the assizes; and the persons summoned in pursuance of such precept shall be the jury for trying the special jury causes at the assizes, subject to such right of challenge as the parties are now by law entitled to; and a printed panel of the special jurors so summoned shall be made, kept, delivered, and annexed to the Nisi Prius Record, in like time and manner and upon the same terms as hereinbefore provided with reference to the panel of common jurors; and upon the trial the special jury shall be ballotted for, and called in the order in which they shall be drawn from the box, in the same manner as common jurors: provided that the Court or a judge, in such case as they or he may think fit, may order that a special jury be struck according to the present practice, and such order shall be a sufficient warrant for striking such special jury, and making a panel thereof for the trial of the particular cause.

109. *Mode of obtaining a special jury in country causes.*—In any county, except London and Middlesex, the plaintiff in any action, except replevin, shall be entitled to have the cause tried by a special jury, upon giving notice in writing to the defendant, at such time as would be necessary for a notice of trial, of his intention that the cause shall be so tried; and the defendant, or plaintiff in replevin, shall be so entitled, on giving the like notice within the time now limited for obtaining a rule for a special jury: provided that the Court or a judge may at any time order that a cause shall be tried by a special jury, upon such terms as they or he shall think fit.

110. *Special jurors in London and Middlesex, how struck.*—In London and Middlesex special jurors shall be nominated and reduced by and before the under-sheriff and secondary respectively, in like manner as by the Master before this Act, upon the application of either party entitled to a special jury, and his obtaining a rule for such purpose; and the names of the jurors so struck shall be placed upon the panel, which shall be delivered and annexed to the Nisi Prius record, in like manner and upon the same terms as hereinbefore provided with reference to the panel of common jurors; and upon the trial the special jury shall be ballotted for, and called i the order in which they shall be drawn from the box, in the same manner as common jurors.

111. *Remedy for delay by notice of trial by special jury.*—Where the defendant in any case, or plaintiff in replevin, gives notice of his intention to try the cause by a special jury, and the venue is in London or Middlesex, the Court or a judge, if satisfied that such notice is given for the purpose of delay, may order that the cause be tried by a common jury, or make such other order as to the trial of the cause as such Court or judge shall think fit.

112. *Notice to sheriff of trial by special jury.*—Where notice has been given to try by special jury, either party may, six days before the first day of the sittings in London or Middlesex, or adjournment day in London, or commission day of the assizes, give notice to the sheriff that such cause is to be tried by a special jury; and in case no such notice be given no special jury need be summoned or attend, and the cause may be tried by a common jury, unless otherwise ordered by the Court or a judge.

113. *If special jury not summoned, cause to be tried by a common jury.*—In all cases where notice is not given to the sheriff that the cause is to be tried by a special jury, and by reason thereof a special jury is not summoned or does not attend, the cause may be tried by a common jury, to be taken from the panel of common jurors, in like manner as if no proceedings had been had to try the cause by a special jury.

114. *View to be by rule without writ.*—A writ of view shall not be necessary or used, but, whether the view is to be had by a common or special jury, it shall be sufficient to obtain a rule of the Court, or judge's order, directing a view to be had; and the proceedings upon the rule for a view shall be the same as the proceedings heretofore had under a writ of view; and the sheriff, upon request, shall deliver to either party the names of the viewers, and shall also return their names to the associate for the purpose of their being called as jurymen upon the trial.

115. *Proceedings before jurors so returned same as before this Act.*—The jurors contained in such panels as aforesaid shall be the jurors to try the causes at the assizes and sittings for which they shall be summoned respectively; and all such proceedings may be had and taken before such juries in like manner, and with the like consequences in all respects, as before any jury summoned in pursuance of any writ or writs of venire facias juratores, distringas juratores, or habeas corpora juratorum, before this Act.

116. *Defendant's right to try, upon default of the plaintiff, preserved.*—Nothing herein contained shall affect the right of a defendant to take down a cause for trial, after default by the plaintiff to proceed to trial, according to the course and practice of the Court; and if records are entered for trial both by the plaintiff and the defendant, the defendant's record shall be treated as standing next in order after the plaintiff's record in the list of causes, and the trial of the cause shall take place accordingly.

And with respect to the admission of documents, be it enacted as follows:

117. *Admission of documents.*—Either party may call upon the other party by notice to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial the judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except in cases where the omission to give the notice is, in the opinion of the Master, a saving of expense.

118. *Proof of admissions.*—An affidavit of the attorney in the cause, or his clerk, of the due signature of any admissions made in pursuance of such notice, and annexed to the affidavit, shall be in all cases sufficient evidence of such admissions.

119. *Proof of notice to produce.*—An affidavit of the attorney in the cause, or his clerk, of the service of any notice to produce, in respect of which notice to admit shall have been given, and of the time when it was served, with a copy of such notice to produce annexed to such affidavit, shall be sufficient evidence of the service of the original of such notice, and of the time when it was served.

And with respect to execution, be it enacted as follows:

120. *Execution after trial.*—A plaintiff or defendant, having obtained a verdict in a cause tried out of Term, shall be entitled to issue execution in fourteen days, unless the judge who tries the cause, or some other judge, or the Court, shall order execution to issue at an earlier or later period, with or without Terms.

121. *Ground writs abolished.*—It shall not be necessary to issue any writ directed to the sheriff of the county in which the venue is laid, but writs of execution may issue at once into any county, and be directed to and executed by the sheriff of any county, whether a county palatine or not, without reference to the county in which the venue is laid, and without any suggestion of the issuing of a prior writ into such county.

122. *Writs in counties palatine to be directed to the sheriff.*—All writs of every description issuing out of the Superior Courts of Common Law at Westminster, to be executed in the counties palatine, shall be directed and delivered to the sheriffs of such counties, and executed and returned by them to the courts out of which such writs are issued, in the same manner in all respects as writs are executed and returned by the sheriffs of other counties.

123. *Expenses of execution.*—In every case of execution, the party entitled to execution may levy the poundage fees and expenses of the execution, over and above the sum recovered.

124. *Writs of execution to remain in force for one year, and to be renewed if necessary.*—A writ of execution issued after the commencement of this Act, if unexecuted, shall not remain in force for more than one year from the teste of such writ, unless renewed in the manner hereinafter provided; but such writ may, at any time before its expiration, be renewed, by the party issuing it, for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal bearing the date of the day, month, and year of such renewal (such seal to be provided and kept for that purpose at the

office of the Master of the court out of which such writ issued), or by such party giving a written notice of renewal to such sheriff, signed by the party or his attorney, and bearing the like seal of the Court; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof.

125.—*Production of renewed writ, evidence of renewal.*—The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal, shewing the same to have been renewed according to this Act, shall be sufficient evidence of its having been so renewed.

126. *Sheriff or gaoler may discharge prisoner by authority of attorney in the cause.*—A written order under the hand of the attorney in the cause, by whom any writ of capias ad satisfaciendum shall have been issued, shall justify the sheriff, gaoler, or person in whose custody the party may be under such writ, in discharging such party, unless the party for whom such attorney professes to act shall have given written notice to the contrary to such sheriff, gaoler, or person in whose custody the opposite party may be; but such discharge shall not be a satisfaction of the debt, unless made by the authority of the creditor; and nothing herein contained shall justify any attorney in giving such order for discharge without the consent of his client.

127. *Proceedings for charging in execution a person already in prison of the Court.*—It shall not be necessary in any case to sue out a writ of habeas corpus ad satisfaciendum to charge in execution a person already in the prison of the Court, but such person may be so charged in execution by a judge's order made upon affidavit that judgment has been signed and is not satisfied; and the service of such order upon the keeper of the prison for the time being shall have the effect of a detainer.

And with respect to proceedings for the revival of judgments and other proceedings by and against persons not parties to the record, be it enacted as follows:

128. *Execution in six years without revival.*—During the lives of the parties to a judgment, or those of them during whose lives execution may at present issue within a year and a day without a scire facias, and within six years from the recovery of the judgment, execution may issue without a revival of the judgment.

129. *Judgment to be revived by writ or with leave of Court, or judge, by suggestion.*—In cases where it shall become necessary to revive a judgment by reason either of lapse of time, or of a change, by death or otherwise, of the parties entitled or liable to execution, the party alleging himself to be entitled to execution may either sue out a writ of revivor in the form hereinafter mentioned, or apply to the Court or a judge for leave to enter a suggestion upon the roll, to the effect that it manifestly appears to the Court that such party is entitled to have execution of the judgment, and to issue execution thereupon; such leave to be granted by the Court or a judge upon a rule to shew cause or a summons, to be served according to the present practice, or in such other manner as such Court or judge may direct, and which rule or summons may be in the form contained in the Schedule (A.) to this Act annexed, marked No. 7, or to the like effect.

130. *Proceedings upon application for suggestion to revive judgment.*—Upon such application, in case it manifestly appears that the party making the same is entitled to execution, the Court or judge shall allow such suggestion as aforesaid to be entered in the form contained in the schedule (A.) to this Act annexed, marked No. 8, or to the like effect, and execution to issue thereupon, and shall order whether or not the costs of such application shall be paid to the party making the same; and in case it does not manifestly so appear, the Court or judge shall discharge the rule or dismiss the summons with or without costs: provided nevertheless, that in such last-mentioned case the party making such application shall be at liberty to proceed by writ of revivor or action upon the judgment.

131. *Writ of revivor and proceedings thereon.*—The writ of revivor shall be directed to the party called upon to shew cause why execution should not be awarded, and shall bear teste on the day of its issuing; and, after reciting the reason why such writ has become necessary, it shall call upon the party to whom it is directed, to appear, within eight days after service thereof, in the Court out of which it issues, to shew cause why the party at whose instance such writ has been issued should not have execution against the party to whom such writ is directed, and it shall give notice that, in default of appearance, the party issuing such writ may proceed to execution; and such writ may be in the form contained in the Schedule (A.) to this Act annexed, marked No. 9, or to the like effect, and may be served in any county, and otherwise proceeded upon, whether in Term or Vacation, in the same manner as a writ of summons; and the venue in a declaration upon such writ may be laid in any county; and the pleadings and proceedings thereupon, and the rights of the parties respectively to costs, shall be the same as in an ordinary action.

132.—*Writs of scire facias in other cases to be tested, directed, and proceeded upon in like manner.* All writs of scire facias issued out of any of the Superior Courts of Law at Westminster against bail on a recognizance; ad audiendum errores; against members of a joint-stock company or other company or other body upon a judgment recorded against a public officer or other person sued as representing such company or body, or against such company or body itself; by or against a husband to have execution of a judgment for or against a wife; for restitution after a reversal in error; upon a suggestion of further breaches after judgment for any penal sum, pursuant to the statute passed in the session holden in the eighth and ninth years of the reign of King William the Third, intituled "An Act for the better preventing frivolous and vexatious Suits," or for recovery of land taken under an elegit, shall be tested, directed, and proceeded upon, in like manner as writs of revivor.

133. *Appearance to writ of revivor.*—Notice in writing to the plaintiff, his attorney or agent, shall be sufficient appearance to a writ of revivor.

134. *As to issue of writ of revivor upon judgment more than ten years old.*—A writ of revivor to revive a judgment less than ten years old shall be allowed without any rule or order; if more than ten years old, not without a rule of court or a judge's order; nor, if more than fifteen, without a rule to shew cause.

And with respect to the effect of death, marriage, and bankruptcy upon the proceedings in an action, be it enacted as follows:

135. *Action not to abate by death.*—The death of a plaintiff or defendant shall not cause the action to abate, but it may be continued as hereinafter mentioned.

136. *Proceedings in case of death of one or more of several plaintiffs or defendants.*—If there be two or more plaintiffs or defendants, and one or more of them should die, if the cause of such action shall survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the action shall not be thereby abated; but such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs against the surviving defendant or defendants.

137. *Proceeding in case of sole plaintiff.*—In case of the death of a sole plaintiff or sole surviving plaintiff, the legal representative of such plaintiff may, by leave of the Court or a judge, enter a suggestion of the death, and that he is such legal representative, and the action shall thereupon proceed; and, if such suggestion be made before the trial, the truth of the suggestion shall be tried thereat, together with the title of deceased plaintiff, and such judgment shall follow upon the verdict in favour of or against the person making such suggestion, as if such person were originally the plaintiff.

138. *Proceeding upon death of sole or sole surviving defendant.*—In case of the death of a sole defendant or sole surviving defendant, where the action survives, the plaintiff may make a suggestion, either in any of the pleadings, if the cause has not arrived at issue, or in a copy of the issue, if it has so arrived, of the death, and that a person named therein is the executor or administrator of the deceased; and may thereupon serve such executor or administrator with a copy of the writ and suggestion, and with a notice, signed by the plaintiff or his attorney, requiring such executor or administrator to appear within eight days after service of the notice, inclusive of the day of such service, and that in default of his so doing the plaintiff may sign judgment against him as such executor or administrator; and the same proceedings may be had and taken in case of nonappearance after such notice, as upon a writ against such executor or administrator in respect of the cause for which the action was brought; and in case no pleadings have taken place before the death, the suggestion shall form part of the declaration, and the declaration and suggestion may be served together, and the new defendant shall plead thereto at the same time; and in case the plaintiff shall have declared, but the defendant shall not have pleaded before the death, the new defendant shall plead at the same time to the declaration and suggestion; and in case the defendant shall have pleaded before the death, the new defendant shall be at liberty to plead to the suggestion, only by way of denial, or such plea as may be appropriate to and rendered necessary by his character of executor or administrator, unless, by leave of the Court or a judge, he should be permitted to plead fresh matter in answer to the declaration; and in case the defendant shall have pleaded before the death, but the pleadings shall not have arrived at issue, the new defendant, besides pleading to the suggestion, shall continue the pleadings to issue in the same manner as the deceased might have done, and the pleadings upon the declaration and the pleadings upon the suggestion shall be tried together; and in case the plaintiff shall recover, he shall be entitled to the like judgment in respect of the debt or sum sought to be recovered, and in respect of the costs prior to the suggestion, and in respect of the costs of the suggestion and subsequent thereto, he shall be entitled to the like judgment as in an action originally commenced against the executor or administrator.

139. *Death between verdict and judgment.*—The death of either party between the verdict and the judgment shall not hereafter be alleged for error, so as such judgment be entered within two Terms after such verdict.

140. *Proceedings in case of death after interlocutory, and before final judgment.*—If the plaintiff in any action happen to die after an interlocutory judgment and before a final judgment obtained therein, the said action shall not abate by reason thereof, if such action might be originally prosecuted or maintained by the executor or administrator of such plaintiff; and if the defendant die after such interlocutory judgment, and before final judgment therein obtained, the said action shall not abate, if such action might be originally prosecuted or maintained against the executor or administrator of such defendant; and the plaintiff, or if he be dead after such interlocutory judgment, his executors or administrators, shall and may have a writ of revivor, in the form contained in the Schedule (A.) to this Act annexed, marked No. 9, or to the like effect, against the defendant, if living after such interlocutory judgment, or, if he be dead, then against his executors or administrators, to shew cause why damages in such action should not be assessed and recovered by him or them; and if such defendant, his executors, or administrators, shall appear at the return of such writ, and not shew or allege any matter sufficient to arrest the final judgment, or shall make default, a writ of inquiry of damages shall be thereupon awarded, or the amount for which final judgment is to be signed shall be referred to one of the Masters, as hereinbefore provided; and upon the return of the writ, or delivery of the order with the amount indorsed thereon to the plaintiff, his executors or administrators, judgment final shall be given for the said plaintiff, his executors or administrators, prosecuting such writ of revivor, against such defendant, his executors or administrators respectively.

141. *Marriage not to abate action.*—The marriage of a woman plaintiff or defendant shall not cause the action to abate, but the action may, notwithstanding, be proceeded with to judgment; and such judgment may be executed against the wife alone, or by suggestion or writ of revivor pursuant to this Act, judgment may be obtained against the husband and wife, and execution issue thereon; and in case of a judgment for the wife, execution may be issued thereupon by the authority of the husband without any writ of revivor or suggestion; and if in any such action the wife shall sue or defend by attorney appointed by her when sole, such attorney shall have authority to continue the action or defence, unless such authority be countermanded by the husband, and the attorney changed according to the practice of the Court.

142. *Bankruptcy and insolvency of plaintiff, when not to abate action.*—The bankruptcy or insolvency of the plaintiff in any action, which the assignees might maintain for the benefit of the creditors, shall not be pleaded in bar to such action, unless the assignees shall decline to continue, and give security for the costs thereof, upon a judge's order to be obtained for that purpose, within such reasonable time as the judge may order, but the proceedings may be stayed until such election is made; and in case the assignees neglect or refuse to continue the action, and give such security within the time limited by the order, the defendant may, within eight days after such neglect or refusal, plead the bankruptcy.

And with respect to proceedings upon motions to arrest the judgment, and for judgment non obstante veredicto, be it enacted as follows:

143. *Upon motion in arrest of judgment, pursuant to 1 Wm. 4, c. 7, or for judgment non obstante veredicto, omitted facts may, by leave of the Court, be suggested.*—Upon any motion made in arrest of judgment, or to enter an arrest of judgment, pursuant to the statute passed in the first year of late Majesty King William the Fourth, intituled "An Act for the more speedy Judgment and Execution in Actions brought in his Majesty's Courts of Law at Westminster, and in the Court of Common Pleas of the County Palatine of Lancaster, and for amending the Law as to Judgment on a Cognovit Actionem in cases of Bankruptcy," or for judgment non obstante veredicto, by reason of the non-averment of some alleged material fact or facts or material allegation or other cause, the party whose pleading is alleged or adjudged to be therein defective, may, by leave of the Court, suggest the existence of the omitted fact or facts, or other matter, which, if true, would remedy the alleged defect; and such suggestion may be pleaded to by the opposite party within eight days after notice thereof, or such further time as the Court or a judge may allow; and the proceedings for trial of any issues joined upon such pleadings shall be the same as in an ordinary action.

144. *Judgment to follow result of suggestion.*—If the fact or facts suggested be admitted, or found to be true, the party suggesting shall be entitled to such [illegible] would have been entitled to, if such fact or facts or allegations had been originally stated in such pleading, and proved or admitted on the trial, together with the costs of, and occasioned by, the suggestion and proceedings thereon; but if such fact or facts be found untrue, the opposite party shall be entitled to his costs of, and occasioned by, the suggestion and proceedings thereon, in addition to any other costs to which he may be entitled.

145. *Costs of abortive issues.*—Upon an arrest of judgment, or judgment non obstante veredicto, the Court shall adjudge to the party, against whom such judgment is given, the costs occasioned by the trial of any issues of fact arising out of the pleading for defect of which such judgment is given, upon which such party shall have succeeded; and such costs shall be set off against any money or costs adjudged to the opposite party, and execution may issue for the balance, if any.

And with respect to Proceedings in Error, be it enacted as follows:

146. *Error to be brought within six years.*—No judgment in any cause shall be reversed or avoided for any error or defect therein, unless error be commenced, or brought and prosecuted with effect, within six years after such judgment signed or entered of record.

147. *Proviso for disabilities.*—If any person that is or shall be entitled to bring error as aforesaid is or shall be, at the time of such title accrued, within the age of twenty-one years, feme covert, non compos mentis, or beyond the seas, then such person shall be at liberty to bring error as aforesaid, so as such person commences, or brings and prosecutes the same with effect, within six years after coming to or being of full age, discovert, of sound memory, or return from beyond the seas; and if the opposite party shall, at the time of the judgment signed or entered of record, be beyond the seas, then error may be brought, provided the proceedings be commenced and prosecuted with effect within six years after the return of such party from beyond seas.

148. *Writ of error abolished.*—A writ of error shall not be necessary or used in any cause, and the proceeding to error shall be a step in the cause, and shall be taken in manner hereinafter mentioned; but nothing in this Act contained shall invalidate any proceedings already taken or to be taken by reason of any writ of error issued before the commencement of this Act.

149. *Error in law how brought.*—Either party alleging error in law may deliver to one of the Masters of the Court a memorandum in writing, in the form contained in the Schedule (A.) to this Act annexed, marked No. 10, or to the like effect, entitled in the court and cause, and signed by the party or his attorney, alleging that there is error in law in the record and proceedings; whereupon the Master shall file such memorandum, and deliver to the party lodging the same a note of the receipt thereof; and a copy of such note, together with a statement of the grounds of error intended to be argued, may be served on the opposite party or his attorney.

150. *Error not supersedeas till service of the copy of the note and grounds of error.*—Proceedings in error in law shall be deemed a supersedeas of execution from the time of the service of the copy of such note, together with the statement of the grounds of error intended to be argued, until default in putting in bail, or an affirmance of the judgment, or discontinuance of the proceedings in error, or until the proceedings in error shall be otherwise disposed of without a reversal of the judgment; provided always, that if the grounds of error shall appear to be frivolous, the Court or a judge upon summons may order execution to issue.

151. *Bail in error.*—Upon any judgment hereafter to be given in any of the said Superior Courts of Common Law in any action, execution shall not be stayed or delayed by proceedings in error, or supersedeas thereupon, without the special order of the Court or a judge, unless the person in whose name such proceedings in error be brought, with two, or, by leave of the Court or a judge, more than two sufficient sureties, such as the Court (wherein such judgment is or shall be given) or a judge shall allow of, shall, within four clear days after lodging the memorandum alleging error, or after the signing of the judgment, whichever shall last happen, or before execution executed, be bound unto the party for whom any such judgment is or shall be given, by recognizance to be acknowledged in the same Court, in double the sum adjudged to be recovered by the said judgment (except in case of a penalty, and in case of a penalty in double the sum really due, and double the costs), to prosecute the proceedings in error with effect, and also to satisfy and pay (if the said judgment be affirmed, or the proceedings in error be discontinued by the plaintiff therein), all and singular the sum or sums of money and costs adjudged or to be adjudged upon the former judgment, and all costs and damages to be also awarded for the delaying of execution, and shall give notice thereof to the defendant in error, or his attorney.

152. *Suggestion instead of assignment of and joinder in error.*—The assignment of and joinder in error in law shall not be necessary or used, and, instead thereof, a suggestion to the effect that error is alleged by the one party and denied by the other, may be entered on the judgment-roll in the form contained in Schedule (A.) to this Act annexed, marked No. 11, or to the like effect: provided that in case the defendant in error intends to rely upon the proceding in error being barred by lapse of time, or by release of error, or other like matter of fact, he may give four days' written notice to the plaintiff in error to assign error as heretofore, instead of entering the suggestion; and he shall, within eight days, plead thereto the bar by lapse of time, or release of error, or other like matter of fact; and thereupon such proceedings may be had as heretofore.

153. *Roll to be made up and suggestion entered by plaintiff in error.*—The roll shall be made up, and the suggestion last aforesaid entered by the plaintiff in error within ten days after the service of the note of the peceipt of the memorandum alleging error, or within such other time as the Court or a judge may order; and in default thereof, or of assignment of error in cases where an assignment is required, the defendant in error, his executors or administrators, shall be at liberty to sign judgment of non-pros.

154. *Error brought by one of several persons against whom judgment has been given.*—In case error be brought upon a judgment given against several persons, and one or some only shall proceed in error, the memorandum alleging error, and the note of the receipt of such memorandum, shall state the names of the persons by whom the proceedings are taken; and in case the other persons, against whom judgment has been given, decline to join in the proceedings in error, the same may be continued, and the suggestion last aforesaid entered, stating the persons by whom the proceedings are brought, without any summons and severance, or if such other persons elect to join, then the suggestion shall state them to be, and they shall be deemed as plaintiffs in error, although not mentioned as such in the previous proceedings.

155. *Judgment roll to be brought into court instead of transcript.*—Upon such suggestion of error alleged and denied being entered, the cause may be set down for argument in the Court of Error in the manner heretofore used; and the judgment roll shall, without any writ or return, be brought by the Master into the Court of Error in the Exchequer Chamber, before the justices, or justices and barons, as the case may be, of the other two Superior Courts of Common Law, on the day of its sitting, at such time as the judges shall appoint, either in Term or in Vacation; or if the proceedings in error be before the High Court of Parliament, then before the High Court of Parliament, before or at the time of its sitting; and the Court of Error shall and may thereupon review the proceedings, and give judgment as they shall be advised thereon; and scuh proceedings and judgment, as altered or affirmed, shall be entered on the original record; and such further proceedings as may be necessary thereon shall be awarded by the Court in which the original judgment was given.

(*To be continued.*)

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

POOR-LAW cases are now so few and far between, that we welcome them as friends long parted, but whose "old familiar faces" recal a thousand pleasant remembrances of the past Still we read them with eager interest, and probably those feelings are shared by many o. our readers once profoundly versed in all the learning of that ponderous volume 5 of Chitty's Burn. Although not a point of very general interest, still as the only one that has been mooted for some time, there is to be noted in our last number the case of *Reg.* v. *The Justices of Middlesex*, 19 Law T. Rep. 255, in which the Q. B. held that the expenses of maintaining an Irish pauper lunatic, who has no known settlement, but who has resided for five years previously in parish A. in the B. union, are by sec. 5 of 12 & 13 Vict. c. 103, thrown upon the union, and not upon the county.

INDUSTRIAL AND PROVIDENT SOCIETIES.—An Act was passed at the end of the late session (15 and 16 Vict. c. 31), "to legalize the formation of Industrial and Provident Societies." It is intended by this Act that societies of working men may be established for attaining the objects of the Friendly Societies Acts by means of joint trade, except banking. The rules of such societies are to be framed in accordance with the Act. The funds are not to be invested with the National Debt Commissioners, and societies established before the passing of the Act shall come under its provisions so soon as they shall conform to the provisions thereof. As to the liability of members, it is provided that "nothing in this or the said recited Act (Friendly Societies Act) shall be construed to restrict in anywise the liability of the members of such society established under or by virtue of this Act, or claiming the benefit thereof, to the lawful debts and engagements of such society, provided always that no person shall be liable for the debts or engagements of any such society after the expiration of two years from his ceasing to be a member of the same." The Act is to be cited as the "Industrial and Provident Societies Act, 1852."

PROTESTANT DISSENTERS.—By an Act of the late session, it is enacted that places of religious worship for Protestant dissenters need not be certified or registered in a bishop's registry. Such places are to be registered in the General Registration Office for Births, Deaths, and Marriages. A fee of 2s. 6d. is to be taken for such certificate of registration, and a list of such places to be open for inspection without any fee.

ST. PANCRAS.—WRIT OF MANDAMUS.—On Saturday, the 120 vestrymen and forty directors of the poor of St. Pancras, were served by Messrs. Sharpe, Field, and Jackson, the solicitors to the Poor Law Board, with copies of a writ of mandamus, issued by the Court of Queen's Bench, to compel the authorities of the parish to reinstate Mr. Eaton in his office of master of the workhouse, from which he was dismissed some weeks since by the vestry, for alleged misconduct, and without the consent of the Poor Law Board.

THE STAFF OF THE TITHE-OFFICE, says a correspondent, amounted at one time to 130 officials, consisting of commissioners, clerks, and surveyors. At the present time it does not amount to a tenth of that number. There are three commissioners, with salaries of 1,500*l.* a year each. Owing to a personal quarrel among them, one of them at one time never went near the office for three or four years. Another of the commissioners is absent about six months in the year, personally superintending a pottery, which he possesses in the west of England. A short time since the Government ordered a reduction of the staff of the tithe-office, and after it was done the commissioners assured the clerks who were retained that no further alteration would take place. To the surprise of the latter, however, a short time afterwards their salaries were considerably reduced. Many who had worked hard for a series of years, and whose salaries had been raised from 80*l.* to 200*l.* a year, found them reduced to 150*l.*; a respectful memorial was addressed to the commissioners, but no redress was obtained, and nearly all the clerks resigned. Not the slightest reduction has taken place in the commissioners' salaries, nor have their labours been increased. Soon after the resignation of the clerks some of them were solicited to return, as it was found their services could not be dispensed with. The conduct of the Tithe Commissioners will be brought before Parliament next session. The whole of the tithe documents, which have cost the country a million of money, are now so carelessly attended to that they will shortly be seriously injured, if not wholly destroyed.—*Daily News.*

JOINT-STOCK COMPANIES' LAW JOURNAL.

THE power of carriers to limit their liability by notices to their customers, has been the subject of much discussion, and many decisions in the courts of law. It was understood to be settled law that they could *not* limit their liabilities by any general notice, but only be making a special contract with the particular customer. Lately, however, the Courts have relaxed the supposed stringency of this rule, and in a series of cases growing out of the carrier business of railways, they have determined that the liability may be limited by certain notices in their nature general. One of these we reported from the Ex. a short time since. (*Carr* v. *The Lancashire, &c. Railway Company*, 19 Law T. Rep. 124.) The C. P. has now come to the same conclusion. In *Austin* v. *Manchester, &c. Railway Company*, 19 Law T. Rep. 256, horses were sent by the railway. The ticket stated that it was issued, "subject to the owner's undertaking to bear all cost of injury by conveyance, and other contingencies," &c. and that the company would not be responsible for "any damages, however caused, to horses, cattle, or live stock of any description, travelling upon their railway." During the journey an axle of one of the carriages broke, through negligence of the servants of the company

in omitting to grease the wheels, and a horse was killed. The company was held not to be liable. The Court said, "At one time the Courts were disposed to hold that carriers could not limit their liability, but now their right to do so is well established. . . . Whatever be the nature of the conduct here charged, we think it is covered by the terms of the contract."

It is obvious how capable of abuse is the power thus recognised in a company to define its own liabilities. If they may do so with horses, they may do so with human beings. They ask the State for special powers, that give them a monopoly; the State has a right to impose just conditions upon the exercise of those powers, and the liabilities of companies ought to be defined by statute as well as their rights. No subject of more general interest or importance than this could engage the attention of parliament.

WINDING UP.

Last week we presented the promised report of the case of *Hutton* v. *Bright*, 19 Law T. Rep. 249, in which the House of Lords has practically reversed its own decision in *Upfill's* case. For the sake of appearances, the late decision is not *stated* to be an overruling of the former one, their lordships finding an excuse for it in some slight dissimilarity of facts, which is really a distinction without a difference. It will be seen by the report that the law is now precisely what we stated it to be a fortnight since. *Upfill's* case had been understood by all the world to decide that, although a provisional committeeman, merely as such, was not a contributory, nor was an allottee, yet if both these ingredients were combined, that is to say, if the committeeman had also accepted shares, he *was* liable as a contributory. Every Judge of every Court before whom the case was cited expressed his inability to understand the *principle* of the decision, but held himself to be absolutely bound by it. The House of Lords, however, has taken the very unusual course of correcting its own error, and reversing its own judgment; and in the case now under review it has determined, after receiving the unanimous opinion of the Common Law Judges, that the additional fact of being an allottee does *not* make a provisional committeeman a contributory. The law, therefore, may now be taken as settled, that a provisional committeeman is only liable for all such debts as he may have sanctioned personally, or given to other persons authority to contract in his behalf. It is a question to be determined according to the Common Law, and in almost every case a question of *fact* to be tried by a jury.

This is precisely the view which we have taken of this question from the beginning, and it is gratifying to find it thus adopted in the end by the highest judicial authorities.

In *Ex parte Holme*, 19 Law T. Rep. 250, the Lord Chancellor has affirmed the decision of the Court below, which was fully reported in 17 Law T. Rep. 11, and then duly noted in the Summary. We therefore deem it unnecessary to repeat the note here.

Cameron's Coalbrook, Swansea, and Loughor.—On Monday, before Master Richards, a meeting was held to make a call upon the shareholders to meet the costs occasioned by proceedings that had for their object the including certain parties, called "seceding shareholders," in the list of the contributories. Mr. Roxburgh, with Messrs. Galsworthy, appeared for Mr. Turquand, the official manager, whose report set forth that seventy persons, holding 15,281 shares, had been placed on the list as liable, and that fifty-nine other persons, holding 3,655, were also sought to be included; but that these latter claimed to be exempted by reason of the alleged transfer of shares, the validity of which was the subject of great litigation, and that a considerable amount of costs had been incurred in consequence, to meet which and the cost of further proceedings, together with the taxed costs of Mr. Williams, the solicitor to the company, which had been allowed at 3,800*l.* a call of 1*l.* per share would be required, more particularly as there was reason to believe that the call would not be productive as regarded 12,800 shares. After considerable discussion, the Master decided on making a call of 4s. per share.

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

British and Foreign Gaslight and Meter Company.—Call of 7*l.* per share, on July 29.—Seni[illegible]r.

REAL PROPERTY LAWYER AND CONVEYANCER.

A bond was given for securing the sum of 300*l.* and conditioned to be void if the obligor should pay the said sum of 300*l.* and the interest and premiums due on certain policies of assurance effected as a collateral security. Proviso, that if default be made in regular payment of interest or premiums, the bond should be forfeited, and the principal sum of 300*l.* be forthwith recoverable. This was held to be properly stamped with the bond stamp for 300*l.* "We think this is not a bond for the payment of the premiums, but only for the payment of 300*l.* the 300*l.* being demandable as soon as there is a deficiency in the payment of interest or premiums; but when it becomes forfeited by the omission to do that, all that can be recovered under it is the amount of the 300*l.* and not any thing else." (*Prudential Mutual Assurance Society* v. *Curzon*, 19 Law T. Rep. 257.)

In *Quinn* v. *Quinn*, 19 Law T. Rep. 249, the Lord Chancellor of Ireland has held that where a lady had lodged money in a bank with the declared purpose of preserving it for the benefit of her children, a trust was fastened upon it for their benefit, and she could not recover possession of the money.

COPYHOLD.

ADJUDICATION STAMPS.

A. as one of the two heirs of the deceased wife of B. claims one moiety, and C. as the other heir, claims the other moiety of a copyhold messuage. At a special Court, A. is admitted as to one moiety, and C. as to the other moiety of the said messuage.

Afterwards, at the same Court, in consideration of 5*l.* to said A. and of 5s to said C. respectively paid by said B. *and in consideration of the said B. having been in receipt of the rents and profits of said messuage since his wife's decease, and for the purpose of carrying out her intention to devise same to him*, said A. and C. do, and each of them doth, surrender same to the use of said B. Thereupon *B. is admitted.*

The commissioners, on the one copy of court-roll of the above proceedings, have adjudged the following amounts of duty, viz.—

For the admittance of A. as to his moiety	£1
" C. "	1
For the surrender and B.'s admittance, three 1*l.* stamps	3
	£5

Considering that there is only one tenement, there ought in fairness to be only one admittance duty charged on A. and C.'s admittance. They were, in fact, only admitted to the entirety as tenants in common. It makes no difference whether the form is to them as tenants in common, or to one as to one undivided moiety, or to the other as to the other undivided moiety.

The custom of this manor as to descents being according to gavelkind, there might possibly have been twelve shares instead of two, in which case, according to the above mode of charging, the admittance duty would have been 12*l.*

The surrender is jointly made; but because it is made by two tenants in common, it seems that 1*l.* is imposed in respect of each tenant; so that had there been twelve tenants, as above suggested, there would have been 12*l.* again, instead of 1*l.* for this surrender.

Surely this construction of the Stamp Act cannot be correct.

It is on the safe side for the commissioners; and if this be their general way of deciding, the public will have to pay dear for their adjudication.

Folkestone. J. B.

Query.

COPYHOLDS.

Can any of your readers inform me if the Commissioners of Inland Revenue have decided whether a warrant to enter satisfaction on a conditional surrender is liable to be stamped as a "reconveyance, release, surrender, discharge, or renunciation of any mortgage," &c. under the 13 & 14 Vict. c. 97, Schedule, tit. Mortgage?

This point has been mooted once or twice in your columns, but I have seen no reply to the question; yet the subject is not without considerable interest.

J. S.

New Act for School Sites.—According to an Act now in operation, the provisions of former Acts with respect to sites for schools are extended to schools and colleges for the religious or educational training of the sons of yeomen or tradesmen, or others, or for the theological training of candidates for holy orders of the Established Church, which are erected or maintained in part by charitable aid.

Suits relating to Charities.—Mr. Hume requested some particulars of a sum of 7,000*l.* charged in the Civil Contingencies on account of bills of costs as solicitor to the Attorney-General in suits relating to charities, and the following statement has just been published in a Parliamentary paper:—"This is a sum which has been advanced to Mr. J. P. Fearon to enable him to carry on proceedings as solicitor to the Attorney-General in charity suits taken by that officer under the authority of the Acts of Parliament. It is expected that this sum, and other advances which have been made from time to time to the predecessors of Mr. Fearon, will be ultimately recovered so soon as the whole of the charity suits shall have been brought to a close. The results of the proceedings instituted by the Attorney-General in several of these suits have been of a most satisfactory character. Property to a considerable amount, which had in the course of years been diverted from the original charitable purposes contemplated by the donors, particularly in regard to hospitals and schools, has been recovered and properly applied. Already more than 600,000*l.* have been recovered for the benefit of certain charities, and in one case alone upwards of 60,000*l.* have been recovered and placed in due course of administration. The number of charities with which the Attorney-General and Mr. Fearon have to deal is 28,000, involving property to the amount of a million and a half per annum."

COUNTY COURTS.

Summary.

We last week published in full the *County Courts Improvement Act*, 19 Law T. Rep. 123. We have already presented to our readers an outline of the principal provisions of this measure. We have only now to add that sec. 1, for which we feel a parent's interest, and by which regular costs are secured to the Profession in the County Courts, instead of the insulting fixed fee, will not come into practical operation until the five Judges are appointed by the Lord Chancellor to frame a scale of fees, and these shall have been submitted to the Judges of the Superior Courts, and approved by them. We are not aware if any steps have yet been taken to carry out this *valuable* provision, but we trust there will be no delay in doing so. The next most important section is the 18th, which establishes a registry of County Court judgments; but the time and manner of doing it are confided to the Treasury, so that it is impossible even to surmise *when* it is likely to be done. The 16th section forbids the Judges to practise at the Bar or as special pleaders after the 30th of September next. By that time the salaries should be raised to the sum given by the new Act. But if the Judges are forbidden to practise, why should Deputy-Judges be allowed to do so? Any objection applicable to the one applies even more strongly to the other. Sec. 6 gives additional protection to officers executing warrants of execution, making the warrant under the seal of the Court sufficient evidence of authority — not of the officer acting under—but "*of the said County Court previous to the issuing of such warrant.*" This would seem to protect the Court, even when acting without jurisdiction; but surely *that* could not have been the *intention* of the Legislature.

It will be seen that in *Hickie* v. *Salamo*, 19 Law T. Rep. 257, it has been decided, upon appeal, that in an action by two plaintiffs, where one resides within and the other beyond twenty miles from the defendant, the Superior Courts have concurrent jurisdiction with the County Courts.

COSTS IN THE COUNTY COURTS.

TO THE EDITOR OF THE LAW TIMES.

Sir,—The Profession are undoubtedly deeply indebted to you for your exertions in watching and advocating their interests from time to time, and particularly in reference to the late County Courts Amendment Act, and the clause securing a fair remuneration for their services, but unless the judges exercise a corresponding liberality in settling the table of fees which shall be allowed in County Court proceedings, Paul may plant and Apollos water in vain. I would, therefore, suggest, on behalf of the Profession in general, that every influence should be exercised to get a fair scale of

charges laid before them officially for the purpose, otherwise most of the work done out of Court will still be unprovided for, and it will therefore be desirable such scale should be prepared by some practical man, and suggestions furnished by the Profession to that end, in which I shall be happy to join; probably those taken from bills of costs that have been already taxed by the Masters as between attorney and client, will be considered by the judges more authentic and entitled to their fair weight when fixing the scale.

The absurd and insulting practice under the old law not only prohibited creditors from seeking to recover their just rights, on account of the time and labour required to get up their cases themselves (rather than incur the expense of legal assistance, which they would have ultimately to pay for in any event), but also materially increased the spirit of litigation and opposition on the part of the debtors themselves; and therefore the alteration which has now been effected will be a boon, not merely to the Profession, but to suitors also, and all parties will be satisfied. The only defect is the omission to give creditors the *option* of proceeding by writ in a Superior Court for demands *under* 20*l.* as well as above, and no provision being made for judgments by default. I am, Sir, yours, &c.

FRED. CHAPMAN.

Guildhall Chambers, Plymouth,
July 19, 1852.

EFFECTS OF THE COUNTY COURTS.—The effects of the County Courts are not more remarkable in the diminution of the number of cases in Westminster Hall than in the diminution of the number of prisoners in the Queen's Bench prison. Till the operation of the County Courts Act the average number of prisoners was considerably upwards of three hundred; at present there is scarcely a third of that number, and a full half of these have been in confinement from a period antecedent to the passing of the Act referred to. One man has been in prison for the space of forty years. He entered a hale and strong man of thirty-five—he is now in his dotage. Two have been there for thirty-one years, four for twenty years, and a considerable number for upwards of ten years. Every advance made by our Legislature in providing cheap justice to the people must necessarily have the effect of diminishing the number of prisoners for debt all over the kingdom. Not unfrequently persons have been kept in confinement for many years for the mere costs in an action, irrespective of the alleged debt or claim altogether—as, for example, in a case where the judge had ordered that each party should pay his own costs. Cheap justice will render such cases rare, it being more difficult to run up a large bill of costs for proceedings in the County Courts than in the Superior ones. A reform in the Court of Chancery will also have the effect of diminishing the number of inmates in the Queen's Prison. Many of the Chancery prisoners are committed for contempt—that is, they may have chanced not to appear to some summons at the Master's or Registrar's office, or otherwise, as the case may be, during the progress of the suit, which may have been prolonged to a tedious duration. The costs connected with such contempts are enormous. If the proceedings in the cause had been more speedy, no contempt, in the shape of non-attendance, would have been committed, and the poor litigant would not have been put in confinement for a debt wholly irrespective of, and apart from, the general costs in the suit.

THE LAWYER.

Summary.

EQUITY PRACTICE.—Defendants who come within the jurisdiction after decree moved without notice to the other defendants, were, in *Vincent* v. *Watts*, 19 Law T. Rep. 253, allowed to have the same benefit of the decree as if they had put in an answer.

Where the tenant for life of trust money paid into Court under the Trustee Act petitioned for payment of dividends, the costs of the petition were ordered to be paid out of the *corpus*, and not out of the income, of the fund. (*Re Field's Trust*, 19 Law T. Rep. 253.)

In *Ex parte Richards*, 19 Law T. Rep. 253, an infant interested under a settlement, made by an alleged lunatic ten years before, was allowed to attend the inquisition by Counsel, the object being to carry back the lunacy for thirty years.

COMMON LAW. In an action on a money bond, alleging a single breach, if the Statute of Limitations is pleaded, and issue taken thereon, the plaintiff is entitled to a verdict on that issue, if he proves a single breach within the twenty years, although there may have been an earlier breach beyond the twenty years. (*Amott* v. *Holden*, 19 Law T. Rep. 253.)

In *Horton* v. *The Westminster Improvement Commissioners*, 19 Law T. Rep. 256, an order had been made for changing the venue, on payment of costs, and other terms were included. But such payment of costs was held not to be necessarily conditional on the change of venue, but the Court would ascertain from the facts whether such payment should be obligatory.

WESTMINSTER COUNTY COURT.

Thursday, July 15.

FRANCE *v.* GREEN.

IMPORTANT TO AUCTIONEERS.

This was an action by a furniture broker against an auctioneer to recover 2*l.* for his expenses, loss of time, and anticipated profit, in consequence of the postponement of a sale of furniture.

The plaintiff appeared in person; Mr. Parry counsel, and Mr. Sangster, solicitor, for the defendant.

From the plaintiff's statement it appeared that, in consequence of an advertisement stating that defendant would, on the 10th of June last, sell some household furniture at Chigwell-row, he, plaintiff, went there for the purpose of buying, but that when he arrived he found that the sale was postponed. That it was a very wet day, and he supposed the sale was postponed in consequence of the rain. Plaintiff claimed 2*l.* for his expenses, loss of time &c.

In answer to questions put by the judge, the plaintiff said he had not seen Mr. Green before the proposed sale, nor could he prove that the advertisement was inserted by him.

The learned judge said that was fatal to the case, but for the plaintiff's satisfaction he would add, that if he had connected Mr. Green with the advertisement, he knew no law by which an auctioneer was liable in such a case. It was an experiment of the plaintiff, and he should give judgment for the defendant.

Mr. Parry was not called upon.

All Masters Extraordinary in Chancery are requested to transmit to the Principal Secretary of the Lord Chancellor, Quality-court, Chancery-lane, on or before the last day of August next, a statement, in writing, mentioning their names, their place of residence, their actual occupation, and the date of their appointment.

DEATH OF "JOHN DOE AND RICHARD ROE."—On the 24th of October next these celebrated characters will legally cease to exist. By an Act passed in the late session (15 & 16 Vict. c. 76), it is enacted that, "instead of the present proceeding by ejectment, a writ shall be issued, directed to the persons in possession of the property claimed, which property shall be described in the writ with reasonable certainty."

THE MERCANTILE LAWYER.

Summary.

ONE of the most important and interesting cases, as affecting the mercantile community and the bankers especially, has been fully and carefully reported to us from the House of Lords. In *Mangles* v. *Dixon*, 19 Law T. Rep. 260, these were the facts: A. (a merchant) and B. (a shipowner) agreed to share the profits of a particular voyage of a ship that belonged to B. This agreement was contained in three instruments: first, a charter-party by which about one-half of the freight at so much per ton per month was to be paid by A. to B. by monthly instalments during the voyage and the rest on the return of the ship; second, a memorandum by which the parties agreed that they should be liable to expenses and share profits in equal moieties; third, a guarantee. After the ship had sailed, B. deposited the charter-party with his bankers as security for a balance then due on his account, with an order indorsed thereon, addressed to A. to pay to the bankers the freight thereafter to become due. Notice of the deposit and indorsement was afterwards given to A. who accordingly paid to the bankers the instalments as they fell due, but did not inform them of the agreement. B. became bankrupt; the ship returned, having made a losing voyage, and then A. refused to make any further payment, alleging that by virtue of the agreement he was liable only for half the freight made payable by the charter-party. Until this objection was made, the bankers were not informed of the existence of the agreement. They now claimed the full benefit of the charter-party deposited with them, without its being affected by the agreement of which they had no notice. But the House of Lords, reversing the judgment of Lord Chancellor COTTENHAM, has held that they could *not* do so, that they were entitled to no larger benefit from it than the assignor was entitled to, and the general rule was affirmed that *an assignee of a chose in action takes it subject to all the then subsisting equities against it in the hands of the assignor.*

In *Amott* v. *Holden*, 19 Law T. Rep. 253, the bankruptcy and certificate of the defendant were held to be no bar to an action by the grantor of an annuity on a joint and several bond, conditioned for payment of the annuity, but executed by defendant only as surety for the grantor, although the bond was forfeited before the bankruptcy, and by its terms the principal and surety were coequally bound. WIGHTMAN, J. differed from the rest of the Court, doubting whether in this case the defendant was a surety. But upon this point Lord CAMPBELL, C. J. said, "With the most sincere deference for the opinion of my brother WIGHTMAN, I have not been able to bring myself to entertain any doubt that in this transaction the defendant is a surety. A surety is a person who makes himself liable for the debt of another, and he is still a surety, though he may be called on for payment at the same moment as the principal. If he has no interest in the transaction, except as surety, and this is fully known to the creditor, who accepts him in the relation of surety, his contract with the creditor must be attended with all the incidents of suretyship."

Another extremely important question in *Bankruptcy* has been decided by a Court of Error, in *Tetley* v. *Taylor*, 19 Law T. Rep. 258, overruling the judgment of the Q. B. It is now decided that a deed of arrangement between a trader and his creditors executed by six-sevenths in number and value of those whose debts amount to 10*l.* and upwards, under the 224th to 230th sections of the New Bankruptcy Act, is *not* binding upon creditors who are not parties to the deed, *unless* the deed provides for the distribution of the whole of the trader's estate among his creditors.

LEGAL INTELLIGENCE.

Assizes.

OXFORD CIRCUIT.

OXFORD, July 15.—The commission was opened here yesterday. The Court sat at twelve o'clock to-day. Five causes were entered; one of them proved to be undefended; in another a verdict was taken for the plaintiff by consent. The calendar is unusually light, there being only fifteen prisoners for trial in the county and one in the city. In the city case the prisoner is charged with the murder of his wife.

STAFFORD, July 22.—The commission was opened on Wednesday. Fourteen causes were entered for trial. Mr. Justice Williams presided in the Crown Court. The calendar, containing the names of sixty-nine prisoners, was comparatively light, both in the number of prisoners and the nature of the offences with which they were charged, which called forth from the learned judge, in his charge to the grand jury, his congratulations on the decrease of crime in the county.

WORCESTER, July 19.—The commission was opened here on Saturday. At Nisi Prius there are five common [illegible] Crown Court there are fifty-five prisoners for trial.

NORFOLK CIRCUIT.

HUNTINGDON, July 20.—The commission for this county was opened yesterday afternoon, there being two common jury causes of an ordinary description (of which one was settled in the course of the day) on the one side, and on the other eight prisoners, involved in two charges of manslaughter, three of burglary, two of highway robbery, and one of assault.

CAMBRIDGE, July 22.—The commission was opened yesterday. On the civil side there is an entry of seven common jury cases. The calendar contains the names of twenty-four prisoners charged with serious offences, including one case of rape, one of bigamy, one of abduction, one of burglary, one of stabbing, three of arson, one of highway robbery, one of perjury, one of concealment of birth, one of uttering counterfeit coin, two of felonious assaults, and five of ordinary larcenies. Besides these, there is, however, a road indictment, which was made a remanet from the last assizes.

Leicester, July 22.—The calendar for the county contains the names of eighteen prisoners for trial; but there are few charges of magnitude—three of cutting and wounding, two of arson, one of burglary, one of housebreaking, one of robbery, one of forgery, and one of throwing a stone upon a railway carriage. The cause list shews an entry of six causes.

HOME CIRCUIT.

Lewes, July 22.—The commission was opened Wednesday, and this morning both the courts proceeded to business; Chief Justice Jervis presiding on the Crown side, and Mr. Justice Maule at Nisi Prius. The gaol calender contains the names of thirty-two prisoners; but the cases, with one or two exceptions, are of the ordinary description. On the civil side fourteen causes are entered—thirteen common and one special jury cases.

Chelmsford, July 17.—The commission was opened here on Thursday. The calendar was an unusually light one, and the offences charged were, with two exceptions, of a trivial character. Mr. Justice Maule sat on the civil side, and disposed of the business on the list, which was also an unusually meagre one.

Derby, July 17.—Mr. Justice Coleridge arrived here this afternoon. Only three venires have been returned, and the calendar contains the names of only nineteen prisoners. Some of the charges are, however, of a serious kind. They include two cases of murder, one of stabbing, one of rape, one of forgery, and one of subornation of perjury.

A Fracas at the Bar.—The new member for Sunderland, Mr. Digby Seymour, having been accused of dishonesty in his political opinions by his antagonist, Mr. Fenwick, during the late election, which personal aspersions were indignantly repelled, Mr. Fenwick resorted to the expedient of writing to members of the Northern Bar for their opinion as to Mr. Seymour's politics, and obtained answers from Mr. Pollock, Mr. Baxter, Mr. Otter, M Price, and Mr. Campbell Foster, which letters he published, in some instances at least without the consent of the writers. Thereupon Mr. Seymour was very indignant, and in a speech delivered by him at Sunderland he accused Mr. Campbell Foster of having, from personal resentment, been a party to this imputation on his political integrity, and entered at some length into the grounds on which he arrived at this conclusion. This speech was reported in the *Sunderland News* of July 10; and on the same day the commission for the York Assizes was opened. Mr. Campbell Foster, on Monday following, addressed a letter to Mr. Seymour, demanding to know whether the report of this speech was correct, and Mr. Seymour sent a reply, which has not been published; its purport, however, may be gathered from the subsequent correspondence. Mr. Dearsley, a member of the Northern Bar, on Wednesday, the 14th, wrote to Mr. Seymour, as from Mr. C. Foster, professing to be their mutual friend, and requesting him "to express his unqualified regret that in a moment of great difficulty and excitement he (Mr. Seymour) was betrayed into expressions and matter of which his better judgment disapproved." Mr. Seymour replied—complying with the request of Mr. Dearsley, and expressing his "regret that under great excitement he felt compelled to make observations and introduce matters relating to Mr. Foster, which his cooler judgment and the subsequent perusal of his letter satisfied him had been better omitted." Mr. Dearsley rejoined that on the part of Mr. C. Foster he was satisfied with this apology, and in one of the York papers of Saturday this correspondence was published by Mr. C. Foster (omitting, however, Mr. Seymour's reply to his first letter). It was imagined that with this publication would end "this war of words," but Monday brought Mr. Seymour and Mr. Foster to an interview with each other, and it would appear that some difference had occurred as to whether Mr. Seymour's letter was to be deemed an apology. The parties met in the robing-room at York Castle, and after some words Mr. Foster, who had a cane in his hand, struck Mr. Seymour three or four smart blows across the shoulders. Mr. Seymour resented this violence, and a "set-to" commenced, in the course of which both the "learned gentlemen" came to the ground. Mr. Knowles, Q.C. and other barristers who were present, then interposed, and ultimately the belligerents were separated. Mr. Knowles, as one of the Commissioners of Assize, felt it to be his duty to apprise the judges—Lord Campbell and Mr. Justice Wightman—and they summoned Mr. C. Foster and Mr. Seymour before them in their private room. The facts being there stated, the learned judges required Mr. Foster and Mr. Seymour to enter into their own recognizances, in 500*l.* each, to keep the peace and be of good behaviour to each other for the next six months. The learned gentlemen were also admonished on the great impropriety of their conduct. Thus the matter at present stands.—*Daily News.*

Representative Peers for Scotland.—An Act of Parliament, which received the Royal assent on the 30th ult. has just taken effect in relation to the election of representative Peers for Scotland. By this Act (15 & 16 Vict. c. 35), Peers of Scotland may take the oaths, &c. in courts of Ireland, or before any judge of a County Court in England, and before other officers, to enable them to vote by proxy.

The Western Bar.—No less than eight counsel who do, or did, travel the Western Circuit, have been returned to the present Parliament, and all for boroughs in the counties of the circuit—namely, Mr. Crowder for Liskeard, Sir A. Cockburn for Southampton, Mr. Butt for Weymouth, Mr. Massy for Newport, Mr. Collier for Plymouth, Mr. Phinn for Bath, and Mr. E. Carter for Tavistock.

Registered Letters.—The Postmaster-General has ordered a relaxation of the stringent rules now in force respecting the delivery of registered letters. At present a registered letter can only be delivered to the party to whom it is addressed, and whose receipt alone is taken for it. For the future, when this is impracticable, a receipt will be taken for a registered letter from the husband, wife, or, failing this, from a member of the same family residing under the same roof of the party to whom such letter is addressed. This will be a very great convenience to the public.

It is stated that one eminent Queen's counsel has already received twenty-five retainers on petitions against election returns, for undue practices.

THE GAZETTES.

Bankrupts.

Gazette, July 20.

Ashburner, George, ironmonger, Bolton-le-Moors, Lancashire, July 30 and August 20, at eleven, Manchester. Off as Lee. Sols. Reece, Birmingham, and Blair, Manchester Petition, July 15.

Brooks, Thomas, nail manufacturer, Lye, near Stourbridge, July 31, at one, Aug. 23, at half-past ten, Birmingham. Off. as. Bittleston. Sols Prescott, Stourbridge, Robinson and Fletcher, Dudley; Mottram, Knight, and Emmet, Birmingham Petition, July 9.

Ford, Daniel Merewether, carrier, Lawrence-lane, Cheapside, Aug. 2 and Sept. 8, at twelve, Basinghall-st. Off. as. Graham. Sols. Dalton and Hall, Coleman-st. Petition, July 17.

Hayman, John, miller, Carbeale-mills, near Torpoint, Cornwall, July 22 and August 26, at eleven, Plymouth Off as Hernaman Sols Edmonds and Sons, Plymouth; and Stogdon, Exeter Petition, July 10

Meeson, Thomas, coal merchant, Fenchurch-st. July 26, at half-past eleven, Sept. 2, at eleven, Basinghall st. Off. as Cannan Sols Lawrance, Plews, and Boyer, Old Jewry-chambers, Old Jewry Petition, July 17.

Powncеby, Samuel, stationer, High-st Shadwell, and victualler, Munster-st. Regent's-park, July 29, at twelve, Sept. 2, at half-past one, Basinghall-st. Off. as Whitmore. Sol France, Godliman-st. Doctors'-commons. Petition, July 17.

Gazette, July 23.

Addis, Henry; Onions, William, and Lloyd, Edmund, vinegar manufacturers, Island, Gloucester, Aug 3 and 31, at eleven, Bristol. Com. Hill Off as. Hutton Sols. G P. Wilkes, Gloucester, and W. Bevan, Bristol Petition, July 9

Clark, George, draper, Old-st. St. Luke's, July 29 and Sept. 2, at half-past twelve, Basinghall-st. Com. Fane. Off as Cannan. Sols. Ashurst and Son, 6, Old Jewry. Petition, July 13.

Gurney, Henry, victualler, 38, Pitfield-st. Hoxton, July 31 and Sept 8, at one, Basinghall-st. Com Fonblanque. Off. as. Graham. Sol. Patten, 41, Ely-place, Holborn. Petition, July 15.

Lister, Thomas, jun. cotton spinner, Long Preston, Yorkshire, Aug. 2 and 31, at eleven, Leeds. Com. Ayrton. Off. as. Hope. Sol. Harle, Leeds. Petition, July 6.

Rampoldt, John, toyman and jeweller, Newcastle-upon-Tyne, Aug. 3, at eleven, Sept. 3, at twelve, Newcastle-upon-Tyne. Com. Ellison. Off as. Wakley. Sols. Hoyle, Grey-st. Newcastle-upon-Tyne; and Crosby and Compton, Church-court, Old Jury Petition, July 19.

Rogers, Charles, draper. Camborne, Cornwall, Aug. 4, at eleven, Aug. 24, at one, Exeter. Com Bere Off as. Hernaman. Sols. Sole, Turner, and Turner, 68, Aldermanbury, London; and Stogdon, Exeter. Petition, July 9.

BANKRUPTCY ANNULLED.

Gazette, July 20.

Horton, S. builder, Carlton-road, Asylum-road, Old Kent-road.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Allison, R. and T. pianoforte manufacturers, second, 4½d.; on new proofs, 1s 3½d. Edwards, London.—*Attree*, R. hosier, second and final, 1s. 11d Groom, London.—*Barnjum*, T wine merchant, first, 7s 6d Edwards, London.—*Bateman* and *Hardwicke*, printers and stationers, first, 1s. 9d. Cannan, London.—*Beaumont*, J. engineer, first, 6s. 8d. Stansfeld, London.—*Bunyard*, C. seedsman, second, 1s. 0½d. Whitmore, London.—*Cogar*, W A. boot and shoe dealer, first, 4s. Whitmore, London.—*Dean*, A. clothier, hatter, &c. first, 7s. 6d. Nicholson, London.—*Dunman*, W. carpenter, first, 5s. Nicholson, London.—*French* and *Sands*, coal merchants, first sep. of Sands, 2s. 6d. Nicholson, London.—*Gatehouse*, *Dirch*, and *Wilkins*, timber merchants, second, 5½d. Cannan, London.—*Gundry* and *Gundry*, merchants, further sep. of John Gundry, 2s. Hirtzel, Exeter.—*Handley*, S. builder, first, 1s. 6d. Stansfeld, London.—*Hart* and *Hart*, trimming manufacturers, first, 6s. 4d. Whitmore, London.—*Keating*, T. druggist, &c. first, on new proofs, 3s. Edwards, London.—*Keith* and *Shoobridge*, warehousemen, first, 2s. 9d. Stansfeld, London.—*Lyon*, A. draper, &c. second, 9d. Nicholson, London.—*McDowall* and *Brown*, printers, third, 3½d. Whitmore, London.—*Millard*, J. coppersmith, first, 10s. Groom, London.—*Richardson*, J. ironmonger, second and final, 1½d. Groom, London.—*Solomons*, A. merchant, second, 8½d.; on new proofs, 1s. 8½d. Edwards, London.—*Silby*, J. F. timber merchant, first, 2s. Nicholson, London.—*Starkey*, J. carpenter, &c. third, 1s.; on new proofs, 7s. 6d. Edwards, London.—*White*, C. H. dealer in china, first, 6s. Nicholson, London.—*Wright*, J. grocer, &c. first, 7s. Nicholson, London.

Assignments for the Benefit of Creditors.

Gazette, July 13.

Coleman, J. draper, Canterbury, June 28. Trusts. J. Tilley, Bread-st. and J. Gower, Lawrence-lane, warehousemen. Sol. N. Overbury, Frederick's-place, Old Jewry.—*Davies*, E. licensed victualler, Globe Tavern, London-st. Fitzroy-square, June 19. Trusts. J. Allnutt, jun. wine merchant, Mark-lane, J. R. F. Burnett, distiller, Vauxhall, and J. Parker, licensed victualler, Curtain-road, Shoreditch. Sols. T. B. Chester, Albion-st. Hyde-park; H C. Elliott, Lincoln's-inn-fields; J. H. Grant, Kennington-cross.—*Joiner*, W. grocer and cheesemonger, Addlestone, Surrey, June 21. Trusts. W. Nash, wholesale grocer, Arthur-st.-west, and G. Penson, wholesale cheesemonger, Newgate-st. Sol R G. Mathews, St Mary Axe.—*Leicester*, J. sen. brewer, Over, Cheshire, July 9. Trust. J. Slater, brewer, Over. Sol. J. Cooke, Over.—*Parker*, T. A. hatter, Marlborough-road, Chelsea, July 9. Trust. E. Parker, spinster, Portland place. Sol. N. Overbury, Frederick's-place, Old Jewry.—*Stanley*, J publican, the Eagle, public house, Barkway, Hertfordshire, July 3. Trusts. T. Titchmarsh, merchant, Royston, and J. Burr, licensed victualler, Park-st. Southwark. Sol. H. Thurnall, Royston.

Gazette, July 16.

Andrew, J. sen. corn miller, Leeds, June 19. Trusts. D Hurtley and J. Steele, corn factors, Leeds. Sol. J. Dunning, Leeds.—*M'Lean*, T. draper and tea dealer, Bridgewater, Somersetshire, June 21. Trusts. J. Culverwell, warehouseman, and J Cousins, woollen draper, Bristol. Sols. W. Brittan and Sons, Bristol.—*Young*, E. builder and ironfounder, Hartlepool, Durham, June 29. Trusts J. Stephenson, merchant, W. Jenkinson, slater, and W. Grey, draper, all of Hartlepool. Sols. T. Belk, Hartlepool, and J. T. Hoyle, Newcastle.

Partnerships Dissolved.

Gazette, July 9.

Brearley, A. sen. C., W. and F. joiners and cabinet makers, Heckmondwike, Birstal, as regards F Brearley, Dec 31.—*Clark*, W. and *Emms*, W. grocers and tea dealers, Nottingham, July 5. Debts paid by Clark.—*Dean*, J and *Pilgrim*, E W. surgeons, Northwich, July 5. Debts paid by Dean.—*Entwistle*, J. and J tailors and drapers, Bury and Heywood, June 15. Debts at Bury paid by Joseph Entwistle; at Heywood, by Joshua Entwistle.—*Foster*, O. and *Robertson*, J. surgeons and apothecaries, Hitchin, June 30. Debts paid by Foster.—*French*, B and *Butler*, W B. cork manufacturers, Piccadilly, June 13 Debts paid by French.—*Gummersall*, B. and *Law*, J. card makers, Dudley-hill, July 5. Debts paid by Gummersall.—*Harris*, S S. and *Cooke*, J. auctioneers and appraisers, Leicester, July 5.—*Hardy*, K. and *Playfair*, G. carvers and gilders, Leeds, April 1.—*Hilton*, J. and *Hall*, D. manufacturing chemists, Land's End, Rhodes, near Middleton, June 24. Debts paid by Hall.—*Howarth*, E. and *Rothwell*, W. cotton spinners, Middleton, July 8.—*Jones*, S. T. and A. New York, and *Heard*, J. Manchester, March 10.—*Lockwood*, J. *Randell*, C. and *Felton*, F. hop merchants, Duke-st. Southwark, as regards Lockwood, June 30.—*Lord*, J and J. *Ogden*, D. *Bleazard*, J. and *Ogden*, J. (dec.) flag and stone dealers, Heald, near Bacup, as regards John Ogden, jun. and John Lord, June 30. Debts paid by remaining partners.—*Mangles*, F. and *Moore*, H. T. merchants and ship owners, London, and Perth, Western Australia, May 31.—*Robinson*, R. and *Atkinson*, A. mercers and drapers, Kendal, June 30 Debts paid by R. Robinson.—*Saalfeld*, A. J., A. S. and S. H. Skinner's-place, Sise-lane, June 1.—*Shaw*, A. and J. manufacturers of orris oil, Lockwood, near Huddersfield, June 29.—*Sweet*, S and E. mustard manufacturers and coffee roasters, Newcastle, July 5.—*Ward*, F and E. booksellers, stationers, and printers, Stratford-upon-Avon, July 7.—*Wills*, H. and *Salinger*, W. fancy trimming manufacturers, Hoxton-sq July 7.—*Wright*, W. and *Grover*, W. farmers, Bellingdon, June 22.

Gazette, July 13.

Barrett, J. and *Bates*, T. painters and gilders, Halifax, July 6. Debts paid by Barrett.—*Bevan*, F. and *Rowcliffe*, E. Peacock-st. Newington Butts, July 10. Debts paid by Rowcliffe.—*Bradley*, W. and *Sutton*, J. iron nail casters, Birmingham, July 6. Debts paid by Sutton.—*Carpenter*, J. and *Tildesley*, J. curry-comb and lock manufacturers, Willenhall, July 9 Debts paid by Tildesley.—*Chillingsworth*, J. and *Haywood*, J. sen. and J. jun. trimming manufacturers, Foleshill, Warwick, July 9.—*Cooper*, R. and G. paper-stainers and hangers, Newcastle-upon-Tyne, July 1. Debts paid by Cooper.—*Flintoff*, A. and H. mercers and milliners, Nottingham, July 7.—*Jameson*, J. and *Banks*, W warehousemen, Honey-la.-market, Cheapside, June 28. Debts paid by Jameson.—*Paine*, W. and A. wine, spirit, and porter merchants, Tiverton, July 8.—*Poole*, J. and *Young*, F. accountants, Spital-square, Norton Folgate, July 10.—*Smith*, W. T. and *Mitchell*, J. R. merchants and commission agents, Liverpool, July 9. Debts paid by Mitchell.—*Warrillow*, E. P. and *Whitehouse*, S. R. stationers, fancy paper box and button bag manufacturers, wholesale haberdashers and general merchants, Birmingham, June 25. Debts paid by Whitehouse.—*Weatherill*, W. *Smith*, S. and *Sutcliffe*, W. joiners and builders, Bradford, July 8. Debts paid by Sutcliffe.—*Wood*, D. and *Godsell*, T. common brewers, Badbrook Brewery, Stroud, July 5. Debts paid by Wood.—*Wyles*, J., T., and L. corn, coal, and general merchants, maltsters, and millers, Grantham and Nottingham, as regards J. Wyles, July 1. Debts paid by remaining partners.—*Young*, H. S. and *Todd*, W. millers, Milton-next-Gravesend, June 30. Debts paid by odd.

CONTENTS.

To Readers and Correspondents.

"W. B. P."—*Yes.*

"A BROKER'S CLERK."—*Thanks for the information; we will see what use can be made of it.*

"N. S."—*The paragraph was cut from the* Daily News, *and the authority ought to have been stated.*

The communications of the following reached us too late in the week to have attention in the present number:—"W. J." "G. W. G." "R. B." and "T. B. B."

ERRATA.—*Re* William Wood, *vol.* 19, *p.* 275.—*In head-note, for* "conditioned" *by subsequent conduct, read* "condoned." *Page* 276, *line* 10 *from top, for* "claims" *read* "clauses."

We cannot undertake to return rejected communications. Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith. No notice can be taken of anonymous communications.

THE LAW TIMES.

SATURDAY, JULY 31, 1852.

LAW REFORMS AND LAW REFORMERS.

MODERATION is the rarest of virtues. Not long ago it was difficult to obtain a favourable hearing for the most obvious improvements in the law. Now, the wildest schemes are gravely proposed and warmly supported. Many of our would-be Law Reformers are endeavouring to vie with one another in the extravagance of their plans, as if they thought that popularity was to be gained by the highest bidder for Law *destruction*, under the plausible name of Law *Reform*. Accomplish the desires of these flaming patriots, and what would be the result? The administration of justice in England would be assimilated to that of Turkey, where a Cadi is judge and jury, and his decisions are governed according to his individual notions of the equity of the case. That is the perfection of the two objects most held in veneration by our legal destructives—*speed* and *cheapness.*

The truth is, that there exists a very great desire in many quarters to destroy *the Lawyers.* That feeling is at the bottom of many a professsion of patriotic zeal for Law Reform. It moves a considerable portion of the pens that supply the leading articles in the newspapers. We regret to be obliged to declare our conviction that it is the aim of some of the noisiest of the Law Reformers. Let philosophers explain it as they may, the fact is confirmed by every day's experience, that those who have failed in a profession usually become its enemies. It is a remarkable fact that the most violent of the Law Reformers—they who are for revolutionising the law—have been unsuccessful in the pursuit of the law; the Profession has failed to recognise their merits. Now they come forward, and by tongue and speech endeavour to promote schemes of which the certain result would be to destroy the Profession that has slighted themselves. Whether this coincidence is an accident, or the facts are connected in the relationship of cause and effect, the reader will form his own judgment.

But whatever the motive that impels these *revolutionary* projects, the duty of the Profession, and of those who are associated with it, is to offer to them the most resolute resistance. Such schemes find a certain amount of public favour, *because* they are seen to be ruinous to the Lawyers, who are not in favour with the public. Therefore they will require to be carefully watched in all their *details*, and the Profession should be prepared, upon the first sound of alarm from the sentinel, to rise as one man and resist the attack, whether it comes from open foes without, or pretended friends within, the camp.

MORTGAGES.

PROTECTION being now abandoned, relief for the landed interest will be sought in other directions, and it is certain that the efforts of all the friends of agriculture will be directed to the promotion of measures that will reduce the burdens upon land, or, which is equally desirable, increase its market value.

Undoubtedly, one of the most serious of its burdens is the cost of conveying and mortgaging it. If a plan could be devised by which these charges could be reduced, land would be transferred and mortgaged much more frequently than it is at present, and the Profession would reap a sum of advantage by multiplied conveyancing more than equivalent to the diminution of profit on each transaction.

We have already shewn why it will be impossible materially to diminish the costs of a conveyance without making considerable alterations in *the law* of real property, for so long as the law recognises the existence of a variety of interests in land, besides that of the actual possessor, there must be, on every transfer, an inquiry into the existence of such interests, and the owners of them must be parties to the conveyance.

But a plan has suggested itself to us by which a considerable improvement might be made in the practice of *mortgages*, and which would have the double effect of diminishing the cost of a mortgage and reducing the rate of interest.

This plan was suggested to us by the provision in the Copyholds Enfranchisement Act, that permits the rent-charges for which the compensation to the lord may be exchanged, to be represented by a transferable certificate of charge, that will pass from hand to hand by indorsement, like a bill of exchange.

Now we propose that a somewhat similar plan should be adopted with respect to mortgages; that there should be a voluntary register of mortgaged property; that the registrar should grant a certificate of charges of any property so registered, which certificate should be transferable by indorsement, with notice to the registrar, or, if deemed more secure, by indorsement of the registrar personally—by whom a register of all such certificates and transfers should be preserved.

Thus, for example. You take up 500*l.* on mortgage. The mortgage deed is deposited with the registrar, for which he issues to the mortgagee so many certificates of charge as may be desired, no one certificate being for a less sum than 50*l.* These certificates of charge refer to the mortgage, and state the interest payable, and the day and place of payment. They are transferable, either by indorsement of the transferor alone, or by an indorsement on the certificate by the registrar, who keeps a register of such transfers. If at any time the mortgagee wants to raise money, these certificates are the best securities, for they are equivalent to small mortgages; they will be put into circulation, pass regularly into the money market, command the highest price there, or, which is the same thing, the lowest rate of interest, and if the mortgagor at any time desires to redeem, he can buy them up either by degrees or altogether, according to his means.

This is the rude *outline* of the plan we propose. Necessarily its details will require much thought and care in the elaboration, and they will be attended with some difficulties: but there is nothing in them impracticable, or which might not be overcome by a resolution to accomplish the object. If any of our readers should be pleased with *the design*, and will favour us with their opinions upon it, or with practical hints for its improvement, or for the construction of the lesser details, we shall feel much obliged by the transmission of their hints.

COMMON LAW PROCEDURE ACT.

IN our last number, by a slight mistake of the printer, the word "week" instead of "month" was used inadvertently in the last paragraph of our notice of the LAW TIMES edition of this statute.

We have received a very valuable suggestion from more than one of our correspond-

ents in reference to our edition of this important statute. It is stated that it would be desirable to give the new procedure under the 6th section of the Law of Evidence Act, relating to the inspection of documents. The power (analogous to that of giving discovery in equity) conferred by the 14 & 15 Vict. c. 99, upon the Common Law Courts, will be of immense consequence now that profert and oyer are abolished; and under the sections effecting this change, we are informed that the new procedure of the Courts above referred to will be given, the suggestions of our correspondents having alone presented themselves to the editor of the statutes as a proper and necessary subject of commentary.

We are glad also to see that the resolution of the editor to delay the publication of the "Common Law Procedure Act" has met with the warm approval of a large number of our subscribers.

APPEALS IN THE HOUSE OF LORDS.

We stated last week that the Lords had cleared off their list of Appeals. This must be taken, however, with an explanation, that the term does not include the appeals entered *during* the session, but only the *list* issued at the commencement of the session. All the *arrears* are disposed of. We expect to receive some curious returns illustrative of the appeal business, as it was and is, and which may suggest some further improvements in the system.

THE ADVOCATE:
HIS TRAINING, PRACTICE, RIGHTS, AND DUTIES.(a)
SIXTIETH ARTICLE.
THE REPLY.

The reply is usually deemed to be the test of an orator's ability, and his most difficult achievement. It may rightly be so in *debate*, because the reply is the only portion of it which we are sure could not have been prepared, and in which we know that the speaker gives expression only to his own thoughts, in his own words, thus enabling us to measure his capacities. But, at the Bar, it is dangerous to come prepared with an opening speech, still more dangerous to anticipate a defence, and therefore the tact and skill required for a defence are even greater than those demanded for a reply. In a defence, half the case is conjectural; in reply, all is known, and the Advocate may deal with it after his own fashion, without fear of contradiction from forthcoming evidence. Hence the wide scope which the reply affords for the exercise of all the powers of the intellect, and which really makes it a less difficult achievement than the other oratorical duties of an Advocate that compel the speaker to caution and restraint, the curb in oratory being a great deal more trying to the speaker's intellect than unlicensed liberty.

The reply is *always* the duty of the leader, and it is to enable him to mould the case, so that he may maintain a consistent argument, that to him is also intrusted the task of cross-examining the witnesses for the defence.

No rules can be suggested for regulating a reply, because the utmost licence is given to you, alike in respect of subject and of treatment. You reply upon *the whole case*. You may comment upon every portion of it, repeat your own evidence, review that of the defendant, compare the one with the other, point out the relative strength or weakness of either, shew inconsistencies, criticise the witnesses, confirm the weak, denounce the false, vindicate the true, answer the arguments of your opponent, elaborate your own, invoke the aid of wit or wisdom, humour or pathos, as it serves your purpose. The wide range thus given to the play of your intellect is to yourself one of the most delightful exercises of your mind and if you have ... and various ... prompt ... sensibly with ... divers topics, you cannot fail to arrest the attention of your audience, and dull indeed must be the jury that will deny to you a patient hearing.

Hence the extreme importance of the *right to reply*. Doubtless you have many times read in the reports, or witnessed in the courts, the contests upon the claim of *right to begin*, and possibly you may have wondered what great advantage, worth so much talk, could arise to a party from the mere permission to state his case *first*. But the battle is not really for the right to *begin*, but for the right of *reply*, which is consequent upon the right to begin. The general rule is briefly stated: that party begins with whom rests *the affirmative of the issue*; but, as with all general rules, the application of it to particular cases often produces great and reasonable doubts where the affirmative *does* lie.

The value of a reply can scarcely be over-estimated. In the hands of a skilful Advocate, scarcely any case is hopeless where a reply is given to him. Instances of its importance must continually occur to all who have had experience in our courts. How often have we seen a jury intimate that they had made up their minds but, being told by the Judge that it was their duty to hear the whole case, reluctantly and sullenly at first submitting to the Advocate's address, then listening of good-will, and ultimately delivering a verdict directly opposed to that upon which their minds had been made up! Remember that the reply is *the last word*, and we all know the proverbial worth of *that*. Arguments, however fallacious, must pass unanswered, save by the Judge in summing up, and the evidence may be so skilfully disposed as to give to it such aspects as the Advocate desires. He may batter down his adversary's case, and there is none to set it up again, or display his own in glowing colours and it cannot be stripped of its hues, however shadowy or deceptive.

You will now understand why it is that the Counsel for the defence should always exercise such care in resolving whether to call witnesses. If he does not do so, the case ends there, and the defence has the benefit of the last word. As a general rule, a cautious Advocate will not call witnesses for the defence, unless they are absolutely required to meet the case established by the plaintiff. If the plaintiff has failed to ... it so, with the impression of the speech for the defence full in the minds of the jury, than to hazard a reply, which can never be given without danger.

This difficulty, however, occurs more frequently in the Criminal Courts, in treating of which we shall have occasion to return to the topic, and adduce the reasons for the rule we are recommending. It suffices merely to hint it here.

But even a reply should be governed by some regard to method. No such orderly array is required as in the opening speech, which is a *narrative* of facts, or in the defence, which is partly argument and partly narrative. But it should not be desultory and unmethodical. It should be artistically arranged, and not a mere string of disconnected sentences. Remember, that it ought to be a continuous and complete *argument*. However sparkling with wit, or glowing with elegance, however you may seem to play with your theme and to fat away on this side or on that in pursuit of illustrations, or even for the indulgence of your fancy, you must never lose the *thread* of your discourse; an under current of argument must run through every part of it, and all must be directed and actually tend to the conclusion which you desire that the jury shall draw from it. A formal logical discourse would be disagreeable and repulsive; but if the flowers with which you adorn it be stripped off, there beneath them the logic should be found that gives pith and substance to the whole.

Remember what is your purpose—to answer by *argument* the case that has been made out for the defence by the *evidence*. That is the principal object of a reply; the others are only secondary. You have also to answer the arguments of the Counsel for the defence, but these are of small moment compared with the duty of meeting and explaining away his *facts*, for *arguments* are but dimly understood by the majority of jurymen, and by almost all of them are but feebly remembered; whilst facts make their way into the minds of the dullest, and remain there. It will, therefore, be the most prudent course, upon the principle of reserving your most important points to the last, that they may leave the most vivid impression, to begin with an answer to the *arguments* of the other side, and then to proceed to review *the facts* of the case as proved by yourself, dwelling emphatically upon such as have been left unanswered by the defence. This serves to refresh the minds of the jury upon the strong points of your own case, and it will also enable them more readily to follow you in your examination of the case submitted for the defence. Good generalship and great caution are required in this, so as to handle your own case as not to bring into prominency its weaknesses and defects, and to give strength and symmetry to its best points by your manner of recalling them. But that manner cannot be conveyed by rule; it can only be taught by experience, combined with a quick perception, and a power of ready adaptation to the demands of the moment.

This done, you proceed to comment upon the evidence for the defence, and to that the same instructions are applicable as have been already submitted to you for your guidance in the speech that opens the defence, for your business in either is the same in this particular, namely, to shew that the evidence is not credible, or, if credible, that it does not support the case. But you have something more to do than mere criticism on the evidence of the defendant, you must compare it with your own case, and shew how and where it is weak, and what it has failed to shake, and what it has left unassailed. In the defence, your only duty was to criticise the case of the plaintiff; you could scarcely venture to compare it with your own, because yours remained as yet unproved; you could only speak of it in anticipation, and as you knew not how it might fail in the witness-box, it would have been dangerous to treat it as proved, and dwell upon it by comparisons with that which was actually proved. But in reply the best and the worst are known; there is nothing to fear from failure of proof; the range of the Advocate's review is only limited by the legitimate boundaries of the whole case; he will set the one fact against the other, and draw such a comparison in his own favour as the contrast will permit, and with the results of that comparison, carefully summed up and put to the jury in the clearest language, he will close his reply.

Observe, however, that this is but an outline of *the form* of a reply; as a general rule, it would be most prudent to adopt this arrangement of your theme, as being the natural order in which it would recur to the thoughts of the jury. For its details, for the ornaments with which you should surround it, and almost conceal its shape, you can be indebted only to your own skill and accomplishments exercised at the moment. There is scarcely one of the graces of oratory which you may not now advantageously employ, provided it be in accord with the subject. And this suggests to us another hint, not out of place here. Let your treatment of every case be *consistent with itself*. Let the tone, the manner of handling, and the language, be in harmony with the *character* of the case. If a fit theme for light and jesting treatment, so treat it; if for pathos, be pathetic; if it be a grave matter, deal with it gravely; if shameless, severely. But do not

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endeavour to mingle all humours, nor approach it in an unsuitable mood. Such bad taste is far more offensive to an audience than many positive faults. And yet it is not an uncommon spectacle in our courts, especially among

possible, and indulge in no "fine phrensies." Courts of Justice are places of business, where men resort for the despatch of earnest and serious affairs, and not for empty declamation and debating-club talk. The occasions are extremely rare that permit of anything more than a sensible plain-spoken address to a jury;—enlivened, if you please, by a spice of humour, or a dash or two of wit, fairly suggested by some person or event on which you are required to comment in due course;—but let nothing tempt you to be *eloquent* about mere matters of business—to rhapsodise upon a tradesman's bill, or to scatter the flowers of oratory over a right of way.

THE COMMON LAW PROCEDURE ACT.

I. THE WRIT OF SUMMONS.

WITH a great shew of change, this statute will, we fear, be found in practice to have advanced very little towards the accomplishment of the three objects for which it was designed—the *simplification*, the *speeding*, and the *cheapening*, of an action at law. It does little to simplify, less to cheapen, and positively *nothing* for speed. It introduces a multitude of changes, but few of them are substantial improvements; they go just far enough to unsettle the existing system, without constructing a new one, and the result is just that which a man witnesses who attempts to alter an old building—it is inconvenient and unsightly when done, and costs him more in money and labour than if he had pulled it down and erected a new one upon a plan adapted to his requirements. So in the new procedure of the Common Law Courts. New and old have been mingled together in unsightly and inconvenient companionship, and we suspect it will be found, when the machine comes to be set to *work*, that it has been marred instead of being mended, and that in patching one hole two new ones have been made.

If our readers will follow us through the series of papers in which we purpose, according to our promise, to make them fully acquainted with the new law, the alterations made by it, as compared with the former practice, and the manner in which they will be required to deal henceforth with actions in the Superior Courts, they will certainly share with us the sense of disappointment we have felt in reviewing its provisions, and the doubts we cannot but entertain, whether it will not prove a positive *increase*, instead of a diminution, of difficulty and cost. At all events, they will acknowledge that seldom has so little *substantial* benefit been ushered into the world with so much needless noise and undeserved gratulation.

The Act comes into operation on the 24th of October next.

Personal actions are still to be commenced by writ of summons, but it is to be necessary no longer to state in the writ *the form* or *cause* of action; still, however, the useless form is to be preserved of testing it in the name of the Chief Judge of the Court whence it issues.

It is to be indorsed as now, with the name and abode of the attorney actually suing it out, or with that of the plaintiff in person (if such was the case).

On demand in writing made by or on behalf of the defendant, the attorney whose name is on the writ is to declare whether the writ is issued with his authority, and the name and abode and profession of the plaintiff; and if he shall declare that it was not issued by him, then all proceedings thereon are to be stayed. This provision will meet an abuse that has occurred now and then in the issue of writs without authority.

We now proceed to describe the most useful provision of the statute, and the greatest improvement it has introduced.

Sec. 25 enacts, that where the claim is "for a debt or liquidated demand in money, with or without interest, arising upon a contract express or implied," as on a bill, note, cheque, bond, or contract under seal for a liquidated sum of money, or on a statute, where the sum sought to be recovered is a fixed sum, or in the nature of a debt, or on a guarantee, whether under seal or not, the plaintiff may make on the writ a *special indorsement of the particulars of his claim*, which shall be considered

by the Act, *at once sign final judgment* for any sum not exceeding the sum indorsed on the writ, with interest, if any due, at the rate specified, and a sum for costs (on a scale *to be* framed by the Masters), and on such judgment the plaintiff may *issue execution* at the expiration of *eight* days from the last day for appearance.

A power is then reserved to the Court to let in defendant to defend *after* the expiration of eight days, upon good cause shewn by affidavits *disclosing a defence upon the merits*.

The advantages of this speedy process for recovery of debts will be recognised by all our readers, and it will compensate for much that is disappointing in the other portions of the Act. The Common Law Courts will thus be rendered far more efficient than the County Courts for the *recovery of debts*, and it is only to be regretted that permission was not given by the statute to plaintiffs to sue *either* in the Superior Courts or in the County Courts; for, as the law is, both a cheaper and speedier remedy is provided by the Superior Courts, and it will be hard to *compel* plaintiffs to go for redress to the most troublesome and costly, instead of to the easiest and cheapest tribunal.

We now return to the other provisions for the regulation of *writs of summons*.

Concurrent writs may be issued.

No original writ is to be in force for more than *six* months from the date, but if any defendant be not served, it may be renewed, at any time before its expiration, for another period of six months, and so from ti to time, and such renewed writ is to be in force to prevent the operation of any Statute of Limitations. And its production, marked with the seal of the Court, is to be evidence of the date of the commencement of the action.

A writ of summons in any action may be served in any county.

Indorsement of service of writ is to be made within *three* days.

Provision is made for service of writs on corporations or inhabitants of hundreds and towns.

Distringas is abolished, and instead of it, where personal service cannot be effected, and the Court or judge shall, upon affidavit, be satisfied that reasonable efforts have been made to serve it, and either that the writ has come to the defendant's knowledge, or that he wilfully evades service, the plaintiff may be permitted to proceed as if personal service had been effected.

Where a defendant resides *out of the jurisdiction*, in any place *except* Scotland or Ireland, a special form of writ may be issued (as given in the schedule), and upon the Court being satisfied that there was a cause of action, and that defendant was served, or that he had evaded service, or wilfully neglected to appear, or "that he is living out of the jurisdiction in order to defeat and delay his creditors," may order the action to proceed. But the plaintiff must, in such case, *prove the amount of the debt or damages claimed by him*, either before a jury on a writ of inquiry, or before one of the Masters, as the Court shall direct.

A similar course, but with a different form of writ, is to be pursued with a *foreigner* resident out of the jurisdiction.

A writ is not to be nullified by an omission to insert or indorse on it any matters required to be inserted, but the Court may amend on terms; as also it may where the wrong writ shall have been accidentally substituted.

Concurrent writs for service within and without the jurisdiction may be issued.

For the purpose of directing proceedings against persons residing out of the jurisdiction, affidavits may be sworn before a consul-general, consul, vice-consul, or consular agent.

Here we pause. So far the alterations are decided improvements, some of them very great ones, especially the final judgment upon the writ specially indorsed, and the provisions for process against defendants out of the jurisdiction, the difficulties which have been hitherto one of the reproaches of our law, and which the facilities of locomotion have lately rendered intolerable.

THE LEGISLATOR.

NEW STATUTES.

15 VICTORIA, A.D. 1852.

[In this record of Legislation only the Statutes of practical utility are given at length. Of the others an abstract or the titles only are presented.]

(*Continued from page 137.*)

156. *Jurisdiction of Courts of Error over the proceedings.*—Courts of Error shall have power to quash the proceedings in error in all cases in which error does not lie, or where they are taken against good faith, or in any case in which proceedings in error might heretofore have been quashed by such Courts; and such Courts shall in all respects have such jurisdiction over the proceedings as over the proceedings in error commenced by writ of error.

157. *Court of Error to have like powers with Court below.*—Courts of Error shall in all cases have power to give such judgment and award such process, as the Court from which error is brought ought to have done, without regard to the party alleging error.

158. *Proceedings in error in fact.*—Either party alleging error in fact may deliver to one of the Masters of the court a memorandum in writing, in the form contained in the schedule (A) to this Act annexed, marked No. 12, or to the like effect, intituled in the court and cause, and signed by the party or his attorney, alleging that there is error in fact in the proceedings, together with an affidavit of the matter of fact in which the alleged error consists; whereupon the Master shall file such memorandum and affidavit, and deliver to the party lodging the same a note of the receipt thereof; and a copy of such note and affidavit may be served on the opposite party or his attorney; and such service shall have the same effect, and the same proceedings may be had thereafter as heretofore had after the service of the rule for allowance of a writ of error in fact.

159. *Plaintiff may discontinue proceedings in error.*—The plaintiff in error, whether in fact or law, shall be at liberty to discontinue his proceedings by giving to the defendant in error a notice, headed in the court and cause, and signed by the plaintiff in error or his attorney, stating that he discontinues such proceedings; and thereupon the defendant in error may sign judgment for the costs of, and occasioned by, the proceedings in error, and may proceed upon the judgment on which the error was brought.

160. *Defendant may confess error, and consent to reversal of judgment.*—The defendant in error, whether in fact or law, shall be at liberty to confess error, and consent to the reversal of the judgment, by giving to the plaintiff in error a notice, headed in the court and cause, and signed by the defendant in error or his attorney, stating that he confesses the error, and consents to the reversal of the judgment; and thereupon the plaintiff in error shall be entitled t and may forthwith sign a judgment of reversal.

161. *Death of plaintiff in error no abatement.*—The death of a plaintiff in error after service of the note of the receipt of the memorandum alleging error, with a statement of the grounds of ... , shall not cause the proceedings to abate, but they may be continued as hereinafter mentioned.

162. *Proceeding for death of one of several plaintiffs in error.*—In case of the death of one of several plaintiffs in error, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, the proceedings may be thereupon continued at the suit of, and against the surviving plaintiff in error, as if he were the sole plaintiff.

163. *Proceedings upon death of sole plaintiff or of all the plaintiffs in error.*—In case of the death of a sole plaintiff or of several plaintiffs in error, the legal representative of such plaintiff or of the surviving plaintiff may, by leave of the Court or a judge, enter a suggestion of the death, and that he is such legal representative, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the proceedings may thereupon be continued at the suit of, and against such legal representative as the plaintiff in error; and, if no such suggestion shall be made, the defendant in error may proceed to an affirmance of the judgment according to the practice of the Court, or take such other proceedings thereupon as he may be entitled to.

164. *Death of a defendant in error no abatement.*—The death of a defendant in error shall not cause the proceedings to abate, but they may be continued as hereinafter mentioned.

165. *Proceedings upon death of one of several defendants in error.*—In the case of the death of one of several defendants in error, a suggestion may be made of the death, which suggestion shall not be traversable but only be subject to be set aside if untrue, and the proceedings may be continued against the surviving defendant.

166. *Proceedings upon death of sole defendant or of all the defendants in error.*—In case of the death of a sole defendant or of all the defendants in error, the

plaintiff in error may proceed, upon giving ten days' notice of the proceedings in error, and of his intention to continue the same, to the representatives of the deceased defendants, or, if no such notice can be be given, then, by leave of the Court or a judge, upon giving such notice to the parties interested as he or they may direct.

167. *Marriage not to abate proceedings in error.*—The marriage of a woman, plaintiff or defendant in error, shall not abate the proceedings in error, but the same may be continued in like manner as hereinbefore provided with reference to the continuance of an action after marriag

And with respect to the action of ejectment, be it enacted as follows

168. *Ejectment to be brought by writ.*—Instead of the present proceeding by ejectment, a writ shall be issued, directed to the persons in possession by name, and to all persons entitled to defend the possession of the property claimed, which property shall be described in the writ with reasonable certainty.

169. *Form and duration of writ of ejectment.*—The writ shall state the names of all the persons in whom the title is alleged to be, and command the persons, to whom it is directed, to appear, within sixteen days after service thereof, in the court from which it is issued, to defend the possession of the property sued for, or such part thereof as they may think fit, and it shall contain a notice that in default of appearance they will be turned out of possession; and the writ shall bear teste of the day on which it is issued, and shall be in force for three months, and shall be in the form contained in the schedule (A) to this Act annexed, marked No. 13, or to the like effect; and the name and abode of the attorney issuing the same, or, if no attorney, the name and residence of the party shall be indorsed thereon, in like manner as herein-before enacted with reference to the indorsements on a writ of summons in a personal action; and the same proceedings may be had to ascertain whether the writ was issued by the authority of the attorney whose name was indorsed thereon, and who and what the claimants are, and their abode, and as to staying the proceedings upon writs issued without authority, as in the case of writs in personal actions.

170. *Service of writ of ejectment.*—The writ shall be served in the same manner as an ejectment has heretofore been served, or in such manner as the Court or a judge shall order, and in case of vacant possession, by posting a copy thereof upon the door of the dwelling-house or other conspicuous part of the property.

171. *Appearance of persons named in the writ.*—The persons named as defendants in such writ, or either of them, shall be allowed to appear within the time appointed.

172. *Appearance of persons not named.*—Any other person not named in such writ shall, by leave of the Court or a judge, be allowed to appear and defend, on filing an affidavit shewing that he is in possession of the land either by himself or his tenant.

173. *Appearance and defence by landlord.*—Any person appearing to defend as landlord in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord; and such person shall be at liberty to set up any defence which a landlord appearing in an action of ejectment has heretofore been allowed to set up, and no other.

174.—*Notice to defend for part only.*—Any person appearing to such writ shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in a notice intituled in the court and cause, and signed by the party appearing or his attorney; such notice to be served within four days after appearance upon the attorney whose name is indorsed on the writ, if any, and if none, then to be filed in the Master's office; and an appearance without such notice confining the defence to part, shall be deemed an appearance to defend for the whole.

175. *Want of certainty cured by particulars.*—Want of "reasonable certainty" in the description of the property, or part of it, in the writ or notice, shall not nullify them, but shall only be ground for an application to a judge for better particulars of the land claimed or defended, which a judge shall have power to give in all cases.

176. *Defence by persons not in possession.*—The Court or a judge shall have power to strike out or confine appearances and defences set up by persons not in possession by themselves or their tenants.

177. *Judgment for default of appearance or defence.*—In case no appearance shall be entered into within the time appointed, or if an appearance be entered, but the defence be limited to part only, the plaintiffs shall be at liberty to sign a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply; which judgment, if for all, may be in the form contained in the schedule (A) to this Act annexed marked No. 14, or to the like effect, and if for part, may be in the form contained in the schedule (A) to this Act annexed, marked No. 15, or to the like effect.

178. *Issue how made up.*—In case an appearance shall be entered, an issue may at once be made up, without any pleadings, by the claimants or their attorney, setting forth the writ, and stating the fact of the appearance, with its date, and the notice limiting the defence, if any, of each of the persons appearing, so that it may appear for what defence is made, and directing the sheriff to summon a jury; and such issue, in case defence is made for the whole, may be in the form contained in schedule (A) to this Act annexed, marked No. 16, or to the like effect, and in case defence is made for part, may be in the form contained in the schedule (A) to this Act annexed, marked No. 15, or to the like effect.

179. *Special case may be stated.*—By consent of the parties, and by leave of a judge, a special case may be stated according to the practice heretofore used.

180. *Trial of issue.*—The claimants may, if no special case be agreed to, proceed to trial upon the issue, in the same manner as in other actions; and the particulars of the claim and defence, if any, or copies thereof, shall be annexed to the record by the claimants; and the question at the trial shall, except in the cases hereafter mentioned, be, whether the statement in the writ of the title of the claimants is true or false, and, if true, then which of the claimants is entitled, and whether to the whole or part, and if to part, then to which part of the property in question; and the entry of the verdict may be made in the form contained in the Schedule (A) to this Act annexed, marked No. 17, or to the like effect, with such modifications as may be necessary to meet the facts.

181. *Verdict when title appears to have expired before trial.*—In case the title of the claimant shall appear to have existed as alleged in the writ, and at the time of service thereof, but it shall also appear to have expired before the time of trial, the claimant shall, notwithstanding, be entitled to a verdict according to the fact that he was so entitled at the time of bringing the action and serving the writ, and to a judgment for his cost of suit.

182. *Trial may be ordered to take place in any county.*—The Court or a judge may, on the application of either party, order that the trial shall take place in any county or place other than that in which the venue is laid; and such order being suggested on the record, the trial may be had accordingly.

183. *Non-appearance at trial.*—If the defendant appears, and the claimant does not appear at the trial, the claimant shall be non-suited; and if the claimant appears, and the defendant does not appear, the claimant shall be entitled to recover as heretofore, without any proof of his title.

184. *Special verdict, and bill of exceptions.*—The jury may find a special verdict, or either party may tender a bill of exceptions.

185. *Judgment upon finding for claimant.*—Upon a finding for the claimant, judgment may be signed, and execution issue for the recovery of possession of the property, or such part thereof as the jury shall find the claimant entitled to, and for costs, within such time, not exceeding the fifth day in Term after the verdict, as the Court or judge before whom the cause is tried shall order; and if no such order be made, then on the fifth day in Term after the verdict, or within fourteen days after such verdict, whichever shall first happen.

186. *Judgment upon finding for defendant.*—Upon a finding for the defendants, or any of them, judgment may be signed, and execution issue for costs against the claimants named in the writ, within such time, not exceeding the fifth day in Term after the verdict, as the Court or judge before whom the cause tried shall order; and if no such order be made then on the fifth day in term after the verdict, or within fourteen days after such verdict, whichever shall first happen.

187. *Execution for recovery of possession and costs may be joint or separate.*—Upon any judgment in ejectment for recovery of possession and costs, there may be either one writ or separate writs of execution for the recovery of possession and for the costs, at the election of the claimant.

188. *Defence by joint tenants, tenants in common, or coparcener.*—In case of such an action being brought by some or one of several persons entitled as joint tenants, tenants in common, or coparceners, any joint tenant, tenant in common, or coparcener in possession, may, at time of appearance, or within four days after, give notice in the same form as in the notice of a limited defence, that he or she defends as such, and admits the right of the claimant to an undivided share of the property (stating what share), but denies any actual ouster of him from the property, and may, within the same time, file an affidavit stating with reasonable certainty that he or she is such joint tenant, tenant in common, or coparcener, and the share of such property to which he or she is entitled, and that he or she has not ousted the claimant; and such notice shall be entered in the issue in the same manner as the notice limiting the defence, and upon the trial of such an issue the additional question of whether an actual ouster has taken place shall be tried.

189. *Trial and judgment in ejectment against joint tenants, tenants in common, and coparceners.*—Upon the trial of such issue as last aforesaid, if it shall be found that the defendant is joint tenant, tenant in common, or coparcener with the claimant, then the question whether an actual ouster has taken place shall be tried, and unless such actual ouster shall be proved, the defendant shall be entitled to judgment and costs; but if it shall be found either that the defendant is not such joint tenant, tenant in common, or coparcener, or that an actual ouster has taken place, then the claimant shall be entitled to such judgment for the recovery of possession and costs.

190. *Action not to abate by death.*—The death of a claimant or defendant shall not cause the action to abate, but it may be continued as hereinafter mentioned.

191. *Proceeding upon death before trial where right survives.*—In case the right of the deceased claimant shall survive to another claimant, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the action may proceed at the suit of the surviving claimant; and if such a suggestion shall be made before trial, then the claimant shall have a verdict and recover such judgment as aforesaid, upon its appearing that he was entitled to bring the action either separately or jointly with the deceased claimant.

192. *Proceedings upon death before trial, where right does not survive.*—In case of the death before trial of one of several claimants, whose right does not survive to another or others of the claimants, where the legal representative of the deceased claimant shall not become a party to the suit in the manner hereinafter mentioned, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the action may proceed at the suit of the surviving claimant for such share of the property as he is entitled to, and costs.

193. *Upon death of one of several claimants having obtained a verdict.*—In case of a verdict for two or more claimants, if one of such claimants die before execution executed, the other claimant may, whether the legal right to the property shall survive or not, suggest the death in manner aforesaid, and proceed to judgment and execution for recovery of possession of the entirety of the property and the costs; but nothing herein contained shall affect the right of the legal representative of the deceased claimant, or the liability of the surviving claimant to such legal representative; and the entry and possession of such surviving claimant under such execution shall be considered as an entry and possession on behalf of such legal representative in respect of the share of the property to which he shall be entitled as such representative, and the Court may direct possession to be delivered accordingly.

194. *Proceedings in case of death of claimant, where right does not survive.*—In case of the death of a sole claimant, or, before trial, of one of several claimants, whose right does not survive to another or others of the claimants, the legal representative of such claimant may, by leave of the Court or a judge, enter a suggestion of the death, and that he such legal representative, and the action shall thereupon proceed; and if such suggestion be made before the trial, the truth of the suggestion shall be tried thereat, together with the title of the deceased claimant, and such judgment shall follow upon the verdict in favour of or against the person making such suggestion, as hereinbefore provided with reference to a judgment for or against such claimant; and in case such suggestion in the case of a sole claimant be made after trial and before execution executed by delivery of possession thereupon, and such suggestion be denied by the defendant within eight days after notice thereof, or such further time as the Court or a judge may allow, then such suggestion shall be tried, and if upon the trial thereof a verdict shall pass for the person making such suggestion, he shall be entitled to such judgment as aforesaid for the recovery of possession, and for the costs of and occasioned by such suggestion; and in case of a verdict for the defendant such defendant shall be entitled to such judgment as aforesaid for costs.

195. *Proceedings upon death of one of several joint defendants.*—In case of the death, before or after judgment, of one of several defendants in ejectment, who defend jointly, a suggestion may be made of the death, which suggestion shall not be traversable, but only be subject to be set aside if untrue, and the action may proceed against the surviving defendant to judgment and execution.

196. *Upon death of all the defendants in ejectment before trial.*—In case of the death of a sole defendant, or of all the defendants in ejectment, before trial, a suggestion may be made of the death, which suggestion shall not be traversable, but only be subject to be set aside if untrue, and the claimants shall be entitled to judgment for recovery of

possession of the property, unless some other person shall appear and defend within the time to be appointed for that purpose by the order of the Court or a judge, to be made upon the application of the claimants; and it shall be lawful for the Court or a judge, upon such suggestion being made and upon such application as aforesaid, to order that the claimants shall be at liberty to sign judgment within such time as the Court or judge may think fit, unless the person then in possession, by himself or his tenant, or the legal representative of the deceased defendant, shall within such time appear and defend the action; and such order may be served in the same manner as the writ; and in case such person shall appear and defend the same, proceedings may be taken against such new defendant as if he had originally appeared and defended the action; and if no appearance be entered and defence made, then the claimant shall be at liberty to sign judgment pursuant to the order.

197. *Upon death of all defendants in ejectment after verdict.*—In case of the death of a sole defendant or of all the defendants in ejectment after verdict, the claimants shall nevertheless be entitled to judgment as if no such death had taken place, and to proceed by execution for recovery of possession without suggestion or revivor, and to proceed for the recovery of the costs, in like manner as upon any other judgment for money, against the legal representatives of the deceased defendant or defendants.

198. *Upon death before trial of defendant in ejectment, who defends separately for part.*—In case of the death before trial of one of several defendants in ejectment, who defends separately for a portion of the property for which the other defendant or defendants do not defend, the same proceedings may be taken as to such portion as in the case of the death of a sole defendant, or the claimants may proceed against the surviving defendants in respect of the portion of the property for which they defend.

199. *Upon death of defendant defending separately for property in respect of which others also defend.*—In case of the death before trial of one of several defendants in ejectment, who defends separately in respect of property for which surviving defendants also defend, it shall be lawful for the Court or a judge at any time before the trial to allow the person at the time of the death in possession of the property, or the legal representative of the deceased defendant, to appear and defend on such terms as may appear reasonable and just, upon the application of such person or representative; and if no such application be made or leave granted, the claimant, suggesting the death in manner aforesaid, may proceed against the surviving defendant or defendants to judgment and execution.

200. *Claimant may discontinue by notice.*—The claimant in ejectment shall be at liberty at any time to discontinue the action as to one or more of the defendants, by giving to the defendant or his attorney a notice headed in the court and cause, and signed by the claimant or his attorney, stating that he discontinues such action; and thereupon the defendant, to whom such notice is given, shall be entitled to and may forthwith sign judgment of costs in the form contained in the schedule (A.) to this Act annexed, marked No. 18, or to the like effect.

201. *Discontinuance of action by one of several claimants.*—In case one of several claimants shall be desirous to discontinue, he may apply to the Court or a judge to have his name struck out of the proceedings, and an order may be made thereupon upon such terms as to the Court or judge may seem fit, and the action shall thereupon proceed at the suit of the other claimants.

202. *Judgment for not proceeding to trial after notice.*—If after appearance entered the claimant, without going to trial, allow the time allowed for going to trial by the practice of the Court in ordinary cases after issue joined, to elapse, the defendant in ejectment may give twenty days notice to the claimant to proceed to trial at the sittings or assizes next after the expiration of the notice; and if the claimant afterwards neglects to give notice of trial for such sittings or assizes, or to proceed to trial in pursuance of the said notice given by the defendant, and the time for going to trial shall not be extended by the Court or a judge, the defendant may sign judgment in the form contained in the schedule (A.) to this Act annexed, marked No. 19, and recover the costs of defence.

203. *Defendant may confess the action.*—A sole defendant or all the defendants in ejectment shall be at liberty to confess the action as to the whole or part of the property, by giving to such claimant a notice headed in the Court and cause, and signed by the defendant or defendants, such signature to be attested by his or their attorney; and thereupon the claimant shall be entitled to and may forthwith sign judgment and issue execution for the recovery of possession and costs in the form contained in the schedule (A.) to this Act annexed, marked No. 20, or to the like effect.

204. *Confession by one of several defendants defending separately for part.*—In case one of several defendants in ejectment, who defends separately for a portion of the property for which the other defendant or defendants do not defend, shall be desirous of confessing the claimant's title to such portion, he may give a like notice to the claimant; and thereupon the claimant shall be entitled to and may forthwith sign judgment and issue execution for the recovery of possession of such portion of the property, and for the costs occasioned by the defence relating to the same, and the action may proceed as to the residue.

205. *Confession by one of several defendants who defend for same property.*—In case one of several defendants in ejectment, who defends separately in respect of property for which other defendants also defend, shall be desirous of confessing the claimant's title, he may give a like notice thereof; and thereupon the claimant shall be entitled to and may sign judgment against such defendant for the costs occasioned by his defence, and may proceed in the action against the other defendants to judgment and execution.

206. *Formal entry of judgment on the roll unnecessary for purposes of execution.*—It shall not be necessary before issuing execution upon any judgment under the authority of this Act, to enter the proceedings upon any roll, but an incipitur thereof may be made upon paper, shortly describing the nature of the judgment according to the practice heretofore used, and judgment may thereupon be signed, and costs taxed, and execution issued, according to the practice heretofore used: provided, nevertheless, that the proceedings may be entered upon the roll whenever the same may become necessary for the purpose of evidence, or of bringing error, or the like.

207. *Effect of judgment.*—The effect of a judgment in an action of ejectment under this Act shall be the same as that of a judgment in the action of ejectment heretofore used.

208. *Error and bail in error in ejectment.*—Error may be brought in like manner as in other actions upon any judgment in ejectment, after a special verdict found by the jury, or a bill of exceptions, or by consent after a special case stated, but, except in the case of such consent as aforesaid, execution shall not be thereby stayed, unless the plaintiff in error shall, within four clear days after lodging the memorandum alleging error, or after the signing of the judgment, whichever shall last happen, or before execution executed, be bound unto the claimant, who shall have recovered judgment in such action of ejectment, in double the yearly value of the property, and double the costs recovered by the judgment, with condition, that if the judgment shall be affirmed by the Court of Error, or the proceedings in error be discontinued by the plaintiff therein, then the plaintiff in error shall pay such costs, damages, and sum or sums of money as shall be awarded upon or after such judgment affirmed or discontinuance; and it shall be lawful for the Court wherein execution ought to be granted upon such affirmation or discontinuance, upon the application of the claimant, to issue a writ to inquire as well of the mesne profits as of the damage by any waste committed after the first judgment in ejectment, which writ may be tested on the day on which it shall issue, and be returnable immediately after the execution thereof; and upon the return thereof judgment shall be given, and execution awarded for such mesne profits and damages, and also for costs of suit.

209. *Tenants to give notice of ejectment to landlord.*—Every tenant to whom any writ in ejectment shall be delivered, or to whose knowledge it shall come, shall forthwith give notice thereof to his landlord, or his bailiff or receiver, under penalty of forfeiting the value of three years improved or rack rent of the premises, demised or holden in the possession of such tenant, to the person of whom he holds, to be recovered by action in any court of common law having jurisdiction for the amount.

210. *Proceedings in ejectment by landlord for nonpayment of rent.*—In all cases between landlord and tenant, as often as it shall happen that one half year's rent shall be in arrear, and the landlord or lessor, to whom the same is due, hath right by law to re-enter for the non-payment thereof, such landlord or lessor shall and may, without any formal demand or re-entry, serve a writ in ejectment for the recovery of the demised premises, or in case the same cannot be legally served, or no tenant be in actual possession of the premises, then such landlord or lessor may affix a copy thereof upon the door of any demised messuage, or in case such action in ejectment shall not be for the recovery of any messuage, then upon some notorious place of the lands, tenements, or hereditaments comprised in such writ in ejectment, and such affixing shall be deemed legal service thereof, which service or affixing such writ in ejectment shall stand in the place and stead of a demand and re-entry; and in case of judgment against the defendant for nonappearance, if it shall be made appear to the Court where the said action is depending, by affidavit, or be proved upon the trial in case the defendant appears, that half a year's rent was due before the said writ was served, and that no sufficient distress was to be found on the demised premises, countervailing the arrears then due, and that the lessor had power to re-enter, then and in every such case the lessor shall recover judgment and execution, in the same manner as if the rent in arrear had been legally demanded, and a re-entry made; and in case the lessee or his assignee, or other person claiming or deriving under the said lease, shall permit and suffer judgment to be had and recovered on such trial in ejectment, and execution to be executed thereon, without paying the rent and arrears, together with full costs, and without proceeding for relief in equity within six months after such execution executed, then and in such case the said lessee, his assignee, and all other persons claiming and deriving under the said lease, shall be barred and foreclosed from all relief or remedy in law or equity, other than by bringing error for reversal of such judgment, in case the same shall be erroneous, and the said landlord or lessor shall from thenceforth hold the said demised premises discharged from such lease; and if on such ejectment a verdict shall pass for the defendant, or the claimant shall be nonsuited therein, then in every such case such defendant shall have and recover his costs; provided that nothing herein contained shall extend to bar the right of any mortgagee of such lease, or any part thereof, who shall not be in possession, so as such mortgagee shall and do, within six months after such judgment obtained and execution executed, pay all rent in arrear, and all costs and damages sustained by such lessor or person entitled to the remainder or reversion as aforesaid, and perform all the covenants and agreements which, on the part and behalf of the first lessee, are and ought to be performed.

211. *Lessee proceeding in equity not to have injunction or relief without payment of rent and costs.*—In case the said lessee, his assignee, or other person claiming any right, title, or interest, in law or equity, of, in, or to the said lease, shall, within the time aforesaid, proceed for relief in any Court of Equity, such person shall not have or continue any injunction against the proceedings at law on such ejectment, unless he does or shall, within forty days next after a full and perfect answer shall be made by the claimant in such ejectment, bring into Court, and lodge with the proper officer such sum and sums of money as the lessor or landlord shall in his answer swear to be due and in arrear over and above all just allowances, and also the costs taxed in the said suit, there to remain till the hearing of the cause, or to be paid out to the lessor or landlord on good security, subject to the decree of the Court; and in case such proceedings for relief in equity shall be taken within the time aforesaid, and after execution is executed, the lessor or landlord shall be accountable only for so much and no more as he shall really and bonâ fide, without fraud, deceit, or wilful neglect, make of the demised premises from the time of his entering into the actual possession thereof; and if what shall be so made by the lessor or landlord happen to be less than the rent reserved on the said lease, then the said lessee or his assignee, before he shall be restored to his possession, shall pay such lessor or landlord what the money so by him made fell short of the reserved rent for the time such lessor or landlord held the said lands.

212. *Tenant paying all rent with costs, proceedings to cease.*—If the tenant or his assignee do or shall, at any time before the trial in such ejectment, pay or tender to the lessor or landlord, his executors or administrators, or his or their attorney in that cause, or pay into the Court where the same cause is depending, all the rent and arrears, together with the costs, then and in such case all further proceedings on the said ejectment shall cease and be discontinued: and if such lessee, his executors, administrators, or assigns, shall, upon such proceedings as aforesaid, be relieved in equity, he and they shall have, hold, and enjoy the demised lands, according to the lease thereof made, without any new lease.

213. *Ejectment by landlord against tenant holding over after expiration of term or determination of tenancy by notice to quit.—Rule or summons for the tenant to give bail. On rule or summons absolute, if tenant shall not conform, judgment to be for the landlord.*—Where the term or interest of any tenant now or hereafter holding under a lease or agreement in writing any lands, tenements, or hereditaments for any term or number of years certain, or from year to year, shall have expired or been determined either by the landlord or tenant by regular notice to quit, and such tenant, or any one holding or claiming by or under him, shall refuse to deliver up possession accordingly, after lawful demand in writing made and signed by the landlord or his agent, and served personally upon or left at the dwelling house or usual place of abode of such tenant or person, and the landlord shall thereupon proceed by action of ejectment for the recovery of possession, it shall be lawful for him, at the foot of the writ in ejectment, to address a notice to such tenant or person requiring him to find such

bail, if ordered by the court or a judge, and for such purposes as are hereinafter next specified; and upon the appearance of the party on an affidavit of service of the writ and notice, it shall be lawful for the landlord producing the lease or agreement, or some counterpart or duplicate thereof, and proving the execution of the same by affidavit, and upon affidavit that the premises have been actually enjoyed under such lease or agreement, and that the interest of the tenant has expired, or been determined by regular notice to quit, as the case may be, and that possession has been lawfully demanded in manner aforesaid, to move the Court or apply by summons to a judge at chambers for a rule or summons for such tenant or person to shew cause, within a time to be fixed by the Court or judge on a consideration of the situation of the premises, why such tenant or person should not enter into a recognisance by himself and two sufficient sureties in a reasonable sum conditioned to pay the costs and damages which shall be recovered by the claimants in the action; and it shall be lawful for the Court or judge upon cause shewn, or upon affidavit of the service of the rule or summons in case no cause shall be shewn, to make the same absolute in the whole or in part, and to order such tenant or person, within a time to be fixed, upon a consideration of all the circumstances, to find such bail, with such conditions and in such manner as shall be specified in the said rule or summons, or such part of the same so made absolute; and in case the party shall neglect or refuse so to do, and shall lay no ground to induce the Court or judge to enlarge the time for obeying the same, then the lessor or landlord filing an affidavit that such rule or order has been made and served and not complied with, shall be at liberty to sign judgment for recovery of possession and costs of suit in the form contained in the Schedule (A.) to this Act annexed, marked No. 21, or to the like effect.

(To be continued.)

SITTINGS OF THE HOUSE OF COMMONS.—It appears from a Parliamentary paper just issued, that the House of Commons sat during the late session on eighty-two different days. The total number of hours occupied in the sittings was 617, of which sixty-one hours were after midnight. The number of entries in votes amount to 6,301.

MEETING OF THE NEW PARLIAMENT.—It is expected that the new Parliament will assemble about the third week in October.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

A POOR-RATE case, in which the Judges differed in opinion in some points, consequently giving occasion for a very elaborate judgment, was reported last week. *Reg.* v. *The Inhabitants of Longwood*, 19 Law T. Rep. 270, was a question as to the manner of rating certain waterworks conducted by commissioners under local Acts. The facts are peculiar, and too long for repetition here, and we must refer the reader for them to the case stated to the Court, which is given verbatim, and to the judgment, where they are carefully reviewed.

The LAW TIMES edition of the *Militia Acts*, edited by Mr. T. W. SAUNDERS, will be ready on Tuesday next. The Act of last Session refers throughout to the previous Acts, which are in fact incorporated in it, the whole forming *the Militia Law*. Hence this volume contains, not only the new Act, but all those that yet remain in force, so that it presents the whole of the law as it is, with explanatory notes, the forms, and an elaborate index.

JOINT-STOCK COMPANIES' LAW JOURNAL.

THE Court of Q. B. has confirmed the ruling of Lord CAMPBELL at Nisi Prius, in the case of *Stewart* v. *The Anglo-Californian Gold Mining Company*, 19 Law T. Rep. 272. A scripholder did not execute the deed of settlement within three months from its date, he had no notice of the clause of forfeiture therein, and the directors, in pursuance of the clause, forfeited his shares. The clause did not expressly require notice to be given. They were held to have been rightly forfeited. "This is an action," said the Court, "for not permitting the plaintiff to execute the deed, and the plaintiff must be supposed to have availed himself of his opportunities of becoming acquainted with its contents, and to have assented to it as it stands. If the deed contains anything contrary to the principles of law, or in other respects objectionable, the plaintiff might possibly recover back the sums he has paid for the scrip from the individuals who compose the company; but in an action against the company for not permitting him to execute the deed, he cannot object to it as unreasonable."

WINDING UP.

Two interesting points in the law of *winding up* decided by the Court of Q. B. in *Mackenzie* v. *The Sligo, &c. Railway Company*, 19 Law T. Rep. 270: first, whether an order for a company to be wound up was a bar to an action previously commenced. The Court held that it was *not*. "There is no provision in the statute taking away the Common Law remedy for a debt, on dissolution under the statute." On the contrary, by sec. 58 it is enacted, "that nothing in the Act shall alter or affect the rights and remedies of creditors." The second point was, whether sec. 73, which prohibits any action, after an order for winding up, until proof before the Master, created a bar to the action. But the Court held that it was *not* a bar, but only a suspension until proof made of the debt, after which the creditor is at liberty to proceed with his action. "All that the 73rd section provides is a power whereby there may be a suspension of the action until after proof by application for an order to stay proceedings. Full effect is given to all the other parts of the section by holding that the action may be *stayed* by the order until after proof, but it is not barred altogether."

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

Dover and Deal Railway and Cinque Ports, Thanet Coal Junction Company.—Call of 1*l.* 7*s.* per share, 16th August, on contributories in class 1.—Brough

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

IT seems that as a general rule the Court has no authority to direct a sale of an infant's real estate, or to convert it, merely because it was assumed that it would be for the infant's benefit. But the Court held, in *Browne* v. *Paull*, 19 Law T. Rep. 269, that it might do so under the particular circumstances of a devise in trust for certain purposes, and with the consent of the annuitant (his wife) to sell and dispose, and after her decease on their own authority to sell and dispose of all or any part of the estate, and to invest the proceeds on the trust of the will, and the devisees in trust had renounced probate and disclaimed.

In *Wisdom* v. *The Mayor, &c. of Dublin*, 19 Law T. Rep. 276, there was a lease for lives renewable during the period of seventy years, each life to be added within twelve months after the fall of the previous life. One of the lives was not heard of for eighteen years. Just before the expiration of the twenty years, the lessee prayed to be allowed to renew, in lieu of the life that had thus been missing for eighteen years, and he was allowed to do so; and he was held not bound to make application for renewal within the twelve months after the presumption of death had arisen.

COUNTY COURTS.

Summary.

THE Court of Q. B. has decided, in *Reg.* v. *The Insolvent Debtors Court*, 19 Law T. Rep. 271, that the Insolvent Debtors Court has *not* jurisdiction to rehear the case of an insolvent, originally heard before a County Court Judge. "There is no provision," said Lord CAMPBELL, "expressly giving power to the Commissioners over cases heard by a Judge of a County Court, and the provision in the 96th section of the former Act does not, in terms or on principle, apply to these cases; in terms it does not apply to County Courts, and on principle it was reasonable to vest the power of deciding on a rehearing in a tribunal in which all, or at least one, of the Judges was present who had presided over the former hearing. It would be inconvenient to require a tribunal to decide whether a Judge had been deceived by false evidence or otherwise, without any power of communicating with the Judge on a matter that depended on what passed in his own mind." As to the power of the County Courts to rehear, Lord CAMPBELL said, "We forbear therefore, to say more with respect to the powers of County Court Judges, than that the words of the section conferring jurisdiction on them to hear originally appear wide enough to comprehend a power of rehearing, and we think that the words describing their powers do not bring them within the limits of the power formerly exercised by the Commissioners themselves."

THE LAWYER.

Summary.

EQUITY PRACTICE.—In *Hills* v. *Nash*, 19 Law T. Rep. 267, the MASTER of the ROLLS held that the Master is bound either to accept or reject evidence, leaving the parties to except to his report; and that it was not competent to the parties, on a mere expression of doubt by the Master, to come to the Court to decide the point, even by consent, as no arrangement by consent can give jurisdiction.

In *Bangley's Trust*, 19 Law T. Rep. 269, where a trust fund had been paid into court under the Trustee Act, the costs of the application by the tenant for life for payment of dividends were not allowed to be paid out of the corpus of the fund.

SALARIES TO OFFICERS AND CLERKS IN THE COMMON LAW COURTS.—By virtue of the new Act (15 and 16 Vict. c. 73), the following officers and clerk of the Common Law Courts are to be paid by salaries instead of fees, from the 24th of October next.—The Associates in the Queen's Bench, Common Pleas, and Exchequer, senior clerk in the offices of the Associates in the Queen's Bench, Common Pleas, and Exchequer; junior clerks in those offices; clerk of assize for the performance of the duties of Associate in the Northern Circuit; clerk of assize for the performance of the duties of Associate of the Western Circuit, Oxford Circuit, Midland Circuit, Home Circuit, Norfolk Circuit, North Wales Circuit, and South Wales Circuit. The following judges' clerks are likewise to be paid by salaries:—Principal clerks of the Lord Chief Justices of the Queen's Bench and Common Pleas, and Lord Chief Baron of the Exchequer; chamber clerks to the same; third clerks to the same; principal clerks to the other judges and barons, and chamber clerks to the same. The salaries to the judges' clerks are to be fixed by the Treasury, with the sanction of the three chiefs of the Common Law Courts.

THE MERCANTILE LAWYER.

Summary.

A PERUSAL of the Lord ST. LEONARDS's very able judgment in the case of *Mangles* v. *Dixon*, 19 Law T. Rep. 261, which we noticed briefly last week, will amply justify the expressions we then used as to its great importance to the mercantile world, and its great value as a *legal treatise*, for such it is, and as such it ought to be read with most careful attention by all who desire to possess a correct knowledge of mercantile law, and especially do we recommend it to all law students. The LORD CHANCELLOR himself designated it as a case of "vast importance in a mercantile point of view."

Another case of scarcely inferior interest was reported last week from the Lord Chancellor's Court. As a question of legal interest it was even more important, for it determined a *new* point in the law of *injunction*, and it has been rightly looked upon by the Profession as the greatest of the many great judgments that have already proceeded from Lord ST. LEONARDS, and of which a *complete* collection will be found in the LAW TIMES Reports. The case was the famous one of *Lumley* v. *Wagner*, 19 Law T. Rep. 264. The facts and the judgment of V. C. PARKER upon them have been already reported. The single question brought before the LORD CHANCELLOR was the point of *law*, whether

a contract containing a *positive* agreement to do something, accompanied by a *negative* agreement not to do any other thing, could be so far enforced by the Court that it would *restrain* the breach of the *negative* agreement, although it might *not* be able to compel specific performance of the *positive* agreement. This was decided in the affirmative in a judgment remarkable for its learning and for the closeness and clearness of the argument by which it was sustained.

A patent case of some interest is reported from the Court of Error (*Heath* v. *Unwin*, 19 Law T. Rep. 272). But it contains no point of law capable of being stated apart from its facts.

It will be seen that the case of *Escritt* v. *Mason*, as to the proper stamp on a promissory note payable on demand, has been explained by the publication of a copy of the note itself. It was payable "to bearer," and *not* "on demand," and therefore clearly liable to the 5s. stamp.

In Bankruptcy there are two reports. In *Re Wood*, 19 Law T. Rep. 275, the Court allowed expenses incurred by the assignees in offering a reward for the bankrupt's capture, and sending a officer abroad in pursuit of him; and in the same case it refused a certificate altogether, the bankrupt having been guilty of fraud, although the creditors waived objection to it.

A paragraph, which appears below, extracted from a Liverpool paper, will probably direct the attention of our readers to a statute of whose existence many of them are probably not aware, although it is one of great practical utility, especially at this time, when emigration is so much the fashion, and embarrassed debtors are likely to be tempted by the double object of escaping from creditors at home, and digging gold abroad. The *Absconding Debtors' Arrest Act* enables a creditor to stop a flying debtor by a very summary process in the County Court, or before a Commissioner of Bankruptcy. This most useful statute, *with all the forms of affidavits, &c.* required to put it in operation, and very ample instructions to solicitors, has been published by Mr. KERR (who is preparing the LAW TIMES edition of the Common Law Procedure Act), and as practitioners must necessarily be required to advise and act upon this statute upon the instant, without time allowed for obtaining assistance from counsel, or even from friends or books, they will probably be pleased to learn that there is an inexpensive adviser, who will give them all the information they require when they are suddenly called upon by a client to stop the flight of an emigrant debtor. We can answer for the *completeness*, for practical use, of *Mr. Kerr's Absconding Debtors' Arrest Act*, and for the ability of the author.

IMPORTANT DECISION UNDER THE RECENT EMIGRATION ACT.—At the Liverpool Police Court, on Saturday, Richard Boothroyd, an emigrant, claimed a payment of 10*l*. and the return of passage money, from Mr. J. S. de Wolf, as charterer of the emigrant ship *Ottillia*, bound for Port Phillip, which vessel had taken her departure on Sunday, the 18th of July, instead of Monday, the 19th, causing him and other passengers to be left behind. Mr. Blair, barrister, attended for the plaintiff, and Mr. Harvey, solicitor, for the defendant. Mr. Blair stated that the passengers had been left on shore without money, their property, to the amount, he understood, of about 1,000*l*. being on board. Mr. Harvey on behalf of the owners of the vessel, expressed great regret that any of the passengers should have been left behind, and gave a promise that all the property should be taken care of, and be delivered to the various owners as soon as they arrived out. He proposed that they should be taken out by another vessel on Monday, for which they would pay the usual charge, subject to an abatement of 5*l*. each, under the circumstances. After the conclusion of the evidence on both sides, Mr. Blair submitted that the case had been entirely proved. Mr. Mansfield, in delivering judgment, said there was no doubt it was intended that the ship should sail on the Monday morning, but that, for some reason or another, the time had been altered. There appeared not to have been sufficient notice given to the passengers of that alteration. The decision of the bench was, that the passage-money should be returned, and that the defendant should pay 5*l*. as compensation.—*Liverpool Albion.*

APPREHENSION OF ABSCONDING DEBTORS.—The inducements held out for emigration to Australia are now being taken advantage of to a large extent by persons who wish to escape from their creditors. During the past week no fewer than ten of these absconding debtors have been arrested by the messenger of the Liverpool Bankruptcy Court, independently of those, of whom no return is kept here, who may have been followed and apprehended by order of the commissioners of bankruptcy or judges of County Courts in other districts of the country. On Tuesday two debtors from London, the one a surgeon and the other an assistant-surgeon, on board one of the many vessels now leaving this port for the gold diggings, in Australia, were arrested by one of the messengers of the Bankruptcy Court of Liverpool. The surgeon, who was possessed of a goodly sum of ready cash, at once paid the demand made by his tailor upon him, 23*l*. with expenses; but the unfortunate assistant being minus of the sum due to the same creditor, 20*l*. 2s. 6d. was transferred to Lancaster, and safely lodged there. The speedy operation of the Act may be made known by the mere mention of the circumstance that creditors from a distance even, on application (the affidavit as to the correctness of the debt being satisfactory) to the Bankruptcy Commissioner here, can obtain an order in five minutes for the arrest of any debtor, whether on shore or on board any vessel leaving the port. In many instances it happens that the husband is taken to Lancaster, and his wife and family left to proceed on their voyage; a distressing separation, no doubt, but a salutary provision. There is one defect in the Act which, it is understood, Government intends early in the next session of Parliament to remedy; that is, that the property as well as the person of the absconder, as in the case of bankruptcy, shall be seized, since, in many instances, rather than pay their debts, several parties with money have preferred being taken to Lancaster, in order to get rid of their liabilities by petitioning the Insolvency Court. Some amusing scenes are often witnessed by the messengers in effecting these disagreeable captures. Now and then the debtors themselves are very valiant and obstreperous; often the passengers interfere to prevent their arrest, and sometimes the captain of the vessel refuses to pay obeisance to the law; but all these difficulties are surmounted, and all opposition quieted, by the exhibition of a little bauble, "the silver oar," which we believe from time immemorial it has been the privilege of the water-bailiff to carry as an emblem of his authority on the Mersey, and on the exhibition of which no pilot will proceed to sea until all "legal" powers are obeyed. Thus, without authority to arrest, this little badge is made the means, and is, we learn, the only available means, of carrying out efficiently the provisions of this salutary statute. In addition to other law reforms already carried out by the present Administration, it may be added that their attention has been directed to the defective provisions of the Absconding Debtors Act. Through Mr. Walpole, a return has been ordered from this district of the number of arrests since the filing of the Act on the 25th of August, 1851, to the 28th of May, 1852; and from this return (on warrants obtained in Liverpool alone) we learn that during the period above-mentioned forty-five absconding debtors have been apprehended, whose liabilities varied from 20*l*. (unless the debt is to this extent no warrant can be issued) up to above 2,000*l*. Since this return was made up, a period of about two months, nearly as many captures have been made, owing to the Australian emigration mania; and in most instances the creditors have either gained all their demands, or such a moiety of them as not only satisfied the expenses they had incurred, but left them very trifling losers by their would-be evaders.—*Liverpool Albion.*

LEGAL INTELLIGENCE.

Assizes.

WESTERN CIRCUIT.

DORCHESTER, July 22.—The commission for this county was opened yesterday. There were only two causes entered for trial, the one an undefended ejectment, and the other a question of right of way. The calendar contains the names of six prisoners, and two or three cases have been since added to the list.

COVENTRY, July 23. — Mr. Baron Alderson arrived here this afternoon. There are only 11 prisoners for trial, 2 charged with manslaughter, 1 with perjury, 2 with burglary, 1 with assault with intent, and the rest with minor offences.

EXETER, July 26.—The commission was opened on Saturday. The number of prisoners is thirty, and the cause-list fifteen, but there are six special juries, in one of which Sir Alexander Cockburn will come down specially. He was retained when Attorney-General. Mr. Crowder was also retained, but Sir A. Cockburn having ceased to be Attorney-General, falls down into the rank of Q.C. and, consequently, is junior to Mr. Crowder, who would now, therefore, lead the cause; but, it being evidently the intention of the parties that Sir Alexander should lead, Mr. Crowder, with that highmindedness which might be expected from him, has declined to appear, and the other side will, of course, be deprived of his services.

OXFORD CIRCUIT.

STAFFORD, July 22.—The commission was opened here yesterday by Mr. Justice Williams. There is an entry of fourteen causes, three of which are special juries. Mr. Justice Cresswell sat at Nisi Prius, and Mr. Justice Williams in the Crown Court, where there are sixty-nine prisoners for trial.

HOME CIRCUIT.

MAIDSTONE, July 26.—The commission was opened on Saturday by Mr. Justice Maule. Lord Chief Justice Jervis presides on the Civil Side, and Mr. Justice Maule in the Crown Court. The gaol calendar contains the names of forty prisoners; and the offences comprise murder, attempt to murder, rape, highway robbery, and other serious charges. On the Civil Side seventeen causes are entered, three of which are special jury cases.

MIDLAND CIRCUIT.

WARWICK, July 26.—The cause list contains an entry of eighteen causes, including that of *De Moroda* v. *Dawson and Others*—the *Baroness Von Beck's* case—which is marked as a special jury. The calendar contains the names of forty-two prisoners, of whom twenty-two are sent from Birmingham. There are three cases of manslaughter; one of shooting with intent to murder; six, cutting and wounding; four, burglary; five, robbery with violence; two, uttering counterfeit coin; one, stealing letter containing money; four, forgery; two, bigamy; one, conspiracy to defraud; two, abominable offences; two, sheep stealing; and the rest minor offences.

NORTHERN CIRCUIT.

DURHAM, July 26.—The judges on Saturday opened the commission. The calendar is light, both as respects the number of prisoners and the description of the offences. There is one charge of murder of an infant, four charges of rape, three of highway robbery, three of perjury, and the rest are ordinary larcenies. The cause list contains an entry of twelve, none of which are causes of moment.

NORTH WALES CIRCUIT.

The commission of assize for Merionethshire was opened at Dolgelley, on the 21st instant, before Mr. Justice Talfourd. The grand jury ignored a bill against Gwen Roberts for concealment of birth. The trial of a simple case of larceny closed the proceedings.

NORFOLK CIRCUIT.

NORWICH, July 27.—The commissions for the county of Norfolk and the city of Norwich having been opened yesterday at two o'clock, the learned judges afterwards attended Divine service in the cathedral. This morning Mr. Baron Parke disposed of the few prisoners awaiting their trial in the city, and then proceeded to charge the grand jury for the county of Norfolk. The calendar contains the names of fifty prisoners, charged 5 with cases of arson, 1 of bigamy, 3 of manslaughter, 2 of rape, 3 of felony, 1 of horsestealing, 1 of forgery, 1 of attempting to murder, and 20 of larceny. The cause list for the county contains two special and five common jury causes, and that for the city contains two common jury causes.

NEW ACT ON PHARMACY.—Among the public Acts passed in the late session was one for regulating the qualifications of pharmaceutical chemists. It is declared to be expedient for the safety of the public that persons exercising the business or calling of pharmaceutical chemists in Great Britain should possess a competent practical knowledge of pharmaceutical and general chemistry, and other branches of useful knowledge. Further, it is declared that it is expedient to prevent ignorant and incompetent persons from assuming the title of or pretending to be pharmaceutical chemists, and to that end it is desirable that all persons, before assuming such title, should be examined as to their skill, and that a register should be kept by some legally authorised officer of all such persons. The charter of the pharmaceutical chemists is confirmed by this Act. Bylaws are to be framed, and to be approved by the Secretary of State. A registrar is to be appointed, and all members, associates, &c. of the society at the passing of the Act are entitled to be registered. The examiners are to grant certificates of competency. All persons registered as pharmaceutical chemists are eligible to be elected members, as also assistants and apprentices. No person is to assume the title of pharmaceutical chemist unless registered, under penalties to be recovered in England and Scotland. The Act took effect from the 30th ult. when it received the Royal assent.

LONDON REVERSIONARY INTEREST SOCIETY.—On Thursday the twelfth annual meeting of this company took place at the offices in New Bank-buildings, City. Alderman Sir Peter Laurie took the chair. The secretary read the report, which shewed a steady improvement in the business of the past year. A dividend of 5 per cent. per annum was proposed, and agreed to unanimously. After the usual vote of thanks to the chairman and directors, the meeting adjourned.

FEES UNDER THE NEW PATENT ACT.—The following list of fees under the Patent Law Amendment Act (which will come into force on the 1st of October next) appears in the schedule annexed to the statute:—On leaving petition for grant of letters patent, 5*l.*; on notice of intention to proceed with the application, 5*l.*; on sealing of letters patent, 5*l.*; on filing specification, 5*l.*; at or before the expiration of the third year, 40*l.*; at or before the expiration of the seventh year, 80*l.*, on leaving notice of objections, 2*l.*; every search and inspection, 1s.; entry of assignment or license, 5s.; certificate of assignment or license, 5s.; filing application for disclaimer, 3*l.*; and caveat against disclaimer, 2*l.* The stamp duties to be paid are as follow:—On warrant of law-officer for letters-patent, 5*l.*; on certificate of payment of the fees payable at or before the expiration of the third year, 10*l.*; and on certificate of the fee payable at or before the expiration of the seventh year, 20*l.*

THE RECENT FRACAS.—The *Gateshead Observer* adds to its account of this extraordinary affair the following statement:—"Mr. Seymour has of course no other mode left him of obtaining satisfaction than to resort to a legal tribunal; and we are informed that the honourable and learned member has accordingly placed the matter in the hands of a leading firm of solicitors in York."

IMPROVEMENTS IN THE CITY OF LONDON.—Among the local Acts of Parliament, which is numbered 168 in the late session, was one for effecting improvements in the city of London. The object of the Act is to widen and improve the north end of Dowgate-hill, Threadneedle-street, opposite Old Broad-street, the south-east corner of Mark-lane, and part of the north side of Great Tower-street. The corporation of London is to effect the improvements. There are several clauses in the Act to carry out the same, and that money may be raised on bond at interest. The plans of improvements are to be deposited in the Town Clerk's Office, to remain there, and to be open to inspection on the payment of 1s.

The Benchers of Lincoln's-inn have appointed William L. Birkbeck, esq. late Fellow of Trinity College, Cambridge, to the Readership in Equity instituted under the new arrangement for legal education.

NEW ORDERS IN CHANCERY.—It is expected that the Lord Chancellor, with the assistance of the other Chancery judges, will shortly frame a number of general rules and orders for carrying into force the Chancery Reform Acts passed in the late session of Parliament.

JOURNAL OF PROPERTY.

Public Sales.

By Messrs CHINNOCK and GALSWORTHY, at the Mart, July 27.—A house and butcher's shop, 10, Ferdinand-street, Hampstead-road, let at 38*l.* per annum; term, 98 years, ground-rent, 7*l.*—360*l.*

A cottage, with stabling, at Lea-bridge, Essex, let at 25*l.*; term, 990 years; ground-rent, 6*l.*—220*l.*

Four enclosures, three meadow and one arable, containing 29 acres of freehold land at Hendon, let at 68*l* 10s. per annum—2,050*l.*

Leasehold private residence, with stabling, 41, Upper Bedford-place, Bloomsbury—privately, 1,100*l.*

VALUE OF LAND IN WINCHESTER.—Some idea may be formed of the rapid progress and prosperity of Winchester from the fact that the enfranchisement price of a piece of land in the suburbs of the city, adapted for building private houses on, has just been fixed by the owners of the fee simple at seven hundred pounds per acre. The tenant holding, too, a lease of this property for twenty-one years, a large portion of which term is unexpired. Land for agricultural purposes contiguous to the city is equally high, as much as 7*l.* per acre frr meadow, and 4*l.* for arable, land being at this time paid. -*Hampshire Advertiser.*

MONEY MARKET.

ENGLISH FUNDS.	Sat.	Mon.	Tues.	Wed.	Thurs.	Fri.
Bank Stock	230½	231½	230½	233½	231½	231
3 ⅌ Cent. Reduced Annuities	101⅛	101	100⅞	100¾	100⅞	101
3 ⅌ Cent. Consols Annuities	100⅝	100½	100¼	100⅝	100½	100⅝
Consols for Account	100⅝	100⅝	100¼	100⅜	100⅝	100⅝
New 5 ⅌ Cent. Annuities	..	..	..	..	..	..
New 3½ ⅌ Cent. Annuities	105⅛	105	104⅞	104⅝	104⅞	104¾
Long Ann. (exp Jan 5, 1860)	..	7	7	7	7	6⅞
Do. 30 yrs. (exp Oct 10, 1859)	..	..	6¾	..	..	..
Do. 30 yrs (exp. Jan. 5, 1860)	..	..	..	6⅞	..	6⅞
India Stock	.	..	298	286	.	..
India Bonds (1,000*l.*)	.	91	91	..	..	91*
Do do. (under 1,000*l.*)		91	..	91	..	..
South Sea Stock	.	..	..	..	..	.
Do. do. Old Annuities	.	..	..	..	..	.
Exchequer Bills, 1,000*l.* June	72*	73*	73*	70*	73*	77*
Do. do. 500*l.* June	..	73*	.	70*	73*	..
Do. do. Small, June	70*	73*	70*	79*	73*	..

* Premium.

THE GAZETTES.

Bankrupts.

Gazette, July 27.

BRANSON, MACKNESS, stationer, Stratford, Essex, Aug. 5, at twelve, Sept 6, at one, Basinghall-st. Off. as. Cannan. Sol. Duffield, Devonshire-st. City, and Chelmsford, Essex. Petition, July 19.

BURMAN, WILLIAM, brickmaker, Birmingham, Aug. 9, at half-past ten, Aug. 30, at one, Birmingham. Off. as. Whitmore. Sol. East, Birmingham. Petition, July 24.

DAVIES, JAMES BURROWS, provision merchant, Liverpool, Aug 5 and Sept 9, at eleven, Liverpool. Off. as. Bird. Sol. Yates, jun. Liverpool. Petition, July 16.

GIBSON, DAVID, grocer, Newcastle-upon-Tyne, Aug. 3, at one, Sept. 3, at half past twelve, Newcastle-upon-Tyne, Off. as. Baker. Sols. Sturmy and Co. Philpot lane, City; Bownas, Newcastle-upon-Tyne. Petition, July 17.

LEE, JOHN, cab proprietor, Brooks-mews, Gloucester-place, Paddington, Aug 5, at half-past one, Sept. 6, at twelve, Basinghall-st. Off. as. Whitmore. Sols. Young and Son, Mark-lane. Petition, July 17.

SWIFT, JOHN, grocer, Stavely, Derbyshire, Aug. 14, at twelve, Oct 9, at ten, Sheffield. Off as. Freeman. Sols. Hoole and Yeoman, Sheffield. Petition, July 20.

Gazette, July 30.

CAMERON, WILLIAM OGILVIE, and BRUCE, WILLIAM, pickle merchants and oil and colourmen, Mintern-st. New North-road, Hoxton, Aug. 4 and Sept. 8, at half-past one, Basinghall-st. Com. Fonblanque. Off. as. Stansfeld. Sols Pocock and Poole, 58, Bartholomew-close. Petition, July 22.

DAUPTAIN, JEAN BAPTISTE, colour merchant, 17, Wharf-road, City-road, Aug 6, at twelve, and Sept 10, at half-past one, Basinghall-st. Com Fane. Off. as Cannan. Sol. Brandon, 15, Essex-st Strand. Petition, July 27.

LINSLEY, DAVID, livery-stable keeper, Monmouth-st. Bath, Aug. 10 and Sept. 7, at twelve, Bristol. Com. Hill. Off. as. Miller. Sols. Heather and Mogor, Paternoster-row Petition, July 29.

LUKE, THOMAS, grocer and confectioner, New Accrington, Lancashire, Aug. 11 and 31, at twelve, Manchester. Off as. Mackenzie. Sols. Bannister, Accrington; and Sale, Worthington, and Shipman, Fountain-st. Manchester Petition, July 27

PEARSE, THOMAS, hat and cap manufacturer, Castle-st. Bristol, Aug 13 and Sept 13, at eleven, Bristol. Com. Stephen. Off as. Acraman. Sol. Bevan, Bristol. Petition, July 27.

RUMSEY, WILLIAM SENTANCE, druggist, 3, Queen-st.-pl. Upper Thames-st. Aug 9 and Sept 15, at one, Basinghall st. Com Fonblanque. Off. as. Graham. Sol. Jones, 22, Austin-friars. Petition, July 22.

WALSH, GEORGE, pawnbroker and clothes dealer, Blackburn, Lancashire, Aug. 10 and 31, at twelve, Manchester. Off as. Pott. Sols. Swift, Blackburn, and Hall, Accrington. Petition, July 20

WINCH, WILLIAM, licensed victualler, Coal-hole Tavern, Fountain court, Strand, and North Mews, Gray's-inn-lane, ivory cutter, Aug 9, at half-past one, Sept. 15, at two, Basinghall st Com. Fonblanque Off as Stansfeld. Sols Laurance, Plews, and Boyer, Old Jewry Chambers. Petition, July 27.

BANKRUPTCY ANNULLED.

Gazette, July 30.

Williams, W timber merchant, brick maker, and coal and iron stone merchant, Kidwelly, Carmarthenshire, July 27.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Bell, R. H. and E. paper manufacturers, first sep. of R. H Bell, 5s 6d, first sep of E. Bell, 9d. Wakley, Newcastle.—*Croudson*, W. iron merchant, final, 1s 0½d. Fraser, Manchester.—*Dickenson, Brothers*, and *Hodgson*, merchants, third, 3 16ths of 1d. Bird, Liverpool.—*Hayman*, H. apothecary, first, 5½d Hirtzel, Exeter.—*Henvill*, C. P miller, first, 6s. 1d Hirtzel, Exeter.—*Holmes*, and *Marshall*, timber merchants, first, 3s. 4d. Baker, Newcastle.—*Horrocks*, J. L. merchant and drysalter, first, 3s. 10d. Lee, Manchester.—*Hoyle* and *Hoyle*, cotton manufacturers, final, 4s. 3d. Lee, Manchester.—*Nicholson*, J cattle salesman, first, 11s Wakley, Newcastle.—*Occleshead* and *Cummins*, general merchants, first, 6s 8d. Bird, Liverpool.—*Pierce* and *Homan*, merchants, final, 1s 10½d Lee, Manchester.—*Potter*, J mill manufacturer, first, 4s. Whitmore, Birmingham.—*Steadman* and *Bakewell*, builders, first, 3s 6d.; first sep. of Steadman, 8s. 5d. Mackenzie, Manchester.—*Taylor*, J. F cotton spinner, final, 8½d Fraser, Manchester.—*Welsh*, M. T. S. linendraper, first, 3s 10d. Edwards, London.—*Wickens*, E. linendraper, first, 6s. Edwards, London.

INSOLVENTS' ESTATES.

Cheney, F shoemaker, 7½d. Apply to J. Loseby, off. as. Market Harborough.—*Edrupt*, C boot and shoe maker, 1s. 3d. Apply to T. J. Barstow, off. as. Newmarket.

Assignments for the Benefit of Creditors.

Gazette, July 20

Clark, W. cabinet maker and upholsterer, Newcastle-upon-Tyne, June 21 Trusts. W. A Dunn, draper, Newcastle, and A. Bathe, floor cloth manufacturer, Swan-st. Kent-road Sols. J Scaife, Newcastle, and R Burbey, Suffolk-lane.—*Crafter*, R. innkeeper Derby House, Rock Ferry, Cheshire, July 8. Trusts. P Eaton, brewer, Chester, and H. Danson, agent for Allsopp and Sons, Liverpool. Sol. H. Ford, Chester.—*England*, E. draper, Manchester, July 15. Trusts J J Birch, J P Jameson, and J Stonham, drapers, Manchester. Sol W. M. Atherton, Manchester.—*Martin*, W. grocer, Stamford, Lincolnshire, July 16. Trusts. H. Barns, plumber and glazier, St Martins, Stamford Baron, and R Martin, farmer, Uffington. Sol. J. Dabbs, Stamford.—*Thursfield*, J builder, Newcastle-under-Lyme, June 28. Trusts. E. Bowers, lime merchant, Cheadle, and T Pouton, cement merchant, Stoke-upon-Trent. Sol. R. Slaney, Newcastle under-Lyme.—*Wells*, F. (widow), baker, confectioner, and pastry cook, Sudbury, Suffolk, July 3. Trusts. J. Wright, bookseller, Sudbury, and E. Baker, miller, Great Cornard. Sols. Ransom and Son, Sudbury.

Gazette, July 23.

Atkinson, J. clothier, Armley Hall, Leeds, June 29. Trusts. J. Walker, cloth manufacturer, Leeds, and J. Shackleton, corn miller, Wortley, Leeds. Sol. J. Shackleton, Leeds.—*Brake*, M. B. veterinary surgeon and shoe smith, Northampton, July 21. Trusts. J. Banks, ironmonger, and P. Phipps, common brewer, both of Northampton. Sols. Pywell and Stevenson, Northampton.—*Cobb*, J. builder, Bedford, June 29. Trusts. W. Williams, ironfounder, and W. W. Kilpin, ironmonger, both of Bedford. Sols Sharman and Turnley, Bedford.—*Pearce*, G. tin-plate worker, Louth, Lincolnshire, July 2. Trusts. G. Parker, copper merchant, and W. R. King, ironmonger, both of Kingston-upon-Hull, and W. S. Pearce, ironmonger, Caistor. Sols. Holden and Sons, Hull.—*Stephens*, W. painter and decorator, Oxford-st. July 17. Trusts. E. Potter, Budge-row, and H. N. Turner, Elizabeth-st. Pimlico, paper stainers. Sols. Willoughby and Cox, Clifford's-inn.

Partnerships Dissolved.

Gazette, July 16.

Abraham, A. and *Levy*, S. H. Loan and Discount Company, King William the Fourth, Eyre-st.-hill, Holborn, July 14. Debts paid by Levy Barnett and Abraham.—*Atkinson*, W. and *Nixon*, W. corn factors, Crutched-friars, as regards Atkinson, June 20.—*Crabb*, J. and *Watts*, R. commission agents, Clement's-court, Wood-st. July 14. Debts paid by Watts.—*Close*, T. *Thorp*, H. *Bowron*, J. and *Cooke*, L. grocers and tea dealers, Stockton, July 1. Debts paid at Silver-st. Stockton.—*Cowley*, J. and *James*, T. gas tube manufacturers, brass founders, and patent bedstead manufacturers, Walsall, July 10 Debts paid by Cowley.—*Goodier*, M. and *Crompton*, M. boarding-school, proprietresses, Fleetwood, June 17. Debts paid by M. Goodier.—*Gregory*, W. and J. H. attorneys and solicitors, Liverpool, May 31.—*Hart*, J., C., and G. wholesale and retail ironmongers, Wych-st as regards G. Hart, March 25.—*Hayes*, W. W. and *Conolly*, M J. manufacturers of asphalte, Liverpool, March 17.—*Howarth*, Jas., G., and Jno. worsted spinners, Burnley, as regards Jas Howarth, July 1. Debts paid by remaining partners.—*Ingham*, S. B. and *Noall*, W. linen drapers and silk mercers, Liverpool, July 12. Debts paid by Ingham.—*Kay*, R. H. *Richardson*, A. T and *Roe*, E. mousseline de laine and fancy goods manufacturers, Manchester, June 4. Debts paid by Kay and Richardson.—*Mackillop*, J. P. and *Young*, J. accountants, Sambrook-court, Basinghall-st. June 30. Debts paid by Young.—*Mason*, Thomas James, and *Castell*, George, stock manufacturers, Huggin lane, Wood-street, July 10. Debts paid by Mason.—*Moore*, C. and *Kellett*, N. joiners and cabinet makers, Horton, Bradford, July 14. Debts paid by either.—*Morris*, J. *King*, J. and *Gooding*, P. engravers, printers, and dealers in printing materials, Ludgate-st. June 30. Debts paid by Morris.—*Owen*, O. *Taylor*, J. and *Hellawell*, J. waste yarn and flock dealers, Huddersfield, July 2. Debts paid by Owen and Hellawell.—*Phillips*, J. and *Bryant*, A. J printers, booksellers, and stationers, Petworth, July 1.—*Ramsay*, J. *Hardy*, J. and *Knowles*, R. block and pump makers, Liverpool, June 30 Debts paid by Hardy.—*Robinson*, G. D. and *Glassbrook*, E. builders, Manchester, July 6 Debts paid by Robinson.—*Schofield*, T. and *Challinor*, C. W. wholesale tea dealers, Rochdale, July 3.—*Speke*, W. D and *Goodhind*, R. drapers, High-st Islington, July 13.—*Tann*, E., E. jun. and J. fire-proof box manufacturers, Hope-st. Hackney-road, July 12.—*Tongue*, N. and *Edwards*, I. D. rice dressers and chocolate manufacturers, Liverpool, July 12.—*Wardleworth*, T. and A. turkey-red dyers, Bunker's Hill, within Prestwich, July 13. Debts paid by A. Wardleworth.—*Whitehead*, T. and *Parker*, T chandelier makers and gas fitters, Liverpool, July 14.—*Williams*, M. and T. fruiterers and poulterers, Chorlton-upon-Medlock, July 12. Debts paid by M. Williams.—*Worms*, L. and *Jacobs*, M under the designation of the Patent Utrecht Company, Stewart-st. Spitalfields, July 10.

Gazette, July 20.

Bradshaw, J. and *Wolstenholme*, R. plumbers, glaziers, and painters, Padiham, July 16. Debts paid by Bradshaw.—*Caddick*, I. and J. nail manufacturers and maltsters, Sedgley, July 6. Debts paid by I. Caddick.—*Dewhirst*, W. and J. cotton spinners and merchants, Halifax, Dec. 31, 1848.—*Fell*, J., S., and G. leather sellers, Brick-lane, St. Luke's, and West-st. Somer's-town, May 12.—*Fenton*, W. and *Baker*, E. J. K. surgeons and chemists, Richmond-road, Westbourne-grove, July 17.—*Gillbanks*, J. and *Whitham*, C. tea dealers and paper merchants, Carlisle, June 9. Debts paid by Gillbanks.—*Gover*, M. A. and R Winchester, June 14. Debts paid by R and G. S. Gover.—*Griffiths*, T *Rees*, R. and *Bowen*, D workers and owners of coal works, Llanelly, June 15.—*Henderson*, W. *Smith*, T. B. and *Sharman*, F. copper smelters, refiners, and vitriol manufacturers, Bow-common, as regards Smith, July 19. Debts paid by remaining partners.—*Hesketh*, J and *Foden*, S. power-loom cotton cloth manufacturers, Knuzden Brook, within Blackburn, as regards Foden, July 16.—*Holmes*, F. and *Fawcett*, J. linen drapers, Bradford, July 15. Debts paid by Holmes.—*Hyde*, S. and *Gamble*, S. dining and eating-house keepers, Strand, July 15. Debts paid by Hyde.—*Jarvis*, E S. and *Church*, A. H. manufacturers of isinglass, Finsbury-st. Finsbury-square, July 10.—*Kreitmair*, C. and *Dadelszen*, E. V. commission merchants, Liverpool, June 24.—*Leytham*, R. and *Hamsworth*, F soda water and ginger beer manufacturers, Liverpool, July 15. Debts paid by Leytham.—*Le Maistre*, P. and *Hocart*, B. ship brokers and general agents, Liverpool, July 17.—*Morton*, J. and G. cutlers, Craven-buildings, Drury-lane, and Cheapside, May 1.—*Richardson*, G. G. and T. and *Muggeridge*, C. J. hop merchants, Duke-st. Southwark, as regards Muggeridge, July 1.—*Rogers*, J and *Hore*, J. ship and insurance brokers, and general commission agents, Newport, July 14. Debts paid by Rogers.—*Sandover*, J. and *Robinson*, J. jewellery case makers, Woodbridge-st. St. James's, Clerkenwell, July 17.—*Scott*, J. and *Taylor*, J. rice millers, Liverpool, June 30.—*Taylor*, C., C., and J. and *Nattrass*, T. upholsterers, Great Dover-st. Newington, July 16.—*Tredwen*, R. and J. jun. ship builders and general merchants, Padstow, June 30. Debts paid by Tredwen, jun.—*Venables*, J. and *Baines*, C. J. manufacturers of china and earthenware, Burslem, June 30.

CONTENTS.

To Readers and Correspondents.

"W. D. S." (Peterborough.)—*Thanks for the proposed scale of County Courts Costs. It will be considered with the rest.*

"W. P. W."—*The Fifth Edition of Cox and Lloyd's Law and Practice of the County Courts, comprising the recent alterations, will be published on Wednesday next.*

"D."—*It is unnecessary to put the question. He has lost the right by nonuser, or rather, perhaps, the other has gained the right to block him out.*

"One," &c.—*Yes: all the new Common Law Forms will be settled by Counsel and published at the* Law Times *Office in time for a supply before they will be required by the country attorneys for use. The Act does not come into operation until the 24th of October.*

We cannot undertake to return rejected communications. Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith. No notice can be taken of anonymous communications.

THE LAW TIMES.

SATURDAY, AUGUST 7, 1852.

MORTGAGES.

Some correspondence on this subject is before us, part approving, part disapproving, the suggestion we have made.

We have weighed attentively the arguments of the dissentients, but they appear to us to have little worth. One calls the plan "dangerous," and another denounces it as "destructive," but neither states in what respect it is calculated to be either the one or the other.

These objections are directed to *the principle* of the proposition. But there are others that question its *practicability*. This is a more disputable point. We have frankly admitted that it is encompassed with many difficulties. But *difficulty* alone is no sufficient cause for the abandonment of any desirable object. Difficulty can always be overcome by patience and perseverance. Difficulty stimulates invention and increases exertion. Nothing that is worth having can be procured without difficulty.

But is it *practicable?* Wherefore should it not be so? There is no inherent essential impracticability in the nature of land that should make it a less marketable security than others; but, on the contrary, inasmuch as it is in itself a better security, it ought to be *more* marketable. The reverse, however, is the fact. A mortgage bears a higher interest than money in the Funds, or than bills and notes. Why? Only because it is less readily transferred. If a charge upon a man's land could be passed about as easily as a charge upon his personal estate, it would command a higher price, or a lower rate of interest, than personalty, because it is more secure.

When a banker issues his notes, people take them readily as cash, because they have confidence that he is able to perform his promise and pay in cash when demanded. A banker puts his money into some securities easily convertible into cash, and then issues his notes, which, in fact, represent his securities. But if he puts his money out upon mortgage, we see no reason why he should not issue similar representatives of the money *so* secured, or why, instead of a promise to pay out of his personalty a certain sum, he should not issue a promise to pay out of his money invested in a mortgage of realty, making that promise a charge upon the land.

The design is not a new nor an untried one. In some parts of Southern Germany it has been adopted with great success. Landowners are there allowed to charge their lands to a certain amount for the purpose of *improvements*; and this charge is represented by certificates, which go into the market like bills or other securities, and command the highest market value. The new Copyhold Enfranchisement Act has adopted this very plan for the rent-charges for which the lord's interest is to be commuted. The Commissioners are to issue certificates of charge for the amount of such commutations, and which will be marketable commodities and excellent investments.

Our purpose in this is not to supersede mortgages, but to facilitate them. We do not propose to issue certificates of charge in lieu of mortgages, but in addition to them; nor to the mortgagor, but to the mortgagee. Many persons would gladly lend money upon mortgage at a very low rate of interest, if they could readily convert their mortgage into cash. This they would be enabled to do by such certificates as we have suggested. They could take just so many of them as they wanted to dispose of to any banker or broker, and get them discounted at any moment, instead of being obliged to wait, as now, until they can call in their money in due course of law. Nor do we contemplate anything in the nature of *compulsion*. We propose that it should be purely a voluntary proceeding, for the use of such persons as may desire to avail themselves of such conveniences and advantages as it may be found in practice to afford. Precautions will of course be required against fraud and forgery: but to these all money transactions are exposed, and no greater facilities will be presented by this design, nor will protection against them be more difficult to devise than in the cases of other securities that now go into the market, and are dealt with freely every day, to fifty times the amount in value of the mortgage certificates which the suggestion we have thrown out would be likely to send into the Stock Exchange.

THE ASSIZES.

The Circuits, now almost concluded, have been marked by the same proofs of the continued decline of legal business which we have had occasion to note ever since the establishment of the County Courts. When first we ventured to hint that this would be the probable result of the local tribunals, the prophecy was met with incredulity, and the Bar were confident that the public would never prefer an undignified and *un*learned County Court to the formality of a Judge from Westminster Hall, attended by a Sheriff in a court dress, guarded by a party of men with pikes, and *assisted* by a jury and a formidable array of wigs. But we, who have a practical acquaintance with the opinions and feelings of suitors, knew well that there was something they preferred even to the dignity, formality, and profound learning of an Assize Court, and that was a more speedy and less costly method of trying their disputes. They like *sound* law very much, but they like *cheap* law a great deal more, and they think that even *bad* law is better for them than *no* law at all, or that which is equivalent to it, law whose cost places it beyond their reach, or whose formalities hedge it about with such obstacles that they cannot approach it. The event has proved the correctness of our anticipations. Suitors have deserted the Superior Courts for the more speedy and less costly justice to be procured in the County Courts. It is seen in the steady diminution of the cause lists at the Assizes, and the spectacle of more Barristers than briefs at every counsel-table.

Some think that the reform just effected in procedure will restore the lost business to the Assize Courts. We cannot share that expectation, nor will any Attorney be found to echo the opinion. Every Attorney who has a practice knows that the inducement to suitors to go into the County Court is mainly the convenience of very speedy trial, and the avoidance of the cost of conveying his witnesses from a distance to the assize town, and keeping them there for several days. He would prefer a Judge of the Superior Court, and the assistance of experienced Counsel, but he is not inclined to pay so dearly for them; so he takes his cause into the County Court, and, instead of waiting six months before it can be tried, he obtains a hearing in one month, and, instead of keeping his witnesses at expenses for three or four days, he is sure that they will be dismissed in one day.

But if the business continues to decline, or

even remains at the present point of depression, what is to be done? Fifteen Judges will no longer be required for its despatch, nor will a Bar incur the loss of attending Courts that do not yield them fees enough to pay even their travelling expenses. There is but one remedy, and it is that which we have urged over and over again, and of which we shall not cease to remind those in authority until it is accomplished. There must be more frequent assizes, so that a trial may be had almost as speedily in the Superior Courts as in the County Courts. There must be *four* circuits in the year, one Judge only travelling each. The number of the circuits must be increased to twelve. The Quarter Sessions must be abolished; the lesser criminal business sent to the County Courts, the greater crimes reserved for trial by the Judge of Assize, and by him should be heard all appeals from the County Courts and from Magistrates' Courts. This would despatch the whole legal business of the country with rapidity and efficiency, and go far to restore to the Superior Courts the business that has been attracted away from them by the more speedy trial now afforded by the County Courts.

LAWYERS IN PARLIAMENT.

The House of Commons will not, after all, be so flooded with Lawyers as, from the array of legal candidates, had been anticipated with some alarm by the Lawyer-hating public. The total number is *seventy-five*, a very slight addition to that in the last Parliament. The list is as follows. According to the *Legal Observer*, those marked with an asterisk are or have been Attorneys.

Adair, Hugh Edward, *Ipswich*.
Aglionby, Henry Aglionby, *Cockermouth*.
Armstrong, Rt. Baynes, Q.C. *Lancaster*.
Atherton, William, Q.C. *Durham* (*City*).
Baines, Rt. Hon. Matthew Talbot, Q.C. *Leeds*.
Bankes, Right Hon. George, *Dorsetshire*.
*Barrow, Wm. Hodgson, *Nottinghamshire* (*S*).
*Benbow, John, *Dudley*.
Bethell, Richard, Q.C. *Aylesbury*.
Bouverie, Hon. Edward P. *Kilmarnock*.
*Bremridge, Richard, *Barnstaple*.
Brockman, Edward Drake, *Hythe*.
Butt, George Medd, Q.C. *Weymouth*.
Butt, Isaac, *Youghall*.
Cabbell, Benjamin Bond, *Boston*.
Cairns, Hugh M'Calmont, *Belfast*.
Carter, S. *Tavistock*.
Chambers, Montagu, Q.C. *Greenwich*.
Chambers, Thomas, *Hertford*.
Cobbett, John Morgan, *Oldham*.
*Cobbold, John Chevallier, *Ipswich*.
Cockburn, Sir Alexander James Edmund, Q.C. *Southampton*.
Collier, Robert P. *Plymouth*.
Coles, Henry Beaumont, *Andover*.
Crowder, Richard Budden, Q.C. *Liskeard*.
Ewart, William, *Dumfries* (*District*).
Farrer, James, *Durham* (*South*).
Fitzgerald, John D., Q.C. *Ennis*.
Follett, B. Spencer, Q.C. *Bridgewater*.
*Freshfield, J. W. *Penryn* and *Falmouth*.
Gipps, H. P. *Canterbury*.
Gower, Hon. F. Leveson, *Stoke-on-Trent*.
Granger, Thos. Colpitts, Q.C. *Durham* (*City*).
Grogan, Edward, *Dublin* (*City*).
Hayter, Right Hon. Wm. Goodenough, Q.C. *Wells*.
Headlam, Thomas Emerson, *Newcastle-upon-Tyne*.
Hildyard, Robert Charles, Q.C. *Whitehaven*.
Hogg, Sir James Weir, bart. *Honiton*.
Ingham, R., Q.C. *South Shields*.
Inglis, Sir Robert Harry, bart. *Oxford* (*University*).
Keating, H. S., Q.C. *Reading*.
Kelly, Sir Fitzroy, *Suffolk* (*Eas*
*Laslett, Wm. *Worcester*.
*Layard, Henry Austen, D.C.L. *Aylesbury*.
Lefevre, Right Hon. Charles Shaw, *Hants* (*North*).
Lowe, Robert, *Kidderminster*.
Macaulay, Kenneth, Q.C. *Cambridge* (*Borough*).
Macaulay, Rt. Hon. T. B. *Edinburgh* (*City*).
Malins, Richard, Q.C. *Wallingford*.
Massey, W. N. *Newport*.
Mills, Arthur, *Taunton*.
Moncrief, Rt. Hon. James, *Leith*.
*Mullings, Joseph Randolph, *Cirencester*.
Murphy, Francis Slade, S.L. *Cork* (*City*).
*Murrough, John Patrick, *Bridport*.
*Neeld, Joseph, *Chippenham*.
O'Connell, Maurice, *Tralee*.
Peel, Frederick, *Bury* (*Lancashire*).
Philimore, J. G., Q.C. *Leominster*.
Phinn, Thomas, *Bath*.
Pugh, David, *Montgomery* (*District*).
Roebuck, John Arthur, Q.C. *Sheffield*.
*Sadleir, John, *Carlow* (*Borough*).
Seymour, William Digby, *Sunderland*.
Stapleton, John, *Berwick*.
Stuart, John, Q.C. *Bury St. Edmunds*.
Tancred, Henry William, Q.C. *Banbury*.
Thesiger, Sir Frederick, *Stamford*.
Villiers, Hon. C. P. *Wolverhampton*.
Vivian, John Ennis, *Truro*.
Walpole, Rt. Hon. Spencer Horatio, Q.C. *Midhurst*.
Whiteside, Rt. Hon. James, Q.C. *Enniskillen*.
Wigram, Loftus Tottenham, Q.C. *Cambridg* (*University*).
Wood, Sir William Page, *Oxford* (*City*).
Wortley, Rt. Hon. James Archibald Stuart, Q.C. *Buteshire*.

And of these seventy-four how many are *practising* Lawyers—how many are only Lawyers by courtesy—gentlemen who have gone to the Bar as a matter of form, with no purpose of pursuing their Profession? So far as the names are known to us, we can detect only thirty-three, or somewhat less than one-half of the whole, who are really practitioners, the rest being but honorary members of the Profession.

The difference between the prospect and the result is due to the extraordinary number of defeated candidates. According to our contemporary (with some corrections) they number no less than *sixty-six*, or nearly one-half of all who were candidates. The following is the list of the unfortunates, first stating those who were in the last Parliament, but unsuccessful in their attempt to be again returned:—

Anstey, Thomas Chisholm, *Bedford*.
Baldwin, Charles Barry, *Totness*.
Bernal, Ralph, *Rochester*.
Best, John, *Kidderminster*.
Bunbury, Edwd. Herbert, *Bury St. Edmunds*.
Butler, Pierce Somerset, *Kilkenny* (*County*).
Cardwell, Edward, *Liverpool*.
Collins, Thomas, *Knaresborough*.
Evans, John, Q.C. *Haverfordwest* and *Pembroke* (*District*).
Greene, Thomas, *Lancaster*.
Hardcastle, Joseph Alfred, *Colchester*.
Hobhouse, Thomas Benjamin, *Lincoln* (*City*).
*Hodgson, William Nicholson, *Carlisle*.
Lewis, George Cornewall, *Herefordshire*.
Nicholl, Right Hon. John, D.C.L. *Cardiff*.
O'Brien, John, S. L. *Limerick* (*City*).
O'Connell, Morgan John, *Kerry*.
Palmer, Roundell, Q.C. *Plymouth*.
Romilly, Right Hon. Sir John, *Devonport*.
Stanford, John Frederick, *Reading*.
Trelawny, John Salusbury, *Brighton*.
Watson, William Henry, Q.C. *Newcastle-upon-Tyne*.

The following *New* Candidates were unsuccessful:—

Allen, Robert, S.L. *Stafford* (*Borough*).
Bayford, Augustus Frederick, D.C.L.
Barnes, P. Edward, *Penryn* and *Falmouth*.
Bovill, William, *Lewes*.
Cadogan, Hon. F. *Bridgnorth*.
Channell, W. F., S.L. *Beverley*.
Cleasby, A. *Surrey* (*East*).
Cox, Edward William, *Tewkesbury*.
Escott, B. *Plymouth*.
Evans, Cooke, *Stafford* (*Borough*).
Farsyde, G. J. W. *Whitby*.
Fenwick, Henry, *Sunderland*.
Follett, Robert B. *Lichfield*.
Gaselee, S., S.L. *Portsmouth*.
Greene, J. G. J. *Wilton*.
Horsman, Edward, *Cockermouth*.
Huddleston, J. W. *Worcester* (*City*.)
Kinderley, George Herbert, *Tralee*
Kinglake, A. W. *Bridgewater*.
Kinglake, J. A., S.L. *Wells*.
Lee, John, LL.D. *Buckinghamshire*.
Lewis, William David, *Pontefract*.
Liddell, Hon. A. F. O. *Gateshead*.
Loch, George, *Manchester*.
Locke, John, *Hastings*.
Mellor, J., Q.C. *Warwick* (*Borough*)
Newton, Augustus, *Ripon*.
Overend, W. *Sheffield*.
Palmer, Geoffrey, *Leicester*.
Paull, Henry, *St. Ives*.
Pashley, Robert, Q.C. *Lyme Regis*.
Phillimore, J. G., Q.C. *Cheltenham*.
Phillimore, Robt. Joseph, D.C.L. *Tavistock*.
Ridley, George, *Northumberland* (*South*).
Robinson, Augustin, *Shrewsbury*.
Rolt, John, Q.C. *Bridport*.
Romaine, W. G. *Marlow* (*Great*).
Slade, F. W., Q.C. *Salisbury*.
Smith, John Sidney, *Bodmin*.
Sturgeon, C. *Nottingham* (*Borough*).
Whateley, William, Q.C. *Bath*.
Wilde, James, *Leicester*.
Wilkins, Charles, S.L. *Evesham*.
*Wire, David Williams, *Greenwich*.

These lists exhibit some curious facts. All the Attorneys who were candidates, save two, were successful. The great majority of the Lawyers who were defeated, are Conservatives; the great majority of those who were elected are Liberals. As elections cannot be conducted, even in the cheapest form, without considerable expense, the great number of Lawyers candidates would appear to indicate that Barristers are not so badly off as they profess to be. On the other hand it may be argued that the desire of so many to hazard the virtual abandonment of their Profession, implied in undertaking duties so laborious as those of an M.P. proves the prevalent conviction of the Bar, that the prospects of their Profession are very lowering, or they would not exchange it for so unprofitable a pursuit as politics.

THE NEW COMMON LAW PRACTICE.

II. PROCEEDINGS IF DEFENDANT DOES NOT APPEAR.

The form of plaintiff's entering appearance for defendant, in default of defendant's appearance, and then proceeding thereon to judgment and execution, is abolished.

In cases where the writ is *not* specially indorsed, and has been served, and defendant does not appear, on affidavit of personal service, the plaintiff may file a declaration, indorsed with notice to plead within *eight* days.

If the defendant has *not* been served, upon affidavit shewing that he evades service, &c. as already described, a judge's order may be obtained for leave to proceed, and on filing such order, and a copy of the writ of summons, the plaintiff may declare.

Distringas to compel appearance, and *outlawry* for non-appearance, are abolished.

III. APPEARANCE.

The defendant may appear at any time *before* judgment.

If he appears *after* the time specified for appearance, he may, after notice of such appearance given to the plaintiff or his Attorney, be in the same position as to the pleadings or other proceedings as if he had appeared in due time.

Where the defendant appears *in person*, he must give an address, at which it will be sufficient to serve all pleadings and proceedings not requiring personal service. No appearance will be received without such address given; and if it be fictitious, the appearance will be irregular, and be set aside, and plaintiff permitted to proceed by sticking up the proceedings in the Master's office, without further service.

Appearance will be entered by delivery of a memorandum in the short form given by the Act.

Where some only of several defendants appear to a writ of summons, specially indorsed (*i. e.* where the particulars are stated, and judgment may be signed upon the writ), judgment may be signed and execution issued (before declaration filed against those who have appeared), against those who have *not* appeared, and in such case the plaintiff will be taken to have abandoned his action against those who *have* appeared. But the plaintiff may, before issuing execution, declare against those who *have* appeared, stating, by way of suggestion, the judgment so obtained against the others, in which case such judgment shall operate as a judgment by default obtained under the old practice against one or more of several defendants in an action of debt.

IV. JOINDER OF PARTIES.

A non-joinder or misjoinder of parties may be amended before trial, by order of the Court, or of a Judge, upon such terms as may be directed; and it may even be amended *at the trial*, as in cases of variance under the existing law. If notice be given of non-joinder or misjoinder of plaintiffs, or a plea in abatement, the proceedings may be amended

without an order, on such amendment only, the defendant to have liberty, if he pleases, to plead *de novo*: and a misjoinder of defendants may be amended before trial by the Court, or a Judge, and at the trial by the Judge, and likewise, upon a plea of abatement for non-joinder of defendants, the proceedings may be amended without order, provided that the date of such amendment shall, as between the persons named in such plea in abatement and the plaintiff, be considered for all purposes the commencement of the action.

If at the trial it shall appear that the person named in the plea in abatement *was* justly liable, the original defendant shall be entitled as against the plaintiff to the costs of his plea in abatement and of amendment. But if it shall appear that he was *not* liable, and that the original defendant *is* liable, the plaintiff is to be entitled to judgment against such as are found to be liable, and the defendant not so found shall be entitled to his costs of the plea, as part of the costs in the cause. Any defendant pleading in abatement is to be entitled to adduce evidence of the liability of the defendants named in his plea.

Where in an action *husband and wife* are necessarily joined for injury done to the wife, the husband is empowered to add thereto "claims in his own right," or a separate action brought in respect of those claims may be consolidated. If either party dies, the suit is to abate only so far as relates to the causes of action which do not survive.

V. JOINDER OF CAUSES OF ACTION.

"*Causes of action of whatever kind, provided they be by and against the same parties, and in the same rights, may be joined in the same suit.*" But this is not to extend to replevin and ejectment.

Where two or more of the causes of action are local and arise in different counties, the venue may be laid in either.

The Court or Judge may prevent the trial of different causes of action together, if such trial would be inexpedient, and in such case separate records are to be made up, and separate trials had

VI. QUESTIONS RAISED BY CONSENT.

Parties may consent to a trial to be had without pleadings. Thus:—

Where they are agreed as to the questions of *fact* to be tried before them, the parties may, after wri issued and before judgment, by consent and order of a Judge, who must be satisfied that they have *bonâ fide* interest in the subject-matter, and that it is fit to be so tried, proceed to trial of the questions *of fact* without any formal pleadings, the questions to be stated in an issue in a form prescribed; the proceedings at the trial to be the same as in other actions.

The parties may also enter into an agreement in writing, to be exempt from stamp duty, that on the finding of the jury in the affirmative or negative of such issue, a sum of money fixed by the parties, or to be ascertained by the jury upon a question i serted in the issue, shall be paid, with or without costs, and judgment may be entered on such agreement, and execution issue accordingly, unless the Court or a Judge shall order it to be stayed, to enable either party to move to set aside the verdict or for a new trial. The proceedings may be recorded at the instance of either party.

After writ issued and before judgment, the partie may, *by consent* and order of a Judge, state any *questions of law in a special case for the opinion of the Court without any pleadings*, and fix therein any sum to be paid by either party with or without costs, and the judgment may be entered and execution issue according to such agreement.

But in both of the above cases, namely, of trials of fact or of law, without pleadings, *the costs are to follow the event*, unless otherwise agreed by the parties.

We shall next have to direct the reader's attention to the language and form of *pleading* under the new Act.

THE NEW CHANCERY PRACTICE.

INTRODUCTION.

THIS year will long be memorable for the extensive, and, it is believed, most beneficial, alterations introduced into the practice and course of procedure of the Court of Chancery, by the Acts of Parliament of this last session, embodying the recommendations contained in the Report of the Chancery Commissioners. This Commission was issued under the late administration; and the Commissioners were:—Sir John Romilly, M.R.; Sir George James Turner, V.C.; Richard Bethell, esq. Q.C.; Sir James Parker, V.C.; Sir W. Page Wood, Mr. Justice Crompton, W. Milbourn James, esq. Barrister-at-Law; to whom were afterwards added two lay Commissioners, Sir James Graham, M.P.; and Joseph Warner Henley, esq. M.P. The object of the Commission was, "to make a diligent and full inquiry into, and report upon the process, practice, and system of pleading in the Court of Chancery, the manner of conducting suits, and other proceedings in such court, and in the offices connected therewith; and the costs, charges, and expenses incident thereto, the practice at the Masters' offices, and the duties of the several officers, clerks, and other persons of, and connected with such court, their salaries, fees, emoluments." By a subsequent Commission the inquiry was extended to "the course of proceeding and practice in, and the jurisdiction of and exercised in the High Court of Chancery, and the several other departments of justice at present administered by and under the authority of the LORD CHANCELLOR, and incidental thereto; and to consider and report whether any, and, if any, what alterations or amendments tending to improve the administration of justice, may be made in, or in relation to such Court and respective departments, or the course of practice and proceedings therein, or the jurisdiction thereof, or incidental thereto."

The Commissioners made their first report on the 27th of January, 1852; and on this report the two most important Acts of this session relating to Chancery reform are founded, namely, 15 & 16 Vict. c. 80, entitled "An Act to Abolish the Office of Master of the High Court of Chancery, and to make provision for the more speedy and efficient dispatch of business in the said Court;" and the 15 & 16 Vict. c. 86, entitled "An Act to amend the Practice and Course of Proceeding in the High Court of Chancery." As the former Act is not only prior in date, but forms, as it were, the foundation for the second Act, it is intended, in the first instance, after a few preliminary remarks on the Report of the Commissioners, to shew the alteration in the existing practice and procedure in Chanceay introduced by that statute.

The Report of the Commissioners most strikingly shows how necessary the abolition of the Masters' offices was, in order that the ridiculously complicated and cumbersome machinery of the present practice, should give way to a mode o procedure in some degree approaching to one worthy of a civilised nation. A specimen of the way in which matters were managed in the Masters' offices in an unopposed case,—where, for instance, there had been a reference to the Master to inquire whether certain proposed arrangements were beneficial to infants or persons not competent to agree to such arrangements, may be given by way of illustration of the evils apparently inseparable from Southampton-buildings. The graphic description of the Commissioners is in the following words:—

"A petition is presented to the Court, setting forth in detail the title of the parties interested, and the full particulars of the proposed arrangement, and praying a reference to the Master to inquire whether it will be beneficial to such of the parties interested as are infants, or under disability, that the arrangement should be carried into effect. This *petition having been presented*, copies are served on all parties, and briefs are delivered to counsel; the matter is heard in open court, and the *reference is made almost as a matter of course*. The *order is drawn up*, and carried into the Master's office, and a *warrant to consider* the order is taken out, which is attended by the solicitors of the parties, and results in a *direction to bring in a state of facts*. The *petition is then converted into a state of facts*, which is left in the office, and a *warrant on leaving* is then taken out. The parties interested then *take copies* in the Master's office and *warrants to proceed* are issued, upon some of which the Master is usually *attended* in person, while others are disposed of before the chief clerk, who compares the state of facts with the evidence adduced in support of it. The Master himself considers the arrangement, and if, as *generally happens*, he approves of it, the state of facts is allowed. The usual forms are then gone through of *taking out and serving warrants to shew cause* why the report should not be prepared, and *warrants on preparing* the draft. The Master's clerk then *converts the state of facts into the draft* of a report, adding the finding of the Master. *Copies* of the draft are taken, and *warrants are issued to settle it*, and when settled the report is transcribed, *signed* by the Master, and delivered to the solicitor prosecuting the order, who *files it* at the Report office, and *obtains an office copy*. A *second petition* is then prepared for the Court, which, after setting out the order of reference made on the first petition and the Master's report, prays the confirmation of the report, with such consequential directions as may be thought requisite. Copies of this petition are served on all parties, and briefs delivered to counsel. The petition is heard in open Court, when the sanction of the Court is finally obtained to the proposed arrangement. *Thus the petition is converted into a state of facts, the state of facts into the draft of a report, the draft into a report, the report into an office copy, and the office copy into a petition, which ordinarily differs but slightly from the original petition, before the transmuting process had commenced.*" P. 33.

In other civilised countries, especially those in which codes of procedure exist, the steps to be taken in a suit, have in general, or were intended to have, reference to this one object—that of enabling suitors to bring before the judge, with the least possible delay and expense, the materials for enabling him to arrive at a correct conclusion upon the merits of their several cases. How, then, did the course of procedure in the Master's office take its rise? To use again the words of the Commissioners, "*The system obviously calculated to cause unnecessary delay and expense, had its origin at a time when the Masters and their clerks were paid by fees.* Every warrant, every copy, every report, indeed, every proceeding, carried its fee, small, perhaps, in individual amount, but the multiplication of which pressed heavily on the suitor, and yielded large emoluments to the officers. This method of remunerating the Masters and their chief clerks by fees has been put an end to by the Chancery Regulation Act, but the system still remains; fees are still paid as heretofore, though the amount is carried to the fee fund, and the effect of the system still remains in the mode of procedure." They add, moreover,—"In estimating the evils arising from this system, it must not be forgotten that every warrant, and every other step and proceeding, is attended with professional charges of the solicitors employed." To put an end to a system which owed its origin to corruption, and its continuance to neglect, is the object of the Act; and this it purposes to carry into effect by abolishing what lies at the root of all the delay and expenses in Chancery—the office of Master in Ordinary, and transferring to the Judges of the Court of Chancery, assisted by officers called Chief Clerks, the duties formerly performed by the Master.

The Act which received the royal assent on 30th June, 1852, after the preamble, commences by abolishing the office of Master in Ordinary of the High Court of Chancery, and enacts that no vacancy therein is to be filled up. The present Masters, however, are to continue to perform the duties provided for in a subsequent part of the Act, until they are released under the Act (secs. 1 and 2). Two of the Masters—Master FARRER and Master BROUGHAM—are to be released on the first day of Michaelmas Term next, but the LORD CHANCELLOR has power, if, from the nature of any particular matter before either of these Masters, he thinks it desirable that it should be worked out before him, to direct such Master to continue the prosecution thereof, for which purpose he has the same power as if he had not been released under the Act. Power is also given to the LORD CHANCELLOR when, from the state of business in the Court, any Master or Masters can be spared, to release them, according to seniority, from all their duties, except from their attendance upon the House of Lords, for which the order of the House is requisite (secs. 3 and 4). Each Master so to be released is to be entitled for life to the full amount of his salary, &c. payable as at present (secs. 5 and 6).

Next come some very important provisions, not only conferring extensive judicial powers upon the Masters, but also enabling them, by compelling suitors to proceed with the matters and things depending before, or which have been referred to them, to wind them up as expeditiously as possible; in effect, to clear their offices, by encroaching as little as possible upon the time of the judges, upon whom additional duties will be thrown, viz. those which formerly fell to the lot of the Masters.

By the 7th section power is given to every Master, after the passing of the Act, to *summon* as he shall deem fit all or any of the parties to any cause, matter, or thing depending before him, *or* their solicitor, to proceed on it, and *give such directions* and *make such order* as he may think necessary for the purpose of settling and winding

up the same; but any such order may be discharged or varied upon application to the Court. Moreover, on the *refusal or neglect* of any of the parties or their solicitors to attend, the Master is to be at liberty to proceed in their absence. If the Master cannot dispose of any cause, matter, or thing, by reason of the conduct of the parties or otherwise, he is be at liberty to dispose of *any part thereof* within his power, and to *report* or *certify* on the whole of the case; and the Court is to have power to make such order upon such report or certificate on *all* or *any* of the parties, for the further prosecution of the suit or matter, or for the final disposal th..eof, and al to costs, including those incurred by reason of the conduct of the parties.

In the event of the parties refusing or neglecting to bring the Master's report or certificate, within a time *to be fixed* by the Master, he may direct the same to be brought before the Court by the solicitor to the Suitor's Fund, the payment of whose costs and expenses the Court is empowered to order out of the funds in the cause, matter, or thing, *or* by such parties as to the Court shall seem just; or in case payment cannot be obtained by any of these means, the same, by the direction of the Court, may be paid out of the Suitors' Fund. (See 9.)

The previous sections of the Act having provided the means for the speedy clearance of the Master's offices, the 10th section provides that from and after the first day of Michaelmas Term, 1852, *no reference* is to be made to any of the Masters in ordinary of the Court, *except* in cases in which, from some previous reference made in the cause or matter, *or* in some other cause or matter connected therewith, the Court may think it expedient to make such reference, *and except* in matters arising under the Joint-Stock Companies Winding-up Acts, 1848 and 1849. Until the Masters are released, they will retain their present powers for the performance of their duties.

THE LEGISLATOR.

NEW STATUTES.

15 VICTORIA, A.D. 18

[In this record of Legislation only the St of practical utility are .. abstract of the title only

(*Continued from p.* 1...)

214. *On trial of any ejectment between landlord and tenant, juries to give damages for mesne profits down to the verdict, or to a day specified therein.* Wherever it shall appear on the trial of any ejectment, at the suit of a landlord against a tenant, that such tenant or his attorney hath been served with due notice of trial, the judge before whom such cause shall come on to be tried shall, whether the defendant shall appear upon such trial or not, permit the claimant on the trial, after proof of his right to recover possession of the whole or of any part of the premises mentioned in the writ in ejectment, to go into evidence of the mesne profits thereof which shall or might have accrued from the day of the expiration or determination of the tenant's interest in the same down to the time of the verdict given in the cause, or to some preceding day to be specially mentioned therein; and the jury on the trial finding for the claimant shall in such case g their verdict upon the whole matter, both as to the recovery of the whole or any part f the premises, and also as to the amount of the damages to be paid for such mesne profits; and in such case the landlord shall have judgment within the time hereinbefore provided, not only for the recovery of p session and costs, but also for the mesne profits found by the jury provided a at nothing hereinbefore contained shall be construed to bar any such landlord from bringing any actio r the mesne profits which shall accrue from th rdict, or the day so specified therein, down to the day of the delivery of possession of the premises recovered in the ejectment.

215. *On trials after bail found, judge shall not stay the execution, except by consent, or tenant's finding security.—Bail in error to discharge such security.*—In all cases in which such security shall have been given as aforesaid, it upon the trial a verdict shall pass for the claimant, unless it shall appear to the judge before whom the same shall have been had that the finding of the jury was contrary to the evidence, or that the damages given were excessive, such judge shall not, except by consent, make any order to stay judgment or execution, except on condition that within four days from the day of the trial the defendant shall actually find security, by the recognisance of himself and two sufficient sureties, in such reasonable sum as the judge shall direct, conditioned not to commit any waste, or act in the nature of waste, or other wilful damage, and not to sell or carry off any standing crops, hay, straw, or manure produced or made (if any) upon the premises, and which may happen to be thereupon, from the day on which the verdict shall have been given to the day on which execution shall finally be made upon the judgment, or the same be set aside, as the case may be: provided always, that the recognisance last above mentioned shall immediately stand discharged and be of no effect, in case proceedings in error shall be brought upon such judgment, and the plaintiff in error shall become bound in the manner hereinbefore provided.

216. *Recognisances to be taken as other recognisances of bail; actions on them limited.*—All recognisances and securities entered into as last aforesaid may and shall be taken respectively in such manner and by and before such persons as are provided and authorised in respect of recognisances of bail upon actions and suits depending in the court in which any such action of ejectment shall have been commenced, and the officer of the same court with hom recognisances of bail are filed shall file such recognisances and securities, for which respectively the sum of two shillings and sixpence, and no more, shall be paid; but no action or other proceeding shall be commenced upon any such recognisance or security after the expiration of six months from the time when possession of the premises, or any part thereof, shall actually have been delivered to the landlord.

217. *Landlord to recover possession of lands, &c. after serv of writ in ejectment.*—In all actions of ejectment hereafter to be brought in any of her Majesty's courts at Westminster by any landlord against his tenant, or against any person claiming through or under such tenant, for the recovery of any lands or hereditaments in any county, except London or Middlesex, where the tenancy shall expire, or the right of entry into or upon such lands or hereditaments shall accrue to such landlord, in or after Hilary or Trinity Terms respectively, it shall be lawful for the claimant in any such action, at any time within ten days after such tenancy shall expire, or right of entry accrue as aforesaid, to serve a writ in ejectment in the form contained in the Schedule (A.) to this Act annexed, marked No. 13, except that it shall command the persons to whom it is directed to appear within ten days after service thereof in the court in which such action may be ght, and the like proceedings shall be thereupon had as hereinbefore provided, save that it shall be sufficient to give at least six clear day notice of trial to the defendant before the commission day of the assizes at which such ejectment is intended to be tried; and any defendant in such action may, at any time before the trial thereof, apply to a judge by summons to stay or set aside the lings, or to postpone the trial until the next and it shall be lawful for the judge, in his discretion, to make such order in the said cause as to him shall seem expedient.

218. *Saving of former remedies.*—Nothing herein contained shall be construed to prejudice or affect any other right of action or remedy which landlords may possess in any of the cases hereinbefore pro- d for, otherwise than hereinbefore expressly enacted.

219. *In ejectment by mortgagee, the mortgagor's le ing the principal, interest, and costs in court, shall be deemed a full satisfaction, and the Court may compel the mortgagee to reconvey.*—Where an action jectment shall be brought by any mortgagee, his heirs, executors, administrators, or assignees, for the recovery of the possession of any ortgaged lands, tenements, or hereditaments, and no suit shall be then depending in any of her Majesty's Courts of Equity in that part of Great Britain called England, for or touching the foreclosing or redeeming of such mortgaged lands, tenements, or hereditaments, if the person having right to redeem such mortgaged lands, tenements, or hereditaments, and who shall appear and become defendant in such action, shall, at any time pending su action, pay unto such mortgagee, or, in case of his refusal, shall bring into court, where such action shall be depending, all the principal moneys and interest due on such mortgage, and also all such costs as have expended in any suit at law or in equity upon such mortgage (such money for principal, interest, and costs to be ascertained and computed by the Court where such action is or shall be depending, or by the proper officer by such Court to be appointed for that purpose), the moneys so paid to such mortgagee, or brought into such court, shall be deemed and taken to be in full satisfaction and discharge of such mortgage, and the Court shall and may discharge every such mortgagor or defendant of and from the same accordingly; and shall and may, by rule of the same Court, compel such mortgagee, at the costs and charges of such mortgagor, to assign, surrender, or re-convey such mortgaged lands, tenements, and hereditaments, and such estate and interest as such mortgagee has therein, and deliver up all deeds, evidences, and writings in his custody, relating to the title of such mortgaged lands, tenements, and hereditaments, unto such mortgagor, who shall have paid or brought such moneys into the Court, his heirs, executors, or administrators, or to such other person or persons as he or they shall for that purpose nominate or appoint.

220. *Not to extend to case ... redemption is controverted, ... adjusted; or to prejudice any* —Nothing herein contained sh where the person, against who or shall be prayed, shall (by writing under his hand, or the hand of his attorney, agent, or solicitor, to be delivered before the money shall be brought into such Court of Law, to the attorney or solicitor for the other side) insist, either that the party praying a redemption has not a right to redeem, or that the premises are chargeable with other of different principal sums, than what appear on the face of the mortgage or shall be admitted on the other side; or to any case where the right of redemption to the mortgaged lands and premises in question in any cause or suit shall be controverted or questioned by or between different defendants in the same cause or suit; or shall be any prejudice to any subsequent mortgage or subsequent incumbrance, anything herein contained to the contrary thereof in anywise notwithstanding.

221. *Jurisdiction of Courts and judges.*—The several Courts and the judges thereof respectively shall and may exercise over the proceedings the like jurisdiction as heretofore exercised in the action of ejectment, so as to ensure a trial of the title, and of actual ouster, when necessary, only, and for all other purposes for which such jurisdiction may at present be exercised; and the provisions of all statutes not inconsistent with the provisions of this Act, and which may be applicable to the altered mode of proceeding, shall remain in force and be applied thereto.

And whereas the power of amendment now vested in the Courts and the judges thereof is insufficient to enable them to prevent the failure of justice by reason of mistakes and objections of form. Be it enacted as follows:

222. *Amendment.*—It shall be lawful for the Superior Courts of Common Law, and every judge thereof, and any judge sitting at Nisi Prius, at all times to amend all defects and errors in any proceeding in civil causes, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend, or not; and all such amendments may be made with or without costs, and upon such terms as to the Court or judge may seem fit; and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties shall be so made.

And in order to enable the Courts and judges to carry this Act thoroughly into effect, and to enable them from time to time to make rules and regulations and to frame writs and proceedings for that purpose, be it enacted as follows:

223. *General rules may be made by the judges.* 13 & 14 *Vict.* c. 16.—It shall be lawful for the judges of the said Courts, or any eight or more of them, of whom the chiefs of each of the said Courts shall be three, from time to time to make all such general es and orders for the effectual execution of this Act, and of the intention and object thereof and for fixing the costs to be allowed for and in respect of the matters herein contained, and the performance thereof, and for apportioning the costs of issues, and for the purpose of enforcing uniformity of practice in the allowance of costs in the said courts, and of insuring as far as may be practicable an equal division of the business of taxation amongst the Masters of the said Courts, as in their judgment shall be necessary or proper, and for that purpose to meet from time to time as occasion may require: and it shall further be lawful for the judges of the said Courts, or any eight or more of them, of whom the chiefs of each of the said Courts shall be three, from time to time to exercise all the powers and authority given to them by an Act of Parliament passed in the session of Parliament held in the thirteenth and fourteenth years of the reign of her present Majesty, intituled "An Act to enable the Judges of the Common Law at Westminster to alter the Forms of Pleading," with respect to any matter herein contained relative to practice or pleading, anything in this Act to the contrary notwithstanding; and the provisions of the said last-mentioned Act as to the rules, orders, or regulations made in pursuance thereof shall be held applicable to any rules, orders, or regulations which shall be made in pursuance of this Act: Provided that nothing herein contained shall be construed to restrain the authority or limit the jurisdiction of the said Courts or the judges thereof to make rules or orders, or otherwise to regulate and dispose of the business therein.

224. *New forms of writs and other proceedings.* —Such new or altered writs and forms of proceedings may be issued, entered, and taken, as may by the judges of the said courts, or any eight or more of them, of whom the chiefs of each of the said courts shall be three, be deemed necessary or expe-

dient for giving effect to the provisions hereinbefore contained, and in such forms as the judges of such courts respectively shall from time to time think fit to order; and such writs and proceedings shall be acted upon and enforced in such and the same manner as writs and proceedings of the said courts are now acted upon and enforced, or as near thereto as the circumstances of the case will admit; and any existing writ or proceeding, the form of which shall be in any manner altered in pursuance of this Act, shall nevertheless be of the same force and virtue as if no alteration had been made therein, except so far as the effect thereof may be varied by this Act.

225. *Rules may be made by each Court for government of its officers.*—It shall and may be lawful to and for the judges of each of the said courts from time to time to make such rules and orders for the government and conduct of the ministers and officers of their respective courts, in and relating to the distribution and performance of the duties and business to be done and performed in the execution of this Act, as such judges may think fit and reasonable: Provided always, that no additional [illegible] imposed on the suitors.

And whereas it is expedient that injunctions and orders to stay proceedings should be rendered more effectual, be it enacted as follows:

226. *Injunctions and orders to stay proceedings to have a specific effect.*—In case any action, suit, or proceeding in any court of law or equity shall be commenced, sued, or prosecuted, in disobedience of and contrary to any writ of injunction, rule, or order of either of the Superior Courts of law or equity at Westminster, or of any judge thereof, in any other court than that by or in which such injunction may have been issued, or rule or order made, upon the production to any such other Court or judge thereof of such writ of injunction, rule, or order, the said other Court (in which such action, suit, or proceeding may be commenced, prosecuted, or taken), or any judge thereof, shall stay all further proceedings contrary to any such injunction, rule, or order; and thenceforth all further and subsequent proceedings shall be utterly null and void to all intents and purposes: provided always, that nothing herein contained shall be held to diminish, alter, abridge, or vary the liability of any person or persons commencing, suing, or prosecuting any such action, suit, or proceeding contrary to any injunction, rule, or order of either of the Courts aforesaid, to any attachment, punishment, or other proceeding to which any such person or persons are, may, or shall be liable in cases of contempt of either of the Courts aforesaid, in regard to the commencing, suing, or prosecuting such action, suit, or proceeding.

And be it enacted as follows:

227. *Interpretation of terms.*—In the construction of this Act the word "Court" shall be understood to mean any one of the Superior Courts of Common Law at Westminster in which any action is brought; and the word "judge" shall be understood to mean a judge or baron of any of the said courts; and the word "Master" shall be understood to mean a Master of any of the said courts; and the word "action" shall be understood to mean any personal action brought by writ of summons in any of the said courts; and no part of the United Kingdom of Great Britain and Ireland, nor the islands of Man, Guernsey, Jersey, Alderney, or Sark, nor any islands adjacent to any of them, being part of the dominions of her Majesty, shall be deemed to be "beyond the seas" within the meaning of this Act: and wherever in this Act, in describing or referring to any person or party, matter, or thing, any word importing the singular number or masculine gender is used, the same shall be understood to include and shall be applicable to several persons and parties as well as one person or party, and females as well as males, and bodies corporate as well as individuals, and several matters and things as well as one matter or thing, unless it otherwise be provided, or there be something in the subject or context repugnant to such construction.

228. *Her Majesty may direct all or part of this Act to extend to any Court of Record.*—It shall be lawful for her Majesty from time to time, by an order in council, to direct that all or any part of the provisions of this Act or of the rules to be made in pursuance thereof shall apply to all or any Court or Courts of Record in England or Wales, and within one month after such order shall have been made and published in the *London Gazette* such provisions and rules respectively shall extend and apply in manner directed by such order; and any such order may be in like manner from time to time altered or annulled.

229. *Certain of the provisions of this Act to extend and apply to the Court of Common Pleas at Lancaster and the Court of Pleas at Durham.*—And whereas it is expedient to apply the provisions of this Act, with the requisite modifications, to the Superior Courts of the counties palatine of Lancaster and Durham respectively: all the enactments and provisions of this Act with respect to writs for the commencement of personal actions, except such as relate to the teste thereof in the name of a judge, to concurrent writs, and to the service of writs elsewhere than in the counties palatine of Lancaster and Durham respectively, and proceedings against parties residing out of the jurisdiction of the said Courts; and all the provisions of this Act with respect to the appearance of the defendant and proceedings of the plaintiff in default of appearance; and with respect to the joinder of parties to actions and joinder of causes of action; and with respect to the determination of questions raised by consent of the parties without pleading; and with respect to the language and form of pleadings, and provisions as to pleadings, profert, oyer, setting out of documents; and with regard to the time and manner of declaring; and as to pleas and subsequent pleadings, and incident thereto; and examples and forms of pleading and causes of action; and with respect to judgment by default, and the mode of ascertaining the amount to be recovered thereupon and incident thereto; and all the provisions of this Act with respect to juries and jury process; and with respect to the admission of documents; and with respect to the expenses of execution and the remaining in force and renewal of execution, the discharging of parties from execution, and charging in execution persons in prison; and with respect to proceedings for the revival of judgments and other proceedings by and against persons not parties to the record; and with respect to the the effect of death, marriage, and bankruptcy, upon the proceedings in an action; and with respect to the proceedings upon motions to arrest the judgment and for judgment non obstante veredicto; and with respect to proceedings in error, subject to the proviso hereinafter contained; and all the provisions of this Act with respect to the action of ejectment, and incident thereto; and with respect to the power of amendment by Courts and the judges thereof, shall extend and apply to the Court of Common Pleas at Lancaster and the Court of Pleas at Durham, and actions and proceedings therein respectively.

230. *Powers given by this Act to the judges of the Superior Courts at Westminster to make rules, &c. may be exercised by judges of the Court of Common Pleas at Lancaster and Court of Pleas at Durham as to those Courts.*—All the powers given by this Act to the judges of the said Superior Courts at Westminster to make rules and regulations for the execution of this Act, and to frame writs and proceedings for that purpose; and to the judges of the said respective courts to make rules or orders for the government and conduct of the ministers and officers thereof; and all other powers by this Act given to or vested in the judges of the said Superior Courts at Westminster to be exercised by more than one of them, except the powers and authority given by the said Act of Parliament passed in the session of Parliament held in the thirteenth and fourteenth years of the reign of her present Majesty, intituled "An Act to enable the Judges of the Courts of Common Law at Westminster to alter the Forms of Pleading," shall and may be exercised by the respective judges of the said Court of Common Pleas at Lancaster and Court of Pleas at Durham, being judges of one of the said Common Law Courts at Westminster, or any two of them, with respect to the said Court of Common Pleas at Lancaster and Court of Pleas at Durham respectively, and the ministers and officers thereof, and matters and proceedings therein, within the jurisdiction of the same Courts respectively; and all powers under this Act exercisable by any one judge of the Superior Courts at Westminster shall and may be exe able by judge of the said Superior Courts of the said counties palatine, being also a judge of one of the said Courts at Westminster, as to matters and proceedings in the said Superior Courts of the said counties palatine.

231. *Judges may make rules for applying other provisions of this Act to Court of Common Pleas at Lancaster, and Court of Pleas at Durham.*—It shall and may be lawful to and for the judges of each of the said Courts of Common Pleas at Lancaster, and Pleas at Durham, being judges of one of the Superior Courts at Westminster, or any two of them, from time to time to make rules and orders for applying any of the other provisions of this Act to the said respective Superior Courts of the said counties palatine, and matters and proceedings therein and parties thereto, with such modifications and alterations with reference to the constitution and peculiar circumstances of such Court, as they may think fit and reasonable; and for modifying any of the provisions hereby applied to such last-mentioned courts respectively with reference to such constitution and peculiar circumstances; and from time to time to rescind, amend, or alter such rules or orders; and that such rules or orders, subject to such power of rescission, amendment, and alteration, shall have the same force as if the same were made by and embodied in this Act.

232. *Provisions to apply to Masters of Courts at Westminster to apply to prothonotaries of Court of Common Pleas at Lancaster, and Court of Pleas at Durham, and their deputies, &c.*—Provided always, that all the provisions of this Act applicable to Masters of the said Courts at Westminster, shall apply to the respective prothonotaries of the Court of Common Pleas at Lancaster, and Court of Pleas at Durham, and their respective deputies, who may singly exercise, with reference to matters and proceedings in the last-mentioned courts respectively, the powers hereby given to any one or more of the Masters of the Superior Courts at Westminster; and that such respective officers shall record the proceedings of trials of causes depending in the said respective courts, and draw up and return posteas on records from the Superior Courts at Westminster, tried in the said counties palatine respectively, and officiate at the trial of such causes therein as heretofore.

233. *As to proceedings in error.*—Provided also, as to proceedings in error, that the Court of Queen's Bench shall still be the Court of Error from the said Court of Common Pleas at Lancaster, and Court of Pleas at Durham; and that it shall be sufficient to transmit to the said Court of Queen's Bench a transcript of the record of any judgment or proceedings in those Courts on which error is alleged; and that the judgment of the Court of Queen's Bench thereon shall be certified by one of the Masters of the said Court of Queen's Bench on the said transcript, or by rule of Court, as the said Court may direct; and that thereupon such judgment shall be entered on the original record in the said respective Courts of Common Pleas at Lancaster and Pleas at Durham; and such further proceedings as may be necessary thereon shall be awarded by the said respective Courts, subject to the right of either party to allege errors in the said judgment in the said Court of Queen's Bench, and proceed thereon as provided by this Act in the case of errors alleged in actions depending in that Court.

234. *Certain provisions of 4 & 5 Wm. 4, c. 62, and 2 & 3 Vict. c. 16, repealed.*—From the time when this Act shall commence and take effect so much of a certain Act of Parliament passed in the fifth year of the reign of his late Majesty King William the Fourth, intituled "An Act for improving the Practice and Proceedings in the Court of Common Pleas of the County Palatine of Lancaster," and so much of a certain other Act of Parliament passed in the second year of the reign of her present Majesty, intituled "An Act for improving the Practice and Proceedings of the Court of Pleas of the County Palatine of Durham and Sadberge," as relate to the duration of writs; and to alias and pluries writs, and to the proceedings necessary for making the first writ in any action available to prevent the operation of any statute whereby the time for the commencement of any action may be limited, shall be repealed, except so far as may be necessary for supporting any writs that have been issued before the commencement of this Act, and any proceedings taken or to be taken thereon; but that the other provisions of the said last-mentioned Acts of Parliament, so far as they are not altered by or inconsistent with the provisions of this Act shall remain in force.

235. *Short title of Act.*—In citing this Act in any instrument, document, or proceeding, it shall be sufficient to use the expression "The Common Law Procedure Act, 1852."

236. *Act not to extend to Ireland or Scotland.*—Nothing in this Act shall extend to Ireland or Scotland, except in the cases herein specially mentioned.

CAP. XXXI.

An Act to legalize the Formation of Industrial and Provident Societies. (June 30, 1852.)

We give this statute entire.

13 & 14 *Vict. c.* 115.—Whereas by an Act passed in the thirteenth year of the reign of her present Majesty, intituled "An Act to consolidate and amend the Laws relating to Friendly Societies," it was enacted, that a society might be established under the provisions of the said Act for any of the objects therein mentioned; that was to say (amongst other objects), "for the relief, maintenance, and endowment of the members, their husbands, wives, children, and kindred;" "and for the frugal investment of the savings of the members, for better enabling them to purchase food, firing, clothes, or other necessaries, or the tools or implements of their trade or calling, or to provide for the education of their children kindred, provided (amongst other things) that th shares in any such investment should not be transferable." And whereas various associations of working men have been formed for th mutual relief, maintenance, education, and endowment of the members, their husbands, wives, children, or kindred, and for procuring to them food, lodging, clothing, and other necessaries, by exercising or carrying on in common their respective trades or handicrafts; and it is expedient to extend the provisions of the said recited Act to such Associations, and otherwise to regulate the same: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. *Societies of working men may be established*

for attaining the objects of Friendly Societies Acts by means of joint trade.—It shall be lawful for any number of persons to establish a society under the provisions of this and the said recited Act, for the purpose of raising by voluntary subscriptions of the members thereof a fund for attaining any purpose or object for the time being authorised by the laws in force with respect to friendly societies, or by this Act, by carrying on or exercising in common any labour, trade, or handicraft, or several labours, trades, or handicrafts, except the working of mines, minerals, or quarries beyond the limits of the United Kingdom of Great Britain and Ireland, and also except the business of banking, whether in the said United Kingdom or elsewhere; and this Act shall apply to all societies already established for any of the purposes herein mentioned, so soon as they shall conform to the provisions hereof.

2. *Rules of the society.*—The rules of any such society shall provide,

1st, For allowing payments to be made from time to time to all members of the society in respect of any work or service which they may do or perform for or on behalf of the same:

2nd, Upon what terms and conditions (if any) persons not members of the society shall be employed for or on behalf of the same; yet so that any person not a member of the society who shall be employed for or on behalf of the same shall receive in respect of any work or service done or performed by him on behalf of such society, whether by way of wages or otherwise, at least the same amount or value as if he were a member of the society:

3rd, Whether or not any loans shall be contracted with persons (whether members of the society or not) for the better effecting the purposes thereof, and how such loans and interest thereon (if any) shall be secured; yet so that the interest on any such loan shall not exceed the rate of six pounds per centum per annum, and so that the total amount of moneys to be owing on loan by the society at any one time shall not exceed four times the amount of paid-up subscriptions for the time being; and a declaration under the hands of the trustees or trustee of the society, certified by the registrar of friendly societies, shall be sufficient evidence in that behalf of the amount of paid-up subscriptions:

4th, For the receipt of subscriptions from persons, members of the society, and for the payment of dividends on such subscriptions at any rate not exceeding five pounds per centum per annum; but so that no dividend shall be paid to any member of the society out of the capital of the same.

5th, For the appropriation from time to time of the net proceeds of any trade, labour, or handicraft exercised or carried on by the society, after such payments as herein-before mentioned, in the first place, to the repayment of any loans made to the society, or any instalment thereof, and, subject thereto, to all or any of the following purposes: viz. to the increase of the capital or business of the society; to such provident purposes, or any of them, as shall be from time to time authorised by the laws in force with respect to friendly societies, to a division or return to or amongst the members of the society of the profits on or in respect of any purchases made by them respectively of goods or articles made, produced, or sold by the society; to the payment to or amongst the members of the society, or other such persons as herein mentioned, in respect of any works or services done or performed by them respectively for or on behalf of the society, of any part not exceeding one third of such net proceeds.

6th, For the appointment of such managers or other officers, whether members of the society or not, at such salaries, or for such compensations, and with such powers and authorities, duties, and responsibilities, and subject to such conditions, as to removal or otherwise, as shall appear requisite from time to time for the better carrying out of the objects of the society.

7th, For the making or continuing of all such contracts as shall be necessary or expedient for the purposes of the society, which contracts, when executed or entered into in accordance with the rules of the society, shall be binding on all members of the same; and for the enforcement of the liability of members in respect of such contracts:

8th, For the due payment by the members, their executors or administrators, of all subscriptions, debts, fines, or other sums of money which they may owe to the society, from time to time, in accordance with the rules thereof:

9th, For enabling members to withdraw from the society, on notice given, for a period to be fixed by the rules; and for determining whether and to what extent members shall be compelled to discharge their obligations to the society before withdrawing from the same, and for otherwise regulating withdrawals:

10th, For regulating the claims (if any) of the executors or administrators of deceased members of the society upon the funds of the same, in respect of the interest of their respective testators or intestates in the same:

11th, For keeping account of all the transactions of the society, for the balancing and auditing of such accounts twice at least in every year, and for the inspection of the accounts by the members:

12th, For referring to arbitration all disputes which may arise between any member of the society and the trustees, treasurer, manager, committee, or officers of the same, or any of them:

13th, For determining under what conditions of pecuniary loss or otherwise, and by what meetings and how composed, and by what special or other majorities of the members or other persons present at such meetings, the society shall be dissolved; and whether, and in what cases, and by what means, a single member may summon a meeting for the dissolution of the society; and for winding up the affairs of the society on the dissolution thereof.

3. *Interest of members not transferable.*—The interest of any member in any such society shall not be transferable, but the whole amount of the balance due to any member shall be paid to him on withdrawal from the same according to the rules of the society.

4. *As to members becoming bankrupt or insolvent.*—If any member in any such society shall become bankrupt, or shall take the benefit of any Act for the relief of insolvent debtors, such member shall be taken to have withdrawn from the society on the day of the date of the filing of the petition for adjudication of bankruptcy, or (in the case of any insolvent debtor, of the declaration of insolvency, or the petition for discharge or for a vesting order respectively, as the case may be; and the assignees of any such bankrupt or insolvent shall have such claim upon the society, and no other, as the bankrupt or insolvent would have had if he had actually withdrawn at the date aforesaid.

5. *Awards of arbitrators may be enforced by County Courts where sum, &c. in dispute is within its jurisdiction—Where it exceeds such jurisdiction, then to be submitted to Superior Courts.*—If either of the parties to any arbitration which shall take place under this Act for the settlement of a dispute shall refuse or neglect to comply with or conform to the decision of the arbitrators, or the major part of them, then, in case the sum or value in dispute shall not exceed the limit fixed by law for the time being for any debt or damages claimable in the County Court in England or in the Court of the Assistant Barrister in Ireland respectively (as the case may be), it shall be lawful for the judge of the County Court or the assistant barrister respectively (as the case may be), within whose jurisdiction the society shall be established or shall carry on business for the time being, upon proof adduced before him to his satisfaction of an award having been made by the arbitrators according to the rules of the society, to cause the award to be entered as a judgment in his Court, and such award shall thereupon take effect and be enforceable in the same manner, to all intents and purposes, as a judgment of such Court in a cause between the same persons as shall be parties to the said reference, except that the same shall be final and without appeal; but in case the sum or value in dispute shall exceed the limit fixed by law for the time being for any debt or damages claimable in the County Court or the court of the Assistant Barrister respectively, then the same may, on the application of either party, be made a rule of any of her Majesty's Superior Courts at Westminster or at Dublin (as the case may be).

6. *Sheriff's jurisdiction in Scotland.*—The sheriff in Scotland shall within his county have the like jurisdiction as is hereby given to the judge of the County Court in any matter arising under this Act.

7. *Investment of funds.*—Notwithstanding anything contained in the laws for the time being in force relating to friendly societies, it shall not be incumbent on any treasurer or other officer of any society constituted under the provisions of this Act to invest any of the funds of such society in manner provided by the laws relating to friendly societies, nor shall any such society be allowed to invest any portion of such funds with the Commissioners for the Reduction of the National Debt.

8. *Laws relating to friendly societies to be applicable, except as varied by this Act, or certified to be inapplicable.—7 & 8 Vict. c. 110, not to extend to societies constituted under this Act.*—All the provisions of the laws relating to friendly societies shall apply to every society to be constituted under this Act, and to every officer and member of such society, and to every proceeding under this Act, except so far as any such provision may be expressly varied by this Act, or by any rule expressly authorised to be made by this Act, and also except so far as the registrar of friendly societies from time to time, by writing under his hand, to be indorsed on the rules of any such society, shall certify that any such provision is not applicable to such society; and no such society shall be considered to be within the provisions of an Act passed in the session of Parliament of the seventh and eighth years of the reign of her present Majesty, intituled "An Act for the Registration, Incorporation, and Regulation of Joint-Stock Companies."

9. *Limitation of interest of members in funds of society.*—No society shall be entitled to the benefit of this Act whereof the rules shall not provide that the amount of the share or interest in the funds of the same to be held at any one time by or in trust for any one member of the same, or any persons claiming by or through him, otherwise than by way of annuity, shall be restricted to a sum to be therein fixed, but which shall not exceed one hundred pounds, exclusively of any annuity; nor shall any member or other person be entitled by way of annuity to any interest in the funds of such society to an amount exceeding thirty pounds per annum.

10. *Annual returns to be prepared as registrar may direct.*—The general statement of the funds and effects of any society or branch constituted under this Act, which by the laws relating to friendly societies is provided to be transmitted to the registrar once in every year, shall exhibit fully the assets and liabilities of the society, and shall be prepared and made out within such period, and in such form, and shall comprise such particulars, as the registrar shall from time to time require, and shall be filed and preserved in such manner as he shall direct.

11. *Liability of the members not to be restricted.*—Nothing in this or the said recited Act shall be construed to restrict in anywise the liability of the members of any society established under or by virtue of this Act, or claiming the benefit thereof, to the lawful debts and engagements of such society: provided always, that no person shall be liable for the debts or engagements of any such society after the expiration of two years from his ceasing to be a member of the same.

12. *Provisions of Friendly Societies Acts giving such societies priority over other creditors as to estate of officers, and exemption from stamp duties in certain cases, not to apply to societies constituted under this Act.*—No provision of the laws relating to friendly societies whereby any money due to any such society from any officer of the same or other person intrusted with the keeping of the accounts, or having in his hands any money or effects belonging to any such society, or from the estate of any such officer or person, is made payable in preference to or before any other creditor, shall apply to any society constituted under the provisions of this Act; and no exemption from stamp duties allowed by the laws relating to friendly societies shall apply to any society constituted under the provisions of this Act, except so far as relates to any copy of the rules of such society, and to any other instrument or document whatsoever relating to such society, which might have been given, issued, signed, made, or produced under the laws relating to friendly societies by or on behalf of or respecting a society constituted under the laws in force relating to such societies previously to the passing of this Act, and would have been exempt from duty in such case.

13. *Meaning of words "County Court."*—9 & 10 *Vict. c.* 95. The words "County Court," when occurring in this Act, shall apply only to County Courts established or holden under the provisions of an Act passed in the tenth year of the reign of her present Majesty, intituled "An Act for the more easy Recovery of Small Debts and Demands in England," and the Acts amending the same.

14. *Short title.*—This Act may be cited as the "Industrial and Provident Societies Act, 1852."

CAP. XXXII.

An Act to alter and amend certain Provisions in the Laws relating to the Number and Election of Magistrates and Councillors in the Burghs in Scotland. (June 30, 1852.)

CAP. XXXIII.

An Act to confirm certain Provisional Orders made under an Act of the last Session "to facilitate Arrangements for the Relief of Turnpike Trusts, and to make certain Provisions respecting exemptions from Tolls." (June 30, 1852.)

CAP. XXXIV.

An Act to extend the Act to facilitate the Improvement of Landed Property in Ireland, and the Acts amending the same, to the Erection of Scutch Mills for Flax in Ireland. (June 30, 1852.)

CAP. XXXV.

An Act to amend an Act passed in the last Session of Parliament, intituled "An Act to regulate certain Proceedings in relation to the Election of Representative Peers for Scotland." (June 30, 1852.)

CAP. XXXVI.

An Act to amend the Law relating to the certifying and registering Places of Religious Worship of Protestant Dissenters. (June 30, 1852.)

We give this statute entire.

1 *Wm. & M. Sess.* 1, *c.* 18—52 *Geo.* 3, *c.* 155.—Whereas by an Act passed in the first year of the reign of King William and Queen Mary, intituled "An Act for exempting their Majesties' Protestant Subjects dissenting from the Church of England from the Penalties of certain Laws," it was enacted, that no congregation or assembly for religious worship should be permitted or allowed by that Act until the place of the meeting of such congregation or assembly had been certified to the bishop of the diocese, or archdeacon of the archdeaconry, or the justices of the peace at their general or quarter sessions of the peace for the county, city, or place in which the meeting shall be, and registered in the bishops or archdeacons' courts respectively, or recorded at the quarter sessions: and whereas by another Act passed in the fifty-second year of the reign of his Majesty King George the Third, intituled "An Act to repeal certain Acts and to amend other Acts relating to Religious Worship and Assemblies, and Persons teaching or preaching therein," enactments were made for certifying and registering the places of meeting of certain congregations and assemblies for religious worship of Protestants: And whereas it is expedient that such places of meeting should no longer be certified to or registered in the court of any bishop or archdeacon, or be certified to any justice of the peace, to be recorded at the quarter sessions, but that such other provision for the certification and registration thereof should be made as is hereinafter contained: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that—

1. *Places of religious worship not to be certified to or registered in bishop's registry.*—No place of meeting of any congregation or assembly for religious worship of Protestants dissenting from the Church of England shall from and after the passing of this Act be certified to any bishop or archdeacon, or to any justice of the peace at their general or quarter sessions of the peace, or be certified to or registered in the court of any bishop or archdeacon, or be recorded at the quarter sessions, and the certifying to any bishop or archdeacon, or justices of the peace, or the certifying to or registering or recording in any such court or at the quarter sessions, after the time aforesaid, or the certificate of any registering therein, given after the time aforesaid by any bishop or registrar or clerk of the peace, shall be void and of no effect; and the registrar of every bishop and archdeacon, and the clerk of the peace of the county, riding, division, city, town, or place in which such places of meeting respectively are held, shall, within three calendar months next after the passing of this Act, make a return to the registrar-general of births, deaths, and marriages in England, according to a form to be provided by him for the purpose, of all such places of meeting which, up to the time when this Act shall come into operation, shall have been certified to and registered in the court of the bishop or archdeacon respectively, or have been certified to the justices of the peace, or recorded at the quarter sessions; and it shall be lawful, instead of certifying any such place of meeting to the bishop or archdeacon, or to the court of any bishop or archdeacon, or to the quarter sessions, to certify the same in writing to the said registrar-general, through the superintendent registrar of births, deaths, and marriages of the union, parish, or place in which such meeting shall be held, and the said superintendent registrar shall forthwith transmit the said written certificate to the registrar-general, who is hereby required to record the same in a book to be kept by him for that purpose at the general register office; and the certifying any such place of meeting to the registrar-general as aforesaid shall have the same force and effect as if the same were certified to the bishop or archdeacon, or to the justices of the peace at their general or quarter sessions of the peace; and the said registrar-general shall give to every person demanding the same a certificate that any such place of meeting has been duly certified.

2. *No greater fee than 2s. 6d. to be taken for such certificate of registration.*—For every such certificate of such registration the parties so registering such places of worship shall pay to the superintendent registrar a fee of two shillings and sixpence, and it shall not be lawful for him on any ground whatever to demand or take any greater fee or reward for the same.

3. *List of certified places of worship to be printed, and open to inspection without fee.*—The registrar-general shall in every year make out and cause to be printed a list of all existing certified places of worship which shall have been returned to him as aforesaid, and also of all such other places of worship as shall from time to time be certified to and recorded by him as aforesaid, and shall state in such list the county and superintendent registrar's district within which each of such places of worship is situated, and the religious denomination to which it belongs, and shall cause a copy of such list to be sent to every superintendent registrar of births, deaths, and marriages in England; and such lists shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

CAP. XXXVII.

An Act to continue the Poor Law Commission for Ireland. (June 30, 1852.)

CAP. XXXVIII.

An Act to explain Two Acts of the Twelfth and Thirteenth Years of the Reign of her Majesty, concerning the Appointment of Overseers, and the Authority of Justices of the Peace to act in certain Matters relating to the Poor in Cities and Boroughs. (June 30, 1852.)

1. *Justices having jurisdiction in other matters in any city or place may act in cases relating to the relief of the poor.*—Whereas by the Act passed in the twelfth year of the reign of her Majesty, chapter eight, it was enacted, that in every city, town corporate, or borough, the justices of the peace having jurisdiction therein should have the exclusive right of appointing the overseers of the poor of the several parishes, townships, or other places separately maintaining their own poor, or of any parts thereof within the said cities, towns corporate, and boroughs respectively, in like manner and with the same effect as the justices of any county then had in respect of the overseers of the poor of any parish within such county: And whereas by another Act of the thirteenth year of the reign of her Majesty, chapter sixty-four, it was enacted, that all powers and authorities which by the Act of the forty-third year of the reign of Queen Elizabeth, intituled "An Act for the Relief of the Poor," may be exercised out of general or quarter sessions by two or more justices of any county, might be exercised within any city or borough by any two or more justices of the peace having jurisdiction within such city or borough respectively as fully in all respects as by the justices of the county in or for any parish of such county: [illegible] said statutes with reference to the justices who are competent to act under and by virtue of the same, and it is expedient that such doubts should be removed: be it therefore enacted and declared by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in any city or borough all justices of the peace, whether of such city or borough or of the county, riding, or division, comprising the same or adjoining thereto, who shall otherwise have jurisdiction to act in any matter arising within such city or borough, shall be deemed to be competent to act therein under and by virtue of the said statutes in all respects.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

IT was decided in *Marshall* v. *Nichols*, 19 Law T. Rep. 284, that under 6 & 7 Vict. c. 79, which was an Act confirming and regulating a fishery convention between France and England, a person who has sustained damage by breach of any of the regulations of the Act must pursue his remedy for damages before a justice of the peace, as directed by sec. 11 and article 69 of the Act, and cannot maintain an action for such damages.

The case of *Ostler* v. *Cook*, 19 Law T. Rep. 286, reported from the Court of Error, arose upon a local Drainage Act. It is of no general interest, but of some moment in localities regulated by similar Acts.

FRENCH REGULATION ON DRUNKENNESS. — The Prefect of the Doubs has followed the example of the Prefect of the Pas de Calais, and decided that any retail sellers of wines or spirits giving liquor to persons already affected by what they had taken, shall be held responsible for the acts of such persons. [This regulation might be adopted here with advantage.—ED. L. T.]

LITERATURE IN THE WEST.—The manner in which legal business is transacted in Devonshire, shews that the schoolmaster is greatly wanted there. On Wednesday morning a summons, a copy of which we subjoin, was handed up to the judge by a gentleman who had been summoned to attend as a special juror. Others were also produced, equally shewing the ability and educational powers of the representative of the under-sheriff. Can any one be astonished that special jurors do not attend, for would any one suppose that he was to obey such a precious document as this:—"I am to sumon and warn you to apeir at the Castle at Exon on Wednesday the 26 day of July instant comming by 8 o'clock in the morning to sarve on the spical jury at the assize on the trile of Harding and Lady Roll."

SOCIETY FOR THE PROSECUTION OF DOG-STEALERS AND THEIR CONFEDERATES. — On Thursday, the usual monthly meeting of this society was held at the offices, 170, New Bond-street, Viscount Chewton in the chair. In the course of the proceedings, the secretary, Mr. Elliott, reported the summary convictions, at the instance of the society, of Edward Sawford, *alias* "Teddy the Fish," on the 13th of July, at the Clerkenwell Police Court; and of George May, *alias* "Dodger" May, on the 31st ult. at the Westminster Police Court, both being sentenced to six months' imprisonment with hard labour. Mr. Bishop, the treasurer, having given a satisfactory statement of the funds of the society (the receipts during the past month exceeding 45*l.*) the usual vote of thanks to the chairman, secretary, and treasurer were passed, and the meeting separated.

IMPORTANT RAILWAY DECISION.—A case of some considerable interest and importance to railway travellers has been heard before the magistrates at the Droitwich Petty Sessions. The defendant was Mr. Henry Dykes, the traffic superintendent of the Midland Railway, who was summoned before the magistrates for an assault upon Mr. Hilary Hill, a surgeon, of Worcester. The affair arose out of the dispute now existing between the Midland and Oxford, Worcester, and Wolverhampton Railway Companies as to the working of the loop line of the latter company between Abbott's Wood, Worcester, Droitwich, and Stoke, and which is now being worked under an agreement by both companies. The case occupied some time, but the facts may be condensed into the following narrative:—On the 17th inst. Mr. Hill, with two of his brothers, took at Worcester day tickets for Droitwich by an Oxford, Worcester, and Wolverhampton train. When about to return from Droitwich in the evening they found that the last Oxford and Wolverhampton train had just left, but that a Midland train for Worcester, running on the same line, was shortly about to start. They applied to the booking clerk at Droitwich (who acts for both companies) for leave to travel by that train; but though at first he demurred, he appears ultimately to have sanctioned their going, but said they must settle about the fare on their arrival at Worcester. Upon that understanding, Mr. Hill and his brothers got into the Midland train, which was just about starting, when Mr. Dykes came up, and after declaring that "they would carry no Oxford and Worcester passengers," forcibly ejected them from the carriage. This was the assault complained of; and the defence was, that Mr. Hill had no right in the carriage, he not having paid his fare, and being unprovided with a ticket, and it was urged that the Droitwich clerk had no power to give them permission to enter the train, and that if he did so, it was unwillingly. The magistrates decided that Mr. Dykes was wrong, and fined him 5*l.* or a fortnight's imprisonment.

The Lord-Lieutenant of the county is to meet the deputy lieutenants and others at the King's Head, Gloucester, next week, to arrange respecting the issuing of orders for the raising of volunteers for the militia. The force will be called out for training and exercise early in October. The number of men to be raised in this county during the present year is 1,240; next year, 753.—*Gloucester Journal.*

GENERAL BOARD OF HEALTH.—Two Acts were passed in the late session to confirm certain provisional orders of the General Board of Health. Local boards under the first Act are to be established in the present month at Worthing, Worksop, Gainsborough, Rotherham, and Kimberworth, Burnham, Calne, and Banbury.

ALTERATIONS IN THE LAW RELATING TO THE ASSESSMENT AND COLLECTION OF COUNTY-RATES.—By an Act passed in the last session of Parliament, the 15 & 16 Vict. c. 81, some important alterations are made in the law relating to the assessment and collection of county-rates, and all preceding statutes, eleven in number, in force on the subject are consolidated into one Act. By clause 2, justices of the peace at Quarter Sessions are empowered to appoint a committee for the purpose of preparing a basis or standard for assessing the county-rates, and, after such basis or standard shall have been agreed upon, and confirmed by the justices at General Quarter Sessions, the same, by clause 16, is to be deemed legal and valid to all intents and purposes. By clause 26, a change is made in the mode of collecting and paying over to the treasurer of the county the county-rates, which is no longer to be done by the overseers, but, except in cases where the high-constables are empowered to collect such rates, the precepts are to be directed to the guardians of the poor of every union of parishes, stating the sum assessed on each parish, which sum the guardians are required to raise and pay by the time required, and in the manner stated; and, by clause 29, if any parish within such union shall neglect, or be unable to pay, the amount at which it is assessed by the

time required, and the same be paid by the other parishes in the same union, the defaulting parish is mulcted in an additional shilling for every ten required of it, which additional sum is to be applied in the same manner as the county-rate. By clause 50, an account of the receipt and expenditure of the county-rates in each county is to be annually transmitted, by the county treasurer, to the Secretary of State, and laid before Parliament.

JOINT-STOCK COMPANIES' LAW JOURNAL.

It will be observed that, in the case of *The Great Western Railway Company* v. *Rushout*, 19 Law T. Rep. 281, an injunction was granted, at the instance of the shareholders, to restrain the directors from entering into contracts with reference to a scheme for an extension line, and to prevent the application of the funds of the company to the payment of costs occasioned by such scheme, or in promoting such a Bill in Parliament. But the Court refused to restrain an application to Parliament to enable the company to make the extension line.

WINDING UP.

London and Birmingham Extension Railway.—On Saturday, at a meeting in this matter, the Master in Chancery Blunt decided that the claims of the directors for expenses incurred were not to be allowed as a set-off in connection with the call of 7s. 6d. per share declared payable in respect of costs incurred in winding up the company.

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

Cameron's Coalbrook Steam Coal and Swansea and Loughor Railway Company.—Call for 4s. per share, on contributories already settled.—Richards.

REAL PROPERTY LAWYER AND CONVEYANCER.

COPYHOLDS.

TO THE EDITOR OF THE LAW TIMES.

Sir,—I have perused J. B.'s letter in your last week's paper, and I cannot help thinking that the commissioners are wrong in the decision which they have come to, with regard to the admission stamps. The language contained in the recent Stamp Act, in my humble judgment, can only admit of one interpretation. It is there stated that "any admittance out of court, or the memorandum thereof, or the copy of Court Roll of any admittance in Court," shall be chargeable with a duty of 2s 6d. I apprehend, therefore, that in each of the admittances referred to, 2s. 6d. was the proper stamp to have been affixed thereon, instead of 1*l.*

The rule with regard to several stamps only applies where there are distinct and separate surrenders or admissions, but the case referred to, seems to me to be analogous to that of coparceners, who are almost invariably admitted upon one admission, and generally surrender by one deed.

One 1*l.* stamp upon the surrender, I presume, would be correct, that document coming under the old Stamp Act, as an instrument not charged under the head of mortgage or conveyance upon the sale of lands.

In your same paper I observe the query put by J. S. and I think it is quite clear, that a warrant to enter satisfaction on a conditional surrender, does not come within the meaning of any of the terms mentioned by him, and consequently requires no stamp. It is simply an authority to the steward to make the entry upon the Court Rolls. I know th practice is, to accept the warrant without any stamp.

I am, Sir, yours, &c.

July 26, 1852. W. J.

LIFE INSURANCES.

TO THE EDITOR OF THE LAW TIMES.

Sir,—The letter of Mr. Francis, which appears in your last number, p. 70, is upon a subject of great importance, nor is the difficulty which in most cases is experienced in obtaining from insurance offices moneys due under a mortgaged or assigned policy of insurance in the least degree overstated therein. It may be, that in the present state of the law insurance offices, and those under whose advice boards of directors act in such cases, are unavoidably compelled, for the sake of self-protection against claims from third parties, to put claimants to every possible degree of trouble and expense before they admit and answer their liability to the mortgagee or assignee of the policy; but if so, the Legislature should interfere, and by some enactment, which might easily be framed, insure that the bonâ fide holder of a policy, accompanied by a deed of assignment, shall be enabled to receive his money without the trouble and expense at present generally attendant thereon. So great is it, that though this kind of security is that more generally offered for sums of from 100*l.* to 500*l.* particularly in the country, I would neither in future lend money on it nor advise a client to do so.

In two cases within my own experience, administration had to be taken out: in one, by the mortgagee himself, as a creditor to the deceased insurer, he dying abroad insolvent, and his representatives living abroad and not choosing to administer; in the other, the mortgagee had to procure the renunciation of a right to administer from a party in America, and then to procure administration to be taken out in England by the next of kin, as the offices considered themselves bound, notwithstanding the mortgage, to require the discharge of a legal personal representative,—a full indemnity was offered in vain in the first case. I know two other cases precisely similar, in which other respectable parties are concerned. It is peculiarly hard in such instances as above mentioned, when perhaps the party lending money on and taking an assignment of the policy has given due notice to the office and subsequently for years kept up the premium out of his own pocket, to find that in addition to all this he must incur the risk and trouble of standing personal representative to an insolvent deceased party before he can get his money, besides a world of trouble, anxiety, and expense otherwise, and, according to the present practice of insurance offices, it seems hardly possible to prepare an assignment which would meet their various and undefined scruples.

I am, Sir, yours, &c.

July 26, 1852. F. F. a Country Solicitor.

Queries.

A. being possessed of certain property consisting of land and one or two cottages, let it to B.

B. underlets one of the cottages to C. A. sells part of the garden occupied with the cottage, underlet to C. to D. but C. refuses to give it up to D. contending that he has had no notice.

Can any of your learned readers inform me who is the proper party to give notice to C. to quit?

R. G.

ENFRANCHISEMENT OF COPYHOLD.

I shall feel much obliged by any reader of your valuable paper, practised in such matters, informing me at what rate the interest of a lord of a manor is to be calculated upon the enfranchisement of copyholds, *fine small and certain*, and at how many years' purchase the lord's rents are estimated. It may be as well to mention that the manor to which I allude on any admission the fine is two years' value of the lord's rent, and in addition there is payable to the lord a relief of one year's value of such rent.

Steward.

ACKNOWLEDGMENT BY MARRIED WOMEN.

Can any of your numerous correspondents inform me the practice usually observed in cases like the following. It is necessary to have a deed acknowledged by a vendor's wife on the sale by himself and her of a freehold estate, the purchaser having agreed to pay all expenses of the acknowledgment. Does the vendor's solicitor prepare the documents, and conduct the business of the acknowledgment to its completion; or has the solicitor for the purchaser the duty of so doing? The solicitors for the vendor and purchaser are both perpetual commissioners, and being both interested in the transaction, one only can act. To which of them does the privilege belong? Has not the vendor's wife in such a case the right to nominate, and has not the married woman in every case the right to choose the commissioners, or one of them, before whom she will acknowledge the deed, or if not, who selects them?

A Subscriber.

Sales of Landed Property.—The last sale but one for the present season under the Incumbered Estates Commission took place yesterday, when four properties were put up for competition, the whole of which were speedily disposed of at remunerative rates of purchase. A fee simple estate in the county of Westmeath, containing 1,669 acres, yielding an annual net rent of 617*l.* was bought by Mr. W. Dargan, the eminent railway contractor, at the high figure of 14,000*l.* being equal to 22¾ years' purchase. The Down estate of Mr. Thomas Scott, comprising over 1,200 statute acres, producing a net rent of 1,189*l.* per annum, realised 19,925*l.* equal to nearly 17 years' purchase. The property was sold subject to the payment of two annuities, amounting together to 160*l.* for two lives aged respectively fifty and fifty-nine years. A small property in the county of Dublin, valued at 158*l.* a-year, after payment of a head rent of 132*l.* brought 1,525*l.* or 15 years' purchase. A profit rent of 32*l.* per annum, arising out of lands and houses in the town of Roscrea and county of Tipperary, produced 360*l.* over 11 years' purchase. The gross sum realised by the day's sales amounted to 35,810*l.*

COUNTY COURTS.

Summary

It will be observed that the provision of the new statute forbidding Attorneys to appear in the County Courts as Advocates, instructed by other Attorneys, and entitling them only to conduct the cases in which they are concerned as Attorney for one of the parties, is producing, as we had anticipated, a good deal of inconvenience. We have received many letters, pointing out the difficulties that are found to result in practice from the prohibition. We could not find space for a tithe of these complaints. We shall publish the most remarkable of them, and indicate the others, with a view to obtain, next session, a remedy for the inconveniences which could not have been anticipated by the promoters of the measure, and of which the Legislature was ignorant or it would not have been sanctioned.

One *Insolvency* case was reported last week. In *Re Dyson*, 19 Law T. Rep. 288, it was determined by the Court that it would hold assignees responsible for all moneys received through their instrumentality, and in such cases will look to them *personally*, and not to their Attorneys.

THE LAWYER.

Summary

Some points of interest and value to the English Lawyer, as authorities occasionally occur in the course of the Scotch appeals that come before the House of Lords. Such are reported for us by Mr. J. Paterson, and they are the only records of the law thus decided that will be accessible to the English Lawyer. Some points of this nature were raised in *Marianski* v. *Cairns*, 19 Law T. Rep. 277, and they relate, first, to the *Practice at Nisi Prius*; secondly, to the *Law of Evidence*. As to the first, the facts were, that at the trial the clerk had made an incorrect entry of the verdict. It was held that the proper course was to "refer to the Judge who tried the cause, that the verdict may be entered according to the substance of the actual finding, which he may do by his notes." The *second* point was this:—Certain account-books kept by A. were tendered in evidence by A.'s counsel, apparently for an improper purpose. B.'s counsel objected that they were inadmissible generally, but the Judge admitted them. They were held to be admissible for *proper* use under the issue, and that as no objection had been taken to the summing up, it was to be *presumed* that the Judge directed the jury to make only the *proper* use of them, and to disregard the improper purpose for which they were put in evidence.

Another point of *practice*, now rare in appeal courts, is reported from the Lord Chancellor. In *Monckton* v. *The Attorney-General*, 19 Law T. Rep. 278, it was held that where two parties are in the same interest, and one dies before judgment, the interest being represented, there is no abatement. And where the petitioning party had died after the hearing and before judgment, that an order made on the petition could be entered *nunc pro tunc*.

An extremely interesting and curious case of *general* law, and which will repay perusal, is that of *Hill* v. *Philp*, 19 Law T. Rep. 284, in which the wife of a lunatic had directed the medical man who had the care of him to take away from him certain letters and papers. He did so, and delivered them to her, and for this an action of trover was brought against him by the lunatic on his recovery. But the Court of Ex. one Judge only dissenting, held that he was not liable. Alderson, B. said:—"The taking of the property of a madman from his possession is not, of itself, a conver-

sion of the property. If it were so, the consequences would be enormous and fatal. Suppose a person holds in his possession the title-deeds of a large estate, and is about to destroy them, does any person say that a taking from him the power of destroying the interests of his family and those who come after him, would be a conversion of the title-deeds? If so, you must say, if a man was about to cut his own throat with a razor, the taking of the razor out of his hands would be a conversion of the razor. Then, would the delivery of these papers to the wife for him make it a conversion? I confess that I think it does not."

Abolition of Fees on Circuit.—By the Nisi Prius Officers Act it is declared, "the fees heretofore received on the circuit by the marshal's man and the judge's bailiff respectively shall be and are hereby abolished, and no fee, gratuity, or reward whatsoever shall be demanded or accepted by any one exercising, or claiming to exercise, either of the said offices, or other person attending the circuit in any subordinate office or employment."

Law Officers.—In the new Nisi Prius Act there is a provision requiring the law officers to perform their duties in person. It is declared that where it shall be made to appear to the said Commissioners of the Treasury that any of the officers mentioned omits to perform the duties of his office in person, the said commissioners, unless it shall be shewn to their satisfaction that such omission arises from temporary and unavoidable causes, and they shall in writing approve of such omission for a period not exceeding at any one time six months, shall, as the case may be, require the whole of the fees due to be received by such officer for his own use during the time of such omission, to be accounted for and paid over as aforesaid, or shall cease to allow or pay any salary otherwise due to such officer during the time of such omission.

THE MERCANTILE LAWYER.

Summary.

It has been the fashion of late for bankrupts to appeal against the refusal of their certificates by the commissioners, and to this they have been encouraged by that which we cannot but deem the too great readiness of the Appeal Court to reverse the decisions of the commissioners, who must have had better means of forming a judgment of the bankrupt's conduct, as they have *seen* as well as heard him, and truth and honesty are often to be learned by the eye even better than by the ear. In *Ex parte Rufford*, 19 Law T. Rep. 279, the Lords Justices *did* support the commissioner in the punishment of palpable misconduct. There the bankrupts had been bankers and had continued to trade and receive deposits long after they knew that they were insolvent. They had claimed a certificate of conformity under the 198th sec. of the Bankruptcy Act. But the Court held that the commissioner had rightly refused it. The case, which is fully reported, is extremely interesting and instructive. Lord Cranworth explained the proper meaning of withholding the certificate. It is not properly the infliction of a punishment, but the refusal of a benefit. "The case is," he said, "whether the conduct of the plaintiffs as traders is such as entitles them to a *benefit* in the shape of a certificate, giving them protection from their creditors; it is rather withholding a benefit from them which good conduct might have entitled them to, than awarding them a punishment."

Jones v. *Starkey*, 19 Law T. Rep. 281, was a question as to the existence of an equitable lien on a cargo, under these circumstances. An account had been opened at a bank on an agreement that the customer might overdraw to a certain amount, but that if he overdrew beyond this he should find security. He did so, and the bank demanded security, upon which the customer wrote a letter to the managers, stating that the arrival of a particular ship would put him in funds to adjust the account, and he enclosed a *policy on the cargo* for 5,000*l.* indorsed payable to the bank in case of loss. The customer not performing his promise, the bank filed a bill to have the bills of lading delivered up, claiming an equitable lien by virtue of the above letter and policy, and praying to have it realised by a sale of the cargo. But it was held *not* to be such a specific appropriation of the cargo as gave the bank a lien on it in preference to other creditors. "I will not say," said the Vice-Chancellor, "that whenever equivocal words are used, the Court will decide against your lien; but the leaning of this Court certainly is against creating partial liens in mercantile transactions on the strength of equivocal expressions."

A guarantee ran thus: "Upon your handing in your two drafts on A. B. for 200*l.* and 146*l.* respectively, at six months from this date, I undertake to get them accepted and see that they are duly paid." Signed A. (the defendant); directed to B. (the plaintiff). This was subsequently altered by a memorandum written across it by A. but signed by B. alone, to this effect: "I have received the two drafts, one being for 150*l.* instead of 146*l.* there being an error in the invoice." This was held, in *Black* v. *Gompertz*, 19 Law T. Rep. 285, to be sufficient to satisfy the Statute of Frauds, and that A. was liable as security for the 150*l.* bill, although he had not signed the second memorandum, it being in his handwriting.

Letters Patent.—During the progress of the Patent Law Amendment Bill through Parliament some curious and interesting statements were made in reference to the origin of letters patent. Those who have only considered letters patent as a legal document granting to an inventor the exclusive right of selling any article of his own invention for fourteen years, by way of rewarding his ingenuity, and an acknowledgment of the benefit thereby conferred on the community, will be astonished to learn the extraordinary purposes for which letters patent were granted in the olden time. By letters patent was meant originally letters from the Crown that were open to everybody that could read them, and differed from letters close, which were sealed up and addressed to a particular party. The first letters patent were issued in the third year of the reign of King John, A.D. 1201. The following are amusing instances of the powers exercised under letters patent granted by that monarch. By one of these instruments he ordained that every year, when lampreys were first caught, they should not be sold for more than 2s. each, until after February, when they were to be sold at a lower price. In another case, his Majesty granted a licence to Peter Bullo to adopt any religion he pleased. In another instance he granted safe conduct, or the right of proceeding without molestation, to enable Stephen, the Archbishop of Canterbury, to come to Staines. By another, a licence was granted to Margaret de Leghorn to marry whomsoever she pleased; and, in another case, his Majesty issued his royal letters patent, to certify that Robert, son of Robert the Mercer, lost his ear at Chateauneuf in the King's service, and not on account of felony. When one of the punishments for felony was nailing one of the ears of the offender to the pillory, it was highly [illegible]sary for a man who had sustained a loss of the kind to be able to account for the same in a satisfactory manner. Such were letters patent in the olden time: they are now issued for a very different purpose.—*Standard.*

The New "Passengers Act."—An important Act was passed in the late [illegible]sion "to Amend and Consolidate the Laws relating to the Carriage of Passengers by Sea." There are 91 clauses in the Act, and several schedules, containing forms to carry the Act into execution. On the 1st October the Act is to come into operation, when the "Passengers Act 1849" is to be repealed, except as to the existing liabilities, and except as to an order in Council, dated the 6th October, 1849. The Act is to extend to every passenger ship proceeding on any voyage from the United Kingdom to any place out of Europe, and not being within the Mediterranean Sea, and on every colonial voyage as stated. It is not to extend to her Majesty's ships of war, &c. The Commissioners of Emigration are to carry the Act into execution. There are various provisions as to the accommodation and diet to be afforded to passengers. No passenger is to be landed without his previous consent at any port or place other than the port at which he may have contracted to land. Her Majesty may, by orders in Council, prescribe rules for the preservation of order, &c. in vessels bound to the colonies. Only a certain number of passengers is to be allowed, according to the size of the ships. The forms in the schedule explain the manner in which the Act is to be carried into force.

NOTICES OF NEW LAW BOOKS.

A Compendium of the Law and Practice of Vendors and Purchasers of Real Estates. By J. Henry Dart, Esq. Barrister-at-Law. Second Edition. London: Stevens and Norton.

The issue of a second edition of this work is the best tribute to its merit. Practitioners speedily discover the true worth of a Law Book, and if it advances beyond a first edition we may be sure that it offers some uncommon recommendations, either in the practical handling of the subject, or the extent of learning it displays. It has proved itself to be adapted in some way to the wants of the Profession. Such has been the case with Mr. Dart's treatise. Although opposed to so formidable a rival as Sugden's "Vendors and Purchasers," it has so recommended itself to the Lawyers, that they have exhausted one edition, and encouraged the author to the issue of another. Nor are we surprised at this. It is a really good book.

CORRESPONDENCE.

ASSURANCE OFFICES.

TO THE EDITOR OF THE LAW TIMES.

Sir,—I have this week seen a letter to a friend of mine from a gentleman in London, in which he states that a certain mutual life assurance office, not a hundred miles from 345, Strand, being in want of agents, "will give 10s. per week to him for his services, besides allowing a commission on business transacted," if he accept the office of agent, and assure his own life in 200*l.*

Surely there must be something here "more than meets the eye;" or how can one office allow so much better terms for agen[illegible]s than the old-established offices? I am, Sir, yours, &c.

Dorchester, July 3, 1852. Inquirer.

LEGAL INTELLIGENCE.

Assizes.

NORTHERN CIRCUIT.

Newcastle, July 30.—The calendar contains the names of twenty-three prisoners. Many of these cases are charges of stabbing by Irishmen, several are highway robberies, the rest are ordinary larceny cases. The cause list contains an entry of eight causes.

OXFORD CIRCUIT.

Hereford, July 31.—The commission was opened yesterday. There were three causes for trial and twenty-three prisoners. Of these there were charged with housebreaking, 5; arson, 2 (the bill against one was thrown out); stealing from the dwelling-house, 2; assaulting with intent to inflict grievous bodily harm, 1; and the rest with larceny, false pretences, and riot.

WESTERN CIRCUIT.

Bodmin, July 31.—The commission for the county of Cornwall was opened yesterday by Mr. Baron Platt and Mr. Baron Martin. The civil business was very small, there being only three causes entered for trial, one of which was an undefended ejectment, another was withdrawn, and the third was disposed of in half an hour, and was of no public interest whatever. There were only twenty-two prisoners for trial, and, with one exception (a case of child murder), were of a very ordinary description.

NORFOLK CIRCUIT.

Ipswich, July 31.—The Nisi Prius Court was opened to-day at half-past nine by Mr. Baron Parke, notwithstanding a severe attack of gout in the knee, which almost prevented all power of locomotion. The cause list contained one special jury and five common jury causes. The calendar contains the names of nearly fifty prisoners, but with few exceptions, the offences imputed to them are not of an aggravated character. Among the more serious cases are one of child murder, one of rape, one of perjury, five of arson, one of cutting and stabbing, one of manslaughter, three of burglaries, and one charge of concealment of birth.

HOME CIRCUIT.

Guildford, Aug. 2.—The commission for the county of Surrey was opened on Saturday. Lord Chief Justice Jervis presided on the civil side, and Mr. Justice Maule in the Crown Court. The business is very heavy, seventy causes being entered on the civil side, fourteen of which are special jury cases, and in the Crown Court there are nineteen prisoners, although the quarter sessions were only last week, and many of the charges are of a very serious character.

SOUTH WALES CIRCUIT.

Monmouth, August 3.—The judges arrived here at an early hour yesterday. There were seven causes entered, of which two were marked for special juries. There were 40 prisoners for trial, of whom 1 was charged with murder, 5 with an assault with intent to do grievous bodily harm, 3 with an assault on a constable in the execution of his duty, 2 with rapes on children, 1 with assault with attempt to commit a rape, 1 with assaulting and ill-treating a child, 3 with burglary, 3 with assault and robbery, 1 with an assault and inflicting grievous bodily harm, and the remainder with common larcenies.

A bust of Lord Denman, sculptured by Christopher Moor, will shortly be placed in the Law Institution, Chancery-lane.

Captain Atcherley, armed with a police-staff, appeared in the Lord Chancellor's Court lately, with his Indian chief—and was about to address the Court as a constable, "on the part of the Crown." The Lord Chancellor told him to "hold his tongue;" and, after some violent resistance on his part, the intruder was ejected by the ushers of the court.

JOURNAL OF PROPERTY.

MONEY MARKET.

English Funds.	Sat.	Mon.	Tues.	Wed.	Thurs.	Fri.
Bank Stock	233	234	232	234	231	234
3 ℔ Cent. Reduced Annuities	100¼	101	101	100¼	100¼	100⅝
3 ℔ Cent. Consols Annuities	100¾	100¾	100¾	100	100	99¾
Consols for Account	100¾	100⅞	100¼	100	100	99¾
New 5 ℔ Cent. Annuities ..	..	..	..	..	..	..
New 3½ ℔ Cent. Annuities ..	101⅞	101⅞	101⅜	101⅜	101¼	101
Long Annu. (exp. Jan. 5, 1860)	..	7	6⅞	7	7	6⅞
Do. 30 yrs. (exp. Oct. 10, 1859)	..	..	..	..	..	..
Do. 30 yrs. (exp. Jan. 5, 1860)	..	..	6⅞	.	.	6⅞
India Stock	287	..	..	..	286	..
India Bonds (1,000*l*.)	[illegible]	91	..	..	..	94*
Do. do. (under 1,000*l*.)....	..	94	94	..	..	94*
South Sea Stock............	..	112	..	..	..	..
Do. do. Old Annuities....	..	..	..	..	..	..
Exchequer Bills, 1,000*l*. June	71*	74*	71*	74*	74*	74*
Do. do. 500*l*. June .	71*	74*	..	.	74*	71*
Do. do. Small, June	...	74*	..	74*	74*	74*

* Premium.

THE GAZETTES.

Bankrupts.

Gazette, Aug. 3.

Avery, John, and Street, Samuel, shipwrights, Birkenhead, Cheshire, Aug. 16 and Sept. 16, at eleven, Liverpool. Off. as. Cazenove. Sol. Ho en, Sweeting st. Liverpool. Petition, July 31.

Bailey, Charles Frederick, boot maker, Burslem, Staffordshire, Aug. 14 and Sept. 6, at half-past ten, Birmingham. Off. as. Whitmore. Sols. Smith, Hanley; Motteram and Co. Birmingham. Petition, July 23.

Bolderston, William, wholesale grocer, Liverpool, Aug. 13 and Sept. 13, at eleven, Liverpool. Off. as. Morgan. Sols. Evans and Sons, Liverpool. Petition, July 9.

Doorbar, Thomas, wheelwright, Bradley-green, Staffordshire, Aug. 19 and Sept. 7, at half-past eleven, Birmingham. Off. as. Whitmore. Sols. Cooper and Howlett, Congleton, and Motteram and Co. Birmingham. Petition, July 29.

Ibbetson, James, bookseller, Bradford, Yorkshire, Aug. 13 and Sept. 10, at eleven, Leeds. Off. as. Young. Sols. Thompson and Clegg, Bradford; and Cariss and Cudworth, Leeds. Petition, July 27.

Lishman, Robert Wilson, apothecary, Shenston, Staffordshire, Aug. 14 and Sept. 6, at half-past ten, Birmingham. Off. as. Bittlestone. Sols. Bowen, Stafford; and Wright, Birmingham. Petition, July 28.

Scott, Andrew, and Thompson, William, iron founders, Upper Ground-street, Blackfriars-road, Aug. 12 and Sept. 10, at one, Basinghall-st. Off. as. Whitmore. Sols. Lindsay and Mason, Basinghall-st. Petition, July 21.

Shaw, Thomas, stationer, Birmingham, Aug. 14 and Sept. 4, at half-past ten, Birmingham. Off. as. Whitmore. Sols. Messrs. Linklater, Size-lane, and Hodgson, Birmingham. Petition, July 30.

Wheeler, William, miller, Cleobury Mortimer, Salop, Aug. 17 and Sept. 7, at half-past eleven, Birmingham. Off. as. Christie. Sols. Boycott and Tudor, Kidderminster. Petition, July 30.

Williams, John, dealer in Berlin wools, Plymouth, Aug. 7 and Sept. 16, at half past one, Exeter. Off. Hernaman. Sols. Rooker and Lavers, Plymouth. Petition, July 19.

Wilson, Robert Chrissop, earthenware manufacturer, Seaham Harbour, Durham, Aug. 17 and Sept. 16, at twelve, Newcastle-upon-Tyne. Off. as. Wakley. Sols. Hoyle, Newcastle-upon-Tyne; Crosby and Compton, Old Jewry. Petition, July 27.

Worfolk, Matthew, coal merchant, Mistley, Essex, Aug. 10, at ten, and Sept. 13, at eleven, Basinghall-st. Off. as. Graham. Sols. Wire and Child, Swithin's lane; Barnes and Neck, Colchester. Petition, July 26.

Gazette, Aug. 6.

Bentley, John, cheesemonger, 5, Smithfield, Aug. 18, at half-past one, Sept. 25, at half-past eleven, Basinghall st. Com. Fonblanque. Off. as. Graham. Sol. Smith, 8, Barnard's-inn, Holborn. Petition, Aug. 4.

England, Louis, builder and auctioneer, 3, Shepperton-st. New North-road, Islington, Aug. 25, at eleven, Sept. 15, at half-past two, Basinghall-st. Com. Holroyd. Off. as. Edwards. Sol. Huson, 7, Ironmonger-lane, Cheapside. Petition, July 22.

Green, Henry, baker and grocer, Dorchester, Oxfordshire, Aug. 17, at half-past one, Sept. 20, at half-past twelve, Basinghall-st. Com. Fonblanque. Off. as. Stansfeld. Sols. Tayler and Collisson, 28, Great James-st. Bedford-row; and Curtis and Cooke, Abingdon. Petition, July 27.

Hartley, Mary (widow) and Henry, stationers and printers, Halifax, Yorkshire, Aug. 23 and Sept. 13, at eleven, Leeds. Com. Ayrton. Off. as. Hope. Sols. Stocks, Halifax; and Courtenay and Compton, Leeds. Petition, July 27.

Mercer, John, provision and cloth dealer, Wotton-under-edge, Gloucestershire, Aug. 17 and Sept. 14, at eleven, Bristol. Com. Hill. Off. as. Acraman. Sol. Salmon, St. Nicholas-chambers, Bristol. Petition, Aug. 5.

Nicholson, Joseph, ironmonger, Shotley-bridge, Durham, Aug. 17 and Sept. 16, at one, Newcastle-upon-Tyne. Com. Ellison. Off. as. Baker. Sols. Hoyle, Newcastle-upon-Tyne; Crosby and Compton, 3, Church-court, Old Jewry. Petition, July 27.

Reddell, John, brewer, Wellington Brewery, Wellington-st. Gravesend, Aug. 17, at half-past one, Sept. 20, at twelve, Basinghall-st. Com. Fonblanque. Off. as. Graham. Sol. Mount, 10, Clement's-lane. Petition, July 28.

Sandle, Joseph Parmenter, cattle dealer and market gardener, North Ockendon, Essex, Aug. 16 and Sept. 24, at two, Basinghall-st. Com. Fane. Off. as. Cannan. Sol. Towne, Devonshire-sq. Bishopsgate-st. Petition, Aug. 4.

Silbowden, John, auctioneer, Liverpool, Aug. 17 and Sept. 7, at eleven, Liverpool. Com. Perry. Off. as. Cazenove. Sol. Yates, jun. 20, Fenwick-st. Liverpool. Petition, July 30.

Winterbottom, Joseph, spinner and doubler, Huddersfield, Yorkshire, Aug. 23 and Sept. 30, at eleven, Leeds. Com. Ayrton. Off. as. Hope. Sols. Barker, Huddersfield; and Bond and Barwick, Leeds. Petition, July 29.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Bertram, J. ironmonger, first, 2s. Freeman, Sheffield.—*Cerrito*, J. merchant, first, 2s. 3d. Groom, London.—*Clark* and *Bleackley*, ironmongers, first, 3s. Fraser, Manchester.—*Cuff*, J. hotel and tavern keeper, first, 2s. 6d. Fraser, Manchester.—*Cuming*, R. H. bookseller, first, 1s. 8d. Stansfeld, London.—*Cundell*, J. publisher and printer, first, 3s. 3d. Stansfeld, London.—*Gibson*, R. ironmonger, second, 10½d. and a first and second, 1s. 10½d. Freeman, Leeds.—*Goodlere*, W. D. common brewer, third, 1s. Groom, London.—*Haynes*, S. wheelwright, first, 1s. 8d. Stansfeld, London.—*Hill*, J. wine merchant, Second and final, 8¾d. Freeman, Sheffield.—*Hinchliffe*, G. W. manufacturer, third and final, 8d. Freeman, Sheffield.—*Moon*, G. corn miller, first, 2s. 6d. Freeman, Leeds.—*Newham*, L. draper, first, 10d. Freeman, Sheffield.—*Nicholson*, J. surgeon, first, 1s. 11d. Freeman, Sheffield.—*O'Donnell*, J. grocer, first, 9d. Freeman, Sheffield.—*Roberton*, C. steel manufacturer, second and final, 1d. Freeman, Sheffield.—*Roberts*, T. wholesale stationer, third, 1s. 1d. Stansfeld, London.—*Shaw*, W. and S. timber merchants, final, 3¼d. Fraser, Manchester.—*Shelford*, J. butcher, third, 3s. 6d. Stansfeld, London.—*Turner*, J. draper and grocer, first, 1s. 10d. Groom, London.—*Ware*, C. saddler and harness maker, first on new proofs, 5s. Freeman, Leeds.—*Wilkinson*, H. D. silver plate dealer, third and final, 2¼d. Freeman, Sheffield.

Assignments for the Benefit of Creditors.

Gazette, July 27.

Best, J. and G. brickmakers, Framfield, Sussex, July 10. Trusts. T. Wallis, grocer, Framfield; and N. Kenward, farmer, Uckfield. Sol. J. G. Langham, jun. Uckfield.—*Haldane*, A. brewer, Devonport, July 14. Trust. W. Coombs, gent. Devonport. Sol. J. Gilbard, jun. Devonport.—*Kidston*, T. and *Jones*, J. fixture dealers, Bishopsgate-st.-without, June 30. Trusts. J. Tadloo, scale maker, Sun-st. Bishopsgate; W. Mayer, timber merchant, Bateman's-row, Shoreditch; and W. Hutchinson, surgical instrument maker, Sheffield. Sol. J. H. Taylor, South-st. Finsbury-square.—*Salmon*, W. T. draper and grocer, Messingham, Lincoln, July 10. Trusts. W. Sowerby and J. S. Robinson, farmers, Messingham. Sols. W. E. and J. Howlett, Kirton-in-Lindsey.

Gazette, July 30.

Carrall, E. St. Alban's-terrace, Kennington-road, Lambeth, widow of J. Carrall, printer and publisher, late of Milford-lane, Strand, July 15. Trust. W. W. Wilson, wholesale stationer, Cheapside. Sol. F. West, Gresham-st. City.—*Chretien*, J. box maker, Russia-court, City, July 26. Trusts. R. Jones, Commercial-road, Lambeth, and T. Sheffield, timber merchant, Adams-court, Old Broad-st. Sols. I. and W. Sheffield, Old Broad-st.—*Ellett*, W. plumber, painter, and glazier, Tenterden, Kent, July 24. Trusts. J. Bayley, cordwainer, and G. Miller, ironmonger, both of Tenterden. Sol. C. Shepherd, Tenterden.—*Gedrych*, M. draper, Cardiff, Glamorganshire, July 7. Trusts. T. Miles, draper, Cardiff, and E. M. Cole, warehouseman, Bristol. Sols. Leman and Humphreys, Bristol.—*Jones*, S. tailor and outfitter, Bristol, June 29. Trust. T. Ford, warehouseman, King-st. Cheapside. Sol. M. Alman, Bristol.—*Robinson*, J. shoe manufacturer, Northampton, July 13. Trusts. J. Wetherell and W. Williams, leather merchants, both of Northampton. Sol. W. Dennis, Northampton.—*Ross*, M. printer, Newcastle-upon-Tyne, July 24. Trusts. J. Milne, wholesale stationer, Edinburgh, T. P. Barkas, stationer, and W. Barkas, printer, Newcastle. Sols. M. and J. L. Forster, Newcastle.—*Stodart*, J. miller, Keyingham, Holderness, July 16. Trusts. J. Wray, farmer, Ottringham Marsh, Holderness; and G. Meadley, butcher, Keyingham. Sol. A. Dunn, Patrington, Holderness.—*Westby*, R. H. stationer, Acton, Middlesex, July 13. Trust. J. Clayton, jun. news agent, Strand. Sol. C. H. Hodgson, New-inn, Strand.—*Wilson*, F. wine merchant, Wells st. Oxford-st. and Grove-terrace, Kentish-town, July 17. Trusts. R. C. Wilson, Drury lane, and J. R. Reay, Mark-lane, wine merchants. Sol. H. Lewellin, Chancery-lane.

Partnerships Dissolved.

Gazette, July 23.

Barrson, J. and *Davies*, C. tobacconists, Ebury-st. Pimlico, July 12.—*Bayne*, J. and *Elleby*, E. B. merchants, Mark-lane, May 21.—*Braun*, H. and *Walford*, E. importers of foreign glass, Old Fish-st.-hill, July 21. Debts paid by Braun.—*Bunker*, W. and *Michelmore*, J. coal merchants, Totness, March 25.—*Crowther*, F. and *Holroyd*, W. fire brick and earthenware manufacturers, Ainleys, near Ellands, Halifax, July 19. Debts paid by Crowther.—*Cumming*, W. and *Carter*, T. spirit, porter, hop, and seed merchants, Kirkham, July 19. Debts paid by Cumming.—*Francis*, J., E. and B. bricklayers and lime burners, Chislehurst and North Cray, March 25, 1851.—*Gardner*, R. *Deane*, G. and *Youle*, F. Liverpool and Pernambuco, and *Gardner*, R. *Deane*, G. *Youle*, F. *Baines*, H. R. and *Gillmer*, J. S. Bahia, merchants and general commission agents, as regards Gardner, June 30. Debts by continuing partners.—*Gray*, W. S. and *Andrews*, G. H. architects, surveyors, &c. High-st. Camden-town, and Great Portland-st. March 1.—*Haydon*, C. and C. jun. linen drapers, Wandsworth, July 20. Debts paid by Haydon, jun.—*Heywood*, W. and *Delauney*, M. wood and iron turners and machinists, Manchester, July 21. Debts paid by Heywood.—*Holt*, G. and R. and *Goodfellow*, E. calico printers and warehousemen, Manchester, May 1. Debts paid by G. and R. Holt.—*Horton*, F. jun. and *Hart*, H. hop factors, High-st. Southwark, June 24.—*Irlam*, W. and *Hulme*, R. calenderers, makers up, and packers, Manchester, July 21. Debts paid by Irlam.—*Johnson*, C. and *Bickerstaff*, J. P. victuallers, Liverpool, July 22. Debts paid by Johnson.—*Knowles*, W. and *Case*, T. builders, carpenters, and joiners, Blenheim-passage, Saint John's-wood, July 3.—*Onions*, J. and *Callen*, A. W. patent steel manufacturers, Hydraulic Works, Surrey Canal-bridge, Kent-road, July 6. Debts paid by Onions.—*Palmer*, J. and W. farmers and shopkeepers, Old Buckenham, July 17.—*Poulton*, C. and G. warehousemen, Blackfriars-road, July 23.—*Phelps*, T. and J. drapers and grocers, Pembroke and Tenby, June 1. Debts paid by T. Phelps.—*Rea*, J. and D. bakers, Union-st. Middlesex Hospital, and Great Titchfield-st. Marylebone, July 5.—*Robinson*, T. *Collins*, S. and *Hargreaves*, J. linen drapers, Bradford, July 21. Debts paid by Hargreaves.—*Robson*, T. and W. builders and bricklayers, Darlington. Debts paid by T. Robson.—*Scovell*, W. G. and *Howes*, C. J. fish salesmen, Saint Benet's-place, Gracechurch-st. and Billingsgate, Jan. 1.—*Stead*, T., W., and J. drysalters, Heckmondwike, Birstal, Dec. 31.—*Taylor*, J. *Robinson*, G. and *Ohmerod*, J. H. fancy manufacturers, Rastrick, Halifax, July 21. Debts paid by J. Taylor and G. Robinson.—*Wade*, J. sen., J., J. jun. and C. D. worsted spinners and stuff manufacturers, Bradford and East Morton, as regards J. Wade, sen. July 17.—*Williamson*, J. and *Hamar*, R. machine brokers, Manchester and Salford, July 20.

Gazette, July 27.

Banson, J. and *Davies*, C. tobacconists, Ebury-st. Pimlico, July 22.—*Brooks*, H. and J. cheesemongers, Shoreditch, July 14.—*Brown*, S. and *Figgis*, S. drysalters and paper agents, London wall, June 14. Debts paid by Brown.—*Burton*, A. and *Dyke*, R. J. stonemasons, Ashford, July 23. Debts paid by Burton.—*Castle*, J. and *Turner*, W. H. surgeons, apothecaries, and accoucheurs, Bermondsey-square, June 30. Debts paid by Turner.—*Curtis*, J. P. *Keeley*, J. and *Williams*, E. tailors, Fleet-st. and the Strand, July 21.—*Davies*, J. and *Rigby*, W. ale and porter dealers, Liverpool, Feb. 18.—*Harvey*, C. J. *Sherwood*, B. and N. *Harvey*, J. and *Robinson*, T. the Vigra and Clogau Copper Mining Company, as regards C. J. Harvey, June 24.—*Husband*, J. E. C. and *Royle*, T. V. attorneys, Chester, July 24.—*Insole*, J. *Jones*, T. W. and *Kimberley*, T. H. sadlers' ironmongers, Birmingham, June 24.—*Jones*, T. and *Howel*, W. grease manufacturers and oil merchants, Tipton, July .. Debts paid by Howels.—*Lawrence*, J. and J. cabinet makers, Southampton, April 13.—*Lawton*, J. *Rhodes*, J. and *Robinson*, J. cotton waste dealers, Oldham, July 22.—Debts paid by Rhodes and Robinson.—*Luck*, A. H. and

Debts paid by Pinchin.—*Preece*, E. and *Price*, P. engineers and ironfounders, Birmingham, July 17. Debts paid by Preece.—*Proctor*, J. *Horley*, E. A. and *Taylor*, J. wine and spirit merchants, Liverpool, July 1.—*Ransome*, F. and *Parsons*, G. patentees and manufacturers of artificial stone, coal and coke merchants, and general commission agents, Ipswich, July 1.—*Taylor*, A. and *Wilson*, J. coal merchants, Halifax, July 24. Debts paid by Taylor.—*Whitworth*, J. and *Holland*, P. H. London Street Cleansing Company, June 24. Debts paid by Whitworth.

Gazette, July 30.

Aman, G. J. and *Kroeber*, F. merchants, Liverpool, July 28.—*Beckingham*, E. E. and *Wheeler*, G. corn and provision merchants, Newport, July 24.—*Bellerby*, W. and T. B. painters, gilders, and paperhangers, Bootham. Debts paid by Walker, solicitor, Bootham.—*Bibbons*, W. *Blagden*, R. and *Stovin*, J. C. merchants, Savage-gardens, Tower-hill, as regards Stovin, July 29. Debts paid by Bibbons and Blagden.—*Clegg*, J. and *Birch*, W. silk small

Darwen, Sept. 27. Debts paid by Thornber.—*Hill*, A. *Hey*, E. and *Stanworth*, J. stone merchants, Bingley, July 27. Debts paid by Hill and Hey.—*Holt*, J. and *Rawlinson*, J. tea dealers and drapers, Bury, July 20. Debts paid by Rawlinson.—*James*, S. and *Nunns*, W. tea dealers and grocers, Church-st. Hackney, July 26.—*Kilborn*, R. and V. drapers, Derby, July 22.—*Lucas*, T. *Gwyer*, E. *Lucas*, J. and E. T. merchants, Bristol, July 1, 1851.—*MacFarlane*, A. and *Ellis*, J. rectifiers and commission merchants, Liverpool, July 27.—*Machin*, S. and *Habgood*, J. jun. iron and metal dealers, Bristol, July 26. Debts paid by Habgood.—*Major*, W. *Gill*, F. J. and R. manufacturers, London and Manchester, Bury-lane and Middleton, as relates to Major, July 1. Debts paid by F. J. and R. Gill.—*Maltster*, W. and *Bull*, W. zinc workers, St. George's-place, Camberwell, July 26.—*Mason*, T. F. and *Bertrand*, C. silk dyers, Macclesfield, July 23.—*Poynton*, E. H. and *Hathaway*, R. I. chemists and druggists, Bristol, July 30. Debts paid by Hathaway.—*Sawtell*, F. and *Winstanley*, J. commission agents, Friday-st. Cheapside, July 29. Debts paid by Sawtell.—*Spreat*, J. and J. H. jewellers and electro platers, Manchester, July 24. Debts paid by J. H. Spreat.—*Stiff*, T. *Beddow*, R. O. and *Stiff*, J. B. starch manufacturers, Bristol, as regards J. B. Stiff, July 28.—Debts paid by T. Stiff and Beddoe.—*Wilks*, E. and *Bullock*, E. M. schoolmistresses, Addison-road, Kensington, June 24.

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TO

POINTS REPORTED DURING THE LAST ELEVEN WEEKS,

(From No. 477 to No. 487, and p. 129 to p. 288, inclusive).

DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES."

		AUCTIONEER	WHEN ADVERTISED	PROPERTY.
August 10	Mart.	Smith and Son.	July 24	Freehold Mansion, Totteridge, Barnet.
	Ibid.	Ditto.	July 24 and Aug 7.	Freehold Estates, Rye, Sussex
	Ibid.	Ditto	Aug. 7.	Freehold Estate and Manor, Rye, Sussex.
	Ibid.	Palmer.	Ibid.	Ground Rent of 78l. per ann. Stratford, Essex
	Ibid.	Ditto.	Ibid.	Three Villa Residences, Westbourne-park-villas

NECROLOGY.

OF LEGISLATORS, MAGISTRATES, AND LAWYERS.

MR. GRANGER, M.P. FOR DURHAM CITY.—It is our melancholy duty to record the death of Mr. Granger, the valuable member for the city of Durham. The melancholy event took place in York yesterday (Thursday) very suddenly. The hon. member had been on the northern circuit at the Durham assizes, and arrived in York on Saturday evening. Feeling himself unwell, he resolved to remain quiet in the ancient city of York for a few days, hoping that a relaxation from the excitement of business would be beneficial. He consulted Mr. B. Dodsworth, a surgeon of considerable practice, and he continued to improve under his treatment until Wednesday, when a marked change for the worst presented itself. Dr. Simpson, an experienced physician, was called in, but the disease baffled every effort, and on Thursday morning, at eight o'clock, the hon. member breathed his last at Scawin's Hotel, near the railway station, where he had taken apartments. Mr. Granger was called to the Bar in 1830. He was a Queen's counsel, a bencher of the Inner Temple, and recorder for the borough of Hull. He has represented Durham in three parliaments, having been elected in 1841, and again in 1847, and a third time in 1852. He was an unsuccessful candidate at the elections in 1835 and 1837. The remains of the hon. member will be removed from York this (Friday) morning for interment in the vaults of the Temple Church.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

CLARKE.—On Monday, the 2nd inst. the wife of William Tredway Clarke, esq. at 30, Great James-street, Bedford-row, of a son.

HUMPHREYS.—On the 1st inst. the wife of J. J. Hamilton Humphreys, esq. barrister-at-law, at Miltown-house, in Miltown house, in the county of Tyrone, Ireland, of a daughter.

LLOYD.—On the 30th ult. Mrs. Henry Lloyd, at 22, Great James-street, Bedford-row, of a daughter.

OTWAY.—On the 2nd inst. the wife of Arthur Otway, esq. in Prince's terrace, Hyde-park, of a son.

MARRIAGES.

BELL, John William, of Craven-street, Strand, and of Chertsey, Surrey, solicitor, to Louisa Helen, youngest daughter of the late Mr. Chorley, of Bridgewater, Somersetshire, on the 29th ult. at St. James's, Piccadilly.

BOURNE, James Samuel, eldest son of Joseph Green Bourne, esq. of Dudley, to Ellen Grace, third daughter of the late Thomas Yates, esq. of Welshpool, on the 20th ult. at the parish church of Sutton.

BRIDGWATER, John Pugh, esq of the Middle Temple, to Eliza Ann, only daughter of the late William Rawling, esq. of Mount-street, Grosvenor-square, on the 31st ult. at St. George's, Hanover-square.

CAMPBELL, Captain Adam, of the 94th regiment, now on duty in India, eldest son of Colonel Charles Stuart Campbell, C.B. of the 1st (or Royal) regiment, to Mary Ann, only daughter of Thomas Harding, esq. solicitor, Birmingham, on the 3rd inst. at St. Mary's, Bryanstone-square

COX, Colonel William, K.H. Assistant Quarter-Master General, Limerick district, to Matilda, daughter of James Hay, esq writer to the signet, on the 29th inst. at St. John's chapel, Edinburgh.

DUIGNAN, Mr William Henry, of Walsall, solicitor, to Mary, youngest daughter of Mr. William Minors, of Fisherwick park, Staffordshire, on the 4th inst. at St. Mary's church, Lichfield.

HASELDEN, John Thompson, esq. of Rock-ferry, Cheshire, to Margaret Fanny, second daughter of the late Randolph Horne, esq. Staines, Middlesex, on the 4th inst. at the parish church, Staines.

LANE, Michael B. esq. of Londonderry, solicitor, to Mary Isabel, eldest daughter of the late Robert Hills, esq. Commander in the Royal Navy of Portugal, and formerly of South Hill, Henley-on-Thames, on the 3rd inst. at St. Mary's, Clapham, Surrey.

LOWTHER, Captain Henry, M.P. 1st Life Guards, eldest son of the Hon. Colonel Lowther, M.P. to Emily Susan, eldest daughter of St. George Caulfield, esq of Wentworths, Surrey, on Saturday, the 31st ult. at St. Paul's, Knightsbridge.

MOON, James, esq. solicitor, of 150, Piccadilly, eldest son of John Moon, esq. of 61, Green-street, Grosvenor-square, to Ann Horn Scott, eldest daughter of J. W. Scott, esq. of St. David's-hill, Exeter, on the 31st ult. at St. James's, Westminster.

FRASER, Douglas, esq. barrister-at-law, Canada West, to Jessie, second daughter of the late Simeon Fraser, esq. of Ford and Garald, on the 29th ult. at Edinburgh.

DEATHS.

CLARK, Joseph, esq. many years magistrate of the borough of Maidenhead, Berks, on the 2nd inst. at his residence, Altwood-house, near Maidenhead, aged 62.

GORST, Margaret, relict of the late John Gorst, esq. of Preston, Lancashire, on the 4th inst. aged 76.

KEWELL, William, esq. of the firm of Gregson, Kewell, and Gregson, of Angel-court, Throgmorton-street, London, solicitors, on the 30th ult. at his residence, 24, Keppel-street, Russell-square, aged 58.

UMBERS, Herbert William, youngest son of the late Mr. William Umbers, of Stratford-on-Avon, and of Mrs. Umbers, of Newstead-house, Leamington, on the 24th of May, off San Francisco, aged 18.

CONTENTS.

To Readers and Correspondents.

The delay in the publication of the part now due of Hughes's Concise Precedents in Modern Conveyancing *has arisen thus. It occurred to us a short time since that the work might be made still more practically useful to Solicitors if closed with a collection of recitals, covenants, provisos, and other* parts of deeds, *arranged alphabetically, so that the form required may be readily found. Mr. Hughes has adopted the suggestion, and the work has, therefore, been unavoidably delayed for their preparation. But the great value and utility of such a collection will, we hope, be deemed fully to compensate the subscribers and purchasers for a few weeks' postponement of publication.*

"O. P."—*It is not correctly stated in the book alluded to. The grounds of appeal are not* required *to be so delivered, it is only desirable that they should be so sent.*

"H. S. W."—*We are not aware that a third edition of the work named is in progress. The* latest *work on the subject is the Second Edition of* Hughes's Practice of Sales, *which is, in fact, a treatise on the Law of* Real *Property* as it is.

"R. W. U." *Thanks for the corrections in the list of Lawyer M.P.'s The additions have now been made, and we hope will be found correct. The compiler appears to have omitted the Irish returns.*

THE LAW TIMES.

SATURDAY, AUGUST 14, 1852.

THE NEW CHANCERY PRACTICE.

AMONG the intelligence for the Practitioner that we are wont to gather into the department of the LAW TIMES entitled, *The Lawyer,* will be found a report of a case lately heard in the Rolls Court, and which has a particular interest just now, because it is an illustration of the practice of the Equity Courts, as it *will be* henceforth. It will be seen that the witnesses were, *by consent,* examined *vivâ voce,* on the floor of the Court, thus making the first trial of the great experiment of which we are so soon to witness the general adoption. In this instance it was entirely successful.

The report is placed among news, and not among the regular reports, because the case decided no point of law, and, therefore, has no permanent value. Its interest is wholly temporary, due to the peculiar circumstances stated above.

MORTGAGES.

OUR correspondent, Mr. GIBSON, who used such harsh terms in speaking of a suggestion which was at least harmless, returns to the charge and puts a case which he challenges us to answer.

"A. mortgages to B. for 500*l.* B. registers his mortgage and supplies ten certificate-holders or submortgagees of 50*l.* each. These certificates are mortgages in *fact,* or else they are no security more than a bill of exchange. If they are mortgages, then, of course, each certificate-holder should have a power of sale, a right of foreclosure, and also the rents and profits."

Herein lies our correspondent's fallacy; the certificates are *not* mortgages nor submortgages, but only representatives of certain sums of *money* that are *secured* by a certain deed and registry. They are issued for a definite term, say of one, two, three, or more years, and during that period they have currency; when they become due, the holder for the time being presents them at the registry office, and if they be not then paid, the property is sold, and the debt, interest and costs, are paid out of the proceeds.

They will be better securities than bills and notes, because, in *addition* to the personal security of those who deal with them (which is all that bills and notes give, and which yet makes them current at a low rate of interest) the proposed certificates will have the further security of a charge upon land.

Practically they would be neither more nor less than bills of exchange secured, in the ultimate resort, by solid acres, and therefore by so much better than bills that are *unsecured.*

MILITIA.

THE Militia is to be embodied in October. Clerks to lieutenancies and deputy lieutenants are puzzled what they are to do, and we have many applications, from all parts of the country, for information. Mr. SAUNDERS, who has laboriously collected in a little volume all the statutes under which the Militia is to be raised, and by which it will be regulated,(a) was desirous to present to his readers a chapter of instructions as to the proceedings to be taken for the purpose. He was unable to do so, because the statute is silent upon the subject. Never was there so vague an Act. Everything is left to the Government, and as yet they have issued only some almost equally vague instructions to the Lords Lieutenant. But being desirous of helping our correspondents if we could, we applied to Mr. SAUNDERS, as having mastered the statutes in the preparation of his book upon them, to favour us with some sketch of the course to be taken in order to *form* the new Militia. His reply will be the best answer to our correspondents. He says,—

I do not know what instructions I c[illegible] give. No proceedings are set forth in t[illegible] it would be idle for me to invent a course of [illegible]ceeding, when there are no data from which to s[illegible]. You will perceive that the operation of the first Act, the 42 Geo. 3, c. 90, is suspended in all its material points as regards *raising* the militia, until there is a failure in getting men by voluntary enlistment, and in all human probability it always will be suspended, particularly since the altered feeling upon the subject of a militia. So that all that the militia functionaries are called upon to do now, is that which is contained in the new Militia Act of the last Session. (15 & 16 Vict. c. 50.)

Now, under this latter Act, it is provided in sec. 11, in general terms, that the lieutenants of counties, at such times, &c. as the Queen shall direct, are to direct their deputy-lieutenants to proceed to raise and enrol volunteers to serve for the term of five years; and such deputy-lieutenants are forthwith to proceed to raise such volunteers, under the regulations of the Secretary-at-War. Sec. 15 then states, that the volunteers are to be examined and approved according to such regulations as shall be made by the Secretary-at-War. Sec. 17 enacts, that the deputy-lieutenants are to transmit the list of volunteers to the clerk of general meetings.

Now, this is really *all* that is enacted upon the subject; and how, therefore, can I possibly give you any instructions or directions. The Act seems to contemplate that the directions and instructions are to be framed by the Secretary-at-War; and it does appear that something of this sort has been done, and sent round to the different lord lieutenants.

At present there is no form of practice—the Act is very vague upon the subject, and all appears to be left to the Secretary-at-War. I am afraid great confusion will arise in carrying out so very vague an Act. All I know is, that the Privy Council have directed a certain number of voluntary militia-men to be raised in each county, and that the lord lieutenants are directed to raise them; but the Act does not say what particular course is to be pursued for the purpose. No doubt the Secretary-at-War has or will give a body of instructions upon the subject, but it is impossible for me to lay down any rules or course of proceeding.

As the *statutes* will not help us, we have now sought the aid of one who will be informed of *the doings* of the Government. Mr. FOOTE, of Swindon, who is, we believe, acting clerk to a Deputy Lieutenancy, and whose name and thoroughly *practical* writings are so well known to our readers, has promised to give them all the intelligence he can procure as to the business of the Militia, and to keep them fully informed as to the proceedings his brother-officers will be required to take in relation to it.

We have collected in the department of *The Magistrate,* all the news as to the Militia, and we shall continue to do so.

LAWYERS IN PARLIAMENT.

THE List published last week was not a complete one. It omitted one English member,

(a) *The Militia Laws; comprising all the Statutes relating to the Militia, with Notes, and copious Index.* By T. W. SAUNDERS, Esq. Barrister-at-Law, Author of "The Duties of Magistrates," &c. Crockford. 7s. 6d.

Mr. GEORGE HADFIELD, M.P. for Sheffield, who is an Attorney practising at Manchester, and almost all the Irish members, and it seems that Ireland has returned a much greater proportionate number of Lawyers than England. The *completed* list, therefore, is as follows. Those marked with an asterisk are, or have been, Solicitors :—

Adair, Hugh Edward, *Ipswich.*
Aglionby, Henry Aglionby, *Cockermouth.*
Armstrong, Rt. Baynes, Q.C. *Lancaster.*
Atherton, William, Q.C. *Durham (City).*
Baines, Rt. Hon. Matthew Talbot, Q.C. *Leeds.*
Ball, J. *Carlow.*
Bankes, Right Hon. George, *Dorsetshire.*
*Barrow, Wm. Hodgson, *Nottinghamshire (S).*
*Benbow, John, *Dudley.*
Bethell, Richard, Q.C. *Aylesbury.*
Bland, Loftus, H. *King's County.*
Bouverie, Hon. Edward P. *Kilmarnock.*
Bowyer, Geo. *Dundalk.*
*Bremridge, Richard, *Barnstaple.*
Brockman, Edward Drake, *Hythe.*
Butt, George Medd, Q.C. *Weymouth.*
Butt, Isaac, *Youghall.*
Cabbell, Benjamin Bond, *Boston.*
Cairns, Hugh M'Calmont, *Belfast.*
Carter, S. *Tavistock.*
Chambers, Montagu, Q.C. *Greenwich.*
Chambers, Thomas, *Hertford.*
Cobbett, John Morgan, *Oldham.*
*Cobbold, John Chevallier, *Ipswich.*
Cockburn, Sir Alexander James Edmund, Q.C. *Southampton.*
Cogan, W. H. F. *Kildare (County).*
Collier, Robert P. *Plymouth.*
Coles, Henry Beaumont, *Andover.*
Crowder, Richard Budden, Q.C. *Liskeard.*
*Davison, R. *Belfast.*
Deedes, W. *Kent.*
Duffy, Chas D. *New Ross.*
Ewart, William, *Dumfries (District).*
Farrer, James, *Durham (South).*
Fitzgerald, John D., Q.C. *Ennis.*
Follett, B. Spencer, Q.C. *Bridgewater.*
Forster, Sir G. M. Bart. *Monaghan (County).*
*Freshfield, J. W. *Penryn* and *Falmouth.*
George, John, Q.C. *Wexford (County).*
Gipps, H. P. *Canterbury.*
Goold, Wyndham, *Limerick (County).*
Gower, Hon. F. Leveson, *Stoke-on-Trent.*
Granger, Thos. Colpitts, Q.C. *Durham (City).*
Grogan, Edward, *Dublin (City).*
*Hadfield, George, *Sheffield.*
Hayter, Right Hon. Wm. Goodenough, Q.C. *Wells.*
Headlam, Thomas Emerson, *Newcastle-upon-Tyne.*
Hildyard, Robert Charles, Q.C. *Whitehaven.*
Hogg, Sir James Weir, bart. *Honiton.*
Ingham, R., Q.C. *South Shields.*
Inglis, Sir Robert Harry, bart. *Oxford (University).*
Keating, H. S., Q.C. *Reading.*
Kelly, Sir Fitzroy (Sol.-Gen.), *Suffolk (East).*
Kennedy, Tristram, *Louth (County).*
Keogh, William, Q.C. *Athlone.*
*Laslett, Wm. *Worcester.*
*Layard, Henry Austen, D.C.L. *Aylesbury.*
Lefevre, Right Hon. Charles Shaw, *Hants (North).*
Lowe, Robert, *Kidderminster.*
Macaulay, Kenneth, Q.C. *Cambridge (Borough).*
Macaulay, Right Hon. T. B. *Edinburgh (City).*
M'Mahon, Patrick, *Wexford.*
Maguire, John F. *Dungarvon.*
Malins, Richard, Q.C. *Wallingford.*
Massey, W. N. *Newport.*
Mills, Arthur, *Taunton.*
Monck, Right Hon. Viscount, *Portsmouth.*
Moncreiff, Right Hon. James, *Leith.*
Moore, R. S. *Armagh.*
*Mullings, Joseph Randolph, *Cirencester.*
Murphy, Francis Stack, S.L. *Cork (City).*
*Murrough, John Patrick, *Bridport.*
Napier, Joseph (Attorney-General, Ireland), *Dublin University.*
*Neeld, Joseph, *Chippenham.*
*O'Brien, Cornelius, *Clare.*
O'Brien, Patrick, *King's County.*
O'Connell, Maurice, *Tralee.*
*Peel, Frederick, *Bury (Lancashire).*
Phillimore, J. G., Q.C. *Cheltenham.*
Phinn, Thomas, *Bath.*
*Potter, Robert, *Limerick.*
Pugh, David, *Montgomery (District).*
Roebuck, John Arthur, Q.C. *Sheffield.*
*Sadleir, John, *Carlow (Borough).*
Scully, Francis, *Tipperary.*
Scully, Vincent, Q.C. *Cork (County).*
Seymour, William Digby, *Sunderland.*
Shee, William S. L. *Kilkenny (County).*
Stapleton, John, *Berwick.*
Stuart, John, Q.C. *Bury St Edmund's.*
Tancred, Henry William, Q.C. *Banbury.*
Thesiger, Sir Frederick, *Stamford.*
Villiers, Hon. C. P. *Wolverhampton.*
Vivian, John Ennis, *Truro.*
Walpole, Right Hon. Spencer Horatio, Q.C. *Midhurst.*
Whiteside, Right Hon. James (Solicitor-General, Ireland), Q.C. *Enniskillen.*
Wigram, Loftus Tottenham, Q.C. *Cambridge (University).*
Wood, Sir William Page, *Oxford (City).*
Wortley, Right Hon. James Archibald Stuart, Q.C. *Buteshire.*

Thus, it seems, that there are ninety-nine Lawyers in the new House of Commons, of whom eighty-four are or have been Barristers, and fifteen are or have been Solicitors. Seventy-two Lawyers were unsuccessful, making the total number of Lawyer candidates at the last election no less than 156!

THE NEW COMMON LAW PRACTICE.

VII. PLEADING.

We come now to describe the alterations that have been made in *the language and form of pleading.*

In this series of papers our purpose is only to make our readers acquainted with the law *as it is;* we have no purpose in this place to consider the propriety of the changes that have been effected, nor to throw out any suggestion for further improvement. In articles devoted to the consideration of the law as it should and might be, we have already expressed our regret that the changes in the system of pleading were not more extensive, and that so much of the old leaven has been permitted to remain.

The commission had the choice between two courses; either to sweep away entirely the old system and construct a new one, or to endeavour to amend the existing system by lopping off some of its abuses. They preferred the latter course; consequently, as they have proposed, and the Legislature has adopted it, the system of pleading in the Common Law Courts remains in *substance* unchanged; it is only altered in some of its details. The reader must remember this, in order that the alterations so made may be intelligible to him.

The first aim of the commissioners was to simplify and to abbreviate pleadings; the second, to prevent justice being defeated by defects in form; the third, to secure, as far as possible, that the very issue intended to be tried should be raised upon the record.

Accordingly the statute commences its provisions relative to pleading, by *abolishing all needless and fictitious averments.* Such are—

1. Statements that need not be proved, as time, quantity, quality, and value, where these are immaterial.
2. Statements of losing and finding, and bailment in actions for goods, or their value.
3. Statements of acts of trespass being committed with force and arms, and *contra pacem.*
4. Statements of promises that need not be proved, as in *indebitatus* counts, and mutual promises to perform agreements.

Demurrers are still permitted, and indeed they could not well be dispensed with, for properly they *mean* nothing more than the assertion by the party that, "granting all the facts stated by the other party to be true, he is not entitled in law to maintain his action against me: they make out no case in law." From the gross abuses of the privilege of demurrer which had crept in under the old practice, where it was employed, not so much to raise a question of law upon *the facts* as to defeat the suitor by objections to the pleadings, the name of demurrer had come to be held in abhorrence, and it was deemed to be the source of all mischief. The new practice, however, restores it to its original and proper function, that of raising the legal question upon *the case,* as disclosed by the pleadings, and provides that either party may object by demurrer to the pleading of the opposite party, on the ground that such pleading does not set forth sufficient ground of action, defence, or reply; but the Court is to give judgment upon such demurrer *according as the very right of the cause and matter in law shall appear unto them,* without regarding any defect for lack of *form;* and no judgment is to be arrested for lack of form.

But *special demurrers,* which were raised upon the form of the pleadings, are *wholly abolished.*

Pleadings framed to *embarrass* or *delay* may be struck out or amended by the Court or a Judge, on the application of the opposite party.

Rules to declare, plead, &c. are *abolished,* and a *notice* is substituted requiring the other party to declare, plead, &c. within four days.

Pleadings are to be *entitled* of the proper Court, and of the *day* and *month when actually pleaded,* and entered in the record under the date when the same took place, unless otherwise specially ordered by the Court.

Profert and Oyer are abolished, and instead of them, the party pleading in answer to any pleading, in which any document is referred to, may set out the whole or any material part of it, and which shall be deemed part of the pleading.

Performance of conditions precedent may be averred generally; but they may *not* be *denied* generally, but the party denying must state the particular condition the performance of which he means to contest.

VIII. THE DECLARATION AND PARTICULARS OF DEMAND.

Plaintiff must *declare* within *a year* after the writ is returnable.

The Act prescribes *the form* of the commencement and conclusion of the declaration.

It is to begin thus :—

"A. by B. his attorney, sues C. for," &c.

It is to conclude thus :—

"And the plaintiff claims £ ."

The only exception is in detinue, which is to conclude thus :—

"And the plaintiff claims a return of the said goods, or their value, and £ for their detention."

After a plea of *nonjoinder,* the *declaration* is to commence thus :—

"A. by B. his attorney, sues C. and D. which said C. has heretofore pleaded in abatement the nonjoinder of the said D."

In actions for *libel* or *slander,* the plaintiff may aver that the words were used in a defamatory sense, specifying that defamatory sense without any prefatory averment to shew how the words were used in that sense, and the denial of the libel shall put that averment in issue, and the declaration is to be sufficient where the words set forth shew a cause of action, with or without the alleged meaning.

IX. THE PLEA.

Rules to plead are abolished: the notice to plead indorsed on the declaration or delivered separately is to be sufficient.

If the defendant is within the jurisdiction, the time for pleading in bar is within eight days, unless the Court or a Judge should extend the time, and notice to that effect; otherwise judgment may be indorsed on the declaration or delivered separately.

Express colour, special traverses, allegation of *actionem non, prayer of judgment,* allegation of *precludi non, are abolished.*

The plea is to commence thus :—

"The defendant, by A. his attorney, says that [*stating the defence.*]"

If more pleas than one, the commencement is to be thus :—

"And for a second plea the defendant says."

And if pleaded to part only, then it is to be thus :—

"And for a second plea to [*stating to what it is pleaded*], the defendant says that," &c.

It is not to be necessary to state that it is pleaded by leave of a Court or Judge, or according to the form of the statute.

But *every* such plea, avowry, or cognisance, is to be written in a *separate paragraph,* and *numbered.*

A defence arising after action brought is to be pleaded according to *the facts,* without any formal *commencement* or conclusion. If the plea does not state whether the defence arose before or after action, it shall be deemed to be a plea of matter arising before action.

Instead of the plea *puis darrein continuance,* the same defence may be pleaded, with an allegation that the matter arose after the last pleading; and it may, when necessary, be pleaded at Nisi Prius between the 10th of August and the 24th of October. But it must be accompanied with an *affidavit* that the matter arose within eight days next before the pleading thereof, unless the Court or a Judge shall otherwise order.

Payment into court by the defendant by way of compensation or amends is to be permitted in all actions *except*—

1. Assault and battery.
2. False imprisonment.
3. Libel and slander.

4. Malicious arrest and prosecution.
5. Criminal conversation.
6. Seduction.

And such payment is to be pleaded thus:—

"The defendant, by A. his attorney, brings into court the sum of £ , and says that the said sum is enough to satisfy the claim of the plaintiff in respect of the matter herein pleaded to."

No rule or order is to be required to pay money into court, but it is to be paid to the proper officer of the court, who is to give a receipt for the amount on the margin of the plea, and it is to be paid out to the plaintiff or his attorney on a written authority from the plaintiff on demand.

After payment into court, plaintiff may *reply* by accepting it in full satisfaction and discharge, and then may tax his costs; and, in case of nonpayment thereof within forty-eight hours, may sign judgment for the same, or he may reply that the sum so paid is not enough to satisfy his claim.

We shall proceed with this sketch of the new practice of pleading next week.

NEW CHANCERY PRACTICE.(a)

HAVING on a former occasion noticed the abolition of the office of Master in Chancery, and the duties which the present Masters will have to perform, in winding up the business of their respective offices, we may now proceed with some of the other provisions of the Act, 15 & 16 Vict. c. 80.

And first, with regard to the judges sitting at chambers to perform the duties which formerly devolved upon the Masters. From and after the first day of Michaelmas Term, 1852, the MASTER of the ROLLS and the VICE-CHANCELLORS are, in conjunction with their court business, to sit at chambers in rooms attached to the courts, for the dispatch of such of the business of the court as can, without detriment to the public advantage, arising from the discussion of questions in open court, be heard in chambers, at and during the times to be fixed on by them respectively (secs. 11, 12); and they are to have the same power and jurisdiction as if they were sitting in open court (sec. 13); and the orders made by them in chambers are ordinarily to be drawn up by their *Clerks, or*, if they so direct it, by the *Registrar*, whose attendance at chambers may be required for that purpose (sec. 14); and the orders so made at chambers are to have the same effect as orders of the Court of Chancery, and may be signed and enrolled in the like manner (sec. 15).

For the purpose of assisting in the general business of the court, the MASTER of the ROLLS and the VICE-CHANCELLORS respectively, with the approbation of the LORD CHANCELLOR, are each to appoint two Chief Clerks (holding office during good behaviour, sec. 21), to be respectively attached to each Judge and his successors (sec. 14), but no person can be appointed a Chief Clerk unless he shall *have been a Chief Clerk* to one of the Masters in Ordinary of the Court, *or have been admitted on the Rolls of Solicitors or Attorneys in one of the Courts at Westminster Hall, and practised in such capacity for the period of ten years immediately preceding his appointment.* Mr. GEORGE WHITING, Mr. HENRY LEMAN, and Mr. CHARLES PUGH, at present Chief Clerks of the Masters, are appointed by the Act, Chief Clerks of three of the Judges (sec. 17.) The Judge of each Court has also power to appoint a junior Clerk (holding office during the pleasure of the Judge) to each Chief Clerk of his Court (secs. 18 and 22). The LORD CHANCELLOR has power to remove any person accepting office under the Act who engages in any employment, or receives any sum of money or benefit other than his salary, or what he is allowed to take for the performance of his duties, or if, having been a solicitor or attorney, *he shall directly or indirectly receive or secure to himself any continuing benefit from any business or firm in which he may have been engaged previously to his appointment* to such office, and a person so removed will be rendered incapable of holding any office or employment in the Court (sec. 19). And every solicitor or attorney accepting office under the Act must cease to be an attorney and solicitor, and procure himself to be struck off the rolls (s. 20).

Both the Chief and Junior Clerks are to be under the *control* of the Judge to whose Court he is attached, and are to attend at such places during such times and for such hours in each day, and perform such duties, as such Judge shall from time to time direct (sec. 23), and they are to be subject to the same prohibitions, prosecutions, &c. as are imposed by 3 & 4 Wm. 4, c. 94, with respect to officers of the Court of Chancery (sec. 24). And the LORD CHANCELLOR, with the concurrence of the MASTER of the ROLLS and VICE-CHANCELLORS, or any two of them, may, by order, *without stating any cause*, remove any Chief Clerk to be appointed under the Act from his office. (Sec. 25.)

We now come to a very important part of the Act, viz. that which relates to the business to be disposed of by the Judges in chambers. It is to consist of such of the following matters as the Judge shall from time to time think may be more conveniently disposed of in chambers than in open court, viz.:—

- For time to plead answer or demur.
- For leave to amend bills or claims.
- For enlarging publication.
- For the production of documents relating to the conduct of suits or matters.
- As to the guardianship and maintenance of infants.
- On matters connected with the management of property.
- On such other matters as each such Judge may from time to time see fit, or as may from time to time be directed by any general order of the Lord Chancellor.

(Sec. 26.)

And any of the Judges when sitting in open court may adjourn, for consideration in chambers, any matter which he may consider can be more conveniently disposed of there; or when sitting in chambers may direct any matter to be heard in open court which he may think ought to be so heard. (Sec. 27.)

The mode of proceeding before the Judges at chambers is to be by summons, and as near as may be according to the form now adopted by the Judges of the Superior Courts of Common Law when sitting at chambers. (Sec. 28.)

Sole power is given to the Judges (subject to any rules to be made by the Lord Chancellor) to order what matters and things are to be investigated by their Chief Clerks, either with or without their direction, during their progress, and what matters and things are to be heard and investigated by themselves; and in particular if the Judge so direct, his Chief Clerks are *to take accounts* and make *such inquiries* as have been usually prosecuted before the Chief Clerks of the present Masters, and the Judge is to give such aid and directions in such accounts and inquiries as he may think proper, subject to the right provided for in a subsequent section (sec. 33), for the suitor to bring any particular point before the Judge himself (s. 29).

For the purpose of any proceedings directed by the Judges, each Chief Clerk is to have full power to issue advertisements, to summon parties and witnesses, to administer oaths, to take affidavits and acknowledgments (other than acknowledgments by married women), to receive affirmations, *and, when so directed by the Judge* to whose Court he is attached, to examine parties and witnesses, either upon interrogatories or vivâ voce, as such Judge shall direct (sec 30); and parties and witnesses so summoned neglecting to attend, shall be liable to process of contempt; and for false swearing or affirming, to the same penalties, punishments, and consequences, as if it had taken place before any person *now* by law authorised to administer oaths, to take affidavits, and to receive affirmations (s. 31).

No particular form is required for the directions to be given by any of the Judges to the Chief Clerk, as to any proceedings before him; and the Chief Clerk is to state the result in the shape of a short certificate to the Judge, *but not* in a formal report, *unless* the Judge shall so direct; and the Judge, if he approve of the certificate or report, is to sign it, in testimony of his adoption of it (sec. 32). No exceptions are to lie to any certificate or report, although signed and adopted by the Judge, but any party *either during* the proceedings before the Chief Clerk or *upon such time after* their conclusion and *before* the signature and adoption of the certificate or report, as the LORD CHANCELLOR shall by general order direct, is to be at liberty to take the opinion of the Judge upon *any particular point or matter* arising in the course of the proceedings, or *when the result* of the whole proceeding when it is brought by the Chief Clerk to a conclusion (sec. 33). When any certificate or report of the Chief Clerk has been signed and adopted by the judge, it is to be filed in the same way as reports are now filed, and will be binding upon all the parties, *unless* discharged or varied either at chambers *or* in open court, according to the nature of the case, upon application by *summons* or *motion* within the time to be prescribed by any general order of the LORD CHANCELLOR, but the Court is to have power at any time to open any such certificate or report upon the same or the like grounds as any report of a Master which has been absolutely confirmed may now be opened (sec. 34). The 13th, 14th, and 15th sections of 3 & 4 Wm. 4, c. 94, giving power to the Masters to hear certain interlocutory matters subject to appeal, which the Court was not to hear except on appeal, and which will now be heard by the Judges in the first instance, and also as to the mode of appointing the Masters in ordinary, are repealed. (Sec. 35.) Next follows a section added by amendment to the Bill, as originally introduced, the absence of which might have occasioned considerable inconvenience, giving to the Judges after the 1st day of Michaelmas Term next, all or any of the powers, authorities, and jurisdiction given to the Masters in ordinary, by any acts then in force. (Sec. 36.)

In a former number, were noticed the extensive and novel powers given to the Masters and to the Court, by secs. 7, 8, and 9 of the Act, to *compel* parties to proceed with their suits, &c. These are to be exercised by each of the Judges in chambers, who, if he thinks that any cause, matter, or thing depending before him ought to be finally disposed of, unless cause can be shewn to the contrary, may direct the same to stand in his paper in open court, and upon giving such notice, if any, as he may deem right, may dispose thereof accordingly. (Sec. 37.)

The evident intention of the Legislature has been to delegate to the Judges the present duties of the Masters, at any rate, such of them as are of a *judicial* character, whilst those of a merely *mechanical* character are (under the direction and supervision of the Judge), to be performed by his Chief Clerks, and it is a great mistake to suppose that they are to stand in the same relation to the Judge as the Master formerly did—they are, properly speaking, mere assistants of, not substitutes for, the Judge. To those acquainted with the almost interminable delays and frightful expenses of references, of inquiries, reports, exceptions to reports, and all the vexatious details of the practice of the Masters' offices, the great benefit to be derived, by having proceedings in a suit worked out by the Judge himself, with an assistant clerk, will be self-evident. A like benefit will likewise accrue to the suitors by the powers conferred upon the Masters, for the purpose of winding up the affairs of their offices, which in effect, constitute them Judges, in everything almost except the name. Above all, the powers conferred both upon the Judges and Masters, of *compelling* parties to go on with their suits, will have, in all probability, as it had in Ireland, where this practice was introduced by the present LORD CHANCELLOR, a most beneficial effect.

Power is given by the 38th section to the LORD CHANCELLOR, with the consent of the MASTER of the ROLLS, and the VICE-CHANCELLORS, or any two of them, and they are thereby required to make general rules and orders for regulating the times, and forms, and mode of procedure before the Judges respectively, sitting at chambers, and their respective Chief Clerks, and generally the practice of the Court, in respect of the matters to which the Act relates, and for regulating the fees and allowances to Solicitors of the Court in respect to such matters; and also for regulating the fees to be payable by suitors of the said Court, to the officers thereof, in respect of the business to be conducted before the Judges sitting at chambers, and their respective chief clerks; and such rules and regulations may be, from time to time, rescinded, altered, varied, or added to by the like authority, and are to take effect as general orders. And there is proviso that *no greater amount of fees* is to be payable by the suitors in respect of such business than is now paid in respect of similar or analogous business in the Masters' offices.

These and the other orders to be made under the Chancery Reform Acts of the last session are, it is believed, already prepared, and soon about to be issued; they are naturally expected with considerable interest by the Profession, since much of the success of the Acts embodying the bold and salutary recommendations of the Chancery Commissioners, depends upon their character. It must, however, be observed that no one who reads the recommendations of the commissioners, expressed in clear, well-

(a) Continued from p. 152, ante.

arranged, and unparliamentary language, can feel aught but regret that full power has not been given to such a body of men to prepare (subject, however, to revision by another select and competent body) an entirely new code of Chancery procedure. Until that is done, notwithstanding the improvements now introduced, the mode of conducting a suit must be picked up from a confused heap of Acts of Parliament, orders, reports, books of practice, and even from the floating traditions of the officials of the Court.

THE LEGISLATOR.

NEW STATUTES.

15 Victoria, A.D. 1852.

[In this record of Legislation only the Statutes of practical utility are given at length. Of the others an abstract or the titles only are presented.]

(Continued from page 155.)

Cap. XXXIX.

An Act to remove Doubts as to the Lands and casual Revenues of the Crown in the Colonies and foreign Possessions of her Majesty. (June 30, 1852.)

Cap. XL.

An Act for carrying into Execution an Agreement for the Sale of Property belonging to her Majesty, in right of her Crown and her Duchy of Lancaster, to the Commissioners of Inland Revenue, and for enabling such Commissioners to dispose of their present Chief Office and other Property in the City of London. (June 30, 1852.)

Cap. XLI.

An Act to provide a Burial Ground for the Township of Huddersfield, in the County of York. (June 30, 1852.)

Cap. XLII.

An Act to confirm certain provisional Orders of the General Board of Health, and to amend the Public Health Act, 1848. (June 30, 1852.)

Cap. XLIII.

An Act to repeal certain Disabilities under the 1 Geo. 1, c. 13, and the 6 Geo. 3, c. 53. (June 30, 1852.)

We give this statute entire.

1 *Geo.* 1, *c.* 13—6 *Geo.* 3, *c.* 53—*Repealing disabilities imposed by the recited Act upon members of either House of Parliament voting without taking the required oath.*—Whereas by an Act of Parliament passed in the first year of the reign of King George the First, intituled "An Act for the further Security of His Majesty's Person and Government, and the Succession of the Crown in the Heirs of the late Princess Sophia, being Protestants, and for extinguishing the hopes of the pretended Prince of Wales, and his open and secret Abettors," it is among other things enacted, that if any person that now is or hereafter shall be a peer of this realm, or member of the House of Peers, or Member of the House of Commons in this or any succeeding Parliament, and after the said twenty-ninth day of September, one thousand seven hundred and fifteen, presume to vote or make his proxy, not having taken the oath therein mentioned, and subscribed the same, as therein also stated, every such peer or member so offending shall be disabled to sue, or use any action, bill, plaint, or information, in any court of law, or to prosecute any suit in any court of equity, or to be guardian of any child, or executor or administrator of any person or to be capable of any legacy or deed of gift, or to be in any office within this realm of Great Britain, or to vote at any election for members to serve in Parliament, and shall forfeit the sum of five hundred pounds, to be recovered by him or them that shall sue for the same, to be prosecuted by action of debt, suit, bill, plaint, or information in any of his Majesty's Courts at Westminster, wherein no essoin, protection, or wager of law shall lie, or any more than one imparlance, and by way of summary complaint before the Court of Sessions or prosecution before the Court of Justiciary in Scotland. And whereas also by a certain other Act of Parliament passed in the sixth year of his late Majesty King George the Third, intituled "An Act for altering the Oath of Abjuration and the Assurance, and for amending so much of an Act of the Seventh Year of Her late Majesty Queen Anne, intituled 'An Act for the Improvement of the Union of the Two Kingdoms,' as after the Time therein limited requires the Delivery of certain Lists and Copies therein mentioned to persons indicted of High Treason or Misprision of Treason," it is declared and enacted, amongst other things, that from and after the fourth day of June, one thousand seven hundred and sixty-six, the said oath of abjuration be administered in such manner and form as is thereinafter set down and prescribed, and that all and every person and persons who were enjoined and required to administer, take, or subscribe the said oath of abjuration should respectively administer, take, and subscribe the oath of abjuration according to the form therein set down and prescribed in such Courts within such time limited, in such manner, and with due observance of the same requisites, and with benefit of the same savings, provisoes, and indemnities, as by the Acts therein referred to or by any other Acts or any part of them then subsisting were directed and enacted; and in case of neglect or refusal, he or they should be subject and liable to the same penalties and disabilities as by the laws and statutes aforesaid were enacted: and whereas the disabilities so created are unnecessarily severe: be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that so much of the said enactment as imposes the disabilities therein as above set forth shall be and is hereby repealed, and the said disabilities shall cease and determine and be of no effect with respect to any offence committed or hereafter to be committed against the aforesaid enactments: provided always, that nothing herein contained shall affect the liability of the person so offending to the pecuniary penalty imposed by the said enactment, or alter in any respect the said enactment in relation thereto.

Cap. XLIV.

An Act to amend and consolidate the Laws relating to the Carriage of Passengers by Sea. (June 30, 1852.)

1. Commencement of this Act, and repeal of former Acts, except as to existing liabilities, and except as to an Order in Council, dated 6th October, 1849.

2. Short title. In legal proceedings, reference to sections of this Act by number sufficient.

3. Definition of terms; viz. "United Kingdom:" "North America:"—"West Indies:"—"Governor:"—"Statute Adult:"—"Passage" and "Passengers:"—"Passenger Deck:"—"Ship:"—"Passenger Ship:"—"Master:"—number and gender.

4. To what vessels and voyages this Act shall extend.

5. Commissioners of Emigration to carry this Act into execution.

6. Emigration Commissioners may sue and be sued in the name of their secretary or one of themselves.—The commissioners and their private estates exempt from liability.

7. Emigration officers and assistants to act under the commissioners, &c.—Existing appointments to continue until revoked.

8. Duties of emigration officer may be performed by his assistant, or by officer of customs.

9. Facilities to be given to the proper officers for the inspection of all ships fitting for passengers.

10. No passenger ship to be cleared out without a certificate from emigration officer, nor until bond be given to the Crown.

11. Passenger ships clearing out without certificate, or bond being given to the Crown, forfeited, &c.—Such ship to be dealt with as if seized under laws relating to customs.

12. Passengers to be carried only on the "Passenger Decks."—Number to be limited both by tonnage and space.—Penalty for excess of persons on board.

13. Two lists of passengers to be made out in the form in schedule (A), and delivered in every case before clearance.

14. Lists of additional passengers taken on board after clearance to be made out, and signed by master.

15. Penalty on persons found on board attempting fraudulently to obtain a passage, and on persons aiding and abetting.

16. All passenger ships to be surveyed before clearing out.

17. Beams and decks.

18. As to arrangement and size of berths

19. Single men to be berthed in a separate compartment.—As to numbers and sexes in one berth

20. Berths not to be removed till passengers landed

21. A space in every ship to be set apart for an hospital.

22. As to fitting up of privies.

23. Directions as to light and ventilation.—Penalty on noncompliance with such directions.

24. Passenger ships shall carry boats.—One boat to be a life boat.—Life buoys, means for making night signals, and fire engines to be provided.

25. Passenger ship to be properly manned.

26. Certain articles prohibited as cargo and ballast.—Cargo and stores not to be carried on deck, except in certain cases and under certain conditions.

27. Computation of voyages.

28. Before clearing out, the provisions and water to be surveyed—Provisions for the crew not to be inferior to those for the passengers—Penalty on owners, &c. for neglect.

29. Power to emigration officer to reject and mark bad provisions, and direct the same to be landed—Penalty.

30. Water tanks or casks to be approved by emigration officer.

31. Proviso for touching at intermediate ports to fill up water.

32. Dietary scale for the voyage—As to articles which may be substituted for oatmeal, rice, and potatoes.

33. Provisions to be issued daily, and articles which require cooking to be cooked.

34. Emigration Commissioners may authorise an alternative dietary scale—Commissioners' dietary scale may be revoked, &c.

35. As to appointment of passengers' stewards.

36. As to appointment of passengers' cook and providing cooking apparatus.

37. In what cases interpreters to be carried.

38. In what cases a medical man must be carried.

39. Qualification of medical man.

40. As to supply of medicines, &c.

41. As to medical inspection of passengers and medicines—Proviso where no medical practitioner can be obtained.

42. Diseased passengers may be relanded.

43. As to return of passage money to passengers relanded.

44. Return of passage money and compensation to passengers where passages not provided for them according to contract.

45. As to subsistence in case of detention.

46. As to ships putting back to replenish provisions, &c.—Penalty on master for default—Ships putting back to be reported to emigration officer—Penalty on master for neglect.

47. In cases of disaster at sea, &c. passengers to be provided with a passage by some other vessel; and maintained in the meantime—In default, passengers may recover compensation by summary process—Power to remove passengers from ship—Penalty on passengers refusing.

48. Secretary of State, governor, or consul may pay expenses of taking off passengers at sea.

49. Governors or consuls may send on shipwrecked passengers, if the master of the ship fail to do so.

50. Expenses incurred under the two preceding sections to be a Crown debt—Passengers forwarded by governor or consul not entitled to a return of passage money.

51. Insurance of passage money not to be void on account of the nature of the risk.

52. Wrongfully landing passengers.

53. Passengers to be maintained for forty-eight hours after arrival.

54. Passengers' right of action preserved.

55. Her Majesty may, by Orders in Council, prescribe rules for preserving order, &c. in vessels bound to the colonies—*Gazette*, and copies printed by Queen's printer, to be evidence of orders, &c.

56. Surgeon or master to exact obedience to rules and regulations—Penalty for refusing to observe rules and regulations.

57. Emigration Commissioner to prepare an abstract of Act and Orders in Council—Such abstract to be posted up in each ship—Penalty on master for neglect, and on person defacing abstract.

58. Sale of spirits prohibited on board passenger-ships—Penalty.

59. Bond to be given by masters of British and foreign passenger-ships.

60. Counterpart of bond to be certified, and sent to the colony to which foreign ship bound, and to be received in evidence without further proof of execution.

61. No person to act as a passage-broker without a licence.

62. How passage-brokers' licences may be obtained—Justices to give notice to Emigration Commissioners of licence granted—Notice to be given to Emigration Commissioners of intended application for licences—Power to justices to order licences to be forfeited, who shall give notice of the same to Emigration Commissioners—As to application for licences in Scotland.

63. Existing licences to continue in force until 1st February, 1853.

64. Contract tickets for passages—Penalty for default.

65. Penalty for inducing any one to part with contract ticket.

66. Penalties on agents acting without written authority from principals, and on persons fraudulently inducing others to engage passages.

67. No runner entitled to commission or fee for services to emigrants, unless acting with authority from a broker.

68. List of runners to be exhibited by brokers, and sent to emigration offices.

69. Trustees of docks may pass bye-laws for regulating the landing and embarkation of intending emigrants, and for licensing emigrant porters—Bye-laws to be approved by Secretary of State, and published in the *London Gazette*.

70. Penalties on masters of ships for offences herein named—Inspection of ships—Carriage of passengers on other than passenger decks—Passengers' lists—Additional passengers' lists—Survey—Beams—Decks—Height between decks—Berths—

Hospital—Privies—Access to the between decks—Boats, life-buoys, night signals, and fire-engines—Manning—Cargo—Issue of provisions and water—Water-casks—Cook and cooking apparatus—Surgeon—Medicines—Medical inspection—Relanding of diseased passengers—Wrongfully landing passengers—Maintenance of passengers on arrival—As to copies of this Act being kept on board, &c.

71. Penalty for falsifying documents to obtain free passages, and for personation.

72. By whom penalties are to be recovered—By whom passage, subsistence, and compensation moneys may be recovered.

73. Tribunal for adjudicating on offences and complaints under this Act.

74. Police and stipendiary magistrates, and in Scotland sheriffs, &c. to have the same powers as justices of the peace.

75. No objection to be allowed, nor convictions to be quashed for want of form.

76. Application of Penalties—Justices may award compensation out of penalties to party aggrieved.

77. Burden of proof to be on persons claiming exemption from Act—Proof of negatives.

78. Proof of a party being an emigration officer, &c.

79. Passengers suing not incompetent witnesses.

80. Tender of amends.

81. Limitation of actions against officers executing the Act—Defendant may plead the general issue, &c.—Costs.

82. Limitation of legal proceedings generally.

83. Colonial voyages defined.

84. This Act to apply to colonial voyages, except as relates to matters herein named—If any colonial voyage be less than three weeks, this Act not to apply to subjects herein named.

85. Governor of colonies may, by proclamation declare length of voyage, and substitute other articles of food and medicine—Proclamations to be transmitted for confirmation or disallowance—Copies to be received as evidence in the colony in which they may be produced.

86. Provision for survey of ships in the colonies, and for appointing surgeons thereto.

87. Power to the Governor-General of India in council, by any Act to be passed for that purpose, to adopt this Act for India; and to make rules respecting food, passengers, &c.; and to declare in what manner penalties, &c. may be sued for and recovered—Indian Act may be enforced in the colonies in like manner as this Act.

88. List of passengers brought into the United Kingdom to be delivered by the master of the ship to the emigration officer—Penalty for neglect.

89. Penalty on masters for having on board a greater number of persons than prescribed by section 12 of this Act.

90. Provisions and water to be issued to passengers brought into the United Kingdom the same as in ships carrying passengers from the United Kingdom—Penalty for default.

91. Schedules to be part of the Act.

THE MAGISTRATE,
AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

A STATUTE of some importance extending the provisions of the Friendly Societies' Act was passed last session. It is entitled *An Act to legalise the Formation of Industrial and Provident Societies* (15 & 16 Vict. c. 31; 19 Law T. 153.) It empowers societies of working men to be formed for the purpose of procuring by joint "labour, trade, or handicraft (except the business of mining and banking), a fund for obtaining any object authorised by the Friendly Societies Acts." It specifies the rules upon which such societies shall be framed; that the interests of the members shall not be transferable; that if any member shall become bankrupt or insolvent, he shall be taken to have withdrawn from the society from that date; that the awards of arbitrators may be enforced in the County Courts, if the mere matter in dispute is within their jurisdiction, if not, by the Superior Courts; the funds of such societies are not to be invested in the savings banks, or as those of friendly societies now are; the laws relating to friendly societies are to be applicable to these, unless as varied by this Act or inapplicable; societies constituted under the Joint-Stock Companies Act not to come under this Act; the interest of any single member is to be fixed by the rules, and is not to exceed 100*l.*; or, if an annuity, not to be more than 30*l.* per annum; annual returns are to be made; the liabilities of members to the lawful debts and engagements of the society are not to be restricted; but they are not to extend beyond two years after the member has withdrawn from it, and the provision of the Friendly Societies Act that gives them priority over other creditors is not to extend to this Act. It will be seen from this that the statute is of very small service for the objects for which it was designed. Probably it relaxes the strict law of partnership so far as it can be safely done, but it does not accomplish the desires of the Socialists.

THE MILITIA.(a)

HAVING received communications from numerous correspondents, seeking for information on points connected with the practical working of the Militia Acts, and also as to the particular duties to be performed by the clerks to the general and subdivisional meetings of the lieutenancy, we intend to contribute a series of articles on the subject. Upwards of twenty years having intervened since the period when the militia was last embodied and called out for permanent duty, comparatively few persons are now acquainted with the routine of business and practical knowledge requisite for such an occasion, and to a considerable number the proceedings will necessarily present features of a new and complicated character. We wish, however, to impress upon our correspondents and readers that the "*ballot*" system, in which the chief amount of practical knowledge of the militia law is required, will not be brought into operation for some considerable time, as in the *first instance* the raising of the militia force will be by *voluntary enlistment*, and should that method fail in obtaining the requisite number of men, *then* recourse will be had to the "*ballot.*" By the 15 & 16 Vict. c. 75, all general and subdivision meetings relating to the militia, and all proceedings relating to the procuring any returns, or preparing or making out lists, or relating to the ballotting for or enrolling any militia-men, shall remain suspended until the 1st October, 1853; but proceedings may be had during the period of such suspension by order in council. Until the period arrives for proceeding by ballot to supply any deficiency in the number of volunteers, there will be very little preparation required on the part of the clerks to the lieutenancies, as we apprehend that the raising of the men by voluntary enlistment will be conducted by means of the staff of the militia force, in the same manner as recruiting for the regular army. It is, however, possible, that the lords-lieutenant may require the clerks to the lieutenancy within their respective divisions to facilitate the enrolment of the force, by causing them to open lists for the reception of the names of volunteers, and to be placed in communication with commanding officers and their recruiting parties. The Secretary at War is empowered to make regulations as to the sum to be paid by way of bounty (which is not to exceed 6*l.*), and as to the pay, and also as to the ages between which men may be received; as to the height; and for the examination and approval by medical men of all men to be raised for the militia, whether they are volunteers or otherwise; and also as to all other matters which, under the provisions of the Act, are made subject to regulations to be made by the Secretary at War. The regulations, therefore, to be issued by the Secretary at War will form the code of instructions for the guidance of those persons on whom will devolve the preliminary proceedings for embodying the Militia Volunteer Force. By the 15 & 16 Vict. c. 50, s. 12, it is enacted, that where the number of men required to be raised, in any county, has not been raised by voluntary enlistment, the Crown may direct such deficiency to be raised by voluntary enlistment in and for any county in which the full quota may have been raised and kept up; but no ballot is to be had in such county for keeping up any greater number of militia-men in such county, than would have been required to be kept up therein in case such order had not been made. The wording of the section is somewhat confused, but the meaning seems to be, that if in one county the required number of men cannot be obtained by voluntary enlistment, then the deficiency may be supplied by means of voluntary enlistment "*in* and *for*" any other county, in which the full quota has been raised and kept up, but so that no ballot shall take place therein for keeping up any greater number of men than would have been required to be kept up therein in case such order had not been made. The words "*in* and *for*" seem to limit the enlistment to the county wherein made; and the marginal note to the section in the Act states probably what is the true construction (but which it is difficult to collect from the words themselves in the section). It runs thus:—"The number of men not raised by enlistment in any county may be authorised to be raised by enlistment, as a *supplemental corps in another county*." The Crown may order such supplemental corps, or any part of the militia, to be marched into any other county for training and exercise.

An important feature ought not to be lost sight of by individuals liable to the ballot, which is, that by 15 & 16 Vict. c. 50, s. 19, in apportioning the number of men required to be raised by ballot among the several sub-divisions and parishes, if the number of men serving, and who at the time of being enrolled were resident in any sub-division or parish, amount to the full number of men which, upon a just apportionment of the whole number of militia-men required to serve for such county, among the several sub-divisions and parishes thereof, according to the number of men fit and liable to serve in the militia, resident therein respectively, ought to be furnished by any subdivision or parish, no proceeding by ballot shall be had by such subdivision or parish, but the men required to be raised by ballot shall be apportioned among the other subdivisions or parishes. The greater number, therefore, of volunteers, which can be enrolled in any place, the better it will be, in the future proceeding by ballot, in regard to sub-divisions and parishes in which the *full number* of volunteers have been raised (to be ascertained on the apportionment), for then such places will be *wholly exempt* from the ballot; for example, if, in the parishes of A. and B. fifty men in each are required to be raised as the apportioned number, and if in A. the full number of volunteers is raised, then that parish will be wholly exempt from the ballot; whilst, if in B. only thirty volunteers should be enrolled, then the latter parish would be liable to supply, by means of the ballot, not only its own deficiency in the apportioned number, but also a proportion of the deficiency in other parishes wherein the proper number of volunteers has not been raised.

(a) By WM. FOOTE, Esq. Attorney-at-Law, author of the "*Highway Acts,*" &c.

THE MILITIA.

THE following are the proceedings with respect to the militia, reported from various parts of the country.

GLOUCESTERSHIRE.—A meeting of the deputy-lieutenants was on Tuesday convened by Earl Fitzhardinge, the lord lieutenant of the county, to consider certain suggestions of the Secretary of State as to the best means of raising recruits for the militia by voluntary enlistment. The lord lieutenant stated the number of men to be enrolled during the present year for the county was 1,240, and next year 753. The period of service was to be for five years, and all young men were eligible as volunteers who were not less than five feet three inches in height, and not younger than eighteen, nor older than thirty-five. The bounty was to be 6*l.*, 1*l.* to be given on enlisting, and the remainder paid in monthly instalments. His lordship urged upon the deputy-lieutenants the necessity there was for them to do all in their power in their respective localities to induce the required number of men to come forward and offer their services, in order that the ballot might be anticipated, and its inconveniences prevented. That this might be done more effectually, his lordship recommended the deputy-lieutenants to communicate with the churchwardens and overseers of their parishes respectively, and that thus every facility should be afforded for carrying out the object in view. After explanations had been given as to the progressive steps to be taken in the enrolment of the men, the examination by surgeons, &c. the meeting broke up. The following are the districts into which the county is divided:—Bristol, Gloucester, Cirencester, Tewkesbury, Newnham, Stow-on-the-Wold, Dursley, Stroud, and Sodbury. Staff-serjeants of the old militia will be immediately sent into the various districts for the purpose of enrolling the volunteers.

EAST KENT.—Earl Cowper, as lord lieutenant of the county, has caused circulars to be addressed to all the officers of the East Kent militia, making inquiry whether they desire to serve in the regiment about to be re-embodied in October next. The office of paymaster in this regiment is vacant since the demise of Captain Ricketts; there are seven applicants for the appointment, which is not, as under the previous Act, in the gift of the lord lieutenant of the county, but of the Queen in Council. —*Maidstone Journal.*

MIDDLESEX.—On Saturday orders were issued by the lord lieutenants of this and other counties, to their deputies, to take immediate steps for raising the required number of men in their respective districts to serve in the militia, to be embodied in accordance with the Act passed in the last session of

Parliament, and during the next week general Courts of Lieutenancy will be held in most of the counties throughout the kingdom to settle the preliminary matters.

THE UNIFORM.—The following is the regulation for clothing the militia:—47,000 men will have a red coatee without lace, with a skirt about nine inches long. The facings to be the same as at present worn by the militia staff of the different corps; the sleeves to have a slash on them like the Guards; black-gray trousers with a red stripe, as the regiments of the line; boots the same, and a Kilmarnock or woollen forage cap with a metal scroll, bearing the name of the regiment; the buttons to be white metal, with the crown stamped only on them. There are to be 1,500 artillery in blue, and 1,500 rifl in green uniform. Nothing is yet known respecting the officers' uniform.—*United Service Journal.*

THE MILITIA ACTS.—Those who take an interest in the militia, which many persons must, we suppose, from the fact that all the lieutenancies in the country are now the steps primarily required for the regular organisation of the force, clearly ought to make themselves acquainted with the several statutes relating to it. Hitherto, so far as we know, no popular compilation has appeared embracing the entire militia code. But the office of the LAW TIMES, through the industry of Mr. T. W. Saunders, of the Middle Temple, has stepped in to supply the want, and we are bound to say that in the handy little volume, under the designation of "The Militia Acts," just published, the want is supplied most effectually. The provisions of all the Militia Acts now in force are given in consecutive and logical order, with just sufficient explanatory matter to shew their practical effect. The work has been prepared with obvious care, and it has the advantage of an excellent analytical index.—*Morning Chronicle.*

Queries.

BASTARDY.

ON the 27th of April last an information was laid by A. B. a single woman, residing in the county of Berks, against C. D. the father of a child of which she had been delivered on the 28th March last, and application was made for a summons against C. D. No summons was, however, then granted, as C. D. was living in Ireland, and his correct address was not known; his address in Ireland has now been ascertained, and A. B. has applied for a summons against him to appear to answer her complaint at the Petty Sessions of the division in Berks in which she resides. A. B. has also applied for a summons against C. D. to give evidence on the hearing as a witness on her behalf, as she has no other corroborative evidence. C. D. is above the labouring class.

Will any of your experienced readers be good enough to state if the summonses which have now been applied for ought to be granted against C. D. and if so, how they ought to be served in Ireland, and how the service should be proved in England on the hearing; and if C. D. must be served with a summons to give evidence, and disobey that summons, before a warrant can be granted against him? Also it C. D. can be compelled to pay the expenses attending the service of the summonses. S.

RESIGNATION OF EARL BROWNLOW.—We regret to announce the resignation of our excellent lord-lieutenant. His lordship's health, we are glad to state, is not worse than it has been for some months past, but, in consequence of the enrolment of the militia, the additional labour imposed on his lordship has become so onerous, that he has thought it more consistent with his duty to place his resignation in the hands of the Queen.—*Stamford Mercury.*

The police stations will be shortly connected with each other, and with the railroads, by means of electric telegraphs.

SILVER MEDALS FOR POLICE OFFICERS.—On Friday, the 6th inst. all the members of the Liverpool police force who were off duty, were assembled by Captain Greig, the recently-appointed chief, in front of St. George's-hall, for the purpose of witnessing the presentation of upwards of 100 silver medals to those officers with whose long services were combined meritorious conduct. The men, upwards of 500 in number, having been drawn up in square round the steps of the hall, were briefly addressed by Mr. Tobin, the chairman of the Watch Committee, after which those to whom the honourable tokens were to be given were severally called out of the ranks, according to their positions in the force, and presented with the medals. They are made of sterling silver and bear on one side the inscription, 'Order of merit. Liverpool police force. Presented by the Watch Committee to ———, as a reward for good conduct." On the obverse side is the Liverpool Arms, with the motto "Non nobis otia fecit." The date is October 9, 1851, in commemoration of Her Majesty's visit to Liverpool. They had one, two, or three bars, according to the length of service—one bar signifying five years; two, ten; and three, 15. The medals were executed by Messrs. Allan and Moore, of Birmingham.

JOINT-STOCK COMPANIES' LAW JOURNAL.

THE liability of a railway company for loss of passenger's luggage was considered in *The Great Western Railway Company* v. *Goodman*, 19 Law T. Rep. 296, which was an appeal from a County Court. Their private Act empowered the company to make bye-laws, provided they were not repugnant to the laws of the realm. They made a bye-law permitting each passenger to carry a certain amount of luggage, but declaring that "the company would not be responsible for the care of luggage unless booked and paid for accordingly." The plaintiff delivered her luggage, without booking, to the porter, with directions to label it, which he did. On her arrival at the place of destination it could not be found. The company were held to be liable by the general law of carriers, notwithstanding their bye-law.

A very important question as to the liability of shareholders was decided in *The Galvanized Iron Company* v. *Westoby*, 19 Law T. Rep. 299, how far is a man bound by an agreement to take shares in a Company? It appears from this case that the agreement is a contract, but it is only conditional. Primâ facie, a person subscribing for shares is a shareholder, but this may be rebutted by other evidence, shewing that the circumstances under which he subscribed were different, as when the company had been formed with 50,000 shares, but afterwards, without his express consent, reduced the number.

We also published last week the report from the Court of Error, which had been deferred in consequence of its great length, upon the question whether an insurance office limits its liability by the common proviso in such policies, that the funds of the company only should be answerable for the moneys thereby assured. It will be remembered that in the court below it was held, that such a proviso did *not* limit the liability, and that an action would lie against individual shareholders for the amount. In Error the Judges were divided upon the point; but the majority have reversed the judgment of the Court below, and held the ruling of Lord CAMPBELL (who tried the case at Nisi Prius) to be wrong. Each of the Judges gave a separate judgment, and we recommend the perusal of them to all of our readers who are interested in the law of Joint-Stock Companies, and especially of Insurance. "The policy," said MARTIN, B. "expressly declares that the capital, stock, and funds of the company shall alone be liable to make good all claims under it; and the meaning of this seems to me to be, that the plaintiff agreed or consented to look not to the general property of all the shareholders, but to confine himself—first, to a fund expected to be accumulated from the payment by the shareholders of a portion of the sum subscribed from time to time, and the premiums received in the course of business, and kept by the directors for the purpose of current demands upon the company; and, secondly, as a sort of reserve fund, to the liability of each shareholder to the extent of his shares not paid up. But the policy proceeds further, and expressly declares that no shareholder shall be liable to any claim by reason of the policy, beyond the amount of his shares in the capital stock. Now, it seems to me, that it is here declared, first, that the shareholder shall be liable to the extent of his unpaid shares; secondly, that he shall not be liable further; and to hold the defendants liable in the present action might render them further liable, and would render them jointly liable, which is equally inconsistent with the above provision, which clearly contemplates a separate liability only. The plaintiff was under no obligation to assure with the company; but, as he thought proper to do so, he is, in my opinion, bound by the express declaration in the policy." (*Hallett* v. *Dowdall*, 19 Law T. Rep. 300.)

WINDING UP.

WE reported last week the judgment of the House of Lords in *Hutton* v. *Bright*, 19 Law T. Rep. 289, in which it was decided that abortive railway projects were "associations" within the provisions of the Winding-up Acts. The Common Law Judges were invited to assist their Lordships with their opinion upon this important question, and the report is, that when the argument was closed, the Judicial Bench were strongly inclined to the opinion to which all who had looked carefully into the question had previously come, that these incompleted companies were *not* within the Acts. When, however, the Judges retired to deliberate, it is said that two of them, who thought otherwise, fairly talked over the rest, and produced the unanimous opinion which was last week contained in these columns. If this story be true, it is a remarkable instance of the influence of argument, where there is no prejudice to combat, but only on all sides a real desire to arrive at the truth. The case will perhaps on this account be read with the more interest.

Another very interesting question in the law of winding up is reported from the Court of Appeal. In *Ex parte the Assignees of Nicholas*, 19 Law T. Rep. 291, it appeared that a shareholder had become bankrupt *before* the order for winding up. Afterwards he obtained his certificate. Was the official manager entitled to prove against his estate for calls made *since* the bankruptcy? It was held that he *might* do so, those calls being in fact in respect of debts previously incurred.

SLIGO AND SHANNON.—On Wednesday a meeting was held before Master Senior, when Mr. Coleman, the official manager, and Mr. Devonshire, his solicitor, reported that the call of 3*l.* 7*s.* 6d. per share, made for the purpose of paying off liabilities and for equalizing payments among the shareholders, some having paid more than others, had only been partially responded to. Whereupon the Master, under the provisions of the Act, directed peremptory orders to be issued for its further enforcement. The claims, which originally amounted to 6,000*l.* have been considerably reduced in consequence of the Master's decision, which has been confirmed upon appeal, to the effect that the shareholders in the railway company are not to be held liable for any proportion of the debts incurred in the promotion of the Sligo Ship Canal Company, which was to have been associated with the railway undertaking.

METROPOLITAN RAILWAYS JUNCTION.—On Monday, at a meeting before Master Brougham, it was reported that a compromise of the affairs of this undertaking had been arranged, Mr. Ashpitel, the principal claimant, having consented to an adjustment. The Master thereupon approved of the compromise. Creditors will be paid out of the funds remaining in hand, which renders any call on the shareholders unnecessary. This will be the first railway scheme out of the multitudinous offspring of the mania of 1845, referred for settlement under the Joint-Stock Companies Winding-up Act, that may be now what is called completely "wound up."

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

British and American Steam Navigation Company.—Call for 65*l* per share, on the 15th of September, on all contributories who have not already paid in full or in part 65*l*. per share; and that those contributories who have paid on account of the 65*l*. per share are to pay the balance due on each share on the 15th of September.—Rose.

REAL PROPERTY LAWYER AND CONVEYANCER.

WHERE a wife, having a power of appointment, appointed, by deed duly executed, in her husband's favour, the deed was held to be valid unless proved to be otherwise. The deed was drawn by the husband's solicitor, executed by her in the presence of his two clerks without being read over, and she was distressed and signed it reluctantly. But these circumstances were held *not* to be sufficient proof to invalidate the deed. (*Nedby* v. *Nedby*, 19 Law T. Rep. 294.)

The following was held to be a contract concerning an interest in land, and therefore within the Statute of Frauds. A. a tenant of a house, held under an agreement with the landlord for a seven years' lease, agreed verbally with the defendant to give him immediate possession of it, together with fixtures and improvements made in it, and the defendant, in consideration of this, agreed to pay A. 100*l*. The landlord assented to the exchange of tenants. The plaintiff performed his part of the contract, and the defendant in part performed his by paying to the plaintiff 51*l*. On

his refusal to pay the balance, plaintiff brought his plaint to recover it. But it was held that he could not do so, the contract not being in writing, and consequently void within the Statute of Frauds. (*Kelly* v. *Webster*, 19 Law. T. Rep. 298.)

Answers to Queries.

NOTICE TO QUIT.

I SUBMIT the following in reply to R. G.'s query in your last.

D. being the assignee of the reversion of A.'s estate, notice of the assignment should be given by the former to the original tenant B. together with a notice requiring all rents due and to become due to be paid to him as such assignee. B. thereupon becomes tenant to D. (attornment in this case being unnecessary), see 4 & 5 Anne, c. 16, s. 10; and D. has then the same powers for distress for rent and determination of the tenancy as A. had; the priority of contract being transferred by virtue of such notice from the lessor A. to the assignee B. (32 Hen. 8, c. 34).

The notice to quit should then be from D. to the immediate tenant B. and not to the undertenant C. Same in the case of A., having acknowledged him as his tenant by receipt of the rent, &c.

And in case of B.'s failing to deliver up, or causing C. to deliver up, possession, B. would be liable in ejectment. G.

Queries.

RENT CHARGE.

WILL any of your readers be good enough to inform me the practice on the grant of a 40s. rent-charge; whether an abstract of title is furnished at the expense of the vendor, and the expense of the grant or conveyance is paid for by the purchaser, or whether the vendor is at the whole expense?

Aug. 11, 1852. T. S. W.

STAMPS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—As you have expressed a wish that your readers would inform you of any decisions of the commissioners of stamps in reference to deeds submitted to them,—we beg to apprise you that a conveyance of a house, subject to a mortgage for 220*l*. in consideration of an annuity of 16s. per week, upon which a 35s. stamp was impressed, was adjudged sufficiently stamped.

We are, Sir, yours, &c.
SHARP, HARRISON, and SHARP.

Southampton, Aug. 10, 1852.

COUNTY COURTS.

Summary.

THREE County Court appeals from the C. P. which had been delayed to enable the reporters to have access to the papers, and without which it was impossible to report them correctly, appeared in our last. But of these one only related to the *Law or Practice of the County Courts*, the others being questions of general law, and therefore noticed under their proper departments. In *Cuthbertson*, v. *Parsons*, 19 Law T. Rep. 297, there was something like a reference to County Courts Practice. The question raised was as to the liability of certain harbour commissioners for negligence under a local Act. After argument, it appeared that the decision of the judge was contrary to law, and then it was attempted to shew that he had decided upon *the facts*, and not upon the law, in which case the Court above would not interfere. But in this they failed, and the Court held that, inasmuch as upon no inferences of fact that could possibly be drawn from the case could the judgment be sustained in law, it must be reversed.

In the *Practice of Insolvency* there is a case to be noted. In *Re Fisher*, 19 Law T. Rep. 289, Mr. Commissioner LAW intimated that it was not a matter of course in his court that a creditor's petition should be dismissed because the creditor consented. "He never dismissed a petition and annulled the vesting order simply because a creditor consented. A man who was arrested and did not file a schedule, and after some months remaining in prison chooses to pay one creditor, had no right, simply from that circumstance, to the dismissal of the petition, the filing of which created a trust for the creditors generally."

COUNTY COURT ADVOCATES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I observe the letters of two correspondents in the last LAW TIMES on this head; the one evidently from an Attorney, the other as clearly from a Barrister. The former writer is troubled at the provision prohibiting an Attorney advocate being employed by another Attorney; the latter, the Barrister, on the same subject, says, in effect, "employ *us* in all cases, or we shall take advantage of the late Act, and do your work and our own too." Well, 'tis "a good and pleasant thing for brethren to dwell in unity!!"

My object, however, is, to inquire what there is in the late statute, or in the general law, to prevent the client changing his Attorney in the County Court as often as he pleases? What is there in law, common sense, or justice, to prevent Mr. Smith employing my friend Mr. ——, one, &c. of Dale, to enter a plaint, and get up the evidence, and then giving me an *express retainer* to *appear* in Court for him.

It must be remembered that under the recent Act Attorneys have an *absolute*, and not only a *permissive*, right to appear and be heard; and who, I should like to know, could refuse to hear an Attorney appearing upon his client's express retainer?

Again, may not a client have *two* Attorneys if he ease? It would be rather hard if he could not. And if he may, why may not one of them get up his case, and the other advocate it?

While certain of the junior Bar (JUNIOR they must be not to perceive their interest more clearly) are constantly waging war against the other branch of the Profession, simply because the public choose to employ the latter, who can wonder that the Attorneys should fortify themselves? If we are to run a race, let us have a clear course—a fair field and no favour.

If the Barrister is to do the work of the Attorney, without certificate, without admission, why then it is but common fairness that Westminster Hall and the Assize Courts be open to each competitor alike.

Mind, Sir, I deprecate this; I am for Barrister and Attorney working, pulling together; but if the Bar will *not* have this, but, on the contrary, in season and out of season, *thrust* themselves upon the public, nolens volens, then Dieu et mon droit is my motto.

I am, Sir, yours, &c.

Dartford, Aug. 9, 1852. C. R. GIBSON.

THE LAWYER.

Summary.

IT will be seen that the Lords Justices have affirmed the decision of Vice-Chancellor PARKER in *Enthoven* v. *Cobb*, 19 Law T. Rep. 291, and reported here a few weeks ago, to this effect, that where A. and B. having substantially a common cause of action against C. brought several actions, which were pending, and A. took the opinion of counsel as to his claim against C. and gave a copy of the case and opinion to B., and C. filed a bill of discovery against B. they were *privileged* documents.

The promised series of articles explanatory of the new procedure, both at Common Law and in Equity, has been commenced in these columns. They will be continued until the whole subject has been fully treated, and as orders issue, and decisions interpret the new law, they will be brought in this shape under the notice of the reader, so as to keep him fully and accurately informed of the law *as it is*.

ROLLS COURT.

(Before the MASTER of the ROLLS.)

ELLIS and ANOTHER *v.* ELLIOTT. (a)

The new practice—An examination vivâ voce in the open Court.

This was a claim for a share of a legacy under a will made upwards of thirty years since, payable after the death of Mrs. Ellis's mother, who died about ten years ago, and the defendant, Elliott, was the surviving executor or trustee under that will.

It appeared from the affidavits in support of the claim, that soon after the death of the tenant for life, the claimants wrote letters to the trustee, and also to his solicitor, making inquiries when the money would be divided, and had letters from both parties, promising that they should have notice to attend when the money was divided.

After waiting twelve months, they wrote again, and received an answer that the money had been divided, and that the share of the claimants was paid to the representatives of Mrs. Ellis's brother William, who produced an assignment of it made in 1822; and adding that the deed was executed by a mark for Mrs. Ellis, whereas she signed her name to the notices sent to the trustee.

The defence set up was by affidavit of the attesting witness to the deed, who was still alive, after a lapse of thirty years.

The plaintiffs replied by further affidavits, that the deed was a forgery.

The MASTER of the ROLLS said such a case would usually be sent for an issue, but the small amount of the legacy (being only 100*l*.) would make such a course very undesirable on the score of expense; and as the plaintiffs, by their solicitor, had volunteered a desire to confront the witness, he was willing, and would examine the parties vivâ voce in open court, if the defendant would consent. And *Simpson*, on the part of the defendant, having at once consented, the cause stood over for that purpose.

On a subsequent day the parties attended for examination.

Witnesses were ordered out of court; and as they were called in, were examined from the floor of the court.

The plaintiff and wife denied the execution of the deed, and stated that they never had any deed presented to them, but that the brother (who was the purchaser by the pretended deed) did once ask the wife to sell her money under the will, but that she peremptorily refused, and never heard anything more about it.

His HONOUR required both the man and wife to write in court their names on a piece of paper, which they did; and his Honour further inquired if there was any writing by the man written some years back; and some writing, ten or twelve years old, was handed up to him, and he said he saw a similarity, though the writing to the deed was of a much larger character. Such similarity, it was explained, was easily accounted for from the circumstance of the purchaser in the deed being indebted to the pretended vendor, who had constantly sent him in bills, and had written letters for payment from which the handwriting might have been copied.

The witnesses were of course subjected to a cross-examination, but in a style much more calm and quiet than is usual in a court of Common Law.

Several other witnesses were examined on the part of the defendant, to contradict a point in the affidavit of the plaintiffs (man and wife), in order to discredit their general testimony.

His HONOUR a few days afterwards gave judgment, and disposed, first, of the discrepancy of the plaintiffs' testimony as to living at Lewes, in which it now appeared they were clearly in error; but as this was not a material point in the case, he would not discredit their testimony to the direct point of the issue. He had made up his mind that Ellis and wife had been personated by some person, who signed the deed before the old witness. Therefore he found for the plaintiff for the legacy, with costs.

(a) This case is reported here because it is the *first* practical illustration of the new law, which comes into operation at the beginning of next term. Here the examinations were, *by consent*, taken *vivâ voce*, according to the practice as *it will be* in future. It is not placed among the *reports*, for it decides no question of law, and therefore is only of temporary interest.

WHO IS HE?

TO THE EDITOR OF THE LAW TIMES.

SIR,—The accompanying card and slip of a letter, addressed to a Devonshire paper in October 1849, was this day placed in the hands of a respectable firm of solicitors in this town by one of their clients, to whom they had been sent by the writer, Mr. Daniel Warren, whose name does not appear in my list of conveyancers or practising solicitors; and it may, I think, be fairly concluded that he is one of that class to whom you are in the habit most properly of giving an unenviable notoriety in the columns of the LAW TIMES.

We know nothing of this man here. I presume he has but recently commenced his disreputable career at his head quarters "near the fish market."

Pray make what use of these papers you think proper. I am, Sir, yours, &c.

Manchester, May 28, 1852. JAMES STREET.

(Copy.)

"MR. WARREN,
Conveyancer,
14, Victoria-street, Manchester.

Great reduction in stamps.

Charge for lease, conveyance, mortgage, wills, &c. very considerably reduced.

Lease preferable to an agreement, which, if swerved from by either party can only be enforced by a suit in Chancery, whilst, in some cases, the stamp for a lease is less than for an agreement."

[The letter is a long one, addressed to and published in a Plymouth paper—of course, not adapted for these columns.—ED. LAW T.]

Query.

ATTORNEYS IN THE COLONIES.

CAN a person who has been articled in this country be admitted to practise as an attorney (or as an attorney and barrister, if the functions are there united) in Grenada, in the British West Indies, without having been admitted in the Courts at Westminster? And, if not, can a person admitted as an

attorney in the latter courts, practise as h in suc Grenada?

I have sought for information on this subject from one or two works on colonial law which we have in the Manchester Law Library, but I can find nothing to satisfy my inquiries, excepting the few remarks contained in Bythewood's Conveyancing by Jarman (1839), p. 187, which only go to shew that in some of the islands the functions of the barrister and attorney are united, and that different qualifications are required in different islands for practising as either. G.

THE MERCANTILE LAWYER.

Summary.

One of the most interesting cases, and of equal practical importance, which has been decided for some time, is that of *Bodenham* v. *Hoskins*, 19 Law T. Rep. 294, in which the relationship of a *banker with his customers* was very fully considered. The facts were briefly these:—A customer opened three accounts with his banker, one of which was called the "Rotherwas' Estate Account," and it was opened by the customer avowedly as receiver of the rents of an estate of that name. The customer drew cheques on that particular account to liquidate a balance due from him on one of his other accounts, called the "Office Account." The customer failed, and the owner of the estate claimed from the bankers the whole of the balance that had been paid to the estate account, including the sum drawn from it by the said cheque, and paid to the private account of the customer. And Vice-Chancellor Kindersley has held, that the bankers are liable to make good the loss. Now, the general rule is, that bankers need *not* inquire upon what account moneys are paid in or drawn out, and they are bound to honour such cheques as the customer may think fit to draw; but when having express knowledge that the money is *not* that of the customer, but only held by him in trust for another, and actually being, as it were, earmarked as the property of another, they are bound not to aid him in any malversation of that money. "A person who deals with another," said the Vice-Chancellor, "which other he knows to have in his hands, or under his control, moneys belonging to a third person, cannot deal with the individual holding those moneys for his own private benefit, when the effect of the transaction is, that this person commits a fraud on a third person."

Another *banker's* case is, *Bell* v. *The London and North-Western Railway Company*, 19 Law T. Rep. 292. There A., a railway contractor, wanting money to perform his contract, applied to a bank to allow him to draw, on condition of his giving an order to the company to pay over the moneys which from time to time became payable under the terms of the contract, as the work advanced. Accordingly he wrote a letter, in which he simply directed the company "to pay into the bank to the account of A. such sums as might become due in respect of his contract." The bank sent this letter to the company, requesting that it may be acknowledged. It was so, and the money due was paid to the bank. A. then made a second contract, and the company wrote to the bank, asking if they required the payment of the moneys upon that contract, as they became due, to be made to them, and they replied that they did not. The secretary also observed in his letter, that he supposed all payments, except under Contract 1, might be made as A. might direct, and the bank answered that they might. A. became bankrupt. No notice of the arrangement between A. and the bank was given to the company. It was held, that A.'s order did not amount to an assignment in equity of the sums due to him from the company; nor did the subsequent letter from the company to the bank alter the construction of that order; nor was it an admission by the company that the moneys due under Contract 1 had been irrevocably assigned.

A third *banking* case is, *Heward* v. *Wheatley*, 19 Law T. Rep. 293. A. had been a partner in a banking company. In a suit for the administration of his estate, it was referred to the Master to take accounts. B. a creditor of the company, prayed leave to go in and prove his debt, but the Court refused, as it was not shewn that the liability could not be satisfied by proceedings against the present members of the partnership.

There is one *Admiralty* case to notice. In *Anonymous*, 19 Law T. Rep. 304 (the name, we presume, being omitted through an oversight of the reporter), a ship was abandoned, under orders of the master, and the crew were landed by a steamer at Vigo. There they were, by the British Consul, put on board another steamer for England. On the day following they fell in with the abandoned ship. Part of the crew boarded her, and conveyed her to Corunna. The portion of the crew who did so were held to be entitled to remuneration as salvors. The judgment is a lucid and most instructive review of the law of salvage, and we recommend it to the perusal of our readers.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

Commissions signed by the Lord-Lieutenant of the County of Oxford.—Lord Alan Spencer Churchill; the Hon. Thomas Edward Stoner; the Hon. Percy Barrington; Col. William Thomas Knollys; Major George Hall; Joseph Phillimore, esq. D.C.L.; Hugh Hamersley, esq.; George Henry Barnett, esq.; Henry Barnett, esq.; Richard Aubrey Cartwright, esq.; James Patrick Muirhead, esq.; William Barrington Read, esq.; William Henry Stone, esq.; Frederick Whitaker, esq.; Henry Norris, esq.; Joseph John Henley, esq.; Clement Cottrell Dormer, esq.; Henry Hall, esq.; Arthur Henry Clerke Brown, esq.; William Elias Taunton, esq.; William Earle Tyndale, esq.; Archer Robert Tawney, esq.; William Wemyss Methven Dewar, esq.; to be deputy-lieutenants.

Commission signed by the Lord Lieutenant of the County of Surrey.—Henry Gosse, esq. to be deputy-lieutenant.

Commissions signed by the Lord-Lieutenant of the County of Denbigh.—Capt. Ebenezer Jones, Major Sir William Lloyd, knt. Thomas Downward, esq. James Maurice, esq. and Thomas Penson, esq. to be deputy-lieutenants.

Commission signed by the Lord Lieutenant of the North-Riding of Yorkshire.—Christopher Cradock, esq. to be deputy-lieutenant.

Commissions signed by the Lord-Lieutenant of the County of Carmarthen.—Alan James Gulston, esq. and John Lloyd Davies, esq. to be deputy-lieutenants.

Commissions signed by the Lord-Lieutenant of the County of Flint.—Sir John Hanmer, bart. Sir William Henry Clerke, bart. Philip Davies Cooke, esq. Edward Morgan, esq. Edmund Peel, esq. and Charles Butler Clough, esq. to be deputy-lieutenants.

THE GAZETTES.

Bankrupts.

Gazette, Aug. 10.

Crabtree, William, and Shepherd, Stephen, ironfounders, Bradford, Yorkshire, Aug. 24 and Sept. 21, at eleven, Leeds. Off. as Hope. Sols. Slater, Manchester; and Richardson and Gaunt, Leeds. Petition, Aug 2.

Fugill, Jo[illegible] stuff merchant, Bradford, Yorkshire, Aug. 31 and Sept 27, at one, Leeds. Off as. Hope. Sols. Stocks, Halifax; and Bond and Barwick, Leeds. Petition, Aug 7

Heathwaite, James, cheesemonger, New-st. Covent-garden, Aug. 16, at half-past eleven, Sept. 21, at one, Basinghall-st. Off. as Cannan. Sols. Ford and Lloyd, Bloomsbury-square. Petition, Aug 7.

Hutchinson, Thomas and James, grocers, Sunderland, Durham, Aug 17 and Sept 16, at eleven, Newcastle-upon-Tyne. Off. as. Baker Sols Cooper, Sunderland; and Chandler, Paternoster-row Petition, July 23

Jones, Hugh, grocer, Chester, Aug 19 and Sept 17, at eleven, Liverpool Off. as. Turner. Sols Bower, Tokenhouse-yard, London, and Royle, Chester. Petition, July 27.

Keddell, John, brewer, Gravesend, Aug 17, at half past one, and Sept. 20, at twelve, Basinghall-st. Off. as Graham. Sol. Mount, Clement's-lane, City. Petition, July 28.

Lodge, George, jun and Hope, Robert, flax spinners, Leeds, Aug. 21 and Sept. 11, at Twelve, Leeds Off. as. Hope. Sols. Payne and Co Leeds. Petition, Aug 6.

M'Cree, Thomas and Andrew, grocers, Newcastle upon-Tyne, Aug. 20, at eleven, Sept. 21, at twelve, Newcastle-upon-Tyne. Off. as. Wakley. Sols. Shield and Harwood, Clement's-lane, Lombard-st; and Watson, Newcastle-upon Tyne Petition, Aug 6

Winterbottom, Joseph, spinner, Huddersfield, Yorkshire, Aug. 23 and Sept. 12, at twelve, Leeds. Off as. Hope. Sols Barber, Huddersfield; and Bond and Barwick, Leeds. Petition, July 29.

Tuesday, Aug. 13.

Ball, George, wine merchant, Fenchurch-st. Aug. 20 and Sept. 24, at one, Basinghall st. Com. Fane. Off. as. Whitmore. Sols. Messrs. Linklater, 17, Sise-lane, Bucklersbury. Petition, Aug. 10.

Bright, William, George, victualler Swansea, Aug. 27 and Sept. 22, at eleven, Bristol. Com. Stephen. Off. as. Hutton. Sols. Strick, Swansea; and Hinton, Exchange-buildings, Bristol Petition, July 30.

Butt, Edward, laceman, 7, Newcastle-place, Edgware-road, Aug. 18, at half past twelve, Sept. 25, at one. Basinghall-st. Com. Goulburn. Off. as. Pennell. Sols. Reed, Langford, and Marsden, 59, Friday-st. Cheapside. Petition, Aug. 10.

Cohen, Hyman, paper hanging manufacturer, 17, Booth-st. Spitalfields, Aug. 20, at twelve, Sept. 28, at one, Basinghall-st. Com. Fane. Off. as. Whitmore. Sols. Jacobs and Forster, 6, Crosby-sq. Petition, Aug. 12.

Delf, Thomas, and Trubner, Nicholas, booksellers, 12, Paternoster-row, Aug. 20, at half-past eleven, Sept. 24, at eleven, Basinghall-st. Com. Fane. Off. as. Cannan. Sol. Hughes, Chapel-st. Bedford-row. Petition, Aug. 10.

Hollamby, William, grocer, miller, and farmer, Hurstperpoint, Sussex, Aug. 25, at half-past one, Sept. 27, at twelve, Basinghall-st. Com. Fonblanque. Off. as. Stansfeld. Sol. Sowton, 6, Great James-st. Petition, July 16.

Lamplugh, Thomas, draper, Great Driffield, Yorkshire, Sept. 1 and 22, at twelve, Kingston-upon-Hull. Com. Ayrton. Off. as. Carrick. Sol. Collinson, Great Driffield. Petition, July 28.

Roberts, Joseph, grocer, Chester, Aug. 26 and Sept. 23, at eleven, Liverpool. Com. Stevenson. Off. as. Bird. Sols. Evans and Sons, Commerce-court, Lord-st. Liverpool. Petition, Aug. 5.

Streevens, John, sail maker and ship chandler, Bermondsey-wall, Bermondsey, Aug. 27, at one, Sept. 28, at two, Basinghall-st. Com. Fane. Off. as. Whitmore. Sols. Hill and Matthews, St. Mary Axe. Petition, Aug. 13.

Sutton, Robert Gleave, proprietor of the Portchester Castle Pleasure-grounds, Portsea, Aug. 20, at half-past one, Sept. 28, at twelve, Basinghall-st. Com. Fane. Off. as. Whitmore. Sols. Briggs and Sons, 55, Lincoln's-inn-fields; and Parnell, Portsea. Petition, July 31.

Swift, John, grocer and draper, Stavely, Derbyshire, Aug. 14 and Sept. 18 (and not Oct. 9, as previously advertised), at twelve, Sheffield. Com. West. Off. as. Freeman. Sols. Hoole and Yeomans, Sheffield. Petition, July 20.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Ballingall, J. pianoforte maker, second, 9d. Whitmore, London.—*Barlow*, J. engineer, second, 8½d. Whitmore, London.—*Bellairs*, A. W. and J. bankers, final sep. of A. W. Bellairs, on further proofs, 3s. 3½d. Bittleston, Nottingham.—*Bird*, J. draper, &c. second (in addition to 9s. 6d. previously declared), 6d. Baker, Newcastle.—*Bowyer*, W. L. grocer, final, 4s. 6d. Fraser, Manchester.—*Colvin*, *Ainslie*, *Colvin*, *Anderson*, and *Ainslie*, ---- chants, seventh, 6 annas per 100 sicca rupees. Whitmore, London.—*Duggan*, J. draper, second, 5d (in addition to 3s 8d previously declared). Baker, Newcastle.—*Greenhow*, C. jun. timber merchant, first and final, 8½d. Wakley, Newcastle.—*Keeping*, R. watchmaker, first, 11d. Whitmore, London.—*Law*, G. hatter, first, 4½d. Whitmore, London.—*Moore*, T. jun. merchant, first and final, 4½d. Baker, Newcastle.—*Passman*, J. currier, first, 3s. 4d. Baker, Newcastle.—*Phillips*, P. common brewer, first, 1s. 3d. Stansfeld, London.—*Pope*, T. coal merchant, second, 5d Whitmore, London.—*Pratt*, F. miller, first, 15 32nds of 1d. Christie, Birmingham.—*Reay*, J. jun. and H. wine merchants, fifth, 4d. Graham, London.—*Sadler*, F. undertaker, first, 9s. Whitmore, London.—*Samuel*, L. silversmith, second, 4-5ths of 1d. Pennell, London.—*Sykes* and *Sykes*, woollen manufacturers, second, 6d. and upon new proofs, 4s 6d. Freeman, Leeds.—*Taylor* and *Wylde*, flock, wadding, and mop manufacturers, second, 4½d. Whitmore, London.—*The Chartershaugh Coal Company*, first sep. of Wanless, 4s. 3½d. Baker, Newcastle.—*Tipper*, B. wholesale stationer, second, 3¾d. Whitmore, London.—*Walker*, W. chemist, &c. first, 8s. 7d. Pott, Manchester.—*Whitfield* and *Whitfield*, cheesemongers, &c. first, 2s. 3d Graham, London.—*Wood*, R. upholsterer, &c. first, 3s. Graham, London.

INSOLVENTS' ESTATES.

Apply at the Provisional Assignee's Office, Portugal-street, Lincoln's-inn-fields, London, between the hours of eleven and three.

Andrews, J. letter sorter, second, 2s 1d.—*Ashcroft*, J. victualler, 9s. 7d.—*Binks*, A. watch maker, 1s.—*Bowick*, B J. clerk, 2s. 6d.—*Bushby*, W. esq. 7s. 8d.—*Cocking*, J. third table decker in H. M household, 11d.—*Davison*, C. law writer, 1s. 8d.—*Deane*, R. T. grocer, 6d.—*Denman*, T. sculptor, 2s 6d.—*Dredge*, W carpenter, second, 7s. 11d.—*Dyson*, G. W. gentleman, first, 1s.—*Harradine*, R. bricklayer, &c 9¾d.—*Hoskins*, J. wine merchant, 5½d.—*Ireland*, R jun. schoolmaster, 1s. 10d.—*James*, C. grocer, 3s. 8½d.—*Roberts*, W. shoe maker, 1s. 5¼.—*Turner*, J. out of business, 20s.—*Willey*, J. scissor forger, 1s. 1d.—*Woodley*, W. Captain R N. second, 1s. 6d.—*Woodley*, W. Captain, R.N. second, 2s 3½d.

Marlay, D. Lieut-col. R M. third, 1s. 7d. Apply to Whitmore, London.—*Marsh*, W. cabinet maker, first, 2s 6½d. Apply at the County Court, Ashford.—*Odden*, S farmer, first, 6½d. Apply at the County Court, Ashford.—*Rogers*, F. grocer and general dealer, first, 1s. 6d. Apply at the County Court, Ashford.

Assignments for the Benefit of Creditors.

Gazette, Aug. 3.

Brewer, H. grocer, Great Waltham, Essex, July 14. Trusts. J. Stapp, cheesemonger, Snow-hill, and J. S. Buck, wholesale grocer, Leadenhall-st. Sols. Messrs. Linklaters, Sise-lane.—*Drewe*, A. carpet warehouseman, Bristol, July 10. Trusts. S. Hindley, carpet warehouseman, Friday-st. Cheapside; W. F. Mogg, gentleman, Bristol; and A. J. Drewe, gentleman, Paddington. Sol. N. Overbury, Frederick's-place, Old Jewry.

Gazette, Aug. 6.

Bedford, J. merchant, Wakefield, Yorkshire, July 20. Trusts. J. Sutton, Rawdon, near Leeds, and J. Denison, Yeadon, near Leeds, manufacturers. Sol. H. Brown, Wakefield.—*Booker*, T. clothier and tailor, Mitford-pl. Reading, Berkshire, July 12. Trust. J. Still, farmer, Wilmington. Sol. E. Clarke, Bedford-row, Holborn.—*Jenkinson*, R. cabinet maker, London-road, Derby, July 26. Trusts. Josiah Smith, mahogany merchant, Hatton-garden, and W. Ratcliff, ironmonger, Derby. Sol. J. Briggs, Derby.—*Lucy*, W. F. brewer, and hop, porter, and ale merchant, Hanley Castle, Worcestershire, July 23. Trusts. G. Clark, merchant, and S. George, maltster, both of Upton-upon-Severn. Sol. T. W. Walker, Upton-upon-Severn.—*Peat*, M. and J. milliners, College-street, Camden-town, July 14. Trusts. J. Field, warehouseman, Wood-st. Cheapside. Sol. J. N. Mason, Ironmonger-lane.

CONTENTS.

To Readers and Correspondents.

"D. B."—*Hughes's is the best.*
"J. M. H." "W." *and* "J. F. R." *are under consideration.*
"J. E."—*We do not perceive the force of your objections to the passage in question.*
"J. D. N." *would particularly call the attention of our readers to the paragraph in the* LAW TIMES, *of July 24th, col. 2, p. 139, respecting some information required by the Lord Chancellor from* all Masters in Chancery.

THE LAW TIMES.

SATURDAY, AUGUST 21, 1852.

HOUSE OF LORDS APPEALS.

SOME extremely curious and interesting statistics of the appeal business of the House of Lords during the last sixty years have been placed in our hands, and we hasten to lay before the Profession the most remarkable results of those figures. That each of the Chancellors may have his just meed of praise, and that their relative exertions in the despatch of the business may be the more readily seen, the state of the business is shewn under the regime of each of the Chancellors in succession. These tables shew the name of the then Chancellor, the year, the number of appeals and writs of error entered, the number of cases heard, and the number decided :—

		Appeals.	Writs of error.	Total heard.	Decided.
Lord Thurlow	1790	10	4	11	12
	1791	22	2	21	21
Lord Loughborough	1796	16	1	17	17
	1797	30	1	31	30
Lord Eldon, before a Vice-Chancellor was made....	1809	13	3	16	9
	1810	11	3	14	11
	1811	10		12	11
	1812	11		11	11
Lord Eldon, after a Vice-Chancellor was made........	1813	50		58	58
	1814	71		78	81
	1815	38		46	53

The arrears being cleared off, the number of causes diminished. In 1818 there were only twenty appeals and eight writs of error, all of which were heard and decided. In 1820, the *Queen's* case occurred, and only thirteen appeals and five writs of error were heard. In 1821 and 1822 there was a great increase in the number of appeals presented, there being no less than 147 in the two years. In 1821, 1822, and 1823, the arrears became heavy, and an arrangement was made for Lord GIFFORD to hear appeals. In 1824, there were heard ninety-one appeals and writs of error; and in 1825, also ninety-one, being the greatest number ever heard, except in the year 1831. In those two years there was, by the arrangement with Lord GIFFORD, a virtual separation of the CHANCELLOR'S two duties, as there has been during the last session by the appointment of Lords Justices. But Lord ELDON never had above one Vice-Chancellor; and the Master of the Rolls did not sit above half as much as he has done since Lord ELDON'S time.

		Appeals.	Writs.	Total heard.	Decided.
Lord Lyndhurst; but part of Session 1827 was in Lord Eldon's time	1827*	48	6	51	43
	1828	38	6	44	37
	1829	24	4	28	25
	1830	53	5	58	39
Lord Brougham; but part of Nov. 1830, in Lord Lyndhurst's time	1831†	101	10	111	107
	1832	30	5	35	29
	1833	39	1	40	39
	1834	35	4	39	44
Commission—Lord Lyndhurst and Lord Brougham took the Appeals	1835	58		63	60

* Session began in November 1826, but few appeals before Christmas.
† Session began in November 1830.

APPEALS.

Lord Cottenham	1837	29
	1838	23
	1839	41
	1840	40
Lord Lyndhurst	1842	46
	1843	23
	1844	26
	1845	30
	1846	33
Lord Cottenham	1847	26
	1848	32
	1849	25
Commission — Lord Brougham took appeals	1850	22 heard
	,,	22 decided
Lord Truro	1851	22 heard
		9 decided
Lord Truro till March 1, Lord St. Leonard's afterwards	1852	35 heard
		33 decided

It is only common justice towards Lord ELDON, and indeed all Chancellors before the last session, to note the great difference in the judicial force which has been made at successive periods. Till 1813, there was the Chancellor and the Master of the Rolls sitting half the time he now does. From 1813 to 1842, there was one Vice-Chancellor, and the Master of the Rolls sat in the morning; but before 1835 he took no motions. From 1842 there were three Vice-Chancellors. In 1852, there have been added to them two Lords Justices, who can execute all the duties of the Chancellor, except presiding in the House of Lords.

The Bankruptcy Court has relieved the Chancellor, since 1831, very considerably. Taking that into the account, and the Master of the Rolls sitting twice as much as in former times, it may be stated that the judicial force of the Court in 1812 was as 3

From 1812 to 1832 ,, 6
From 1832 to 1842 ,, 7
From 1842 to 1852 ,, 11
And in 1852 ,, 13

This estimate proceeds on the assumption that each Judge, Chancellor, Vice-Chancellor, and Master of the Rolls is equal to two; that when the Master of the Rolls sat only in the evening, he was equal to one; that the Bankruptcy Court added one; and that the Lords Justices, sitting together, only add two. If they take causes separately, an addition of at least one must be made, and the total force now will be—14.

To these interesting facts and figures we add another, equally significant. It is a list of the causes heard in the House of Lords, and waiting for judgment at the end of the session :—

1832	4	1843	4
1833	3	1844	1
1834	3	1845	8
*1835	4	1846	5
1836	1	1847	15
1837	12	1847-8	8
1837-8	19	1849	5
1839	6	*1850	*nil.*
1840	9	1851	11
1841	7	1852	2
1842	8		

* No Chancellor.

There is probably an error in 1837-8. The judgment not being given in the same session frequently depends on the learned Judges, when they have been called in. Sometimes it arises from the same Lords who heard the cause not being able to attend afterwards.

We leave these facts for the present to the consideration of our readers. We shall probably return to them with a commentary.

BRIBERY.

ALL agree that something must be done to raise a more effective obstacle against bribery at elections.

It had been generally supposed that the change in the law of evidence, which now permits the party to be personally examined, and therefore will subject members petitioned against to be called into the witness-box to give evidence against themselves, would have deterred candidates from resorting to bribery.

Not so, however. During the last election there was as much of it as, perhaps more than, ever before. Many of the cases have obtained a painful notoriety, but it was not less flagrant in other places, although not brought so prominently before the public. We speak from personal experience. We have seen its effects. Thirty-one promises are not broken without a *consideration*. Three men who go out on Friday with blue ribbons to meet a candidate and accompany him into the town, and go to his committee-room, do not, on the Tuesday following, vote against him, without *substantial* reasons for conduct so shameless. Everybody knows that they have been *bought*, and yet it is difficult of *proof*.

Now why is this? Why does a fact notorious to the whole town escape detection and punishment before a committee of the House of Commons? That is the question, the answer to which will exhibit the real difficulties that impede the prevention of bribery, and the true cure for the evil.

Now, what are they You know your man; you are sure who was the briber, and who the bribed. You put them into the witness-box, not to prove a case against *themselves*, but against the validity of the election thus obtained. But though the very men are there and the fact is within them, and only wants to be brought out, you cannot extract it.

Why not? Because of the absurd protection which our law throws round witnesses who are not bound to answer questions that might be afterwards used against them in a criminal prosecution. Thus is truth stifled and justice defeated. That is the obstacle to much of justice everywhere; but it is a positive defeat of it in an inquiry as to the bribery committed at an election.

What is the remedy? Nothing more easy and certain. Remove the obstacle. If justice is defeated by the consequences in which truth-telling would involve the witness, do not exclude the truth, but protect him against those consequences. When there is a real desire to learn the truth, this is the course adopted. It is thus that the St. Alban's inquiry was conducted, and thus the corruption of boroughs is to be ferretted out under the new Act designed for application to other boroughs like St. Alban's. But if this be efficient to promote the ends of justice when the object is to trace bribery among a constituency, why should it not be adopted also when the object is to trace the bribery of particular individuals, and discover by whom and on whose account they were bribed. The first and most effective remedy, then, for the discovery, and therefore for the prevention, of bribery, is to protect all witnesses giving evidence against any legal consequences of truth-telling, and then compelling an answer to all questions put to them, even of such as involve admissions of their own guilt.

The second remedy is the punishment of bribery when proved. Pecuniary penalties are worthless; usually the parties are too poor to pay them, and, therefore, they are disregarded. The offence should involve something which men care for more than money,—it should be followed by some *infamous* punishment appropriate to the nature of the offence. Some are in favour of making it felony, and inflicting hard labour in a gaol; but this would only prevent convictions, for the public mind would not be brought to place bribery in the same category with larceny, or class Major BERESFORD with a pickpocket. The punishment should be *appropriate*, and then it will be enforced by judges and juries; that appropriate punishment will be *disfranchisement for life* of the *receiver*, and permanent *incapacity to sit in Parliament, or hold any public office*, in the *giver* of a bribe. Whenever an inquiry is made into the existence of corrupt practices in any borough or county, let the Committee or Commissioners make a report of the names of all the persons proved to have been guilty of bribery; let that report be recorded, and upon that let the disqualification follow as a matter of course, only giving to any person thus reported an opportunity, if he pleases, of appealing to a Court of Law against the decision, by demanding to be prosecuted by the ATTORNEY-GENERAL for the alleged offence; and on that prosecution permitting himself to be examined as a witness, as well as the reproduction of all the evidence against him on which the report was founded. This would sufficiently protect the innocent against possible errors of the Committee or Commission.

And so with all *givers* of bribes reported. Give them the same power of appeal, and in default, or on failure, let the punishment of perpetual incapacity follow without further proceedings.

The advantages of this plan are manifold. The offence would always suggest the punishment. Courts would not scruple to enforce it, because of its fitness. It would punish only those actually guilty, and not disenfranchise a whole constituency, because some are corrupt. It would gradually weed out the venal, who are only a definite and well-known portion of the electors in any place, and it would be feared by the vilest, for it would set a mark upon them that would expose them to the contempt of their fellows.

We throw out these suggestions of experience for the consideration of those who are *really* desirous of applying an effective remedy to the increasing crime of bribery at elections.

LAWYERS IN PARLIAMENT.

AN inaccuracy and an omission in our list of last week have been pointed out to us; and on reference to *Dod's Parliamentary Companion*, just published, we find the corrections of our correspondents verified. Mr. J. G. PHILLIMORE, Q.C. is member for *Leominster*, and not for Cheltenham as was stated in our last; and we omitted the name of Mr. FREDERICK LUCAS, member for the county of Meath, an Equity Barrister.

THE NEW COMMON LAW PRACTICE.

IX. PLEADING (*continued*).

Where it may be doubtful whether the action is on contract or for tort, or partakes of both, the plea is not to be objectionable on the ground of its treating it as either, if good in substance.

Pleas of *payment* and set-off, and other pleas capable of being construed distributively, are to be so construed; and if issue be taken thereon, and so much as is sufficient to answer part of the causes of action be found by the jury, the verdict and judgment shall be distributed accordingly.

As to *traverses*, it is provided that the defendant may either traverse *generally* such facts as might have been denied by one plea, or *separately* any material fact, although it might have been included in a general traverse, and in like manner with the plea, on subsequent pleading of either party.

Joinder of issue may be pleaded by either party in answer to the pleas or subsequent pleading of the other party, thus.

"The plaintiff joins issue upon the defendant's first plea," and in like manner for other pleadings; and this form of joinder is to be deemed a denial of the substance of the pleading, and an issue thereon.

By leave, either party may plead and demur at the same time to the same pleading. But the application must be on affidavit of merits of the party or his attorney, and that the matters sought to be pleaded are true in substance and in fact, and that he is advised and believes that objections are good and valid in law. In such case, it is to be in the discretion of the Court or Judge to direct which issue shall be first disposed of.

Several matters may, by leave, be pleaded by either party, but only upon affidavit of merits, that the matters so sought to be pleaded are true in substance and in fact. The *costs* of any issue, either of law or fact, are to follow the finding upon such issue, and be adjudged to the successful party, whatever the result of the other issues.

A Judge's order to plead several matters is to suffice, without a rule.

***Objections* to the pleading of several pleas, on the ground that they are founded on the same ground of answer or defence, are to be heard on the summons to plead several matters.**

The following pleas, or any two or more of them, may be pleaded together as of course, without leave :—

1. Denial of any contract or debt alleged in the declaration.
2. Tender as to part.
3. Statute of Limitations.
4. Set-off.
5. Bankruptcy of defendant.
6. Discharge under Insolvent Act.
7. Plene administravit præter.
8. Infancy.
9. Coverture.
10. Payment.
11. Award and satisfaction.
12. Release.
13. Not guilty.
14. Denial that property is the plaintiff's.
15. Leave and licence.
16. Son assault demesne.

Or any other pleas which the Judges of the Superior Courts shall, by rule or order, from time to time, direct.

With these exceptions, if either party plead several matters without leave, judgment may be signed, and shall only be set aside on affidavit of merits.

The *signature of counsel* to all pleadings is *abolished*.

One *new assignment* only is to be pleaded to any number of pleas to the same cause of action, and it is to be consistent with and confirmed by the particulars, if any, delivered in the action, and shall state that the plaintiff proceeds for causes of action different from those which the pleas profess to justify, or for an excess beyond what they justify, or both, and to such new assignment no plea, already pleaded to the declaration, shall be pleaded without leave, except a plea in denial.

The form of a *demurrer* is to be thus :—

"The defendant, by his attorney, says that the declaration (or pleas, &c.) is bad in substance."

And in the margin the matter of law to be argued must be stated, in default of which judgment may be signed as for want of a plea. The *joinder in demurrer* is to be in this form :—

"The plaintiff says that the declaration is good in substance."

After *amendment* of any pleading the other party is to plead to the amended pleading within the time specified in the original notice to plead, or within two days after amendment, whichever shall last expire, unless otherwise ordered; and unless there be such new or amended pleading the original pleading is to stand, and be deemed the answer to the amended pleading.

The statute gives, in a schedule, various short *forms of pleading*, which are to be sufficient, and may be used with such modifications as may be necessary to meet the facts of the case. But the letter of the forms is not to be observed if the substance be correct.

X. JUDGMENT BY DEFAULT.

Where the claim is for a *debt* or *liquidated demand*, and there is judgment by default, it is to be *final*, and no rule to compute will be required. Where it shall appear to the Court or a Judge that the damages to be recovered are matter of calculation, *no writ of inquiry* shall issue, but the Court may direct the amount to be ascertained by one of the Masters, and the attendance of witnesses and production of documents may be compelled by subpœna as before a jury; and the Master is to indorse upon the order the amount found by him, and deliver it to the plaintiff; and the same proceedings as to taxation of costs, judgment, &c. are to be had thereon as upon the finding of a jury upon a writ of inquiry.

Where plaintiff recovers a sum of money, the judgment may award it to him generally, without distinction whether it was recovered by way of debt or damages.

XI. JUDGMENT OF NONSUIT.

The stat. 14 Geo. 2, c. 17, so far as it relates to *judgment in case of nonsuit*, is repealed, and, instead of it, where issue is joined, and plaintiff neglects to bring it on to be tried,—in town causes, within the following Term and vacation, and in country causes, where issue joined, in or on the vacation before Hilary or Trinity Term,—and the plaintiff neglects to try at the *second* assizes following

such Term, or where joined in or on the vacation before Easter or Michaelmas Term, and the plaintiff neglects to try at the *first* assizes after such term, whether notice of trial have been given or not, the defendant may give to plaintiff *twenty days'* notice to try at the sittings or assizes next after the expiration of the notice, and in default of his doing so, the defendant may *suggest it in the record*, and sign judgment for his costs. But the Court or a Judge may extend the time for trial upon terms.

XII. NOTICE OF TRIAL AND INQUIRY.

Ten days' *notice of trial* or inquiry is to be sufficient in all cases, whether in town or country.

Countermand of notice of trial is to be given *four days* before the time mentioned in the notice of trial, "unless short notice of trial has been given, and then two days before the time mentioned in the notice." This, however, appears to be a mistake in the Act, for the previous section had required ten days' notice of trial in all cases, and thus abolishing *short* notice.

A rule for *costs of the day* for not proceeding to trial, pursuant to notice, may be drawn up on affidavit, without motion.

XIII. THE NISI PRIUS RECORD.

The *record* is not to be sealed or passed, but delivered to the proper officer of the court in which the cause is to be tried, and records of the Superior Courts are to be brought to trial and entered and disposed of in the counties palatine in the same manner as in other counties.

At this convenient point we pause again, the next series of provisions, which relate to juries, being numerous.

NEW CHANCERY PRACTICE.(a)

OUR remarks in the last number on the Master in Chancery Abolition Act concluded with some observations on the general rules and orders to be made under sec. 38 by the LORD CHANCELLOR, with the advice and consent of the MASTER of the ROLLS and VICE-CHANCELLORS, or any two of them, for, amongst other things, regulating the mode of procedure before the Judges sitting at chambers, and the practice of the Court generally.

The Act then proceeds to assimilate the practice before the Masters to that before the Judges, for from and after the first day of Michaelmas Term next, the course of practice and proceeding in the Masters' offices, so far as the same may be inconsistent with the rules and regulations to be made by the LORD CHANCELLOR, as before mentioned, are to be abolished, and the Masters, with reference to the proceedings before them, are to adopt all such rules and regulations, and are to conduct the business of their respective offices *as nearly as may be in the manner in which similar business* is to be conducted by the Judges respectively, save only that the Master, instead of communicating directly with the Judge, is *to report shortly the result of his inquiries to the Court.* (Sec. 39.) It will be observed that the report which the Master will have to make under this section will, or at any rate ought, to be, very different from the lengthy composition which at present goes by that name. It is to consist merely of the *result* of his inquiries, without the materials by which he arrives at it.

Next come some very useful causes, giving the judges power to obtain the assistance of certain skilled persons to aid them in the performance of their duties of a particular kind. First, from and after the first day of Michaelmas Term next, the Court, or any Judge thereof, when sitting at chambers, may receive and act upon the *opinion of conveyancing Counsel* in all cases in which, according to the present practice, the Masters receive such opinion, in the investigation of the title to an estate, with the view to the investment of money in the *purchase* or on *mortgage* thereof, or with a view to a *sale* thereof, or in the settlement of a *draft of a conveyance, mortgage, settlement*, or other *instrument*, or otherwise as the LORD CHANCELLOR shall by general order direct. Any party, however, may take an objection to such opinion of counsel, whereupon the point in dispute is to be disposed of by the *Court*, or by the *Judge sitting at chambers*, according to the nature of the case. (Sec. 40.) And power is given to the LORD CHANCELLOR to nominate not less than six conveyancing Counsel in actual practice, *who shall have practised as such for ten years at least*, whose opinion is to be acted upon in the cases before mentioned, and to supply vacancies among them from time to time, and to distribute the business among them as he shall think fit. (Sec. 41.) Under this section the LORD CHANCELLOR has appointed Messrs. BRODIE, COOTE, CHRISTIE, HAYES, JARMAN, and LEWIN, as Conveyancing Counsel. Moreover, the Court, or any Judge thereof, may, in such way as they may think fit, obtain the assistance of *accountants, merchants, engineers, actuaries, or other scientific persons*, the better to enable such Court or Judge to determine any matter at issue in any cause or proceeding, and to act upon the certificate of such person. (Sec. 42.) This provision will, doubtless, be of great practical utility, and although questions will, notwithstanding, arise in which parties may desire to have the opinion of the Court, their number will certainly be less, and will be presented to the Court in such a shape as to be more easily dealt with and disposed of. With regard to the taking of accounts the Chancery Commissioners observe, that when they are taken in the Court of Admiralty, the practice has been to associate one or two merchants with the officer of the court, and that little difficulty has been experienced in taking these accounts, and that in Scotland accounts are referred to professional accountants, though the accountants to whom such references are made are not precisely the same class of persons as accountants in England.

The allowances in respect of fees to such conveyancing Counsel, accountants, merchants, engineers, actuaries, and other scientific persons, are to be regulated by the *Taxing Master of the court, subject to an appeal* to the Judge to whose court the cause or matter is attached, whose decision is to be final. (Sec. 43.)

The salaries of the Chief Clerks are to be 1,200*l.*; of the Junior Clerks 250*l.* which may be increased by the LORD CHANCELLOR in certain events to 1,500*l.*; and 300*l.* respectively (sec. 44); and they are to have pensions in case of permanent infirmity (sec. 45). The pensions of the Chief Clerks, and the compensation to Junior Clerks of retiring Masters, is next provided for (secs. 46 and 47); and then the mode of the payment of salaries (sec. 48), and of compensation (sec. 49). Then comes a provision for the reduction of the before-mentioned salaries or retiring pensions, on the acceptance by any of the Masters, or the Chief or Junior Clerks of certain offices (sec. 50). The appropriation of the Masters' offices in Southampton-buildings is next provided for: such part of such offices as is not wanted for the Judges may be appropriated for other purposes connected with the Court of Chancery, or let for chambers; and when the Masters have resigned, died, or have been released, the same may be sold by order of the LORD CHANCELLOR. (Sec. 51.) In connection with this section, we may usefully give a passage from a speech of the LORD CHANCELLOR in the House of Lords, clearly shewing what is his opinion as to the nature of the duties to be performed by the Chief Clerks. After expressing a wish that the Chief Clerks should occupy rooms annexed to the Courts of the Judges, his Lordship adds, —"I make a great point of this. I am most anxious that the new Clerks shall not find their way to Southampton-buildings. I feel satisfied that, at such a distance from the Judges, and from old associations, and from the class of persons they will be likely to meet there, they will act as if they were Masters, and not Clerks; and I am afraid the scheme would never answer." (Hans. Parl. Deb. vol. cxx. col. 801.)

By the next section, power is given to her Majesty to appoint a successor to the Vice-Chancellor Sir GEORGE JAMES TURNER, who must be or have been *a Barrister of fifteen years' standing at the least.* (Sec. 52.) The power of such Vice-Chancellor (sec. 53), his officers, and attendants (sec. 54); his salary, and those of his officers and attendants (sec. 55), his retiring pension (sec. 56), and the appointment of court-keeper (sec. 57), are next severally limited and provided for. The appointment of another Vice-Chancellor, as a successor to Sir G. J. TURNER, in case of a vacancy occurring, is very properly provided for, as it would be impossible to carry on the increased and still increasing business of the Court of Chancery with less than the present number of Judges. Whether a greater number will not be requisite, in order to carry out the alterations shortly to be introduced in the practice of the court, is at least probable, notwithstanding the additional powers which have been conferred upon the remaining Masters, for the purpose of winding up proceedings depending before, or which have been referred to them. The Commissioners, in their report, have not recommended any increase, but they very significantly add,—"If experience should prove that the business of the Court cannot be efficiently transacted without an increased number of Judges, we confidently trust that this necessity will be promptly met by the Legislature." (Ch. Rep. 37.) This wish every one acquainted with proceedings in equity will echo—not only because it is unfair to the Judges to thrust upon them more business than they can conscientiously discharge, not only because when we consider the enormous value of the property, the right to which is determined, or the management and administration of which is regulated by the decisions of the Court of Chancery, the attempt to save a few thousands in such a manner is a species of false economy of the worst description; but because the very success of the present plan cannot be expected unless each Judge himself gives up much of his time in seeing each suit efficiently worked out in its different stages; and if he cannot do so, the business must either be done inefficiently, or after great delay, or be delegated to the clerks or other officials of the Court, and thus all the abuses of the Masters' offices, and from the same causes, would be again gradually but surely introduced.

The rights and establishments of the present Masters are to continue until they are released in pursuance of this Act. (Sec. 58.) And nothing in this Act is to affect the rights of the ACCOUNTANT-GENERAL as a Master in ordinary. Nor is he to be called upon or required to do any duties as such Master in ordinary other than such as are now usually performed by him. (Sec. 59.)

The 60th section is a step in the right direction towards remedying what has been justly the subject of great complaint, and often of much hardship and injustice; it is in these words:—"Whereas it has frequently happened that after cases have been fully heard by the LORD CHANCELLOR in the Court of Chancery, and are standing for judgment, the LORD CHANCELLOR has delivered up the great seal *without being able by reason of other urgent public business* to deliver judgment therein, and much inconvenience and expense to the parties has been thereby occasioned. For remedy thereof be it enacted, that *in every such case* it shall *be lawful* for the person who has so delivered up the Great Seal *within six weeks* after he shall have delivered up the same to give in to the registrar of the said Court, a written judgment thereon, signed by him; and a decree or order, as the case may require, shall be drawn up in pursuance of such judgment, and every such decree or order shall have the same force and effect as if the judgment in pursuance whereof it is drawn up had been given in open Court the day before he shall have so delivered up the great seal."

In reading over this section, it certainly seems strange why the Legislature should have apparently confined the power of the LORD CHANCELLOR to deliver judgment after his resignation of the Great Seal, to those cases where it has not been delivered by "*reason of other urgent public business.*" Again, it is *not obligatory* upon the LORD CHANCELLOR to deliver judgment, it is merely *lawful* for him to do so; that is to say, he is at liberty to do so, without it being necessary, as at present, that the consent of all parties, if competent, should be given, in order that such judgment should be valid,—but even then the judgment must, in order to be *lawful*, be delivered *within six weeks.* Let us suppose, for instance, a Lord Chancellor resigned the seals from ill health, just previous to the long vacation, several judgments remaining undelivered, their non-delivery *not* being occasioned by any urgent public business, could he deliver judgment even within six weeks? or suppose he could, if from illness, *or from any other cause*, he failed to deliver judgment within that period, he would not, unless with the consent of all parties as at present, have any power to deliver judgment.

The evils this section were intended to obviate were glaring, and cried loudly for amendment; to a certain extent, as before observed, this has been done, but it is submitted that it would have been much more effectually done, had the delivery of judgments in all cases heard by a retired Lord Chancellor, before giving up the seals, been made *obligatory* upon him afterwards: and the time for delivery should not, at any rate in all cases, have been confined to so short a period as six weeks; and all mention of *urgent public business*, which perhaps may only be held to amount to a superfluous expression illustrative of Parliamentary prolixity, might as well have been altogether omitted.

(a) Continued from p. 161, ante.

THE LEGISLATOR.

NEW STATUTES.

15 VICTORIA, A.D. 1852.

[In this record of Legislation only the Statutes of practical utility are given at length. Of the others an abstract or the titles only are presented.]

(Continued from page 165.)

CAP. XLV.

An Act for Making a Turnpike-road between Stone Creek and Sunk Island Church, in the County of York, and between Sunk Island Church and Patrington Haven; and for consolidating wtih such Roads the present Turnpike-road from Sunk Island Church to Ottringham, and for constructing Quays and Wharfs and Stone Creek. (June 30, 1852.)

CAP. XLVI.

An Act to amend an Act of the Eleventh Year of King George the Fourth, for amending and consolidating the Laws relating to the Pay of the Royal Navy. (June 30, 1852.)

CAP. XLVII.

An Act to enable her Majesty to abolish otherwise than by Treaty, on condition of Reciprocity, Differential Duties on Foreign Ships. (June 30, 1852.)

CAP. XLVIII.

An Act for the Amendment of the Law respecting the Property of Lunatics. (June 30, 1852.)

We give this statute entire.

11 *Geo.* 4 & 1 *Wm.* 4, *c.* 65, *s.* 28.—Whereas by an Act of Parliament passed in the first year of the reign of his late Majesty King William the Fourth, intituled "An Act for consolidating and amending the Laws relating to Property belonging to Infant Femes Covert, Idiots, Lunatics, and Persons of unsound Mind," a power is given of ordering any land of any lunatic to be sold, or charged and incumbered by way of mortgage, or otherwise disposed of, for the purpose of raising money for the payment of debts, and other purposes therein mentioned, and provision is thereby made as to the surplus moneys; and it is expedient that such powers should be enlarged, and that the several provisions of the said Act relative thereto, and to the application of the money raised, and the quality of the surplus moneys, should be extended accordingly: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. *Powers and provisions of the recited Act extended to other cases and purposes.*—The aforesaid power of selling, or charging and incumbering by way of mortgage, or otherwise disposing of the land of any lunatic, and the aforesaid provisions relating thereto, or to the application and quality of the moneys to be raised, and every of them, is and are hereby extended so as to be applicable to and include any estate or interest of any lunatic in land or stock, in reversion, remainder, or expectancy, and so as to authorise the payment out of the moneys to be raised of any expenditure made or debt incurred after inquisition found, for the maintenance or otherwise for the benefit of the lunatic, and the payment of or provision for the expenses of his future maintenance, and the costs of such sales, charges, and incumbrances, and other dispositions as are hereby or by the said recited Act authorised.

2. *Modes in which future maintenance may be charged.*—In case of a charge or mortgage being made by order upon an interest in contingency, or in reversion, remainder, or expectancy, for the expenses of future maintenance the order may direct the same to be payable and paid, either contingently, if the interest charged be a contingent one, or upon the happening of the event if the interest be depending on an event which must happen, and either in the gross sum or in annual or other periodical sums, and at such times, in such manner, and either with or without interest, as shall be deemed expedient, and any charge already made which would have been valid if made after this Act shall be and is hereby declared to be valid.

3. *By whom jurisdiction to be exercised—The foregoing provisions to be incorporated with the recited Act.*—The powers so given by the said Act as aforesaid, and the powers hereinbefore given, may be exercised by and are hereby given to the person or persons for the time being intrusted by virtue of the Queen's Sign Manual with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, and of unsound mind; and the foregoing provisions shall, as to jurisdiction, and also as to the interpretation of expressions, and in all other respects so far as may be consistent with the meaning of this Act, be deemed to be incorporated with the said Act.

4. 8 & 9 *Vict. c.* 100, *s.* 95—*Power to receive dividends of stock in lunatic's name.*—And whereas by an Act of Parliament passed in the ninth year of the reign of her present Majesty Queen Victoria, intituled "An Act for the Regulation of the Care and Treatment of Lunatics," it was enacted, that when any person should have been received or taken charge of as a lunatic upon an order and certificates, or an order and certificate, in pursuance of the provisions of the said Act, or of any Act thereby repealed, and should either have been detained as a lunatic for the twelve months then last past, or should have been the subject of a report by the commissioners in pursuance of the provision therein contained, it should be lawful for the Lord Chancellor to direct that one of the Masters in Lunacy should, and thereupon one of the said Masters should, personally examine such person, and should take such evidence and call for such information as to such Master should seem necessary to satisfy him whether such person was a lunatic, and should report thereon to the Lord Chancellor, and such report should be filed with the secretary of lunatics; and it should be lawful for the Lord Chancellor from time to time to make orders for the appointment of a guardian, or otherwise for the protection, care, and management of the person of any person who should by any such report as last aforesaid be found to be a lunatic, and such guardian should have the same powers and authorities as a committee of the person of a lunatic found such by inquisition then had, and also to make orders for the appointment of a receiver, or otherwise for the protection, care, and management of the estate of such lunatic, and such receiver should have the same powers and authorities as a receiver of the estate of a lunatic found such by inquisition then had, and also to make orders for the application of the income of such lunatic, or a sufficient part thereof, for his maintenance and support, and in payment of the costs, charges, and expenses attending the protection, care, and management of the person and estate of such lunatic, and also as to the investment or other application for the purpose of accumulation of the overplus, if any, of such income, for the use of such lunatic, as to the Lord Chancellor should from time to time in each case seem fit. And whereas doubts have arisen whether the last-mentioned Act extends to authorise a receiver appointed as aforesaid to re- dividends on Government or Bank Stock or Annuities standing in the lunatic's name, and it is expedient that these doubts should be removed Be it therefore enacted as follows:—Every receiver of the estate of such lunatic as aforesaid, already appointed, or who may be hereafter appointed under the powers in the said last-recited Act, shall have full power to demand, and to receive and to give effectual receipts for, the dividends due or to become due of any stock belonging to the lunatic.

5. *Indemnity to Bank of England, &c.*—This Act shall be and is hereby declared to be a full and complete indemnity and discharge to the governor and company of the Bank of England, and all other companies and societies, and their officers and servants, for all acts and things done or permitted to be done pursuant thereto, and such acts and things shall not be questioned or impeached in any Court of Law or Equity to their prejudice or detriment.

6 *Receiver may, under order, make repairs, leases, &c.*—The person or persons for the time intrusted as aforesaid may, by order upon a petition, direct the receiver to make such repairs and improvements of or upon the land of the lunatic, or to make to the tenant executing the same such allowance in respect thereof by and out of the lunatic's income, and also to make and execute such contracts, agreements, leases, or under-leases of or concerning the same, as may seem expedient for the preservation or increase of the income; and every act done according to such direction as aforesaid shall be valid and binding to all intents and upon all persons whomsoever.

7. *Interpretation of words.*—In the construction of those provisions of this Act which refer to the secondly-mentioned Act, the words "land," "stock," and "dividends" respectively shall be interpreted as is provided for the like words in the first-mentioned Act.

CAP. XLIX.

An Act to extend the provisions of the several Acts passed for the Conveyance of Sites for Schools. (June 30, 1852.)

CAP. L.

An Act to consolidate and amend the Laws relating to the Militia in England. (June 30, 1852.)

42 Geo. 3. c. 90—14 & 15 Vict. c. 3[illegible]

1. Secretary of State may make regulations as to qualification for service of officers.

2. Persons holding certain military ranks may be appointed field officers.

3. Provisions of 42 Geo. 3, c. 90, as to certain property qualifications, repealed.

4. Qualification of deputy lieutenant, captain, or officer of higher rank.

5. Provision enabling certain officers in the militia to retain their half-pay extended to field officers.

6. Power to her Majesty to appoint adjutants, &c.—While militia is embodied, colonels to appoint serjeants.

7. Existing officers who are qualified for service may continue—Officers not so continued shall retain their ranks.

8. Number of militia to be raised.

9. Quotas of counties to be fixed by Order in Council.

10. Her Majesty may, by Order in Council, make subdivisions conterminous with superintendent registrars' districts, under 6 & 7 Wm. 4, c. 86.

11. Militia-men to be raised by voluntary enlistment.

12. The number not raised by enlistment in any county may be authorised to be raised by enlistment as a supplemental corps in another county.

13. Secretary-at-War may make regulations.

14. Regulations to be laid before Parliament.

15. Volunteers to be raised for supplying the places of men whose time is about to expire, and for supplying vacancies by death, &c.

16. Volunteers to be sworn and enrolled.

17. Lists of volunteers to be transmitted to clerk of general meetings.

18. Where men cannot be raised by voluntary enlistment, her Majesty in Council may order a ballot.

19. General meetings to apportion deficiencies among subdivisions and parishes—Subdivisions and parishes in which the full number of volunteers has been raised to be wholly exempt.

20. Men not liable to the ballot after thirty-five years of age.

21. Members of London and Durham Universities and Lampeter and St. Bees Colleges exempted.

22. Publication of lists and notices of meetings for hearing appeals.

23. Nature of infirmity need not be stated in returns.

24. Registar-General may be directed to furnish information to lieutenants of counties for their guidance in making apportionments.

25. Her Majesty may direct into what regiments, &c. militia shall be formed, and with what officers and staff.

26. 43 Geo. 3, c. 19, and 55 Geo. 3, c. 65, s. 5, repealed as to England—Her Majesty may cause militia to be called out for training more than once in a year.

27. Her Majesty may, by Order in Council, cause militia to be exercised out of their own counties, or extend or reduce the period of exercise.

28. Lieutenants, with approbation of a Secretary of State, to provide places for exercise.

29. Her Majesty may order increased pay to militia-men attached to the artillery.

30. In case of invasion, or imminent danger thereof, her Majesty may raise the militia to 120,000 men.

31. When additional number of men is raised, her Majesty shall issue a proclamation for the meeting of Parliament within fourteen days.

32. The provisions of 42 Geo. 3, c. 90, as amended, to extend to this Act.

33. Quakers not to be committed to gaol when goods are not found whereon to levy distress.

34. Militia may be billeted in the beer-houses in which soldiers may be billeted—11 Geo. 4 and 1 Wm. 4, c. 64.

35. Militia of the Tower Hamlets—37 Geo. 3, c. 25.

36. Saving of the militia of the City of London.

37. As to yeomanry and volunteer corps.

38. Miners of Cornwall and Devon—42 Geo. 3, c. 72—51 Geo. 3, c. 114—42 Geo. 3, c. 72—51 Geo. 3, c. 114.

PARLIAMENTARY PAPERS.

INSOLVENT COURTS.—A return to the House of Lords just printed states that the number of cases heard before the commissioners on circuit in 1841 was 3,832; in 1842, 2,955; in 1843, 2,533; in 1844, 1,715; in 1845, 598; in 1846, 650; and in 1847, 566. After the spring and summer ones in this year the circuits are abolished.

POST-OFFICE STATISTICS.—By the census of 1841, the population of Scotland was found to be 2,600,000, and the population of Ireland 8,175,000. In the census of 1851, Scotland stands at 2,800,000, and Ireland at 6,500,000; thus, while Scotland has gained 200,000 people, Ireland has lost a million and a half. Ireland, however, has maintained its relative position to Scotland both as regards letters and money-orders. In 1841, the number of Scotch letters was 21,234,772; the number of Irish letters being 20,794,297; in 1851, the numbers were respectively 36,512,649 and 35,982,782. As to money-orders, the comparison stands thus:—In 1841, Scotland, 51,526; Ireland, 53,507*l.*; in 1851, Scotland, 389,680*l.*; Ireland, 392,848. Thus, ten years ago, as measured by these tables, two million six hundred thousand Scots were equal to eight millions of Irish; while now two million eight hundred thousand Scots are no more than equal to six millions and a half of

Irish. Pat, however, must not begin to boast as yet. One Scot in seven takes out a money-order in the course of the year, but that feat is performed by only one Irishman in sixteen. Moreover, the Irish orders, though more numerous than the Scotch, amounted in money to 653,000*l.* only, while Scotch orders amounted to 709,000*l.*; so that Sawney beats Pat in the magnitude of each transaction.

COST OF PROCURING THE SMITHFIELD MARKET REMOVAL ACT.—From a parliamentary paper just issued, it appears that the cost of procuring the Smithfield Market Removal Act was 3,612*l.* 7s. 9d.; of which sum 1,819*l.* 0s. 1d. were paid to Messrs. Lyon, Barnes, and Ellis, 1,273*l.* 5s. 6d. as fees to counsel, and 579*l.* 14s. 4d. as house fees, short-hand writers, and witnesses.

From a parliamentary return issued on the motion of Mr. Brotherton, it appears that 127 public bills were introduced during the late session. Of these 108 were originated in the Commons, and of course the remainder in the House of Peers. Thirty-eight of the measures introduced in the Commons were lost or withdrawn, and one only of the Lords' bills shared the same fate.

PROROGATION OF PARLIAMENT.—The following Order in Council appeared in a supplement to the *London Gazette* of Tuesday:—"At the Court at Osborne-house, Isle of Wight, the 18th day of August, 1852, present, the Queen's Most Excellent Majesty in Council.—It is this day ordered by her Majesty in Council, that the Right Honourable the Lord High Chancellor of that part of the United Kingdom called Great Britain, do issue writs for proroguing the parliament, which was appointed to meet on Friday, the 20th day of August instant, to Thursday, the 21st day of October next; and also for proroguing the convocations of the provinces of Canterbury and York, from Saturday, the 21st day of August instant, to Friday, the 22nd day of October next."

We announced some time since that parliament would not meet till November. We believe we can now state that it will assemble about the third week of that month for the despatch of business.—*Globe.*

THE MAGISTRATE,
AND PAROCHIAL AND MUNICIPAL LAWYER.

THE MILITIA.*

(*Continued from p.* 165.)

THE lieutenancy in counties are now assembling their deputy-lieutenants, and making general arrangements for embodying the Militia Volunteer Force. The staff appointments begin to be filled up, and every *Gazette* contains the names of gentlemen appointed as deputy-lieutenants; an office which hitherto has been bestowed as a mark of favour and distinction, without any real duty attached to it, but which becomes of some importance in connection with the militia laws. The efficiency of the militia, under whatever system it is embodied, will depend upon its being properly officered. The lieutenant of each county commands the militia, and he has the appointment of all deputy-lieutenants, and of all officers of all grades, from the colonel to the subaltern, subject, however, to the approval of the Crown, and, by the 15 & 16 Vict. c. 350, s. 1, subject also to the regulations of one of the Secretaries of State, as to the ages and for securing the appointment of persons as officers who are qualified to discharge their duties; and also as to drill, training, and exercise. Such officers are to rank with those of the regular army, as youngest of their rank. When the militia was last embodied some questions of difficulty arose respecting ranking with the juniors of the line, and it is desirable that the law should be rendered more clear and explicit; for not only discordant sentiments were entertained by the military themselves, but also eminent counsel disagreed upon the subject. When the militia are embodied, her Majesty may put the forces under the command of such *general* officers as she may appoint; but there is no power, under any of the Militia Acts, given to place the militia under the command of any *regular* officer of an inferior rank, or indeed *any* officers (except *generals*) who are not qualified; on the contrary, the militia forces are to be led by their *respective officers*. In 1798, the flank companies of the different regiments of the regular and militia forces in a particular district were ordered by the Commander-in-Chief to be formed into battalions, and those mixed bodies were put under the command of field-officers of the *regular* forces. Several of the militia colonels opposed that step as illegal; and on stating their case to eminent counsel, their advisers were of opinion with them; on the other side, the Commander-in-Chief consulted the Crown lawyers, who are said to have expressed their sentiments in support of his orders; but on the militia colonels declaring that, in case of the punishment of imprisoning any militia men by the direction of the *regular* field officer, appointed to command the detachment corps, they were determined to bring the question before a court of law, the Commander-in-Chief withdrew the *regulars*, both officers and men, from those battalions, and thus put an end to the dispute. Notwithstanding that, as well as some subsequent misunderstandings, no alteration or provision to meet such cases was made in the then subsequently passed Act of the 42 Geo. 3, c. 90; and it seems to have escaped notice in the late Act. The lieutenant shall have the command of the militia *within* the county, which implies that he shall have such command when the militia are *not* drawn out and embodied for actual service; for then they are to be placed under the command of *general* officers. Circumstances have arisen where the lieutenant of a county has found himself commanded, *as colonel*, by an officer of his own appointment; as where the lord-lieutenant of county (the militia of which consisted of more than one regiment) had appointed a colonel to a certain battalion, and *afterwards* appointed *himself* colonel of another battalion; the two corps being drawn out and embodied for service, and doing duty in the same garrison, the county lieutenant was commanded by his senior officer, though of his own creation. It has been suggested that the lord-lieutenant should be allowed to appoint himself brigadier-general, with a proviso that such commission should not enable him to command any colonel of the regular forces, yet give him precedency of every militia colonel not being lieutenant of a county.

The qualifications of deputy lieutenant, and officers generally are,—a deputy lieutenant, 200*l.* per annum; a colonel, 1,000*l.* per annum; lieutenant-colonel, 600*l.* per annum; a major, 400*l.* per annum; a captain, 200*l.* per annum; except in the counties of Cumberland, Huntingdon, Monmouth, Westmoreland, Rutland, and in Wales, where the qualification for a deputy lieutenant is 150*l.* per annum; a colonel, 600*l.* per annum; lieutenant-colonel, 400*l.* per annum; a major, 200*l.* per annum; a captain, 150*l.* per annum. In the Isle of Ely the qualification for a deputy lieutenant is 150*l.* per annum; and for a captain 100*l.* per annum. No qualification is now required by statute for any officer below the rank of captain. Being heir apparent of a person of *double* the above annual income, equally qualifies for each rank. To give such qualification, each shall be seised or possessed either in law or in equity for his own use and benefit, in possession of a freehold, copyhold, or customary estate for life, or for the life of his wife, she having a freehold, copyhold, or customary estate for her life, or for some greater estate, or of an estate for some long term of years, determinable on one or more life or lives, in manors, messuages, lands, tenements, or hereditaments, in England, Wales, or Berwick-on-Tweed, or shall be heir apparent of some person who shall in like manner be seised or possessed of a like estate as aforesaid; and by the 15 & 16 Vict. c. 50, s. 4, a clear yearly income arising from any personal estate within the United Kingdom, of or to which, or the yearly income thereof such deputy lieutenant, or officer, is possessed or entitled at law or in equity, for his own use and benefit, in possession for his own life, or for the life of his wife, or for some greater estate or interest, shall be deemed equivalent to an estate in lands of the yearly value of the same amount with such yearly income; and such yearly income from personal estate shall be admitted in whole or in part of any such qualification accordingly; of which real estate required as qualification, one moiety shall be situate or arising within the respective counties, ridings, or places in which the officers shall be appointed to serve. For the Isle of Ely, the moiety is required to be either situate therein or in the county of Cambridge.

In cities and towns that are counties within themselves, and which raise a separate militia, the lieutenant, or in case there should not be one, then the chief magistrate, shall appoint the deputy-lieutenants and the officers; the qualification for a deputy-lieutenant being in real estate 150*l.* a-year, or personal, or real and personal property, to the amount of 3,000*l.*; for a field officer, a real estate of 300*l.* a-year, or 5,000*l.*; and for a captain, a real estate of 150*l.* or 2,500*l.* By the 15 & 16 Vict. c. 50, s. 3, any person holding, or having held the rank of captain, or any higher rank in her Majesty's other forces, or in the forces of the East-India Company, may be appointed a major of militia; and a major in the army, &c. may be appointed a lieutenant-colonel of militia, without any property qualification. Peers, and their heirs apparent, are exempted from the qualification clauses.

The inconvenience arising from confining the qualification, or, at least, one moiety of it, to the county, riding, or place, is partially remedied by a qualification being also permitted in respect of being possessed of personal estate within the United Kingdom; but if officers who derive their income from land, and should be desirous to serve in any particular corps elsewhere, they must resort to the expedient of effecting a sale, or an exchange of property of equal value, with some friend.

No deputy-lieutenant, nor any officer, superior or subaltern, shall be appointed till his qualification shall be delivered to the Clerk of the Peace, who shall transmit a copy to the lieutenant of the county, riding, or place. The Clerk of the Peace must enter the qualifications upon a roll, and cause the names, and rank of officers, together with the names of the officers in whose room they are appointed, to be inserted in the *London Gazette*; and in the month of January in every year, he is to transmit to the Secretary of State an account of the qualifications so left with him to be laid before Parliament. All deputy-lieutenants and officers of militia shall, at some general quarter sessions, or in one of the Courts of Record at Westminster, take the oaths of allegiance, supremacy, and abjuration, within six calendar months after appointment. Persons who shall execute any of the powers of deputy-lieutenants or field officers not being duly qualified, or who have not delivered in their qualifications, shall forfeit 200*l.*; captains to forfeit 100*l.*; one moiety to go to the person who shall sue for the same; proof of the qualification will lie upon the person against whom the action, suit, or information shall be brought.

Form of a specific Description of Qualification for a Commission in the Militia, or Deputy Lieutenant, to be delivered to the Clerk of the Peace prior to the granting of the Commission:—

To the Clerk of the Peace for the county of Wilts, or his deputy.

Pursuant to the directions of the militia laws, I, *A. B. esquire, do hereby certify unto you, that I am qualified to accept a commission as captain in the Wiltshire regiment of militia, videlicet, by being possessed in my own right* [or *in the right of my wife*; or, *being eldest son and heir apparent of C. D. esquire, who is possessed, &c.*: or, *by being a younger son of C. D. esquire, who is* (or, *at the time of his death was*) *possessed in his own right*] *of the following manor, messuages, lands, tenements, and hereditaments* (as the case may be), *to wit:*—

A messuage and tenement, and 200 *acres of land in fee* (as the case may be) *called "The Home Farm," situate in the parish of* , *in the said county of* , *of the clear yearly value of* 200*l. and upwards*;

or (describing several tenements), *which said tenements together are of the clear yearly value of* 200*l. and upwards*;

or, *a clear yearly income of* 200*l. arising from personal estate within the United Kingdom, and invested and standing in my name* (as the case may be) *in the books of the Governor and Company of the Bank of England* (describe from what source such income arises).

Given under my hand this *day of* , 1852,

A. B.

Signed in the presence of W. F.

ARE DISSENTERS LIABLE TO TOLL WHEN TRAVELLING TO THEIR USUAL PLACE OF WORSHIP?—This question, involved in the case of *Phillips* v. *Creese*, has been decided by the magistrates at Hereford, in favour of the exemption. Mr. W. James having declined to act, the defendant was fined in the sum of 41s. in order to enable an appeal to be instituted at the ensuing sessions. This is a most important point, and it is most desirable that it should be set at rest by the decision of a competent tribunal. The question is not whether the authority of the head of the Roman Catholic Church is "paramount" to that of the Queen in Council, as it has been very foolishly represented by some parties, but whether the Act of Parliament, in reference to the exemption from tolls on week days, by the use of the words, "services by authority ordered to be celebrated," refers to the "authority" of each Dissenting church, or to such occasions as a fast or general thanksgiving ordered by the Government. If the case is ultimately decided in favour of Mr. Phillips, the exemption will equally apply to all other Dissenters who are "tolerated" by law. The Congregationalist, Methodist, Baptist, or Quaker, will probably, on the same ground, claim exemption

* By WILLIAM FOOTE, Esq. Swindon.

when on their way to attend their union meetings, chapel anniversaries, preaching station, quarterly, or district or camp meetings. The question is thus one which will materially affect the income of the turnpike trust, here and elsewhere. — *Hereford Times.*

ASSAULT BY THE MAYOR OF BLACKBURN. — On Thursday last the grand jury at Liverpool found a true bill against Mr. W. H. Hornby, mayor of Blackburn, for a misdemeanour in striking, on the previous Saturday, Mr. Thomas Dugdale, chairman of the East Lancashire Railway Company, a violent blow on the left cheek. A bench warrant was immediately afterwards granted, calling upon Mr. Hornby to find sureties to keep the peace and to answer any charge that may be preferred by the prosecutor at the next assizes.

JOINT-STOCK COMPANIES' LAW JOURNAL.

A RAILWAY Act provided, that the purchase-money of vicarage lands should be reinvested on the petition of the vicar and patron, with consent of the ordinary. An order was made for the Master to report on the proposed investment, and this being favourable, a petition was presented by the vicar and patron to confirm the directions. The bishop was held to be entitled to his costs of appearance on this petition. (*Ex parte the Vicar, &c. of Creech St. Michael*, 19 Law T. Rep. 312.)

A case is reported very fully from the Court of Error, which is one of considerable importance to railway companies. In the *Eastern Union Railway Company* v. *Hart*, 19 Law T. Rep. 311, it was held that a company could be sued by a mortgagee upon a covenant implied in the condition for repayment of the money on a day named in the deed, and that such right was not affected by the provisions of the Consolidation Acts. "We are clearly of opinion," said the Court in its judgment, "where a corporation is created for certain purposes, with power to sue and be sued, and to borrow money for the completion of those purposes, and to receive the repayment of such money by an instrument which on its face imports a covenant for repayment, if money be so borrowed and so secured, an action upon promises may be maintained against the corporation on a breach of the covenant."

Another case of no less importance, as defining the powers of companies and of their directors, is that of *Macgregor* v. *The Official Manager of the Dover and Deal Railway Company*, 19 Law T. Rep. 316, in which it was held by the Court of Error that an incorporated company cannot apply the corporate property to any purpose not authorised by the Act; therefore, that a contract made by such a company to pay the costs of an application to Parliament for an Act to authorise the making of another railway, projected by other parties, was illegal and void, unless the power to do so was expressly conferred by the Act. Nor is it less a *void* contract, although in form it is a contract by the chairman that the company shall pay.

WINDING UP.

THE LORD CHANCELLOR, upon appeal, has reversed the decision of Vice Chancellor BRUCE, and determined that clubs are *not* within the operation of the Winding-up Acts. His Lordship remarked, in his very able judgment:—"I am happy to say that the law does not, as has been erroneously supposed, render any of the members liable to the creditors of the club, except for what they may have individually ordered or agreed to become liable for." It will be observed that the LORD CHANCELLOR, in this case, takes a much more limited, and, as it seems to us, more rational view of the meaning of the term "association" in the Winding-up Acts, than was taken by the House of Lords in *Hutton* v. *Bright*. He says:—"The term *association* must have a limited meaning." "An association may mean a partnership: but to make it a partnership it must be associated for the purpose of trading, and for the making of profits." "It is impossible to say that the word *club* can come under any of the denominations specified in the Act." (*Re The St. James's Club*, 19 Law T. Rep. 307.)

REAL PROPERTY LAWYER AND CONVEYANCER.

THE House of Lords continues to supply some interesting and curious cases, and necessarily they are always important ones. Such was *Stoddart* v. *Grant*, 19 Law T. Rep. 305. The facts were these:—A illiterate old lady left seven testamentary writings each purporting to be "my will," the third and fourth to be "my last will;" and four of them were in her own handwriting. In the first four documents there were alterations, erasures, and words written on them, and numerous blanks and mis-spelled words. No one of the documents revoked the others, either generally or specially though the first, fifth, and sixth were prepared by the same solicitor, and the sixth referred to the fifth, as an existing will, but to no other. Several legatees had each legacies of different amounts under two or more of the instruments. No residuary legatee was named, except by the first, but the sixth reserved power to do so, which power was never executed. The funds were sufficient to satisfy the legacies given by all the instruments. It was held that all the seven were to be admitted to probate as the will. "I consider the general rule to be," said the LORD CHANCELLOR, in giving the judgment of the House, "that all these documents being found under circumstances which entitle them to consideration, are primâ facie to be regarded as one will. They may be altered, and they may be partially revoked, or they may be inconsistent, without the latter operating as an entire revocation of the former. The circumstances of a partial inconsistency, as it is called,— that is to say, dispositions in two documents, both of which cannot be fulfilled,—is held only to operate as a revocation pro tanto, and only to bear on the particular legacy in which that inconsistency exists."

The LORD CHANCELLOR has confirmed, upon appeal, the judgment of Vice-Chancellor BRUCE, in *Walter* v. *Selfe*, 19 Law T. Rep. 308, already noted here, granting an injunction to restrain a person from making a brick-field, and burning bricks in a field adjoining a house and grounds of another, which had been occupied as a private dwelling for several years previously.

His lordship has also confirmed the decision of Lord CRANWORTH, in *Kemp* v. *Sober*, 19 Law T. Rep. 308, who had held the keeping of a school for young ladies to be "a calling" within the restrictive words of a covenant in a lease, "that the lessee should not carry on any trade, business, or calling" on the premises in question.

Four cases on the construction of *Wills* were reported last week, but they turn entirely upon the meaning of the particular words, and decide no point of law capable of being stated apart from the facts of the case itself, and, therefore, we do not attempt to note them in this summary, in which it the design only to direct the reader's attention to *the new law* decided by the Courts.

In the law of *Vendor and Purchaser*, we find a case that appears to be of some importance. One of the terms of a contract for the purchase of land by a railway company was, *that the title previous to the year* 1821 *should be taken to be good.* A petition was presented, praying a reference to the Master to ascertain if a good title could be made 1821. But the MASTER of the ROLLS refused the order, without some satisfactory evidence of the validity of the title *previous* to 1824, and he directed the Master to ascertain if it was for the benefit of the parties that the contract should proceed, and, if so, that then he should inquire whether, according to the contract, a good title could be made. The practical result of this case, as it appears to us, is, that even though the contract (and, by consequence, a condition of sale) restricts an inquiry into title, the vendor could not compel the purchaser to accept a bad title. (*Ex parte Lowe*, 19 Law T. Rep. 310.) Another case, in the same branch of the law, is *Abbott* v. *Sworder*, 19 Law T. Rep. 311, where, in a suit for specific performance, occasioned by the misconduct of the purchaser, a reference as to the title was directed, and the purchaser ordered to pay the costs of the reference and the other costs of the suit, although the Master found that a good title was shewn only a few days before the date of his report.

In *Sidebottom* v. *Bostock*, 19 Law T. Rep. 316, there was a demise, with liberty to cut a goit out of a river, &c. and from time to time to view, repair, and amend the goit. It was made and covered, but being found too small, it was re-opened and widened. The Court of Error, affirming the judgment of the Court below, has held that the power being only to make a goit, and then to repair it, &c. it was determined by once making a goit, and the widening of it was a trespass.

It is stated that Mr. Fearon, the Attorney-General's Solicitor for Charities, was last week on a visit to William of Wykeham's much-abused foundation, St. Mary's College, Winchester, with, it may be hoped, a view to the better administration of the noble endowments, which cannot be less now than 20,000*l.* a year.

COUNTY COURTS.

COUNTY COURTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In the LAW TIMES of August 7, you assumed that the words in the new statute, "concerned generally in the action for such party," are restricted to those concerned generally *as Attorneys of the parties*, but I think the intention of the Act was merely to restrict Attorney advocates, who shortly before the trial received their instructions from some other Attorney in whose establishment they were not generally engaged. It so happens, that I am in a solicitor's office, having entered into an arrangement as regards the profits of my private practice, and being in the receipt of a salary for attending to the business of the office when unoccupied with my own, and nearly all the County Court matters devolve upon me. So situated, immediately I read an outline of the late Act in your columns, it occurred to me that it was not framed, either in intention or terms, so as to oblige me to obtain the client's consent to permit me to appear as his Attorney in each particular action, but that my being "concerned generally in the action" (though not as *Attorney* of the party), was sufficient guarantee to the Legislature that I had not, at the ninth hour, stepped in for the mere purpose of conducting the cause in Court. About three weeks since I had occasion to make an application to Mr. Fraser, of the Wandsworth County Court, and afterwards I asked him to favour me with his opinion as to the situation in which the Act placed me; and in reply, he very kindly told me that if I appeared before him as an Attorney engaged in the establishment of the plaintiff's or defendant's Attorney, and having had the conduct of the cause, he would not hesitate to hear me, although I might not directly represent either of the parties thereto. There are many in my position who will feel obliged by your influence being bestowed in seeking this construction upon the late Act. I am Sir, yours, &c.

J. FIELD ROBERTS.

2, Bedford-terrace, Clapham-rise, Aug. 9, 1852.

[NOTE.—We have no doubt that our correspondent falls fairly within the limits of *admission*. Being an Attorney, and conducting the case as such, he is so far the Attorney concerned generally in the action as to be entitled to be heard.—ED. LAW T.]

DEFECT IN COUNTY COURT LAW.—At the Sheriff's Court, Guildhall, on Saturday, Mr. Ashley, a solicitor, applied to his Honour, Mr. Gurney, under the following circumstances.—His client, a Mr. Bett, had obtained a judgment in the Shoreditch County Court for a debt of 50*l.* which, not being paid, execution had issued, and as the defendant resided in the City, the process was sent to the high bailiff of his Honour's court, who, however, sent word to the high bailiff of the Shoreditch Court that he could not execute it, as he had no jurisdiction to distrain beyond 20*l.* His Honour said he could give no relief, for he had no power in the matter. Mr. Ashley said, what was singular in the case was, that his Honour's high bailiff had served the summons and put the machinery in operation at a cost of 7*l.* to his client, knowing that the object could not be carried out, although they had received the fees for doing so. His Honour repeated that he could not interfere.

THE LAWYER.

Summary.

EQUITY PRACTICE.—Two or three points of practice were to be noted last week. Where parties decline to try an action as to matters alleged in a bill, and request the decision of the Court upon a motion, without any assistance from a jury or a Court of Law, they cannot appeal from that decision. (*Walter* v. *Selfe*, 19 Law T. Rep. 308.) A motion cannot

be heard before the Lord Chancellor without leave of the Court. (*Kekewich* v. *Marker*, 19 Law T. Rep. 308.) In *Re Reynolds*, 19 Law T. Rep. 311, a receiver of the rents of real estate has been appointed upon petition; and in *Re* ——, 19 Law T. Rep. 311, an allowance out of an infant's estate to her father, who was in great need, was refused.

Query.

A friend of mine has recently purchased a considerable quantity of land in Australia, and is about to emigrate there with his family, consisting principally of sons. As he is desirous of bringing up one of his sons to the profession of the Law, would any reader kindly inform me if, on his being articled in Australia, his son would be obliged to come to England to be admitted, in order to practise *in the colony?* If such be the case, and should his son prefer remaining in England, would he be allowed to practise here, having served his articles in Australia. The stamp, I presume, would be 120*l*.: is this correct? T. E

Answers to Queries.

ATTORNEYS IN THE COLONIES.

It would seem that neither a person who has been articled, nor an admitted Attorney of the Courts at Westminster can, by virtue of such qualification, be admitted to practise in the Courts at Grenada. It is by rule of Court provided that a person keeping twelve *terms* at home, or six at home and attending during the sittings here [Grenada], two years (making twelve courts), may practise as *Counsel* and *Attorney*, the two characters being blended.—Vide Clarke's Colonial Law, p. 213. R. J.
Craven-street.

NOTICES OF NEW LAW BOOKS

The Practice of the County Courts. By J. F. Archbold, Esq. Barrister-at-Law. Fourth Edition. London: Shaw.

The Fifth Edition of the Law and Practice of the County Courts, as altered by the new Statutes, with all the Decisions to this time. By Edward W. Cox and Morgan Lloyd, Esqrs. Barristers-at-Law. London: Crockford.

The Practice of the County Courts. By J. Jagoe, Esq. Barrister-at-Law. Second Edition. London: Spetigue and Farrance.

The Practice of the County Courts. By E. Columbine, Esq. Attorney-at-Law.

The Practice of the County Courts. By Charles Pollock, Esq. Barrister-at-Law. London: Sweet.

The Practice of the County Courts. By Herbert Broom, Esq. Barrister-at-Law. London: Maxwell.

Glancing at this long list of books on a single subject, the query at once suggests itself, by what calculations authors write and publishers hazard the cost of printing a law book? There is but one prudent and rational motive for the labour of the one or the speculation of the other—namely, the existence of an hiatus in legal literature; a positive demand for a book upon the subject proposed; a field either vacant or insufficiently supplied. It is in consequence of their forgetting this rule that so many legal authors continually labour in vain, and so many publishers of law books go into the *Gazette*. Survey the lists of new works as they are announced, and it will be apparent how strangely this rule, which would seem to be one of the most ordinary deductions of common sense, is continually violated, to an extent that would be ludicrous but for the melancholy consequences that result from it to those who fall into the fatal error. You will continually see announcements of new law books upon subjects that are already abundantly written upon, and these pretending to nothing of novelty that offers the most remote chance of their *superseding* their predecessors. To whom, then, do they appeal? Why is it supposed that the Profession will resign an author with whose book they are familiar for a new book from a strange pen? But if this is not the hope of author and publisher, what is it?

The same error, to a less extent, pervades all literature; and it is remarkably shewn in the history of periodicals; hence the extreme rarity of their success. The enterprise is usually undertaken for the very reason that should have been deemed conclusive against it. A newspaper or a magazine starts, not because there is an *unoccupied* field, but because some other periodical has already succeeded there, forgetting that the very success of its predecessor ensures its own failure. A new book, or a new periodical, can only prosper by *novelty*; it must open a new territory for itself; it must offer to the public something which it had not before, but which is adapted to its *requirements*, which supplies a *want*; then it will succeed, after a time. Otherwise it will end in great pecuniary *loss* to the publisher, and greater disappointment to the author.

These reflections were suggested by the pile of books upon our table professing to supply the Lawyers with the *Practice of the County Courts*. Here already are six, and we have heard of eight or nine more that are in course of composition. Now it is certain that all of these *cannot* be successful. There are 430 Courts, and if we allow three copies to each Court, which is the largest number of "*Practices*" that are ever likely to be bought, there is a total of about 1,300 volumes required to supply the Profession. For this there are already six candidates, with others coming. Now it is certain that they will not equally divide the spoil; if they *were* to do so, all would suffer a grievous loss. Some are already established favourites, as is proved by the number of editions through which they have passed, and which fact constitutes, perhaps, the surest test of the *practical* value of a law book, because it has thus been attested by those who have tried it and found its usefulness and sufficiency for their requirements. But then, for the reasons above stated, the very success of these elder and approved books is discouragement for others, unless they can offer something altogether superior in quality. But can they reasonably hope to do so? If the *whole* law and practice are contained in the books already in the hands of the Profession, and stamped with their approval, what probable prospect is there of the Lawyers resigning these established authorities and familiar friends for books that cannot give them *more* than they already possess, nor put it into a much better shape? Here, for instance, is *Mr. Archbold's Law of the County Courts*, manifestly popular, for several editions of it have issued, although it is not, in fact, a treatise on *the Practice* of the County Courts, so much as a collection of the statutes relating to them, with notes and index. Then we have *Cox and Lloyd's Practice of the County Courts*, of which *five* editions have been called for; this last one, however, not being a reprint of the whole work, but only of so much of it as was affected by the statutes of last session, with the introduction of all the cases that have been decided upon County Courts law since the issue of the 4th edition, so that it contains *the entire* of the law and practice as *it is* at this moment. This volume is both a treatise on *the practice* and a collection of all the statutes, rules, and forms, so that it effects a double purpose. Mr. Jagoe's work also has enjoyed considerable popularity, and is remarkable for the care with which it was compiled. But the untimely death of the author has probably prevented the issue of a new edition containing the changes of the last two years.

These three were the original occupants of the newly-opened field of the County Courts. They made their first appearance immediately on the establishment of the Courts, and they have kept the ground of which they then took possession, only improving and extending themselves, step by step, as the Courts, of whose practice they treated, were enlarged in jurisdiction, adopting whatever experience proved to be desirable. Then followed, after a long interval, Mr. Columbine, who wrote a book, which, however, was designed and adapted rather for the use of the general public, than of the Profession. Next in order of time was Mr. Pollock, whose work differs from those of his predecessors mainly in abbreviation. He has followed their plans and given no information which they do not give, but he omits much that they have included. Apparently his purpose, as that of his successor, was to make a *smaller* volume. But this, we think, is a mistake in both. A book of *practice* cannot be too full and complete. Condense as much as you please a book for the *study* of the law; a book for the *practice* of it cannot be too ample. Its whole value consists in the *fulness* of its information. It should contain *every* statute in its *very words*. It should give the substance of every decided *case*. It should set forth at length every required *form*. It should be minute, almost to tediousness, in its instructions, because it is designed to guide *action*, and is usually consulted in the urgency of the moment, when the practitioner has little time for reflection and less for research, often, especially with County Courts practice, amid the noise and hurry of a trial. Hence, labour bestowed on compression is worse than wasted in a book designed for *practice*, however commendable in a book for *reading* in the study, where there is ample time for the mind to pause and think, or where search may be made elsewhere for anything wanting in the volume in hand. Mr. Broom also has overlooked this important characteristic of a book of *practice*. Accustomed to write excellent books for *reading*, he has followed the same design in a book for *reference*, and has so much curtailed a work, whose peculiar nature and uses require the *fullest* treatment, that he completes the whole subject in somewhat less than 300 pages of tolerably large type, so that it is rather *a sketch* of the Law of the County Courts, written with the usual ability of the author, than a *practice*, properly so called. It will do well for a *reader* desirous of obtaining a general knowledge of the County Court system, but the practitioner would probably find it insufficient for *his* purposes, not only from its brevity, but for another even more serious defect,—its *omission of the statutes*, for which no treatise, however excellent, is a substitute, and to which the *practising* Lawyer is compelled to make continual reference, and which, consequently, are a necessary appendage to books that treat of any single branch of the law, for they are the text upon which the essay of the author are but a commentary.

It is not often that six works upon the same limited subject come together under the notice of a legal journal. We have briefly stated the characteristics of each of them. Necessarily they resemble each other in what they *do* contain, for all deal with precisely the same statutes, rules, and decisions; they differ only in this, that some are established and accepted favourites, some are new aspirants to favour; some treat their subjects largely, others briefly; some aim at fulness, others at condensation. Readers will judge for themselves which of *these* claims they prefer, and we can assure them that *all*, according to their several *designs*, are well executed, and creditable to their authors.

COURT PAPERS.

Proclamation of Outlawry.—On Thursday, at the Sheriffs' Court, Red Lion-square, Mr. Hemp, the principal officer to the Sheriff of Middlesex, proclaimed the following persons as outlaws:—The Rev. J. Prendergast Walsh; E. H. Lane, at two suits; Sir J. Malcolm, Algernon Massingberd, at four suits; William Thos. Thornton, at two suits; O. H. Sumpays, G. A. Laing, Augustus Mayhew, Wm. Wilson, Wm. D. Sheriff, F. Smith, Wm. Burt, Sidney Wm. Alston, F. J. Manning, J. Armine Morris, J. Cruikshank, Walter Lockhart Scott, G. Spiller, F. Angerstein, at two suits; Edward Addison, T. Baddely, Margaret Coleman, G. Chitty, J. D. Hinxman, Augustus Nugent, and Edw. J. Dare.

LEGAL INTELLIGENCE.

The Vacant Vice-Chancellorship.—The few stragglers of the Chancery Bar still lingering in London are occupying themselves in speculations on the vacancy in the office of a Vice-Chancellor, caused by the death of Sir James Parker. The political right to this valuable and responsible judicial office is, of course, considered to belong to Mr. John Stuart, Q.C. the new member for Bury St. Edmond's, and who is said, in his electioneering expenditure, to have barely exceeded the legal expenses in turning out Mr. Bunbury. Mr. Stuart, however, haughtily refused the offer of the Solicitor-Generalship on the formation of the present Government, and was reported to be highly indignant that he did not receive the Great Seal. The hon. and learned gentleman may not press his claim in the present instance. Certainly his opposition to Chancery Reform and his notorious ultra-Toryism would render his appointment unpopular, however he might reconcile acceptance to himself. Other names were mentioned in the clubs. It was said that Mr. Walpole might not unadvisedly descend from the Home-office and ascend the judicial seat. The right hon. gentleman's practice at the Bar, so recently and gallantly abandoned for the uncertain tenure of political office, was considerable and increasing; and his elevation to the Bench would, doubtless, be comparatively agreeable and popular out of doors and with the Bench and Bar. Lord St. Leonard's is known also to be well disposed to Mr. Swanston, Q.C. whom he regards as the most eminent equity lawyer of the day. Mr. Roundell Palmer would probably have been the choice of the Peelites, but they are *hors de combat*.—*Globe.*

NOVEL CASE.—The Scotch courts are likely soon to be engaged in the trial of a somewhat novel case. Mr. Griffin, an English engineer, who has been employed for the last two or three months superintending the laying down of the submarine telegraph between the coast of Wigtonshire and the opposite coast of Ireland, was in the habit of attending the parish church of Stranraer with some of his female friends. Mr. Simpson, the parochial minister, thought, however, that the conduct of this gentleman during the period of divine service was not quite suited to the solemn occasion, and one day, before the service commenced, he referred to the subject, at the same time warning the gentleman that if there was a repetition of this conduct he would consider it his duty to direct the church officers to expel him. Mr. Griffin, as might be expected, was not a little annoyed at this public rebuke, and he has commenced an action against Mr. Simpson in the Court of Session for defamation. The damages are laid at 500*l.*—*Dundee Advertiser.*

JOURNAL OF PROPERTY.

MONEY MARKET.

English Funds.		Mon.	Tues.			
Bank Stock	226	225	226	226	226	225¾
3 ℔ Cent. Reduced Annuities	100⅛	99⅞	100⅛	100⅛	100⅜	100⅜
3 ℔ Cent. Consols Annuities	99¾	99	99⅞	99⅞	99⅝	99¾
Consols for Account	99⅞	99¾	99⅞	99⅞	99⅝	99⅞
New 5 ℔ Cent. Annuities ..	..	..	..			..
New 3¼ ℔ Cent. Annuities ..	103	103	102⅞	103⅛	103⅜	103⅜
Long Ann. (exp Jan. 5, 1860)	6⅝	..	6⅝	6⅝	6	6⅝
Do. 30 yrs. (exp. Oct. 10, 1859)						
Do. 30 yrs. (exp. Jan. 5, 1860)	.					
India Stock	277	277	270	271	274	
India Bonds (1,000*l.*)			88	87	.	
Do. do. (under 1,000*l.*)....			..	90	87	
South Sea Stock						
Do. do. Old Annuities...						
Exchequer Bills, 1,000*l.* June			71*	71*		68*
Do. do. 500*l.* June .			71*			
Do. do. Small, June			71*			

* Premium.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

BERE.—On the 17th inst. at Milverton, Somerset, of Mr. Richard Bere, solicitor, of a daughter.

DIXON.—On the 17th inst. the lady of J. Dixon, esq. of Astle-park, of a son.

MARSLAND.—On the 13th inst. at Bolton, the wife of Mr. George Marsland, of a son.

PLUMPTRE.—On the 15th inst. at Dawlish, South Devon, the wife of Charles John Plumptre, esq. barrister-at-law, of a son.

MARRIAGES.

BAYLY, Henry Elliott, esq. of her Majesty's 58th regiment, second son of Lieut.-Col. Sir Henry Bayly, K.H. of Burly-villa, Lyme Regis, magistrate for the counties of Dorset and Devon, to Thomasine Charlotte, eldest daughter of the late Thomas Oliver, esq. of the Royal Crescent, Bath, on the 17th inst. at Brighton.

BROTHERTON, James, esq. of the Middle Temple, barrister-at-law, receiver-general of her Majesty's Inland Revenue, and only son of Joseph Brotherton, esq. M.P. to Mary Hannah, eldest daughter of John Roberts, esq. R.N. of Chesterfield, Derbyshire, on the 17th inst. at the parish church of Chesterfield.

FERRIER, Alexander John, of Lincoln's-inn, barrister-at-law, eldest son of John Turing Ferrier, esq. of Brussels, and eldest grandson of the late Sir Alexander Ferrier, K.G.H. her Majesty's consul at Rotterdam, to Emilia Lillias, fourth daughter of the late Alexander George Milne, esq. of the Court-yard, Eltham, on the 17th inst. at the parish church of Eltham, Kent.

KINNEAR, John Boyd, jun. esq. of Kinnear, Fifeshire, advocate, to Sarah Harriet, only child of the late George Frith, esq. Worksop, Notts, on the 12th inst. at Stockton-upon-Tees.

DEATHS.

BENT, Jeffrey Hart, Chief-Justice of British Guiana, on the 29th of June, at Georgetown, Demerara, aged 71. The deceased held the commission of judge under four sovereigns, his first appointment to the Bench of New South Wales bearing date in 1814. He was subsequently, in succession, Chief-Justice of Grenada, of St. Lucia, first puisne judge of Trinidad, and for the last sixteen years Chief-Justice of British Guiana. He served in the West Indies (with but one leave of absence) for thirty-two years. During the entire of his judicial life he sustained an unblemished reputation as a judge, and held the highest character as a lawyer. So long a career of useful and honourable service, unrewarded by any mark of distinction from the Sovereign, is totally unprecedented.

THE DUKE OF HAMILTON, the premier peer of Scotland, at his mansion in Portman-square. His grace was one of the oldest, if not the very oldest member of the peerage, having been born in the year 1767, and consequently he had attained the patriarchal age of 85. He succeeded his father, who was the ninth duke, in 1819, taking his seat in the House of Lords by two titles—the Duke of Brandon and Baron Dutton.

NORTON, Robert Bruce, Lieutenant 35th Regiment N.I. Bengal Army, third surviving son of the late Sir John David Norton, one of the judges of the Supreme Court at Madras, on the 15th inst. at St. John's-hill, Wandsworth, aged 30.

PARKER, Vice-Chancellor Sir James, on the night of Friday, the 13th inst. at Rothley Temple, Leicestershire, aged 49.

WELLBORNE, Elizabeth Anne, on the 11th inst. aged 7, and Henrietta Ada, on the 14th inst. aged 4, the beloved daughters of Charles Wellborne, esq. of Loampit-hill, Lewisham High road, and 17, Duke-street, Southwark, solicitor.

THE GAZETTES.

Bankrupts.

Gazette, Aug. 17.

HORNBY, WILLIAM, joiner, Kirkdale, Lancashire, Aug. 26 and Oct. 1, at eleven, Liverpool. Off. as. Turner. Sol. Atkinson, Liverpool. Petition, Aug. 9.

HOWE, JOHN, builder, Felling, Durham, Sept. 3, at eleven, Sept 30, at twelve, Newcastle upon-Tyne. Off. as. Baker. Sols. Brignal, South Shields and Durham; and Hartley, Southampton-street, Bloomsbury. Petition, Aug 9.

JOHNSON, CHARLES, ironmonger, Northumberland-place, Commercial-road East, Aug 25, at two, Sept 27, at one, Basinghall-st. Off. as. Stansfeld. Sol. Johnston, Chancery-lane. Petition, July 19.

MARTIN, WILLIAM, grocer, Stamford, Lincolnshire, Aug. 27 and Sept 17, at ten, Birmingham. Off. as. Bittleston. Sols. Hill and Matthews, St. Mary Axe, London; and Bray and Bridges, Birmingham. Petition, July 27.

ROLPH, WILLIAM, brewer, Billericay, Essex, Aug. 31, at two, Oct 5, at twelve, Basinghall-st. Off. as. Groom. Sols. Messrs. Linklater, Bucklersbury; and Woodward, Billericay. Petition, Aug. 12.

TOPHAM, THOMAS, cotton manufacturer, Noble-st. Cheapside, and Ripley, Derbyshire, and Walham-green, Middlesex, Aug 25, at half past two, Sept. 27, at half-past one, Basinghall-st. Off. as. Stansfeld. Sols. Hudson and Co. Bucklersbury. Petition, Aug. 1.

Gazette, Aug. 20.

BELL, JOHN, tailor and draper, 21, Ludgate-hill, Sept. 1, at two, Oct 5, at one, Basinghall-st. Com. Holroyd. Off. as. Edwards. Sol. Cobb, Gray's-inn-square. Petition, July 18.

MARSHALL, WILLIAM, provision agent, Tooley-st. Aug 28, at twelve, Oct. 1, at two, Basinghall-st. Com. Fane. Off. as. Whitmore. Sols. Ashurst and Son, Old Jewry. Petition, Aug 16.

MARTIN, WILLIAM, grocer, Stamford, Aug 27 and Sept. 17, at ten, Nottingham. Com. Balguy. Off. as. Bittleston. Sols. Hill and Mathews, St. Mary Axe, and Bray and Bridges, Birmingham. Petition, July 27 (and not August, as before advertised).

MOLE, WILLIAM, victualler and innkeeper, Birmingham, Sept. 7 and 21, at half-past eleven, Birmingham. Com. Daniell. Off. as. Whitmore. Sols. Messrs. Wright, Waterloo-st. Birmingham. Petition, July 12.

MOUTON, GEORGE, coal merchant, Crown Wharf, Scotland-yard, Aug 27, at eleven, Oct. 1, at one, Basinghall-st. Com. Fane. Off. as. Cannan. Sols. Selby and Mackeson, Lincoln's-inn-fields. Petition, Aug 18.

NICHOLL, THOMAS FRANKLIN, auctioneer and upholsterer, Poole, Sept. 2, at half-past eleven, Oct. 1, at eleven, Basinghall-st. Com. Fane. Off. as. Whitmore. Sol. Barber, King-st. Cheapside. Petition, Aug 10.

STURT, THOMAS, common brewer, Barnet, Sept. 3, at half past eleven, Oct. 1, at twelve, Basinghall-st. Com. Fane. Off. as. Cannan. Sol. Green, South Molton-st. Oxford st. Petition, Aug 12.

TOWNSEND, THOMAS, hat manufacturer, Bath, Sept. 3 and Oct. 4, at eleven, Bristol. Com. Stephen. Off. as. Miller. Sols. Messrs. Linklater, Sise-lane, London, and Abbott and Lucas, Albion-chambers, Bristol. Petition, Aug. 7.

WILLIAMS, WILLIAM JONES, hosier, haberdasher, and general dealer, Wolverhampton, Staffordshire, Aug 26 and Sept. 25, at half past eleven, Birmingham. Com. Daniell. Off. as. Christie. Sol. Chambers, Sheffield. Petition, Aug. 6.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Bell and *Bell*, paper manufacturers, first, 1s. 9d. Wakley, Newcastle.—*Belsh*, W. joiner and builder, first, 7¼d. Pott, Manchester.—*Blake*, G. soap boiler, second, 1¾d. Bird, Liverpool.—*Cathy*, J. B. stationer, &c. first, 9d. Hutton, Bristol.—*Carter*, J. merchant, third, 3-32nds of 1d. Bird, Liverpool.—*Dickenson, Brothers*, and *Hodgson*, merchants, fourth, 3-32nds of 1d. Bird, Liverpool.—*Entwistle*, J. cotton dealer, first, 6s. Lee, Manchester.—*Field* and *Molineaux*, corn and flour factors, first sep. of Molineaux, 10s. 9d. Pott, Manchester.—*Greenhalgh*, J. draper, &c. first, 5s. 2½d. Pott, Manchester.—*Lord*, T. boot and shoe maker, first, 7s. 8¼d. Pott, Manchester.—*Lowe*, E. toy dealer and turner, first, 1s. 10d. Hutton, Bristol.—*MacCann*, W. first, 1d. 9-16ths. *Monserrat*, F. G. wine and spirit merchant, first, 1¼d. Hutton, Bristol.—*Turnbull*, G. draper and grocer, first, 4d. Wakley, Newcastle.

INSOLVENTS' ESTATES.

Apply at the Provisional Assignee's Office, Portugal-street, Lincoln's-inn-fields, London, between the hours of eleven and three.

Beacroft, S. smith and bell-hanger, 4s.—*Burney*, G. master, R.N. 6s. 2d.—*Gyde*, J. out of business, 10s.—*Hall*, J. farmer, 20s.—*Hatch*, H. clerk and rector, 5s.—*Hawkins*, W. H. coal and manure agent, 3¼d.—*Leytham*, R. jun. farmer, 1s. 10¾d.—*Millor*, A. linendraper and salesman, 1s. 1½d.—*Newton*, T. joiner and beerseller, 1s. 0½d.—*Quartermann*, W. printer and engraver, 2s. 4½d.—*Thomas*, E. M. hosier, 4½d.—*Tinsley*, R. silk and worsted dyer, 7s. 8½d.—*Westley*, W. boot and shoe factor, 1s. 9½d.—*Wood*, T. baker and corn dealer, 8½d.

Portwine, T. butcher and general shopkeeper, first and final, 1d. Apply to W. Stringer, official assignee, New Romney, Kent.

Assignments for the Benefit of Creditors.

Gazette, Aug. 10.

Gall, S. farmer, Winston, Suffolk, Aug. 6. Trusts. J. Palmer, farmer and auctioneer, Winston, and J. Gall, gentleman, Whitton. Sol. A. Powell, Debenham.—*Hull*, S. ironmonger and brazier, Hinckley, Leicestershire, July 10. Trusts. T. Harrison, grocer, and S. Wykes, tallow chandler and grocer, both of Hinckley. Sol. S. Pilgrim, Hinckley.—*Wilson*, F. wine-merchant, Well-st. Oxford-st. and Grove-ter. Kentish-town, Middlesex. Trusts. R. C. Wilson, Drury-lane, and J. R. Reay, Mark-lane, wine-merchants. Sol. H. Lewellin, Chancery-lane.

Gazette, Aug. 13.

Bishopp, E. B. grocer and draper, Ewhurst, Sussex, Aug 2. Trusts. J. and E. Konward, drapers, G. Thorpe, shoemaker, and J. Burgess, draper, all of Battle. Sols. J. and S. Langham, Bartlett's-buildings, Holborn.—*Clark*, C. engraver, Goswell-road, Aug. 11. Trusts. J. Taylor, upholder, The Terrace, New Norfolk-st. Islington, and J. Teulon, printer, Cheapside. Sol. W. Jones, St. Mildred's-court.—*Colgate*, J. grocer and draper, Battle, Sussex, Aug. 3. Trusts. C. J. Jeudwine, grocer, Hastings, and J. Baggallay, warehouseman, Love-lane. Sols. Sole, Turner, and Turner, Aldermanbury.—*Doody*, J. mercer and draper, Hanley, Staffordshire, July 22. Trusts. W. Butterfield, merchant, Manchester, and L. Whitaker, innkeeper, Hanley. Sol. R. Stevenson, Hanley.—*Dunford*, J. innkeeper, Doncaster, Aug 3. Trusts. G. Gamwell, innkeeper, Doncaster, and J. Johnson, spirit merchant, Wath-upon-Deane, near Rotherham. Sol. G. P. Nicholson, Wath-upon-Dearne.—*Harris*, M. plasterer, Rotherham, Yorkshire, July 20. Trust. R. Marsh, jun. gentleman, Rotherham. Sols. Hoyle and Marsh, Rotherham.—*Hurst*, J. P. victualler, Saint Peter the Apostle, Isle of Thanet, Kent, July 26. Trusts. R. S. Cramp, brewer, Ramsgate, and J. Staudring, wine merchant, Margate. Sol. M. L. Daniel, Ramsgate.—*Kings*, M. A. New Bond-st. and *Claxton*, E. South Molton-st. Oxford-st. milliners and dressmakers, July 30. Trusts. J. Green, dealer in foreign silks, Cork-st. Burlington-gardens; and F. Cates, silk mercer, New Bond-st. Sol. O. Richards, Warwick-st. Regent-st.—*Timothy*, M. A. and *Edmonton*, T. drapers and carpet warehousemen, High-st. Shoreditch, July 19. Trusts. H. Atkinson, warehouseman, Wood-st. Cheapside; and W. Pigram, gent. Friday-st. Sol. C. Sawbridge, Wood-st. Cheapside.

Partnerships Dissolved.

Gazette, Aug. 3.

Bibbins, W. *Blagden*, R. and *Stovin*, J. C. merchants, Savage gardens, Tower-hill, as regards Stovin, July 29. Debts paid by remaining partners.—*Bickford*, E. and J. linendrapers, mercers, and milliners, Kingsbridge, July 30. Debts paid by E. Bickford.—*Brimley*, A. G. and *Bond*, J. wholesale and retail grocers, tea dealers, cheesemongers, &c. Cambridge, May 25. Debts paid by Brimley.—*Butler*, J. and *Humphreys*, T. B. surgeons and apothecaries, Seething lane, July 31.—*Caistor*, A. and *Leybourn*, R. millers and corn factors, Manchester, June 30. Debts paid by Caistor.—*Churchill*, E. and *Beane*, W. dealers in corn, coal, manure, guano, and other commodities, and hop factors, Tonbridge Wells, July 23. Debts paid by Churchill.—*Dean*, P. H. and *Mills*, A. ship brokers, Liverpool, July 31. Debts paid by Dean.—*Dodge*, N. S. *Morey*, C. and *Osborne*, E. manufacturers of Palmer's patent artificial limbs, Regent-st. as regards Morey, July 30.—*Gilkes*, J. and *Adams*, E. G. grocers and cheesemongers, Cross-st. Islington, July 29. Debts paid by Gilkes.—*Grafton*, J. and *Gibson*, T. C. merchants and manufacturers of coke, Threadneedle-st. and Gracechurch-st. June 30. Debts paid by Gibson.—*Jewell*, S. and M. furniture brokers, Whitechapel-road and Jersey, July 27. Debts paid by S. Jewell.

Jones, G. and *Malleson*, H. travelling commercial or commission agents, Edinburgh, July 19.—*Kings*, M. A. and *Claxton*, E. milliners and dress makers, New Bond-st. June 10.—*Lennox*, J. and *Lee*, C. drapers, Newcastle-upon-Tyne, July 27.—*Livesey*, J. and *Hill*, J. contractors, stone dealers, and quarrymen, Bury, July 29. Debts paid by Hill.—*Loseby*, J. *Trout*, J. *Oswin*, E. and *Stern*, J. hosiers, Nottingham and Sneinton, July 27. Debts paid by Loseby.—*Maclean*, D. and C. E. engineers and founders, Ratcliffe Iron Works, St. George-st. East, July 31.—*Mansfield*, J. and *Jones*, D. wholesale tea dealers, Liverpool, July 29.—*Neall*, H. and *Whewell*, S. tobacconists, Staverton-row, Walworth-road, July 29.—*Pemberton*, E. J. and *Powell*, T. common brewers, Warrington, July 30.—*Perks*, H. and S. E. and *Davies*, A. Henrietta st. Cavendish square, July 31.—*Rhoades*, J. and *Wilson*, W. grocers and tea dealers, Nottingham, July 31. Debts paid by Wilson.—*Stitt*, S., T. H., and J. J. iron merchants, Liverpool, as regards T. H. Stitt, July 31. Debts paid by remaining partners.—*Stodart*, M. and E. pianoforte makers, Golden-square, March 18.—*Twynam*, E. and T. agriculturists, Allington and Bishopstoke, Aug 2.—*Twynam*, E., T., and C. and *Dixon*, E. linseed and bone crushers, and artificial manure manufacturers, Northam, July 31. Debts paid by Dixon.

Gazette, Aug 6.

Bratt, M. and E. grocers and hucksters, Great Haywood, July 30. Debts paid by E. Bratt.—*Bowtell*, Jno. and Jos. boot makers, Piccadilly, April 4.—*Craddock*, G. and W. C. butchers and dealers, Bilston, Aug. 4. Debts paid by G. Craddock.—*Evans*, T. F. and *Emson*, W. merchants, Philpot-lane, May 20. Debts paid by Evans.—*Fisher*, J. M. and *Arding*, F. ironmongers, Taunton, July 1. Debts paid by Fisher.—*Giles*, W. jun. and *Dowden*, H. general shopkeepers, Fishersgate and Southwick, July 5.—*Greenwood*, T. and *Fraser*, W. G. warehousemen, Watling-street, June 30. Debts paid by Greenwood.—*Hind*, J. and *Alcock*, R. saddlers and coach makers, Tunstall, July 14. Debts paid by Hind.—*Jardine*, R. and *Muir*, A. drapers, Southampton, July 31.—*Johnson*, A. E. and *Jones*, H. architects and surveyors, Furnival's-inn, July 1. Debts paid by Jones.—*Lyon*, S. and *Levi*, N. tailors and woollen drapers, Liverpool, Aug. 3. Debts paid by Levi.—*Martin*, G. and J. H. wine and spirit merchants, Southampton, July 31. Debts paid by G. Martin.—*Moore*, H. Wimborne Minster, and *Greata*, R. Blandford Forum, solicitors, July 19.—*Murgatroyd*, C. and B. manufacturing chemists, Bradford, Aug. 2. Debts paid by B. Murgatroyd.—*Rosenberg*, L. and *Cohen*, H. tobacconists, Sheffield, July 27. Debts paid by Cohen.—*Smith*, J. *Gilling*, J., H. jun. and W. carriers, Sowerby, near Thirsk, as concerns H. Gilling, jun. Aug. 2. Debts paid by remaining partners.—*Wadsworth*, T. *Howard*, J. and *Hall*, J. W. cotton spinners, Ashton-under-Lyne, as regards Hall, Aug. 4. Debts paid by Wadsworth and Howard.

CONTENTS.

We cannot undertake to return rejected communications. Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith.

No notice can be taken of anonymous communications.

To Readers and Correspondents.

"J. C. W." (Bristol) *will see we have availed ourselves of his inclosure.*

"J. B." (Blackburn).—*We are much obliged by the information, which our correspondent will observe we have used.*

"Justitia."—*We recommend our correspondent to take no further notice of the matter. We remember a case somewhat similar, which brought upon the Attorney some severe remarks in the Court of Common Pleas, before which it came on motion.*

"An Intending Emigrant."—*We believe an Attorney, duly admitted in England, will, on motion of Counsel and due proof of identity and admission, be forthwith permitted to practise in Australia. We have heard that Counsel there act both as Counsel and Attorney; but whether Attorneys are permitted to act as Barristers and Counsel, we very much doubt.*

THE LAW TIMES.

SATURDAY, AUGUST 28, 1852.

THE NEXT STEP.

The Reforms in the procedure of the Common Law Courts which are to come into operation at the beginning of the next legal year, are admitted by all to be but an imperfect remedy for the evils against which they were directed, and are only to be lauded if they are offered as the first step, to be followed by many bolder ones in the same direction. Of themselves they will do the greatest amount of harm to the Profession with the least possible benefit to the public. Accompanied by others they might be the means of securing great advantages both to the Profession and the public. We know now precisely how far change has proceeded, and that the alterations already made have necessitated a multitude of others. The first step is concluded, and we can now take accurate measure of our progress. The question is, for present consideration, what should be *the next step*, for it is even more important than that which has been already taken.

We have secured something like simplicity and rapidity of pleading. If a demand is not disputed, judgment and execution can be obtained far more quickly and even more cheaply than in the County Courts, certainly with far less trouble. The cause of action in a disputed demand may now be stated briefly, and it will be very difficult for the most ingenious pleader to construct a demurrer for the single purpose of delay or to defeat the claim by raising another issue than its merits. It is a fair question for difference of opinion whether it would be desirable to abolish all forms of pleading and substitute an untechnical statement of the demand and the defence; but all must agree that, assuming a preference for a formal pleading, it would scarcely have been more simplified and shortened than by the new statute it has been. In the vast majority of disputed claims it will be impossible to prevent the issue from being joined and all being ready for trial within a month from the service of the writ. An action in the County Court is not often brought to trial in less time than this. Thus, up to this point, the reformed procedure of the Superior Courts will place them on a par with the County Courts as regards cheapness and simplicity.

Why, then, is there still a doubt whether the Superior Courts will be able to maintain themselves against the rivalry of the County Courts? If they are cheaper, why will they not be preferred? If the procedure is as simple, why should it not be as much approved? Have they not as good Judges? Is not the justice dispensed there as perfect as in the Inferior Courts? The whole Profession and the public also will answer yes. They will say that they prefer the regular Judge of Assize and a formal court, and a choice of Advocates for the trial of their causes. If they be asked why, thus preferring them, they reject them and go rather to the Courts they esteem less, what is their answer? "You tell me of speed and cheapness in your courts; but of what use are these to *me*: they do not help me to that which is my object—judgment and execution. Of what service to me is it that you can bring your pleadings to an end and be ready for trial in a month, if I must wait during one part of the year for *four* months, during the other part for *eight* months before I can go to trial?"

And our clients are *right*. It *is* a mockery to boast of hastening the preliminaries to a trial, if you do not hasten the trial itself. Of what use is it to be ready to try, if there be no Court at which to try. The *next step*, then, must be to provide for *more speedy trial*, without which the reforms that have been made in pleading are practically worthless.

We have already shewn our readers how easily and effectively this may de done. As it is a rule with us never to point out a mischief unless we are prepared also to shew how it may be remedied, we have not repeated this complaint of the unfrequency of trial, without stating explicity how it may be removed. The plan has been already submitted to the Profession in these columns, but only as part of a larger plan for the reform of the procedure in the Superior Courts of Common Law. Some portions of that plan being now adopted as the law, and the importance of this part having been increased by the greater urgency there is now for it, in order to save the Courts at Westminster from dying of inanition, we repeat it again, lest, amid the other topics that now agitate the Lawyer, the details of this one may have been forgotten.

We propose, therefore, the following plan for securing more speedy trials:—

We propose that *the Circuits* should be increased to *twelve*.

That *four* Assizes in each year should be held in every county.

That the legal year should be thus subdivided—

November and December, a circuit.
January, sittings *in banco*.
February and March, a circuit.
April, sittings *in banco*.
May and June, a circuit.
July, sittings *in banco*.
August and September, a circuit.
October, vacation.

In this we name two months as the period of each circuit, which would allow for any extra time that might be rendered necessary by accidental influx of business; but with the circuits increased in number as we propose, the regular period occupied by the business of each circuit would not usually exceed a month or five weeks, thus giving to the Judges and Counsel a holiday varying from a fortnight to three weeks after each circuit, and a long vacation in the autumn of from six weeks to two months. Three sittings *in banco*, each of a full month, would amply suffice for the despatch of the business *there*.

We propose also that one Judge only should go upon each circuit, and we would thus dispose of the fifteen Judges:—

Twelve to be engaged on the twelve circuits.

Two to sit at Nisi Prius for a Metropolitan District Court, to comprise all the district now included in the Central Criminal Court.

One to sit daily in the Bail Court, or some more convenient court in one of the Inns of Court, to hear motions and despatch publicly the business now done privately in chambers.

In order to relieve the Judge of Assize, he should try only the criminals charged with crimes punishable with transportation. The Court of Quarter Sessions to sit simultaneously with the Court of Assize to try the minor offences, thus avoiding the inconvenience of calling juries, &c. from their homes more than four times in a year.

The Judge of Assize to hear appeals *from*

the County Courts, and from Magistrates' Courts.

As soon as possible regulations to be made for holding the Assizes in each county alternately, at four of the principal towns within it.

Such is the plan we have proposed, and which has been approved by the Profession and by not a few of the most eminent of the Law Reformers. We repeat it now because preparations will soon be made for the business of the session of the new Parliament; and as a matter of vital moment to the Superior Courts, it may be hoped that this necessary supplement to the Procedure Act of last session will form a part of the programme.

LAWYERS IN PARLIAMENT.

An omission in our list of Lawyers in the New Parliament has, by the kindness of a friend, been pointed out to us. The name of Mr. William Eccles, M.P. for Blackburn, should have appeared in the list, that gentleman having been for many years, previous to his entering into the cotton trade, a Solicitor of large practice in that borough. We believe the list is now complete and correct.

THE NEW COMMON LAW PRACTICE.

XIV. JURIES AND JURY PROCESS.

All the former jury processes are abolished, and instead of them the precept issued by the Judge of Assize to the Sheriff, shall direct the *common jurors* to be summoned for the trial of all issues, whether civil or criminal; and thereupon the jurors are to be summoned as at present. A printed panel of the jurors summoned is to be made by the Sheriff *seven* days before the commission day, and kept in his office for inspection, and a printed copy given to any person at the price of 1s. and such copy is to be annexed to the Nisi Prius Record.

In like manner as to *special juries*, the Judges are to direct the Sheriff to summon a sufficient number of special jurymen, not exceeding forty-eight in number, to try the special jury causes, and they are to be the persons to try them, subject to the usual right of challenge, and the panel is to be kept, and a printed copy supplied as with the common jury. At the trial, the special jury is to be ballotted for as common juries now are. But power is reserved to the Court or a Judge to order a special jury to be struck as now, if sufficient cause be shewn.

A *special jury* is to be obtained in *country* causes thus. The plaintiff is to be entitled to it on giving notice in writing to the defendant, at such time as would be necessary for a notice of trial. The defendant may obtain it by a like notice to the plaintiff, within the time now limited for obtaining a rule for a special jury. But the Court or a Judge may order any case to be tried by a special jury if they think fit.

In London and Middlesex, special jurors are to be nominated and reduced by and before the Under-Sheriff, or Secondary as hitherto, by the Master, upon the application of either party, and the names so struck are to be placed on the panel, and affixed to the Nisi Prius record.

Where notice of *special* jury appears to be given by a defendant for the purpose of *delay*, and the venue is in London or Middlesex, the Court or a Judge may order the cause to be tried by a common jury.

Where notice of special jury has been given, either party may, *six* days before the sittings, or commission day, give *notice to the sheriff* that the cause is to be tried by a special jury, otherwise no special jury need be summoned or attend, and the cause shall be tried by a common jury, unless otherwise ordered by the Court.

A *view* may be had by a rule of Court or Judge's order, without a writ as heretofore, and the sheriff is to give to either party the names of the viewers, and return their names to the associate for the purpose of their being called as jurymen at the trial.

The jurors so contained in such panels are to be the jurors to try all causes at the assizes or sittings for which they were summoned. But nothing in the Act is to affect the right of a defendant to take down a cause for trial after default by plaintiff to proceed to trial; and if records are entered for trial both by plaintiff and defendant, the defendant's record shall be treated as standing next in order after the plaintiff's record in the list of causes, and the trial shall take place accordingly.

XV. ADMISSION OF DOCUMENTS.

Either party may call on the others to admit any document; in case of refusal or neglect to admit, the costs of proving are to be paid by the party so refusing, unless at the trial the Judge shall certify that the refusal to admit was reasonable. No costs of proof are to be allowed, unless such notice be given, except in cases where, in the opinion of the Master, the omission to give the notice is a saving of expense. An affidavit of the Attorney in the cause, or of his clerk, of the signature to any admissions made in pursuance of notice, is to be sufficient evidence of such admissions, as also of the notice itself, and of the time and place of service thereof.

XVI. EXECUTION.

On a cause tried *out of Term*, the successful party is to be entitled to issue execution within fourteen days, unless the Judge who tries the cause, or some other Judge, or the Court shall order it earlier or later. A writ of execution may issue at once into any county, and be directed to and executed by the sheriff of any county, whether county palatine or not; and in counties palatine writs of every description are to be directed and issued to the sheriffs, and returned by them in the same manner as with the sheriffs of other counties.

It is expressly provided that in executions the poundage-fees and expenses of the execution may be levied over and above the sum recovered.

A writ of execution will remain in force for one year, but it may be *renewed*, at any time before its expiration, for another year, and so on from time to time, by seal of the Master of the Court out of which it issued, or by giving written notice of renewal to the sheriff, signed by the party, or his Attorney, and bearing the like seal of the Court; and such a writ is to be entitled to priority, according to the time of the original delivery thereof, and its production, with the seal, shall be sufficient evidence of its renewal.

The sheriff or gaoler may *discharge a prisoner* on written order under the hand of the Attorney in the cause, unless the party for whom the Attorney professes to act shall have given written notice to the contrary to such sheriff or gaoler. But such discharge is not to operate in satisfaction of the debt, unless made by the authority of the creditor. But it is expressly provided that nothing in the Act shall justify an Attorney in giving such order for discharge without the consent of his client.

Where a party is *already in prison*, it is not to be necessary to sue out a writ of habeas corpus ad satisfaciendum, but he may be so charged by a Judge's order, made upon affidavit that judgment has been signed, and is not satisfied, and the service of such order on the keeper of the prison is to have the effect of *a detainer*.

XVII. REVIVAL OF JUDGMENTS, &c.

Execution may issue without a revival of the judgment, during the lives of the parties, or of those of them during whose lives execution may at present issue within a year and a day without *sci. fa.* and within *six years* from the recovery of the judgment.

Where it becomes necessary to *revive a judgment*, the party may either sue out a writ of revivor, or apply for leave to enter a suggestion on the rolls to that effect, such leave to be granted by the Court or a Judge, upon a rule to shew cause or a summons, or as the Court or Judge may direct, and on such application, such suggestion may be allowed to be entered, and execution to issue thereon; and if it does not manifestly so appear, the rule is to be discharged or summons dismissed, with or without costs, with liberty for the party making the application to proceed by writ of revivor or action on the judgment.

The *writ of revivor* is to be directed to the party called on to shew cause why execution should not issue, and after reciting the reason why it has become necessary, it is to call on the party to appear within *eight* days after service to shew cause why execution should not issue, and it is to give notice that, in default of appearance, the party issuing the writ may proceed to execution. And this writ may be served in any county, or proceeded on either in Term or Vacation, in the same manner as a writ of summons; the venue may be laid in any county, and the pleadings, proceedings, and costs are to be the same as on other actions.

Writs of *scire facias* are to be acted, directed, and proceeded upon in the same manner.

Notice in writing to the plaintiff, his attorney, or agent, is to be sufficient appearance to a writ of revivor. This writ is to be allowed without any rule or order to revive a judgment, *less* than *ten* years old; if *more* than ten years old, it is not to be allowed without a rule of Court or a Judge's order; and if *more than fifteen*, not without a rule to shew use.

At this point we pause again, that the lesson of the week may not be too long for the reader to learn and digest.

NEW CHANCERY PRACTICE.(a)

Having, in the last number (p. 171) completed the sketch of, and the remarks upon, that part of the New Chancery Practice which is introduced by the Master in Chancery Abolition Act, we may now proceed to the examination of "The Act to amend the Practice and Course of Proceeding in the High Court of Chancery" (15 & 16 Vict. c. 86), which is to commence and take effect from and after the 1st November next. It commences with some *novel*, but it is believed some very *useful*, provisions, viz. after the commencement of the Act, the practice of engrossing on parchment bills of complaint or claims, and filing the same, is to be discontinued, and the Clerks of Records and writs are to file, in lieu thereof, a *printed bill of complaint or claim* (sec. 1); and the writ of *subpœna*, to appear to and answer a bill, and the *writ of summons* upon a claim are respectively *abolished* (sec. 2), and the defendant is to be *served with a printed bill of complaint or claim* in the mode and according to the practice now adopted with reference to such writs respectively, the same being endorsed in the mode set out in the schedule, by which an appearance within eight days is required, and being also stamped by one of the Clerks of Records and Writs, indicating the date of the filing thereof (sec. 3), and the filing and service of a printed bill or claim, is to have the same effect as the filing of a bill or claim, and the service of the writ of subpœna or writ of summons respectively, and is to entitle the plaintiff in such suit to such remedies for default of appearance, and otherwise, as he is now entitled to in case of the proper service of a subpœna, to appear to and answer a bill of complaint or of a writ of summons on a claim. (Sec. 4.) The *service of a printed copy* of a bill or claim is to be effected in the same manner as the service of a writ of subpœna to appear to and answer a bill is now effected, *save only* that it is not to be necessary to produce the original bill or claim, which will be on the files of the court; and the Court is to be at liberty to direct substituted service of such printed bill or claim, in such manner and in such cases as it shall think fit. (Sec. 5.) However, notwithstanding the before-mentioned provisions, a *written copy of any bill* may be received and filed by the Clerk of Records and Writs, and being stamped and endorsed as before mentioned, its service is to have the same effect as the service of a printed copy, *upon the* personal *undertaking* of the plaintiff or his solicitor to file *a printed copy* of such bill within fourteen days, in the following cases, viz.:—

Any bill praying a writ of injunction;
Or a writ of ne exeat regno;
Or where filed for the purpose either solely or among other things of making an infant a ward of the Court. (Sec. 6.)

The plaintiff, upon application being made to him, is bound to deliver to the defendant or his solicitor such number of printed copies of his bill or claim as he shall have occasion for at a rate to be prescribed by any General Order of the Lord Chancellor. (Sec. 7.)

The provisions before mentioned with respect to filing, serving, and delivering printed copies of any bill or claim, are upon the amendment of any bill, or claim, to extend and be applicable as far as may be thereto; and where, according to the *present practice*, an amendment of a bill or claim may be made without a new engrossment thereof, or *under such circumstances as the* Lord Chancellor *may prescribe* by General Order, a bill or claim may be wholly or partially amended by *written* alterations in a printed bill or claim. (Sec. 8.)

Next come some not very usual, though perhaps not unconstitutional powers, conferred upon the Lord Chancellor *alone*, enabling him in effect to repeal so much of preceding part of this Act of Parliament which relates to the printing of bills and claims, or otherwise, and to restore the old practice. We give it verbatim:—

"It shall be lawful for the Lord Chancellor from time to time to make any order or orders

(a) Continued from p. 171, ante.

directing that the provisions hereinbefore contained as to *printing* or *otherwise* shall be *discontinued* or *suspended* until further order, and to *direct* that all or any of the *present practice* as to the filing of bills and claims, and the issuing and service of subpœnas and writs of summons may be *revived and come into operation as if this Act had not passed*." (Sec. 9.)

This power of, in effect, repealing the first eight sections of the Act, is, it seems, conferred upon the Lord Chancellor *alone, without the advice or assistance of any* of the other Equity Judges (three of whom at the time of the passing of the Act were members of the Chancery Commission) being requisite; for it will be observed, on looking at the 66th section of the Act, it is only the expression "general order of the Lord Chancellor" is to mean "general order of the Lord Chancellor with such advice and assistance as aforesaid." And what is still more strange, there is a strict provision in the 64th section of the Act, that "all *general* rules and orders of the Lord Chancellor, *with such advice and assistance as aforesaid*," are to be immediately laid before Parliament, if then sitting, or within five days after the next meeting thereof, and the *resolution* of *either* of the Houses of Parliament, made within thirty-six days after such rules and orders have been laid before them, may determine that either the whole or part thereof ought not to continue in force. But with regard to the order or orders to be made by the Lord Chancellor *alone*, there appears to be no such provision. This may be the result of a mere oversight in drawing the Act of Parliament; if it is not, and although, after due deliberation, Parliament has enacted that certain important alterations recommended by the Commission should be made in the procedure in Chancery, it was intended that a *power of revocation* (if we may borrow the expression) should be *reserved*, not for the Lord Chancellor, with such advice and assistance as aforesaid, or subject to be rescinded by a resolution of either House, but for the Lord Chancellor *alone*, without the advice or assistance of the other Chancery Judges, not subject to be rescinded by an order of either House, and unless re-enacted by "further order" of the Lord Chancellor, only again to be introduced by Act of Parliament. If this be the intention of Parliament, greater powers to deal with its deliberate enactments have been conferred upon an individual Judge, the highest though he may be in the realm, than one would have imagined accordant with the practice, or consistent with the dignity, of the Legislature.

With regard to the first eight sections of the Act, the printing of the bill will, it is believed, in most cases be more economical than making copies according to the present practice; and it will render it much easier to the Judge and Counsel to get up the case, and by the service of the printed copy upon the defendant, he will at once know what is sought from him, of which he is not informed under the present practice, and cannot know until he has appeared, and taken an office copy of the bill, the cost of which, with the fees, is often very great, and has often been used by a disreputable plaintiff, extending the bill to an enormous length, for the most oppressive purposes. The plan introduced by the Legislature (if acted upon) will put a stop to this most effectually.

Next come some very useful provisions, which will, in all probability, do away with claims, as the same end may, it seems, under the following sections, be obtained at as little expense by a bill in the new form, while certain objections which are applicable to claims as to the mode of taking evidence upon points of conflict, can, in all cases where such points arise, be readily obviated. That is to say, all the advantages of cheapness and despatch now to be gained by claims can, it is conceived, be attained, by a concise bill filed *without interrogatories*, on which a decree may be obtained on affidavits; while, if necessary, interrogatories may be filed after the bill, and evidence gone into, in the same manner as at present.

Now the provisions are as follows:—Every bill filed after the commencement of this Act is to contain merely a concise narrative of facts, on which the plaintiff relies, divided into paragraphs, numbered consecutively, with a prayer for specific and general relief, but it is not *to contain any interrogatories for the examination of the defendant*. (Sec. 10.) It may here be remarked, that in all cases where a suit is stopped at once, either by a plea, demurrer, or compromise, the insertion of interrogatories in the bill is a needless expense, as is also the case when the facts are not disputed.

In order to guard against any person's name being used in any suit without his knowledge, either as next friend of an infant, married woman, or other party, or as relator in any information, such person is to sign a written authority to the solicitor, to be filed with the bill, information, or claim. (Sec. 11.)

The plaintiff, within a time to be limited in a general order of the Lord Chancellor, *may*, in any suit commenced by bill, if he require an answer, file in the Record Office interrogatories for the examination of a defendant, a copy of which, or of such of them as he shall require any defendant to answer, are to be delivered to him or to his solicitor within the time so to be limited, or within such further time as the Court shall think fit to direct; otherwise the defendant will not be called upon to put in an answer. (Sec. 12.)

The defendant in a suit commenced by bill, whether any answer is or is not required, *may*, without leave of the Court, put in a plea, answer, or demurrer, within the time now allowed for demurring alone, or within a time to be fixed by general order of the Lord Chancellor; *after* that time he must obtain leave of the Court, which, if granted, suspends the plaintiff's right to move, under the 15th section of the Act, for a decree or decretal order. (Sec. 13.)

The answer, as at present, may contain, not only the *answer* to the interrogatories, but also the *defence*, and is to be divided into paragraphs, numbered consecutively, each paragraph containing, as nearly as may be, a separate and distinct statement and allegation. (Sec. 14.)

The *plaintiff* in any suit commenced by bill *may*, *after* the time allowed for answering (but *before* replication), move upon notice (to be prescribed by a general order) for such decree or decretal order as he may think himself entitled to; and affidavits may be filed both by the plaintiff and defendant, to be used on the hearing of the motion; and if the motion is made *after answer*, it is for the purposes of the motion to be treated as an affidavit. (Sec. 15.) The Court may either grant or refuse this motion for a decree or decretal order, or make an order for the further prosecution of the suit, as the circumstances of the case may require, and also as to costs. (Sec. 16.)

Much expense and delay will also be put an end to by the next section, whereby the practice of *excepting* to bills, answers, and other proceedings for *impertinence*, is abolished; and the Court is at liberty to direct the *costs* occasioned by any impertinent matter introduced into any proceeding to be paid by the party introducing the same, upon application to the Court for that purpose. (Sec. 17.)

Power is given to the Court, upon the application of the *plaintiff* by bill or claim, and in the former case, although the defendant's answer may not have been required, or he may not have been interrogated as to documents, to make an order for the production by any defendant, upon oath, of such of the documents in his possession or power relating to the matters in question in the suit, as the Court shall think right; and the Court may deal with such documents when produced in such manner as shall appear just. (Sec. 18.)

By the next section, discovery may often be obtained by a defendant without the necessity of resorting to a cross bill. For the defendant may, in any suit commenced by bill or claim, but in the former case, if he is required to answer, not until he has put in a full answer, and *without filing a cross bill of discovery*, file interrogatories for the examination of the plaintiff, to be delivered to the plaintiff or his solicitor, to which is to be prefixed a concise statement of the subjects on which discovery is sought, and the plaintiff must answer the interrogatories in the same way as if it had been contained in a cross bill filed against him. The practice of the Court with reference to excepting to answers for insufficiency, or for scandal, is to extend and be applicable to answers put in to such interrogatories; but in determining the materiality or relevancy of any such answer, or of any exception thereto, the Court is to have regard, in suits commenced by bill, to the statements contained in the original bill and in the answer which may be put in thereto by the defendant, exhibiting such interrogatories for the examination of the plaintiff, and in any affidavits which may have been filed, either in support thereof or in opposition thereto. It is however, provided that a defendant, if he shall think fit so to do, may exhibit a cross bill of discovery against the plaintiff, instead of filing interrogatories for his examination. (Sec. 19.)

Moreover, the Court may, on the application of any *defendant*, in any suit commenced by bill or claim, *but* in the case of a bill where an answer is required, not until a full and sufficient answer has been put in, *unless* the Court make an order to the contrary, make an order for production by the *plaintiff*, on oath, of such documents in his possession or power relating to the matters in question in the suit, as the Court shall think right. And the Court may deal with such documents when produced in such manner as shall appear just. (Sec. 20.)

THE LEGISLATOR.

HOUSE OF LORDS.

Friday, the 20th, having been the day on which the writs for the assembling of a new Parliament were made returnable, the House of Lords was opened shortly before two o'clock, for the purpose of proroguing Parliament, by royal commission, until Thursday, the 21st of October next, in conformity with the command of the Queen in Council, the official notice of which was published in an extra *Gazette* to Tuesday's *Gazette*.

The Duke of Northumberland and Lord Howard de Walden, who were the only peers present, entered the House a few minutes before two o'clock; and Mr. Shaw Lefevre, the Deputy Clerk of Parliament, took his place at the table before the business commenced.

At two o'clock precisely, the Lord Chancellor entered the house, and standing before the throne, said,—My lords, her Majesty has been pleased, under her writ, sent under the great seal, to prorogue Parliament until Thursday, the 21st of October next.

Mr. Pulman, Yeoman Usher of the Black Rod, having gone for the Commons, he shortly appeared at the bar, accompanied by Mr. Ley, the assistant clerk of the House of Commons, attended by several other officers of that House, when

Mr. Shaw Lefevre read her Majesty's writ.

The Lord Chancellor then bowed; and Mr. Ley and the other officers, who represented the Commons, withdrew; and the proceeding, which did not occupy five minutes, terminated.

PARLIAMENTARY PAPERS.

The Census of Ireland.—A portion of the census returns of Ireland, shewing the area, population, and number of houses, by townlands and electoral divisions, in the county of Wexford, has been printed, by command of her Majesty. It appears by the poor-law valuation of Ireland, made in 1851, that the unions in the county were valued at 330,537*l.* 2*s.* 3*d.*; but by the government valuation of the county, made by Mr. Griffiths in 1847, the value was stated to be 390,177*l.* 11*s.* 7*d.* The area of the county contains 573,199 acres. The population, according to the census of 1841, was 202,033—viz. 97,918 males and 104,115 females. The population, by the last census (1851), was 179,793—viz. males 86,770, females 93,020. The decrease of population, therefore, in the ten years, amounts to 22,243. The total number of inhabited houses in the county, in 1841, was 33,507; of uninhabited, 1,108; and building, 102. The total number of inhabited houses, in 1851, was 29,479; of uninhabited, 1,776; and building, 50. The result of the return, therefore, shews a decrease of population of 22,243; of inhabited houses, 3,828; and of houses building, 52. The only increase shewn by the return is in the number of uninhabited houses, which presents an increase, in 1851, of 668, as compared with 1841.

The Patent Law Amendment Act.—This Act, which received the royal assent on the 1st instant, "for Amending the Law for granting Patents for Inventions," contains fifty-seven clauses, and a schedule of forms. It will take effect from the 1st of October next. The Lord Chancellor and others are constituted Commissioners of Patents for Inventions, three of whom may act, the Lord Chancellor or Master of the Rolls being one. The commissioners are to use a seal, and to frame rules and regulations, which are to be laid before Parliament. The Treasury is to provide offices for the purposes of the Act, and officers may be appointed. Every petition and declaration is to be compared with the provisional specification. "Every application for letters patent made under this Act shall be referred by the commissioners, according to such regulations as they shall think fit, to one of the law officers." No letters patent are to be issued after three months from the date of the warrant—they are to be valid, when issued under the Great Seal, for the whole of the United Kingdom. A register is to be kept of all letters. The fees and stamp-duties to be paid are set forth in the schedule annexed to the Act.

INDIA IN THE NEW PARLIAMENT.—There are still five directors of the East-India Company who have seats in the House of Commons: Mr. Masterman, Sir James Hogg, Mr. R. D. Mangles, and Mr. M. T. Smith. Mr. Plowden has lately lost his seat for Newport, but General Caulfeild has been returned for Abingdon. In addition to those members, not officially connected with the Indian Government, who are conversant with Eastern politics, such as Sir James Matheson, who served in the last Parliament, Mr. Macaulay, son of the celebrated Zachary Macaulay, the Indian lawgiver, has been returned for Edinburgh. All the old members connected with the India-House are Liberals or Free-traders.—*Globe.*

THE MEETING OF PARLIAMENT.—Parliament, says the *Observer*, will not be called together for "despatch of business" before Thursday, the 11th of November, when it will be assembled for a short session before Christmas, of four or five weeks, unless something important and unforeseen shall occur in the mean time, and will then be adjourned for the Christmas holidays.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

THE MILITIA.

So many questions are addressed to us respecting the militia, that we think it well to give a place in our columns to the following official intimations and regulations, which have recently been issued under authority:—

Duty of, and pay and allowances to be granted to, the officers and non-commissioned officers of the militia in England and Wales, when detached from head quarters upon the service of raising and enrolling volunteers.

1. It will be the duty of the adjutant to superintend the enlistment and enrolment of the volunteers, and to take charge of the payment of the bounties, and other expenses to be incurred upon such enrolment.

2. For this duty he will be allowed, while absent rom head quarters, his full training pay of 8s. 6d. a day, with an addition of 4s. 6d. for performing this extra duty.

3. He will be entitled to an allowance also of 5s. a day to cover the expense of living at an inn.

4. He will be allowed 2s. a day for the forage of a horse; or if forage be not drawn, he may be paid the actual expense of travelling by railway; or when not so proceeding, an allowance of 9d. a mile.

5. He will be required to give the security of a guarantee society policy of 500*l.* for a regiment of eight companies and upwards; of 300*l.* for a regiment of less than eight companies; and of 200*l.* for a regiment of less than four companies.

6. The surgeon of the regiment will accompany the adjutant for the purpose of examining the volunteers at particular places and on particular days, to be appointed by the commanding officer, and will be then allowed a daily pay of 11s. 4d. with an allowance of 5s. a day to cover the expense of living at an inn, and 2s. a day for forage for a horse; or, if the forage allowance be not drawn, the actual expense of travelling by railway; or when not so proceeding, receive an allowance of 9d. a mile.

7. Non-commissioned officers and drummers when absent from head quarters upon this duty will be allowed the full training pay, viz.:

	Per diem.
Sergeant-Major	2s. 0½d.
Sergeant	1s. 6½d.
Drummer	1s. 1d.
And beer-money, each, at	0s. 1d.

8. Marching-money for each non-commissioned officer and drummer, at 1s. 1d. a-day (which includes the allowance to the innkeeper for the hot meal), will be allowed for each day's march, and ½d. a day while detained in billet more than one day.

9. A sergeant, selected to assist the adjutant in paying the bounty and keeping the accounts of bounty and expenses incurred, will be allowed the pay of paymaster-sergeant, viz. 2s. 0½d.

W. BERESFORD.

War-office, 16th August, 1852.

The subjoined regulations for the militia have been made by the Secretary-at-War, in pursuance of the Act 15 & 16 Vict. c. 50:—

1. The age of the volunteers, as an ordinary rule, is to be from age eighteen to thirty-five.

2. Volunteers above thirty-five years of age, on being certified by a military or militia medical officer to be fit for duty for five years, and recommended by the adjutant of the regiment to the Secretary-at-War, may be enrolled after his approval.

3. Men who have been discharged from the army after three years' service with good character may be accepted up to the age of forty-five.

4. Any discharged soldier above that age can only be accepted with the sanction of the Secretary-at-War.

5. Volunteers of 5 feet 4 inches and upwards may be accepted.

6. Should eligible volunteers of 5 feet 3 inches offer, they may be accepted, with the sanction of the Secretary-at-War.

7. Volunteers must, at the time of their engagement, be resident in the county in the militia of which they engage to serve.

8. Every volunteer must be examined before being enrolled by a militia, or by a military medical officer; or, in the event of no such medical officer being available, by two private medical practitioners. If it be impossible to obtain the certificate of two private medical practitioners, that of one may be accepted.

9. The allowance for medical examination of each volunteer, by one or two private medical practitioners, will be 2s. 6d. for each volunteer. Instructions for this purpose will be furnished to the medical officer by the War-office.

10. Volunteers must be attested upon the form prescribed, and will then be enrolled. The attestation will be preserved at the head-quarters of the regiment, and the names and descriptions of the men enrolled must be sent half-monthly by the adjutant to the clerk of general meetings for the county.

11. Every volunteer is to receive the sum of 10s. as a bounty on being enrolled, and 10s. at the termination of the first training, if his conduct has been good; and after that time he is to be paid at the rate of 2s. a month during his term of service, until he shall have received by way of bounty, allowances, and periodical payment, the full sum of 6*l.* This payment will be made either monthly, quarterly, or otherwise, as may, according to circumstances, be hereafter ordered by the Secretary-at-War.

12. Commanding officers of militia may, if they think fit so to do, advance, after the second training, the amount of the next ensuing six months' instalments to those men who have conducted themselves creditably during the period of their training, on their departure home.

13. Men who are appointed sergeants or enlisted as drummers on the permanent staff will only be allowed a bounty of 15s. on enrolment, and will be required to take the oath prescribed in section 3 of the 51 Geo. 3, c. 118.

They need not have been residents in the county. Drummers may be accepted at sixteen years of age, and under 5 feet 3 inches.

14. Volunteers who, after enrolment, desire to change their place of residence, may be permitted to do so upon notifying their wish to the adjutant of the regiment in which they are enrolled; and on receiving the sanction of the Secretary-at-War, may, by a certificate from the commanding officer and adjutant, be transferred for the remainder of their service to the militia regiment of the county in which they purpose to reside.

15. Representations having been made to the Secretary-at-War from various quarters by the colonels or commanding officers of militia, with respect to the method of paying the bounty, this additional regulation is issued to permit the colonel of militia to authorise the adjutant either to pay the bounty or allowance as prescribed above by the 11th and 12th regulations, or, if they prefer it, in the following manner, with the annexed conditions in either case, viz. 10s. on enrolment; 1*l.* 1s. during the first period of training; and 1*l.* 1s. during each successive annual training. The periodical payment and allowances are to be made on condition that the necessaries furnished to the militia-man by Government, and which he is permitted to take away with him, are at all times in serviceable order, his allowances being subject to a deduction for repairing and replacing them. W. BERESFORD.

War-office, August 16th, 1852.

ATTESTATIONS FOR MILITIA VOLUNTEERS.

Questions to be separately asked by the magistrate or deputy-lieutenant:—

1. What is your name? 2. In what parish, and in or near what town, and in what county, were you born? 3. Where do you now reside? 4. Where have you resided for the last twelvemonth? 5. What is your age? 6. What is your trade or calling? 7. Are you an apprentice? 8. In whose employ are you? 9 What is the name and residence of your former master? 10. Are you single, married, or a widower? 11. If married, or a widower, how many children have you under fourteen years of age? 12. Are you ruptured or lame, have you ever been subject to fits, or have you any disability or disorder which impedes the free use of your limbs, or unfits you for ordinary labour? 13. Are you willing to be attested to serve as a volunteer for the militia of the county of · for the term of five years, provided her Majesty should so long require your services? 14. Do you belong to, or have you been enrolled in, or rejected by any other corps of militia, or do you belong to her Majesty's army, or to the marines, ordnance, or navy, or to the forces of the East-India Company? 15. Have you ever served in, or been rejected by, the army, marines, ordnance, or navy, or the forces of the East-India Company? (*a*)

"I, ———, do sincerely promise and swear that I will be faithful and bear true allegiance to her Majesty Queen Victoria, and that I will faithfully serve in the militia in any part of the United Kingdom of Great Britain and Ireland, for the defence of the same during the term of five years, for which I am enrolled, unless I shall be sooner discharged.

"Witness my hand,

———, Signature of the volunteer.

———, Witness present.

"Sworn before me at ——— this ——— day of ——— one thousand eight hundred and fifty ———.

Signature of the magistrate, or deputy lieutenant.

42 GEO. 3, CAP. 90.

SEC. 99.—Penalty on men not appearing at exercise, or absenting themselves, 20*l.* or six months' imprisonment.—"Every militia-man (not labouring under any infirmity incapacitating him) who shall not appear at the time and place appointed for his being exercised according to the directions of this Act, notice having been published and given as by this Act required, shall be deemed a deserter, and if not taken until after the time of any such exercise, shall forfeit and pay the sum of twenty pounds; and also, every militia-man who having joined the regiment, battalion, or corps, to which he belongs, or any company or companies, or detachment or division thereof, shall desert or absent himself during the time of any such exercise, and shall not be taken until after the time of such exercise, shall forfeit and pay the sum of twenty pounds, and if such penalty shall not be immediately paid, the justice of the peace before whom any militia-man shall be convicted of any such offence, shall commit such militia-man to the house of correction to hard labour, or to the common gaol, there to remain without bail or mainprise, for the space of six months, or until he shall have paid the said penalty."

SEC. 109.—Reward for apprehending deserters, 20s.—Any person apprehending such deserters shall be entitled to a reward of 20s.

SEC. 110.—Penalty on concealing, &c. deserters, 5*l.*—Any person harbouring, concealing, or assisting any deserter, shall forfeit the sum of 5*l.*

Certificate of Attesting Magistrate or Deputy-Lieutenant.

To Wit.—I, ——— one of her Majesty's justices, of the peace of (or deputy-lieutenant for) the , do hereby certify, that, in my presence, all the foregoing questions were put to the volunteer , that the answers written opposite to them are those which he gave to me, that the 99th sec. of the 42 Geo. 3, c. 90, was read over to him, that he took the oath of alle[illegible], that - is the place for which he is enrolled, which place or ———, the place where the head quarters of the ——— corps of militia is stationed (as the case may be), is in the vicinity of my residence, or within the division or district or place for which I act.

Signature of Magistrate or Deputy-Lieutenant.

MEDICAL CERTIFICATES.

On Enlistment.

I have examined the above-named volunteer, and find that he has no rupture or ulcer adhering to the bone, and has the full power of motion of the joints and limbs. He is well formed, and has no scrofulous affection of the glands, or inveterate cutaneous eruptions, and he is free from any trace of corporal punishment, and not marked as a deserter with the letter D. His respiration is easy, and his lu[ngs] appear to be sound. He has the perfect use of [his] eyes and ears. His general appearance is healthy, and he possesses strength sufficient to enable him to undergo the fatigue to which soldiers are liable. I consider him fit for service in the militia. He has the following particular marks or scars: ———

Dated at ———, this ——— day of ———, 185—.

——— Signature of Surgeon.

Certificate of Commanding Officer.

having been finally approved, I have caused his name and every prescribed particular to be recorded in the roll, with the regimental No. — affixed to his name.

——— Signature of Officer Commanding.

THE TRUCK ACT.—The report of the commissioner appointed under the provisions of the Act to inquire into its operation, and into the state of the population in the mining districts, for the year 1852, has been issued. The report commences by tracing the results effected by the "Anti-Truck Associations," and then proceeds to examine and report upon three points suggested last autumn by Sir George Grey:—"1. Whether the evil still existing

(*a*) If the volunteer has served as above, he is to state the particulars of his former service and the cause of his discharge, and is to produce the certificate of his discharge if he has it with him.

is one of magnitude. 2. Whether it appears that the defects in the law, and not the unwillingness of the parties affected by it to enforce the law, are the cause of the evil. 3. Whether any amendments could be made in the law with the prospect of a beneficial result." The first question is considered in three points of view. First, with reference to workmen. The report, after alluding to numerous cases brought under the commissioner's notice, states:—"If there can be no doubt that the evil of the truck system is one of magnitude to those who are subject to it, as little can there be of the very considerable number of the working classes who are exposed to it in various degrees of rigour." Second, with reference to the retail tradesman:—"The diversion of so large a portion of the profits of retail trade from those whose proper business it is to the hands of large capitalists is considered a great grievance by the very large class of persons affected by it." Third, with reference to the masters who pay in money, it is stated that in times of bad trade they are undersold by the truck-paying masters, who by this violation of the law gain an extra advantage of from ten to fifteen per cent. on a large proportion of their capital. In answer to the second question, it is said that there is no backwarding on the part of the tradespeople and the money-paying masters, and that the workmen do not acquiesce in the system unless under the pressure of circumstances, in event of not getting work elsewhere, and being able to move to obtain it; and that the money-paying masters can always command the best men. On the third point the commissioner is of opinion that such amendments can be made, and proceeds at considerable length to explain the proposed amendments in detail. In conclusion, the report notices the proposition made to extend the principle of the education clauses to the mining districts, but recommends that, "instead of the Amended Factory Act (7 & 8 Vict. c. 15), the Print-works Act (8 & 9 Vict. c. 29) affords a precedent more applicable to the circumstances of the mining districts. And, accordingly, if the [illegible] to the following, namely:—That all boys at work in the collieries and iron mines, between the ages of ten and fourteen, shall be compelled to go to school for 'thirty days, or 150 hours, in every six months' (in the words of the Print-works Act), or a little more than an average of one school-day, or five hours and a half per week, it would be acceptable in all the principal mining districts, and would be followed by results of much value."

IMPORTANT RAILWAY COMPENSATION CASE.—On Tuesday a special jury, summoned by the sheriff of Staffordshire to assess the compensation to be paid to Messrs. Sparrow, pursuant to the recent decision of the Lords Justices of Appeal, in reference to the intended passing of the Oxford, Worcester, and Wolverhampton Railway through Messrs. Sparrow's iron and tin-plate manufactory, in Horsleyfields, Wolverhampton, met at the Assembly-rooms, Queen-st. Mr. Serjeant Channell, of the Home Circuit, appeared as assessor for the sheriff. Sir Alexander Cockburn and Mr. Bovill had been specially retained by Messrs. Sparrow; and the Attorney-General (Sir Frederick Thesiger) and Mr. Phipson had also been specially brought down by the company. After the jury had waited a considerable time, it became reported in the room that the respective counsel and parties in the case were discussing the terms of a proposed compromise at the Swan Hotel, and at the expiration of two hours and a half, Mr. Bovill and Mr. Phipson, the two junior counsel, came into court and made the announcement to the learned assessor and the jury that the case had been settled satisfactorily to both parties, at the same time apologising for having detained them so long. We understand that the respective parties met their counsel on Monday afternoon, and having viewed the manufactory in question, long conferences took place until a late hour at night, and were again resumed on Tuesday morning, with the result above stated. It was ultimately arranged, we understand, that Messrs. Sparrow should exonerate the company from the purchase of the whole manufactory, and that as compensation for the line being carried through it the company should pay 10,000*l.* to Messrs. Sparrow. This arrangement, however, was accompanied with several other terms of a comprehensive nature satisfactory to both parties, the details of which would not be of any public interest.—*Birmingham Journal.*

The following building is certified as a place duly registered for solemnising marriages, pursuant to the act of the 6 & 7 Wm. 4, c. 85:—Union-street Chapel, Chatham, Kent. Friend Hoar, superintendent registrar.

JOINT-STOCK COMPANIES' LAW JOURNAL.

ANOTHER interesting case on the liability of railway companies for the loss of a passenger's luggage came before the Court of Ex. by appeal from a County Court, in *Shepherd* v. *The Great Northern Railway Company*, 19 Law T. Rep. 324. In that case the plaintiff, a passenger by an excursion-train, placed a box, a carpet-bag, and some parcels, each containing a quantity of ivory handles, intended for use by the plaintiff in his trade, in the receptacles of a carriage usually appropriated to luggage, each package bearing the plaintiff's name and address. No notice was given to the company of the nature of the goods conveyed as luggage, nor was any opportunity afforded the company of discovering, without special search, that the packages contained anything other than ordinary luggage. A collision of trains took place, after which the plaintiff removed to another train, leaving his luggage in the damaged carriages, having received assurance from one of the servants of the company that the luggage would be "all right." A great part of the luggage was lost. Under these circumstances, the questions arose—first, whether the company were liable for the loss of articles of merchandise carried as luggage, without insurance or notice of contents; secondly, whether the plaintiff and his wife, who travelled with him, were entitled to carry between them 112 lbs. weight of luggage. In the course of the argument PARKE, B. threw out, obiter, a remark, the substance of which forms the basis of the judgment:—"Here the company say, 'We will take you and your luggage,' but there is no special contract; they do not undertake to carry merchandise, unless properly declared and paid for. If you do not give them notice, they cannot know the nature of the contents of the packages, and the risk they incur in carrying them. In this case there was false colour, whether intentionally or not does not signify, since it had the effect of preventing inquiry, and did not give the defendants full opportunity of knowing the contents." The Court held that the company were not liable, reversing the decision of the Judge of the County Court. In the judgment, PARKE, B. defines what is "luggage," and what articles might perhaps be admitted as coming within that term. He said, "In this case, there being no special contract, the defendants were only bound to convey the plaintiff and his 'luggage,' and under that term may be comprised his clothing and everything required for his personal convenience; and perhaps even a small present, had he had such with him, or a book to read on the journey, might also be included in that term; but they were certainly not bound to carry merchandise and materials intended for trade and to be sold at a profit. If this plaintiff had exposed these goods, and the defendants had known, and had full notice of what they were carrying, they would have been responsible; but they were not bound to carry merchandise, articles wholly disconnected with personal luggage." Upon the second point, as to which we are surprised there could have been any doubt, the Court held that the rule permitting every passenger by a third-class Parliamentary train to carry with him 56lbs. weight of luggage, empowers a husband and wife travelling together to take between them double that quantity. Of course, where special contracts are entered into respecting luggage and merchandise between passengers and railway companies, questions varying with the peculiar circumstances of each case will from time to time arise; but we think the law as to the liability of railway companies, as common carriers, in the matter of passengers' luggage, may now be regarded as settled with tolerable clearness and certainty. Three leading cases, first reported in this journal, may be referred to on this question with profit. The first is the case of *Richards* v. *The London, Brighton, and South Coast Railway Company*, 13 Law T. Rep. 139, C.P. where the duty safely to *deliver* luggage, as well as safely to carry and convey, is laid down. The two others are *Goodman* v. *The Great Western Railway Company* (reported the week before last), 19 Law T. Rep. 296; and the present case; the first of which settles the law as to the effect of bye-laws, giving notice of non-responsibility where luggage is not declared and insured, and the last that of carrying goods as luggage, which properly do not come within the meaning of that term.

WINDING UP.

THE only case under the Winding-up Acts reported since our last notice is a case before the MASTER of the ROLLS—*Ex parte Lake, re The Northern Coal Mining Company*, 19 Law T. Rep. 323. In that case an order was made for winding up the affairs of a coal mining company, and a call of 10*l.* per share was made on all the shareholders. A claim for the amount due on the call was carried in and proved in a suit for the administration of the estate of a deceased shareholder, and subsequently a balance order was issued charging L. as administrator of the estate simply with the amount of the calls and the interest thereon. This order was discharged on the ground that it was made personally against L. as administrator, and because interest was chargeable thereon. On motion to vary or discharge the order discharging the Master's order, the Court held that the Master's order must remain discharged, but the order discharging it must be varied so as to allow the official manager to prove for the calls in the suit for administration against the assets without prejudice to any claim for interest to be made in that suit. It is to be regretted that a most important question raised incidentally in this case, whether calls made under the Winding-up Acts are to be considered judgment debts under the 1 & 2 Vict. c. 110, was not decided. The reason for avoiding the question given by the MASTER of the ROLLS was, that the application was not made to him in the administration-suit, and his decision, if he should make one in the case, would not be final, as the parties might open the question again in the administration-suit. As the point is one of some interest and importance, and it is desirable it should be speedily settled, we hope it will be raised in the administration-suit.

IMPORTANT DECISION: LIABILITY OF PARTNERS.—In the County Court (Liverpool), recently, Mr. Pollock delivered a judgment, with respect to partnership liability, of great importance. An action had been brought by a creditor of the late firm of Messrs. Doran and Wilson, of this town, against Mr. Wilson alone for 32*l.* 15s. 10d. due by the firm to the plaintiff, Mr. Hume. The defendant pleaded that the plaintiff had brought an action on a bill of exchange for 252*l.* 6s. 8d. against Doran and Wilson, and it was contended that the present claim was included in the former action. This, however, proved not to be the fact. The second ground of defence, which was the most important, was that, in the month of September last, Mr. Doran made an assignment for the benefit of his creditors, and the plaintiff came in under the assignment, which purported to be not only for the benefit of the separate creditors of Doran, but also of the creditors of Doran and Wilson; and the several creditors, including the plaintiff, executed the deed and received the composition, entering into a covenant not to sue Mr. Doran for any of the debts of the firm. Mr. Wilson had not assigned over. An action was brought by the plaintiff to recover the debt from him. The learned judge quoted the case of *Hutton* v. *Eyre*, in which it was held that, although a release to one portion was generally a release to all, yet a covenant not to sue one of several partners will not operate as a release to the others. The verdict must, therefore, be for the plaintiff. In answer to a remark by Mr. Hime, the learned judge said he was desirous that the matter should have been put in a train for the consideration of the Superior Court, but he could not see how it could be done.

REAL PROPERTY LAWYER AND CONVEYANCER.

A CURIOUS case of spoliation of a will, in which the Court visited the party who tore up

the will with costs of an issue required by him by way of punishment, is reported in the Rolls Court. (*Middleton* v. *Middleton*, 19 Law T. Rep. 323.) The decision is thus stated:—"Where the heir-at-law, shortly after the death of the testator, tore the will in pieces, but the paper-writing was afterwards restored and proved, and in a suit the heir required an issue devisavit vel non, the Court, upon the validity of the will being established, ordered that the costs of the issue should be paid by the heir in consequence of his misconduct in tearing the will." A case under the Trustee Act of 1850, is *Re Mais*, 19 Law T. Rep. 324. It was therein held that the sections 22 and 32 of the Trustee Act, 1850, do not give the Court power to remove a trustee merely because he is out of the jurisdiction, and to appoint another in his stead. Many important points upon the construction of a will, the doctrine of *cypres*, the questions of remoteness, void devise, life estate, issue, shifting clause, and recovery by tenant for life, were raised and considered in *Moneypenny* v. *Dering*, 19 Law T. Rep. 321, which came before the LORD CHANCELLOR, on appeal from a judgment of the Vice-Chancellor WIGRAM. The length of the statements, and complexity of the points, unfit them for review here; it is therefore only necessary to direct attention to them as useful for perusal.

CHARGES FOR DRAWING MORTGAGE.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Will some of your readers be so obliging as to inform me upon the following?

It is customary here, in the north, in all conveyances, mortgages, &c. to charge 1*l.* per skin for drawing, and 10s. per skin for engrossing, and nothing for fair copy. Is not every attorney entitled to 2s. per folio (including drawing fair copy and engrossing), and what is the authority for making such charge? I am, Sir, yours, &c. W

Stockton, August 18, 1852.

MORTGAGES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Will you allow me to put an imaginary case on the subject of your suggestion as to mortgages?

Suppose A. and B. to be in league together; A. mortgages to B. an imaginary estate, or an estate worth some 500*l.*; the mortgage is made for 1,000*l.*; the deed is registered, and twenty certificates of 50*l.* each are issued. B. parts with the certificates in the market, and in course of time they fall due,—what happens then? Is B. in any way liable, unless fraud could be clearly proved?

I submit there is this difference between these certificates and bills and notes,—that whereas no one would take either a bill or note, unless perfectly satisfied of the responsibility of the borrower, in this case they would see nothing more than a certificate for 50*l.* without knowing either the responsibility of the party or the value of the property.

I am, Sir, yours, &c.

J. MAYCHELL HARRISON.

Cartmel, 17th August, 1852.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Can any of your readers help me to find or refer me to a case reported in your paper some time ago upon the following point?

An attorney acting for a person wanting a loan, applies to another attorney, who agrees to lend it. The mortgagor afterwards declines to complete the business when he has put the lender to much expense. In the case I allude to the lending attorney sued the mortgagor, and it was held that he should have sued in his client's name.

I am, Sir, yours, &c.

Leeds, August 26, 1852. A.

THE INCUMBERED ESTATES' COMMISSION.—The *Evening Post* furnishes the following accurate return of the sales in the Incumbered Estates Court, from the opening of the commission until the 9th inst. when further sales in Dublin were suspended until after the summer vacation:—

"The number of estates sold was 777, in 4,083 lots.

Court sales	£1,715,257	10	0
Provincial sales	1,636,198	0	0
Private sales	1,002,280	12	8½
Total	£7,353,736	2	8½

This amount far exceeds the general calculations of the value of the property which has changed hands under the operation of a commission intended by its promoters to lay the groundwork of great social and agrarian improvement in Ireland. As might, indeed, have been expected on the introduction of so decided a change in the laws regulating the sale and transfer of landed property, the commission, at the outset, had been decried by ignorant or interested clamour; but gradually, as its advantages were understood, and people had an opportunity of becoming acquainted with the integrity, strict impartiality, and efficiency of the commissioners and their officers, the public of all classes placed the most implicit confidence in the Court; and it is now regarded as a model tribunal, calculated to confer inestimable benefits upon the country."

COUNTY COURTS.

Summary.

IF the County Court Amendment Acts have deprived the Bar of business in the matter of "Entering Suggestions," and some other forms, they have compensated for the loss by increasing the facilities for appeals; and thus, as our columns have shewn, have given rise to many very interesting and important cases, throwing light not only on the law and practice of the County Courts, but illustrating the general principles and effect of the common and statute law. One of these cases, *Shepherd* v. *The Great Northern Railway Company*, 19 Law T. Rep. 324, is reviewed in the present number, under the head "Joint-Stock Companies' Law Journal," and therefore needs no further notice here.

NEW SCALE OF COSTS.

THE following are the five County Court Judges appointed by the LORD CHANCELLOR, under the 15 & 16 Vict. c. 54, to frame a scale of costs and charges to be paid to Attorneys in the County Courts, to be allowed as between attorney and client, and as between party and party:—

JAMES MANNING, Queen's Ancient Serjeant.

JOHN HERBERT KOE, one of her Majesty's Counsel.

ALFRED SEPTIMUS DOWLING, Serjeant-at-Law.

WILLIAM WALKER, } Barristers-at-Law.
WILLIAM TURNER, }

Secretary, Mr. HENRY NICHOLL, of the Treasury.

ADVOCACY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I addressed you last week respecting advocacy in the County Courts; but if I had merely quoted a portion of the Act, interposing a few words in parenthesis, I should I think have conveyed my meaning more clearly to you. The Act runs:—"That it shall be lawful for the party to the suit or other proceeding, or for an attorney of one of her Majesty's Superior Courts of Record, being *an attorney* (not *the attorney*, as it should read if 'attorney' were to be taken in immediate conjunction with 'for such party') acting generally in the action (conducted or carried on) for such party; but not an attorney retained as an advocate by such first-mentioned attorney to address the Court," &c. In the last number of your paper Mr. Gibson asks what there is in this Act to prevent the client employing one attorney to enter the plaint and get up the evidence, and then by special retainer to engage another attorney to appear in court for him. Now it seems to me that no judge who wishes to enforce either the letter or spirit of those words already quoted, which require that the attorney who appears in court for the client shall be the one concerned "generally in the action," will hear an attorney advocate who is expressly engaged as such, even though he may hold the client's express retainer for that purpose; and the judges will pay but an indifferent compliment to the Act itself, if they allow such palpable evasions of it as Mr. Gibson suggests.

I am, Sir, yours, &c.

J. FIELD ROBERTS.

2, Bedford-terrace, Clapham-rise, Aug. 16, 1852.

THE PROFESSION AND THE COUNTY COURTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The letter which appeared in the LAW TIMES of August 7, signed "Nisi Prius," is evidently written with the intention of promoting a good understanding between Barristers and Attorneys, with regard to conducting the business of the new County Courts; but it seems to me to be written from a locality (the Temple) and by an individual above such minor matters, and consequently destitute of any practical acquaintance with the subject; and with your leave I will point out one or two portions which seem to be very much open to observation.

If I am not mistaken, the general object of the writer is to procure the assimilation of the business of the new County Courts to the course of practice pursued in the Courts of Quarter Sessions that is, for the Attorney to conduct the matter up to the time of appearing in court, and then hand a brief to the Barrister. But then it must be borne in mind, that in the Courts of Quarter Sessions (at least in all that I know of) there is a regular scale of fees, which never varies to any considerable extent, whatever may be the nature of the case. The allowance, as a general rule, is considered a fair remuneration both to the Counsel and Attorney, and finally, are paid out of the public purse; but I am afraid, unfortunately, this will afford no comparison with the general run of cases in the new County Courts, where the majority of the debts are below 10*l.* and where not only are the costs *not* paid by the public, but the losing party has to pay *both* sides; and though as between Barristers and Attorneys they may be well satisfied with the existing regulations in the Court of Quarter Sessions, yet when a third party is brought in, namely, a private client, who has to *pay out of his own pocket*, that makes a wonderful difference in the matter.

One argument used by "Nisi Prius" is, that the *habitual* attendance of a "Bar" would prevent irregularities and improprieties which are apt to arise in courts free from such salutary control. Well, but the County Court judge is situated very differently to the Judge in Westminster Hall, because the former is a bird ever on the wing, *continually* traversing his circuit; and if the "Bar," who are to correct him, are to keep in his wake, I should like to know in what school they are to be trained, to confer the necessary qualifications for keeping him up to the mark; because, for my part, I can see no other teacher, under such circumstances, than the County Court judge himself, or, in other words, the very individual with respect to whom they are supposed to have the task of keeping in order.

There is another fallacy into which "Nisi Prius" has unwittingly fallen, and that is, in assuming that there is business enough in every court to maintain a "Junior Bar." Why, Sir, how many *dozens* of places are there in which County Courts are held where the business of the court would not even maintain a solitary Attorney—let alone a Junior Bar, with a host of Attorneys to employ *them?* Sometimes, indeed, it may be, that in the courts alluded to there is a case requiring the attendance of a couple of attorneys, but very often this occurs only twice or thrice in the course of a year; and what is to become of a "Bar" in such places, I should like to know?

I could mention towns containing from 30,000 to 100,000 inhabitants, where courts are held once a fortnight, but where a Barrister is not called in as much as once a year—and for this simple reason, that the cases are not of that importance to require such assistance.

For my part, I should be very glad to see the suggestions brought into usage, but I know they are entirely out of the question, because the business to be done is quite insufficient to allow it.

I am, Sir, yours, &c.

EXPERIENCE.

THE LAWYER.

Summary.

EQUITY PRACTICE.—A case, which in the Court below attracted much attention, and which involves an important principle, was lately decided in the House of Lords. (*Dimes* v. *The Company of Proprietors of the Grand Junction Canal and Others*, 19 Law T. Rep. 317.) In that case a public company, established for constructing a canal, was incorporated, and they bought some land for the purpose of making the canal; a person claiming adversely an interest in such land recovered the property by ejectment. The corporation then filed a bill against the claimant, and to have their title confirmed. The Lord Chancellor (COTTENHAM) had an interest as a shareholder in the company to the amount of several thousand pounds, which was unknown to the defendant, and his Lordship granted the injunction and the relief sought. The question arose upon these facts, whether this was a case in which the order and decree of the

Lord Chancellor were void, on account of his interest, and of his having decided in his own cause. It was held by the House of Lords that the order for the injunction and the decree were voidable, on account of the interest the Lord Chancellor had in the suit, and the order and decree were, upon appeal, reversed. It was, furthermore, held, that the signature of the Lord Chancellor to authorise a decree or order to be enrolled is discretionary and ministerial only; and any disqualification in the Lord Chancellor as judge in the cause, on the ground of interest, cannot prevail; and, therefore, that such signature for such enrolment is neither void nor voidable. Another important point arising out of these proceedings was also settled in the same case. It was held that the Vice-Chancellor of England is not the mere deputy of the Lord Chancellor, and all orders and decrees pronounced by him are obligatory, and not affected by any disqualification of the Lord Chancellor; consequently such orders and decrees were neither void nor voidable. The terse and clear language of Lord Campbell, C.J. in giving his opinion to the House of Lords on the first and most material question, that of disqualification of the Lord Chancellor, will well repay perusal, and justifies an extract here.

"With respect to the point upon which the learned judges were consulted, I must say that I entirely concur in the advice which they have given to your lordships. No human being can suppose for an instant that my Lord Cottenham could be in the remotest degree influenced by the infinitesimally small interest that he had in this concern, nor if his interest had been ever so great; but, my lords, it is of the last importance that that maxim should be held sacred, that no man is to be a judge in his own cause; and that is not to be confined to a cause in which he is a party, but a cause in which he has an interest. Since I have had the honour to be Chief Justice of the Court of Q.B. we have again and again set aside proceedings in inferior tribunals, because an individual who had an interest in a cause took a part in the decision. And it will have a most salutary influence when it is known that this high Court of last resort, in a case in which the Lord Chancellor of England had an interest, considered that his decree was not according to law, and must be set aside. This will be a lesson to all those in the inferior tribunals to take care that in their decrees they may not be influenced by their personal interest, *and to avoid the appearance of doing what is wrong.*"

A point worthy of note as to production of documents arose in *Gough* v. *Offley*, 19 Law T. Rep. 324. That was a suit for the administration of the estate of a deceased mortgagee, and it was therein held that the executors may be compelled to produce the mortgage-deeds admitted by their answer to be in their possession, although the mortgagors are not parties to the suit, and although such production might be attended with loss to the estate of their testator.

THE COMMON LAW BAR.

Before the commencement of Michaelmas Term next, nearly a hundred barristers, hitherto enjoying a moderate share of practice, will have been completely removed from the opportunity of competition with their forensic brethren. We allude to the judges of the County Courts throughout England and Wales, who, up to the present moment, have not been disqualified, through their judicial position, from active practice at the Bar. Under the Act, however, just passed, regulating the practice of County Courts, it is no longer competent for any judge of those courts to act as a barrister or special pleader, or to be concerned, either directly or indirectly, as a conveyancer, solicitor, attorney, or notary. Many of the judges of the County Courts have long ago voluntarily retired from practice at the Bar, while not a few have still continued in the strife. The recent changes in the profession—chiefly arising from the extension of the powers of those tribunals—are known to have reduced, in numerous cases, incomes of from 2,000*l.* to 2,500*l.* per annum to less than 1,000*l.* per annum; and many gentlemen of considerable professional name have in consequence become not only ambitious of the position of County Court Judge, but have even been thoroughly reconciled to the rule which debars them for ever from practice at the Bar. Notwithstanding the immense number of the members of the Bar, amounting to about 2,000, the average number of practising barristers, or barristers laying themselves out for practice, at the Common Law Bar, for the last ten years, has been about 300, upwards of five-sixths of whom are located within the precincts of the Temple. Granting that only one-half the number of County Court Judges have continued till the present moment in active practice, and supposing that, on an average, they did not earn each more than 200*l.* per annum, some slight benefit must necessarily arise from the recent change to those who have hitherto been obliged to compete with them. Of the 300, at least 150 never behold the face of attorney or client, or only on occasions "few and far between," so that in reality there are only about 150 who actually enjoy practice. Of this number of 150, there are about eighty whose only earnings are derived from the defence of prisoners, either on circuit or at provincial sessions, or at the Central Criminal Court, and not from their skill in the law of Nisi Prius, or law proper, as displayed in the Nisi Prius Courts on circuit, or in the Courts of Westminster Hall; forty, again, may be said to possess practice embracing both the defence of prisoners and cases at Nisi Prius; and this number, added to the previous eighty, makes 120 who are in the enjoyment of very small practices, averaging from 100*l.* to 600*l.* per annum. The great prizes of the Profession, arising from the great bulk of business of the most profitable kind, fall into the hands of about twenty men and these are the names daily seen in the newspaper law reports. Of these twenty, again, only about ten or twelve are in leading, that is, first-rate practice; while the remaining eight or ten are only second raters. Sir Fitzroy Kelly, Sir Frederick Thesiger, and Sir Alexander Cockburn, may be regarded as the most prominent of the former; but it would be invidious to mention any other name on the number as entitled to greater prominence than their fellows.—*Morning Chronicle.*

CORRESPONDENCE.

ARTICLED CLERKS.

TO THE EDITOR OF THE LAW TIMES.

Sir,—In many of the provincial towns in this kingdom, where there are but a few studious articled clerks, great difficulty is experienced by them in the study of their profession, in not having the means of discussion, which are afforded by debating societies in larger towns, upon difficult passages in text-books, and moot points which may arise in the course of study. In order to remedy this, I propose that the articled clerks in various parts of the kingdom, similarly situated, should unite and form themselves into a society for mutual correspondence, the results of which should be published in a small pamphlet for the benefit of the whole community, quarterly or otherwise, as may hereafter be determined upon, in which essays on various branches of the law might be written by the various members, which would be found both instructive and amusing, and would prove beneficial by causing the writer to make every search upon the branch of the law upon which he might choose to fix.

To carry this plan into effect, I propose that a fund should be raised by subscription, or otherwise, out of which the necessary expenses of publishing might be paid.

If this could be carried out, a great benefit would be derived, besides which, it would in a great measure be the means of doing away with that coolness of feeling which now exists in the Profession, and be the means of forming a friendly feeling amongst the law students by bringing them into collision with each other and by the mutual intercourse which would be thereby kept up. Hoping this plan will meet with the approbation of some of your readers, I am, Sir, yours, &c.

A Law Student.

BRIBERY AT ELECTIONS.

TO THE EDITOR OF THE LAW TIMES.

Sir,—I admit the propriety of your suggestions relating to the prevention of bribery at elections by compelling direct evidence from all witnesses to the questions put; but this is far from meeting the general question, and only applies where petitions are actually presented. The most crying evil is that of the innkeepers, which affects every contested election, whether appealed against or not, for it is a notorious fact that this class of persons are numerous enough in every borough to turn the scale in the elections. Speaking from experience, the innkeepers will not promise their votes until nearly the day of election, and not then without having had considerable sums of money spent at their houses by the candidates or their friends: this amounts indirectly to a purchase of such votes, and has a most demoralising tendency to bribery, which can only be effectively remedied *by disfranchising every retailer or licensed vendor of liquors.* By doing this, intemperate meetings by the voters at the inns would be avoided, and the great part of Bribery cases, which mostly arise from suggestions made at such associations, would be cured. I have had much experience in these matters, and have witnessed the effect on the innkeepers and their immediate friends [illegible] ure from an influx of musicians, staff-men, &c. &c. within the week immediately preceding the day of election, wherein the candidates are almost compelled to rival each other to carry the votes of these parties and their friends. All this, and the expense attendant thereon, can be remedied by the above hint being carried into execution in getting rid of innkeepers, musicians, and staff-men. I am, Sir, yours, &c. A. P.

COURT PAPERS.

City of London Registration.—Mr. T. Y. M'Christie, the Revising Barrister, has given notice that he will commence his registration this year of voters for members to serve in Parliament for the city of London on Thursday, the 16th of next month.

NOTICES OF NEW LAW BOOKS.

Medical Jurisprudence. By Alfred S. Taylor, M.D. Fourth Edition. London: Churchill.

Dr. Taylor's *Medical Jurisprudence* is an authority in all our courts. It is the best book on the subject of which it treats, and it is not only approved by the legal world, but it is held in high esteem among medical men, who are best able to appreciate its *scientific* worth. This *fourth* edition has been considerably enlarged by the introduction of many cases of importance and some modern discoveries; so that it exhibits a complete sketch of the present state of knowledge in this branch of science. We need not commend it to our readers, for it has already commended itself. It bears upon its title-page the stamp of public approval.

LEGAL INTELLIGENCE.

Metropolitan Law Association.—A second number of the circular, issued by the committee of this association, has been forwarded to us by the secretary. It is devoted to the alterations which have been effected in the law during the past session. First, with reference to equity reform, the Master in Chancery Abolition Act is taken into consideration. After discussing the principal amendments, the committee state that they have still some fear that the wholly insufficient number of judges provided for bringing the new practice into operation may cause some confusion in the business of the court, and that thus the practice may become discredited before it has had a fair trial. The committee, therefore, felt it to be their duty to call the attention of both Houses of Parliament to this, and prepared a clause for increasing the number of judges, which was moved in committee in the House of Commons, but rejected. A report has reached the committee that it is the intention of the judges to do but little at chambers, but they cannot believe that the judges will pursue a course which would inevitably defeat the intention of the Legislature and the fair expectation of the public. The committee then proceed to examine the improvements of the Jurisdiction of Equity Act, by which they consider very numerous and important changes have been made. Several of the most important alterations in these Acts have been contained in various memorials and petitions presented by the committee, whose unceasing efforts have been directed to the reform of the procedure in equity. The Enfranchisement of Copyholds Act, 15 & 16 Vict. c. 31; the Wills Amendment Act, 1852; the Extension of the Trustees Act; the Act to facilitate and arrange Proceedings in the County Courts, and the Common Law Procedure Act are examined and discussed. We may probably make some extracts from this useful circular on a future occasion.

The High Sheriff of Lancashire.—We are requested to publish the following statement respecting the conduct of the High Sheriff of Lancashire, lately commented on by Lord Campbell in his address to the grand jury at Liverpool. It seems that an expression used by his lordship has been misinterpreted, and has rendered the present explanation necessary. Mr. Weld Blundell, as sheriff, appointed no chaplain. He intimated to the incumbents of the church where the judges are

accustomed to attend service, that the usual service would be required for her Majesty's judges, and he requested them to be kind enough to make the necessary arrangements. To this request the reverend gentlemen acceded.—*Morning Chronicle.*

THE SHRIEVALTY.—To the great surprise of the City authorities, Mr. Chandler, who was elected sheriff at the last Common Hall, has not only signified his intention not to serve the office, but has already paid the 600*l.* penalty. The reason which Mr. Chandler has assigned to the friends who proposed him to the Livery is, that the large business of the house to which he belongs will require his peculiar attention, in consequence of the delicate state of his father's health, which has been for some time on the decline. It is expected that a Common Hall will be summoned in the course of the week. As the fees of under-sheriff have been by recent changes in professional charges considerably diminished, one great element in sheriff-making has been almost completely dissolved, and it is believed that vigorous measures will be adopted to destroy every part of the system.

The remains of the late Vice-Chancellor Parker were interred in a vault beneath the chapel adjoining Rothley Temple on Friday afternoon. The funeral service was read by the Rev. E. T. Vaughan, vicar of St. Martin's, Leicester, and the following gentlemen were the principal mourners:—Mr. G. Parker, Mr. H. Parker, and Mr. C. Parker (brother and two sons of Sir James), Mr. Cardwell (late M.P. for Liverpool), Mr. C. Cardwell, Dr. Rainey, Mr. Tennant, Rev. J. Babington, Rev. A. Babington, Mr. W. H. Babington, Rev. E. Rose, Mr. Thomas Macaulay, Mr. Colin C. Macaulay, Mr. A. Smith (secretary to the late Vice-Chancellor), and Mr. Moultrie. The corpse was borne to its resting-place by six tenants, and eight other tenants officiated as pall-bearers. The chapel in which the interment took place is a small building connected with the Temple; and in vaults beneath the floor there had previously been interred several members of the Babington family (ancestors and relatives of Lady Parker), and the Hon. Mrs. Erskine, wife of the present Dean of Ripon, who is Commissary of the Peculiar of Rothley.

MONEY ORDERS. — GENERAL POST-OFFICE, August, 1852.—1. On and after the 1st of September, 1852, an additional commission will be charged in every case of transfer or repayment of a money order. 2. The payment of the additional commission, viz. 3d. on all sums not exceeding 2*l.* and 6d. on all sums between 2*l.* and 5*l.* must be invariably made by postage stamps transmitted with the application for transfer, or repayment, and unless the amount be so transmitted, the application will not be complied with. 3. All applications for transfer or repayment must be addressed to the President of the London, Dublin, or Edinburgh Money Order-office, according as the order was issued in England (or Wales), Ireland, or Scotland. 4. To prevent the necessity of a transfer, in consequence of an order being erroneously drawn on a different office from the one at which payment is desired, the public are advised to furnish in writing to the issuing Postmaster at the time of application, the full particulars of the money order required, and also to ascertain, before quitting the issuing office, that the order corresponds with those particulars.

HOPE FOR CHANCERY SUITORS. -The cause of *Beckford* v. *Jasper*, begun above a hundred years ago, is now in a fair way of being wound up. The original plaintiff was Thomas Beckford, executor of one James Pope, a merchant in Madeira, and Edward Jasper, also a merchant, was the original defendant. Jasper owed Pope 10,000*l.* and Pope died in 1713, and in 1718 Beckford, his executor filed this bill against Jasper, who died before he could put in an answer. The suit was revived against Jasper's executors, and in 1753 the cause was heard before Lord Chancellor Hardwick, and referred to the Master to take accounts. In 1764 and in 1772 further proceedings were taken, and 630*l.* in Bank Stock and 553*l.* were lodged to the cause, which then slept until 1851, when Mr. J. D. Wadham obtained administration to Pope, the original testator, and revived the bill against Jasper's representatives. The funds to the credit of the cause had, by accumulation of dividends, bonuses, &c. amounted to 70,000*l.* Wadham had to take out administration to five intermediate estates, and to pay 778*l.* for the stamp duties. The case is now wound up by an order to pay the costs of all parties out of the funds in court, and to share the remainder according to the respective rights of the claimants.

THE GAZETTES.

Bankrupts.

Gazette, Aug 24.

CRAWFORD, ANN, paper manufacturer, Warden, Northumberland, Sept. 2, at eleven, Oct 7, at one, Newcastle-upon-Tyne. Off. as. Wakley. Sols. Messrs. Chater, Newcastle-upon-Tyne; and Bell and Co. Bow-church-yard. Petition, Aug. 18

DANGERFIELD, RICHARD JAMES, printer, Dunstable, Bedfordshire, Sept. 8, at two, Oct. 12, at eleven, Basinghall-st. Off. as. Groom. Sols. Armstrong and Westbrook, Bedford-row and Medland, Dunstable. Petition, Aug. 23.

GILLAM, SAMUEL WALTER, wine merchant, Tarlington-place, Edgware-road, Sept. 3 and Oct. 8, at twelve, Basinghall-st. Off. as. Cannan. Sols. Ashurst and Son, Old Jewry. Petition, Aug. 13.

HOLMES, JAMES, shawl warehouseman, Regent-st. Sept. 3, at eleven, Oct. 8, at one, Basinghall-st. Off. as. Cannan. Sols. Reed and Co. Friday-st. Petition, Aug. 19.

O'NEIL, CHARLES, metal dealer, Birmingham, Sept. 7 and Oct. 5, at half-past eleven, Birmingham. Off. as. Christie. Sol. Jubet, Birmingham. Petition, Aug. 12.

PATTEN, WILLIAM, dealer in horses, Teering, Essex, Sept. 6, at eleven, Oct. 5, at one, Basinghall-st. Off. as. Groom. Sol. Abell, Horseferry-road and Colchester. Petition, Aug. 16.

SECRET, THOMAS, common brewer, Barnet, Sept. 3, at half-past eleven, Oct. 1, at twelve, Basinghall-st Off. as. Cannan. Sol. Goren, South Molton-st. Petition, Aug. 12.

Gazette, Aug 27.

BOLTON, GEORGE, coach maker, Albany-st. Regent's-park, Sept. 13, at one, Oct 5, at two, Basinghall-st Com. Holroyd. Off as Groom. Sols. Surr and Gribble, 80, Lombard-st Petition, Aug 26.

DALBY, EDWARD HALFORD, butcher, Hornsey-road, Middlesex, Sept 6, at half-past eleven, Oct. 8, at eleven, Basinghall-street. Com. Fane. Off. as. Whitmore. Sol. Neal, 5, Austin Friars. Petition, Aug. 26

HAYES, PATRICK, oil manufacturer, Widnes, Lancashire, Sept. 6 and 28, at eleven, Liverpool Com. Perry Off as. Morgan. Sol Payne, Peel-buildings, Harrington-st Liverpool. Petition, Aug 21.

ROBERTS, HENRY BROMAGE, tailor and draper, Nicholas-lane, City, and Ann-st. Britannia-fields, Sept. 6, at one, Oct. 8, at two, Basinghall-st. Com Fane. Off as Cannan Sols Messrs Linklater 17 Size-lane, Bucklersbury. Petition, Aug. 24.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Ackroyd, J. carpenter, first, 4d. Young, Leeds —*Ben*, R grocer, second 3d Young, Leeds -*Collins*, J. H. draper, first, 3s 7½d. Young, Leeds --*Firth*, J draper, second, 1½d. Young, Leeds —*Longley*, L and *Sons*, cloth manufacturers, first, 3d Young, Leeds —*Oyston*, J. draper, first, 5s Young, Leeds —*Starkey*, W. woolstapler, second, 1d. Young, Leeds.— *Waite*, W cloth manufacturer, first, 1s 4½d. Young, Leeds. --*Wilkinson*, J. cloth manufacturer, first, 1s 2d Young, Leeds.

INSOLVENTS' ESTATES.

Fry, J. L tailor, 1s. 4d. 9 16ths. Apply at the County Court, Honiton --*Norton*, A (dec), widow, 1s 2d. making with former divs. 5s. 10d. Apply to T. Mancher, Somerset-st. Bristol.

Assignments for the Benefit of Creditors.

Gazette, Aug 17.

Bayliss, G C general merchant, Cardiff, Glamorgan, July 22. Trusts F. P Carrell and R. Crannas, potato merchants, Cardiff Sol. E. Haviland, Cardiff —*Day*, C. draper, Walsall, Staffordshire, July 30. Trusts J Shannon, esq Walsall, and H. Smyth, merchant, Nottingham Sol. J Hemmant, Walsall --*Dodsworth*, J. boot maker and dealer, Pontefract, York, July 28. Trust. J. A Brown, nurseryman, Pontefract Sol W Clough, Pontefract.—*Graham*, G timber merchant, Wakefield, York, Aug. 7 Trust W Teall, iron founder, Wakefield. Sols Lumb, Sons, and Stewart, Wakefield.—*Reeve*, S. and E milliners and dress makers, Leicester, Aug 9 Trusts. H. Kemp, draper and silk mercer, Leicester, and A Nurse, farmer and grazier, Ashley Parva. Sol. T. Spooner, Leicester.

Gazette, Aug 20.

Coker, S widow, steel converter, and manufacturer and merchant of wire, needles, &c. at the Porter Steel Works, Sharrow Vale, Sheffield, July 23. Trusts. F. Wilkinson, merchant, Kirk Ella, Kingston-upon-Hull, W. Waterfall, banker, Grey Stones, Sheffield; J. Moss, merchant, Sheffield, and J. Rhodes, colliery owner, Bentley Hall, Coal Aston. Sol Smith and Wightman, Sheffield.—*Middleton*, F. C cheesemonger, Troy Town, Rochester, Kent, July 23. Trusts G Penson, wholesale cheese-monger, Newgate-st and J. Lanham, provision merchant, High-st Borough. Sol H. H. Poole, Bartholomew-close.—*Musson*, W farmer and grazier, Birkholme Farm, Carby, Lincoln, Aug 11. Trusts G Osborne, clerk, Stainby, and R. C Moore, land agent and surveyor, Harmston. Sol Ostler, Sons, and Cochrane, Grantham. — *Singleton*, F. grocer and brickmaker, Southwell, Nottingham, Aug. 11. Trusts. G. Routledge, chemist and druggist, Doncaster; S Hazzledine, grocer, Nottingham; and J. Bradwell, banker's clerk, Southwell. Sol. H. C. Stenton, Southwell.- *Smith*, O linen draper, Castleford, Yorkshire, July 22. Trust. W. Illingworth, timber merchant, Wortley, Leeds. Sol. T. Simpson, Leeds —*Webster*, W paper bag manufacturer, Kingsland, Middlesex, July 23. Trusts. G. Emdin, gentleman, Budge-row, and James Barry, wholesale stationer, Queenhithe. Sol. L. D. Lewis, Skinner's-pl. Size-la.

Partnerships Dissolved.

Gazette, Aug 10.

Appleby, J. and *Mitchell*, J. maltsters, corn dealers and corn millers, Enfield, Clayton le-Moors, July 1. Debts paid by Appleby.--*Brendon*, W and *Halsey*, H. V. grocers and provision dealers, Gloucester and Sudbrook, April 5. Debts paid by Brendon.--*Chamberlin*, H., R., H. jun. *Smith*, J. and *Rackham*, W. S. wholesale warehousemen, Norwich, as regards H. Chamberlin and H. Chamberlin, jun July 31.—*Clark*, P *Kirby*, W. *Rietti*, S. V. and *Voight*, H. C. merchants, Austinfriars, July 26.—*Clark*, P. *Kirby*, W. and *Rietti*, S. V. merchants, Corfu, Ionian Islands, Zante, and Cephalonia, and at Patras, Morea, July 20.—*Cutler*, D. and *Tryon*, E. W. tailors, Regent-st. July 31.—*Douglas*, G. and *Buxton*, W. linendrapers and silk mercers, Derby, July 29. Debts paid by Douglas.—*Garratt*, J. and *Edis*, J. butchers, Shoe-lane, Fleet-st. Aug. 7.—*Grau*, C. and *Wurth*, A. hotel keepers, Liverpool, July 30. Debts paid by Grau.—*Hardman*, T. *Stott*, R. and *Hardman*, A. cotton waste dealers, Heywood, Aug. 4. Debts paid by Hardman and Hardman.—*Holman*, T. *Coombs*, H. and *Thomas*, J. C. mercers and linendrapers, Plymouth, Aug. 2. —*Holt*, J. and *Hobson*, J. jun. proprietors of the Royal Casino, and retailers of beer, Leeds, Aug. 5.—*Homan*, J. sen. and *Homan*, W. drapers and hosiers, Rochester, July 1.—*Lewis*, G. and *Graham*, R. curriers, leather cutters, and shoe makers, Market Drayton, July 19. Debts paid by Lewis. *Mercer*, J. and J. and *Anderson*, W. cotton spinners and manufacturers, Clitheroe, as regards Anderson, July 1. Debts paid by remaining partners.—*Mills*, T. and *Greaves*, J. druggists, Bakewell, July 1. Debts paid by Greaves.--*Morgan*, E. and *Andrews*, A. brewers, Abridge, March 26. Debts paid by Morgan.—*Norton*, J. H., W. and H. brewers, Carmarthen Brewery, Carmarthen, July 29.—*Oldfield*, G. Ashford, and *Wheatcroft*, M. (widow) Crich, marble masons and manufacturers, Aug 6. Debts paid by Oldfield.—*Partridge*, S. W. *Oakey*, D. F. and *Hanbury*, H. booksellers and publishers, Edgware-road, Aug. 1. Debts paid by Partridge and Oakey.—*Petchell*, J. and *Tyrrell*, D. coach and carriage builders, Rotherham, Feb. 14. Debts paid by Petchell.—*Prince*, G. A. and *Coles*, J. A. fret cutters, Little King-st. Camden-town, Aug. 7.—*Robinson*, J. and *Hayes*, W. tea dealers, York, Aug. 4. Debts paid by Robinson.—*Sharp*, J and *Whitehead*, W. J. commission agents, Manchester, Aug. 6. Debts paid by Sharp.—*Sowerby*, G. and *Murray*, G. jun. wholesale wine and spirit merchants, Chester-le-Street, July 2.—*Steains*, J. *Rowley*, T. and *Davies*, T. tea dealers, London and Liverpool, July 1. Debts paid at London by Rowley, at Liverpool by Steains.—*Turner*, H. and *Eltoft*, G. mercers and drapers, Gainsborough, Aug. 6. —*Verity*, R. *Richards*, W. and *Williams*, D. sail makers and ship chandlers, Cardiff and Newport, June 14. Debts paid by Verity and Richards.—*Wilson*, J. and H. cabinet makers and upholsterers, March 25.

Gazette, Aug. 13.

Barnes, G. *Clarke*, M. E. *Blanshard*, H. *Margrave*, T. J. *Gambier*, W. *Hoare*, F. G. (executor of the late S. Hoare), *Sievewright*, J. *Pitmann*, J. *Smith*, J. C. *Rasch*, A. A. *Smith*, G. A. *Marshall*, C *Shears*, J. H. *Smith*, P *Sievewright*, J. and *Crowder*, F. R. coal owners, under the firm of the Llangennech Coal Company, Crosby-hall-chambers, Bishopsgate-st. and Llanelly, March 1, 1851.—*Blackmore*, F. W. and J. W. linen drapers, High-st. Hoxton, and Bull's-place, Shepherdess-walk, July 31.—*Boreman*, F. and *Davis*, T. tailors and clothiers, Wellington-st Strand, Aug. 10 Debts paid by Boreman, *Burton*, M. and *Whitehead*, W. O. cotton waste dealers, Manchester, and cotton spinners, Claughton, Garstang, April 15. *Carter*, R. and *Giles*, C. E. architects and surveyors, Taunton, Feb. 14.—*Clephan*, J. and *Wilson*, C. plumbers, Liverpool, July 24.—*Cowan*, J. and *Ludlam*, R. ironmongers, Manchester, Aug. 11.—*Farrant*, J. B. L and *Fisher*, D. british wine makers and manufacturers of crystallized confectionery, Earl-st. Finsbury, July 24. Debts paid by Farrant.--*Field*, J. and *Townsend*, C. P. wholesale haberdashers, Wood-st. Cheapside, Aug. 7.—*Head*, R J and *Peerless*, E. drapers, Peterborough, March 25 —*Johnson*, R and T. corn dealers, Bolton, Aug. 9.—*Larom*, F. and *Burgon*, C. cutlery manufacturers, Sheffield, Aug 10 —*Latimer*, W and *Horsley*, J. S. cigar merchants, Carlisle, May 19.—*Lucas*, J. and *Holmes*, J. joiners and builders, Broughton, Manchester, Aug 2 Debts paid by Holme.—*Marks*, H. and F. J. carvers and gilders, Blackman-st. Southwark, May 17.—*Marsh*, W. and J. braziers and iron plate workers, Birmingham, Aug. 2. Debts paid by W. Marsh.—*Morris*, C. *Pruett*, W. and *Davies*, W. timber merchants, Kington, July 14.—*Palmer*, W. H. *France*, T. and *Palmer*, C. J. attorneys and solicitors, Bedford-row, as regards France, July 10.—*Scaife*, T. and *Kelsey*, C. corn, seed, and cake brokers, and general commission agents, Kingston-upon-Hull, Aug. 10. Debts paid by Kelsey.—*Slater*, G., J. and J. N. bleachers, Turton, April 3. Debts paid by J. and J. N. Slater.—*Sneesby*, H. and *Harrison*, H. tailors and woollen drapers, Sheffield, Aug 2. Debts paid by Harrison.—*Turner*, C. and *Wheelhouse*, W. edge tool manufacturers, Sheffield, Aug. 11. Debts paid by Wheelhouse.—*Watson*, J. sen. *Davy*, J. and *Watson*, J. jun. carpet manufacturers, dry salters, and chemists, Kidderminster, Aug. 2.—*Webber*, W. W. and *Bidgood*, R. maltsters and brewers, Merriott, July 31. Debts paid by Webber.—*Wilkinson*, G. and *Barber*, J ironmongers, grocers, and seedsmen, Wem, Aug. 10. Debts paid by Barber.

Gazette, Aug. 17.

Andrew, J. and *Wolley*, G. mercers and linen and woollen drapers, Stafford, May 1. Debts paid by Andrew and Keates.—*Birch*, W. and J. machine makers and blacksmiths, Halifax, March 13, 1851.—*Brown*, I. B. and *Webb*, T. E. surgeons, Oxford-square, Hyde-park, and Maida Vale, Aug 13. Debts paid by Brown.—*Browning*, C. L. and *Iliffe*, C. iron masters, Deepfield Iron Works, near Bilston, Aug. 14. Debts paid by Browning.—*Bushby*, A. *Foster*, W. F. and *Hampson*, J. brokers, Liverpool, July 26 —*Cheetham*, G. *Hodgkinson*, L. and *Cheetham*, T. brewers of ale and porter, Whitfield, Glossop, Aug. 12. Debts paid by Cheetham and Cheetham.—*Cliffe*, T. and M. W. linendrapers, Huddersfield, April 8.—*De Yongh*, B. S. and *Auerhaan*, L. M. diamond cutters and polishers, Harrison-st. Gray's-inn-road, July 1.--*Evans*, T. and *Long*, A. shoe manufacturers and curriers, Abergavenny, June 15, 1851.—*Evans*, T. and *Daniel*, J. shoe manufacturers and curriers, Abergavenny, June 1, 1840. — *Haswell*, E. and *Bellew*, W. gas fitters and brass finishers, Carlisle-st. Lambeth, July 19. Debts paid by Haswell.—*Hewett*, S. and *Cook*, J. H. curriers and leather cutters, Tiverton, Aug. 11. Debts paid by Cook.—*Hollingsworth*, T. and *O'Toole*, C. F. woollen drapers and tailors, Nottingham, Aug. 16.—*Laycock*, J. and *Hutchinson*, T. cloth fullers, Leeds, Aug. 10.—*Le Neve*, T. C. and *Gayton*, G. dairymen and farmers, New-cross, Aug. 4.—*Ratcliffe*, J. M. Nerrington Saint Clement, and *Mills*, G. Wisbeach, millers, Aug. 13. Debts paid by Mills.—*Round*, W. and H. coal merchants and corn dealers, Oxford, Aug. 13.—*Samuels*, J., *Jervis*, R. A. and *Pope*, J. commission agents, Manchester, as regards Jervis, Aug. 12. Debts paid by remaining partners.—*Smith*, E. and *Taylor*, J. grocers and corn dealers, Middleton, April 3.—*Smith*, T. and *Hanson*, J. fancy woollen manufacturers, Huddersfield, Aug. 14.—*Taylor*, P. and *Barker*, J. millwrights and engineers, Manchester, Aug. 10. Debts paid by Taylor.—*Wales*, G. R. and *Wells*, W. cabinet makers and upholsterers, Regent-st. St. James's, Aug. 16.

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We cannot undertake to return rejected communications. Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith.

No notice can be taken of anonymous communications.

To Readers and Correspondents.

We have received an anonymous but serviceable letter, dated Chancery-lane, on the subject of Life Assurance Companies. If the writer will confidentially comply with our rule requiring the authentication of all written communications by name, the letter shall have place.

"An Assistant Clerk."—*We will endeavour to make room for the insertion of the letter next week. Its length precludes its admission at present.*

"A Subscriber."—*The query forwarded to us, even if it were such as with propriety we could answer, falls within our rule of exclusion, because the name of the querist is not given; it is also one to which for another reason we cannot reply, because it is not on a point of practice, but is a question of law properly for the opinion of counsel.*

"D. H." (Driffield).—*The communications are received, and shall have consideration. It is beyond our means and opportunities to give private advice on all the points submitted by our correspondents.*

"An Assistant Clerk."—*If the letter had earlier come to hand, it should have had place this week; it shall appear in our next number.*

THE LAW TIMES.

SATURDAY, SEPTEMBER 4, 1852.

THE LAW OF PARTNERSHIP.

Newspaper writers, who know little of law, or of the practical difficulties in its application to the complicated facts of human affairs, and philosophers and philanthropists who weave fine schemes for social reform, in which they always forget to take into their calculations that rather important element—human nature—have taken it into their heads that the obstacle to all improvement in England is the Law of Partnership; and hundreds of articles have been written, and vehement speeches uttered, and heavy pamphlets published, and, finally, a Parliamentary Committee appointed, with a purpose to procure the abolition of the existing law, and substitute another more in accordance with the views of the agitators.

The principle of the present law is simply that of "pay your debts." The principle sought to be substituted is that of *repudiation*. As it is, every partner is liable for the whole of the debts of the concern; that is to say, for all the debts which he, or his agents on his behalf, have contracted. As it is sought to be, each partner is not to be liable for all his debts, but only for so much of them as it may please him to be responsible for. Stated thus nakedly, the true character of the proposition becomes apparent, but it is disguised under a fine name, in which it has been exhibited to the unthinking public. Partnership *en commandite* is nothing more than permission given to a party of persons to go into trade, and carry on *un*limited dealings, and contract unlimited debts, with only *limited* liabilities. In some cases, doubtless, it would work justly, and even beneficially, as, where all the parties concerned are honest men. But laws must not be made on the assumption that all men will be always honest; it is necessary, also, to ascertain whether rogues might not use them for their own purposes. Let us see whether this would not be the consequence of the desired change in the Law of Partnership. At present, the security against improvident partnerships is the knowledge that, if the honest man chooses to link himself with the rogue, or the rich man with the pauper, the former will pay the penalty. But if there be only limited liability, the man who *can* pay will be enabled to join a partnership with the man who cannot. The rogue having everything to gain, and nothing to lose, will be enabled to speculate to any extent, and contract debts to any amount; and when the debtor sends in his claim, the wealthy man, who has shared the chance of the gain of the speculation with the poor rogue, will escape with only his fraction of the liabilities, and laugh at the plundered public. If there be limited liability, there must also be limited power to contract debts, and if that limit is exceeded, then, for all beyond, all the partners should be liable individually as now. That would be an efficient protection against the consequences of so monstrous a combination as unlimited debts with limited liabilities. But this would not answer the purposes of the promoters of the scheme, who, however benevolent their motives, have not looked at it in all its aspects, nor considered how it might be *misapplied*, as well as what advantages might accrue from it.

Unfortunately, while pursuing this will-o'-the-wisp, people have lost sight of the *real* defects of the existing law of partnership, and are losing the advantage of those improvements in it which might be secured easily without revolutionising it altogether. Our readers know from the experience of their offices what those defects are, although perhaps the remedy might not have suggested itself to them. It may be, therefore, that we shall do some service by pointing out two or three of these defects, and endeavouring to shew how they may be cured.

There are few matters that produce more social and commercial troubles, or are more difficult for the Solicitor to deal with, than the settlement of partnership affairs, especially *small partnerships*, where the sum involved is trifling, the debts and credits few, the parties poor, and therefore a suit out of the question. If one of the parties is a rogue or a fool, resolved to ruin the other, he is enabled to do so with certainty, and without fear of consequences to himself. Every Attorney in practice sees daily instances of this, and must acknowledge that the cause of the mischief lies in the want of a cheap and speedy tribunal for the settlement of the disputes and affairs of small partnerships. This being the evil, let us now see what may be the remedy.

Let jurisdiction be given to the County Courts in all partnership disputes or windings up where the assets do not exceed a certain limited sum, say 500*l.* with power to either party to remove it to the Superior Court, by permission, on good cause shewn. The proceedings in the County Court may be in form almost the same as in Chancery—a complaint by the party desiring the interference of the Court, to which the other party should be required to answer, and then upon a hearing of both parties in open Court, the Judge should adjudicate the question in dispute. If it be a matter of account between them, he should order an account to be taken, either by the clerk or by an arbitrator appointed by himself. If the object be a dissolution of the partnership, he should direct such dissolution, with an account to be taken in like manner.

The advantages of this are sufficiently obvious. The smallest partnership disputes might thus be determined with speed and cheapness. The parties will be examined, and the grounds of their differences ascertained, and the law will enforce upon the refractory that which an impartial arbitrator has determined to be the measure of justice between them. We know of nothing to which the County Courts might be more usefully applied than to this fruitful source of contention and ruin.

Already the County Court has a jurisdiction in partnership accounts where they have been made up and agreed to between the parties. But this does not meet the evil we have described, the want of a cheap and speedy means of enforcing the settlement of accounts, and relieving partners from the dangers and inconveniences of a connection that is injurious to them.

This would be a vastly greater improvement in the *practice* of the Law of Partnership than any of those alterations of its *principle* which have been lately so much in vogue.

RECEIPT STAMPS.

We do not suppose that Mr. Disraeli reads the Law Times; but many Lawyers connected with the Government do so, and a hint to them may thus be conveyed to the Chancellor of the Exchequer, who is engaged in the arduous task of reconstructing the taxation of the country.

Many are the *interests* claiming relief. We of the law have our own peculiar claims. We are demanding the repeal of the Attorney's Tax. That demand would be strengthened if, at the same time, we could shew a substitute for it, and it would be irresistible if that substitute were also a benefit to the entire community.

The substitute we suggest is a very simple one—*a uniform penny receipt stamp.* It would yield an immense revenue, and it would cost nothing in the collection. It might be sold by all vendors of postage stamps, and included in the same accounts. Extend this penny stamp to bankers' cheques. As it is, the receipt stamp is evaded in ninety-cases in a hundred; so little is it respected, that it is almost deemed an insult to demand a stamped receipt. But let the receipt stamp for any sum whatever be a penny, and it will be required in all cases. If cheques also were required to be stamped, the bankers would sell stamped cheque-books at the price of the stamps, and then the production of the stamped cheque endorsed by the receiver would be a receipt. Even as a matter of convenience and security, this advantage would be more than an equivalent for the trifling cost,—it would be deemed a positive relief by the public, and yet would the revenue be largely increased.

It is difficult to present any figures that would exhibit the probable results of such a stamp. But every reader has only to ask himself how often he has taken or given receipts *without* a stamp, as compared with the occasions when he requires or is asked for it, and he will be enabled to form some notion of the profit that would accrue to the Exchequer from this source. Officials may be slow to acknowledge it, for they are hostile to all changes that involve additional labour and compel new arrangements. But the Chancellor of the Exchequer has a public to please, and his own fame to consult, and he could not more effectually do so than by substituting a uniform penny receipt stamp for the unjust Attorney's Tax.

THE ATTORNEYS' TAX.

It was very fortunate that Lord Robert Grosvenor was prevented, by the accident of a count out, from bringing on his motion for the repeal of this tax, for it would have been certainly defeated upon the plea that the Government was only acting provisionally, and that it was pledged to make no changes in taxation during the then Parliament. This would have deterred many members favourable to our cause from voting with us against a Government whom they were desirous of supporting; it would have placed us in a certain minority, and all the prestige of past victories would have been destroyed by the least defeat. As it is, we hold an excellent position. We can now point to an unbroken succession of majorities which, in a matter of taxation peculiarly the province of the House of Commons, ought to be deemed decisive against the continuance of the tax so solemnly pronounced to be unjust. Even those who voted against its repeal were compelled to admit its iniquity. They could find no argument, except the law of the strongest, to justify the imposition of a special tax upon one class of the community *in addition* to those taxes which they pay in common with every other class. It was put to the House, by the Chancellor of the Exchequer, purely as a question of *necessity.* "I want money—I must get it somehow—unless you are prepared to revise the whole scheme of taxation, I cannot give up one tax and another tax merely because it is unjust in principle or inconvenient in practice." It was the tyrant's plea, but it was at the moment unanswerable, and therefore we were unsuccessful though victorious.

But now *that* plea must be abandoned, and if the Attorney's Tax is to be maintained at all some other argument must be found for it. The scheme of taxation is actually in process of revision. Mr. Disraeli is known to be engaged in preparing for the great and difficult task to which he has pledged himself, and which is to be the mission of Lord Derby's Government. What the issue will be, how far a large revision is practicable, if proposed, whether it will be accepted by the public and a hostile Parliament, are questions hidden in the future; but with the *unreversed divisions* of the House of Commons against the Attorney's Tax, its indefensible injustice, and its small amount, the Chancellor of the Exchequer cannot fail to include it in his list of taxes to be swept away. We have not the slightest doubt that its repeal will form a part of Mr. Disraeli's budget, and that in a few weeks it will be our pleasing duty to congratulate our readers on their having obtained a ministerial condemnation of the Attorney's Tax.

NEW CHANCERY PRACTICE.(a)

In continuation of our summary of, and remarks upon, the New Practice of the Court of Chancery, contained in the "Act to Amend the Practice and Course of Proceeding in the High Court of Chancery" (15 & 16 Vict. c. 86), we may now proceed to notice a very useful reform, which will tend greatly to diminish the expenses in many Chancery suits.

The practice of the Court, of issuing commission to take pleas, answers, disclaimers, and examinations in causes and matters, is, with respect to pleas answers, disclaimers, and examinations to be taken *within the jurisdiction of the Court,* abolished and they may be filed *without any other formality than is required in the swearing and filing of a affidavit.* (Sec. 21.)

The next section will be of great utility in authenticating, at little expense, such part of the pleading or evidence as may be taken *out of the jurisdiction* It enacts that all pleas, answers, disclaimers, examinations, affidavits, declarations, affirmations, and attestations of honour in causes or matters, and also acknowledgments required for the purpose of enrolling any deed in the court, are to be sworn and taken in *Scotland* or *Ireland*, or the *Channel Islands*, or in any *colony, island, plantation*, or *place under the dominion of her Majesty in foreign parts*, before any Judge, Court, Notary Public, or person in such places lawfully authorised to administer oaths, or before any of her Majesty's Consuls or Vice-Consuls in any *foreign parts out of her Majesty's dominions*, and the Judges and other officers of the Court of Chancery are to take judicial notice of the seal or signature, as the case may be, of any such Court, Judge, Notary Public, person, Consul, or Vice-Consul. (Sec. 22.)

All persons wilfully and corruptly false swearing, declaring, affirming, or attesting, before any person authorised by the Act to administer oaths, and take declarations, affirmations, or attestations of honour, are to be liable to all such penalties, punishments, and consequences, as if they had done so before any Court or persons now by law authorised to administer oaths, and take declarations, affirmations, or attestations upon honour. (Sec. 23.) And if any person forge the signature or the official seal of any such Judge, Notary Public, or other person lawfully authorised to administer oaths under the Act, or tender in evidence any plea, answer, disclaimer, examination, affidavit, or other judicial or official document, with a false or counterfeit signature or seal, *knowing* the same signature or seal to be false or counterfeit, every such person will be guilty of felony, and will be liable to the same punishment as any offender under 8 & 9 Vict. c. 113, intituled "An Act to facilitate the Admission in Evidence of certain official and other Documents." (Sec. 24.) And pleas, answers, disclaimers, or examinations, whether taken by commission out of the jurisdiction of the said Court, or otherwise, *may* be filed *without the oath of a messenger;* and any alterations made therein previously to the taking thereof are to be authenticated according to the practice now in use with respect to affidavits. (Sec. 25.)

Next as to the mode of *joining issue.* In suits, which have been *commenced by bill*, and notice of motion for a decree or decretal order has not been given, or having been given, where a decree or decretal order has not been made thereon, issue is to be joined by filing a replication in the form or to the effect of the replication now in use; and where a defendant has not been required to answer and has not answered the plaintiff's bill, he is to be considered *to have traversed* the case made by the bill. (Sec. 26.)

Where a defendant to a suit *commenced by bill* has not been required to answer and has not answered the bill, he is to be at liberty to *move to dismiss the bill for want of prosecution*, as prescribed by any general order of the Lord Chancellor. (Sec. 27.)

Next follows the most important part of the Act, perhaps the most important part of the whole of the reforms in the Chancery practice, viz. that which relates to the new mode of taking evidence. According to the old system (the evils of which are well detailed in the report of the Chancery Commissioners), after the cause is at issue the Counsel of the parties prepare *written interrogatories* for the examination of witnesses, whose evidence, in London, is taken before an examiner, in the country before a commissioner specially appointed, but in both cases *in private*, none of the parties or their agents being present. The interrogatories being framed beforehand by counsel, without its being certain what witnesses will be forthcoming, or what answer a witness will give to any particular question, are framed to meet the contingencies which are likely to occur, and are deemed necessary to be provided against. Several witnesses are frequently produced to prove the same facts, or to prove facts leading to the same material conclusion, from the uncertainty whether one witness (who if examined orally and publicly would have been found sufficient) has in his deposition given sufficient evidence of the necessary facts. The examiner or commissioner takes down and records the answers of the witnesses to the written interrogatories, and is under the obligation of an oath not to disclose the evidence taken. The theory of the Court is, that the witnesses are subject to cross-examination; but *the cross-examination by written interrogatories of witnesses* whose examination in chief is not known, *is so ineffective and dangerous, that it is seldom resorted to except where the witness is known to be friendly to the cross-examining* party, and has previously communicated facts to be the subject of such cross-examination. If the witnesses are to be examined in the country, a special commission issues to the purpose. Formerly there was a commissioner on each side; but by a recent rule of Court only one commissioner acts. This has diminished the expense; but has been complained of as leading to another evil,—that the acting commissioner being named by one party, it is supposed that the evidence on that side is taken more carefully and favourably than the evidence on the other side. The obtaining the commission is a matter of considerable expense. A day is appointed for opening the commission, generally at an inn. Besides the commissioner, there is a clerk, who is also sworn to secrecy. The commissioner is furnished with the interrogatories and cross-interrogatories of the parties; and each witness is sent in with a note specifying the interrogatories which are to be administered to him. The commissioner puts the interrogatory to the witness, often, if not generally, being obliged to translate it into less technical language, more intelligible to the witness, whose answers are taken down and are copied by the clerk. The process is very slow. The solicitors and the witnesses are in attendance during the execution of the commission, which often lasts several days, and has not unfrequently lasted weeks, the commissioner and his clerk being entitled to daily fees, and heavy expenses being incurred by the attendance of the solicitors and witnesses. The depositions being completed, are sealed up by the commissioner, and returned to the Office of Records, either by himself or by some messenger on oath.

A day is fixed for what is called the publication of the evidence:—"The parties then, for the first time, get copies of the depositions, for which copies fees are of course charged. After publication no further evidence can be adduced without special leave of the Court." Other objections to the

(a) Continued from p. 179, ante.

old system are mentioned, for "sometimes the parties move to suppress the depositions, by reason of the interrogatories being leading, or otherwise objectionable, or by reason of some irregularity in the mode of taking or returning the depositions. Sometimes it is discovered that, through an accidental slip, either of the Solicitor or Counsel, or of the Commissioner, some material piece of evidence has been omitted, and it is necessary to make a special application to the Court to supply the omission by a further examination conducted in the same way." (Chan. Commissioners' Rep. 7, 8.)

This part of the Act commences by abolishing the present mode of examining witnesses in causes, and all the practice of the Court in relation thereto, so far as such practice is inconsistent with the mode thereinafter prescribed of examining such witnesses, and the practice in relation thereto. It is *provided*, however, that the Court *may, if it shall think fit*, order any particular witness or witnesses within the jurisdiction of the said Court, or any witness or witnesses out of the jurisdiction of the said Court, *to be examined upon interrogatories in the mode now practised;* and that with respect to such witness or witnesses, the practice of the said Court, in relation to the examination of witnesses, is to continue in full force, *save only so far* as the same may be varied by any general order of the Lord Chancellor, *or* by any order of the Court with reference to any particular case. (Sec. 28.)

When any suit *commenced by bill* is at issue, the plaintiff, within the time to be prescribed by any general order of the Lord Chancellor, is to give notice to the defendant that he desires the evidence to be adduced in the cause to be taken *orally* or *upon affidavit*, as the case may be; and *if* the plaintiff desires the evidence to be adduced upon affidavit, and the defendant or some or one of the defendants, if more than one, shall not, within the time to be prescribed by any general order of the Lord Chancellor, give notice to the plaintiff or his solicitor that he or they desire the evidence to be oral, the plaintiff and defendants respectively are to be at liberty to verify their respective cases by affidavit. (Sec. 29.)

When any of the parties to any suit *commenced by bill* desires the evidence to be adduced *orally*, and gives notice thereof to the opposite party as thereinbefore provided, the same is to be taken orally, in the manner thereinafter provided; if, however, the evidence be required to be oral merely *by a party without a sufficient interest* in the matters in question, the Court may, upon application in a summary way, make such order as shall be just. (Sec. 30.) These are very important enactments; they give, in effect, parties to a bill the *option* of having the evidence taken *orally*, or by *affidavit*: in many cases the truth, or, at any rate, the whole truth, can only be elicited by *oral* examination; in many cases it may be arrived at quite as satisfactorily by affidavits.

Next, as to the mode of examining witnesses orally under the provisions of this Act. They are to be so examined by or before one of the examiners of the Court, or an examiner to be specially appointed by the Court; the examiner being furnished by the plaintiff with a copy of the bill and of the answer, if any, in the cause; and such *examination is to take place in the presence of the parties, their counsel, solicitors, or agents;* and the witnesses so examined orally are to be *subject to cross-examination and re-examination*, which is to be conducted as nearly as may be in the mode now in use in courts of Common Law with respect to a witness about to go abroad, and not expected to be present at the trial of a cause. (Sec. 31.)

The depositions upon any such oral examination are to be taken down in writing by the examiner, not ordinarily by question and answer, but in *the form of a narrative*, and when completed, are to be read over to the witness, and signed by him in the presence of the parties, or such of them as may think fit to attend: *and if the witness refuses to sign* the said depositions, the examiner is to sign the same, and such examiner may, upon all examinations, state *any special matter* to the Court as he shall think fit. It is, however, to be in the discretion of the examiner *to put down any particular question or answer*, if there should appear any special reason for doing so; *and any question or questions which may be objected to* are to be noticed or referred to by the examiner in or upon the depositions, and he is to state his opinion thereon to the Counsel, Solicitors, or parties, and to refer to such statement on the face of the depositions, but he is not to have power to decide upon the materiality or relevancy of any question; and the Court is to have power to deal with the costs of immaterial or irrelevant depositions as may be just. (Sec. 32.)

It may here be remarked that great as is the improvement effected by the new mode of taking evidence orally, especially with regard to cross-examination, the present manner of conducting which has been aptly designated by the Lord Chancellor as "a mere farce," still the improvement would have been much greater if oral evidence were in all cases to be taken *before the Judge* who decides the case instead of the examiner. This seems to have been the opinion of the Chancery Commissioners. But then they add,—"Practically it would be impossible to carry on the business of a Court of Equity if all the evidence were taken vivâ voce before the Judge; and the inconvenience to persons liable to be called as witnesses would be intolerable if they were brought to London and kept until the cause or matter was called on; while the expense to the parties would make justice itself too dear." (Chan. Com. Rep. p. 21.) This remark of the Chancery Commissioners admits of no dispute; there is, however, one point of view in which the matter must, sooner or later, be looked at which does not appear to have come within their consideration. Why should all Chancery suits *necessarily* be heard in London? If it be found that the *oral* examination of witnesses is preferable in the majority of suits, and that it could be resorted to more frequently and with greater effect, if it were taken before the judge himself, which it cannot well be done in London, the plain question then arises (assuming, for the present, that there will be no fusion of law and equity),—whether there ought not to be District or Circuit Chancery Courts, by which the effective administration of justice should be brought near to the suitor's door? Why should there not be District Chancery Courts as well as District Bankruptcy Courts? If it were proposed that all bankruptcy cases should be disposed of by judges at some central place,—as, for instance, London—that the evidence should be taken not by the Judges, but by examiners, in the mode set forth in this Act, the faultiness of such scheme would at once be apparent, and if it is overlooked in the present, it is only because the attention of most persons is drawn to the really great improvements which it has, on the whole, effected.

Another, amongst many other reasons which might be urged in support of these views, is this: The unnecessary expense occasioned to the suitor who resides in the country in being obliged, in most cases, to employ and pay two sets of Attorneys—his usual man of business in the country, and the London agent—when the former, in all probability, from his knowledge of the different facts and circumstances, would be able much better to conduct the cause himself than through the medium of a third party. At all events, the expense occasioned by the employment of the that third party is one that it is hard that a suitor should be compelled to submit to.

THE NEW COMMON LAW PRACTICE.

XVIII. DEATH, MARRIAGE, AND BANKRUPTCY.

We have next to review the effect of death, marriage, and bankruptcy upon the proceedings in an action, as settled by this statute. An action is not to abate on the death of either plaintiff or defendant, but may be continued as follows:—Where there are two or more plaintiffs or defendants, and one or more dies, if the cause of action survives to the surviving plaintiff, or against the surviving defendant, the action shall not abate, but, the death being suggested on the record, shall proceed. Where a sole plaintiff dies, his legal representative may enter suggestion of the death and that he is legal representative, and proceed with the action.

In case of the death of a sole defendant, where the cause of action survives, the plaintiff may make a suggestion of the death in the pleadings if the cause has not advanced to issue, or in a copy of the issue if it has so arrived, and that a person therein named is the executor or administrator, and may thereupon proceed as in other cases against such executor, or administrator. If no pleadings have taken place before the death, the suggestion is to form part of the declaration.

The death of either party between the verdict and the judgment is not hereafter to form ground of error, so as such judgment be entered within two terms after verdict.

If plaintiff happen to die after interlocutory but before final judgment, the action is not to abate if it might be originally prosecuted by the executor or administrator of such plaintiff; and if defendant die after interlocutory and before final judgment, in like manner such action is not to abate; and the plaintiff, or, if dead, his executors or administrators, shall have a writ of revivor (in form given) against the defendant, or his executors or administrators, to shew cause why damages should not be recovered against him or them; and if no sufficient cause be shewn to arrest final judgment, such judgment shall in due course follow.

Upon marriage of a woman, plaintiff or defendant, the action is not to abate, but may be proceeded with to judgment, and execution issued against the wife alone, or by suggestion or writ of revivor judgment may be had against both husband and wife, and execution thereon issue. In case of judgment for the wife, execution may be issued by the authority of the husband without writ of revivor or suggestion; and if the wife shall sue or defend by attorney appointed by her when sole, such attorney may continue the action or defence, unless his authority be countermanded by the husband, and the attorney changed according to the usual practice of the Court.

The bankruptcy or insolvency of a plaintiff in any action maintainable by the assignees, shall not be pleaded in bar unless the assignees decline to continue and give security for costs under a judge's order, but proceedings may be stayed until such election is made by them, and if they neglect or refuse to continue the action, and give such security, the defendant then may after such neglect or refusal plead in bar the bankruptcy.

Such are the new regulations respecting death, marriage, and bankruptcy; and it will at once be be seen that they are not the least beneficial and serviceable of the enactments of this statute.

XIX. ARREST OF JUDGMENT, AND JUDGMENT NON OBSTANTE VEREDICTO.

Upon motion in arrest of judgment, pursuant to 1 Wm. 4, c. 7, or for judgment non obstante veredicto, by reason of the non-averment of some material fact or allegation, or other cause, the party whose pleading is alleged to be therein defective, may, by leave of the Court, suggest the omitted fact or other matter which would remedy the defect. If the fact, &c. suggested be admitted, or found to be true, the party suggesting shall be entitled to judgment, as if such fact or allegation had originally been stated in the pleading. On arrest of judgment, or judgment non obstante, the Court shall adjudge to the party against whom such judgment is given, the costs of trial of any issues of fact arising out of the pleading, for the defect of which the judgment is given; and such costs shall form the subject of set off against any money or costs adjudged to the opposite party, and execution may issue for the balance.

XX. ERROR.

The provisions of the law in the matter of error are no less lengthy than important; they extend to some 22 sections.

No judgment may be reversed for any error or defect therein, unless error be brought within six years after such judgment. There follows a proviso for disabilities, in the case of infants, femmes covert, persons non compos mentis, or beyond seas, and these are to bring error within six years dating from the removal of such disability.

The writ of error is abolished, and proceeding to error is to be a step in the cause.

Either party alleging error may deliver to a Master of the Court, a memorandum in writing (in a form supplied by schedule), alleging that there is error in law in the record and proceedings; the Master is to acknowledge receipt of the same by a note, a copy of which, together with a statement of the grounds of error for argument, may be served on the opposite party.

Proceedings in error are to be deemed a supersedeas of execution from time of the service of the above-mentioned note, until default in putting in bail, or affirmance of the judgment, or discontinuance of the proceedings in error; but if the grounds of error shall appear to the Court to be frivolous, the Court or a Judge may order execution to issue.

Execution is not to be stayed by proceedings in error, or supersedeas thereon, without any order of the Court or a Judge, unless the person in whose name error is brought, with two or more sureties, shall be bound to the party for whom such judgment is given in double the sum recovered by the said judgment, to prosecute the proceeding in error with effect, and also pay the sum of money and costs adjudged in the former judgment, and all costs and damages of delaying execution.

A suggestion to the effect that error is alleged and denied is henceforth substituted for assignment of and joinder in error.

In cases where error is brought by one of several persons against whom judgment has been given, and the other persons decline to join in the proceedings in error, the same may nevertheless be continued.

Courts of Error are to have power to quash proceedings in error in all cases where error does not lie, or they are taken against good faith; and such Courts shall have such jurisdiction over the proceedings as now, by writ of error.

Where either party alleges error in fact, he is to give notice to the Master in the manner we have seen indicated in error in law, and the master is to take like steps, and similar notice is to be served on the opposite side.

The plaintiff in error, whether of fact or law, may discontinue proceedings in error by giving notice to the defendant, who thereupon may sign judgment for the costs of such proceedings in error, and may then proceed on the original judgment.

The defendant in error may, by following a similar course as regards notice, confess error and consent to the reversal of the judgment, and there upon plaintiff may sign judgment of reversal.

The death of a plaintiff in error is not to cause abatement of the proceedings; and in case of death of one of the plaintiffs in error, a suggestion may be made of the death, and the proceedings be continued. In like manner, the death of a defendant in error is not to abate proceedings. In case of the death of a sole defendant, or of all the defendants in error, the plaintiff may still proceed on giving notice to the representatives; or, if no notice can be given, then by leave of the Court or a Judge upon giving such notice to the parties interested as may by the Court be directed.

The marriage of a woman plaintiff or defendant is not to abate proceedings in error.

Here, for the present, we close our review of the provisions of this statute. It will be seen that the proceedings in error are far more simple, practical, and effective than those hitherto laid down for relief and forming the existing practice.

MR. TUDOR'S EDITION OF THE CHANCERY REFORM ACTS.

The delay in publishing this work has been occasioned by the non-appearance of the rules and orders necessary to render it complete. The orders which appear in to-day's Law Times, apply to *one* of the Acts only, 15 & 16 Vict. c. 86. The orders about to be issued under the Master in Chancery Abolition Act, and which it is expected will be of considerable importance, are not yet ready, and any edition of the Act without these orders must necessarily be incomplete. The editor prefers to delay the appearance of his edition of these Acts, and thus secure as nearly as possible a perfect and practicable work.

ADVERTISING LAWYERS.

The following unprofessional advertisement appeared in the *Times* of 27th August last. The discovery and exposure of the advertiser would be a service:—

Law Reform.—A qualified Attorney, desirous of increasing his practice, undertakes to recover tradesmen's accounts, &c. in town and country, without charge for his trouble where costs not paid by the debtors. All the County Courts attended, and every other description of business at charges much lower than usual.—Apply by letter to M 29, City-terrace, City-road.

THE MAGISTRATE, AND PAROCHIAL AND MUNICIPAL LAWYER.

AFFILIATION.

TO THE EDITOR OF THE LAW TIMES.

Sir,—In the present rage for emigration the following is a case of not infrequent occurrence.

A. is duly adjudged to be the putative father of a bastard child, and ordered to pay the mother, until the child shall attain the age of thirteen years, a certain sum per week, and the costs incurred in obtaining the order. A pays the costs and the instalments regularly for six months, and then, to the alarm of the mother, gives out that he is going to the "diggings," about which there can be no doubt, as he has abandoned his regular employment, and is seen busily engaged in preparing for the voyage. He has taken care, however, not to be in arrear with the weekly payments, and on the day of his departure, about which he makes no secret whatever, there is nothing due to the mother of the child. He has hitherto "obeyed" the order. When the next instalment becomes due the defendant is far away upon the main—and a "warrant of apprehension" is of course out of the question. Can any of your correspondents, familiar with affiliation practice, suggest a course by which the weekly provision for the child may be secured when the putative father insolently advertises his intention to leave the country under the circumstances I have described? The 7 & 8 Vict. c. 101, and 8 Vict. c. 10, seem to afford no remedy in such a case.

I am, Sir, yours, &c. J. B.

15, Wine Office-court Chambers, Aug. 31, 1852.

THE MILITIA.

Westminster.—On Wednesday notice was given to the inhabitants of the city of Westminster, that the number of men to be called out to serve in the Royal Westminster Middlesex Militia was 607. Each man who shall volunteer to serve five years is to receive a bounty of 6*l.* and not to be under the standard of five feet four inches in height, and between 18 and 35 years of age. Ten shillings will be paid to every recruit when attested by the respective sergeants of the district, and ten shillings more at the expiration of the first twenty-one days' training, and the remainder of the 6*l.* will be paid by monthly instalments. It is expected that very few will be tempted by the proffered bounty, and it is generally believed that there will be great difficulty in raising the required number, unless resort be had to the ballot.

St. Mary, Islington.—The churchwardens of the parish of St. Mary, Islington, have issued a notice to the inhabitants, stating that the Lord-Lieutenant of Middlesex has called their attention to the Act of last session, by which it is enacted that volunteers may be raised to serve in the militia, and that a bounty not exceeding 6*l.* is given to each volunteer, and urging upon the inhabitants that the opportunity thus given to prevent the inconvenience of the ballot should not be neglected. The quota of men to be furnished by the parish is 216.

The following buildings are certified as places duly registered for solemnising marriages, pursuant to the Act of the 6 & 7 Wm. 4, c. 85:—Furrough Cross Church, St. Mary Church, Devonshire. John Alsop, superintendent registrar.—The Church of the Sacred Heart, Howden, Yorkshire. George England, superintendant registrar. A building in Walkergate, Louth, Lincolnshire.—Cross-street Baptist Chapel, St. Mary, Islington.

JOINT-STOCK COMPANIES' LAW JOURNAL.

Some cases of interest for this department of our Journal are reported in our last number. The first is that of *The Sutton Harbour Improvement Company* v. *Hitchins*, 19 Law T. Rep. 332. The facts and the effect of that decision, which is not unimportant as regards the question of costs, may be thus stated:—A lessee of a warehouse adjoining some works of an incorporated company carried on under the powers of an Act, wherein the provisions of the Lands Clauses Consolidation Act were incorporated, claimed compensation under the 68th section of the latter Act for damages to his property, "injuriously affected, as he alleged, by the works of the company, or that the damages should be ascertained by arbitration." A bill being filed to restrain proceedings under the Lands Claus Consolidation Act, the Court of Appeal dissolved an injunction granted by the Master of the Rolls on the authority of *The London and North-Western Railway Company* v. *Smith*, 1 Mac. & Gord. 216, since overruled. A notice of motion was thereupon given by the defendant before the Master of the Rolls to dismiss the bill with costs, and afterwards notice of a cross-motion was given by the plaintiff to dismiss the bill without costs, and, on the hearing of the motions, no order was made on the former, and the latter was dismissed without costs. It was held by the Lords Justices on appeal from the judgment of the Master of the Rolls, and varying his decision (the cause being treated, by consent, as if it had come regularly to a hearing), that the defendant ought to have had his costs of his motion to dismiss, and that as the plaintiffs were justified in filing their bill by the authority of *The London and North-Western Railway Company*, v. *Smith*, their bill ought to be dismissed without costs; but leave was given to the defendant to apply as to costs if he succeeded in obtaining compensation.

A curious question affecting a railway company was raised as to the adoption by a third party of a contract made between others, the enforcing specific performance, and the abandonment of a scheme, was raised in *Gooday* v. *The Colchester and Stour Valley Railway Company*, 19 Law T. Rep. 334. In that case a railway company who had projected and were promoting a new line of railway, being opposed by a landholder on the line, arranged, through a third party, who professed to be the agent of the company, to purchase his land at a certain price. The landholder accordingly withdrew his opposition, and the Bill passed authorising the construction of the new line. No steps, however, were taken to carry out the scheme, and the compulsory powers having expired, though the time for completing the line had not, the landholder filed his bill against the company for specific performance of the contract to purchase his land. The Court held, that there was no contract between the plaintiff and the company, for before they obtained their new Act they could not enter into a contract; and as to their adoption of the contract made by their professed agent for their benefit, as a corporation subsequently established, there had been nothing done after obtaining the Act which the plaintiff's withdrawal of opposition had enabled them to do, and therefore they could not be said to have adopted it. The Court refused even to put the company on terms to admit the contract at law; but dismissed the bill with costs. Speaking to the point that there was here no contract between the plaintiff and defendants, the Master of the Rolls referred to the rule of law as settled by recent cases, and said that assuming a contract to have existed between an individual and a company, if the undertaking had been abandoned, the Court will *send the case to law*, instead of granting specific performance. The substantial point raised and the reasons for the judgment on it are clearly stated in the close of the judgment:—"Here the question is, whether the defendants did adopt the agreement previously entered into by their agent, or alleged agent, with the plaintiff. The contract was entered into with the plaintiff for the benefit of a corporation not then, but subsequently, established, and the withdrawal of the plaintiff's opposition, which was part of the contract, enabled them to obtain their Act of incorporation. Since the Act was obtained, however, nothing has been done, nor any step taken to construct the railway. There is no distinct evidence, indeed, that the railway has been abandoned; but no money has been paid, no land taken, nor any movement made towards carrying on the scheme, and the compulsory powers of the Act have now ceased. Under these circumstances I cannot say that the company has adopted the agreement, or is bound by its terms; and therefore I do not think that I can compel them to admit the contract in an action at law. I must dismiss the bill, but without costs."

REAL PROPERTY LAWYER AND CONVEYANCER.

Some cases of interest under the Trustee Relief Acts of 1847 and 1850, have recently been reported, and deserve noting. In the case of *Re Mais*, 19 Law T. Rep. 324, a petition had been presented on behalf of certain infants for the removal of a trustee on the ground that he was residing in Jamaica out of the jurisdiction of the Court, and praying the appointment of another trustee in his stead. It was urged, on the authority of *Re Hobson's Settlement*, 15 Jur. 352, that the Court had power, by secs. 22 and 32 of the Trustee Relief Act, 1850 (13 & 14 Vict. c. 60), to remove a trustee under such circumstances and nominate ano-

ther. But it was held by Vice-Chancellor KINDERSLEY, after consultation with the other Vice-Chancellors, that under those sections the Court took no such power. "The words of the sections referred to," said his Honour, "were very general, but he did not think that the Legislature could have intended that a trustee should be summarily removed because he was out of the jurisdiction, which probably might be the case only for a short time."

In *Lewis* v. *Hillman*, 19 Law T. Rep. 329, it was held by the House of Lords that a trustee acting under a deed in which is contained a power of sale, cannot be the purchaser under such power of sale. In the same case, an interesting point as to the purchase of property by a Solicitor concerned in the cause, in the name of a sub-agent, and a question under the Trustee Relief Act of 1847, were considered. These points are reviewed in another column.

The case of *Re James's Trust*, 19 Law T. Rep. 338, arose also under the Trustee Act of 1850. In that case an attorney had been declared by the Court a trustee of certain copyhold lands, and had been ordered to surrender them. The Court, upon evidence that he could not be found, and on a statement in the petition that it was uncertain whether he was in England or abroad, but if still in England he was avoiding his creditors, and could not be found, ordered the appointment of some person to surrender the lands in his stead. A case of practice as to the confirmation of the Master's report approving of a new trustee is *Re Farmer*, 19 Law T. Rep. 338. The Court held that such an application must be made, not by petition, but by motion. An important case under a will, affecting a tenant for life, and the accumulation of capital for remainder-man, is that of *Meyer* v. *Solomon*, 19 Law T. Rep. 337. In that case a testator gave the residue of his property to his wife and to any persons who might be executors or trustees of his will upon trust to pay or permit his wife to receive the income and profits so long as she should continue his widow, and after her death to other persons. A sum of 12,000*l.* the testator's share of the capital of a partnership, was, after the testator's death, secured to be paid to his estate according to the articles of partnership, by the warrant of attorney of the surviving partner in the following manner:— The capital was to be paid off by annual instalments of 1,500*l.* and interest at 5*l.* per cent. per annum was payable on the debt until discharged. The question submitted, on a special case, to the Court was whether the widow was entitled to the whole of the interest payable by the surviving partner, and if not, what part was to be considered as interest and what part capital. The Court held that she was entitled to 4 per cent. only of the interest, and that the remaining 1 per cent. must be treated as capital and invested, but the widow should enjoy the interest of such investment. A nice question as to whether a gift in a codicil was in addition or substitution of a gift in the will was considered in *Sawrey* v. *Rumney*, 19 Law T. Rep. 337. In that case a testatrix by her will gave 1,000*l.* stock upon trust for the maintenance of A. B. until she attained twenty-two years of age, and then for A. B. absolutely. By a codicil the testatrix confirmed the bequest except as to the trusts, which she revoked, and declared the trusts to be for A. B. for life, and afterwards for A. B.'s children. By a subsequent codicil the testatrix thus expressed herself:—"I have altered my views as to A. B. respecting the 1,000*l.* as left in my will, and which I now think may prove a snare for her. I now leave 500*l.* for schooling and board, when at a proper age to be sent to a respectable place for useful teaching." The Court held, that the 500*l.* was an additional gift, and not a gift in substitution for the 1,000*l.* the trusts of which were declared by the former codicil. In the case *Re Tinkler's Trust*, 19 Law T. Rep. 338, where an annuity charged on real estate with power of distress and entry had fallen into arrear, and a railway company had taken a portion of the estate, and paid into court the purchase-money, the Court directed such money to be paid to the annuitant in discharge of the arrears of her annuity, the VICE-CHANCELLOR remarking that "the annuity was, in a sense, charged on the corpus."

A case, not unlike *Ogle* v. *Morgan*, which recently arose under the will of the late EARL of ABERGAVENNY, and was much litigated in Chancery, came before Vice-Chancellor TURNER, in *Blackwell* v. *Pennant*, 19 Law T. Rep. 336. The testator's will contained the bequest "to all my servants living with me at the time of my decease, who shall then have lived in my service for three years, one year's wages." The Court held that, under this, all servants at a yearly hiring were entitled, although not resident with the testator; but that a gardener, who was engaged at a stated sum per week, although it was paid at irregular intervals, was not entitled, although he had lived more than three years in the testator's service. "I am bound," said the VICE-CHANCELLOR, "to adopt Lord COWPER's opinion, in *Townsend* v. *Windham*, 2 Vern. 516, that the description 'servants living with me at the time of my death' is not to be confined to such servants only as were in the testator's house, or had diet from him. But then there is the case of *Booth* v. *Dean*, before Sir JNO. LEACH, which is not opposed to this view, but has an important bearing on the present case, because there, as here, a servant hired by weekly wages, claimed under a gift of a year's wages to all servants living with the testator at the time of his death; and the MASTER of the ROLLS decided that the expression 'a year's wages' clearly had reference to a yearly hiring—to servants 'usually hired by the year.' And this I take to be the right interpretation. When the testator gives to his servants a year's wages, he gives it to those whom he had hired at yearly wages."

Query.

ABSTRACT OF TITLE.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Can any of your conveyancing readers answer the following query, or refer to any case bearing upon it?

Certain leasehold property was sold by auction to B. The vendor's solicitors being unable or unwilling to remove some of the objections taken by the purchaser's solicitors to the title, it was ultimately agreed that the deposit should be returned, without interest and without costs, and the contract rescinded. This was done, and the vendor's solicitors now (some time afterwards) claim to have the abstract returned. This abstract contains the purchaser's solicitors' remarks, and the advice and observations of counsel upon it. Are they entitled to it?

I am, Sir, yours, &c. M.

Answers to Queries.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The case alluded to by your correspondent A. of Leeds, in the LAW TIMES of the 28th instant, is, I presume, *Hallett* v. *Chamberlayne*, 12 Law T. 272.

I am, Sir, yours, &c. J. S.

Chichester, Aug. 30, 1852.

COUNTY COURTS.

WE have been favoured with a copy of the following letter on the subject of the new scale of costs to be allowed as between Attorney and client, and party and party, which has been forwarded, by the Secretary of the Committee of Judges appointed to frame the scale, to the Secretary of the Law Institution. No doubt any suggestion from our readers which may be forwarded to Mr. NICOL, the able Secretary of the Committee, will be acceptable, and may be serviceable to the Committee in the important duty they have to discharge:

"Treasury Chambers, Whitehall, 27th August, 1852.

Sir,—The LORD CHANCELLOR having, under the provisions of the County Courts Acts Amendment Act of last session, appointed Mr. Serjeant MANNING, Mr. KOE, Mr. Serjeant DOWLING, Mr. WALKER, and Mr. FURNER, being five of the Judges of the County Courts, to frame a scale of costs and charges to be paid to Attorneys in the County Courts, to be allowed as between Attorney and client, and as between party and party, I have been directed by those gentlemen to forward to you a copy of the above Act, and to request that you will lay the same before the members of the Law Society, of which you are the Secretary, and move them to communicate to me any suggestions they may wish to make with reference to the powers conferred on the Judges by the LORD CHANCELLOR's appointment.

I am, Sir, your obedient servant,
(Signed) "HENRY NICOL, Secretary."

THE LAWYER.

Summary.

EQUITY PRACTICE.—From the case of *Lewis* v. *Hillman*, 19 Law T. Rep. 329, which was an appeal to the House of Lords from a judgment of Lord Chancellor COTTENHAM, some useful points may be abstracted. And first with regard to the purchase of property by a Solicitor, it was held that if an Attorney or agent can shew by circumstances that he was entitled to purchase the property, as a stranger might buy it, yet if, instead of openly purchasing it, he purchases in the name of another person, a sub-agent, the Court will set aside such purchase. So if an Attorney put forward a clerk as bonâ fide purchaser, for the purpose of perfecting the title to the property sold, such a purchase will be set aside. These points should be noted in Pulling's Law of Attorneys. In the same case the appellants had, in the court below, petitioned under the Trustee Relief Act of 1847, to have a trust-fund paid out to them; there was no cross-petition, but the respondents had consented that the case should be treated as if there had been a cross-petition; the VICE-CHANCELLOR had ordered the money to be paid out to the petitioners. On appeal to the LORD CHANCELLOR, the order on the petition was reversed, and the LORD CHANCELLOR ordered the money to be brought back into Court, and a declaration to be made, on the petition, that the deed of sale (on which the order of the VICE-CHANCELLOR was founded) was invalid and could not stand. It was held by the House of Lords that the declaration on such petition was good in point of form. In *Magan* v. *Magan*, 19 Law T. Rep. 338, a point of practice was decided. An order, of course, in a cause attached to any one of the Vice-Chancellors' Courts, may be obtained in the Court of any other Vice-Chancellor. In the same case the word "had," in the fifth General Order of 1841 (11th November), affecting motions and petitions, was read as "heard." A point also worthy of notice in Pulling's Law of Attorneys, relative to the giving security for costs to married women, entitled to separate estate, was settled in *Re Waugh*, 19 Law T. Rep. 334. In that case, a married woman entitled to separate estate had employed Solicitors to act for her, and had given them some securities for costs incurred by them on her separate estate. She then obtained an order of course for delivery and taxation of their bill of costs, but without the intervention of a next friend. On motion to discharge the order for irregularity in not having a next friend, or in the alternative that security for costs might be given, the MASTER of the ROLLS held, that security for costs must be given, or the order must be discharged; that there was no real distinction between the case of an order of course and any other case; but that the practice having been, though erroneously, to give orders of course without the intervention of a next friend, there could be no costs of the motion. With regard to the costs of the application to discharge the order, or that security for costs might be given, it may be as well to add, that the MASTER of the ROLLS said, "As for many years it has been the practice to give orders of course, without the intervention of a next friend, I will give no costs of this application, but will, if it is desired, make the costs abide the result of the taxation."

NEW CHANCERY ORDERS.

WE invite attention to the New General Orders and Rules in Chancery, under the recent Act to amend the Practice and Course of Proceeding in the High Court of Chancery (15 & 16 Vict. c. 86), the appearance of which has been awaited with anxiety by the Profession. Although dated on the 7th of August, they were only issued from the printers on

Thursday last. They are the first orders regulating the future practice of the Court under the Acts passed in the last session of Parliament.

ORDER OF COURT, SATURDAY, THE 7TH DAY OF AUGUST, 1852.

The Right Hon. Edward Burtenshaw, Lord St. Leonard's, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Hon. Sir John Romilly, Master of the Rolls, the Right Hon. the Lord Justice Sir James Lewis Knight Bruce, the Right Hon. the Lord Justice Lord Cranworth, the Right Hon. the Vice-Chancellor Sir George James Turner, the Hon. the Vice-Chancellor Sir Richard Torin Kindersley, and the Hon. the Vice-Chancellor Sir James Parker, doth hereby, in pursuance of an Act of Parliament passed in the 15th and 16th years of her present Majesty, intituled "An Act to amend the Practice and Course of Proceeding in the High Court of Chancery," and in pursuance and execution of all other powers enabling him in that behalf, order and direct:—

That all and every the orders, rules, and directions hereinafter set forth shall henceforth be, and for all purposes be deemed and taken to be, "General Orders and Rules of the High Court of Chancery," viz.:—

PRINTING.

1. Bills and claims are to be printed on writing royal paper, quarto, in pica type, leaded; and the copy to be filed is to be interleaved with paper of the same description.

2. No costs are to be allowed either as between party and party, or as between solicitor and client, for any written bill or written copy of a bill, filed under the 15 & 16 Vict. c. 86, s. 6, or for any written copy thereof, served upon any defendant thereto, or for any written brief of such bill, unless the Court shall, in disposing of the costs of the cause, direct the allowance thereof.

3. The clerks of records and writs shall, at the expiration of fourteen days from the filing of any written bill or written copy of a bill, take off the files of the Court, without further order, the bill or copy so filed, unless a printed copy thereof shall in the meantime have been filed, and the plaintiff in the suit, or his solicitor, who shall personally have undertaken to file such printed copy, shall pay to the defendant all the costs incurred by him in the suit, such costs to be taxed by the Taxing Master, without further order, upon production to him of the certificate of the Clerk of Records and Writs, that a printed copy of the bill has not been filed pursuant to such undertaking, and to be recoverable in like manner as costs ordered to be paid by a party in a suit to another party in a suit are now recoverable.

4. In lieu of the fees now payable to solicitors for instructions for bills, for engrossing bills and claims, for copies of bills and claims, for abbreviating bills and making a brief thereof, solicitors shall be entitled to charge, and be allowed in suits commenced after these orders come into operation, the fees specified in schedule A. to these orders.

5. The payment to be made by the defendant to the plaintiff for printed copies of the bill or claim shall be at the rate of one halfpenny per folio.

6. No defendant shall be at liberty to demand from the plaintiff more than ten printed copies of his bill or claim.

AMENDMENT OF BILLS AND CLAIMS.

7. Where, according to the present practice of the Court, an amendment of a bill or claim may be made without a new engrossment thereof, a bill or claim may be amended by written alterations in the printed bill of complaint or claim so to be filed, and by additions on the paper to be interleaved therewith, according to the directions of Order 1.

8. The practice of amending a defendant's copy of the bill shall, with respect to the amendment of bills filed after these Orders come into operation, be abolished.

9. A copy of an amended bill or claim, whether upon an amendment by a reprint or by such alterations and additions as mentioned in Order 7, is to be served upon the defendant or his solicitor; and such copy may be partly printed and partly written, if the amendment is not made by a reprint; but in every case the copy to be served is to be stamped with the proper stamp by one of the Clerks of Records and Writs, indicating the filing of such amended bill or claim, and the date of the filing thereof.

10. In all cases where, according to the present practice of the Court, a subpœna to appear to and to answer an amended bill may be served upon the solicitor of a defendant, service upon the defendant's solicitor of a copy of an amended bill, whether wholly printed or partly printed and partly written, shall be good service on the defendant.

11. Where a defendant has appeared in person to any bill, service at the address for service of such defendant of a copy of an amended bill, whether wholly printed, or partly printed and partly written, shall be good service on the defendant.

LIMITATION OF PRECEDING ORDERS.

12. None of the preceding Orders shall apply to bills or claims filed before these Orders come into operation, though afterwards amended; and the existing practice of the Court is to continue in force, with reference to the amendment of such bills and claims.

13. The existing practice of the Court with reference to issuing and serving writs of subpœna to appear to and answer bills and writs of summons on claims is also to continue in force with respect to bills and claims filed before these Orders come into operation

FORM OF BILL.

14. Bills may be in a form similar to the form set out in Schedule (B) to these Orders, with such variations as the nature and circumstances of each particular case may require.

INTERROGATORIES.

15. The interrogatories for the examination of the defendant to a bill may be in a form similar to the form set out in Schedule (C) to these Orders, with such variations as the nature and circumstances of each particular case may require.

16. In cases in which the plaintiff requires an answer to any bill from any defendant or defendants thereto, the interrogatories for the examination of such defendant or defendants are to be filed within eight days after the time limited for the appearance of such defendant or defendants.

17. If the defendant appear in person, or by his own solicitor, within the time limited for that purpose by the rules of the Court, the plaintiff is, within eight days after the time allowed for such appearance, to deliver to the defendant or defendants so required to answer, or to his or their solicitor or solicitors, a copy of the interrogatories so filed as aforesaid, or of such of them as the particular defendant or defendants shall be required to answer. And the copy so to be delivered is to be examined with the original, and the number of folios counted by the Clerks of Records and Writs, who, on finding that such copy is duly stamped and properly written, are to mark the same as an office copy.

18. If any defendant to a suit commenced by bill do not appear in person, or by his own solicitor, within the time allowed for that purpose by the rules of the Court, and the plaintiff has filed interrogatories for his examination, the plaintiff may deliver a copy of such interrogatories, so examined and marked as aforesaid, to the defendant, at any time after the time allowed to such defendant to appear, and before his appearance in person or by his own solicitor; or the plaintiff may deliver a copy of such interrogatories, so examined and marked as aforesaid, to the defendant or his solicitor, after the appearance of such defendant in person or by his own solicitor, but within eight days after such appearance.

19. A defendant required to answer a bill must put in his plea, answer, or demurrer thereto, not demurring alone, within fourteen days from the delivery to him or his solicitor of a copy of the interrogatories which he is required to answer; but the Court shall have full power to enlarge the time from time to time upon application being made to the Court for that purpose.

20. After the time allowed by Order 16, for filing interrogatories for the examination of any defendant, no interrogatories are to be filed for the examination of such defendant, without special leave of the Court, to be applied for upon notice of motion.

FORM OF ANSWER.

21. Answers may be in a form similar to the form set out in Schedule (D) to these Orders, with such variations as the nature and circumstances of each particular case may require.

MOTION FOR DECREE.

22. One month's notice is to be given by the plaintiff to the defendant or defendants of the motion for a decree or decretal order.

23. The affidavits to be used in support of such motion are to be filed before the service of such notice, and a list of such affidavits is to be set forth at the foot of such notice.

24. The defendant, within fourteen days after service of such notice, is to file his affidavits in answer, and to furnish the plaintiff or his solicitor with a list thereof.

25. Within seven days after the expiration of such fourteen days the plaintiff is to file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and he is to furnish the defendant or his solicitor with a list thereof; and except so far as these affidavits are in reply, they are not to be regarded by the Court, unless upon the hearing of the motion the Court shall give leave to the defendant to answer them, and in that case the costs of such affidavits, and of the further affidavits consequent upon them, shall be paid by the plaintiff, unless the Court shall otherwise order.

26. No further evidence on either side is to be used upon such motion for decree or decretal order without leave of the Court.

27. Every notice of motion for a decree or decretal order is to be entered with the registrar, who is to make out a list of such motions, and the same are to be heard according to such list, unless the Court shall make order to the contrary.

28. Where a defendant shall not have been required to answer and shall not have answered the plaintiff's bill, so that under the 15th and 16th Victoria, chap. 86, sec. 26, he is to be considered as having traversed the case made by the bill, issue is nevertheless to be joined by filing a replication in the form or to the effect of the replication now in use.

DISMISSAL FOR WANT OF PROSECUTION.

29. A defendant to a suit commenced by bill, who shall not have been required to answer the bill, and shall not have answered the same, shall be at liberty to apply for an order to dismiss the bill for want of prosecution, at any time after the expiration of three months from the time of his appearance, unless a motion for a decree or decretal order shall have been set down in the meantime, or the cause shall have been set down to be heard; and the Court may, upon such application, if it shall think fit, make an order dismissing the bill, or make such other order or impose such terms as may appear just and reasonable.

IMPERTINENCE.

30. The application to be made for the costs of any impertinent matter introduced into any bill, answer, or other proceeding, is to be made at the time when the Court disposes of the costs of the cause or matter, and not at any other time.

EVIDENCE.

31. The time within which the plaintiff in any suit commenced by bill is to give the defendant notice of the mode in which he desires that the evidence to be adduced in the cause shall be taken, is to be seven days after issue joined therein; and if the plaintiff shall not, within such time, give any such notice, or if the plaintiff shall give such notice, and shall therein desire the evidence to be adduced upon affidavit, the plaintiff and defendant respectively shall be at liberty to verify their respective cases by affidavit, unless the defendant, or some or one of the defendants, if more than one, shall, within fourteen days after the expiration of the said period of seven days, give notice to the plaintiff, or his solicitor, that he or they desire the evidence to be oral.

32. The evidence on both sides in any cause, to be used at the hearing thereof, whether taken orally (and including the cross-examination and re-examination of any witness or witnesses) or taken upon affidavit, is to be closed within nine weeks after issue joined therein, except that any witness who has made an affidavit intended to be used by any party to such cause at the hearing thereof shall be subject to cross-examination within one month after the expiration of such period of nine weeks.

33. No affidavit filed before issue joined in any cause shall be received or receivable at the hearing thereof, unless within one month after issue joined notice in writing shall have been given, by the party intending to use the same, to the opposite party of his intention in that behalf.

34. Any party desiring to cross-examine a witness who has made an affidavit in any cause intended to be used at the hearing thereof, shall give forty-eight hours' notice to the party on whose behalf such affidavit was filed, or to the party intending to use the same, of the time and place of such intended cross-examination, in order that such party may, if he shall think fit, be present at such cross-examination.

35. The re-examination of any such witness is immediately to follow his cross-examination, and is not to be delayed to a future period.

36. Any party in any cause or matter requiring the attendance of any witness before an examiner, for the purpose of his being examined or cross-examined, with a view to his evidence being used upon any claim, motion, petition, or other proceeding before the Court, not being the hearing of a cause, shall give to the opposite party or parties forty-eight hours' notice at least of his intention to examine such witness, and of the time and place of such examination, unless the Court shall in any case think fit to dispense with such notice.

37. And where it is desired to cross-examine any party, whether a party to the cause or matter or not, who has made an affidavit to be used, or which shall be used on any claim, motion, petition, or other proceeding before the Court, not being the hearing of a cause, the party desiring so to cross-examine such deponent shall give such notice to the opposite party as is required by Order 34, with reference to the cross-examination of a witness who has made an affidavit to be used on the hearing of a cause.

38. All the above Orders with reference to the examination, cross-examination, and re-examination of witnesses, shall extend and be applicable to evidence taken in any cause subsequently to the hearing thereof.

39. In suits in which issue shall have been joined when these Orders come into operation, the evidence

to be used at the hearing of the cause shall be taken according to the existing practice of the Court, unless the parties shall consent, or the Court shall order, that the same shall be taken in the mode prescribed by the Act 15 & 16 Vict. c. 86, and these Orders.

ADDING TO DECREE.

40. The time within which a party served with notice of a decree under sec. 42 of the above Act may apply to the Court to add to the decree, is to be one month after such service.

41. A memorandum of the service upon any person or persons of notice of the decree in any suit under the said section, rule 8, is to be entered in the office of the Clerks of Records and Writs upon due proof by affidavit of such service.

SUMMONS.

42. The summons to be obtained under sec. 45 of the above Act may be in a form similar to the form set forth in schedule (E) to these Orders, with such variations as the circumstances of the case may require.

REVIVOR AND SUPPLEMENT.

43. Any party under no disability, or under the disability of coverture, who may be served with an order to revive any suit, or to carry on the proceedings therein, may apply to the Court to discharge such order within twelve days after such service; and any party being under any disability, other than coverture, who may be so served, may apply to the Court to discharge such order within twelve days after the appointment of a guardian or guardians ad litem for such party; and until such period of twelve days shall have expired such order shall have no force or effect as against such last-mentioned party.

NEW FACTS OR CIRCUMSTANCES.

44. If the plaintiff, in any cause which is not in such a state as to allow of an amendment being made in the bill, shall desire to state or put in issue any facts or circumstances which may have occurred after the institution of the suit, he may state the same, and put the same in issue by filing in the Record and Writ Clerk's Office a statement, either written or printed, to be annexed to the bill; and such proceedings by way of answer, evidence, and otherwise, are to be had and taken upon the statement so filed, as if the same were embodied in a supplemental bill; provided always, that the Court may make any order which it shall think fit for accelerating the proceedings thereunder, or proceedings therein, in any manner which may appear just and practicable.

INJUNCTION.

45. No injunction for stay of proceedings at law is to be granted as of course for default of appearance or answer to the bill.

POWER OF COURT.

46. The power of the Court to enlarge or abridge the time for doing any act, or taking any proceedings in any cause or matter, upon such, if any, terms as the justice of the case requires, is unaffected by these Orders.

COMMENCEMENT OF ORDERS.

47. These Orders shall take effect and come into operation on the 2nd day of November, 1852.

INTERPRETATION.

48. In these Orders the following words have the several meanings hereby assigned to them, over and above their several ordinary meanings, unless there be something in the subject or context repugnant to such construction, viz.:—

1. Words importing the singular number include the plural number, and words importing the plural number include the singular number.

2. Words importing the masculine gender include females.

3. The word "bill" includes "information."

4. The word "party" includes a body politic or corporate.

5. The word "affidavit" includes "affirmation."

St. Leonards, C.
John Romilly, M.R.
J. L. Knight Bruce, L.J.
Cranworth, L.J.
C. J. Turner, V.C.
Richard T. Kindersley, V.C.
James Parker, V.C.

SCHEDULE (A).

TABLE OF FEES.

For instructions for bill	£1	14
For making a copy of a bill or claim for the printer, per folio	0	0
For correcting the proof sheet, per folio..........	0	0
For printer's bill (as paid), deducting any copies paid for by the defendant........................	0	0
For amending each copy of a bill or claim to serve where there is no reprint	0	13
Instructions for brief to be allowed on a replication being filed, or on a motion for a decree on a bill, or in an injunction cause on moving for the injunction; but so that this fee shall be charged once only in the progress of a cause...	1	1
For amending each brief of a bill or claim where there is no reprint	0	13
For perusing and considering the bill on behalf of each defendant, or set of defendants, appearing by the same solicitor	1	1

SCHEDULE (B).

FORM OF BILL.

In Chancery.

John Lee .... Plaintiff.

James Styles and Henry Jones } .... Defendants.

BILL OF COMPLAINT.

To the Right Hon. Edward Burtenshaw, Baron St. Leonards, of Slaugham, in the County of Sussex, Lord High Chancellor of Great Britain,

Humbly complaining, sheweth unto his lordship, John Lee, of Bedford-square, in the county of Middlesex, esq. the above-named plaintiff, as follows:—

1. The defendant, James Styles, being seised in fee simple of a farm called Blackacre, in the parish of A. in the county of B. with the appurtenances, did, by an indenture dated the 1st of May, 1850, and made between the defendant James Styles of the one part, and the plaintiff of the other part, grant and convey the said farm, with the appurtenances, unto and to the use of the plaintiff, his heirs and assigns, subject to a proviso for redemption thereof, in case the defendant James Styles, his heirs, executors, administrators, or assigns, should, on the 1st of May, 1851, pay to the plaintiff, his executors, administrators, or assigns, the sum of 5,000*l.* with interest thereon at the rate of 5*l.* per cent. per annum, as by the said indenture will appear.

2. The whole of the said sum of 5,000*l.* together with interest thereon at the rate aforesaid, is now due to the plaintiff.

3. The defendant, Henry Jones, claims to have some charge upon the farm and premises comprised in the said indenture of mortgage of the 1st May, 1850, which charge is subsequent to the plaintiff's said mortgage.

4. The plaintiff has frequently applied to the defendants, James Styles and Henry Jones, and required them either to pay the said debt, or else to release the equity of redemption of the premises, but they have refused so to do.

5. The defendants, James Styles and Henry Jones, pretend that there are some other mortgages, charges, or incumbrances affecting the premises, but they refuse to discover the particulars thereof.

6. There are divers valuable oak, elm, and other timber and timber-like trees growing and standing on the farm and lands comprised in the said indenture of mortgage of the 1st of May, 1850, which trees and timber are a material part of the plaintiff's said security; and if the same or any of them were felled or taken away, the said mortgaged premises would be an insufficient security to the plaintiff for the money due thereon.

7. The defendant, James Styles, who is in possession of the said farm, has marked for felling a large quantity of the said oak and elm trees and other timber, and he has, by handbills, published on the 2nd of December inst. announced the same for sale, and he threatens and intends forthwith to cut down and dispose of a considerable quantity of the said trees and timber on the said farm.

PRAYER.

The plaintiff prays as follows:—

1. That an account may be taken of what is due for principal and interest on the said mortgage.

2. That the defendants, James Styles and Henry Jones, may be decreed to pay to the plaintiff the amount which shall be so found due, together with his costs of this suit, by a short day to be appointed for that purpose, or, in default thereof, that the defendants, James Styles and Henry Jones, and all persons claiming under them, may be absolutely foreclosed of all right and equity of redemption in or to the said mortgaged premises.

3. That the defendant James Styles may be restrained by the injunction of this Hon. Court from felling, cutting, or disposing of any of the timber or timber-like trees now standing or growing in or upon the said farm and premises comprised in the said indenture of mortgage, or any part thereof.

4. That the plaintiff may have such further or other relief as the nature of the case may require.

Names of defendants.

The defendants to this bill of complaint are—

James Styles,
Henry Jones.

Y. Y.
(name of counsel).

Note.—This bill is filed by Messrs. A. B. and C. D. of Lincoln's-inn, in the county of Middlesex, solicitors for the above-named plaintiff.

SCHEDULE (C).

FORM OF INTERROGATORIES.

In Chancery.

John Lee .... Plaintiff.

James Styles and Henry Jones } .... Defendants.

Interrogatories for the examination of the above-named defendants in answer to the plaintiff's bill of complaint.

1. Does not the defendant Henry Jones claim to have some charge upon the farm and premises comprised in the indenture of mortgage of the 1st of May, 1850, in the plaintiff's bill mentioned?

2. What are the particulars of such charge, if any, the date, nature, and short effect of the security, and what is due thereon?

3. Are there or is there any other mortgages or mortgage, charges or charge, incumbrances or incumbrance, in any and what manner affecting the aforesaid [illegible] part thereof?

4. Set forth the particulars of such mortgages or mortgage, charges or charge, incumbrances or incumbrance; the date, nature, and short effect of the security; what is now due thereon; and who is or are entitled thereto respectively; and when and by whom, and in what manner, every such mortgage, charge, or incumbrance was created.

The defendant, James Styles, is required to answer all these interrogatories.

The defendant, Henry Jones, is required to answer the interrogatories numbered 1 and 2.

Y. Y.
(name of counsel.)

SCHEDULE (D).

FORM OF ANSWER.

In Chancery.

John Lee .... Plaintiff.

James Styles and Henry Jones } .... Defendants.

The answer of James Styles, one of the above-named defendants, to the bill of complaint of the above-named plaintiff.

In answer to the said bill, I, James Styles, say as follows:—

1. I believe that the defendant, Henry Jones, does claim to have a charge upon the farm and premises comprised in the indenture of mortgage of the 1st of May, 1850, in the plaintiff's bill mentioned.

2. Such charge was created by an indenture dated the 1st of November, 1850, made between myself of the one part, and the said defendant, Henry Jones, of the other part, whereby I granted and conveyed the said farm and premises, subject to the mortgage made by the said indenture of the 1st of May, 1850, unto the defendant Henry Jones for securing the sum of 2,000*l.* and interest at the rate of 5*l.* per centum per annum, and the amount due thereon is the said sum of 2,000*l.* with interest thereon from the date of such mortgage.

3. To the best of my knowledge, remembrance, and belief there is not any other mortgage, charge, or incumbrance affecting the aforesaid premises.

M. N.
(name of counsel.)

SCHEDULE (E).

FORM OF SUMMONS.

In Chancery.

In the Matter of the Estate of John Thomas, late of the Parish of A. in the County of B. deceased.

Joseph Wilson
against
William Jackson.

Upon the application of Joseph Wilson, of Russell-square, in the county of Middlesex, esq. who claims to be a creditor upon the estate of the above-named John Thomas, let William Jackson, the executor of the said John Thomas, attend at my chambers [in the Rolls-yard, Chancery-lane, Middlesex], [or at No. —, —— square, Lincoln's-inn, Middlesex], on the day of , at of the clock in the afternoon, and shew cause, if he can, why an order for the administration of the personal estate of the said John Thomas, by the High Court of Chancery, should not be granted.

Dated the day of , 1852.

John Romilly, Master of the Rolls, or
G. J. Turner, Vice-Chancellor, or
Richard T. Kindersley, Vice-Chancellor, or
James Parker, Vice-Chancellor.

Note.—If the above-named William Jackson does not attend either in person or by his solicitor, at the time and place above mentioned, such order will be made in his absence as the judge may think just and expedient.

This summons was taken out by A. and B. of Lincoln's-inn, in the county of Middlesex, solicitors for the above named Joseph Wilson.

ORDER OF THE COURT. AUG. 7, 1852.

The Right Hon. Edward Burtenshaw, Lord St. Leonards, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Hon. Sir John Romilly, Master of the Rolls, the Right Hon. the Lord Justice Sir James Lewis Knight Bruce, the Right Hon. the Lord Justice Lord Cranworth, the Right Hon. the Vice-Chancellor Sir George James Turner, the Hon. the Vice-Chancellor Sir Richard Torin Kindersley, and the Hon. the Vice-Chancellor Sir James Parker, doth hereby, in pursuance and execution of all powers enabling him in that behalf, order and direct—

That all and every the orders, rules, and directions hereinafter set forth shall henceforth be, and

for all purposes be deemed and taken to be, general orders and rules of the High Court of Chancery, viz.:—

1. That no appeal from any decree, order, or dismission, or any rehearing of the case on which such decree, order, or dismission is founded, shall be allowed, unless the same is set down for hearing, and the requisite notice thereof duly served, within five years from the date of any such decree, order, or dismission respectively.

2. That all decrees and orders, and all dismissions pronounced or made in any cause, claim, or matter, in this court which shall be enrolled, shall be so enrolled within six calendar months after the same shall be so pronounced or made respectively, and not at any time after without special leave of the Court, such leave to be obtained in manner next hereinafter mentioned.

3. In case any party is desirous to enrol a decree, or order, or dismission after the expiration of six calendar months from the time the same shall have been made, he shall obtain an order for that purpose, and which order, unless made by consent of the adverse party, or on motion and notice to all the parties, shall be a conditional order in the first instance, but shall become absolute without further order unless cause is shewn against it within twenty-eight days after service of the order.

4. That where a caveat is entered with the proper officer to stay the signing of the docket of the enrolment of any decree, order, or dismission, such caveat shall be prosecuted with effect within twenty-eight days after the docket of such decree, order, or dismission shall be left to be signed with the proper officer by the party who entered the same, otherwise such caveat shall be of no force; and the docket of such decree, order, or dismission may, immediately after the expiration of the said twenty-eight days, be presented to be signed, as if no such caveat had been entered.

5. That no enrolment of any decree, order, or dismission shall be allowed after the expiration of five years from the date thereof.

6. That the Lord Chancellor, either sitting alone, or with the Lords Justices, or either of them, shall be at liberty, where it shall appear to him under the peculiar circumstances of the case to be just and expedient, to enlarge the periods hereinbefore appointed for a rehearing, or an appeal, or for an enrolment.

7. That these orders shall take effect on and from the 28th day of October next.

St. Leonards, C.
John Romilly, M.R.
J. L. Knight Bruce, L.J.
Cranworth, L.J.
G. J. Turner, V.C.
Richard T. Kindersley, V.C.
James Parker, V.C.

THE MERCANTILE LAWYER.

Summary.

A nice question in the law of principal and agent was considered by the Lord Chancellor, in the case of *Zulucta* v. *Vinent*, 19 Law T. Rep. 330. There A. and Co. induced B. to make advances, for the purpose of working some mines abroad, belonging to C. the produce of which was to be remitted to A. and Co. as consignees, who undertook to account to B. for such proceeds. The Court held that A. and Co. could not set up an antecedent title to the proceeds of such consignments. The principle as to constructive fraud was, in effect, thus propounded by the Court: Where a man induces another to place himself in a particular position, upon condition that when he has so placed himself in that position he will conduct himself in a given manner towards him, he cannot reject the condition without the concurrence of the other party, or set up any right which is inconsistent with it. A case in which the Lords Justices confirmed a decision of a Commissioner of Bankrupts, refusing a bankrupt his certificate, because, amongst other reasons, he had been guilty of conduct as a trader generally, though not in his particular trade, came before the Court of Appeal in Chancery. (*Ex parte Staner*, 19 Law T. Rep. 333.) The bankrupt carrying on the trade of a baker, previous to the coming into operation of the Bankrupt Law Consolidation Act, obtained money under the fraudulent pretence that he would invest it on security, which, in fact, he never did; the Court held, that this was conduct on the part of the bankrupt as a trader, though not in the course of his particular trade, which disentitled him to a certificate. It was furthermore held, that if the case came otherwise within the Bankrupt Act of 1849, it was not the less so, because the conduct complained of took place previous to the passing of the Act.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

Granger.—On the 30th ult at 24, Cavendish-road, St. John's-wood, the widow of the late T. C. Granger, esq. M.P. of a son.

Gant.—On the 31st ult. at Grove Cottage, Shacklewell, Middlesex, the wife of John Castle Gant, esq. solicitor, of a daughter.

Shipton.—On the 28th ult at Park Hall, Chesterfield, Mrs. Joseph Shipton, of a daughter.

Stone.—On the 27th ult. at 6, Wellclose-square, Mrs Thomas Stone, of a daughter.

MARRIAGES.

Balshaw, John, eldest [illegible] f W. Balshaw, esq of Hill [illegible] ase, Alt[illegible] to Mary Jane, youngest daughter of the late J. Br[illegible] q solicitor, Liverpool, on the 26th ult at St Mark's Church, Liverpool.

Blake, Mr Alfred G. solicitor, Croydon, to Antoinett[illegible] youngest daughter of Mr Turner, late of Beckenham, Kent, on the 26th ult at St John's Church, Croydon.

Clarke, J. Langton, esq. of the Middle Temple, barrister-at-law, to Miss A. Maria Harrison, of York-terrace, Regent's park, on the 2nd inst. at St. Marylebone Church.

D'Eyn[illegible] ur, Louis Charles, third son of the Right H[illegible] Charles [illegible] on D'Eyncourt, of Bayon's Manor, Lincolnshire, to Sophia, youngest daughter of John Ashton Yates, esq of Bryanston-square, and Dinglehead, Lancashire, on the 31st ult at St Mary's Church Bryanston square.

Giffard, Hardinge Stanl[illegible] sq of the Inner Temple barrister, to Caroline Lo[illegible] sa, da[illegible] ghter of William C[illegible] Humphreys esq of Wood gr[illegible], Middlesex, on the 28th ult at [illegible] ean Old Church.

Gurney, Ru[illegible] one of her Majesty's Counsel, to Emily, daughter of the late Samuel Ellis Batten, of the Grove, H[illegible] the 1st inst at Paddington Church.

Hewitt, Arth[illegible] T[illegible] er, of 6, Nicholas lane, Lombard st and Clapham, solicitor, to Mary Ann Harriet, daughter of Charles Chippindale, esq. of St John's-wood-road, on the 2nd inst at Marylebone Church, by his uncle, the Rev. Augustus Hewat.

DEATHS.

Bradlaugh, Charl[illegible] for upwards of twenty years the faithful and confidential clerk of Messrs Lepard and Co of 9, Cook [illegible] London, solicitors, at Warner place South, Hackney-road, on the 24th ult aged 41.

[illegible] wrson, Barbara Forbes, widow of the late Andrew Davidson, esq advocate, Aberdeen, at her reside[illegible] bourg place, Edinburgh, on the 27th ult. aged 83.

Dent, the Re[illegible] Edward, one of the [illegible] magistrates in the county [illegible] Wiltshire at his re[illegible] e, Lake House, Wilts on th[illegible] 25th ult aged 73.

He[illegible] q late M P fo[illegible] [illegible] of Nottinghamshire, at his residence, Portland-[illegible] ce, Manchester, on the 1st inst aged 80.

[illegible] t, Henry, esq at Kettering, Northamptonshire, on [illegible] th ult age[illegible] 61.

[illegible], Ponsonby, third son of the late Charle[illegible], esq barrister-at-law, suddenly, at h[illegible] mother[illegible] dence, Lydeld Manor-house, Wilts, on the 9th ult [illegible] d 21.

THE GAZETTES.

Bankrupts.

Tuesday, Aug 31.

Batterstay, George, victualler, Turnham-green, Sept 13, at half past twelve, and Oct. 12, at one, Basinghall-st Off. as. groom. Sol. Gammon. Cloak-lane. Petition, Aug 21.

Craven, John, grocer, Birkenhead, Sept 9 and Oct 8, at eleven, Liverpool. Off. as. Bird. Sols. Evans and Son, Liverpool. Petition, Aug 23.

Fitkin, Robert, ironmonger, Park-st. Camden-town, Sept 13, at half-past one, Oct. 12, at two, Basinghall-st Off. as Edwards Sols Surr and Gribble, Lombard-st, and Oxley, Rotherham Petition, Aug 19.

Griffiths, Edwin Henry, merchant, Liverpool and Valparaiso, Sept 13 and Oct. 13, at eleven, Liverpool. Off. as Morgan. Sol. Ewer, Liverpool. Petition, Aug 20.

Hoare, William, bricklayer, Manor-place, Walworth-road, Sept 3, at two, and Oct 15, at eleven, Basinghall-st Off. as Whitmore. Sol Lee, Regent's-square, St. P[illegible] Petition, Aug 20.

Howard and Thomas, millers, Rush[illegible] ll, Stafford-Sept 24 and Oct 5, at half-past eleven, Birmingham. Off as Whitmore [illegible] l. Reece, Birmingham. Aug 27.

[illegible] victualler, Road-side, Mile-end-road, Sept. 13 at tw[illegible] Oct 12, at twelve, Basinghall-st. Off as [illegible] Sol Ro[illegible] Bargs yard chambers Bucklersbury. [illegible] Aug 2[illegible]

Taylor, Henry, [illegible] bbler, Hatton-garden, Sept 13 at [illegible] two, Oct 1[illegible] at eleven, Basinghall-Off as. Gr[illegible] Sol Dig[illegible] Circus-place, Finsbury circus Petition, Aug. 28.

Wale, Frederick, draper, Leicester, Sept. 10 and Oct 4, at ten, Nottingham. [illegible] as Bittleston. Sols Hawker, Leicester, and H[illegible], Birmingham. Petition, Aug. 7.

Gazette, Sept 3.

August, William, builder, Norwich, Sept. 9, at half-past eleven, Oct. 1[illegible], at twelve, Basinghall-st. Com. Fane. Off. as. Cannan. Sols Sole, Turner, and Turner, 68, Aldermanbury, London; and Miller and Son, Norwich. Petition, Aug. 23.

Bowers, John, grocer, Worcester, Sept 14, at half past eleven, and Oct, 9, at half-past ten, Birmingham Com Balguy. Off. as. Bittleston, Sols, Marten, Thomas, and Hollams, Mincing-lane; and Reece, Birmingham. Petition, Dec. 16.

Burnip, Thomas, draper and haberdasher, Dean-st. Newcastle-upon-Tyne, Sept. 16, at eleven, Oct. 14, at one, Newcastle-upon-Tyne. Com. Ellison. Off. as. Baker. Sols. Sale, Worthington, and Shipman, Manchester; and Griffiths and Crighton, Newcastle-upon-Tyne Petition, Aug. 20.

Cole, Joseph, victualler, Robert-st. Limehouse, Sept. 14, at eleven, Oct. 19, at one, Basinghall-st. Com. Holroyd. Off. as. Edwards. Sol. C. Welborne, 17, Duke-st. London-bridge, Southwark. Petition, Aug. 26.

Johnson, George, coal merchant, Poplar, Middlesex, Sept. 13, at eleven, Oct. 19, at twelve, Basinghall-st. Com. Holroyd. Off. as. Edwards. Sols. Booth, 30, Essex st. Strand; and Eaden, jun. Cambridge. Petition, Aug. 16.

Roberts, Thomas, glass bottle maker, Hunslet, Leeds, Sept 14, and Oct 4, at eleven, Leeds. Com Ayrton. Off. as. Hope. Sol. Teale. Leeds. Petition, Aug. 14.

BANKRUPTCIES ANNULLED.

Gazette, Aug. 27.

Pounceby, S stationer, 194, High st. Shadwell, and victualler, Duke of Clarence, Munster-st. Regent's-park, Aug 21.

Tuesday, Aug. 31.

Lindfield, T jun. builder, Stanhope st. Hampstead-road. *Horn*, J. miller, Gedney-hill, Lincolnshire.

Dividends.

INSOLVENTS' ESTATES.

Apply at the Provisional Assignee's Office, Portugal-street, Lincoln's-inn-fields, London, between the hours of eleven and three.

Beverley, B. farmer, 7d - *Bradford*, S. grocer, 1s. 9d — *Clark*, R coal r[illegible] ster, 7s 5d — *Cooper*, R in no business, 20s *D'Arande* G surgeon and apothecary, 2s. 7d. making 1s 7d — *Ellis*, J H boot and shoe maker, 6d — *Ford*, W H victualler, 8½d.— *Judis*, H F deputy comptroller of corn returns, 9½d — *Judd*, H. cabinet maker, &c. 2s. 2½d — *Lacey*, F cheesemonger, 8d — *Lounds*, H. carpenter's assistant, 20s — *Hornsby*, T N builder, &c 4½d *Hewitt*, S I in no business, 1s.— *Nicholson*, E milliner and dressmaker, 11½d — *Norse*, H. carver and gilder, 1s 9d.— *Orford*, H. tole maker and accountant, 8d.— *Stater*, E. schoolmaster, 1s — *Tod*, R. sadler and harness maker, 2s 1d.— *Yeates*, H surveyor of taxes, 5s making 5s. 7d.— *Yeates*, L attorney's clerk, 2s 1d.

Passmore, G tailor, &c. 8d. 11-16ths Apply at the County Court, Honiton — *Store*, J. collector of taxes, &c. first and final, 1s. 1d. Apply at the County Court, Gainsborough

Assignments for the Benefit of Creditors.

Gazette, Aug 24.

Cooke, R draper, Brixham, Devonshire, Aug 6. Trusts. J Howell, St Paul's Church yard, and T Devas, Lawrence lane, warehousemen. Sol. T. Parker, St Paul's Church yard — *Kerr*, M (widow), grocer and draper, Burnham market, Norfolk, July 2. Trusts W. Anderson, leather [illegible] tter, Burnham-market, and R Butcher, grocer, Norwich Sol. F Fox, Norwich.—*Montgomery*, A draper, Kingston upon-Hull, Aug. 11 Trusts D M'Kinna, draper, Kingston upon-Hull, and J. Oakes and T. Dobson, Manchester. Sols. Shackles and Son, Kingston-upon-Hull.—*Thornton*, W. H. grocer and tea-dealer, Gloucester, Aug. 9. Trusts. W. Cullis and W. Roberts, grocers, Gloucester. Sol. G P Wilkes, Gloucester *Witham*, G M. farmer, Sheering, Essex, Aug. 13. Trusts J Stallibrass, farmer, Sheering, and J H. Summers, auctioneer, Bishops Stortford. Sol H Everingham, Harlow — *Young*, T. grocer, Hartlepool, Durham, Aug. 13 Trusts J Anderson, grocer, and J Robinson, provision merchant, Newcastle, and J. Davison, miller, Stranton. Sol F Belk, Hartlepool.

Gazette, Aug 27.

Roberts, H. grocer, Lambeth-walk and Lower-marsh, Lambeth, Aug 25 Trust J Flower, grocer, Fore st. Cripplegate Sols Wellborne and Hopwood, Aldine-chambers, Paternoster-row.

Partnerships Dissolved.

Gazette, Aug. 20.

Batty, G and *Feast*, R. oil, Italian, and pickle warehousemen, Leadenhall-st and Pavement, Moorfields, Aug. 11. Debts paid by Batty — *Beaumont*, W R. and *Shaw*, G coal owners, Mexbrough, June 7. Debts paid by Shaw. —*Chadwick*, G. M, J., W., T, J., and H. manufacturers of flannel and other woollen goods, and merchants, Rochdale, Manchester, Aldermanbury, and Glasgow, as regards W Chadwick, May 1 —*Clarke*, C. and *Pickey*, J journeymen seedsmen and florists, Percy cross Nursery, Walham-green, Fulham, July 29.—*Goodchild*, J. and J. farmers and grazier, Forty-farm, Whembley, Harrow-on-the-Hill, July 26 Debts paid by James Goodchild. *Hodson*, L. V. and I. C[illegible] mists and druggists, Hedge hill, near Liver[illegible] l, Aug 18 Debts paid by J. C. Hodson. -*Hughes*, A. and *Hirst*, J dyers, Lingards, near Huddersfield, Aug 17. Debts paid by Hirst —*Jordan*, J. and *Wilcox*, W. sail makers and ship chandlers, Liverpool, Aug 10.— *Pickup*, H and J. cotton spinners, Spring Mill, Dean, Rossendale, July 31.—*Pitcher*, H. and *Newman*, H juvenile dressmakers, Pantheon Bazaar, Oxford-st. Aug. 20. Debts paid by Pitcher.—*Ramsbottom*, J. and G. cotton spinners and manufacturers, Goodshaw Fold, Higher Booths, Whalley, Aug. 9. Debts paid by G. Ramsbottom —*Sanderson*, M. and W. butchers, Thatto Heath, Sutton, and Rainhill, Aug. 13. Debts paid by M. Sanderson —*Satterthwaite*, R. and *Wright*, H. joiners and builders, Clitheroe, Aug. 18. Debts paid by Satterthwaite. - *Shaw*, T. and *Gault*, H. woollen drapers and tailors, Hulme, Manchester, Aug. 3.—*Stainton*, T. and M. cast-iron and brass founders, and general smiths, South Shields, June 30.—*Stubbs*, J. S. and H. J. L. merchants, woollen drapers, and tailors, Manchester, July 1. Debts paid by H. J. L. Stubbs.—*Weaver*, H. and J. W. tailors and drapers, Manchester, Aug. 13. Debts paid by J. W. Weaver.—*Wright*, W. *Young*, A. W. and *Wright*, G merchants, factors, commission agents, and oil seed crushers, Kingston-upon-Hull, as regards W. Young, June 30.—*Wykes*, G. and J. commission agents and yarn merchants, Leicester, Aug. 16. Debts paid by G. Wykes.

CONTENTS.

THE NEW LAWS OF THE SESSION, 1852.
THE LAW REFORMS.

NOTICE.—A portion of the following important *New Laws of the Session* is already published, and the remainder, including the New Procedure Acts, will be published as soon as possible.

Each will be transmitted by the next post after publication (and, if published, *by return of post*) to those Members of the Profession who will *immediately* forward their orders to the Publisher.

We cannot undertake to return rejected communications. Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith.
No notice can be taken of anonymous communications.

To Readers and Correspondents.

"C." (Manchester) *will doubtless observe, that his reply to A.'s query has been anticipated in our last number, the reference being to the same case.*

"AN ATTENTIVE READER" *complains of the inconvenience sustained by attorneys in entering and leaving the Assize Courts, and suggests that they should "return to their proper costume of gowns and bands," as a remedy, "in which case he thinks they would experience no more difficulty of obtaining entrance and seats than Barristers do."*

"D. H." (Driffield) *will see that we have availed ourselves of a letter shorter than his, but having the same object. Had space permitted, we should have adopted his communication.*

"J. P." (Birmingham).—*We are obliged by the inclosure, which shall have due attention.*

"W. J. L." (Winchester); "T. J."; "W. E." (Newport); "W. C." (Clare); "B. G."; "T. F."; and "A. A." *who respectively answered the Query as to Abstract of Title, are thanked for their communications, and referred to Law Property Journal in this number.*

"AN ARTICLED CLERK." *We recommend the London Law Students' Debating Society.*

THE LAW TIMES.

SATURDAY, SEPTEMBER 11, 1852.

THE NEW VICE-CHANCELLOR.

THE Profession are no longer in doubt on the question who is the successor of the late able and lamented Vice-Chancellor PARKER. Rumour for some time had given the office to Mr. STUART, Q.C. The first intimation of the appointment, however, appeared in a ministerial journal (the *Morning Herald*) in the form of a paragraph, announcing the acceptance of the office by Mr. STUART, and that active measures were in progress at Bury St. Edmunds to secure the seat in that borough, vacated by this appointment, in favour of a supporter of Lord DERBY's administration.

The new Vice-Chancellor was called to the Bar on the 23rd of November, 1819; twenty years later he obtained silk, taking rank after Mr. PURTON COOPER, Q.C. and before Mr. BETHELL, Q.C. He has long enjoyed, as our readers know, a lucrative and extensive practice at the Equity Bar. In politics he has consistently supported the Conservative party. He sat for some years in Parliament for Newark, a borough understood to be in the interest of the Duke of NEWCASTLE. Latterly he has represented Bury St. Edmunds. During the premiership of the late Sir ROBERT PEEL, it was said that Mr. STUART was offered, and declined, the Solicitor-Generalship; and, since the death of Vice-Chancellor PARKER there have not been wanting persons who, estimating Mr. STUART's ambition as soaring only at the highest judicial seat, predicted that if offered he would decline the office we are now authoritatively informed he has accepted.

Immediately on the announcement of this appointment a leading article of a very rancorous spirit appeared in a leading journal, attacking Lord DERBY for so conferring this office, and describing Mr. STUART as an uncompromising, zealous, and bitter opponent of law reform. Nor was this all; for the writer went on to charge him with "indifferent advocacy of the worst side of almost every question with which the Legislature for the last six years has had to deal." We read this with sincere regret. It prejudges and condemns by anticipation an honourable man. Vituperation of such a nature, and coming from such a quarter, though it may subserve the interests of party, and perhaps produce the desired effect upon the general mass of the public, is understood and valued at its true worth by the Profession, who will not censure before they have seen good cause for it, but rather generously and hopefully look for the co-operation of the new Vice-Chancellor in those changes and reforms which are sanctioned and furthered by a ST. LEONARD's and a CRANWORTH.

LAW OF PARTNERSHIP.

WE put a case of continual recurrence, in illustration of our remarks of last week on this subject.

Two persons go into partnership. One has money, the other brains; one simplicity, the other cunning.

By virtue of our law of partnership, the weak man and his money are instantly placed at the absolute mercy of the poor rogue.

Although one has in fact supplied the entire of the funds, and in truth the whole of the stock is his, the Law of Partnership does not merely give to the partner a full *share* of it, but *practically* it enables him to possess himself of *all*. He may sell the goods and pocket the money; he may collect and keep all the debts of the concern; he may refuse to render any account; his *legal* rights are equal, though his *moral* right is none; *law* will give him no redress; his partner may rob him with impunity of the uttermost farthing, and turn him into the streets a beggar, and yet there is no punishment for the rogue, and no remedy for the victim.

Such cases occur every day, as our readers well know. They are continually consulted upon them by the parties thus wronged. They are compelled to send them away with only the poor consolation that, if they choose to go into a Court of Equity, after a few years of litigation, and at the cost of several hundreds of pounds, they might possibly obtain an account from their villainous colleague, perhaps a restoration of their own money, and a release from the fetters of the partnership. This is all that British justice can do for them. Of course this is, in fact, a denial of justice altogether.

Nor will the matter be much mended by the recent reform in the procedure of the Equity Courts. It is impossible that the machinery of a Court that sits in London *can* deal speedily and inexpensively with the settlement of accounts between persons living in the provinces; and speed and cheapness of process are essential to the redress of the grievances we have described. The parties will require to be examined *personally*, and probably many times; their books and papers will be often referred to. Both may have need to produce witnesses. It is, indeed, peculiarly a case for *arbitration*. The remedy is so simple, so obvious, and so easy, that it has but to be named to be approved. The County Courts supply the machinery requisite for the accomplishment of the desired object. They can administer justice in such cases at least as effectually as a Superior Court. These small partnership disputes are seldom, if ever, questions of law, but only of *fact*: an accountant can settle the *figures* between the parties better than any number of lawyers, and the judge will determine the questions that are properly for *judgment*,—that is, such as arise out of the facts and figures; the *terms* upon which the settlement should be made, or the dissolution had. The amount of misery that would thus be spared to the community is incalculable. May we hope that Lord BROUGHAM or Lord CAMPBELL will accept the hints we have given.

as to the existence of a great wrong, and the remedy for it which we have suggested, and that early in the next session the subject may be submitted to Parliament in the practical form of a Bill.

NEW CHANCERY PRACTICE (a)

Shortly after our last summary of the New Chancery Practice was in type, the New General Orders and Rules of the High Court of Chancery applicable to the Act to "Amend the Practice and Course of Proceeding in the High Court of Chancery," were issued from the printers, although they are dated so far back as the 7th of August last, and signed by all the Equity Judges.

A reference to the Law Times, p. 189, will shew how they bear upon that part of the Act which has already been noticed. In future they will be incorporated in our analysis or summary of the Act.

On perusing the General Orders and Rules it seems difficult to find any substantial reason why their contents should not have been included in the Act. For those points which were left in suspense by the Act, and were intended to form the subject-matter of the general orders and rules to be made by the Lord Chancellor, with the advice and assistance of the other Equity Judges, might readily, with the same advice and assistance, have been incorporated in the Act.

That much tautology and confusion would have been thereby avoided is clear—that the whole of the practice would have been thereby much more easily comprehended admits of no doubt necessity alone (the existence of which it difficult to imagine) can alone justify the resort to such an expedient, for which, however, it must be admitted, there are many precedents,—it is, in fact, a proceeding something analogous to what is too common in our statute law—an Act to amend an Act. It may indeed be said that it is advisable that such part of the new practice as consisted of details relating principally to time to be taken in different proceedings in a suit, should be left to be disposed of by general orders and rules as they might from time to time be altered by other general orders and rules, and that it would be objectionable to give the Judges power to repeal parts of an Act of Parliament. That may to a certain extent be so, although we have before seen that that has been done in this Act in not the least objectionable mode (see *ante*,); but all these details might easily have been introduced into the Act after full consideration by the judges; and should it have been deemed advisable, power to alter such details by general Orders, might have been reserved to the Lord Chancellor, with the advice and assistance of a certain number of the other Equity Judges, subject, however, to be rescinded by a resolution of either of the Houses of Parliament.

In the last number we noticed some of the sections of the Act relating to the mode of taking evidence. By the 31st of the new Orders the time within which the plaintiff in any suit commenced by bill is to give the defendant notice of the mode which he desires that the evidence to be adduced in the cause is to be taken, is to be seven days after issue joined therein; and if the plaintiff does not within such time give any such notice, and desires the evidence to be adduced upon affidavit, the plaintiff and defendant respectively are to be at liberty to verify their respective cases by affidavit, unless the defendant, or some, or one of the defendants, if more than one, within fourteen days after the expiration of the said period of seven days, gives notice to the plaintiff, or his solicitor, that he or they desire the evidence to be oral.

By the 33rd section of the Act, if any person produced before the examiner as a witness refuses to be sworn, or to answer any lawful question put to him by the examiner, or by either of the parties, or by his or their counsel, solicitor, or agent, the same course is to be adopted with respect to him, as is now pursued in the case of a witness produced for examination before an examiner of the Court, upon written interrogatories, and refusing to be sworn, or to answer some lawful question. If, however, any witness *demurs*, or *objects* to any question or questions put to him, the question or questions so put, and the *demurrer* or *objection* of the witness thereto, is to be taken down by the examiner, and transmitted by him to the Record-office of the Court, to be there filed and its validity is to be decided by the Court; and the costs of, an ... thereby, are to be in the discretion of the Court. (Sec. 33.) Now, it will be observed, that by the 32nd section of the Act (*ante*, page 187), upon any objection being taken before the examiner to any question, he is not to have power to decide upon its *materiality* or *relevancy*,—he is merely to state his opinion thereon, and to refer to it on the face of the depositions; and by the 33rd section, upon a *demurrer* or *objection* being taken by a witness thereto, it must be taken down and filed by the examiner, and must be decided, not by him, but by the Court. Now, if examinations were conducted by or before the Judge, all objections as to materiality or relevancy, and any demurrer or objection by a witness as to a question, might at once be decided. It is true that the Court in both cases under the present Act can deal with the costs of an unnecessary objection or demurrer. It is, however, very questionable whether that power alone will be sufficient to check the anticipated evil. The examiner, it is to be feared, will be but a poor substitute for the Judge: his powers are, perhaps, necessarily scant; his control over the counsel, solicitors, and parties, will not be like that of a Judge; nor can he possibly convey, by writing those impressions which are made upon his mind by the conduct and demeanour of the witnesses, the observation of which in doubtful cases, where the evidence is conflicting, and all turns upon the credibility of the witnesses, constitutes one of the chief advantages of evidence obtained by the *public* oral examination of witnesses, over that obtained by merely written interrogatories administered, as at present, by an examiner in *secret*. These are additional reasons for having the evidence, as we have before suggested, taken by or before the judge himself. It has, indeed, been suggested by very high authority, "that the business of the Court would be broken in upon by examinations being taken before the Judge; that witnesses would disturb the Court, which is always quietly deciding questions of great amount, and very often of great importance, and that that is the daily habit of the Court." (Chancery Com. Rep. App. A. p. 30.) It is, however, with the greatest deference submitted, that even the quietude of the Court should give place to the convenience of the public, for whose benefit the Court is constituted.

To return to the Act. When the examination of witnesses before any examiner is concluded, the original depositions, authenticated by his signature, are to be transmitted by him to be filed in the Record Office; and any party to the suit may have a copy thereof, or of any part thereof, upon payment for the same, in manner to be provided by any General Order of the Lord Chancellor. (Sec. 34.) This does not appear to be provided for in the Orders at present issued.

It is not to be necessary to sue out any commission for the examination of any witnesses *within the jurisdiction* of the Court. and *any examiner* appointed by any order of the Court is to have the like power of administering oaths as commissioners now have under commissions issued by the Court for the examination of witnesses. (Sec. 35.)

Notwithstanding that the plaintiff or the defendant in any suit in the said Court may have elected that the evidence in the cause should be taken orally, affidavits by particular witnesses, or affidavits to particular facts or circumstances, may, *by consent*, or *by leave of the Court obtained upon notice*, be used on the hearing of any cause, *and such consent*, with the approbation of the Court, may be given by or on the part of *married women or infants, or other persons under disability*. (Sec. 36.) This is a section which will practically be of great use, as the affidavits of certain witnesses may be quite as satisfactory to the parties, or to the Court, as their oral examination.

Every affidavit to be used in the Court is to be divided into paragraphs, to be numbered consecutively, and to be confined, as nearly as may be, to a distinct portion of the subject. (Sec. 37.)

The evidence on both sides in any suit in the said Court, whether taken orally (and including the cross-examination and re-examination of any witness or witnesses), or taken upon affidavit, is to be closed within *nine* weeks after issue joined; the Court, however, is to have power to enlarge the times for receiving evidence, as it may seem fit; and after the time fixed for closing the evidence, no further evidence, whether oral or by affidavit, is to be receivable without special leave of the Court previously obtained for that purpose; and it is provided that any witness who has made an affidavit filed by any party to a cause is to be subject to oral cross-examination within one month after the expiration of such period of nine weeks, by or before an examiner, in the same manner as if the evidence given by him in his affidavit had been given by him orally before the examiner, and after such cross-examination may be re-examined orally by or on the part of the party by whom such affidavit was filed; and such witness is to be bound to attend before such examiner to be so cross-examined and re-examined, upon receiving due and proper notice, and payment of his reasonable expenses, in like manner as if he had been duly served with a writ of subpœna ad testificandum before such examiner; and the expenses attending such cross-examination and re-examination are to be paid by the parties respectively, in like manner as if the witness so to be cross-examined were the witness of the party cross-examining, and are to be deemed costs in the cause of such parties respectively, unless the Court think fit otherwise to direct. (Sec. 38—Order 32.)

The provision in the 38th section, which renders a person who has made an affidavit liable to oral cross-examination and re-examination, in the same way as if he had been orally examined, is a most useful enactment, and will, as observed by the Chancery Commissioners, tend much to improve the character of affidavits.

Upon the hearing of any cause, whether commenced by bill or by claim, power is given to *the Court* to require the production and oral examination before itself of any witness or party in the cause, and to direct the costs thereof to be paid by such of the parties to the suit or in such manner as it may think fit. (Sec. 39.)

Any party in any cause or matter may, by a writ of subpœna ad testificandum or duces tecum, require the attendance of any witness before an examiner of the said court, or before an examiner specially appointed for the purpose, for the purpose of examining such witness orally, and of using his evidence *upon any claim, motion, petition, or other proceeding before* the Court, *in like manner as such witness would be bound to attend and be examined with a view to the hearing of a cause.*

And *any party having made an affidavit* to be used, or which shall be used, on any claim, motion, petition, or other proceeding before the Court, shall be bound, on being served with such writ, to attend before an examiner, *for the purpose of being cross-examined*: but the Court is always to have a discretionary power of acting upon such evidence as may be before it at the time, and of making such interim orders, or otherwise, as may appear necessary to meet the justice of the case. (Sec. 40.)

The following of the new orders, applicable to the preceding sections, may be here conveniently mentioned:—

No affidavit filed, *before issued* joined, in any cause is to be received or receivable at the hearing thereof, unless within *one month after issue joined* notice in writing has been given by the party intending to use the same to the opposite party of his intention in that behalf. (Order 33.)

Any party desiring to cross-examine a witness who has made an affidavit in any cause intended to be used at the hearing thereof, is to give *forty-eight hours' notice* to the party on whose behalf such affidavit was filed, or to the party intending to use the same, of the time and place of such intended cross-examination, in order that such party may, if he shall think fit, be present at such cross-examination. (Order 34.)

The re-examination of any such witness is immediately to follow his cross-examination, and is not to be delayed to a future period. (Order 35.)

Any party in any cause or matter requiring the attendance of any witness before an examiner, for the purpose of his being examined or cross-examined, with a view to his evidence being used upon any claim, motion, petition, or other proceeding before the Court, not being the hearing of the cause, is to give to the opposite party or parties *forty-eight hours'* notice at least of his intention to examine such witness, and of the time and place of such examination, *unless* the Court in any case think fit to dispense with such notice. (Order 36.) And where it is desired to cross-examine any party, whether a party to the cause or matter or not, who has made an affidavit to be used, or which is used on any claim, motion, petition, or other proceeding before the Court, not being the hearing of the cause, the party desiring so to cross-examine such deponent, is to give such notice to the opposite party as is required by order 34, with reference to the cross-examination of a witness who has made an affidavit to be used on the hearing of a cause. (Order 37.)

In cases where it shall be necessary for any party

(a) Continued from p. 1..

to any cause depending in the court to go into evidence *subsequently to the hearing* of such cause, such evidence is to be taken as nearly as may be in the manner provided in the Act, with reference to the taking of evidence with a view to such hearing. (Sec. 41.) And all the before-mentioned orders with reference to the examination, cross-examination, and re-examination of witnesses, is to extend and be applicable to evidence taken in any cause *subsequently* to the hearing thereof. (Order 38.)

In suits in which issue shall have been joined when the orders come into operation (2nd November, 1852), the evidence to be used at the hearing of the cause is to be taken according to the existing practice of the Court, *unless* the parties consent, *or* the Court orders, the same to be taken in the mode prescribed by the Act 15 & 16 Vict. c. 86, and the new Orders. (Order 39.)

NEW COMMON LAW PRACTICE.

XXI. PROCEEDINGS IN EJECTMENT.

The changes which the new Act introduces, with respect to Ejectment, are contained in fifty-four sections. *John Doe* and *Richard Roe*, those heroes of legal fiction, whose reign has lasted for nearly four hundred years, are at last consigned to repose henceforth in the same tomb with fines and recoveries, wager of law, and trial by battle. The "casual ejector," with the motions against him, in which newly-called Barristers were wont to glory; the verbose jargon about Richard Roe ejecting John Doe from two hundred messuages, two hundred tenements, &c. which has so often been used for party purposes to puzzle and alarm the rustic tenant; and the artificial forms that have, it is to be feared, too often been made the working tools of *sharp* practitioners, will next Term be matters only of history. New forms of proceeding are framed, with a view to substitute real for nominal parties, certain for indefinite claims; and the public expect that questions of title to land will no longer be involved in protracted litigation. Whether all these objects will be attained under the present Act experience only will be able to prove.

The present proceeding in Ejectment, by delivering to the tenant of a declaration and notice, being discontinued, a writ is to be issued directed to the persons in possession by name, and generally to all persons entitled to defend the possession of the property claimed, the property claimed being described in the writ with reasonable certainty.

The writ, of which a form is given in the schedule, is required to state the names of all the persons in whom the title is alleged to be, and under a penalty of being turned out of possession on non-compliance: the persons to whom it is directed must in sixteen days appear and make their defence of the whole or a part of the property claimed.

The service of the writ is to be in the manner hitherto practised in the service of an ejectment, personally or by a Judge's order, or in case of a vacant possession, by posting it up.

Any of the persons named as defendants in the writ may appear as of course, but any other person seeking to appear and defend, must do so by leave of the Court or a Judge, on an affidavit shewing that he is in actual possession as landlord or tenant, and if appearing as landlord, the appearance must so stated, and the same defence may then be set up as a landlord appearing under the present system may set up, and no other.

An appearance generally is to be deemed an appearance to defend the whole, but may be limited to a part by a motion describing that part with reasonable certainty; the want of such "reasonable certainty" in the notice in the writ affording ground only for an application to a Judge for better particulars.

The Court or a Judge may, in the case of persons not in possession by themselves or their tenants, strike out their appearances or confine their defences.

In lieu of the present proceeding to obtain judgment against the casual ejector, the plaintiff may, in default of appearance, at once sign judgment and obtain possession of the whole or that portion of the property to which no defence is made.

The *issue* in defended cases is to be made up in a very simple manner, without any pleadings. It is merely to set forth (after a short heading furnished by the Act) the writ, the fact of appearance, the date, and the notice limiting the defence,—a direction to the sheriff to summon a jury being added; and the trial is to take place as in other cases, the particulars of claim and defence being annexed to the record at the trial. The ordinary question arising on this issue is to be, whether the statement in the writ of the title of the claimants is true or false? and if true, then which of the claimants is entitled? and whether to the whole or part? and if to part, which part?—the verdict being given in every case according to the title of the claimant at the date of the writ. By consent of the parties and by leave of a judge, a *special case* may be stated according to the existing practice.

The *trial* in ejectment may be ordered to take place in any county. On nonappearance at the trial, plaintiffs may be nonsuited, or defendants have a verdict and judgment against them without proof of title. The jury may find a special verdict, or either party may tender a bill of Exceptions.

In lieu of the present loose verdict in Ejectment, and the subsequent proceedings for costs, the jury are now required, on a verdict for the plaintiff, to find which part of the property he is entitled to; and judgment may be signed and execution issue for the recovery of the whole or such parts, and costs, either on the fifth day of the ensuing Term, or fourteen days after verdict, or at any earlier period named by the Judge, the claimant, having the option of one writ for securing of possession and costs, or separate writs in his favour, may obtain judgment and execution for his costs within the same time.

In Ejectment by one of several joint tenants, &c. the statute enables the defendant, within four days of appearance, to give notice to the claimant admitting his title as joint tenant, but denying the actual ouster; and on the trial of this issue, the additional fact of an actual ouster is to be tried. The Act provides that, under these circumstances, the fact of a joint tenancy, &c. being proved, the defendant is to be entitled to a verdict, judgment and costs, unless an actual ouster is also proved; but if the defendant is not proved to be a joint tenant, &c. or an actual ouster is made out, the verdict is to be for the claimant.

Actions of Ejectment are not to abate by the death of a claimant or defendant. When the claimant's right survives to other claimants, a suggestion is to be made of the death in the mode provided with respect to other actions, and the survivor may recover the whole. Where it does not survive to the other claimant, and the representatives do not come in, the survivor is only to have a verdict for his particular share. Where the death occurs after verdict, the surviving claimant may have a judgment and execution for the whole, subject to the rights of the representatives of the deceased.

On the death of a sole claimant, or one of several claimants, whose claim does not survive, the representatives may, by leave of the Court or a Judge, enter a suggestion of the death, and their own title by representation, and themselves proceed to verdict, judgment, and execution; but the truth of the suggestion in this case may be disputed and tried.

The action may proceed to verdict, judgment, and execution, notwithstanding the death of one of several defendants defending jointly; and where a sole defendant, or all the defendants die before trial, a time may be appointed by the Court or a Judge for the legal representatives to come in and defend within a specified time, and in default thereof the claimants will have judgment. The defendant's death after verdict is not to render any suggestion or revivor necessary, but judgment and execution may be sued out to recover possession, and proceedings may be taken against the representatives for the costs, as on a judgment debt. Upon the death before trial of a defendant, who defends separately for part, the claimant may either proceed as on the death of a sole defendant, or proceed against the survivor for his particular part; and where the defence is a separate one, but other surviving defendants also defend it, the Court or a Judge may order the person in possession, or the personal representatives, to defend in lieu of the deceased, or the claimant may proceed and recover against the survivors.

The remaining clauses of the Act with respect to proceedings in Ejectment, regulate the practice on discontinuance, default in proceeding to trial, confession by the defendant, error and bail, ejectments for non-payment of rent, for holding over after notice to quit, and by mortgagees. These clauses, twenty-two in number, are reserved for comment in our next number.

THE LEGISLATOR.

NEW STATUTES.

15 VICTORIA, A.D. 1852.

[In this record of Legislation only the Statutes of practical utility are given at length. Of the others an abstract or the titles only are presented.]

CAP. LI.

An Act to extend the Provisions of the Acts for the Commutation of Manorial Rights, and for the gradual Enfranchisement of Lands of Copyhold and Customary Tenure.

(June 30, 1852.)

4 & 5 Vict. c. 35—*6 & 7 Vict. c.* 23—*7 & 8 Vict. c.* 55.—Whereas an Act was passed in the session of Parliament holden in the fourth and fifth years of the reign of her present Majesty Queen Victoria, intituled "An Act for the Commutation of certain Manorial Rights in respect of Lands of Copyhold and Customary Tenure, and in respect of other Lands subject to such rights, and for facilitating the Enfranchisement of such Lands, and for the Improvement of such Tenure:" and whereas the said Act was amended and explained by an Act passed in the session of Parliament holden in the sixth and seventh years of the reign of her present Majesty, and by an Act passed in the session of Parliament holden in the seventh and eighth years of the reign of her present Majesty: and whereas it is expedient to extend the provisions of the said Acts in manner hereinafter provided: may it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. *For effecting enfranchisement after next admittance.* At any time after the next admittance to any lands which shall take place on or after the first day of July, one thousand eight hundred and fifty-three, in consequence of any surrender, bargain and sale, or assurance thereof (except upon or under a mortgage in cases where the mortgagee is not in possession, or in consequence of any descent, gift, or devise, and whether such surrender, bargain and sale, or assurance shall have been made, passed, or executed, or such descent shall happen, or such gift or devise shall take effect before or after that day, it shall be lawful for the tenant so admitted, or for the lord, to require and compel enfranchisement in manner hereinafter mentioned of the lands to which there shall have been such admittance as aforesaid; provided that no such tenant shall be entitled to require such enfranchisement until after payment or tender of the fine or fines and of the fees consequent on such admittance, provided also, that if from any cause such enfranchisement shall not take place until some event shall have happened which may require a second or any subsequent admittance, such second or subsequent admittance shall be made, with all the rights incident thereto, as if this Act had not passed, and it shall be competent for the lord or tenant to require and compel enfranchisement upon or after such second or subsequent admittance in the manner hereby provided for enfranchisement upon the next admittance.

2. *Mode of effecting enfranchisements.*—In every case where, under the powers of this Act, any lord or tenant shall become entitled to require and shall require the enfranchisement of any copyhold lands, he shall give notice in writing, the lord to the tenant, or the tenant to the lord, as the case may be, of his desire that such lands should be enfranchised, and the consideration to be paid to the lord for such enfranchisement shall, unless the parties agree about the same, be ascertained under the direction of the copyhold commissioners, upon application to them in writing in the manner following, viz. by two valuers, one to be appointed by the lord, and the other by the tenant; and such two valuers, before they proceed, shall appoint an umpire, to whom any points in dispute between them shall be referred; and in case the valuers or umpire, as the case may be, shall not make their or his decision, and deliver the particulars thereof in writing to the lord and tenant, or the solicitor or agent of such lord and tenant, within forty-two days after the appointment of such valuers, or after the matter shall have been referred to such umpire, as the case may be, then the commissioners shall act as umpire in fixing the consideration to be paid or rendered to the lord; and in any case where either party shall neglect or refuse for twenty-eight days after being called on so to do to appoint his valuer, the commissioners shall appoint a valuer for him as soon as may be after the expiration of such twenty-eight days; and in any case where any valuers appointed under this Act, either originally or in the place of any other valuer, shall for the space of one week after their appointment be unable to agree in the appointment of such umpire, the commissioners shall appoint such umpire; and such umpire shall give in his award in manner and within the time aforesaid, and if he shall neglect or refuse, or on any account

fail so to do, the commissioners shall act as such umpire as aforesaid: provided always, that it shall be lawful for the lord and tenant to appoint one and the same person as valuer, and in such case the valuations, acts, and award of such single valuer shall have the same effect as the valuations, acts, and award of the valuers or umpire under the provision herein contained: provided also, that it shall be lawful for the said commissioners, on application to them in writing by such lord or tenant, or such umpire as aforesaid, if the said commissioners shall see fit, to extend the time within which a valuer may be appointed, or any decision or award under this Act may be given.

3. *Appointment of valuer not to be revoked without mutual consent, except that commissioners may remove for misconduct, &c.*—The appointment of a valuer by the lord or by the tenant shall not be afterwards revoked, except by the mutual consent of the lord and tenant; provided always, that it shall be lawful for the commissioners at any time, on complaint of either party, to remove any valuer or umpire for misconduct, or for refusal or omission to act.

4. *In case of death, &c. of valuers, others to be appointed.*—Upon the death, incapacity, or refusal to act, or removal, from time to time, of any valuer, another valuer shall, by a time to be fixed for such purpose by the commissioners, in the manner and by the means aforesaid, be appointed in his stead; and in case such death, incapacity, or refusal to act, or removal, shall be of a valuer who may have been chosen by the lord and tenant, then the lord and the tenant may in manner hereinbefore directed or authorised, as regards them respectively, substitute one other person as valuer, or the lord may nominate one valuer on his behalf, and the tenant another on his behalf; and in any such case where either party shall neglect or refuse for twenty-eight days after being called on so to do to appoint his valuer, the commissioner shall appoint a valuer for him as soon as may be after the expiration of such twenty-eight days; and after every or any substitution the new valuer or valuers for the time being may adopt and act upon any valuations and other matters or proceedings which shall have been completed or agreed upon by the valuer or valuers previously actin[g].

5. *Commissioners, &c. may call for and enforce production of books and documents.*—The commissioners, assistant commissioners, and valuers may, by summons under the seal of the commissioners, call for the production, for any of the purposes of this Act, at such time and place as the commissioners shall appoint, of any court rolls or copies of court roll in the possession or power of any lord or tenant, or of the steward of any manor, and may by summons under such seal summon and examine any lord or tenant, or other person, on oath, and administer the oath necessary for that purpose; and every person who shall have been summoned, and to whom a reasonable sum shall have been paid or tendered for his expenses, and who shall without lawful excuse neglect or refuse to attend or to produce any such documents so called for as aforesaid, shall, being convicted thereof before any two justices of the peace for the county wherein such proceedings were held, forfeit the sum of five pounds; and any person who shall wilfully give false evidence in any proceeding under this Act shall be guilty of perjury; provided always, that no lord or tenant so summoned shall be bound to answer any questions as to his title.

6. *Power of entry for purposes of Act.*—It shall be lawful for the commissioners, assistant commissioners, and valuers, and their agents or servants respectively, upon giving reasonable notice to t[he] occupier, to enter upon any of the lands and heredi[ta]taments proposed to be dealt with under the provisions of this Act, and to make all necessary admeasurements, plans, and valuations of the same, without being subject to any action, obstruction, or hinderance, making compensation f[or] all injury, if any, occasioned thereby.

7. *Valuers how to proceed.*—The valuers shall determine the value of the manorial rights and incidents of tenure from which the lands proposed to be dealt with are to be enfranchised, and shall determine the compensation to be received by the lord for such enfranchisement in manner hereinaft[e]r mentioned; that is to say, where such enfranchisement shall have been effected at the instance of the tenant, the compensation shall be a gross sum of money to be paid at the time of the completion of the enfranchisement, or in cases where the compensation exceeds twenty pounds, the same, if the said commissioners shall so direct, and if all persons (if any) who shall have any mortgage, charge, or incumbrance affecting the lands enfranchised, and which shall have been in existence at the time of the passing of this Act, shall consent thereto, may remain as a first charge, under the provisions of this Act, on the lands enfranchised, until the expiration of such time from the day of such completion as the said commissioners shall appoint, but not exceeding in any case ten years; and interest at the rate of four pounds per centum per annum shall be payable thereon, or on such part thereof as shall from time to time remain unpaid, from the time of such completion as aforesaid half-yearly until full payment thereof; and where such enfranchisement shall have been effected at the instance of the lord, the compensation shall be an annual rent-charge to be issuing out of the lands enfranchised: Provided always, that the parties to any enfranchisement under this Act may in any case, with the sanction of the commissioners, agree that the compensation shall be either a gross sum of money to be paid or charged as aforesaid, or a yearly rent-charge, or a conveyance of land to be settled to the same uses as the manor of which the enfranchised lands are holden is settled, as provided in the said recited Acts with respect to enfranchisements effected by virtue thereof; and in every case the valuers shall frame an award, shewing the amount, nature, and particulars of the compensation which shall be in full satisfaction of all manorial rights whatsoever, save as hereinafter mentioned.

8. *Questions of law or fact may be referred to the commissioners—Appeal to be had on matter of law on a case stated—4 & 5 Vict. c. 35, s. 10.*—In case any objection shall be made or question shall arise upon or prior to any admittance or in the course of such valuations, in relation to any alleged custom, or the evidence thereof, or any matter of law or fact material to such valuation or arising on any enfranchisement, the same shall, on the request in writing and at the option of any one of the parties on either side of the matter in difference, be referred to th[e] commissioners or assistant commissioner, who shall inquire into and ascertain the same; and the decision of such commissioners or assistant commissioners shall be final: provided nevertheless, that where any one of the said party or parties dissatisfied with any decision of such commissioners or assistant commissioner on any matter of law shall be desirous to appeal, then the like proceedings may and shall be had for obtaining the decision of one of the Superior Courts of law at Westminster thereon, and such decision shall be binding in like manner as is provided by the said Act of the Session of the fourth and fifth years of her Majesty, chapter thirty-five, where a person is [di]ssatisfied with a decision of such commissioners or an assistant commissioner which involves a point of law only, and the parties in difference are agreed upon the facts relating thereto: provided always, that no such proceedings as aforesaid shall be had unless a request to the commissioners to direct a case to be stated as in the said Act mentioned be made within twenty-eight days after the decision in respect of which the appeal is desired.

9. *Award to be confirmed by the commissioners.*—After all such objections (if made) shall have been heard and determined, then the commissioners shall, if they shall see fit, and after such investigation by themselves or by an assistant commissioner as may seem to them necessary, confirm such award under their hands and seal as aforesaid, and such award so confirmed shall be forthwith registered at the office of the commissioners, and a copy thereof shall be entered on the court rolls of the manor to which the same shall relate, but the same, whether so entered or not, shall, after registration at the office of the said commissioners, be valid.

10. *Charge under Act to be a first charge.*—Any charge under this Act shall be a first charge on such lands, and shall have priority over all mortgages, ch[ar]ges, and incumbrances whatsoever affecting such lands (except tithe commutation rentcharges, and any charges or rentcharges which may have been or [s]hall be charged upon the same lands for the drain[age] thereof by virtue of any of the statutes in that behalf) notwithstanding the actual priority in point of date or anterior title of such mortgages, charges, and incumbrances. Provided always, that, notwithstanding any such charge, any moneys already invested or any moneys previously secured or charged thereon may be continued on the security of the same, notwithstanding the imposition of the said charge under this Act: Provided also, that no such charge shall have priority over any mortgage, charge, or incumbrance which at the time of the passing of this Act may affect the lands enfranchised, without the consent of the persons entitled to such mortgage, charge, or incumbran[ce].

11. *Enfranchisements to be according to form in [sc]hedule.*—Any enfranchisement of lands under this Act or the said recited Act shall be by deed according to the form in the first [s]chedule to this Act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the parties, with the consent of the commissioners, may think fit, and which deed the lord shall be bound to execute within twenty-eight days after the same shall be approved by the commissioners on the same being tendered to him for that purpose; and all enfranchisements so made shall take effect from the time of the execution of such deed by the lord, but not before, and shall be effectual to vest the land thereby conveyed in the tenant or other person to whom the lands shall be conveyed, free from any estates, rights, titles to dower and free bench, interests, incumbrances, claims, or demands affecting the manor of which the same lands are holden: Provided always, that in the meantime and until such enfranchisement shall so take effect, all the rights, remedies, powers, privileges, and conditions of and affecting the lord and tenant respectively in regard to such lands, with all the incidents of tenuure, shall remain and continue unaffected.

12. *Form of charge.*—Every charge under this Act shall be made by a certificate under the hands and seal of the commissioners, to be called a certificate of charge; and such certificate shall specify the whole amount of principal money to be charged on the lands, enfranchised under the powers of this Act, subject to which the land is enfranchised, and may specify any place, to be agreed upon between the parties, as the place of payment of the principal money and interest charged by such certificate; and, if the parties so agree, or the said commissioners shall so direct as aforesaid, such certificate may provide that such principal money, or any part or parts thereof, shall continue upon the security of such certificate for any term or terms of years, period or periods, in such certificate mentioned, not exceeding ten years, and the lands charged thereby may be described by reference to the enfranchisement thereof under the said Acts, or otherwise, as the commissioners may think fit; and such certificate may be in the form set forth in the schedule to this Act, or in such other form as the parties, with the consent of the commissioners, may think proper, and shall be entered on the court rolls of the manor.

13. *Certificates to be transferable by endorsement.*—Such certificate, and the charge thereby made, shall be transferable by endorsement of such certificate, and such endorsement may be in the form set forth in the schedule to this Act, or to the like effect.

14. *Stamp on certificates.*—Every certificate of charge and transfer thereof issued or made under this Act shall be chargeable with the like stamp duties as are chargeable in respect of other mortgages and transfers thereof.

15. *Commissioners may correct any error in award, &c. after notice to parties interested.*—It shall be lawful for the said commissioners to correct and supply any manifest error or omission in any award, or in any deed of enfranchisement or charge under this Act, or any other instrument authorised by this Act to be made or issued by the said commissioners, after such notice to the parties interested as the said commissioners shall deem sufficient; provided that no such error or omission shall be corrected or supplied more than five years after the execution of any such award, deed, or instrument.

16. *Valuer to take particular circumstances of the cases into consideration.*—In making any valuation under this Act, the valuers shall take into account the facilities for improvement, customs of the manor, fines, heriots, reliefs, quit-rents, chief-rents, escheats, forfeitures, and all other incidents whatever of copyhold or customary tenure, and all other circumstances affecting or relating to the land which shall be included in such enfranchisement, and all advantages to arise therefrom, and shall make due allowance for the same.

17. *If consideration not paid, the lord may take possession.*—In case such enfranchisement consideration, or the interest thereon, shall not be paid at the time stipulated or provided for payment thereof respectively, the lord or other person for the time being entitled to the benefit thereof shall become entitled to the rents and profits of the land in respect of which the same enfranchisement consideration or interest shall be due; and it shall be lawful for such lord or other person to proceed to obtain possession of the said land, or the rents and profits thereof, in like manner as if the land had remained unenfranchised, and been lawfully seised into the hands of the lord for some default of a tenant, and all the rights and remedies by the said recited Acts, or any of them, given for the recovery of rent charges, sums of money, and other payments, shall be applicable to the sums of money, interest, and payments payable under this Act, in the same manner as if such consideration had been a consideration for an enfranchisement under the said Acts.

18. *Land so obtained by lord may be let for not exceeding seven years.*—Where any lord or other person for the time being entitled to the benefit of any enfranchisement consideration, or the interest thereon, shall have obtained possession of the land under the powers and provisions of the said recited Acts or this Act, it shall be lawful for the said lord or other person as aforesaid to let such land, or any portion thereof, for any period not exceeding seven years, in possession, at such rent as can be reasonably obtained for the same; and the restitution of such land, on payment or satisfaction of the money due, and of all costs and expenses, shall be subject and without prejudice to any such lease.

19. *Steward's compensation to include preparation of deed of enfranchisement.*—The steward for the time being of any manor of which any lands enfranchised under this Act shall be parcel shall, on every such enfranchisement, be entitled to receive from the tenant, as a compensation for the trouble

of such steward about such enfranchisement, and for the extinguishment of his office with respect to such lands, such a sum as the said commissioners may direct, and, in the absence of such direction on this subject, such a sum as will amount to one set of fees on surrender and admittance for each of the tenements included in such enfranchisement, such fees to be calculated according to the reasonable custom or usage prevalent in the manor whereof such lands shall be parcel, and in case the parties shall differ about the same the amount shall be ascertained by the commissioners; and the steward, in consideration of such compensation, shall prepare and deliver to the tenant a proper deed of enfranchisement, duly executed by the lord, without making any charge for the same, or for completing the enfranchisement, save stamp-duty and parchment: provided always, that if more than one set of fees is demanded by the steward, it shall be lawful for the said commissioners to moderate and tax the amount of such fees to such sum as shall appear to them just and reasonable.

20. *Inspection, &c. of court rolls of the manor.*—At any time after any enfranchisement effected under the said recited Acts or this Act, it shall be lawful for any persons seised of or interested in the lands which have been so enfranchised to have access to and to inspect the court rolls of the manor of which the said lands were holden, and to demand and have copies thereof, on payment of a reasonable sum for the same; and the said commissioners, if they shall think it necessary or expedient, may fix a scale of fees to be payable to the steward or other person having custody of the court rolls for such inspection of the court rolls, and for making all necessary extracts or copies thereof.

(*To be continued.*)

THE MAGISTRATE, AND PAROCHIAL AND MUNICIPAL LAWYER.

NEW ORDERS OF THE POOR LAW BOARD FOR THE REGULATION OF OUT-DOOR RELIEF TO THE POOR.

The Poor-law Board have just issued to certain unions and parishes the following new orders for regulating the administration of relief, and prescribing, among other things, an out-door labour test for able-bodied males. The principle kept in view in these orders, the board state to be that which was established by the 43 Eliz. c. 2, that the disabled poor should be relieved, and the able-bodied be employed:—

Art. 1. Whenever the guardians shall allow relief to any indigent poor person, out of the workhouse, one-third at least of such relief allowed to any person who shall be indigent and helpless from age, sickness, accident, or bodily or mental infirmity, or who shall be a widow having a child or children dependent upon her, incapable of working, and one-half at least of the relief allowed to any able-bodied person, other than such widow as aforesaid, shall be given in articles of food or fuel, or in other articles of absolute necessity.

Art. 2. In any case in which the guardians allow relief for a longer period than one week to an indigent poor person, without requiring that such person shall be received into the workhouse, such relief shall be given or administered weekly.

Art. 3. It shall not be lawful for the guardians or their officers to establish any applicant for relief in trade or business; nor to redeem from pawn for any such applicant any tools, implements, or other articles; nor to purchase and give to such applicant any tools, implements, or other articles, except articles of clothing or bedding, where urgently needed, and such articles as are hereinbefore referred to in Art. 1; nor to pay directly or indirectly the expense of the conveyance of any poor person, unless conveyed under the provisions of some statute, or under an order of justices or other lawful authority, or in conformity with some order or regulation of the Poor-law Commissioners or the Poor-law Board, except in the following cases, viz.—first, the case of a person conveyed to or from a district school, or an hospital, or infirmary, or a lunatic asylum, or a house licensed, or hospital registered for the reception of lunatics. 2. The case of a person conveyed to the workhouse of the union or parish in which such pauper is at the time chargeable. 3. The case of a person conveyed to or from any other workhouse, or other house or establishment for the reception of poor persons, in which for the time being it shall be lawful for the guardians to place such pauper. Nor to pay, wholly or in part, the rent of the house or lodging of any pauper, nor to apply any portion of the relief ordered to be given to any pauper in payment of any such rent; nor to retain any portion of such relief for the purpose of directly or indirectly discharging such rent in full or in part for any such pauper. Nor to give money to or on account of any such applicant for the purpose of effecting any of the objects in this article mentioned. Provided always that nothing in this article contained shall apply to any shelter or temporary lodging procured for a poor person in any case of sudden or urgent necessity or mental imbecility.

Art. 4. No relief shall be given from the poor rates of any of the said parishes, or of any parish comprised in any of the said unions, to any person who does not reside in some place within such parish or union, save and except in the following cases:—1. The case of a person casually within such parish, and destitute. 2. The case of a person requiring relief on account of any sickness, accident, or bodily or mental infirmity, affecting him or any of his family. 3. The case of a widow having a legitimate child dependent on her for support, and no illegitimate child born after the commencement of her widowhood, and who, at the time of her husband's death, was resident with him in some place or other than the parish of her legal settlement, and not situated in the union in which such parish is comprised. 4. The case of a child under the age of sixteen maintained in a workhouse or establishment for the education of poor children not situate within the union or parish. 5. The case of the wife or child residing within such parish or union of some person not residing therein. 6. The case of a person who has been in the receipt of relief from such parish, or from some parish in the union from which he seeks relief, at some time within twelve calendar months next preceding the date of this order.

Art. 5. No relief shall be given to any able-bodied male person while he is employed for wages or other hire or remuneration by any person.

Art. 6. Every able-bodied male person, if relieved out of the workhouse, shall be set to work by the guardians, and be kept employed under their direction and superintendence so long as he continues to receive relief.

Art. 7. Provided that the regulations in Arts. 5 and 6 shall not be imperative in the following cases.—1. The case of a person receiving relief on account of sudden and urgent necessity. 2. The case of a person receiving relief on account of any sickness, accident, or bodily or mental infirmity, affecting such person, or any of his family. 3. The case of a person receiving relief for the purpose of defraying the expenses of the burial of any of his family. 4. The case of a person confined in any gaol or place of safe custody. 5. The case of the wife, child, or children, resident within the parish or union, of a person not residing therein.

Art. 8. The guardians shall, within thirty days after they shall have proceeded to act in execution of Art. 6, report to the Poor-law Board the place or places at which able-bodied male paupers shall be set to work; the sort or sorts of work in which they or any of them shall be employed; the times and mode of work, and the provision made for superintending them while working; and shall forthwith discontinue or alter the same if the Poor-law Board shall so require.

Art. 9. No relief which shall be contrary to any regulation in this order shall be given by way of loan; but any relief which may be given in conformity with the provisions of this order, to or on account of any person to whom relief may be lawfully given above the age of twenty one, or to his wife, or any part of his family, under the ages of sixteen, may, if the guardians shall think fit, be given by way of loan.

Art. 10. Provided always that, in case the guardians of any of the said parishes or unions depart in any particular instance from any of the regulations hereinbefore contained (except those contained in Art. 3), and within fifteen days after such departure report the same, and the grounds thereof, to the Poor-law Board, and the Poor-law Board approve of such departure, then the relief granted in such particular instance shall, if otherwise lawful, not be deemed to be unlawful, or be subject to be disallowed.

Arts. 11, 12, 13, and 14, define the meaning of the words "guardians," "parish," the persons named, and the articles of this order.

The above order applies to 109 unions and parishes, among which may be mentioned:—The City of London, East London, West London, Holborn, Strand, Hackney, Poplar, Paddington, St. George in the East, St. George the Martyr, Southwark, St. Giles's (Camberwell), St. Luke (Chelsea), St. Martin-in-the-Fields, St. Mary Abbott's (Kensington), St. Mary (Lambeth), St. Mary Magdalene (Bermondsey), St. Mary (Rotherhithe), St. Matthew (Bethnal-green), St. Olave, St. Saviour, Whitechapel, Hampstead, Brentford, Fulham, Greenwich, Lewisham, Stepney, Wandsworth, Leeds, Liverpool, Manchester, Salford, West Derby (Liverpool), and other important unions and parishes.

The order is signed John Trollope (president), S. H. Walpole, B. Disraeli, and countersigned Courtney (secretary).

THE MILITIA.

Salop.—A meeting of the deputy-lieutenants and magistrates for the subdivision of Shrewsbury was held on Tuesday. The communications from the Secretary of State, and the regulations of the War-office as to the qualifications of the volunteers, were read and explained. The population of each parish was stated, and a calculation made of the number required in each parish, being about one man out of every 178 of the male population. Mr. Peele, the subdivision clerk, stated that in several places the noblemen and gentlemen employing eligible persons had expressed their willingness to take back their servants or labourers volunteering, after the period of training and exercise, and which had a beneficial effect; and it was hoped that, as far as it conveniently could, the practice should be here adopted; also that it was understood a sum not exceeding 5s. would be allowed by the Government for every fit man brought for enrolment.

Devon.—It does not appear likely that the efforts of the Lord Lieutenant of the county of Devon, the Earl of Fortescue, and his deputy-lieutenants, in respect to promoting enlistments in the militia, are likely to be productive of any practical results. In several parishes in the neighbourhood of Plymouth not a single man can be got to entertain the notion of enlistment. The guardians of the poor of the parishes in the Plympton St. Mary Union have engaged to have displayed the placards relating to the enlistment in their several parishes, but so full are all the young men's hands of employment of one sort and another, that it is hardly to be expected any of them will put down their tools to take up the sword and musket.

Suffolk.—It appears highly probable, notwithstanding the temptation of the 6*l.* bounty, that the number of men required for the East Suffolk regiment of militia will not be raised without recourse to the ballot. At first it was determined to restrict the machinery for enlistment to the various boards of guardians, but under this system there was scarcely a volunteer forthcoming, and it has been found necessary to call in the aid of the staff sergeants and the drum. The sergeants, accompanied by the drummer, beat up for recruits in Ipswich, and by Monday night last they had succeeded in persuading between forty and fifty young fellows, mostly persons without regular work, to offer themselves for enlistment. On Tuesday these parties were submitted to medical inspection, and out of the whole number only thirteen were passed as fit for service. The number to be raised by the month of October is 570, and up to the present time scarcely a single man has been enlisted in the rural districts.

City of London.—During the transaction of the ordinary business on Wednesday at Guildhall, about thirty young and able-bodied men were sworn in for the City of London Militia. The total number required for this district is 600, and from the facility with which volunteers are being obtained, it is anticipated it will not be necessary to put in operation the ballot. Of the number offering themselves for enlistment only one was rejected, and that because he was too drunk to be sworn.

Middlesex.— Since Monday last upwards of seventy young men have been sworn in at Marlborough-street police-court to serve in the East and West Middlesex militia. The term of service is five years, and the whole of them received 10s. each, being the first instalment of the bounty of 6*l*.

Meeting of Middlesex Magistrates.—On Thursday a meeting of the magistracy of this county was held for the despatch of county business. The report of the Committee for Accounts and General Purposes was read. In it they recommended the payment of the coroners' accounts, as follows:—Mr. Baker, 139*l.* 1s. 5d.; Mr. Wakley, 647*l.* 6s. 8d.; Mr. Bedford, 105*l.* 4s. 5d.; and Mr. Higgs, 11*l.* 10s. 6d. Mr. Kemshead, in moving the adoption of this recommendation, said (referring to Mr Wakley's account), that the court most likely would be struck with the very large amount of this account, which was owing to the unusual number of witnesses who had been called to give evidence on these inquiries. This expense was one over which they had no control; they had only power over the coroners' fee, and not over the other charges. Mr. Wilkes made a proposition (which was adopted), to the effect that the subject should be referred to the Committee of Accounts and General Purposes, who should report to the court whether any measures could be adopted to prevent the augmentation of the coroners' charges, and particularly with regard to the payment of witnesses, who appeared to be unusually numerous and expensive. A report from the Committee of Visitors of the Colney Hatch Asylum was read. They recommended the acceptance of a tender for the loan of 3,000*l.* for the purposes of the asylum, and also the exchange of a piece of land. It appeared from a report by Mr. Tite, that that gentleman had surveyed a piece of ground belonging to the asylum, which was situated on the opposite side of the Great Northern Railway, and contained twenty-one acres

of land suited for building purposes. He had also surveyed the piece for which they proposed to exchange it, which consisted of thirty-five acres of meadow land abutting on the asylum, and well suited for agricultural purposes, and he strongly recommended them to effect the exchange. The suggestions of the committee were then adopted. The usual prison reports were read. From them it appeared that the number of prisoners in confinement in the House of Correction, Coldbath-fields, was 1,285; namely, 720 felons, 390 misdemeanants, and 175 vagrants. In the House of Correction, Westminster, 771; namely, 243 males, and 528 females. After some further business, the court adjourned.

COUNTY AND BOROUGH LUNATIC ASYLUMS.—From a Parliamentary paper, just published, it appears that the receipts received on account of the several county and borough lunatic asylums, in the year ending the 31st of December last, in England and Wales, amounted to 236,724*l.* 4s. 2¼d. The expenditure was 207,017*l.* 18s. 6¼d. The balance in the hands of the treasurer at the end of the year was 33,584*l.* 3s. 8½d. and there was due to the treasurer 3,877*l.* 18s.

POOR-RATES.—According to a return to the House of Commons, just printed, the annual value of property assessed to the poor-rate in England and Wales and Ireland in 1842 was 75,891,575*l.*; in 1847, 80,515,413*l.*; and in 1851, 79,280,671*l.* For the poor-rate and county-rate in 1851 there was voted by Parliament, or otherwise paid out of the public funds, the sum of 391,500*l.* The county-rate is paid out of the poor-rate.

JOINT-STOCK COMPANIES' LAW JOURNAL.

A QUESTION not unlike that which was recently litigated in the case of *The Great Central Gas Consumers' Company*, was raised before Vice-Chancellor TURNER in *The Attorney-General and the Sheffield United Gas-light Company* v. *The Sheffield Gas Consumers' Company*, 19 Law T. Rep. 341. That was an application by a gaslight company for an injunction restraining a subsequently formed company "from taking up the pavement, obstructing the public use of the streets, and damaging the pipes of the old company." The new company was projected late in 1851, of which the old company had full notice, and early in 1852 was completely registered. The old company filed a bill for an injunction early in April, but the Court, on the ground that the matter was of a public nature, refused to interfere. On this the old company dismissed their bill, and, having obtained the sanction of the Attorney-General, filed an information and new bill, and then moved for an injunction in the above terms. The Vice-Chancellor was of opinion that the breaking up of the streets amounted to nuisance, but said that, as it was only of a temporary nature, the Court would not interfere. With regard to the question whether the laches of the plaintiffs (who, knowing the intention of the new company so long back as the autumn of 1851, did not interfere until April 1852), disentitled them, the Court would construe that as such an acquiescence as deprived the plaintiffs of all title to relief in equity, and they must, therefore, be remitted to their remedy at law. The Vice-Chancellor said—"Upon the effect of lapse of time, I adopt most fully Lord ELDON's opinion in *The Attorney-General* v. *Cleaver*, 18 Ves. 211, and *The Attorney-General* v. *Johnson*, 2 Wils. 87, where I find his lordship saying that as there has been considerable delay without applying to the Court for protection, the Court would not consider the party entitled to the extraordinary assistance of a Court of Equity, but would leave him to his legal remedy." The Court furthermore here drew a distinction between cases of permanent, and others, such as this, of temporary, mischief. This is a remarkable instance of the danger of slumbering over rights for even a comparatively short space of time in such cases as these. "Whatever," said the Vice-Chancellor, "might have been done at an earlier period, I think lapse of time alone would be a sufficient ground to justify me in declining to exercise the summary interference of the Court.

WINDING UP.

Two cases, under the Winding-up Acts, require a passing notice. The first is that of *Re The Great Western Extension Atmospheric Railway Company and the Winding-up Acts, Ex parte Wryghte*, 19 Law T. Rep. 342, in which an important point as to whether the MASTER has jurisdiction, where a company is ordered to be wound up, to take cognisance of a claim not alleged to be due from the company, qua company, but only from individual members of it. It was held by the LORDS JUSTICES, on appeal from the decision of the MASTER, that the latter had no jurisdiction, under the order for winding up, to take cognisance of such a claim. The other case is that of *The Grand Trunk, Stafford, and Peterborough Railway Company* v. *Brodie*, 19 Law T. Rep. 335, which has been under litigation in one shape or another these seven years. The points raised and decided cannot be more tersely stated than they are given in the head-note, to which reference should be had. With regard to the effect of the order for the prosecution of the suit by the official manager, who, when substituted, under 11 & 12 Vict. c. 45, s. 53, for the original plaintiff, is empowered and directed "to prosecute such suit or proceedings *as if it had been commenced by him*," the VICE-CHANCELLOR thus expressed his opinion of the meaning of those words:—"What the official manager has to make out to entitle him to maintain the suit is, that he had a better right than the original plaintiff. I am of opinion that the official manager had no better right when he became plaintiff than the original plaintiff had; but the moment he took the suit upon himself, he adopted it with all the infirmities attached to it, and by these he must abide. According to the provisions of the section, he was thenceforward to prosecute the suit in the same manner and with the same effect as if it had been commenced by him as plaintiff, under the Act. What he is to prosecute is the original suit, and by that, or by any amendment of it, he must, in my opinion, abide. To construe the words of the section, 'as if the suit had been commenced by him,' as freeing the suit from objections to which it would have been open if carried on by the original plaintiff, would lead to the most palpable injustice. If that is to be the construction put upon these words, defendants might find themselves called upon at the hearing of the cause to encounter equities which they would have had no opportunity of meeting. It would, in my opinion, require the strongest proof of such an intention on the part of the Legislature, to warrant the Court in adopting this construction, as contended for by the official manager. I find nothing in the Act which at all points to the conclusion that the Legislature had any such intention."

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

EVERY successive number of our journal, at this season especially, when space and leisure offer for reporting complex, lengthy, and delicate points, offers cases of interest in Real Property Law. The first we are now called upon to notice is that of *Hughes* v. *Williams*, 19 Law T. Rep. 341, before Lord Chancellor TRURO, on appeal against a decree of Vice-Chancellor WIGRAM. It involved questions of settlement and covenants against incumbrances. A. who was seised in fee of four estates, mortgaged two of them, and afterwards executed a settlement, on his marriage, of the mortgaged estates, and of one of the others, under which he took a life interest, with remainder to his son B. in tail. There was a covenant in the settlement by A. against incumbrances, but there was no recital shewing that there were any incumbrances. A. afterwards mortgaged the fourth estate, and took the benefit of the Insolvent Debtors Act. Soon afterwards a judgment-creditor, being also equitable mortgagee of a mining lease on one of the estates, filed a bill against A.'s assignee and B. the tenant in tail, and against the other incumbrancers, praying a sale in satisfaction of the judgment-debt, and of what the plaintiff might pay in discharge of prior incumbrances, subject to the estate and interest of B. under the settlement. It was held, reversing the decision of the Court below, decreeing foreclosure against B., that the settled estate must be regarded as exonerated from incumbrances as between A. the tenant for life, and B. the tenant in tail, and that the plaintiff was subject to the same equities as A. the settlor, and that the judgment being of a later date than the settlement, B. the tenant in tail, was not affected by such judgment. The Court furthermore held, reversing in like manner the decision in the court below, that more than six years' arrears of interest previous to the filing of the bill, of a legacy made an incumbrance on the estates devised by the testator (who died in 1810) to A. could not be recovered. The next case for review raised a question whether legacy duty was payable under the following circumstances. *Lawrie* v. *Clutton*, 19 Law T. Rep. 343. In that case, a testator gave several specific legacies, and devised real estates to his wife, and real and personal estate to trustees, in trust for his wife, for life, with remainder over. He also gave a legacy of 10,000*l.* for the benefit of his daughter and her children. At his death, large sums of stock stood invested in the joint names of the testator and his wife; but his estate being insufficient to pay certain specialty debts and the legacies, the wife, who survived, and was his executrix, transferred to the trustees of the wife a large portion of the stock standing in the joint names, for the payment of the debts and legacies, including the 10,000*l.* bequeathed to the daughter. The Stamp Office having made a claim for legacy duty on the 10,000*l.* it was held by the MASTER of the ROLLS, that under the statutes 36 Geo. 3, c. 52, and 45 Geo. 3, c. 28, "upon which alone," observed the Court, "any question could arise in this case," no legacy duty was payable. It may be well to note this case in Hughes's, Tilsley's, or any other edition of the Stamp Acts.

The effect of a will upon an equity of redemption in mortgaged hereditaments, was considered by Vice-Chancellor KINDERSLEY in *Plowden* v. *Hyde*, 19 Law T. Rep. 348. In that case a testator, who had the equity of redemption in certain mortgaged hereditaments, made his will devising that estate, and any other which he had contracted to purchase, to trustees upon certain trusts for certain persons, one of whom was his heir-at-law. He subsequently took a reconveyance of the hereditaments in the usual form to exclude the dower of his wife, and with remainders over: the Court held, that those hereditaments of which he had obtained the reconveyance did not pass by the devise in his will. It was furthermore held (to follow the judgment), that to put the heir to his election, the testator's intention to devise or dispose of such estate or interest must clearly appear by his will; and this will not disclosing such intention, the heir-at-law was not to be put to his election between the estates thus descended to him, and a share of the produce of the estates directed to be sold, and to which he had become entitled.

Answers to Queries.

CONVEYANCING COSTS.

YOUR correspondent "W." from Stockton is very shortsighted. He says, "It is customary in the North, in all conveyances, mortgages, &c. to charge 1*l.* per skin for drawing, and 10s. per skin for engrossing, and nothing for fair copy." Together 1*l.* 10s. per skin. Now "a skin" consists of fifteen

folios, which, charged at the rate of 1s. per folio for drawing, 4d. per folio for fair copy draft, and 8d. per folio for engrossing—together 2s. per folio,—the accustomed charge here, and I believe the correct one, amounts to the same sum,—1l. 10s. per skin. The best authority I know is Dax's Book of Costs, edit. 1847, pp. 461, 462. S.

Hull, 3rd Sept. 1852.

ABSTRACT OF TITLE.

Sir,—I beg to refer your correspondent "M." in last week's Law Times, to the case of *Roberts* v. *Wyatt*, 2 Taunt. 278, where it is laid down that "the property in the abstract, after delivery to the purchaser, is vested in him whilst the contract is in *fieri*, that is, while it is going on towards completion, or until it is abandoned or rescinded; from which time either the purchaser is absolutely entitled to the abstract, *or it reverts to the vendor if the contract cannot be completed.*"

I beg also to refer him to *Wood* v. *Court*, Hil. Term 1827, V. C. where it is decided "that the purchaser may, if he please, retain any opinion which he has taken upon the title, or *he may erase any observations or opinions which have been written upon the abstract*, so as to debar the vendor from reaping any advantage from them, unless, as he is entitled to do, he claims from the vendor the expenses of such observations or opinions; in which case it seems but reasonable that the vendor should have that for which he is bound to pay." N.

Cheltenham, Sept. 6, 1852.

[Several other correspondents have answered this query; some referring to the cases here cited, also to 2 Sugd. Vend. and Purch. p. 80 (10th edit.); Atk. Conv. 163; Dart, Vend. and Purch. 130.—Ed. Law T.]

COUNTY COURTS.

ASSISTANT CLERKS.

TO THE EDITOR OF THE LAW TIMES.

Sir,—At this time, when the system and effects of the County Courts, as they are at present constituted, or may be affected by future legislation, are so much under consideration, any communication respecting the details of the work to be done in the office of the assistant clerk (which, it appears to me, has not been by any means fairly estimated by those who have fixed the mode and rates of remuneration) may be serviceable.

I therefore venture to take upon myself to write to you upon this subject, trusting you will think it sufficiently important to warrant the insertion of my communication in your paper, or that you will in some way take notice of our position, and advise us how to act with a view of obtaining its amelioration; as I feel convinced that there are many assistant clerks throughout the country who will concur generally in the remarks I have to make, and who, I hope, will signify their concurrence to you, and thus confirm me in my observations.

I believe that there is now scarcely a district in which the clerk has not found it highly desirable, if not absolutely necessary, from the peculiar nature of the office, to appoint a solicitor rather than a non-professional person to fill the office of assistant clerk. My district is one of the smaller ones, and the principal solicitor in this town having resigned the appointment with some feelings of disgust, I, being a young solicitor wanting employment, was induced to accept the same (thinking it a possible means of introducing other business), the clerk having liberally agreed to allow me the whole of the fees up to a certain amount, which, I fear, there is little chance of their exceeding.

In the first place, I consider that the general system of paying the clerk by a progressive poundage on the amounts for which process is issued, is not founded upon just and fair principles, and however applicable to larger and more important districts (where, perhaps, upon an average taken of the whole clerks' fees, a fair remuneration is found to accrue for each particular proceeding), does not at all afford an adequate return for the work done in smaller districts, particularly agricultural ones, where the County Courts are perhaps equally useful, but are not made available for such large debts as the larger ones; for when it is considered that there is precisely the same amount of labour required, and not much less responsibility incurred, in issuing any process for 10s. as there is for 10l. it seems to me that, according to the present system, the mode of paying the assistant clerk (whose labour and responsibility are so little affected by the difference in the amount for which the process is issued) by fees depending on such amount, is manifestly inapplicable and unjust in its operation in small districts, at any rate. For example, the fee on issuing an execution for 10s. is 2d. and for 10l., 1s. 8d.; the moiety only of which, after deducting at the rate of 5 per cent. for the high bailiff, goes to the clerk; so that the latter gets for entering and issuing an execution in duplicate in the one case, a fraction of 1d. and in the other about 9d. which I fancy the most resolute free-trader would consider as scarcely sufficient in either case. There is, it appears to me, far more responsibility attached to issuing an execution than a summons; while in the latter case there is no poundage below 7d. but in the former it descends to 2d.

The accounts are kept by double entry, and require so much and such strict attention and accuracy, even in a small district, as to demand almost the exclusive application of a person of some intelligence.

Now, Sir, when you consider, in addition to the above, that for the emoluments here stated an assistant clerk, if an attorney, is debarred from practising in the court; is bound to attend personally at the office day after day, all the year round (unless he keep a clerk at a considerable personal expense, when otherwise it would be unnecessary, whose salary the whole clerk's fees would in some districts, as in mine, be scarcely sufficient to pay); and is thus prevented from moving about on his other business: when you consider that for some matters, including intricate monthly, half-yearly, annual, and occasionally other returns, to be made in duplicate, the clerk gets no fees at all, I think you and your readers must conclude that at present the duties of the office of assistant clerk have not been at all fairly and adequately provided for. Every labourer is worthy of his hire; but I am convinced that under the present system the emoluments of many of the County Courts are not enough to repay a sufficiently intelligent and respectable professional or non-professional man for necessarily giving the greater part, if not the whole, of his time and attention to the business of the County Court office. Apologising for the length of this letter,

I am, Sir, yours, &c.

Aug. 31, 1852. An Assistant Clerk.

THE LAWYER.

Summary.

Equity Practice.—A point of practice under the Trustee Act, worthy of note, was settled in *Torbuck* v. *Hewitson* (a lunacy cause), 19 Law T. Rep. 312. In that case the legal estate of a married woman in customary freeholds was vested in a lunatic trustee, in trust for her during the joint lives of herself and husband, for her separate use, without restriction as to alienation or anticipation; remainder, in case she survived her husband, to her absolutely; but in case she died in his lifetime, then to such uses as she should appoint; and no trusts were ordered in default of appointment. She mortgaged the estate by deed duly enrolled under the Fines and Recoveries Act. The Lord Chancellor, on a petition under the Trustee Act, ordered the legal estate to be vested in the mortgagee.

Common Law.—A question whether an apothecary having only an extra-urban license, qualifying him to practise anywhere except in London and ten miles around, could maintain an action for services rendered within that limit, came before Talfourd, J. at Nisi Prius, in *Wadsworth* v. *Collins*, 19 Law T. Rep. 351. The learned Judge reserved the point, but expressed for himself a strong opinion that the apothecary could maintain the action under such circumstances. He also held that proof of the license must be given, it being put in issue by a plea therein pleaded of payment into court as to part, and non-assumpsit as to the residue. In *Coggan* v. *Warwicker*, 19 Law T. Rep. 350, which was an action for use and occupation, the following question of liability was settled, so far as it goes by a Judge at Nisi Prius. In that case A. and B. agreed that A. should occupy B.'s warehouse for five years, at 75l. a year, and as much more as half the profits made by A.; and that an agreement in writing should be drawn up. A. was let into possession without any agreement, and with a view to the intended agreement; but when the written agreement was drawn up, he refused to sign it. Held, by Erle, J. that A. was liable for the time during which he had occupied the warehouse. In *Nicholls and Wife* v. *Brookes*, 19 Law T. Rep. 351, an opinion was expressed by Williams, J. at Nisi Prius, that in an action by husband and wife, the wife is a competent witness where she is the meritorious cause of action. This was, however, objected to, and his lordship noted the objection.

PARTNERSHIPS.

TO THE EDITOR OF THE LAW TIMES.

Sir,—Will you permit me to ask for information upon the following point, which some of your readers may be disposed to give? In cases of partnership between solicitors, the senior partner ofen stipulates for an annuity to be paid to his widow for a certain number of years. I wish to know how the amount and the number of years are usually determined. For instance, supposing the senior partner, at his death, were drawing out as his share of the business 1,000l. per annum. Then if the whole of the business producing this sum continued to the survivor, what would it be equitable for him to pay in the shape of annuity to the widow, and for what length of time? And if the partnership were to be for, say ten years, should not the amount of the annuity vary according to the time of the death of the senior partner, at the beginning or towards the end of such ten years? A third point affecting the question is, as business often dies with the partner who brought it, should not the amount and duration of the annuity be made contingent upon the amount of the senior partner's business surviving and continuing with the survivor? Information from any of your readers on these three points will much oblige

Manchester, Sept. 8, 1852. X. A. C.

"ARTICLED CLERKS' CORRESPONDING SOCIETY."

TO THE EDITOR OF THE LAW TIMES.

Sir,—The proposition of "A Law Student," in No. 491 of your valuable journal, is one that in my opinion ought to be universally responded to by all the articled clerks in this country; and I must say that if such a society were established, and all would co-operate with good will, it would be greatly beneficial to its members. We have a society of law students here, of which I act as secretary; and I am confident that it effects much good, giving a stimulus to all its members to study more earnestly than they otherwise would. I hope many articled clerks will respond to this call, and that ere long I shall see a further announcement in your columns that such a society is in the act of formation.

I am, Sir, yours, &c.

Another Law Student.

Norwich, Sept. 3, 1852.

[A communication expressing a similar wish has reached us from Mr. David Hornby, of Driffield.—Ed. L. T.]

ASSURANCE CHRONICLE.

Equitable Assurance Company.—A general quarterly court of the insurers was held on Thursday, at the offices, New Bridge-street, Blackfriars. The actuary, A. Morgan, esq. read the general cash account for the midsummer quarter, 1852, which exhibited the following receipts:—On new policies, 1,063l. 15s.; for entrance money, policy money, extra premiums, commuted premiums, 1,078l. 6s.; annual premiums on old assurances, 57,870l. 8s.; forfeits, 36l.; dividends on stock, 33,000l.; interest on mortgages, 27,508l. 19s. 7d.; making a total of 120,557l 8s. 7d. Produce of stock sold, 137,987l. 10s. and 79,150l. with the balance of last quarter of 27,551l. 7s. 1d. made a total of receipts of 365,549l. 5s. 8d. The "expenditure" was—Claims paid on 51 policies on 13 lives, 77,725l. 17s.; additions to those claims, 85,803l. 19s; annuities to claimants, &c. 139l. 4s.; income-tax on stock and mortgages, 1,761l. 16s. 9d.; returns of premiums and forfeits, 176l. 1s. The disbursements of management, including income-tax on salaries, directors' allowances, auditors, &c. were 3,188l. 10s. 6d. making a total payment of 169,693l. 8s. 3d. Cash paid for seven policies on five lives surrendered, 10,122l. 3s.; for additions surrendered, 6,233l. 9s.; invested on mortgages, 143,270l.; balance on the 30th of June, 36,225l. 5s. 5d.; making the total of 365,549l. 5s. 8d. The property in hand consisted of 3,955,000l. in the Three per Cents., 10,000l. in Exchequer Bills; out on mortgage, 4,022,114l. 18s. 8d.: making nearly eight millions. The chairman having explained the various items in the account, Mr. Woollaston suggested some steps for the further increase of the business, which was supported by Sir A. Grant, and the chairman promised that the suggestion should be considered. After further explanations of items, in which Mr. Beddome and other holders took part, and with which all present seemed satisfied, the meeting broke up.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

Mr. John Stuart, Q.C. is appointed a Vice-Chancellor in the room of Sir James Parker.

Lord Malmesbury has appointed Mr. Henry Byron her Majesty's Vice-Consul at Hayti. Mr. Byron is the Secretary to the Great Protection to Native Industry Society in Bond-street.

The Queen has been pleased to approve of Mr. J. G. Dalgety as Consul at Melbourne for his Majesty the King of the Belgians; also been pleased to approve of Senor Antonio de Almeida Campos as Consul at Liverpool for her Majesty the Queen of Portugal and the Algarves.

COMMISSION SIGNED BY THE LORD LIEUTENANT OF THE COUNTY PALATINE OF LANCASTER.—John Rigby, esq. to be Deputy-Lieutenant.

COMMISSIONS SIGNED BY THE LORD LIEUTENANT OF THE COUNTY OF SOUTHAMPTON.—The Hon. Ralph Heneage Dutton; Sir George Elliott Meyrick Tapps Gervis, bart.; Sir John Rivett Carnac, bart.; Charles William Beauclerk, esq.; John Beardmore, esq.; Albert John Hambrough, esq.; Francis Jervoise Ellis Jervoise, esq.; Edward St. John Mildmay, esq.; John Shelly, esq.; Edward Hulse, esq.; John Richard Beste, esq. to be Deputy-Lieutenants.

COMMISSIONS SIGNED BY THE LORD-LIEUTENANT OF THE COUNTY OF NORTHUMBERLAND.—The Right Hon. Sir George Grey, bart. the Hon. Algernon George Percy (commonly called Lord Lovaine); the Hon. Charles Bennett (commonly called Lord Ossulston); Thomas Andersen, esq.; Wentworth Blackett Beaumont, esq.; George Burdon, esq.; William Henry Charlton, esq; Edward John Clavering, esq.; John Errington, esq; Rowland Errington, esq; Charles Bacon Grey, esq., George Annett Grey, esq.; Thomas James, esq.; Henry George Liddell, esq; Edward Riddell, esq.; Walter Selby, esq; Prideaux Selby, esq.; Sir Walter Calverley Trevelyan, bart.; Samuel Edward Widdington, esq; William Wharton Burdon, esq.; Bryan Burrell, esq, William Linskill, esq; Henry Silvertop, esq; John Cookson, esq.; William Gray, esq.; Charles Atticus Monck, esq.; and Sir Matthew White Ridley, bart to be Deputy-Lieutenants.

COMMISSIONS SIGNED BY THE LORD-LIEUTENANT OF THE COUNTY PALATINE OF LANCASTER.—Humphrey de Trafford, esq.; Ralph Anthony Thicknesse, esq.; James Pilkington, esq.; Jonathan Peel, esq.; Benjamin Heywood Jones, esq; Charles Roger Jacson, esq.; Gilbert Greenall, esq; Montague Ainslie, esq.; Edward Every Clayton, esq; William James Garnett, esq.; Thomas Littledale, esq.; the Hon James Lindsay; John Smith Entwistle, esq.; Robert Henry Norreys, esq.; and John Frederic Foster, esq. to be Deputy-Lieutenants.

COMMISSIONS SIGNED BY THE LORD LIEUTENANT OF THE COUNTY OF SOMERSET.—Richard King Meade King, esq; Sir Alexander Bateman Periam Acland Hood, bart.; Philip Pleydell Bouverie, esq., Philip Broadmead, esq; George Bullock, esq.; John Halliday, esq.; Francis Fownes Luttrell, esq.; Henry Gorges Moysey, esq.; Francis Wheat Newton, esq.; Frederick John William, Earl of Cavan, to be Deputy-Lieutenants.

COMMISSIONS SIGNED BY THE LORD LIEUTENANT OF THE COUNTY OF KENT.—Charles Henry Tyler, esq.; William Wriothesley Turner Baldwin, esq; Matthew Bell, esq; Henry Boys, esq; Edmund Barrell Faunce, esq., John Tracey William French, esq.; Edward Foss, esq.; John Baker Sladen, esq.; Sir John William Lubbock, bart.; Sir John Maxwell Tylden, knt., James Chapman, esq D.C.L., Charles Wykeham Martin, esq; John Malcolm, esq.; William Augustus Munn, esq, Edward Hugessen Knatchbull Hugessen, esq; William Woodgate, esq, Sir Walter Charles James, bart.; George Warde Norman, esq. to be Deputy-Lieutenants.

COMMISSIONS SIGNED BY THE LORD LIEUTENANT OF THE NORTH RIDING OF YORKSHIRE.—Thomas William Waldy, esq; Richard Bassett Wilson, esq.; William Thomas Hustler, esq to be Deputy Lieutenants.

COMMISSION SIGNED BY THE LORD LIEUTENANT OF THE COUNTY OF PEMBROKE.—James Robe Bryant, esq. to be Deputy-Lieutenant.

THE GAZETTES.

Bankrupts.

Gazette, Sept [illegible]

[illegible] st [illegible] worker, Deptford, Kent, [illegible] all, Bermondsey, and tobacconist, [illegible] St Olave, Southwark, Sept 16, at [illegible] twelve, Basinghall-st. Off. as. Cannan [illegible] John [illegible] Bedford-row. Petition, Aug [illegible]

FOWLER, [illegible] Bristol, and Wedmore-upon [illegible] Sept [illegible] and Oct [illegible], at eleven, [illegible] Off. as. Hutton [illegible] Conneh and Parnell, Bristol. Petition, Aug. 21.

SPARKS, DANIEL, surgeon, Cirencester, Gloucestershire, Sept. 21 and Oct 19, at eleven, Bristol. Off. as. Miller. Sols Mallings and Co. Cirencester; and Bevan, Bristol. Petition, Sept 4.

WARNER, SAMUEL, plasterer, Blackheath, Kent, Sept. 17, at one, Oct 22, at half-past eleven, Basinghall-st. Off. as Whitmore Sols. Messrs. Linklater, Sise-lane, Bucklersbury. Petition, Aug. 27.

Gazette, Sept. 10.

DAVEY, CHARLES, linendraper, Brixton, Surrey, Sept. 24, at one, and Oct. 19, at eleven, Basinghall-street. Com. Holroyd. Off. as. Edwards. Sols. Dickson and Overbury, Frederick's-place, Old Jewry. Petition, Aug 31.

HARPER, JAMES, hotel-keeper and victualler, Albion Hotel, Southgate-street, Gloucester, Sept. 24 and Oct. 13, at eleven, Bristol. Com Stephen. Off. as. Acraman. Sol. Bevan, Small-st. Bristol. Petition, Aug. 31.

LEE, JOSEPH, grocer, Dewsbury, Yorkshire, Sept. 21 and Oct 18, at eleven, Leeds. Com. Ayrton. Off as. Hope. Sols Evans and Son, Liverpool, and Atkinson, Dibb, and Atkinson, Leeds. Petition, Aug. 30.

MEYER, ANTHONY, merchant and commission agent, Throgmorton-street, Sept 21, at twelve, and Oct 22, at one, Basinghall street. Com. Fane. Off as Cannan. Sols. Reed, Langford, and Marsden, Friday-street, Cheapside. Petition, Aug 31.

PRATT, SAMUEL LUKE, upholsterer, New Bond-st. Sept. 23, at twelve, Nov. 13, at eleven, Basinghall-st Com. Goulburn. Off as Pennell. Sols. Carlon and Haynes, Palace-chambers, St. James-st.

BANKRUPTCIES ANNULLED.

Gazette, Sept. 7.

Crabtree, W. and *Shepherd*, S. ironfounders, Bradford, Yorkshire, Aug 26.

Gazette, Sept 10.

Lansley, David, livery-stable keeper, Monmouth-st. Bath, Sept 7.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Ruffords and *Wragge*, bankers, first sep. [illegible] P. Rufford, [illegible], first sep of C Wragge, 8s. Whitmore, Birmingham

INSOLVENTS' ESTATES

Austin, W C out of business, 2s 1d —*Carey*, J wheelwright 8½d —*Coleman*, W stock and shirt maker, 3s 7½d. —*Hay*, F W clerk in the War Office, 20s —*Howling*, R. china and glass dealer, 4s 1½d.

Berrington, T clerk in the mineral department, first, 9s 6d Apply to B Frear, Derby —*Davis*, J 7s Apply to R Shaw, clerk, Appleby —*Wharton*, R 3s 1½d Apply to R. Shaw, clerk, Appleby.

Assignments for the Benefit of Creditors.

Gazette, Aug 31

Plea, S jun button manufacturer, Great Hampton-st Birmingham, Aug 29 Trusts, T H Hasluck, gentleman, and C Rosley, button manufacturer, both of Birmingham. Sol T R F Hodgson Birmingham *Tarish*, H [illegible] facturer of leather goods, Hatton garden, Aug 25 Trusts T J Smith, wholesale stationer, Queen-st Cheapside, and J Bromley, commission agent, Queen st Cheapside Sol J J Field Russell-square —*Turner*, H farmer, Twickenham-common, Aug 24 Trust J. May, gentleman, Twickenham common. Sol. H. Farnell, Isleworth.

Gazette Sept 3.

Bright, F. licensed victualler, Old Cheshire Cheese, Addle-st Wood st City, Aug 11 Trust R Cunningham, wine and spirit merchant, Arthur st-west Sol R Plews, Old Jewry chambers *Hodges*, W. H and J C. warehousemen, Little Tower st, Aug 9 Trust H. Hewetson, warehouseman, Wood st Sols Lawrence, Plews, and Boyer, of Old Jewry chambers *Simmon*, J. draper and tallyman, St George's circus, Surrey, July 24 Trusts W White, Cheapside and H Minchener, Lawrence-lane, warehousemen. Sols Ashurst and Son, Old Jewry.

Partnerships Dissolved.

Gazette, Aug 24.

[illegible], R and *Barrett*, J tanners and curriers, Far[illegible] Aug [illegible] *West*, A and J boot and shoe makers, Woolwich July 20 *Campbell*, J *Bowman*, C and *Ran[illegible]*, [illegible] linen and woollen drapers, Louth, Aug. 1.—*Clarke*, J and *Willis*, W. coffee merchants and agri[illegible] agents, Lime st Aug 21 Debts paid by W[illegible] *Cunningham*, J and *Belcher*, [illegible] coach and cart wheelwright, Portland, Aug 20 *Cross*, H and *Wilkin* C G florists and rose cultivator, Moorend, near Ha[illegible]brook Margaretfield, Jan 1—*Guinness*, B and J watchmakers, jewellers, and dealers in foreign fancy goods Brighton Debts paid by B. Guinness—*Hardman*, W and *Hil[illegible]*, [illegible] founders, Great Bolton, Aug 20—*Horsey*, W and A [illegible], North-st Peckham, Aug 21 *Ingham*, J and *Waters*, J rag dealers Dewsbury, April [illegible] *Kennie*, J and *Crook*, T. paper manufacturers, Little Lever-with-Farnworth and Little Bolton, Aug 20—*N[illegible]*, W W and *Thackray*, H provision merchants [illegible] Torquay and Newton Abbot, Aug. 14—*P[illegible]* and *Everett*, F W S hair cutters, wig [illegible] perfumers, Fenchurch [illegible] Aug 17—*Payne*, M A, F, and J E [illegible] coach lace manufacturers, Great Queen [illegible] Jan [illegible] Debts paid by P Payne—*Potter*, J [illegible] and *Potter*, W [illegible] Leeds, Aug 21 Debts paid by Potter and Potter *S[illegible]* J and *Lush*, J [illegible] and corn dealers, Warminster, Aug 16—[illegible], D and J. [illegible] ter, Aug 1—*Pl[illegible]*, J and *Jolly*, S A [illegible], haberdashers, hosiers, glovers, and linen drapers Exmouth-st Clerkenwell, Aug 20—*Thomas*, J, E, and R M printers and booksellers [illegible], Aug 13 Debts paid by [illegible]—*Wainwright*, W and *Massey*, E quarrymen and dealers [illegible]stone, Penistone and Manchester, Aug. 20. Debts paid by Massey.

Gazette, Aug 27.

[illegible]ams, T and *Jordan*, H victuallers, Parker-st. Queen-st. St Giles's, Aug. 24. Debts paid by Jordan—*Ambridge*, R H and *Andrews*, A corn and coal merchants, St John-street, West Smithfield, Aug 24. Debts paid by Ambridge.—*Amos*, J. and *Featherstone*, J. coopers and vat and back makers, Cathay, Bristol, Aug. 24. Debts paid by Amos.—*Berton*, N. and *Lonsdale*, E. tailors, Princes-st. Hanover-square, Aug. 26.—*Burt*, W. M. and *Heap*, J. commission agents, Manchester, Aug. 24. Debts paid by Burt.—*Cockett*, F. and *Bull*, F. warehousemen and manufacturers of fancy goods, Aldermanbury, Aug. 20. Debts paid by Cockett.—*Coleman*, J. and *Tagg*, W. curriers and leather-sellers, Oxford, Aug. 23.—*Cooper*, E. B. *Fitton*, H. W. and *Maclean*, M. merchants and commission agents, Billiter-square, June 25, 1851.—*Cross*, J. and *Plant*, S. blacksmiths, Wolverhampton, Aug. 13. Debts paid by Plant—*Dixon*, J. and *Hunter*, T. joiners and builders, Toxteth-park, near Liverpool, June 1.—*Dodge*, N S and *Morey*, C. workers of patents and general agents, Regent-st. July 21.—*Edwards*, C. and *Spurgin*, J. tailors and outfitters, New Sarum, Aug. 25.—*Gallard*, J. R. and W. farmers, millers, and corn dealers, Greens Norton, Aug. 24—*Hutt*, J. *Arlidge*, J. *Randle*, T. *Budworth*, J and *Sabell*, E. ribbon and trimming manufacturers, Coventry, July 9.—*Ingledew*, J. *Winden*, T. and *Streeter*, J. millers, Tower-mill, Brighton, July 15.—*Jones*, B. and *Evans*, J. printers and newspaper proprietors, Carmarthen, Aug 20—*Kelsall*, R, J. and H. and *Heap*, J. flannel manufacturers, Rochdale, Aug 21—*Kidd*, R. and *Follett*, R. sawyers and millers, Bristol, June 30. Debts paid by Kidd.—*King*, W. A. and *Greenway*, T. wine merchants, Fenchurch-st. Aug. 25 Debts paid by Greenway.—*Laing*, W. G. and J. and *Todd*, H. W. drapers, Birmingham, as regards J. Laing, Aug. 23—*Morgan*, D. and D. T. Broad-st. and *Clarke*, F. and A. F. Archangel, in Russia, merchants, as regards D. Morgan, July 1.—*Nisbett*, J. *Murray*, J. *Taylor*, T. and *Watson*, J. booksellers and publishers, Berners-st Oxford-st as respects Nisbet, June 30.—*Parkin*, T. and *Shepherdson*, T. joiners, Kingston-upon-Hull, Aug. 24. Debts paid by Parkin.—*Pratt*, D and *Joysey*, T. H. metal rollers, Nechells, Aston-near-Birmingham, Aug. 23. Debts paid by Pratt.—*Ramsden*, G. and *Knowles*, J. P. corn factors, Halifax, Aug. 25. Debts paid by Knowles.—*Smith*, B, J. F, and T. S. wine and spirit merchants and brewers of ale and porter, Manchester and Ardwick, as regards J F. Smith, May 1. Debts paid by B. and T. S. Smith—*Strachan*, G. and *Roan*, W warehousemen, Friday-st Aug 23. Debts paid by Strachan.—*Tyler*, T. and *Goodfellow*, G. Manchester warehousemen, Wood-st. Cheapside, Aug 23 Debts paid by Tyler—*Webb*, J. and *Radcliffe*, E cutters and glaziers, Eversholt st. St. Pancras, Aug 24—*Wren*, T. and *Gray*, C window-glass surveyors, auctioneers, &c. Conduit st. Regent-st. Aug. 24.

Gazette, Aug 31.

Alderman, J. and *Fisher*, A. wholesale milliners and artificial flower makers, Swinton-st Gray's inn-road, Aug 28—*Batters*, G. and *Clements*, R St John's-wharf, Westminster, Aug 27. Debts paid by Clements—*Brook*, B. and *Snell*, E. builders, Belgrave-road, St John's-wood, July 7—*Clark*, A. and B. and *Merryweather*, J dentists, Lower Brook-st. as relates to B Clark, Aug 21—*Eady*, W, H J, and T. W. goldsmiths, Red Lion-st. Clerkenwell, Aug 28. Debts paid by H. J and T. W. Eady.—*Faulkner*, D and *Renshaw*, G Y. stock and share brokers, Manchester, Sept. 30—*Good*, J. H. M. and *Clark*, P. C. ironmongers, Manchester, Aug. 26. Debts paid by Good.—*Hardey*, H. and *Dakin*, J. corn merchants, Runcorn, Aug 25 *Hood*, S and W. blacksmiths, New Alresford, Aug 13—*Holroyd*, C and *Simpson*, J jun woollen manufacturers, Rochdale, Aug. 26. Debts paid by Simpson.—*James*, P and *Skilbeck*, R. whitesmiths and bellhangers, Leeds, Aug 27—*Jones*, S sen and jun. and C. manufacturers of sealing wax, wafers, and stationers, Talbot-court, Gracechurch st Aug. 28. Debts paid by S Jones, jun. and E. Jones.—*Knight*, J., W. and J. B. soap and candle manufacturers, &c. York-place, Old Gravel-lane, as regards J. Knight, sen. Aug. 28.—*Little*, J. and *Norris*, G. coachmakers, High-st. Camberwell, and Water-lane, Dulwich, Aug. 24.—*Martin*, J and *Benussi*, J pawnbrokers and outfitters, Liverpool, Aug. 26 Debts paid by Benussi—*Miles*, D. and *Bridger*, C. carpenters and builders, &c Worthing, Aug. 25 Debts paid by Miles.—*Pridmore*, E and C. milliners and dressmakers, Rugby, Aug 23. Debts paid by C. Pridmore.—*Savery*, C *Clark*, E *Fussell*, J. F and *Savery*, F. attorneys and solicitors, Bristol, as regards F Savery, Aug 27.—*Shoobert*, W. H., C and G E wine coopers, Two Swan-yard, City, Aug 28, Debts paid by W H. and C Shoobert—*Smith*, H *Speight*, J and *Jones*, H. brass founders, Sheffield, as regards Jones, Aug 25. Debts paid by Smith and Speight.—*Thompson*, J, R W, L, G. and E. grocers, meal and flour dealers, provision dealers, and farmers, Blackburn, Over Darwen, and Hoghton, April 1.

Gazette, Sept. 3.

Burrin T W and *Nalder*, H H. wine and spirit merchants, Martin's-lane, Cannon-st Sept 3—*Coward*, J. and *Lesh*, G. C wholesale and retail grocers, Barrows, Dalford, Aug. 23 Debts paid by Coward.—*Davies*, J. and *Sayer*, W. cabinet makers and upholsterers, Cheltenham, June 25—*Dawson*, J. and *Waller*, R. corn millers and dealers, Dalton-mill, Dalton, March 6.—*Deakin*, G. and *Cartwright*, C H glass bottle manufacturers, Bank Quay, Warrington, Aug. 12.—*Frankell*, H. and *Golberg*, S. pawnbrokers, Swansea, Aug. 31. Debts paid by Frankell.—*Huschke*, A H. and *Bell*, J. T. merchants, Bombay and Manchester, June 30.—*Knight*, J, W, J. B, E, A. and A. soap and candle manufacturers, York-place, Old Gravel-lane, as regards J. Knight, Aug. 28. Debts paid by remaining partners—*Lansdale*, R. *Haslehan*, G and *Carr*, J. smallware manufacturers and merchants, Manchester, as regards Lansdale, Sept. 1. Debts paid by remaining partners—*Mewburn*, W. and *Blakey*, J stock and sharebrokers, Manchester, at Halifax, Aug. 30. Debts paid by Mewburn—*Nolloth*, G. and S. shoe factors, Tyssen-st. Church-st Shoreditch, Sept. 1—*Pilling*, J and *Aked*, J. reed makers, Bacup, Aug. 28. Debts paid by Pilling—*Parker*, J G. and E. merchants, Sheffield, Sept. 1. Debts paid by J. G. Parker.—*Richardson*, J. *Hawkin*, J. and *Dennis*, G. wholesale druggists, York, as regards Hawkin, Sept. 1.—*Smith*, R and *Wittleton*, T. farmers, horse-dealers, and brickmakers, Aylsham, Aug. 11.—*Smith*, T. and *Norris*, S C. cocoa and chocolate manufacturers, Upper Whitecross-st Aug. 30. Debts paid by Norris.—*Wordsworth*, J T. *Richardson*, J. W. H. *Whitehead*, J. and *Pollard*, J Holbeck, Leeds, as regards Richardson, Aug 4 Debts paid by remaining partners—*Waring*, W. and R J. chemists and druggists, Crown st. Walworth, Aug. 26. Debts paid by W. Waring—*Wilson*, C. and *Hands*, J. coal dealers, Shipston-on-Stour, Aug. 27.

CONTENTS.

We cannot undertake to return rejected communications.

Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith.

No notice can be taken of anonymous communications.

To Readers and Correspondents.

"J. T. R."—*We are much obliged by the communication, which is valuable, and we have therefore availed ourselves of it.*

"A LAW STUDENT" (Norwich) *should have given us the name of the society to which he refers.*

"H." (Liverpool).—*The case to which our correspondent alludes is, we believe,* Hallett v. Chamberlayn, 12 Law T. 272.

"ONE OF YOUR CONVEYANCING READERS" *will have observed, ere this, that the question was settled by similar references in our last number.*

"AN ATTORNEY" (Birmingham).—*Prior to the receipt of our correspondent's communication, a letter objecting to the report in the* Law Journal (Norman v. Marchant) *was in type. We refer our correspondent to the remarks appended to that letter.*

"C. W. A." (Poole).—*We are unable to give the required information.*

THE LAW TIMES.

SATURDAY, SEPTEMBER 18, 1852.

MORTGAGE DEBENTURES.

THE plan we have suggested for relieving the landed interest by facilitating mortgages and making them more marketable, is attracting some notice without as well as within the Profession. An influential contemporary among the newspapers has reproduced the scheme with very slight alterations, and has recommended it as one of the best remedies for the grievances of which landowners complain. So far from finding in it any unanticipated difficulties, the more it is considered the more practicable does it appear. Objections have been urged by various correspondents, but all of them resolve themselves into this—how is the mortgage to be called in if the lender wants his money?

Now this objection proceeds entirely on the assumption that a mortgage *debenture* will be nothing more than a mortgage *deed*. You cannot take a mortgage deed into the market and raise money upon it, or at least any sum approaching its actual value, because before the purchaser can realise it, there must be a formal transfer of it to him, with all its cost, and then a foreclosure, or a sale. But a mortgage *debenture* will be transferable by endorsement; it will be payable to the holder; and although, in fact, if it were necessary to realise the loan by resorting to the land, there must be a sale of it in due form of law, yet in practice this will not be necessary, and for the same reason that permits bills and notes to be transferred for their full value. A bill of exchange is not *money*, it is of no worth *in itself*. Before it can be turned into money in the last resort, an action must be brought, with nothing but the *personal* responsibility of the parties as the ultimate security. Yet does not this deter persons from taking it as money, from advancing money upon it, or from buying it; nor does it prevent the holder for the time being from obtaining advances upon it at the very lowest market rate of interest. Does it not appear strange that the owner of a mortgage cannot so readily sell or pawn it, or obtain a loan upon it, at so low a rate of interest as the owner of a bill of exchange? It ought not to be so. A mortgage should be a *better* security, and therefore should have a preference in the money market. That it has not such, but on the contrary, is *less* available, must be owing to some defect in the law that regulates mortgages. If they *could* be sent into the market as easily as bills, they would have a preference there. Is it not possible to do this? We have shewn that it is. Why should a mortgage be *less* marketable because it has a security beyond that of a bill of exchange? But then, say the objectors, if there are several debentures, and the holder of one wants his money, how is he to sell the land without the concurrence of the others? This would be a difficulty, indeed, if the mortgage were made payable at any time. But that is not our design. All such mortgages would be made for a term of years, and the debentures would become payable as against this estate at the end of that term. In the meanwhile, by passing from hand to hand in the money market by endorsement, they would *always* be convertible into money by the holder at the price of money, and the value of the security for the time being. The parties through whom it passes would be liable as endorsers, and the land would be the *ultimate* resort should the mortgagor fail to meet the payment at the expiration of the term, a state of things that would rarely occur, as then he might renew the loan or take up a fresh mortgage. Only one real difficulty has presented itself to us, and that is, a provision for the payment of the interest. Two or three plans have been proposed to us for this purpose, but neither of them quite satisfies us. One of them is sufficient, should no better be suggested, but it is not as perfect as we should desire, and therefore we shall feel much obliged to any of our readers, who may give a little thought to the subject, if they will communicate to us any plan that may occur to them for securing the regular payment of interest, at an appointed place, without imposing upon the holders of the debentures the trouble of collecting it from the mortgagor. This difficulty overcome, and we have no doubt that we shall be enabled to meet it satisfactorily, the very important object so long desired will be accomplished, and landed securities will be as easily negotiated, command as low a rate of interest, and be as convertible into money as any that are now in the market. They would come, in fact, to form a species of stock, and thus prices would be as regularly quoted in the papers as those of the funds, or of railway debentures. The Lawyers would profit by the change as much as the landowners, for it would enormously multiply mortgages by relieving them from all the difficulties that now impede their freedom, and by which they are made the very worst and most inconvenient security a man can hold, instead of being the best, as they ought to be.

LAWYERS IN PARLIAMENT.

THERE *can* be too much of a good thing. It is a good thing to have Lawyers in Parliament, but there may be too many of them there, and, to be candid, we believe that so it is at present. Nearly one-sixth of the entire House of Commons is composed of Lawyers. This is to be regretted for many reasons, alike for the public welfare and for the advantage of the Profession. Lawyers are for the most part accustomed to take narrow views of things, to be ruled more by precedent than by reason, and in their keen pursuit of words and forms to disregard principles. It has been noticed as a remarkable fact, that very few Lawyers succeed in distinguishing themselves in the House of Commons. Certainly they labour under great disadvantages there. The prejudice of the house runs strongly against them. If a lawyer makes a good speech, it is said that speech-making is his business, and he obtains no applause for it: Lawyers in Parliament never have credit for honesty of opinion or action; they are supposed to be always seeking professional advancement; to be holding a brief on one side or the other, and never to utter their own genuine sentiments. The other members who cannot speak, dislike them for their more ready power of utterance; those who can talk look upon them as intruders who have come with professional objects into a place where personal aims should be excluded. But capacity for legislation and statesmanship make itself heard and respected even against

all these disadvantages, and the paucity of such successful ventures confirms the truth of the observation, that good Lawyers are seldom good lawmakers or able statesmen. A mind trained to technicalities, and engaged for years together in contemplation of them, to the exclusion of almost every other occupation, cannot fail to become more or less moulded to its business, and to lose the power of grasping anything beyond the range of its daily avocations.

But even technicalities have their advantages, and some technical minds are useful, nay, necessary to the work of legislation, therefore the presence of a considerable body of practical Lawyers is of great value to a Legislature. Although statesmen and philosophers may *invent* laws, the technical lawyer alone can put them into working shape; they must give their help to the adaptation of the new rules to the existing system into which they are to be incorporated, and shew how they may be worded so that they may express the precise purpose of the Legislature and nothing else. Twenty or thirty good, sound, sensible, practical, and *practising* Lawyers are invaluable in so mixed an assembly of amateur law-makers as our House of Commons. But then a hundred of them! *That* is to overwhelm the Legislature with technicalities. The inconvenience will doubtless be felt severely before the close of the first session.

The Profession, also, will probably find it to be as disadvantageous to themselves as to the public. Lawyers in Parliament are very rarely found to be the supporters of the Lawyers out of Parliament. This fact, so often noted, has occasioned a good deal of perplexity to find a sufficient cause for it. But we take the true reason to be, that professional M. P.'s, conscious of their unpopularity in the House, or out of their profession, endeavour to put themselves into what they suppose to be a better position by appearing as unprofessional as possible, and therefore they shun rather than seek occasions in which they can appear, *as Lawyers*, vindicating their own order. Whether or not this be the right explanation, the fact is notorious that the Lawyers obtain the least help in Parliament from those to whom they have the most right to look for it, and the multiplication of Lawyer M.P.'s is consequently not even a subject for congratulation among themselves as being calculated to do *them* service, whether by promoting their interests or warding off the attacks of enemies.

For these reasons, we entertain no hope that the Parliament about to assemble will bear a more friendly spirit towards the Lawyers than that which has expired; nay, we fear that the very increase of our numbers will increase the hostility of the whole Legislature to men in whom the non professional members will see only a power which they suppose, most erroneously, to be banded together for the advancement of the interests of a class against those of the community. True, such a fear is perfectly groundless, as past experience has proved, but nevertheless it will have its effect in stimulating that insane and irrational hatred of Lawyers which shewed itself so powerfully on so many occasions during the last Parliament.

There is another danger, but not so palpable, perhaps, to be apprehended from the seeming triumphs of the Lawyers at the late election. It is not immediate, but it is "looming in the distance." We refer to the not improbable prospect of a reaction. It may be feared that the public, alarmed at the vision of a House of Commons, one-sixth of whose members are Lawyers, will go to the other extreme, and reject all Lawyers, or, at least, view them with such prejudice that they will find the utmost difficulty in procuring admission to the Legislature. This would be a far more formidable evil both to the public and the Profession than any to be apprehended from an excess of Lawyers.

The only way in which these present and future mischiefs may be avoided, will be for the Lawyers to make themselves as *useful* as possible; to prove by their conduct that they have *not* sought seats in Parliament with any *professional* objects; that although talkers by trade they do not intend to drown the House with talk; and that their aims being thoroughly practical, they are entitled to be heard when they have something to say on any subject they really understand, and which falls properly within their province; and thus to give the world assurance that they have not abandoned the practice of the law for the pursuit of the more attractive game of politics with any other purpose than a laudable ambition, public spirit, or conscious aptitude for their new calling.

COSTS IN THE COUNTY COURTS.

The Committee of the Judges are now engaged in the task of carrying into practical operation the provision for securing to the Attorneys a fair remuneration for their professional services in the County Courts. It is of great importance that their deliberations should result in a scale of fees that shall carry out the objects with which we first promoted the suggestion which was afterwards adopted by the Legislature. To achieve a permanent [illegible] the scale must be such as w[illegible] not be deemed unjust either to the public or the Lawyers. If too high it will excite the active hostility of the one; if too low, it will be treated with contempt by the others. The Judges to whom the work has been entrusted are conscious of the importance and the difficulty of the duty, and they have sought the advice and assistance of the experienced of the Profession, through the Law Societies. But individuals may lend their aid, and doubtless they will be welcomed if their hints are short and practical. But something more than this is desirable. There should be some public discussion of the question what the scale of fees should be. Perhaps, as the parent of the measure itself, the Law Times might fitly be the vehicle for such a discussion, and any hints appearing here would not only be sure to reach the proper quarter, but they would have the benefit of being reviewed by the whole Profession, and any objections or improvements started *before* the scale of fees is finally determined. We invite our practical readers to give their thoughts to this subject, of such great importance to them, and oblige us with suggestions for costs in the County Courts which we will endeavour to submit in the best form to the consideration of their legal brethren first, and afterwards, if approved, to the Committee of the Judges.

THE PRACTICAL STATUTES.

The volume of the Practical Statutes of the last Session is at length completed. The delay has been unavoidable, occasioned by the unusual number and importance of the contents, which comprise the Common Law and Chancery Reform Acts, the Copyhold Enfranchisement Act, the Militia Act, the Passengers' Act, and many others which have made the year a remarkable one in the annals of the law. All these required to be annotated with care and copiously. Hence the longer time occupied by Mr. Paterson for its preparation. From the same cause it exceed length by nearly 200 pages the volumes for 1850 or that for 1851, and this has compelled a larger price to be put upon it, although the addition is not equivalent to the increased quantity of matter. The volumes of the two preceding years may still be had to complete sets.

The Practical Statutes for 1850 are in rapid progress. But they contain the new Bankruptcy Act, and as all the cases decided upon its construction are to be given in the notes, their number has made Mr. Hertslet's labour much heavier than had been anticipated. But the product will, we trust, be of proportionate value to the Profession.

NEW CHANCERY PRACTICE.(a)

The expense of suits in Chancery will be very much diminished by some very useful provisions, diminishing the number of persons whom it is necessary to make *parties* to suits. To comprehend this fully, in the words of the Chancery Commissioners, "it is necessary to bear in mind one of the fundamental rules of Chancery procedure under the old system, viz. that a suit *shall embrace all parties interested in the result.*" As, for example, if there were a complaint of a breach of trust, all persons interested in the trust estate must have been parties to the suit, and, subject to some modifications made by orders of the Court, all the persons parties to the breach of trust. It very commonly, therefore, happened that some of the parties liable had died, and that it was necessary to enforce the claim against their estates, in which case their legal personal representatives, and if it were necessary to affect their real estates, all persons interested in those real estates, must have been made parties.

The expense of numerous parties to a suit was greatly aggravated by the mode, under the old system, of making their representatives, on their deaths, or the parties entitled, or on transfer of their interests, parties, by bills of revivor and supplement, which have been very properly abolished in a subsequent part of the Act.

By the 12nd section of the Act, it is *not to be competent* to any defendant in any suit *to take any objection for want of parties* in any case to which the rules hereinafter set forth extend.

Rule 1. Any *residuary legatee* or *next of kin* may, without serving the remaining residuary, legatees or next of kin, have a decree for the administration of the *personal estate* of a deceased person.

Rule 2. Any *legatees interested in a legacy charged upon real estate, and any person interested in the proceeds of real estate directed to be sold*, may, without serving any other legatee or person interested in the proceeds of the estate, have a *decree for the administration of the estate* of a deceased person.

Rule 3. Any *residuary devisee* or *heir* may, without serving any co-residuary devisee or coheir, have the like decree.

Rule 4. Any *one of several cestuis que trust* under any deed or instrument may, without serving any other of such cestuis que trust, have a decree for the execution of the trusts of the deed or instrument.

Rule 5. In all cases of *suits for the protection of property pending litigation*, and in all *cases in the nature of waste*, one person may sue on behalf of himself and of all persons having the same interest.

Rule 6. Any *executor, administrator*, or *trustee* [illegible] obtain a decree against any one legatee, next of kin, or cestui que trust for the administration of the estate, or the execution of the trusts.

Rule 7. In all the above cases the *Court*, if it see fit, *may require any other person or persons to be made party or parties* to the suit, and may, if it see fit, give the *conduct of the suit* to such person as it may deem proper, and may make such order in any particular case as it may deem just for placing the defendant on the record on the same footing in regard *to costs* as other parties having a common interest with him in the matters in question.

Rule 8. In all the above cases the persons who, according to the present practice of the Court, would be necessary parties to the suit, *are to be served with notice of the decree* and after such notice they are to be bound by the proceedings in the same manner as if they had been originally made parties to the suit, and they may by an order of course have liberty to attend the proceedings under the decree; and any party so served may, within such time in that behalf prescribed by the General Order of the Lord Chancellor, apply to the Court to *add to the decree*. By the 40th of the New Orders the time within which a party served with notice of a decree under section 42 of the Act may apply to the Court to add to the decree, is to be *one month after such service*. And by the 41st of such Orders a memorandum of the service upon any person or persons of notice of the decree in any suit under the said section, Rule 8, is to be entered in the office of the Clerk of Records and Writs, upon due proof by affidavit of such service.

(a) Continued from p. 195, ante.

Rule 9. In all suits concerning real or personal estate which is vested in trustees under a will, settlement, or otherwise, such trustees are to represent the persons beneficially interested under the trust, in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it is not to be necessary to make the persons beneficially interested under the trusts parties to the suit; but the Court may, upon consideration of the matter, on the hearing, if it so think fit, order such persons, or any of them, to be made parties.

The 43rd section of the Act abolishes a part of the practice of the court established by 39th and 41st General Orders of 25th August, 1841, which has not been found to work well, viz. the practice of setting down a cause *merely on an objection for want of parties*; for as it was often impossible to ascertain until the hearing of the cause whether any particular person absent from the record was really a necessary party or not, the result of setting down the cause upon the objection for want of parties was frequently merely to reserve the objection until the hearing. In other cases the objection, though apparently valid upon the bill and answer, might be removable by evidence, which was not capable of being brought before the Court until the hearing. Nor does there appear to have been any case in which the Court had exercised the liberty of dismissing the plaintiff's bill on an objection for want of parties, and there were few cases in which it had been able to make a decree saving the rights of absent parties.

Under the old system, the plaintiff was often much embarrassed in cases where a person interested in the subject matter of litigation had died, and from his not having left any property behind him, or from some other cause, no one had thought it worth while to prove his will, or take out administration to his estate, the plaintiff was himself obliged to take proceedings in the Ecclesiastical Court for the purpose of compelling some person to administer, or in default, to obtain letters of administration to a nominee limited to the purposes of the suit; and such nominee administrator, who served no useful purpose whatever, was made a formal party to the suit in Chancery, was served with process, put in an answer, and appeared by counsel. (Chan. Comm. Rep. 17). The unnecessary delay and expense occasioned by this practice, is put an end to by the 44th section of the Act, which enacts, that if in any suit or other proceeding before the Court, it appears to the Court that any deceased person who was interested in the matters in question, has no legal personal representative, the Court may either proceed in the absence of any person representing the estate of such deceased person, or appoint some person to represent such estate for all the purposes of the suit, or other proceeding, on such notice to such person or persons, if any, as the Court thinks fit, either specially or generally by public advertisements; and the order so made by the Court, and any orders consequent thereon, are to bind the estate of such deceased person in the same manner in every respect as if there had been a duly constituted legal personal representative of such deceased person, who had been a party to the suit or proceeding, and had duly appeared and submitted his rights and interests to the protection of the Court.

By the next three sections of the Act, a very important change is effected by the substitution of a very *summary* mode of procedure in certain cases, which will, in all probability, be sooner or later extended to many other cases; for the Chancery Commissioners, whose opinion is of the greatest authority, well observe that the proper progress of Chancery reform is in the same direction; that is to say, to substitute in every case which admits of it *the shortest and most summary process, with the least amount of preliminary written pleadings, and to bring the parties by themselves or their counsel, to state their cases with as little delay as possible to the tribunal which has to decide.* This coincides also with the opinion of the great philosophical lawyer BENTHAM, whose writings ought no longer to remain unstudied in our Inns of Court, or so little considered by our legislators (see Bentham, Rationale of Judicial Evidence, vol. iv. p. 8). Those sections are to the following effect:—Any person claiming to be a *creditor*, or a *specific pecuniary* or *residuary legatee*, or the *next of kin*, or *some* or *one of the next of kin of a deceased person*, may apply for and obtain as of course, without bill or claim filed, or any other preliminary proceedings, *a summons* from the Master of the Rolls or any of the Vice-Chancellors, requiring the executor or administrator, as the case may be, of such deceased person, to attend before him *at chambers*, for the purpose of *shewing cause why* an order for the administration of the personal estate of the deceased should not be granted; and upon proof by affidavit of the due service of such summons, or on the appearance in person, or by his solicitor or counsel of such executor or administrator, and upon proof by affidavit of such other matters, if any, as such Judge requires, he may, if in his discretion he think fit so to do, make the usual order for the administration of the estate of the deceased, with such variation, if any, as the circumstances of the case may require; and *the order so made is to have the force and effect of a decree to the like effect made on the hearing of a cause or claim between the same parties*: it is, however, provided that such Judge is to have full discretionary power to grant or refuse such order, or to give any special directions touching the carriage or execution of such order, and in the case of applications for any such order by two or more different persons, or classes of persons, to grant the same to such one or more of the claimants, or of the classes of claimants as he may think fit; and if the Judge think proper, the carriage of the order may subsequently be given to such party interested, and upon such terms as the Judge may direct. (Sec. 45.)

A duplicate or copy of such summons previously to the service thereof, is to be filed in the Record Office of the court; and no service thereof upon any executor or administrator is to be of any validity, unless the copy so served shall be stamped with a stamp of such office indicating the filing thereof; and the filing of such summons is to have the same effect with respect to lis pendens, as the filing of a bill or claim. (Sec. 46.) The form of the summons, which is very concise, is given in Schedule (E) to the New Orders.

Any person claiming to be a creditor of any deceased person, or interested under his will, may apply for and obtain in a summary way, in the manner thereinbefore provided, with respect to the personal estate of a deceased person, *an order for the administration of the real estate of a deceased person, where the whole of such real estate is by devise vested in trustees, who are by the will empowered to sell such real estate, and authorised to give receipts for the rents and profits thereof, and for the produce of the sale of such real estate*; and all the provisions therein before contained, with respect to the application for such order in relation to the personal estate of a deceased person, and consequent thereon, are to extend and be applicable to an application for such order as last therein mentioned with respect to real estate. (Sec. 47.) It is to be regretted that the power of proceeding summarily for the administration of the real estate of a deceased person should be confined to those cases where the trustees have power to sell, and give receipts for the rents and profits, and for the produce of the sale. It is submitted that as real estates are now assets for payment of debts, they should, as personal estate, vest primarily in the executors or administrators of a deceased person, and that the devisees or heir-at-law should stand in the same relation to them, with regard to the administration of real estate for payment of debts, as specific legatees or next of kin stand in towards executors and administrators of personal estate, in suits where personal assets are alone concerned.

Next, with regard to mortgaged estates, the Court may in any suit for the *foreclosure* of the equity of redemption in any mortgaged property, upon the request of the mortgagee, or of any subsequent incumbrancer, or of the mortgagor, or any person claiming under them respectively, *direct a sale of such property instead of a foreclosure of such equity of redemption*, on such terms as the Court may think fit to direct, and if the Court so think fit, without previously determining the priorities of incumbrances, or giving the usual or any time to redeem; it is, however, provided that if such request shall be made by any such subsequent incumbrancer, or by the mortgagor, or by any person claiming under them respectively, the Court is not to direct any such sale without the consent of the mortgagee or the persons claiming under him, *unless* the party making such request shall deposit in court a reasonable sum of money, to be fixed by the Court, for the purpose of securing the performance of such terms as the Court may think fit to impose on the party making such request. (Sec. 48.)

Much inconvenience will be obviated by this section, for, under the old system, where a mortgagee or other incumbrancer instituted a suit for the purpose of realising his security, all the subsequent incumbrancers, who were all separately interested in contesting or reducing his demand, and in rendering their own securities available, were necessary parties to the suit. When the decree in such a suit was for foreclosure, the decree of foreclosure could not be pronounced until the priorities inter se of all the incumbrancers subsequent to the plaintiff had been ascertained; the effect of which was, that the plaintiff's remedy was delayed by the necessity of settling rights between the defendants. This inconvenience does not exist where the plaintiff is entitled to a decree for sale; in such a case the estate may be sold at once, and the plaintiff's demand satisfied; the surplus remaining in Court as a fund to be applied in or towards satisfaction of the claims of the defendants, when ascertained. (Chanc. Comm. Rep. 19.)

THE NEW COMMON LAW PRACTICE.

XXI. ACTION OF EJECTMENT (*continued*).

A CLAIMANT in ejectment may at any time discontinue as to one or more of the defendants by giving *notice*, and thereupon such defendant may sign judgment for costs. Or one of several claimants may discontinue, *by leave of the Court*, and thereupon the action may proceed at the suit of the others.

If the claimant do not go to trial within the time allowed to him, the defendant may give him *twenty* days' notice to proceed to trial at the sittings or assizes next after the expiration of the notice; and if then the claimant fails to proceed to trial accordingly, the defendant may sign judgment.

A sole defendant or all the defendants may *confess the action* as to the whole or part of the property, by signed notice to the claimant, and thereupon the claimant may forthwith sign judgment, and issue execution for the recovery of possession and the costs. Where one of several defendants defends separately for a *portion* of the property, for which the others do not defend, he may do likewise in respect of such portion. And if other defendants defend in respect of the same property for which he defends, he may confess the action, and judgment may be signed against him for the costs, and the action proceed against the other defendants.

Before issuing execution on *any* judgment, it is not to be necessary to enter proceedings on the roll, but an *incipitur* thereof may be made upon paper, shortly describing the nature of the judgment, and on *that* execution may issue. But the proceedings may be afterwards entered on the roll, whenever they may become necessary for the purpose of evidence, bringing error, or the like.

Error may be brought in ejectment, as in other actions, after a special verdict, on bill of exceptions, or special case. But execution shall not be stayed, unless the plaintiff in error shall, within *four clear days* after lodging the memorandum alleging error, or after signing judgment, or execution executed, be bound to the claimant in double the yearly value of the property, and double the costs recovered by the judgment, with condition that if the judgment shall be affirmed, or the proceedings be discontinued, he shall pay such costs and damages as shall be awarded; and the Court may issue a writ to inquire as to the mesne profits and damage by waste committed after the first judgment, and on the return thereof judgment is to be given, and execution issued accordingly.

Every tenant to whom any writ of ejectment is delivered, or to whose knowledge it may come, is required forthwith to give notice thereof to his landlord, his bailiff, or receiver, under penalty of three years' rack-rent of the premises held by him, to be recovered by action at law in any court having jurisdiction for the amount.

In ejectment of a tenant by a landlord, for nonpayment of rent due, a writ for the recovery of the demised premises may be served without any formal demand or re-entry. If it cannot be served, or no tenant be in actual possession of the premises, a copy of the writ may be affixed on the door of any messuage, or on some notorious place on the premises, and this is to be deemed legal service; and then if there be judgment for non appearance, or defendant appear, and it be shewn to the Court by affidavit in the one case, or proved on the trial in the other, that half a year's rent was due and no sufficient distress found, and that the lessor had power to re-enter, judgment and execution shall be had as if rent had been legally demanded and

re-entry made. And if the lessee, or his assignee, or person claiming under the lease, shall suffer judgment and execution without paying the arrears of rent and full costs, and without proceeding for relief in equity within six months after execution executed, he shall be barred of all remedy in law or equity, other than bringing error, in case the judgment shall be erroneous, and the lessor shall hold the premises discharged from the lease. But this is not to extend to bar the right of any mortgagee of the lease not in possession, if such mortgagee shall, within six months after execution, pay the rent in arrear and all costs and damages sustained by the lessor, and perform all the covenants and agreements which on the part of the first lessee are to be performed.

If the lessee, or person claiming under the lease, shall, within the six months, proceed for relief in equity, he is not to have an injunction against the proceedings at law unless within forty days after answer made by the claimant in ejectment, he brings into court such sum as the lessor shall in his answer swear to be due, and the taxed costs, to abide the result. And if such proceedings in equity be taken within the time aforesaid, and, *after execution*, the lessor is to be accountable for so much only as he shall *bonâ fide* make of the premises from the time of his entering into the actual possession thereof, and if that should happen to be less than the rent reserved, the lessee or his assignee shall, before he is restored to possession, pay the lessor so much as the money so made fell short of the reserved rent for the time that the lessor held the lands. And if at any time the tenant, or his assignee, shall pay to the landlord or lessor the rent in arrear, with costs, the proceedings in ejectment shall be stayed, and if the lessee be relieved in equity, he shall hold the lands demised according to the original lease, without any new lease.

In *ejectment* against a *tenant holding over after expiration of the term or determination of the tenancy by a notice to quit*, after lawful demand of possession made, the landlord may, at the foot of the writ, address a notice to the tenant, requiring him to find bail, if ordered by the Court. If then the party appears, the landlord is to produce the lease or agreement, and prove the execution by affidavit, and that the premises were actually held under it, and that the interest of the tenant had expired, and possession been lawfully demanded; and thereupon a summons may issue to the tenant to shew cause why he should not give bail in himself and two sureties, in a reasonable sum, conditioned to pay the costs and damages that may be recovered by the claimant in the action; and if he shall neglect to do so, or shall shew no good cause to the Court to enlarge the time for doing so, judgment may be signed for recovery of possession and costs of suit. At the trial, the claimant is to be permitted to prove for *mesne profits*, and the jury are to give their verdict upon *the whole matter*, both as to the recovery of the whole or any part of the premises, and also as to the amount of damages to be paid for mesne profits, and the landlord is to have judgment for the recovery of possession, for costs, and for mesne profits.

Where bail has been given as above provided, and the verdict is for the claimant, the Judge is not to order judgment or execution to be stayed, except upon condition of security being given by the defendant, within four days, not to commit waste or damage, or to sell or carry off crops, &c. from the premises. But the recognisance is to be void if the defendant shall enter into recognisances for error, as before described.

All the recognisances required are to be taken, as are other recognisances of bail, in the Court which the action is brought; they are to be filed in the court, for which a fee of 2s. 6d. is to be paid. But no action or proceeding is to be taken upon them after six months from the time when possession of the premises, or any part thereof, shall have been actually delivered to the landlord.

Where the tenancy expires, or right of possession accrues, in or after Hilary or Trinity Terms respectively, a claimant may, within ten days, serve a writ of ejectment in a special form given in the schedule (No. 13, A), except that it shall command the tenant to appear within ten days after service, and thereupon the same proceedings shall be had as already provided, save only that it shall be sufficient to give at least six clear days' notice of trial to the defendant before the commission-day of the Assizes at which the trial is to be had. The defendant in such action may, however, apply to a Judge to stay proceedings or postpone the trial, and the Judge may make such order as shall seem to him expedient.

Nothing in this Act is to prejudice or affect any other right of action or remedy which landlords may possess, otherwise than as in this statute is expressly enacted.

In *ejectment by a mortgagee*, where no suit is depending relating to the mortgage, the person having the equity of redemption, and who shall appear and defend, may, at any time pending the action, pay to the mortgagee, or bring into Court, the principal, interest, and costs (to be computed by the proper officer of the courts), and the Court shall discharge such mortgagor or defendant from the same accordingly, and by rule of Court compel such mortgagee, at the costs of the mortgagor, to assign, surrender, or reconvey the mortgaged premises, and deliver up all deeds, &c. to the mortgagor or defendant, or to such other person as he shall appoint. But this is not to extend to any case where the person against whom the redemption is prayed shall, by writing under his hand, or that of his attorney, delivered to the attorney on the other side, insist that the party praying redemption has no right to redeem, or that the premises are chargeable with other or different principal sums, or where the right of redemption is controverted or questioned by different defendants in the same suit, or shall be any prejudice to any subsequent mortgage or incumbrance.

The Courts may still exercise over the proceedings in ejectment the same jurisdiction as hitherto, so as to *ensure* a trial of *the title*, and of actual ouster, when necessary, and the provisions of all statutes not inconsistent with the provisions of this Act, and applicable to the altered mode of proceeding, are to remain in force, and be applied thereto.

Such are the provisions relating to ejectment. That they are great improvements no reader will doubt. The practice is vastly cheapened and facilitated.

THE LEGISLATOR.

NEW STATUTES.

15 Victoria, A.D. 1852.

[In the record of Legislation only the Statutes of practical utility are given at length Of the others an abstract or the titles only are presented.]

(*Continued from p* 197.)

21. *After enfranchisement, the lord may give up to the commissioners all the court rolls—Inspection, &c. thereof.*—When and as soon as all the lands held of any manor shall be enfranchised, the lord or other person having custody of the court rolls of such manor may, if he thinks fit, give up and hand over to the said commissioners all such court rolls; and from thenceforth all persons seised of or interested in such lands shall have access to and may inspect such court rolls, and obtain copies thereof, on the payment of such reasonable fees as to the said commissioners may seem fit and proper.

22. *Title of lord to be made for the purpose of enfranchisement.*—Previous to any enfranchisement under this Act, it shall be lawful for the lord and steward, if they shall see fit, and if there shall be no steward, then for the lord alone, to make a solemn declaration, in such form as the said commissioners shall direct, and to be taken and subscribed as solemn declarations are by an Act made and passed in a session held in the fifth and sixth years of his late Majesty King William the Fourth, chapter sixty-two, directed to be taken and subscribed, stating therein the nature and extent of the estate and interest of the lord in the manor of which he is such lord, and the date and short particulars of the deed, will, or other instrument under which he claims or derives title, and the name and style or other designation or description of the person in whose name the court of any such manor was then last holden, and the date or time of the holding of such court, and the incumbrances, if any, whether by mortgage, judgment, or otherwise, which affect such manor; and it shall be lawful for the said commissioners, and they are hereby directed to approve of such title for the purposes of this Act, which approval shall be testified under their hands and seal, upon such evidence alone, unless they shall be of opinion that further information is necessary in the respects aforesaid; but if the said commissioners shall consider that such evidence does not fully and truly disclose all such particulars as are necessary, or if no such declaration shall be made, or if the lord shall refuse or decline or fail to give such information and evidence as they shall deem proper and necessary to shew a satisfactory primâ facie title in the lord, or in persons claiming under or in trust for him, and if the said commissioners shall consider either that the title of the lord is not satisfactory, or that the incumbrancers should be protected, then, if they think the justice of the case requires it, they may direct that the enfranchisement consideration shall be invested as hereinafter directed in case of lords under disability.

23. *After an application for enfranchisement, tenant may require commissioners to inquire into the lord's title.*—In all cases in which the lord shall apply to the commissioners to effect an enfranchisement as aforesaid, it shall be lawful for the tenant of the lands so proposed to be enfranchised to require that the said commissioners shall satisfy themselves, in such way and by such evidence as they shall see fit, of the title of such lord to the manor of which the lands are held.

24. *Identity of lands.*—In cases where the identity of any lands described as to quantity in the court books or rolls of any manor cannot be ascertained to the satisfaction of the valuers, such lands shall be taken at the quantities mentioned in the court books or rolls of the manor, and as to any lands the quantities of which are not specified in the court books or rolls of any manor, the same shall be taken at such quantities as such valuers may determine; and it shall be lawful for the lord of any manor, or for any tenant of any manor, at any time hereafter, in case of any doubt or difference of opinion as to the identity of any lands, to apply to the commissioners to define the boundaries thereof for the purpose of any enfranchisement under this Act or the said recited Acts; and the expenses of identification shall be borne by the party making such application, unless the commissioners shall otherwise direct; and the commissioners shall proceed, in such manner as they shall see fit, to ascertain, identify, and define such boundaries; and such identification and definition of boundaries to be made by the commissioners shall be final and conclusive on all parties for the purposes of any such enfranchisement.

25. *As to purchase by the lord in certain cases.*—With respect to any land proposed by any tenant to be enfranchised under this Act, in case the lord shall show to the satisfaction of the commissioners that any change in the condition of such land, which but for this Act would or might have been prevented by the incidents or conditions of the tenure thereof, will prejudicially affect in enjoyment or value the mansion-house, park, gardens, or pleasure grounds of such lord, and in case such lord shall by writing under his hand offer to purchase the tenant's interest in such land so proposed to be enfranchised and shall give notice to the tenant of such offer, then, unless the tenant shall accept such offer within twenty-eight days after receiving notice thereof, such land shall remain unenfranchised, unless the commissioners shall think fit to impose such terms and conditions, in case of enfranchisement, as shall in their judgment be sufficient to protect the interests of the lord; and in case the tenant shall within twenty-eight days as aforesaid signify in writing to the commissioners his acceptance of the said offer, such offer by the lord and acceptance by the tenant shall be binding both upon lord and tenant; and in case the lord and tenant shall not within such time as the commissioners shall limit agree on the value of the rights and interest of the tenant, it shall be lawful for the commissioners to appoint a valuer for the purpose of ascertaining such value, or to refer the same to the valuers, if any, then acting in the enfranchisement; and all the costs, charges, and expenses of such valuation and attending such purchase shall be borne by the lord; and when such value shall have been agreed upon or ascertained as aforesaid, the commissioners shall issue a certificate under their hands and seal, which shall state the land which shall have been sold to the lord, and the consideration money for the same, and shall declare that upon payment of the consideration money therein mentioned within a time to be therein limited such land shall at the time of such payment be surrendered or released by the tenant (at the expense of the lord) to the lord, and thereupon such land shall vest in such lord accordingly: provided always, that in case such consideration money shall not be paid within the time limited by the commissioners, or within such further time as the commissioners may have granted in that behalf, and it shall appear to the commissioners that the same shall have remained unpaid by the default of the lord, it shall be lawful for the commissioners to cancel such certificate, and such enfranchisement may be proceeded with as if such offer and acceptance as aforesaid had not been made, and all costs which the commissioners shall certify to have been incurred by the tenant in consequence of such offer, acceptance, and default, shall be paid by the lord to the tenant.

26. *Power to lord having a limited interest to charge purchase money on manor, &c.*—Provided also, that where the lord of a manor by whom any purchase is hereby authorised to be made shall not be seised in fee simple or fee tail of and in or otherwise entitled to an absolute power of disposition over the manor, it shall be lawful for such lord, with the consent of the commissioners, to raise the consideration for such purchase, and the expenses of

the same, by a charge of or upon the same manor, or any lands settled therewith to the same uses, such charge to be made in such form, and upon such terms, and at such rate of interest, as the commissioners shall direct from time to time.

27. *After 1st July, 1853, when a heriot shall be due and payable, the lord or tenant may require or compel enfranchisement.*—And whereas in many manors heriots are by custom due and payable to the lord by tenants of freehold or customary freehold lands holden of such manors: be it therefore enacted, that at any time after any such heriot shall be due or payable with respect to any such freehold lands on or after the first day of July, one thousand eight hundred and fifty-three, it shall be lawful for the lord or the tenant to require and compel the extinguishment of all such claim to heriots, and the enfranchisement of the lands subject thereto, in the same way as if such lands were copyhold, and the same proceedings shall thereupon be had as are herein mentioned with reference to the enfranchisement of copyhold lands, or as near thereto as the nature of the case will admit.

28. *Declaration to be taken by valuers.*—Before any valuer shall enter upon the valuation under this Act, he shall in the presence of a justice of the peace make and subscribe the following declaration (that is to say,)

"I, *A. B.* do declare, that I will faithfully, to the best of my ability, value, hear, and determine the matters referred to me under the Copyhold Acts.

"A. B.

"Made and subscribed in the presence of

And such declaration shall be annexed to the schedule of valuation, when made; and if any valuer, having made such declaration, shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

29. *As to recovery of interest in enfranchisement considerations.*—In case the interest payable in respect of any gross sum of money, pursuant to any award under this Act, or any part of the same, shall be in arrear for thirty days after the same shall become due, it shall be lawful for the person for the time being entitled to receive such interest to levy the same by the same means and remedies and in the same manner in all respects as if the same had been rent in arrear upon a lease for years.

30. *As to expense of proceedings under this Act.*—The expenses of the proceedings for effecting any enfranchisement under this Act, and all expenses which in the judgment of the said commissioners may be incidental thereto, whether for the proof of title, the production of documents, expenses of witnesses, or otherwise, shall be borne by the party, whether lord or tenant, who shall have required the enfranchisement, but no costs or expenses shall be due or recoverable from any person until the same shall have been certified, under the hands and seal of the said commissioners, or of an assistant commissioner, to have been reasonably and properly incurred; and in case any dispute or difference shall arise as to the amount of such expenses, the certificate of the commissioners or assistant commissioner shall be final, and any person to whom such certificate shall be granted shall have the same means and remedies for the recovery of the sum mentioned therein as are provided by the said recited Acts or by this Act for the recovery of the consideration for an enfranchisement under this Act.

31. *How expenses of enfranchisement to be borne where the lord has but a limited interest in a manor, or is trustee thereof.*—In every case in which the lord shall require and compel an enfranchisement under this Act, where such lord shall be an ecclesiastical corporation or a corporation sole not having an absolute power of sale, or shall have only a limited interest in the manor or be a trustee thereof, the expenses of the proceedings for effecting such enfranchisement, and all expenses which in the judgment of the said commissioners may be incidental thereto, whether for the proof of title, the production of documents, expenses of witnesses, or otherwise (the amount of such expenses being subject to the approval and certificate of the said commissioners as hereinbefore is mentioned), shall be paid out of the first moneys to be received for any enfranchisement to be effected under this Act, when the consideration for such enfranchisement shall be a gross sum of money, and in cases where such consideration shall not be a gross sum of money then the said expenses shall be charged, together with interest for the same, at the rate of not exceeding four pounds per centum per annum on the said manor or other lands settled or held therewith, in such manner as to the said commissioners may seem fit and proper.

32. *How tenants' expenses of enfranchisement are to be borne.*—In every case in which the tenant shall require and compel an enfranchisement under this Act, where such tenant shall have only a limited interest in the lands enfranchised, or be a trustee thereof, he shall be entitled to charge the expenses of the proceedings for effecting such enfranchisement, and all expenses which in the judgment of the said commissioners may be incidental thereto, whether for the proof of title, the production of documents, expenses of witnesses, or otherwise (the amount of such expenses being subject to the approval of the said commissioners as hereinbefore mentioned), on the lands enfranchised, and such expenses, and also the consideration money for such enfranchisement, whenever such consideration shall be a gross sum of money, may, by a simple entry on the court rolls of the manor, and for which entry the steward shall only charge such a sum as the said commissioners shall direct, be charged, together with interest for the same at the rate of not exceeding four pounds per centum per annum on the lands enfranchised, in such manner as to the said commissioners shall seem fit and proper: provided always, that any gross sum or rent-charge constituting the consideration for any such enfranchisement shall have priority over any sum so charged for expenses.

33. *Confirmation of award by commissioners to be proof of prior proceedings being regular.*—The confirmation under the hands and seal of the commissioners of any award, or the execution by the commissioners of any deed or instrument whereby any enfranchisement shall be effected under the said Acts or this Act, shall be conclusive evidence that all the directions in relation to the enfranchisement intended to be effected by means of such award, deed, or instrument, which ought respectively to have been obeyed or performed previously to such confirmation or execution respectively, have been obeyed and performed; and no such award, deed, or instrument shall be impeached by reason of any omission, mistake, or informality therein, or in any proceeding relating thereunto, or on account of any want of any notices or consents required by the said Acts or this Act, or on account of any defects or omissions in any previous proceedings whatever in the matter of such enfranchisement.

34. *After confirmation of apportionment, &c. in cases of enfranchisement, the customary modes of descent to cease, and the lands to descend and to be subject to dower and curtesy in like manner as freehold lands—Proviso—Proviso as to gavelkind.*

From and after the final confirmation of any schedule of apportionment under the said recited Acts and from and after the final enfranchisement of any lands under this Act or the said recited Acts, the several lands included in any such enfranchisement shall thenceforth cease to be subject to the customs of borough English or gavelkind, or to any other customary mode of descent, or to any custom relating to dower or freebench or tenancy by the curtesy of England, or to any other custom whatever; and all the laws relating to descents or to estates of dower or estates by the curtesy of England which shall for the time being affect and be applicable to lands held in free and common soccage, shall thenceforth affect and be applicable to the lands included in every such enfranchisement: provided always, that nothing herein contained as to curtesy or dower or freebench shall extend or be applicable to the case of any person who shall have been married before such enfranchisement shall have been completed: provided always, that nothing in this Act shall affect the custom of gavelkind as the same now exists and prevails in the county of Kent.

35. *Commissioners to have power to suspend proceedings.*—Notwithstanding anything herein contained, it shall be lawful for the commissioners from time to time to suspend any proceedings under this Act for the enfranchisement of any land, where any peculiar circumstances render it impossible, in the opinion of the said commissioners, to decide on the prospective value of the lands to be affected by such proposed enfranchisement, or where any especial hardship or injustice would unavoidably result from any compulsory proceeding: provided always, that when the said commissioners shall so suspend any proposed enfranchisement they shall state the reasons of such suspension in their general report, which shall be laid before Parliament, as directed by the first-recited Act.

36. *Power to lord to sell rent-charge.*—In all cases in which the person for the time being entitled to the receipt of any rent-charge under the said recited Acts or this Act shall be entitled thereto for a limited estate or interest only, or shall be a corporation not authorised to make an absolute sale of such rent-charge otherwise than under the provisions of this Act, it shall be lawful for such person, with the consent of the said commissioners, testified under their hands and seal, or, in the case of coverture, infancy, idiotcy, lunacy, or other incapacity, with the consent of the husband, guardian, committee, or trustee of such person so under disability, to sell and transfer such rent-charge, the payment for which shall be made in manner hereinafter mentioned.

37. *Commissioners to certify the amount of consideration money for redemption.*—In every case in which a rent-charge is payable under the provisions of the recited Acts or this Act the commissioners shall, upon the request of the owners of land chargeable with such rent-charge, or any of them, certify under the hands and seal of the commissioners the sum of money in consideration of which such rent-charge may be redeemed; and when it shall appear to the commissioners that payment or tender of such consideration money has been duly made, it shall be lawful for the commissioners to certify that such rent-charge has been redeemed under the provisions of this Act, and such certificate shall be final and conclusive: provided always, that no such redemption shall be effected in the case of rent-charges created before the passing of this Act, under the provisions of the said recited Acts, except with the consent in writing of the person or persons entitled to the receipt of such rent-charge.

38. *Consideration money for redemption of sale, how payable.*—Where the person entitled to a rent-charge redeemable under the provisions of this Act shall be absolutely entitled thereto in fee simple in possession independently of the provisions of this Act, and shall not be a spiritual person entitled in respect of his benefice or cure, or a corporation prevented from aliening such rent-charge, otherwise than under the provisions of this Act, a payment or tender to the person so entitled of the sum of money certified by the commissioners as aforesaid after six months' notice to the person entitled to such rent-charge shall be deemed a due payment of the consideration money, and in every other case the payment of the sum of money so certified according to the provision hereinafter contained shall be deemed a due payment of the consideration money.

39. *Consideration money in cases of owners under disability, how payable.*—In all cases in which the person for the time being entitled to any rent-charge subject to be redeemed or sold under the provisions of this Act, or entitled to any gross sum payable by way of compensation for enfranchisement, shall be only entitled thereto for a limited estate or interest therein, or as trustee for sale or otherwise, without power to give an effectual discharge for the same, or shall be under any disability, or shall be a corporation not authorised to make an absolute sale of such rent-charge otherwise than under the provisions of this Act, the consideration money to be paid for the redemption or sale of such rent-charge, or as compensation for such enfranchisement, shall be applied in manner hereafter provided; that is to say, shall, at the option of the person for the time being entitled as aforesaid, be paid into the Bank of England in the name and with the privity of the accountant-general of the Court of Chancery, to be placed to his account there ex parte the copyhold commissioners, pursuant to the method prescribed by any Act for the time being in force for regulating moneys paid into the said Court; and such moneys shall remain so deposited until the same be applied to some one or more of the following purposes (that is to say), in the purchase or redemption of the land-tax, or the discharge of any rent or incumbrance affecting the rent-charge in respect of which such money shall have been paid, or the manorial incidents for which the same shall have been substituted, or affecting other hereditaments settled therewith to the same or the like uses, trusts, or purposes, or in the purchase of other lands, to be conveyed, limited, and settled upon the like uses, trusts, purposes, and in the same manner, as the rent-charge for the redemption of which such money shall have been paid stood settled, or in payment to any party becoming absolutely entitled to such money; and such money may be so applied as aforesaid upon an order of the Court of Chancery made on the petition of the party who would have been entitled to the receipt of the rent-charge in respect of which such money shall have been deposited; and until the money can be so applied it may, upon the like order, be invested by the said Accountant-General in the purchase of Three per Centum Consolidated or Three per Centum Reduced Bank Annuities, or in Government or real securities, and the dividends, interest, or annual income thereof paid to the party who would for the time being have been entitled to the rent-charge in case the same had not been redeemed; or otherwise such consideration money may be paid, at the like option of the person for the time being so entitled, to trustees acting under the will, conveyance, or settlement under which such person having such limited interest shall be entitled to or interested in such rent-charge, or to such one or more of such trustees as the said commissioners may approve of and direct, or if there are no such trustees, then into the hands of trustees to be nominated under the hands and seal of the said commissioners; and the money, when so paid to such trustees, shall be applied by the said trustees, with the consent of the said commissioners, in the manner hereinbefore directed concerning any money to be paid for redemption or sale into the Bank of England in the name and with the privity of the said Accountant-General; and upon every vacancy in the office of any trustee appointed by the said commissioners some other fit person shall be appointed by them in like manner.

40. *As to consideration money under 20l.*—When any consideration money so to be paid as last hereinbefore mentioned shall not exceed the sum of twenty pounds for the redemption or sale of all the rent-charge which shall be redeemable under this Act in

any one manor, the same shall be paid, if the said commissioners shall so direct, to the person for the time being entitled to the rent-charge, for his own use and benefit; or in case of coverture, infancy, idiotcy, lunacy, or other incapacity of the person for the time being entitled, then such money shall be paid, for the use of the person so entitled, to the husband, guardian, committee, or trustee of such person.

41. *Power to commute or enfranchise at fixed fines or rent-charges.*—In any commutation or enfranchisement to be hereafter effected under or by virtue of the said recited Acts, it shall not be imperative to make the commutation fines or rent-charge, or enfranchisement rent-charge, variable with the prices of grain, but the same or any of them may, at the option of the parties effecting such commutation or enfranchisement, or at the discretion of the commissioners, as the case may require, be fixed in money or be made so variable as aforesaid.

42. *Tenants may deduct rent-charges, &c. payable to landlord.*—Any occupying tenant of any lands to be enfranchised under this Act who shall pay any rent-charge or interest which may become payable under this Act shall be entitled to deduct the amount thereof from the rent payable by him to his landlord, and shall be allowed the same in account with the said landlord.

43. *Surrenderee by way of mortgage, &c. to be deemed a tenant for certain purposes.*—A surrenderee by way of mortgage under a surrender entered on the court rolls in possession, or in receipt of the rents and profits of land, shall be deemed a tenant within the meaning of this Act, entitled to obtain or join in obtaining and effecting enfranchisement, and redeeming a rent-charge, under this and the said recited Acts, by and with the approbation of the said commissioners; and any money paid by any mortgagee for or in respect of the consideration or costs of enfranchisement or redemption of rent-charge under this and the said recited Acts shall be added to the amount due to him as mortgagee, and the land shall not be redeemable, without payment of such money, with interest thereon.

44. *Enfranchisement not to affect previous leases or demises.*—Where land enfranchised under this or the said recited Acts was immediately before such enfranchisement subject to any subsisting lease or demise at will or for any greater interest, the freehold into which such estate is so converted shall be the reversion immediately expectant upon such lease or demise at will, and the rents and services reserved and made payable upon such lease or demise shall be incident and annexed to such reversion; and the covenants or agreements, whether expressed or implied, on the part of both the lessor and lessee, shall run with the land and with the reversion respectively; and such enfranchisement shall not prejudice or affect any right of distress, entry, or action accruing in respect of such lease or demise.

45. *Not to affect commonable rights in respect of lands enfranchised.*—Nothing herein contained shall operate to deprive any tenant of any commonable right to which he may be entitled in respect of such lands, but such right shall continue attached thereto, notwithstanding the same shall have become freehold.

46. *Enfranchisement not to affect rights under any will, settlement, &c.*—No enfranchisement under this Act shall, except as herein is mentioned, affect the rights or interests of any person in, to, or out of the lands enfranchised under any will, settlement, mortgage, or otherwise, but the right of every such person shall continue to attach upon the lands enfranchised, in the same way, as nearly as may be, as if the freehold had been comprised in and had been devised, conveyed, charged, or otherwise disposed of by the will, settlement, mortgage, or other instrument or disposition under which any such person shall claim.

47. *Defective title of lords and tenants.*—Provided always, that if any enfranchisement consideration money shall be paid to any lord whose title shall thereafter prove to be bad or insufficient, the rightful owner of the manor or his representatives shall be entitled to recover against such lord or his representatives the amount or value of such consideration money as money had and received to the use of such rightful owner, and interest thereon at the rate of five pounds per centum per annum from the time of such title so proving to be bad or insufficient; and that if any tenant or person claiming to be tenant shall, after payment by him of any enfranchisement consideration money, be evicted from the lands enfranchised, by an adverse claimant, such tenant or person shall be entitled to claim the repayment of such consideration money against the lands enfranchised, and the amount thereof shall be a charge upon the lands enfranchised, and shall carry interest at the rate of four pounds per centum per annum from the time of such eviction.

48. *Act not to extend to mines or minerals, &c. nor to copyholds for lives where tenants have not a right of renewal.*—No enfranchisement under this Act shall extend to or affect the estate or rights of any lord or tenant in or to any mines, minerals, limestone, lime, clay, stone, gravel, pits, or quarries within or under the lands enfranchised, or within or under any other lands, or any rights of entry, rights of way and search, or other easements of any lord or tenant in, upon, through, over, or under any lands, or any powers which in respect of property in the soil might but for such enfranchisement have been exercised, for the purpose of enabling the said lord or tenant, their or his agents, workmen, or assigns, more effectually to search for, win, and work any mines, minerals, pits, or quarries, or to remove and carry away any minerals, limestone, lime, stones, clay, gravel, or other substances had or gotten therefrom, or the rights, franchises, royalties, or privileges of any lord in respect of any fairs, markets, rights of chase or warren, piscaries, or other rights of hunting, shooting, fishing, fowling, or otherwise taking game, fish, or fowl, unless with the express consent in writing of such lord or tenant; and nothing in this Act shall be held or construed to extend to any copyhold lands held for a life or lives or for years, where the tenant thereof hath not a right of renewal.

49. *Copies registered at the office of commissioners to be evidence.* Copies of and extracts from every award under this Act, which shall be registered under this Act, at the office of the commissioners, purporting to be sealed or stamped with the seal of the commissioners, shall respectively be received in evidence without any further proof thereof; and a copy entered under this Act on the court rolls of every such award shall be as available for the purposes of evidence as any entry on the court rolls, and a copy of or extract from any such enrolled copy shall be as available for the purposes of evidence as a copy of an entry on the court rolls.

50. *Agreements, &c. to be exempt from stamp-duty.*—No agreement, valuation, schedule, award, or power of attorney under this Act shall be chargeable with stamp-duty.

51. *Penalty on persons obstructing commissioner, assistant commissioner, valuer, or umpire.*—Any person obstructing or hindering any commissioner, assistant commissioner, valuer, or umpire acting under the powers granted by the said recited Acts or by this Act, being convicted thereof before two justices of the peace, shall forfeit the sum of five pounds.

52. *Construction of words.*—In this Act, unless where the context shews that the words hereinafter mentioned are used in a different or more restricted sense, they shall be understood in manner hereinafter mentioned; that is to say, the word "lands" shall extend to and include messuages, tenements, and corporeal or incorporeal hereditaments, subject to any manorial rights, or any undivided part or share therein; the word "valuers" shall apply to and include a single valuer, where authorised to act alone, or any umpire to be appointed as herein mentioned, and also the commissioners or the commissioner or assistant commissioner proceeding upon or with any valuation under this Act in cases where such single valuer, umpire, commissioner, or assistant commissioner respectively shall act in any such valuation; the word "manor" shall extend to such portion or portions of a manor as the said commissioners shall by any order in writing under the hands and seal direct to be considered as a manor for the purpose of effecting any enfranchisement under this Act; the word "lord" shall extend to and include the lord or lords of any manor, whether seised for life or in tail or in fee simple, and all ecclesiastical lords seised in right of the Church or otherwise, and lords farmers holding under them, and any body politic, corporate, or collegiate, and all lords seised of any manor, whether they have or have not an absolute power of selling or disposing of the same; and the word "steward" shall extend to and include a deputy steward or clerk acting as such for the time being.

53. *This Act to be deemed part of first-recited Act.*—This Act shall be taken and construed as part of the first-recited Act, and the Acts amending and explaining the same; and all the enactments therein contained as to enfranchisements effected under the provisions thereof shall be deemed and taken to apply to enfranchisements under this Act, and to the rights of all parties thereto, as if such enactments were here again repeated, except so far as is hereinbefore otherwise provided for; and all enfranchisements which may have taken place under such Acts or any of them, and all matters and things incident thereto, shall be of the same force, validity, and effect as if the provisions of this Act had been contained in the said first-recited Act.

54. *Titles of Acts.*—In citing or referring to the said recited Acts and this Act, or any of them, in other Acts or legal instruments, it shall be sufficient to use the expression "The Copyhold Acts," or "The Copyhold Act, 1841," "The Copyhold Act, 1843," "The Copyhold Act, 1844," or "The Copyhold Act, 1852," as the case may be.

55. *Not to impede enfranchisement irrespective of this Act, or powers in other Acts of Parliament.*—Provided always, that nothing herein contained shall interfere with or prevent or impede the enfranchisement of any lands whatsoever which may be enfranchised irrespective of this Act, where parties competent to do so shall agree on such enfranchisement, or the exercise of any powers contained in any other Acts of Parliament.

SCHEDULE.

No. 1.—*Form of Deed of Enfranchisement.*

This indenture, made the day of in the year between A. B. lord of the manor of of the one part, and C. D. of in the county of a tenant of the said manor, of the other part: whereas on or about the day of the said [*tenant*] was admitted tenant to the lands parcel of the said manor described in the schedule hereto, upon an absolute surrender passed to his use by [*or* by virtue of a bargain and sale from *or* by virtue of a will of *or* as customary heir of *as the case may be*]: now this indenture witnesseth, that in consideration of the sum of pounds sterling by the said [*tenant*] to the said [*lord*] now paid, the receipt of which the said [*lord*] hereby acknowledges [*or* in consideration of the rent-charge to be reserved, *as the case may be*], he, the said [*lord*], in exercise of any power given him by the said Copyhold Acts, or any other power whatsoever, and with the consent of the Copyhold Commissioners, hereby enfranchises and releases unto the said [*tenant*], his heirs and assigns, all the lands to which the said [*tenant*] was so admitted tenant as hereinbefore recited, and which are described in the schedule hereto, together with their appurtenances, to hold the said lands (subject to the [*here state the gross sum of money or rentcharge*] secured to the said by the certificate of the Copyhold Commissioners, *as the case may require*), unto the said [*tenant*], his heirs and assigns [*here state any uses which may be required*], as freehold, henceforth and for ever, discharged by these presents from all fines, heriots, reliefs, quit-rents, and all other incidents whatsoever of copyhold or customary tenure: provided always, that nothing in this deed contained shall prejudice or affect the rights or remedies of the said [*lord*] in respect of any lands held of the said manor, other than those comprised in the schedule hereto, nor any of the rights reserved by the Copyhold Act, 1852, section forty-eight. In witness, &c.

The Schedule.

No. 2.—*Certificate of Charge affecting Lands comprised in an Enfranchisement in the Manor of*

's Enfranchisement.

We, the Copyhold Commissioners, do hereby certify, that the [*here state the gross sum of money, or the annual rent-charge, which is the consideration for the enfranchisement, as the case may be*] has been awarded on account of the enfranchisement of the lands described in the schedule hereto, and we hereby charge the same lands with the payment of the [*here state the gross sum of money, or annual rent-charge, as the case may be; and, if a gross sum of money, add*, with interest thereon at the rate of pounds per centum per annum] [*here insert the terms of payment of the principal and interest (if any), and the place (if any) agreed on for payment thereof*]; and we certify that the whole principal money charged on the said lands under certificates of charge amounts to the sum of pounds, and that the said lands were enfranchised subject to [*mention any gross sums or annual rent-charges (other than the rent-charges) subject to which the lands were enfranchised*]. In witness whereof we, the said and have hereunto set our hands and the seal of the said commissioners, this day of in the year of our Lord 185 .

The Schedule.

E. F.
G. H.

[*Seal of the said commissioners.*]

[*Here may follow receipts for principal and interest respectively.*]

No. 3.—*Form of Endorsement of Transfer of Certificate.*

I, A. B. of hereby transfer the within-written certificate to C. D. of .
Dated this day of 18 .

A. B.

CAP. LII.

An Act to enable Colonial and other Bishops to perform certain functions under Commission from Bishops of England and Ireland.

(June 30, 1852.)

The new Parliament, it is expected, will be opened by the Sovereign in person, on her Majesty's return from Scotland, in the second week in November.—*Morning Herald.*

TROOPS IN THE COLONIES.—From a Parliamentary paper just published, it appears that the number of troops employed in our colonial possessions during

the year 1850, was:—Officers, 1,675, and men, 38,752, at a cost of 1,329,656*l*. This is exclusive of artillery and engineers.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

EXPLANATORY REMARKS BY THE POOR-LAW BOARD ON THE NEW REGULATIONS AS TO OUT-DOOR RELIEF AND LABOUR TESTS.

THE new regulations of the Poor-law Board for the administration of out-door relief, which appeared in the LAW TIMES of last Saturday, introduce most important changes into the administration of the poor-laws; and it is evident from the following, that they are intended as the forerunner of other and more stringent rules relating to out-door relief and labour tests. The Poor-law Board have addressed a letter to the parties concerned in carrying into operation these regulations, which contain the following explanatory remarks:—

The board are of opinion that where there is a commodious and efficient workhouse, it is best that the able-bodied paupers should be received and set to work therein; but, looking to the circumstances of most of the unions and parishes in London, and in some other populous places, they have not thought it expedient in this order to prohibit out-door relief to any class of paupers; at the same time they leave the guardians at liberty to offer relief in the workhouse only in every case in which they may consider it right to apply that test of destitution, or in which they consider that form of relief the most suitable to the necessity of the applicant, and the circumstances of the case.

Art. 1 prescribes that a certain proportion of the relief given to any applicant, whether infirm or able-bodied, shall be given in kind. The object of this provision is to prevent the misapplication of the relief furnished, and the general rule is to be observed whether work is exacted in return for the relief or not.

Art. 2 prevents the practice of delivering a large amount of relief to a pauper at once in cases in which it is intended that the relief shall be for a considerable period, and the amount is consequently more than the immediate destitution of the pauper requires. The object of the board in this article is mainly to save poor persons in the receipt of relief from being exposed to the temptation of expending at once money given to them beyond their present necessities.

Art. 3 is intended to preclude the payment of rent and the allowance of relief in other specified forms which are not recognised by the law, and are at variance with the principle laid down in the statute of 43rd Elizabeth. The cases here indicated are those which cannot without great difficulty be sufficiently investigated and watched by guardians and their officers, and are therefore such as afford frequent occasions of deception.

Art. 4 imposes a restriction upon the allowance of relief to non-resident paupers, with certain exceptions, wherein a discretionary power, subject, however, to the restrictions imposed by the other articles of this order, is left to the guardians. It is obvious that relief to non-resident paupers is a form of relief peculiarly open to abuse, and the Poor-Law Commissioners have, in their minute of the 26th of Janury, 1841, printed in the seventh Annual Report, Appendix, p. 107, fully detailed the general objections and evils arising out of it. The present order, however, in consideration of such relief having in recent times prevailed extensively, only provides for its gradual extinction, and still permits it in certain cases where the denial might be most felt as a hardship. The relief of this kind, which is authorised by the 7 & 8 Vict. c. 101, s. 26, to widows is necessarily excepted from the rule. The guardians will remember that, in cases where the non-resident pauper is irremovable, by reason of the late Removal Act, there is no legal ground for their granting relief, which, if required, should be given by, and charged upon, the union or parish of the residence.

Art. 6 prohibits the allowing relief to an able-bodied male pauper unless he be set to work, and kept at work by the guardians as long as he continues to receive relief. Several cases, however, which are described in Art. 7, are exempted from the compulsory operation of this rule, though in all or any of them the guardians may, if they think proper, upon a consideration of the circumstances, require work to be performed in return for the relief given.

The board must observe that every payment made by guardians to paupers ought to assume the form of relief—not of wages—and consequently should be measured by the wants of the applicant, and not by the quantity of work done. It is, therefore, of primary importance that the paupers should labour under vigilant superintendence, and should be required to execute a task fixed according to their physical ability.

The general consolidated orders provide, in the unions and parishes to which they have been issued, for the appointment, and prescribe the duties of a superintendent of labour (Arts. 153 and 217); and where superintendence is mentioned in this order it is assumed that a superintendent of labour is, or is to be, appointed under one of those orders, or, where they have not been issued, by the general authority of the body administering relief in the union or parish, and the board also assume that he shall be competent, under the direction of the guardians, to enforce the performance of the required task.

Art. 8 directs that the guardians shall, within thirty days after the time when they begin to put this test in operation, supply the Poor-law Board with full information as to the measures they have taken for giving effect to the provisions of this order.

Art. 9. The strict observance of this article is important for the correction of a prevalent error regarding relief by way of loan. It is not unfrequently supposed that there are cases in which, though the guardians may not give relief, they may lend it. But this article points out that what cannot legally be given, must not be lent; and that the power of lending is only to be exercised where the guardians think fit to do something less than absolutely give the relief applied for in cases where the application is lawful. In such cases, and such only, they may lend it; and such loans should never be made without being in due time strictly recovered.

Art. 10 is a proviso upon all that precedes it, with one exception; and it is introduced for the purpose of guarding against any special case which may occur, so that, by means of the concurrent action of the Poor-law Board and the board of guardians, departure in such case from the letter of the regulations may not involve the consequences of a violation of the law. The exception refers to the 3rd article, containing absolute prohibitions which can in no case be relaxed.—I am, &c.

(Signed) COURTNEY, Secretary.

Queries.

MILITIA ACT.

CAN any of your readers inform me whether attorneys are exempt from service herein. See Gerrard's case, 2 Wm. Bla. Rep. 1123, and Pulling's Law of Attorneys, 175. A SUBSCRIBER.

THE MILITIA.

VOLUNTEERING FOR THE MILITIA AT MANCHESTER.—The overseers of Manchester have only secured 100 volunteers for the militia from the township. Of the number named, twenty have been in the army before, and no doubt are induced to enter by the expectation of promotion on account of their previous drilling and knowledge. The rest are young men, weavers, packers, and others, from the various trades in the town; but the number altogether is below the proportion required for the town, which contains 300,000 inhabitants. In Salford forty have volunteered, the population being about 100,000.

WARWICK.—Upwards of 500 men have accepted as volunteers for the militia in Warwickshire, and considerable numbers are still offering themselves at Warwick, Leamington Coventry, Foleshill, and other places in the county.

LEEDS DISTRICT.—After an adjourned meeting of the Lieutenancy of the West Riding, the volunteers for the militia in the Leeds Division of the West Riding attended at the Corn-Exchange Hotel for the purpose of being attested. The work of attestation commenced at twelve o'clock, and went on rapidly till two, when it came to a stop in consequence of all the blank forms sent down by Government having been used up. The consequence of this was that an adjournment was rendered necessary until next week. Contrary to expectation, the number of volunteers coming forward very great. Those offering are mostly young men of from 18 to 22, and many of them look well adapted for service. In the opinion of those having the management of the enrolment, there is no doubt of the full complement of militiamen required for the Leeds district being raised by volunteering.

MANCHESTER.—The number of volunteers in three of the principal townships of Manchester and of Salford is 169. Chorlton-upon-Medlock township, with 35,534 inhabitants, should give as its proportion of militia, about 98 men, but the volunteers are only 7; Hulme, with 53,470 inhabitants, and 140 men required, has raised 23; Salford, with 63,424 inhabitants, and 176 men required, has raised 38 only; Manchester township, with 186,987 inhabitants, and 516 men required as its proportion, has only 101 volunteers. Total, 339,427 inhabitants, and 930 militiamen required, towards which there are only 169 volunteers.

ESSEX.—This week the process of enrolling volunteers for this force has been going on, meetings of the deputy-lieutenants, attended by Capt. Pearson, acting as adjutant of the regiment, and Mr. Foaker, surgeon, having been held in the different sub-divisions. At present, however, little progress has been made towards raising the number of men required to complete the corps, only about 50 having been enrolled out of 1,049.—*Chelmsford Chronicle*

JOINT-STOCK COMPANIES' LAW JOURNAL.

WINDING UP.

A CASE on appeal to the LORDS JUSTICES, on a motion to discharge the winding-up order, and an order for calls, is reported in our last number. (*Re The Direct Exeter and Plymouth and Devonport Railway Company, ex parte Woolmer and Others*, 19 Law T. Rep. 357.) In that case, a member of the managing committee of an abortive railway company, against whom an action had been commenced, obtained a winding-up order, before some other members of the same body, who intended proceeding for a similar order. An official manager having been appointed, proceedings under the order were had, with the assent of the other members of the managing committee. The Court, affirming the order of Vice-Chancellor PARKER, held, that whether the winding-up order was rightly or wrongly obtained, the last-mentioned persons could not move to discharge it. In respect to this question, Lord CRANWORTH said—"We have already intimated in the progress of the argument, that when the affidavits came to be fully stated before us, the first application,—the application by the petition to discharge the winding-up order, which Vice-Chancellor PARKER had refused to discharge,—was entirely without foundation. We intimated pretty clearly the ground on which we came to the conclusion, that the winding-up order, whether rightly or wrongly obtained, was an order obtained practically as much by the present petitioners as by Colonel Ellis. They were both proposing to obtain what they thought, and perhaps rightly thought, was a fit and expedient course to take; and Colonel Ellis got the order first. It was prosecuted by him, but evidently with the sanction and concurrence of the other parties, who took as much part in the proceeding as he took, and, therefore, we are clearly of opinion that they could not say that Colonel Ellis had done wrong in obtaining the order from the commencement. If he had not done it, if he had been a fortnight later, or a week later, they would have got it themselves. Both parties were proceeding to obtain the order. Colonel Ellis obtains it, and the other party cannot now say that the order was wrongly obtained. We think the Vice-Chancellor was right in refusing the present petition to discharge that order, and, consequently, that the appeal from him must be dismissed with costs." In the course of the judgment, it was stated that the attempt to wind up the affairs of this company, and to diffuse the liability amongst other persons than the managing committee, who were eventually found to be liable, cost 3,019*l*. 4s. whilst here was but one creditor, and that for a sum of only 83*l*. With respect to the costs of these proceedings, the Court held that a call on all the members of the managing committee was properly made.

COUNTY COURTS.

ADVOCACY IN COUNTY COURTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Your attention has been frequently directed to the difficult question of advocacy in the County Courts, and the relative rights and duties of attorneys and barristers, rendered of late somewhat perplexing on account of the public mania for cheap law, and the direct encouragement given by Act of Parliament to the commission of a *breach* of the *peace*, hitherto maintained between the higher and lower branches of the Profession (?), which "peace," or mutual good understanding, all who wish well to their honourable calling still desire to maintain. On the one hand it is obviously to the advantage of the judges, and to the barristers, and to those attorneys who do not personally attend the courts, that there should be a Bar, and it would seem almost essential, now that Nisi Prius is nearly defunct, that those who are to succeed to the judicial office should qualify themselves by actual practice in these courts, else verily the armour wherein they trust will grow rusty and unfit for use. On the other hand it may be urged, that the suitors and the

present popular attorney-advocates will be damnified—the first by an additional expense, and the second by a diminution of practice. The answer, however, to this objection is not difficult; as to the suitor, inasmuch as it is for the public welfare that none but trained advocates, "learned in the law," should be allowed to aid them in their litigation in order to prevent a confusion of law, so it can be no hardship that they be compelled to employ that order of men who, in an especial manner, qualify themselves for the task, and are privileged by the State to pursue this vocation; in other words, cheapness is not to be obtained by an infraction of order; and as to the attorney-advocate, it must be obvious that, if he should persist in dis- the barrister, he will be liable to be dis- in his turn (by the barrister), or, worse still, the unqualified silver-tongued son of an auctioneer! If one barrier of the Profession be broken down for the supposed benefit of the attorney, it will not be long before the public will call for the annihilation of all exclusive privileges, and raise up cheap and ignorant, yet plausible advocates of their own, to compete with the attorney-advocates.

In my opinion, Sir, the proper remedy for all this mischief is, the establishment of local courts, *with unlimited jurisdiction in matters of law and equity*, subject to appeal. That giant abuse, the Court of Chancery, contrived to monopolise the jurisdiction over all the property of the country, by the false pretence of having machinery more suitable than the Common Law Courts for investigating accounts, &c. &c. till at length, under one plea or another, the ancient Courts of Common Law became fairly ousted of their jurisdiction. The fatal mistake was in the common law judges refusing to take notice of "trusts;" so that when, by the modern practice of conveyancing, all property is become fettered with trusts, the Court of Chancery has imperceptibly, and by degrees, engulphed everything! The machinery of this Court, and the centralising system, are found to be most ruinous and defective. The machinery is accordingly to be remodelled; but the centralising system, alas! remains. What the country most wants (and that which would renovate the Profession), is *efficient local tribunals of law and equity*; and to this end all the country attorneys should actively bestir themselves. I might suggest that the twelve country Commissioners of Bankruptcy, and five of the discharged Masters in Chancery, and ten or fifteen extra hands, should form the judicial staff, leaving the Small Debts Courts for small debts.

I am, Sir, yours, &c.

T. W.

THE LAWYER.

Summary.

Equity.—A case in which a wife's equity to the settlement of a fund which had fallen in from her father, as against the creditors of her husband, was decreed, will be found in *Dunkley* v. *Dunkley*, 19 Law T. Rep. 357. There the wife had obtained a divorce from her husband on the ground of adultery, but without alimony. No provision had been made by the husband for his wife and children. On the falling in of the wife's reversionary interest in 1,000*l.* the whole amount was directed by the Lord Chancellor to be settled in opposition to the claim of the assignees of the husband. In the course of his judgment the Lord Chancellor said, that he "set the example in Ireland (*Napier* v. *Napier*) of deciding what share the wife ought to have, and that, too, without directing a reference." By this means unnecessary expense and delay were wisely and considerably avoided. His Lordship reviewed, seriatim, all the cases, stating that it was "very desirable the practice should be settled on this point, in order that counsel, when giving advice in chambers in cases of this kind, may advise their clients of the law, and save much expensive litigation, and its attendant delays." His Lordship reviewed the cases, "not because he entertained any doubt of what the rule is, but from anxiety to prevent litigation, and to shew they were not inconsistent with the conclusion he arrived at." These purposes and wishes, and the expression of them, do equal credit to the judgment-seat: they have the effect of removing doubt, meting substantial justice, and creating confidence at one and the same time. In the same case two points of practice were also settled. It ... held, that on an appeal under a claim, there must be in future a deposit as upon a bill; and that the practice as to the opening of an appeal under a claim is the same as that under a bill. In *Chant* v. *Brown*, 19 Law T. Rep. 361, one of a class of questions always interesting to the Profession, was considered. The point there raised was, whether documents prepared by a solicitor acting for a party under whose bill the plaintiff and defendant claims, and also for a third party as mortgagee, formed privileged communications. It was held by V. C. Turner that they were such, and therefore the interrogatories relating to them, and the depositions thereon, except for the sole purpose of proving handwriting, must be suppressed. It was also held that such documents as are prepared for the person under whom the plaintiff and defendant claim are not privileged. A very important case to solicitors is *Re Gedge*, 19 Law T. Rep. 359. From this we learn that uncertainty as to the rules and principles on which orders of course for taxation are obtained is removed, and the practice at length finally settled. The rule there laid down is, that it is incumbent on the party who applies for an order of course to tax a bill, to proceed in the same manner as if he were asking an injunction ex parte; that is, to state every material fact to the officer to whom he applies, in order to enable him to judge whether the case is really one for an order of course, and that if he do not do so, but suppresses special matters of consequence, the Court will not stay to inquire whether, if a special application had been made, an order to tax would have been allowed, but will discharge the order of course, even though he might have been entitled to the order to tax on a special application.

Common Law.—A question as to what constitutes an attestation of a power of attorney sufficient to satisfy the provisions of 1 & 2 Vict. c. 110, s. 9, was decided by the Q.B. (dissentiente Erle J.) in *Pocock* v. *Pickering*, 19 Law T. Rep. 363. There a warrant of attorney had the following attestation:—"Signed, sealed, delivered, &c. in the presence of me, H. C. who at the request and in the presence of the said J. P. &c. (the parties executing) have set and subscribed my name as the attorney on their behalf attesting the execution hereof, having first read over and explained to them and each of them the nature and contents thereof.—H. C." The Court held (Erle J. dissentiente), that the attestation did not comply with the requisites of the stat. 1 & 2 Vict. c. 110, s. 9, for want of a declaration that the subscribing witness was the attorney in the transaction for the parties executing the warrant. The refinements of argument in support of the view taken by the Court and offered by the judgment, do not, we confess, satisfy us; our opinion goes rather with Erle J. who thought the attestation sufficient.

THE MERCANTILE LAWYER.

Summary.

As there are few transactions originating more frequent litigation than bills of sale, it may be well to note a point concerning them in *Christie* v. *Winnington*, 19 Law T. Rep. 352. In that case, Williams, J. at Nisi Prius, expressed an opinion that a bill of sale by the sheriff to the execution creditor, in the ordinary form and delivered to him, confers a good title to the goods in the latter without execution by him of the bill of sale. In the same case it was held that the question, whether an execution creditor has received notice of act of bankruptcy sufficient to render his execution ineffectual, was not a question for the judge, but might be sometimes, as in that case, left to the jury. Two points were also raised by counsel in the same case and reserved by the judge; the first, whether it is necessary that the time of the execution of a cognovit under 3 Geo. 4, c. 39, should be made by the attesting witness? The second,—if necessary, then, whether an execution on a cognovit duly filed (the affidavit of the execution creditor not being by the attesting witness) is void as against a bankrupt's assignees? These points, though obviously likely to have frequently arisen in practice, appear to be without precedent, no reference to authorities having been made during their discussion. In *Re Roberts*, 19 Law T. Rep. 351, some useful points in bankruptcy were decided by a District Commissioner. It was there held, that a solicitor's bill before taxation, formed a good petitioning creditor's debt. It was furthermore held, that the non-attendance by an insolvent trader at a meeting of his creditors, convened during his absence by his clerk at his request, and which he had promised to attend, was an act of bankruptcy.

In *Attwood* v. *Hill*, 19 Law T. Rep. 353, which was a case at Nisi Prius, W. a member of a boat-building society, having become the allottee of a boat, held by the committee in trust for the society, subsequently sold it to A. his landlord, who had no notice at the time of the nature of W.'s title. W. having become a defaulter to the society, they seized the boat; it was held by Cresswell, J. in an action of trespass, that the society were justified in the seizure.

The Accountant-General of the Court of Chancery.—Among the improvements effected by the Suitors in Chancery Relief Act (15 & 16 Vict. c. 87), is one declaring that the Accountant of the Court of Chancery, from the 28th of October next, shall be paid a salary of 2,700*l.* in lieu of "brokerage" hitherto received by him, in addition to the salary and allowance now made for books and stationery. The "brokerage" heretofore received by the Accountant-General is to be paid by him to the Suitors' Fee Fund.

THE GAZETTES.

Bankrupts.

Gazette, Sept. 14.

Forfar, Alexander, straw bonnet manufacturer, Dunstable, Sept. 30 and Oct. 26, at eleven, Basinghall-st. Off. as. Edwards. Sols. Crosley and Burn, Lombard-st. and Simpson, St. Albans. Petition, Sept. 9.

Jones, Edward, linendraper, Liverpool, Sept. 24 and Oct. 15, at eleven, Liverpool. Off. as. Turner. Sol. Williams, Liverpool. Petition, Sept. 10.

Michelson, Edward, woollen merchant, Manchester, Sept. 28 and Oct. 29, at eleven, Leeds. Off. as. Young. Sols. Bond and Barwick, Leeds. Petition, Sept. 1.

Quilter, Henry, George, grocer, Birmingham, Sept. 29 and Nov. 2, at half-past eleven, Birmingham. Off. as. Whitmore. Sols. Motteram and Co. Birmingham. Petition, Sept. 9.

Richards, Maurice, grocer, Birmingham, Sept. 29 and Nov. 2, at half-past eleven, Birmingham. Off. as. Whitmore. Sols. Motteram and Co. Birmingham. Petition, Sept. 9.

Salter, Benjamin, brewer, North-end, Fulham, Sept. 28, at one, Oct. 19, at two, Basinghall-st. Off. as. Edwards. Sols. Lawrence and Plews, Old Jewry-chambers. Petition, Sept. 8.

Worms, Lewis and Matthew, merchants, Queen-st. Cheapside, Sept. 30 and Nov. 2, at twelve, Basinghall-st. Off. as. Groom. Sols. Tilleard and Co. Old Jewry. Petition, Sept. 11.

Gazette, Sept. 17.

August, Alfred, ironmonger, St. Stephen-st. Norwich, Sept. 30 and Oct 19, at one, Basinghall-st. Com. Holroyd. Off. as. Groom. Sols. Sole and Turner, Aldermanbury; Miller and Son, Norwich. Petition, Sept. 4.

Balls, Benjamin, perfumer and hairdresser, Temple-row, Birmingham, Sept 27 and Oct. 23, at half-past ten, Birmingham. Com. Daniell. Off. as. Christie. Sol. Allen, Waterloo-st. Birmingham. Petition, Sept. 15.

Barker, Henry Allison, coal merchant, Hope Wharf, City-road, Sept 30, at half-past one, Nov. 9, at eleven, Basinghall-st. Com. Holroyd. Off. as. Edwards. Sols. Lawrance, Plews, and Boyor, Old Jewry-chambers. Petition, Sept 2.

Clapham, George, watchmaker and jeweller, Whittlesea, Cambridgeshire, Sept. 28, at two, and Nov. 9, at one, Basinghall-st. Com. Holroyd. Off. as. Edwards. Sols. Reece and Blyth, Serjeants'-Inn, Fleet-st. and Reece, Birmingham. Petition, Sept. 9.

Gilbert, George, builder, Nottingham, Oct. 8 and 29, at ten, Nottingham. Com. Balguy. Off. as. Bittleston. Sol. Smith, Market-st. Nottingham. Petition, Sept. 6.

Harris, Charles Sewell, pawnbroker, Liverpool, Sept. 28 and Oct. 28, at eleven, Liverpool. Com. Perry. Off. as. Cazenove. Sols. Wason and Fletcher, Wason-buildings, 4, Harrington-st. Liverpool. Petition, Sept. 8.

Mackellar, Duncan James, and Hampson, Charles, shawl and fancy warehousemen, Gresham-st. in the City of London, Sept. 30, at two, and Nov. 2, at one, Basinghall-st. Com. Holroyd. Off. as. Groom. Sols. Mardon and Prichard, Newgate-st. Petition, Sept. 15.

Marriott, David, draper, 118, Oxford-st. Sept. 30, at half-past eleven, Nov. 2, at two, Basinghall-st. Com. Holroyd. Off. as. Groom. Sol. T. G. Norcutt, Gray's-inn-square. Petition, Sept. 15.

Staley, Thomas, grocer, Stockport, Cheshire, Sept. 29 and Nov. 10, at twelve, Manchester. Off. as. Fraser. Sol. Stringer, Stockport. Petition, Sept. 15.

Assignments for the Benefit of Creditors.

Gazette, Sept. 7.

Brooksbank, W. flax spinner, Leeds, Sept. 1. Trusts. J. O. March, machine maker; H. Ludolf, flax merchant; and J. Pollard, machine maker, Leeds. Sol. W. North, Leeds.—*De Carle*, J. T. grocer, Norwich, Aug. 23. Trusts. O. A. Diver, and H. Browne, grocers, Norwich. Sols. Beckwith and Kitton, Norwich.—*Culley*, H. provision dealer, Gravesend, Aug. 24. Trusts. W. Winnett, grocer, Gravesend; W. Miall, victualler, Milton-next-Gravesend; and J. Milton, butcher, Milton-next-Gravesend. Sols. Southgate and Son, Milton-next-Gravesend.—*Laurence*, F. C. licensed distiller and rectifier, Ramsgate, Aug. 10. Trusts. I. Abraham, Auctioneer, and C. Page, licensed victualler, Ramsgate. Sol. J. B. Judge, Ramsgate.—*Noble*, D. Royal Brewery, Oldfield-road, Salford, Aug. 11. Trusts. H. Morris, maltster, Caunton; and J. Swindels, corn factor, Salford. Sols. Heywood and Allwood, Manchester.—*Orley*, A. M. Berlin wool dealer, Plymouth, Aug. 10. Trusts. S. R. Block, S. W. Block, and W. A. Block, Berlin wool importers, City.

Gazette, Sept. 10.

Bedford, J. C. grocer and retailer of ale and porter, Bishopwearmouth, Aug. 18. Trusts. T. Catton, Newcastle-upon-Tyne, and J. Humphrey, Sunderland-near-the-Sea, wholesale grocers. Sol. W. W. Robson, Bishopwearmouth.—*Cross*, W. L. farmer, Bawtry, Yorkshire, Aug. 16. Trusts. T. Nettleship, chemist and druggist, and W. Stephenson, saddler, Bawtry. Sol. H. Cartwright, Bawtry.—*Walker*, W. hatter, High-st. Birmingham, Sept. 1. Trusts. J. Gee, Hollingwood, Oldham, and M. Taylor, Denton, Manchester, hat manufacturers. Sol. T. S. James, Birmingham.

REPORTS

OF

ALL THE CASES ARGUED AND DETERMINED

IN ALL THE

COURTS OF LAW AND EQUITY, IN BANKRUPTCY, INSOLVENCY, NISI PRIUS, THE CRIMINAL COURTS, AND IN IRELAND,

FROM APRIL TO OCTOBER, 1852.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. KEENE, Esq. of Lincoln's-Inn, Barrister-at-Law.

(Before Lord ST. LEONARDS.)
IN CHANCERY.
Saturday, March 13.
WYKE *v.* ROGERS.

Principal and surety—Promissory note—Evidence.

A. and B. (principal and surety) became bound to C. in the payment of 400l. of which sum, by an arrangement between A. and B. 120l. were paid to the latter. B. repaid to C. that sum, before the time limited by the bond for the payment of the 400l. and C. after that time accepted from A. a promissory note payable at two months for the remainder, on a parol agreement (which was proved) that the note was not to be considered as given in discharge of or as substituted for the bond. A. died insolvent. On a bill filed by surety against creditor for a declaration, that under the circumstances he might become released and discharged from the bond, and for an injunction to restrain creditor from proceeding in an action which he had commenced for the recovery of 280l.: the remainder of the 400l.:

Held, that the surety was not discharged.

When a security is taken, which may be supposed, by postponing the time of payment, to restrict the right of suing within that time, and so to release the surety, parol evidence is admissible to prove that there was an agreement that such security should not have that operation.

If an intention to give what is in effect time be declared by a written agreement, in order that the right as against the surety may be reserved, it is necessary that such a reservation be declared also in writing.

This was an appeal from the decree of the Vice-Chancellor Knight Bruce in a suit instituted to restrain the defendant from issuing execution on a judgment at law under a bond against the plaintiff as surety. The question was, whether, in a dealing between the creditor and the principal debtor, the surety (the plaintiff) had been released.

The facts were briefly these:—In May 1843, Seth Evans, of Abergavenny, borrowed of Alice Rogers, the defendant, 400l.; 120l. of which were received by Jacob Wyke, the plaintiff, and the remaining 280l. by Evans. Evans and Wyke executed to the defendant Rogers a bond, bearing date the 18th of May, 1843, whereby they became bound to her in the penal sum of 800l. with a condition for making the same void on payment by them, or either of them, to her of 400l. with interest at the rate of 5 per cent. per annum, on the 18th of May, 1844. The bond was executed by the plaintiff as a security only for and on behalf of Evans, so far as regarded the 280l. and of this fact the defendant, at the time of its execution, was aware. On the 20th of January, 1844, the plaintiff paid to the defendant 120l. being so much of the 400l. as he had received. The 280l. received by Evans, and which formed further part and residue of the 400l. were not paid by him at the time stipulated by the conditions of the bond; and on the 20th of January, 1845, he made and delivered to the defendant a promissory note for that sum, payable to her or her order at the Abergavenny Bank. The promissory note was not paid when it became due, and had previously been negotiated by the defendant to Messrs. Bailey and Co. bankers, of Abergavenny, who discounted the same, and who shortly afterwards commenced an action at law against Evans for the recovery of the amount of the note and interest, and obtained a judgment. Evans having executed an assignment of all his estate and effects for the benefit of his creditors, no execution was issued upon the judgment. The defendant subsequently brought an action against the plaintiff and Evans upon the bond, for the recovery from them of 348l. being the sum of 280l. and interest thereon, at 5l. per cent. per annum, to 6th May, 1848. Upon this the plaintiff filed a bill, alleging, inter alia, that the sum of 120l. which he had paid as aforesaid, was received by her in full satisfaction and discharge of all claims and demands which she had as against him upon or in respect of the said bond in respect of 400l. thereby secured, and that at the time he so paid to her that sum she admitted that her claim against him upon the bond was fully satisfied, and that the promissory note which had been so as aforesaid given and delivered to her by Evans was received and taken by her in full satisfaction and discharge of the 280l. the balance of the 400l. secured and made payable by the bond, and was received and taken by her as a security for such balance, and at the time when such promissory note was so made and delivered as aforesaid, the said defendant undertook and agreed that the payment of the 280l. should be postponed and delayed until the time when such promissory note should arrive at maturity, and that the transaction between Evans and the defendant with regard to the making and delivery of the promissory note, and the arrangement between them as to postponing the time for payment, took place entirely without the consent or knowledge of plaintiff, and praying that he might become released and discharged from the bond, and that the same was satisfied as against him, and that the defendant Rogers might be restrained from taking any further or other proceedings at law against the plaintiff in the said action.

The defendant by her answer stated that when the plaintiff paid the 120l. it was distinctly understood between him and the defendant that he was and would be held liable for the remainder of the 400l. if the same was not paid by Evans, and that it was distinctly understood and agreed at the time the promissory note was given, that it was not to be considered as payment of the balance due upon the bond, or substituted for such bond, but that such said bond was to remain in the hands of the defendant, and was to continue to be a security to her for the remainder of the money thereby secured, after deducting therefrom the sum of 120l. which had been paid by the plaintiff; that there was a special understanding that the promissory note should not operate against the power of proceeding for the recovery of the amount under the bond. In the course of the suit, Mr. Price, the solicitor to the defendant, was examined and gave evidence to that effect. The Vice-Chancellor directed a reference to the Master to inquire whether, at the time when the promissory note was given, there was any and what agreement respecting the bond between the defendant and Evans, and under what circumstances the promissory note was given. There was a very lengthened viva voce examination before the Master, who found that the promissory note was not given in discharge of the bond, and that there was a general understanding between Rogers and Evans that the remedy of the former on the bond was not to be taken away, and that there was no written nor, beyond the general understanding, any distinct parol agreement respecting the bond between those parties. On the cause coming on to be heard on further directions, his Honour directed the injunction which had been granted in the cause to stay the proceedings at law upon the bond to be dissolved, and that the defendant was to be at liberty to issue execution on the judgment obtained by her against the plaintiff.

That decree was made in the absence of the plaintiff, and an application was afterwards made to have the cause restored to the paper and to be reheard. To this rehearing the defendant objected, and his Honour, who, on the hearing on further directions, had required the case to be stated to the Court, and had thereupon formed his opinion, refused to interfere.

Under these circumstances the plaintiff now came before this Court.

The LORD CHANCELLOR.—This is not an appeal, but an application for a rehearing of a cause. I have jurisdiction; my duty being to hear appeals from judgments in the courts below. I, however, feel that this is a case deserving of the consideration of the Court. Here is a litigation on a matter of 280l. which must already have swallowed up a considerable portion of that sum. If I resend it to the Court below, in all probability it will come back again on appeal. I doubt whether I have jurisdiction, but if the counsel

for the defendant are willing to consent that I should hear the cause, I will do so, but only under the peculiar circumstances of the case, and on the express understanding that this is not drawn into a precedent. I only want to put an end to this frightful expense.

C. P. Cooper and *J. Browne*, of the Common Law Bar (with them *Bilton*), submitted that the surety was released, provided the creditor placed himself in such a situation that a Court of Equity would restrain him from proceeding. It was originally contended that the promissory note was given in discharge of the bond; but the question was now narrowed to this, whether *time was given* to Evans by the promissory note; and referred to the case of *Lewis* v. *Jones*, 4 B. & C. 506. It was contended that the position of the only witness as attorney for the parties, and his liability to his client should he do anything to release the surety, detracted from the credit of his testimony. If there had been the express agreement alleged as to the nonrelease, that fact should have appeared on the face of the promissory note.

Wigram, *Bovill*, of the Common Bar, and *Pearson*, argued on the testimony of Mr. Price, the solicitor, that there was an agreement that the note should not prejudice the remedy under the bond; and that there was no equity to deprive the defendant of the fruits of the judgment at law; and cited *Pring* v. *Clarkson*, 1 B. & C. 14.

Browne, in reply.

The LORD CHANCELLOR.—In this case the plaintiff had entered into a bond as surety for the sum of 400*l.*; 120*l.* of which were paid, and 280*l.* remained to be paid. A promissory note was given by the principal debtor to the creditor for the latter sum, payable at two months. The effect of that transaction at law was in no manner to impeach the bond, and the bond remained just as powerful an instrument, and equally as effective at law, as it did before. A question at law might arise, whether that promissory note did not necessarily, in the absence of any agreement being proved to the other, operate in discharge of the surety,—that is to say, whether it was to be taken simply as a collateral security for the 280*l.* or whether it was to be considered as a security which, being payable at the end of two months, must be understood to give two months' time to the principal, so as to prevent any remedy being resorted to to compel payment, either against the principal or surety during that period. Now, all the cases prove that if, after the execution of an instrument a security is taken which might operate as a discharge of the surety by giving time, if the remedy is preserved as against the surety there is no discharge. In this case an action had been brought on the bond, under which the defendant would necessarily have recovered at law; the plaintiff, therefore, resorts to this Court in order to stay the proceedings, and to obtain equitable relief. Now, equity cannot relieve as against a legal obligation unless a clear equitable case is made out: the plaintiff is opposing a legal right, and must, therefore, shew to the Court that the dealing in question did operate to release him in equity, although not at law, from the obligation. Now, is there anything necessarily in the transaction which operates so as to give time, and so to release the party? No authority has been cited for that proposition, and I do not mean to give any opinion on that, either one way or the other. It is perfectly clear in law, that if there be, at the time when the security is taken, a period fixed for payment, and a transaction is subsequently entered into which may be supposed to postpone the time of payment, and to restrict the right of suing within that time, and so to release the surety, there you may prove by parol evidence that there was an agreement that it should not have that operation. Now, the argument at the bar at one time assumed this shape, namely, that you could not admit any parol evidence against this promissory note. That argument was beside the question. It is not sought to impeach the promissory note, or to prevent its having every operation, which, as a promissory note, can be given to it; but the evidence is introduced, to prevent that operation which it is insisted this note had, namely, to prevent any process on the bond, which would be a release of the surety: for that purpose, beyond all doubt the evidence is admissible, and if the evidence had not been admissible, then the plaintiff has miscarried throughout this case; and, instead of allowing it to go to the Master to inquire whether there was such an agreement or understanding to the effect contended for, he should have insisted that no such evidence was admissible, and that the matter was ripe to be decided by the Court at the time it made that inquiry. However, it went to the Master, and there was as much evidence as one could suppose could possibly be brought forward. There was a great deal of cross-examination. There was great expense incurred,—such expense as, in my opinion, cannot be justified when the amount which is in dispute is taken into consideration. That evidence is directly and conclusively against the party who insisted upon having it. The defendant herself, in her answer, swears that there was an understanding that it was not to affect her security. Well, it was said that that was not relied upon, and the Court did not rely upon it; observations were made that the answer was prepared by the solicitor, who was the person who would be answerable. This, I doubt very much; but this it is needless for me to consider. These observations had weight with the Court below, and the Court therefore sent it to the Master to ascertain whether or not any such understanding existed. Well, respecting this gentleman, whose character has not been impeached, some observations have been made on his credit; but every means of cross-examination have been resorted to, and there has been no other result except to prove, in the most distinct manner I ever heard a statement in evidence, not that there was an agreement, but there was no agreement quâ agreement; he swears, too, distinctly over and over again that it was stated at the time when the note was delivered that the remedy on the bond was in no way to be affected; but that the defendant should be at liberty to sue as if the note had not been given. Suppose I were at this moment to reverse the decree, what would the plaintiff do? He has no other evidence; he does not deny that it is open to evidence. There is the evidence of the defendant, and the facts sworn to in her answer; he is not satisfied with those. The solicitor, the only other person who could give evidence, has been subjected to a vivâ voce and cross-examination; he swears to the fact, which establishes the case against the plaintiff. What would be the effect of reversing the decree? What is to be done? There would be evidence on one side and on the other; and this evidence as it stands is, in my opinion, perfectly conclusive. Now it was said that, if there were a general agreement when the note was made, that it should not affect the remedy provided by the bond: this reservation ought to have appeared on the face of the promissory note. I wholly deny that it is proved as a collateral matter, and the cases which were cited proved no such thing. In those cases there were regular deeds, or regular written instruments, by which the compromise was made, and time was given; and the Court there held that if you were to introduce parol agreements to take away the effect of deeds, it would be mischievous and against law. If, therefore, by a written agreement you declare your intention to give what is in effect time; if you mean to reserve your right against the surety, you must reserve it by a written instrument. Now, on the Master's finding, what was contended for on the part of the plaintiff is this, the said there was a double agreement; he first insisted that there was an agreement that the promissory note was given in satisfaction of the bond. The Master is of opinion that the promissory note was not so given. It certainly would have required a strong case to make out that position. So to decide would be to convert what was a specialty into a mere simple contract debt. As against the defendant, the principal debtor would have made out and converted a specialty debt into a mere debt by simple contract. It could not have any such effect or operation; the Master found that there was no such agreement. The plaintiff then insisted that there was a general dealing and a general understanding between the parties, amounting to a parol agreement, that the promissory note was given and accepted in discharge of the security; but to this the Master says, "that there was a general understanding between Alice Rogers and Seth Evans that the said Alice Rogers's remedy on the bond was not to be taken away; but he found that there was no written, nor, beyond the general understanding before mentioned, any distinct parol agreement respecting the said bond between the said parties." It is clear the Master was right; there was no contract on those terms; but there was a general dealing and a general understanding, which in point of law amounts to a stipulation that did prevent that promissory note in equity from having the effect of discharging the surety. Equity is not tied up by such narrow bounds as is supposed in this case. In a matter of this sort, what a judge has to decide is, whether in real truth and honour there was or was not such an agreement as was here contended for. The evidence shews that there was no such agreement; it is made out to my perfect satisfaction. The Master is right, and I, therefore, dismiss this appeal with costs.

HIGH COURT OF APPEAL.

(BEFORE THE LORDS JUSTICES.)

Reported by C. H. KEENE, Esq. of Lincoln's-Inn, Barrister-at-Law.

March 5 and 22.

WEBB *v.* THE DIRECT LONDON AND PORTSMOUTH RAILWAY COMPANY.

Landowner—Railway company—Purchase of lands—Abandonment of undertaking—Remedy at law for damages—No specific performance.

The promoters of an Act for making a railway entered into a contract with a landowner, which was afterwards confirmed by the company, whereby after agreeing, in the first nine clauses, to do or abstain from doing certain things which had sole reference to the completion of the railway, by the tenth they agreed to pay the landowner a sum of 4,500l. as purchase-money for the lands to be taken by the company for the formation of the railway, not exceeding eight acres, and for consequential damages to the property, and in consideration of this contract the landowner withdrew his opposition to the Bill:

Held, reversing the decree of the Court below, that on the abandonment of the railway by the company, after the passing of the Act, a Court of Equity ought not to compel the company specifically to perform the agreement, and that the landowner ought to be left to his remedy at law to obtain damages.

Principles on which the Court decrees or refuses to decree specific performance.

This was an appeal from the decree of the Vice-Chancellor Turner, made on a claim directing the specific performance of an agreement under the following circumstances:—An agreement, dated the 23rd of July, 1845, signed by, and made between, C. S. Crowley, B. Baines, and J. Laurie, three of the promoters of an Act of Parliament for making a railway from the Croydon and Epsom Railway, at Epsom, to the town of Portsmouth, to be called "The Direct London and Portsmouth Railway Company," on behalf of themselves and all other the promoters of the said Act, of the one part, and the plaintiff, P. B. Webb, of the other part, whereby the said C. S. Crowley, B. Baines, and J. Lawrie, for themselves, agreed with the said P. B. Webb as follows:—"First, that the company to be incorporated under the said Act of Parliament, when passed, shall, at their own costs and charges, build in a substantial and workmanlike manner a bridge over the said railway between the points A. and B. mentioned in the plan or map annexed to the agreement, or at such other place as the said P. B. Webb shall by writing direct; and that such bridge shall be of the width of at least sixteen feet, so as to afford a convenient and sufficient carriage-way for wagons, carts, and carriages between the parts of the property of the said P. B. Webb, described in the plan, which shall be divided by the said railway, and shall for ever thereafter keep the said bridge and roadway thereon in good repair. Secondly, that the said company shall deviate from their proposed line as delineated in the said plan, so far to the eastward thereof as to avoid altogether any interference with the piece of meadow land, the property of the said P. B. Webb, or the plantation round the same, distinguished in the said plan by the numbers of 152 and 153. Thirdly, that the said company shall, if empowered so to do, purchase a piece of land, the property of the dean and chapter of Salisbury, containing by estimation one acre (more or less), which will lie between the said deviated line of railway on the one side, and the said piece of meadow land and plantation numbered 152 and 153, and the piece of land in the said plan marked 35, on the other side; and immediately, on such purchase being completed, shall convey the same, at their own costs and charges, to the said P. B. Webb, his heirs or assigns, or as he or they shall direct, for a nominal consideration. Fourthly, that the said company shall build, in a substantial and workmanlike manner, an ornamental archway under their line of railway, between the points C. and D. mentioned in the said plan, so as to continue by means thereof the shrubbery-walk there, which will be divided by the said railway, and shall keep the said archway for ever thereafter in good repair; and that such archway shall be of the width of ten feet at least. Fifthly, that the said company shall allow the said P. B. Webb a crossing over the said railway where the same shall traverse the land of the said P. B. Webb on a level between the points E and F; and the said company shall erect and keep in repair proper gates on both sides of the said crossing, the gate on the west side thereof to be an ornamental one. Sixthly, that the said company shall plant with evergreens, or other ornamental shrubs or trees, the western side of the embankments of the said railway, as far as it shall cross the property of the said P. B. Webb, described in the said plan. Seventhly, that the said company shall not erect any fence upon the surface of the ground above the said railway where the same shall pass in a cutting, except an invisible iron fence; and if any telegraphic communication shall be set up by the side of the said railway, it shall be set up (as far as the same may be practicable) so as not to be within view from the mansion-house or pleasure-grounds of the said P. B. Webb. Eighthly, that the said company shall not erect or build any station or other building on any part of the lands of the said P. B. Webb, described in the said plan, which may be seen from the said mansion-house or the grounds surrounding the same. Ninthly, that the said company shall not enter upon nor deposit spare

or refuse earth or materials, or any other thing, on any of the said lands of the said P. B. Webb, described in the said plan (except such as shall be taken by the said company for the site of the said railway), for any purpose whatsoever, without the consent in writing of the said P. B. Webb. Lastly, that the said company shall pay to the said P. B. Webb the sum of 4,500*l.* together with his costs, charges, and expenses incurred up to the day of the date of the agreement by reason of the intended formation of the said railway (not exceeding the sum of 150*l.*) before the company shall enter on any of the lands of the said P. B. Webb for the purpose of making the said railway; and that all timber and other trees on the lands to be taken by the said company shall be the property of the said P. B. Webb. And it is hereby declared that the said sum of 4,500*l.* is to be the purchase-money for the said lands so to be taken by the said company as aforesaid for the formation of their railway, not exceeding eight acres, according to such deviated line as aforesaid, across the property of the said P. B. Webb, described in the said plan, and for the consequential damage to such property." A memorandum of the same date, written at the foot of the agreement, and signed by C. J. Woods, the plaintiff's agent, was in the following words:—

"It is understood and agreed by and between the parties above named, that, in the event of the Act of Parliament referred to in the foregoing agreement not being obtained, the agreement for purchase hereinbefore contained shall be null and void.

"C. J. WOODS."

It appeared that this agreement was entered into while the company's Bill, empowering them to make the railway, was pending in Parliament; and that the consideration for it was the withdrawal of the opposition of the plaintiff as a landowner to the Bill. On the 26th of June, 1846, the Act (The Direct London and Portsmouth Railway Act (*a*) was passed.

On the 5th of April, 1847, the company executed an indenture under their seal, whereby it was witnessed that the company, in consideration of the withdrawal of the opposition of the said P. B. Webb to the therein-mentioned Bill, did thereby ratify and confirm the said agreement of the 23rd of July, 1845, made on their behalf by the said C. S. Crowley, B. Baines, and J. Laurie, and did thereby for themselves, their successors, and assigns, covenant with the said P. B. Webb, his executors, &c. that they the said company, their successors and assigns, would in all things perform, fulfil, and keep the covenants and agreements entered into in the said agreement by the said C. S. Crowley, B. Baines, and J. Laurie. And the said P. B. Webb, in consideration of the covenant thereinbefore entered into by the said company, did thereby discharge and release the said C. S. Crowley, B. Baines, and J. Laurie, their heirs, executors, &c. from the observance and performance of the covenants and agreements in the said agreement contained, and on the part of the said company to be observed and performed, and from all liability whatsoever in respect of the said agreement so entered into by them as aforesaid; and the said P. B. Webb, his heirs, executors, &c. did thereby covenant with the said company, their successors and assigns, that he had not done or permitted any act, matter, or thing, whereby he would be prevented or hindered from discharging or releasing the said C. S. Crowley, B. Baines, and J. Laurie, from the said agreement.

The claim stated that the plaintiff had, before the agreement was entered into, incurred certain costs, charges, and expenses, by reason of the intended formation of the railway, to the amount of more than 150*l.* It appeared that the company had entered upon the land for the purpose of surveying and taking levels; but, subsequently, the railway was abandoned, and the company did not require the land. There was an offer on the part of the plaintiff in the claim specifically to perform the agreement on his part.

Sir *W. Page Wood* and *Moxon*, for the plaintiff, contended that the agreement was binding upon both parties, and was not conditional upon the de-

&c. Railway Company, 1 Sim. 586, N. S.; and *Bland* v. *Crowley*, 20 L. J. 218, Ex.

Bethell,(*a*) *Malins*, and *Bovill*, for the company, contended, first, that the agreement was conditional and framed on the supposition that the land was to be taken, and the railway made through the lands of the plaintiff. Secondly, that the price of the land by itself was not ascertained. The 4,500*l.* included not only the price for the land, but for compensation for severance, and consequential damages. Thirdly, that the powers of the company to hold land had expired. Lastly, that the plaintiff's proper remedy, if he was entitled to any, was at law: that is, the contract was one of such a character as a Court of Equity could not, without injustice, compel a specific performance of. (*Harnett* v. *Yielding*, 2 S. & L. 554; *Kimberley* v. *Jennings*, 6 Sim. 340; *Reg.* v. *The London and North-Western Railway Company*, 15 Jur. 873; *Shirley* v. *Davis*, cited 6 Ves. 678.)

Moxon, in reply.

Lord Justice Lord CRANWORTH.—It is now, I believe, a fortnight ago since this matter was first brought before us, and both my learned brother and myself have had ample opportunity of turning the matter over in our minds several times since the former argument, and having formed a strong opinion upon this case, we think it is not useful to detain the parties, but to give an opinion at once. Now, this is a claim, the object of which is, to get the specific performance of a contract, or alleged contract contained in a deed of covenant entered into by the defendants. That deed of covenant is a deed binding on the parties who entered into it, namely, the railway company, to carry into execution certain articles of agreement, or alleged articles of agreement, entered into by three gentlemen, Crawley, Baines, and Laurie, with the plaintiff on the intended formation of the company. Now what the plaintiff says is, that according to the true construction of that instrument these three gentlemen bound themselves, among other things, to pay to him the sum of 4,500*l.* by way of purchase-money for any eight acres of land of his, within certain limits, which the company should think fit to take for the purpose of making their railway; that the 4,500*l.* was to be accepted by him as the purchase-money of the land from the company, and as the consideration for the consequential damage to his property; and what the plaintiff contends is this, that that instrument amounted to such a contract; that the defendants, the company, after the company came into esse pursuant to the Act of Parliament, entered into the deed, whereby they bound themselves to adopt that as their contract upon the consideration that he released the contracting parties; and now he asks as against these defendants specific performance of that which he alleges to be the contract to purchase this property. The first question, and a very important one is, whether there is any contract at all? Upon the view we take of this case, it does not become necessary for us to give any positive opinion upon that subject. In the case before me, just referred to, when I was Vice-Chancellor, of *Preston* v. *Liverpool and Manchester, &c. Railway Company*, as far as I recollect that case, I have just had it handed up to me, and have had no opportunity of looking at it, I see by the note at the end, I gave the parties the opportunity of trying that question at law, it being a mere legal question. I do not apprehend that I had myself any sort of doubt about that contract, and that can afford no authority for the present case; I mean that part of the present case which consists of the doubt whether the contract was entered into at all. No doubt, if the railway had been formed, and the land taken, there was a contract that would have bound the parties; but the railway not having been formed, the question is whether, under the circumstances, the contract to purchase ever arose. On the part of the plaintiff, it is said that must be the construction, that there was a contract. On the part of the defendants, it is said that is not the reasonable construction; that if there was no railway, there was no contract to sell or purchase at all; and although the mere preceding clauses of the agree-

would select a portion of the plaintiff's land lying within certain limits, not to exceed eight acres, and to take it for the purpose of the railway, and to pay him 4,500*l.* as the purchase-money for what they should so take. Now assume for the purpose of the argument, that was the contract; then the plaintiff seeks the specific performance of that contract. Now it is the plain A. B. C. doctrine of the Court, that it is not upon every contract that the Court will interfere to decree specific performance. It does so, to give more complete justice to a party who seeks the aid of this Court, where a party has entered into a contract to purchase an estate. It may often happen that the mere legal remedy of recovering damages for the non-performance of the contract would afford very inadequate relief, and from the earliest time it has been the doctrine of this Court to interfere to make the party do that which he has engaged to do, namely, convey the land he has agreed to sell. Whether, in order to give a corresponding remedy on the other side, and for what other reason we need not stop to inquire, but undoubtedly the same relief is also given, unless there be some reason against it, to the vendor who seeks merely to have the purchase-money, there is no doubt the Court will interfere; but even in the case of a suit by a purchaser, if there be circumstances rendering it unjust that the Court should interfere, the Court will not interfere in favour of a purchaser; and I should say, much more readily will the Court listen to an objection that is made against a vendor seeking a specific performance, because, of necessity, the vendor can get complete relief at law. Now, looking at that principle, let us see whether this is a case in which we ought to interfere. I suppose the instrument to amount to a contract, such as the plaintiff alleges it to have been. I think this is not only a case in which we ought not to interfere, but it is a case in which we should be exactly reversing the order of things, and making the machinery of this Court instrumental in doing injustice, instead of justice, because the only relief we could give would be to decree the payment of the 4,500*l.* But here it is admitted, that what the contract amounts to is really this:—A contract to pay 4,500*l.* to select eight acres of the plaintiff's land, and take it from him; and for those eight acres and other consequential damage to pay the 4,500*l.* Now, what the plaintiff would have to do at law, as I believe, would be to state this contract, and state the default, the breach of that contract on the part of the defendants, which will be their not having taken the eight acres of land; and so not having done, of course, consequential damage, and not having paid the 4,500*l.*; the amount of damage to be then calculated will, as I conceive, be a calculation made on the aggregate, which, taking all these circumstances into consideration, will do justice; whereas the relief that would be afforded in this Court would be positive injustice—would be giving to this gentleman 4,500*l.* as the purchase-money for that which they had not taken, and which, I believe, they never can now take. I do not wish to commit myself on that subject. It may be that they would take it and sell it. At all events, it is one of those cases in which, assuming the instrument to amount to what the plaintiff says it amounts to,—a contract to pay 4,500*l.* by way of purchase-money and compensation for damage to be done to other land, he has the ready means of obtaining complete redress at law; and, we think, to that redress he ought to be left. Our opinion is, that this claim ought to be dismissed, but, as we think, under the circumstances, not with costs, and without prejudice to the rights of the parties in an action. I own I very much regret, and my learned brother concurs in that, that the offer that has been made has not been acceded to.

Sir *W. Page Wood.*—My client has lost more money than the amount offered. The Legislature has thought proper to provide for this where a party remains four or five years in suspense, without being able to dispose of his property.

Lord Justice Lord CRANWORTH.—That is a very good reason for the jury giving you the 4,500*l.*

Lord Justice KNIGHT BRUCE.—I should have

the plaintiff of his opposition to the Bill; and even if the defendants have not profited thereby, which they may have done, the plaintiff cannot be put in the same position as he was previous to entering into the contract. That the company had entered into the lands, surveyed and took levels of them, felled trees, and that, according to the agreement, the purchase-money ought to have been paid before their doing such acts. That the unreasonable course pursued by the defendants, in contending that, notwithstanding all that had been done by the plaintiff, no obligation attached to the company, was directly opposed both to correct principle and authority. They cited *Preston* v. *Liverpool and Manchester*

(*a*) 9 & 10 Vict. c. lxxxiii.

with the railway, yet that necessarily implies it was to be done if the railway was formed, and the whole was conditional on the existence and formation of the railway. I say that is matter, at all events, of a very doubtful nature what is the construction of the contract. Assume, for the purpose of the argument, and that only, that the contract is such as that contended for by the plaintiff. I will call it the agreement of the defendants, whatever it was, the agreement of the defendants under their seal, that they

(*a*) At the conclusion of Mr. Bethell's argument a sum of money being offered to compromise the suit, the cause stood over, upon the recommendation of their lordships, that the offer might be taken into consideration. It was ultimately refused, and the argument was continued by Mr. Malins.

On the c
and me.

ROLLS COURT.

Reported by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

Dec. 4 and 5 and Jan. 14.

MORTIMER *v.* WATTS.

Devise—Leasehold—Discretionary power of renewal—Trustees, discretion of.

A testator bequeathed leaseholds to trustees upon trust, out of the rents and profits to pay and perform the rents and covenants, and if they thought it advantageous to effect renewals of the subsist-

ing leases or any of them, as they should think proper, and if they, in their discretion, should think fit or expedient, but not necessarily or peremptorily, effect and keep on foot insurances on the lives of the cestuis que vie, or any of them, and should effect such insurances in such sum as, in the opinion of the trustees, should be sufficient to enable them, whenever a life dropped, to effect a renewal, and should, out of the rents and profits, or by mortgage thereof, raise money sufficient to effect the renewal of the leases so often as advisable. The testator was possessed of [illegible]lds for terms of years determinable on lives, and these had been renewed, but there was no covenant for renewal. On a case under the 13 & 14 *Vict. c.* 35:

Held, that the trustees were bound to renew from time to time, if able to obtain renewals on terms not disadvantageous to the testator's estate; that they had not a mere discretionary power to renew at their arbitrary will and pleasure, that there was an absolute trust to exercise their discretion; that in the exercise of their discretion they were bound to renew if they thought it desirable, and that they had a discretion to raise money in the modes pointed out by the will, and they were bound to exercise it if not injurious to the estate.

This was a special case, and the question thereby submitted to the Court related to the duties of the trustees under the will of the Rev. Nicholas Watts, late of Kingsteignton, in the county of Devon, with reference to the renewal of certain leases, whether it was obligatory upon them to renew, or whether they might, in the exercise of their discretion, refuse so to do. Mr. Watts, by his will, dated the 31st of December, 1845, gave and bequeathed to his wife, Judith, his dwelling-house for life, and he gave all the residue of his personal estate (except lease hold estates and chattels real) to George Ferris Whidborne Mortimer and John Bradford upon trust to collect and convert the same, and, after payment of debts, &c. to invest as therein mentioned, and stand possessed thereof in trust after payment thereout of 500*l.* a year to his wife during widowhood, to pay one-fourth part of the income for the benefit of the testator's son Nicholas, his wife, and children; and as to one other fourth part, to pay the same to such persons as the testator's son William John Watts should by deed or will appoint; and as to one other fourth part, to pay the same to such persons as the testator's daughter, Lucinda Diana Whidborne, with the consent of her present or any future husband, by deed or will executed as therein mentioned should appoint; and as to the remaining fourth part, on trust to pay the same to such persons as the testator's daughter Judith Elizabeth Moir, with the consent of her present or any future husband by deed or will executed as therein mentioned should appoint, and in default of appointment in trust for the said J. E. Moir for her separate use for life without power of anticipation; and from and after her decease in trust for her husband, Robert Moir, for life; and after the decease of both Mr. and Mrs. Moir, upon trusts for the benefit of their children. The testator then gave and devised all his freehold estate to his said trustees and their heirs, as to one fourth part, to the use of his son Nicholas and his children; as to another fourth part to the use of his son William John for life, to the use of all and every or such one or more, exclusively of the other or others of the child or children of him the said Wm. John Watts as he should appoint, and in default of appointment to all and every the child and children of him the said William John Watts and their heirs as tenants in common, with an ultimate limitation to William John Watts, his heirs and assigns; and as to one other fourth part, to the use of the said trustees and their heirs, during the lifetime of L. D. Whidborne in trust to pay the rents and profits thereof as they should become due, but not in anticipation, to such persons as she by any writing under her hand should from time to time appoint; and in default of appointment to pay the same to her for her sole and separate use, and after her decease to the use of her husband for life, and after the decease of both to the use of all and every, or such one or more, exclusively of the other or others of the child or children of the said L. D. Whidborne as she should appoint, and in default of appointment, to the use of all and every the child and children, their heirs and assigns, as tenants in common, with an ultimate limitation to to L. D. Whidborne, her heirs and assigns; and as to the remaining fourth part, to the use of the said trustees and their heirs during the life of Judith Elizabeth Moir upon trust to pay the rents and pro[illegible]s should be[illegible] due, but not

[illegible] time appoint, and in default of appoin[illegible]
or her sole and separate use; and after her decease to the use of the said Robert Moir for life, and after the decease of both, to the use of all and every, or such one or more exclusively, of the other or others of the child or children of the said J. E. Moir as she should appoint; and in default of appointment, to the use of all and every the said child or children, their heirs and assigns, as tenants in common. Then follows this clause:—"I give and bequeath all my leaseholds or chattel messuages, lands, tenements, or hereditaments whatsoever and wheresoever, including any messuages, land, tenements, or hereditaments I may hold or be entitled to under any lease or leases for lives absolute, to the said trustees, their heirs, executors, administrators, and assigns, according to the nature and quality thereof respectively, for the respective estates or interests which I shall have [illegible] upon trust that they the said trustees, and the survivor and, &c. do and shall, out of the rents and profits of the said messuages, lands, tenements, and hereditaments and premises respectively, pay and perform the rents and covenants of and relating to the said tenements, hereditaments, and premises respectively which shall be subsisting at the time of my decease, or which shall be reserved or contained in any renewed lease of any of the said tenements, hereditaments, and premises, and which from time to time ought to be paid, observed, and performed on the part of the lessees, and upon trust, if they the said trustees or trustee for the time being shall think it proper or advantageous, as to any of the said tenements, hereditaments, or premises which are customarily or may be renewed; that the said trustees or trustee, for the time being, shall, or lawfully may, endeavour to effect renewals of the subsisting leases of the said tenements, hereditaments, and premises, or any of them, upon such terms as they shall think proper, so that the said premises may, during the continuance of the trusts of this my will, as far as the circumstances of the case will admit, be respectively held for three lives for a long term, determinable on three lives or for twenty-one years absolute, or according to the usual terms of renewal, and in order thereto do and shall, if they or he in their or his discretion think fit or expedient, but not necessarily or peremptorily, effect and keep on foot insurances on the lives of the respective cestuis que vie, or any of them named in such of the subsisting leases, for the time being, of the said tenements, hereditaments, and premises (or any of such leases) as shall be held on lives, or years determinable on lives, or on the lives of such of the cestuis que vie as shall be insurable at reasonable premiums, and shall or may effect such insurances in such sum as in the opinion of the said trustees or trustee, for the time being, shall be sufficient to enable them or him, whenever such life shall drop or fall, to effect a renewal of the subsisting lease on which the life insured shall have been named a cestui que vie, and do and shall apply the money to be obtained or received on the insurance of such life or lives as aforesaid in effecting a renewal of the subsisting lease in which such life or lives shall have been named a cestui que vie, if such renewals can be effected on such reasonable terms as the said trustees or trustee shall approve, and shall pay the surplus of such money, if any, or the whole thereof, if such renewal cannot be effected, to the person or persons who under the trusts hereinafter declared or referred to shall, for the time being, be in the possession of the said leasehold tenements and premises, or beneficially entitled to the rents and profits thereof; and shall or may, out of the rents and profits of the said leasehold premises respectively, or by mortgage thereof, or of any part thereof, raise money sufficient to effect the renewal of any of the subsisting leases of the said tenements, hereditaments, and premises for the time being, when and so often as a renewal shall be advisable, and as from not insuring, or from the insufficiency of the money arising from any such insurance as aforesaid, or from any other cause there shall be no funds or insufficient funds for the purpose, and do and shall apply the money to be so raised in or towards effecting such renewal or renewals accordingly;" and for the purpose of effecting such renewals the trustees were to surrender the subsisting leases and do all other necessary acts; and the testator declared that the trustees were to hold the said leasehold tenements, &c. on the same trusts, &c. regard being had to their nature and quality, as should best or nearest correspond with the uses, &c. thereinbefore declared of his freehold, and he appointed the said trustees the executors of his will. The testator afterwards executed six codicils to his will, by the first of which he appointed William Miskin a trustee and executor in conjunction with the two named by his will; and by the third of which, dated 22nd May, 1848, after reciting that his son Nicholas had lately died, leaving [illegible]

and his children, and he directed his said trustees to receive and take the annual produce, revenue, rents, and profits thereof and invest and accumulate the same in Government Stock or Funds of Great Britain till his grandson Nicholas should attain the age of twenty-six years, and when he should have attained that age to pay him the said income, &c. of the said accumulations and personal estate for life, and after his decease to stand possessed of the said accumulations, and one-fourth part of his personal estate upon trust for the children or child of his said grandson as he should appoint, and in default of appointment upon certain trusts for the said children, and as to the one-fourth part of the freeholds of inheritance to the use of his said grandchild Nicholas for life, and after his decease to the use of all and every the child or children of his said grandson as he should appoint, and in default of appointment to their use as tenants in common, and the testator declared like uses of the leaseholds, &c. The testator died on 3rd May, 1849, and his will was proved by George Ferris Whidborne Mortimer and William Miskin on the 14th of July, 1849, John Bradford having renounced probate thereof, and by deed disclaimed the trusts. William John Watts has never been married. Lucinda Diana Whidborne has only one child, viz. the defendant Lucinda Diana Watts Whidborne, of the age of five years, and she has not exercised the power of appointment to her children. Judith Elizabeth Moir has only one child, viz. the defendant George Moir, of the age of ten years, and she has not exercised the power among her children. The defendant Nicholas Watts is an infant and unmarried, his guardian being Judith Watts. By an order of the 8th August, 1851, George Ferris Whidborne was appointed guardian of all the infant defendants for the purpose of concurring in this case. The testator was at the time of his death possessed of or entitled to certain leaseholds held upon leases for a term of ninety-nine years determinable upon lives under Lord Clifford, and all the leases contained a covenant to pay rent and do suit at the courts of the manor of Kingsteignton, and to keep the premises in repair; but none of the leases contained any clause binding the lessor to renew. It appeared it had been the ordinary practice to renew the leases on Lord Clifford's estate by granting (if applied for) from time to time, when a life dropped, a reversionary term determinable on the failure of another life, so as to make the current lives three in number. No renewals, however, of any of the leases in question had been made since the testator's death. The clear value of the leases is about 700*l.* a year. It appeared that an application had been made to Lord Clifford's steward for a renewal of a lease of one of the tenements, and on the 14th of January, 1851, the solicitor of his lordship replied by stating, that after the Hon. Mr. Clifford's coming of age, in 1840, Lord Clifford's power of renewing leases for years determinable on lives, was limited to tenements comprising less than two acres of land. Doubts having arisen as to the construction to be put upon the power of leasing given to the trustees as to whether the exercise of it was discretionary or imperative, a special case was prepared under the provisions of the stat. 13 & 14 Vict. c. 35, for the opinion of the Court; the questions thereby raised being two; first, whether the trustees were bound to renew the leaseholds, or any or which of them, supposing them to be unable to renew some of them, in consequence of its being disadvantageous to the testator's estate, or whether they might exercise an absolute discretion as to the making or not making of such renewals; second, whether they were bound to take any means, by insurance or mortgage of the leasehold premises, or out of the present rents and profits to meet the expense of such renewals when the occasion for them should arise. The case now came on to be argued.

Wickens, for the trustees, stated the facts of the case, and that the trustees had been advised that they were placed in difficulty, and hence the application to the Court.

Roupell, *Freeling*, *Shapter*, and *Wickins* for the several parties.

The following cases and authorities were cited:—*Lord Milsington* v. *Earl Mulgrave*, 3 Madd. 491; *Crowley* v. *Hortstonge*, 1 Dow. 361; *Fordyce* v. *Bridges*, 2 Ph. 497, S.C.; 10 Beav. 90; *Prendergast* v. *Prendergast*, 14 Jur. 989; *Stocken* v. *Stocken*, 4 Myl. & Cr. 489, S.C.; 4 Sim. 152; 2 Myl. & K. 489; *O'Reilly* v. *Alderson*, 8 Hare, 101; *Costabodie* v. *Costabodie*, 6 Hare, 413; *Greenwood* v. *Evans*, 4 Beav. 44; *Reeves* v. *Creswicke*, 3 Y. & C. 715? *Earl Shaftesbury* v. *Duke of Marlborough*, 2 Myl. & K. 111; Sugd. Real Prop. H.L. 462.

Wednesday, Jan. 14.—The MASTER of the ROLLS.—The question in this case is a very simple one, which arises upon the construction of a clause in the will of a testator, empowering the trustees to renew certain leaseholds. The case came before the Court before the Christmas vacation, and I should not have reserved my judgment but for the desire that I had to read this clause, which is somewhat long and complicated; not because I thought that any real difficulty arises upon the construction of the clause. The question is, whether the clause gives a mere discretionary power to the trustees to renew the leaseholds, or whether, in fact, it imposes a trust upon them, which,

if they did not execute it, the Court would execute for them; and I will state very shortly the reasons why I have come to that conclusion on the construction of that clause. There is a very clear distinction, which is familiar to all persons practising in Courts of Equity, between a mere discretionary power in trustees and a trust to be executed by them, though it may sometimes assume the shape of a power. Where there is a mere discretion in trustees to be executed simply as they think fit, this Court will not interfere with their discretion. If the trustees themselves do not themselves execute the trust, the Court will not execute it in their place. But the only difficulty which appears to me to have arisen in this case has arisen from the circumstance that the clause is in its form discretionary, and the reason for its being discretionary is very obvious. It is, I apprehend, the custom of conveyancers, when the testator directs that certain leasehold estates for lives, which are renewable, shall be renewed by the trustees, not to make it compulsory upon the trustees to renew, but to give them a discretion in the matter to do it upon such terms as they shall think fit; for unless the testator, or the framer of the instrument, were to adopt that course, the effect would be that it would be placing the estate and the persons interested in the estate in the power of the lessor to ask for such terms as he might think fit. Now, bearing that in mind, and that being, as I apprehend, the reason for it being done, we come to the words of the clause; and I think there cannot be any reasonable doubt upon the subject. The clause begins thus. [Here his Honour read it, down to the words "upon such terms as they shall think proper."] I pause here for a moment to point out what appears to me to be the object which I have before referred to, of giving the discretion to the trustees. If it had been compulsory upon the trustees to renew, if they could by possibility have obtained a renewal, it would have compelled them to] pay any sum, or at least any reasonable sum, which the lessor might have demanded. Upon that subject it appears to me, that the testator giving them a discretion in the matter, gives them a discretion as to the terms; and I shall point out presently, in what way I think that discretion ought to be exercised; and the trust is important, when compared with other words of the instrument. It is upon trust that they shall, if they think proper, renew and endeavour to effect renewals "upon such terms as they shall think proper." Now, then, that means that it is their duty, provided they can get fit and reasonable terms, to renew the leaseholds. And it goes on in this way,—"So that,"—now this is the object for which that renewal is to be effected—"so that the said premises may, during the continuance of the trusts of this my will, so far as the circumstances of the case will admit, be respectively held for three lives, or for a long term determinable on three lives, or for twenty-one years absolute, or according to the usual terms of renewal." Well, that is the object for which it is to be done; that is to say, the object was, and it is an expression which is frequently found, that they are to do so for the benefit of the estate, that is, for the benefit of all persons interested in the estate, in the same manner as the person would do it if he were the owner in fee simple of the estate. And the manner in which the Court would execute a trust of this description, if the trustee were unable or refused to execute, would be, that it would refer it to the Master to know whether it was for the benefit of all parties interested, supposing them to be under disabilities, and not consenting in the matter, whether it was for the interest of all persons interested in the estate that these renewals should be effected. It is evident that the trustees are not to sacrifice the tenant for life to the persons interested in the reversion, but that they are to exercise their discretion in such manner as they may consider most beneficial for keeping the estate in its present condition. Then that will answer the first question, which is, whether the trustees are bound to renew the leaseholds, or any or which of them, supposing them to be unable to renew some of them in consequence of its being disadvantageous to the testator's estate; or whether they may exercise an absolute discretion as to the making or not making of such renewals. My opinion is, that they are bound to renew these leaseholds from time to time when a life drops, supposing them to be able to obtain renewals on terms not disadvantageous to the testator's estate; and that is to say, that they have not a mere discretionary power to renew upon their arbitrary will and pleasure. The power given by the testator is this, that it is an absolute trust to exercise their discretion, and then, if in their discretion they should think it desirable to effect such renewals, they are bound to do so. The second question is, whether they are bound to take any means by insurance or mortgage of the leasehold premises, or out of the present rents and profits, to meet the expense of such renewals, when the occasion for them shall arise. Now the trusts in the clause in question are these. [Here his Honour read the clause.] Now I may here observe, that the latter part of this clause confirms the observation that I have made with respect to the clause primarily, namely, that it is imperative upon them to exercise the discretion given them to renew. I think that the same discretion applies to them for the purpose of raising the moneys either by insurances of lives or in such manner as is pointed out by this clause, as they shall think most advisable at the time; that it is their duty to exercise that discretion, and if it cannot be done without great injury to the estate, then it would not be necessary that such insurances should be effected and such money should be raised. But that they must exercise in this matter that discretion for the purpose of obtaining the money in the shape or in the manner most beneficial to all the parties concerned. The latter part of the clause it is not necessary for me more particularly to refer to. I foresee that some difficulty may arise as to the payment of the surplus; but no question arises upon that. I am of opinion that the second question depends very much upon the first; and I am of opinion that this is a discretion that is to be exercised.

Roupell.—That clause also gives a power of sale and mortgage for that purpose. There seem to be three trusts in the trustees—to raise the money either by insurance, mortgage, or sale; and that would give me a trust to exercise the discretion in any of those modes.

The MASTER of the ROLLS.—In any of those modes which they may consider most beneficial; always considering that the main object is, as far as possible, to keep the estate in the condition that it was when the testator left it. That is the primary consideration.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. HENRY COOKE, Esq. Barrister-at-Law.

Jan. 24 and Feb. 12.

ROCHFORD *v.* HACKMAN.

Tenant for life—Gift over on alienation—Insolvent debtor—Forfeiture.

A testator gave a life interest in dividends to a son, and declared that if he should in any manner assign, or incumber, or anticipate the same, the bequest to him should cease, as if the same had not been mentioned in or made part of his will, or as if his son were dead. The son took the benefit of the Act for the Relief of Insolvent Debtors:

Held, that the life estate was forfeited, and that the parties in remainder were entitled, and that the same did not pass to the assignee in insolvency.

This was a claim filed by James Rochford, and Martha Ann Rochford, his wife, against the trustees of the will of William Rochford, and other parties, praying that the Court would declare the plaintiffs entitled to one-half of 1,900*l.* absolutely, and to the other half contingently, on the decease of Richard Rochford, jun. before attaining the age of twenty-one years. The facts were as follow: William Rochford, deceased, by his will, dated Aug. 15, 1822, after bequeathing certain legacies, gave all the rest, residue, and remainder of his personal estate unto two trustees named Groves and Hackman, upon trust to invest the same, and pay the dividends and interest to his wife for her life, and at her decease, to divide the capital into four shares, and to pay the dividends of one share to his son Robert Rochford, for his life, and after his decease to divide the capital of that share among his children equally, and to be vested interests as and when such children should attain the age of twenty-one years, and if no child should attain twenty-one then the same share to go over to the other sons. The will also contained trusts for the other sons of the testator, and their issue, with similar gifts over to the other sons and their issue, *mutatis mutandis.* The testator then made the following declaration: "And I do hereby will and declare, that in case my said wife or either of my said four sons shall in any manner sell, assign, transfer, incumber, or otherwise dispose of or anticipate all or any part of her, his, or their share and interest of and in the said dividends, interest, and annual proceeds aforesaid, then and in such case, and from and immediately after such alienation, sale, assignment, transfer, or disposition shall be made, the said several bequests so hereinbefore made to or in trust for her, him, and them as aforesaid, shall cease, determine, and become utterly void, to all intents and purposes, as if the same had not been mentioned in or made part of this my will, or as if my said wife or either of my said sons were dead." The trustees were appointed executors. The testator died on the 7th of September, 1831, and the executors proved the will on the 13th of the following month, and six days afterwards the wife of the testator died. The executors paid the debts and legacies, and invested the residue in their names in the purchase of 3,800*l.* Three per Cent. Consols. The trustee Hackman died in the lifetime of Mr. Groves, who died in 1846, having appointed Mr. Hackman and Mr. Knight executors of his will. Two out of the four sons of the testator died without issue. James Rochford, a third son, had issue, who attained twenty-one. Richard Rochford, the remaining son, had issue,—Richard Rochford the younger, an infant, and Martha Ann, who attained twenty-one, and was married to her cousin James Rochford. Richard Rochford, the son of the testator, was confined for debt, and on the 14th of December, 1849, petitioned for his discharge under the statute 1 & 2 Vict. c. 110. The Court for the Relief of Insolvent Debtors made a vesting order on the 17th of December, and having appointed Mr. English the assignee of his estate, the insolvent was discharged from custody. The assignee under the insolvency claiming, by virtue of the vesting order, the dividends of the share of Richard Rochford, Martha Ann, with her husband, filed the claim against the executors of the will of the surviving trustee of William Rochford's will, and who, as such, were trustees of that will, and against the assignee of the insolvent's estate, and against the infant son of Richard Rochford, the insolvent, claiming to be entitled to the capital of half of 1,900*l.* Consols, the half of the testator's residuary estate, in the same manner as if he were then dead, and claiming also to have the other half of the 1,900*l.* Consols secured, to abide the contingency of the infant brother not attaining twenty-one years.

Sir *W. P. Wood* (Solicitor-General) and *Shebbeare,* for the plaintiffs, cited *Dommett* v. *Bedford,* 6 T. R. 684; *Wilkinson* v. *Wilkinson,* 3 Swans. 515; *Yarnold* v. *Moorhouse,* 1 Rus. & Myl. 361; *Lear* v. *Leggatt,* ib. 690; *Churchill* v. *Marks,* 1 Coll. C.C. 441; *Rishton* v. *Cobb,* 5 Myl. & C. 152; *Cooper* v. *Wyatt,* 5 Madd. 484; *Pym* v. *Lockyer,* 12 Sim. 397; *Martin* v. *Marghan,* 14 Sim. 230.

Tripp, for the assignee in insolvency, relied on *Bradley* v. *Peixoto,* 3 Ves. 324; *Ross* v. *Ross,* 1 Jac. & Wal. 155; *Re Dickson's Trust,* 1 Sim. 37, N.S.

J. Baily, for the trustees.

De Gex, for the infant.

Shebbeare, in reply.

JUDGMENT.

Thursday, Feb. 12.—The VICE-CHANCELLOR said it had been contended by the plaintiffs, and by the defendant, Richard Rochford the younger, that the insolvent's interest had ceased, and that the plaintiffs were absolutely, and that defendant was contingently entitled to the 1,900*l.* in which, but for the insolvency of Richard Rochford the elder, he would have been entitled to an interest for his life. His assignees, however, claimed to be entitled to the dividends of that fund during his life. In determining the question, the first point was, to see whether there were any fixed rules to guide the decision of the Court; and on examination of the cases there appeared to be two rules laid down applicable, and sufficient to govern the present case. First, that property could not be given for life, any more than absolutely, with any restriction upon alienation, and that any such restriction was void if annexed to a life estate, just as much as if annexed to an estate in fee; and, secondly, that although a life estate be expressly given by the first part of the will, it might be well determined by an explicit limitation over in the subsequent part of the will. The first proposition was fully supported by *Brandon* v. *Robinson,* 18 Ves. 429, and *Graves* v. *Dolphin,* 1 Sim. 67; in both which cases there were estates for life given, with a restriction on alienation, but no gift over on alienation; and the doctrine laid down in these cases had not been contravened by any subsequent decisions. The second proposition, that a life estate may be determined by an explicit limitation over, was equally well settled. His Honour said he need only refer to the cases of *Wilkinson* v. *Wilkinson, Cooper* v. *Wyatt,* and *Churchill* v. *Marks.* It was said at the bar, indeed, that a limitation over was unnecessary; and the case of *Dickson's Trust* was relied on. He did not think it necessary to decide the point at present; but he did not understand the case of *Dickson's Trust* as deciding that a life interest might be well determined merely by a proviso that it should cease in a certain event, without any gift over being made. The true rule was that the Court must collect the testator's intention, whether the intention was that the life interest should continue or not from the whole will. The Court must look to the primary disposition to see what estate the testator intended to give, and to the ulterior disposition to see in what events it was given over. If the Court found that there was a limitation over, and that it met the event in which the primary disposition was to cease, then it was clear that the testator did not intend the life estate to continue. If the Court, on examination, found that the limitation over did not meet the event in which the previous gift was to cease, then there was no sufficient evidence of the testator's intention that the life interest should determine. This took away all difficulty and fell in with the case of *Dommett* v. *Bedford,* in which there was no gift

over, but a proviso for cesser; but it would be difficult to argue that more force was due to a gift over than to a proviso for cesser. Some expressions of Lord Eldon in the case of *Brandon* v. *Robinson* had been the subject of remark, and a few observations upon them might therefore be proper. "A disposition to a man until he shall become bankrupt," his lordship said, "and after his bankruptcy over, is quite a different thing from an attempt to give it to him for his life, with a proviso that he shall not sell or alien it. If that condition is so expressed as to amount to a limitation, reducing the interest short of a life estate, neither the man nor his assignees can have it beyond the period limited." His Honour did not understand Lord Eldon there to say that the law would not permit of a proviso determining previous gift. On the contrary, he expressly said that if the proviso be so expressed as to reduce the interest previously given to one short of a life estate, neither the man nor his assigns should have it beyond the period for which the gift was limited. Lord Eldon then passed to the old law on the subject, and entering on the question whether the interest was assignable by the commissioners in bankruptcy, he said, "To prevent that, it must be given to somebody else." But this did not mean that in all cases there must be a gift over, but that under that particular will the assignees must take the life interest of the bankrupt, in the absence of any gift over. This seemed clear, both from what preceded and from what followed the particular gift. But without determining whether a gift over was in all cases necessary, his Honour was of opinion that in the case before the Court the testator had not merely provided for the cesser of the life interest, but had made a valid gift over. Some effect must, if possible, be given to all the words of the will; and if he were to hold otherwise in this case, no effect would be given to the proviso following the previous gift for life. Some observations were made on the terms in which this proviso was framed; but on looking to the previous part of the will, as well as to the ulterior provisions, he thought there was no difficulty, if he referred the different expressions, "as if the same had not been mentioned in or made part of this my will," and "as if my said wife, or either of my sons, were then dead," to the different persons and the different events to whom and upon which the interests were given over in the previous part of the will. He was also of opinion that the event which had occurred was an event which the testator intended should determine the interests given in the previous part of the will. He thought that the views he had thus taken were in accordance with *Brandon* v. *Acton*, and *Shee* v. *Hale*, 13 Ves. 404; and were not affected by *Lear* v. *Leggatt*, and *Pym* v. *Lockyer*. A learned text writer had expressed some doubt as to the soundness of the distinction, taken in *Shee* v. *Hale*, and other cases, between alienation under bankruptcy and under an insolvency, but his Honour saw no reason for the doubt. The conclusion was, that the life interest of the insolvent was determined, and the only remaining question was, whether the capital should be now divided. He thought that the capital was not yet divisible; for the determination of the life interest did not alter the class who were to take on that event; and a division of the fund at the present time might carry it beyond its objects, for after-born children would be equally entitled to come in. Therefore, Mrs. Rochford, the plaintiff, took under the will a vested interest in one moiety of the 1,900*l.* and the defendant, Richard Rochford the younger, took a contingent interest in the other moiety, depending on his attaining twenty-one years; but both these interests would open, so as to let in after-born children (if any) becoming entitled under the will. Those interests would be on the same footing as vested interests in a fund which was subject to a power of appointment, and which were, therefore, liable to be divested on the exercise of that power; in which case the parties entitled to the vested interests were entitled to the dividends and interest in the meantime. The fund would, therefore, be brought into court, and kept entire.

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple Barrister at Law.

Wednesday, Jan. 28.

TROTTER *v.* VINING.

Trust—Husband and wife.

A. the wife of B. was entitled in her own right to certain real estate, and proceedings to recover the same were instituted against C. who was in possession. The claim was compromised by C.'s paying a sum of money, and A.'s executing a release of the estate. The money was received by B. who, in a letter to the attorney in the proceedings, stated his intention to invest it for his wife's use. The sum was afterwards invested in B.'s name, and he regularly paid the dividends to his wife. B. on several occasions spoke of the stock as belonging to his wife, &c. B. died, and upon the claim of A. it was held that B. was a trustee of the fund for her separate use, and the executors were ordered to transfer it to her.

This was a claim by Margaret Trotter, the widow of Thos. Trotter, deceased, against the executors of his will to recover 40*l.* Long Annuities standing in the name of the testator at the time of his death. In 1840 the plaintiff, her husband being then living, claimed to be entitled to certain real estate as the heiress-at-law of the Rev. John Ridghill. General Reeve was in possession of the estate, and disputed the plaintiff's title. The plaintiff and her husband were about to commence proceedings to recover the estate, when, after some negociation, it was agreed that in consideration of 687*l.* 19s. to be paid by General Reeve to the plaintiff and her husband, they should release General Reeve from the claim to the estate, and Thos. Trotter, the husband, should give to General Reeve a bond to secure him against any future proceedings in respect of the said claim to the estate. In pursuance of the agreement the plaintiff duly executed to General Reeve a release of all her right in the estate. The balance of the 687*l.* 19s. after paying the costs, amounted to 551*l.* 10s. 2d. and this sum was paid to the husband by Mr. Dennett, who acted as the solicitor for the plaintiff in the matter. In a letter addressed to Mr. Dennett, and dated the 5th of July, 1841, Mr. Trotter thus accounted for the disposition of this money:—"It appears that the law and other expenses in this matter are as follow:—Your bill, 129*l.* 17s. 11d.; the amount of General Reeve's bill, deducted from Mrs. Trotter's money, 66*l.* 11s.; Meredith's bill on me, 2*l.* 15s.; my own disbursements at various times for parish registers, wills, &c. 15*l.* 1s. 6d.; total, 205*l.* 8s. 5d.; leaving a balance in favour of my wife amounting to 551*l.* 10s. 2d. which I shall immediately invest to the best advantage for her use." Mr. Trotter paid to the plaintiff 49*l.* 0s. 2d. part of this money, and on the 9th of July, 1841, invested the balance (502*l.* 10s.) in the purchase of 40*l.* Long Annuities in his own name. Mr. Trotter died on the 8th of September, 1851, having by his will appointed W. Vining and J. Palmer, the defendants in this case, and three other persons, his executors, and the will was shortly afterwards duly proved by Vining and Palmer alone. It was proved in evidence on this claim that Mr. Trotter on several occasions verbally stated to different persons that the money was his wife's, and that he would not touch a penny of it; and that he had invested it for her, as he feared she would run through it. It was also proved that after the investment Mr. Trotter paid his wife 10*l.* per quarter, and that he spoke of it as her annuity, and that she had no other annuity than the dividends in question, and that the household expenses were always paid by Mr. Trotter and not by his wife.

Malins and *Speed* appeared for the plaintiff; and *Bacon* and *Simons* for the defendant.

The VICE-CHANCELLOR said that the attorney in the proceedings against General Reeve must be considered as the attorney of the wife, and Mr. Trotter having written to the attorney the letter of the 5th of July, 1841, stating that he intended to invest the sum for his wife's use, and having afterwards invested the sum, and paid the dividends to the wife; these facts, coupled with Mr. Trotter's parol declarations, clearly established that the husband was a trustee of the fund for the separate use of the wife. His Honour would, therefore, make a declaration to that effect, and order the defendants to transfer the annuities to the plaintiff, she undertaking to indemnify the testator's estate against the bond given to General Reeve.

Thursday, Feb. 12.

HYDE *v.* THE CORPORATION OF MANCHESTER.

Lands Clauses Consolidation Act, 124th section.

The corporation of M. had occasion to go to Parliament for the purpose of constructing waterworks, and they required lands, of which part belonged to A. B. and part to C. D. but the boundary between the lands was undefined and uncertain. The corporation deposited plans, adopting as to this boundary the plan they had obtained from C. D. A. B. opposed the Bill in Parliament, but withdrew his opposition upon an agreement that the corporation should consult A. B.'s views, and fix the exact quantity of land required for the proposed works within six months after the passing of the Bill. The corporation, before the expiration of the six months, gave A. B. notice to treat, defining the lands they required by a plan annexed to the notice. The award of the arbitrators in terms gave compensation for the lands within the boundary shewn by that plan, but in the proceedings before them the statement of A. B. as to the boundary was taken and (as was alleged) acted upon. A. B. afterwards recovered in ejectment against the corporation a piece of land upon the disputed boundary, and for which the corporation had paid C. D. The corporation then proceeded, under the 124th section of the Land Clauses Consolidation Act, to acquire possession of the piece of land as in a case of mistake. A. B. filed a bill to restrain the corporation from so doing, but upon a motion for injunction the Court considered that the case was one of mistake and within the 124th section, and refused the motion, with costs.

By "The Manchester Corporation Waterworks Act 1847," "The Lands Clauses Consolidation Act 1845," and "The Waterworks Clauses Act 1847," were incorporated with that Act except so far as inconsistent therewith, and the corporation of Manchester were thereby empowered to purchase from the Manchester and Salford Waterworks Company who were empowered to sell to them, the lands, reservoirs, buildings, works, and property of that company, which lands, &c. immediately on the execution of a conveyance by the company under their common seal or on the payment of the purchase-money and the execution of a deed poll by the corporation, as therein mentioned, were by virtue of the Act to vest in the corporation; and thereupon all powers, authorities, rights, and privileges contained in the company's Acts were to vest in the corporation, except only so far as the same were inconsistent with the Act now in statement. By the 32nd section, after reciting that plans and sections of the reservoirs and works proposed to be made, and a book of reference containing the names of the owners or reputed owners, lessees or occupiers of the land in or upon which the same were intended to be made, had been deposited with the several clerks of the peace for the counties of Lancaster, Chester, and Derby, respectively, it was enacted that they should retain the said plans, sections, and books of reference, and permit all persons interested to inspect the same. By the 34th section the corporation was empowered to purchase such of the lands delineated in the plan and described in the book of reference, as should be necessary for the purposes of the Act. The 53rd section authorised the corporation to apply, in the next session of Parliament, for an Act to enable them to construct auxiliary reservoirs as therein mentioned. By the 60th section it was enacted, that the powers of the corporation for the compulsory purchase of lands should not be exercised after five years from the passing of the Act; and the 61st section empowered the corporation to enter into agreements for the purchase of streams of water and land, as therein mentioned.

Mr. Hyde, the plaintiff in this case, at the time of the passing of the before-mentioned Act, was seized in fee simple of certain lands near Vale House, in the county of Chester, part of which were delineated in the plans and books of reference mentioned in the Act; and the corporation being desirous of making a gauge basin and reservoir on or near the plaintiff's land, applied to Parliament for a special Act to empower them to do so. The plaintiff at first opposed this by presenting a petition against the Bill; and the petition, among other things, stated that the boundaries of the plaintiff's estate were very inaccurately drawn on the deposited plan, and that a considerable parcel of land, amounting to 786 square yards, belonging to the plaintiff, within the limits of deviation on the set plan, had therein been described as the property of the Duke of Norfolk, and appeared to be required for the purposes of the Act; but that the plaintiff had received no notice as to it from the parties applying for the Bill. This petition was referred to the parliamentary committee in the usual way; but before the assembling of the committee the plaintiff agreed with the corporation to withdraw his opposition, and thereupon the following memorandum was signed by the plaintiff's solicitor and the town-clerk of the corporation: "Manchester Corporation Waterworks, No. 2. "Mr. Hyde to withdraw his opposition upon the following terms:—That the question of value of the lands required by the promoters, and of the amount of compensation to be paid to Mr. Hyde for injury or damage for severance of lands, diversion, or use of water, or otherwise occasioned by the proposed works of the company to the remainder of his estate to be settled by arbitrators to be appointed in the manner prescribed by the Lands Clauses Consolidation Act. That the promoters shall, in carrying out the proposed works so far as may be compatible with the efficient carrying out of this scheme, consult the views of Mr. Hyde to the fullest extent, and shall fix the exact quantity of land required, and the site of the proposed works, if required by Mr. Hyde within six months after the passing of the Bill. The promoters to pay 45*l.* towards the charges and expenses which Mr. Hyde has been or may be put to in opposition to the said Bill.—Joseph Heron, R. H. Wyatt."

The opposition by the plaintiff being thus withdrawn, the Bill became an Act on the 22nd of July, 1848, and was entitled "The Manchester Corporation Water Works Amendment Act, 1848." This Act was incorporated with the former Act, and the corporation were thereby empowered to make the said

gauge basin on or near the plaintiff's land, and by sec. 10 of the Act it was provided that the power of the corporation for the compulsory purchase of lands for the purposes of the Act should not be exercised after the expiration of three years from the passing thereof. On the 17th of January, 1849, the corporation, in pursuance of the agreement before mentioned, gave to the plaintiff a notice to treat under the Lands Clauses Act and the before-mentioned Acts, and by such notice requiring a piece of land belonging to the plaintiff, containing 7a. 2r. 15p. and coloured pink in the plan thereto annexed, being part of the lands comprised in the plan deposited with the clerk of the peace for the county therein, and in the book of reference distinguished by the numbers 141 and 147.

On the 14th of June, 1849, the plaintiff claimed compensation in respect of the said land, and required that if disputed it should be settled by arbitration in the manner prescribed by the Lands Clauses Consolidation Act. The claim was referred to arbitration accordingly, and in the proceedings before the arbitrators and umpire the plaintiff's counsel contended that the notice to treat and plan annexed did not correctly describe the southern boundary, which wa the longest side of the piece of land required to be taken by the corporation. The said plan did not in fact include all the plaintiff's land on the south side, but left a narrow strip containing 1,328 square yards between the land required and land belonging to the Duke of Norfolk, also taken by the corporation, and being on the south side of the land actually required from the plaintiff. The corporation, on the supposition that this strip of land belonged to the Duke of Norfolk, purchased it from the Duke, and paid him a sum of compensation-money in respect thereof, having laid down the boundary from some plans obtained from the Duke. On the 2nd of November, 1849, 1,620*l.* were awarded as compensation to the plaintiff for the purchase by the corporation from him of the lands described in the notice to treat and the plan thereto annexed, and in respect of all injury and damage which the adjoining hereditaments and premises of the plaintiff should or might sustain by the construction and maintenance of the works of the corporation. The plaintiff being dissatisfied with the award, attempted to set it aside, and neglected to attend to a notice served upon him by the corporation dated the 5th of April, 1850, requiring him to make out his title to the said piece of land mentioned in the award. On the 29th of May, 1850, the corporation proceeded under their compulsory powers to take possession of the land, having previously, on the 7th of the same month, paid into Court the 1,620*l.* compensation-money, and executed the deed-poll required by the Act. The corporation also took possession of the strip of land on the south side of the plaintiff's land. On the 26th of May, 1851, the plaintiff brought an ejectment against the corporation for the strip of land, and on the 14th of August, 1851, obtained a verdict in his favour. In Michaelmas Term, 1851, the corporation moved for a new trial, which was refused; and thereupon judgment was entered up for the plaintiff, but he did n t recover possession of the strip of land, and the corporation made part of their reservoir and executed other works at different times upon the strip of land. The corporation, upon the assumption that the case was within the 121th section of the Lands Clauses Consolidation Act, determined to proceed under that section, to obtain a legal right thereto; and accordingly, on the 6th of December, 1851, they served the plaintiff with a notice to treat for the purchase of the strip of land. By that notice it was stated by way of recital that the corporation had agreed for the purchase of the strip of land in question from the Duke of Norfolk, as the reputed owner thereof, and paid him a sum of money as compensation for the same, and had, with his consent, on the 29th of May, 1849, entered upon the same, and executed various works thereon; and reciting that subsequently the plaintiff's title to the said strip of land so taken had been finally established at law, and that through mistake the corporation had failed, under the aforesaid circumstances, to purchase the said strip of land, and that they required the same for the purposes of the said Waterworks Amendment Act, 1848, and that they desired to purchase the same under the provisions of the Lands Clauses Consolidation Act. By a protest dated the 19th December, 1851, and served upon the corporation, the plaintiff stated that the time for the corporation to take land under their said agreement had expired, and refusing to sell to them the land in question. On the 30th of December, 1851, the corporation served the plaintiff with a further notice, dated the previous day, reciting their notice of the 6th of December, and that twenty-one days had elapsed since the service of that notice, and that the plaintiff had failed to give the particulars of his estate, &c. as thereby required, and stating the intention of the corporation, under the said Acts, to summon a jury after ten days from the service of that notice to assess the compensation money for the mesne profits of the said strip of land, and offering 75*l.* as the compensation money for the said land, and 3*d.* a day since taking possession, for the mesne profits thereof. Upon this, the plaintiff filed the bill in this suit, charging that the before-mentioned agreement was binding on the corporation, and that what they were then seeking to do was inconsistent therewith, and with the terms of the arrangement entered into between them and the plaintiff previous to the passing of the Amendment Act of 1848, and upon the faith whereof the plaintiff had ceased to oppose the passing of the Act, and praying that the corporation might be restrained by injunction from issuing their warrant to the sheriff requiring him to summon a jury for the purpose of ascertaining the value of the said piece of land, or the compensation to be paid to the plaintiff in respect of the same piece of land, and from taking any steps or proceedings whatever under the provisions, or as being, or stated, or alleged to be under the provisions of the said Amendment Act of 1848, or the provisions of the Acts incorporated therewith, with the view, or for the purpose, of obtaining the compulsory purchase from the plaintiff of the said piece of land; and also from doing any works or excavations in, or removing the soil of the said piece of land or any part thereof, and from building thereon or on any part thereof, and also from altering or removing any of the landmarks or boundaries of the said piece of land or any part thereof, and also from retaining or continuing in possession of the said piece of land or any part thereof.

Russell and *Renshaw* now moved for an injunction in the terms of the prayer of the bill, and cited *Edwards* v. *The Grand Junction Railway Company*, 1 Myl. & Cr. 650.

Bacon and *Little*, for the corporation, contended that the case was within the 121th section of the Lands Clauses Consolidation Act.

Russell, in reply.

The VICE-CHANCELLOR said, that he did not consider that the plaintiff was entitled to the injunction. The circumstances of the case were these: the corporation of Manchester had occasion to go to Parliament, for the purpose of constructing the waterworks which were mentioned in the pleadings, and for that purpose they had occasion to take lands, part of which belonged to the plaintiff, and part to the Duke of Norfolk. The state of those lands was, that there was no boundary-fence between them. The boundary was undefined, and to a certain extent there seemed to have been some uncertainty about the precise boundary between the two lands. The corporation proceeded to deposit their plans in Parliament, and to enable them to do that, they adopted the plan they got from the Duke of Norfolk, shewing the boundary of his land, which of course also shewed the boundary of the plaintiff's, and they defined in the plan they deposited the boundary of the land between those of the plaintiff and the Duke of Norfolk by the information they got from these plans, and also from the tenants of the Duke of Norfolk. Then there could be no doubt that the boundary laid down by the corporation was done bonâ fide in that way, for it appeared that some time afterwards—it was not very material when—they bought from the Duke of Norfolk the lands within the boundary that the deposited plans had ascribed to him, and paid him for those lands. The plaintiff petitioned Parliament against the Bill, which was pending at that time, and promoted by the corporation; and one ground on which he complained of it was, that the boundary was laid down incorrectly as between the lands of the plaintiff and the Duke of Norfolk, and that that boundary gave the plaintiff 786 square yards too little. The plaintiff opposing a Bill in Parliament, an agreement was entered into between him and the corporation, that the corporation should, in carrying out their works, consult the views of the plaintiff, and should fix the exact quantity of land required for the site of the proposed works, if required by the plaintiff, within six months after the passing of the Bill; and, upon that agreement, the plaintiff withdrew his opposition, and the Act of Parliament passed on the 2nd of July, 1848. In January 1849, the six months were about expiring within which the corporation were, by the terms of the agreement, to fix the precise quantity that they required of the plaintiff's land. On the 16th of January they gave him the common notice to treat, fixing and defining the lands that they wanted by a plan which they annexed to the notice to treat. Now, this plan they had made out after communication with Mr. Stirke upon the lands, Mr. Stirke being the agent of the plaintiff. There was nothing to shew that they did not act with perfect bona fides in fixing the limits. It appeared that Mr. Stirke himself did not at that time accurately know the limits, he did not accurately ascertain them for some time afterwards. However, what the corporation did was after communication with Mr. Stirke to alter the boundary, giving the plaintiff not only 786 yards, which he claimed, but somewhat more, giving the plaintiff therefore some of that land which they either had bought and paid for, or which they were about to buy and pay for from the Duke of Norfolk. That was on the 16th of January. On the 21st, the agent of the plaintiff stated that he thought the plan was not quite correct; but he said that he would see Mr. Bateman, the defendants' engineer, upon it. On the 22nd, the six months were to expire. It did not appear that any communication took place between the plaintiff and Mr. Bateman at that time. The parties had then to proceed to ascertain the value of the lands defined on the plans which had been given by the corporation in the way I have stated, and that was to be done by arbitration. The plaintiff proceeded to ascertain more accurately than he had done at that time the precise boundary of his land, and he appeared to have employed a person of the name of Barnes for the purpose; and Mr. Barnes made a survey in July 1849, and by Mr. Barnes's survey it appeared that the plan given to the plaintiff in January still gave him too little, and that he was really entitled to one rood five perches beyond what the plan shewed. They were then before the arbitrators for the purpose of ascertaining how much was to be paid, and the corporation, in order to avoid all dispute, on the 27th of August, 1849, admitted that the plaintiff's boundary was really the boundary laid down by Mr. Barnes, and agreed that that should be considered the boundary for the purpose of the arbitration. Then it was asserted on the one side, and denied on the other, that the arbitrators in assessing the value gave the plaintiff compensation for that one rood five perches or whatever it might have been. His Honour did not think it was necessary to decide for the present purpose which of the two parties was right. He confessed the weight of the evidence appeared to him in favour of the corporation, and that they actually paid the plaintiff for that one rood five perches, but he did not think it was material, for this reason: if they did pay for it they had got an equitable title, which they could enforce adversely against the plaintiff in this court; if they did not pay for it, it was quite sufficient for the purpose of this motion to say, that they supposed that they had paid for it, and it was quite clear upon the statement of the umpire, and upon the evidence given before him, that that was claimed, for evidence was given on it, and the umpire said that he actually did give the plaintiff value for it; that was quite sufficient to make out the bona fides of the statement on the part of the corporation, when they said that they believed that they had paid for it, and they believed, by having paid for it, they acquired an equitable title to the land. In May, 1850, they took possession, and thereupon the plaintiff brought an ejectment to recover the land, which was in question. The only title which the corporation had got to the land was by a statutory deed-poll conveying it to themselves, which of course was limited to the land they had described in the plan, which they had given in January, 1849, and therefore they could not by the statutory provision give themselves a legal title to the one rood five perches. It was quite clear, therefore, that the plaintiff in the ejectment had the legal title, whether the equitable title beneficially was or was not in him, or whether he was prosecuting that action against the equitable rights of the corporation or not. He got judgment in that ejectment, and a rule for a new trial was moved for, and the corporation failed in disturbing the verdict. Then the corporation proceeded under the 121th section of the Lands Clauses Consolidation Act to acquire possession of this land by paying the plaintiff whatever might be the value of it, and whatever might be the mesne profits made by them by the enjoyment of it on the ground that it was through mistake or inadvertence that the corporation had failed or omitted duly to purchase or pay compensation for it. Several questions had been raised upon that. It was first said that this clause of the Lands Clauses Consolidation Act was not incorporated with the special Act relating to the undertaking, and clauses were referred to shewing that the time for exercising the compulsory powers was limited, and that the Lands Clauses Consolidation Act was only incorporated so far as not repugnant to this. But then his Honour found that this section provided for enabling the parties to purchase, whether the period allowed by the special Act for the purchase of land should have expired or not, so that there was nothing repugnant in the provisions of the special Act in incorporating that clause in it, and he thought, as he had said during the argument, the special Act must be read as if that clause were expressly incorporated in it. Then the next thing was that the corporation must shew, in order to bring themselves within this, that it was through mistake or inadvertence that they had failed or omitted duly to purchase or pay compensation for the land. From the statement he had made it appeared to his Honour perfectly clear that not only it was through mistake or inadvertence, but that it was through mistake or inadvertence into which they had been led by the imperfect information of the plaintiff himself and the way in which he communicated that to them. It appeared to him, therefore, that they were clearly in the position of

being parties who had failed to purchase the land in proper time through mistake or inadvertence. Then it was said that might be very well if they were not bound by a special agreement, but by the agreement which they had entered into with the plaintiff to withdraw his opposition to the Act of Parliament, the corporation were bound to state in a certain time what precise land they wanted; that they were therefore acting not under the provisions of the Lands Clauses Consolidation Act at all, but that they were actually dealing with him on the footing of the agreement, and were now trying to set up something against the agreement. But his Honour did not think that was the true construction of the 124th clause, because that clause provided for all cases in which the parties promoters of the undertaking should have entered on any land which they were authorised to purchase if it appeared through mistake they failed or omitted duly to pay for it. It seemed to him to have nothing to do with the mode in which they entered on the contract under which they entered into possession of these lands. It was quite enough that the lands they were in possession of were lands they were authorised to purchase, and they had not acquired a complete title to this, not from any fault of their own, but solely on account of mistake or inadvertance. It was quite immaterial whether by agreement or by compulsory powers, or how else it was they got into possession of the land, if the circumstances were that they were in that position, and that through mistake or inadvertence they had failed to get a complete title. His Honour therefore thought that the corporation were within the 124th clause, and it appeared to him that they were quite within the time provided by that clause, because the clause gave them six months after the right should have finally been established at law. They were within six months from the time when the motion was refused at law, and up to that time his Honour thought they were perfectly justified in saying that if they had not got a legal title, they had, at all events, an equitable title, and he did not feel satisfied at the present moment that they had not an equitable title which they might have enforced as plaintiffs against Mr. Hyde, and compelled him to withdraw his proceedings, or stay his proceedings, in the action of ejectment. It therefore appeared that as far as could be determined on an interlocutory motion, the defendants were proceeding regularly and properly under the 124th section, and that the plaintiff had no right to come here and interfere with them. His Honour considered the plaintiff's conduct was very oppressive and litigious, and he could not refuse the costs of the application.

Saturday, March 6.

Re The Aylesbury Free School.

Lands Clauses Act—Application of purchase-money of lands belonging to a charity.

Land belonging to the Aylesbury Free School was taken by the London and North-Western Railway Company for the purposes of their Acts, and the purchase-money was paid into court. In some proceedings in Chancery to which the school was a party, it was ordered that the costs should be paid out of the funds of the charity. By a petition now presented for the application of the purchase-money, it was prayed that this money should be paid in discharge of the costs before mentioned, on the ground of their being an incumbrance, for the satisfaction of which the money was applicable within the meaning of the Lands Clauses Act.

Goodeve appeared in support of the petition.

The Vice-Chancellor refused to make the order, as it would be an alienation of the charity lands, which the money represented, and there was no proof that the corpus of the land was charged with the costs in question.

Wednesday, March 24.

Re The Pennant and Craigwen Consolidated Lead Mining Company.

Joint-stock Companies Winding-up Acts—Costs

J. V. Prior, in this case, which is reported *ante*, p. 152, stated that a notice of motion of appeal had been given, but an arrangement had since been made, by which the appellants were to withdraw their notice upon their costs being paid out of the estate. The Master had been applied to for his sanction to this arrangement, but he considered that he had not jurisdiction in the matter. The application now made to the Court was, that with the consent of the official manager, the Messrs. Bush undertaking to withdraw their notice of motion of appeal, their costs of the appeal, and in this branch of the Court, should be paid out of the estate.

The Vice-Chancellor accordingly directed that this should be done.

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. Bennet, Esq. of Lincoln's-inn, Barrister-at-Law.

Saturday, March 6.

Re The Arigna Iron and Coal Company.

Costs—Winding-up Acts.

A party who has been present at a meeting at which a resolution was passed to wind up the affairs of a company, but who subsequently opposed a petition for an order to wind them up under the Winding-up Acts, will not be allowed the costs of such his opposition,—the Master having reported that it was expedient to wind up the company.

The facts relating to the application for the preliminary order to wind up this company were given in 18 Law T. 62.

Bigg now appeared upon the petition, in which it had been referred to the Master to ascertain and certify whether it was expedient to wind up the affairs of the company. The Master had reported that it was, and the petition now came on upon the question of costs. It appeared that this company was formed under an Act of Parliament giving powers to work mines in any part of Ireland, and the company might be dissolved at a meeting of 100 shareholders. The company having long ceased to carry on business, a meeting took place on the 5th of December, 1850, at which it was unanimously resolved that the company should be dissolved, but fifty shareholders only remaining, it was necessary to proceed to wind it up under the Joint-Stock Winding-up Acts, and the petition was accordingly presented. On that occasion a shareholder of forty-five shares asked for and obtained the reference.

Logie appeared for Mr. Parker, and asked for his costs. The Act of Parliament gave such extensive powers as to be very valuable, and Mr. Parker was unwilling that it should be rendered null without full investigation. He had not, in fact, opposed the petition, and had only filed one affidavit, and in such cases the Court would not give costs against the opposing party.

Bigg contended that Mr. Parker ought to pay all the costs. He was present at the meeting at which it was unanimously resolved to dissolve the company, and his opposition was most vexatious; 11,000*l.* were tied up in the hands of trustees, who could not touch it without the assistance of this Court.

The Vice-Chancellor said, that the Court should be very cautious how it either granted rash references, or refused to hear parties who entertained adverse views to petitioners in those cases. As it appeared in this instance that Mr. Parker had been present at a meeting at which it was unanimously resolved to wind up the company, which assumed that he had assented to it, he would not give him the costs up to this time; but as it appeared that only one affidavit had been filed, and the case had now come on for the accommodation of counsel, Mr. Parker ought not to pay the costs of this application.

Jan. 31 and March 8 and 9.

Woodman *v.* Robinson and Others.

Injunction—Church-rates.

The churchwardens of a parish who proceed bonâ fide to carry into effect the resolutions of the rate-payers to warm the church by the introduction of hot air or water pipes under the floor of the church, will not be restrained at the instance of one rate-payer from doing so.

Whether such a bill can be sustained by a single inhabitant rate-payer, quære.

This was a special motion to restrain the defendants, the churchwardens of the parish church of Morpeth, from executing any works under the floor of the parish church for the purpose of heating the same with hot air or hot water, and also from applying any part of the rates of the said parish in executing any works for heating the said church without the consent of the rate-payers of the said parish.

The bill was filed by the plaintiff, an inhabitant householder, and rated to the church-rate of the parish, and he thereby alleged that the parish church was a very ancient building; that the interior of the church had been used as a place of sepulture, and that the soil beneath the floor of the church was thickly mingled with bones and remains of human bodies; that plaintiff had lately discovered that a contract had been entered into by the defendants, as churchwardens, to execute certain works for heating the church with hot air or hot water, to be placed under the floor of the church, and charging that thereby the noxious gases which had been absorbed by the soil under the floor of the church would be given out, and would endanger the health and lives of the congregation, and that plaintiff and his family would be prevented from attending service in the church; that the churchwardens had not applied for or obtained a faculty from the ordinary, or consent of the parishioners or rate-payers.

A motion for an injunction in the terms above was now made.

It appeared that at a meeting which took place in the vestry on the 5th November last, a church-rate was made inter alia, for the purpose of enabling the churchwardens to render the church sufficiently warm to secure the requisite degree of comfort to the congregation, and on that occasion the plans for that purpose were laid before the meeting, and the project explained and agreed to; contracts were then entered into with stonemasons and others to carry out that resolution, and on the 5th January the works were actually commenced, but, on the 6th, notice was given to the churchwardens to suspend the works by the plaintiff, who is a solicitor, and also the secretary of the Local Board of Health at Morpeth, and the works were accordingly suspended, and this bill filed on the 27th of January.

A second notice was sent to the contractor on the 21st, and in the event of noncompliance, the plaintiff threatened an application to this Court. It also appeared that the plaintiff had applied to the vicar on the subject between November and January, and a meeting of twenty-four in vestry was suggested, and the defendants acceded to the views taken by the General Board of Health, who had communicated with the plaintiff on the subject.

Stuart and *Bates*, for the motion.

Malins and *Dickinson*, contrà, argued that the delay which had taken place between the time of the public resolution in vestry, which the plaintiff should have been aware of, and the filing of the bill, was alone sufficient to disentitle him to the injunction. The bill being filed on the 27th, special notice was given on the 28th for this injunction for the 31st; and the affidavits which were filed on the 17th of February never had been answered, which shewed that the plaintiff was in fact the sole mover in the matter; an offer had also been made to dismiss the bill upon the terms of each paying their own costs on the undertaking to do nothing in the meantime. They also contended that it was not competent for one person (not on behalf of himself and other parishioners, but alone) to file such a bill as the present.

Stuart in reply.

The Vice-Chancellor said that upon this application for an injunction a very grave question was raised upon the frame of the bill, viz. whether a single individual could sustain a bill of this description, and but that as he found clear ground for determining this motion independently of that question, he should reserve his judgment on that point until the hearing. The injunction asked, was to restrain the churchwardens from warming the church with hot-water pipes, and the scheme was originally brought before the select vestry upon the 5th November, 1851, and at that meeting the expenses of the proceeding were estimated, a plan was prepared, and a rate of 3d. in the pound agreed on. The plan was, moreover, explained to the rector and other persons present, among whom it did not appear the plaintiff was. In pursuance of their resolution, the churchwardens entered into a contract with Mr. King, and the plan was to convey the hot air or water in pipes separated from the soil by a course of brick-work set in lime. Upon the 5th January, 1852, the plaintiff, who is a solicitor and clerk to the Local Board of Health, communicated his objections to the proposed plan to Mr. Wilkinson, and on the 6th January he wrote to the churchwardens, stating that the hot pipes would generate noxious gases passing through the soil, which was composed of decomposed human bodies, some of which had been recently interred. The plaintiff suggested that the matter should be referred to the General Board of Health. Up to this time nothing could be better than the conduct of both parties. Upon the 6th January Mr. Wilkinson called at the plaintiff's office and explained the plan, and expressed surprise that the objection had not been taken previously. To this the plaintiff replied, stating that he had mentioned it to the rector a month before—a fact important, as shewing that the plaintiff was acquainted with what had been done. It was then arranged between the parties that the plaintiff should write to the Board of Health for their opinion, enclosing a statement of the case. Upon the 15th, the Board of Health wrote to the plaintiff; and on the 20th he communicated the letter to the churchwardens, which was to the effect that they thought the proposed plan objectionable, and suggesting an outer coat of Roman cement. To this the defendants at once acceded, and were proceeding to comply with the suggestion of the Board of Health, when they received a notice from the plaintiff not to proceed, inasmuch as he did not think that the opinion expressed by the Board of Health was favourable, and proposed to write again. To this the defendants also assented, and in answer to the plaintiff's suggestion to call a fresh meeting, replied "what is the use of a meeting, if you will not be bound by it?" They did not, however, refuse to call it. On the 22nd Mr. Wilkinson did write, and a meeting was agreed to be held by the 29th. Upon the 27th the bill was filed. Now up to this time he thought there was not a pretence for filing a bill. His Honour then proceeded

to say that he thought that the defendants had been right throughout, and that therefore he thought he must refuse the motion, with costs.

Injunction refused, with costs.

Saturday, March 20.

Re EVAN'S Settlement.

Trustee Act, 1850—Practice.

A certificate of the Master on a reference under the Trustee Act, must be confirmed, and the consequential directions given, on motion.

In this case the cestui que trust, under a marriage settlement, obtained the certificate of the Master, under the 38th section of the Trustee Act, 13 & 14 Vict. c. 60t, that new trustees should be appointed, and for a vesting order.

Shapter appeared in support of a petition, to confirm this certificate, and for the consequential directions thereon, and a question now arose, whether a petition was the proper course under the 39th section of that Act to make such an order. That section is as follows:—"And be it enacted, that any person who shall have obtained such certificate may apply by motion to the Court of Chancery, or to the Lord Chancellor, intrusted as aforesaid, for an order to the effect set forth in such certificate, or for such other order as such person may deem himself entitled to upon the facts found by the Master." The matter had stood over to inquire into the practice.

The VICE-CHANCELLOR now said that he had inquired into the practice, and the opinion appeared to be that the proper course was by motion. A petition, moreover, was the more expensive course, and the Act expressly pointed out that by motion was the course to be pursued. It happened in this case that the Master's certificate did not appear, but the order might be taken upon production of the certificate to the registrar. The order must be taken as upon a motion. *Ordered accordingly.*

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and PAUL PARNELL, Esqrs. Barristers-at-Law.

Tuesday, Feb. 10.

REG. *v.* MICHAEL GREEN and OTHERS.

Auditor of poor-law accounts—Appeal by guardians to the Poor-law Board—Appointment of assistant overseer and collector of rates.

Where the guardians of a poor-law union had appealed against the disallowance by the auditor of the salary due to an assistant overseer and collector of rates appointed by them, and the Poor-law Board reversed the disallowance:

Held, that at the next audit that decision and order of the Poor-law Board was binding upon the auditor and the overseers, as well as the guardians, until removed by certiorari into this Court and quashed.

The effect of 7 & 8 *Vict.* 101, *s.* 61, *is to take away the power of the vestry under* 59 *Geo.* 3, *c.* 12, *to appoint an assistant overseer, whenever there has been an appointment in fact of a collector or assistant overseer by the guardians of an union under an existing unrescinded order of the Poor-law Board.*

On the 5th April, 1837, the poor-law commissioners issued their order to the board of guardians of the Gateshead union, that they "within one month from the date of this order appoint one or more fit and proper persons to be the collector or collectors of the poor-rates of such of the several parishes comprised therein as the said guardians may deem to require a collector, and shall, as soon as conveniently may be after such appointments, report the same to us the said Poor-Law Commissioners, in order that we may approve or disallow the same, or give such other directions therein as the case may require; and in case and so often as any person so appointed shall die, or resign, or be removed, the said Board of Guardians shall as soon as conveniently may be after such death, resignation, or removal, proceed in like manner to a new appointment." On the 1st August, 1837, another order was issued reciting the last order, and another order on the 15th May then last, extending the time for appointment to the 15th day of June then next, which was issued after the previous order had expired, and another order of 27th June then last, which was also after the expiration of the last-mentioned order, extending the time to the 15th July then next, and then further extending the time until the 15th September then next. On the 8th May, 1838, Mr. James Hudson was appointed by the Board of Guardians collector of rates of the parish of Gateshead. The clerk of the Board of Guardians on the 17th May, 1838, wrote to the Poor-Law Board a letter in which he inquired respecting Mr. Hudson's appointment as collector, "As there is no existing order of the commissioners authorising the appointment, I beg to ask whether application should be made for such an order, or if it will be sufficient to forward a copy of the resolution for their confirmation." Upon this letter the Poor-Law Commissioners made a minute directing the issuing of an order, and upon such minute the following order was issued:—

"Know all men by these presents, that we, the Poor-Law Commissioners, &c. do hereby order and direct, that the Guardians of the poor of the Gateshead Union, in the county of Durham, shall, within one month from the date of this order, appoint a fit and proper person to be the collector of the poor-rates of the parish of Gateshead, if the said guardians shall deem it to require a collector, and shall, as soon as conveniently may be after such appointment, report the same to us, &c. And in case and so often as any person so appointed shall die, or resign, or be removed, the said Board of Guardians shall, as soon as conveniently may be after such death, resignation, or removal, proceed in like manner, to a new appointment, &c. And we do hereby further order that if the guardians shall deem that such parish shall require such services as are usually performed by an assistant-overseer, they may appoint the person so appointed as collector for such parish, to perform the duties of an assistant-overseer for such parish accordingly; provided always, and we do hereby order, direct, and declare, that if either of the churchwardens or overseers of the said parish is willing and desirous to collect the rates, the said parish shall not be deemed to require a collector, and that in such case the churchwardens and overseers of the said parish, shall observe the following rules and regulations, &c.

"Given under our hands and seal of office, this 8th day of June, A.D. 1838."

There was no re-appointment of Mr. Hudson by the guardians after the issuing of the last-mentioned order, but Mr. Hudson entered upon and continued to perform the duties of collector of rates up to the month of May 1842. By an order of 27th November, 1838, the Poor-law Commissioners directed that "the guardians of the poor of the Gateshead Union, in the county of Durham, shall within one month from the date of this order appoint one or more fit and proper person or persons to be the assistant-overseer, or assistant-overseers of such of the several parishes comprised therein, as the said guardians may deem to require an assistant-overseer, and shall, as soon as conveniently may be after such appointment, report the same to us, the said Poor-law Commissioners, in order that we may approve or disallow the same, or give such other directions thereon as the case may require." And after ordering that any person appointed should reside in the parish and not follow any other employment, the order proceeds, "and in case and so often as any person so appointed shall die, or resign, or be removed, the said board of guardians shall, as soon as conveniently may be after such death, resignation, or removal, proceed in like manner to a new appointment." On the 27th December, 1838, another order was issued extending the time for the appointment of assistant-overseer to the 21st January, 1839. No subsequent order was issued, and on the 6th May, 1839, it was decided by the Court of Q. B. in *R.* v. *The Poor-law Commissioners*, 9 A. & E. 301, that the Poor-law Commissioners had no authority to order guardians to appoint collectors, and thereupon the Act 2 & 3 Vict. c. 84, was passed. Mr. Hudson having resigned the office of collector, Mr. Robert Foreman was appointed by the guardians collector of rates and assistant-overseer, which appointment was confirmed by the Poor-law Commissioners on the 17th June, 1842. In the year 1844 the 7 & 8 Vict. c. 101, was passed, the 61st section of which enacts, "that the inhabitants in vestry assembled of any parish situated within the district for which any collector or assistant-overseer appointed under order of the said commissioners now acts may appoint such collector or assistant-overseer to discharge all the duties of an overseer of the poor, in addition to those of collector of poor-rates for such parish, and in the same manner as if he were appointed thereto as an assistant-overseer under the provisions of an Act passed in the fifty-ninth year of the reign of his late Majesty King George the Third, intituled 'an Act to amend the Laws for the Relief of the Poor;' and whenever any such collector or assistant-overseer has been or may be appointed under any order of the said commissioners, and whilst the said order remains in force, the powers of any vestry or parish officers, or of any other persons, other than the board of guardians of such parish or union (if a board of guardians have been constituted), to appoint any collector or assistant-overseer, and (if so directed by the said commissioners) every appointment under such powers shall cease" Sec. 62 enacts, "that if the board of guardians of any parish or union make application to the said commissioners to direct the appointment of a paid collector of the poor-rates in such parish or union, or in any parish or parishes of such union, it shall be lawful for the said commissioners, by order under their hands and seal, to direct the said board of guardians to appoint such a collector; and the said commissioners shall have the same powers with respect to such collectors as are given to them by the said first recited Act with respect to paid officers; and all powers of the inhabitants of any parish in vestry assembled, or of justices of the peace, or of any persons, other than the board of guardians of such parish union, to appoint any collector for any such parish as aforesaid, and (except when otherwise directed by the said commissioners) all appointments under such powers shall cease." Subsequently Mr. Foreman resigned, and on the 20th of November, 1849, Mr. John Usher was appointed by the guardians assistant-overseer and collector of rates of the parish of Gateshead. On the 24th of November, 1849, Mr. Thomas Shaftoe Robson was elected assistant-overseer by the inhabitants in vestry, under the 59 Geo. 3, c. 12, s. 7, and his appointment was duly made by the magistrates. At the audit in May, 1850, the auditor disallowed a sum of 30*l.* paid by the guardians to Mr. Usher as a half-year's salary, and surcharged with it three persons, who were guardians of the parish of Gateshead. The guardians thereupon applied to the Poor-Law Commissioners, who, by an order dated 28th of October, 1850, under their hands and seal, addressed to the guardians of the union and the overseers of the parish and the auditor, determined that the disallowance and surcharge were illegal. The auditor at his next allowance disallowed 60*l.* for a half-year's salary to Mr. Robson, and surcharged accordingly, and allowed the 30*l.* to Mr. Usher, so giving the guardians of the union credit against the parish for 30*l.* and fixing the parish with that sum. Thereupon the auditor was called on to state the reasons for his allowance, disallowance, and surcharge, and a writ of certiorari issued to remove them into this court. A return was made by the auditor, setting out the facts and the several orders of the Poor-Law Board, and three principal questions were raised; first, whether the overseers were concluded by the decision of the Poor-Law Board on the application of the guardians against the disallowance of Mr. Usher's salary; secondly, whether the inhabitants in vestry had power to appoint an assistant-overseer, while there was an order of the Poor-Law Board in existence for the appointment of a collector or assistant-overseer; thirdly, whether there was in fact such an order in existence on the 20th of November, 1849. The case was argued (Jan. 17, 21), by

Atherton and *Tomlinson*, in support of the auditor's return.

Bliss, Pashley, and *Udall*, contrà.

Cur. adv. vult.

The judgment of the Court was now pronounced by

Lord CAMPBELL, C.J.—On bringing up the accounts of the auditor of the Gateshead union two objections were made (there was another objection to a small sum, which was abandoned in the course of the argument); the two substantial objections were:—First, to the allowance of 30*l.* paid by the guardians of the union for a quarter's salary of John Usher as collector of the rates, and assistant-overseer of the parish of Gateshead appointed by the guardians of the union. Secondly, to the disallowance of 60*l.* paid by the overseers of the parish to Thomas Shaftoe Robson for a half-year's salary as assistant-overseer elected by the vestry. As to the first objection, it appears that the auditor, considering that John Usher had not been legally appointed on the 16th and 17th of May, 1850, at his audit then held, disallowed to the guardians of the union the sum of 30*l.* so paid to Usher, and surcharged three persons, guardians of the poor of the parish, with that sum. These parish guardians required him to state his reasons, which he did; and thereupon they wrote to the Poor-Law Board, under the 36th section of the 7 & 8 Vict. c. 101. The Poor-Law Board by their order of the 28th of October, 1850, decided that the disallowance and surcharge were unlawful. The auditor, therefore, on a subsequent audit on the 15th November, 1850, in obedience to such decision, reversed his former disallowance, and allowed the sum of 30*l.* to the guardians of the union. The effect of this is to give the guardians of the union credit for 30*l.* in their accounts with the parish, and to fix the parish with it. The overseers now apply to us, and contend that although the guardians of the parish, who elected to appeal to the Poor-Law Board, are bound by their decision, yet that they the overseers, representing the parish at large, are no parties to that appeal, and are not bound by the decision. Whether they may be right in so contending or not, still it is plain that in making that decision and order the Poor-Law Board were acting strictly within the jurisdiction given to them by the 36th section of the 7 & 8 Vict. c. 101, and that the 105th section of the 4 & 5 Wm. 4, c. 76 applies, and their order must be obeyed until set aside by the Court on removal by certiorari, which has not been done here. The order is addressed to the guardians of the union, to the over-

seers of the parish, to the then guardians of the parish, and to the auditor; and therefore the auditor was not only justified in allowing the 30*l.* in obedience to that order, but bound to do so, and this Court must confirm that allowance wholly irrespective of the question whether Usher was strictly appointed or not. As to the second question, the disallowance of 60*l.* to the overseers of the poor, as the salary of Thomas Shaftoe Robson, that involves the question, whether he was duly appointed to the office of assistant-overseer. He was elected on the 26th of November, 1849, by the inhabitants in vestry, under the 59 Geo. 3. c. 12, s. 7, and all the requisitions of that Act were complied with. The question is, whether any subsequent Acts, and the circumstances which have occurred, have deprived the parish of the right to so appoint him. Now, no Act prior to that of the 7 & 8 Vict. c. 101, directly deprives them of that right, whatever powers the intermediate Acts may have conferred on the Poor-law Board. The 61st section of that Act, after reciting the 2 & 3 Vict. c. 84, which confirmed the appointment of the collectors of poor-rates under the orders of the Poor-law Board, and further reciting, "that it is expedient that such collector should in certain cases be invested with other of the duties of overseers of the poor," enacts "that the inhabitants in vestry assembled of any parish, situated within the district for which any collector or assistant-overseer appointed under any order of the said commissioners now acts, may appoint such collector or assistant-overseer to discharge all the duties of an overseer of the poor, in addition to those of collector of the poor-rate for such parish, and in the same manner as if he were appointed thereto, as an assistant-overseer under the provisions of an Act passed in the 59th year of the reign of his late Majesty King George the Third, intitled, 'An Act to amend the Laws for the Relief of the Poor,' and wherever any such collector or assistant-overseer has been or may be appointed under any order of the said commissioners, and whilst the said order remains in force, the powers of any vestry or parish officers, or of any other persons other than the Board of Guardians of such parish or union (if a Board of Guardians have been constituted), to appoint any collector or assistant-overseer, and (if so directed by the said commissioners) every appointment under such powers shall cease." The first part of this clause as to inhabitants in vestry adding power to a collector, applies only to collectors who are acting as such at the time of the passing of the Act (9th August, 1844), and is therefore immaterial to the present question. The latter part in terms, forbids the inhabitants to exercise the powers of the 59 Geo. 3, c. 12, s. 7, whilst there is a collector or assistant-overseer appointed under any order of the Poor-law Board, and whilst such order remains in force. Certainly Usher had been appointed collector and assistant-overseer under an order of the Poor-law Board in November, 1849, and that order remained in force (if ever it was in force at all) at the time when Robson was appointed on the 26th of the same month. But it is contended that the order of the Poor-law Board of the 8th of June, 1838, under which, (being prospective) Usher was appointed, never was in force and was illegal. It is remarkable that no Act of Parliament in express terms authorises the Poor-law Board to order the appointment of an assistant-overseer. The 46th section of the 4 & 5 Wm. 4, c. 76, as to paid officers, does not apply to an assistant-overseer, not even to a collector of poor-rates, as was held by this Court in the 9 A. & E. p. 911; *Re The Poor-law Commissioners*, a similar case. The statute the 2 & 3 Vict. c. 84, s. 2, which confirms the appointment of collectors already made, does not mention assistant-overseers, nor does it even give a prospective power to the Poor-law Board to order the appointment of collectors. The statute of the 7 & 8 Vict. c. 101, s. 62, does give such power as to collectors, but does not mention assistant-overseers. Still the 61st section of the last Act, using the language we have before cited, seems to recognise the appointment of collectors or assistant-overseers, under the orders of the Poor-law Board, and in such case prohibits the inhabitants in vestry from appointing a collector and assistant-overseer, although it may be observed that there is no Act of Parliament authorising the inhabitants in vestry to appoint a collector, but only assistant-overseer under the 59 Geo. 3. It would seem that the 7 & 8 Vict. c. 101, by so recognising such appointments, either gives the power to order it to the Poor-law Board by implication, which would be a strange mode of legislation, or attaches, as a consequence to such an appointment, whether the order for it be good or bad, if it remains unrescinded by this Court, a prohibition to the vestry to appoint an assistant-overseer. This also would be a strange enactment. However strange it may be, still we do not see how we can give effect to the Act without holding that the appointment, in fact, of collector, or assistant-overseer, or both, by the guardians of the union, under an existing unrescinded order of the Poor-law Board, takes away the power of the vestry under the 59 Geo. 3, c. 12. Some attempt was made to shew, that no order of the Poor-law Board was in existence on the 20th of November, 1849, when Usher was appointed; but we think this attempt failed, because the order of, the 8th of June, 1838, was prospective to appoint from time to time, and has never been rescinded. Thus it appears to us, in point of law, the auditor was right in allowing the 30*l.* to be paid to Usher, and disallowing the 60*l.* paid to Robson; consequently this rule must be discharged. *Rule discharged.*

Nisi Prius.

COURT OF QUEEN'S BENCH.

Reported by W. J. METCALFE, Esq. of the Inner Temple, Barrister-at-Law.

LONDON SITTINGS AFTER HILARY TERM.

Thursday, Feb 26.

(Before Lord CAMPBELL, C.J. and a Common Jury.)

SIVEWRIGHT *v.* RICHARDSON.

Principal and agent—Negligence of agent—Broker's duty in making mercantile contracts—Liability for negligence—What is negligence in a broker of the city of London in the ordinary course of business.

A broker of the city of London who negotiates a contract between the buyer and seller of merchandise is bound either to enter the contract correctly in his book forthwith, or to deliver a correct note of the contract to both buyer and seller, and is liable to his principal for any damage the latter may sustain by his negligence in this respect.

Where a broker of the city of London makes out a contract, and does not enter the same in his book, but delivers the bought and sold notes to the parties, and these notes vary so materially that an action cannot be sustained on the contract, the broker is liable for the damages occasioned to his principal by the invalidity of the contract, and the costs incurred by the principal in unsuccessfully endeavouring to enforce it.

This was an action brought to recover damages from the defendant for the loss sustained by the plaintiff in consequence of the defendant's negligence in making out the *bought and sold notes* of a contract on the plaintiff's part to sell to a Mr. Archibald 500 tons of pig iron. The declaration had also a count for negligence on the defendant's part in omitting to attend as a witness at the trial of *Sivewright* v. *Archibald*.

Bovill and *Unthank* for the plaintiff.

Watson, Q.C. and *Pulling* for the defendant.

It appeared from the evidence that the defendant was in February, 1850, employed by the plaintiff to sell 500 tons of Dunlops pig-iron; and he shortly afterwards concluded a bargain with a Mr. Archibald for the same. The defendant did not enter the contract in his book, but he delivered bought and sold notes to the plaintiff and Archibald. The price of iron fell, and Archibald refused to complete the contract. An action was then brought on the contract by the present plaintiff, which was entered for trial at Guildford, at the Autumn Assizes, 1850; but owing to the absence of the present defendant, the record was obliged to be withdrawn. The trial afterwards came on at Guildhall, when the bought and sold notes made out by the present defendant were found to vary as to the description of the iron. The sold note describing the iron as "500 tons, Messrs. Dunlop, Wilson, and Co.'s pig-iron;" and the bought note describing the iron merely as "500 tons of Scotch pig-iron." A verdict was returned for the plaintiff in this action, leave being reserved to the then defendant, Archibald, to move to set aside the verdict, and enter a nonsuit.

The point of variance between the bought and sold notes was afterwards elaborately argued in the full Court (in *Sivewright* v. *Archibald*, 20 L. J. N. S. 529, Q.B.; 17 L. J. 264), when a majority of the judges held the objection fatal, and a rule absolute made for entering a nonsuit. The damages now sought to be recovered against the defendant were for the loss sustained by the plaintiff in having the verdict, *Sivewright* v. *Archibald*, set aside; together with the costs in that action, and also the costs of the day, occasioned by withdrawing the record when the same case came on for trial at Guildford.

Lord CAMPBELL, in summing up the case to the jury, said the question they had to decide was one of great importance to the commercial city of London. There had been many lamentable instances of neglect by brokers, whose duty it was to act for both parties, and who ought to enter contracts in their books, or, at all events, to see that the bought and sold notes agreed, so that the contracts which they made might be binding upon the parties. The plaintiff supposed the broker had done his duty, and acting on that belief, he had sued Archibald, and failed in his action. The same case had happened again and again, to the great detriment of commerce. His lordship then called the attention of the jury to the facts of this case, and thought there had been gross negligence on the part of the defendant. If the jury were of that opinion, the plaintiff was entitled to damages for the costs to which he had been put in consequence. The plaintiff was also entitled to damages on the second count.

The jury found a verdict for the plaintiff upon both counts, with 391*l.* damages.

Lord CAMPBELL said he entirely concurred in the verdict which the jury had given. The verdict would prove most useful, and he wished that an account of the trial were given to every broker in the kingdom.

BANKRUPTCY.

COURT OF BANKRUPTCY, LONDON, reported by JOHN A. FONBLANQUE, Esq. Barrister-at-Law.
COURT OF BANKRUPTCY, DUBLIN, reported by J. LEVY, Esq. Barrister-at-Law.

IRISH BANKRUPTCY COURT.

Reported by J. LEVY, Esq. Barrister-at-Law.

Feb. 1852.

Re CRONEN and SEXTON.

Partnership—Evidence.

Where partners apply at the same time to be discharged under the Insolvent Act, 3 & 4 Vict. c. 107 (English analogous, 1 & 2 Vict. c. 110), and the petition of one is dismissed for alleged suppression of property, whilst the other is discharged, counsel for the partner whose petition has been dismissed, will not be allowed to examine the other partner touching the partnership property.

The insolvents in this matter were traders in Cork, where their petitions came to be heard before Mr. Commissioner Baldwin, who directed an adjournment to Dublin; and they now came before the full Court for their discharge. Sexton was about to be discharged without opposition, but Cronen was opposed by Meetee, solicitor, on the ground of suppression of property. He stated that, upon an examination of the insolvent's books, he discovered that there was a discrepancy between the moneys received and those accounted for in the balance-sheet, amounting to about 800*l.* which was a clear proof of a suppression of property to that amount, and the schedule should therefore be dismissed.

Levy, for the insolvent, admitted that the difference as shewn by the books would require an amended balance-sheet and schedule, and he could not object to the dismissal of the petition; and when it was dismissed, he would claim the right of examining Sexton, whom he alleged had made away with the money.

Mr. Commissioner CURRAN said, no such right existed, inasmuch as Cronen did not return his partner a creditor.

Levy contended that Cronen's interest in the partnership property gave him all the rights a creditor could have to examine his insolvent partner with a view to take down his evidence, as well as to discover property for creditors, and he ought to be permitted to examine Sexton before his discharge: facts might be brought out that would shew he ought not to be discharged at present.

The COURT were of opinion that such a course would be letting in opposition on the part of a person not returned a creditor. When Cronen came to be heard on an amended schedule, he then might summon his partner and examine him.

Sexton was then discharged, without counsel being permitted to examine him on the part of his partner.

INSOLVENCY COURT.

Reported by DAVID CATO MACRAE, Esq. of the Middle Temple, Barrister-at-Law.

Re C. W. BEVAN.

An arrangement lately made by an insolvent in the Court of Bankruptcy under 7 & 8 Vict. c. 70, does not prevent the exercise of jurisdiction by this Court under 1 & 2 Vict. c. 110.

Mr. Commissioner LAW said,—In this case opposition is made by Mr. Nicholls on the part of a creditor who obtained judgment against the insolvent early in 1851, and was one of a list of creditors in regard of whom he soon after put himself into the Bankruptcy Court, under the 7 & 8 Vict. c. 70. The first objection is, that the Court ought not now to entertain the matters of this petition so far as they relate to those creditors, because such matters are subject to the other jurisdiction. No one has been so determined as I have been to keep an insolvency in this court distinct from a prior insolvency of the same party. No one has been more desirous to avoid an undue interference with, or anticipation of the judgment of another Court. But I seek to found the decision of such questions, as they arise, upon some fair principle. Thus I have rejected the notion that a man's schedule shall contain those who were his creditors in an insolvency already adjudicated, on the plain ground that he now seeks no privilege as to them; and as they are by law incapable to claim

payment of him, I hold it both absurd and unjust to treat them as parties to a suit in which the law gives them no interest. The insolvency in which they were creditors produced a definite adjustment of the future relation of all parties; and the terms of that adjustment prohibit them from being creditors in a new insolvency. I observed the same principle where a prior insolvency, whose concerns it was attempted to mix up with a schedule under 1 & 2 Vict. had been one under the Protection Statutes. But there are in the law other schemes of insolvency, where the results are not always so definite and intelligible, and may not so necessarily exclude the creditors from appearing in a subsequent process. If a bankrupt petitions this Court, desiring the additional chance for his personal liberty, we decline to deal with the subject; because it is duly before another tribunal, which has the power through a certificate to pronounce for him the benefit which he seeks from us; and it does not become this Court to enter upon the question of a speedier indulgence. But there is a contingency under which this Court has been used to relax that principle of non intervention. If in bankruptcy all judgment on the merits is refused, and the party is left with no protection, present or future, we do then entertain the question of liberty, on the one principle that a man shall not be imprisoned for life. Some may think that even here we should abstain. At all events the case is an exception; and it is the only exception to the rule which I approve, namely, that a process of insolvency here shall not touch matters which have before been definitively dealt with, or which are under another jurisdiction competent to deal with them. What, then, is the process now spoken of, as calculated to prevent me from dealing with the rights of certain parties under the petition lately presented to this Court? It is a process under which the Court that superintends it has no power to determine the future rights of the parties. Nevertheless, if a debtor, having, through the statute in question, brought himself and his creditors under the control of an arrangement in the Court of Bankruptcy, should presently change his mind, and without waiting for the effect of the arrangement contrive a plan for transferring himself to this Court, I should be ready to disappoint his project, and leave him to the arena which he had first selected. But when we see the circumstances which bring Mr. Bevan before me, and the terms of the arrangement which he made, there is no pretence under which I could reject him. I cannot throw him back into the Bankruptcy Court. They cannot receive him. They could do nothing for him or his creditors. Their business was only to superintend a compact, which was, that the debtor should make certain periodical payments, and should receive a limited and renewable protection. He could annul this compact whenever he pleased. He did so. By not paying he forfeited his protection, and both parties were remitted to their prior rights and duties. Over those rights and duties the Bankruptcy Court has now no jurisdiction whatever; and the debtor, who is in custody on eight detainers, some by his "arrangement" creditors, some by others, can look for his liberty to no power in England but the power of this Court. This question being disposed of, I am to consider the merit of the case. The progress of the insolvent's incumbrances has been this:—In 1848, by being secretary to a non-existing rail-road, he got into debt 150*l.* besides two law-bills. He married in March 1849; and he informs us by September of that year he owed about 800*l.* To alleviate his embarrassments he then first made "arrangement" in the Court of Bankruptcy, and enjoyed the protection of that Court for six months. He gave it up in March 1850, and in April 1851, presented a new petition of "arrangement," with debts increased to 1,800*l.* He enjoyed his new protection till the 27th December, when he was arrested; and in January petitioned this Court, with a list of debts in the aggregate above 5,000*l.* Mr. Bevan, as appears from his evidence and that of his attorney, Mr. Chas. Lewis, desires to throw all the blame of this rapid increase of debt on the perverse operation of the system from which he sought relief. Now, though it is obvious that his embarrassments are likely to be increased by his deluding himself with a relief of that description, still the extent to which he has multiplied his debts cannot be imputed to that as the operating cause: it involves blame, and much blame, on his part. We will assume that, in the first instance, he made an excusable blunder, in supposing that the process of "arrangement" would suit his particular case. The inventors of that process, in which there is very little of judicial interference, and chiefly the sanctioning of a private bargain with some formalities of a court of justice, evidently were influenced by benevolent feeling towards a non-trading debtor: and so spared him from the publicity of the *Gazette*. Hence arise incidents not tending to a reasonable result. He is required to exhibit a certain fraction of his creditors as assenting to the course which he adopts; but the tribunal is prevented from knowing whether this fraction is a true one. The total must be unsafe; for the only parties invited to the conference are the debtor and his friends. The tribunal is also to be satisfied that the petitioner is exempt from certain enumerated blemishes; that he has fallen into debt without fraud, violence, vice, or injustice to his neighbour; and that his course of action is invested with certain meritorious and reasonable properties. But, while this satisfaction is made a requisite preliminary, the means of arriving at it are utterly wanting; for here again the commissioner is not permitted to have evidence, excepting from the debtor and his avowed friends. The awkwardness of this becomes more apparent when we find the system to be characterised by the introduction of a power which had just been abolished from bankruptcy, namely, the power in a large fraction of creditors of binding the smaller portion to submit to unwelcome terms. We all know that the minority may be those who have lately been damaged in order to get the means of conciliating the majority; and, if this sort of unfairness were an item for judicial investigation, the compulsory vote might be judicially rejected. But such exercise of a veto is not provided for. Satisfaction that all is right is to be entertained in limine, when the commissioner can know nothing about it, unless the applicant should make a statement which puts him out of court at the same time that he puts himself into it. The officer of the court, after presiding at the two meetings, reports the requisite majority. This is signed as an exhibit, and the protection is continued. We certainly find afterwards, when penalties are provided against the agents of the law who may fail to respect the protecting certificate, that there is an exception as to any debt, which may have been incurred without those honest propensities hich the Act seems to require. But as no machinery is provided through which a sheriff's officer can decline to recognise that instrument as a voucher of the debtor's purity and the Court's satisfaction, he surely must adopt these conclusions, though they be but fictions of law. When the affairs of an insolvent man come into this place, light is thrown upon them by the admission of evidence; accordingly, in this instance, it is impossible not to see with what hopelessness of payment those debts were contracted on which Mr. Bevan made his last petition for arrangement. It is true, as urged on his part, that the great vice of the system, privacy, meant as a boon to the debtor, may be his insidious enemy. Through that blemish in the system he got a short reprieve, which truth would not have earned for him; and this gave more scope to his ill-advised proceedings. But this fault in the law is not to be rested upon as having produced, and so excusing, his present financial condition. It does not account for a growth of debt, in two years, from 800*l.* to 4,000*l.* or 5,000*l.* especially when there was all the time an income on which he could have maintained himself. In both instances the process of arrangement was sure to fail of its object, because the adversaries, who should have been disarmed, were not disarmed by it. He only gained a little time. This was no injury to him; and it was cheaply gained by the payment of 50*l.* twice a year in reduction of his debts. He multiplied those debts, not because of the arrangements, but in spite of them. The futility, however, of the process for such a case is easily explained. He required, as every insolvent man does, protection from all creditors. He could only have it against those whom he named. He could only name a part, for he only knew a part. Therefore he could only have protection against a part. This must be the case with every one who has sent forth, as Mr. Bevan did, negotiable securities into the world. The mass of his debts were of this description. Under the insolvent law, this has not such fatal consequence. All the world has a general invitation, while every known party has moreover a special invitation; and the privilege gained affects all, including bill-holders not ascertained. The protection laws are the same; they began in 1842, and in the second statute of 1844, this reasonable provision was borrowed from the Insolvent Act, at the same moment the "arrangement" law was first contrived. That law was necessarily incapable of this beneficial provision. And see what comes of that defect. In September 1849, Mr. Bevan first seeks the aid of the Court of Bankruptcy. No sooner has he obtained a temporary protection against those with whom he contracted his debts, than he is assailed on all sides by the assignees of those debts, bill-holders. He purchases their forbearance for a time by heavy premiums; and, to pay the purchase-money, borrows from fresh parties at a ruinous rate of interest. When the allowed time has expired, the same process is gone through again; the forbearance is to be renewed and paid for, and the means of paying to be provided. Thus debts are renewed and increased, much as they would have been without the arrangement, and claimants, with their rights of action, are multiplied. In March 1850, Mr. Bevan elected to abandon his protection, on perceiving that it could not ultimately benefit him. That he might easily have renewed it, is apparent, on looking to his account of moneys borrowed about that time. The interval between that time and April, 1851, was employed by him in obtaining some large loans, and very many smaller ones, through discount of bills: and one would have thought that experience might have dissuaded him from resorting a second time to a process which promised only a worse recurrence of those disastrous incidents. But alive only to the convenience of the moment, and wilfully blind to the mischief that must come to himself and loss to others, he plunges again into a bankruptcy "arrangement" in April, 1851, having borrowed heavily during the three months immediately preceding. By paying 50*l.* down, and promising 50*l.* more in January, he gets a protection against specified creditors. Then again arises, as of course, a host of plaintiffs, untouched by his instrument of defence. And what now is the result of his efforts? Though he actually borrows about 1,200*l.* more, and incurs fresh tradesmen's bills, he only keeps himself out of custody till the 27th of December. Even the 50*l.* which he was to pay out of his salary as the January instalment had been anticipated: and he comes to this Court, with a list of debts amounting in the aggregate to 5,000*l.* It seems to me that the creditors under that very merciful arrangement are entitled to say, that that proceeding was delusive on the part of the debtor. He was preparing, not to diminish his debts, but to increase them. His experience of the prior arrangement made him know that a few months would make his state still more calamitous, as had happened immediately after that proceeding. I have rarely heard of a case where such an amount of debt was contracted with so little hope of payment. A man in trade, who struggles too long and accepts credit while he can get it, is far more excusable than a nontrader, who follows the course observable in the present case: who, with the certain knowledge that every day is making his condition worse, and only to drive off for a few weeks the crisis of arrest, goes on borrowing from every quarter, whether professional lenders or friends, as if not caring for the consequence to them or himself. With such a history before me, I certainly think that the insolvent may be deemed fortunate, that no more of those who have lost their money by lending it to him, whether before or after the arrangement, should have come to make complaint. But, though one only stands forth, in a case of conduct so reckless and injurious, the Court is not warranted in affording the relief prayed without some qualification. It would be idle to pretend to acquit this gentleman of being the cause of his own embarrassments. His exploits in the Court of Bankruptcy are but episodes in his career of imprudence. He will be discharged in six months from the vesting order

Circuit Reports.

NORTH WALES CIRCUIT.

Reported by R. VAUGHAN WILLIAMS, Esq. of Lincoln's-inn, Barrister-at-Law.

OXFORD CIRCUIT.

Stafford, Tuesday, March 16.

(Before GREAVES, Q.C.)

REG. *v.* BAILEY.

False pretence—Variance between averment and evidence—Power of amendment under the 14 & 15 *Vict. c.* 100, *s.* 1.

In an indictment for obtaining money by false pretences, the pretence alleged was that the defendant had been to B. on behalf of the prosecutrix, and had served a certain order of affiliation on one J. B. and that he was entitled to receive for serving the said order the sum of 5*s.*:

Held, that this averment was not supported by proof that the defendant said that he had been with the order to B. to serve J. B. and left it with the landlady where J. B. lodged, he being out, &c.:

Held, also, that this was not an amendable variance within the meaning of the statute 14 & 15 *Vict. c.* 100, *s.* 1.

The prisoner, George Edward Bailey, was indicted for obtaining money by means of false pretences.

The indictment alleged that he pretended to Emma Fletcher, of West Bromwich, &c. "that he, the said George Edward Bailey, had been to Bretley, in Derbyshire, on behalf of the said Emma Fletcher, and served a certain order of affiliation on one John Bell (meaning John Bell of Bretley aforesaid, named in the said order of affiliation), and that he, the said George Edward Bailey, was then entitled to have and receive of the said Emma Fletcher, for serving the said order, the sum of 5s. whereas in truth and in fact the said George Edward Bailey had not been to Bretley, in Derbyshire, on behalf of the said Emma Fletcher, to serve the said order of affiliation on the

said John Bell; and whereas the said George Edward Bailey was not then entitled to have and receive of the said Emma Fletcher the sum of 5s. by means of which false pretence the said George Edward Bailey obtained from the said Emma Fletcher two pieces of the current coin called half-crowns, of the moneys of the said Emma Fletcher," &c.

Emma Fletcher, the prosecutrix, deposed that the prisoner made the following statement to her:—"He told me he had been with the order to Bretley, to serve one Bell, and left it with the landlady at the Chesterfield Arms there, where Bell lodged, he being out; that he would not overcharge for his journey," &c.

Huddleston, for the prisoner, submitted that the allegation in the indictment was not supported by the evidence. The indictment alleged that the defendant pretended that he had served the order of affiliation personally on John Bell, whereas what the defendant said was, that he had left the order with a third person to give to him.

Scotland, for the prosecution, contended that the substantial charge was sufficiently proved. The defendant clearly intended to cause the prosecutrix to believe that the order had reached Bell's hands; and that a service had been effected by his instrumentality.

Greaves, Q.C. after retiring to consult Mr. Baron Platt, sitting in the Crown Court, said he was sorry to stop a case on this point, but both he and Mr. Baron Platt were clearly of opinion that the allegation in the indictment meant a personal service, and that consequently the pretence was not proved as alleged.

Scotland then applied to amend the indictment by making the allegation correspond with the evidence.

Greaves, Q.C. said that he was afraid that he had no power to order the amendment under the recent Act, 14 & 15 Vict. c. 100, s. 1. As originally drawn, the Bill provided for such a case, but those words had been struck out in the House of Lords. The section, as it stands now, provides for a variance between the statement in the indictment, "and the evidence offered in proof thereof, in the name of any county, riding, division, city, borough, town corporate, parish, township, or place mentioned or described in any such indictment, or in the name or description of any person or persons, body politic or corporate, therein stated or alleged to be the owner or owners of any property, real or personal, which shall form the subject of any offence charged therein, or in the name or description of any person or persons, body politic or corporate, therein stated or alleged to be injured or damaged, or intended to be injured or damaged by the commission of such offence, or in the christian name or surname, or both christian name and surname, or other description whatsoever, of any person or persons whomsoever therein named or described, or in the name or description of any matter or thing whatsoever therein named or described, or in the ownership of any property named or described therein." In this case the variance could not be said to be in the *name or description of any matter or thing* named or described in the indictment. He was not sorry this case had occurred, for it illustrated the utility and necessity for the provision originally contained in the Bill.

The prisoner was therefore acquitted.

Irish Reports.

Reported by P. J. M'Kenna, Esq. Barrister-at-Law.

COURT OF QUEEN'S BENCH.

Saturday, Jan. 17.

(Before Perrin, Crampton, and Moore, JJ.)

Meara *v.* Edwards.

Practice—Setting fi. fa. aside—Bond conditioned to abide award.

On a motion to set aside a fi. fa. which has been issued on a judgment entered contrary to good faith, and the understanding of the parties ... a bond condition for payment by one of two partners to the other, of whatever sum should be found due on taking the account of a temporary partnership transaction, by an arbitration agreed upon, where there are conflicting statements, and where there is a primâ facie of incorrectness and partiality on the part of the arbitrator, the Court will direct an issue to try the correctness of the arbitrator's finding, in order to save the parties the delay and expense of going into a Court of Equity.

Martley, Q.C. applied to make absolute the conditional order to set aside the judgment, notwithstanding cause shewn. The plaintiff and defendant had entered into a temporary partnership for the purpose of trading in whiskey. This partnership continued for three months, when they came to the determination of winding it up, and taking the account. The defendant meeting at the office of plaintiff's attorney in Cork, where plaintiff resides, plaintiff, and a gentleman of the name of Cottar, to whom they agreed to leave the taxing of the accounts, the defendant entered into a bond in the penal sum of 120*l.* to pay whatever sum Cottar should find to be owing by defendant to plaintiff. There was considerable delay in getting the parties together in order to produce their books and vouchers before Cottar, to enable him to decide, as the defendant was a traveller for several English houses of business, and defendant's books and other requisite documents were at Bristol, in England. On the 25th of July, 1851, Cottar wrote to defendant to Bristol, calling on him to attend him at Kingstown, and that he would proceed to make his decision on the 1st of August whether he attended or not. Defendant being engaged in his business did not attend at Kingstown until the 7th of August, and on the 8th there was an agreement between plaintiff, defendant, and Cottar, to meet on the following day, Saturday, at defendant's hotel in Dublin, and proceed to the arbitration and taking the account. On that day defendant received a note from Cottar, saying that he could not come to town, but that he would be at home at half-past three. On the evening of the same day defendant went to Cottar's house at Kingstown, and saw there plaintiff and Cottar, who were then indisposed to going into the account. On the Monday following Cottar wrote to defendant to say that he had made an award, and would not go into the matter again. On the following day judgment was entered on the bond, and execution issued for 45*l.* being the amount of the award, which sum was levied under the fi. fa.

Fitzgibbon, Q.C. (with whom *Johnes*).—Mr. Cottar states in his affidavit that he made the award on the 1st of August, as he informed defendant in his first letter that he would. The arbitrator is a brother-in-law of the defendant, and not likely to make an ex parte decision. It was impossible to get defendant to attend. [Perrin, J.—How do you reconcile Cottar's statement in his affidavit that he made this award on the 1st of August with those letters written to defendant, making appointments with him after the 1st of August, and saying that he would be at home?] Mr. Cottar states, in his affidavit that these letters had reference to other business transactions. After such delay on the part of the defendant in coming before the Court on conflicting affidavits, the Court ought not to entertain this application.

Meagher in reply.—We lost no time. The affidavit on which we move was drafted and ready to be sworn before the first day of last Term. But from defendant being unable to find a commissioner to take his affidavit, and sending it backwards and forwards, all this delay occurred.

Crampton, J.—If we refuse the motion it would be a great hardship on the defendant. To send the parties into equity to take this account would impose considerable delay and expense. The best course would be to direct an issue to a jury, to find whether any, and what, sum was due by the defendant to the plaintiff. The money which has been levied under the fi. fa. to be paid into Court, and the plaintiff here to be plaintiff on the trial of this issue.

Reg. *v.* Hart.

Practice—Bail—Amount.

This Court will allow a person against whom a strong case on the information is made out, of sending a threatening letter, to stand out on sufficient bail.

This was an application that the prisoner might be admitted to bail. The offence charged was sending a threatening letter to the magistrates. Messrs. Forman and Channing, who had committed him, had refused to take bail; under these circumstances this application was necessary. The prisoner was prepared to give ample bail.

Perrin, for the Crown, opposed the application. The informations which had been sworn, stated that the threatening letter which had been sent was all in the hand-writing of the prisoner, and the person stating this was well acquainted with the handwriting of the prisoner, who was a country schoolmaster. It would be very wrong, under such circumstances, to allow a prisoner on whom so serious an offence was charged, to stand out on bail.

Crampton, J.—Unless very strong reasons offered, why should you refuse substantial bail? Let the prisoner find two sureties for 50*l.* each, and his own bail for 100*l.* before the committing magistrates, Messrs. Forman and Channing.

HILARY TERM, 1852.

Tuesday, Jan. 13.

***Re* Catherine Hand.**

Habeas Corpus—Practice.

Where C. H. an unmarried girl, between sixteen and seventeen years of age, had, since her father's death, with the assent of her guardian, resided with a married sister and M. D. her husband, the Court, holding that the latter stood in loco parentis, granted a habeas corpus to bring up C. H. upon the application of M. D. founded upon an affidavit that she was detained from her family by a third party by means of fraudulent representations.

Hayes, on behalf of a Mr. Mark Delany, moved for a writ of Habeas Corpus, directed to James Glascow, ordering him to bring up the body of Catherine Hand. It appeared that Delany was married to Eliza Hand, sister of Catherine Hand. That their father, James Hand, died in 1844, leaving five children, of whom Catherine Hand was one, and who attained her sixteenth year in September, 1851. Upon the death of James Hand, Catherine, and the other children, came to reside with their sister Eliza, who was married to Delany, and remained with them until the 5th of January. Under the will of her grandfather, Catherine Hand was entitled to from 300*l.* to 400*l.* in case she should attain the age of twenty-one years, or marry with the consent of Edward Mooney, the surviving executor of the will. It was also stated upon affidavit, that the children resided with Mr. Delany with the approbation of Mooney and the Rev. Mr. Dunne, the guardian of the children; that James Glascow lived within a quarter of a mile from Delany's house; that in January he applied to Delany to use his influence with the Misses Hand, to induce one of them to marry him, not particularising which of them, which Delany refused to do; that on the 5th of January the sister of James Glascow spent the evening at Delany's house; that Delany was obliged to leave the house in the evening, and did not return till late, when he found that Catherine Hand had left his house with Glascow's sister. It then proceeded to state facts, from which it appeared that she had proceeded to Dublin, and that James Glascow admitted that she was in his custody. The affidavit further stated that Catherine Hand was detained by the fraudulent representations of Glascow, and that Delany's object in applying for the writ was to restore her to her friends.

Moore, J.—I do not recollect a case of this sort; but as I take Mr. Delany to be in loco parentis, I think you are entitled to the order.

On a subsequent day Catherine Hand was brought up in obedience to the writ, and was left at liberty to proceed to her friends, James Glascow being ordered not to interfere with her.

Wednesday, Jan. 14.

Peters *v.* The Dublin and Wicklow Railway Company.

Railway Company—Notice to treat—Mandamus.

A company's special Act provided that, where contracts for lands required by the company were in existence at the time of the passing of the statute, the value need not be assessed by the officer appointed by the Board of Trade. The Court

Held, that a mere notice to treat did not come within this exception, and refused to compel the company to proceed to assess compensation by means of a jury.

Butt, Q.C. and *Bond Coxe*, moved in this case to make absolute a conditional order, which had been obtained on a former day, for a mandamus, requiring the company to take the necessary steps to award compensation to the applicant for a plot of ground required for the purposes of the company, and in reference to which a notice to treat was served in May 1848. The abstract of title to the lands had been furnished to the company's solicitor, and the sum of 1,200*l.* claimed as the purchase-money. It was now contended on behalf of the applicant, that the recent statute, providing that the value of land required by a railway company should be assessed by an officer appointed by the Board of Trade, did not apply, inasmuch as the company's special Act exempted from the operation of this statute all contracts which were previously in existence, and the service of a notice to treat constituted a contract within the meaning of the section. Without calling on

M. Barry and *Coffey*, who appeared on behalf of the company,

Crampton, J. said, that in the opinion of the Court a mere notice to treat was not within the the exception, and that the statute having appointed an arbitration, the present remedy was not by means of an inquisition and the finding of a jury, therefore the cause shewn should be allowed.

Coxe submitted that the order should not be discharged with costs.

Coffey.—All this litigation has been about twenty perches of ground.

Crampton, J.—The question raised is a new one, and the majority of the Court are of opinion that no costs should be given to the company.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by E. G. WELFORD, Esq. Barrister-at-Law.

WATKINS v. WILLIAMS.
(Before Lord TRURO, L.C.)

Conditions precedent in subsequent petition — Grounds of appeal not stated in the petition of appeal.

A married woman having with her husband levied a fine of her real estate, an undivided moiety to such uses as she should by deed or will appoint, by her will devised the same to her husband, with power to sell or to raise money thereon by way of mortgage or otherwise, subject to a proviso that such part of such sums so to be raised as should be unexpended at his death should be charged upon certain houses belonging to the husband to be paid to her four nieces, share and share alike, and in case the estate should be mortgaged for less than its full value, then she devised the reversion of the same to her four nieces as tenants in common. The husband mortgaged the estate, but made no such charge as was required on his own houses. After the husband's death the nieces and their husbands mortgaged their estate, and in cross suits for redemption and partition and foreclosure, a foreclosure was decreed, and it was thereby declared that the mortgage made by the husband was a valid charge, but no commission for a partition was directed as prayed in the redemption suit. It was

Held, that mortgage debt created by the husband was a valid charge, and that the direction that he should charge his own houses was not a condition precedent.

Held, also, that the owners of the equity of redemption will not be allowed to insist on a direction for a partition being inserted in the decree on a redemption suit against the will of the mortgagee, who has no interest in the question.

Objections to a decree not raised upon the petition of appeal cannot be taken on the hearing, as respondents would thereby be taken by surprise.

This was an appeal against the decree of Vice-Chancellor Knight Bruce, the facts of which are fully stated in the judgment.

Swanston and *Terrall*, for the appellants.

Bacon and *James*, for the respondents.

Swanston, in reply.

The following cases and authorities were referred to in argument:—Dan. Ch. Prac. 1354; *Ross* v. *Ross*, 1 Jac. & Walk. 151; *Bourne* v. *Gibbs*, 1 Russ. & Myl. 614; *Cuthbert* v. *Purrier*, 1 Jac. 415; *Green* v. *Harvey*, 1 Hare, 431; *Byng* v. *Lord Stafford*, 5 Bea. 567; *Doe dem. Stephenson* v. *Glover*, 1 C. B. 448; *Doe* v. *Martin*, 4 Term Rep. 39.

JUDGMENT.

The LORD CHANCELLOR.—This is an appeal from the decree of Vice-Chancellor Knight Bruce upon the following grounds:—First, on the ground that it ought not to have been declared by the decree that certain mortgages created by Rees Davis were valid; secondly, on the ground that the equitable mortgage created for securing 600*l*. is not valid; and thirdly, on the ground that a partition ought to have been directed to be made between the different parties interested in the estates to which the mortgage referred. These are the grounds which appear in the petition of appeal. Other objections were taken by the appellants on the hearing of the appeal; but as I do not think it is competent to the appellants to take objections to the decree which are not stated on the petition of appeal, I can take no notice of them. The facts of the case are very complicated, but I will state such as are relevant and material to the judgment I am about to pronounce. By indentures of the 12th and 13th of May, 1817, George Price Watkins, under whom the respondents claim, took a transfer of a mortgage for 1,200*l*. on an estate called "Lower Tylecrown." Some years prior to this Lewis Williams, being the owner of the equity of redemption of Lower Tylecrown, also owner in fee of Upper Tylecrown, devised these estates to his daughters Abigail and Winifred, as tenants in common in fee, and died in the year 1802. Abigail Williams intermarried with Walter Lewis, and Winifred Williams intermarried with Rees Davis. In or about the year 1824 Abigail Lewis died intestate, leaving her husband Walter Lewis and three children—Edward Williams Lewis, her son and heir at law; Mary, afterwards the wife of Thomas Haverd, and Margaret, afterwards the wife of John Lewis. Edward Williams Lewis, the only son and heir of Abigail Lewis, died, leaving his sisters, Mary Haverd and Margaret Lewis, him surviving, in whom the moiety which belonged to Abigail Lewis became vested, as his co-heiresses at law. In September 1833 Walter Lewis, Thomas Haverd, and John Lewis, made an equitable mortgage of the moiety which belonged to Abigail Lewis to the said George Price Watkins for securing 600*l*. one-half of which appears to have been paid. By indentures of 16th and 17th November, 1838, John Lewis and Margaret his wife made a mortgage to George Price Watkins of one undivided fourth part or share of Upper and Lower Tylecrown, 1,150*l*. By indenture of the 21st of May, 1813, Rees Davis covenanted with Samuel Church that he, Rees Davis, and Winifred his wife, would levy a fine of her moiety of Upper and Lower Tylecrown to such uses as Winifred should by deed or will appoint; and a fine was levied accordingly. Winifred Davis devised to Rees Davis, her husband, her share of Upper and Lower Tylecrown, with power to sell and dispose of the same, or to raise any sum or sums of money thereon by mortgage or otherwise, as he should think proper. She then had a proviso in these terms:—Provided always, and these presents are upon this express condition, that such part of all and every sum or sums of money so as aforesaid raised by the said Rees Davis, either by sale or mortgage, as shall be expended at my decease, shall be charged upon the house belonging to the said Rees Davis, situate, &c. to be disposed of as hereinafter expressed immediately after the decease of the said Rees Davis; that is to say, that that sum shall be paid to my four nieces, viz. Charlotte Coltheart, Mary Lewis, Margaret Lewis, and Helen Williams, share and share alike; and in case the estate should be mortgaged for less than its real value, then the testatrix devised the reversion of the same to her said four nieces, share and share alike; and in case the estate should not be sold or mortgaged by the said Rees Davis, then she devised the same to her said nieces, their heirs and assigns, as free from incumbrances as they should be at her decease, share and share alike, as tenants in common. Rees Davis made certain mortgages to George Price Watkins, and in 1839 died without having made any such charge on the two houses as required by the proviso in the will of Winifred Davis. On his death th moiety in which he had life interest became vested in possession (subject to the mortgages) in the defendants Charlotte Williams (formerly Coltheart), Mary Haverd (formerly Lewis), Margaret Lewis and Helen Holderness (formerly Williams), as tenants in common in fee, and in their husbands, Henry Williams, Thomas Haverd, John Lewis, and John Holderness, in their right. George P Watkins devised the premises vested in him as mortgagee under the various mortgages to the respondents, and the several mortgage debts still remain due to the estate of George Price Watkins, except the part of 600*l*. which has been paid off. In this state of things the appellants, in February 1844, filed a bill for redemption and partition; and in March in the same year the respondents filed a bill of foreclosure. These causes came on to be heard before Vice-Chancellor Knight Bruce, when his Honour pronounced a decree of foreclosure, the particulars of which it is not necessary to state any further than this that it was thereby declared that the mortgages created by Rees Davis were valid, and also treated the equitable mortgage for 600*l*. as a valid charge, and it does not direct that a commission should issue for making a partition as prayed by the redemption bill. Against that decree the parties interested in the equity of redemption presented a petition of appeal, whereby they objected to the decree, first, on the ground that the mortgages created by Rees Davis are not valid; secondly, on the ground that the equitable mortgage for 600*l*. is not a valid charge; and, thirdly, on the ground that the decree ought not to have contained a direction for a partition. The other objections which were taken by the appellants, on the hearing of the appeal, and which do not appear on the face of the petition of appeal, I cannot entertain without infringing a rule of practice (stated 2 Daw, Chan. Prac. by Headlam, 1351), which is necessary to protect respondents from being taken by surprise. Now, with respect to the objection to the validity of the mortgages made by Rees Davis, the foundation of that objection is, that the power in the will of Winifred Davis, under which he created them, was dependent on the condition of Rees making such a charge, and inasmuch as he did not observe that condition, the mortgages created by the execution of the power were void, I am of opinion that this objection to the validity of these mortgages cannot be maintained. I do not think the condition embodied in the proviso is a condition precedent. Conceding that the words "unexpended at my decease," were written by mistake for "unexpended at his decease," and supposing also that the import of the proviso is sufficiently clear, and that the meaning was, that Rees Davis should create a charge, either by deed or will, on his two houses for such a proportion of the money to be raised by him as might happen to be unexpended at the time of his decease, the form of the proviso is most certainly not that of a condition precedent upon which an estate is to arise, but of a condition subsequent in that general sense of the term, in which it is sometimes used in contradistinction to a condition precedent to denote a clause which causes the cessor of an estate, given in a preceding sentence, whether such condition subsequent is a condition properly so called, which causes the revertor of the property, or a condition of limitation, which gives the property over to a third person. Indeed the word "provided," and the words "on condition," when they constitute the introductory words of a distinct sentence in the preceding sentence, are the technical words which properly introduce a condition subsequent, as opposed to a condition precedent. But, independently of the form of the proviso the condition cannot be condition precedent, because it would be absurd that Rees Davis, before raising the money, should have been obliged to execute a charge by deed on his own estate, to secure to the nieces so much as should be unexpended by him, and thereby put himself to considerable expense, and preclude himself from the free alienation of his estate, and from the power of raising money on it, when he could at any moment render such a charge wholly nugatory by spending the whole money. And as to a charge by will, that of course cannot be deemed to have been intended, as it might be revoked the next day. The proviso is of the nature of a condition subsequent in the general sense of the term, which I have mentioned. It is an irregular way of accomplishing the purposes of a conditional limitation properly so called; a conditional limitation takes effect in defeasance of the interest given in a preceding sentence; and this proviso is intended virtually to take effect in partial defeasance of the absolute interest in the entirety of the money to be raised, for it would seem to amount to the same, as if the testatrix had said, "But in case Rees Davis shall not expend all the money, which shall be raised by him, so much as shall be unexpended at the time of his decease shall go to my nieces, and Rees Davis shall execute a charge on his two houses to secure that amount to them." But whether this is the precise character and import of the proviso or not, which it is unnecessary for me to decide, there can be no doubt that it was intended virtually to be a limitation over in some way or other of so much of the money as should be unexpended. Now it is a rule, that where a money fund is given to a person absolutely, a condition cannot be annexed to a gift that so much as he shall not dispose of shall go over to another person. Apart from any supposed incongruity, a notion which savours of metaphysical refinement rather than of any thing substantial, one reason which may be assigned in support of the expediency of this rule is, that in many cases it might be very difficult and even impossible to ascertain whether any part of the fund remained undisposed of or not, since, if the person to whom the absolute interest is given left any personalty, it might be wholly uncertain whether it were a part of the precise fund which was the subject of the condition or not. Another reason may be, that it would be contrary to the well-being of the party absolutely entitled to lead him profusely to spend all that was given him, which in many cases might be all that he had in the world, for although he might provide against leaving himself destitute by buying an annuity, yet even if he did this, it might be at the expense of those for whom he might be under a moral obligation to make some provision. In *Ross* v. *Ross*, 1 J. & W. 151, Sir Thomas Plumer observed, "One consequence of permitting such limitation over would be, that if the party entitled to the absolute interest had not spent money, and were to die indebted to any amount, his creditors would be excluded from it. The validity of this reason may be doubtful, as it may perhaps be said that a man might properly be deemed to have spent the amount of debt which he has contracted, and which he has laid himself under an obligation to pay. In *Bourne* v. *Gibbs*, 1 Rus. & M. 614, a testator gave his personal estate to his wife for her own absolute disposal, provided nevertheless, that if his wife should make no disposition thereof in her lifetime or by her will, then he directed that such part as should remain undisposed should go, and he accordingly bequeathed the same to his nephew. It was held, that the sum of stock which was part of the testator's property given to his wife remaining in his name at her death, passed by her will, although it contained no allusion to her husband's will, Sir John Leach, M.R. being of opinion that the widow took an interest in the whole of the testator's residuary estate. So in *Ross* v. *Ross* (ubi supra), a testator gave to his son a sum of money, with a limitation over, in case he should not receive or dispose of it by will, or otherwise, in his lifetime. He died intestate, without having received the money, although it was carried to his separate account in a suit. Sir T. Plumer, M.R. said—This differs from a power and a remainder over in default of its exercise. If you give an absolute interest to a person, you cannot subject it for his life to a proviso that if he does not spend it, his interest shall cease. So in *Cuthbert* v. *Purrier*, 1 Jac. 415, an absolute interest was given to A. at twenty-one, with a bequest over in the event of his dying under that age, or afterwards, without

lawful heirs, and being intestate. Sir T. Plumer said, as the testator had two objects, which are inconsistent to invest the son with the absolute property, and then to provide for the event of his not exercising his right over it, I think the Court is bound to transfer it to him. So in *Green* v. *Harvey*, 1 Hare, 431), Vice-Chancellor Wigram said the general rule at law is that an absolute interest is not taken away by a gift over, unless the gift over may itself take effect. Now, it has been repeatedly decided that were a legacy is given absolutely, and gift over is superadded, in the event of the legatee dying, without having disposed of his legacy, the gift over is void, and the legacy is absolute. So in *Byng* v. *Lord Stafford*, 5 Beav. 567, Lord Langdale said—If an absolute interest be given on an express condition, which may be lawful in itself, but is incompatible with the free enjoyment of the property, the Court does not modify the absolute interest, for the purpose of giving effect to the condition, but declares the condition void, for the purpose of supporting the absolute interest. The case of *Doe dem. Stephenson* v. *Glover*, 1 C.B. 448, in which I was counsel, is not opposed to these cases, as that was not a case of money limited over, but one in which there was a devise over of real estate. There a testator devised his real estate to his son, his heirs, and assignees for ever; but in case he should die without leaving any issue then living, or being no such issue, and he should not have disposed of and parted with his interest in the real estate, then the testator devised the same to his illegitimate daughter, her heirs and assigns. The judges were unanimous in the opinion that the devise over was a good executory devise, and that as the son had not parted with the estate in his lifetime, although he had disposed of it by will, it went over to the daughter. As to the case of *Doe dem. Martin*, 4 T. & R. 39, which was cited at the bar by the counsel for the appellants, a most substantial distinction exists between that case and the present. That was a case of a power enabling settlors to revoke the uses of a settlement, and the trustees to sell the estate and convey to a purchaser, so as that the purchase-money should be paid to the trustees and not to the settlors, to be paid out and invested by the trustees in the purchase of other property to be settled to the same uses. It was held that the power of revocation was conditional, and as neither of the conditions was performed, viz. the payment of the money to the trustees, and the re-investment of it in the purchase of other lands to be settled to the same uses, the revocation was a nullity. In this case, as Lord Kenyon intimated, the exercise of power and the performance of the condition were beyond all doubt to be considered parts of one transaction. They were essentially and inseparably connected. The performance of the condition, instead of being a derogation from the ownership of the parties to be affected by the exercise of the power not permitted by law, was an act which those parties had a most unquestionable right to expect to be done. But, independently of the rule to which I have adverted, the mortgages created by Rees Davis cannot be affected by the proviso. Supposing, for the reasons I have assigned, it was not a condition precedent, then as the testatrix has specified no time for the creation of the charge, it would be sufficient for Rees Davis to create it at any time before he died, but it cannot be contended that he was bound to create it at all if he had spent all the money, and yet the appellants, upon whom it was incumbent to shew that the condition was not performed, have not proved that Rees Davis left any part of the money unexpended, and, consequently, have not proved that the condition was broken. For these reasons I am clearly of opinion that their objection to the validity of the mortgage created by Rees Davis altogether fails with respect to the second ground of appeal; it appears to me that the decree must be right in treating the equitable mortgage as a valid charge, for the appellants by their answer have admitted that the 600*l.* was lent, and that John Lewis and Thomas Haverd gave George Price Watkins a written undertaking that they would execute a mortgage of their respective interests, and that, if necessary, all proper parties should concur in levying a fine of the premises; the answer seems to me to admit a fact which constitute a valid equitable mortgage, and the life estates of the husbands of the two daughters of Abigail, and of the two other nieces of Winifred, and I see no evidence to impeach or reduce that mortgage, except so far as the payment of one-half of the 600*l.* With respect to the third ground of appeal, viz. the omission of a direction as to a partition, a partition appears to me not to be properly incident to a foreclosure or redemption suit, in such a way that the owners of the equity of redemption can be allowed to insist on it against the will of the mortgagee, who has no interest in the question. In the present case, with the consent of the mortgagee, the parties interested in the equity of redemption may have a partition, but I cannot regard the omission of a direction for a partition as constituting a ground for an appeal. The appeal must be dismissed with costs.

Reported by C. H. KEENE, Esq. of Lincoln's-Inn, Barrister-at-Law.

IN CHANCERY.

(Before LORD ST. LEONARDS.)

March 10 *and* 17.

Re THE VALE OF NEATH AND SOUTH WALES BREWERY JOINT STOCK COMPANY, *Ex parte* LAWES.

Company—Winding-up Acts—Contributories—Sale of shares to the company.

The deed of settlement of a joint-stock company provided the mode by which a shareholder, parting with his shares, was to be relieved from subsequent responsibility. At an extraordinary general meeting of the company resolutions were passed, by which any of the shareholders might withdraw from the company on certain conditions. A. (a shareholder) did not then avail himself of the privilege of withdrawing. The conditions contained in those resolutions were, at a subsequent ordinary general meeting modified and altered; whereupon A. in pursuance of such conditions sold his shares to a nominee, one of the directors of the company. The transfer of the shares was duly entered in the share register book, as required by the provisions of the deed. The company was subsequently wound up under the Winding-up Act.

Held, affirming the decision of the Vice-Chancellor, that A.'s executors were properly placed on the list of contributories.

This was an appeal from an order of the late Vice-Chancellor Knight Bruce affirming the order of Master Brougham placing the name of Mr. John Lawes (the appellant) on the list of contributories to the company.

In the year 1840 a joint-stock company was established under the title of the Vale of Neath and South Wales Brewery Company, the constitution of which company was settled by a deed dated the 3rd of March in that year. Its nominal capital was stated to be 125,000*l.* in 6,250 shares of 20*l.* each; but no more than 3,640 shares were ever taken up.

William Lawes (deceased) became the owner of 30 shares, and held them up to the 21st of August, 1841. The 22nd and 23rd clauses of the deed of settlement were to the following effect:—22nd. "The directors shall at all times have or keep in the hands of the bankers of the company such a balance as shall be sufficient to answer the current expenses and demands of the company; and when and so often as the balance in the hands of the bankers shall be more than sufficient for the ordinary purposes of the company, or for paying the yearly dividends to the proprietors, the directors shall, so far as they conveniently can, accumulate the same until a surplus fund be raised or provided amounting the sum of 10,000*l.* sterling money, and shall report the amount of such accumulation at every annual general meeting; and for making the aforesaid accumulations, the directors shall lay out and invest the moneys or funds appropriated to such purposes in the names of the trustees, for the time being, of the company, in any of the public stocks or funds of Great Britain, or at interest upon Government or real securities in England or Wales, but not in Ireland, or in paying off and discharging the said mortgage money or sum of 15,000*l.* or any part thereof; and shall from time to time alter, vary, and transpose the said stocks, funds, or securities as occasion may require or as it shall be deemed expedient. And in case a sufficient balance at the bankers cannot be obtained by other means and for the purposes to which such surplus fund is by these presents made applicable, the said trustees or trustee for the time being, on being thereunto required by the directors, shall sell and convert into money a competent part of the surplus fund, and of the stocks, funds, or securities in which the same shall for the time being be invested."

23. "The directors may from time to time by and out of the surplus fund hereinbefore mentioned purchase and buy up any share or shares in the capital stock of the company which shall be offered for sale, and shall, at their discretion, either sell the same upon such terms and conditions as they may think proper, or shall suffer the same to sink into the general stock and funds of the company for the benefit of the existing shareholders, according to their several and existing shares therein."

The 50th section of the deed provides for extraordinary general meetings of the company; and on the 30th of April, 1841, an extraordinary general meeting of the shareholders was convened, in pursuance of a requisition as provided by the deed.

Such extraordinary general meeting was convened by notice conveyed to each of the proprietors on or about the 30th of March, by printed circulars, sent through the post, addressed to each proprietor at his place of residence, as standing in the "share register book." The notice was in the following terms:—

"Sir,—I am instructed by the directors to give you notice that an extraordinary general meeting of the proprietors of the Vale of Neath and South Wales Brewery will be held at No. 59, Queen-square, Bristol, on Wednesday, the 10th day of April next, at twelve o'clock precisely, for the purpose of receiving from the directors a proposition for paying off the advances made during the recent interruption to the trade, and discharging such other liabilities as require to be paid at an early period, and to provide for such payments, without appropriating to that purpose the funds accruing from the present trade.—I remain yours, very faithfully, William Lowther, Secretary."

On the 10th April, 1844, such extraordinary general meeting of the company took place, whereat the following was, among other resolutions, unanimously passed—"That if any shareholder shall be desirous of withdrawing from the company, the directors shall be at liberty to purchase his shares at a price not exceeding 15*l.* per share on his investing or procuring to be invested an amount not less than the purchase money of his shares, and taking the loan-note of the company for five years at 5*l.* per cent. interest for such investment, together with the purchase money for his shares; but in case of preference shares being so purchased by the company, the same shall be taken at a price not exceeding 20*l.* per share, and not less than a corresponding amount be introduced." The circular convening this meeting stated generally its object to be, to provide means for making certain payments and discharging other liabilities of the company.

Mr. Lawes was not present at the meeting either in person or by proxy. After the 10th of April, 1841, three duly convened ordinary general meetings were held; and on the 31st of July following, at an ordinary general meeting, the following resolutions were passed:—"It having been shewn that materially increased profits may be realised by an extended trade, it is highly desirable that the attention of the manager be particularly directed to the best extra means of effecting this object by making speedy arrangements with parties to become extensive wholesale customers in Bristol, Liverpool, and other places, and by such other means as are likely to prove effective."

"That the directors allow such further time as they think reasonable to those shareholders who have not complied with the resolutions passed at the special meeting held at Bristol on the 10th of April last, and that after the expiration of such further time this meeting sanctions the forfeiture of the shares of those proprietors who shall continue to be defaulters."

William Lawes exercised the option given him by the first resolution, and by indenture, dated the 24th of August, 1844, made between Wm. Lawes of the first part, W. H. Buckland of second part, and J. W. Little and W. Brenton of the third part, in consideration of the sum of 450*l.* therein stated to have been paid to W. Lawes by W. H. Buckland, W. Lawes assigned his thirty shares to W. H. Buckland. W. H. Buckland was one of the directors, and a nominee of the company.

The 40th clause of the deed of settlement is as follows:—"A book to be called 'The Share Register Book,' shall be kept by the secretary of the company in which shall be entered the names and additions of the several proprietors for the time being of shares in the capital and property of the company, together with the number of the shares which they shall respectively have therein, and the proprietors for the time being shall be entitled to copies by way of certificates, signed by two of the directors for the time being, of the entries relating to their respective shares in the said share register book, and such copies or certificates so signed shall, as between the proprietors of the company, be conclusive evidence of the entries of which they purpose to be copies."

A memorandum of the transfer of the shares to W. H. Buckland was entered in the share register book, and a certified extract from this book of the transfer, had been delivered to John Lawes, as executor of William Lawes.

The sum of 450*l.* was not paid by W. H. Buckland: W. Lawes advanced the further sum of 450*l.* and received a loan-note of the company for 900*l.* signed by two of the directors.

The affairs of the company shortly afterwards became so embarrassed as to render it impossible for them to continue their engagements, and ultimately, on the commencement of the year 1849, an order was obtained for the winding-up of the company, under "The Joint-Stock Companies Winding-up Act, 1848."

William Lawes died, and appointed John Lawes (the appellant) his executor.

The Master, by his certificate, included J. Lawes, as the executor of W. Lawes, in the list as a contributory in respect of the thirty shares which had been held by his testator, being of opinion that it was not competent for the directors, or for the company, regard being had to the deed by which the company was constituted, to have passed the resolu-

tion by virtue of which the sale to them by William Lawes was effected.

From this decision John Lawes appealed to the Vice-Chancellor. His Honour, in giving judgment, said, there were specific differences between that and *Morgan's* case, 1 Mac. & Gor. 225, but his impression was, that the late Lord Chancellor decided *Morgan's* case on a ground common to that (*Morgan's*) and the case before him, namely, that the intention of all the parties in the transaction of the transfer was, that the shares should be assigned to the company through the medium of a trustee; and that such a transaction could not be maintained unless the purchase by a director for the company was made according to their rules. His Honour found a distinction in *Holloway's* case, 1 De Gex & S. 777, on the ground that the legal formalities had been pursued, and that it had not been brought home to the party transferring that he knew or intended that the transfer was to be made to the company. His Honour decided that the motion ought to be refused, but directed that the costs should come out of the estate.

From this decision Mr. Lawes appealed.

Roundell Palmer and *Lewin* appeared in support of it, and stated that, on the hearing of the present case before the Vice-Chancellor, he decided it on the ground that the facts were identical with those in *Ex parte Morgan*; and although that case might have been rightly decided, yet the circumstances of this case were such, that a contrary decision would not be inconsistent with the principles there laid down. That Lord Cottenham's judgment (if right) went to the extreme point of the law, and ought not to be extended. It was an admitted hardship on the appellant. No fraud was imputed to him, and he was entitled to relief. The present case was distinguishable from it: here the transfer to the directors was made in pursuance of resolutions passed at the annual general meeting; and such transfer was rendered complete by the terms of the 44th section of the company's Act. The company were now dealing with the executors, who had no interest in, and were not liable to, the company. The entry of the substituted shareholder in the share register book had been regularly made, and must be taken to have been known to all the company; and their acquiescence must be implied.

Russell and *T. H. Terrell*, appeared for the official manager.

Lewin replied.

The following cases were cited: *Hughes* v. *Taylor*, 2 Jo. & L. 24; *Bagge's* case, 13 Bea. 162; *Richmond's* Executor's case, 3 De Gex & S. 66; *Adie* v. *Walford*, 5 Hare, 112; *Holloway's* case, 1 De Gex & S. 777; *Graham* v. *Birkenhead Railway Company*, 2 Mac. & G. 146; *Bosanquet* v. *Shortridge*, 4 Exch. 699; *London and North Western Railway Company*, v. *Smith*, 17 Law T. Rep. 85; *Ex parte Besley*, 3 Mac. & Gor. 287; *Morgan's* case, 1 Mac. & G. 225; S. C. 1 De G. & S. 750.

Wednesday, March 17.—The LORD CHANCELLOR.—This case, I think, lies in a very narrow compass. I do not think it necessary to go through a detail of all the facts, because they are contained with great accuracy in the reports of the case, and the counsel on both sides are fully masters of them. The question is, whether this gentleman was or not properly put upon the list of persons bound to contribute to the expenses. Now, that depends upon the transaction. This was a partnership of a peculiar nature, consisting of a great number of persons, and yet strictly a trade; and I am very far from meaning to say, that such rules as were laid down, for example, in *Const* v. *Harris*, T. & R. 496, would not still be the rules which would bind the Court, in cases generally of that description; but here it is in the nature of a joint-stock company, with a great many partners, and it is necessary, I think, to hold such persons, as strictly as may be, to the terms of their contract; because as there are general meetings and extraordinary meetings, if you do not keep within the meaning of the deed, as necessarily a great number of the partners never can or will attend the meetings, you would have proceedings taking place which, in effect, according to the view of one party, would bind the absent parties, and yet be directly opposed to the terms on which they had entered into the partnership. Now, by this partnership, which was at first supposed to be of such value, an earnest stipulation is made that no more than ten per cent. under any circumstances, shall be divided. They began with eight per cent.; they come down immediately to six per cent. and almost instantaneously to no dividend at all—to no per cent.—and at the time the transaction took place on which this case depends, in point of fact the company was wholly insolvent, and was looking for the means of dragging on its miserable existence. Now the articles particularly provide that if there be a surplus fund to a certain amount, which is indicated 10,000*l*. that the directors may purchase shares; that is, if they become so rich as to enable them to buy out certain of their partners who may wish to retire, thereby increasing, of course, the interest of the remaining partners, that it may be done; but the company being greatly in want of funds in order to relieve the pressure of the circumstances which then existed, an extraordinary meeting was called. Now the deed expressly provides what shall be done in regard to those extraordinary meetings; and it says, in so many words, that in calling those extraordinary meetings there shall be stated a specific object for which those meetings are to be called. Now, I think it perfectly clear that the notice calling that meeting did not state the specific object, and I think it impossible to read the notice, which I need not now go through again, without feeling satisfied that there was an intention not to state fully to the shareholders what the scheme was which the directors intended to propound. At that meeting, after passing a resolution that every man according to his interest should bring in a certain amount of loan, it gave permission to the directors, if any shareholder wished to retire, to buy his share at a certain depreciated price, at three quarters, I think, of its nominal value; and upon his tendering a sum equal to the amount of the purchase-money,—a very singular transaction,—then one of these loan notes should be given for both the purchase and the amount of the loan, which was to remain for five years. Now, that was a mode of increasing, as it appears to me, the difficulties of this partnership; for it was not only pledging them to more debt than it would be necessary to do, but it was actually withdrawing a portion of the capital from the trade, and throwing greater liabilities upon the partners who remained: it was throwing a clear liability on every man who remained; and I can see nothing in the notice of that extraordinary meeting which could have led any shareholder to suppose that any such proposition was about to take place. Now that was followed by a general meeting; this circumstance having arisen, that, as regards Mr. Lawes, the shareholder in question, he did not avail himself of that, I will not call it a right, it was not a right on his part, but a privilege to tender to the directors his share, and a right on their part as far as the resolutions went to buy that share: he did not avail himself of it within the time; but there was a general meeting, and that general meeting passed a resolution enlarging the time, and then saying that the defaulters should forfeit their shares who did not take the advantage within the time Now, the question was raised before me, whether that general meeting had such power, or had not. In my opinion they had not the power; for their powers are expressly confined to that which should not be contrary to the provisions of the deed. Now this was directly in opposition to the deed; therefore I think it depended on the powers of the extraordinary meeting within; whose powers I do not deny it would have been, if they had stated the specific object for which the meeting was to be held; but I think it did not fall within the general powers of the general meeting; and if it did fall within the general powers of the general meeting, I think, upon consideration of the terms of the resolution, that it was confined to the liability of the parties to contribute their loans, and that it did not include that power which had expired by the lapse of time on the part of the directors to purchase shares of partners who desired to withdraw from the copartnership. I think, looking at the terms, you can hardly doubt that that is so; for it speaks of the defaulters and of the forfeiture of their shares; these were liabilities; but it says not a word about the privilege of being entitled to sell their shares to the company, and at a certain sacrifice of the amount of their loan, and the amount of their purchase-money, having the chance of withdrawing themselves and all their assets from any liabilities of the company; that company being at the moment, at the very time confessedly, I must say, in a state of insolvency: now, a good deal was said about whether this was a concluded and perfect transaction, as regarded the execution of the deed, and the entry of the deed in the books of the company, signed by two directors, and so on. I do not think that that question has any relevancy to the point that I have to decide; for though this was in terms a transfer to a third person, yet in substance it was a purchase by the company itself, and the name of that third person was used only as a mere trustee, and that transaction would bind both parties, that is, it must bind Mr. Lawes, the seller, as well as the general body, according to the nature of it. I think that the person who sold never could be heard to say that he was to be treated as an independent purchaser, standing upon the provisions of the deed of copartnership, which provided expressly what should be done by an outgoing seller; he never could be heard to say that, as a seller, for he was not selling in the market as a third person, and calling on the directors to approve of that transaction; but he was dealing immediately with the directors themselves, they being the real purchasers, and he being one of the general body of shareholders, was himself selling to them: I think that those clauses do not apply to this case, and that, therefore, I need not embarrass myself with the consideration of what I think after all was made out, that as between third persons this would have been a regular transaction: well then, it is said that this point was decided by the Vice-Chancellor in *Morgan's* case, but it is said with this difference, that in *Morgan's* case it depended entirely upon an extraordinary meeting, and now this case upon a general meeting, that there the instrument was not perfect, but here it is perfect. Now I have already removed both those differences, because I am of opinion that neither of them can influence the judgment which I am about to pronounce in this case. The Vice-Chancellor proceeded upon the ground of knowledge and acquiescence in all parties; when that case came before Lord Cottingham, he did not think that ground a solid one, and he reversed that decision. Now it is impossible for any man who understands the bearing of such cases not to feel that the doctrine of acquiescence must, in most of these cases, lead to insuperable difficulty, because, when you come to deal with individual members who are demanding equities which they have precluded themselves from maintaining by their own acts, you may find this difficulty arising at almost every step: that individual members of this one partnership may be bound by particular acts, quâ partners, by which the general body would not be bound; however, I do not feel I am embarrassed by that in this case, because I am of opinion that the extraordinary general meeting was not called with a sufficiently explicit notice to enable them to do the act. I am of opinion that the general meeting had not the power to do that act itself, and therefore no supposed confirmation of the act could give validity to it, and I am also of opinion that the resolution passed at that general meeting did not extend to this case. Then, upon the truth and merits of the case, I am clearly of opinion that this is a transaction which ought not to prevail. I make no imputation at all on the gentleman who unfortunately is still to be a contributor. I have no doubt of his bona fides: I have no doubt that in his views it was a real transaction, and free from all taint, or fraud, or contrivance; but it is an improper transaction: it was a dealing to allow a certain number of persons who had the command of money to escape from further liability at the expense of their copartners, and contrary to the express provisions of the deed under which they were all acting. I therefore think, that the Vice-Chancellor, upon the second view of this case, which I hold not to be distinguishable from *Morgan's* case, came to a right conclusion, and therefore I must dismiss this petition, and, I am afraid, with costs.

Petition dismissed, with costs.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

(BEFORE THE LORDS JUSTICES.)

Dec. 19, 20, *and* 22, 1851; *March* 19 *and* 20, 1852.

TURNER *v.* TURNER.

Petition of rehearing—Issue devisavit vel non—Married woman's consent to discharge order for.

By decree, dated the 14th February, 1833, certain orders therein mentioned, which directed issues for the purpose of trying the validity of the will of W. T. alleged to have been insane, were on the petition of Mrs. M. the heiress-at-law and her husband discharged, and the will was established, and the trusts thereof directed to be performed. The petition stated that they had withdrawn all opposition to the will at the urgent request of their children, who were willing that certain costs incurred by the petitioners should be allowed to them as costs in the cause. The decree was stated on the face of it to be made with the consent by counsel of Mrs. M. the heiress-at-law. On the 13th of January, 1851, Mrs. M. obtained leave to file a petition to rehear the decree of the 14th of February, 1833, and she filed her petition accordingly:

Held, reversing the order of the Court below discharging the order for a petition of rehearing, and ordering the petition to be taken off the file, that there ought to be a rehearing, and that the petition of rehearing ought to be restored to the file.

Irregularity in the title of a petition of rehearing not being objected to in the Court below, was considered to have been waived, or at any rate to be immaterial, the petitioner offering to strike it from the title, which offer was not accepted by the objecting parties.

A reference to the title of a private Act of Parliament in a petition, is sufficient to give the Court and the parties notice of its contents, and no objection can be taken that the petition does not state enough, though it does not set it out.

Petition of rehearing stating too much, no part of the prayer being founded on the part stating

too much, it can be objected to only as a ground for costs on the petition coming on to be heard. On the petition of rehearing coming on to be heard:

Held, that the decree of the 14th of February, 1833, ought to be varied by striking out the consent of Mrs. M. and inserting words whereby Mrs. M. her heirs and assigns after the death of her husband, might be at liberty to dispute the validity of the will and codicil of the testator, the husband being as tenant by the courtesy bound, to the extent of his estate, by the decree.

This was an appeal from the order of the present, discharging an order of the late, Master of the Rolls, whereby leave was given to present a petition of rehearing, and ordering the petition to be taken off the file. The circumstances of the case are as follows:—William Turner made his will, dated the 19th of September, 1829, and thereby he devised his real and personal estates to trustees, whom he appointed also his executors, upon certain trusts for the benefit of the children of his only child, Mary Ann, the wife of William S. Meryweather; and he gave his daughter an annuity of 500*l.* a year during the joint lives of herself and husband, and on the death of the latter it was to be increased to 1,000*l.* a year. The will and a codicil thereto were proved on the 3rd of October, 1829, a caveat which had been entered up against probate on behalf of Mary Ann Meryweather not having been followed up by the proper proceedings. On the day the will was proved the original bill in this cause was filed on behalf of the children of Mary Ann Meryweather, then infants, by their next friend, against the trustees, and against the said Mary Ann Meryweather, stating that Mary Ann Meryweather was heiress-at-law, and praying that the will and codicil might be established, and the trusts thereof carried into execution under the decree of the Court. Mary Ann Meryweather and her husband appeared and put in their answer jointly, in which they admitted the due execution of the will and codicil, and Mary Ann Meryweather also applied to the trustees for payment of a legacy of 500*l.* bequeathed to her by the will, which was paid to her. Mary Ann Meryweather and her husband afterwards obtained an order on a petition, for payment of the annuity of 500*l.* bequeathed to her by the will, and which was accordingly paid to her. Soon after the filing of the bill, and in Michaelmas Term, 1829, Mary Ann Meryweather and her husband, in right of Mary Ann Meryweather, as the testator's heiress-at-law and customary heiress, brought an action of ejectment against the trustees to recover possession of certain freehold and copyhold hereditaments, part of the testator's real estate, for the purpose of disputing the testator's will on the ground of his insanity. To this action the trustees appeared and pleaded, and notice of trial in the action was given by the plaintiffs therein, but afterwards they countermanded the notice of trial, and discontinued the action, and were ordered to pay the costs thereof. On the cause coming on to be heard on the 25th of January, 1832, Mary Ann Meryweather applied for an issue devisavit vel non to try the validity of the will, which was granted, and such of the plaintiffs in the suit as were then adult were directed to be plaintiffs at law, and the defendants William S. Meryweather and Mary Ann his wife defendants at law, and the trustees also obtained leave to attend the trial by counsel, and examine witnesses in support of the will, although they were not formal parties on the record. The issue was settled and set down for trial before a special jury, and everything was ready for trial, when the plaintiff withdrew their record. The trustees thereupon applied to the Court, and obtained permission for themselves to be the plaintiffs in the action, and an order was made on the 27th of November, 1832, giving the defendants Mr. and Mrs. Meryweather liberty to examine the trustees at the trial, and directions were given for the trial by special jury. William S. Meryweather and his wife appealed from this order, praying that the then adult plaintiffs might be continued plaintiffs at law, and for leave for William S. Meryweather and his wife to examine them at the trial and the petition was heard and dismissed in December 1832. Notice of trial was given by the trustees, and on the 29th of November, 1832, the issue was duly entered for trial, and was specially appointed to be tried on the 19th of February, 1833. On the 5th of February, 1833, William S. Meryweather and his wife presented a petition, whereby, after mentioning the proceedings down to the issue, it states that the said testator, at the time of the execution of the said will and codicil, was wholly under the control and management of certain persons who were hostile to the petitioners, and who, taking advantage of the impaired state of his mind, compelled him to make a will to the great injury of the petitioners, and that they had been guided throughout in opposing the said will from a deep sense of injury, and from the conviction that it was necessary for them the petitioners, to clear their characters of the imputations conveyed by the said will, more particularly as the said testator had therein directed that the guardianship of the petitioners' children should be removed from them, and that they and their children had ever lived on terms of the greatest affection, and that the said testator had also directed the payment of the annuity of Mary Ann Meryweather to be paid in a manner degrading to the feelings of the petitioners. They then stated that they had, at the urgent request and intreaty of their children (three of whom were of the age of twenty-one years and upwards), consented to withdraw all further opposition to the said will, the petitioners' children and the plaintiffs in the cause, being willing and desirous that the expenses hitherto incurred by the petitioners in preparing for the said trial should be allowed to the petitioners as costs in the cause, and therefore praying that the said order of the 25th of January, 1832, whereby it was ordered that the said parties should proceed to a trial at law upon the said issue, devisavit vel non, to the said will of the said William Turner, and the further order of the 27th of November, 1832, whereby it was ordered that the said trustees be substituted as plaintiffs in the said issue, and that the said plaintiffs do proceed to trial, might be discharged, the petitioners undertaking to admit the validity of the said will of the testator, and submitting to have the trusts thereof performed and carried into effect under the direction of this Court, and that the costs of and relating to the said issue, and of that application and consequent thereupon might be costs in the cause as between solicitor and client. On the 14th of February, 1833, this petition came on for hearing together with the cause, and an order was made thereon, whereby, after stating that M. A. Meryweather, as only child and heiress-at-law of the testator, by counsel consenting that the Orders of the 25th of January, 1832, and 27th of November, 1832, should be discharged, it ordered that the said Orders should be discharged accordingly, and it was declared that the said will and codicil were well proved, and ordered that the same should be established, and the trusts thereof performed and carried into execution. And it was then ordered, after ordering some matters not material to be stated, that the Master do also tax the costs of all parties up to and including the hearing of the cause relating to the aforesaid issues, and of the aforesaid issues directed to be tried in the Court of Ex. and all the proceedings relative and incident thereto, all such costs to be taxed as between solicitor and client. And it was ordered that, when the costs were taxed, they should be paid in manner therein directed. In March 1843, the executors were cited by William S. Meryweather and his wife in the Prerogative Court of Canterbury, to prove the testator's will and codicil in solemn form; but it was held that they had barred themselves by their proceedings in Chancery with respect to the issue, and the executors were dismissed from further attendance in the Court, and their costs were ordered to be paid out of the testator's estate. In April 1844, the executors were cited to prove the will and codicil in solemn form, by Maud Sarah Meryweather, one of the children, and they accordingly proceeded to prove the same. However, on the 10th of March, 1846, the Court pronounced in favour of the will and codicil, all proceedings against the executors having been abandoned. In 1845, the surviving plaintiffs in the suit applied to Parliament for an Act to authorise the granting of building leases of parts of the testator's estate; the petition to the House of Lords for the Act was signed by Mary Ann Meryweather, and afterwards was passed. In the saving clause there was a saving to the Crown and to all persons other than and except the parties named in the testator's will, the testator's daughter, Mary Ann Meryweather, and her children and grandchildren respectively, and their respective real and personal representatives, and the right heirs of the testator, all rights, &c. to which they were entitled in respect of the hereditaments therein mentioned before the passing of the Act, or could or might have enjoyed in case the Act had not passed. In 1846, William S. Meryweather and his wife commenced an action of ejectment against the trustees, to try the validity of the will, but the Court, on the application of the trustees, and upon W. S. Meryweather and his wife undertaking, by their counsel, not to proceed further with such action, ordered that the petition should stand over, without prejudice to any question between the parties to the cause. In September 1849, William S. Meryweather and his wife commenced another action of ejectment against the trustees, but upon an application of the trustees, the Vice-Chancellor of England, on the 27th of March, 1850, made an order restraining the actions already commenced, and also restraining William S. Meryweather and his wife from commencing or prosecuting any other action of ejectment, in her right as heiress-at-law or customary heiress of the said testator, for the recovery of any part of his real estates devised to the trustees, or otherwise in any manner litigating or disputing the validity of the testator's will and codicil. On the 13th of January, 1851, Mary Ann Meryweather obtained an order from the late Master of the Rolls (Lord Langdale), giving her liberty to present, by her next friend, her petition of rehearing of the order of the 14th of February, 1833, and on the 29th of January, 1851, she obtained the usual order for setting down the petition of rehearing.

On the 29th of May, 1851, the trustees, upon motion, obtained an order from the present Master of the Rolls ordering the order of the 13th of January, 1851, for a rehearing, to be discharged, and the petition of rehearing presented by Mary Ann Meryweather to be taken off the file, upon the ground that she had, by many acts during a considerable lapse of time, acquiesced in the order of the 14th of February, 1833.

Bethell and *Villiers* for Mrs. Meryweather, contended that as a married woman she was not bound by the order of the 14th February, 1833. That petition was that of her husband, and that she did not appear by separate counsel, and therefore her alleged consent by counsel was not binding on her. That she would not have consented to the act to grant leases had she thought it would prevent her disputing the will.

Roundell Palmer and *Hardy* contended that Mrs. Meryweather was bound by her consent, and long acquiescence in the decree. And technical objections were also taken as to the petition being wrongly entitled—to its stating too little on one subject and too much on another. Those objections and the cases cited are sufficiently noticed in the judgment delivered by their lordships.

Roll, J. V. Prior, and *Wright,* for other parties.

Lord Justice KNIGHT BRUCE.—The petition of rehearing is irregular in title, and probably it would have been necessary or right if the objection had been taken at the Rolls to reform the petition; but considering that the circumstances of the case were argued there on wholly distinct grounds, it may fairly be taken to have been waived; and if not, we do not think, under the circumstances, that we are bound to give effect to it, especially as the petitioner tenders to the respondent the option of having it struck out from the title which they do not accept. The question might then arise whether too much was stated in the petition of rehearing. That point, however, as I understand, too, was not taken at the Rolls. If it had been, we think that the principles on which the case of *Wood* v. *Griffith*, 1 Mer. 35, was decided could not govern such a case as this, and that there is stated in it nimiously (to use a Scotch phrase), if there is any thing of that kind, and that may be cured on dealing with the costs accordingly, if the Court shall be so asked. Then the question arises whether the petition of rehearing states too little. That point I understand to have been taken at the Rolls. But it appears to me, and though I expressed myself plurally just now, I am only speaking for myself, and Lord Cranworth will state his view of the case,—it seems to me that, considering that the title of the Act of Parliament was introduced, it gave notice at once to the Court and to the parties of the existence of that Act of Parliament, and there was nothing substantially kept back which is introduced on such occasions for such a purpose. Those difficulties, therefore, in the particular circumstances of the case, being, as I think they may be considered to be out of the way, the question then is, whether this lady is entitled to have the matters on which the order, or decretal order of 1833, was made, reheard, so far as she asks to have them reheard. Now the point arose in this way. A bill was filed, among other purposes to establish the will, against the heiress-at-law, who was a married woman. It came on to be heard, and then the only decree, if it was a decree was to direct an issue. An order was subsequently made upon the application of the trustees of the will, that they should be made parties to the issue, as I understand, in the place of some children of the lady who were to have been parties. That I understand to have been the nature of the order. Before that was tried, a petition was presented by the husband of the lady in the names of himself and his wife, which is in some respects very remarkable. [His Lordship here read the statements and prayer of the petition set forth antè.] Now mark the case stated in this petition. It does not state the conviction either of the husband or of the wife that the will was a good one; it states that they have been induced to abandon the opposition to a bad will at the request of the children, and for a pecuniary consideration, namely, the payment of certain costs in which alone the husband could be interested, and not the wife—it was in effect a money payment to him. That petition having been filed, comes on with the cause, and thereupon a decree or decretal order is made in conformity with that application, and which, I suppose, provides that the costs may be paid in the same way—the way mentioned—that is, that the bargain may be performed. If upon that it is not a sale by the husband of the wife's rights, I do not know what it is. With regard to this lady's consent by counsel, it may be said that the consent of a married woman

by her counsel, she having no counsel distinct from her husband, and having been defended with him and by him, and not separately, it may be said that that is matter of sheer nonsense, and perhaps it is. Perhaps it is utterly without meaning, but if it has any meaning it is wrong, because she could not so consent. She is entitled, therefore, if there is anything in it, to have the matter set right, because it is contrary to the law of the country. But why should it be said against her right to correct an apparent error that it is merely nonsense which the order of the Court contains, that it is futile, and must, therefore, of necessity be disregarded? My opinion is that whether it be nonsense, that it cannot be opposed to her as a reason for not having it struck out the decree; it is contrary to the known and established law of the country. It was inserted in the order, I believe, I am convinced, without the knowledge of the learned judge, whose order it purports to be, and without having his attention called to it; nor is it the first instance in my experience in which parties have drawn down great mischief on themselves by altering the order according to their own fashion and views without the knowledge of the Court. But assume it to be all that it seems—assume that it prays nothing but what appears on the face of the order, and expressly as one of the causes by reason of which the order is made—assume that it be so, then the case comes to be this, that the husband abandons the right to have an issue to try the validity of the will as to freehold estates in fee simple of his wife's ancestors, and it has been said that the husband is dominus litis in the sense in which the expression has been used for the present purpose, that he has the entire conduct of the cause, and that the wife is bound effectually and for ever by what the husband does. Now that undoubtedly is a most serious proposition, considering the guard with which the law in this country in general surrounds a married woman as to her real estate. It is not, however, for me to deny that there may be cases in which the husband, by his manner of conducting the cause, so binds the right of his wife as to her real estate. There may be such cases; but is this one? It is not one in which the husband has said, "I conduct this cause for myself; I feel that I have no defence, and I give it up. The husband says, there is no will at all; my children wish me, or some of them, to give up the suit. I am offered certain money terms for the purpose, and therefore I give it up." What is that more or less than a sale? It is in other words, and mere words; but substantially I do not observe the difference. Then, if all these considerations were otherwise, is this a kind of point to be decided, not on a rehearing, but in the ordinary way in which important questions are decided by the Court, but an application to prevent a petition of rehearing from being heard, the closing of the doors of the court against the wife because something has been done which the Court decides is an answer to her claim? There may be cases in which it is right. There have been, indeed, cases in which judges of the highest authority have directed petitions of rehearing to be taken off the file. Undoubtedly such cases may occur. The case ought to be very clear for that purpose, and not, as I think, with great deference, in a case of this description, where there is so much to be argued. Without, therefore, giving any opinion whether the issue will, if directed, succeed, or whether the issue will be directed at all, whether there is any foundation or a total absence of foundation for the petition of rehearing, my impression is, that everything that is to be said against the petition of rehearing ought to be said when it shall come on as a cause, either on the materials existing in the cause and on the petition of rehearing alone, or upon that proceeding, coupled with such other proceeding, if any, as those opposed to it may think fit to institute. Although, therefore, the Master of the Rolls, in stopping this proceeding in limine, has done that which is substantially the best thing in the world for all parties concerned, I am of opinion, with great deference to him, that the matter must be discussed at a later stage, and therefore I think the petition of rehearing should be restored to the file.

Lord Justice Lord CRANWORTH.—I am of the same opinion. From the course which the argument has taken here, which, I understand, is the same as was taken at the Rolls, I think that many of the points which have been urged are not proper points before us. I give no opinion as to what will be the result of the rehearing of the petition, either with reference to the particular facts of this case or the general question, as to how far the husband conducting his wife's defence by his act bound her inheritance. That is a very important question. Upon that I express no opinion at all. What his Honour seems to me to have done—I think, with respect to him, erroneously done—is, that he considered that question, on the general merits of this case, as a point to be discussed on the preliminary question, whether the parties should be allowed to rehear or not. And the authorities which it would seem from Mr. Roundell Palmer's argument his Honour mainly relied upon were two or three cases before Lord Langdale, which I think proceeded on totally different principles. I allude particularly to *Davenport* v. *Stafford*, 8 Beav. 503; *Hargrave* v. *Hargrave*, 8 Beav. 289; and *Gwynne* v. *Edwards*, 9 Beav. 22. All proceeded on this ground. Assume, it was said, that the rehearing is a matter of right upon the certificate of counsel, or so much a matter of right that primâ facie the right is admitted; yet a party after a decree may so conduct himself that this Court will say, "It is inequitable to let you present a petition at all of rehearing." For instance, suppose a decree were made that gave benefits to each party, and that after that decree was made, one of those parties, A. says to B. the other party, "Let me have no more disputes about it, I will execute a release to you of all claims whatsoever." It is done for valuable consideration. And if afterwards that party giving that release were to ask to have the matters reheard, the principles on which Lord Langdale proceeded would apply. They went to this extent,—there is injustice, and you have precluded yourself from any right of rehearing; just as, if you had done that before the original hearing, you would have afforded ground of defence, and it is not just that you should now be allowed to rehear. I have put the case of a party to a release or by contract, which would be the same thing, actually debarring himself. This extends that doctrine somewhat further, but not further than principle requires and renders just. Lord Langdale said, "If by your conduct you have so dealt that the parties might infer that you never meant to question that decree, you shall not afterwards be allowed to have it reheard." That was the principle on which his lordship went in *Davenport* v. *Stafford*, *Hargreave* v. *Hargreave*, and *Gwynne* v. *Edwards*, which was the cause of a creditor seeking to put himself in the place of the plaintiff who had stated the decree, that plaintiff having precluded himself from rehearing the case in the opinion of the judge. Now, suppose that doctrine to be most correct—that a party may by his conduct prevent himself from having a right to rehear—a consent to that may prevent himself from the right to rehear,—how does that apply to the case of a married woman, who cannot contract, and therefore cannot by contract conduct herself in such a way as that? Is she is to be dealt with as if she had contracted? In my opinion, it is impossible for a married woman by contract to prevent herself from having the right to have her cause reheard; so neither can she do so by her conduct. It appears to me that the distinction was not sufficiently directed to the attention of his Honour in dealing with this case. From the very short and loose note that was handed up to me, it appears that his Honour relied upon those cases, and dwelt very much upon the knowledge that must have been in the mind of Mrs. Meryweather as to what had been done, and that therefore she ought to have been bound. Assume her knowledge to have been as perfect as possible, that she had had a copy of the decree, and released all further demands. In my opinion it would have been an act perfectly inoperative; and I do not think her conduct could have put her in a different situation. It appears to me, that the cases relied upon did not warrant the judgment of his Honour. It might be heard. But as a general question, has not any party in a cause a right to have that reheard, if he think fit to do so? Generally speaking, he can do so. I think there is nothing to take this out of the ordinary course. So much for the matter that was argued at the Rolls. There are two or three points of minor importance which have been suggested here. One, that there is an error perfectly technical, namely, that the matter is wrongly entitled. That point was not taken at the Rolls, and if it had been, I am persuaded that his Ho[illegible] would have allowed the party liberty to amend. We should probably have power to do the same, but we find that the parties do not wish it. There are two other objections that may be called formal, but they have a semblance of substance. It is said that this petition states too much, and as another objection, it is represented that it does not state enough. With regard to its stating too much, that is of course unimportant. Nothing is prayed in respect of what is stated too much, and it comes within the same category as the improper and additional title. It is quite innocuous. That point was not taken at the Rolls: I therefore think it must fail, just like the superfluous title. There is another point, which, though in some sense formal, has a semblance of substance. It is this, that the petition does not state that which it ought to state—that it was ground of arrangement, and that seems to be the ground on which Lord Eldon proceeded on one of the grounds in *Wood* v. *Griffith*, in dismissing the petition. But that case is no authority for the present. In *Wood* v. *Griffith*, the decree was that the defendant should concur with the plaintiff in executing a sale of certain property in which I suppose they had a common interest. That was a decree made adversely to the defendant, but after the decree had been made the defendant consented to an order whereby it was referred to some known auctioneer by the order of the Court to settle the conditions of sale. Now, Lord Eldon said, and said truly, I should be slow to say that having consented to that order, precluded the party from having the original decree reheard. But in presenting the petition of rehearing (I do not mean that these are the very words, but this is what I understand), the party must state to the Court enough to enable the Court to know what it is that it is rehearing, and what has been done, and what position the Court will be in when it is reheard. I cannot say that it would not be material to know that since the decree has been made, the party consented to it for settling the conditions of sale. The party ought certainly to have stated that in his petition of rehearing. Upon that ground the petition of rehearing that was presented with that motion was dismissed, but without prejudice to the party presenting another. How does that apply here? Why was it important that that order that consent for settling the conditions of sale should have been stated in the petition of rehearing? Why because, if the decree is varied on the rehearing, the Court will have to consider what should be done under that order which is made under the decree of rehearing. What is the point here? It is that the Act of Parliament ought to have been stated under which certain leases have been granted. Why, nobody in the world can question what has been done under the Act of Parliament. That is to stand, whether the decree on rehearing is varied or not. Indeed, that puts it that that is to remain just in the state in which it would have been if the cause had been reheard. Of course it would be out of the question to admit of dispute, that what has been done by the Legislature is valid quâcunque viâ datâ. It appears to me that the objection as to not having stated the Act of Parliament wholly fails, and the parties are driven back to the merits, the general merits of this petition, which I think are entirely with the parties who ask to rehear the case. I do not mean to give the least opinion, either as to what the result of a trial or issue would be. I should be of opinion that, under the circumstances, the decree was erroneous. It may be found, on investigating the subject more fully, that the husband is for this purpose competent to bind the interests of the wife. And then the decree would have been perfectly right, although erroneously stating what it was not necessary that it should state.

Order of the Master of the Rolls reversed. All costs reserved until after the rehearing or further order, with liberty to apply.

The petition of rehearing now (19th March) came on to be heard.

Bethell and *Villiers*, for Mrs. Meryweather.

Wright, for all the children (except Lady Sandys), in favour of the application.

Lord Justice KNIGHT BRUCE. This case comes before the Court under very extraordinary and peculiar circumstances. It is not necessary to say whether, when there is an adjudication of the validity of a will of freehold estate in a case where the heiress is a married woman, that adjudication can be questioned by her on the ground that she was a married woman at the time, or by her heir on that ground after the coverture shall have determined whether there have been, or have not been, a trial at law. Cases of that description we desire to leave totally untouched, considering this not one of them. Subject to any observation upon that point which those who oppose the present application are desirous of making, we consider at present that this is a case in which there has not been substantially an adjudication of the will, inasmuch as that point was retired from by the husband; when he had charge of the case, he himself and his wife, not on the ground that the will was good, but on the ground that if the contest proceeded the result would be favourable to the will, but on the ground that though the will was a bad one, there were reasons and inducements which led the husband, having the conduct of the cause, to think it was better that the will, though a bad will, should be established. We are at present, therefore, disposed to think, subject to what we may hear, that it ought to be left open to the wife or her heirs, hereafter to make what she can of that point. But that during the life of the husband the estate is effectually bound, so that during his life, he being tenant by the courtesy, there cannot be a trial, and therefore subject to dealing with this case more unfavourably to those who support this application, what we at present purpose to do, is to vary the decree or order of the 11th of February, 1833, by striking out, "and the consent of Mary Ann Meryweather," and inserting at the end of it the following words, "that this decree or order is to be without prejudice to any suit or question, which may be instituted or raised as to the validity of the said will, and accordingly, the said Mary Ann Meryweather, her heirs, and assigns are to be at liberty to institute, prosecute, or make any suit, proceeding, or application, which they may be advised after the death of the said William Stevens Meryweather,

for the purpose of recovering the real estate of the said testator, on the ground that he left the said Mary Ann Meryweather his heiress-at-law, and disputing the validity as to the real estate devised by the said will." Now, as I have already said, if those who oppose this application consider that they have a reasonable chance of obtaining anything more advantageous for them, we are of course ready to hear them, and hear them with attention.

Roundell Palmer and *Hardy*, for the trustees, cited *Jackson* v. *Barry*, 2 Cox, 225.

Rolt and *J. V. Prior*, for Lady Sandys, one of the children, against the application.

Villiers, in reply.

Lord Justice Lord CRANWORTH.—This is a case, which though, as we have often before said, we believe practically to be of no importance at all, really does open a number of very difficult and somewhat curious questions, namely, as to the right of a husband as dominus litis in a suit in which his wife's inheritance is interested. Now there does seem to be very great authority for saying that all convenience and all analogy to the old proceeding in respect of real actions would seem to proceed by reason à priori of this being the state of the law; namely, that if there is a suit against the husband and wife in respect of the wife's inheritance, if the wife does not or the husband and wife do not at the time desire to have an issue, the Court may declare the will to be proved just as if she was not a married woman. All convenience, I say, seems to require it. I cannot remember any case having come under my own experience; but if I had been asked the question I should have said it was just the same with a married woman, and that if she does not claim she must be bound by it. Mr. Walker, who is a registrar of very great experience, states it as his impression that it is very frequently done. He has brought us a note of two cases, and one was distinctly a case in which that had been done; but on looking at the registrar's book, singularly enough the decree does not seem to have been entered; and although the decree was not entered, there was an order made afterwards reciting it, and some directions given upon some interlocutory order about costs. If it had been absolutely necessary to decide that, for myself I should probably have wished further time to make some further search. But assuming that to be so; assuming it to be the law that the wife, or the husband acting for the wife, does not claim an issue at the time the cause comes to a hearing; assume, then, that the wife is bound. Now in this case an issue was directed, then arises the dry question, an issue having under these circumstances been directed, the husband afterwards presents a petition to vary that order, and to get rid of the issue—Can he do that? Now, in my opinion, he cannot; that is a different proceeding altogether. He did not think fit to claim an issue; and the wife having obtained the benefit of an issue, he thinks fit afterwards, on her behalf, to compromise the suit. Now, as was repeatedly thrown out by my learned brother, that is not a proceeding by analogy to the old proceeding at law; for though the wife may be bound in suits as to real property, yet undoubtedly where there has been a compromise of right as to her estate by a fine expressly or impliedly, in either case she may separately apply to the Court herself, or some person for that purpose; though the result of that seems to me that the husband could not by this petition get rid of the right that the wife had acquired in 1832. If the husband could not do it by his own petition alone, it could not make it at all better by joining the wife as co-petitioner, still less can it be entered on the decree that she had consented. It is merely a superfluity of words that mean nothing. It is, in truth, the husband's right. What is the effect of the order that was made on that petition of the husband joining the wife with him? I believe we both are of opinion that although inoperative in binding the inheritance as against the wife, it must be conclusive as against the husband. Indeed, it is hardly necessary to determine that, because he was a party afterwards to an order which expressly proceeded on that footing, the consequence of that is, that he is for ever bound. He being tenant by the courtesy, and therefore entitled sub modo during his own life, he has bound that inheritance, whether there was or was not a good will. He is bound to act on the footing of its being a valid will, so long as he lives. Then the question arises whether we ought not to provide that the wife, or those who come after her, may not be precluded from disputing that will after the husband's death. We think that we ought to make such a provision, that if upon his death Mrs. Meryweather, if she should then be alive, or her heir, if she should be then dead, should be so minded, to dispute this will, they should not be prejudiced by the act of the husband in having got rid of the order that was made in 1832, for the trial of an issue as to the validity of that will; but that they ought to have the same right as if the order of 1833 had never been made. With that view, my learned brother sketched out some few words, that seemed to embody at the first blush all that was necessary. If it should turn out that any thing more is necessary, words of course in this paper may be introduced. That seems to be the course that we ought to pursue to get rid of or vary the order of 1833 in the mode proposed, by striking out that it was by the consent of Mary Ann Meryweather, and inserting a provision that it is to be without prejudice to any suit or proceeding of Mrs. Meryweather after the death of her husband, if she should survive him, and if she should not survive him, then her heir-at-law, if he should think fit, is to institute proceedings, and so on.

Lord Justice KNIGHT BRUCE.—I repeat that this transaction was analogous to a compromise, and not to a final adjudication, and that the two stand on importantly different principles. The idea in which we both concur has been endeavoured to be expressed; but it may be very well susceptible of improvement on either side. Therefore, if either side shall wish to suggest any thing upon that, we should be very glad indeed if it could be done. Mr. Walker shall have a copy made of this, and shall hand a copy out to the parties, merely as a suggestion, and we will very gladly hear any thing that may be stated upon it. You quite understand the idea upon which we proceed. The minutes, as settled this day (March 20) were,—"Vary the decree or order of the 11th of February, 1833, by striking out the 'consent' of Mary Ann Meryweather, and inserting at the end of it the following words:—'That the decree or order is to be without prejudice to any suit or question which, after the death of the said W. S. Meryweather, may be instituted or raised by the said M. A. Meryweather, her heirs, or assigns, as to the validity of the will and codicil, or either of them.' And accordingly the said M. A. Meryweather, her heirs and assigns, are to be at liberty to institute, prosecute, or make any suit, proceedings, or application that they may be advised after the death of the said W. S. Meryweather, for the purpose of recovering the real estates of the said testator, on the ground that he left the said M. A. Meryweather his heiress-at-law, and of disputing the validity as to real estate of his said will and codicil, or either of them. The costs of all parties, and consequent upon the petition of rehearing, including the costs of the trustee's motion at the Rolls to take the petition off the file, &c. and of the appeal to discharge the order of the Master of the Rolls thereon, to be costs in the cause."

ROLLS COURT.

Reported by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

Dec. 16 *and* 17.

GOOCH *v.* GOOCH.

Will—Construction—Limitation over—Cutting down interest given—Distribution.

A testator gave his real estates to trustees, in trust, to apply the rents for the benefit of his daughter and all her children, in equal shares, and on any of the children attaining twenty-one during the minority of her youngest living child, his or her part or share should thenceforth be paid to him or her respectively, for his or her own use, and when the youngest child should have attained twenty-one, the savings of the rents, &c. in the hands of the trustees were to be divided equally among all the children then living, and if any of them should die under twenty-one, and without leaving issue, his or her share was to go in equal shares to the testator's daughter and the other children, at twenty-one; but if any should die under twenty-one leaving issue, such issue was to take its parent's share; and on the youngest child attaining twenty-one the testator gave his said estate to the then eldest living grandchild of his daughter, and the residue of his real estate he directed to be sold, and the proceeds divided equally among his daughter's other children except such eldest grandson:

Held, that the trusts over in favour of the daughter's grandchildren were void for remoteness.

Held, however, the limitations over, being void, did not cut down or destroy the gifts to the children of the daughter and the survivors of them.

Held, also, that there was a contingency with a double aspect, on which the testator intended the property to be divided when the youngest child should attain twenty-one, that if all the six children of the testator were then alive, the property was to be divided amongst them; if any died without leaving issue, it was to be divided amongst those who survived; if any died leaving issue, it was to be divided into as many shares as there were survivors, and one more for the issue of the deceased, in which case there would be an intestacy of the latter share, which was void.

This case came again before the Court to be spoken to on the minutes. The questions of remoteness had been fully gone into at the hearing (see 19 Law T. 231; supra); but on subsequent consideration, his Honour, though still of opinion that he had taken a proper view of the case, was desirous of hearing a further argument on the general bearings of the questions involved, and as to the distribution of the fund so far as the limitations thereof were not void for remoteness. On this account it may be advantageous to state the words of the will. The testator, by his will, dated 24th October, 1792, devised his real estate to William Bazire and Jonathan Tipple, upon trust to receive the rents and profits during the lives and life of the survivor or longer liver of all the children, which his daughter Mary, the wife of John Gooch, had or should have, and pay and apply the same in keeping the houses and buildings in repair, and paying certain annuities, &c. and subject thereto to apply the same to the support of his said daughter, and in the maintenance, education, and bringing-up of all her children which she should from time to time have living, in equal shares between her and them; and he directed that when any of her children should attain the age of twenty-one during the minority of her youngest living child, the part or share of such child or children attaining twenty-one should from thence be paid to him or her respectively to and for his, her, and their own use and disposal; and when the youngest of his grandchildren who should live to attain twenty-one should have arrived at that age, then he directed that such savings or overplus of the said rents and profits as should be then in the hands of his trustees, and the rents then due should be paid and divided to and amongst his said grandchildren that should be then living equally; and in case any of his said grandchildren by his said daughter should die under twenty-one without leaving any issue then living, then that the parts and shares, or part and share, of the said rents and profits of such grandchild and grandchildren so dying under age, and without issue should be paid and applied to and amongst his said daughter and the survivors or others of his grandchildren by her in equal shares, to be paid to the latter at their respective ages of twenty-one years. But in case any of his said grandchildren should depart this life under the age of twenty-one years leaving issue, such issue should be entitled to the share of the said rents and profits its father or mother would have been entitled to if living; and in case his said daughter should depart this life before all his grandchildren should have attained twenty-one, then her share of the said rents and profits should, from her decease, be paid and applied for the use and benefit of all her children and their issue until the youngest of such children should attain twenty-one, in equal shares; and in case his said daughter should happen to be living at the time the youngest of his grandchildren by her should attain twenty-one, then upon trust to pay her an annuity of 100*l.* for life, which he charged on his real estate as therein mentioned, and also an annuity to his brother Thomas and his sister Elizabeth Seawater respectively to be charged on his real estate; and from and after all his grandchildren by his said daughter and the youngest of them should have attained twenty-one, he directed that the clear rents and profits of his real estates accruing from that time should be applied to and amongst his said grandchildren and the issue of any of them that should happen to die leaving issue, equally share and share alike, and to the survivors and survivor of them until the decease of the longest liver of his said grandchildren, the issue of any children or child so dying to be entitled only to the share which its parent, if living, would have been entitled to; and from and immediately after the decease of the survivor or longest liver of his said grandchildren, then upon trust to convey all his said messuage so situate in Sutton, in the county of Suffolk, subject to the payment, with the rest of his real estate, of a proportionate part of the annuities previously given by him unto that son, of any one of his said grandchildren as should at such decease of the survivor or longer liver of them be then the eldest living grandson of his said daughter and his heirs, and he directed him to take the name of Tipplo; and all the residue of his real estate subject to and charged with the payment of the residue of the said annuities, he directed to be sold by his trustees after the decease of the longest liver or survivor of his said grandchildren; and the moneys arising from such sale and from the rents and profits thereof, from the decease of such surviving grandchild, until such sale, he gave unto all and every of his grandchildren, the children of his daughter, whether male or female, other than and except such eldest grandson of his said daughter, who would be entitled to his Sutton estate by virtue of the demise thereinbefore mentioned. The testator then gave his personal estate to his trustees upon like trusts, and he appointed his trustees executors of his will. The testator died in 1797, leaving his daughter Mary, his only child and next of kin and heiress-at-law and customary heir. Mary Gooch had six children, all living at the death of the testator, viz. Mary Bazire, by a former husband, and five then infant children by her husband John Gooch, viz. John Tipple, Anne, Maria, George,

and James. Mary Bazire died unmarried in 1800, Mary Gooch died in 1801, and Anne Gooch died unmarried in 1807. John Tipple Gooch died in 1837, intestate as to real estate, and leaving Watson Gooch, his eldest son and heir-at-law, who was also the heir-at-law of Mary Gooch and of the testator, and entitled presumptively under the will to the Sutton estate as the eldest grandson of the testator's daughter Mary Gooch. Maria married Robert Cann and had issue. George Gooch was also married and had issue. The testator was in possession of both freehold estate and copyholds of Borough-English tenure, and George Gooch, as being the youngest son of Mary Gooch, claimed as her customary heir, and also as customary heir of the testator. At the hearing the questions of remoteness were disposed of (see supra, p. 274), and the matter was now again mentioned, his Honour having first stated more fully the view of the case he had taken, and its bearings upon the interests of the several parties. The points raised will be seen by his Honour's judgments.

Tuesday, Dec. 16.—The MASTER of the ROLLS.—I have been considering this case since it was last before me, and I should rather like to hear Mr. Walpole on the subject. I am very much of opinion that it was a proper view that I took of this case with respect to the will,—that it was a contingency with a double aspect, in which the testator intended, when the youngest child should attain twenty-one, the property should be divided in this manner: if all the six grandchildren were alive, to be divided amongst them; if any died without leaving issue, it was to be divided amongst the number of children who were surviving; if any died leaving issue, then it was to be divided into the joint number of the surviving children, and the children of the child who had died leaving issue. In that case if the child died leaving issue, there would have been an intestacy. That is my decision. But what is there illegal in a man saying, "I give to A. for life, and after his death to his children, for their lives; and on the death of the surviving of those children, if he is then alive in person?" That would be perfectly good. "But if A. B. is dead, then I give it to the children of those children." That would be clearly bad. But because he has given in one event to the children of his child, that would not make the gift to A. B. bad. That is the general view I take of this case.

Walpole and *Smith* then addressed the Court on the construction of the words of the will.

The MASTER of the ROLLS.—The view which I take of this case is, that if I were to follow the interpretation which Mr. Smith endeavoured to induce me to put upon this will, I should be violating the direct and exact words of the testator; and I look at it, as he says, from the death of the testator. The testator gives a set of trusts (which it is not necessary to regard, because it has nothing to do with the present question), which is to continue until the youngest grandchild shall attain twenty-one. Then he says what is as nearly as possible expressed in these words: "Upon the youngest grandchild attaining twenty-one, I desire that the rents shall be divided into this number of shares, that is to say, as many shares as there shall be grandchildren then living, and grandchildren dead, having left issue." It follows, if there are no grandchildren then living, but there are grandchildren who died leaving issue, it would be divided into this number of shares: if there are only grandchildren alive without grandchildren dead leaving issues, it would only be divided into the number of shares of the grandchildren then alive. He had six grandchildren,—two had died not leaving issue; by what possibility, in accordance with the terms of the testator's will, can you divide it into six parts? He says it is to be divided then into as many shares as there are objects composed of those two classes of persons, that is to say, living grandchildren and stirpes of deceased grandchildren, just as much as if he had said "grandchildren and children of A." as many as there are of these two classes combined. Then if there are none of the grandchildren who died leaving issue, why are you to give them shares? It appears to be directly opposed to the words of the testator's will. He has directed it to be divided into as many shares as there are persons, to be derived from two sources; one of those sources fails; the other source takes the whole. And, then, what is there that is void in it, because it is only in case there were grandchildren who had left issue that it would be void? He might have said, "I desire it to be divided into as many shares as there are children of A. and children of B. and I desire to die intestate with respect to those shares of the children of B." That would be perfectly good; and if there were no children of B. the children of A. would take the whole. In my opinion, therefore, the orders of 1812 are correct. It was a class of shares to be ascertained when the youngest child shall attain twenty-one; and the number of shares, according to the testator's will, was four, and accordingly it is to be so divided. In my opinion, according to the construction of the will, the same process was to take place upon the death of any child, until they all died, and when the survivor died, a new set of limitations was to take place. By the same process, there was to be a new class ascertained whenever any grandchild died. Then supposing a grandchild died without leaving issue, it would be divided into thirds; and supposing two grandchildren died, without leaving issue, it would be divided into halves. On the other hand, supposing a grandchild died leaving issue, it was to be divided into fourths; then that fourth given to those children (of the grandchildren) was too remote, and was, therefore, void. I took some pains with the will, but it is possible that I may be wrong upon the subject; at the same time, it is very fit that the view I take of the case should be as clear as I can make it, in order that it may be set right if I have miscarried in the matter. It does not appear to me that the orders of 1812, as I have at present heard them, go further than to say that upon the youngest grandchild attaining twenty-one, the rents [illegible] to fourths. That appears to be [illegible] does not appear to go beyond [illegible] of a grandchild leaving issue. [illegible] that Mr. Palmer may have to [illegible] view of the case, that thereupon it was still to be divided into fourths, and that one of those fourths would become void for remoteness, and it would go to the heir at law or customary heir.

Palmer then addressed the Court.

The MASTER of the ROLLS.—I will look at it and settle the minutes to-day, and if I have occasion to mention it again I will mention it to-morrow morning; if not, I will let you have the minutes to-morrow morning. I shall say nothing more about the division of the fourths when the youngest child attained twenty-one. I am of opinion that it is quite right. With respect to the other question, I will look at it and see whether, in fact, I have not rather been misled in the observations I have made by supposing that the words of the will were repeated over and over again, so as to make a fresh division whenever any child died.

Wednesday, December 17.—The MASTER of the ROLLS.—I have looked carefully at the matter of *Gooch* v. *Gooch* since yesterday, and I am of opinion that the minutes are right as they stand. When I stated my opinion with respect to this, that after the youngest child had attained twenty-one the distribution of the fund into fourths in the event that had happened, I stated that I thought that opinion was correct, and I adhere to that opinion; but when I stated that a new distribution took place on the death of each successive child, I had present in my mind that the words which relate to the distribution of the fund when the youngest child attained twenty-one were repeated. The fund is given to them and their survivors, and the limitation over being void will not cut down or destroy their estate. I am of opinion that the minutes are correct as they stand.

Friday, Jan. 30.

Re LETHBRIDGE and MACKRI[LL]

Solicitor—Bill of Costs—Taxation—Delivery of bill—Payment—Costs of application.

A. and B. were appointed executors of J. F.'s will; B. was a solicitor and a partner in the firm of B. and C. but was authorised by the will, notwithstanding his being an executor, to charge for professional services. The firm of B and C. was employed professionally in the affairs of the executorship, and three several bills of costs which had been incurred, one of them in the lifetime of the testator, were delivered to the executors, who drew cheques for the amount, which cheques were handed over by A. to B. in his capacity of solicitor. On a petition for delivery of the bills and taxation by a party beneficially interested in the residuary estate, the delivery of the cheques by A. to B. was held to be a payment, and more than a year having elapsed since payment of two of the bills, delivery and taxation were refused: but as to the third payment having been made within the year, it was ordered to be delivered by a given time, and the petition as to taxation, &c. was ordered to stand over till after delivery to give the petitioner an opportunity of considering whether taxation would be desirable.

The respondents then delivered a bill of costs, not in the name of the firm, but in the name of C. only. The petitioner having decided upon proceeding with the taxation, applied for an order accordingly, and asked the Court to insert in the order a direction that the Master might treat the bill delivered as that of the firm and not of C. only:

Held, that the Court had no power to give any such direction, but could only order taxation of the bill which was delivered and on which the claim was made: and as B. claimed nothing, the order would be for taxation of the bill as delivered in the name of C.

That if any thing should be found due from the solicitor on the taxation, as that would be corpus, it must be ordered to be paid to the executors:

That the costs of the respondents should depend upon the result of the taxation.

This was a petition for delivery and taxation of certain bills of costs after payment thereof. The case had been before the Court on the 23rd of December last (see 18 Law T. 192, supra), and an order was then made for delivery of one of the bills, and the rest of the petition was ordered to stand over till to-day to give the petitioner an opportunity of considering, after delivery of the bill, whther it would be desirable to apply for an order for taxation. The bill being delivered the petitioner now applied for an order to tax. The facts of the case are fully stated 18 Law T. 192, supra; but they are shortly to this effect. Henry John White and William Thomas Mackrill, were appointed executors of the will of Sir James Flower, and Mr. Mackrill, being a solicitor, was thereby authorised to charge for professional services. Three several bills of costs were delivered to Mr. White by Mr. Mackrill on behalf of the firm of Lethbridge and Mackrill, of which Mr. Mackrill was a partner, and cheques were drawn by Mr. White and Mr. Mackrell, as executors, on the bankers of the executorship, and these cheques were handed by Mr. White to Mr. Mackrill in his capacity as solicitor, in payment of the bills. This was held to constitute a payment of the bills (vide supra, 18 Law T. 192); but one of the bills, amounting to 195l. 9s. having been paid within the twelve months, the Court directed that that bill should be delivered to the petitioner, Mrs. Lusignan (who was tenant for life of the residuary estate of the testator, and of course a party who was ultimately to bear the payment so made by the executors); but the rest of the petition was to stand over to give Mrs. Lusignan an opportunity of judging of the fairness and reasonableness of the charges contained in the bill when it should be delivered, and of the propriety of asking for an order to tax. The bill having been delivered by the respondents it was found not to be made out in the name of the firm, but to be headed thus: "The executors of Sir James Flowers, deceased, to J. Lethbridge." The petitioner now renewed her application to the Court, and asked an order for taxation of the bill, accompanied with a direction that the Master should treat the bill as the bill of the firm.

Bevir, for the petitioner, asked the Court to insert in the order for taxation a direction to the Master to treat the bill as that of the firm, and not merely as that of J. Lethbridge; and he insisted that as on the previous occasion (vide supra, 18 Law T. 192), the respondents had opposed the petition, the object of which was the taxation of the bills of the firm without alleging that the business was done by one, or the bills due to one, and indeed had shewn by their affidavit in opposition that the bill had been paid to Mr. Mackrill for the firm, they could not now, for the purpose of even harassing the petitioner, set it up as the bill of the one. That it might not only affect the principle of taxation upon which the Master would proceed; but it would also abridge the remedy given by the common order for the examination of the parties and the production of papers in their possession. The Court, though not having any power in this repect under the Act, would make this direction in exercise of its general jurisdictions over the solicitors, its officers. He then referred to cases in which the Court had refused to allow one of a firm of solicitors being a trustee to set up a claim through his partner for costs for business which had, in fact, been done by the firm. (*Christophers* v. *White*, 10 Beav. 523.)

Roupell, contrà.

The MASTER of the ROLLS thought he had no power to make any such direction. The Court could only order taxation of the bill which was delivered, and on which the claim was made. In this case Mackrill claimed nothing. The order would therefore be for taxation of the bill which had been delivered.

Bevir then suggested whether, as the application was made by the tenant for life of the residue under the 39th section of the Act, the Court would in case anything should be found to be coming for another solicitor on the taxation, make any direction with regard to the party to whom it should be paid.

The MASTER of the ROLLS said any such sum would be corpus, and must be ordered to be paid to the executors.

Roupell asked for the respondents' costs.

Bevir contended that there was nothing to take them out of the common course; and that the right to them would depend on the result of the taxation.

The MASTER of the ROLLS so decided.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. HENRY COOKE, Esq. Barrister-at-Law.

March 5 *and* 9.

KING *v.* MALCOTT.

Lessor and lessee—Security against—Breach of covenants.

A claim was filed by the representative of a lessor to have the estate of the lessee, who had died,

administered and a portion of the assets impounded to answer any future breaches of the covenants in the leases, there being no present breach, but the Court dismissed the claim with costs.

A lease was granted containing the ordinary covenants on the part of the lessee to repair, to pay the rent, and to insure the premises from loss or damage by fire. The lessee assigned the lease in the usual manner, taking a covenant from the assignee to observe the covenants of the original lease, and to indemnify the lessee for all losses in respect of any breach of the same. The lessee made his will and devised and bequeathed both real and personal estate, which he charged with the payment of his debts. The executors proved the will and paid the debts, but declined to accede to a demand made upon them by the person representing the lessor to set apart a sufficient part of a sufficient sum to answer any consequences of breach of covenant in the lease. There being no breach at that time the executors declined to do so, and thereupon the present suit by claim was instituted, praying that the usual administration accounts might be taken of the lessee's estate, including what was due, or might become due, to the plaintiff for rent, and that the estate might be applied in payment of the debts, and that a sufficient portion of the estate might be set apart to answer any breaches of the covenant in the lease.

Kenyon Parker and *Rogers*, for the plaintiff, argued that as if there were any breaches hereafter the lessor would be entitled to bring his action against the executors, therefore the retention of a part of the estate was only a reasonable precaution. Any breach would create a debt, and as the lessee himself had charged his estate both real and personal with the payment of his debts, it was still more reasonable to take such a course. They cited *Hawkins* v. *Day*, Ambl. 160; *Simmonds* v. *Bolland*, 3 Mer. 547; *Dobson* v. *Carpenter*, 12 Beav. 370; and *Fletcher* v. *Stevenson*, 3 Hare, 360. Williams on Executors, 817, was also referred to.

Amphlett, for the executors, argued that the lessor was not a creditor until there had been a breach of the covenants, and as there had been no breach, the presumption ought to be that there would be none. Were it certain that the debt would arise, there would be some ground for detaining the assets of the lessee from distribution, but it was plain that the breach might never occur, and equally clear that the lessor had no right as against the estate of the lessee to have that security which he could not have had against the lessee himself, and a security, moreover, for which he never contracted. (*Flight* v. *Cook*, 2 Ves. sen. 619; *Franks* v. *Cooper*, 4 Ves. 763.)

Tuesday, March 9.—THE VICE-CHANCELLOR.—The question is, whether the plaintiff is now entitled to have the lessee the testator's, assets impounded, for securing him against possible breaches of the covenants of the lease. There has been no breach of covenant up to this time on which any legal debt is due. No action would now lie against the executors for the purpose of compelling payment of any rent in arrear, or any damages for repairs. Not only is there no rent due, but there is no certainty that anything ever will be due on any of these covenants, because if the rent be paid at the day, and if the other covenants be duly observed, no action will ever lie upon any of them. There is, therefore, no certainty that any debt will ever be due; which makes this case readily distinguishable from the cases quoted. Where there has been a bond or covenant for payment of a certain sum of money; there the money must become due, and must become due on the bond or covenant. In the general decree for the administration of a testator's estate in an administration suit, the usual reference to the Master is to take an account of all debts due to and from the testator. If the testator be a lessee no debt is proveable under that decree by the lessor if there be no rent in arrear, nothing, in fact, is due to the lessor from the testator or his estate. But suppose rent afterwards becomes due, and that proceedings were taken by the landlord, a sum of money will be set apart to answer his demand. That arises, not from the right of the creditor to come in under the decree, but from the right of the executor to an indemnity out of the assets. The creditor becoming a creditor after the decease of the testator, on account of the covenant, is not a creditor at the time of his decease, and therefore is not entitled to come in under the decree. The lessor never bargained with the lessee that any portion of his assets, or any fund whatever, should be impounded for the purpose of securing to him the due performance of his covenants. For that due performance he looks to the personal security of the lessee; and that is all he can go against at law. Why should a Court of Equity give a more extensive remedy than a Court of Law? The case of contingent legatees was urged in argument by way of analogy, and it was said that such legatees (certainly not more to be favoured than creditors) have this right of retaining and impounding the assets of their testator. But, in the case of legatees, every legatee has a right under the will, and there is, therefore, a liability actually existing, to which the estate is subject. Does any such liability here exist? It may be that a liability will arise hereafter, but there is none at present. There is also a difference between a contingent interest in a legacy, and a contingent legacy. The first is a sum which is, in every event, certainly payable to some person, though to what person is uncertain; the second is a sum which it is uncertain whether it will ever be payable at all. The case of *Webber* v. *Webber*, 1 Sim. & Stu. 311, shews the proper course to be taken in consequence of this difference. The person entitled to a contingent legacy is not, as seems to have been assumed at the bar, entitled to have a sum actually retained to answer the legacy when the contingency arises. This is not an unusual way of providing for the legacy, but it is matter of arrangement, not of right, and, in strictness, the legatee is only entitled to have security for the repayment of the sum should the contingency arise. Lord Redesdale's judgment in *Lynar* v. *Mills*, 2 Sch. & L. 339, is, I think, quite sufficient to govern the present case. There the testator had covenanted to pay an annuity, and assigned a terminable fund for securing it, and had further covenanted, that if such terminable fund should fail, all his real and personal property should be charged with the payment of the annuity. On a bill brought by the annuitant against the executors, praying an allocation of part of the testator's assets to answer the annuity the terminable fund having not yet failed, Lord Redesdale said, "I cannot allocate any part of the property in this case, it would be tying up two parts of the property to the same purpose—the particular fund, which is ample while it lasts, and also part of the general estate producing the same income. The intention of the deed was, that no additional security for the payment of the annuity should be given, except upon the failure of the particular fund. The plaintiff has made her bargain and taken a particular security, and now files this bill in direct contradiction to it." Here the landlord has for his security the leasehold property itself, which is a fund clearly liable to make good the breaches of any covenant contained in the lease, and also the general liability of the whole personal estate of the testator, in case the leaseholds themselves should be insufficient. Does a landlord ever intend to have any specific security beyond the security of the property demised? In fact, such a case as the present case is immediately after the passage I have read referred to by Lord Redesdale in the same judgment, for he asks directly afterwards, "Every covenant in a lease may be broken; yet, was it ever held that a party could come here to have personal assets allocated to answer such possible breaches? Such a bill might possibly be entertained, if it were alleged and appeared, that the executors were wasting the assets, but that is not pretended here." The ... put by Lord Redesdale is one of considerable difficulty, because, even there, if the executors ... committing waste, how can a Court of Equity treat that as a legal debt which is not a legal debt? However, I do not intend to say anything on that question at present, as it does not arise here, there being no pretence of the executors wasting the assets, and it would be very improper to prejudice the case, when it may arise, by any observations not made on a full review of all the decisions. On these grounds I must dismiss this claim, a course which, besides, is highly advisable, on the ground of expediency, since the consequence of the doctrine contended for by the plaintiff would amount to this that the estate of no lessee could ever be distributed within any reasonable period from his decease.

The claim was then dismissed with costs.

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ALLSUTT, Esq. of the Middle Temple Barrister-at-Law.

March 25, 26, and 29.

Ex parte CARPENTER'S EXECUTORS, *re* THE LONDON AND BIRMINGHAM EXTENSION AND NORTHAMPTON, DAVENTRY, LEAMINGTON, AND WARWICK RAILWAY COMPANY.

Joint Stock Companies' Winding-up Act—Breach of trust by directors.

In a railway company, shares were allotted, deposits received, and the parliamentary contract and subscribers' agreement executed. The directors appointed five of their number to be a finance committee, with power for any three of them to draw cheques. Cheques were drawn, and the money appeared by the cash-book to have been applied for contingencies, which contingencies were, by the secretary's evidence, shewn to be the purchase of shares in the market. The scheme having failed, the company was ordered to be wound up, and the Master charged the members of the finance committee who had signed the cheques with the amount of the cheques, they being at liberty to discharge themselves by shewing a proper application of the moneys.

Upon appeal, the Master's order was discharged.

This was a motion on behalf of Richard Cromwell Carpenter and the Rev. Geo. Carpenter, executors of Richard Carpenter, deceased, for the discharge or variation of an order of Master Blunt, dated the 6th of February, 1852. The Master's order was as follows:—"Whereas, &c. it appearing to me that the several contributories respectively hereinafter named have applied certain moneys of the said company hereinafter more particularly mentioned in breach of the trusts reposed in them by the parliamentary contract of this company, dated the 16th day of August, 1845, I do hereby order and direct that the official manager of this company do open the several accounts hereinafter mentioned between the said company and the said R. C. Carpenter and Geo. Carpenter (as personal representatives of the said R. Carpenter, deceased,) Seth Nuttall Fisher, Peter Henry Edlin, Sir John Edward de Beauvoir, bart. and Frederick F. Weiss, and that in such accounts he do debit and charge the said contributories respectively with the several sums of money hereinafter mentioned (that is to say) first, an account between the said company and the said R. C. Carpenter and George Carpenter (as personal representatives of the said R. Carpenter, deceased), S. N. Fisher, P. H. Edlin, Sir J. E. de Beauvoir, bart. and F. F. Weiss, and that in such account he do debit and charge the said R. C. Carpenter and George Carpenter (as such personal representatives as aforesaid) S. N. Fisher, P. H. Edlin, Sir J. E. de Beauvoir, and F. F. Weiss, with the sum of 1,000*l*. Second, an account between this company and the said R. C. Carpenter and G. Carpenter (as such personal representatives as aforesaid), S. N. Fisher, and P. H. Edlin, and that in such account he do debit and charge the said R. C. Carpenter and G. Carpenter (as such personal representatives as aforesaid) with the sum of 3,150*l*. 18s. 9d. Third, an account between this company and the said R. C. Carpenter and G. Carpenter (as such personal representatives as aforesaid,) S. N. Fisher, and Sir J. E. de Beauvoir, bart. and that in such account he do debit and charge the said R. C. Carpenter and G. Carpenter (as such personal representatives as aforesaid,) S. N. Fisher, and Sir J. E. de Beauvoir, bart. with the sum of 741*l*. 12s. 6d. And I do further order and direct that the said R. C. Carpenter and G. Carpenter, as personal representatives of R. Carpenter, deceased, S. N. Fisher, P. H. Edlin, Sir J. E. de Beauvoir, bart. and F. F. Weiss, do on or before the 31st day of March, 1852, bring in before me statements in writing of such sums of money (if any) as they respectively may claim to be entitled to and to have allowed to them respectively, in discharge of the several sums so to be debited and charged against them as aforesaid. And that in default thereof, the said official manager be at liberty to proceed to enforce the payment, by the said contributories, of what on the balance of the said accounts respectively shall appear to be due from such contributories respectively. And as to the sum of 10,000*l*. sought by the official manager to be charged against the several members of the managing committee of the company, in my said order of the 23rd day of January, 1852, named, I do adjourn the further consideration of such charge until after the cause, now pending in this court, entitled, "*Bryson* v. *The Warwick and Birmingham Canal Company*," relating to the said sum of 10,000*l*. shall have been heard or otherwise disposed of." The company was formed in June 1845, and provisionally registered, the capital to consist of 500,000*l*. in 20,000 shares of 25*l*. each; deposit 1*l*. 7s. 6d. per share. The shares were allotted, and a considerable sum received on account of the deposits. At a meeting of the directors of the company on the 15th of August, 1845, it was "resolved, that Sir J. E. de Beauvoir, R. Carpenter, esq. Capt. S. N. Fisher, P. H. Edlin, esq. and F. F. Weiss, esq. be elected and appointed to be a committee of finance, any three of them to form a quorum, and with power to draw upon the bank by cheques, to be signed by not less than three of them, and to be countersigned by the secretary;" and at the same meeting it was "resolved that Sir J. E. de Beauvoir, bart. W. F. Black, esq. J. D. Hopkins, esq. Capt. S. N. Fisher, be elected and appointed a committee for general purposes, with power to take offices and to proceed to the appointment of a secretary."

On the 8th of September, 1845, a cheque for 1,000*l*. was drawn on account of the company, and paid by the Commercial Bank of London, signed by Fisher, Carpenter, and Edlin, and it appeared from the cash-book of the company, that this sum was applied for contingencies. The cheque, however, was not produced.

In October, 1845, three other cheques, one for 1,200*l*., another for 858*l*. 15s. and the third for 92*l*. 3s. 9d., all signed by Fisher, Carpenter, and Edlin, were paid on account of the company, and by the cash-book appeared to have been applied for "contingencies."

In November, 1845, a cheque for 741*l*. 12s. 6d.

payable to "contingencies," and signed by Fisher, Carpenter, and de Beauvoir, was paid on account of the company, and appeared by the cash-book to have been applied for "contingencies."

The parliamentary contract and subscriber's agreement were executed, but the latter had been lost. The company was, in June, 1849, ordered to be wound up (13 Law T. 231), and some of the proceedings in connection with the winding up, will be found reported in the case of *Ex parte Gay*, 17 Law T. 240; 18 Law T. 167.

The sums which by the Master's order now appealed from, were charged upon the members of the financial committee, had, according to the belief of the secretary, as stated in his evidence, been applied in the purchase of shares.

In giving his judgment, the MASTER said,—"With reference to a part of the case I do not think it is necessary to defer giving judgment. It appears to me that as regards those sums which are sought to be charged against the gentlemen, who have signed the cheques, there is nothing like a defence, and there is no defence suggested. These were funds subscribed by the shareholders in this company for a particular purpose, namely, for the purpose of carrying out a railway. The funds, which were drawn out by these cheques, were not applied to that purpose, at least there is no evidence to shew they were applied to that purpose. It is clearly in evidence that shares were being bought with the funds of the company, and that when the funds were so applied, they were entered in the books as for "contingencies." The sums which were so drawn out with these several cheques, were so entered. Therefore, there is sufficient evidence for me to charge these gentlemen, in the first instance, with the moneys, which were so drawn out as sums, which were improperly applied. If they can make out a case to shew that these sums we applied to a purpose, to which they ought to have been applied, or if they can shew they were properly applied, or were brought back, or can in any way discharge themselves it is open to them to do it. That applies to all the sums except the 10,000*l.* and the first 1,000*l.* With respect to the first 1,000*l.* it is quite clear, at least no jury would doubt it from the evidence which has been given here, and I am here in the nature of judge and jury, that that sum of 1,000*l* was applied by Mr. Carpenter for the purpose of buying shares in the market. I have not a particle of doubt that it was so applied. If it w I have very little doubt that it was so applied with the knowledge of the other persons who were members of the finance committee. At least if they had not knowledge that it was so applied, they were culpably ignorant from not having used the means of information from which they ought to have acquired it. It falls clearly within the rule which was laid down by Lord Hardwicke in the case which has been referred to, and which has been recognised in subsequent cases. I think there was culpable neglect if there was nothing more, but I believe the evidence would go to establish actual knowledge that this money was drawn out and applied to purposes which were clearly illegal. However, with reference to that sum also, if they can explain that which, upon the face of it, appears not to be capable of explanation, it will be open to them in discharge to shew that it was so applied. This disposes, therefore, of the whole e except the 10,000*l.*; and, with reference to that, I shall take time to consider whether I will allow that part of the charge to stand over until the suit which is before the Court has been brought to a conclusion. If, upon consideration, I think that ought not to be the case, I will take time to consider whether I will charge them with that sum. There may be greater difficulty in charging that sum on all the directors who are sought to be charged than there is with reference to the first 1,000*l.* I will let the parties know in a few days whether I make up my mind to direct that part of the application to stand over until after the suit is determined, or I will give my opinion upon whether I ought to charge or discharge them. If it does stand over, I will take care that the official manager prosecutes the suit with the greatest possible diligence."

Bacon and *Hallett* appeared for Mr. Carpenter's executors in support of the motion of appeal.

Daniel and *Southgate* appeared for Mr. Weiss, who had given a similar notice of motion, appealing from the Master's order.

Selwyn and *Swift* for the official manager.

The following cases were cited—*Re The Marylebone Bank*, 1 Hall & Twells, 100; *Parbury* v. *Chadwick*, 12 Bea. 614; *Deeks* v. *Stanhope*, 1 Sim. N. S. 448; *Cox's* case, 3 De G. & Sma. 180; *Chadwick's* case, *Re The Madrid and Valencia Railway Company*, 15 Jur. 597; *Ex parte Inderwick*, 3 De G. & Sma. 231; *Hollingsworth's* case, 3 De G. & Sma. 102; *The Charitable Corporation* v. *Sutton*, 2 Atk. 400; *Styles* v. *Guy*, 1 Mac. & Gord. 422; *Attorney-General* v. *The Corporation of Leicester*, 7 Bea. 176; *Booth* v. *Booth*, 1 Bea. 125; *Fenwick* v. *Greenwell*, 10 Bea. 412; *Attorney-General* v. *Wilson*, Cr. & Ph. 1.

The VICE-CHANCELLOR said that he had come to the conclusion that the Master's order could not be sustained consistently with the principles and practice of the Court. The circumstance were, that five individuals, with several others, were members of the managing body, and that these five were appointed to be a finance committee, with power for any three of them to sign cheques, which were to be countersigned by the secretary. It was admitted on both sides that some, if not all of the five, acting by the direction of the managing body, had employed the funds of the company to a large amount in buying up shares in the company. The Master had by his order, in fact, charged these persons with the moneys which they were instrumental in applying for the purchase of those shares. His Honour would be extremely sorry to say anything intimating any difference of opinion from the conclusion to which the Master had come as to the proceeding in question, which the Master had rightly characterised as a breach of trust in the application of their funds. It was possible there might be an explanation given of it, but he had not heard any. He did not in the least differ from the view which the Master had taken. It appeared to his Honour to be a misapplication of the funds of the company tending, as had been forcibly put by Mr. Selwyn, in the course of his argument, to destroy the very object for which the money had been put into the hands of the directors. Whatever jurisdiction the Master might or might not have under the Act, he certainly had all the jurisdiction necessary for taking the ordinary accounts, and enforcing the ordinary liabilities. In carrying out the object of the Act of Parliament another class of liabilities, not of the ordinary kind might arise. It was not necessary to consider this point in the present case. It appeared to his Honour that the vice of the Master's order was this, that it assumed that the five individuals, where there was no cheque forthcoming, or three of them where there were cheques, were the parties who, as between these persons and the company, are solely and ultimately chargeable with the moneys misapplied. It assumed that complete justice would be done in the case by making these persons, who were the hands of the governing body, solely liable, by making an order for the restitution of funds to be applicable as funds in which whole of the company had a benefit. When it was considered that these acts were done under the direction of the governing body, and that the object of this proceeding was to wind up the company, and to settle all matters as between all the members of it, it was certain that the object would fail, if the Court were to proceed upon the principle of making those persons solely liable, who, no doubt, were implicated in the misapplication of the money, but not more so than other persons who were not parties. If this money were recovered, the very persons who had directed a misapplication of it, would have the benefit of the fund being brought back. It seemed to him that all persons who were implicated in the transaction were jointly and severally liable; and that there was an obvious distinction between the present case and *The Attorney-General* v. *Wilson* and that class of cases, where the application was to have the funds restored on behalf of a company, no members of which were implicated in the misapplication of them. His Honour being of opinion that there was a misapplication of the funds, it appeared to him, with regard to the mode of proceeding, that it was not consistent with the ends of justice that it should be against those persons only as the Master had considered. The transaction itself was much more complicated than to enable him to treat these parties as being solely liable to bring back these funds. He had very little doubt that some other course would be found to enable the Master to investigate what had been done. The Master's order must be discharged, and the costs be reserved, with liberty to apply.

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. BENNET, Esq. of Lincoln's-inn, Barrister-at-Law.

March 8 *and* 9.

PEARSE *v.* COLE.

Costs—Solicitor—Jurisdiction.

A married woman can take no proceedings in a cause, except in the name, and with the concurrence of the next friend:

Where, therefore, a motion was made on behalf of a married woman, no next friend being named in the notice of motion, the Court will exercise a jurisdiction to compel the solicitor who gave such notice of motion, to pay the costs occasioned by it.

This was a suit which had been instituted by husband and wife, together with other parties, as plaintiffs, against the defendants, to have certain properties in the West Indies declared chargeable with certain incumbrances, and for the necessary accounts. This suit, however, abated by the death of one of the defendants, and a bill, which was contended to be a bill of revivor, had been filed by a Mr. B. purporting to be by and on behalf of the abovementioned plaintiff against the defendant, and in which a decree, instead of the usual order of revival had been obtained. An application was now made by motion on the part of Mary Pearse, the wife, that the bill of revivor filed by Mr. B. might be taken off the file, the same, as it was alleged, having been filed without the authority of the said Mary Pearse, and that an order to revive made in the cause, dated the 15th day of December, 1851, and a decree of revivor dated the 20th day of December, 1851, might be discharged for irregularity, and that Mr. B. the solicitor, might pay the costs of the application. It appeared that Messrs. Y. and G. also solicitors, had previously filed a bill in the name of Mary Pearse, *by her next friend*, purporting to be a bill of revivor which it was alleged was also defective, and they had given the present notice of motion, *not intituling it as being by the next friend of the wife.*

C. P. Cooper and *Jolliffe*, in support of the motion, relied upon the affidavits which had been made shewing that no authority had been given by the wife to file the bill of revivor.

Karslake, contrà, stated that he was instructed to appear by the plaintiffs, *including the wife*, through the instrumentality of Mr. B. who had filed the bill of revivor. He contended that a feme coverte could not take any step in a cause in which she was a party, unless by her next friend; that no next friend being mentioned in the notice of motion, the solicitors who improperly gave such a notice should be made to pay the costs of it.

Prior and *Winstanley* for other parties.

The VICE-CHANCELLOR said there appeared to him to be a series of blunders on both sides, and that he should not proceed to make any order on the present motion unless upon the undertaking of Mr. B. to take from the files of the Court the improper decree for relief which had been obtained instead of the usual order for revival. As to the jurisdiction of the Court to make the solicitors who gave an improper notice of motion pay the costs of the application, he wished for further authorities to be sought for.

The following cases as to the jurisdiction were subsequently cited: *Fawks* v. *Pratt*, P. Wms. 593; *Ex parte Cuthbert*, 1 Mad. 78; *Cockell* v. *Whiting*, 1 Russ. & My. 43; *Bennett* v. *Wade*, 2 Atk. 324; *Cook* v. *Broomhead*, 16 Ves. 133; *Ex parte Simpson*, 15 Ves. 476; *Aubrey* v. *Aspinwall*, Jac. 441.

The VICE-CHANCELLOR, after refusing to allow the notice of motion to be amended by inserting the name of a next friend, said,—The plaintiff Pearse has or had an interest which formerly existed in right of his wife, therefore the original bill in which they were plaintiffs was properly filed by them. This application was, however, made by the wife without a next friend to take a bill of revivor off the file on the ground that it had been filed without her authority, and to compel the solicitor to pay the costs; therefore, that latter part of the motion could not succeed, as the solicitor having been engaged in the original suit, had a right to file such a bill. The motion then being to be dismissed, the Court would have to dismiss it with costs if made on behalf of a person capable of paying costs; but Mrs. Pearce, being a married woman, could not pay costs, still less could she pay costs to herself and her husband, who were the plaintiffs. But the parties against whom the motion is directed had a right to costs, and he (the Vice-Chancellor) had never had a doubt as to the general jurisdiction of the Court to make a solicitor who made a motion without authority pay the costs of it. The only doubt was, whether, according to the present practice, he ought to make this order on the present application, or whether it ought to be the subject of a separate application. He (the Vice-Chancellor) was satisfied that the proper course was to dismiss the motion, and that the solicitors who made the motion should pay the costs. It did not, however, appear to be necessary that the Court should think that the solicitor had acted from improper motives, as he might have acted either from inadvertence or ignorance, he would still, however, be compelled to pay the costs.

Motion refused, with costs against the solicitors.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and PAUL PARNELL, Esqrs. Barristers-at-Law.

Monday, Jan. 26.

REG. *v.* HAMMOND.

Corporations (municipal) — Election — Voting papers—Place of abode of candidate—5 & 6 Wm. 4, c. 76, s. 32—Quo warranto.

The words "place of abode" in the 5 & 6 Wm. 4, c. 76, s. 32, mean the place in which the can-

didate for whom the voter intends to vote actually resides; and that section will not be complied with unless the place of actual residence be set forth in the voting paper.

A rule nisi had been obtained for a new trial in this case, which was an information against the defendant for exercising the office of councillor of Yarmouth, a borough within the 5 & 6 Wm. 4, c. 76. The question raised was, whether certain voting papers, which described the defendant as of "Church-road, miller," was a correct description of his "place of abode" within the 5 & 6 Wm. 4, c. 76, s. 32, the defendant's place of business being in Church-road, and his place of residence in High-street.

Tuesday, Jan. 13.—*O'Malley* and *Couch* shewed cause.—The place of business is within the purpose of the section, and will better fulfil that purpose which is the best possible identification of the person named. (*Haslop* v. *Thorne*, 1 M. & S. 103; *Johnson* v. *Lord*, 1 M. & M. 444; *Alexander* v. *Miller*, 2 C. & G. 424; *Roberts* v. *Williams*, 5 Tyr. 583.) Place of "abode" may mean place of "business" (*Southampton Dock Company* v. *Richards*, 1 M. & G. 448; 2 Wm. 4, c. 39, s. 72), even at the option of the voters. (Com. Dig. Abatement, F. 25.) The cases under the Registration of Voters Act, 6 Vict. c. 18, do not apply. They explained *R.* v. *Deighton*, 5 Q.B.

Worlledge and *Keane*, contra.—The Act shews a clear distinction in respect of place of business and of residence, between the qualification of candidate and voter; and this is conspicuous in the forms, especially in forms number 3 to section 17. [COLERIDGE, J.—The 121st, the 127th, and 131st sections also support that distinction.] It is plain from the 6 Vict. c. 101, that for the purposes of election to the Imperial Parliament place of abode does not mean "place of business." (*Lucket* v. *Prowles*, 2 C.B. 187; *Allen* v. *Greensill*, 4 C.B. 100.) Place of "residence" would afford a greater certainty than place of business, and is therefore to be preferred as an interpretation of the phrase, "place of abode;" for it cannot have been intended that the voter should have an option as to the manner in which he will describe a person who has a place of residence distinct from his place of business.

By the COURT, *Cur. adv. vult.*

JUDGMENT.

Tuesday, Jan. 26.—Lord CAMPBELL, C.J. In this case we are required to put a construction on the words "place of abode" in the 32nd section of the statute 5 & 6 Wm. 4, c. 76, which enacts that "every burgess entitled to vote in the election of councillors may vote for any number of persons not exceeding the number of councillors then to be chosen by delivering to the mayor and assessors a voting paper containing the Christian names and surnames of the person for whom he votes, with their respective places of abode and descriptions." At the time of the election in question of town councillors for the borough of Great Yarmouth, the defendant resided with his family in High-street, and he carried on the business of a miller in Church-road, having a mill there. His present place of residence and business are both in the parish of Gorleston, and within the limits of the borough of Great Yarmouth. A certain number of the voting papers for him described him as "William Hammond, of Church-road, Gorleston, miller." If his place of abode is properly stated in the voting papers according to the Act of Parliament, he was duly elected a councillor, but otherwise he was not, and the verdict in his favour must be set aside. After an attentive consideration of the Act of Parliament, we are of opinion that by "place of abode" it means the place of residence of the candidate. Such is the usual meaning of this expression. In Johnson's Dictionary "abode" is defined to be "habitation, dwelling, place of residence," and "residence" defined to be "place of abode, dwelling." A man's residence, where he lives with his family and sleeps at night, is always his "place of abode" in the true sense of that expression; and if this be stated to be his place of abode, no doubt nor difficulty ought to occur. In some instances he may be quite as well known if described of the place where he carries on his business; but this is never his place of abode in the ordinary sense of the expression, and he may have a place of business to which he goes very rarely, and which may be known to few as belonging to him. It was urged that the object of this enactment was to designate the individual for whom the vote is given, by requiring the voting paper, along with his name and surname and description, to contain his place of abode; but surely this does not shew that his place of business may be stated, instead of his place of residence; for, the place of residence being mentioned, no doubt can exist as to the individual for whom the vote is intended to be given. The defendant's counsel did not venture to contend that a statement of the place of residence would not be sufficient. They must, therefore, say that a choice is given to state in the voting paper either the residence of the candidate or his place of business; and if he has several places of business, any one of them which the different voters may think fit to select. But this latitude might lead to confusion and errors in summing up the votes, and the object of the legislature, as contended for on the part of the defendant, will be more effectually gained by considering that the language employed is used in its ordinary sense. Wherever the expression "place of abode" occurs in this Act of Parliament, it will be satisfied by the meaning of "place of residence;" and in some places where it occurs, as in sections 121 and 127, and in schedule (D. 2) referred to by section 17, it will admit of no other meaning. We are bound to suppose that it is used in the same sense throughout the whole statute. *The Queen* v. *Deighton*, 5 Q.B. 896, was a case that was relied upon by the counsel for the relator, as an express decision upon the meaning of the expression "place of abode," in this section of the Act of Parliament; but there the rejoinder admitted that the defendant's place of abode had not been truly stated in the voting papers, and merely averred that he was so described in the voting papers, without any fraud, and that the description so given of him was as well known as if his place of abode had been mentioned. The judgment of the Court against him proceeded upon the ground that his place of abode had not been mentioned in the voting papers, and the Court did not there decide that his place of abode could not be considered his place of abode. On the part of the defendant reliance was placed on *Ricketts* v. *Williams*, 3 C. M. & R. 561. That case turned on the statute 24 Geo. 2, c. 44, which requires notice of action to be indorsed with the name of the attorney intending to sue out process, "together with his place of abode." The Court held that an indorsement, stating the attorney's place of business was sufficient within that Act; principally, it appears, because the information intended to be furnished under that Act was, the place where the attorney, as such and acting in such character, was to be found; and the decision is manifestly inapplicable to the case of the abode of an individual, merely as such, independent of any profession or business. The defendant's counsel likewise referred to the cases in which it has been held that an affidavit describing the deponent as of his place of business is enough, where, by rule of Court, he should be described as of his place of abode. These cases only prove that for some purposes the place of residence may be place of abode, and they are of little use to shew the meaning to be given to the words in the Municipal Corporation Act. There is, however, a statute in pari materia, the Registration of Voters Act, 6 & 7 Vict. c. 18, and in construing this Act the learned judges of the Court of Common Pleas seem to have been of opinion that where it uses the words "place of abode," it means "place of residence." (*Luckett* v. *Knowles*, 2 C. B. 187; and *Allen* v. *Greensill*, 4 C. B. 100.) We have been much pressed by the fact that, in the present case, the defendant was as known by his place of business as by his place of residence; but if we were to hold that the place of business is sufficient, we must lay down a general rule upon the subject, which, if unqualified, would, in many instances, defeat the object of the Legislature; and if qualified with the condition that the candidate is as well known by his place of business as his place of residence, might lead to great uncertainty and much litigation. We think it the safer and better course to conclude that the Legislature used the words in their plain and ordinary sense, and required that the voting paper shall contain the candidate's place of residence, which in all cases he may be easily identified. For these reasons we think that the verdict for the defendant must be set aside, and the rule for a new trial be made absolute.

Tuesday, Feb. 10.

RENSHAW *v.* BEAN.

Easement—Ancient lights—Alteration—Extinguishment or suspension of right.

Upon the trial of an action for obstructing ancient windows, it appeared that the plaintiff had, within twenty years, added a new story to his house, and enlarged the old windows in the lower stories. The obstruction consisted in the addition of another story to the defendant's house, which was on the opposite side of a narrow court.

Held, that as the plaintiff had by his own act rendered it impossible for the defendant to obstruct the new windows, or the unprivileged portions of the old windows without also obstructing the privileged portions, the action was not maintainable, and the defendant was entitled to a verdict upon a plea traversing the right.

This was an action on the case by the reversioner for the obstruction of ancient lights, which was tried at Nottingham during the last Summer Assizes, when a verdict was found for the plaintiff, subject to the following case.

The premises in the occupation of the plaintiff's tenants, mentioned in the declaration adjoining to each other, and the windows in question, open into a court or passage leading out of the high pavement in the town and county of Nottingham.

The defendant was the owner of premises very near and in parts adjoining the plaintiff's premises, and situate on the opposite side of the said court or passage. The defendant rebuilt, enlarged, and raised the premises shortly before the action was brought, and thereby darkened and obstructed the windows on the ground-floor, first-floor, and second-floor of the premises in the occupation of the plaintiff's tenants; and the only question in dispute is, as to the right to the windows in question. The premises in the occupation of plaintiff's tenants had been rebuilt about eighteen or nineteen years before the rebuilding of the defendant's premises, and none of the identical windows in respect of which the action was brought had existed for twenty years before the obstruction complained of. In the premises which previously occupied the site of the plaintiff's present premises there were the same number of stories as in the present premises, and there were windows on the ground floor, first floor, and second floor, which had existed for a period considerably exceeding twenty years; but on rebuilding the plaintiff's premises some of the windows were enlarged, and the situations of others were changed, and no one of the present windows was in all respects identical in point of size and situation with any one of the previously existing old windows. The defendant contended that by these alterations, the nature of which is hereafter specified, the ancient rights had been lost, and that no new rights had been acquired, in consequence of the period of enjoyment of the present windows falling short of twenty years, and that, therefore, he was entitled to a verdict upon the second plea, which denied the rights alleged in the declaration, and this is the point for consideration of the Court. The plan which accompanies this case, and which it is agreed may be referred to by the Court, represents the premises in the occupation of the plaintiff's tenants, and the windows in question which look into the court or passage before mentioned. The windows to which the evidence of the trial was directed, and to which it is material to direct the attention of the Court, were those numbered in the plan from one to seven inclusive, all of which are in the premises occupied by Mr. Booth Eddison; and also the windows, eight to twelve inclusive, which light the warehouse, counting-house, and premises in the occupation of Mr. George Shelton, and all of which were in a greater or less degree darkened and obstructed by the rebuilding and alteration of the defendant's premises. The windows, Nos. 1, 4, and 5, look up the yard towards the north; the windows, Nos. 11 and 12, look down the yard towards the south; all the other windows look into the yard towards the east. When the premises occupied by Mr. Booth Eddison were rebuilt, the new building was made nine or ten feet higher than the old one, and height of the rooms of all the floors was raised, and, as a consequence of this alteration, the windows in all the floors were all made and placed somewhat higher than they were in the old premises, and other changes were made as hereinafter particularly mentioned. On the ground-floor the window No. 1 was in the same situation as an old window previously existing there, except that the new window was made about four inches narrower and about one foot higher than the old one, it being from the same elevation as the old window. With respect to the window No. 2, the wall in which it was made stood in the same situation as the present wall; but there were two windows previously lighting the room now lighted by No. 2. These old windows were narrower windows than the present window, and were separated from each other by about eighteen inches of wall; the present window occupies the situation of this intervening piece of wall, and a part of the situation of each of the old windows; but the outer sides of the old windows extended farther towards the north and south respectively than the present window. The cill of the present window is at the same elevation from the ground as the cills of the former windows, but the top of the present window is about a foot higher than the top of the old windows. The room which is lighted by No. 2, is now a breakfast parlour and library. In the old building it was used as a counting-house. With respect to the window No. 3, the wall on which it is placed stands in the same situation as the old wall, and the present window, to the extent of about one-third of its dimensions, occupies the same situation as part of an ancient window in the premises building; the cill is at the same elevation, but the top of the present window has been raised so as to be about a foot higher than the top of the old window in that situation, the space occupied by the remaining two-thirds of the present window was occupied by part of a brick wall in the old building. The room now lighted by this window is used as a surgery. In the old premises there were two rooms in the same situation—a backing room and a pantry, each lighted by a separate window, and at the time of the alteration one of these old

windows was stopped up. With respect to the windows Nos. 4, 5, 6, and 7, they occupy nearly the same positions as four ancient windows previously existing in the former premises, but in consequence of the raising of the floors of the present building, the cills and tops of the present first floor windows are higher than those of the previous windows, but the greater portion of each of the present windows is in the same situation as the corresponding old windows, and the use made of the rooms and places lighted by these windows is substantially the same in the new as it was in the old premises. With respect to the windows to the plaintiff's warehouse and premises, in the occupation of Mr. George Shelton, the windows Nos. 8, 9, and 10 occupy nearly the same situations as three ancient windows previously existing in the former premises, except that in consequence of the floors having been raised in height the cills and the tops of the present windows are higher than the cills and tops of the old windows, but the greater portion of each of the present windows is in the same situation as the corresponding old windows on the second floor, and the rooms lighted by the present and former windows were used for the same purposes. With respect to the remaining windows, Nos. 11 and 12, which look down the yard towards the south, the wall and building in which these two windows are placed, was, at the time of the rebuilding of the premises, raised and brought forwards towards the south wall. The windows 11 and 12 were placed in the new wall so brought forward as aforesaid, in pretty nearly the same situation which previously lighted the staircase of the old building, but in consequence of the wall and building on which the staircase stands having been so brought forward, no part of the present windows occupies any part of the situation of the old staircase windows. And in consequence of this part of the building having been brought forward, the windows of the warehouse and counting-house, Nos. 8, 9, and 10, and also the windows of Mr. Eddison's surgery and bed-room over it, Nos. 3 and 7, were deprived of some of the light which had previously been enjoyed by the windows that formerly stood in similar situations in the old premises.

The rebuilding of the plaintiff's premises was completed in or shortly after the month of October, 1831, and the several lights had been enjoyed in their altered state without interruption until about the months of August and September, 1850, when the defendant's obstructions took place.

The question for the consideration of the Court is, whether the plaintiff is entitled to recover damages in the present action in respect of the obstruction of all or any, and which of the windows in question, and the verdict is to be entered accordingly. The Court to have the power of determining any question of fact arising from the case, and which (but for this power) they might consider proper to be submitted to a jury.

The pleadings in the action to be referred to, if necessary, as a part of the case.

The case was argued on Jan. 27 and 28 by

Hayes (*Macaulay* with him) for the plaintiff.

Mellor (*Humfrey* with him) for the defendant.

The argument for the plaintiff in substance was, that at least so far as the existing windows were identical with the old windows the right of the plaintiff remained the same, and that he was entitled to succeed if that right had been obstructed. The argument for the defendant was that the alteration of the plaintiff's house had increased the burden upon the servient tenement by depriving it of the privacy which it previously enjoyed; and that as the plaintiff's encroachment had been so made, that the defendant could not obstruct the excess without also obstructing the privileged parts of the windows, the plaintiff must take the consequence. It was argued in reply that if the defendant could legally set up such an excuse, it ought to have been specially pleaded.

The following authorities were cited: *Blanchard* v. *Bridges*, 4 Ad. & Ell. 176; *Luttrell's* case, 4 Rep. 87 *a*; *Dougal* v. *Wilson* (dict. per Wilmot, C.J.), 2 Saund. 175, *n*; *Cotterell* v. *Griffiths*, 4 Esp. 69; *Martin* v. *Goble*, 1 Camp. 322; *Chandler* v. *Thompson*, 3 Camp. 80; *Garritt* v. *Sharp*, 3 Ad. & Ell. 325; *Thomas* v. *Thomas*, 5 Tyr. 804; Gale on Easements, 373; Perk. Profit. Book, s. 671; *Cherrington* v. *Abney*, 2 Vern. 646; *Moore* v. *Rawson*, 3 B. & C. 322; 2 Black. Com. 385; *Ward* v. *Eyre*, 2 Bulstr. 323; *Bruerton's* case, 6 Rep. 1; *Talbot's* case, 8 Rep. 104; *Hall* v. *Swift*, 4 Bing. N.C. 381.

Cur. adv. vult.

Lord CAMPBELL, C.J. now delivered the judgment of the Court.—We are of opinion that this action is not maintainable; but we do not proceed upon the ground that the plaintiff, by the alteration in his windows, had entirely lost the right which he had before enjoyed of having light and air through such portions of the present windows as formed portions of the ancient windows before the alteration; and we must be understood as not meaning to overturn any of the cases on which the plaintiff's counsel have relied. But the plaintiff has acquired nothing more in addition to that former right; and if by the alterations which he has made he has exceeded the limits of that right, and has put himself in such a position, that the excess cannot be obstructed by the defendant in the exercise of his lawful rights on his own land, without at the same time obstructing the former right of the plaintiff, he has only himself to blame for the existence of such state of things, and must be considered to lose the former right which he had, at all events until he shall, by himself doing away with the excess and restoring his windows to their former state, throw upon the defendant the necessity of so arranging his buildings as not to interfere with the admitted right. The material facts proved appear to be, that the plaintiff and defendant have houses on opposite sides of the same court, which is the private property and in the exclusive occupation of the plaintiff; that the plaintiff, about eighteen or nineteen years ago, rebuilt his house, the outward wall being on the old foundation; that he raised it a story higher, putting windows into the new story and altering the dimensions of all the windows in the lower stories, although they still embraced portions of the space occupied by the old windows; that the defendant, in the year 1850, rebuilt his house, and raised it a story, to about the same elevation as the plaintiff's; that thereby he obstructed the new windows in the upper story of the plaintiff's house; that without building a wall similar to that of the wall of the defendant's new house, the defendant could not have prevented the plaintiff from enjoying the free use of the new windows in the upper story of the plaintiff's new house, and that this wall so raised to its present height darkened and obstructed all the windows in the lower stories of the plaintiff's house. The defendant clearly had the same right to raise his house in 1850 as he would have had immediately after the plaintiff's house was raised, although he would have had no such right after the plaintiff's new windows in his new story had enjoyed the free access to light and air for twenty years. Would not the defendant have been justified, upon the raising of the plaintiff's house, in raising a wall on his own foundation to obstruct these new windows? Confessedly, the defendant could not have maintained any action for placing the windows there, whereby his house was overlooked and his privacy was encroached upon, and after an uninterrupted enjoyment of twenty years, the plaintiff would have had the same easement for these new windows as he had for the old, upon the supposition (it is said), that after such an enjoyment, the law would presume a grant from the defendant; but there seems to be no doubt that the defendant, if he did not commit any trespass, was at liberty so to interrupt the enjoyment as to rebut such a presumption. This appears to have been all that the defendant did in the year 1850, and this is the alleged grievance for which the present action is brought. The consequence is, that the windows in the lower story of the plaintiff's house are darkened, but the primary cause of this misfortune is the plaintiff's own act in raising his house and opening new windows in it which have acquired no privilege. Can he then complain of the natural consequences of his own act? We by no means say, that where the owner of a house alters the dimensions of an ancient window in it, he may in no case maintain an action for that which is an obstruction to the window in its new state, and would have been an obstruction to it in its former state. This would be contrary to a long series of decisions, beginning with *Luttrell's* case, reported by Lord Coke. If the wall in which the window is be on the extremity of the owner's land, and the window is enlarged at the lower part of it, the owner of the adjoining land could easily obstruct the unprivileged part of the window, and would not be justified in building a wall which would obstruct the whole. But there was no mode of merely obstructing the new and unprivileged windows, and the unprivileged portions of the windows in the lower stories in this case, and the obstruction of the privileged portions of these windows is a necessary consequence of the obstruction of the unprivileged portions of them and of the new windows in the additional story. It has been suggested that this argument is not open to the defendant, either under the plea of not guilty, or the plea traversing the alleged right, and that supposing it to be a good defence, the defendant ought to have confessed and avoided, admitting the obstruction, and excusing or justifying it by reason of the new windows opened by the plaintiff. The case of *Frankum* v. *Lord Falmouth*, 2 A. & E. 452, establishes this, that the plea of not guilty, under the new rules, puts in issue only the facts alleged to have been wrongfully done, and not the wrongfulness of that fact; and though the contention there was that the plea did deny the wrongfulness of the fact complained of, and so incidentally denied the right asserted by the plaintiff, which is not the precise contention made in the present case, yet we are of opinion that the new rules, and that case in effect shew that the plea of not guilty denies only the fact complained of, and not its nature; and as in this case the obstruction was clearly proved to the existing windows, the issue of not guilty must be found for the plaintiff as to the plea traversing the plaintiff's alleged right. We have considered much whether the defendant ought not to have pleaded specially, that though some right did exist, yet that the plaintiff had committed a great excess in the exercise of that right, and that it was impossible to obstruct his excess without at the same time obstructing the admitted right. But we are of opinion that such a plea would after all be no more than an argumentative denial of the alleged right; for, as we have already observed in the outset, the plaintiff has by his own acts of excess at all events suspended, at least for a time, his former right, if he has not actually wholly destroyed it. In holding that the action is not maintainable, we are glad to think that this decision is not likely to lead to any practical injustice or hardship, as it only gives a means of preventing an usurpation from ripening into a right; and when one of two neighbours occupying houses near each other raises his house a story, he empowers the other to do the same at any time within twenty years. We direct the verdict to stand for the plaintiff on the plea of not guilty; and to be entered for the defendant on the plea denying the right.

Judgment for the defendant.

Nisi Prius.

COURT OF COMMON BENCH.

Reported by W. J. METCALFE, Esq. of the Inner Temple, Barrister-at-Law.

SITTINGS AT GUILDHALL AFTER HILARY TERM.

Thursday, Feb. 19.

(Before JERVIS, C.J.)

POWLETT (Earl) *v.* LEE.

Execution—Fi. fa.—Goods demised.

Furniture let to a tenant cannot be seized under an execution against the lessors.

This was an interpleader, issued to try whether the furniture in the house, 33, Dover-street, was liable to a writ of fi. fa. issued on a judgment obtained by the present defendant against the Earl of Mexborough.

Byles, Serjt. in opening the case for the plaintiff, stated that the house and furniture in question were settled, prior to the marriage of Lord Pollington in 1812, on the Earl of Mexborough for life, remainder to Lord Pollington. Subsequently a person of the name of Berry obtained a judgment against Lord Mexborough, and levied the amount on the furniture, which was then sold by the sheriff, by bill of sale, to Mr. Lightfoot, who bought Lord Mexborough's remaining interest in it also. The Dowager Lady Hardwicke then purchased Lightfoot's interest, and thus became possessed of Lord Mexborough's life interest in the furniture. In February, 1850, an agreement for a lease of the house and furniture for three years, at a rent of 630*l.* a year, was executed by the plaintiff, and the plaintiff was occupying under it when the present defendant caused the furniture to be seized.

The plaintiff's lease and occupation only were proved.

Byles, Serjt. contended that whatever might be the title to the property, it was protected from execution by the lease, citing *Izod* v. *Lamb*, 1 Cromp. & Jer. 35, as directly in point.

Wilkins, Serjt. and *Petersdorff* contended that upon this evidence the defendant was entitled to a verdict, as the plaintiff had not shewn any title to the furniture.

JERVIS, C.J.—I can see no difference between the present case and the case cited, and, therefore, upon the authority of that case, I shall direct a verdict for the plaintiff. *Verdict for the plaintiff.*

Byles, Serjt. and *Henderson* for the plaintiff.

Wilkins, Serjt. and *Petersdorff* for the defendant.

INSOLVENCY COURT.

Reported by DAVID CATO MACRAE, Esq. of the Middle Temple, Barrister-at-Law.

Thursday, March 4.

(Before Mr. Commissioner PHILLIPS.)

Re DANIEL EDWARD FLYNN.

Concealment of property—Rehearing.

An adjudication having been made on false evidence, property having been concealed by the insolvent, the Court will order the adjudication and discharge to be annulled, and make a new adjudication:

Held also, that upon a rehearing the insolvent himself may be examined to disprove his former statement respecting his property.

Cooke, upon affidavit of facts that had transpired since the hearing of this insolvent, which took place on the 4th of November, 1851, when he was remanded under the discretionary clause for six months, obtained the following rule:—"Whereas the

adjudication was made in the matter of the said **petition** on or about the 4th day of November, 1851, and whereas it is represented to the Court by Edward Firth, in the affidavit of the said Edward Firth now read and filed in the court, that the said adjudication was made on false evidence, or otherwise improperly made or fraudulently obtained; it is ordered that the said D. E. Flynn, upon notice of this rule to be given to him, shall, on the 6th day of March instant, peremptorily shew cause why the insolvent debtor should not upon due notice to be given to such persons, and in such manner as the said Court shall direct, be brought up and attend, and the said matter be reheard before the said Court, and all things be done thereupon in pursuance of the provisions of the statute in that behalf."

On the 6th of March the rule was made absolute, and the insolvent ordered to be brought up on the 13th of March, with four days' notice to insolvent.

Saturday, March 13.—*Cooke*, to-day, appeared to oppose on behalf of Mr. Frith, a creditor, who, after the insolvent's hearing in November last, sought to enforce the judgment of the Court by bringing an action, to which the insolvent put in bail, and thus compelled Mr. Frith to proceed to judgment, which he obtained in December, and thereupon issued a fi. fa. upon enforcing which a large quantity of property was discovered upon the insolvent's premises. Upon this discovery the insolvent procured a creditor to be appointed assignee, who took possession of the property for the general benefit of the estate, and it was in consequence of this concealment of property that the present proceedings were adopted. The facts of the case were admitted by the insolvent, and the only question was the amount of punishment to be awarded for so grievous an offence.

Mr. Commissioner PHILLIPS asked whether the insolvent had been instrumental in the ultimate restitution of the property to his creditors, as in a case where so heavy a charge was made it was desirable to know whether there existed a locus pœnitentiæ for the insolvent.

Cooke replied, that the insolvent had not been at all instrumental in the discovery of the property.

Sargood, for the insolvent, said his instructions were precisely the contrary.

Dennis Quinlan was then called by *Cooke*.—The witness stated, that he was an apprentice to the insolvent, and that while his master was in prison he moved some goods by his mistress's directions.

A discussion occurred between the learned counsel, which resulted in the removal of the property since discovered being taken as admitted, and the inquiry being directed to other property not found or mentioned by the insolvent.

Quinlan then stated, that he took three large bundles to the insolvent in prison on three several occasions. The bundles contained canvas, waistcoats, cottons, alpaca coats, unmade, &c. of the value he believed of 20*l*. or 30*l*. He also took a couch, a table, and six chairs to a French polisher's in Holborn. He also took three bundles of cord trousers to another place. The value of each of these bundles was about 2*l*. The sheriff was in possession at the suit of Mr. Frith at the time of these removals, which were all made by direction of the insolvent's wife, himself being then in prison. The removals were effected while the sheriff's man was out of the way. Some things were found by the officer under the bed.

Mr. Commissioner PHILLIPS asked how it was that the broker of this court had not found the property if it was on the insolvent's premises?

Cooke said, the property had been removed from Blackfriars-road to a cottage at Wandsworth, and brought back after the insolvent's hearing in this court. The learned counsel was proceeding to examine the insolvent, when

Sargood objected, upon the ground that the majority of the Court had decided against such a practice. The insolvent stood in a sufficient predicament without adding to it by seeking to make him convict himself of other offences.

Cooke replied that the practice of not examining an insolvent upon a re-hearing had long been given up, and it was now held that a re-hearing was a perfect re-hearing on all points.

Mr. Commissioner PHILLIPS decided that the creditor was entitled to examine the insolvent.

The insolvent, in reply to Mr. Cooke, said that after he was in prison he made arrangements with his detaining creditor for his discharge, and paid him 12*l*. on that account. He gave bail in Mr. Frith's action, but was only out of prison three days when he was again arrested. All the goods which were brought to him in prison by Quinlan he had left behind him when he went out in charge of a fellow prisoner, from whom they had been obtained by means of a forged order in his (insolvent's) name. The goods that had been seized were at Wandsworth when the broker of this court went to Blackfriars-road, and were brought back afterwards.

Mr. Wilson was called by *Sargood*.—He stated that he was the assignee appointed by this Court on the 20th of December. He first heard of the execution by Mr. Frith from a neighbour of the insolvent's, and afterwards from the insolvent's attorney, by whose advice witness gave notice to the sheriff not to part with the goods. Since then the insolvent had done all he could to assist the assignees.

In answer to *Cooke*, the witness said that insolvent had never informed him about the bundles sent to him in prison, nor about the things sent to the French polisher's. The goods which had been seized had been sold by auction for 130*l*. odd.

Cooke then addressed the Court, and submitted this was a most serious proceeding both for the insolvent and for public justice. The insolvent having been remanded by this Court, Mr. Frith wished to give effect to that judgment, and accordingly commenced an action, to which the insolvent put in bail, and thus compelled the creditor to go on to judgment, by which accident alone the discovery of this large amount of secreted property had been made. No credit was due to the insolvent for its restitution to the creditors, and therefore so flagrant a case of fraud and perjury demanded at the hands of the Court a signal punishment.

Sargood admitted that the insolvent was guilty of both fraud and perjury, but whatever might be the opinion of the Court in a moral point of view, the concealment of property was the only matter which it could deal with; as the other offence, that of perjury, was a distinct offence, for which the insolvent might hereafter be liable before another tribunal. The insolvent had latterly done all he could to remedy the wrong originally inflicted, and the only person who now complained was the creditor who alone had suffered by the insolvent's attempt to remedy his wrong. The insolvent could offer no merits except that of remorse, and his case must be left to the merciful consideration of the Court.

Mr. Commissioner PHILLIPS said this was the first case of the kind that had come before him, and he was happy to say such cases were very rare indeed. The facts here were indisputable, and the course taken by the insolvent's counsel was simply one of mitigation, calling upon the Court to interpose its mercy in the remand which he admitted it must pronounce upon the insolvent. He (the learned Commissioner) hoped that not only in this, but in every case that came before him, he should not forget that great and almost divine quality; but he was bound to take care so to guard his own feeling that mercy to an individual might not be injustice to society. In this case he thought the original offence had been greatly aggravated by the perjury employed to conceal it. Substantially, as an offence, this Court would not deal with that perjury, as it was undoubtedly a matter for which the man was liable to indictment elsewhere, although he hoped, after the punishment the insolvent had undergone, and would still undergo from this Court, no creditor would think it necessary to proceed against the insolvent upon that ground. With respect to the case of mitigation that had been set up, it was impossible for the Court to avoid seeing that the motive which actuated the insolvent was rather personal vindictiveness against Mr. Frith than a [illegible] the benefit of the creditors. He had only [illegible] the realisation of the property when it had been discovered and he could no longer conceal it, and up to that very day the assignee, who appeared kindly disposed towards the insolvent, had not been [illegible] by him respecting any of the other property which had been removed from his house. It was true that the insolvent had given some assistance to Mr. Wilson, the assignee, although the motive was doubtful. Taking the case as an original hearing, and dealing with it on account of the concealment of property, the following order was made by the Court, under the 77th section:—"Upon re-hearing the matters of the schedule of the said insolvent debtor, and upon examination made into the same, and upon the said insolvent debtor swearing to the truth of the same, it is ordered, that the adjudication made in the [illegible] said insolvent debtor on the 4th day of November, 1851, and the order made thereupon, shall be, and the same is hereby, annulled. And forasmuch as it appears to the said Commissioner that the said insolvent debtor has fraudulently, with intent to diminish the sum to be divided amongst his creditors, concealed part of his property, it is adjudged and ordered that the said insolvent debtor shall be discharged from custody and entitled to the benefit of the said Act as to the several debts, &c. so soon as the said insolvent debtor shall have been in custody at the suit of one or more of the several persons above mentioned for a period of twelve calendar months, to be calculated from the 18th of September, 1851, being the time of making such vesting order as aforesaid."

The following indorsement was made upon the record (the schedule):—

"13th March, 1852,—The matter of the schedule reheard, and original adjudication and order annulled, and the insolvent remanded back to custody, and adjudged and ordered to be—

"Entitled, so soon as he shall have been in custody at the suit of some one or more of his creditors for the period of twelve calendar months from the date of vesting order, he having fraudulently, with intent of diminishing the sum to be divided among his creditors, concealed part of his property."

Circuit Reports.

NORTH WALES CIRCUIT.

Reported by R. VAUGHAN WILLIAMS, Esq. of Lincoln's-inn, Barrister-at-Law.

Carnarvon, March 16.

(Before VAUGHAN WILLIAMS, J.)

DOE *dem*. JONES and WIFE *v*. HUGHES and GRIFFITH.

Will Construction—Meaning of word "Appurtenances," and "Appurtenances thereunto belonging."

This was an action to try the right to some plots of ground claimed by the lessor of the plaintiff, as representing the widow and residuary devisee of the testator.

In the will were the following devises, out of the words of which the dispute arose:—"I give and devise to my sister, M. for ever, the following five houses and their appurtenances, situate at Rachub, in the parish of Llanllechid, namely, the houses now occupied by A. B. C. D. E. respectively." and, "I devise to E. the daughter of my late sister Margaret, the house and appurtenances thereunto belonging where she dwells in, and which her husband now occupies under me."

On the part of the lessors of the plaintiff, *Welsby*, with whom was *Wilkin*, contended that the plots of ground in question went to the residuary devisee, as not otherwise disposed of in the will of the testator.

Beavan, on the part of the defendant Hughes, and *Coxon* on the part of defendant Griffiths, contended that the plots of ground in question passed to the devisees of the houses, as included in the word appurtenances.

It appeared on the evidence that the testator had purchased a piece of land, of which these plots were part, subsequently to the time when he became possessed of the land on which the houses stood; that all the houses but one were built at the time of the purchase of the piece of land; that the testator, after the purchase, allotted small plots of this land to the occupiers of the houses already built, and also a plot to a house which he built [illegible]quently. The plots of ground allotted were detached from the houses, with the exception of one which immediately adjoined. No rent appeared to have been paid for these plots before the death of the testator. It was now contended, on the part of the lessors of the plaintiff, that these plots were allotted to the tenants of the houses to be held by them for a short time rent free, on condition that they brought them into cultivation; but afterwards to be held subject to a separate rent, and that they did not, therefore, come within the meaning of the word "appurtenances." On the other side it was contended that they were allotted as gardens going with the houses, and would thus pass under the word "appurtenances" to the devisees of the houses. A verdict was taken for defendants, with leave to move to enter it for the lessors of the plaintiff.

Irish Reports.

COURT OF COMMON BENCH.

Reported by P. J. M'KENNA, Esq. Barrister-at-Law.

Monday, Jan. 19.

HENDERSON *v*. LEGASTER.

——— *v*. LEGASTER.

——— *v*. LEGASTER.

Practice — Consolidation of actions — Staying proceedings — Several actions for damages for losses by deaths arising from negligence of defendants' servants.

Three actions having been brought under Lord Campbell's Act, by separate plaintiffs, to recover damages for the losses occasioned by the deaths of three persons, which occurred from the same cause, upon the same occasion, through the alleged negligence of the defendants' servants, on board a steam ship, the Court refused either to compel the plaintiffs to consolidate their actions, or to stay the proceedings in two of them, until the third should be decided.

In these cases, which were actions brought by three plaintiffs under Lord Campbell's Act, to recover compensation for the deaths of three persons, which were alleged to have occurred through the negligence of the servants of the defendants on board a steamer called the ***Minerva,***

Napier, Q.C. and *J. D. Fitzgerald*, Q.C. moved for an order that proceedings be stayed in two of the three actions, or that the three actions might be consolidated, the question involved being the same in all.

Fitzgibbon, Q.C. and *E. Hayes*, contrà, submitted that the Court had no jurisdiction in an action of this description to restrain one plaintiff from proceeding until another plaintiff was pleased to bring his case to trial.

The COURT were of this opinion, and refused the application with costs.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. KEENE, Esq. of Lincoln's-Inn, Barrister-at-Law.

IN LUNACY.
(Before Lord ST. LEONARD'S.)
Saturday, March 20.
Re BURRIDGE.

An application for the sale of a reversion to which a lunatic was entitled, subject to a life interest, refused, where it appeared that the sale was required for the payment of the costs of the commission, and not for the purpose of benefiting the lunatic.

This was a petition praying for the sale of a reversion to which the lunatic was entitled on the death of a tenant for life, in a sum of 256*l.* a year, for the purpose of paying the costs of the commission and other small sums stated to have been paid on the lunatic's account. It appeared that the only other property of the lunatic consisted of a small freehold cottage, of the annual value of 4*l.* The father of the lunatic was the person who sued out the commission, and asked that the reversion might be sold to pay the costs, and also certain other sums which had been expended by him towards the maintenance of his son. The Master refused to sanction the sale of the reversion. The father became bankrupt, and his creditors refused to prosecute the claim against the lunatic's estate. The costs of the commission amounted to 400*l.* or thereabouts. The lunatic was in the workhouse, with an allowance of 2s. 3d. a day, which was accumulating as a charge upon his estate.

Batten appeared for the petitioner.

The LORD CHANCELLOR.—I refuse the prayer of the petition, as I will all others where the interest of the lunatic has not been studied. The costs of this commission have been incurred very recklessly, and I am very dissatisfied with the mode in which the commission has been prosecuted. It is quite manifest that the proceedings have not been instituted with any view to the benefit of the unfortunate lunatic, but for the sole purpose of getting his property into the hands of other parties. The enormous sum of 400*l.* has been incurred in costs at a time when it was well known that the whole of the property that the lunatic had in his possession was 4*l.* a-year. The result is, he is allowed to go to the workhouse; and then the Court is asked to sell his reversion in order to pay these costs and a few other trifling sums for maintenance. The only doubt whatever that I entertain is in respect to these sums, which have been advanced by a relative for the maintenance of the lunatic; but, notwithstanding that it is proper that they should be repaid, the Court will not be justified in ordering the sale of the reversion on that account. As to the question of costs, there is nothing whatever to induce the Court to order a sale for their payment. The object of a commission ought to be to protect the lunatic and provide for his sustenance and comfort, but have the present proceedings tended to such an object? The unfortunate lunatic has been sent to the workhouse on an allowance of 2s. 3d. a-day, where he remains in an abject and degraded state, neglected by every one, while an application is made to sell his reversionary property for the payment of 400*l.* costs and a few other debts, leaving a very poor chance of anything being saved from the wreck for his own benefit. I will not sanction any such proceeding, and the party petitioning, if he has any claim for costs, must wait until the reversion falls in, for the Court will not take any step for expediting their payment. The object of the commission was to get hold of this reversion, but I will take care that those views shall be defeated, and in the meantime I will see whether something cannot be done for improving the condition of the lunatic, and at the same time to take care of his property. I will see that inquiries are made to that effect, and will ascertain whether arrangements cannot be effected to remove the lunatic from the workhouse, and place him in a lunatic asylum, where he will receive proper care and nourishment; in the meantime I will make no order on the petition.

IN LUNACY.
Re REYNAULT.

One sole trustee appointed in the place of a lunatic trustee, where the trust was shortly to be wound up, and where there had been but one trustee originally.

This was a petition for the appointment of a new trustee in the place of the lunatic, who was the sole trustee of real and personal estate of very small amount.

The LORD CHANCELLOR.—Why do you ask for the appointment of one trustee only? You will have perhaps to come here again with a similar application.

Regnier W. Moore.—There was but one trustee of the will creating the trust, and I am given to understand that the trust will very shortly be wound up.

The LORD CHANCELLOR.—If you are authorised to make that statement, you may take the order

Order made.

IN LUNACY.
Re CHORLEY.
Ex parte applications—Strict proof.

In ex parte applications seeking to affect the ownership of property, the strictest proof of title will be required, and the Bar are requested to assist the Court by drawing its attention to any authorities bearing upon the point.

This was a petition praying that a sum of 800*l.* which was standing in the name of a lunatic trustee, might be paid to the petitioner.

On the trustee becoming lunatic, the petitioner paid out of his own moneys 800*l.* and divided it among the cestuis que trust, who executed a release of the trust-fund, and now applied for its transfer from the lunatic to himself. It appeared that some of the cestuis que trust were married women, but there was no evidence to shew that there had not been any settlement of their shares on their marriage.

The LORD CHANCELLOR.—It behoves me, as guardian of the property of the lunatic, to exercise the greatest care before parting with it. Before making orders affecting the property of lunatics on ex parte applications I shall require to be well satisfied that the interests of the lunatics will not be compromised by them, and therefore shall require in such cases the strictest evidence of title. In these cases I sit to exercise a most important jurisdiction, and that, too, in the absence of the parties whose rights are sought to be affected, and in these cases a grave responsibility rests with counsel as to the truth of the statements in the petitions. I must beg the Bar to understand that they must assist the judge by directing his attention to any authorities that may be in point, and to shew that the parties claiming are strictly entitled to what they ask. The present case is an extraordinary one,—a person has parted with 800*l.* out of his own pocket to pay parties who are entitled to a sum of stock of which the lunatic is trustee, and the Court, before making an order for the transfer of the stock, must look carefully into the circumstances of the case. With that view the petition must stand over.

IN LUNACY.
Re PROCTER.
New trustee without a reference—Costs of day.

This was a petition for the appointment of new trustees without a reference to the Master. The statements in the petition were not proved. The property was under 200*l.*

Kenyon S. Parker for the petition.

The LORD CHANCELLOR.—In this case I am requested to make an order, transferring property from one person to another, without a reference to the Master. This I would willingly do to save expense; but then I must put myself in the place of the Master, and examine the proofs. This I am unable to do, because the evidence is insufficient. In such cases I shall expect strict proof. You may amend your petition; but I will make an order that the costs of this day's attendance shall not be allowed.

IN LUNACY.
Re BEAVAN.

The costs of parties interested in the estate of a lunatic attending the inquiry without leave of the Court disallowed.

Selwyn, in this petition, asked for the payment of the costs of certain parties interested in the estate of the lunatic, who had attended the inquiry.

The LORD CHANCELLOR being informed that such parties had attended without having previously obtained the leave of the Court, refused to allow them.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

(BEFORE THE LORDS JUSTICES.)
Monday, March 8.
Re THE WINDING-UP ACTS OF 1848 AND 1849, and THE WOLVERHAMPTON, CHESTER, AND BIRKENHEAD JUNCTION RAILWAY COMPANY.
DALE'S CASE.

Provisional committeeman accepting shares—Contributory—Order for call—Report of Master—Practice.

The usual order for the winding-up of a company provisionally registered, but of which there had been no deed of settlement, having been obtained, the Master, by a report, found, first, that the only contributories consisted of a certain number of persons, members of the provisional and managing committees, who had agreed to take the same number of shares; secondly, that by a call which he had already made, and by other payments, nearly the whole of the expenses had been discharged by the contributories in unequal proportions; and, thirdly, that for the purpose of paying outstanding liabilities, adjusting the claims of the contributories, and for raising the costs of the winding up, a certain sum was necessary to be raised, by means of a call of a certain amount upon each of the contributories then directed to be made, each of the contributories who had already made any payment by way of contribution to the said expenses or otherwise, having credit given to him for the amount so paid by him against such call. And the Master, by an order of the same date as the report, made an order for the call.

Held, affirming the decision of the Court below, that the Master was right in making the call, and that it was unimportant whether the liabilities in respect of which the call was made were liquidated or unliquidated. Nor was it a valid objection that if all the contributories had paid the call more money would be raised than what was wanted to pay the sums mentioned in the report.

Held, also, although the Master's order for a call was made on the same day as the report, that as the appellant had on the previous hearing of the motion, which stood over for that purpose, liberty to question the accuracy of the report, which he failed in doing, no valid objection to the call could be raised on that ground.

This motion came on by way of appeal from the decision of Vice-Chancellor Kindersley, under the following circumstances:—In 1845 the company or association was formed and provisionally registered, but no deed or settlement was ever executed. On the 3rd of November, 1849, the common order to wind up its affairs was obtained. On the 30th July, 1851, the Master made the following report:—"In pursuance of the order of the Court made in this matter, dated the 3rd November, 1849, whereby it was referred to me to wind up the affairs of this company, I have proceeded with the said reference, and have settled on the list of contributories the following persons as contributories, being members of the provisional and managing committees with their own consent, and having agreed to take one or more shares, upon such share or shares being allotted to them according to the provisions of the said company, and to each of whom twenty-five shares were allotted, that is to say (the report here gave the names of forty persons, including Mr. Dale); and on the 12th July, 1850, I made a call of 120*l.* on each of the said contributories so settled on the list as aforesaid, which produced 858*l.* 14s. 9d. of which 79*l.* 16s. were applied to the payment of a claim upon the company; 188*l.* 14s. were applied in payment of Cottle's costs, ordered by the House of Lords to be paid by the official manager; and 556*l.* 2s. 11d. were applied in part payment of expenses of winding up, leaving balance of 34*l.* 1s. 10d. in the hands of the official manager. And I find from the books and papers of the company, and the report of the official manager, that there were expenses incurred and debts contracted by the managing committee in printing, advertising, secretary's and clerks' salaries, stationery, law charges, the preparation of the surveys, plans, and sections, and all other acts necessary to be done in the establishment of this company, and for the purpose of obtaining an Act of Parliament for making the railway, for the formation whereof this company was provisionally registered, to the amount of 11,243*l.* 2s. 5d. the particulars whereof are set forth in the schedule of this my report, with the purposes for which such expenses were incurred; and I find from the books of the said company, and the said report of the official manager, that these expenses have been discharged by contributories in unequal proportions, with the exception of 216*l.* 0s. 8d. still remaining unpaid, as stated in the said report. And I find that there have been costs ordered by the Court to be paid by the official manager, and which are already taxed, amounting to the sum of 237*l.* 6s. 4d. of which the

sum of 188*l.* 14s. has been paid by the official manager as aforesaid, leaving 48*l.* 6s. 4d. still remaining unpaid; and that in the winding up of the affairs of this company the official manager has, by himself and his solicitor, expended large sums of money, and properly incurred costs, which, together with the costs so ordered to be paid, I estimate will amount to 1,248*l.* 6s. 4d. and upwards; and the said official manager has proposed to me, that for the purpose of paying outstanding liabilities, and adjusting the claims of the contributories, and for raising the sum of 1,248*l.* 6s. 4d. for the costs of the winding up, a call should be made of 60*l.* on each of the said contributories so settled on the list as aforesaid. And I am of opinion and find, that the sum of 5,227*l.* 3s. being that part of the expenses incurred between the 1st of November, 1845, being the date of the consent to act as provisional committee-men, and take one or more shares, signed by each of the said contributories, as aforesaid; and the 1st of December, 1845, being the day on which the said managing committee decided on suspending all expenses, were expenses necessarily incurred in preparing to launch the common concern, in which the said several contributories had engaged; and I find that each of the said several contributories so settled on the list, as aforesaid, is legally liable to bear and pay his rateable proportion of the said necessary expenses of the committee in preparing to launch the common concern, and also to bear and pay his rateable proportion of the costs incurred in winding up this company; and I am of opinion that it is necessary and proper to raise the said sum of 5,227*l.* 3s. being the amount of the expenses incurred, as aforesaid, between the 1st of November and the 1st of December, 1845, and also the said sum of 1,248*l.* 6s. 4d. for the said costs, by means of a call of 60*l.* upon each of the several before-mentioned contributories—each of the several contributories, who has already made any payment by way of contribution to the said expenses, or otherwise, having credit given him for the amount so paid by him against such call; and I direct an order for the call of 60*l.* to issue against each of such several contributories upon whom notice of the intended call has been served, as appears by the affidavit of William Lowther, clerk to the official manager. Sworn before me on the 30th of July instant." The Master, on the same day (30th of July, 1851) made an order for a call in the following term I, William Brougham, esq. of the High Court of Chancery, charged with the winding up of this company, do peremptorily order that a call of 60*l.* be made on all the contributories of this company, whose names are included in the list of contributories filed by the official manager, and who are settled on such list by me as provisional committeemen duly registered as such with their own consent, and who, having agreed to take one or more shares in the said company, upon such share or shares being allotted to them according to the provisions of the said company. And I do peremptorily order each of such contributories as aforesaid, on the 28th day of August next, &c. to pay to the official manager at, &c. the balance, if any, which will be due to him, after debiting his account in the company's books with such call." On the 16th of December, 1851, a motion was made on behalf of Mr. Dale before Vice-Chancellor Kindersley, that this order for a call might, so far as regarded himself, be discharged or varied, but his Honour refused to grant the motion, on the ground that as the order for the call depended upon the report, and the report not having been either discharged or questioned, and must therefore be assumed to be right, the order for a call which was consequent upon it ought not to be disturbed. (See 18 Law T. Rep. 206.) This motion, by way of appeal from the decision of Vice-Chancellor Kindersley, was first made before their lordships on the 31st of January, 1852, when it was ordered to stand over, with liberty to Mr. Dale to make such application to the Master as he might be advised, and with liberty to any party to apply. An application accordingly having been made on behalf of Mr. Dale to the Master, the Master refused to alter the report, the correctness of which was then questioned, or in any way to interfere with or modify the order for a call. The motion by way of appeal from the decision of Vice-Chancellor Kindersley now came on to be heard before their lordships.

Glasse and *Greene*, for Mr. Dale, contended that the Master had no power to make what is called a report; that it was a report not to the Court, but to the Master himself. That the appellant had had no opportunity of questioning the report, the order for a call having been made by the Master on the same day as he had made the report. That the amount of debts and costs to which the appellant was found liable by the report was not shewn to be the proper amount, and that the Master ought not therefore to have ordered a call to be made upon the appellant. They cited *Upfill's* case, 1 Sim. N.S. 395; *Hunter's* case, 1 Sim. N.S. 435.

Bethell and *Roxburgh*, for the official manager, contended that the Master had full power to make the report and the order founded upon it. Moreover, as the appellant had not impeached the report, as he might have done, either by leave of the Court under the 99th section of the Winding-up Act of 1848, or before the Master, under the liberty given by the order of the 31st of January, 1852, he must be bound by such report if (as was the case) his liability appeared upon the face of it. That although the call, together with the previous call of 120*l.* would, in case all the contributories should pay, be more than sufficient to discharge the sums mentioned in the report, nevertheless the Master had not exceeded the powers conferred upon him by the 83rd section of the Winding-up Act of 1848, and the 28th section of the Winding-up Act of 1849, by which sections the Master was authorised to take into consideration, in fixing the amount of the call, the probability that some of the contributories might not pay it. That the Master had not, by his proceedings, come into conflict with *Upfill's* case or *Hunter's* case.

Glasse, in reply, said, that an order similar to that made in *Ex parte Hall, re The North of England Banking Company*, 1 Mac. & Gord. 307, ought to be made.

Lord Justice Lord CRANWORTH.—We are both of opinion that the decision of the Master is perfectly right. The Master's order proceeds upon a preceding report of even date, and no doubt some anomaly and difficulty might exist in dealing with that in point of form, because what Mr. Roxburgh says is perfectly true:—"If the parties object to the order because the foundation of the order had proceeded upon an error in point of fact, on the supposition that the parties were liable to something for which they were not liable, that which ought to be objected to would be the foundation, and not the order"—the report, and not the order; and the report being in this case concurrent with the order of the same date, and being, therefore, in all probability, a document to which the parties affected by the order never had access, there is, in point of form some difficulty, or there might have been. But I repeat what I have said more than once in the course of the argument, that is a difficulty which this Court would not listen to for one moment, if the party was damnified by an order proceeding upon a report which he had no practical opportunity of questioning. The circumstance that he made his complaint to the form of the order itself, and complained against the order instead of the report, is a matter that this Court certainly would not have listened to—at least, to the extent of affecting him permanently by that error in point of form. We should have given him an opportunity of questioning the report in some way or other—of letting the substantial merits be decided. We did so—at least, we thought we had done so—by giving the party an opportunity of going before the Master to make any application he might be advised to make; and if he had any means of questioning the accuracy of that which the Master calls, and probably accurately calls, his report—if he had the means of questioning that, by shewing that it was inaccurate, no doubt he would have done so. Not having done so, I think we are bound to assume that that report is substantially accurate as to the demands that are existing against this association or company, or by whatever other name it is to be designated. Then, taking that to be so, what the Master finds, in substance is this,—that the contributories of this company consist now only of forty persons, and that every one of these forty persons is liable to the same amount, each having been liable, because they, on the 1st November, 1845, all agreed, being members of the provisional committee, to take shares, and so rendered themselves liable to the expenses of forming the company thereafter to be incurred. Mr. Dale was one of those parties, and appeared to be—so it was stated, but I do not go on that much—a leading member of the committee. Expenses were incurred between that day and the 1st December following, to the extent of five thousand and odd pounds. The Master finds all that; and therefore, carrying into execution the principle laid down in the House of Lords in *Upfill's* case (*Hutton* v. *Upfill*, 2 H. L. C. 674; 14 Jur. 843), and followed by me—at least, in this sense followed by me in *Upfill's* case (1 Sim. N.S. 395), that I did not at all question what the House of Lords had done, but shewed only, or attempted to shew, to what extent it did apply, the Master follows out these views, by saying. "What the House of Lords has directed, followed by what the judgment of the Vice-Chancellor has directed, is this,—that I am to ascertain to what extent each and every of the contributories are liable. Having done that, I am to make a call to meet that liability. I do ascertain what is the extent to which the contributories are all equally liable; they are liable to the extent of five thousand and odd pounds, in respect of liabilities incurred at a given period. They are liable to that; they are liable also to the costs of winding up the concern, which is their concern, and their concern exclusively; there is no other contributory, no other liability to be at all wound up." Well, the Master, therefore, says, "As a call must be made to meet these 5,000*l.* together with the costs, I now will do, with regard to the costs, the best that the nature of the thing enables me to do. I cannot tell to a shilling what it will be, but I estimate and make the best account I can; and having made out that account, which is made out with practical accuracy, I find that the whole amount is the sum of 5,000*l.* together with another sum of 1,200*l.*; therefore, to that 5,000*l.* plus the 1,200*l.* the forty are to contribute. Almost all of it has been paid, that is, by means of another call, and, I suppose, payments before any call was made; large sums have been paid on account; but, in order to equalise all this, and to do justice, I now, having made a call of 120*l.* before this time, make a call which, in my judgment and the judgment of the official manager, will meet the case with practical accuracy, a further call of 60*l.*" I think that is all the Master can do, or ought to do. He has no possibility of arriving at a conclusion as to what absolutely, to the fraction of a farthing, these persons will have to pay. This section of the Act clearly shews that the Act did not mean to impose a practical impossibility in point of figures. That is not what he is to do. Having ascertained all the data on which he is to proceed, having ascertained that the parties before him are all equally liable to these outstanding liabilities, so far as there are any outstanding, they are to equalise them among themselves, so far as they are to be liquidated, and are to contribute to the costs. "I make that which, on the best estimate I can come to, will raise the sum which will be necessary." That, I think, is all the Master can do. He seems to me not only not to have come in conflict with my decision in *Upfill's* case, as was argued by Mr. Glasse, but to have carried into effect the principle I laid down there, and which, until I am set right, I believe to be the correct principle. Neither does he come in conflict with *Hunter's* case, which simply was this, that the Master has no right, because a man is a contributory, which may mean nothing but that he is liable to 5*l.* to say, "I now rate you, with all the rest of the contributories, to 5,000*l.* costs." That was the principle I laid down in *Hunter's* case, but which does not touch the present case; for here the Master proceeds upon the data, on which he has come to the conclusion in respect of the liabilities to third persons; whether liquidated or unliquidated is unimportant; because, if liquidated, they have been liquidated in unequal proportions. "The parties liable to this are the forty; the parties liable to the winding up are the forty. The gross sum necessary for liquidating the two will be met by the call, and this call I make." I think the Master was quite right in making it,—that is, the language he has used I think quite correct.

Motion refused, with costs.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. HENRY COOKE, Esq. Barrister-at-Law.

Nov. 16 and 17, 1851, and Feb. 17, 1852.

SMITH *v.* MULES.

Partnership—Dissolution.

Three solicitors entered into partnership, each agreeing to give his whole time and attention to the business; each was to communicate to the others on request all instructions relating to the practice: one was to attend to the duties of certain public offices, and take their emoluments in lieu of any other share in the partnership. If either should fail faithfully to observe the articles, or if two of them or either of these two should unduly absent themselves, the others or other might give notice dissolving the partnership. One of the partners absconded, and one of the others gave a notice of dissolution to the other, and served it at the absconding partner's last place of residence: but the notice so served was in the name of one only, and not of the two. The partner who gave the notice filed a bill for a dissolution, and for taking the partnership accounts, and the same was decreed; but the Court considered the notice was deficient as not being by the two: that for the purpose of dissolution the neglect of the partner who had the public offices to attend to must be shewn in that respect: that the neglect to communicate instructions was no cause for a dissolution unless a request had been previously made; but that although informal, the notice was sufficient for a general dissolution of the partnership.

This was a bill filed for the dissolution of a partnership. The plaintiff was Mr. John Bridgman Smith, and the defendants Mr. Philip Mules and Mr. Horace Vibart Mules. The facts undisputed were that in and before January, 1847, Mr. Philip Mules carried on business as a solicitor at Honiton, which had been formerly carried on by the partnership firm of Flood and Mules. The defendant, Horace Vibart Mules, assisted his father, Mr. Philip Mules, in the business, but not as a partner. In the

spring of 1847, the plaintiff, Mr. John Bridgman Smith, who had been admitted as an attorney and solicitor in 1846, and was desirous of obtaining an entrance into business as a partner in some established concern, entered into negotiations for a partnership with Mr. Philip Mules. In the course of those negotiations Mr. Philip Mules represented his business as being worth, on an average, 1,500*l.* per annum, in which estimate were included certain offices held by him, and the total income of which amounted to 421*l.* per annum. The offices were those of clerk to the Honiton Turnpike Trust, clerk to the Honiton and Sidmouth Trust, clerk and registrar to the Poor-law Union (which three offices amounted together to 205*l.*), clerk to the Commissioners of Taxes, and several other smaller offices, stewardships, &c. making up the remainder of the 421*l.* Mr. Philip Mules also represented that he was at the time entirely free from any pecuniary embarrassment, and not exposed to any pecuniary liabilities that could affect his credit. The termination of the negotiation was, that in consideration of 2,300*l.* Mr. Smith was admitted to be an equal partner with Mr. Philip Mules in the business, as from the 22nd June, 1847. The defendant, Mr. Horace Vibart Mules was also to be a partner; but, in lieu of any share of the profits of the business, he was to have, so long as all three continued partners, the emoluments arising from the three offices firstly above mentioned. Articles of partnership were drawn up accordingly of that date, by which it was provided that the plaintiff and the defendants were to be partners during the lives of them, and of any two of them. By clause 2, each was to employ all his time in the business of the partnership, and to communicate to the others or other of them, upon request, all instructions and information in any wise relating to the said partnership practice. Clause 5, that Philip Mules was to use his best endeavours to obtain the grant of the three offices above referred to, to be made to the partnership firm; that in the meantime the defendant Horace Vibart Mules should perform all the duties of such three offices at the place of business of the firm, and that such three offices should be partnership property, the defendant, Horace Vibart Mules, to take to himself the emoluments of them for and in lieu of his share of the profits of the partnership business; and so soon as Philip Mules should retire or die, the salaries of the three offices were to be divisible equally. Clause 6 provided that all other offices should be obtained, if possible, in the name of the firm, and that all the emoluments of such offices should belong to the partnership equally. By clause 7 the plaintiff and the defendant, Philip Mules, were to be entitled to the profits in equal shares, after defraying the payments and expenses, &c. aforesaid. By clause 10, each partner, immediately on receiving any moneys, notes, &c. was to make entries duly thereof, and hand them over to the plaintiff as the cashier, who was to make entries in the general cash book, and pay them to the bankers of the concern. By clause 11, the plaintiff was to be cashier, and keep all proper books. By clause 13, it was provided that the said Philip Mules was to be at liberty to assign his share in the partnership to the said Horace Vibart Mules, who, during the continuance of Philip Mules therein, should be considered as a sub-partner merely; and that on the retirement or decease of Philip Mules, the emoluments of the said offices were not to go exclusively to Horace Vibart Mules, but form part of the general partnership profits; and that such partnership profits should then be divided equally between the plaintiff and Horace Vibart Mules. By clause 14, Philip Mules was not to retire for three years, nor then without six months' notice. The plaintiff and Horace Vibart Mules needed only to give three months' notice. By clause 15, in the case of the retirement of Philip or Horace Vibart Mules, or of the death of any of the three partners, the share of the partner so dying or retiring was to accrue to the surviving or continuing partners or partner. If Philip or Horace Vibart Mules retired, they were to give their best endeavours to secure to the continuing partners all the partnership practice, offices, &c.; and in case of such retirement, the retiring partner should not for twenty years thereafter practise as a solicitor or attorney within thirty miles of Honiton. By clause 16, if, contrary to the provisoes and stipulations therein contained, either of the partners should not (not being prevented by illness or unavoidable accident) diligently and faithfully employ himself in carrying out the said partnership practice, or enter into contracts not compatible with the business, or give credit unduly, or release debts, or should knowingly commit or permit any act, &c. whereby the said partnership moneys might be taken into execution, &c. or should not, so often as he receive money, bills, notes, &c. immediately thereupon cause due entries thereof to be made in the proper books of accounts; and should and knowingly and wilfully make such omission, or if the plaintiff or Horace Vibart Mules unduly absented themselves from business, the other partners or partner might leave or give a notice, declaring the partnership to be dissolved, and the partnership should thereupon be dissolved from the day of giving such notice, in the same manner and with the same consequences as if the partnership had been determined by the voluntary retirement of the offending partner. The partnership then commenced under the provisions of the deed. Mr. Philip Mules banked with Messrs. Flood and Lott, who stopped payment in November 1847, and at that time he owed them 5,000*l.* on his private account, besides being liable to 30,000*l.* due to the bankers on the account of the former partnership of Flood and Mules. The assignees having sued for the money due, Mr. Philip Mules absconded in January 1849, and remained ever since abroad. After a time employed in endeavours to effect some arrangement, Mr. Smith, on the 16th of May, 1849, served a notice under clause 16 of the Articles of Partnership on Mr. Horace Vibart Mules, and a copy of the same was left at the late residence of Mr. Philip Mules. The bill was filed on the 12th of June following, and after stating that the plaintiff had faithfully observed the stipulations of the deed on his part, but that neither of the defendants had done so, and in particular that they did not introduce him to the clients of the firm, nor give him information on the subject of the business done, and that both of them transacted business at their private abode; that the defendants received various sums of money on account of the partnership without accounting for the same, or entering them in the books of the firm; that the defendant Horace Vibart Mules had procured some of the offices to be granted to him in his own name, and that he and the other defendant had procured others of the offices to be granted to them in their joint names, but that none of the offices were ever granted in the names of the three partners, and that no part of the money for either of the offices was ever received by the plaintiff; it was prayed that the Court would declare that the partnership subsisting, as in the bill mentioned, between the plaintiff and the defendants was dissolved, as from the 14th of May, 1849; and that the usual partnership accounts might be taken; and that the defendants might be decreed to resign the several offices, which ought, according to the articles of partnership, to be considered as belonging to the partnership; and that the defendants might be restrained from acting as solicitors or attorneys for twenty years from the said 14th of May, 1849, within a distance of thirty miles from Honiton; and that they might be restrained from removing the books of the partnership. The bill was taken pro confesso against the defendant Philip Mules. Horace Vibart Mules by his answer, swore that he had no knowledge of the particulars of the negociation for the partnership, the same having been conducted entirely between the plaintiff and the other defendant: that he never promised to introduce the plaintiff to the clients of the partnership, nor assist him in carrying on the business, save as implied by his having executed the articles of partnership, in which he had joined on the request of his father, a request with which, owing to the peculiar circumstances in which the father was placed, he, the son, was bound to comply; that he had invariably accounted for all moneys received by him to Smith, the plaintiff, whose duty it was to enter them in the partnership books of account; that he, the defendant, Horace Vibart Mules, had not obtained any grant of offices to be made out in his own name, though he had procured, or assisted in procuring, some to be made out in the joint names of his father and himself; that this was because it was impossible to get the plaintiff's name joined in the grant; that he, the defendant, Horace Vibart Mules, was only interested as a sub-partner, and had nothing to do with the partnership business as a principal; that he had tried all means of obtaining an amicable arrangement with the plaintiff; he had had nothing to do with the negotiations previous to the articles, and had received no part of the consideration-money, and therefore he insisted he was not liable to the plaintiff in this suit; he also insisted that as the plaintiff had dissolved the partnership without any sufficient reason as against him, the plaintiff must abide by the consequences of that act. The evidence in the cause was conflicting; that on the part of the plaintiff shewed the grant of some of the offices to the father and son, and one only of an inferior description to the plaintiff; that the son had not attended regularly at the place of business, where he ought to have been; that he had received moneys without accounting for the same, and that he had not introduced the plaintiff to the clients. The cross-examination of the plaintiff's witnesses, and the evidence for the defendant proved that all moneys were entered in the diary at the office, with one exception, and that the plaintiff was, in fact, introduced to, but refused to see, the clients of the firm.

The *Solicitor-General* (Sir *W. P. Wood*) and *Dickinson*, for the plaintiff.

Rolt and *Eddis* for the defendant who appeared.

Tuesday, Feb. 17.—The VICE-CHANCELLOR.—No repayment of the 2,300*l.* the consideration money for the partnership purchase is asked; and the only question is, what are the rights of the parties? Three branches of relief, without impugning the articles of partnership, are sought by this bill: first, a dissolution as from the 14th May, 1849, the date of the notice of dissolution, with the consequent accounts; secondly, an injunction to restrain the defendants, or either of them, from practising within the limits before mentioned; and, thirdly, relief as to the offices. As against the defendant, Philip Mules, a sufficient case for a dissolution, under the 16th clause, is proved to have existed; but it does not follow that because the plaintiff is entitled to dissolve partnership as against Philip he is therefore entitled to dissolve as against Horace. I think the plaintiff is bound to shew a sufficient case against him also, under clause 16. There are several events in which the plaintiff had a right to dissolve the partnership, but there are only two material to be considered; viz. whether the defendant, Horace Vibart Mules, has not diligently and faithfully employed himself, &c. (being the first cause for a dissolution under clause 16); or whether he has or not received moneys without making due entries. I think the first of these branches applies only to the business carried on by the individual partner complained of; and there is no evidence at all shewing any breach of this engagement as regards the offices, the duties of which were performed by Horace Vibart Mules. It was argued for the plaintiff, that he could not be held to have worked diligently and faithfully if he made no communications; but referring to the 2nd clause of the articles, I am of opinion he was not bound to make any communications unless requested to do so by his partners. At all events, a request would be necessary to call this part of the dissolution clause into effect; and there is no evidence of any such request having been made. Neither is the case as to this defendant, Horace Vibart Mules, within the other branch of the dissolution clause, which refers to the receiving moneys without duly entering the same. To come within this branch, it must be shewn not only that there was an omission on the part of the defendant, but that it was an omission knowingly and wilfully deceitful. This, I think, the plaintiff has not sufficiently done. On the contrary, all the sums received by the defendant, Horace Vibart Mules, are, with one exception, entered in his diary; and there is an allegation that any such entries were made at any other time than when it professes to have been made. The excepted item is small in amount, and it would be going too far to stand on it for the purpose of declaring a dissolution. One of the witnesses proves the omission, but he says nothing as to the amount, or the fraudulent intention. I am further of opinion that the partnership was not well dissolved by the notice under clause 16. Whatever might be the effect of such a notice, if the breach complained of in it were established against both the defendants, it clearly was not competent to the plaintiff alone to give such a notice without joining the other partner with himself. It cannot, however, be said that because the partnership has not been properly dissolved under clause 16; it is therefore still subsisting. The defendant, Horace Vibart Mules, has adopted this notice, and treated the dissolution as complete, and the plaintiff cannot go back from his own instrument; there must, therefore, be considered to have been a dissolution as from the 14th of May, 1849, but without the consequences mentioned in clause 16 to follow a dissolution. It remains to decide what is to be done with the offices. Under clause 5 these offices were to belong to the partnership, though the defendant Horace was to receive the emoluments as his share so long as Philip remained in the firm; and on his retirement, or death, they were to belong to the partners equally. If they had been obtained in the joint names of all three of the partners, the plaintiff would now have had a chance of possessing them, or, at any rate, would have had a joint interest in them; but Philip never used any endeavours for this purpose, and the defendants alone are now jointly interested in them. Clause 5 is sufficient to constitute these offices partnership assets; and, under the circumstances, the defendants cannot be allowed to retain them to their joint and exclusive use. The proper relief is, to charge the defendants with the value of them in the partnership accounts. This only extends to the three offices mentioned in clause 5, and not to the other offices held by the defendants, or either of them, since these are not expressly mentioned in clause 5; and this is not the case of the retirement or death of Philip Mules, nor, in my opinion, of a dissolution within clauses 15 and 16. I shall therefore declare the partnership dissolved as from the 14th May, 1849, and direct the usual partnership accounts to be taken; there will be a reference to the Master as to the value (at the time of this decree) of the three offices mentioned in clause 5 of the articles of partnership, after making a reasonable allowance for the trouble and expense of conducting and carrying on the business of the same; the defendants will be charged in the partner-

ship account with that value. An account will then be taken of the profits of the same three offices since the dissolution, making those reasonable allowances, and the defendants must account to the plaintiff for his share of such profits. As to the rest of the relief prayed, I shall dismiss the bill without costs, and shall reserve the costs of so much of the bill as is not dismissed. That will be the decree.

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

Wednesday, Feb. 25.

BUSHELL v. NIXON.

Will—Construction—Period of vesting.

Thomas Bushell, by his will, dated the 28th of August, 1808, devised to Thomas Eden, George Day, and Francis Woodward, all and singular his freehold estates, lands, hereditaments, and premises, with their appurtenances, situate and being in the hamlets, parishes, or townships of Hill and Moor, and Charlton, in the county of Worcester, or elsewhere in England, upon trust for his, the testator's wife, Susannah Bushell, for her use during her natural life, and from and after her decease, in trust, that his said trustees, or the survivor of them and his heirs, should, in case his, the said testator's said wife, should die before his youngest child should attain the age of twenty-one years, receive and take the rents, issues, and profits of the said freehold estates, and pay and apply the same for and towards the clothing, maintaining, educating, and bringing up of all and every his said children, until the youngest of them should arrive at the age of twenty-one years, then in trust, that they, the said trustees, and the survivor of them, should sell the said freehold estates, either publicly or privately, and should, by and out of the moneys to arise by such sales as aforesaid, in the first place, pay all the costs and expenses attending such sales, and then pay and divide the residue of such money unto and amongst all and every his, the testator's, sons and daughters that should then be living, share and share alike, as tenants in common, and not as joint tenants. All the testator's children attained twenty-one in the lifetime of Susannah Bushell, the testator's widow, who died on the 24th of November, 1850, and the question raised on this claim was, whether the proceeds of the sale of the testator's estates were divisible amongst the representatives of the four children, who died in the lifetime of Susannah Bushell, but were living when the youngest child attained twenty-one, together with those living at the death of S. Bushell, or whether those children who survived S. Bushell were alone entitled to the proceeds.

Bacon and *J. Barber* appeared for the plaintiff.

Malins and *Rogers* for the defendants.

The VICE-CHANCELLOR thought that the class of children entitled to the shares were those living when the youngest child for the time being attained the age of twenty-one years. The testator gave a life interest to his wife, and from and after the decease of his wife the fund was given upon trusts, which, according to the natural meaning of the words, were all governed by the clause, "in case his wife should die before his youngest child should attain the age of twenty-one years, receive and take the rents, issues, and profits, and pay and apply the same for and towards the clothing, maintaining, educating, and bringing up of all and every his said children until the youngest of them should arrive at the age of twenty-one years then in trust." By the word "then" the testator plainly meant when the youngest child attained twenty-one. It appeared to his Honour that the trust for sale here was an absolute and not a contingent trust, and that was arrived at not by doing violence to the words of the will, but by the obvious meaning, which the testator had, however, not expressed. The testator meant the time when the youngest child attained twenty-one as the time to pay the proceeds among all the children then living.

Friday, Feb. 20.

Ex parte THE BISHOP OF HEREFORD.

Copyhold Enfranchisement Act—Costs—Service of petition for investment.

Where a tenant for life of a manor, in which lands are enfranchised under the above Act, applies for the investment of the fund paid into Court for the enfranchisement, it is proper to serve the copyhold commissioners with the petition, and the Court will order their costs to be paid by the petitioner, such costs to be added to his own, and with them deducted out of the fund.

This was a petition presented under the 4 & 5 Vict. c. 35, for the investment of moneys, part of a larger fund standing to the credit of the copyhold commissioners.

By the 4 & 5 Vict. c. 35, s. 56, for the commutation of manorial rights, lords of manors, whatever be their interest therein, are empowered to enfranchise any of the lands holden of the manors in consideration of such sum or sums of money payable either forthwith, or at a future time as shall be agreed to be paid by the tenant, whose lands are to be enfranchised. By the 58th section of the Act, the expenses of every agreement for enfranchisement are to be borne by the lord and tenants in such proportions as they may agree, or in default of agreement, as the commissioners may direct, provided always that the expenses payable by lords of manors, having particular interests, or being trustees, shall, with any other expenses they may reasonably incur in or about any such agreement, the amount of such last-mentioned expenses being subject to the approval of the commissioners, be paid out of the first moneys to be received out of the enfranchisement to be effected under the Act. By the 69th section, lords of manors having particular interests, or being trustees, may, with the consent of the commissioners, charge the costs and expenses paid by them in respect of the commutation or enfranchisement on the manor. The 73rd section enacts, that all moneys to be paid for enfranchisement shall be paid to the lord of the manor, his heirs or assigns, where he shall be absolutely seised as tenant in fee-simple in possession of the manor, or where, as trustee for sale or otherwise, he has power to give an effectual discharge for such moneys, and where the lord shall be only entitled for a limited estate or interest, or shall be under any legal disability, such money shall, if it exceed 200*l.* be paid into the Bank in the name and with the privity of the Accountant-General of the Exchequer, there to remain until the same shall, by order of that Court made upon the petition of the party who would have been entitled to the rents and profits of the manor had no such enfranchisement been made, be applied in the discharge of incumbrances affecting the manor, or in the purchase of lands, to be settled to the like uses, and in the meantime the same money may, by order of the said Court, upon application thereto, be invested by the said Accountant-General in his name in the purchase of Three per Cent. Consolidated Bank Annuities or Three per Cent. Reduced Annuities, the dividends, in the meantime, to be paid to the person who would have been entitled to the rents and profits of the manor, if no enfranchisement had been made.

The Copyhold Commissioners were served with the petition in the present case, and claimed their costs of appearance in court. In the first instance these costs were allowed without observation; but the registrars having stopped the order on the ground that the commissioners ought not to have been served, and that the Lord Justice Knight Bruce, when Vice-Chancellor, had so held. The matter having been again brought before the Court by

Prendergast, who appeared for the Copyhold Commissioners, and

Willcock, who appeared for the petitioner.

The VICE-CHANCELLOR said that he had communicated with Lord Justice Knight Bruce, and that he was prepared to decide that service of the petition on the Commissioners was necessary, and gave them a right to appear on the hearing. As to costs, the question was one of more difficulty, and but for a decision of the Vice-Chancellor Knight Bruce (*Ex parte the Archbishop of Canterbury*, 1 Coll. 154), who granted the costs of the petitioner out of the fund, his Honour should have doubted his jurisdiction to make any order as to the costs of either the petitioner or the commissioners. He would, however, follow that precedent; and as the commissioners had a right to appear at the hearing of the petition, he thought that the proper order on the present occasion would be, that the petitioner should pay the costs of the commissioners, and add them to their own, and take such costs out of the fund.

Saturday, March 6.

Ex parte THE ARCHBISHOP OF CANTERBURY.

Ex parte THE DEAN AND CHAPTER OF ST. PAUL'S.

Ex parte THE BISHOP OF LONDON.

These were similar petitions to that presented in the last case; and

Wigram appeared for the petitioners in the first two petitions.

Kent, for the Bishop of London.

Prendergast, for the copyhold commissioners, applied for costs, and referred to the case of *Ex parte the Archbishop of Canterbury*, 1 Coll. 154, and contended that the costs might be paid out of the fund paid into court for the enfranchisement, as expenses reasonably incurred in and about the agreement, under the 4 & 5 Vict. c. 35, s. 58.

The VICE-CHANCELLOR directed that the costs of the commissioners should be paid by the petitioners, and that they should take their costs so incurred out of the fund paid into court for enfranchisement.

Saturday, March 13.

MACKENZIE v. MACKENZIE.

Practice—Writ of attachment.

An order was made in a cause, and in the matter of the Trustee Act, 1850, by which A. B. was ordered to transfer a sum of stock. In the affidavit of service of this order, the order was described as entitled in the cause only. Upon this affidavit a writ of attachment for disobedience to the order was issued against A. B. but it was discharged for irregularity, on the ground of the difference between the title of the order and the description of the title in the affidavit.

This was a motion to discharge a writ of attachment which had been issued against Mr. Duncan Mackenzie, for disobedience to an order of the Court. The application was made on the ground, among others, of the irregularity in the affidavit of service of the order. The case has already been reported upon another point, ante, vol. 18, p. 205. On the 22nd of January last, an order was made on the motion of Robert Mayne, that the order of the 8th of August, 1851, mentioned in the former report, should be discharged, and that Duncan Mackenzie should concur with Robert Mayne in making a transfer of the stock into court. This order was entitled:—

"Between E. F. Mackenzie, plaintiff; and D. Mackenzie, R. Mayne, and P. S. Keir, defendants; and between E. F. Simpson, an infant, by her next friend, plaintiff; and C. R. Simpson, defendant; and in the matter of the Trustee Act, 1850."

The affidavit of the service of this order on D. Mackenzie, and upon which affidavit the writ of attachment issued, was entitled thus:—

"Between E. F. Mackenzie, plaintiff; and D. Mackenzie, R. Mayne, and P. S. Keir, defendants; and between E. F. Simpson, late an infant, by her next friend, plaintiff; and C. R. Simpson, defendant."

The only difference then between these titles was that in the latter the word "late" was inserted before "an infant," and there was no mention of the Trustee Act, 1850. In the affidavit, the deponent stated "that he did personally serve the said D. Mackenzie with an order made in this cause." Mr. D. Mackenzie being in custody upon the attachment,

Toller now moved the discharge of the writ.

Tennant opposed the motion.

The VICE-CHANCELLOR (after conferring with Mr. Berrey) said that it was Mr. Berrey's opinion, that if the title in the affidavit had followed the title of the order, the affidavit would have been regular, although the title of the order might not have been correct; and further, that as the title in the affidavit did not follow the title of the order, the Trustee Act, 1850, being mentioned in one but not in the other, the affidavit was irregular. His Honour thought that the opinion of the officers of the Court in such matters was deserving of great consideration, and he should follow it in this case. There was the possibility that there might have been a service of some other order. The writ of attachment must be discharged.

Toller applied for the costs, contending that in such a matter, the Court had no discretion as to the costs.

The VICE-CHANCELLOR thought differently, and refused to give Mackenzie any costs.

Monday, March 15.

STRUTT v. BRAITHWAITE.

Settlement—Construction—Exclusive Appointment.

By a marriage settlement an estate was conveyed to trustees upon trust for the husband for life, and afterwards for the wife for life; and after the decease of the survivor, to pay and apply the rents towards the maintenance and education of all and every the child or children of the marriage, until such child or children should attain twenty-one, and when and as such child or children respectively (if more than one) should attain twenty-one, then to convey the same premises unto such child or children in such manner, shares, and proportions for such uses, estate, and estates as the husband and wife jointly or the survivor of them alone should appoint; and in default of appointment, to convey the premises unto and amongst such children equally, share and share alike, to hold as tenants in common and not as joint tenants; and if there should be but one such child who should live to attain twenty-one, to convey the same premises to such only child and his or her heirs for ever:

Held, that the power of appointment did not permit the exclusion of any of the children of the marriage, and that in default of appointment, all the children of the marriage, whether attaining twenty-one, or dying in their parent's lifetime, or not took equal vested interests in the estate in fee.

By an indenture of settlement, dated the 13th of April, 1784, made on the marriage between John

Strutt and Sarah Susannah Strutt (then S. S. Freeman), the said Sarah Susannah Strutt, with the privity and approbation of John Strutt, conveyed to Henry Mayo, Joel Oseland, and Nathaniel Taylor, and their heirs, certain real estates of which she was then seised in fee, to hold the same unto the said Henry Mayo, Joel Oseland, and Nathaniel Taylor, their heirs and assigns, upon trust that they, and the survivors and survivor of them, and the heirs of the survivor of them, should stand seised of the said hereditaments and premises, to the use of the said Sarah Susannah Strutt, and her heirs, until the solemnisation of the said then intended marriage and immediately thereafter, upon trust for the said John Strutt and his assigns, during his natural life, as therein mentioned, and after the decease of the said John Strutt, then upon trust for the said Sarah Susannah Strutt, and her assigns, during her natural life, as therein mentioned; and from and immediately after the decease of the survivor of them, the said John Strutt and Sarah Susannah Strutt, upon trust to pay and apply the rents, issues, and profits of the same premises towards the maintenance and education of all and every the child or children of the said John Strutt on the body of the said Sarah Susannah lawfully to be begotten until such child or children should attain his, her, or their age or ages of twenty-one years; and when and as such child or children respectively (if more than one) should attain the said age of twenty-one years, then upon trust to release and convey the same premises unto such child or children in such manner, shares, and proportions, for such uses, estate, and estates, as they, the said John Strutt and Sarah Susannah should jointly in their lifetime, or which the survivor them the said John Strutt and Sarah Susannah should alone by any deed or instrument to be by them jointly executed or executed by the survivor of them in the presence of three or more credible witnesses or by the last will of the survivor of them the said John Strutt and Sarah Susannah, or any deed or writing purporting to be, or in the nature of, a last will and testament, to be executed and attested in the presence of three or more credible witnesses, give, devise, direct, limit, or appoint; and for want of, and in default of, any such deed, will, disposition, direction, or appointment, then upon trust to release and convey all the same premises, with the appurtenances, unto and amongst such children equally, share and share alike, to hold as tenants in common, and not as joint tenants; and if there should be but one such child who should live to attain the age of twenty-one years, then upon trust to release and convey all the same premises, with the appurtenances, unto such only child, and his or her heirs for ever; provided that in case it should happen there should be no such lawful issue of the said then intended marriage, or being any, all such issue should happen to die without having any lawful issue, in the life-time of both the said John Strutt, and Sarah Susannah Strutt, or after her decease, and in the lifetime of the said John Strutt, then and in either of such cases, the said trustees, and the survivors and survivor of them, and the heirs of such survivor should stand seised of and convey the same premises to such uses as the said Sarah Susannah should by any deed or will to be executed, published, and attested as therein mentioned, and notwithstanding her coverture, direct or appoint to take effect from and immediately after the decease of the survivor of them, the said John Strutt and Sarah Susannah his then intended wife, or their issue under the age of twenty-one years; and without issue as aforesaid, and in default of and subject to any such last-mentioned direction or appointment, upon trust to convey the premises to the right heirs of the said Sarah Susannah. There were eight children and no more of this marriage, viz. William Freeman, Joseph Henry, and Eliza Susannah (all since deceased), Sarah and Maria, George (since deceased), Louisa the wife of Geo. M. Braithwaite, and Matilda. Of the three trustees, Nathaniel Taylor was the survivor, and he died intestate as to the legal estate in the trust property, and it was not known who was his heir. William F. Strutt died in July 1799, under twenty-one, and unmarried, leaving his brother, Joseph Henry Strutt, his heir-at-law. By a settlement, dated the 2nd of May, 1827, made on the marriage of Mr. and Mrs. Braithwaite, Mrs. Braithwaite's interest under the settlement of the 13th of April, 1784, was covenanted to be conveyed to Joseph Henry Strutt, Joseph Lythgoe, and Richard Mott, in fee, upon trust for Mrs. Braithwaite and the children of the marriage. George Strutt died in April, 1832, intestate, having attained twenty-one, but never having been married, leaving Joseph Henry Strutt his heir-at-law. Eliza Susannah Strutt died in June, 1834, intestate, having attained twenty-one, but never having been married, leaving her father, John Strutt, her heir-at-law. Sarah Susannah Strutt died in July, 1830. She and her husband not having exercised the joint power of appointment given by the settlement of 1784. By an indenture dated the 12th of January, 1835, John Strutt, in exercise of the power given by the settlement of the 13th of April, 1784, appointed that the hereditaments and premises comprised in the said settlement should, subject to his life-estate, go, remain, and be to the use of the said Joseph Henry, Sarah, Maria, and Matilda Strutt equally, as tenants in common, and their respective heirs and assigns; and directed that the trustees of the settlement should immediately after his death convey and assure the said hereditaments and premises accordingly. Joseph Henry Strutt died in 1848, after having attained twenty-one, intestate as to his real estate, and leaving George Henry Strutt his eldest son and heir-at-law. John Strutt, the father, died on the 19th of May, 1850, having, by his will, dated the 21st of June, 1848, given all his real estate to his said four daughters, in equal shares, as tenants in common, and their respective heirs and assigns. The present suit was instituted by the three unmarried daughters, and the will prayed that the appointment of the 12th of January, 1835, might be declared a valid appointment, or, if not, that the Court should declare the rights of the several parties, and that, under the Trustee Act, 1850, the Court would vest the same trust estates in the persons severally entitled thereto.

Bacon and *Mott* appeared for the plaintiffs; and

Sergeant for all the defendants, excepting G. H. Strutt.

C. Hall and *E. F. Smith* for the defendant, G. H. Strutt.

Bacon, in reply.

The following cases were cited:—*Vanderzee* v. *Aclom*, 4 Ves. 771; *Gordon* v. *Hope*, 13 Jur. 382; *Kenworthy* v. *Bate*, 6 Ves. 793; *Boraston's* case, 3 Co. Rep. 19; *Doe* v. *Lea*, 3 Term. R. 41; *Cohen* v. *Waley*, 15 Sim. 318; and *Skey* v. *Barnes*, 3 Mer. 335.

The VICE-CHANCELLOR said that this was a very obscure settlement, and no one in construing it could feel sure what was the construction which the parties contemplated at the time. As to the validity of the appointment by Mr. Strutt, the surviving husband, that was an appointment to some only of the objects of the power, and that raised the question whether the power did or did not authorise an exclusive appointment. That question turned entirely, as it appeared to him, on the grammatical force to be attributed to the word "such," in the clause giving the power to appoint "unto such child or children in such manner, shares, and proportions, and for such uses, estate, and estates, as they, the said John Strutt and Sarah Susannah should, jointly in their livestime, the survivor of them" should appoint. If "such" meant such as they should choose to appoint, there could be no doubt that the power authorised an exclusive appointment. If "such" was to be taken in the sense of "the said," the power did not authorise an exclusive appointment. The question was, whether the meaning of the word "such" was throughout the same, or whether "such" was used in the sense of "the said." In the first place, his Honour found a trust to "pay and apply the rents, issues, and profits of the premises towards the maintenance and education of all and every the child;" that was the only place in which the word "the" was used—"or children of the said John Strutt on the body of the said Sarah Susannah lawfully begotten, until such child or children"—that must mean all, not excluding any,—"should attain his, her, or their age or ages of twenty-one years, and when and as such child or children respectively, if more than one, should attain the said age of twenty-one years, then upon trust to release and convey the same premises unto such child or children;" that must mean *the said child or children*, following the previous description. The next place where his Honour found it introduced seemed to him to remove all doubt whatever, "and in default of any such deed, will, disposition, direction, or appointment, then upon trust, to release and convey all the same premises, with the appurtenances, unto and amongst such children equally, share and share alike," and the word "such" must there have the same grammatical force as it had, where the parents were empowered to appoint—"and if there should be but one such child who should live to attain the age of twenty-one years, then upon trust to release and convey all the same premises, with the appurtenances, unto such only child, and his or their heirs for ever." It appeared to him, on the language, that "such" was used there in the place of the definite article, and if it was read otherwise, it must be seen that it was not the sense in which it was meant to be used. His Honour thought, therefore, that the power did not warrant an exclusive appointment, and therefore the appointment by Mr. Strutt was bad, and there must be a declaration to that effect. Then, who were the parties to take in default of appointment? Three constructions were contended for. It was first said that those children only were to take who survived the surviving parent. His Honour could not think that there was any ground for that construction. This was a marriage settlement. The Court always endeavoured to construe marriage settlements so as not to make the interest of the children depend on their surviving their parents; and in the case referred to by Mr. Hall (*Gordon* v. *Hope*) there was a trust to pay to and among all and every the children and issue of the marriage to be paid to sons at twenty-one, and to daughters at twenty-one or marriage, after the death of the parents, and it was held that the fund vested in the children as they came of age, though they died in the lifetime of the parents. There could be no doubt that in this case the children attaining twenty-one took vested interests, though they died in the lifetime of their parents. The next question was, whether the children who died under twenty-one, took any interest; and as to that his Honour must say that he did not see his way on legal principles of construction to exclude any child who died under twenty-one from taking a share in the property. It was on those words of gift in default of appointment that the argument "upon trust to release and convey all the same premises, with the appurtenances, unto and amongst such children equally, share and share alike, to hold as tenants in common, and not as joint tenants; and if there should be but one such child who should live to attain the age of twenty-one years," &c. That, it was contended, was like a clear gift to all of them at twenty-one, for thereby that word "such" was meant such as should attain twenty-one; and if there should be but one such child who should live to attain twenty-one, it could not there mean one child only, but all the children. It was not safe, on an instrument so framed as this, to depart a single step from the literal meaning of the words. If to attain twenty-one was to be the condition of vesting, what became of the share of a daughter marrying under twenty-one, and dying before that age? There was not to be a gift over in case of one dying leaving lawful issue during the parent's existence. A daughter therefore dying under twenty-one, leaving a child would prevent that gift over taking effect, though she took no share, which would be incongruous. His Honour thought there was no principle on which he could say that any of the children were to be excluded. The next question was, what estates did they take in default of appointment? He thought there was no doubt they took estates in fee. The conveyance to the trustees was in fee, upon trust, after saying they were to convey to such children as the parents should appoint, in default of appointment to the children as tenants in common, and if only one, then all to such one, his heirs and assigns. In a marriage settlement which was for the benefit of the children, a direction to convey must mean to convey to the children in fee. There must be a declaration that the appointment was bad, and the property was divisible into eighths, of which Joseph Henry Strutt took three-eighths; the devisees of the heir of Eliza one-eighth; Mrs. Braithwaite's trustees, one-eighth; and the three plaintiff's each one-eighth: and as one trustee of the original settlement was dead, and the other could not be found, there must be an order vesting the estate in the person entitled according to the declaration.

Friday, April 2.

Ex parte CHAPPELL, *re* THE MERCHANT TRADERS' SHIP, LOAN, AND INSURANCE ASSOCIATION.

Joint-Stock Companies Winding-up Acts—Bankrupt certificate.

A company became bankrupt in May 1848, *and was subsequently ordered to be wound up. A. B. a shareholder in the company, became bankrupt in November* 1848, *and obtained his certificate in January* 1849. *The Master placed A. B.'s name on the list of contributories; but it was*

Held, that A. B.'s certificate was a bar to his liabilities, and that his name was improperly placed on the list of contributories.

This was a motion on behalf of John Cramer Chappell, that the decision of Sir William Horne, dated the 3rd of December, 1851, placing Mr. Chappell's name on the list of contributories as a shareholder who had executed the company's deed of settlement in respect of 100 shares, might be discharged or varied by placing the names of his assignees under his bankruptcy on the list in his place. The company was provisionally registered on the 18th of September, 1845. The business of the company was discontinued in the Autumn of 1847, and on the 8th of May, 1848, was declared bankrupt. The circumstances of the company are stated in the report of the case. (*Ex parte Lord Talbot*, 18 Law T. Rep. 328.) On the 6th of November, 1848, Mr. Chappell, who was the holder of 100 shares in the company, was declared bankrupt, and he obtained his certificate of conformity on the 11th of January, 1849.

Bacon and *Hoare*, in support of the motion, referred to the 88th section of the Winding-up Act of 1848, and the 30th section of the Amendment Act of 1849, and cited *Kuper's Assignee's* case, 3 De G. & Sma. 113.

Roxburgh and *Morris*, for the official manager,

cited *The South Staffordshire Railway Company* v. *Burnside*, 20 L. J. 120, N. S. Ex. 120.

The VICE-CHANCELLOR said that he considered Mr. Chappell [illegible] The company became bankrupt in M. 1848. Before that time the company had incurred liabilities, and for those no doubt Mr. Chappell had been liable to contribute; but they appear to have been clearly barred by his certificate. If, after his certificate had been obtained, a suit had been instituted against him and the other shareholders to enforce their liabilities, he could have pleaded his certificate in bar of the suit. The Winding-up Act only appointed another mode of enforcing the liabilities; and the calls Mr. Chappell was now required to pay were in respect of a contribution really payable by or due from him before the period of his bankruptcy. His certificate was a bar not to these calls, quâ calls, but to the liabilities to satisfy which they were made. His Honour therefore thought that Mr. Chappell's name ought to be removed from the list of contributories, and that the costs of all parties should be paid out of the estate.

April 1 *and* 2.

***Ex parte* YELLAND, *re* THE PORT OF LONDON SHIPOWNERS' LOAN AND ASSURANCE COMPANY.**

Joint-stock Companies Winding-up Acts — Contributory.

A company was completely registered, and A. B. applied for shares, and two were allotted to him. A. B. paid the deposit upon the shares, and his name was returned to the registry office as a shareholder, but he never executed the company's deed of settlement. That deed of settlement expressly provided that the liabilities and privileges of shareholders should commence upon their execution of the deed. The company was ordered to be wound up, and it was

Held, that A. B. was a contributory in respect of two shares.

This was a motion on behalf of Robert Easton Yelland, that the decision of Master Tinney, of the 21st of November, 1851, whereby the name of the said R. E. Yelland was placed on the list of contributories in the second-class of the above-named company in respect of two shares might be reversed, and that the name of the said R. E. Yelland might be struck out of the list of contributories. The Port of London Shipowners' Loan and Assurance Company was provisionally registered on the 24th of February, 1847 - the capital to consist of 50,000*l.* in 500 shares of 100*l.* each - and the deed of settlement of the company was dated the 8th of April, 1847. The 83rd section of that deed was as follows:—"That immediately upon the execution of the deed of settlement of the company, or such deed of accession thereto in the manner aforesaid, the person executing the same being a person duly entitled by original subscription, or by transfer, election, nomination, or otherwise, in the manner hereinbefore mentioned, shall be forthwith entered on the register of shareholders, and duly returned to the joint-stock registry office, under the provisions of the Registration Act, and shall thenceforth, but not before, assume the liabilities and privileges of a shareholder, and if such person be entitled in any of the representative capacities as aforesaid, as the nominee of any party so entitled, the dividends accruing on the share or shares to which such party or the nominee of such party shall have been so entitled after the event on which such title shall have accrued, and before the execution of the deed of settlement or the deed of accession thereto, shall, unless forfeited under the 39th clause of these presents, be accumulated for and paid to the person so executing at the time of such execution, whose receipt then given, and no other, shall be a valid and sufficient discharge for the same; but in all cases of transfer the former holder of the share in respect of which such execution is made, shall, until such execution and registration as aforesaid, be entitled to the dividends up to or before that time paid on any such share, and to all other the privileges, and be subjected to all the liabilities of a shareholder in respect of the same share." The company was completely registered on the 22nd of April, 1847. Mr. R. E. Yelland having applied for shares in the company, the following letter was sent to him:-

"London, 29, St. Helen's-place, Bishopsgate, July 20, 1848.

"No. 1,117.

"SIR,—In compliance with your application for shares in the Port of London Ship Owners' Loan and Assurance Company, I beg to inform you that two shares have been allotted to you.—I am, Sir, your obedient servant,

"AUGUSTUS COLLINGRIDGE,
"Managing Director.

"N.B. A certificate will be given in exchange for this letter, on executing the deed."

On the 22nd of July, 1848, the following letter was forwarded to Mr. Yelland:-

"R. E. Yelland, esq. Bideford.

"22nd July, 1848.

"DEAR SIR,—The 31st of this month being the day appointed by the 7 & 8 Vict. for the return to be made to the Registrar of Joint-Stock Companies, I beg to inform you that you will be furnished immediately after that date with a printed list of upwards of 200 proprietors who, during the past half-year, have executed the registered deed of settlement of this company. It may be as well to add further, that the aim of the directors having avowedly been directed throughout to the distribution of the shares in the hands of as many parties as possible, the actual number of shareholders at this moment exceeds 960, whose attested signatures will be obtained as early as the different localities in which parties reside will admit of.—I am, dear Sir, yours faithfully,

"AUG. COLLINGRIDGE,
"Registered Officer."

On the 24th of July, 1848, Mr. Yelland paid 10*l.* the deposit on the two shares allotted to him, and received an acknowledgment of the same, but he never executed the deed. Mr. Yelland's name was returned to the Registrar Office as a shareholder on the 1st of August, 1848, and the return was duly registered; but Mr. Yelland's name was therein stated to be Robert *Eastern* Yelland. In 1850, the company was ordered to be wound up. (11 Law T. 391.) The Master placed Mr. Yelland's name on the list of contributories in respect of two shares.

Willcock and *Terrell* appeared in support of the motion of appeal from the Master's decision.

Roxburgh and *Morris* appeared for the official manager.

[illegible] following [illegible] cited:- *Hutton* v. *Thompson*, 3 House of Lord Cases, 191; *Ex parte Hall*, 1 Hall & Twells, 581 and *Carrick's case*, 1 Sim. N.S. 505.

The VICE-CHANCELLOR said that he considered the Master had rightly placed Mr Yelland's name on the list of contributories. The company appeared to have been completely registered; and Mr Yelland, having applied for shares, received a letter from the managing director, stating that, in compliance with his application, two shares had been allotted to him. Shortly afterwards, Mr. Yelland sent to the company's office 10*l.* by way of deposit on the two shares, and the secretary forwarded to him an acknowledgment of the receipt of the deposit of 10*l.* The contract between Mr. Yelland and the company was thus rendered complete. All that remained to be done was the execution of the deed by Yelland. By the 83rd section of the company's deed of settlement it was provided that immediately upon its execution the person executing it being a person duly entitled by original subscription or otherwise as therein mentioned, should be forthwith entered on the register of shareholders and duly returned to the Joint Stock Registry-office under the provisions of the Registration Act, and should thenceforth, but not before, assume the liabilities and privileges of a shareholder. Here the company had inserted Mr Yelland's name on the register of shareholders, and had returned his name to the Registry-office without his having executed the deed of settlement. But his Honour said, it appeared to him that as Yelland had agreed to take shares and had accepted them, he had authorised the company to put his name on the register without his execution of the deed. The misnomer of Mr. Yelland was of no moment, and his Honour thought that the Master had come to a right conclusion in placing Mr. Yelland's name upon the list of contributories. The costs of the official manager of this application must come out of the estate.

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. BENNET, Esq. of Lincoln's-inn, Barrister-at-Law

Thursday, Jan. 15.

HAMBROOK *v.* SMITH.

Discovery — Title deeds — Forfeiture — Practice.

Deeds which were in a defendant's possession formed the evidence of title of both parties to the estate in question. On a bill seeking for a discovery (inter alia) of what had become of the same, and in whose possession, custody, or power they were

Held, that the defendant must discover by his answers as to those deeds; although he may incur a forfeiture, and although, in the event of the Court deciding at the hearing on one point against the plaintiff, he might not be entitled to a discovery.

If a discovery may be useful for obtaining any relief which the plaintiff may obtain, the plaintiff is entitled to a discovery.

An exception to one interrogatory, as numbered in the bill, will not be overruled, although part of that interrogatory may have been answered.

This cause came on by way of exceptions to the defendant's answer in the two particulars more immediately referred to in the Vice-Chancellor's judgment.

Goodere, in support of the exceptions.

Chandless and *Surrage*, contrà, contended that the exceptions were bad in point of form, extending, as they said, over more than one interrogatory, and they relied upon the well-known rule, that if a defendant would lay himself open to a forfeiture by his answer, he was not bound to make such discovery. They cited the following cases: *Wrottesley* v. *Bendish*, 3 P. Wms. 235; *Chancey* v. *Fenhoulet*, 2 Ves. sen. 625; *Atkins* v. *Wright*, 14 Ves. 211; and Wigram on Discov. 2nd Edit. 199, s. 285; Hare on Discov. 222; *Short* v. *Mercier*, 3 M'N. & G. 205; *Adams* v. *Fisher*, 3 My. & Cr. 526; *The Attorney General* v. *Thompson*, 8 Hare, 1[illegible]; *The Attorney-General* v. *Strutt*, 3 Beav. 396; *Bute* v. *The Glamorganshire Canal Company*, 1 Phil. 681; *Glover* v. *Hall*, 2 Phill. 484.

Goodere, in reply, said, by the General Orders the interrogatories in the bill, were directed to be numbered, and each interrogatory should have an exception to the whole of the answer to it; and that the latter portion of the interrogatory would be unintelligible, if it alone formed the exception. That a defendant, if he answers at all, must answer fully. That both parties had a common interest in most of those title deeds. He relied on *Ovey* v. *Layton*, 2 Sim. & S. 251; *Duncombe* v. *Davis*, 1 Hare, 184; *Lord Portarlington* v. *Soulby*, 7 Sim. 28; Mitf. on Pleading, 193, 4th edit.

JUDGMENT.

The VICE-CHANCELLOR.—The first question raised upon these exceptions is, whether they are good in form. It is contended, on the part of the defendant, that they are bad in form in this respect, that such exceptions embrace more than one interrogatory; and that inasmuch as one of the interrogatories embraced in the exception has been sufficiently answered, even if another has not been sufficiently answered, the exceptions ought to be altogether overruled. Now, as to the effect of such exceptions, embracing more than one interrogatory, as to the first exception, in one sense, there are two questions, but properly embraced in one interrogatory, because it is all an interrogatory as to in whose possession the documents are. It appears to me that there is no impropriety in embracing the whole of that in one interrogatory, and no impropriety in embracing it in one exception, though a portion has been answered. The same observation applies to the second exception, and therefore there is no objection in form. The next question is this—that having the discovery sought here would not in any way assist the plaintiff in obtaining a decree when the cause comes on to a hearing, and for that reason, besides the *other*, the plaintiff ought not to be allowed to compel the defendant to answer. Now the matter has been argued as if the discovery sought was what deeds are the scheduled deeds. But the discovery is not what the deeds were, for that has been answered, and the schedule has been set out, but the discovery is, in whose possession are these documents now, and in what right? Now it is said, and said very truly, that inasmuch as the defendant claiming under the *will* of the testator's wife is entitled to this property if the will is valid, and if that question is decided against the plaintiff, the plaintiff will have no relief whatever at the hearing. But I need not say that I cannot now determine whether the question will be decided in favour of the plaintiff or the defendant. It is enough that there is such a question. But supposing it should be determined in favour of the plaintiff that the will is invalid; then is there not relief which the plaintiff would be entitled to at the hearing, for the purpose of obtaining which the discovery here sought is or may be material? The plaintiff asks that the estate may be given up to him, and that the deeds may be delivered to him in order to found a claim. Now the facts of the case are these:—By indenture of the 29th and 30th of November, 1832, being a voluntary settlement made by Samuel Smith, the husband of Elizabeth Smith, certain real estate was conveyed to a trustee upon trusts for the benefit of Elizabeth Smith, during her life, and after her death to such use as she should appoint by her will; and, in default of such appointment, in trust for Mary Hambrook, her heirs and assigns for ever. In the year 1815, Samuel Smith prevailed upon the trustee to reconvey the estate to him, his heirs, and assigns. In April 1848, Elizabeth Smith died, having by her will appointed that all the hereditaments comprised in the said indentures of 1832, should remain and be to the use of her husband during his natural life, or until he should be found or declared a bankrupt, or should take the benefit of any Act for the relief of insolvent debtors, or convey or assign or incumber his aforesaid life estate or interest, or any part thereof, by way of anticipation, and after the decease of her said husband, or other sooner determination of his aforesaid estate or interest, then to other persons mentioned in the will. Mary Hambrook died in 1846, leaving Samuel Smith Hambrook her heir, who filed his bill on the 22nd of March, 1851, against Samuel Smith and others, alleging that the will of Elizabeth

Smith was invalid, and that he was therefore entitled to the hereditaments under the indentures of 1832, as in default of appointment, and also alleging that immediately upon the death of his wife Samuel Smith obtained possession of the deeds of 1832, and still retained possession of them, and praying a conveyance of the estate and delivery up of the deeds. Now the bill contained the following interrogatories: "9. Whether the said Samuel Smith did not at the time of the death of his said wife, or at some other time, and when he obtained possession of the said indentures of settlement of November, 1832, and the other title-deeds hereinbefore in that behalf mentioned, or of some, and which, of the same respectively, and whether he does not not now retain such possession either by himself or by his solicitors, or agents, or some or one of them or otherwise, or in whose possession are the same now and in what right." "19. And that the said Samuel Smith may set forth a list and schedule of the title-deeds and muniments of title relating to the hereditaments the subjects of the said settlement of 1832, and if he shall allege himself to have parted with the possession of the same, or any of them, then that he may state what hath become of such of the same, the possession of which he shall have parted with, and in whose possession, custody, or power the same now are and under what title respectively." The defendant, Samuel Smith, by his answer admits that at the time of, or very shortly after, the death of his said wife he did obtain possession of the indentures of 1832, and he sets forth a schedule of the deeds in his possession, and says that he had at one time in his possession some other title deeds and muniments of title relating to the said hereditaments, and that before the institution of this suit he parted with them." He then submits and insists that he ought not to be compelled to state what had become of the same, or in whose possession, custody, or power they were, inasmuch as he is advised and believes that having regard to the terms of the trust in the defendant's favour contained in the said will, such discovery would or might subject him to forfeiture and loss of his interest in the said hereditaments under the said will. Now when the cause comes on to be heard the Court will first have to determine the question as to the validity of the appointment: if it determines that it is invalid the plaintiff's bill will have to be dismissed; but if the will is held to be valid and the Court is of opinion that the plaintiff is right, what will the Court have to decree? Why a conveyance and delivery over of the deeds to the plaintiff. Now upon the exceptions it is no protection against answering to say, "In one event of the decision of the Court you will be entitled to no discovery at all." If a discovery may be useful for obtaining any relief which the plaintiff may obtain, I apprehend in that case the plaintiff is entitled to a discovery, and here it may be most material to the plaintiff to have a discovery of the hands in which the deeds now are. It may be material even before the cause comes to a hearing, because it may be necessary to make the person in whose hands the deeds are a party; and if it were not for the question that arises as to forfeiture, I should have considered it a clear case, and that the defendant was bound to answer in whose custody the deeds are. In fact, these deeds were the common property of both parties, and are the foundation of the title of both parties—the deed of settlement, for instance. These would be no doubt subject to the question of forfeiture, but that the defendant would be bound to set out all the deeds, and that the plaintiff would be entitled to production. It is not necessary to determine that; and, indeed, the defendant has set out a schedule of the deeds in his possession. If he, having got the legal estate from the trustees, has parted with the deeds, then is he not compelled to state to whom he has parted with the deeds? All the cases cited by the defendant are cases relating to production, except the case of *Stainton v. Chadwick*, 15 Jur. 1139. Now, the principle on which the Court proceeds as to compelling a party to set out deeds, and also as to applications for production, is this,—if the plaintiff's title is positively disputed, and the documents in question could not in any way assist the plaintiff in any relief he is to ask for at the hearing, the Court may not only not compel production, but may not compel a schedule of them to the answer. But if the documents may assist the plaintiff in obtaining any portion of the relief which, in one event of the decision upon the given point, he may become entitled to, there the party is entitled to discovery by having the deeds set out, and also to production, subject only to this, that if the Court sees upon motion for production that there is a point to be determined, upon which the title of the plaintiff depends, and which the documents will not help, then the Court may say in this stage of the cause the Court will not compel production. Now, as to that case cited from the Jurist, I conceive that the dictum of the Lord Chancellor must have reference to documents not necessary to a decree at the hearing, but which will become necessary for a reference to the Master or some consequential proceeding. I am of opinion that really, if there were not this question arising as to forfeiture and loss which the defendant may sustain, there could be no reasonable doubt as to the right of the plaintiff to have the discovery; and that brings me to the question as to forfeiture. Now that stands thus:—the defendant says this will of the wife (which he has a right to assume for this purpose will be, or at least may be, a valid testamentary appointment) has made the defendant's life estate depend upon his not alienating; that is to say, has made his estate cease upon alienation, and go over to other persons; and he says: "If I disclose to the plaintiff the hands in which I have placed these deeds, I shall forfeit this estate, because it may shew or tend to shew that I have done an act which will determine my estate." Now *Monnins v. Monnins*, 2 Ch. Rep. 68, no doubt, seems to have decided this, that where an estate is given to a woman durante viduitate, and therefore was only to endure so long as she remained a widow, she might protect herself from answering as to the fact of whether she had contracted a new marriage. On the other hand, there are other cases referred to. The case before Lord Talbot (cited in 2 Atk. 393) and other cases, which go to shew distinctly this, that the Court can distinguish between two classes of cases; or if a certain estate is given to an individual, with a condition annexed, or that upon the happening of a certain event, forfeiture of the estate so given; the other, that an estate is so limited, as only to endure till a certain event occurs, and then to go over. No doubt in many cases this is so, and the distinction is fine, but well established, not only as to discovery, but as to many other questions. The latter is called a conditional limitation. I doubt the correctness of that; but it means that the estate is limited to endure till a certain event happens, and then to go over; that is clearly the meaning of the term. Now, in this case, according to the terms in the will of Samuel Smith's wife, the estate is given to him absolutely for life, with a certain condition annexed, so that upon the happening of the condition, that is to say, upon alienation, it is given over to other persons. Now, it would be very difficult, in a Court of Equity, to maintain the proposition that a man has a right to say, "Although I am in possession of an estate which was only to endure till the happening of a certain event, I can, in equity and moral justice, refuse to disclose whether the event has happened, upon the happening of which my estate is to determine." If there were no decision upon the point, I should have found it very difficult to say that he could protect himself from giving such discovery, when the refusal is, in effect, saying this, "Although my estate has determined, and although I am most wrongly in possession, I have a right to refuse to disclose whether it has determined." I should find it extremely difficult to hold this: but the decisions clearly establish that this is not a case of forfeiture to which the rule applies, though the defendant is not compelled to set out that which would create a forfeiture, any more than that which would subject him to a penalty. Now, the cases cited, except that of *Monnins v. Monnins*, which appears overruled by subsequent cases, seem to have determined that there is a distinction between the case of estates to endure for life, but to go over in case of a particular act being done, and the case of an estate to endure until the happening of a certain event; and that if an estate was given to a man for life, unimpeachable for waste, so that if he commits waste he may forfeit, he is not compelled to disclose an act which might cause forfeiture. I am of opinion, therefore, that the objection to discovery on the ground that it might subject the defendant to what he calls forfeiture, is not good. I think, therefore, that I am bound to overrule these exceptions.

Exceptions overruled.

Common Law Courts.

EXCHEQUER CHAMBER.

Reported by C. J. B. Hertslet, Esq. Barrister-at-Law.

ERROR FROM THE EXCHEQUER.

Dec. 1, 1851, and Feb. 6, 1852.

(Before Patteson, Coleridge, Maule, Wightman, Cresswell, Erle, Williams, and Talfourd, JJ.)

Jones v. Johnson and Another.

Replevin against Magistrates - 5 & 6 Wm. 4, c. 76, s. 92--55 Geo. 3, c. 51 - 1 & 5 Wm. 4, c. 18 - Construction of—Borough rate need not be made in public—Rate for expenses already incurred - Warrant—Receipt and date of -Extension of time—Distress on overseers after the expiration of their term of office—Warrant signed by mayor in his capacity of mayor and as justice—Jurisdiction.

The council of a borough made an estimate pursuant to the Municipal Corporations Act (5 & 6 Wm. 4, c. 76, s. 92) in which they included a certain sum for compensation awarded to a former town-clerk, and for legal expenses, a part of which had been already paid, and a rate was accordingly made.

At a meeting to which the public were not admitted, but at which the reporters for the press were present, the council proceeded to make an order directed to the overseers of certain parishes to pay the proportions of the said rate assessed upon their parishes out of the poor-rates; and they then issued a warrant to their treasurer commanding him, within 100 *days* from the date thereof *to demand the same from the said overseers. The treasurer, by his precept, required the overseers within* 100 *days* "after the receipt hereof," *to pay the said sum out of the poor-rates.*

The plaintiff, one of the overseers, having made default in payment, a warrant was issued by the defendants, being the mayor and justices. The warrant did not aver that the justices were acting within their jurisdiction, but it had a venue in the margin, and after directing a certain sum to be levied by distress of plaintiff's goods, concluded thus:—"Given under our hand and seal, and under the corporate seal of the said borough city. T. J. (L.S.), M. B. M. (L.S.), justices of the said borough and city (corporation seal), T. J. mayor." The defendant Johnson was not stated in the body of the warrant to be mayor of the borough, but he had executed it in his double capacity of mayor and justice of the borough. The plaintiff's term of office as overseer had expired at the time the distress was made:

Held—1. *That borough justices may make a rate at an ordinary meeting of the town council, and that they are not required, like county justices, to make their rates at a public meeting.*

2. *That the rate being good upon the face of it, the fact of such legal expenses being included, did not make it void.* [*The authority of the case of Woods v. Reed, 2 M. & W. 777, doubted.*]

3. *That the variance in the warrant to the treasurer, and in that to the overseers, was immaterial, inasmuch as the time allowed for payment of the sum was not thereby abridged.*

That the distress was properly made on the goods of the plaintiff.

That the warrant was not the less the act of the mayor because he had also signed it as justice, but that he might act in both characters.

This was an action of replevin for taking certain goods. The declaration was in the ordinary form. Plea—Not guilty (by statute). The first avowry by both the defendants stated that Lichfield was an ancient borough, having a body corporate; that the borough fund was insufficient for the purposes of the 5 & 6 Wm. 4, c. 76 (the Municipal Corporation Act); that the council of the borough made an estimate of what would be sufficient, and ordered a borough-rate in the nature of a county-rate, and appointed one J. W. Proffitt, the collector, and ordered that the sum of 666*l.* 16s. 1½d. then payable by St. Mary's parish should be paid by the overseers of the said parish to the said J. W. Proffitt out of the poor-rates made and collected, *or to be made and collected*, for the said parish. The avowry then went on to state the nonpayment by the overseers of the sum of 77*l.* 16s. 1½d. balance of the said sum of 666*l.* 16s. 1½d. and that a distress warrant was issued, and the goods seized, in pursuance thereof. The second avowry was immaterial. Replication—De injuria.

The cause was tried at the Stafford Summer Assizes 1850, when a special verdict was taken, finding the following facts:—That Lichfield was a borough corporate; that the plaintiff, at the time of the making of the borough-rate thereinafter mentioned, was one of the overseers of the poor of the parish of St. Mary, in the said borough of Lichfield; that the defendants were two justices of the peace of the said borough; that the borough being included in Schedule A of the Municipal Corporations Act, and the borough fund not being sufficient for the purposes of the Act of 1 Vict. c. 81, on the 19th July, 1817, a meeting of the council of the borough was held, according to the 69th and 92nd sections of the first-mentioned Act, but which meeting was *not a public* meeting, the members of the town council and the reporters of the press only being allowed to be present, and the meeting not having been advertized in any newspaper, there being no newspaper published at Lichfield · at such meeting the said council made the rate in question, carried resolutions, and entered the minutes of the proceedings under the corporate seal of the borough, duly signed by the mayor. The order in council was then set forth. It ordered a borough-rate to be made, by which the parishes of St. Michael, St. Mary, and four other parishes and places being within the borough were assessed at certain sums. It then ordered that the churchwardens and overseers of the above-mentioned parishes and places should pay the amount of their proportions "out of the poor-rates

made and collected;" that Henry Hitchins should be appointed collector of the rates, to act as overseer, &c.; and that J. W. Proffitt, treasurer of the borough, should make demand in writing on behalf of the said council, of the said churchwardens and overseers of the poor of the respective sums assessed on the said parishes, &c. and which sums the churchwardens, &c. were required to levy and pay to the treasurer within 100 days after demand; and in case the said churchwardens, &c. should neglect to levy and pay the said sums within 100 days after demand, the treasurer was to levy the same by distress of the goods of such churchwardens and overseers. An estimate of expenditure and assets made at the meeting of the council was then set out. It contained, amongst others, the following items: —"Compensation to the late town clerk three years and a half, 105*l*. 11s. 10*d*.; law expenses, 800*l*." The first of these items was introduced under the following circumstances:—a Mr. Simpson had been town clerk of Lichfield before and at the time of the passing of the Municipal Corporation Act, when he was dismissed from his office by the town council. He, therefore, claimed compensation, and being refused, obtained a mandamus, on which he recovered against the town council 467*l*. for damages and costs. Subsequently an annuity of 30*l*. a-year was awarded to him for compensation; being dissatisfied with that, he appealed to the Treasury; and whilst that appeal was pending, the sum of 105*l*. 11s. 10d. being the arrears of the annuity, was included in the estimate. The other sum was introduced under the following circumstances:—A. Eggington, the town clerk of the borough and attorney for the council, in defending them in the matter of the mandamus, paid to the said Mr. Simpson, the sum of 467*l*. the amount of damages and costs. This was a voluntary payment to save the corporation from expense, he intending to charge it to the council as a disbursement. He had not delivered a signed bill to the council on the 19th July, 1847. Under these circumstances the item of 800*l*. was introduced into the estimate as a sum that would be required to pay Mr. Eggington his bill of costs for that and other suits, then unascertained, including the before mentioned payment of 467*l*. The proportions of the rate were according to the fair annual value of the rateable property, and on the 19th of July, 1847, a precept or warrant, signed by the mayor of the borough, and sealed with the corporate seal, was, by order of the council, issued to J. H. Proffitt, the treasurer, whereby he was commanded, within 100 days *from the date thereof*, to demand from the said churchwardens the sums assessed upon the said parishes; and if the said churchwardens, &c. should refuse or neglect to pay the same within 100 days after demand and notice, then to give information thereof to the said council. Accordingly, on the said 19th July, Proffitt made his precept to the churchwardens and overseers of St. Mary (the plaintiff being one), in which, after reciting the order, and the warrant of the council, he required that "within 100 days *next after the receipt*" thereof by them, they should pay to him, "out of the poor-rates made and collected, *or to be made and collected*," the sum of 666*l*. 16s. 1½d. On the 29th July, 1847, a copy of this precept was left at the house of the plaintiff. The plaintiff inspected the rate, and gave notice of appeal, and the rate was confirmed. The churchwardens and overseers of St. Mary afterwards paid to J. W. Proffitt three several instalments on account of the rate, amounting altogether to 513*l*. leaving the balance due on the 30th March, 1848, when the plaintiff went out of office and ceased to be overseer. A successor was appointed to the office, and on the 11th July, 1848, after the expiration of the 100 days, and after the plaintiff had ceased to be overseer, the two persons who still then continued churchwardens, and the plaintiff and James Gilbert were by J. W. Proffitt summoned to appear before the defendant Thomas Johnson, he then being mayor of the said borough, and the other defendant Major Butler Morgan, then being a justice of the peace of the said borough, in respect of the nonpayment of the balance of the sum assessed on the parish of St. Mary. On the 13th July, 1848, the plaintiff attended before the defendants, and the hearing was adjourned until the 25th, and from thence till the 3rd August following, the plaintiff promising to pay the residue, and, in fact, before the last-named day, paying a further sum of 76*l*. on account of the balance of 153*l*. 16s. 1½d. The plaintiff did not attend on the 3rd August, and the defendants upon the application of the attorney for the council of the borough, decided that a distress warrant should issue, and such warrant was, on the 10th of August, 1848, prepared, signed, sealed, and delivered to the said attorney, who was then town-clerk of the borough, for the purpose of having the corporate seal affixed thereto, it being his duty to attend when the corporate seal was affixed to documents; he, however, altered the date from the 10th to the 14th of August, but with the assent and direction of the defendants, who re-signed and re-sealed it, and the corporate common seal was then affixed by the defendant, the mayor, who then signed it. On the 4th of July the council duly resolved at a meeting, that this amount be enforced, and that the mayor do sign and affix the common seal to all necessary documents in reference thereto. On the 14th of August the corporate seal was duly affixed to the warrant, and it was delivered to Mr. Proffitt, who took the goods and chattels of the defendant, described in the declaration, and kept possession of them until they were replevied. No notice of action was given to the defendants, or either of them, before the commencement of the suit. On the 19th of July, 1847, there were two high constables for the borough. Proffitt never had been one. The warrant, under which the distress was made, commenced thus:— "Borough and city of Lichfield." It was directed to Mr. Proffitt and others, and commanded them to levy 77*l*. 16s. 1½d. by distress of the goods of the plaintiff and others; and proceeded, "and if within the space of five days next, after such distress by you taken, the sum of 77*l*. 16s. 1½d. shall not be paid, that then you do sell the said goods," &c. and concluded, "Given under our hands and seals, and under the corporate seal of the said borough and city, this 14th day of August, A.D. 1848. T. Johnson (L.S.); M. B. Morgan (L.S.), justices of the said borough and city. Thomas Johnson, Mayor. (Corporate Seal.)"

The case was argued on the 2nd November, 1850, when judgment was given for the defendants, against which decision the plaintiff now brought his writ of error.

J. Gray, for the plaintiff, after going fully through the pleadings and the facts, as found by the special verdict. First, this rate was bad. By the Municipal Corporation Act, 5 & 6 Wm. 4, c. 76, s. 92, "The borough justices are to order a borough-rate, in the nature of a county-rate, to be made within their borough, and for that purpose the council of such borough shall have within their borough all the powers which any justices of the peace assembled at the General or Quarter Sessions have," under the 55 Geo. 3, c. 51, s. 1, "or as near thereto as the nature of the case will admit." Now the 55 Geo. 3, c. 51, s. 1, authorises county justices "assembled at their General or Quarter Sessions," to make county-rates, to make them in public. Nothing turns upon the exception in the 92nd section of the Municipal Corporation Act; but I do not rely solely upon this; the subsequent Act is a declaratory Act; the 4 & 5 Wm. 4, c. 48, recites that doubts existed whether the business of making county-rates should be transacted publicly and in open court, and then goes on to declare and enact, all such business shall, after the passing of that Act, be transacted "publicly and in open court." This being a declaratory Act, shews the construction that ought to be put upon the 55 Geo. 3, c. 51, the word "declare" throws a light on the previous Act, and leaves no doubt of the intention of the Legislature. The Municipal Corporation Act was passed after the 4 & 5 Wm. 4, c. 48; and in mentioning the 55 Geo. 3, c. 51, it must be taken to refer to it as it is required to be read by the subsequent Act. The true meaning of the Act is declared by the 4 & 5 Wm. 4, c. 48, and the reading of it is settled by that Act. The 7 Wm. 4, and 1 Vict. c. 81, after reciting the Municipal Corporation Act, enacts that the overseers to be appointed shall have the same powers vested in them, and shall be subject to the same regulations, &c. for levying and collecting such rate, as if they had been appointed by any law now in force. This further explains the true reading of the Act, and shews that the subsequent statute, 4 & 5 Wm. 4, c. 48, adds nothing to the law, but only declares its true meaning. Now, what power had the county justices to make a rate? Why, to make it "in public and open court." [MAULE, J.— There is nothing requiring the council to hold the court in public generally.] Whatever may be the case with respect to other matters, in all matters incidental to making rates, the county justices are empowered to make such rates in public; and the same power is to be exercised, "or as near thereto as the nature of the case will admit," by the council. The law provides no means of making the proceedings public afterwards That which is applicable to county justices at Quarter Sessions, is equally applicable here; and there is as much reason for requiring that the proceedings in both cases should be public. The Court below said that the council was not a Court, neither is the Quarter Sessions a Court of Justice when engaged in the business of rates, and that surely was not a satisfactory reason for deciding the case as they did. The rate ought to have been made in public, and as it was not so made, it is bad. Secondly, the rate is retrospective: it is not made to pay expenses to be incurred, but to repay expenses and disbursements already owing. [PATTESON, J.—In this respect the rate is good upon the face of it; if that be so, is it competent for you to take this objection in an action against persons acting under it?] Yes; it often occurs that a man is rated for property he does not possess; the rate may be good upon the face of it, and the justices may have been ignorant of the fact. Yet he is liable in trespass for the error. (*Rex* v. *The Justices of Kent*, 10 B. & C. 477.) [COLERIDGE, J.—The rate is not retrospective. MAULE, J.—Is a rate wholly void if only partially retrospective, or is it only subject to appeal?] The 92nd section of the Municipal Corporation Act says, "and in case the borough fund shall not be sufficient for the purposes aforesaid, the council of the borough is hereby authorised and required from time to time to estimate as correctly as may be what amount in addition to such fund will be sufficient for the payment of the expenses *to be incurred*." [MAULE, J.—You are to pay a number of things out of the borough fund, and if that is insufficient you may make an estimate of what is requisite. The sums received for the purposes of that estimate to be applicable to the purposes to which the original fund might be applied; the Act particularly provides for some expenses previously incurred, and clearly includes some retrospective matters. Salaries to officers are not paid beforehand, and if the fund be insufficient you may raise money by the means there pointed out for the purpose required. Nothing is said in the Act about the amounts being due; the word retrospective is not used.] In consequence of the case of *Woods* v. *Reed*, 2 M. & W. 777 (and see the note thereon), the Legislature passed the 7 Wm. 4, and 1 Vict. c. 81. That case decided that under the Municipal Corporation Act the council of a borough have no power to make a retrospective rate. In that case the question for the Court was, whether the council of the borough could by virtue of the Municipal Corporation Act legally order a borough rate in the nature of a county rate to be made within their borough, for the payment of expenses which had before then been incurred in carrying into effect the provisions of that Act; and Lord Abinger, C.B. there said, "If the words of the clause were not so clearly prospective we might perhaps take advantage of the ambiguity to give some latitude to their construction; but they are plainly prospective only." The object, then, of the new Act was to get rid of the inconvenience which had arisen by giving notice to parties of what they must guard against in future, and that they must take care to have money in hand to meet expenses. The Municipal Corporation Act gives them full power to have money in hand, this is to be an estimate of expenses to be incurred, and may be made on a liberal scale; but a calculation or estimate of debts already incurred is unnecessary, inasmuch as it can be accurately ascertained. The inconvenience of the present year's ratepayers paying the expenses incurred last year is evident; here the litigation had been going on for years; the Act says the amount is to be estimated, not ascertained, and the estimate may be made at any time they want the money. [ERLE, J.—Is not the meaning of *expenses to be incurred, payments to be made?*]. The question is, what is the meaning of the words of the Act, and there is no expression in it equivalent to *payments to be made*. [MAULE, J.—"Expenses to be incurred in carrying into effect the provisions of this Act," viz. to be incurred after the Act came into operation, not after the estimate.] The purposes of the Act may require expenses to be incurred after the estimate, the borough-fund may be sufficient for past expenses. The Court of Ex. was right in holding that the words "expenses to be incurred" means to be incurred after the estimate. He cited *Reg.* v. *The Justices of Flintshire*, 5 B. & Ald. 761; *Rex* v. *The Chapelwardens of Haworth*, 12 East, 556; and *Cortes* v. *The Kent Waterworks Company*, 7 B. & C. 314. In the last case, Bailey, J. in his judgment, which was delivered after time taken to consider, after fully going into the case, said: "There are two objections to these rates. The first is, that they are retrospective, and have the effect of casting upon the tenants at one period burdens which ought to have fallen on those who were tenants at a preceding period." . . .

"Every one of the gaol rates made by the commissioners under the Woolwich Act was made to pay sums previously paid by them; and the effect of that was to throw the burden of the rate not upon those occupiers who ought to bear it, but upon some other persons who by law were not liable to bear it." . . . . . "These objections to the gaol rates appear to us to be fatal." In that case the rate was good upon the face of it, and no objection was raised on that ground. It is immaterial, however, whether the rate was good on the face of it or not. In that case there was nothing to be done before; here the law requires that an act shall be done, namely, the making an estimate; and if that be not done, the rate is bad. [MAULE, J.—All the Act requires is, that an estimate shall be made, an estimate of such a sum as may be deemed requisite.] The rate is to be made with reference to the sum required by the estimate. The facts of this case shew that damages and costs had been paid to Simpson by the town-clerk of his own accord, and not by their desire; he has no remedy, therefore, against the corporation. The proceedings throughout have been incorrect.

Then the treasurer directs the churchwardens and overseers to pay the sum assessed within hundred days from the *receipt* of the precept, whereas the warrant of the council requires him to pay it within one hundred days from the *date* of the warrant to him. The requirements of the Act of Parliament have not been complied with, and the avowry does not shew that the Act of Parliament has been followed; and there is a fatal variance between the avowry and the order in council; if the officer is allowed to depart from the terms of the warrant of the council, he may favour one parish more than another. [Maule, J.—The warrant was served the day and year aforesaid; in that respect, therefore, there was nothing wrong.] It appears by the special verdict that it was not served till the 29th, although dated the same day; but, however it may be, whether the overseers had the full time or not, the Act must be strictly adhered to. The neglect on which the warrant is to issue is the neglect to pay within the time mentioned by the warrant of sessions. The overseers may have no notice of the time, if the high constable or treasurer inserts what date he pleases; the warrant should shew his jurisdiction on the face of it; the proceedings were altogether irregular, and the warrant required by the Act has never issued. [Maule, J.—He only says, "Pay me within a certain time;" you contend that he should have said, "Pay me within a certain time fixed by the Council," so as to give them notice.] Yes; the effect of these proceedings is, that they have had no warrant from Proffitt, and no notice, and that they are, therefore, not liable to a warrant of distress. I pray your Lordship's judgment, on the ground that the avowry is bad, independent of the special verdict. The special verdict sets out the warrant to Proffitt, "within one hundred days," to do certain acts. The Court below said that that might be read as "one hundred days from demand;" but that cannot be so, because if he is to pay the money within one hundred days from the receipt of the warrant, and to receive it within one hundred days from the demand, he would probably be paying it before he received it. The one hundred days mentioned in two places in the mayor's warrant must be read as meaning the same one hundred days. [Coleridge, J.—Would a demand on the 101st be void?] Yes; if the hundred days have elapsed, then the warrant is at an end. Then the overseers are not liable after they are out of office; the distress should be on the overseers in office. A remedy is given by the 55 Geo. 3, c. 51, s. 12, which, after providing for the distress, provides for the reimbursement of the overseer, which clearly shews that the proceedings should have been against the existing overseers, for those out of office would have no opportunity of reimbursing themselves. The 14th section of that Act gives a right of appeal. Suppose he appeals, and the warrant is running on, and his period of office concludes before the hearing of the appeal; that at the hearing the appeal is decided against him, and a distress issues; in such a case, you make a man pay, without giving him any opportunity of reimbursing himself. [Maule, J.—If the overseer goes out of office after he has paid, his successor "may and shall" make a rate to reimburse him.] There is only one other point which only goes to one avowry. The 7 Wm. 4 and 1 Vict. c. 81, s. 1, provides that the warrant shall be under the hand and seal of the mayor or two justices of the peace. Now there is nothing in the body of this warrant to shew that this requirement had been complied with. The corporate seal and the mayor's signature was a nullity—it could not be looked upon as a ministerial act. Having once signed and sealed it there was an end of their authority. At first it might be valid, but any further act might vitiate, but cannot alter, the character of the document.

The Court said there were a great many points in the case, and at present they would not hear *Keating* and *Whitmore* for the defendants.

Cur. adv. vult.

JUDGMENT.

Friday, Feb. 6.—Patteson, J.—In this case, which was argued last term, the first objection taken was that the borough-rate for which the distress was made, was not made in public. The power to make such a rate is given by the 92nd section of the 5 & 6 Wm. 4. c. 76, by which it is enacted that "the council shall have all the powers which any justices of the peace assembled at their general or Quarter Sessions in any county in England have within the limits of their commission by virtue of the statute 55 Geo. 3, c. 51, or as near thereto as the nature of the case will admit; and all warrants required by the said Act to be issued under the hands and seals of two or more justices shall in like case be signed by the mayor, and sealed with the seal of the borough." The 55 Geo. 3, c. 51, directs the county-rate to be made by the justices at sessions, but is silent as to its being made in public. It seems that a practice had prevailed, by which the business required to be transacted by the justices at general or quarter sessions was conducted in private, and to remedy this the 4 & 5 Wm. 4, c. 48, was passed, and which enacts that all business appertaining to county-rates shall be done and transacted publicly and in open court; and if done otherwise it should not be binding or effectual. This latter statute is not referred to, in terms, by the 5 & 6 Wm. 4, c. 76, s. 92, and it is contended by counsel for the plaintiff that, as it is a declaratory Act, and has put a construction upon the 55 Geo. 3, c. 51, it therefore, on reference to that Act, obliges the town council of any borough to make a borough-rate in public. Now, the town council of a borough are a representative body, but the justices at sessions are not. There is, also, no clause throughout the 5 & 6 Wm. 4, c. 76, which requires any of the proceedings of the town council to be conducted in public, nor have they any general or open court in which they transact business. It may well be, therefore, that the Legislature purposely omitted any reference to the 4 & 5 Wm. 4 in the 5 & 6 Wm. 4. But the words of the 92nd section are, "as near thereto as the nature of the case will admit," and the nature of the case will not admit of the town council transacting their business publicly in open court, they not having such a court. Whether the acting publicly in open court is part of the power given to justices at sessions, be the true construction or not of the section, we have no provision ordering the making of a borough-rate by the council to be in public. The second objection is, that though the rate in question is good on the face of it, yet that it is void, because the estimate of expenses for defraying which the rate is made, includes some expenses already incurred; and the case of *Woods* v. *Reed*, 2 M. & W. 777, is cited as a direct authority on this point. The 92nd section of the 5 & 6 Wm. 4, speaks of borough-funds, and in the early part of it specifies the purposes to which the borough-fund shall be applied, amongst others, in the payment of various expenses incurred under the provisions of the Act. Such expenses must necessarily have been incurred before the application of the borough-fund in payment of them. Therefore that part of the section clearly affords an answer to the question now before us. The section contemplates the borough-fund arising from the ordinary revenues of the borough being more than sufficient for the purposes specified, and provides for the application of the surplus: it then contemplates the borough-fund being insufficient for the purposes specified, and it provides in that case "the council of the borough is hereby authorised and required from time to time to estimate, as correctly as may be, what amount, in addition to such fund, will be sufficient for the payment of the expenses to be incurred in carrying into effect the provisions of this Act," and to raise the amount by a rate; "and all such sums levied in pursuance of such borough-rate shall be paid over to the account of the borough-fund." The Court of Ex. in *Woods* v. *Reed* construed those words "to be incurred" in reference to the time of the making of the rate, and by analogy to the cases of poor-rates and church-rates, which cannot be made retrospectively for the payment of charges or expenses, but must be prospective; and they held that a rate made by the town-council for bygone expenses would vitiate a rate otherwise good upon the face of it. The principle recognised in the case of church-rates is, that the rate-payers ought to be liable only for expenses incurred whilst they are rate-payers, and are not to be contributory to those incurred before they become so. This seems applicable to the case of a borough-rate equally with any other; but still it may be that the words "to be incurred" used in this section may have reference, not to the time of the making of the rate, but to the time of the passing of the Act. If this be the true construction, the case of *Woods* v. *Reed* cannot be supported. But without decidedly determining that point, we think there are other answers to this objection which render it untenable. In the first place the special verdict does not distinctly shew that the items objected to in the estimate were properly bygone expenses. They appear to be sums paid by way of compensation to the former town-clerk, the amount of which could not be told at the time of the making of the rate, but which were still under litigation; also the expenses of various litigations which were at that time not fully ascertained; part, therefore, would be paid by the town-clerk of his own accord and out of his own funds, and part would come into the estimate of the amount required to be raised. Some latitude must, therefore, be allowed, and particularly in cases of litigation the council may be justified in treating them as expenses not actually incurred before the delivery of the solicitor's bill. It does not clearly appear those sums were bygone expenses. In the next place, the rate being good upon the face of it, and unpaid, the defendants, acting only as justices, and not having made either the rate or the estimate, were justified in issuing their warrant of distress, and the plaintiff cannot say the rate is bad as regards them. It is not said the plaintiff was not a person liable to be rated; and even if the rate be wrong, he cannot raise that question in this action. This point was not taken in *Woods* v. *Reed*. If the plaintiff be aggrieved by the rate he may appeal to the recorder of the borough under the 92nd section. The third objection is, that the warrant of the treasurer to the overseers does not fix the same time as the warrant of the mayor to the treasurer, the latter being 100 days after demand, and the former on receipt of the treasurer's warrant; and it is contended that the 55 Geo. 3, c. 51, s. 12, requires the same time to be specified in each in a clear and positive manner; and that the treasurer's warrant is altogether void if it does not agree in this respect with that of the mayor. This objection is shaped in two ways. First, with regard to the avowry itself; secondly, with regard to the finding in the special verdict. The avowry states in substance that the council, to wit, on the 19th of July, made a rate and appointed a treasurer to collect it, and ordered the overseers to pay it out of the poor-rates, but does not mention any time; and then it says—"The mayor, to wit, on the day and year last aforesaid, made a warrant to the treasurer, commanding him, within 100 days, to demand, collect, and receive the money from the overseers;" and thereupon the treasurer made his warrant to the overseers, and thereby demanded that within 100 days next after the receipt thereof they should pay the money; and that afterwards, to wit, on the day and year aforesaid, a copy of such warrant was left at the house of and received by the plaintiff. It is argued that this avowry can only be supported by treating the day mentioned as immaterial, by which it would appear that both warrants were on the same day. The warrant by the treasurer was received on the day of the date, and so 100 days from that date, or 100 days from the receipt, would embrace precisely the same time. If it did not, the warrant of the treasurer, according to the argument, would be void. But then, if the avowry be so construed, the finding of the special verdict that it was received on the 29th of July, would shew that the avowry was not proved. This argument proceeds on the supposition that the warrant of the treasurer would, if it did not correspond exactly as to the time of payment with that of the mayor, be void under the provisions of the 55 Geo. 3, c. 57, s. 12. But we are of opinion that the statute is in that respect directory; and whatever might have been the case if the time had been abridged, the warrant is not vitiated by the extension of the time, as no distress could be made till the more extended time mentioned in it. However, this is not strictly material, and whether or not it might be open to special demurrer, it is good after verdict unless there is any variance. We may observe that the mayor's warrant does in truth give the extended time, because it directs the treasurer to apply for a distress-warrant if the money be not paid within 100 days, demand having been first made; the fair meaning of which is, 100 days after demand made. The fourth objection arises on the demurrer to the fifth plea in bar, namely, the plaintiff being out of office at the time of the distress, is not liable to have his goods seized. An answer was given in argument, and acquiesced in by the council for the plaintiff, that the distress is given for the offender's goods, and the plaintiff was the offender, and by the statute the subsequent overseers can make a rate to reimburse him. A fifth objection took place (which is in truth only a question of costs), and it was contended that the avowry was not supported, for the warrant of distress having been signed by the defendant Johnson, as a justice, he could not afterwards sign it as mayor; but we are of opinion that he may act in both characters, and the warrant is not less the warrant of the mayor because it is also that of the justice. On these grounds the judgment should be affirmed.

Judgment affirmed.

INSOLVENCY COURT.

Reported by David Cato Macrae, Esq. of the Middle Temple, Barrister-at-Law.

Thursday, March 25.

Re John Wolsey.

Effect of the new law of evidence—The costs of a nonsuit may be treated as a debt incurred or contracted by the plaintiff.

This insolvent to day received his adjudication. The history of the case it is unnecessary to give more fully than is indicated in the judgment, and only that portion of the judgment is given which has reference to the legal matter involved.

Mr. Commissioner Law said, the effect of the new law of evidence, by which a party has the option to be his own witness, is beneficial or injurious, according as the testimony admitted by it may be true or false. The other innovation, which requires a man to become his adversary's witness, will commonly be subservient to truth. Those who are ready to gain an unjust end by other means, will sometimes shrink from committing perjury themselves. The case before us furnishes a peculiar instance of the operation of this new law. The invi-

tations to the adversary to come forth and give evidence were mutual. On the one part it was meant to frighten and extort money. On the other part, it was given in the desire to expose a fraud. The result was, that the honest man stood up to the combat; the other ran away. We do not know what sort of evidence the plaintiff would have produced, nor what particular facts he would have related himself, if Mr. Dayrell had withdrawn from the annoyance of an examination, and not answered to the call. On first bringing forward the demand, the plaintiff wrote letters threatening to placard him and expose him at his club, and, still relying on extortion, he had the impudence to subpœna Mr. Dayrell as a witness, and declared that, if the defendant appeared in court, he would give him such an exposure as would disgrace him for life; thus at the same time bullying him with a subpœna, and seeking to deter him from obeying it. But he was defeated with his own weapons: he was himself subpœnaed by the defendant, and the result was as I have stated. In 1846 the insolvent was a petitioner of this Court. His schedule did not contain Mr. Dayrell as a debtor. On that occasion he lodged 100*l*. for 1,700*l*. as a voucher for money which he said was owing to him from some other person. Now he says that he had Mr. Dayrell's 100*l*. in his possession at that time; but never thought of it, and adds that he supposed him to be dead or abroad. One cannot doubt that it has been manufactured since that time. Mr. Dayrell's solicitor swears that it is not in that gentleman's hand-writing; and that his name is wrongly spelt. It is without a date. The insolvent says that he saw him write it in the presence of a dozen persons. What, then, but a consciousness of falsehood, should have prevented him from standing up to swear to it, when the law both entitled him and invited him to do so? It is too late that he should to-day venture to speak in support of his claim: he cannot expect to be believed. This observation arises, that a man who has shrunk from committing perjury . . Westminster-hall, finds himself driven to it here. There he wanted the courage to tell his false tale. Here he wants the better courage to renounce it. He cannot here decline to be a witness; a petitioner for liberty must seek it through his own evidence. In repeating the story which he dared not repeat before a jury, he chooses what he probably thinks to be the least of two evils. It is not the least, though the alternative was undoubtedly a painful one. Mr. Nicholls has very properly pointed to a doubt which may possibly be entertained, whether this debt for costs can be treated as a debt contracted by the insolvent. I remember the same question to have been made many years ago on the meaning of the expression "debts incurred." At that time the law disabled a man from receiving a discharge within five years after a prior insolvency or bankruptcy, unless he could shew that his new debts . . necessarily incurred, &c. But it was urged that a plaintiff who, failing in his action, was adjudged to pay costs, had not incurred that debt, because those costs . . against him without his wish or assent—and that it was therefore not a debt whose necessity he was called upon to shew. It seemed to me, and seems so still, that a man who has become indebted through a transaction, in which he not only acted with his own free will, but of which he was the sole originator, must be deemed to have incurred and contracted such debt. In that case the insolvent had been resisting his bankruptcy by bringing wanton actions against the assignees, actions justified on no legal . honest principle . . failed, and was in custody for costs: and it was held that he had incurred those debts unnecessarily. So in the present case I consider that the insolvent has contracted the debt for costs unnecessarily, and worse than unnecessarily. The action was brought in the mere spirit of wrong, and this debt is the fruit of an unjust and vicious attempt to obtain money through an abuse of the law: an attempt which, if contrived by two, would have been an indictable conspiracy. Made by one, it is an act of fraud, and by means of this act the large debt for costs has been contracted. Moreover, it was contracted without the prospect or intention of paying it; for among the threats employed was this: that if the plaintiff should not succeed, he would immediately take the benefit of the Insolvent Act. The insolvent will be discharged forthwith as to other creditors; and as to Mr. Dayrell, when he shall have been in custody at his suit for a period of twelve calendar months from the vesting order.

Circuit Reports.

OXFORD CIRCUIT.

Reported by J. E. Davis, Esq. Barrister-at-Law.

Worcester, March 8.

(Before Mr. Justice WIGHTMAN.)

REG. *v*. NEW[ALL].

Perjury—Evidence—Proof of charge before justices, upon the hearing of which perjury is alleged.

The defendant was indicted for perjury alleged to have been committed by him on the hearing before justices of a summons charging him with being the father of an illegitimate child:

Held, that, to support the indictment, it was necessary to give evidence of the charge made by the mother, either by production of the original order made thereon, or by giving secondary evidence of the summons after notice to the defendant to produce it, and that, in the absence of such notice, it was not sufficient to produce the minutes of the proceedings by the clerk to the justices, those minutes being of no greater authority than the notes of a shorthand writer.

The defendant was indicted for perjury. The indictment alleged that "at a Petty Sessions of the Peace holden in and for the borough of Kidderminster, in the said county [of Worcester], on the 6th day of February, A.D. 1852, before William Boycott, the younger, William Nicholls, and Henry Talbot, esquires, justices of our said lady the Queen, assigned to keep the peace in and for the said borough, and also to hear and determine divers felonies, trespasses, and other misdemeanours in the said borough committed, Richard Newall appeared in pursuance of a certain summons requiring him to answer any complaint which one Ann Jones should then and there make against him touching her having been delivered of a bastard child, of which she alleged him to be the father, and for the maintenance whereof she had given proof that he did, within twelve calendar months after its birth, pay money; and the said Richard Newall then and there, upon the hearing of the said complaint, offered himself as a witness for and on behalf of himself, the said Richard Ne[wall], and was then and there duly sworn," &c. The indictment then proceeded to allege, that upon the said hearing certain questions therein specified became and were material; that the defendant swore in the negative of those questions, and proceeding in the usual manner to affirm the truth of the propositions, negativing what the defendant had sworn.

On the part of the prosecution, the magistrates' clerk was called as a witness. He produced a book containing the minutes made by him of the examination of the witnesses before the magistrates. The entry was headed

"Ann Jones
v. } Affiliation."
Richard Newall,

The evidence was then set out.

"Ann Jones, sworn," &c. "I first became acquainted," &c. "Richard Newall, the defendant, sworn, says:—I know the complainant," &c.

It being admitted that there was no other evidence forthcoming of the proceedings before the justices,

Huddleston, for the defendant, submitted that the original summons must be produced, or notice to produce it served on the defendant.

[Pow]*ell*, for the prosecution, submitted that that was not necessary, and cited *Reg.* v. *Newman*, 21 L. J. 75, M.C.; where, on an indictment for perjury at the Central Criminal Court, charging the prisoner with having committed the perjury on the trial of one D. on a previous indictment for a misdemeanour in the same Court, it was held that the minutes and entries of the trial of D. made by the officer of the Court, and produced by him on the trial of the indictment for perjury, were good evidence to prove that D. had been so tried, as alleged, and that it was not necessary to produce any record or certificate of the trial of D. In the present case, moreover, the Court would take judicial notice of the statute giving justices the power to hear the complaint of the mothers of illegitimate children, and to make orders upon the putative fathers for their maintenance.

WIGHTMAN, J.—The statute provides that, upon complaint by the mother, the justice shall have power to summon the putative father before him, and, upon the appearance of the person so summoned, or upon proof of the service of such summons, to hear and adjudicate upon the case. A summons is therefore necessary to give the magistrate jurisdiction, and to prove that they had jurisdiction in this case you must prove that the defendant was duly summoned either by production of the summons or by secondary evidence after notice to the defendant to produce it. The minutes of examination in this case are no more than the minutes of a short-hand writer, and only answer the purpose of refreshing the memory of the witness.

The witness, in answer to questions put to him by the learned judge, said that the magistrates made an order on the defendant. There were three original orders. One original order was deposited with the clerk of the peace, another was served on the defendant, and the third was kept by the person serving him. No notice to produce had been given to the defendant of either the summons or order, and neither of the other orders were in court.

WIGHTMAN, J.—What evidence is there of the charge? If you could shew the woman's charge, then the witness might state what the defendant said. But here you have neither the woman's charge, the summons, nor any notice to produce, nor the order, but a mere note of the evidence.

Powell applied to have the trial postponed, in order that the necessary evidence might be procured, but

WIGHTMAN, J. refused the application, the defendant being in charge. (To the jury.)—It is to be regretted that the ends of justice may be defeated in this case, but the evidence is deficient for want of a notice to the defendant to produce.

The defendant was accordingly acquitted.

Stafford, March 12.

(Before Mr. Justice WIGHTMAN.)

TIMMINS and WIFE *v*. GIBBINS, P.O.

Assumpsit—Money lent—Liability of trustee on deposit accounts, where amount paid in promissory notes of a bank dishonoured on presentment.

Where money was deposited in a bank, and the bankers agreed to pay 3 per cent. interest, and gave the depositor a deposit receipt, with a memorandum at the foot, "with 3 per cent. at 14 days' notice:"

Held, that this did not support an allegation in a plea that the money was to be repaid to the depositor on request.

The money so deposited by the plaintiff consisted of notes of R. and Co.'s bank, and payable at S. or in London, and the notes were presented in London on the following day, and dishonoured; but would have been paid if presented at S. (a short distance from the bank into which they were paid by the plaintiff) on the same day.

Quære, whether the bankers could set up the presentation and dishonour in London in answer to an action for money lent.

This was an action of assumpsit, brought to recover the sum of 80*l*.

The declaration was for money lent by Mary, the wife of the plaintiff, while sole and unmarried, to the Birmingham and Dudley Banking Company, with a count for interest, and on an account stated. The defendant pleaded, except as to 15*l*. (which was paid into court), non assumpsit, and also a special plea that the 65*l*. were deposited by Mary Timmins, when single, in the bank on a deposit account, to be repaid on request with three per cent. interest, and that the amount was paid in notes of Rufford and Co.'s Stourbridge Bank, which were made payable on demand at Glyn and Co.'s, London; that the defendant duly presented the notes at Glyn and Co.'s, and they were dishonoured, of which the plaintiff had notice.

Keating, Q.C. and *Gray* for the plaintiffs.

Alexander, Q.C. and *Chance* for the defendant.

The plaintiffs proved(a) the payment of the money in notes to the Dudley branch of the bank, and produced the banker's receipt, in the following form:—"Received of Mary Weale, 80*l*. for which we are accountable;" with a memorandum at the foot, "with three per cent. at fourteen days' notice." The money was paid in about eleven o'clock in the forenoon of the 26th of June, 1851. On the 13th of January, 1852, the plaintiffs gave fourteen days' notice, and on the 29th made a formal demand of the money. The defendant had previously offered the notes to the plaintiffs, but refused to pay the amount in money, on the ground that they had been presented at Messrs. Glyn and Co.'s and payment refused by them. It was admitted by the defendant that the notes of Rufford's bank were paid at Stourbridge, distant seven miles from Dudley, throughout the whole of the 26th of June, the bank there not stopping payment until the 27th.

Alexander, in addressing the jury, said the question in this case was one rather of law than of fact. 65*l*. of the 80*l*. paid by the plaintiff were in notes of Rufford and Co.'s bank, payable at Stourbridge, or at Glyn and Co.'s, London. He should prove that the notes were sent up to London immediately, and presented on the morning of the 27th at Glyn and Co.'s, and payment refused. Notice of that fact was given to the defendant, and the notes offered to be returned. Under these circumstances, the defendant would be entitled to the verdict. This was not a new point, but had been decided by Sir Vicary Gibbs, in the case of *Beeching* v. *Gower*, Holt's N.P. Cas. 313. That was an action for money had and received, and it appeared that a note of a country bank, payable in the country and in London was given, while the bank continued open, but subsequently failed. Sir Vicary Gibbs held that the notes might be presented at either place, if done in due time. So in this case he submitted that the defendant had the option of sending the notes either to the country bank at Stourbridge, or to Glynn and Co.'s, London, and that having been presented without laches, and dishonoured at

(a) Mary Timmins, the co-plaintiff, was examined as a witness, without objection or remark as to her admissibility.—J. E. D.

the latter place, the defendant was entitled to the verdict.

Witnesses were called to prove the special plea. Mr. Richard Henry Smith, the manager of the Dudley branch of the Birmingham and Dudley Banking Company, proved that 65*l.* of the money paid in by the plaintiff, Mary, was in 5*l.* notes of Rufford and Co.'s bank, the remaining 15*l.* being in Bank of England notes. The witness sent these notes of Rufford's bank by the same night's post to Messrs. Jones, Loyd, and Co. the London agents of the Birmingham and Dudley Bank, to be presented at Messrs. Glyn and Co.'s. On the 28th the notes were received back dishonoured, and notice of dishonour given to the plaintiff, Mary, by letter. The notes were subsequently tendered to her.

On cross-examination, the witness said the receipt given for the money was a deposit receipt, and the notice in the corner signified that fourteen days' notice must be given, in the ordinary course of business, before it could be withdrawn. Two other notes of Rufford's bank were sent up to London with those in question, being the whole of the notes of that bank received at Dudley on the 26th of June. A clerk of Messrs. Lloyd and Co. proved the presentment and dishonour of the notes at Messrs. Glyn and Co.'s on the 27th, and their return to the Birmingham and Dudley Bank.

This being the defendant's case,

Keating objected that the defendant's plea was not made out. The plea stated that the notes were deposited and kept to be paid to the plaintiff on request. The proof was that fourteen days' notice was necessary before the money could be demanded.

[WIGHTMAN, J.—Payment on fourteen days' notice is certainly not an agreement to pay on request.]

Alexander applied to have the plea amended.

Keating and *Gray* resisted. Issue was taken on this very averment in the plea. If the plea had stated, in accordance with the facts, that the money was payable at fourteen days' notice, the plaintiff would have demurred to the plea. With respect to the liability of the defendants the law was laid down in *Camidge* v. *Allenby*, 6 Barn. & Cress. Rep. 373, that if a pre-existing *debt* was paid under the circumstances of this case, the creditor might set up the dishonour of the notes; but only in that particular case, and not in other cases, as where the parties stood in the relation of borrower and lender.(*a*)

[WIGHTMAN, J.—That point arises equally whether the money was to be repaid with or without fourteen days' notice.] Since the case of *Camidge* v. *Allenby*, other cases had occurred which rendered the distinction important between a loan for a fixed period and where the amount is payable at call.

WIGHTMAN, J. intimated his opinion that as there were no laches on the part of the defendants in endeavouring to obtain money for the notes by presenting them, and they were dishonoured, and the notes were originally received on the belief by all parties that they would be paid, there was a failure of consideration for the defendant's promise to pay with fourteen days notice, the plaintiffs were not entitled to recover.

[It was ultimately arranged that the jury should be discharged from giving a verdict on the special plea, and that a verdict should be taken for the defendant on the plea of non-assumpsit, with liberty to the plaintiffs to move to enter a verdict for them on that issue.]

Gloucester, March 29.
(Before Mr. Baron PLATT.)
REG. *v.* DAY.

Evidence—Depositions—Admissibility of depositions in the absence of the witness under the statute 11 & 12 *Vict. c.* 42, *s.* 17.

Before a deposition of a person who is dead, or so ill as not to be able to travel, can be read on the trial, under the statute 11 & 12 *Vict. c.* 42, *s.* 17, *it must be proved affirmatively on the part of the prosecution that the deposition was taken in the presence of the accused person, and that he or his counsel or attorney had a full opportunity of cross-examining the witness.*

To give the accused a full opportunity within the meaning of the statute, the examination must be taken, question by question, in his presence, and in the presence of the magistrate, and it is not sufficient to read over the statement of the witness, previously taken and committed to writing, in the absence of the magistrate.

The accused must also be asked whether he has any question to put with reference to the statement of the individual witness.

To render the deposition of an absent person admissible it is not necessary that he should be absolutely unable to travel, it is sufficient if his attendance would place his life in jeopardy.

The prisoner was indicted for larceny as a servant. Her mistress, Keturah Cornhill, the prosecutrix, was alleged to be unable to attend in consequence of illness, and in order to allow of her deposition taken before the committing magistrate, being read as evidence on the trial under the provisions of the statute 11 & 12 Vict. c. 42, s. 17, a medical witness was called, who stated that he visited the prosecutrix the previous afternoon at her house, a distance of several miles from Gloucester, and found her suffering from bronchitis. She was sitting up in a chair, supported by pillows. The witness examined her, and remained about half an hour, and he was of opinion that her life would be endangered if she was brought into court. On cross-examination he stated that he was not her ordinary medical attendant, but visited her for the purpose of ascertaining whether she was in a fit state to attend and give her evidence.

A relative, a great nephew of the prosecutrix, corroborated this evidence. He said his aunt was about sixty years of age, and had been an invalid for some years. She was confined to her bed the day before the visit of the medical witness, but was rather better the next day. She was wrapped in flannel, but he did not hear her cough. Her usual medical attendant had seen her on the day she was confined to her bed, but he was unable to attend at Gloucester to give evidence, being in daily attendance on Lord Dynevor. The witness thought his relative was quite unable to attend as a witness.

W. H. Cooke, for the prisoner, submitted that the evidence was insufficient. The statute 11 & 12 Vict. c. 12, s. 17, required the proof to be that the witness "so ill as not to be able to travel." The evidence amounted to nothing more than that it would be imprudent for the prosecutrix to attend, or at most that she was *unfit* to travel, and not such a total inability as the statute required. This was a new provision, and ought to be applied with great care and strict-

PLATT, B. It is sworn that the attendance of the witness would endanger her life. Each case must of course be governed by its own circumstances. Here enough has been shewn to render the deposition admissible.

Huddleston then applied to have it read by the officer of the court, but

PLATT, B.—Something further is necessary. You must shew that the deposition was taken conformably with the statute.

The magistrate's clerk was called. He stated that the prisoner was present with her father when the deposition of the prosecutrix was taken. The magistrate asked the prisoner whether she had any questions to put; but there was a little uncertainty in the evidence of this witness whether she was so asked with reference to the particular examination of the prosecutrix, or whether it was a general question at the end of the examination of another witness.

A police officer was then examined. He was a witness on the same occasion. He could not recollect whether the prisoner was asked if she had any questions to put to the prosecutrix; but he disclosed the fact that the examinations of the witnesses were taken and committed to writing by the clerk previously to the arrival of the magistrate, that they were then read over in the presence and hearing of all parties, and that it was then, if at all, that the prisoner was asked if she had any questions to put to the prosecutrix.

PLATT, B. expressed his opinion that the deposition was inadmissible.

Huddleston submitted that the statute had been sufficiently complied with, if the deposition appeared on the face of it to be regularly taken. The statute provides that "If such deposition purport to be signed by the justice by or before whom the same purports to have been taken, it shall be lawful to read such deposition as evidence in such prosecution, without further proof thereof, unless it shall be proved that that the magistrate did his duty properly. The onus of shewing that she had not an opportunity lay on the prisoner, and there was nothing in the facts proved inconsistent with her having that full opportunity.

PLATT, B.—How could it suggest itself to the prisoner that she had a right to put questions? It was the duty of the magistrate to ask her, and it must be proved that he did so, and did so with reference to the examination of the particular witness. The words of the statute are—"If upon the trial of the person so accused as first aforesaid it shall be proved, by the oath or affirmation of any credible witness, that any person whose deposition shall have been taken as aforesaid is dead, or so ill as not to be able to travel, and if also it be proved that such deposition was taken in the presence of the person so accused, and that he or his counsel or attorney had a full opportunity of cross-examining the witness, then if such deposition purport to be signed by the justice by or before whom the same purports to have been taken, it shall be lawful to read such deposition," &c. Until the question was asked her, I am of opinion she had no opportunity of cross-examination within the meaning of the statute, and the evidence is not satisfactory on that point. But on another ground the prisoner had not a full opportunity of cross-examination. The examination of the witness being taken and put into writing before the arrival of the magistrate, the reading it over in his presence could not give the prisoner a proper opportunity of cross-examination. She had a right to hear the evidence given step by step, and so to have time to consider what questions to put. I cannot allow the deposition to be read.

There not being sufficient evidence without the deposition of the prosecutrix, the prisoner was acquitted.

NORFOLK CIRCUIT.

Reported by J. B. DASENT, Esq. Barrister-at-Law.

Cambridge, March 12.
(Before Lord CAMPBELL, C.J. and a Special Jury.)
REG. *v.* CROSS.

Quo warranto—Health of Towns Act, 11 & 12 *Vict. c.* 63—*Construction of—Election for local Board—Chairman—Nature of office—Evidence.*

The defendant in a quo warranto is a competent witness to prove his qualification.

The office of the chairman or returning officer at an election under the Health of Towns Act, 11 & 12 *Vict. c.* 93, *is judicial and not merely ministerial. The result of the poll as certified by him under the Act is final and conclusive, precluding all future scrutiny.*

Query, whether, in the absence of the chairman, the appointment of a substitute or returning officer ought not to be under the seal of the local board and signature of five members of the body.

Semble, that this irregularity appointed by a minute signed by the chairman alone, it will be sufficient to prove that the person so appointed acted as returning officer at the election.

This was a quo warranto calling on the defendant to shew by what authority he claimed to exercise the office of a member of the local board of health for the city of Ely. The defendant pleaded that he was duly elected to such office.

Prendergast, Q.C. and *Worlledge* appeared for the relators, Mr. John Haylock.

Byles, Serjt. (with him *O'Malley*, Q.C. and *Wells*) was counsel for the defendant, and as the affirmative of the issue raised was on the defendant, the learned serjeant stated the facts of the case, which would ultimately raise some new and important points for the consideration of the Court. In 1848 the Health of Towns Act, 11 & 12 Vict. c. 63, passed, and in accordance with the forms therein prescribed, its provisions were applied to the city of Ely in the same year. By one of the sections of that Act, one third of the local board go out of office every year, and accordingly, in 1851, an election was held to make good five vacancies so created, the outgoing members being re-eligible. By the 13th the electors for non-corporate districts, such as Ely, are "owners of property" therein, and the ratepayers. Among the five members then elected, Mr. Cross, the defendant, stood the lowest, the relator, Mr. Haylock having polled only five below him. That gentleman being anxious to defeat the election of Mr. Cross, applied to the Court of Q. B. for this rule, which was made absolute without argument on the last day of the Term at eleven o'clock at night. It was apprehended that the election was conducted in a strictly legal manner, so that the relator could not impeach it in law; and it was submitted that it was not open to him to enter upon a scrutiny of the votes here as the certificate of the chairman or returning officer of the number of votes ascertained by him for each candidate was final and conclusive, his office being not merely ministerial, but judicial. If that be the proper view of the Act, then the

(*a*) In *Camidge* v. *Allenby*, the vendee of goods delivered to the vendor bank notes as and for payment. At the time of the sale of the goods, the bank had not stopped, but it had stopped at the time of the delivery of the notes, but neither party was aware of it. The plaintiff not having presented the notes in due time (although if he had done so he would not have obtained cash), it was held that he could not recover the price. It was not the decision in this case so much as the opinion expressed in the judgment of the Court that the plaintiff's counsel in the case in the text relied upon. Bayley, J. said, "If the notes had been given to the plaintiff at the time when the corn was sold, he could have had no remedy upon them against the defendant. The plaintiff might have insisted upon payment in money; but if he consented to receive the notes as money, they would have been taken by him at his peril. If, indeed, he could shew fraud or knowledge of the maker's insolvency in the payer, then it would be wholly immaterial whether they were taken at the time of sale or afterwards. Here the notes were given to him in payment subsequently, and the question is, whether they operate as a discharge of the debt due to the plaintiff in respect of the corn. The rule as to all negotiable instruments is, that if they are taken in payment of a pre-existing debt, they operate as a discharge of that debt unless the party who holds the instrument does all that the law requires to be done in order to obtain payment of them." Holroyd, J. went further, and intimated his opinion that although the notes were not given at the *time* of the sale, they were taken as money:—"The notes were paid by the defendant and received by the plaintiff as money, and having been paid and received as money, and both parties being innocent, and the notes being what they imported to be, it seems to me that they must operate as payment."

defendant would be entitled to a verdict on this issue. The question thus raised is new and important, turning on the construction to be placed on several sections of the 11 & 12 Vict. c. 63. Of these the first is the 21st section, which enacts that "at every election of owners of property and ratepayers, the chairman of the local board of health . . . . shall have the powers and perform the duties vested in or imposed upon the said chairman by this Act in relation to any such election, and shall perform all other duties which it may be requisite for him to perform in conducting and completing elections under this Act, and in case the office of chairman shall be vacant at the time when any such power or duty must be executed or performed; or in case the chairman, ... from illness or other sufficient cause, shall be unable to exercise or discharge such powers or duties, or shall be absent, or shall refuse to act, some other person who shall be appointed . . . . by the local board of health shall exercise or perform such of the said powers and duties as then remain to be exercised or performed under this section." Dr. Peacock, the chairman, being ill, Mr. Marshall, the clerk of the local board, was appointed by the board to act as returning officer at the election of 1851. The question is, what were the powers of Mr. Marshall? The defendant contends that they were of a judicial nature, and he so contends, on the 27th section, which clearly indicates that the decision of that officer on the validity of the votes is meant to be final and conclusive. By this section it is enacted, that "the chairman shall, on the day immediately following the day of election, and on as many days immediately succeeding as may be necessary, attend at the office of the local board of health, and ascertain the validity of the votes by an examination of the rate-books and such other books and documents as he may think necessary, and by examining such persons as he may see fit, and he shall cast up such of the votes as he shall find to be valid, and to have been duly given, collected, or received, and ascertain the number of such votes for each candidate, and the candidates, to the number to be elected, who being duly qualified, shall have obtained the greatest number of votes shall be deemed to be elected, and shall be certified as such by the said chairman under his hand, and to each person so elected the chairman shall send or deliver notice of such election; and the said chairman shall also cause to be made a list containing the names of the candidates, together with, in case of a contest, the number of votes given for each, and the names of the persons elected, and shall sign and certify the same, and shall deliver such list, together with the nomination and voting paper which he shall have received, to the Local Board of Health at their first or next meeting, as the case may be, who shall cause the same to be deposited in their office, and the same shall, during office hours thereat, be kept open to public inspection, together with all other document relating to the election, for six months after the election shall have taken place, without fee or reward; and the said chairman shall cause such list to be printed, and copies thereof to be affixed at the usual places for affixing notices of parochial business within the parts for which the election shall have been made." It will be seen that the duties cast upon the returning officer are of a strictly judicial character. He is to examine the voting papers, and ascertain such of the votes as he shall find to be valid, and then to certify the result. With such duties it is impossible that the Legislature can possibly have meant to give to the unsuccessful candidates a power of ripping open the election and of entering upon a fresh scrutiny. Yet this the relators now seek to do.

Mr. Marshall, the clerk of the Local Board of Health at Ely, was then called, and deposed as follows:—I am a solicitor. In 1848 the Health of Towns Act was applied to the city of Ely, and in March, 1851, there was an election of five members of the local board. Dr. Peacock, the dean, was the chairman at first, but he being ill, it became necessary that a person should be appointed in his place as returning officer to conduct the election. I was appointed to that office by a minute of the board. This is the minute of my appointment. It is signed by the chairman alone, and is not under the seal of the body.

Prendergast then objected that this was an illegal mode of appointment. The 149th section required that the appointment should be "under the seal of the local board, and should be signed by five members of the board." The 35th section enacts that "the local board in the case of a new corporate district (which this was), should cause to be made a seal for the use of such board in the execution of this Act." The 21st section, already referred to, treats of the appointment of deputy-chairman for an election by the local board of health. Now the question is, how that appointment is to be made. It is submitted that it falls within the 149th section, and ought to be under the seal of the board. That section enacts that "Whenever the consent, sanction, or approval, or authority of the local board of health is required by the provisions of the Act, the same shall, in the case of a non-corporate district, be under their seal and the hands of five or more of them." Mr. Marshall seems to have been appointed by a minute of the board, signed at a meeting by the chairman, which was wholly insufficient and unwarranted by the Act.

Byles, Serjt.—If the objection is persisted in, I shall withdraw the formal appointment, and content myself with proving that Mr. Marshall acted *in* the office. Evidence withdrawn.

Mr. Marshall continued.—Dr. Peacock being too ill to attend, I acted as returning officer in his place, at the election of March 1851. I caused voting papers to be distributed and to be collected; I examined them on the same day as the election, and on the following days, and ascertained the validity of the votes given for each candidate. Having done so, I signed this certificate. I came to a decision on the validity of the votes on all sides. I ascertained the number of valid votes for each candidate. I then gave notice to the elected candidates, and made out a list of all the candidates, and the number of votes each had, which I published. At the first meeting after the election I returned the examination papers and the voting papers to the Board.

Cross-examined by *Prendergast*.—The votes were cast up in my office, as the Board has not any fixed office; yet, though they usually meet in the hall, as I was clerk, and had all the papers in my possession, the Board met at office as a matter of convenience.

Mr. Cross, the defendant, was then called as a witness, but

Prendergast objected to his reception.—This was not a case to which the new Evidence Act was applicable.

Lord CAMPBELL, C.J. Mr. Cross is clearly a competent witness. He comes within the enacting clause of the section, and does not fall within the exceptionary clauses. He may be examined, therefore, as a witness in this case.

Mr. Cross then proved his qualification, and the signature to the declaration required by the Act. This being the ca for the defendant,

Prendergast, Q.C. submitted that there was no evidence to go to the jury that the defendant had been duly elected. The proceedings were altogether irregular. There had not been sufficient notice of the election, as required by the 23rd and 24th sections of the Act; nor was there any evidence of the nomination of the candidates, nor was the appointment of Mr. Marshall proved, as required by the Act.

Byles, Serjt. submitted that these objections were not open to the relator, as they were not made in the rule nisi in which this rule absolute proceeded; and, by the general rule of the Courts, it is provided that the party objecting in such proceedings shall be confined to the objections taken in his rule nisi.

Worlledge, for the relator.—The rule only extended to the pleadings, and does not limit the objections on the evidence. These objections are all founded on the sufficiency of the evidence to prove the issue "duly elected or not."

Lord CAMPBELL, C.J.—I was at first inclined to agreed with my brother *Byles*, and to restrain the relator, but I think the suggestion now thrown out is entitled to consideration, and removes him from his ground. Without, however, giving any definite opinion on the construction of this rule, which is very doubtful, I think it would be better if we were to discuss and decide the main question in the case, namely, whether the certificate of Mr. Marshall is final.

Prendergast, Q.C.—There was one other objection, and that was to the place of meeting. The Act directs the board to meet for the election at its office, but it seems that the election took place in the private room of Mr Marshall.

Lord CAMPBELL, C.J.—The clause is merely directory. The local board must meet somewhere, and if they have no regular office, there is no reason why they should not meet at that of the clerk. You had better go to the question on the certificate.

Prendergast and *Worlledge* then proceeded to submit that the decision of Mr. Marshall, admitting him to be properly the "returning officer," was not final and conclusive. There are provisions in the Municipal Corporation Act, 5 & 6 Wm. 4, c. 76, s. 35, similar to those in the Health of Towns Act, and under those it had been held, that the decision of the mayor and assessors was not conclusive; but that the duty of the returning officer was merely ministerial. They cited *R.* v *Ledgard*, 8 Ad. & Ell. 545, and argued that, supposing for the sake of argument that Mr. Marshall was duly appointed, his certificate is not final and conclusive. He could only examine those voters who were willing to be examined by him, and had no power to compel attendance or the production of documents. The Act says, that parties claiming to vote as owners of property shall send in their claim fourteen days before the election; but the returning officer has no power authentically to prove or disprove such claims. He cannot compel them to verify their votes before him, or to produce their title-deeds. His certificate may, therefore, proceed on the most superficial examination of the votes. If his certificate was meant to be final, there would be no necessity or reason for the clause in the 27th section, which requires the board to preserve the voting papers for six months after the election.

Byles, Serjt. contrà, was not called on.

Lord CAMPBELL, C.J.—I am clearly of opinion that the certificate of Mr. Marshall is conclusive, as far as the validity of the votes is concerned. I quite concur with *R.* v. *Ledgard;* but the two Acts are dissimilar. The 5 & 6 Wm. 4, c. 76, is so framed expressly as to make the duty of the mayor as returning officer merely ministerial. The Legislature observed the inconvenience of that enactment, and seems to have cautiously worded the section in the Health of Towns Act, so as to make the office of returning officer not merely ministerial, but also judicial. And I am at a loss to see what words could have been employed better calculated to convey that intention. According to the decision in *R.* v. *Ledgard*, even this certificate must be held final as regards the validity of the votes; though it may be otherwise if corruption be charged (of which there is not a pretence here), or any error in casting up the votes. It was, indeed, pressed in argument that this could not be final, because the returning officer had no power to examine the voters on oath; but the recent decision of the Court of Q. B. in Mr. Ramshay's case is clear on the point, that though there is no express power given to any officer to examine on oath, yet, if the examination be taken not on oath, and an express decision be given on that evidence, such decision is final and binding. Under these circumstances, I shall direct a verdict for the defendant; but, as the point is both novel and important, I shall be glad to afford an opportunity to have my opinion reversed. The relator may move accordingly, and if the Court above should be of opinion that the certificate is not conclusive, then there will be a new trial; but I should advise an agreement between the parties which would provide for the going into the scrutiny before a legal arbitrator, a much more fit tribunal than a jury for such a purpose.

This suggestion was at first acceded to, but a difficulty arising, it was abandoned, and the case left to take the ordinary course.

Verdict for the defendant.

Irish Reports.

COURT OF CHANCERY.

Reported by J. BLACKHAM Esq. Barrister-at-Law.

May 9 and 10, 1851, and Jan. 26, 1852.

BLENNERHASSET *v.* MONSELL.

Judgment creditor of wife—Right of assignee of wife—Right of husband surviving.

A feme sole indebted by judgment married, being at the time of her marriage entitled to a chose in action. She assigned it to a volunteer. The chose in action was not reduced into possession during the coverture, and the husband surviving the wife, took administration to her:

Held, that the husband, as the assignee of the wife, could take nothing but the surplus of the chose in action, after the payment of the debts of the latter:

Held, also, that the statute of voluntary conveyances applied to the case of a conveyance to evade the creditors of a third person, as well as a conveyance to evade the creditors of the debtor himself.

This was a bill by a judgment creditor to raise a judgment of the year 1831, and to set aside a deed of the year 1833 as fraudulent and void.

The bill stated that Richard Camarique Ponsonby being entitled to a sum of 4,000*l.* by indenture of settlement bearing date the 29th of June, 1799, vested that sum in trustees for himself for life; remainder, as to 2,000*l.* to his wife, Letitia Lindsay, for life; remainder, as to that sum to his children of that marriage; and as to the residue of the 4,000*l.* to his children absolutely, on their attaining the age of twenty-one. There were two daughters, Louisa and Mary. Richard C. Ponsonby died in the year 1811, leaving surviving him Letitia Ponsonby, his wife, and his two daughters. Letitia Ponsonby, shortly after her husband's death, married William Lindsay. Louisa Ponsonby sold her interest in the 1,000*l.* which she took absolutely.

The plaintiff, in the year 1831, recovered judgment in the sum of 263*l.* 7s. 10d. against Louisa Ponsonby, who, on the 14th day of June, 1833, married William Rumley Monsell. The judgment of 1831 was revived in 1834 against the defendant. By deed, bearing date the 23rd day of October, 1833, Louisa Monsell conveyed her reversionary interest in the 1,000*l.* to trustees in trust for her

three stepbrothers in equal shares, or as she should by deed or will appoint; and in December, 1833, she by will appointed to her husband her interest in the money she was entitled to by her father's marriage settlement; she died in August, 1836, and her husband took out administration. The defendant, Jeffers claimed as the assignee of a third party the 1,000*l.* from one of Mrs. Monsell's stepbrothers, and the defendant, Barrington, as a trustee of the deed of 1833.

Brewster, Q.C. with him *A. J. Maley* and *J. Ball*, for the petitioner.—The deed of 1833 is for the conveyance of the reversionary interest of a married woman, and cannot be sustained. (*Box* v. *Box*, 6 Ir. Eq. Rep. 174; *Batterbee* v. *Farrington*, 1 Swanst. 106; *Taylor* v. *Jones*, 2 Atk. 601.) They also cited and commented upon *Dundas* v. *Dutens*, 1 Ves. jun. 196; 2 Cox, 235; *Townshend* v. *Windham*, 2 Ves. sen. 10; *Richards* v. *Chambers*, 10 Ves. 583; *Holloway* v. *Millard*, 1 Mad. 227, *Russell* v. *Hammond*, 1 Atk. 15; *Bells* v. *Kempston*, 2 B. & Al. 277; *Squibb* v. *Wyn*, 1 P. W. 80; *Gutteridge* v. *Stilwell*, 1 M. & K.; *Cluff* v. *Bond*, 6 Jur. 51; *Skarfe* v. *Soulby*, 13 Jur. 1109; *Fitzgerald* v. *Fitzgerald*, 14 Jur. 485; 8 C. B. 592.

Greene, Q.C. *Christian*, Serjt. and *Burroughs* for Mr. and Mrs. Lindsay.

G. B. Hickson, Q.C. and *Sir C. O'Loghlen*, for Jeffers, the assignee of Mrs. Lindsay.

White v. *St. Barbe*, Ves. & B. 400; *Parker* v. *Ravenhill*, 1 Turn. 114; *Watts* v. *Watts*, 3 Ves. 244; *Anderson* v. *Dawson*, 15 Ves. 357; *Ripley* v. *Wood*, 2 Sim 165.

Benjamin Stephens and *Lover* for Mr. Monsell.

Monday, Jan. 26.—The LORD CHANCELLOR.—This case stood over for consideration, the question raised being one not disposed of by any authority that I have been able to find. [His lordship stated the facts]. If the case rested here it might have been sent into the Master's office; but it being admitted that this fund was the only assets of Mrs. Monsell, it was thought better to dispose of it here. The rights of property in matters of this nature are, to a certain point, well established, and the husband could not, after the death of the wife, by virtue of any marital right, take the chose in action of the wife, unless it were reduced into possession by him during the life of the wife. During the life of the tenant for life, the money in question here could not be reduced into possession; it therefore would have continued to be the property of Mrs. Monsell, if she had lived, and upon her death the husband would only take as her administrator, and in that capacity Mr. Monsell now claims. That the general assignees will take property of this nature has been decided in the case of assignees in bankruptcy (*Harper* v. *Ravenhill*, Tam. 114); and so will the particular assignee, as against all but the wife surviving. (*White* v. *St. Barbe*, 1 Ves. & Bea. 405.) That is the only authority on this part of the case. So far, then, as the rights of the husband and his assignees are in question, the latter can take; but it is equally well settled that during the life of the wife, the fund cannot be disposed of by the husband. (*Fitzgerald* v. *Fitzgerald*, 14 Jur. 115; 8 Com. B. 592.) This being a title derived through the administration taken by the husband to the wife, he must take the fund subject to the debts of the wife, that is expressly stated in *Squib* v. *Wyn*, 1 P. W. 380. The last question in this case is, whether the assignee of the wife can stand in a better position than the husband himself, and can claim anything but the surplus after the payment of the debts of the wife? That has not been expressly decided, but the dictum of Sir W. Grant, in *White* v. *St. Barbe*, has been relied upon to shew that the payment of the debts of the wife cannot be avoided. In the case of *Harper* v. *Barnhill*, Tam. 114, where an account was directed, there appear to have been no debts of the wife. I have now to consider what has been conveyed by the deed of 1833. It was clearly a voluntary assignment. The assignee was the assignee of but a chose in action. It is very clearly explained in the case of *Purdew* v. *Jackson*, 1 Russ. 1, that the assignee cannot stand in a better position than the husband surviving. Considering the positions laid down in these cases, I cannot see what right the assignee here can claim under the assignment. The assignee can acquire no higher rights than the person assigning. The decisions which settle the rights of the husband with respect to the property of his wife must rule this case. Then as to the case of Mr. Jeffers, he is in no better plight than the voluntary assignee; if I am right in saying that the voluntary assignee cannot take, the particular assignee cannot be in a better position; the case, in fact, comes to the same thing, though the difficulty is of a stronger nature, and I am of opinion that the particular assignee can not take more than the surplus after the payment of the debts of the wife, and that is shewn by the case of *George* v. *Milbank*, 9 Ves. 196: that case distinguishes the case of a particular assignee, and establishes this proposition, that the particular assignee cannot take except subject to the debts of the wife. It was argued upon the construction of the Statute of Voluntary Conveyances, that it was not a case within that statute, as it was not an assignment to defeat the creditors of husband, but the creditors of wife. In my opinion, this is a conveyance within the meaning of the statute, and I declare this money to be a part of the assets of the wife, and liable to her debts.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by R. G. WELFORD, Esq. Barrister-at-Law.

Wednesday, Nov. 12.
(Before Lord TRURO, L.C.)
SCOTT *v.* SPASHETT.

Assignment of wife's reversionary chose in action—Equity for a settlement—Petition—Stop order.

A married woman, being entitled upon the death of an annuitant to a share of a sum of stock invested for payment of the annuity, joined her husband in assigning such reversionary interest in the stock, and the assignee obtained a stop order on the fund. The husband afterwards became insolvent. The assignee was not a party to the administration suit in which the fund had been set apart. On the death of the annuitant, the married woman petitioned for a settlement, and she was

Held entitled to have the order made on petition, and, under the circumstances to have the whole fund settled for the benefit of herself and children.

This was an appeal against the order of the late Vice-Chancellor, made on the petition of Sarah A. Spashett, which prayed a reference to approve a settlement out of a fund to which she was entitled under the will of Thomas Upton.

Lee and *Walford* supported the appeal petition.

Russell and *Giffard* objected that the order pray could not be made on petition, but was the subject of a bill.

Lee in reply.

The cases referred to in the argument were, *Purdew* v. *Jackson*, 1 Russ. 1; *Brett* v. *Greenwell*, 3 You. & Coll. 239; *Napier* v. *Napier*, 1 Dru & W. 467; *Greedy* v. *Lavender*, 14 Jur. 608; *Earl of Salisbury* v. *Newton*, 1 Eden, 370; *Macaulay* v. *Phillips*, 4 Ves. 19; *Wright* v. *Morley*, 11 Ves. 161; *Elliott* v. *Cordell*, 5 Mad. 156; *Gardner* v. *Marshall*, 14 Sim. 587; *Lady Elibank* v. *Montolieu*, 5 Ves. 737; *Sleech* v. *Thorington*, 2 Ves. sen. 560; *Pentland* v. *Quarrington*, 3 Myl & Cr. 249; *Sanford* v. *Morrice*, 11 Cl. & Fin. 667; *Rock* v. *Cook*, 2 Phil. 691.

The material facts are fully stated in the Lord Chancellor's

JUDGMENT.

The LORD CHANCELLOR (Lord TRURO).—This is an appeal by Sarah Ann Spashett, the wife of John Spashett, against the Vice-Chancellor of England dismissing a petition presented for a reference to the Master to approve of a proper settlement under the will of Thomas Upton. The appellant was entitled to a share in a part of his residuary estate; and by an order of the 15th November, 1829, in a suit for administering the estate of Thomas Upton, it was ordered, on the consent of the appellant given in court, that the share amounting to 306*l.* 6s. 8d. Three per Cent. Bank Annuities, and 383*l.* 11s. 5d. Reduced Annuities, should be paid to her husband. Under the same will the appellant and her husband were entitled to a share in a fund set apart for the payment of an annuity payable upon the termination of an annuity. By an indenture of the 25th of October, 1831, which was in the lifetime of the annuitant, the appellant and her husband, in consideration of 140*l.* assigned to William Harding the respective shares in the annuity fund. In 1833 the appellant's husband took the benefit of the Insolvent Debtors Act, and his estate became vested in Thomas Allen, as the assignee under the insolvency. The interest of William Harding and Thomas Allen afterwards became vested the respondents, the trustees of a reversionary interest society, who, in 1837, procured a stop order on the shares of the appellant and her husband in the fund reserved for the annuity. The appellant, Mrs. Spashett, has four infant children; no settlement was ever made on her and her children. Her husband has already received, in her right, under the same will, a sum equal to double the amount of that which is the subject of the petition. In Hilary Term 1850, the appellant presented a petition praying for a reference to the Master to approve of a proper settlement on herself and her children of 346*l.* 13s. 4d. being her share of the annuity fund which was then distributable in consequence of the death of the annuitant. The Reversionary Society, the respondents, appeared and opposed the petition, and the late Vice-Chancellor of England, by an order dated the 22nd February, 1850, dismissed the petition, and, as I understand, on the ground that as the respondents claimed to be entitled to the funds, that the wife's right to a settlement of that fund, or any part of it, can only be set up by a bill bringing the respondents before the Court. I am of opinion that the petition ought not to have been dismissed upon this ground; but that upon principle and the petitioner was entitled to the relief sh[illegible] by the petition, and I see no reason or advant[illegible] putting the parties to the more expensive liti[illegible] by bill. There can be no question between the parties which cannot be discussed upon the petition equally as well as in a new suit, and only defect of which would be additional delay and expense, exhausting a very small fund. The reasons for driving the parties to that other remedy ought to be very clear and decisive to induce the Court to adopt them; in my opinion nothing short of clear proof that justice cannot be properly administered upon the present petition ought to induce the Court to abstain from deciding upon the right claimed by the petitioner, and no such case has been made out by the respondents. No authority that has been cited is inconsistent with the opinion which I have formed. In *Greedy* v. *Lavender*, 19 L. J. 491, Ch. a married woman and her husband had assigned her reversionary interest in a trust fund, and the assignee deposited the deed of assignment as a security with Richard Kirkman Lane. The interest ceased to be reversionary in the lifetime of the husband and wife. The wife then presented a petition for a settlement, and Lord Langdale directed it should be made. The suit had not been instituted at all in connection with any question relating to the wife's right, as claimed by the petition; and it also appears from the report of this case on another point, in 18 L. J. 62, Ch. that the married woman and Richard Kirkman Lane were co-defendants, and yet no objection was made by the counsel for the latter, or by the Court, that the petitioner ought to have proceeded by bill. I have inquired of the registrar, and I am told that it is the constant practice of the Court in such cases to proceed by petition. If the respondents had been parties to the present suit as defendants, I see no reason why the question of the equity to the settlement should not have been decided on petition; and neither do I perceive any reason why it should not now be decided on petition. In my opinion the respondents, although neither plaintiffs nor defendants, have, by obtaining a stop order, brought themselves before the Court sufficiently to enable it to deal with the case. The effect of the stop order is that the fund cannot be paid out without notice to them. It has not the effect of varying the mode of proceeding by the parties entitled to the fund; it only entitles the respondents to notice so as to give them a power of opposing the payment of the money out of court. They have availed themselves of that notice, and have opposed such payment, and have brought themselves before the Court so as to enable it to decide if there should be any just cause why the Court should not deal with the fund according to the rights of the parties, unless they can shew that the question cannot be decided without the machinery of a distinct suit. But they have not shewn this, and I therefore think it is the duty of the Court to adjudicate on the question between them and the appellant. Upon the general question of the wife's right to a settlement out of her absolute equitable choses in action, whether against her husband or against his assignees in bankruptcy or insolvency, or against a particular assignee for valuable consideration, I think no doubt can be entertained in the present day, and it would be a waste of time to refer to the authorities. As respects the husband himself, the wife's claim to a settlement is considered as a clear equity, and as respects those claiming under him the rule applies that the assignee must take, subject to the equities of his assignor. Doubts were formerly entertained as to the wife's equity to a settlement as against a particular assignee for valuable consideration, and it was decided by Lord Northington, in the case of *The Earl of Salisbury* v. *Newton*, 1 Eden, 370, that a wife has an equity for a settlement, even against a particular assignee, for valuable consideration. In *Macaulay* v. *Phillips*, 4 Ves. 161, Sir William Grant, who was quite familiar with the question, expressed the reason why the wife's equity should prevail even as against a purchaser. If the husband has lost the right of reducing the wife's interest in the possession, how can he, for valuable consideration or otherwise, convey more than he has. If the assignee requires a right different from that which the husband had, the husband parts with something different from what he has. In *Elliot* v. *Cordell*, 5 Madd. 156, Sir John Leach said when an absolute equitable interest is given to the wife the Court will not part with the fund in favour of the husband, without making provision for the wife or with her express consent, and all who claim under the husband must take his interest, subject to the same equity. The amount which is to be settled is discretionary, and depends on the particular circumstances of each case. In *Brett* v. *Greenwell*, 3 Y.

&C. 230, Alderson, B. said, "It appears to me the insolvent's wife and her children are entitled to the whole fund; and if I am bound by the practice of the Court to take away any portion of it, I will take away a shilling. In *Gardner* v. *Marshall*, 14 Sim. 587, the whole was settled on the wife for her separate use, in consequence of the large sums the husband had received—about double the amount of this fund—under the order of the 15th November, 1829, and no settlement has ever been made on the wife or her children. I have the less hesitation in directing the whole to be settled as the assignee only paid 140*l.* for the two shares of the husband and wife. Appeal allowed; and it must be referred to the Master to approve of a proper settlement of the fund mentioned in the petition.

Lee submitted that a reference was unnecessary, and that this fund ought to be paid to trustees for the wife.

Giffard agreed to this for the purpose of saving expense, and it was ordered accordingly.

Reported by C. H. KEENE, Esq. of Lincoln's-Inn, Barrister-at-Law.

March 17 *and* 27.

IN LUNACY

(Before Lord ST. LEONARDS, L.C. Lord Justice KNIGHT BRUCE, and Lord Justice Lord CRANWORTH.)

Re CUMMING. (*a*)

Right to traverse inquisition in lunacy affirmed—Judicial discretion—Costs—The opinions of Lord Hardwicke and Lord Thurlow on the one side, and Lord Rosslyn and Lord Eldon on the other, considered.

An inquisition of lunacy is traversable as a matter of right, if upon the examination of the alleged lunatic the Court should be of opinion that he has understanding enough to comprehend the application, and can exercise volition upon it.

This was an application on the part of Mrs. Cumming for leave to traverse the inquisition under which she had recently been found to be of unsound mind.

The question was, whether a person found lunatic by inquisition could traverse as of right.

Bethell opened the case for the alleged lunatic, and said that the point had recently come under the consideration of Lord Cottenham, who found the antecedent authorities somewhat at variance with each other, and his lordship considered them as being balanced, the opinions of Lord Hardwicke and Lord Thurlow being that an application to traverse was *not* a matter of right, and the opinion of Lord Rosslyn and the frequently expressed opinion of Lord Eldon, that it was. Lord Cottenham examined the matter with reference to the earlier statutes and with reference also to considerations of general expediency, and arrived at the conclusion that if the party making the application were proved to have understanding enough to comprehend the application and to exercise free will about it, the application was one which the Court was not at liberty to refuse. By the Common Law of England the Crown was entitled to the custody of the lands of lunatics; and that principle was embodied in the statute 17 Edw. 2, c. 10. It was laid down by Lord Coke, that on inquest taken under the authority of that statute, a lunatic was not entitled, as a matter of right, to traverse that inquest, but that the party must be put to the ordinary remedy of petition of right. This led to the passing of the statute 36 Edw. 3, c. 13, which gave the right to traverse ex debito justitiæ; such right, it was not at first considered, extended to what were denominated commissions or inquests of lunacy, but by the statutes of 2 & 3 Edw. 6, c. 18, such right was so extended. Such being the state of the statute law, the inquiry naturally suggested itself, why traverses were always granted as matters of practice and procedure upon an application to the Lord Chancellor for leave to traverse. Leave to sue out the writ was not made to the Chancellor by virtue of his jurisdiction over lunatics, but it was made to him in Chancery—the officina brevium,—and that the Chancellor, as a matter of prudence and caution only, had adopted the practice of not permitting the writ to issue as of course upon an application in the name of the lunatic, without first taking precautionary steps to ascertain that that application was really and truly made by the alleged lunatic; and this course had been adopted in order to avoid the abuses which would arise, could any one come in the name of one found lunatic, and for the asking, as a matter of course, sue out the writ. Petitions for leave to traverse were introduced in order that the Chancellor might not be imposed upon, and that he might not in his capacity of the issuer of writs grant a writ to traverse to a party who was not in reality the lunatic, and who might make a bad use of the name of the lunatic for the purpose of obtaining the traverse. Such was the state of the law from the statutes, and it would follow, as a matter of course, that an application like the present was such an one as the Chancellor was bound to grant, when he had satisfied himself that the alleged lunatic was a person competent to make it. The earliest reported decision was before Lord Hardwicke. In the case of *Ex parte Roberts*, his lordship thought that an application for a traverse was not a matter of right, but that the Court was invested with a discretion as to whether the writ should issue or not. In that case the question did not arise, and Lord Cottenham seemed to have founded an opinion that Lord Thurlow had followed Lord Hardwicke in that view from a case imperfectly and incorrectly reported. In the case of *Barnsley*, the application was not made by the lunatic himself, and it was not contended that the Court had not a discretion where the petition was that of a stranger. All, therefore, that Lord Hardwicke's authority would extend to shew was, that where, as in the case of a lunatic, he considered the right to traverse as of course; in the case of another person claiming only an interest in his estate, he refused the application. The case of *Ex parte Southcot* was not an application for leave to traverse, but an application for a commission of lunacy against Mr. Southcot, who was resident abroad, and the principal difficulty seemed to have been, whether such a commission could issue, and how it was to be executed. From the report the true state of the law appeared to be, that a lunatic, or any person interested, might apply for a traverse to supersede the commission, that if he appeared to be examined coram rege in concilio, and if the holder of the Great Seal was satisfied that the application was in truth the act of volition of the party, it was granted as a matter of course. In *Ex parte Fust*, Lord Thurlow, who was professing simply to follow Lord Hardwicke, refused leave to traverse as of right. In *Ex parte Wragg*, Lord Rosslyn decided that to traverse an inquisition finding a person lunatic was a matter of right, and not one of favour; and the same case was again considered and so decided in *Ex parte Ferne*, by Lord Loughborough. The matter was frequently discussed before Lord Eldon, and his lordship's opinion was very clearly expressed in the case of *Sherwood* v. *Sanderson*, Lord Eldon's decision was acted on, and the right to traverse taken as a matter of course, and the application treated de jure, until the subject came before Lord Cottenham, in the case of *Bridge*, although an opinion was there ascribed to Lord Hardwicke, at variance to what was the state of the law, his lordship followed the decision of Lord Eldon, so far as it regarded the application for leave to traverse as a matter of right when applied for by the alleged lunatic. Such was the principle of the statutes and the authorities, and it might justly be considered as inconvenient and opposed to the interests of justice that the Lord Chancellor should be subject to the obligation of examining the evidence for the purpose of determining whether he should grant a further inquiry or not. On every consideration, and according to every legal analogy, it ought to be the *right* of the subject to traverse such a commission; it was the ordinary common law right of the subject; such right did not formerly exist, but the Legislature advanced the rights of lunatics to the condition of those of all other subjects; they were enabled by the statutes of the Edwards to exercise the rights which had been previously conceded to other subjects. Those Acts of Parliament had been made, as it were, the basis upon which the cases had been decided, and which had brought about the law as it was now established and there were no considerations of public justice or of public utility, that should induce the Court to depart from that course, or establish any exception. Subject, therefore, to the ordinary condition that the Court should be satisfied that that was really the application of the person in whose name it was made, and consequently, as a matter resulting therefrom, that the individual making the application was of sufficient understanding perfectly to comprehend its nature, object, and consequences, he submitted that the application ought to be granted.

Roundell Palmer followed on the same side, and said that the foundation of the jurisdiction of the Court laid in the statutes which had been referred to. It would be difficult to decide whether it was a jurisdiction in lunacy or at common law; but looking at the statutes there was no reasonable ground for doubting that a traverse was a strict matter of right upon those statutes. The question might arise whether the person presenting the petition for leave to traverse was a party aggrieved or not; and that at once suggested a distinction which might account for the apparent discrepancy in the authorities; for in *Barnsley's* case, and in the case of *Fust*, before Lord Rosslyn, the petitioner was not the lunatic himself, but a person only alleging himself to be aggrieved by reason of some collateral interest. The statute of the 34 Edward 3, c. 14, gave a right of traverse "in all cases of land and tenements seised by an escheator," &c. and such right was subsequently conferred upon lunatics. By the 2 & 3 Edw. 6, "any person untruly found lunatic, idiot, &c. should have the same remedy and advantage as in other cases of traverse upon untrue inquisitions or offices founden." In Coke upon Littleton that statute is spoken of as a remedial statute, and in his first and second Institutes he considers that the object of those statutes was to deliver the subject in the most beneficial manner from encroachments of the prerogative by offices untruly found. A remedy of right was created and given, and that being a beneficial statute ought to be construed most beneficially for the subject. There were two points upon which the Chancellor should satisfy himself in every case. The one that the party be aggrieved within the meaning of the statute; the other that the application be truly the application of the lunatic, and that an improper use had not been made of his name without the exercise of volition on his part. No case could be referred to in which the application being made by the lunatic, or by any one who was undeniably or incontestably the person aggrieved within the statute, had been refused except in *Saumarez* case, cited by Lord Cottenham in *Re Bridge*; in that case Lord Eldon refused the application, though on what ground did not appear. If the Lord Chancellor should see the alleged lunatic, examine her, and find what Lord Cottenham found in *Bridge's* case, that for that purpose at all events there was volition, and that there was understanding and sufficient capacity to desire the remedy and to assert the right, the remedy should go, and as a matter of right, a positive right given to her by the law. [Lord Justice Lord CRANWORTH.—You say the law has given a positive right. What do you mean by a positive right? Do you contend that if it is refused the Court of Q. B. would grant a mandamus, or that an action would lie? Would the Chancellor be liable to be impeached for malversation of office?] He was not aware of any instances in which the Court of Q. B. had ever granted a mandamus to the Lord Chancellor to issue any writ; but he thought it was impossible to hold the language which Lord Cottenham and Lord Eldon held without coming to that conclusion. If one verdict were to create such a presumption of general incompetency that no act of an alleged lunatic, even for the purpose of relieving himself from the verdict, was to be taken as the act of a competent person, or as his own act, until the finding was got rid of, he would be driven to travel in a circle which would deprive him altogether of the benefit of those enactments which had been referred to, and to nullify the principles to be extracted from Lord Eldon and Lord Rosslyn's decisions, that an alleged lunatic was not to be considered a lunatic if he asserted within due time his right to traverse, and that if he did assert that right, he could not be considered as a lunatic until that right had been exercised. In that light Lord Cottenham had viewed those decisions, and Lord Truro, in *Loveday's* case, seemed to have been of the same opinion. There was nothing in opposition to them, but two cases, in which Lord Hardwicke and Lord Thurlow declined to recognise the application as a matter of right, when it was made by a person, not the lunatic, but by a person claiming in respect of some collateral interest.

Southgate followed.

The *Attorney-General* opened the case on the other side, and said the point was restricted as to whether a party had an absolute and unconditional right to traverse an inquisition of lunacy, or whether there was a discretion in the Court either to grant or refuse it. It had been argued that there was an absolute right, subject merely to the necessity on the part of the Lord Chancellor of ascertaining whether the person had an independent volition, or whether, in point of fact, the traverse was one which the party himself was desirous to take place. It would be a very illusory check upon improvident traverses that such should be a matter of right, for in the great majority of instances of persons who were inmates of lunatic asylums, they were under a strong impression that they were improperly restrained, and an instance could hardly be imagined in which a party being possessed with the notions that a proceeding was for his benefit, and to relieve him from restraint would not have understanding enough to adopt that proceeding, and to say that it was entirely with his will that it took place. A more striking instance, he thought, of that could hardly be furnished than by the case of *Ex parte Bridge*, to which reference had been made: it was absurd to call such a proceeding an act of volition by a lunatic, and it was as great an anomaly to permit a verdict of nineteen jurymen to be set aside by one of twelve, which would be the number to try a traverse of the inquisition. He felt the weight of the authority in *Ex parte Bridge*, but he was bound to say that neither

(*a*) A report of the proceedings in this case will be found 18 Law T. Rep 191; as the point involved in this application is of great public interest, as well to the Profession as otherwise, the arguments of the counsel on both sides are reported at greater length than usual.

in that case nor in any other to which his attention had been directed, had circumstances been taken into consideration which were most essential to decide so important a question. A traverse was entirely a creature of the statute law, and a party seeking to avail himself of its advantages must take with it all the conditions which were imposed by the statutes. There was no traverse at common law as appeared by *Sadler's* case. The traverse was first given by the statute 34 Edw. 3, which applied only to particular cases. The principles of that statute were extended by that of 36 Edw. 3, to all offices found for the king, and a person applying for a writ of traverse was required to shew by evidence his ancient right and good title, and after that it remained with the discretion of the Chancellor whether it should be granted or not. The next statute was that of 8 Hen. 6, which provided that a party had no right to traverse unless he complied with the conditions prescribed by the Act, and proved this traverse to be true. The 1 Hen. 8, extended the time within which a person could traverse to three months, and the law remained in that state until the passing of the statute 2 & 3 Edw. 6. By that Act a person "untruly" found a lunatic could traverse the inquisition. The words were not that *every* person found so could traverse, so that it must be found out; what was the meaning of that word "untruly?" It must mean that the supposed lunatic was to satisfy the Court that the verdict he was desirous to traverse was untrue; or, in other words, he must lay evidence before the Court to enable it to decide whether it was a proper case to allow a traverse. That word was introduced for the purpose of leaving to the holder of the Great Seal the right to consider and to have evidence adduced whether there was good ground for supposing that the party was improperly found lunatic. The cases that had been decided, especially those of *Sir John Cutts* and *Scowrefields'*, shewed it was a matter of discretion in the Court whether the writ should issue or not. With respect to the right of the Crown, after office and inquisition found, the king was not entitled to a writ of melius inquirendum, absolutely and of right, but he must shew good cause why that proceeding should take place; it was clear that it would not issue, except on pregnant matter, to shew that the former finding was erroneous. In Buller's Nisi Prius, the practice had always been for the party to petition the Lord Chancellor for leave to traverse, and then the Chancellor would upon proper grounds give such leave, and suspend the grant of the custody in the mean time. All the decisions which had taken place prior to *Ex parte Bridge* were decisions under the statutes. In an anonymous case in Mosely's Reports, Lord King, in granting leave to traverse, imposed certain conditions. Now, if the writ were a matter of right, there would be no necessity to apply for leave to the Chancellor, and still less would the Chancellor have any authority to impose conditions upon the issuing of the writ. Passing from the conflict of decisions between Lord Hardwicke and Lord Thurlow on the one side, and Lord Rosslyn and Lord Eldon on the other, he came to the case of *Ex parte Bridge*, in which Lord Cottenham had held that the writ was a matter of right. It did not, however, appear in any of the cases that the old statutes had been referred to, or that, in fact, the question had been properly argued. In the latest case (*Sherwood* v. *Sanderson*) before Lord Eldon that question was not raised; that case related to the costs of the commission, and what was there stated by his lordship must be taken to have been incidentally stated, and not as necessarily applicable to the judgment to be given. In *Ludlam's* case, he imposed certain conditions on the issuing of the writ as to the time within which it was to be executed. The utmost that could be made of the decisions was, that they were very doubtful, and Lord Cottenham's decision in *Bridge* was not very decisive, and in *Ex parte Saumarez* (mentioned in the latter case, but not adverted to in the judgment) Lord Eldon dismissed a petition for leave to traverse presented, not by third parties, but by the husband and wife. Before the passing of the statute, 6 Geo. 4, it was doubtful whether a traverse was a matter of right; that statute concluded the question, for it enacted that the Lord Chancellor, was thereby "directed and required to hear and determine such petitions of traverse." That statute embodied the statutes of Edward 6. and, by directing the Chancellor to hear and determine the petitions. vested in him, as a matter of course, a discretion as to the granting of the writ; otherwise, there would be nothing to determine. There was no common law right to traverse an inquisition, and, being entirely under the statutes, everything must be done in conformity with their provision. What was indefinite under the old statutes of Edward 3, as to the right to traverse was made plain by the Act of Geo. 4, which gave a discretion to the Court; and if, after seeing the alleged lunatic, the Court should have a doubt as to the sanity or insanity of the person, it would be a case for the exercise of its discretion. If a traverse should be granted, and the jury then find her sane, the probability is that the parties will come to this Court, with an application for a new trial. The determination of the question depended entirely upon the statute law; it rested upon the provisions of certain Acts, which it was impossible to construe consistently with the argument, which had been urged by the other side, and it was impossible not to say, that under them there was a discretion to be exercised, which depended upon the view that was taken of the actual state of mind of the party, at the time the inquisition took place.

Sir *W. P. Wood* followed on the same side, and said that the argument of his opponent must be put as high as this,—they must say that under any circumstances whatever, not only with reference to the lunatic herself, as to whether she be or be not lunatic, that the traverse must issue: and that notwithstanding such traverse was not intended for her benefit; and although he might be in a condition to prove that the application was made for a totally different purpose, and that it was only made a handle of by parties who were desirous of retaining her property in their hands, and of having the traverse tried for the purposes of incurring still further expense and with a view of profiting by it, yet the Court was not able to pay attention to any such circumstances because the traverse was a matter of right. His grounds were, that the traverse would not be for the benefit of the lunatic, as the whole of her property would be wasted. From the statutes which had been cited, it would appear that there must be something beyond the personal inspection of the lunatic in order to arrive at the conclusion of granting the traverse. In *Roberts's* case, Lord Hardwicke went into the affidavits before granting the writ; and in *Barnsley's* case the writ was refused on the ground that as there had been several trials it would not be for the benefit of the lunatic that there should be another. [The LORD CHANCELLOR.—Is there any case in which the Great Seal has gone into the whole question of sanity or insanity—whether it has taken three days or thirty days to inquire into it before the Court has granted a right to traverse?] He had not found a case of that description, but he considered that the several cases which had been decided by Lord Hardwicke and Lord Thurlow were very strong authorities upon the question of discretion; and in the case of *Ex parte Ward*, Lord Eldon did not refuse the traverse the ground that the party applying was a stranger, but he assumed a discretion. It had been admitted on the other side, that if any person besides the lunatic applied for the writ, the Court would exercise a discretion as to its being granted; but the statutes made no such distinction, and therefore, if the Court had any discretion in one case it had the same in all; he had collected several instances from the registrars' books and other sources, in which Lord Eldon had heard and disposed of applications to traverse on the merits of the different cases. So late as the year 1823 that learned judge, as it appeared from the books in the Lunacy-office, had heard a petition in which no less than nineteen affidavits had been filed, a decision which might fairly be placed in opposition to the dicta of his lordship relied upon by the other side, that a traverse was a matter of right. In *Ludlam's* case, and in that of *Saumarez*, referred to by Lord Cottenham in the case of *Bridge*, it was plainly proved that the Court did not consider that a right to traverse an inquisition existed as of course. The state of the authorities was, that Lord Hardwicke, in the cases of *Roberts* and *Barnsley*, expressed a clear and decided opinion that the Court had a discretion in granting the writ, for he allowed it to issue in the first instance upon certain conditions, and refused it altogether in the second. His lordship's observations against the existence of any such right were most conclusive when he asked why the parties came to him for leave if the right to traverse was of course, instead of going to the Petty Bag-office and issuing the writ at once. Then followed the decisions of Lord Thurlow and Lord King, who, by imposing conditions on the granting of the writ, evinced an opinion that the Court had a discretion in the matter. In *Ex parte Wragg*, Lord Eldon, although undoubtedly he stated that the writ was a matter of right, did not overrule Lord Hardwicke, for the question whether the Court had a discretion was not argued. The case of the present petitioner was very curious and difficult to be understood, for it did not claim the writ of traverse as an absolute but as a qualified right, conceding that the Lord Chancellor was authorised to ascertain from the petitioner herself whether she was desirous that the writ should issue, but at the same time contending that if her wish was in the affirmative then that the writ must go as a matter of right. So that the person to decide by volition whether the writ should issue or not, was the very person whose capability of properly exercising a will was the subject of inquiry. It might be that some concealed and sinister motive existed for suing out the writ, and yet the Court could not inquire whether it was for the benefit of the lunatic that it should issue. He had no wish to put the case higher than that of *Saumarez*, in which Lord Eldon had received affidavits, and inquired whether it would be for the benefit of the lunatic that the writ should be granted. In favour, therefore, of the Court's possessing a discretion were arrayed the opinions of Lord Hardwicke, Lord Thurlow, and Lord King, and even the opposite decision of Lord Rosslyn, in *Wragg's* case, was unsatisfactory, for the case itself was very shortly and ambiguously reported. Then came the dicta of Lord Eldon, that the writ was a matter of right, and the cases of *Ludlam* and *Saumarez*, in which his lordship had exercised a discretion. These brought the question down to the case of *Ex parte Bridge*, decided by Lord Cottenham, and which was considered by the other side as conclusive on the point that the writ was a matter of right. That decision was based upon the assumption that his lordship was fettered by the expressed opinion of Lord Eldon, and that the statutes gave the subject a right to traverse as of course in all cases where the Crown seized land as escheator or otherwise. On this latter point his lordship had fallen into an error in supposing that the Crown ever seized the property of lunatics to its own use. It might take the property of idiots, but not of lunatics, and therefore the judgment of Lord Cottenham in *Bridge* must be considered as resting entirely upon the dicta of Lord Eldon. The statute, however, of the 6 Geo. 4, put the question beyond a doubt, for in its preamble it assumed that the Keeper of the Great Seal had all along exercised a discretion in the granting of the writ to traverse, and then proceeded to define that discretion and to limit the issuing of the writ to three months after the finding of the jury. The words in the statute, that the Lord Chancellor was "to hear and determine" the petition to traverse, could only mean that he was to have a discretion in the matter, or how otherwise could there be anything for him "to hear and determine?" Another view of the case as proving that the Court had a discretion in the granting of a traverse was, that the heir-at-law and next of kin of the lunatic were always served with notice of the intended application, which would be altogether unnecessary if the writ was a matter of right, for it could then be obtained ex parte. If the Court should hold that a traverse could be obtained of right, the present was the last case in which counsel would appear in opposition, even if it were to oppose any sinister purpose that the writ was intended to answer; and in future nothing would be required to be gone through except the form of indorsing on the writ, "Let right be done."

Rolt appeared on the same side, but did not address the Court.

Petersdorff (of the Common Law Bar) then followed, and contended that the Courts of Law had repeatedly decided that the right to traverse an inquest was not of course. The mistake had arisen from taking the words of text-writers and judges to mean that to traverse an inquest was a matter of right, whereas all that they inferred was, that it was a right, as contrasted with reviewing a judgment or a record. A coroner's inquest could not be traversed as a matter of right, and some inquests could not be traversed at all; for instance, the Crown could not traverse an inquest declaring a person to have committed suicide in order to obtain a verdict of felo de se. An inquest of a felon down the country, or one against outlawry, could not be traversed as of right, and it therefore became the duty of the parties promoting the present petition to shew that the traverse of an inquest in lunacy was different from other inquests at law, and also point out a remedy in the event of the Lord Chancellor, who would then become only a ministerial officer, refusing the application. It had not, however, been contended that the issuing of the writ was entirely unconditional, but that a certain portion of discretion was vested in the Lord Chancellor to ascertain whether it was the wish of the lunatic that the traverse should issue where the petition was presented in the name of the lunatic, and to see whether the petitioner had an interest when the writ was asked for by a third party. This concession, however, of discretion, destroyed the case on the other side, a none of the statutes pointed out any limit to the discretion of the Chancellor, or specified a different mode of proceeding in cases where the petitioner was a stranger to those in which the lunatic himself petitioned. Even in applying for a habeas corpus, a person must shew to an extent that he was wrongfully in custody, and some error or wrong must also be shewn on a mandamus or quo warranto. There was a great analogy between this case and a motion for a new trial: a mandamus or quo warranto was not granted as of right, but was subject to the sanction or leave of the Court. If this writ was a matter of right, why was a petition presented at all? The only object of the Court's having notice seemed to be that the lunatic might be protected from any abuse being practised in his name. Such an hypothesis made out his case, for,

in order to protect the lunatic, the Court must have the power of exercising a discretion, which meant looking into the evidence. Some mistake or miscarriage in the inquisition ought therefore to be shewn, or such a preponderance of evidence adduced to prove that the person was not insane before the Court granted a traverse, whereas, in the present case, there was not even a suggestion impugning the finding of the jury.

W. Morris, on the same side, said that the question had only come five times before Lord Eldon, the last of which was *Turner's* case, and which was decided upon a mass of affidavits. The point was not brought at all before Lord Lyndhurst; and Lord Brougham, in *Ex parte Tubb*, granted the writ on the ground that the solicitor, who was also a trustee, had a direct interest. All the cases, therefore, with the exception of that of *Wragg*, before Lord Rosslyn, had been decided on their merits.

Bethell, in reply, submitted that there had been much misapprehension as to the meaning of the statutes. By the common law of England, whenever the king's title stood on record on an office found, there was no remedy for the subject but to proceed either by monstrans de troit or by a petition of right—which petition was always presented to the Lord Chancellor to enable his lordship personally to examine the alleged lunatic and to suspend the custody of his person and property pending the inquiry. The statutes 34 and 36 Edward 3 gave the right of traverse; the right, however, was exclusively confined to the case of lands seized to the use of the king. With respect to the language of the statute of Henry 6, it was a mistake to suppose that it was necessary to shew "office untruly found" in applying for a traverse, such words being confined to an application by the traverser to have the lands to farm, which was a matter in the discretion of the Court. There was no statutory right to traverse till the 2 & 3 Edw. 6. The right to traverse an inquisition was given to a supposed lunatic in the plainest terms by that statute the word "unduly" in that statute was only intended to be made use of as a suggestion in applying for a traverse, or otherwise the Court would have first to hear the whole case again to ascertain whether the party asking to traverse had been unduly found a lunatic or not. With respect to *Ward's* case, which had been relied upon as proving that the Court could exercise a discretion, Lord Eldon had there stated that he was bound to grant a traverse to any party aggrieved, whether the lunatic or his alienee, but not to a stranger. The reason why the application for a traverse in lunacy was upon notice was to enable the Chancellor to suspend the grant of the lunatic's person and property, which could not be done ex parte, and had nothing to do with the right of the lunatic to traverse as of course. With respect to the 6 Geo. 4, it had been asked why, if there was no discretion in the Court, the heir at law and next of kin were served with the petition, applying for leave to traverse? It was not served on them in their character of heir or next of kin, but as parties interested, and that only if they had had the carriage of the inquisition. The latter statute was based on the statute of Edw. 6, and the discretion which it gave was only with the view to limit the time within which traverses should be prosecuted. It had been urged, that because affidavits had been filed in *Ludlam's* and *Saumarez* cases, the Court exercised a discretion, but affidavits being filed was no proof that the judgment of the Court had been influenced by them. In *Fust's* case, the application to traverse was by the husband of the lunatic, and Lord Thurlow, in refusing the petition, assigned as a reason that the petitioner had not a legal interest, and so in *Roberts's* case Lord Hardwicke observed, that as the petitioner was a stranger he was desirous of including the whole matter in one traverse, by joining in it another person who had an interest. The inquisition in lunacy was ex parte by the Crown, the lunatic himself being no party to it, and not in every case being present at it, and it would be hard indeed if he were to be peremptorily concluded by such a proceeding.

The following statutes and cases were cited during the arguments: 17 Edw. 2, c. 10, 34 Edw. 3, c. 14; 36 Edw. 3, c. 13; 8 Hen. 6, c. 16; 18 Hen. 6, c. 6; 1 Hen. 8, c. 10; 2 & 3 Edw. 6, c. 8; 6 Geo. 4, c. 53; Co. Litt. 77 b; 12 East, 115; *Sir John Cutt's* case, Ley, 26, vide 3 Atk. 6; *Scrowfield's* case, Ley, 22; *Re Sadler*, 1 Madd. 581; *Re Bridge*, 1 Cr. & Ph. 338; *Ex parte Saumarez*, 1 Cr. & Ph. 342, note; *Ex parte Wragg*, 5 Ves. 832; *Ex parte Ward*, 6 Ves 579; *Ex parte Ferne*, 5 Ves. 450, 832; *Sherwood* v. *Sanderson*, 19 Ves. 287; *Re Fust*, 1 Cox, 418; *Ex parte Roberts*, 3 Atk. 5, 308; *Re Barnsley*, 3 Atk. 184; *Ex parte Southcot*, Amb. 109; S. C. 2 Ves sen. 401; *Knight* v. *Duplessis*, 2 Ves. sen. 555; S. C. 4 Mad. 313; *Ex parte Hall*, 7 Ves. 260; *Re Loveday*, 18 Law T. Rep. 217; *Anon.* Mos. Ch. Rep. 71; *Re Sir G. O. P. Turner*, 27 June, 1826; *Re Ludlam*, 2 Collinson on Lunatics; Buller's Nisi Prius, 216.

The LORD CHANCELLOR.—The question which has been argued before the full Court, is one of very great importance in a constitutional point of view, but it is a point which lies within a narrow compass. . . . . has a right to traverse the finding of the jury upon a commission against a person who has been found a lunatic, and whether the liberty to traverse is, as the term has been used in all times "as of right." What the true meaning of the expression "as of right" is, I shall postpone until I have considered whether or not it is of right. What the meaning of that term is, is another question, although it is involved necessarily in the first. Now, the whole question depends in the first instance, upon the statute of Edw. 6, and although it is fair to reason by analogy, and although it has been argued upon that ground, yet here we are proceeding on a statute, and must consider ourselves bound by the enactment fairly construed; looking also, as we must do, to what has been the view of other judges in former times, from the period when that ancient statute was passed. Now the 6th section of the statute 2 & 3 Edw. 6, c. 8, after providing for other cases, proceeds in this way—"or if any person or persons be or shall be untruly found lunatic, idiot, or dead, it is enacted that every person and persons grieved or to be grieved by any such office or inquisition, shall and may have his or their traverse to the same immediately or after, at his or their pleasure, and proceed to trial therein, and have like remedy," &c. Much reliance has been placed on these words—"and have like remedy and advantage as in other cases of traverse upon untrue inquisitions." Now if, in granting a traverse, the Court is not simply at liberty, but is actually bound to enter into the whole question which was before the jury (if it should be of opinion that there is no absolute right to traverse), it must hear all the evidence which was laid before the jury at the trial before it would be at liberty to make up its mind to grant or refuse the application. Now, in order to found the claim of the party to enter into the whole of the evidence, the case is put upon the ancient statutes regarding escheators, and the proposition of the Attorney-General referring to that statute was, that there could be no issuing of a traverse; that there could be no right to traverse until you had established your title; and having proved that, as he argued, under the early statute of Edw. 3, in regard to escheats generally, he then said that the law which applied to the present case required, according to the words which I have already read, that the party should have the like remedy and advantage as in other cases of traverse upon untrue inquisition; and therefore it was argued, that before the Court could possibly grant a right to traverse, the title must be shewn as under the ancient statute. Now that proceeds altogether on a mistake, because the right to traverse, which was there given in regard to lands and upon ordinary escheats and office found was of this nature—that the party had not only a right to [illegible] given to him by the Act, but had a right to have the lands demised to him for a certain time during the existence of the trial. If you came first, and asserted your right to traverse as against the Crown, you had not only a right to traverse, but if you shewed your title to the satisfaction of the Chancellor, you had a right to the very lands, so as to secure to the Crown a rent if you should turn out to be wrong. I secure to you the possession if you should turn out to be right. Now, this matter is put wholly out of the question by Staunton, who, in his book on Prerogative, explains it very satisfactorily. After stating several of these old statutes, which are relied on so much as governing this case, he says, "Hereupon it is to be noted that the shewing of the evidence is only rehearsed as to the letting of the lands to farm, and not to the traverse, for by this statute he may traverse without shewing any evidence, but not have the lands to farm. Also by these statutes he is not bound to any certain time for taking of his traverse, but only for taking of the lands to farm; for he may tender his traverse when he will, so he desire not the farm of the lands. But if he will have them to farm, he must tender his traverse within the month, as appeareth," and so on. So that in this book, which is always considered a great authority, it clearly appears, what no doubt the statute itself admits, that it is a misapplication of that statute to bring it to bear upon the statute upon which this case really depends. Now, if the point were about to be decided for the first time upon the meaning of the statute of Edward 6, I might say that words could hardly be stronger to give to a party what is called the right to traverse,—it is to be "at his or her pleasure." Can words be stronger? It is to be governed by the usual laws as regards traverses, as far as they are applicable, but that does not take away the right given by those express words. No doubt that is upon an allegation that the party is untruly found a lunatic; for if he were not so found, there would be no ground for the traverse, and, although the Act of Parliament is clear, yet it does not exclude the exercise of a discretion, whether it be an untrue allegation or not. The authorities do not assist us at any early period, for the cases, of which there are some that I have looked into in the Court of Wards, do not bear so fully upon the case as to justify the Court in placing any reliance upon them. We come down, therefore, at once to the time of Lord Hardwicke. Although Lord Hardwicke, in the cases which have been referred to, did put it in some sense as a matter of right; yet it is impossible to deny that he went into the cases and examined the circumstances in order to satisfy his mind that it was a proper case in which to grant a traverse. How did it arise that the Chancellor was applied to? If it be an abstract right, the party may go into the Petty Bag office at once, and lodge his traverse. I shall presently state a case in which a party appears to have taken that step, and although objected to, was not interfered with. I do not desire to say anything which shall touch the question, whether a party might not, behind the back of the Court, and irrespective of the Act of Geo. 4, go into the Petty Bag office and lodge his traverse without the Court interfering at all; but it is very plain how it was that the petitions were presented to this Court, for the traverse cannot of course take place until the party has been found lunatic on a commission issued by the Great Seal. The Great Seal has jurisdiction. The Great Seal grants the custody of the person and of the estate of lunatics. No party would attempt to traverse without the leave of the Great Seal, because, in all cases of traverse there is a question of costs to be considered. If a person goes behind the back of the Court, and exercises his legal right (if he had it), could he come and ask for his costs, as on a proceeding instituted by the authority of the Great Seal? He must depend upon his rights by law, whatever they may be. It can, therefore, be easily discovered why parties come with their petitions to the Court. The Chancellor, among his offices, has the duty of issuing the very writ which is called for in this particular case, and, therefore, it is why the parties come and ask permission to take this step; and from all the cases it appears that the Court has exercised, I will not call it so much as a discretion, as a care and caution in the issuing of the writ. Now, with regard to the authorities, they have all been referred to in the late case of *Ex parte Bridge*. Lord Hardwicke, I consider, did go to a greater degree in point of evidence than any other judge later than himself would have gone. Lord Thurlow, in *Ex parte Fust*, following Lord Hardwicke, did enter into the circumstances of the case, and I am not certain that Lord Thurlow was at all wrong in doing so. A man had married, and it was necessary to impeach the marriage. A commission would have enabled the parties to impeach it. He came there to assist the traverse in order that the marriage should not be impeached, and the Chancellor there seeing the indirect and improper purpose for which the traverse was intended to be used, refused the leave. As regards the later cases, it is impossible to entertain any doubt. Every successive Chancellor, from the time of Lord Thurlow down to this moment, has been of opinion that the issuing of the evil is, in some sense or other, a matter of right. Lord Eldon's opinion is perfectly clear upon it. Over and over again he has enunciated the rule of law. He states it without any limit; but he states it over and over again as a matter of right; and even, as regards the question which has been discussed, of the right of a third party, you will find that, in *Ex parte Hall*, 7 Ves. 263, he states this:—"There are two views in which this case is to be considered: first, as to the right of the petitioner to traverse, it strikes me as extraordinary to say that a person who had become the bonâ fide owner in equity of two advowsons under contract, is not aggrieved by the finding that the party with whom he contracted has been a lunatic ten years. If, however, decisions would exclude him, he would be entitled only to that regard which the Court has been in the habit of giving in lunacy particularly; but the case *Ex parte Morley* proves that a person under such a contract is a party aggrieved, and I am of opinion, upon that case, he has a right and must be permitted to traverse." He thought, therefore, that the right to traverse extended as well to a third person having an interest as to the case of the alleged lunatic himself; even in *Ex parte Ward*, he did not decide against the right, but he looked with a jealousy to the application of a mere stranger, not connected with the family, and having no personal interest. I am far from saying that it may not be proper in some cases for a stranger to apply; it may be a proper application, but generally speaking where there is not an interest, the alleged lunatic is supposed to be seen, and if seen who so proper as himself to impeach the commission? In that view he may or may not, according to circumstances, be a party to the traverse, for if the traverse be upon his own application it is difficult to say he is not a party to it: if the traverse be on the application of another person, then he may be the subject of the trial, but may not properly be considered a party to it. As regards the other authorities, the opinion of Lord

Rosslyn admits of no doubt; Lord Eldon's opinion is over and over again expressed at different periods and in different cases; Lord Lyndhurst was never called on to express any opinion; Lord Brougham, in a case before him, without deciding the matter, does refer to it. In *Re Tubb*, in 1831, he makes this observation, "My predecessors seem to have considered it as a matter of right." He meant to do nothing in opposition to that declaration; Lord Cottenham's authority was to the same effect. Lord Truro twice decided the matter upon the decisions of his predecessors. The authorities therefore, as far as they go, are conclusive. I am of opinion that the statute of Geo. 4 does not alter the question. There is an authority which has been found of *Gervais Healy*, which was in 1748, and there the party seems to have gone to the Petty Bag Office and to have exercised the right, without the intervention of the Court of entering a traverse. The petition was presented by the cousins and co-heirs of the lunatic, and prayed that the traverse might be discharged; it does not appear that any order was made at that time, but the costs of the petition upon which such order was made were reserved until the traverse should be tried, or there should be delay in carrying the same down to trial. Before the traverse could be tried, Gervais Healy died; so that there was a traverse filed in the Petty Bag Office in the name of the lunatic, and, as was said, without his assent; but it was filed as of right, the parties not coming to the Court at all, and Lord Hardwicke left them to try that traverse, without interfering with it. Now, that seems to be a very considerable authority, to shew that at the time not only was it considered as of right, but so much of right that if the party chose to go behind the back of the Lord Chancellor and to file his traverse in the Petty Bag Office he was entitled to do so, and carry the matter down to trial; but in that case the costs were reserved until the traverse should have been tried. In a case from the Lunacy Office it appears that on the 10th Feb. 1825, an order was made by Lord Eldon, reciting a petition presented by the lunatic for a traverse, and also a petition presented by the lunatic's son-in-law, praying to be appointed committee, which directed that an interim manager of the farm and lands should be appointed, and that the lunatic should be produced before his lordship. Now a note was taken by the present Vice-Chancellor Turner of what fell from Lord Eldon. He said, "I will see the person who is the subject of this commission, and learn from him whether it was his real intention to traverse." The decisions have been that the party has a right to traverse, and that if any other person than the party—the object of the commission—has an interest inducing him to apply for liberty to traverse, there can be no objection to his traversing; but there is a right to call upon him to do it within a limited time. "With respect to the party himself," says Lord Eldon, "I am not quite so confident as I have been that there is not a right to limit him as to time." In that case Lord Eldon did not retain the opinion he so often expressed, that not only the party had the right, but even a party having an interest in point of estate. The authorities, therefore, are entitled to the greatest weight; and it would require very great deliberation and judgment, and a very strong feeling in the mind of any judge who should venture to oppose his own opinion to so much authority. I am clearly of opinion that these opinions are authorised in the fullest manner by the true meaning and spirit of the Act of Parliament itself upon which they are founded; and if I had had to decide the case in the first instance, I should have come to the conclusion to which I now arrive, that it is the right of the party to traverse in a case of this nature. Now the traverse being as of right, the question remains to be considered how that right is to be exercised? It is impossible to deny that in every case which has been cited, the Lord Chancellor has addressed himself to the consideration of the question whether it is proper that the writ should issue. There is no doubt about that; for whether it is to depend upon an examination of the lunatic, or upon such affidavits as the parties may think fit to file, still the Court has addressed itself to the question, is this a case in which the traverse ought to be allowed? But in order to come to a satisfactory conclusion upon this question, you must first decide whether in any proper sense the issuing of the traverse is of right or not; because, if it is of right, which I consider will now be decided, then the consideration to which the Court would address itself upon the second assumption, as to the subsidiary point, would be very different, it would be addressed in a very different view from that to which the Chancellor would be bound to direct his attention if it were not strictly of right; but being strictly of right it is still as it ought to be, under a certain control; for example, if a petition were presented to me, and I were to call, as I necessarily must, in every such case, for the presence of the alleged lunatic, and I saw instantly the signs of absolute raving madness, nobody can imagine that the person holding the office I fill would be at liberty to allow the writ to issue; in that case there could be no untrue allegation, and it would require no trial: upon the very view it would be seen that there was no untrue finding, and therefore that there was no necessity for the traverse; and the protection which it is the duty of this Court to throw around such an individual for the protection of his person and estate, would compel it to deny the right to traverse. In some of the cases, those before Lord Hardwicke particularly and in one or two before Lord Eldon, I cannot deny that matters have been entered into which, according to the strict interpretation of the words "as of right," one would hardly have expected would have been entered upon; but I am not surprised to find such cases, for as a petition is presented, and is served, and the common order made that all parties should appear, and be heard, and as the parties, by the rule of the Court, are left to their discretion in filing affidavits, I consider it no proof at all of the right or duty of the Court to enter into a general investigation of affidavits entering into the general question as to whether the sanity or insanity is proved or disproved before the jury. In many cases affidavits would absolutely prove nothing, but when the Court has been pressed with the particular hardship of the circumstances one is not very much surprised to find they have been entered into to some extent; but I cannot permit Lord Eldon's authority to be quoted in favour of that which is contended for against the traverse, that I am to enter into all the evidence which was before the jury, and to consider this as a question of a new trial: I cannot admit the authority of Lord Eldon for that proposition, when I find it over and over again deliberately stated that it is of right, and that he shall examine the lunatic himself upon that question. Now, that brings me to what it is I am to consider my duty with reference to the decision here. There is no doubt that my first duty is to render it satisfactory to my mind, that the application is a bona fide one; and that the lunatic herself is competent to judge so far as to satisfy me whether she really does desire or not to have a traverse as against the finding. If I had any doubt upon that point, I am not now going to decide, whether I should hear evidence of the sanity or insanity, which I now do hold I am not at liberty to go into. I will not decide, that if I were satisfied, upon the examination of the lunatic, that it was doubtful what her intentions were, that she herself did not know her own mind upon the subject, or was not perhaps capable of coming to a clear conclusion, I do not say in such a case the Chancellor might not feel himself at liberty to see who were the persons applying for her, by whom she was surrounded, and what were the objects and views of the persons applying; but it will be time enough to enter into those considerations when the case arises. The case now before me is one in which the Court will decide that it is of right in the proper sense of those terms. I have myself examined Mrs. Cumming; I have represented to her what the consequences of this traverse may be in point of expense; I have had a considerable conversation with her, and upon this point she is as reasonable and as sane (I am speaking not of any delusions she may labour under, of that I can form no opinion), and, as far as appearances go, as to her competency to judge whether she wishes or not that this traverse should issue; on that question I am bound to say she is as reasonable, as composed, as free from heat, or passion, or violence of any sort as any reasonable person with whom I ever conversed. She desires that this traverse may issue; she is aware it may put in peril the remainder of her property, or nearly so; she is content to sacrifice her property for what she terms her liberty of action; and she has satisfied me that as far as such a person can have volition, she has it. She has only and simply desired that if I think it right that the traverse should issue, I will allow it to proceed. I am of opinion, therefore, that this is a case in which (the traverse having been decided as being of right) I am bound to allow the traverse to go. There is one observation which I have to make, though not bearing upon the point of law. In this case it is impossible for the Court to have heard without pain that this lady's property is of small amount: without care and caution the whole of her property will be swallowed up in litigation, and she stripped of the whole of her means of existence at the age of 76, by the operation of law brought in to protect her. Let the parties on both sides seriously consider the case. It will be a reproach to all parties if this matter is carried on with an expense and to an extent which will swallow up the remainder of this poor lady's property. She is exceedingly infirm, and it would be a reproach to everybody concerned, and it would be a reproach also to the law, if during the short remainder of her life, she should be left without the means of subsistence. This case has been conducted at an expense which is perfectly frightful with reference to the object. Upon this occasion eight counsel have appeared; three on the part of Mrs. Cumming, and five on the other side; and I make an order that no more costs shall be allowed than for two counsel on each side; and I will make an order that in whatever further steps are taken on either side, they shall restrain the expenditure to the lowest possible point, and preserve to this lady, if it is in the power of the Great Seal to preserve it, some remnant of her fortune for the remainder of her days.

Lord Justice Knight Bruce.—The observations of the Lord Chancellor render it almost or quite superfluous for me to add even the few words which I shall add. An inquest under a commission of lunacy is, I apprehend, in reality a proceeding to which the alleged lunatic is not a party. Accordingly I apprehend the law to be this, that his rights after the finding of the jury are the same, whether he shall have appeared before the jury for the purpose of contesting the allegations of lunacy or not. If he has not contested the matter before the jury by himself, or any counsel, solicitor, or agent on his behalf, and is not in default for not having done so, as I conceive to have been the case in this instance, surely it will be a monstrous principle to say he is not entitled as of right to dispute the finding, nor do I understand law and principle, or, in other words, law and justice, to differ in that respect. Legally, as I have said, his rights would be the same, although he had not appeared and contested the matter before the jury either in person or otherwise. The jurisdiction, therefore, to which it belongs is in my judgment only to ascertain whether the application is an act of free will of the person—not whether the will is that of a person of sound or of unsound mind: where, in the judgment of that jurisdiction, there is a plain and sufficient expression of free will, the traverse, cannot, I think, be refused, however clear, however important, and however beneficial to the alleged lunatic it may be in the opinion of the judge that the finding of the jury should remain unquestioned. It is the right of an English person to require the free use of his property, and that his personal freedom should not be taken from him on the ground of alleged lunacy without his being allowed the opportunity of establishing his sanity or of denying his insanity before a jury as a contesting party, and not merely as a subject of inquiry. Whether in the present instance there has been such a plain and sufficient expression of free will as has been mentioned (though I consider it highly probable), I do not know, and of course, therefore, I cannot give any opinion upon it, it having been thought by the Lord Chancellor, Lord Cranworth, and myself right that the Lord Chancellor alone should see and converse with Mrs. Cumming.

Lord Justice Lord Cranworth.—I have nothing to do but to express my entire concurrence in the judgment of the Lord Chancellor and my learned brother, and just to add a few words to what has been said. I think, under the statute of Edw. 6, the party aggrieved (the lunatic herself particularly being the party aggrieved), by an inquest which has found her a lunatic, has a right to traverse. I think the right is expressly given to her by that statute, which, independently of the authorities, would have appeared to me perfectly clear and indisputable. Now, when I say a right to traverse, it may be thought inconsistent with the fact that the Chancellor in some degree exercises what is considered a discretion. I conceive that to be merely a discretion to see that the party is herself really applying for the traverse; because the peculiar nature of the subject-matter of inquiry makes all analogy from ordinary cases to a great extent inapplicable. If a party sues out a writ to recover land, or any property, it is presumed that it is his act; but where there is a primâ facie reason for supposing the party is incapable of having the will, it is fit that some precaution should be adopted for the purpose of seeing that that which is to be done as the exercise of his will is really so done that it is ordinarily done by the Lord Chancellor examining the party himself. I do not, however, mean to say that there might not be cases in which, even without a personal examination, some inquiry might be taken and made on the subject,—as, for instance, suppose a party is in a state, not of mental, but of bodily illness, that makes it impossible he should come in contact with the Chancellor. I do not say a case might not occur in which some discretion might not be exercised; but, in the general observations which have been made I entirely concur, and I have added these few words lest it should be supposed that I entertain some doubt when really I entertain none.

COURT OF APPEAL IN CHANCERY.

Reported by Owen Davies Tudor, Esq. of the Middle Temple, Barrister-at-Law.

(BEFORE THE LORDS JUSTICES.)

IN BANKRUPTCY.

Saturday, March 20.

Re Brewer.

The attorney of a creditor who has proved, cannot request, as a matter of right, under the 232nd section of the Bankrupt Act, liberty to inspect the

papers and documents upon which the adjudication is founded, for the purpose of impeaching the validity of the adjudication, as such request, according to the proper construction of the section, must be such as the Court, in its discretion, considers reasonable.

This was an application, made in consequence of the commissioner at Bristol refusing to give the attorney of a creditor, who had proved, liberty, under the 232nd section of the Bankrupt Law Consolidation Act (12 & 13 Vict. c. 106), to inspect papers and documents, upon which the adjudication was founded, with the intention, it appeared, of taking steps to impeach the adjudication

The 232nd section is as follows:—"That the proper officer of the Court in London, and in the several districts in the country, shall, on the *reasonable request* of any bankrupt or arranging debtor, or of any creditor of such bankrupt, having proved his debt, or of an arranging debtor, when the debt of the arranging creditor has been admitted in the petition, or proved, or on the like request of the attorney of any such bankrupt, debtor, or creditor, produce and shew to such bankrupt, debtor, creditor, or attorney, at such times as the Court shall direct, every fiat, petition for adjudication of bankruptcy, adjudication of bankruptcy, and petition for arrangement against or by such bankrupt, and all orders and proceedings under any such fiat, petition, or adjudication, and *the Court shall order* the official assignee or officer of the Court, as the case may be, to permit such bankrupt, debtor, creditor, or attorney, to have inspection at all reasonable times, of all books, papers, and writings relating to the matters of such fiat, petition, or adjudication, and the estate of the bankrupt or debtor in the possession of the assignees, or filed in court in such matter, and permit him to inspect and examine the same, and such official assignee or such officer shall provide for any such bankrupt, debtor, creditor, or attorney requiring the same, an office copy of such fiat, petition, or other proceeding, books, papers, and writings as aforesaid, or of such part thereof as shall be required, receiving such fee or sum, or rate of charge as may be authorised in that behalf."

James, in support of the appeal, contended that the Court was bound to allow the inspection.

Bacon, for the assignee, was not heard.

Lord Justice Lord CRANWORTH thought that, according to the true construction to be put upon the section of the Act referred to, the request ought to be of a *reasonable* character, and that as it was not such in this instance, the application ought to be refused.

Lord Justice Knight BRUCE said that he was not perfectly satisfied that the particular papers and documents which the gentleman making the application wished to see, were within the language of the section, but that he would rather give no opinion on that point. But assuming, for the purposes of this case, that they were within the language of that section, he must hold that a *discretion* must be exercised as to the *reasonableness* of the application By this application the creditor, on the part of the bankrupt, desired to see the proofs with the view of impeaching those proceedings in which the creditors at large were interested,—one of the body had an interest adverse to the body at large, and wished to affect the whole body of which he was one merely—to destroy the commission and take away from his fellows that right which the adjudication gave them His lordship thought there never was an application more properly refused.

Appeal dismissed with costs.

IN CHANCERY.

Thursday, March 25.

Ex parte MANWARING, *re* THE EASTERN COUNTIES JUNCTION AND SOUTHEND RAILWAY COMPANY.

Joint-Stock Companies Winding-up Acts—Provisional committeeman Contributory.

A company was, in May 1845, provisionally registered for the purpose of forming a railway from R. to S., and A.'s name was, on the 30th of September, 1845, inserted in the list of the provisional committee. A communication was made to A. by the secretary, stating that he was, as a member of the provisional committee, entitled to 100 shares, or a less number, upon his signifying what number he would take. A.'s wife and afterwards A. himself, wrote requesting 100 shares to be reserved for him. The secretary afterwards, by letter, requested payment by A. of the deposit on the 100 shares accepted by him. In reply, A. required information as to the amount of deposits already paid, stating that he should not hesitate to pay on being satisfied on the points inquired after.

Held, reversing the decision of the Court below, that there had not been an unconditional acceptance of shares, it being, moreover, doubtful whether there had ever been an allotment of shares; and that A.'s name ought to be removed from the list of contributories.

This was a motion by way of appeal against the decision of Vice-Chancellor Parker of the 9th of February last, who did not think fit to make any order on a motion made before him on behalf of Mr. John Manwaring, that the order or certificate of Sir William Horne placing or retaining his name on the list of contributories should be discharged and varied, and that his name should be struck out from the list of contributories to the Eastern Counties Junction and Southend Railway Company. His Honour considered the case as not distinguishable from *Hutton* v. *Upfill*, 2 House of Lords Cases, 674.

The material facts of this case are sufficiently stated in the judgment, and are reported 18 Law T. Rep. 268.

Lee and *F. S. Williams*, in support of the motion, contended,—first, that as there had been no unconditional acceptance of shares by Mr. Manwaring, this case did not come within the authority of *Hutton* v. *Upfill*, 2 Ho. of Lords Cases, 674; secondly, that there was no evidence that there had been an allotment of shares to Mr. Manwaring (*Conway's* case, 18 Law T. Rep. 169); thirdly, that at any rate the variation of the plans of the company by the introduction, without Mr. Manwaring's knowledge of a new line of railway, was a sufficient reason for not including his name on the list of contributories. (*Edmond* v. *The Midland Great Western Railway Company of Ireland*, 16 Law T. Rep. 505.) They also cited *Cooke's* case, 3 De Gex and S. 118; *Lord Mansfield's* case, 14 Jur. 28; 14 Law T. 345.

Daniel and *Wordsworth* for the official manager.

Lord Justice Lord CRANWORTH.—We think this does not come within *Upfill's* case on the ground that there has been no acceptance of shares. Assuming that there has been no substantial variation of the line, the way the case stands is this: Mr. Manwaring's name is put on the provisional committee on the 30th of September, 1845, for the first time. On the 6th of October the first meeting of the committee of management took place, and on that day Mr. Causton, one of the promoters of the scheme, was appointed secretary; and on the same day, but I suppose after that appointment, he writes a letter to Mr. Manwaring, telling him that he was, as a member of the provisional committee, entitled to 100 shares, or any less number, provided he signified in writing on or before the 9th instant, the number he was desirous of taking. In answer to that letter Mrs. Manwaring writes on the 7th of October, that she cannot say whether he will take the shares, but that he will write when he returns home, but she asked that 100 shares might be "reserved" for a few days longer. When Mr. Manwaring returned home on the 9th of October he then writes, "I should wish to have the shares reserved for me." I expressed an opinion in *Onion's* case, 17 Law T. Rep. 138, to which I still adhere, and both myself and my learned brother are of opinion that it does not mean "I accept the shares," because the acceptance and the reservation of the shares were considered by the writer as different things, as appears from the other letters. If that be so there is no evidence of acceptance on the 9th of October, but then matters go to sleep for a long time. On the 21st of November a letter was written by Mr Causton to Mr Manwaring, in which he says, "the plans and sections of the Eastern Counties Junction and Southend Railway being nearly ready for deposit on the 29th inst. agreeably to the standing .. ... of the House of Commons, the committee of management are of opinion that the payment of the deposit money should be no longer delayed; they therefore request you will be so good as to pay forthwith the deposit on the 100 shares accepted by you as a member of the provisinal committee, agreeably to your letter of the 9th instant." So he admits that there was no acceptance unless that be considered one, which we do not consider to be an acceptance. The postscript of the letter adds, "Your letter of allotment has already been forwarded, and the bankers of the company are directed to receive the amount." On the 27th Mr. Manwaring writes in answer. "I must beg that you will have the goodness to inform me whether a sufficient amount of deposits has been paid up to enable the company to go to Parliament this session, and if all the other members of the provisional committee have paid their deposits; *should that be the case*, I shall not hesitate to pay also, that is, upon being clearly satisfied upon these points." Now, what we think is the fair inference, is no more than this, "I do not accede to your interpretation of my conduct but I accept subject to these qualifications," and there is no evidence that they have been complied with; on the contrary the evidence clearly shews they had not been complied with. Therefore it amounts to no more than this. The secretary writes, saying—"You did accept on the 9th of October, and we call on you to pay the deposit." Upon which Mr. Manwaring in substance says—"I do not trouble myself as to what may be the legal effect of what is already done; satisfy me that sufficient deposits have been paid, and I will accept the shares and pay my deposits." So that there was not an absolute and unqualified acceptance It does not, I think, come within *Upfill's* case. This gentleman's name, therefore, should be removed from the list of contributories.

Lord Justice KNIGHT BRUCE.—Considering the case as it would stand if the letters of the 21st and 27th of November were out of it, there is not only in my opinion a total absence of evidence of allotment, but strong reason to believe evidence to the contrary. Whether arising from the fact suggested at the Bar that they had not wherewithal or otherwise to allot, that is my view independently of those letters. Then, upon those letters, how is this case varied on this point by them? It is argued by the counsel for the respondents that the letter of allotment referred to in the postscript of the letter of the 21st of November, either refers to nothing or to a letter not produced; the consequence, therefore, must be that in substance that letter of the 21st of November must be considered rather in the nature of the proposal than of anything else; and if it had been unconditional the case might have stood more favourably for the respondents. But the letter of the 27th is a conditional acceptance, and the condition was never fulfilled. I come to the same conclusion as Lord Cranworth, that sufficient evidence is not produced to put this gentleman on the list of contributories. But we are glad to think the Vice-Chancellor had not had this matter brought so fully before him or he would have taken the same course as we have. But what we now do is to be without prejudice to the production of additional evidence by the official manager in order that this gentleman's name may, if right, be placed on the list of contributories.

Costs of all parties to come out of the estate.

ROLLS COURT.

Reported by J. MACAULAY, Esq of the Inner Temple, Barrister-at-Law.

Monday, January 12.

COOPER *v.* KNOX.

Order of course, discharge of—Irregularity.

Where an order of course is obtained at the Rolls, and application is made to discharge it, it ought to be made to the Court to which the cause is attached.

In this case an order of course was obtained at the Rolls to change a solicitor in the cause, which was a cause attached to Vice-Chancellor Turner's Court.

Moore now moved to discharge it, on the ground of irregularity.

Giffard, contrà, insisted that whatever the practice might have been formerly, it was now settled that an application to discharge an order of course ought to be made to the Court to which the cause is attached. The merits of the case, if necessary, could then be gone into, but that could not be done in this court, where nothing more than the question of regularity or irregularity was ever considered, and that course had been found inconvenient and had now been abandoned.

Moore in reply.

The MASTER of the ROLLS said, that the practice had been varied by the General Order, and the application must be refused, with costs.

Monday, Feb. 9.

NAYLOR *v.* ROBSON.

Errors in proceedings—Original and supplemental claim—Rectification.

Errors were committed in carrying out the proceedings under an original claim, and a supplemental claim was allowed to be filed for the purpose of correcting them.

Wickens moved for leave to file a supplemental claim for the purpose of effectually carrying out proceedings under an original claim, which had been continued after an abatement caused by the marriage of one of the plaintiffs.

The MASTER of the ROLLS gave leave to file the supplemental claim.

Wednesday, Feb. 18.

ROSE *v.* GOULD.

Will—Construction—Debts due by children of testator to be reckoned as part of their share—Hotchpot clause—Statute of Limitation—Residuary estate.

A testator directed his residuary estate to be divided amongst his six children:—"And I direct that, in order to equalise my said residuary estate amongst my said six children, in case it shall appear by my private ledger, that any or either of them my said children or the present or any future husband of any of my said daughters, are indebted to me at my decease in any sum of money, such debt shall be considered as forming part of my residuary estate, and the shares of my said children shall respectively become liable to pay such debt." One of his sons owed

him a large debt, but part of it was barred by the statute:

Held, nevertheless, that the whole must be paid out of his share, and that the clause amounted to a hotchpot clause.

The testator gave the residue of his estate amongst his six children equally, "subject nevertheless to the several provisoes, limitations, and conditions hereinafter mentioned, expressed, and declared, of and concerning the same; that is to say, provided always nevertheless, and my will is, and I direct that in order to legalise my said residuary estate between and amongst my said six children, in case it shall appear by my private ledger, or any other of my books, that any or either of them my said children, or the present or any future husband or husbands of any or either of them my said daughters, are indebted to me at my decease, in any sum or sums of money, or in case I have or shall at any time during my life become security or responsible for the payment of any sum or sums of money on their or any of their account, which shall be then outstanding and unsatisfied, then and in either or any of such cases such debt or debts, security or securities, shall be considered as forming a part of my said residuary estate for the purpose of equalising the same between and amongst my said children, and in such case the share or shares of such of my said sons respectively, or of such of my said daughters whose husband or husbands shall be so indebted to me as aforesaid, or for whom or on whose behalf I may have become such security or responsible as aforesaid, of and in my said residuary estate, shall, in the first place, be subject and liable to pay and discharge such debt or debts to my estate, or redeem such security or securities, as the case may be: and if the same shall not be sufficient for that purpose, then the deficiency shall be paid and made good to my estate by the party or parties by whom such debt or debts shall be owing, or for whom or on whose behalf such security or securities shall have been given by me;" but his son Richard's share was to be invested in trust for Richard for life, with remainder for his wife for life, with remainder to his children.

At the death of the testator debts were owing to him by his son Richard, but some of them were barred by the Statute of Limitations.

Stuart and *Bates*, for the plaintiffs, the children of Richard.

R. Palmer and *Batten*, for Richard and wife, in the same interest, contended that the debt due by Richard ought not to be taken into account. The testator might have intended his ledger should be evidence of the origin of the debt and payment of the money, of which there was another proof; but the question was, did it include debts barred by the statute, and they submitted that it did.

Roupell, *T. B. Saunders*, *Lloyd*, and *Shebbeare*, were not heard.

The Master of the Rolls had no serious doubt as to the construction to be put upon the will. He was quite clear the proper construction was, that debts barred by the statute were included, and, in fact, that the clause amounted to nothing more than a hotchpot clause. The testator says, that "in case it shall appear by my private ledger, or any other of my books, that any or either," &c.; and it is argued that those expressions mean not what appears by the private ledger to be due, but what is actually due, and as part of the debt owing by Richard is barred by the statute, that cannot be included. But the plain words are, "whatever I say is due by my private ledger that must be brought into the amount;" and a case of election might be raised, for if the debt was very large, and the share of the property small, the son might say he would take against the will, and would not be bound. The debts must therefore be brought into hotchpot, whether barred or not.

Saturday, Feb. 21.

Stuart v. The London and North-Western Railway Company.

Railway company—Contract—Specific performance—Uncertainty—Laches—Conditional or absolute agreement—Adoption of contract—Agent—Bill, withdrawing opposition to—Claim.

A railway company agreed with a landowner to buy so much of his land as should be required for the railway at a certain price per acre, in consideration of his not opposing the Bill in Parliament, and the price as to one lot was to include consequential damages. The Bill passed, but the line was not made, and the compulsory powers of the company being gone they refused to perform the contract, contending that it was conditional only on the line being made. They insisted, also, on the defence of laches, the vendor having delayed enforcing the contract:

Held, however, on a claim for specific performance, that the case was a fit one for being brought forward on a claim, and that the contract must be specifically performed, and a reference was directed to the Master as to title in the usual way.

This was a claim filed to enforce specific performance of a contract for the purchase by the defendants, the London and North-Western Railway Company, of certain lands belonging to the late Marquis of Bute. In the year 1847, the defendants were desirous of obtaining an Act of Parliament to authorise the construction by them of a branch line from the London and North-Western Railway, near Watford, to St. Albans, Luton, and Dunstable, and the line, as projected, passed through lands belonging to the Marquis of Bute, in the parish of Luton, Bedfordshire. The Marquis, conceiving that his property would be injured by the construction of the railway, presented a petition in opposition to the Bill, and as there were several other Bills, his was that by the London and North-Western Company, introduced into Parliament for the construction of a railway to Luton, and particularly one by the London and York Railway Company, a severe contest was threatened, and it became very important to the London and North-Western Company to obtain a withdrawal of the Marquis of Bute's opposition to their project, and accordingly they entered into a negociation, which resulted in an agreement for the purchase of the land required by the company at a certain price, and for the consequent withdrawal of the Marquis's opposition. The arrangement so made was drawn up in a rough manner, and called "Heads of agreement for the purchase of the Marquis of Bute's land required by the above railway"—the Watford and Dunstable. The agreement was dated the 1st of April, 1847. There were four portions of land comprised in the agreement, distinguished therein by the letters A, B, C, and D; and as to A, the company were to give 100*l.* an acre for the land required for the railway, and an additional 100*l.* for making a road. As to B, which was laid out for building-ground, and was called the "Seven Acres," the company were to give 1,250*l.* an acre for seven acres extending from Love-lane to the street called North-street, &c.; and as to C, they were to give 100*l.* an acre for what was required; and as to D, they were to give 250*l.* an acre. Besides, they were to pay 1,000*l.* for depreciation of homesteads, &c. And the agreement contained this clause:—"The above prices refer to the quantities of land required for the railway, and to the contents of the roads and severed portions, which are respectively to be accurately measured." The agreement was signed by Edward Driver, as agent on behalf of the company, and by T. Collingdon, as agent on behalf of the Marquis. Upon the execution of this agreement the Marquis withdrew his opposition, and the Bill passed on the 9th of July, 1847, empowering the London and North-Western Company to construct the Watford, St. Albans, Luton, and Dunstable branch line, the powers for compulsory purchase of lands to continue three years from the passing of the Act, and the time for completion of the line being limited to five years from the passing of the Act. After the passing of the Act, a formal draft agreement was drawn up by Messrs. Roy and Co. the solicitors of the Marquis, and by them transmitted, on the 1st September, 1847, to Messrs. Parker and Co. the company's solicitors, accompanied by a letter requiring Messrs. Parker to carry the "heads of agreement" into effect. This draft agreement was retained by Messrs. Parker till the 7th of December, 1848, when it was returned with alterations of such a character as to convert what Messrs. Roy intended to be a draft of an absolute and unconditional agreement into an agreement contingent upon and only to be effective in case the London and North-Western Railway Company should construct the railway through Luton, though the Marquis was bound to sell and convey the lands upon the terms agreed to. A long correspondence then ensued; but nothing definite was done. The Marquis of Bute died on the 18th of March, 1848, having by his will, dated 22nd of July, 1847, appointed the plaintiffs, Lord James Stuart, O. T. Bruce, and J. M. Macnabbd, devisees in trust for sale of the Luton estate, and executors. The compulsory powers of the company ceased on the 9th of July, 1850; but the time to complete the construction of the railway does not terminate till the 9th of July next. The line, however, has been abandoned. The correspondence between the parties went on till June 1850, on the 18th of which month the plaintiffs filed their claim, but did not proceed with it till the 21st of January last. Under these circumstances the claim now came on to be heard. Several affidavits were read in support of and in opposition to the claim.

R. Palmer, for the plaintiffs, contended that the case was a proper one to be brought before the Court by claim, and specific performance had been decreed on a claim in the case of *Webb* v. *The Direct London and Portsmouth Railway Company*, 9 Hare, where the company had lost the power to complete the line. And this is a stronger case, for here they still have time to complete the line. He cited also *Preston* v. *The Liverpool, Lancashire, and Yorkshire Railway Company*, 1 Sim. N.S. 586.

Willcock and *Speed* for the company.—The Marquis of Bute opposed the Bill because the railway was unnecessary, and would interfere with his property in an injurious manner. The party contracting is dead, and the plaintiffs have no title except as devisees. The contract is by way of a penalty; the object was not to sell the lands, but the railway was a great injury to him. Thus there was a distinct allegation that there was no authority to the agent to make an absolute agreement, and that they did not contemplate doing so. The contract was entered into three months before the Bill was passed, and on its passing the Marquis might have insisted on the contract being completed immediately. Then in the cases cited, a fixed sum was to be paid, and the purchase-money was certain; but here it depends on the quantity actually required, and unless the railway is made, the company have no powers to buy. As to what is required, that is to be determined by a line running between the two lines of deviation, and it is so much of the ground between as is required. Then there is 1,000*l.* for depreciation which cannot occur till the terms of the agreement shew that the taking of the land depended upon the construction of the railway. Besides, the Marquis has got all he wanted: he has got all his costs, and his land has not been taken, as he wished it not to be. Lastly, there have been great laches. They cited *East Anglian Railway Company* v. *The Eastern Counties Railway Company*, 18 Law T. Rep. 138; *Moore* v. *Blake*, 1 B. & B. 69; *Walker* v. *Jefferys*, 1 Hare, 348; *Heapy* v. *Hill*, 2 Sim. & S. 9; *Watson* v. *Reid*, 1 R. & M. 236; *Hawker* v. *The Eastern Counties Railway Company*, 20 L.J. , *Black* v. *White*, 3 Sw. 108; *Clarke* v. *Moore*, 1 Jon. & L. 728.

R. Palmer was not heard in reply.

The Master of the Rolls.—I cannot distinguish this case from that of *Webb* v. *The Direct London and Portsmouth Railway Company*, and I must decide accordingly. The case has been well argued, but I think the case very clear. I thought the other day, when the matter first came before the Court, that difficult questions would arise upon the case, but I find that is not so. First, the contract is an immediate contract to be entered into immediately, and there is nothing in it shewing that it is conditional on the Act passing. On the face of it it is an immediate and direct contract. There is a clause in it marked D, and in that the sum of 1,000*l.* is given for depreciation, &c.; but in *Webb* v. *The Direct London and Portsmouth Railway Company* the same thing appears; and in that case Sir George Turner, in an elaborate judgment, after taking time to consider, decreed specific performance, though there it was urged, first, that the argument was conditional; secondly, that one undivided sum was given as a price for the land, and compensation for consequential damages, and therefore that the price of the land could not be ascertained; thirdly, that the powers of the company had ceased, and they could not compel a sale; and, fourthly, the hardship of the case. Now those grounds of objection to the specific performance are all to be found in this case. But, in the first place, I do not find such ambiguity as to make it impossible to perform the contract, assuming it to be a valid contract. I think a surveyor could ascertain the land required, and of course the price to be paid. The contract is for the land wanted for the present project as contemplated at the time, and what was wanted for deviation was also talked of, and therefore I should have required something more on this point if the Vice-Chancellor had not expressed an opinion in *Webb* v. *The Direct London and Portsmouth Railway Company*. It was there said that 1,500*l.* were for the land and for consequential damages, and therefore there is no distinct price stated as the price of the land. And so here the same thing appears. The other objections are that Mr. Driver had no authority. I am not satisfied from the evidence that he had authority to enter into this particular contract; but it is clear he had authority to enter into some contract, and the company saw the contract after it was entered into and adopted it, and allowed the Marquis of Bute to withdraw his opposition in pursuance thereof; and it is not denied that it was in consideration of the agreement that the Marquis withdrew his opposition. Now, if a party employs an agent, and he exceeds his powers, yet if the principal acts on what has been done by the agent, and allows others to act upon it, the Court will not allow the principal to draw back, but will compel him to abide by the contract. The next point is that the company had no power to contract; but the same objection is taken in *Webb* v. *The Direct London and Portsmouth Railway Company* and *Preston* v. *The Liverpool Lancashire and Yorkshire Railway Company*. I am of opinion, therefore, that there is nothing on that ground to prevent a decree for specific performance, and I am bound by the authorities. As to laches there is no difficulty. It is true, that the rule is, and the cases shew that parties must not delay, but must bring

forward their claims with reasonable diligence, if they expect to succeed in obtaining redress; and I shall not be the first judge to weaken that principle; but in all those cases the contract was given up at the time. Here, on the contrary, it was kept for a year and a half, and that is the laches not of the plaintiffs, but the defendants themselves. It is true no claim was filed till eighteen months after the draft agreement was returned, but it was only then that the compulsory powers of the company ceased; and the plaintiffs did not know whether the company would or not take the land, and all this time the contract was insisted on as valid. I am of opinion, therefore, that the cases as to laches do not apply. As to the contract or the enforcement of it being useless, it is the fault of the defendants themselves, for they might have done all they contemplated doing; and it would be a dangerous principle to say, that because one party to a contract has changed his mind, and now that they find it of no use, refuse to carry it out, that, therefore, specific performance cannot be enforced. As to the hardship of the case, that question was discussed in *Webb* v. *The Direct London and Portsmouth Railway Company*, and I adopt the views there propounded. The case is one in which I am bound by authority, and specific performance must be decreed, and there must be a reference as to whether and when first a good title was shewn.

VICE-CHANCELLOR PARKER'S COURT.

Reported by Geo. S. Allnutt, Esq. of the Middle Temple Barrister-at-Law.

Wednesday, Feb. 18.

Popple v. Henson.

Costs—Heir-at-law.

A. B. contracted to purchase real estate of C. D. but died before completion intestate. C. D. filed a claim against the infant heir and the administratrix of A. B. for a resale of the estate and the application of the proceeds in payment of the purchase-money and expenses.

Held, that the costs of the heir were to be paid by C. D. and added to his own.

This was a claim filed by Mr. Popple against the infant heir-at-law and the administratrix of Mr. Henson, who died intestate. Mr. Henson had contracted to purchase real estate of the plaintiff Popple, and paid him a deposit of 100*l.* but before the sale was completed Henson died. By the claim it was prayed that the estate might be resold, and that the money produced by such resale, together with the deposit of 100*l.* might be applied in payment to the plaintiff Popple of the purchase-money, interest, and expenses.

Cairns appeared for the plaintiff.

J. D. Chambers, for the administratrix of Henson.

Briggs, for the infant heir-at-law of Henson, asked for his costs.

Cairns referred to *The Duke of Beaufort* v. *Phillips*, 1 De Gex & Sma. 321.

The Vice-Chancellor said that the heir-at-law was a necessary party to the claim, but had no means of getting his costs from the administratrix. The plaintiff must therefore pay the infant defendant his costs and add them to his own. The administratrix must take her costs out of her estate. If there were any surplus of the proceeds of the resale, after paying the plaintiff the purchase-money, interest, and expenses, it should go to the heir.

Saturday, March 20.

Ex parte Wise.

Trustee Act, 1850.

A. B. surrendered copyhold estate to the use of C. D. upon trust at any time to sell, and after payment of expenses, to retain 200l. and interest then due from A. B. to C. D., the receipts of C. D. his executors, administrators, and assigns, to be good discharges to purchasers. C. D. died intestate, and his administrator contracted to sell the estate to E. F. for 100l. The heir-at-law of C. D. was an infant, and the administrator and E. F. petitioned, under the above Act, for the appointment of a person to convey to E. F. in the place of the infant. A. B. had died intestate.

Held, under the circumstances, that it was not necessary to serve the representatives of A. B. with the petition.

At a Court Baron, held the 1st of October, 1829, at Stoke-upon-Trent, for the manor of Newcastle under-Lyne, Samuel Smith surrendered into the hands of the lord of the manor a piece of land in Shelton, to the use of Hugh Booth, his heirs and assigns, for ever, at the will of the lord of the said manor, according to the custom thereof, upon trust that he, the said H. Booth, his heirs, executors, administrators, or assigns, should at any time or times thereafter, when and as soon as he or they should think proper or convenient, and without any further or other concurrence of or on the part of the said Samuel Smith than was therein contained, make sale and absolutely sell and dispose of the said hereditaments and premises as therein mentioned, and with the moneys arising from such sale or sales, and the rents and profits of the same premises in the mean time, until such sale or sales should be so made should in the first place pay the costs, expenses, &c. and in the next place retain and pay the principal sum of 200*l.* then due from S. Smith to H. Booth, with interest at 5*l.* per cent. and should pay the residue of the money to the said S. Smith, his executors, administrators, and assigns, or as he or they should appoint: and the said S. Smith did thereby consent and declare that the receipt or receipts of the said H. Booth, his heirs, executors, or administrators, should be a good and sufficient discharge and good and sufficient discharges to the purchaser or purchasers for so much money as in such receipt or receipts should be expressed to be received. Hugh Booth died on the 10th of October, 1831, intestate, leaving Mary Lovatt Booth, his only child, his heiress-at-law, and heiress according to the custom of the said manor, him surviving. In March 1833, letters of administration to the estate of H. Booth during the minority of M. L. Booth, were granted to Rev. E. Whitby, her guardian. On the 28th of March, 1837, M. L. Booth was married to J. A. Wise, and on the 4th of January, 1838, letters of administration to the estate of H. Booth left unadministered, were granted to Mary L. Wise, who had then attained twenty-one. Mrs. Wise died on the 6th of May, 1844, leaving her son L. L. A. Wise, an infant, her heir-at-law, and customary heir, her surviving, and on the 23rd of July, 1846, letters of administration to her estate were granted to her husband J. A. Wise, and on the following day letters of administration to the estate unadministered of H. Booth were granted to the said J. A. Wise. On the 13th of September, 1851, John Ayshford Wise, in pursuance of the power contained in the surrender of the 1st of October, 1829, agreed to sell to Ephraim Edwards the hereditaments and premises so surrendered, for 100*l.*; and it was agreed that 70*l.* should be paid at once, and the remainder, with interest, upon the premises being surrendered. This was a petition by J. A. Wise and E. Edwards, praying that M. Pattison might be appointed in the place of Lewis Lovatt Ayshford Wise, the infant, to surrender the copyhold to the use of E. Edwards, his heirs and assigns.

C. M. Roupell appeared in support of the petition, and stated that S. Smith had died intestate; that his customary heir had since died intestate; and that the proof of the title of the present customary heir would be attended with considerable expense. The surrender was not strictly a mortgage, but a trust for sale; and he submitted, that if any person on behalf of the mortgagee were served with this petition, it should be his personal representative; but as the mortgage was for 200*l.* and the sale for 100*l.* there could be no necessity for such service.

The Vice-Chancellor considered that, under the circumstances, the order might be made without service on the mortgagee, S. Smith, or his representative.

Wednesday, March 24.

Gardom v. Ridgway.

Practice—Creditors' suit—Costs.

Further proceedings in a suit by a creditor on behalf of himself and all other the creditors of a partnership firm, against the estates of two partners, who were both dead, ordered to be stayed, two decrees having been obtained in three other suits, two of which were for the administration of the separate estates of the partners, and the third for taking the partnership accounts, the references being to the same master.

The costs of the suit which was stayed were ordered to be reserved until the costs in the other suit were dealt with.

This was a suit instituted against the real and personal representatives, both of J. W. Ridgway and H. E. Ridgway, by two creditors, on behalf of themselves and all other the creditors of J. W. Ridgway and H. E. Ridgway. J. W. Ridgway and H. E. Ridgway carried on business in partnership as solicitors at Manchester. J. W. Ridgway died on the 21st of January, 1851, and H. E. Ridgway died in the month of August following. The bill stated a case, upon which the plaintiffs claimed as creditors on the ground of a deed, the signature to which was alleged to be forged, against the joint and separate estates of the partners, and prayed a declaration accordingly, that the real and personal estates of both were liable; for the usual accounts of the real and personal estates of both; for an administration of the partnership estate; and for an injunction and receiver. The bill was filed on the 22nd of January last. At that time a decree had been obtained in a claim of *Ridgway* v. *Ridgway*, filed by Frances Ridgway, the executrix and one of the general devisees and legatees of H. E. Ridgway, against the other devisees and legatees, by which decree the usual accounts of the real and personal estate and debts of H. E. Ridgway were directed to be taken, and it was referred to the Master to inquire whether H. E. Ridgway was, in his lifetime, engaged in any and what partnership business, and whether the partnership accounts were unsettled, and liberty was given to the Master to direct any proceedings to be taken for obtaining a settlement of the partnership accounts. At the time the bill in this suit of *Gardom* v. *Ridgway* was filed, another decree had been obtained in a claim of *Ridgway* v. *Clare*, filed by Dinah Ridgway, the sole acting executrix of J. W. Ridgway, against his legatees and devisees; which decree, besides ordering the usual accounts of J. W. Ridgway's real and personal estate and debts, directed the Master to ascertain the amount of the deficiency (if any) of the personal estate, and to sell the real estate. After this suit of *Gardom* v. *Ridgway* had been instituted, a third claim was filed by leave of the Master, given in *Ridgway* v. *Ridgway*, by Frances Ridgway against Dinah Ridgway; and by a decree made on that claim, on the 14th of February last, it was referred to the Master to whom the causes of *Ridgway* v. *Ridgway* and *Ridgway* v. *Clare* stood referred, to take an account of the partnership dealings and transactions between the said H. E. Ridgway and J. W. Ridgway from the commencement of the partnership, and of the debts and liabilities arising from the late partnership, or chargeable against the joint estate of H. E. and J. W. Ridgway on account thereof, also an account of the joint assets; and it was ordered that the joint assets should be applied in a due course of administration in or towards payment and satisfaction of the outstanding debts and liabilities of the said partnership firm; and that the Master should take an account of such of the joint assets as were got in by H. E. Ridgway after the death of J. W. Ridgway, or by the plaintiff since H. E. Ridgway's death; and the Master was to be at liberty to adopt any of the accounts and proceedings taken or made under the decrees in *Ridgway* v. *Ridgway*, and *Ridgway* v. *Clare*, &c. All the decrees, although the suits were in different branches of the court, were sent to the same Master, and notice of them was given to the solicitors for the plaintiffs in *Gardom* v. *Ridgway*; but as they intimated an intention to proceed with their suit notwithstanding those decrees, a notice of motion, entitled only in the suit of *Gardom* v. *Ridgway*, was given by Frances Ridgway for the stay of all proceedings in that suit.

Russell and *Surrage*, in support of the motion, contended that the decrees already made would answer all the plaintiff's purposes, and therefore, according to the ordinary rule, the suit of *Gardom* v. *Ridgway* ought to be stopped; and, moreover, that the suit was in fact multifarious, the separate creditors of the several partners being mixed up in the same suit with the joint creditors.

Malins and *Pryor* argued that the plaintiffs in this suit were entitled to proceed, particularly as in the suit for administering J. W. Ridgway's estate, which was the larger estate, they could not obtain relief until the separate creditors were paid. In their suit, moreover, there was sought a declaration that the partnership funds were liable. The inconvenience and expense of being obliged to proceed under three separate decrees should also be considered. (*Plunkett* v. *Lewis*, 11 Sim. 379.)

The Vice-Chancellor said that it was not the practice of the Court to make, at the hearing in a creditors suit, any such declaration as the plaintiffs asked for. His Honour considered the decrees already made were sufficient; and he should therefore order that the proceedings in the suit of *Gardom* v. *Ridgway* be stayed.

Malins asked that the decrees should be consolidated.

The Vice-Chancellor said that he had no authority, on this application, to make such an order.

Malins then asked for an order that the costs of the suit should be paid at once by Frances Ridgway, she not denying assets; but after some discussion,

The Vice-Chancellor ordered the costs to be reserved until the costs of the other suits were disposed of.(a)

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by Adam Bittleston and John Thompson, Esqrs. Barristers-at-Law.

Tuesday, Jan. 13.

Beaumont v. Squire.

Devise—Construction—Restraint of marriage—Power of appointment.

Sir T. B. devised his G. estates to trustees for the

(a) Upon this question of costs, see *West* v. *Swinburne*, 19 L.J. N.S. 81, Ch. and *Golder* v. *Golder*, 9 Hare, 276, from which latter case the rule appears to be, that the plaintiff in the suit which is stopped is entitled to his costs at once from the executor moving, unless there is an affidavit that the executor has no assets, in which case the plaintiff is directed to add his costs to his claim.

use of his nephew in strict settlement. Remainder to the use of T. R. B. and his wife for their lives; and after the decease of the survivor to such son as the survivor should appoint in tail male. Remainder to W. L. and his wife with the like limitations. Remainder "to the use of Louisa W. or such person as she shall first intermarry with, if any (if before she attain the age of twenty-one by and with the consent and approbation of the said trustees; and which person shall also previously make a competent settlement upon her to the like approbation of the said trustees), for their lives or the life of the survivor," with the like power of appointment and limitations as in the case of T. R. B. and his wife, and W. L. and his wife.

The testator devised other estates upon the same trusts, and in the like terms as the G. estates.

He then charged all except the G. estates with two rent-charges. One for the use of W. L. and his wife for life, and upon the death of the survivor to the use of such son as the survivor should appoint, and for default of such issue, &c. or in case W. L. or his wife should inherit the estate, then the rent-charge to sink into the estate. The other "for the use of Louisa W. and her assigns until she shall marry (under and with the restriction above mentioned), or for and during the term of her natural life," and when and so soon as she shall marry as aforesaid, then upon such trusts with the like powers, for such estates and interests, and subject to the same contingencies, &c. as before declared concerning the rent-charge devised to W. L. and his wife.

Louisa W. married under age without the consent of trustees, and had issue. After the death of her first husband, she, being then of full age, married again, and then appointed the rent-charge after her death to her eldest son by her first husband:

Held, that the power of appointment of the rent-charge devised as above, vested in her; and being well exercised conferred a valid title upon the appointee.

Replevin.—The defendant avowed for a distress for arrears of a rent-charge, devised to Louisa Wentworth by the will of Sir Thomas Blackett; in the first avowry claiming under an appointment by Louisa Clifford, formerly Louisa Wentworth, in the second, under an appointment by John Clifford her husband.

Plea in bar; and

Demurrer thereto; raising by direction of the Court of Chancery a question as to the construction of the following will.

Sir Thomas Blackett devised certain real estates, called the Gunnertone estates, in the counties of Northumberland and Durham, to trustees in fee, upon trust to the use and behoof of his nephew, William Bosville, for life, without impeachment of waste; remainder to trustees to preserve contingent remainders; remainder to the use of such one of the sons of William Bosville, as he should appoint, and of the heirs male of the body of such son; and for default of appointment or of such issue of such son, then to the use of the first, second, third, fourth, and all and every other son and sons of William Bosville, the heirs male of their bodies successively; and for default of such issue, then to the use of Thomas Richard Beaumont and Diana his wife, "one of my natural daughters," for and during their joint natural lives, and the life of the survivor, without impeachment of waste; remainder to trustees to preserve contingent remainders; and from and after the decease of the survivor then to the use of such one son of the body of his said daughter Diana, as the survivor of her, and T. R. B. should appoint, and of the heirs male of the body of such son; and for default of such appointment, or from and immediately after the decease of such son without issue male of his body, &c. then to the first and other sons of Diana successively in tail male; and for default of such issue, &c. then to the use of William Lee and Sophia his wife, "another of my natural daughters," with the same limitations; and for default of such issue, &c. then to the use of Louisa Wentworth ("the other of my natural daughters"), or such person as she shall first intermarry with, if any (if before she attain the age of twenty-one, by and with the consent and approbation of the said trustees, or the survivor, and his heir; and which person shall also previously make a competent settlement upon her my said daughter Louisa, by deed or deeds in writing, to the like approbation of the said trustees) for and during their joint natural lives, or the life of the survivor of them without impeachment of waste; remainder to her sons in tail male, with the like power of appointment, and the like limitations as in relation to Mr. and Mrs. Beaumont and Mr. and Mrs. Lee.

The testator, as to all his other real estates, devised them to the same trustees to the ... of T. R. B. and Diana his wife, and the son and sons of his said daughter Diana, and the heirs male of such son and sons, and to the use of William Lee and Sophia his wife and her sons, in the same terms, and "of my said daughter Louisa, and such person as she may so marry, if any, as aforesaid, and of the son and sons of my said daughter Louisa, and the heirs male of the body of such son and sons, &c. severally, respectively, and successively," upon such trusts, &c. as before declared concerning the estates before devised.

The testator then charged all his estates in Northumberland and Durham, except those devised to his nephew William Bosville, with two rent-charges, and gave to John Cockshutt and his heirs one annuity or rent-charge of 3,000*l.* upon trust for the use of William Lee and Sophia his wife for their lives, and upon the death of the survivor to the use of such son or sons as the survivor should appoint, &c. and for default of such issue, &c. or in case William Lee and his wife, or either of them, should inherit or possess any of the premises before devised, then the rent-charge to sink into the estate charged with the payment thereof, and to be annihilated. And he gave to John Cockshutt and his heirs another annuity or rent-charge of 3,000*l.* upon trust for the only proper use and behoof of his said daughter Louisa Wentworth and her assigns, "until she shall marry (under and with the restriction above mentioned), or for and during the term of her natural life; and when and so soon as she my said daughter shall marry as aforesaid," then upon such trusts in like manner, and with the like powers, for such estates and interests, and with the like remainders and limitations, and subject to the same contingencies and annihilations as before declared concerning and in relation to the aforesaid rent-charge devised for the benefit of Sophia.

He also gave his daughter Louisa a legacy of 10,000*l.* 5,000*l.* payable upon her marriage, "with such consent and approbation as aforesaid," and 5,000*l.* within two years next afterwards.

The material facts stated upon the pleadings were that Louisa married whilst a minor, without the consent of the trustees, and without any settlement made upon her. She had a son by that marriage; and afterwards, being a widow, married her second husband, John Clifford. After her second marriage she exercised her power of appointment in favour of her eldest son by her first husband.

The case was argued Tuesday, Nov. 18, before Lord Campbell, C.J. Patteson, Coleridge, and Wightman, JJ. by

Butt for the defendant.

Peacock, contrà.

The following authorities were cited: *Stackpole* v. *Beaumont*, 3 Ves. jun. 88; 1 Fearne, Cont. Rem. 187, 510; 2 Fearne, 361; *Jones* v. *Westcomb*, 1 Eq. Cas. Abr. 245; *Andrews* v. *Fulham*, 2 Eq. Cas Abr. 291; Piggott, Com. Rec. 176; 1 Jarm. on Wills, 735; 2 Powell on Dev. 217; *Killersden* v. *Lowe*, 2 Hare, 355, 372; *Langston* v. *Langston*, 8 Bligh, N. S. 167; *Langston* v. *Pole*, 2 Moo. & P. 190; *Hales* v. *Margerum*, 3 Ves. jun. 299; *Page* v. *Hayward*, 2 Salk, 570; *Clifford* v. *Beaumont*, 4 R . 325. *Cur. adv. vult.*

Lord Campbell, C.J. now delivered the judgment of the Court.—In this case the question for decision arises upon the construction of a clause in the will of Sir Thomas Blackett, made in 1792. The defendant avows for a distress made for arrears of a rent-charge created by that will; in one avowry, claiming immediately under an appointment by Louisa Clifford, who, as Louisa Wentworth, was the first devisee of the rent-charge with a power of appointment; in the second, under an appointment by John Clifford, her second husband; and the questions will be, whether at the respective times of these appointments the powers under which they respectively professed to act existed in either of these persons. It will be necessary, in considering these questions, to advert not merely to the devise now to be construed, but to four other portions of the will, which may be described as the devises respectively of the Gunnertone estate, of the family estates, and two rent-charges on these last, amounting to 3,000*l.* a year each, one of them the rent-charge in question, and a legacy of 10,000*l.* But it may be proper, in the first place, to consider the clause which limited the two rent-charges, only premising that at the date of the will Sir Thomas Blackett had no legitimate child, and his three natural daughters were among the principal objects of his bounty; Diana, then married to Thomas Richard Beaumont, Sophia, then married to William Lee, and Louisa Wentworth, then a minor, unmarried. The devise in question is as follows. "To John Cockshutt and his heirs one other annuity or clear yearly rent-charge of 3,000*l.* upon trust, nevertheless, to and for the proper use and behoof of my said daughter, Louisa Wentworth and her assigns, until she, my said daughter, shall marry (under and with the restriction above mentioned), or for and during the term of her natural life; and when and so soon as she, my said daughter, shall marry, as aforesaid, then upon such trusts, and in like manner, and with the like powers for such and the like estates and interests and with the like remainders and limitations, and subject to the same like contingencies and annihilations as are hereinbefore particularly mentioned and declared of and concerning and in relation to the aforesaid rent-charge herinbefore given for the benefit of my said daughter, Sophia." It will be observed that this clause contains two references, the last of which refers to the trusts, powers, estates, remainders, limitations, and contingencies to arise upon marriage, and applies specifically to this devise what had been before expressed in regard to the rent-charge created in favour of Mrs. Lee, the former referring to the "restriction above mentioned." If, under the circumstances, the trusts, powers, estates, &c. have arisen, there is no difficulty in the construction of the clause referred to, which sets them out at length, and perhaps the only remark which it is worth while to make upon it in passing is that if they do not arise, so that what is limited after the life estates did not take effect, there is a specific provision for the rent-charge to sink into the hereditaments and premises chargeable with the payment thereof, and thenceforth to be annihilated and be no longer paid or payable. But in the view which we take of this case, this becomes immaterial. To ascertain what the testator intended by the 'restriction above mentioned," we are remitted to the first of the four devises spoken of above, that of the Gunnertone estate. This was, in the first place, to his nephew, William Bosville, in strict settlement, in default of appointment; remainder in the same manner to the Beaumonts and Lees successively, and then "to the use of Louisa Wentworth (the other of my natural daughters), or such person as she shall first intermarry with, if any (if before she attain the age of twenty-one, by and with the consent and approbation of the said trustees, or the survivor of them, and which person shall also previously make a complete settlement upon her my said daughter Louisa, by deed or deeds in writing to the like approbation of the said trustees), for and during their joint natural lives, or the life of the survivor of them." Supposing Louisa Wentworth to marry, but without fulfilling the condition imposed by this "restriction," as the testator calls it, it is obvious that at least two questions with regard to the rent-charge might arise; the first is as to her own interest; the second, as to the power of appointment, or in default of appointment the interest of her sons, if any, under the devise. She did marry while a minor, but without the consent of the trustees, and without any settlement made upon her; and the first of these questions, which has some bearing on the second, that now before us, did arise and received a judicial decision from Lord Loughborough, in the case of *Stackpole* v. *Beaumont*, 3 Ves. Jun. 89. He thought it very clear that she was entitled for her life to the rent-charge; that neither the first husband was, nor would any after-taken husband be entitled to any interest in it; and he had further to decide in the same case on a claim which Louisa, then Mrs. Stackpole, put forward to the legacy of 10,000*l.* above mentioned. The words of that bequest were as follow:—"To my said daughter Louisa the legacy or sum of 10,000*l.* payable and to be paid unto her in manner following; that is to say, the sum of 5,000*l.* upon her marriage, with such consent and approbation as aforesaid; and the sum of 5,000*l.* within two years next afterwards." He determined that the condition here imposed by the testator was a lawful one, and as it had not been performed the daughter was not then entitled to the legacy. Many years after she, having become a widow, married Mr. Clifford, and again claimed the legacy upon the ground that it was payable to her on marriage generally, and that the required consent applied only to a marriage under twenty-one. (*Clifford* v. *Beaumont*.) Sir John Leach, Master of the Rolls, decided against the claim, and it does not appear that his judgment was ever reviewed. The questions which now arise, arose either not at all or very indirectly in the cases just referred to. Lord Loughborough expressly declined to make any declaration as to the children. The plaintiff, who now denies that the power ever arose or the limitations took effect, must contend either that by the words of the devise a condition precedent is created, until the performance of which no trust or power for the benefit of children arises, that condition being a marriage while under age, with consent of trustees, and with a settlement previously made, or that at all events, though if the daughter had not married while a minor, the condition might not have attached on a first marriage, made after attaining full age, yet that the first marriage, whenever contracted, was so exclusively in the contemplation of the testator, that being made in breach of the restriction imposed, it prevented the trusts and powers in favour of children from ever arising. It seems to us, on full consideration, that these positions labour under insuperable difficulties; as to the first, which relies on the literal import of the words "when and so soon as she, my said daughter, shall marry as aforesaid," however specific the words "when and as" certainly are, it is clearly not necessary

to hold that the words "as aforesaid" incorporate all the previous conditions, or limit the marriage to the first made; for it is not an absurd or insufficient meaning to give them if we make them refer only to the mere fact of marriage before spoken of; and it is the more natural to do so, because if the sentence is construed to make a marriage before age an absolute condition precedent, the testator must be supposed to have required his daughter to marry while a minor in such sense, that if she remained single during that time, but married after twenty-one, her children by such marriage would be excluded. But this is a supposition so absurd in itself, so contrary to his obvious wish to guard her during minority, and to discourage her from marriage during that period by in some sort restraining her liberty as to choice and terms, and also so inconsistent with his plain scheme of making her position, so far as he could, the same as her sister Sophia's, that the construction involving it ought to be inevitable to induce us to adopt it. No one could infer from a restraint on marriage before twenty-one, unless under certain conditions, or at most a qualified permission to marry before that age, an intention so to insist on a marriage being made before that age, that all trusts in favour of children of every marriage she might at any time make were to depend on it. On the other hand, if we adopt the second supposition, we are met with this difficulty. The testator clearly distinguishes between husband and children as objects of his bounty; only the first husband is to take interest or power, but the children of a first, or any after-taken husband, may succeed. Yet, according to this supposition, if there had been no children by Mr. Stackpoole, but there had been by Mr. Clifford, these must have been excluded; the power could not have been exercised in their favour, in spite of the manifest general intention and some of the language of the testator, on account of the first marriage—which certainly is a very unreasonable intention to impute to the testator; it is to deduce a very serious consequence from a cause which has no reasonable relation to it. Lord Loughborough's decision, however, determined that the young lady herself did not forfeit her own life interest in the rent-charge by the marriage which she first contracted. Looking at the words of the previous devise of the Gunnertone estate, it cannot be doubted that he would have held, supposing the previous limitations to have failed, that her marriage did not prevent her taking those estates for life al Now, in that case, we think it clear that, although the limitations in favour of her first husband could not have taken effect, yet those in favour of her sons by him, or any after-taken husband, would have taken effect. But, although there are slight variations in the wording, yet as the testator, both in respect of the family estates and the rent-charges, refers to the language used in respect of the limitations of the Gunnertone estate, it is clear that in these his intent was the same, and certainly the general words of reference in the second and third cases must be construed according to the meaning of the more detailed language in the first It would seem, therefore, to follow that the limitations over as to the rent-charges, so far as regards the sons of the marriage, will take effect; and this does no violence to the language used. If the parenthetical words, "under and with the restriction above mentioned," had been omitted there, we should still have found nothing awkward or redundant in the language which follows, "when and so soon as my said daughter shall marry as aforesaid;" the words "as aforesaid" would equally in that case have been inserted by a conveyancer, merely to refer to the fact of marriage before spoken of. There can, therefore, be no necessity for making them also take up the parenthetical words, and so introduce the restriction there also, for the purpose of making the limitations over depend on it as on a strict condition precedent. Nor does any difficulty arise upon Lord Loughborough's decision as to the legacy of 10,000*l.* because in that case, when the intended legatee applied as Mrs. Stackpole she had clearly not brought herself within the words of the bequest. She was a minor, and had married, but had not married with the required consent The words were too specific to be got over. In the case before Sir John Leach, when she had married Mr Clifford, having married after coming of full age, it was perhaps open to her to contend that the condition was now spent; that the first marriage, if it did not of itself entitle her to the legacy, yet would not prevent the effect of the second marriage, and certainly the judgment does not give any satisfactory answer to some of the arguments of her counsel; nor are grounds satisfactory to our minds put forward by the learned judge in giving judgment, in support of it. Better reasons, perhaps, might be suggested from the particular language of the will; but the Master of the Rolls seems to have thought that Lord Loughborough decided more than he really did. We are, therefore, upon the whole, of opinion that the power was vested in Mrs. Clifford; and, as no objections have been made to the manner in which it was exercised, that the first avowry is good, and the plea in bar is no answer. Our judgment will, therefore, be for the defendant on this point.

Judgment for the defendant.

Wednesday, Jan. 28.

WEBSTER *v.* KIRK.

Bill of exchange—Payee against drawer—Security for debt of another—Statute of Limitations.

In an action by the payee of three bills of exchange against the drawer, to which the Statute of Limitations was pleaded, it appeared that the brother of the drawer had been indebted to a banking company, to the plaintiff, and to the defendant; that in pursuance of an arrangement between the parties the bills had been drawn by the defendant on his brother, payable to the plaintiff, and then handed to the banking company, that the bills became due on the 4th of May, 1843; *that the banking company commenced an action against the plaintiff on them in* 1847, *and signed judgment in December* 1850; *that early in the year* 1851 *the plaintiff settled that action, and that afterwards in April* 1851 *the action was brought:*

Held, that the action on the bill was barred by the Statute of Limitations.

This was an action of assumpsit by the payee of three bills of exchange against the drawer. The declaration contained three counts upon three bills of exchange drawn by the defendant, John Kirk, upon William Kirk, payable to the plaintiffs or their order; and a count for money paid. First plea to the whole declaration, the Statute of Limitations; eighth plea to the fourth count, non assumpsit. On the trial, before Platt, B. at the Yorkshire Summer Assizes in 1851, it appeared that on the 1st June, 1840, which was the date of the first bill, William Kirk was indebted to the Yorkshire District Banking Company, who were pressing him for the payment of the balance of his account; and that he was also indebted to the plaintiffs, as well as to his brother, the defendant. It was then arranged that bills to the amount of William Kirk's debt to the bank should be drawn, and delivered to the banking company; and that the defendant should be the drawer and the plaintiffs the payees of the bills. The bill declared upon in the first count was one of the series, and was made payable thirty-five months after date, which would expire on the 4th May, 1843; the bills in the second and third counts were given in renewal of the original bill, and were made payable on the same day as that bill. The action was brought on the 28th April, 1851. The bills were in the hands of the banking company at their maturity, when they were dishonoured, and in 1847 the banking company commenced an action against the present plaintiffs upon the bills, and signed judgment in December, 1850, and early in 1851 the present plaintiffs settled that action. It was contended for the plaintiffs, that their right to sue the defendant did not accrue until they had paid the bills, and had become holders of them, and therefore the action did not accrue until 1851. The learned judge, without expressing any opinion, directed a verdict for the plaintiffs for 1,304*l.* 16*s.* reserving leave to move to enter a verdict for the defendant, or to reduce the damages to 652*l.* 8*s.* being one-half of the whole amount.

In the following Michaelmas Term (Nov. 1) a rule nisi was obtained, pursuant to leave, on two grounds,—first, that the Statute of Limitations was an answer to the action on the bills, and *Rhodes* v. *Southurst*, 6 M. & W. 351, was quoted; and, secondly, that the damage ought to be reduced, the plaintiff and the defendant having been mutually sureties for William Kirk.

Jan. 26 *and* 28.—Against the rule cause was shewn by

Hull.—The Statute of Limitations does not begin to run until the cause of action has accrued (Stat. 21 Jac. 1, c 16, ss. 3, 7; *Murray* v. *The East India Company*, 5 B & A. 201); that is, accrued to the plaintiffs, for without a plaintiff to whom it may accrue the action cannot accrue. The defendant was an accommodation indorser, and so contracted that the acceptor should pay the bill and that the assignee of the bill, which between them was a chose in action, should be on demand, and the bank, in fact, gave no value, but took the bills as a collateral security for the debt due to them from the acceptor; and if that debt had been satisfied by other means, the bank could not have sued upon the bills. The plaintiffs and the defendant were sureties to the bank upon the terms of the bill, and the plaintiff was surety for the defendant to the bank; but he could not sue the defendant until he himself had been compelled to pay, and for every payment made by him, that is, for every fresh damnification, a fresh right of action arose. (*Pownel* v. *Ferrand*, 6 B. & C. 430; *The East-India Company* v. *Prince*, R. & M. 407; *Savage* v. *Aldren*, 2 Stark. 202; *Brooks* v. *Rogers*, 1 H. Bl. 640; *Howis* v. *Higgins*, 4 T. R. 714.) In the case of *Cowley* v. *Dunlop*, 7 T. R. 565, which was an action by the assignee of the firm of Peters, it was allowed by all the Court, that if the indorser of a bill for valuable considerations be compelled to pay it on account of bankruptcy of the acceptor, he may prove it under the commissioner, although he did not take it up till after the commission issued. All the judges admitted in that case the distinction between a surety and an indorser for valuable consideration. For the present purpose the Statute of Limitations is analogous to the Statute of Bankruptcy. He then cited *Wallis* v. *Swinburne*, 1 Ex. 203; and *Harle* v. *Baxter*, 3 East, 177.

Atherton, Q.C. (with him *Ellis* and *Boothby*), contrà.

Lord CAMPBELL, C.J.—We think that the action is barred as to the bills of exchange by the Statute of Limitations; but as to the other count there must be a new trial to ascertain more clearly the terms on which the original bill was given.

Rule absolute for a new trial.

Saturday, Feb. 21.

REG. on the Prosecution of the MARQUIS of BRISTOL *v.* THE TITHE COMMISSIONERS.

Tithe Commutation Acts—Differences determinable by Commissioners—Question of title—Remedy.

A writ of mandamus recited, that there were differences between certain landowners in the parish of H. and the vicar, as to whether the old enclosed lands were wholly exempt and discharged from great tithes and tithes of lamb and wool, or, if not exempted, whether they were subject only to the payment of 1*s. per acre yearly to the impropriator of the parish for or in lieu of the great tithes and tithes of lamb and wool, and as to the new enclosed lands, whether they were wholly exempt from the render of great tithes and tithes of lamb and wool, and commanded the Tithe Commissioners to appoint a time and place for hearing and determining the same differences. The return stated a meeting before the assistant commissioner, on the* 24*th of April,* 1843, *in pursuance of a notice, at which the vicar claimed tithes of lamb and wool, and the agent of the land owners contended that by a decree of the Court of Chancery in* 1697, *all the tithes of the parish had been commuted, and that meeting was adjourned in order to ascertain whether the commissioners would consent that all the evidence relating to the disputes and differences that had so arisen should be heard before the assistant commissioner, and that a further notice was given by the commissioners on the* 22*nd of February,* 1844, *to hear and determine the said differences, whereby the making of the award was alleged to be hindered, that such meeting was held before an assistant commissioner, when the parties attended by counsel, and the vicar proposed that a feigned issue should be tried as to the right to the tithes of lamb and wool, and that the said commissioner should award a rent-charge in lieu of them to the party entitled; but the landowners insisted that those tithes were extinguished by an agreement and the decree of the Court of Chancery; that a difference was existing between the landowners, vicar, and impropiator concerning the tithes, and they required the commissioners to decide it. It was arranged that time should be given to the parties to consider whether they would consent to try a feigned issue as to the title to the said tithes, and if they did not the landowners should be at liberty to apply to this Court for a mandamus to compel the commissioners to decide the question, whether the said tithes of lamb and wool belonged to the vicar, or to the landowners and impropriator of the tithes of the respective lands, that being a question of title. The return then stated a bill in Chancery filed by the vicar (the same person who is now vicar) in* 1812, *against certain landowners, for the subtraction of tithes, in which a question was raised whether the lands were ever liable to the payment of tithes of lamb and wool to the vicar. It then stated the decree of the Court of Chancery of the* 14*th of November,* 1817, *by which it appeared that the defendants set up an agreement of* 1697, *confirmed by a decree of the Court, and a subsequent agreement of the* 16*th of September,* 1707, *as binding on the vicar, which he denied to be binding on him, and by which decree of November,* 1817, *the Court ordered the Master to take an account of the tithes of lamb and wool as due to the vicar, dismissing his bill as to the tithes of hay. The return then stated a bill in Chancery in* 1819 *by the impropriator against the vicar for the tithes of wool and lamb, which bill was dismissed out of court, with costs, The return then stated a petition that was preferred in* 1821 *to the Vice-Chancellor, Sir John Leach, by one of the occupiers of the parish, for leave to file a supplemental bill in the original suit in which the decree of* 1817 *was made, as to whether the vicar was not entitled to the tithe of lamb and wool, which petition was dismissed with*

costs. Then it stated an appeal to the Lord Chancellor, which appeal was dismissed with costs. The return then stated the perception of the tithes of lamb and wool by the vicar; and further, that the Tithe Commissioners, considering the decree had established the right of the vicar, on the 5th of June, 1845, in answer to a requisition from the agent of the landowners, declined to confirm as invalid the agreements of 1697 and 1707, or to decide the question of title. It then stated an application to this Court in 1845, for a writ of mandamus to compel them to confirm the agreement, and to decide the existing differences, the issuing of the writ, the return to it; and the demurrer and judgment for the commissioners in December 1849. It then stated that the assistant commissioner, on the 4th of February, 1850, made his final award; but that the confirmation was delayed till the 28th of February of the same year, which delay was in order to give the landowners an opportunity of making any further claim before such confirmation; that notice was given to the agent of the landowners of their intention to confirm the award about to be made within a fortnight after such notice, that is to say, on the 23rd of February. The return then set out the award, which found all the titheable lands in the parish subject to the tithe in kind, stated who were the impropriators of the great tithes, that the vicar is in possession of the tithes of lamb and wool, and entitled to the residue of the tithes. It then fixed the rent-charge to several landowners, and 360l. to the vicar for the time being, or the party entitled in lieu of the tithes of lamb and wool, and 150l. to the vicar for other tithes.

On special demurrer, held, that no difference was shewn to exist between the vicar and the landowners by which the making of the award was hindered, or any which the commissioners had power to hear and determine; that the question was purely one of title between the impropriator and the vicar, which might still be contested under the 71st section of the Tithe Commutation Act, and, therefore, that even if the writ were good (which was very doubtful), the return was a sufficient answer to it, and judgment must be given for the commissioners.

The judgment in this case sufficiently states the facts and the argument for the prosecutor, which only was heard; the Court, at the close of it, saying that if the opinion then formed by them should be altered on consideration, they would call on the counsel for the defendants.

Monday, Nov. 24.—*Cowling* for the prosecutor.

Bovill appeared for the defendant.

Cur. adv. vult.

Saturday, Feb. 21.—The judgment was pronounced by Coleridge, J.—The writ of mandamus in this case states that there were certain differences between certain landowners in the parish of Great Hale and the vicar, namely, as to the old inclosed lands, whether they were wholly exempt and discharged from the render of great tithes and tithes of lamb and wool, or if not exempted, whether they were subject only to the payment of one shilling per acre yearly to the impropriator of the parish for, or in lieu of, the great tithes and tithes of lamb and wool; and as to the new inclosed lands, whether they were wholly exempt from the render of great tithes and tithes of lamb and wool. The writ commands the commissioners to appoint a time and place for hearing and determining the same differences; and the return states a meeting before the assistant commissioner on the 24th of April, 1843, in pursuance of a notice, at which the vicar claimed tithes of wool and lamb, and the agent of the landowners contended that by a decree of the Court of Chancery in 1697, all the tithes of the parish had been commuted, and that meeting was adjourned in order to ascertain whether the commissioners would consent that all the evidence relating to the disputes and differences that had so arisen should be heard before the assistant commissioner, and that a further notice was given by the commissioners on the 22nd of February, 1844, to hear and determine the said differences, whereby the making of the award was alleged to be hindered; that such meeting was held before an assistant commissioner, when the parties attended by counsel, and the vicar proposed that a feigned issue should be tried as to the right to the tithes of lamb and wool, and that the said commissioners should award a rent-charge in lieu of them to the party entitled; but the landowners insisted that those tithes were extinguished by an agreement and the decree of the Court of Chancery; that a difference was existing between the landowners, vicar, and impropriator concerning the tithes, and they required the commissioners to decide it. It was arranged that time should be given to the parties to consider whether they would consent to try a feigned issue as to the title to the said tithes, and if they did not the landowners should be at liberty to apply to this Court for a mandamus to compel the commissioners to try the question whether the said tithes of lamb and wool belonged to the vicar or to the landowners and impropriator of the tithes of the respective lands, that being a question of title. The return then states a bill in Chancery filed by the vicar (the same person who is now vicar) in 1812, against certain landowners for the subtraction of tithes, in which a question was raised whether the lands were ever liable to the payment of tithes of lamb and wool to the vicar. It then states the decree of the Court of Chancery of the 11th of November, 1817, by which it appears that the defendants set up an agreement of 1697, confirmed by a decree of the Court and the subsequent agreement of the 16th of September, 1707, as binding on the vicar, which he denied to be binding on him, and by which decree of November, 1817, the Court ordered the Master to take an account of the tithes of lamb and wool as due to the vicar, dismissing his bill as to the tithes of hay. The return then states a bill in Chancery in 1815 by the impropriators against the vicar for the tithes of wool and lamb, which bill was dismissed out of Court with costs. The return then states a petition that was referred in 1821 to the Vice-Chancellor Sir John Leach by one of the occupiers of the parish for leave to file a supplemental bill in the original suit, in which the decree of 1817 was made, as to whether the vicar was not entitled to the tithes of lamb and wool, which petition was dismissed with costs. Then it states an appeal to the Lord Chancellor, which appeal was dismissed with costs. The return then states the perception of the tithes of lamb and wool by the vicar; and further, that the Tithe Commissioners, considering the decree had established the right of the vicar on the 5th of June, 1845, in answer to a requisition from the agent of the landowners, declined to confirm, as invalid, the agreements of 1697 and 1707, or to decide the question of title. It then states an application to this Court in 1845 for a writ of mandamus to compel them to confirm the agreement, and to decide the existing differences; the issuing of the writ, the return to it, and the demurrer; and judgment for the commissioners in December 1849, which case is reported in 19 L. J. 177, Q. B. It then states that the assistant commissi [illegible] his final award, but that the confirmation was delayed till the 28th of February of the same year, which delay was in order to give the landowners an opportunity of making any further claim before such confirmation; that notice was given to the agent of the landowners of their intention to confirm the award about to be made, within a fortnight after such notice, that is to say, on the 28th of February. The return then sets out the award, which finds all the titheable lands in the parish subject to the tithe in kind; states who are the impropriators of the great tithes; that the vicar is in possession of the tithes of lamb and wool, and entitled to the residue of the tithes. It then fixes the rent-charge of 10l. 6s. 4d. to Sir George Farrant and Thomas Farrant; 3l. 13s. to Mr. Godson; 1,182l. to several landowners, and 360l. to the vicar for the time being, or the party entitled in lieu of the tithes of lamb and wool, and 150l. to the vicar for other tithes. To this return there was a special demurrer. From the writ of mandamus itself we gather that when the vicar is claiming tithes of lamb and wool, the landowners say their lands are exempt from these tithes by reason of the payment of 1s. per acre in lieu of them to the impropriator. Now this either means that the impropriator, and not the vicar, is owner of these tithes, but is bound to receive a shilling per acre in lieu of them; and if that be the meaning, it raises at once a question of title between the impropriator and the vicar, which is a difference the commissioners cannot determine, and so the writ is bad (see 15 Q. B. Rep. *Reg.* v. *The Tithe Commissioners*); or it is that the vicar is owner of these tithes, but cannot receive them, because a shilling per acre is to be paid to the impropriator in lieu of them—a startling proposition which one would think would hardly be supported by any state of circumstances. When, however, we come to look at the statement in the return we find this shilling per acre is not an immemorial payment or modus, but had its origin in the agreement of 1697. That agreement may be binding on the impropriator, but it is invalid as regards the vicar, which the decrees in Chancery abundantly shew. And so plainly is this the case, that the landowners endeavoured to persuade the commissioners to confirm it, on the ground of its being an invalid agreement, under the 7th section of the Act, 5 & 6 Vict. c. 54, and failing so to persuade them obtained a writ of mandamus to compel them, in which also they failed, and do not now attempt to renew such compulsion, but this Court has expressly already decided that the agreement is not such an agreement as the commissioners were bound to confirm. (See 19 L. J. 177.) If, then, the agreement be binding on the impropriate rector only, and not the vicar, and a shilling in lieu of tithes of lamb and wool be payable only under the agreement, it is plain it can only be a payment exempting the land from the render of those tithes on the supposition that the impropriator is the owner, and not the vicar, who, if he be owner of them, is manifestly entitled to them in kind. In other words, the question, in this view, is a question of title. Again, it appears by the return, that the commissioners declined to go into further discussion, because they find the vicar in possession of the tithes of lamb and wool, and considered themselves bound by the principle of the decree in the Court of Chancery, according to the 44th sect. 6 & 7 Wm. 4, c. 71. The learned counsel for the landowners argued that they are not so bound, and cited authorities to shew that where a feigned issue is tried under the 46th sect. of the Act, the judge and jury are not so bound; and that is perfectly true, but it shews, however, the landowners ought to have adopted the course of trying a feigned issue, which it appears by the return was proposed by the vicar, and declined by them, if there was to have been any question which could be tried on such an issue between the parties. Looking at the whole of the pleading in this case, namely, the writ and return, it is manifest that no difference existed between the vicar and the landowners by which the making of the award was hindered, or any which the commissioners had power to hear and determine. The question is purely one of title between the impropriator and the vicar, which may still be contested under the provisions of the 71st section of the Act, which gives all persons who have claims to tithes the same right of claiming a rent-charge in lieu of tithes. We are, therefore, of opinion, even if this writ be good (which we think very doubtful), the return is a sufficient answer to it, and judgment must be given for the commissioners.

EXCHEQUER CHAMBER.

Reported by A. Bittleston, Esq. of the Inner Temple, Barrister-at-Law.

ERROR FROM THE QUEEN'S BENCH.

Monday, Feb. 2.

Challis v. Doe dem. Evers and Wife.

Will—Construction—Executory devise—Remoteness—Contingent remainder.

[illegible] devise over is limited upon t[illegible] gencies, upon one of which it would be void for remoteness, but not upon the other, the devise is void altogether. A testator devised his real estates to his daughter E. for life, and after her death to such of her children, if males, who should live to attain twenty-three, if females, who should live to the age of twenty-one, their heirs and assigns, as tenants in common; and in case all the children of E. should die under those ages, or if she had none, then to his son J. and his daughters S. and A. for their lives; and upon their decease, the share of such of them so dying unto his or her children, if males, living to twenty-three, or daughters, living to twenty-one, in fee. And in case of the death of J. or S. or A. without leaving a child who should, if a male, attain twenty-three, or if a female, to attain twenty-one, then he gave the parts such children would have been entitled to, to the child and children of J., S. and A. having issue, if sons, living to to the age of twenty-three, if daughters, to the age of twenty-one.

After the death of the testator, E. died, never having had a child, afterwards A. died, never having had a child. S. and J. had several children who attained the prescribed ages:

Held (reversing the judgment of the Court below), that the devise over to the children of J. and S. after the death of A. was void for remoteness. It would have been valid if it had been a devise over in the single event of A. having no child at all; but as it also included the event of A. having a child, and the child dying under the prescribed age, it was void altogether.

Error from a judgment of the Court of Q. B. in favour of the lessors of the plaintiff. The question turned upon the construction of a will, the material parts of which are set out in the judgment of the Court.

The case was argued (Thursday, Nov. 27) before Alderson, B., Maule, J., Cresswell, J., Platt, B., Williams, J., Talfourd, J. and Martin, B. by

Rolt for the plaintiff in error.

Malins, contrà.

The following authorities were cited:—*Doe* v. *Selby*, 2 B. & C. 926; *Doe* v. *Ward*, 9 Ad. & Ell. 582; *Loddington* v. *Kime*, 3 Lev. 431; 1 Ld. Raym. 203; 1 Salk. 228; *Gulliver* v. *Wickett*, 1 Wils. 105; Fearne Cont. Rem. 396; *Cole* v. *Sewell*, 2 H. L. 186; 2 Jarm. on Wills, 732; Sugd. Law of Property as administered in H. L. 120; *Bull* v. *Pritchard*, 1 Russ. 213; *Leake* v. *Robinson*, 2 Mer. 390; *Gee* v. *Audley*, 1 Cox, 324; *Crump* v. *Norwood*, 7 Taunt. 362; *Proctor* v. *The Bishop of Bath and Wells*, 2 H. Bl. 358; *Newman* v. *Newman*, 10 Sim. 51; *Longhead* v. *Phelps*, 2 W. Bl. 703.

Cur. adv. vult.

Alderson, B. now delivered the judgment of the

EXCHEQUER CHAMBER.

Court.—This is a writ of error from the judgment of the Court of Q. B. upon a special verdict. This was an action of ejectment brought to recover a twelfth part of certain property devised by the will of one Thomas Dolley to his daughter Elizabeth. The lessors of the plaintiff were Mary Ann Evers and her husband, she being one of the two children of John Dolley, the son of the testator. The testator had four children, John, Sarah, Anne, and Elizabeth; and by his will, dated 12th June, 1819, he gave the property (the twelfth part of which is now in question) to trustees during the life of his daughter Elizabeth, in trust for her separate use; and after her decease, he gave the same to such children as she might have, if a son or sons, who should live to the age of twenty-three; and if a daughter or daughters, who should live to the age of twenty-one years, their heirs and assigns, as tenants in common He then provided for the disposition of his property, in the event of one or more of the children of Elizabeth dying leaving others surviving. He then provided this: "In case all the children of my said daughter Elizabeth shall die, if a son or sons, under the age of twenty-three years, or if a daughter, under the age of twenty-one, or if she has none, I give all the said last-mentioned premises unto the said Thomas Challis and John Brogden, their heirs, &c. during the respective lives of my said son John Dolley and daughters Sarah Ward and Anne Dolley, upon trust to pay, or permit my said son and two last-mentioned daughters to receive and take, the rents, profits, and annual income thereof, for and during their respective natural lives, in equal shares; the share of my said two daughters to be for their separate uses only, and independent of any husband or husbands, and upon the decease of my said son and two last-named daughters, I give the share of such of them so dying unto his or her children, if a son or sons, living to attain the age of twenty-three years; and if a daughter or daughters, living to attain the age of twenty-one years, his, her, and their heirs and assigns, if more than one, in equal shares, as tenants in common; and if only one child, to such only child, his or her heirs and assigns." The part of the devise on which the question depends is this: "And further, in case of the death of my said son, or of either of my said two daughters, without leaving a child, if a son, that shall live to attain the age of twenty-three years, or if a daughter, who shall live to attain the age of twenty-one years, I give the part and parts such children or child would be entitled to as aforesaid, unto the child or children of my said son and two daughters having issue, if a son or sons, living to the age of twenty-three years, and if a daughter or daughters, living to attain the age of twenty-one years; if two of my said last-named children have such children or child, to them, his, or her heirs and assigns, as taking in equal shares from his or her father or mother, his, her, and their heirs and assigns; and if only one of them, my said son and two daughters, leaves issue that lives, if a son or sons, to the age of twenty-three years, or if a daughter or daughters, to attain the age of twenty-one years, then I give the whole of such last-mentioned estate and premises unto such issue, if more than one, in equal shares, their respective heirs and assigns, and if only one, to such one, his or her heirs and assigns, at the ages aforesaid." Elizabeth died in August 1838, having been married, but never having had a child. Upon her death, her brother and two sisters took each one third of the property devised to her issue. In March 1847 Anne died, having been married, but also never having had a child, and thereupon Mrs. Evers, being one of the two children of John, and being twenty-one years of age, claimed a twelfth part of the property devised to Elizabeth, insisting that, upon the event that had happened, the two children of John became entitled to a half of the third of the property devised to Elizabeth, which had come to Anne on her death, and that she, as one of them, was entitled to a half of this third, or one-twelfth of the whole. A special verdict was found, which stated the above facts, and judgment was given by the Court of Queen's Bench for the lessor of the plaintiff. The case is reported in 20 L.J. 113, and upon this judgment the present writ of error is brought. This will came under the consideration of the Court of Q.B. in the case of *Doe* v. *Ward*, 2 Ad. & E. 582, and both parties acquiesced, and, as we think, most correctly, in the propriety of that decision. We are to take it, therefore, as clearly established, that by this will the testator gave an estate for life to his daughter Elizabeth, with a contingent remainder in fee to her unborn children, which, on the birth of the child, became a vested remainder in fee; that upon such child or children being born and failing, if males, to attain the age of twenty-three, and if females, to attain twenty-one, then he gave Elizabeth's share over by an executory devise to his other three children equally. Now it is clear, this executory devise over would be void as too remote; but in this part of his will the testator also provided, by a distinct and separate clause, that if Elizabeth should have no children, the property devised to her should go over in like manner to his three remaining children. In the event which happened, the contingent remainder to Elizabeth's children never vested, and so the devise over took effect, not as an executory devise, but as a good contingent remainder to the three other children of the testator, one of whom was the testator's daughter Anne. In the event, therefore, which had happened, the devise was one to Elizabeth for life, with contingent remainder to her unborn issue tail—contingent remainder, one third to Anne for life, with a contingent remainder in fee to Anne's unborn issue, to become vested on the birth of a child, and with a devise over, on which the present question turns, in favour of the children of his surviving brother John and sister Sarah. Now Anne died never having had a child, and consequently the contingent remainder in fee given to her children failed. We must, therefore, look at the terms of the devise over: they are as follows:—"in case of the death of my son, or either of my two daughters, without leaving a child, if a son, that shall live to attain the age of twenty-three years, or if a daughter, who shall live to attain the age of twenty-one years, I give the part and parts such children or child would be entitled to as aforesaid, unto the child or children of my said son and two daughters having issue, if a son or sons, living to the age of twenty-three years, and if a daughter or daughters, living to attain the age of twenty-one years." Now here there are not the two events which were separately and distinctly mentioned in the former devise over; the event, if she shall have no children is not mentioned in terms at all. The question between the parties is, whether this devise over be void or not? It may be well admitted, that the testator intended to include in these words two events, first, the event of Anne having no child at all (and certainly, if she never had a child, she must die without a son who could attain twenty-three, or a daughter who could attain twenty-one); but that, secondly, he also intended to include in those same words the compound event of her having a child, and the child dying under the prescribed age. This second event is, according to all the cases, too remote an event to take effect according to law. The first, if it stood alone, is legal. The thing to be settled is the principle on which the Court is to act. In the first place, it seems established, that the time to construe the will is at the testator's death. The devise at that time must be legal to oust the heir-at-law. Now, at the death of the testator, and in the lifetime of Anne, how would the devise have been construed? For it is not sufficient, that on the happening of certain events the devise may take effect, and if limited to those events originally, would have been good; but it ought to have been shown that the devise of the testator must be valid and legal in all the events contemplated by him. This, we think, is the principle contained in the passage of Sir William Grant's judgment, in *Leake* v. *Robinson*, 2 Mer. 370, in which he says an executory devise is an infringement of the rules of common law, and is only to be allowed in consideration of its not exceeding certain established limits. In a devise to a class, therefore, the Courts do not split the devise into two parts, and give effect to the legal part; for this (says Sir William Grant) is to make a will for the testator. Here the true meaning of this devise is, in every event which can happen, in which Anne dies, leaving no children, if male, who attained twenty-three, or if female, who attained twenty-one, I give the estate over. That is what he says, and that is what he means. He includes all those events in one clause. Some are legal, and some are illegal. If it is the Court to sever those events which the testator has expressly joined together, without making a new will? The principle seems, therefore, to be against splitting such a devise, when we are considering the question whether it is a legal one. Now this question, it is conceded, must be determined as on reading the will at the instant of the testator's death. Do the cases cited affect this principle? On looking at them, we find that in all of them the devise in any event was legal, and that it was competent to the testator to make it. In *Jones* v. *Westcomb*, 1 Eq. Cas. Abr. 245, a case on which the Court of Q. B. proceeded, it was a bequest to the wife for life, and after her death to the child with which she was supposed to be *enceinte*; and if such child should die before twenty-one, then, as to one-third, to the wife, and two-thirds to other persons; and it was held that the wife, not being *enceinte*, the bequest over took effect. But if the testator had distinctly expressed all that the Court held to be included in the words he used, the whole would have been legal. This is not an authority, therefore, for splitting a devise, and giving effect to the legal, and rejecting altogether the illegal. *Gulliver* v. *Wickett*, 1 Wilson C. C. 105, which is the same case, only applying this will to real estate, is to the same effect; and the observations of the Court in the latter case, as to the validity of the executory devise over, if it took effect as an executory devise, were material, if this necessity for the devise being legal on all the contingencies contemplated by the testator, be the true principle on which the Court acts, and may reconcile the observations of Fearne with those of Bailey, J. in *Doe dem. Harris* v. *Howell*, 10 B. & C. 196; and *Meadows* v. *Parry*, 1 Ves. & B. 126, is to the same effect. These cases are fully explained and put on a very clear principle by Sir William Grant, in *Murray* v. *Jones*, 2 Ves. & B. 313. They shew, no doubt, that the existence and failure of the children for whom the provisions limited are made, not in all cases, and was not in those cases, a condition precedent to the devise over; but they shew no more, and do not at all apply to the question now before the Court, whether, if one of the contingencies be illegal, the single devise which included that contingency, but with others, became void. If Lady Bath had separately stated in her will the contingencies on either of which Mrs. Markham was to take, each would have been legal; and the Court held, that her including them both in one expression made no difference. This is like expressing the individuals of a class all of whom can legally take, and including all those individuals in a class, which is good; but the reverse is true, if some of the individuals cannot legally take. Then, if they are expressly named, the will is carried partly into effect; but if they are classed together, it becomes void. Suppose this had been a limitation by deed to Anne for life, the remainder to her children in fee; or if she have none, if male, who have attained twenty-three, or female, who attained twenty-one, then over, it is, I apprehend, clear enough that such a limitation over would be void altogether at common law. It may, however, says Fearne, p. 373, be good in a will, or by way of use, on a contingency to happen within a reasonable period. Now, if so, must the contingency here so happen? We think not; for it may go beyond the period allowed by law, if the natural and full effect be given to the words of the testator. For these reasons, we think the judgment of the Court of Q. B. must be reversed.

Judgment reversed.

INSOLVENCY COURT.

Reported by David Cato Macrae, Esq. of the Middle Temple, Barrister-at-Law.

PROTECTION CASE.

Tuesday, March 30.

(Before the Chief Commissioner.)

Re John Bingham the Younger.

Non-appearance at first examination—Mode of obtaining subsequent protection against creditors in the schedule.

Held, that a petitioner who has lost his protection on account of not appearing at an adjourned examination, upon being taken into custody by his creditors, must apply under the 28th section of 7 & 8 Vict. c. 96.

Cooke applied for a new interim order under the following circumstances. The petitioner appeared upon his interim examination on the 2nd of January last, and the case was adjourned till the 13th of February, when the insolvent did not appear, and the case was adjourned generally, at the request of his counsel, upon the ground that he was arranging with his creditors. He had not, however, succeeded in his efforts at arrangement, and was now in custody at the suit of three persons. The object of this application was to put him in the same position as he was at the time of the original adjourned examination, and the mode of doing it, he apprehended, would be to issue a new interim order, and a warrant to discharge from custody under the 6th sec. of 7 & 8 Vict. c. 96. He requested, therefore, to have this done, and a day fixed for his examination, upon notice to the creditors to shew cause why the interim order should not be renewed and the insolvent discharged. He should wish to treat the case as if it were under the 6th section of the 7 & Vict. c. 96; and supposing a man to be in custody, cause would be shewn why he should not be discharged.

The Chief Commissioner.—I must hear the creditors before adopting this course.

Cooke.—We propose to give the creditors notice.

A day for further hearing of the case on the merits was then named, with six days' notice to all creditors by the messengers, that the Court would be moved for the discharge of the insolvent from custody.

Monday, April 5.—To-day counsel on both sides appeared upon the rule.

Sargood, for the detaining creditor, gave consent to the issue of a discharge.

Dowse, for the other creditors, contended that consent could not give jurisdiction, and that as the statutes spoke throughout of one interim order only, the Court had no power, under these circumstances, to discharge under sec. 6.

Cooke contended that the Court had an original power to grant a discharge at any time, especially in cases like these.

The Chief Commissioner decided that he had no power to grant a discharge under the 6th section; but upon counsel (*Dowse*) consenting that insolvent

should come up for his final order, a day was fixed for that purpose, the insolvent remaining in prison in the nterval.

ERRATA.—*Re* JOHN WOLSEY, p. 34, instead of "he lodged 100*l.* for 1,700*l.*" read "he lodged an I O U for 1,700*l.*" Again, soon after, instead of "Mr. Dayrell's 100*l.*" read "Mr. Dayrell's I O U."

Circuit Reports.

NORTH WALES CIRCUIT.

CHESTER SPRING ASSIZES, 1852.

Reported by D. T. EVANS, Esq. Barrister-at-Law.

(Before WILLIAMS, J. and a Special Jury.)

BROWN *v.* WARD and OTHERS.

Landlord and tenant—Demise by two persons, and distress for rent by heir of survivor—Course of proceeding in replevin.

On issue taken on a plea of non tenuit to an avowry for rent, the defendant is entitled to begin, and may, after giving in the first instance general evidence of the plaintiff's tenancy by the payment of rent, set up by way of answer to the plaintiff's case particular evidence of title.

Where a demise is made by two persons with a reservation of rent to themselves and their heirs, payment by the lessee of a moiety of a half year's rent to the heirs of the survivor affords evidence of the plaintiff's treating the estate of the lessors as a tenancy in common so as to estop him from afterwards contending that the estate was a joint tenancy.

Where, in support of a plea of non tenuit to an avowry for rent by the representatives of the heir at law of the lessor, the plaintiff set up the lessor's will executed previous to the 1 Vict. c. 26, to defeat the title of the heir, it was

Held that the representatives of the latter might in reply give evidence of the ancestor's purchase-deed executed subsequent to the date of the will, and that such evidence was an answer to the plaintiff's case.

Welsby and *Grove*, for the plaintiff.

Evans, Q.C. and *Pulling*, for the defendants.

This was an action of replevin. The defendants avowed as administrators of Christopher Ward for 112*l.* 10s. the moiety of four and a half years' rent of a farm in the plaintiff's occupation, due in said Christopher Ward's lifetime. The plaintiff pleaded in bar non tenuit.

From the evidence it appeared that by a lease, dated 23rd January, 1836, William Ward and Richard Barker jointly demised the farm in question to the plaintiff, at a rent of 50*l.* per annum, payable half-yearly to themselves and their heirs. William Ward died in July 1836, leaving Christopher Ward his heir, and in March 1837 the plaintiff paid to the collector employed by Christopher Ward the moiety of half a year's rent due subsequent to the death of William Ward, but from some cause or other no subsequent payment had been made on account of such moiety. Christopher Ward died in 1850, and his administrations then claimed the arrears accruing due in his lifetime in respect of the moiety of the rent, and after some correspondence had taken place between the parties a distress was put in, and the present proceedings arose.

The defendant's counsel, who claimed the right to begin, put in the counterpart of the lease of 1836, signed by the plaintiff. The following evidence for the defendant was then given:—

William Worrell produced the lease of the 23rd of January, 1836, which stated the rent as being 50*l.* a year, the tenancy being yearly.

On cross-examination the witness stated that William Ward had been dead several years, but that Barker is still alive.

John James: I used to receive rent for William Ward, of Farringdon, Berkshire. I first began to receive the rent in 1831, I received it up to 1837. Brown succeeded the former tenant of the farm in 1836, and I received rent from him. The rent was paid half-yearly. I find an entry in my books of payment by Brown of 12*l.* 10s. in October, 1836; that was for the half-year up to Michaelmas-day. On the 7th of March, 1837, I received the half-year's rent becoming due on the 25th of that month. That was before it was due. Mr. William Ward died shortly after my receipt of the first of those payments, but I am not quite sure of this. In the month of December, 1844, I was instructed by a Mr. Vallance, the executor of Mr. Wm. Ward, to apply to Joseph Brown, the plaintiff, for payment. I saw him myself on the day before Christmas-day in that year. He asked for indulgence in paying his rent on account of money he had paid for repairs and outlaid in improvements. He stated he had a good deal of money due from debtors, which he could not just then get in. I wrote to him about the rent in 1846. I saw him in the month of June of that year. He made similar statements of reasons for delay in payment of his rent, and added that he would not pay till the title of the parties was established. He said he paid the other moiety of rent to one Mr. Cotgreave.

Cross-examined: I never knew of my own knowledge that Mr. William Ward was for years before he died a lunatic, and had been so found by inquisition. I saw Mr. William Ward in 1836; he appeared imbecile, but not insane. Not a word was then said about insanity.

Wm. Fidel: I knew the late Mr. Wm. Ward, of Farringdon. He was a banker. I knew him before his marriage. He had seven or eight children. His eldest son was Christopher. Mr. Ward died in July, 1836. I knew his daughters, Miss Ward and Mrs. Reynolds. Christopher Ward died in February, 1850.

Cross-examined: I never knew that there was a commission of lunacy on Wm. Ward. He was not well, and a Mr. Schultz transacted his business. I think he transacted his business of a banker several years before his death.

Edward Wilde: I am a bailiff, and made a distress, the subject of this action, on plaintiff's cattle. I took property of the value of 112*l.* 10s. I saw Brown, who asked how much money I wanted. I told him the amount, and he said he had not enough money in the house to pay me. There was nothing said about paying under protest.

This was the case for the defendants.

Welsby then contended that there was no evidence in support of the defendant's case; that the lease only disclosed a joint tenancy in Wm Ward and Barker, and it was not proved that the plaintiff had, with notice of Wm. Ward's death, paid rent to his heir.

WILLIAMS, J. said that in his opinion there was evidence to go to the jury of the plaintiff having recognised the estates of his lessors as a tenancy in common, so as to estop him from now contending that it was a joint tenancy; but the point should be reserved.

Welsby, for the plaintiff, then put in the will of Wm. Ward, dated 1832, by which all his real estate was given to certain trustees.

Evans, Q.C. in reply, contended that that will referred solely to equitable estate, and that the legal estate was in the defendants. He would prove that in 1816 William and Thomas Cotgreave were tenants in common of the farm. They assigned to one Lee, who made a declaration of trust that he held three-fourths of the moiety for W. Ward and the remainder for himself. The legal estate of these three-fourths, which William Ward had before, was afterwards formally assigned to him. So that William Ward did not acquire the legal estate in the farm till after the date of the will. The legal estate therefore did not pass by the will, as that was made previous to the coming into operation of the 7 Vict c. 26, s. 3.

Welsby objected that it was not competent for the defendants to divide their case into two portions, and make out a different title in reply from that which was set up in the opening.

WILLIAMS, J. held that it was in his opinion competent for the defendants to set up the purchase deed, to shew that the estate was after acquired property, and did not pass by the will This point was however, also reserved.

Evidence was then given of the deeds of lease and release, dated in 1835 (*a*), by which the legal estate in the moiety, now claimed, was conveyed to Wm. Ward; and the jury gave a verdict for the defendants.

OXFORD CIRCUIT.

Reported by J. E. DAVIS, Esq Barrister-at-Law.

Hereford, March 22.

(Before Mr. Justice WIGHTMAN.)

DOE *dem.* CALDWELL and WIFE *v.* LEE.

Attestation of will—Statute 1 Vict. c. 26—Competency of wife as a witness when a party to the action.

A testator having requested H. to write his, the testator's, name as his signature to his will, being unable from illness to do so, H. did so, and he and two other persons signed their names as attesting the execution of the will by the testator. The following memorandum was subsequently affixed and signed by H., "Memorandum, I, E. H. signed the testator's name, at his request."

Held, that the memorandum was not inconsistent with the previous attestation, and that the will was duly executed, according to the statute, 1 Vict. c. 26, s. 9.

In ejectment on the demise of husband and wife, the latter claiming as devisee of the property, the wife is a competent witness.

This was an action of ejectment brought to recover possession of a house and lands in the parish of Stoke Lacy. The lessors of the plaintiff claimed under a devise by Thomas Lee to the wife, for her life, with remainder to her son in fee. The defendant claimed as heir-at-law of the testator.

Whateley, Q.C. and *Huddleston*, for the plaintiff.

Greaves, Q.C. and *W. H. Cooke*, for the defendant.

The will of Thomas Lee was produced, and tendered in evidence on the part of the plaintiff, and two of the persons purporting to attest its execution were examined as witnesses.

It appeared from the evidence that the will was prepared by a solicitor, with a form of attestation at the foot, and executed in the following manner. It was read over to the deceased on the 3rd of September, 1851, but the execution was postponed at his request. On the morning of the 6th of September he consented to execute it, and Mr. Howey, a surgeon and apothecary attended with a person named Fowler, and Mary Bruton, a servant, for the purpose of attesting the execution. The testator, who was in bed and very ill, was raised up, and a pen put in his hand. He attempted to sign his name, but failed. He had previously asked Mr. Howey to sign it for him, and after shewing his inability to do it himself, Mr. Howey said to him, "Shall I sign it for you?" The testator replied, "Yes;" and Mr. Howey accordingly wrote the testator's name at the foot of the will; and he and Fowler subscribed their names to the attesting clause; and Mary Bruton being unable to write put her mark, her name being written by Mr. Howey. The testator had not made any request that the witnesses should attest his execution. The attesting clause was in the ordinary form, expressing that the will was signed by the testator in the presence of the witnesses present at the same time, who in his presence, and in the presence of each other, and at the testator's request, had affixed their names as witnesses. In this state the will was delivered by Mr. Howey to the testator's solicitor, who had prepared it. Being informed of the mode in which the execution was effected, he wrote the following memorandum at the foot of the attestation:—"Memorandum—I, Edward Howey, signed the testator's name at his request." And this memorandum was signed by Mr. Howey.

In the course of the case some observation was made as to why Mrs. Caldwell, the devisee, was not called as a witness; and *Whateley* said there was a doubt as to the admissibility of her evidence, in consequence of her coverture, and on that ground he would not run the risk of calling her.

WIGHTMAN, J. said he should have received her evidence, as she was herself one of the lessors of the plaintiff, and the meritorious cause of action.

At the close of the plaintiff's case,

Greaves, Q.C. objected that the will was invalid and informal, not having been duly executed as required by law. The attesting clause asserted in distinct terms that the will was signed by the testator himself; and then followed the extraordinary memorandum directly contradicting the previous attestation. It was therefore an imperfect instrument. The objection is, first, the attesting clause could not be contradicted. Secondly, it could not be shewn that the witnesses attested Howey's signature for the testator, nor that they attested any signature by the testator, as either would contradict an allegation on the face of the instrument. Thirdly, there is no attestation clause to Howey's signature on behalf of the testator. If Howey signed on behalf of the testator, his execution should be attested by two witnesses. Fourthly, there was no evidence that the testator knew that the witnesses were present, or that they attested his will, still less that they were called upon by the testator to be witnesses to his will. It was the duty of the plaintiff to shew affirmatively that the signature was made in the presence of the witnesses and in the presence of the testator.

Whately, contrà.—The stat. 1 Vict. c. 26, sec. 9, provides that no will shall be valid unless it be in writing, and shall be signed at the foot or end thereof by the testator, or some other person in his presence, and by his direction, and such signature shall be made or acknowledged by the testator, in the presence of two or more witnesses present at the same time; and such witnesses shall attest and subscribe the will in the presence of the testator; but no form of attestation shall be necessary. The execution by the hand of Mr. Howey was, therefore, within the very terms of the Act, and was in law the execution by the testator, and that execution was attested by two witnesses.

WIGHTMAN, J. expressed his opinion that the execution was within the statute, and was attested by three witnesses. Then the additional memorandum was not inconsistent with the previous allegation, for the signature by the hand of Howey, in the presence and by the direction of the testator, was, in fact, an execution by the testator.

At the request of the counsel for the defendant the learned judge took a note of the objection.

Greaves, Q.C. then addressed the jury on the question as to the testator's competency at the time.

(*a*) There were several objections raised as to the admissibility of these deeds in evidence, which were, however, all reserved for the opinion of the Court of Ex. from whence the record came.

WIGHTMAN, J. directed the jury that if they were of opinion that the testator at the time of signing the will by the hand of Mr. Howey was in such a state as to be incapable of knowing what he was doing, or what was being transacted, they should find for the defendant; but if, on the other hand, they were satisfied that the testator was competent to give instructions to Mr. Howey to write his name to the will, and that it was his intention that the will should operate as his last will and testament, their verdict should be for the plaintiff.

Verdict for the plaintiff.

Monmouth, March 26.
(Before Mr. Justice WIGHTMAN.)
REG. v. DILMORE.

issibility of depositions of deceased persons—atute 11 & 12 Vict. c. 42, s. 17—Identity of ence charged in the indictment with that preferred before the justices.

r the statute 11 & 12 Vict. c. 42, s. 17, which r providing for the taking of depositions before justices, enacts that, upon proof at the trial of the death, &c. of the deponent, "it shall be lawful to read such deposition as evidence in such prosecution."

Quære, whether the deposition of a deceased person on a charge against the prisoner of stabbing him, can be read on a trial for the murder or manslaughter of the deceased.

The prisoner was indicted for manslaughter.

The indictment charged that the prisoner, on the 4th day of August, 1851, "did feloniously kill and slay" one Joanni Stoicovich.

On the part of the prosecution it was sought to give in evidence the deposition of the deceased, taken on the 11th of August, 1851, the wound having been inflicted on the 4th of August, and the deceased having lived until the 16th of that month.

The deposition was headed as follows:—

"Borough of Newport, in the County of Monmouth, to wit. } The examination of Joanni Stoicovich, late seaman on board the *Elodie*, of Trieste, lately lying in the Newport-dock, taken upon oath this fourteenth day of August, A.D. 1851, at Pillgwenlty, in the said borough, before me, Thomas Hughes, esq. one of her Majesty's justices of the peace in and for the said borough, in the presence and hearing of Cesare Delmore, charged before me the said justice, for that he the said Cesare Dilmore did, on the 4th day of August instant, at the said borough, feloniously stab, cut, and wound the said Joanni Stoicovich in the belly with a knife, or some other cutting instrument, of which stabbing, cutting, and wounding, the said Joanni Stoicovich is likely to die. James Caprella sworn to interpret Italian into English."

Huddleston, for the prisoner, submitted that the deposition could not be read. It was proposed to read it under the provisions of the statute 11 & 12 Vict. c. 42, s. 17. That section enacted, "That in all cases where any person shall appear or be brought before any justice or justices of the peace, charged with any indictable offence," &c. the justices shall take the examinations of th witnesses, in the manner therein stated; and then proceeds to enact that, "if, upon the trial of the person so accused as first aforesaid, it shall be proved by the oath or affirmation of any credible witness, that any person whose deposition shall have been taken as aforesaid is dead," &c. "it shall be lawful to read such deposition as evidence in such prosecution." In this case, charge before the magistrates was one of stabbing, and not a charge of manslaughter. He submitted that the deposition can only be given in evidence where the charge before the magistrate is the same, as that for which the prisoner is subsequently indicted. The statute says, "upon the trial of the person so accused as first aforesaid," referring to the accusation before the magistrate. [WIGHTMAN, J.—If that is so, the deposition of a deceased person cannot be used in any case where the charge is connected with his death.] The question had been raised in a case before Mr. Greaves, Q.C. sitting at Gloucester, to try prisoners, and, after conferring with Lord Campbell and Mr. Justice Williams, it was held that a deposition on a charge of assault was not admissible on an indictment for cutting with intent to do grievous bodily harm, but that the indictment must be for the same offence as that charged before the justices. (*Reg.* v. *Ledbetter and Others*, Gloucester Summer Assizes, 1850.) (a)

Barrett, on the same side, urged that it was a hardship on the prisoner to receive the deposition of the deceased in this case. It would not be admissible on an indictment for stabbing, unless the prisoner was present at the time, so as to cross-examine the witness; and the deposition, when complete, consisted of the cross-examination as well as of the examination in chief. Here there could have been no cross-examination as to the charge with which the prisoner now stood indicted. [WIGHTMAN, J.—The hardship you put scarcely arises in this case. The charge is varied by the death, but the charge is still manslaughter by cutting and wounding.] The statute which enables depositions to be read in the absence of the witness ought to be construed strictly. Supposing a prisoner to be indicted for highway robbery and wounding, would a deposition of an absent or deceased witness taken on a charge before the magistrates of wounding only, be admissible? Surely not.

Skinner, for the prosecution.—The question has been already decided. The case of *R.* v. *Smith*, R. & R. 339 (cited in Archbold, p. 149, 11th edition), is expressly in point. There it was held that depositions taken on a charge of assault were, after the death of the deponent, admissible against the defendant on his trial for the murder of the deponent, who died in consequence of the assault. That was a decision subsequent to the statute 7 Geo. 4, c. 64, which merely provided for the taking of depositions, and contained no provision respecting the admissibility of depositions in the event of the death of the deponent. The recent statute simplified the powers under the former statutes, and was not intended to diminish but to extend their operation. The 11 & 12 Vict. c. 42. in using the terms, "in such prosecution," must be taken to mean the prosecuting the inquiry to an end, whatever particular form it might assume from intervening circumstances. The charge before the magistrates was for stabbing, cutting, and wounding Joanni Stoicovich, "of which stabbing, cutting, and wounding, the said Jhanni Stoicovich is likely to die." That was the charge here, subject to the change in the particular offence arising from the death of the deponent.

WIGHTMAN, J.—What is the offence charged on the face of the depositions? It seems to be stabbing, simpliciter. Is that an offence, except as including an assault, it not being alleged that the stabbin was done unlawfully or maliciously?

Huddleston in reply.—The case of *R.* v. *Smith* was not on the present statute. Moreover, the case before Mr. Greaves, at Gloucester, with the opinion of Lord Campbell, shewed that Smith's case was not law. It was an unsatisfactory decision. Several of the judges expressly stated that they should have doubted the admissibility of the evidence in that case but for *Radbourne's case*, 1 Leach, 457 (see 2 Russell on Crimes, by Greaves, 891, note f.)

WIGHTMAN, J. There is no decision precisely in point. The case cited at Gloucester differs in one respect from this. There the original charge was an assault, here there is something more. The recent alteration in the law, making it unnecessary to set out the means of death in the indictment, increases the difficulty, for here the indictment merely alleges that the prisoner did feloniously kill and slay the deceased. The question raised here is one of the greatest importance, for it is in those cases where an injury has been done to the deponent of which he subsequently dies that it is desirable to have his evidence. If it is a casus omissus the statute ought to be amended forthwith. It may be that the Legislature has omitted to provide for the very cases where the necessity chiefly arises, but if so it a most extraordinary defect. I shall receive th evidence and reserve the point if necessary.

The deposition was then read.

The prisoner was ultimately acquitted.

WIGHTMAN, J. observed, that although it longer became necessary in this case to discuss point raised with reference to the admissibility of the deposition; it was very important that the question should be settled without delay.

(a) The case was cited from a MS note of Mr. Greaves, Q.C.

Ecclesiastical Courts.

PREROGATIVE COURT.

Reported by Dr. WADDILOVE, of Doctors' Com

Jan. 30 and March 14.
(Before Dr. LUSHINGTON, sitting for Sir H. JENNER FUST.)
BRENCHLEY v. LYNN.

Will of married woman—No executor named—Administration with will annexed decreed to the universal legatee in preference to husband.

A married woman made a will under powers contained in the will of her mother and her marriage settlement, she also covenanted that she would not revoke or alter such will. She afterwards made several wills, and finally executed a codicil, whereby she revoked all former wills, and declared an intention to die intestate, and that her property should go to her next of kin according to the provisions of the Statute of Distribution:

Held, that such paper was alone entitled to probate, and that it was in every respect a testamentary instrument.

Semble, although probate was now refused of the other papers, still the Court of Equity would probably, with a view to see how far the covenant in the settlement rendered inoperative the codicil, direct the other papers to be proved in order to guide its decision.

The proper course is to answer an act on petition, not merely to pray that it may be rejected.

The facts of this case appear sufficiently in the judgment.

Sir *J. Dodson* and *Harding*, for the husband.

Addams and *Twiss*, contra.

The following cases were cited:—*Barnes* v. *Vincent*, 5 Moore's Priv. C. C. 201; *Salmon and Hays* v. *Breese*, 4 Hagg. 382; *Tatnall* v. *Hankey*, 2 Moore's Priv. C. C. 342; *Hughes* v. *Turner*, 4 Hagg. 30.

JUDGMENT.

In order to bring the questions which arise in this case clearly under consideration, it is necessary to state some of the leading facts. This litigation relates to the property of Mrs. Lynn, formerly Mrs. Elizabeth Coare. She died on the 17th of April, 1848, leaving her husband her surviving, but no children. Under the will of her mother, Mrs. Minnitt, she took considerable property, and had certain powers of making a disposition in the nature of a will, of such property. There is also other property left besides. Prior to the marriage a settlement was executed; there was no issue of the marriage, as I have already stated. All these facts I may call common to both parties. Now, what have been the proceedings in this case? The cause commenced by the issuing of a decree at the instance of Mrs. Brenchley, described as the sister, and only next of kin of the deceased. That decree is dated the 28th August, 1848, and it recited that Mrs. Minnitt made a will; that a settlement was made, dated the 21st of May, 1831; that in virtue of the powers contained in Mrs. Minnitt's will and the settlement, the deceased made a will and various codicils, and appointed Mr. Still and Mr. Rackham executors. The decree further alleged, that under, and by virtue of the before-mentioned powers, the deceased, on the 14th of May, 1847, executed a further will, revoking the former will and codicils, but did not appoint any executor or residuary, or other legatee. According to the words of the decree, the effect of this paper was to give the property over which she had a power of disposal to her next of kin, according to the Statute of Distribution. That so stated. The decree then called on the executors to see the codicil to be propounded proved in lemn form of law, and also to shew cause why administration, with the paper of the 14th May, 1847, should not be granted to Mrs. Brenchley, the sister, and only next of kin, limited to the right and interest of the deceased, to all such personal estate, as by virtue of Mrs. Minnitt's will otherwise she had a right to dispose of. I have set forth the contents of this decree somewhat fully because I think it will be necessary hereafter to discuss it more particularly. Mr. Rackham, the surviving executor in the previous paper, declined to interfere in this suit. Various other testamentary papers were brought in. An appearance was given for Mr. Lynn, who had been cited. The paper of the 14th of May was propounded in an allegation. The contents of that allegation may be very briefly stated. It begins by alleging that by Mrs. Minnitt's will Mrs. Lynn had a power of distribution over the property, and in case it is not exercised, it alleges the intention of Mrs. Minnitt. The third article states that certain testamentary papers which are recited at length, namely, a wi and seven codicils, were made by the deceased. In the fourth article, it is alleged that Mrs. Lynn, having an intention to revoke and make void all such former wills and codicils, made and executed the paper propounded in this case. Now, this allegation, I see from the proceedings, was opposed,—upon what grounds I know not, but it was admitted, and three witnesses were examined upon it, and they were examined solely to the making and execution of the paper itself. An allegation was also given in on the part of Mr. Lynn, which was rejected. As this allegation was rejected, perhaps it is not necessary to consider minutely the effect of it. I may, however, have occasion hereafter to refer to it. The cause then came on before the Court, on the former allegation, and the evidence taken, and the prayers of th respective parties were as stated in the course of these proceedings. These concluded by praying the judge to pronounce for the force and validity of the codicil, bearing date the 14th of May, 1847, on the part of Mrs. Brenchley, and also by praying the judge to decree letters of administration with the codicil annexed to her. I need not go through it more minutely than I have done. That was the prayer, the decree is in the following terms: "The judge having read the evidence," and so on, "by his interlocutory decree, pronounced for the force and validity of the said codicil, bearing date the 14th day of May, 1847, but made no order as to costs." Now, it is perfectly clear, from a perusal of that decree, that it does not correspond with the whole of the prayer which I have already stated. The case was appealed, and the prayer of the appellant was to reverse, that of the

respondent to affirm, the decree such as I have stated. The judgment was affirmed. The first consideration then is, what has been done by Sir Herbert Jenner Fust and by the Judicial Committee? What I am now precluded from considering, and what I am at liberty and bound to deal with? No doubt can be entertained that, beyond all question, I am bound by what the Judicial Committee has done, confirmed by order in council; and I am also bound, though perhaps not quite so stringently, by all Sir Herbert Jenner Fust has done. I can neither diminish nor enlarge the decrees. I have only to construe them, and to decide matters which were not decided by them. Reading the decree, then, in the printed proceedings before the Judicial Committee, at page 4, it is to my mind most abundantly clear that it left the question, as to whom the administration was to be granted, wholly and altogether untouched. I cannot engraft upon the decree what was not in it, but it was said, in the course of the argument, that the Court might vary the decree; and, in some instances, no doubt where a mistake has been committed, a decree may be varied from the original minutes, under the authority of the Court. I doubt not but that, under the circumstances, that may be done, and that such power exists in the Court; but not under the present circumstances, for the Court cannot alter a decree affirmed by the Judicial Committee; whatever may have been the error, assuming there was an unintentional omission in the Court below, when once made, and the decree is affirmed by a Superior Court, it is utterly impossible for the Inferior Court to make the slightest alteration. I may observe, however, that if I had the power, I have no evidence to satisfy me that the learned judge of the Prerogative Court intended to dispose of the question to whom the administration was to be granted. All he said was, taking his words literally, "I pronounce for the validity of the paper, and decree probate." Probate is the general term used. The meaning is as clear to my mind as it possibly can be—I pronounce it is entitled to proof; but not a word is said in that judgment as to who was to take the grant, and the Registrar's book confirms this entirely. I am clear, therefore, that the question to whom the grant must pass is yet to be decided, and decided according to the principles and rules applicable to the circumstances of this case; and indeed I may observe that though both probate was demanded by the prayer, and also the grant of administration with the will annexed to the sister, yet these are in themselves two separate and distinct subjects; and according to the practice of the court, at the time,—at least, when I practised in it,—it did not at all follow that because an instrument was declared to be proved, the other party could not be heard on an act on petition as to whom the grant should pass. The cause is then remitted to this court. And the next step is, the proctor for Mrs. Brenchley, on the 9th of July, 1851, makes a prayer conformable to the latter part of the prayer he had made before the decree was pronounced by Sir Herbert Jenner Fust. And here I may say, if I really believed that Sir Herbert Jenner Fust and the Judicial Committee had already decreed the administration to Mrs. Brenchley, I cannot comprehend why such administration should not have issued at once, nor what was the necessity for a fresh appearance in the Prerogative Court. However, in opposition to this prayer, an appearance is given on the behalf of Mr. Lynn, and he prays to be heard on his act on petition. The substance of that act is, that it states first the will of Mrs. Minnitt; secondly, the making of the will of 1834 under it; thirdly, that the settlement was intended to bear even date with the will; fourthly, it sets out part of the contents of that settlement, namely, a covenant not to revoke the will of May 1834; fifthly, the act further states the making of various other testamentary papers, which I do not think it is necessary to specify; and, sixthly, it states that on the 11th day of May, 1847, the subsisting testamentary papers of the deceased were, the will, dated the 21st of May, 1831, and two codicils. It is then alleged that questions may arise as to the operation and effect of the instruments at law or in equity, and that to obtain such decision it is indispensably necessary that in some shape or other the said will and codicils should be admitted to probate. It further states that the deceased left personal estate other than the properties over which she had a power of appointment. And the prayer at the end of this act on petition is, "that the said Elizabeth Lynn left behind her personal estate and effects other than the properties over which she had a power of appointment as aforesaid, and that by the law and practice of this Court the said Rev. James Lynn, as the lawful husband of the said Elizabeth Lynn, is entitled to take letters of administration of all and singular the goods, chattels, and credits of the said Elizabeth Lynn, deceased, with the four said testamentary appointments, or such of them as the Court may be pleased to direct, annexed on giving the usual security. Wherefore, referring to the several testamentary appointments hereinbefore mentioned, and now remaining in the registry of this Court, and to such other proofs as he may hereafter bring into the registry, prayed the judge to decree letters of administration with the said testamentary appointments bearing date the 21st day of May, 1831, the 1st day of December, 1845, the 21st day of July, 1846, and the 14th day of May, 1847," the three codicils, "or" —this is the alternative,—" with the said testamentary appointment bearing date the 14th day of May, 1847, alone annexed." That is the prayer made on behalf of Mr. Lynn. This act on petition having been given in, a very unusual course was adopted on the part of Mrs. Blenchley, for no answer was made to the act at all, but the Court was asked to reject it. Now I am of opinion that the ordinary course of proceeding should not have been departed from upon the present occasion; that there was no reason to justify the so doing, and that it has been productive of inconvenience; and it might in some cases be of prejudice to a party in the position of Mrs. Brenchley, because, amongst other considerations, the Court cannot possibly come to the original bearing of this case with its mind at all informed by the arguments intended to be urged on behalf of Mrs. Brenchley, who has made no answer, nor as to whether the facts contained in the original act are admitted or denied. I entertain no doubt, and I have already expressed my reasons for that opinion, that the question to whom the grant should be made was an open question, and I think it equally clear that an answer was required in that respect. Whether the annexation of the other papers to the grant was an open question remains now to be considered, and if not an open question, I must say I think the Court was entitled to be informed by a statement of the party why it was not, and then, if an open question, why the grant, with the papers annexed, should not be decreed as prayed. No answer, however, was given, and I had not the least hesitation in rejecting the extraordinary prayer, or rather refusing the extraordinary prayer, to reject the act on petition. To have rejected the petition would have been tantamount to declaring that the matter contained in it was utterly foreign to the cause, or on its own shewing felo de se. I entertain a very different opinion to that now, as I did then, and consequently I refuse to grant that prayer. The Court is, therefore, now called on to perform this duty; to consider the import and effect of this act on petition without any answer to it. The objections against it I have to collect from my own mind, or from the arguments of counsel, as no issue is taken either in law or in fact. I have already said that I must consider to whom the grant must be made, but I must first consider another question, which I think requires considerable attention, and that is, am I precluded by what has been already done from considering of what papers the grant should issue? Has that question already been determined, or has it not? Has it been determined by any act of the Judicial Committee, or of Sir Herbert Jenner Fust? If I could come to such affirmative conclusion, I should doubtless be relieved from a very difficult part of this case. First, then, has the Judicial Committee considered or decided, or in any way intimated an opinion that the will and codicils before mentioned should not be included in the probate with the codicil of May, 1847. This is a question which may possibly admit of some doubt, and that doubt arises from the allegation given in on the part of Mr. Lynn, and rejected. I must, however, remember, that whatever may have been the wording of the allegation admitted on the part of Mrs. Brenchley, the only question truly raised by it was, whether the codicil of the 14th of May was entitled to probate, but not exclusively. The legal meaning of the codicil might be decided upon the issue raised, but whether it was barred from being operative as a revocation of all other papers, was a question for another Court, when and after its title to probate was established. If duly executed it was entitled to probate, whether the intention to revoke was operative or not. I think that the case of *Hughes* v. *Turner*, 4 Hagg. 30, to which I must soon more especially advert, shews that the mere pronouncing that a paper is entitled to probate, does not exclude the question whether other papers may not be joined, unless indeed that question was specifically raised. On the whole it appears to me that the rejected allegation was applicable only to the question of probate of the contested codicil, and that I am not justified in presuming that the learned judge meant to decide, by the rejection of that allegation, that no other paper could be joined in the probate. I think the only question which was raised by that allegation was, whether, in consequence of the covenant contained in the settlement, the Court was barred from decreeing probate of that paper, and no other. Now I am in no degree apprised of what did occur when the question of the admissibility of that allegation was debated. I may, therefore, be in error, but I must form my judgment from the pleadings, and it does not appear to me that the question of joining other papers in the probate was distinctly raised or decided at all. Even if I should be mistaken in this opinion, I think it is much safer, in the absence of all information, to assume that the question whether any papers should be included in the probate was left an open question. I am of opinion, therefore, that it is a duty from which I must not shrink to pronounce my judgment upon both the questions raised in this act on petition, namely, whether the three papers mentioned should be joined in the grant with the codicil of the 14th of May, 1847, and to whom, secondly, the grant should be made. I will take these questions in the order I stated them. Primâ facie the codicil of May, 1847, is a revocation of all the testamentary papers before made, and no reasonable doubt can be entertained that if that codicil, or a similar testamentary paper, were pronounced for, without reference to the execution of powers or covenants in a deed, probate of that codicil alone must pass, and that according to our ordinary course of business. It is perhaps almost superfluous to advert to that codicil, but I will do so, and very briefly. Whatever else may be said of the codicil, certainly great pains have been taken by the framer of it to make it a sweeping revocatory paper, for it goes on to state—" Whereas I have by my last will and testament in writing, or by some instrument in the nature of a will by me, duly executed, and made in pursuance of some power or authority vested in me by my marriage or some other settlement, appointed and disposed of the real and personal estate," and so on. " Whereas I am desirous to revoke and make void my said will and disposition aforesaid, and to die intestate, in order that all my property, both real and personal, may go to and devolve upon my heirs or next of kin according to the nature and quality thereof, the same as if I had made no will and had died utterly intestate. Now, therefore, I, the said Elizabeth Lynn, do by this instrument in writing, revoke, annul, and make void my said will in toto, and all the gifts, dispositions, clauses, and directions therein absolutely, so that I may die intestate both as to my real and personal estate. And I make and execute this codicil," and so on, in order to effect that object. I think, therefore, I am quite safe in saying, that no doubt at all can exist as to the revocatory intention which was entertained by the deceased being clearly and satisfactorily expressed in this instrument. Some special reasons, therefore, must be shewn to justify the Court in departing from the ordinary course. These reasons are set forth in the act on petition, the ordinary course being to grant probate of that paper alone, as I have already stated. The substance is the will of Mrs. Minnitt, the marriage settlement, the covenant not to revoke, and that no revocation has been legally effected. I mean strictly speaking,—that the codicil does not operate so as to destroy the effect of the will of 1831. Now, I am called upon to decree probate of these testamentary papers, in order that justice may be done by the proper Court,—the Court that would properly take cognizance of the effect and construction of the codicil. But to this averment no answer whatever has been made. How, then, am I to deal with it under these circumstances? If it were a simple averment of fact that it was indispensably necessary for the purpose of suits in equity or elsewhere, I think I should be bound to take it all as true; but it is in truth a complex averment; it is an averment of law founded upon a given state of facts. I apprehend, therefore, that it is my duty at least to pause before I assume it to be a statement entirely true in a legal sense, and if, therefore, I should be of opinion that it is true or doubtful, I must then consider how far the law allows me to give weight and effect to such a state of things, even if admitted to be true. Now, I cannot shut my eyes to this—the whole of the papers shew it—that the question intended to be raised elsewhere, is manifestly the effect of the covenant in the marriage settlement,—whether that covenant is binding so as to render the codicil inoperative in effect, though an instrument bearing the probate of this Court, or whether the covenant is not null and void, as in fraud, of the power which gave a right of disposal by will and not by deed, a will being in its nature revocable. I do not mean by this observation to enter minutely on questions not familiar to this Court, but I do not think it consistent with my duty to adopt, without consideration, sweeping averments of the description contained in this act, and it would be a very dangerous precedent so to do. I must consider whether these averments are well founded. Then, to proceed with reference to the questions intended to be raised, as I collect from the act; first, I conceive it to be perfectly true that a Court of Equity cannot carry into execution testamentary instruments disposing of personal property, unless they have received probate. That is a law so uniform and generally admitted on all sides, and stated in all cases, that it must be considered as undoubted law; consequently, I am bound to admit that a Court of Equity could not, whatever might be its opinion of the effect of the covenant in the settlement, or however inoperative the codicil already proved, it could

not carry into effect, without the probate of this Court, the previous will of 1834, and the two codicils of which probate is prayed by Mr. Lynn. That is a proposition which we must start with as undoubted; in order to enable a Court of Equity to carry these instruments into effect, probate of this Court is an indispensable preliminary. But, though this be true, I am not aware that a Court of Equity, having before it Mrs. Minnitt's will, the marriage settlement, and the codicil of May 1847, might not declare its opinion as to the effect of these three instruments, or whether the codicil was revocatory, not in the sense of probate, but in operation, because here we must judge whether the codicil be revocatory in the sense of granting probate, but whether it was revocatory in the sense of operation belongs to a Court of Equity, but in operation of prior testamentary instruments, if any. I am not prepared to say, whether justice might not then be done by coming to the Court for probate of these instruments. I know not exactly how this may be, and I pass no opinion, but I cannot think this is a state of things wholly and altogether impossible; I cannot easily believe that though a Court of Equity will not give effect to testamentary papers without probate, that it will wholly ignore the possibility of the existence of such papers. I am the more inclined to come to that opinion because of a recent case which has been decided in the Court of Chancery under the name of *Penny* v. *Briggs*. I hold in my hand a copy of the judgment of Lord Justice Knight Bruce, which was afterwards affirmed by the Lord Chancellor. The question was one of a totally different description; of course I do not quote it as bearing on the question, but with relation to certain remarks and things done in that case. The question was, whether Miss Penny was a trustee, or took the residue for her own benefit, but the testatrix, in her will, stated that she had written papers, which papers did not appear; and what did the Court do? Why the Court did this: after having commented at considerable length upon four papers, in themselves testamentary, but held not to be entitled to probate in this court—having so far taken notice of them,—it decreed a reference to the Master to inquire whether there were any and what other papers which could possibly have a bearing upon the case; and for what purpose was this reference to the Master to find these papers? Why these were testamentary papers, and these papers could have no operation or effect in the Court of Chancery unless they had been proved; and does it not follow to demonstration under these circumstances, that if the Master does find any papers of that character they must be sent to this Court before any effect can be given to them? I will not occupy much time in going into the particulars of this case, because I think I have said all that is necessary to shew that which I wish to prove, namely, that the Court of Chancery, though it does not carry into execution any testamentary paper unless proved, yet it is not bound to shut its eyes wholly and altogether to the existence of such papers; but that it may and does order an inquiry whether any such paper does exist. I presume the necessary consequence of the existence of such a paper would be, if found, that the Court of Equity would direct that that paper should be brought here to receive the sanction of this Court to render it effective, otherwise it would be a mere useless inquiry to make search for papers of which no use could be made by the Court when found. Now, that decree was affirmed by the Lord Chancellor after great consideration. In his judgment, as well as in the judgment of the Vice-Chancellor, reference was made to those papers which were supposed to exist. Why should I not presume that a somewhat similar course might have been followed upon the present occasion? I mean, why should I presume that the Court of Chancery, if the codicil was brought in, the settlement was brought in, and Mrs. Minnitt's will was brought in, would utterly ignore the consideration that there could possibly exist other testamentary instruments, and would not pronounce on the effect of those instruments; and having pronounced on them if the codicil was inoperative, would not allow further steps to be taken? I do not say it would, but I have heard no argument to satisfy my mind that it would not. I have entered on this inquiry reluctantly; but I think I am bound to do so. It would, in my opinion, be exceedingly dangerous to the interests of justice to assume general sweeping assertions, such as I find in this act, to be true without the least proof of any kind to support them; and I must say, because, as I have already expressed myself, I do doubt,—I venture to say no more than that,—that the indispensable annexation of these papers to probate is well founded. I will not, however, decide the question upon these grounds, though I think I should be justified in so doing. I will assume that it is necessary for the purpose of justice, as stated in this act, that probate should be granted of the three papers. I will assume that to be true. Then, if this be so, there cannot be a stronger inducement to the Court to grant the probate as prayed. It is quite superfluous to observe that it is the duty of every Court, to the extent of its jurisdiction to aid other Courts in doing justice; but then comes another question, what is the law which must govern the Court under such circumstances? Am I at liberty to exercise such discretionary powers, or am I not? By what rules am I to be governed in exercising such discretion? The whole subject of the testamentary papers of married women, and the grants to be made respecting the same by the Ecclesiastical Courts has never in my opinion been placed on any very satisfactory foundation. The history is stated at considerable length by Lord Brougham in the case of *Barnes* v. *Vincent*, 5 Moore's Priv. C. C. 201, which shews that the practice has in some degree varied, as no doubt has the law in Courts of Equity as to separate property between husband and wife; but however that may be, this is clear, that the Statute of Wills has nothing at all to do with the present question. That statute does not affect the jurisdiction of Ecclesiastical Courts in this matter in any way whatever. It neither diminishes the jurisdiction, nor does it enlarge it; all that the statute does is this, it enacts that powers to be executed by testamentary acts shall, as to the mode of execution, be the same as the mode of execution enacted for ordinary testamentary instruments, or, in other and shorter words, all powers shall be executed in the presence of two persons, and they shall attest them in the presence of each other; that is the sum total of the Wills Act, as bearing on this question. The Court of Probate, therefore, must decide whether that form of execution has been duly followed. Why? Because otherwise it is not a testamentary instrument. But the judgment of a Court of Probate is not made binding on a Court of Equity more than it was before, and a Court of Equity may, if it should think fit, inquire as to the execution of the power, and decide, notwithstanding probate, that the power was not well executed. A Court of Equity might differ both as to law and fact. We might decide the paper was entitled to probate; the Court of Equity might decide it was not well executed; even a decision by the Judicial Committee on the same point would not bind a Court of Equity. Having disposed of those arguments which arose at the bar, and depend on the Statute of Wills, I will proceed with the inquiry, and confine myself to the question of power only, and not confound it with separate property. I will observe that there are two sets of questions which may arise, the one the existence of the power at all under any given circumstances, and what the power is, and whether it can be exercised at all. The second question is, the execution of the power itself, the form in which it is executed. I think it will be necessary to keep these two considerations quite distinct. It will also, I conceive, be necessary to a clear understanding of this subject, to bear in mind that the word "revocation" has two meanings. The one—if I may use such an expression—in the probate sense of the term, that is, where one instrument revokes another originally entitled to probate, and so revoking it, disentitles it to the probate it would otherwise be entitled to. The other sense—which we may call the Chancery sense of the term—is where one paper, and that subsequent, renders another inoperative in the whole or part, though both papers may have received probate. To advance another step: what is the true question now before me, and how far can I discuss it; and what is the law I can find applicable to the case? The question is very easily raised; it is this,—whether the testatrix intended by the codicil of May 1847, entirely to revoke all other testamentary papers. If she did, and if the codicil is in terms sufficient for such purpose, then no doubt can be entertained that if no impediment occur on account of the power, probate of the codicil alone must be granted. It is clear beyond all argument that it would be so in the case of an ordinary testator. I have entertained some doubt whether Sir Herbert Jenner Fust did not dispose of this question by the rejection of the fourth article of the allegation given in by Mr. Lynn; that is, whether the codicil was entitled alone to probate. I know he disposed of this question, that it was entitled to probate, but whether that it was so alone or not is another question. Upon the whole I think he did not. In searching for the law to aid me in deciding this case, there appears to me to be but one case, which, however, contains pretty nearly all we have—that is, the case of *Hughes* v. *Turner*, 4 Hagg. 30. There is also *Tatnall* v. *Hankey*, 2 Moore, Priv. C. C. 342, and *Barnes* v. *Vincent*, 5 Moore, Priv. C. C. 201. I think, when I have mentioned these cases, I have pretty well exhausted the decisions with reference to any question I am now discussing. Now, do these cases, or either of them, lay down a rule to govern the Prerogative Court in this or similar cases, or do they not? I must refer to *Hughes* v. *Turner*, 4 Hagg. 30. It is no easy matter to understand the whole bearing of that case. It is a case that occupied the serious consideration of the Court, and occupies in this volume nearly forty pages; but I give what I consider to be a faithful abstract of it so far as it bears upon the case now under consideration. There the testatrix had executed two sets of testamentary papers, one set bearing date in 1815, the latter in 1829. The Prerogative Court decreed a general probate of the papers of 1829 only. A question arose, whether those papers of 1829 contained a valid appointment of the property of the donor of the power. The Prerogative Court was applied to, and the application assumed to a certain extent the same form as the present, which will appear at page 49 of that case, namely, that it was necessary, before a proper decision could be obtained in equity, that probate should be granted of the set of papers of 1815. What the Court of Probate then did was this: it left the general probate of 1829 unrevoked, but it granted administration of the papers of 1815, limited to proceedings in Chancery, touching the execution of the power. Now mark - that decree the Court of Delegates reversed, and that was the first step they took in the cause. They would not allow the Prerogative Court to leave the question in that shape, namely, a general probate of the papers of 1829, and what I may call an ancillary probate limited to the Chancery proceedings of the others of 1815. It is clear that is a course that cannot be admitted after the decision in that case. Now what was the next step before the delegates? The Court was then prayed to decree probate of the set of papers of 1815 and 1829, as together containing the will, and that brings the case of *Hughes* v. *Turner* and the present case very much into juxta-position. The Court of Delegates refused so to do, and it confirmed the probate of the papers of 1829 alone. Now, how do that case and that judgment bear upon the present question? Let us see in what respects the two cases agree, and in what they are dissimilar. They agree in this, that in both cases the question was revocation quâ probate or not quâ probate; they differ in this, that in *Hughes* v. *Turner* it was contended that the papers of 1829 were not in execution of the power. In this case of *Brenchley* v. *Lynn*, the testatrix, it is said, was estopped by the covenant in the settlement, from executing a testamentary paper, revoking the will of May, 1834. In *Hughes* v. *Turner*, it was said, "Unless you decree probate of the paper of 1815, you shut out the question, whether it was not a good execution of the power, and the will of 1829 not operating as a revocation; that was the bearing, not as destructive of what had been done by the will of 1815. That was the question in *Hughes* v. *Turner*. The party said, "You do me injustice in refusing to grant me probate with the papers annexed, because I say, the will, signed in execution of the power, namely, the will of 1815, is a good execution, and you do not enable me to try that question in Chancery by excluding the will, and I say that is a grievance." That the party said in *Hughes* v. *Turner*; what does the party say in this case? Somewhat to the same effect. "By the refusal of probate to the papers, mentioned in the Act, you shut out the question, whether the testatrix was not barred by the covenant from rendering the will of May, 1834, inoperative—for it is that instead of revoking,—and from that will being carried into effect, if not rendered inoperative." The result then is, that in both these cases it was alleged that the refusal of probate would prevent the Court of Equity from exercising their proper jurisdiction. Then what did the Court of Delegates do? Of course by their decision I am bound. They said, in effect, you must not look at any such consideration. The report at the end of it is in the following words. After stating the decree, it further says, "It is understood that the ground of decision in the Court of Delegates was, that the contents of the will of 1829, taken together, clearly shewed a departure from the original intention in 1815, and therefore revoked that will; but that the clause of revocation, taken per se and without a clear intention, would not have had that effect." The Court of Delegates consisted of very learned judges, and, as I well know, great pains were taken—Mr. Baron Bailey, Mr. Justice Patteson, and Mr. Baron Alderson, independently of gentlemen from this Court,—and it appears to me that the plain meaning of that decision is, that the Court of Probate must decide according to its ordinary rules whether the last paper was revocatory or not, which was the last will. In the 2nd volume of Dr. Lee's Reports, at p. 542, published by Dr. Phillimore, who was one of the judges delegate, states that was the case. That the paper which I have already read is revocatory of all other papers is, as I conceive, too plain to admit of a moment's argument; and if that be so, if *Hughes* v. *Turner* be law, can I possibly distinguish these two cases in substance, though they are different in minute circumstances? I have looked to see whether the case of *Hughes* v. *Turner* in any degree clashes with any other case—whether it is contradicted. I must remember that *Hughes* v. *Turner*, being decided in the Court of Delegates, is absolutely binding unless it has been overruled by the Judicial Committee or by some

subsequent decision. Now it is not contradicted by *Barnes* v. *Vincent*. *Hughes* v. *Turner* was distinctly brought under their lordships' consideration appears by the report. It was not repudiated; on the contrary, the present Lord Justice Knight Bruce said, "In that case (*Hughes* v. *Turner*) the question of due execution was not decided. The Court only acted as if it was a question of revocation." The duty, therefore, of deciding whether the last paper was intended to revoke all others is, as I think, clearly thrown upon this Court by that authority, and being of that opinion the Court has no option but to decree probate of the codicil alone. Perhaps it would be vain to speculate, for we have no data as to what were the precise grounds upon which that judgment of the Court in *Hughes* v. *Turner* went. It would have been satisfactory to us all if we could have had any written judgment of the reasons which actuated the Court in coming to the conclusion which they did. It is dangerous, perhaps, to speculate upon it, but I cannot help saying that if I were to speculate on the reasons which actuated the judges, I cannot help thinking that it must very much have depended upon this, whether it was possible that, where the donor had a power, and directed that power to be executed by will only, not by deed, but by will only, it was possible to divest that power of that which the donor had attached to it, namely, the right of revocation necessarily incident to testamentary instruments; but it is not necessary to determine that, because I am not concerned with the reasons; I am more concerned with the mere matter of the judgment. In conformity with that authority I refuse to grant probate of the papers prayed for by Mr. Lynn, and I do so with less reluctance, because, notwithstanding the averments in the act, I am not convinced that the refusal will prejudice Mr. Lynn in any right he may have to remedy elsewhere. Having disposed of these questions, I will now come to the last—to whom administration is to be granted with the paper of the 14th May, 1847, annexed. I must first decide who are the claimants for the grant, and in what character they claim. On the one side is the husband of the deceased; on the other Mrs. Brenchley, who is the surviving and only next of kin of Mrs. Lynn. But upon what averment or in what capacity does Mrs. Brenchley claim as regards the paper itself? Now, I find in the original decree and in the proceedings, it is said that, in case of no disposition of the property by due exercise of the power, Mrs. Brenchley would take as next of kin; that the deceased executed a testamentary paper, whereby she revoked all other papers, and did not name any residuary or other legatee, ergo, that the administration should be granted to Mrs. Brenchley as the person entitled under the will of Mrs. Minnitt. I have entertained very considerable doubt whether that original decree, or whether the statement made in the act on petition, is correct; and I am of opinion that it can make very little difference in the ultimate decision of the case; yet I am of opinion (and after a great deal of consideration) that the statement, both in the original decree and subsequently in the prayer now made, is erroneous, and that administration cannot be granted to Mrs. Brenchley in the form prayed, though it may be of little importance. I think that Mrs. Brenchley does not take, properly speaking, under the ultimate disposition of the property by Mrs. Minnitt's will, but then she is a sole universal legatee of all that property by the instrument of May, 1847. I think she takes as an appointee under that instrument, and not as legatee in the ultimate disposition of Mrs. Minnitt; she takes, in fact, in consequence of the operation of that instrument. Now, let us see what the instrument is itself. It is not merely a revocatory instrument. It is an instrument, in my opinion, dispositive as well as revocatory, though if it were purely revocatory, I should not be inclined to alter my opinion at all. "Whereas I am desirous to revoke and make void my said will and disposition aforesaid, and to die intestate, in order that all my property, both real and personal, may go to and devolve upon my heirs or next of kin, according to the nature and quality thereof, the same as if I had made no will, and had died utterly intestate." Now I deem this to be a bequest of the property to her own next of kin. I think it would have done this: suppose the limitation in Mrs. Minnitt's will to be otherwise than the next of kin of Elizabeth Coare, it would have defeated that limitation, and the next of kin would have taken the disposition. Suppose Mrs. Minnitt's will had declared that if no disposition were made of the property, the property should go to John Noakes and Abraham Stiles, those words I have now read would entirely destroy the effect of that limitation, and be a direct bequest to the next of kin. Let us consider, then, a moment how this case stands. When Mrs. Brenchley takes under this paper in the manner stated, must she not pay duty as a legatee? Is it a case of intestacy? Was there ever such a thing as testative intestacy? How is it possible? It was hinted at rather than argued, that the paper might not be proved; it was not necessary to prove it. How could any one swear the deceased died without making a will, when here is a paper that disposes of the property to certain parties? Now I think that all such papers should be proved, and if there have been cases in which a revocatory paper has not been proved, I am of opinion that that is a very mischievous practice, and I say it without hesitation, when I look at the consequences, I say it upon principle, as well as when I look at the results of not proving revocatory papers. In the first place, on principle, intestacy can only arise where a person dies without legally bequeathing his property—without a will at all. If a man by will declares he dies intestate, and that his property shall go as in cases of intestacy, it is not an intestacy, but it is a bequest of the property personis designatis, namely, to persons designated in the Act of Parliament, as it might be by any other description, and the property in this case will go by virtue of the will setting aside the power, but not by virtue of the statute. Now let us see what would be the danger of holding a contrary doctrine. Why if you hold a contrary doctrine, the result would be, if you did not prove the will in the manner I have stated, that at any distance of time an old will might be set up, and then you would be in the predicament that you might have lost the revocatory instrument, and that doubt might be thrown upon it in consequence of its not having been proved as it ought to have been. I think I may safely lay aside all that consideration, and may really come to the essence of the case. I hold the proper claim of Mrs. Brenchley is that of universal legatee in a paper not appointing an executor. Then, how stands that claim under the circumstances of this case, as opposed to that of the husband? Mr. Justice Williams's work on Executors has been cited, and he states the law in the last edition, at page 340, in these words: "Where a feme covert has a power to dispose of her estate by will, which she executes, but without appointing an executor, administration will be granted to the husband cum testamento annexo. Again, if a feme covert has a power to dispose of certain personal property by her will, but no power to appoint an executor, and she makes a will, the Court will grant to the executor an administration with the will annexed, limited to that property, and decree a general administration cæterorum bonorum to her husband." Now, this is a very faithful exposition of the two cases which are cited at the bottom of the page; it is a faithful exposition of *Salmon and Hays* v. *Breese*, 4 Hag. 382, and and *Boxley* v. *Stubbington*, 2 Lee, 537; but I very much doubt whether the principle attempted to be extracted from the faithful statement of these circumstances is really the true ground, because, according to the mode in which the two cases are stated, it will make the grant to depend very much upon the circumstances of whether a feme covert so having executed a will without having appointed an executor, that for that reason it shall go to the husband; but if she appoint an executor, without any power to do so, it shall of necessity go to the person so appointed executor, though she has no power of appointment. That I do not believe to be the correct exposition of the law, not that I apprehend Mr. Justice Williams intended this. All I apprehend he intended was to give a faithful abstract of the two cases; but by simply stating the facts he does not, by necessity, extract the spirit of the rule. The decisions, no doubt, under the circumstances of the two cases, were quite right, but it does not follow that the whole of these grants are to depend either upon omitting to make an executor, or making an executor without the power of appointing one. In the case of *Boxley* v. *Stubbington*, though there was no power to appoint an executor—a point I am not going to discuss now—though there was no power, yet the testatrix having done it, the Court granted the administration. Then what was the real effect and meaning of *Salmon and Hays* v. *Breese*? Because it is absolutely just, if I am going to take a case as a guide, that I must really look at the circumstances of the case, and must not take a single expression from the judge who decided that case, than whom there was none more accurate—we must not take a single expression dehors the case, and pin him down to it. That case arose under the following circumstances:—Mrs. Hays made a will—very obscure to begin with—and a doubt arose as to the validity of the will—it was long before the Statute of Wills—whether it was duly executed, it having begun—"I, Elizabeth Mary Hays," and she not having signed the paper, the husband opposed the probate, contending that it was imperfect. An allegation was given in, the judge admitted it, expressing considerable doubt as to what the ultimate result would be. The husband then gave up opposition, and consented that probate should be taken, and then the question arose whether he who was the husband should take the grant, or whether it should be taken by two daughters by a former marriage, who were legatees in the will. It is to be observed the donee had a power in that case; she exercised [illegible] peared as the representative of the four children. So far as interest went, the majority was with Mr. Hays. Mr. Hays represented a greater interest than that of the other two daughters in the proportion of two to one. Upon that occasion it was contended, "Where a feme covert makes a will in respect of property over which she has a disposing power, and does not appoint an executor, administration with the will annexed is granted to the surviving husband, if he is willing to take it." The Court said that was correct as to general practice; and I have no doubt as the practice then was, that was correct. Whether the practice has continued the same, uniform, to the present time, I am not enabled to say; but I can never omit from bearing in my mind, when I am talking of a grant, that to couple the grant with the interest is, for the most part, one of the leading principles of this Court, and, as I think, one of the safest principles on which it can go. However, what did the Court say in that case? It saw no reason to depart from the ordinary practice, holding, as is undoubtedly true, that it had a discretionary power to grant the administration with the will annexed to Mr. Hays, because he said he had not carried on a vexatious opposition, but had withdrawn the very moment the allegation was admitted, and he was also the father of four legatees. Under these circumstances, he said he saw no reason to pass him over, and he granted it to Mr. Hays in preference. Then the result of that is, that it is a matter of fair discretion to whom the administration shall be granted. The Court must judge from all the circumstances of the case to whom the administration ought properly to pass. I must say this case is toto cœlo different from *Salmon and Hays* v. *Breese*, as to the title of Mr. Lynn to administration, for the course he has adopted is, indeed, very unlike that of Mr. Hays, who, when the allegation was admitted, withdrew from litigation. Mr. Lynn has carried the case not only through the Prerogative Court, not only to the Superior Court—the Judicial Committee—but, according to the statement made in his own act, threatens legal proceedings elsewhere. How, then, can I think that Mr. Lynn is the person best calculated to administer this property, in which he has no interest, for the benefit of those entitled to it according to the instrument, if the Court decrees probate? I verily cannot. As to there being other property, he may take a cæterorum grant, and I see no inconvenience if there be such property. I cannot doubt the proper person to take the administration is Mrs. Brenchley, who has fought through this long-contested battle, and who, I think, on every principle of law as well as justice is entitled to it. I therefore grant probate of this paper alone—namely, the codicil bearing date the 14th day of May, to Mrs. Brenchley, as the sister and universal legatee named in the paper.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. Keene, Esq. of Lincoln's-Inn, Barrister-at-Law.

IN CHANCERY.

(Before Lord St. Leonards.)

March 20 *and* 31.

CUTTS *v.* SALMON.

Attorney and client—Sale—Specific performance—Infant—Duties of an attorney purchasing from his client considered.

An attorney for three brothers, on behalf of one of them, a minor, lotted and put up to sale an estate belonging to the three, and in person bid for and became the purchaser of one lot, and signed a contract, by which it was agreed that a deposit of 10 *per cent. should be paid down, and that possession should be given and the purchase completed on a day before the infant would have attained his majority. The attorney did not pay the deposit, but took possession of the estate. The purchase-money was not paid in the manner or at the time mentioned in the contract. The client, after attaining twenty-one, five months after the sale, received from the attorney money amounting to rather more than one-fifth of his share of the purchase-money of the lot. Three years afterwards he filed his bill to set aside the sale on the ground of fraud, which was not proved. Held, in the Court below, that the bill was filed too late, and was dismissed, but in consequence of the conduct of the attorney in the matter of the sale, without costs. The attorney subsequently filed his bill for the specific performance of the agreement; the Court, acquitting him of fraud, affirmed the decision of the Court below, and dismissed the appeal with costs.*

Where an attorney purchases from his client, the

Court will not assist him in obtaining specific performance, without he can shew that all confidence has been preserved in the matter of the sale.

Semble, an attorney should not purchase from his client without the intervention of another solicitor.

Where the solicitor to the vendor, and known to be such, bids at the sale, the presumption is, that he is bidding for the estate, and not for himself. In such a case the sale is damaged, as by so doing he prevents the public from bidding, and is enabled to buy the estate at an undervalue.

A vendor has no right to have his estate exposed to the hazard of an auction without a reserved bidding, not necessarily for the purpose of screwing up bidders to the highest point which the estate is worth, but for the purpose of preventing its going at a great undervalue.

This was an appeal from a decree of the Vice-Chancellor Knight Bruce.

The facts of the case are reported in 16 Law T. Rep. 502; and 17 Law T. Rep. 87; and are stated in his Lordship's judgment.

Lee and *F. S. Williams* appeared for the appellant (the plaintiff).

Cooper, Malins, Craig, Elderton, and *Goodwin* appeared for the several parties.

The following cases were cited :—*Cole* v. *Gibbons*, 3 Pr. Wms. 290 ; *Edwards* v. *Meyrick*, 2 Hare, 60 ; *Coles* v. *Trecothick*, 9 Ves. 234 ; *Morse* v. *Royal*, 12 Ves. 355 ; *Stead* v. *Dawber*, 10 Adol. & Ell. 57 ; *Cory* v. *Gertcken*, 2 Madd. 46 ; *Thomas* v. *Phillips*, 11 Jurist, 80 ; *Davies* v. *Davies*, Vice-Chancellor Parker (not yet reported).

The LORD CHANCELLOR.—This case admits of very little doubt. The rule of law is perfectly clear and settled. Now the aid of particular authorities is not wanted to support the proposition that the attorney may buy from his client ; beyond all question there is no rule to prevent that: but if an attorney does buy an estate from his client, he must shew that he deals with him at arm's length ; if he fills that situation of confidence, he must also shew that all confidence has been preserved between the parties. No attorney would be well advised who should act for himself, and deal with his client for the purchase of that client's property. I say that the attorney would not be well advised if he so acted without the intervention of another solicitor. No solicitor ought ever to buy a property from his own client, without at once requiring that another solicitor should act for the client. I do not mean to lay down the rule that no purchase could be sustained as between attorney and client unless another solicitor was called in ; but no prudent man in the character of solicitor would ever attempt to purchase an estate from his client without seeing that that client was in the possession of the professional aid of another solicitor. This is a very singular case ; I never saw a case more so than the one now before the Court. Mr. Cutts, it appears, was the solicitor of the testator, by whom this property was given, and he was in possession of all the title deeds, of course in possession of the will ; and without imputing to him that he had the management of the estate, or was particularly conversant with its qualities, or had more knowledge of it than the persons actually living upon it, yet he had all the knowledge which properly belonged to what I may call the family solicitor. The property is given by the will in a way which admits of no doubt. No lawyer can look at the will without seeing that the trustees only took, if they did take, the intermediate estate up to the time of the Messrs. Salmon becoming of age ; when they did become of age the powers and estate of the trustees altogether ceased, and the young men themselves took the property amongst them as tenants in common in fee, and were the absolute masters of that estate, without any power or control, or any estate remaining in the trustees. I think it clear upon the evidence that the family of the Salmons did want to sell the property. There is no imputation, therefore, to be cast upon Mr. Cutts with reference to the intention of these parties to sell the estate ; but there is reason to think that they were led to believe, I do not know by whom, but one can easily suppose, that the legal estate was in the trustees, and that it was in them for sale ; whether it was a mistake or not I know not, and therefore express no opinion ; but it was a total want of knowledge of the commonest rule of law, with respect to the operation of the will. Any solicitor of this Court, I should imagine, looking at that will, would know at once that the legal estate in fee would become vested in the three sons on the youngest attaining the age of twenty-one ; but there was a representation that the estate must be sold. During the course of the argument for the plaintiff, I called for the advertisement announcing the sale of the estate, and I found it was as early as the month of March, 1845, and that advertisement announces the sale in these words :—"The valuable farms to be sold in the month of June next by order of the trustees named in the will of the late Mr. John Smith." Observe this—"by order of the trustees named in the will of the late Mr. John Smith," and that "possession will be given at Michaelmas next." Observe it says also, "that further particulars will be given, and the estate may be looked over on application to Mr. Cutts, solicitor," &c. Now there is a representation which I must consider is brought home to Mr. Cutts himself as early as the month of March 1845 ; a representation to the purport and effect that the estate was in the trustees for sale, and was to be sold in the month of June, and that possession was to be given at Michaelmas. Now the error was found out in some way or other, but is not explained how ; and consequently the advertisement in that respect was not acted upon. The particulars of sale were then generally for a sale without reference to the trustees, and yet the trustees were acting as if they had had some authority over this estate for sale. Now it appears that there were three closes which were the particular objects of desire of Mr. Cutts, and which Mr. Cutts wished particularly to possess ; and I do not impute any fraud to Mr. Cutts in this transaction. From anything in the odious sense of fraud I entirely, as far as my opinion goes, absolve Mr. Cutts. He was desirous of having three particular closes, constituting part of this estate, and I think naturally so, because it so happened that these closes adjoined his own property. Now the question arose as to how the estate should be lotted, and the auctioneer took the business of allotting the property principally upon himself. It appears that several persons went in a body, and amongst them Mr. Cutts, for the purpose of looking over this estate with a view to this allotment ; but when they came to this particular portion which, as I have already observed, Mr. Cutts wished to purchase, and did eventually purchase, it appears that Mr. Cutts withdrew · that fact impresses one with the notion that he believed at that time they could not interfere with the sale. However, the three closes in question, which constituted a considerable portion of this small estate, were lotted, and they formed lot 8, which has been the subject of contest. Now, without going any further into the facts of the case on that point, it appears that Mr. Cutts bought that property ; I will presently state the circumstances under which he bought it. I may observe that he made a very good purchase, he gave 2,500*l.* and he was enabled to withdraw and keep in his own hands the ground which he particularly wished to possess, and which I think was some twenty-four or twenty-five acres of land ; he kept that in his own hands, and he let the remainder of the lot for 100*l.* giving only 2,500*l.* or 2,510*l.* for the whole. That is no proof of fraud ; but is a proof that the lot was a very good lot, and would have fetched, no doubt, under ordinary circumstances, a large price, and that 2,510*l.* therefore, cannot but be regarded in the light of a bargain on the part of Mr. Cutts. I am not prepared to say that the amount of the purchase-money was such as would have justified the Court in setting aside the conveyance. But on the other hand, to have done what was strictly right, Mr. Cutts, when he made up his mind to purchase this part of the property, ought cautiously to have withdrawn himself from every dominion over it ; but instead of doing that, we find that he allows himself to be inserted in the advertisement in the public newspaper announcing the sale, as the solicitor ; and in case of any further information being required he allows himself to be referred to. It is admitted that he drew as many of the conditions as bear on the title and so on, and with a full knowledge, as I must suppose him to possess, of the title. He stipulates that an abstract shall be delivered in twenty-one days ; that that abstract shall shew a good title ; and that the possession of the estate and the completion of the purchase shall take place in Michaelmas 1845, the sale taking place in the month of June. How did the circumstances of the case at that time stand ? Edmund, one of the children (and on whose attaining the age of twenty-one the estate would vest in all those persons), was not at that time, although nearly, twenty-one ; he did not attain that age until the month of November following. Now observe the first false step which Mr. Cutts took after he had discovered the mistake as to the trustees ; he allows this estate to be sold under an express condition, namely, that a good title shall be shown in twenty-one days, and an abstract delivered, and the purchase completed at Michaelmas on conveyance, and payment of the purchase-money. I must consider him cognisant of this fact, namely, that Edmund not being of age until the month of November following, he could not sell himself, neither could any body sell for him ; that he could not sell and convey it at the time the conveyance was stipulated to be executed. What, therefore, is to be said of a transaction in which an attorney puts up the estate of his client for sale, the estate of a client who is under age, and stipulates that the purchase shall be completed while his client is under age ? He must be taken to have known at the time that every purchaser of the estate, or portions of the estate, if he happened to be dissatisfied with his purchase, might turn round after the sale had taken place and might throw up his purchase and bring an action on the ground that the sale had taken place without the possibility of making a title ; how is it possible to sustain the case if it stood there merely ? How is it possible, I ask, to sustain such a transaction ? A solicitor for an infant sells his estate during infancy, and stipulates that the title should be made good during the infancy, and the conveyance also be made during the infancy ; thus enabling every purchaser, after all the expenses had been incurred, to throw up his contract and rescind the sale. That alone, in my judgment, would be a sufficient ground if that were all ; but it is not all, or approaching all. Mr. Cutts goes as solicitor, with his name in these particulars as solicitor to that estate ; every body in the room knew that he was the solicitor; that fact was known to every man ; he bid openly, and he bid for himself. What would be the fair inference which everybody would have drawn at that sale ? Why, undoubtedly, that Mr. Cutts attending there at that sale, and known to be the solicitor, and avowed to be the solicitor, every man present at that sale must have believed,—I mean everybody who knew any thing of the ordinary transactions of sales of this nature—must be taken to have believed that Mr. Cutts was bidding for the estate and not for himself. But we must inquire what effect that would have had on the sale. Now, for that purpose, look at the case of *Twining* v. *Morris*, 2 Bro. C. C. 326 ; 6 Ves. jun. 338 ; 10 Ves. jun. 305, 313, 398 ; and see what effect the Court has given to a circumstance of that nature. If a solicitor attends a sale known to be the solicitor, and does not publicly mention the fact that he is buying for himself, and the public is led to believe, as they naturally would without evidence to the contrary, that the man is bidding for the estate, he thereby damages the sale and prevents men from bidding who otherwise would have done so if they thought it a bonâ fide sale, and he enables himself to buy at an undervalue by the very circumstance that he himself is a bidder. But observe another thing which took place, and the effect of it. I refer to the fact of there being no reserved bidding. Who ever heard of a sale of this nature taking place without a reserved bidding ? Mr. Cutts, meaning to buy part of the estate himself, and these alleged trustees, meaning to buy the rest, they go to the sale of the property of these young men during their infancy and have no reserved bidding. Who ever heard of such a thing ? What is to prevent their buying the estate at any price ? There is nothing to protect it. Is a solicitor to tell me that he is to maintain a sale against his client, when he has put that client in a condition to have his estate sold for anything it may fetch ; perhaps, for a fourth or fifth of its proper value : Besides he has not taken proper precaution. No man is expected to expose his estate to the hazard of an auction, without freely having a reserved bidding ; not necessarily for the purpose of screwing up bidders to the highest point which the estate is worth, but merely for the purpose of preventing the estate going greatly under its value. Suppose, for the purpose of argument, that could be justified, which cannot be, but suppose for a moment it could be justified, what should he have done as a prudent solicitor acting for his client ? Undoubtedly he ought to have told the public that it was a sale without reserve, and then again you would have had the advantage, as he had the advantage, of selling without a reserve ; for if the public know, and have confidence in the auctioneer, and the parties believe what is said, for, I am afraid it is sometimes said, but not acted upon,—I say if they can have confidence, and believe that they are dealing with men of character and credit, it assists the sale of the estate, if it is understood that there is no reserved bidding; and the people bidding believe that every man who bids is an honest, fair, bonâ fide bidder. But there is this circumstance in addition, there is no guard on the estate ; no guard against the estate being sold for nothing, or against being sold for next to nothing, and there is no benefit taken from that great relaxation of the common rule ? Well, now, what portion does Mr. Cutts buy ? What are the particular conditions which Mr. Cutts, acting as solicitor for this young gentleman, who was under age, imposes upon the rest of the world ? He imposes the condition, that ten per cent. should be paid down instantly as a deposit, and the remainder of the purchase-money at Michaelmas, 1845, and possession given at the same time. Now, then, let us see how Mr. Cutts executes this contract between himself and his client. His client was entitled to 10 per cent. down. That was a large proportion of the purchase-money ; it lies dead as against the purchaser, and it is a security to the seller that the purchaser will complete his contract, or he loses his deposit. The remainder of the purchase-money was to be paid at Michaelmas. So early a time after the sale was, of course, a very great benefit, because then this young man, for example, supposing he had been of age (he was not competent to have received the money at the time, as I have said before, therefore it was a delusion as regards him-

self), and competent to receive the money, it would have been a most important circumstance that he could have had the money at so early a period. What does Mr. Cutts do, standing as he did in the capacity of solicitor to this infant? Why, he does this: he pays no deposit, but he takes possession at the day named; he pays no deposit, and pays no part of the purchase-money. So that he bids with this advantage, knowing, of course, what he meant to do, knowing he was bidding without a liability to pay the deposit, and with the impression and conviction on his own mind that he would pay the purchase-money when it suited him. But let us suppose that he had told the rest of the world, "You need not pay any deposit on the purchase-money; you may pay in the year 1847, or at any time it may suit you best." Undoubtedly, if that had been the case, the biddings would probably have been much higher. But no, he does no such thing; he imposes upon the rest of the world conditions which you must consider proper as between the seller and the buyer, whoever became the buyer; and it appears that these conditions which he imposed upon the rest of the world, when he chooses to become the buyer he wholly neglects, while he avails himself of every condition in his own favour as a purchaser, at the expense of his client. This Court must cease to be a Court of Equity if such a dealing could constitute a contract between a solicitor and his client. How is the money paid? There is no proof of its being paid until the beginning of the year 1847, and I do not like the mode in which these receipts were got up; they were all signed at the same time,—five receipts for money doled out in a way to ruin a young man; there could not be a more effectual way of damaging this young man in his prospects in life. When a young man attaining twenty-one, supposing he has to receive a certain number of hundreds of pounds which is his undoubted right, and which he ought to have had paid to him to the day, if he was competent to receive it, and certainly when he became of age he ought to have received it: besides, possession was taken of his estate, and the money represented the estate; and then, two years afterwards, the money is doled out by fifties, and twenties, and hundreds, and twenties, just in a way to induce a young man to expend and throw his patrimony away, instead of making a solid investment of the whole of it, as no doubt he would have done; at least there would have been the inducement to do so, supposing he had had it, as he ought to have done, in his hand in a lump. It is useless to go further through it,—I think there is no part of the transaction which can be defended. I acquit Mr. Cutts wholly of what is called fraud, in a felonious sense, but I do think that there is fraud in the sense of this Court,—that there is an unfair dealing with the estate,—that advantage was taken of the client,—that there was not fair dealing with him; not that giving him those benefits to which he was entitled, but only taking those benefits to which the solicitor was entitled. I have not the least hesitation in affirming the decree, and dismissing this appeal with costs.

Appeal dismissed with costs.

COURT OF APPEAL IN CHANCERY

Reported by Owen Davies Tudor, Esq. of the Middle Temple, Barrister-at-Law.

March 19, 20, and 22.

Kent v. Jackson.

Foreign railway—English directors—Managing committee—Discharge by general meeting.

The English Directors of a Belgian railway company, established as a Société Anonyme, subsequent to their retiring, returned deposits to a considerable amount to English allottees, and also purchased back for the company some of the shares which had been allotted. An account of these transactions was laid by the English directors before the committee of management, to whom also the balance due from the English directors was paid. These transactions were afterwards approved of by a general meeting:

Held, affirming the decision of the Court below, that the general meeting had power to sanction such a transaction, and having done so, there was no ground for a suit in this country against the retired English directors.

This was an appeal from the decision of his Honour the Master of the Rolls, dismissing the bill of J. K. Kent, a shareholder in the Charleroy and Erquelinnes Railway Company, which was filed on the 24th of June, 1848, on behalf of himself and all the other shareholders of the company (except such of the several persons thereinafter named as defendants thereto, as were shareholders in the said company), against Jackson, the assignees of Graham, and the committee of management of the railway company, who were stated to be out of the jurisdiction. It appeared that on the 28th of May, 1845, by the royal concession of the King of the Belgians, the railway company was established as a "Société Anonyme," under certain articles or rules (afterwards duly ratified and approved of by a royal ordinance), which, so far as are material, are as follows:—

Art. 3. The company takes the title of, &c. Its seat is Brussels.

Art. 15. The possession of, or subscription for, one or more "titres," carries with it the adhesion to the present statutes.

Art. 16. The company shall be represented by a general meeting of shareholders: it shall be managed by a board.

Art. 23. The board of directors is invested with the most extensive powers, as regards the construction and the working of the line, its branches and dependencies. It is authorised to contract for the whole or part of the works; it is authorised to pass, with third parties (but subject to the approval of the general meeting), all treaties advantageous to the company, even for railways in connection with this one. It makes the regulations for management or internal order, and superintends their execution.

Art. 26. As the members of the board act as representing the company, they contract, by virtue of their offices, no joint or personal liability; they are only answerable for the execution of the trusts reposed in them, under art. 32 of the Code of Commerce.

Art. 28. Judicial proceedings shall be carried on in the name of the board of directors, at the prosecution, and by the proceeding of the chairman, or of the person replacing him.

Art. 31. The general meeting regularly convened by a notice, &c. shall represent the whole body of shareholders. It assembles every six months, &c.

Art. 38. At the meetings constituted according to the terms of article 31, the general meeting take cognisance of the accounts and balances, and determines on them finally. *The approval of the balances completely discharges the board of directors.*

Art. 39. *The deliberations of the general meeting,* taken in conformity with the above dispositions, *bind the company, &c.*

Art. 43. Every six months, at the half-yearly general meeting, the active and passive situation of the company shall be presented to the meeting, the accounts and balances shall be settled and approved, &c. &c.

Art. 47. All disputes between members of the company, concerning the affairs of the company, shall be judged by arbitrators. The tribunal shall be composed of three arbitrators, in the choice of whom the parties shall be bound to agree within eight days; in default of which, the said arbitrators will be named by the president of the Tribunal of Commerce of Brussels, at the request of the first requirent. The arbitrators shall decide absolutely, as amicable compounders, without appeal, and without being bound by the forms and delays of legal proceedings. Their decision cannot be reversed by appeal, civil petition, nor by recourse to Cassation.

By another article, the defendant Jackson, Graham, and certain other persons, were appointed directors. Shares having been allotted in England, deposits upon them to the amount of 12,680*l.* were paid into the bank of Smith, Payne, and Co. to the joint account of Jackson and Graham. On the 26th of October, 1845, each of them, in consequence of disputes between the English and Belgian directors, sent in his resignation of the office of director, which was duly accepted. In November 1845, Jackson and Graham sent a circular to the English shareholders, giving them the option either of taking scrip in exchange for the banker's receipts, or having the amount of their deposits, paid by them, returned without interest. Many of the allottees having adopted the latter alternative, deposits to the amount of 8,280*l.* were paid to them by Jackson and Graham, out of the 12,628*l.* by cheques on the bankers.

The plaintiff Kent was the owner of ten shares in the company, which he had purchased three weeks only before the filing of the bill. The bill alleged, "that the company, ever since it was established, carried on, and still continued to carry on and conduct, their affairs, on the footing of and in conformity with the said rules and regulations; and that such rules and regulations have ever since constituted, and now constitute, the existing laws of the said company, and are binding on all persons who are or have been, at any time, members or shareholders of or in the same, to the full extent of all their respective property or interest therein." The bill also alleged, that Jackson and Graham determined to avail themselves of the legal control they had over the English deposits, for the purpose of indemnifying themselves against all liabilities which they had incurred as directors; the bill insisted that the return of the deposits amounted to a breach of trust and fraud on the shareholders, and that it had taken place against the protest of the committee of management, and that the committee had no power to authorise the return of the deposits. It also charged, that the shareholders were very numerous, and that it would be impracticable to make them parties, and prayed that it might be declared that Jackson and the assignees of Graham (who had become bankrupt) were liable to make good the 8,280*l.*; and that an account might be taken, and that the sum found due, might be paid and secured in court for the benefit of the Charleroy and Erquelinnes Railway Company, and all persons entitled to or interested in the funds thereof. Jackson, by his answer, said that the English directors had retired in consequence of the apparent impossibility of the company carrying its plans into effect, and that they had declined, after their retirement, to pay the English deposits to the committee of management in Belgium, and that they returned them to the English allottees with the sanction of Mr. Arnold, the solicitor of the committee of management, considering that they were entitled to them on the failure of the undertaking; that after their retirement various negotiations took place between the defendants and the committee of management, and that finally an account was rendered by them to the committee, and settled, and the balance, after deducting the sum of 8,280*l.* and certain other payments, was, on the 2nd of June, 1846, paid over to the committee of management. In the account thus rendered, a sum of 1,281*l.* 7*s.* 6*d.* was included, which, as appeared by the answer, was paid by Jackson and Graham, with the sanction of Arnold, for the purchase back of 300 shares allotted in London.

On the part of the defendants, two Belgian advocates gave evidence as to the law of Belgium: the evidence of one of whom was in substance as follows: That the directors of Sociétés Anonymes could bring or maintain any suit in the name of such sociétés, but that no individual member could do so. That in this case any differences between shareholders must, by the 47th article of the statutes, which is in accordance with the terms of article 1134 of the Civil Code, making it binding on the shareholders, be settled by arbitration; and the Belgian tribunals would declare themselves incompetent in such cases.

Roundell Palmer and *Shee*, for the plaintiff, contended that the English directors had no authority to return the deposits, or to apply the funds of the company in purchasing up the 300 shares; and that, as trustees or agents for the company, they were liable to make good the funds so misappropriated. (*Salomans* v. *Laing*, 12 Beav. 352.)

Bethell, *Wilcock*, and *Amphlett*, for Jackson, contended—1st. That Jackson and Graham, after they had retired from being directors, had stated and settled their accounts respecting the transaction complained of with the committee of management in Belgium, and that all the members of the company were bound thereby. (*Foss* v. *Harbottle*, 2 Hare, 461; *Mozley* v. *Alston*, 1 Phil. 790.) And moreover, it must be taken to be approved of by the general meetings; as it is alleged in the bill, "that the company have ever carried on their affairs on the footing of, and in conformity with, the rules and regulations." It must, then, be assumed that half-yearly meetings representing the whole body of shareholders had been held according to the 31st article; that the accounts in which the items complained of appeared, must have been duly passed according to the 38th article; and that by the 39th article the approval thereof was binding on the company. 2nd. That as the seat of the company by article 3 was in Belgium, the rights of the members of the company must be determined by the Belgian law. That by article 28 all judicial proceedings must take place at the prosecution of the chairman. That by article 47 all disputes between members concerning the affairs of the company are to be settled by arbitration. And even by the law of England an individual member cannot sue for money belonging to the corporate body, unless he shew a reason why the company neglect to do so. 3rd. That there was a misjoinder; for although the plaintiff may not have sanctioned or approved of the acts of the defendants now complained of, yet the other shareholders who did so, and are co-plaintiffs,—the bill being filed by the plaintiff on their behalf,—are wrongly joined with him in that capacity. (*Graham* v. *The Birkenhead, &c. Railway Company*, 2 Mac. & Gord. 146; *King of Spain* v. *Machado*, 4 Russ. 225.) 4th. That the railway company was a necessary party.

Malins and *Borill*, for the assignees of Graham.

Shee, in reply.

Lord Justice Knight Bruce.—Whether, upon the question of right or the question of remedy, the law of Belgium or the law of England is regarded, this suit seems to us ill founded. According to the law of Belgium, the plaintiff is incompetent to sue for the purpose for which he has filed this bill; and by the law of England, he has shewn no case for suing the Directors in the manner he has done, even if some suit be proper. The pleadings and evidence seem to us to shew that in the year 1847, more than a year before the plaintiff filed his bill, an account had been stated and settled between the committee of management in Belgium, who were authorised agents of the company, and Jackson and Graham;

which account, if fairly stated, must be considered destructive of the plaintiff's case. It appears to us to have been fairly stated and settled; that is, every fact was stated without suppression, and the account so come to and stated was approved by the committee of management, who were in our opinion competent to do so. If, possibly, on account of the existing trusteeship, if there was one, the confirmation by the committee might have been insufficient, there must still be taken to have been a sufficient affirmance by the general meeting. There is, probably, more than one other ground fatal to this case; but enough has been said to shew that this petition of appeal must be dismissed with costs.

Lord Justice Lord CRANWORTH concurred.

ROLLS COURT.

Reported by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

Feb. 11 *and* 12.

PAUL *v.* ROY.

Jurisdiction — Foreign judgment — Contribution — Joint and several liability — Interlocutory order — Final decree.

A. a domiciled Scotchman, being indebted, borrowed money on the security of an estate in Scotland, part of which it was arranged should be deposited in the bank of Scotland, in the names of the plaintiff and defendant (the agents of the lender and borrower), in trust to meet the liabilities of certain creditors. The plaintiff and defendant made payments out of this deposit from time to time, which, though for the benefit of the borrower, were held by the Scotch Courts to be improper. Proceedings were taken by certain creditors in the Scotch courts, and in the course of these the defendant was ordered to pay in a sum admitted to be in his hands, and afterwards an interlocutory order was made directing plaintiff and defendant jointly and severally to pay in another sum, which sum was accordingly paid in by the plaintiff, the defendant having left Scotland and come to reside in England, and got an assignment of the order of Court from the creditors, which authorised him to call upon the defendant to repay him the whole amount so paid in. The plaintiff being unable to avail himself in Scotland of the assignment and process founded thereon, instituted the present suit to compel repayment by the defendant of the whole fund withdrawn, or if the Court would not make that order, then that the defendant should be decreed that part which, on an account taken between them, should appear to be due from him. The bill was dismissed with costs.

This Court has jurisdiction to enforce a foreign judgment or the debts and rights which might arise on a contract made between persons of another country who had afterwards come to reside here.

But the judgment of the foreign Court must be the final decree of the Court, and not an interlocutory order made in course of the litigation, the enforcement of which latter by this Court might work great injustice to the parties.

This was a bill to enforce an order of the Court of Session of Scotland, or to carry into effect certain proceedings founded thereon. The facts of the case are fully stated in the judgment.

Anderson and *Toller*, for the bill, cited *Dickson* v. *Stewart; Paul* v. *Roy*, 1 Wils. & Sh. 716; *Lingard* v. *Bromley*, 1 Ves. & B. 114; *Lefroy* v. *Gore*, 1 Jon. & L. 517; *Wilson* v. *Goodman*, 4 Hare, 54.

R. Palmer, *Goodeve*, and *Forbes* for the defendant.

Thursday, Feb. 12.—The MASTER of the ROLLS.—Having given this case as much consideration as I could—and I considered it fully last night—I am prepared to state now my opinion that I have formed. At present I am of opinion that the plaintiff in this suit is not entitled to any decree for relief at all in this case. I am of opinion that he has not shewn any grounds for granting him the relief that he prays; and I am about to state the reasons upon which I have arrived at that conclusion. The facts of the case, as far as it is necessary for me to refer to them on the present occasion, are these:—That Major Anstruther being entitled to an estate, or the life interest in a certain estate called Caiphe, in Scotland, in the year 1835, which was considerably embarrassed, raised money from a gentleman or a [illegible] he [illegible] upon the estate, and the estate was to be conveyed to a gentleman of the name of Renton, in trust, for the rents arising therefrom to be applied for the purposes which are mentioned in the memorandum of agreement to which my attention has been called, and to which I have just referred. Of this sum of 10,000*l.* agreed to be thus lent, 7,900*l.* were applied in the discharge of the various charges mentioned in the memorandum, and the remaining sum of 2,100*l.* was deposited in the Bank of Scotland in the name of the plaintiff who was the agent of the lender, Mr. Wood, and in the name of the defendant, Mr. Roy, who was the agent of Major Anstruther upon the same occasion. This sum was deposited by them for this purpose—for the purpose of carrying into effect the trust to which the money was to be applied in the manner mentioned in this memorandum of trust. In the years 1835 and 1836 certain payments were made out of this fund; proceedings were taken, and the Court of Session has determined that many of these payments were improperly made, and several inhibition creditors having taken out proceedings somewhat analogous to our proceedings,—that is, to an attachment in this country,—a proceeding of a summary description, and having brought a suit of forthcoming in order to provide for the funds being brought back for the purpose of being made available; and the Court of Session having the rights and claims of all the parties entitled to the funds ascertained in that suit,—the Court have directed the two trustees, Paul and Roy, to bring back these sums of [certain sums particularly enumerated]—in order to make up the sum of 2,100*l.*, that is, to make up what was not properly paid out of it. In the first place they ordered, some time in the year 1841, that is, in June 1841, the Court ordered the defendant Roy to pay a sum of 569*l.* into court, on behalf of himself and the plaintiff, which he accordingly did on the 2nd of July, 1841, contending it was the utmost amount of those sums which had not been applied according to the trusts; and subsequently, in the year 1845, the Lord Ordinary directed that that sum should be made up to 1,981*l.* odd shillings, the amount of the sum in court being then 796*l.* which further sum was ordered to be paid in by both parties. This sum of money being ordered to be paid in, Mr. Roy comes to England, and Mr. Paul pays in the whole amount, and thereupon he gets an assignment from the creditors in the suit in the Court of Session—he gets an assignment of the decree from the creditors, which entitles him, Mr. Paul, in the terms of the decree to call upon Mr. Roy, to repay to him, Mr. Paul, the whole amount which he, Mr. Paul, has paid into court according to the order—the whole amount paid into court—not the half, but the whole amount; and thereupon he takes out letters of horning, and having failed in obtaining any satisfaction from the goods of the defendant, he takes out those letters of caption, which direct him and entitle him to take the defendant himself, and imprison him till the whole amount that is claimed is satisfied. The plaintiff being unable to put those letters of caption into effect, and the defendant having come to England, where he now resides, thereupon the plaintiff institutes this bill, which prays in the alternative - to which it is necessary to pay some attention presently, and which it will be proper to consider more fully; it prays that the defendant may be ordered, either to replace the whole of the sums paid out of the 2,100*l.* which were improperly paid out, other than the sum of 569*l.* which was replaced by the defendant, and also to pay the sum of 271*l.* 3s. 5d. and the costs incurred by the plaintiff in the actions of forthcoming and multiple-poinding, or, in default of the Court not considering that that ought to be done, that the defendant may be ordered to make contribution and pay the balance of the sum he paid taken from one-half of the fund paid into court. That is the relief which he seeks by this bill; and I was early embarrassed in the case in considering in what way the Court had properly jurisdiction in this case, if it had any; whether it was upon the ground of its being a foreign judgment, or whether on the ground that it was a contract which I was called upon to enforce, entered into between strangers, the subjects of a foreign country, and one or both of whom had come afterwards into this country. There is no doubt that, in the great majority of cases, some distinction may be taken; but I do not doubt that in either case this Court has jurisdiction either to enforce a foreign judgment, or in the great majority of cases to enforce the debts and rights which might arise on a contract made between two persons of another country when they came afterwards into this country and reside here. I first considered this, whether it was to be considered in the light of a foreign judgment, which must be taken as final, for it would be new to me to find that this Court would ever enforce a foreign judgment unless [illegible] enforce a judgment which was merely interlocutory, and give relief which might be enforced by final judgment in another country. The Court might do great injustice by so doing. If there is a final judgment to pay a certain sum of money, subject to certain observations I am about to make, I have no doubt that the Courts of this country can compel the debtor, if residing in this country, to pay the foreign judgment creditor the amount. But now considering this case either as a final judgment or not, in no way can this suit be considered as a suit for properly enforcing a foreign judgment. The decree, singularly enough in the first place,—this is not singular,—directs the plaintiff and the defendant to pay in the sum jointly and severally, that is, as between the creditors and the plaintiff and defendant themselves they were jointly liable to pay the whole amount; but then, upon one paying in the whole amount and obtaining an assignment of the decree, this singular result takes place, that if in such a case by order of the Court of Session the plaintiff obtains such an assignment of the decree, it enables him and gives him a right to obtain repayment from the other, not of the proportion of the amount ordered to be paid in jointly, but of the whole amount he has paid into court. In such a case as this, at least, there is no doubt the Court would inquire into the propriety of the foreign judgment. Even if this were the case of a final judgment in a foreign court, the case of *Houlditch* v. *Donegall*, 2 Cl. & F. 470; S. C. 8 Bli. N. S. 301, shews that it is to be treated as primâ facie evidence of the right in the party who had obtained the judgment, and that its propriety may be inquired into, and, therefore, that the Court has jurisdiction. If that be so, then, the only case we have to consider is, that of contribution; and the ground for contribution brought forward here is, that the Court having ordered two persons jointly and severally to pay a certain sum of money into court, it is inequitable that one of them, the plaintiffs, should pay in the whole amount; but so on the other hand it must be considered equally inequitable that the other, the defendant, should be called upon to repay the whole amount to him; yet the effect of it would be, if I were to make a decree in favour of the plaintiff to make the defendant pay the whole amount of the money into court. No doubt that is a result so monstrous that Mr. Anderson and Mr. Toller have not themselves asked the Court for a decree to give such relief or effect to the judgment pronounced in Scotland; and I consider if I were to act upon it, it would be treating it as if the judgment of a foreign Court and not the Court of Session. In that Court relief and proper justice might be administered between the parties notwithstanding a decree of that description; and, therefore, I am not able to consider this as a case of enforcing a foreign judgment—it would be unjust to do so, and I am not even asked by counsel to do so, nor does the bill, although it prays that on the proceedings in the Court of Scotland—in fact, asks me to carry into effect the whole of the judgment of the Court of Session—it only asks me to carry into effect a portion of it. Then I have to consider the question, independently of the question of not enforcing a foreign judgment, whether there is anything by reason of the proceedings which have taken place in Scotland which enables the plaintiff in this court, constituted as it is, to require the defendant to pay, either as the prayer of the bill puts it, the sums of money which have been improperly paid out of the 2,100*l.* or to pay half of the sum of money which has been paid into court. I will shortly consider these two questions: in the first place, the money which has been paid out of court is this—out of the Bank of Scotland, I should say—I use the words as meaning the same in both cases, and for all practical purposes the meaning must be considered the same. There was a sum of 2,100*l.* for the purposes mentioned in the memorandum: various sums of money have been paid out of it, and to the evidence that has been given upon that subject I have attended very carefully, for the purpose of seeing what those sums were that were paid out. There was paid out,—and, it is not contested, was paid out with propriety,—a sum of 501*l.* 19s. for inhibition debts, and with respect to that sum no question is raised on either side. With respect to other necessary sums which were paid out, there are various sums which, according to the statements in the bill, and according to the whole of the evidence, amounting altogether to 1,019*l.* seem to have been paid out to the plaintiff himself. I will consider in a moment the question of an account. These sums appear to have been paid out to the plaintiff himself,—one sum was for costs, another sum was for the purpose of replacing premiums on policies which the plaintiff had already paid, and which not merely he mentions the fact of his having already paid, but that the money paid to him is not merely the amount paid upon the premiums, but interest from the time when he advanced [illegible] being applied to that purpose, but that the premiums on the policies had been actually paid by the plaintiff at that time, and that the plaintiff then came to make the fund in court—to make the trust fund available to repay him, with interest upon the

amount so paid. If you take the whole amount, after deducting that 103*l.* which remains in court, the total amount of the rest will be 425*l.*, so that if the whole of the amount of the rest had been paid to the defendant Roy, he would pay back under the order 569*l.* more than the amount of the money paid out to him Now, there could be no question that the Court of Session having determined that these sums of money were improperly paid, the person who received them ought to replace them, and that is the manner in which this Court, and I have no doubt in the Court of Session, would be the ultimate way in which the rights of the parties and the equity of the case would be worked out. There were some sums of money which were advanced by the plaintiff out of his own pocket, which, he says, were properly payable out of the rents, and he makes this sum of 2,100*l.* available for that purpose to repay himself. The Court of Session having decreed that sum to be made good and to be replaced, they must both, the plaintiff and defendant, as against the creditors, make it good. But suppose this were solely a trust fund, and the money had not been applied for any other purpose, it would rest simply between the plaintiff and the defendant, and each would have to pay the sums he had received. These sums were paid out to repay debts, in respect of which the plaintiff was a creditor; but the plaintiff says,—and for that purpose an elaborate account has been gone through on both sides,—the plaintiff says these very sums which were paid by the plaintiff, ought to have been paid—I shall be very glad to be set right if I misstate anything—that, in fact, although the plaintiff paid this annuity to Lady Anstruther, the rents of the estate were applicable to this purpose, and that, in fact, the defendant Roy, in his account of the receipts of the rents, has had credit for the application of the rents for that express purpose. Now, I assume that to be so, and observing in what character Roy was in possession of the estate, I find that he was in possession of the estate as factor to the trustee, and according to the law of this country, the factor could only be answerable to his trustee for the rents, and is not answerable to any of the cestuis que trust for any of those rents; but the factor, as between himself and his trustee, having misapplied those rents,—the factor being nothing more than what we in England should call a steward—a person who, by authority, receives the rents—the trustee would equally render answerable and liable for the due application of those rents which he had received himself, or by his factor, Mr. Roy, who was only his agent. In fact, if there were a case different from that, it would be totally impossible for me to take an account of the rents, to see whether they had been properly applied. It could not be done in a case of this kind, because it is obvious that Mr. Renton should be, and is, a necessary party to this suit for that purpose; and also, that Major Anstruther should be made a party, or else the Court would be taking accounts over and over again, which would not bind absent parties, and therefore would have to be taken over and over again for every one of those parties as they came. It is impossible, therefore, that I can, in a suit constituted as this is, regard, in any degree whatever, any question arising upon the rents of the estate, for the purpose of considering whether, in point of fact, whether it be law or not, the defendant Roy has, in the account of those rents, had allowance made for those very sums which were advanced by the plaintiff, Mr. Paul, and which Mr. Paul got repaid to him out of the 2,100*l.* improperly, and which the Court of Session has ordered to be replaced. In my view of the case, I can only look at the question of the 2,100*l.* and I consider that the suit is not a suit which is constituted in any form, which would enable me to look at it in any other way. Well, then, the other case, that if he, the plaintiff, is not entitled to that, the other alternative of the prayer is, that he may have contribution; that is to say, that the defendant may be compelled to pay into the Bank of Scotland, or into the Court of Session, the one-half of that sum which Paul and Roy were ordered jointly to repay; but upon what ground can I do that? Not upon the ground that it is a foreign judgment, because that is not a final judgment; not on the ground that that is shewn to be the proper amount between the parties, because I say it is not possible for me to ascertain that it is the proper amount; but it is only upon the ground that a foreign Court has directed two persons to pay a sum of money into court, jointly and severally, and has thought proper to make a decree, that this Court is asked to say that, and say they ought to pay it in separately, while the other Court has jurisdiction in the matter, and the proceedings shewing that steps are now going on in that court for the purpose of working out full and complete justice. I am of opinion that if I came to deal with the case in the present state of the case, I should, in fact, be carrying on the suit concurrently with the Court of Session, not having before me the whole of the parties who are before the Court of Session—not having the evidence laid before me which is before the Court of Session—not having the means of obtaining that evidence—and not having the means of doing justice between the parties when the arguments were proceeding. I put this question, supposing if I should order that Mr. Roy should pay to Mr. Paul one-half of what I should consider was due, or any other sum, and the Court of Session would not afterwards look upon that decision as being correct, and should determine that that was not the proper amount to be paid, and should call upon Mr. Paul to repay it, how could I say that Mr. Roy could get that back? and I consider if I were to do so I should, in fact, be making a final decree in a case which is pending in another court, and in which case that Court has made no final decree itself. I am also of opinion that it would be necessary for the plaintiff to ascertain by proceedings in the foreign court what was the amount which was properly due from the defendant. I am not satisfied that he has not the means of efficiently doing that, and I am not satisfied that by means of an account being taken against the defendant in a foreign court, the plaintiff has not the means of discovering if he has property. I am not satisfied that there is not property in another country belonging to Mr. Roy himself which might give a right of jurisdiction against Mr. Roy. It is very true that I do not call upon Mr. Roy to shew that he has property, but if it be true that the plaintiff could not obtain a final decree against the defendant, the burden would lie upon him to prove that, and if a final decree had been obtained in Scotland, and accounts taken ascertaining what was the sum due, there would have arisen a question which it is not necessary for me to discuss, whether the plaintiff could have enforced his claim in this court, or whether he might not have gone to a Court of Law. As I have considered and expressed my opinion that there is no case of a foreign judgment made out before me upon which I could act, and as I have gone into the other question, I do not stay to inquire whether this is the proper tribunal or not, or whether this is one of those peculiar cases which relate to the accounts of rents in a foreign country in which this Court would have jurisdiction to inforce a contract entered into by foreigners alone, because I am of opinion that no case has been made out, and for the reasons I have stated I can give the plaintiff no relief, and therefore the bill must be dismissed with costs.

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple Barrister-at-Law.

Thursday, Feb. 15.

Ex parte CROXTON, *re* THE OUNDLE UNION BREWING COMPANY.

Joint-stock Companies Winding-up Acts—Costs.

A trustee of a company, by the order of the directors, executed a bond for a sum advanced to the company, and was afterwards sued for the debt and compelled to pay it. Upon the company being ordered to be wound up, the trustee carried in a claim for the amount paid by him, but the Master disallowed the claim. Upon an appeal from this decision, the Court directed an action to be tried as to the trustee's right to be repaid, which action resulted in a verdict in the trustee's favour. The Court gave the trustee the costs, charges, and expenses properly incurred by him in resisting the claim, and the costs of the motion of appeal from the Master's decision, and before the Master.

In 1840, the Oundle Union Brewing Company being in want of funds for carrying on the business of the company, an arrangement was made by the directors with John Hudson for the loan by him to the company of 1,000*l.* and as a security for the same it was agreed that George Croxton and William Prentice, as trustees for and on behalf of the company, should jointly execute a bond in the penalty of 2,000*l.* in favour of John Hudson. The bond, dated the 2nd of July, 1840, was accordingly executed by Croxton and Prentice, at the request and by the order of three of the directors of the company, who signed a memorandum to that effect at the foot of the bond. The money was applied to the uses of the company, and interest on the bond was from time to time paid out of the funds of the company up to the 1st of January, 1850. On the 26th of February, 1850, an action to recover the said 1,000*l.* and interest was commenced, of which Croxton gave notice to the company's solicitor, and to Prentice and the directors. On the 26th of April, 1850, Croxton gave a further notice to the solicitor and directors of the company under the provisions of the Winding-up Acts, requiring them to pay the money or defend the action. On the 30th of April, 1850, the action came on to be tried, and a verdict for the principal, interest, and costs was given for the plaintiffs, and on the 31st of May, Croxton paid this amount. On the 25th of May, 1850, the company was order to be wound up (15 Law T. 201). A claim having been carried in before the Master (Richards) by Mr. Croxton to be repaid the said debt and costs, and also the damages he had sustained in regard thereto, it was, on the 23rd of March, 1[illegible] disallowed. Upon an appeal from the Master's decision, the Vice-Chancellor Knight Bruce, on the 8th of May, 1851, directed an action to be tried as to Mr. Croxton's right to the principal and interest paid by him, reserving the question as to damages. The action was tried in Michaelmas Term last, and a verdict was given in Mr. Croxton's favour. The motion before Vice-Chancellor Knight Bruce was accordingly now renewed by

Wigram and *Hislop Clarke* for Mr. Croxton, who claimed to be repaid the sums paid by him, and also his costs, and a further sum on account of the damage sus'ain'd in raising money to pay Hudson.

Bacon and *Roxburgh*, for the the official manager, contended that Mr. Croxton should not have incurred the expense of defending Hudson's action, and that as Mr. Croxton could, upon application to the Master under the 91st section of the Winding-up Act, have had the question between himself and the official manager tried by an action or issue, the costs of the appeal before the Vice-Chancellor had been needlessly incurred, and ought not to be allowed.

Wigram in reply.

The VICE-CHANCELLOR said that Mr. Croxton was a trustee for the company, and in the character of trustee had borrowed money of Hudson. Hudson recovered a judgment for his debt and costs against Croxton. The Master, considering that there was no sufficient authority in the company's deed for thus borrowing the money, had disallowed Mr. Croxton's claim. The result of the action proved that the borrowing of the 1,000*l.* was an authorised act. Croxton was therefore entitled to be indemnified personally. His Honour thought that he was entitled to his costs, charges, and expenses properly incurred by him as a trustee in defence of the claim of Hudson, which had proved to be a claim against the company, and to the costs of the present motion and before the Master. He could not, however, give to Mr. Croxton any sum on account of damages sustained in raising the money.

April 16 *and* 19.

Ex parte HILL, *re* THE MIDLAND UNION, BURTON-UPON-TRENT, ASHBY-DE-LA-ZOUCH, AND LEICESTER RAILWAY COMPANY.

Joint-stock Companies' Winding-up Acts—Contributory.

A. B. a member of the provisional committee of a projected railway company, attended meetings of the committee. At one meeting, which he did not attend, the surveyor was appointed; but at another meeting, in October, 1845, which A. B. did attend, the surveyor's report was adopted and directed to be advertised. The project was soon afterwards abandoned, and the solicitor was directed to arrange with the surveyor as to his claim of 2,625l. which he did by paying him 1,300l. and the solicitor claimed repayment of this 1,300l. from the company. The company was ordered to be wound up, and A. B.'s administratrix was placed by the Master upon the list of contributories. An appeal from the Master's decision was dismissed with costs.

This was a motion on behalf of Mrs. C. E. C. Hill, administratrix of John George Norbury, esq. deceased, that the Master (Tinney) might be directed to review his decision, whereby the name of the said C. E. C. Hill, as the administratrix of the said J. G. Norbury, was placed on the list of contributories to the above-named company, by striking her name off such list. The company was formed in 1845, and Mr. J. G. Norbury was a provisional director, and a member of the committee of management. At a meeting of the committee on the 17th of October, 1845, at which Mr. Norbury was not present, it was resolved "that 500 shares be the maximum number to be allotted to each member of the committee of management." At a meeting on the 28th of the same month, at which Mr. Norbury was present, it was resolved, "that the whole number of shares, with the exception of those originally reserved for provisional committee, be allotted to the public." On the 29th of the same month Mr. Norbury was present at a meeting, at which it was resolved, "that the report of the company's engineer, Mr. Vignoles, this day received by the secretary, be entered on the minutes, and published in the usual morning papers of to-morrow, and in the railway weekly papers, under the direction of Mr. Baxter." The report alluded to in this resolution was as follows:—

"Sir,—I have the satisfaction of reporting to you, for the guidance of the board, that the progress made in the parliamentary surveys is such, that I am now able to assure you that the whole of the necessary plans and sections will be completed in good time for lodgment on the 29th of November.—I am, Sir, your faithful servant,

"C. VIGNOLES, Engineer.
"Wm. Knight, esq. Sec. Midland Union Railway."

Some shares in the company were allotted, but not to the provisional directors, and deposits were paid upon them, but the project was soon afterwards abandoned. Mr. Vignoles' claim amounted to 2,635*l.* This claim was left to be arranged by Mr. Baxter, the company's solicitor, who paid 1,300*l.* to Vignoles, and now claims to be repaid that sum. On the 25th March, 1850, the company was ordered to be wound up. (15 Law T. 3.) Mr. Norbury died in August 1849, and Mrs. Hill, who was now placed on the list of contributories, took out letters of administration to his effects.

Hobhouse, for Mrs. Hill, referred to *Besley's* case, 3 De G. & Sma. 221; 2 Mac. & Gord. 176; 3 Mac. & Gord. 287; *Glaholme's* case, 1 De G. & Sma. 583; and *Hutchinson's* case, 1 De G. & Sma. 563; and contended that Mr. Norbury had incurred no liabilities, but that, if he had, no expenses had been incurred since the 29th of October, 1845; and the Statute of Limitations would apply.

Roxburgh, for the official manager, referred to *Carrick's* case, 1 Sim. N. S. 505; and *Ex parte Tanner*, 18 Law T. 233.

Hobhouse, in reply.

Monday, April 19.—The VICE-CHANCELLOR said, the question in this motion was, whether Mrs. Hill, the administratrix of Mr. Norbury, was liable to contribute to the debts, liabilities, or losses of the company. The evidence was scanty, but his Honour thought the Master had come to a right conclusion upon the evidence, and that the name of the administratrix was properly placed upon the list of contributories. The company consisted of persons who contemplated the formation of the railway above named. The project was abandoned before any great progress had been made in the formation of the company. His Honour said, he was bound by the authorities on the subject, and indeed by the order under which the present proceedings had been taken, to assume that there was, within the meaning of the Winding-up Act, a "company" to be wound up. It appeared that a numerous body of persons had been appointed to act as a provisional committee of the company, and from among those, ten persons, including Mr. Norbury, formed themselves into a committee of management. That committee appeared to have acted in the usual way. Frequent meetings were held for transacting such business as was considered necessary, with a view to the formation of the company. At those meetings orders were given from time to time, resolutions were entered into, expenses were incurred, and regular entries kept of what passed at those meetings. Mr. Norbury appeared to have attended at those meetings, at some of which orders were given for expenses which had been subsequently incurred. At one of the meetings of the committee of management, Mr. Vignoles had been appointed as engineer to the company, and he had been directed by them to make the neces[illegible], and a resolution was entered into to that effect. Mr. Norbury, it was true, was not present at that particular meeting, but it appeared that he was present at a subsequent meeting on the 29th of October, 1845, at which the appointment of Mr. Vignoles, as the company's engineer, was recognised, and a report made by him as to the progress of his services was adopted, and directed to be entered in the minutes, and advertised in the newspapers by Mr. Baxter, who was the company's solicitor. In respect of his employment as engineer, Mr. Vignoles afterwards brought in a demand against the company, which, under the sanction of a meeting of the provisional directors, who were acting at that time, was compromised, and 1,300*l.* was paid by Mr. Baxter to Mr. Vignoles on account of his claim. Mr. Baxter stated that the sum of 1,300*l.* was still due to him. His Honour considered that primâ facie (subject of course to investigation as to the propriety of the payment) the amount due to Mr. Vignoles, whatever was properly paid by Mr. Baxter in satisfaction of his claim, was a debt or liability of the company within the meaning of the Winding-up Acts. The question was, whether it was a debt or liability of the company towards which Mr. Norbury was liable to contribute. Lord Cranworth had very distinctly stated (*Carrick's case*, 1 Simon's New Cases, 505) who were, at the time of the passing of the Act, the persons liable to pay the debts incurred in the attempt to form the company. He said (p. 509): —"Evidently those who had given the orders under which the debts were incurred; or who had sanctioned the giving of such orders by others. No one could be liable unless either the creditor could say to him, 'My debt was incurred under an order given or sanctioned by you;' or unless the party liable to the creditor could say to him, 'I incurred this obligation under your engagement to contribute rateably with me.'" It was very possible in this case Mr. Vignoles could not have said (following Lord Cranworth's language) that his debt was incurred under an "order given" by Mr. Norbury. He was not a party to the order; but he thought that the parties who were liable under that order might say to Mr. Norbury that the expenses were incurred under an engagement to contribute rateably to them. Here was a limited number of gentlemen, who formed themselves into a committee of management for forming this project. They gave orders as to the mode of doing particular acts, and as to the mode of carrying it out. What the law looked to was the liability of those gentlemen upon the order given eventually, and in the last instance, without any claim of contribution from others. Was it not obvious that when gentlemen associated in objects of this kind, necessarily this Court must imply a contract between themselves that they should contribute rateably towards the expenses which were incurred under orders, which, although not given by themselves, or sanctioned by themselves, were acted upon and carried out by such of them as happened to be present. He could not entertain a doubt that, in the present case, under the circumstances, there was a contract to be implied among these ten persons to contribute rateably to the liability incurred under the resolutions of a body of whom Mr. Norbury formed a part, and therefore that the Master was right in his conclusion. The official manager must have his costs.

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. BENNET, Esq. of Lincoln's-inn, Barrister-at-Law.

Saturday, March 6.

SEYMOUR *v.* VERNON.

Receiver—Fire insurance—Income of tenant for life.

Where premiums had been paid by a receiver under the order of the Court, to keep up certain policies of insurance on buildings or real estate; and which premiums had been paid out of the rents and profits of the estate to which W. B. H. was subsequently declared to be tenant in tail in possession. The buildings having been burned down:

Held that the tenant in tail in possession was entitled to the amount of the policies of insurance received from the insurance office.

This was a petition of an infant by his guardian, praying the amount of certain policies received from an insurance office on certain buildings on the estate having been burned down, might be carried to his "separate account" in the cause. It appeared that a suit had been instituted for the administration of the trusts of the will of the late Lord Harcourt, and by an order made in this Court, it was ordered that the receiver of the real estates who had been appointed in this cause, should pay all the rates, taxes, premiums of insurance, and all other outgoings in respect to the Mansion House at St. Leonard's-hill, devised by Lord Harcourt's will. The *first* tenant in tail in possession under the will had insured the Mansion House, stables, outhouses, and other buildings at St. Leonard's-hill, in a sum of £15,000 *in his own name.* He died in 1847. After his death, the insurance was continued and premiums duly paid, in the first place by the trustees under the will to cover any loss that might incur to the estate, and subsequently by the receiver of the Court, who had been directed so to do. In February, 1850, the stables and outbuildings were burnt down, and the representatives of the insurer, the first tenant for life, having applied to the insurance office for the amount of the insurances, that amount, being 800*l.*, was paid to him. This sum had been paid into court to the general credit of the cause,—it having been considered that the building of the stables was unnecessary, and that it would be inexpedient to rebuild them. By the decree made on the hearing of the cause, it had been declared that the estates of the testator, including the real estate at St. Leonard's-hill, had become and were vested in the petitioner, the infant L. B. Leonard, as tenant in tail male, and the receiver was directed to pay his balances in respect of such estates to an account entitled "The account of the infant defendant Louis B. Harcourt." The petition was now presented for the object as above stated.

Leach appeared in support of the petition.

Selwyn, for the person in remainder, contrà. He contended that the payment of the premiums of the insurances had been so directed by the Court for the benefit of all parties interested in the suit, and ought to be considered as part of the general estate. If the stables had been rebuilt, it was quite clear that those buildings would have formed part of such general estate, and the burthen of the payment of the premiums would have had to be borne by each tenant for life in succession and consequently the general estate would have received the benefit of the insurance.

Messiter, for certain parties who had interests the same as the remainder-man, supported this line of argument, and cited *Norris* v. *Harrison*, 2 Madd. 268.

Leach, in reply. The insurance was a mere temporary arrangement. No one was obliged to insure. It was for the benefit of the existing tenant for life—and as the payments of the premiums had been paid out of a fund, the surplus produce of which he was entitled to, he should have the fruits of such insurance. He mentioned *Re Skingsley*, 15 Jur. 958.

The VICE-CHANCELLOR said, he thought the direction to keep down the premiums of this insurance must mean, that it was done for the benefit of all parties who, in the result of the decision, should prove to be the parties really interested, and that the outgoings, including these payments, must be borne accordingly. The ultimate result of the decree of the Court being, that the infant petitioner had become the tenant in tail, the fair construction was, that the party for whose benefit, and out of whose fund the payments had been made, being the tenant in tail, was entitled to the benefit and fruits of the insurance, which had been effected.

Order in the terms of the prayer of the petition.

Thursday, March 25.

THE ATTORNEY-GENERAL *v.* THE LUDLOW CHARITIES.

Salary of master—Costs.

A suit had abated, and which it was impossible, under the circumstances, to revive. No costs will be given.

Arrears of salary, which had accrued to a master of a school, who had been dismissed, whether rightly or wrongly was immaterial, will be paid to his representative.

This was a petition by the executors of a gentleman, named Arthur Willis, who had been head master of Ludlow School. Under these circumstances, Mr. Willis being head master of the school, certain complaints were made against him, of keeping the boys waiting outside the door, and of having reproved the usher in presence of the boys, thereby bringing his authority into contempt. The trustees, without hearing Mr. Willis, in his defence, dismissed him from his office. Mr. Willis thereupon filed a bill, charging, that he had been improperly dismissed, and claiming his salary, and asking for an injunction, restraining the trustees from removing him. The motion for an injunction was made before the Master of the Rolls, who granted it, expressing an opinion that the trustees had acted arbitrarily in the course they had taken. The trustees appealed against this decision, but before the Lords Justices had heard the case, Mr. Willis died. The suit consequently abated.

Malins and *Renshaw* submitted that the executors ought to receive the costs of the suit, which had been, so far as it went, successful. If Mr. Willis had been living, there could be no doubt he would have obtained a decree.

Bacon and *Lewin* appeared for the trustees, and submitted that they had a right to dismiss the defendant, and their right had been established in a court of law.

The VICE-CHANCELLOR said he could not give the petitioners the costs of the suit, because it had abated, and the object having perished, it could not be revived. He thought the arrears of salary ought to be paid to the executors, as the Master of the Rolls confirmed Mr. Willis as master of the school. With regard to the costs, had the Master of the Rolls adjudicated on the whole matter, he should have directed the costs to be paid; but the fact was not so, for what he said was, that there was no evidence before him to enable him to judge whether Mr. Willis had been properly dismissed, and that Mr. Willis had been dismissed without a hearing. He should therefore make an order for the payment of the arrears of the salary, and say nothing about costs.

Order accordingly.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

Wednesday, Feb. 11.

FLOYD *v.* WEAVER.

COUNTY COURT APPEAL.

Truck Act—Artificer and workman, or sub-contractor.

A man employed and working as a collier in a coal mine, dismissable at a month's notice, and paid according to the quantities got, but not bound to work any fixed number of hours, and being at liberty to employ men to assist him, is an artificer or workman within the meaning of the Truck Act.

This was an appeal from the County Court of Monmouthshire held at Tredegar, and the case stated by the judge for the opinion of the Court above was as follows:—This is an action brought to recover the sum of 33*l.* 1s. 5d. for wages. The defendant is a contractor under the Tredegar Iron Company for the getting of coal and iron, and resides at Tredegar in the county of Monmouth. About the 30th of May, 1850, he employed the plaintiff to work in

what is called a stall in a coalpit belonging to the company at the following rates, viz.:—9s. 8d. a dozen for iron mine, 1s. 9½d. per ton for large coal, and 1s. 2½d. for mixed coal; and the plaintiff forthwith entered upon his work, and continued working thereunder till the month of August last. The workings of a [illegible] into the work and side-workings, where the chief part of the coal is worked. The main roads are called "headings," the side workings "stalls." During the periods of his employment the plaintiff earned altogether the sum of 58*l.* 13s. 2d. and he received 20*l.* 1s. 9d. in cash; the balance, amounting to 38*l.* 11s. 5d. was received in goods upon the credit of the defendant at a shop kept by Mr. Fothergill, in the profits of which shop the Tredegar Iron Company have an interest in the shape of a per-centage on the business done; and that balance formed the subject of this action. The defendant gave notice of set-off for the whole amount of such goods; and the plaintiff contended that the defendant was not entitled to deduct as a set-off the price of such goods from his wages. Under the agreement the plaintiff was entitled to be paid monthly, and to draw money on account at the end of every week. On the first night after the plaintiff went to work he asked the defendant for 5s. in cash, and the defendant gave him an order for 5s. addressed to Mr. John Davies, the bookkeeper at Mr. Fothergill's shop. The amount of this order he received in goods at the shop. On the following Saturday he received 3s. as "draw," that is a payment of money on account; and on the following Monday morning he asked the defendant to put orders in the shop; and from that time till the termination of his engagement orders were regularly put in every week on his account, proportionate to the amount of his estimated earnings, and he received the amount of such orders from time to time, as they were put in, in goods. The plaintiff had a pass-book from the shopkeeper, in which the value of the goods were entered as so much "cash." The goods were not specified nor any particulars given. The entries say,—December 10, cash, 5s.; December 15, cash, 4s. 3d. and so on. At every monthly pay a statement of the account between the parties was delivered to the plaintiff; this statement, which is called the pay-ticket, credits the plaintiff with the amount of his earnings during the past month, and debits him with the money paid him as draw, with the amount of the orders put into the shop, which are described as cash advanced, and with the usual charges for doctor's fund, &c.; and the balance, if in his favour, was paid him in cash; and if against him, was carried to his debit in the next monthly account; and during the period of his contract it was sometimes on one side and sometimes on the other; but more frequently the balance was against the plaintiff. The plaintiff, in his evidence, stated that he frequently expressed dissatisfaction at being paid in this manner, and that he went to the shop under compulsion. The defendant, on the other hand, deposed that it was in compliance with the plaintiff's express request that the orders were put in the shop; that he was perfectly at liberty to deal where he pleased; and that he had been told if he would do without the shop, he should regularly have 10s. a week as draw; and in corroboration of this statement, it was shewn that several persons in the defendant's employ were paid the amount of their wages in cash, and that the defendant put no orders in the shop on their accounts, but always paid them in cash; and two of the workmen swore that they had heard the plaintiff ask the defendant for orders on the shop. The defendant has no interest in the shop, and derives no benefit either directly or indirectly from the orders which he puts in on account of the men in his employ. The defendant, however, was a contractor under the Tredegar Iron Company, and it was proved that the Tredegar Iron Company received from Mr. Fothergill, the owner of the shop a per-centage upon the business of the shop which included the goods delivered to the plaintiff. Mr. Fothergill was paid for these goods by the Tredegar Iron Company, and not by the defendant, the Tredegar Iron Company at the time deducting their per-centage, and the Tredegar Iron Company only paid the defendant the cash balance which was due to the plaintiff, after deducting the value of the goods. This was proved to be the course of proceeding with regard to a large number of workmen besides the plaintiff. The plaintiff was not, by the terms of the agreement bound to work any stated number of hours, or to do any fixed amount of work, and he was at liberty to employ men to assist him, if he thought proper to do so; and accordingly he did employ, during four months of his service, one man, and during one month two men, who were paid their wages by the plaintiff in a similar manner, that is to say, by orders on the shop put in by the defendant in the plaintiff's name. The plaintiff was a working collier, working personally during the whole time of his service in the same way as other colliers in the district are in the habit of working. He was subject to be dismissed or to leave his service on a month's notice, and his service was determined by month's notice given on the 22nd July last. On behalf of the plaintiff it was contended that this mode of settling with the plaintiff for his wages was altogether illegal and void under the Truck Act, and that he was entitled to recover the amount of wages which he had received in goods. On behalf of the defendant it was contended, first, that the plaintiff was not an artificer within the meaning of the 1 & 2 Wm. 4, c. 37, he having taken a piece of work called a "stall" to get coals by the ton, and iron mine by the dozen, and having command of his own time and by reason of his employing men under him who were paid by the plaintiff in the same manner as the defendant paid him; and that, therefore, he was a sub-contractor; 2ndly. That at the time the contract was made between the plaintiff and the defendant it was agreed that the plaintiff should be paid in weekly money draws and monthly settlements; that the orders having been put in for the plaintiff before there was any thing due to him under his contract, this was not a payment of goods in lieu of wages, as the wages must be earned and payable at the time such goods were delivered, to bring it within the operation of the Act; thirdly, that the defendant, having no interest in the shop, and having rendered himself liable for the amount of the goods supplied to the plaintiff, was entitled to set off the amount as money paid at the plaintiff's request, and was not precluded from setting off the amount by sec. 5; and, fourthly, that the plaintiff was now precluded from disturbing the settlement which had taken place from month to month between them, by reason of his acquiescence therein, the plaintiff never having disputed the monthly accounts which had been delivered to him by the defendant before action brought. The case having been tried before the judge of the County Court, without the assistance of a jury, the judge held, first, that the plaintiff was an artificer within the meaning of the Act; and, secondly, that the delivery of the goods so supplied to the plaintiff was payment, and not matter of set-off; and that the payment having been made in goods, and not in the current coin of the realm, was illegal, null, and void; and, even assuming that it was matter of set-off, and not payment, that the defendant could not set off or deduct the value of the goods so supplied in the present action, and gave the plaintiff judgment for the whole amount claimed. The question, then, for the Court of Q. B. is, is the receipt of goods by the plaintiff, under the circumstances above stated, available as a defence to this action, either as payment or matter of set-off?

Watson, for the appellant.—The question turns upon 1 & 2 Wm. 4, c. 37, which requires that workmen and artificers in certain trades shall not be paid otherwise than in the current coin of the realm; but the plaintiff was not a workman or artificer within that Act. He was a kind of sub-contractor, as in *Riley* v. *Warden*, 2 Ex. 59, where the plaintiff was held not to be a workman within the Act. [PATTESON, J.—The contract there was very different from this. It was a contract to execute a particular work, which the plaintiff could not perform by his own labour alone; and he was not dismissible, as here.] The plaintiff sues here for the work of others as well as his own work; and his contract is clearly not one for mere personal service.

Keating, contrà, was not called upon.

PATTESON, J.—This would be like the case of *Riley* v. *Warden*, unless, by the contract, the plaintiff was to work personally; and if the judge had that case before him, he must have come to that conclusion in point of fact. The plaintiff was to be paid so much per ton; but that would not alter the case if the contract was one for personal service; and I see nothing inconsistent with that view of the case. If it was a contract for personal service, the statute applies; if it was not, but a contract to work a portion of the mine by the labour of others, then it does not apply. The agreement is not very satisfactorily stated; but the judge must have proceeded upon the ground that it was a contract for personal service.

WIGHTMAN, J.—I am of the same opinion. It is impossible to say upon this case that the judge has wrongly decided. The plaintiff was to be at liberty to employ men to assist him; and he was to be paid so much per ton; but that is not inconsistent with a contract for personal service; and the provisions of this wholesome statute cannot be evaded by adopting any particular mode of paying the workman's wages. This case does not appear to fall within the rule stated in *Riley* v. *Warden;* because there the plaintiff was really a sub-contractor, who might have performed his contract altogether by the labour of others. The object of the statute was certainly to protect those who contracted for their personal labour; and the plaintiff here appears to have done so. *Judgment affirmed with costs.*

Thursday, April 15,

MEREDITH v. GITTINS.

County Court—Costs—Appeal from judge at chambers.

Where an application for costs under s. 13 *of* 13 & 14 *Vict. c.* 61, *has been refused by a judge at chambers, a subsequent application to the Court is in the nature of an appeal, and must be made within a reasonable time. The judge having dismissed the summons in June, application to the Court in January*

Held, too late. Semble, it ought to be made not later than the following Term.

A rule had been obtained on the 28th January, calling on the defendant to shew cause why the plaintiff should not be allowed his costs, pursuant to 13 & 14 Vict. c. 61, s. 13, although the sum recovered was only 13s. 3½d.; and the undersheriff had refused to certify. On the 11th June last a summons was taken out before Coleridge, J. at chambers, for the same purpose; but the learned judge, considering that he had a discretion to exercise according to the case of *Jones* v. *Harrison*, 20 L. J. Ex. 66 (since overruled by *McDougal* v. *Paterson*, 21 L.J. 27, C.P.; and *Crake* v. *Powell*, 18 Law T. Rep. 330), refused the application, and endorsed upon the summons the words "no order."

T. Jones now shewed cause, and objected that the present application was too late; citing *Orchard* v. *Moxey*, 18 Law T. 255, referred to in *Asplin* v. *Blackman*, 21 L.J. 78, Ex.

Pigott, contrà.—This application is made within a reasonable time. In *Asplin* v. *Blackman*, two Terms were allowed to go by; and yet the order was made. This is not in truth an appeal from the judge; it is an original application. [WIGHTMAN, J.—"No order" means summons dismissed; and from that decision you appeal.] In *Orchard* v. *Moxey*, the damages had been paid and received, so that there was an acquiescence in the order of the judge.

Lord CAMPBELL, C.J.—I am of opinion that this application is too late. We can only hear it as an appeal from the decision of the judge at chambers, and after that decision the whole of Michaelmas Term was allowed to elapse without any application being made. Now these applications must be made within a reasonable time, and I think that they ought at all events to be made in the course of the ensuing Term. The particular circumstances with regard to the history of the decisions upon this point cannot affect the question; because, upon the same ground, it might be contended that if a decision is overruled after the lapse of seven years all the intervening cases are to be reviewed.

WIGHTMAN, J. concurred.

ERLE, J.—"No order" sometimes means only that the judge declines to interfere, leaving the party to any other remedy which he may have; but where a jurisdiction is given in the alternative either to the Court or a judge, and application is made to the judge, then "no order" is a refusal of the application, and the matter can only come before the Court by way of appeal, which must be within a reasonable time.

CROMPTON, J.—Under the 13th section of the County Courts Act, parties may apply either to the Court or to a judge, but they cannot go to both. Then, according to *Orchard* v. *Moxey*, the plaintiff in this case comes too late by way of appeal; and *Asplin* v. *Blackman* was the case of an original application. *Rule discharged.*

NEVE and OTHERS, Executors, v. JOHN HOLLANDS and WIFE.

Joinder of husband and wife as defendants—Debt of the wife dum sola—Statute of Limitations—Payment.

In an action against husband and wife, on a promissory note of the wife dum sola, and the Statute of Limitations pleaded:

Held, that a payment of interest by the wife without the knowledge of her husband, within the six years, would not take the case out of the statute, inasmuch as that payment could not be evidence of a promise by her, she being under coverture, and incompetent to contract,—and even if evidence of any promise by the husband, only evidence of a separate and independent contract by him, upon which the wife would not be liable.

The declaration alleged a promise to pay by the wife dum sola, and then after marriage a promise by the husband.

Semble, that such a declaration could only be supported by rejecting altogether the allegation that the husband promised to pay.

Assumpsit by the executors of John Neve, on a promissory note for 50*l.* dated 24th June, 1837, and payable on demand. The declaration stated that the defendant, as Mary Fowler, and whilst sole and unmarried, and one John Eyton, made their joint and several promissory note, &c. and that Mary promised John Neve to pay the amount according to the tenor and effect thereof. It then alleged that

after the marriage of the said Mary with the defendant James Hollands, the note being still due and unpaid, he, the said James Hollands, promised to pay the same. Third plea,—the Statute of Limitations.

At the trial it appeared that interest had been paid on the note regularly every year down to 1818, which payments were endorsed upon the note. In January, 1843, Mary Fowler married the defendant, and the endorsements on the note mentioned payments of interest, by Mary Hollands, in August, 1844, and at subsequent dates. It was proved, however, and found by the jury, that the payments made by Mary Hollands were made without the knowledge or authority of her husband. Some attempt was made by the defendants to shew that money had been transmitted by Eyton to Mary Hollands for the purpose of those payments. A verdict having been entered for the plaintiffs on the third plea, a rule had since been obtained to enter it for the defendants, or to arrest the judgment.

Crowder and *Barrow* now shewed cause. This case is taken out of the Statute of Limitations by the payments proved. It is immaterial that the payments by the wife were made without the husband's express authority; because they were made to discharge a liability, which he had incurred by marriage, and the wife for that purpose must be deemed to be the agent of the husband. (*Pittam* v. *Foster*, 1 B. & C. 248.) [WIGHTMAN, J.- Suppose he had expressly prohibited her from paying?] The law would not permit him to say that. Payment by one of two joint-makers will operate as against the other to take the case out of the operation of the statute, notwithstanding any such prohibition. (*Whitcomb* v. *Whiting*, Dougl.; *Goddard* v. *Ingram*, 3 Q. B. Rep. 839; *Burleigh* v. *Stott*, 8 B. & C. 36.) [Lord CAMPBELL, C.J.—What is the cause of action declared upon?] The note made by the wife. [Lord CAMPBELL, C.J.—But the declaration states first a promise by the wife dum sola; and, secondly, a promise by the husband during the coverture.] The second promise by the husband may be rejected; but the declaration was amended by inserting it in consequence of the case of *Morris* v. *Norfolk*, 1 Taunt. 212. In truth the promise of the husband after the marriage is not to be treated as a separate promise by him alone; it is a continuation of the original promise of the wife made dum sola; and only gives expression to the legal effect of the marriage. Where husband and wife are sued jointly for a debt incurred by the wife dum sola, there never can be strictly a joint promise, that is a promise made by both at one and the same time. (*Mitchinson* v. *Hewson*, 7 T.R. 348). Further, the payments by the Eytons would take the case out of the statute as against these defendants.

Bramwell, contrà.—There is no mode of declaring, which would have enabled the plaintiffs to recover against both defendants. With reference to the Statute of Limitations, payment operates by shewing a new contract within the six years. (*Tanner* v. *Smart*, 6 B. & C. 603.) Then in this case, what is the promise made within six years? Not that of the wife, because the marriage took place before the commencement of the six years; not that of the husband, because any agency is disproved. As to the motion in arrest of judgment, if the amendment is material, and the plaintiffs rely upon a separate promise by the husband after the marriage, the wife ought not to have been joined. *Morris* v. *Norfolk* is in favour of the defendants.

Lord CAMPBELL, C.J.—I am of opinion that the verdict on the third plea ought to be entered for the defendants. I think there is no evidence that the cause of action mentioned in the declaration accrued within six years. Now, what is the cause of action alleged? First, without the amendment, it is a promise of the wife dum sola; and what is the evidence of such a promise? None. The evidence is payment by her after coverture, when she was no longer competent to promise. As to the payments made on behalf of Eyton, they were not relied upon at the trial, and I think could not be relied upon; because there was no evidence that they were payments by Eyton. They were payments by the wife during coverture, and could not shew a promise by her dum sola. Then, looking at the amendment, that states a separate promise by the husband; and supposing the declaration in that form to be good, what is the evidence of a separate promise by him? The payments were made without his knowledge or authority. For my own part, if there had been a verdict for the plaintiffs, I should have had no hesitation in saying that the judgment must be arrested; because a joint action against husband and wife cannot be maintained upon the separate promise of the husband.

WIGHTMAN, J.—I am of the same opinion. If issue had been taken simply on the alleged promise by the wife dum sola, the plaintiff would have been entitled to succeed upon that issue; but the Statute of Limitations is pleaded, and the plaintiff must shew that the cause of action accrued within six years. Now, taking the declaration as originally framed, the cause of action would appear to be the promise of the wife dum sola; and the evidence of payment after the marriage would be wholly beside the question. Then the issue being whether the wife dum sola promised within six years, the evidence is that she was married more than six years before action brought. But to cure this defect an amendment was made and a promise by the husband alone alleged. Independently, however, of the question in arrest of judgment the jury have found that the payments were made without the privity of the husband; and I think that that finding entitles the defendants to the verdict on the plea of the Statute of Limitations. It is unnecessary, therefore, to consider the form of the declaration; but, as it appears to me, the only way in which it could be supported would be to reject the allegation of a separate promise by the husband.

ERLE, J.—The plaintiff is bound to make out that the cause of action accrued within six years. Now the contract of the wife by the promissory note was made more than six years ago; and it is by alleging that within six years she promised to pay that the plaintiff seeks to get rid of the effect of the statute; and the evidence offered of that promise is payment by her on account of the note within that time. Payment by the maker of a note is equivalent to an express promise to pay; but supposing that the female defendant had expressly promised to pay, it was clearly during the coverture; when she was incapable of making any contract. The promise by the husband alone seems to me an entire nullity, and not to be that declared on. A payment by the husband during coverture would create a new liability; it would be evidence of a separate and original promise by him on the fresh consideration of forbearance to him, and would be different from the mere taking up of the wife's liability by marriage. As to the payments by Eyton, they were at the trial rather relied upon by the other side; but they do not appear to me to carry the case further, because, if the wife could not directly promise, neither could she impliedly promise by the acts of her co-contractor.

CROMPTON, J.—I am of the same opinion. This is an action against husband and wife jointly; and the Statute of Limitations being pleaded, the plaintiff is bound to make out a joint liability within the six years. Now, that liability could not arise from the promise of the wife dum sola, because that promise was made before the commencement of the six years; nor could it arise from the secret payments by the wife after marriage. I think that they would not bind the husband; and, at all events, they would not be evidence of a joint liability, because the wife was then incompetent to contract. This is explained by Lord Tenterden in *Pittam* v. *Foster*; and it seems to me quite immaterial whether the promise is supposed to have been made through the co-contractor or not. As to the form of the declaration, I think it is a good declaration against husband and wife on the separate promise of the wife dum sola, and that the subsequent allegation of a promise by the husband is a mere nullity. It is an immaterial allegation which could not be traversed, because without it there still remains a good cause of action against both on the separate promise of the wife.

Rule absolute.

LANE v. HILL.

Account stated—Evidence.

A mere acknowledgment that a debt is due, unless some amount is mentioned, is not evidence of an account stated, so as to entitle the plaintiff even to nominal damages (Erle, J. dissentiente).

ASSUMPSIT on a cheque, with a count upon an account stated. At the trial it appeared that the cheque was post-dated, and consequently could not be received in evidence. The plaintiff then relied upon the 2nd count, and gave in evidence the following letter from the defendant to the plaintiff:—"Oblige me by holding my cheque till Monday, and in the interim I will send you the amount in cash." A verdict was entered for the plaintiff for nominal damages; and subsequently a rule obtained to enter a nonsuit or verdict for the defendant.

Knowles now shewed cause.—The letter contains a distinct admission that something was due, and that something cannot be less than nominal damages. [WIGHTMAN, J.—Can there be a statement of account without any item mentioned?] It is evidence of an antecedent statement of account. (*Teal* v. *Auty*, 2 Brod. & B. 99.) The difficulty pointed out in *Green* v. *Davies*, 4 B. & C. 235, does not exist here.

E. James and *Paterson*, contrà.—How can there be an account stated without the mention of a precise sum? Ex vi termini, a precise sum must be shewn; and it was so held in *Kirton* v. *Wood*, 1 Moo. & Rob. 253. They also referred to *Trueman* v. *Hurst*, 1 T. R. 42; and *Highmore* v. *Primrose*, 5 M. & S.

Lord CAMPBELL, C.J.—I am of opinion that this rule ought to be made absolute; and that a general admission of liability to a pecuniary demand, without stating any sum, does not amount to an account stated. According to general comprehension certainly an account stated requires a real statement of accounts; and how can there be a statement of account without a single item. Here the words are, "Oblige me by holding my cheque till Monday, and I will send you the amount in cash." What amount? It may be 1s. or it may be 1,000*l*. It is put as evidence of an account having been stated; but I do not see how the plaintiff can be entitled to treat it as evidence that an account has been stated when no sum is mentioned; and I think that great inconvenience would result from allowing a verdict to be taken for nominal damages in such a case. I do not know what would be the effect of a judgment for nominal damages in this action, supposing another action brought upon a cheque properly stamped and admissible in evidence. Would this judgment be an answer to that action? It is said that it would be an answer only pro tanto; but however that may be, I think that this letter is not evidence of an account stated; and that the rule ought to be made absolute.

WIGHTMAN, J—I am of the same opinion; and besides the reason of the thing, *Kirton* v. *Wood* seems an authority in point.

ERLE, J.—I quite agree in the general doctrine; the only question is as to the application of it to the present case. It appears to me that the defendant did state an account with the plaintiff and ascertain the amount due. That was the amount mentioned in the cheque. Now, the question whether the plaintiff is entitled to a verdict, and what should be the amount of damages, are two perfectly distinct questions; and as to the first, the plaintiff having lost the cheque, shews that the defendant did state an account and ascertain the amount due to the plaintiff. That is a good cause of action; but he is unable to fix the extent of the liability, and so can only recover nominal damages. In case of another action being brought, the defendant would have no difficulty in shewing by averment that the subject matter of both actions was the same.

CROMPTON, J.—My impression was, that a plaintiff could not recover on an account stated without proving a precise sum; and so TINDAL, C.J. says in *Kirton* v. *Wood*.

Rule absolute for a nonsuit.

Friday, April 16.

BEAR and OTHERS v. BROMLEY.

Mutual loan societies—7 & 8 Vict. c. 110—Registration.

An unenrolled mutual society, consisting of more than twenty-five members, and having a fund raised by subscriptions for the purpose of advancing, to members only, sums at five per cent. interest, the sum so advanced being put up to competition among the members, and the advances being made to the highest bidders, is not a partnership requiring to be registered under the Joint-Stock Companies' Registration Act, 7 & 8 Vict. c. 110.

Debt by the payees against the maker of a promissory note for 80*l*. with interest at five per cent. payable on demand.

Fourth Plea.—That the consideration for the note was money lent by a joint-stock company, that is to say, a partnership, which before and at the time of the lending consisted of more than twenty-five members, the said number of more than twenty-five not being caused by an admission subsequent on devolution or other act of law; which said joint-stock company had, &c. been established in, &c. "*for a purpose of profit*," to wit, for the purpose of lending money at interest and making profit thereby, and was not a banking company, school, &c. (negativing the other exceptions in the 7 & 8 Vict. c. 110). And the defendant further says, that in lending the said money to the defendant, the said company acted otherwise than provisionally, &c; and that the said company had not at the time of lending the said money obtained a certificate of complete registration, but the said company, illegally, and contrary to the form of the statute in such case, lent to the defendant, to wit, 80*l*. out of the funds of the said company, at interest and with a view to the profit of the said company, and in the course of carrying on the business of the said company. And the defendant further says, that he made the said note and delivered the same to the plaintiffs, they then being the trustees of the said company. *Verification.*

Replication.—De injuria.

At the trial before the Lord Chief Justice in London, it appeared that the plaintiffs were the trustees, and the defendant a member, of the Mutual Fund, No. 2, established at Colchester, for raising by subscriptions a sum of money, and lending the same to some of the members at interest. The society consisted of upwards of 100 members, who held shares of 40*l*. each, and when loans were about to be made by the society, they were put up at a kind of auction, and granted to the highest bidder. The premiums and the loans were payable by instalments, and went into the general funds of the society,

and the ,......., .. these payments was enforced by fines. .t is unnecessary to report the rules, as they were treated as substantially the same as those reported in *Silver* v. *Barnes*, which was a similar society at Woodbridge, in Essex. The defendant objected, that the society was illegal, not being registered under the Joint Stock Companies' Registration Act, and not being within any of the exceptions in sec. 2 of that Act. Under the direction of the learned judge, the verdict was taken for the plaintiffs on all the issues, with leave to the defendant to move to enter it for him on the fourth issue.

Horn moved to set aside the verdict found for the plaintiffs, and enter it for the defendant on the fourth issue. The question is, whether this society is within the Joint Stock Companies' Registration Act, 7 & 8 Vict. c. 110, s. 2. The second section enacts that the Act shall apply to every joint-stock company "for any commercial purpose or for any purpose of profit;" and every partnership consisting of more than twenty-five members is a joint-stock company within the meaning of the Act. That such a society as this is to be treated as an ordinary partnership, is established by *Silver* v. *Barnes*, 6 Bing. N.C. 180; and *Beaumont* v. *Meredith*, 3 Ves. & B. 180. The rules of this society are the same as those in *Silver* v. *Barnes*. At the termination of the society, the non-borrowing members receive a profit upon the sums they have contributed, which is derived from the payments made by the borrowing members in respect of premium and interest for advances, and also from the fines. [Lord CAMPBELL, C.J.—Does the society as such make any profit? ERLE, J.—As against the rest of the world, the society makes no profit. At the close of the society, *Silver* v. *Barnes* decides that the society makes no *usurious profit*, and so far is against you. WIGHTMAN, J.—The leading words of 7 & 8 Vict. c. 110, s. 2, are "for any commercial purpose, or for any purpose of profit;" and *Reg.* v. *Whitmarsh*, 19 L.J. 469, Q.B. is in point.] It is submitted that the profits to the non-borrowing members bring this case within the 7 & 8 Vict. c. 110.

Lord CAMPBELL, C.J.—I agree with the learned counsel, that this point is well worthy of being considered, but it has been fully considered and determined in *Reg.* v. *Whitmarsh*. The principle there laid down for determining whether a society is established for the purpose of profit, is to ascertain whether the society, as such, is established for the purpose of profit, and not whether an individual member may be a loser or gainer by its operations. It is quite clear, therefore, that this society, as a society, makes no profit. Some members may lose, some may gain; but the society profits nothing.

WIGHTMAN, J.—I am of the same opinion. I think that the allegation in the fourth plea, that this was a society for the purpose of profit, within the meaning of the Act, was not proved. This case is precisely within *Reg.* v. *Whitmarsh*.

ERLE, J.—The principle of *Reg.* v. *Whitmarsh* is, that where several persons or shareholders in a society carry on business substantially for the benefit of the individual members, among themselves, but not for the benefit of the society as such, such a society is not a partnership within the meaning of the Registration Act.

CROMPTON, J. concurred. *Rule refused.*

Saturday, April 17.

SHEPHERD v. HORSMAN.

Turnpike—3 Geo. 4, c. 126—Clerk to trustees—Agreement for letting tolls—8 & 9 Vict. c. 106.

An agreement for letting tolls recited the putting of them up to auction by the trustees, and the taking of them by the renter, and in the operative part stated that S. (the clerk to the trustees) agreed to let, &c.; and the agreement was signed by the clerk, and not the trustees.

Held, that this was a sufficient compliance with the 3 *Geo.* 4, *c.* 126, *ss.* 55, 57, *being an agreement by the clerk, and signed by him on behalf of the trustees.*

Held, also, that the 3 *Geo.* 4, *c.* 126, *s.* 57, *authorising an agreement to be made by writing for letting tolls, without being by deed or under seal, was not affected by the* 8 & 9 *Vict. c.* 106, *s.* 3, *which makes void all leases required by law to be in writing, unless the same be by deed.*

This was an action for rent of tolls of a turnpike-road in the East Riding of Yorkshire, and was tried at the last York Assizes before Cresswell, J. and a verdict found for the plaintiff.

The plaintiff was the clerk to the trustees of the road, and the defendant was the surety of Norris, the lessee. The agreement for letting the tolls was signed by the plaintiff as clerk to the trustees, and recited that the trustees had put the tolls up to auction, and that Norris was the highest bidder, and in the operative part the agreement stated that Shepherd agreed to let the tolls for two years. It was objected that this was not a valid agreement, there being no letting by the trustees, but by their clerk. The learned judge at the trial overruled the objection.

W. H. Watson moved to set aside the verdict and enter a nonsuit. 1st. This agreement was not proper letting under the 3 Geo. 4, c. 126, ss. 55, 57 By sec. 55 the trustees are to let the tolls in the manner pointed out: "the last bidder shall be the renter, and shall forthwith enter into a proper agreement for the taking thereof, &c.; and under such conditions as the said trustees or commissioners shall think fit." And then sec. 57 provides that all contracts and agreements to be made or entered into for the letting the tolls, signed by the trustees or commissioners letting such tolls, or any two or more of them, *or by their clerk* or treasurer, and the lessee and his sureties, shall be valid, notwithstanding the same may not be by deed or under seal. The agreement in this case does not comply with these provisions, for it is not made with the trustees, but with their clerk. The statute ought to have been strictly followed (*Bell* v. *Nixon*, 9 Bing. 393); and the demise of the tolls should have been by the trustees, and not by their clerk. *Pitman* v *Woodbury*, 3 Ex. 4, was also cited upon this point. 2nd. The agreement is void, because, whether it is to be made by the trustees or their clerk, the 3 Geo. 4, c. 126, s. 57, requires it to be in writing, and the 8 & 9 Vict. c. 106, s. 3, enacts that a lease required by law to be in writing shall be void unless made by deed. The words of this latter provision are general, and not confined to leases required by the Statute of Frauds to be in writing.

Lord CAMPBELL, C.J.—I am of opinion that there should be no rule granted. This being a lease of tolls, could, by the common law, only have been made by deed; but the statutory mode of letting them has been here pursued. The trustees are to let the tolls, and the agreement is to be signed by the trustees or their clerk. The agreement in this case recites the whole transaction,—the putting up of the tolls by the trustees, the taking by Norris, and the joinder of the defendant as surety, and it is signed by the clerk. That is a sufficient letting of the tolls by the trustees within the Act. The second objection cannot be maintained. It was not the intention of the 8 & 9 Vict. c. 106, s. 3, to repeal the provision of 3 Geo. 4, c. 126, s. 57. The general words referred to have not that effect; but their proper object is only to affect such leases as are required by the Statute of Frauds to be writing; and that statute has nothing to do with the letting of tolls under the 3 Geo. 4 c. 126.

WIGHTMAN, J.—The statutory mode of letting these tolls has been sufficiently pursued here. Sec. 57 enacts that the agreement is to be signed by the trustees or their clerk, and nowhere in terms says that the agreement to let is to be made expressly by the trustees. This was an agreement for letting the tolls by the clerk to the trustees on behalf of the trustees, and signed by the clerk. With regard to the second point, I agree with my Lord Chief Justice.

ERLE and CROMPTON, JJ. delivered similar judgments. *Rule refused.*

HINE v. DEWDNEY.

Stamp—Promissory note—Agreement.

"12th Feb. 1849.—Borrowed of J. H. 100l. for one or two months," signed by the defendant:

Held, that this instrument was neither a promissory note or an agreement, but a mere acknowledgment, and therefore required no stamp.

Assumpsit for money lent for interest, and on an account stated. At the trial, before Erle, J. at Exeter, the plaintiff gave in evidence the following memorandum, signed by the defendant:—"12th Feb. 1849.—Borrowed of John Hine 100*l.* for one or two months;" and obtained a verdict.

Phinn now moved to enter a nonsuit, on the ground that that document ought to have been signed as a promissory note or an agreement. If a promise to pay a definite sum at a definite time can be collected from the instrument, it is a good promissory note. (*White* v. *North*, 3 Exch. Rep. 689; *Shrivel* v. *Payne*, 8 Dowl. 441.) [Lord CAMPBELL, C.J.—Here the time is uncertain] Then it is an agreement not to sue for at least one month.

CROMPTON, J.—There is nothing in this instrument to prevent him suing the very next day.

Lord CAMPBELL, C.J.—There is no binding contract. It is a mere acknowledgment.

Rule refused.

Monday, April 19.

MICKLETHWAITE v. MERRILL.

Trover—Deposit of goods—Pawn—Power of sale.

Trover for paintings, tried before Alderson, B. at York. Verdict for the plaintiff.

Unthank moved, pursuant to leave, to enter the verdict for the defendant, on the ground that he had a right to sell the pictures as a pawn to him. The plaintiff had deposited the pictures with the defendant upon a memorandum to the following effect:—"I have this day given into the care of J. M. (the defendant) twenty-six paintings, for him to hold and keep for me, and as a security for any sums which I may owe to his firm for goods supplied by them." Goods were supplied by the firm upon credit; but not being paid for, the defendant, when the period of credit had expired, sold the pictures. The rule of law is, that if the pawnor makes default at the stipulated time, the pawnee may sell the thing pawned. (*Coggs* v. *Bernard*, 1 Smith's L.C. 100, in notis.) [Lord CAMPBELL, C.J.—Do you mean that every deposit of goods as security is accompanied by a power of sale?] Yes; a power of sale is implied in every pawn; and in that respect is different from a lien.

ERLE, J.—A deposit with power to hold, and a deposit with power to sell, are surely quite different things. Very recently there was a discussion whether there was a mercantile usage in London giving such a power of sale; but it was by no means taken as clear that to every deposit of goods by way of security a power of sale is necessarily incident.

Lord CAMPBELL, C.J.—It is quite clear that it is not. In the passage from Smith's Leading Cases the word pawn must be used to express a deposit with power of sale. *Rule refused.*

BUSINESS OF THE WEEK.

Thursday, April 15.

Crompton, J. took his seat upon the bench this morning, and the usual oaths were administered to him.

PARTRIDGE v. ————.—*Keating* moved to set aside an order of the Lord Chief Baron for inspection of documents. *Rule refused.*

REG. v. THE GREAT WESTERN RAILWAY COMPANY.—*Fitzherbert* moved for a rule for a mandamus to complete a certain deviation on the Frome and Weymouth line. *Rule nisi.*

REG. v. THE EAST AND WEST INDIA DOCK AND LONDON AND NORTH-WESTERN RAILWAY COMPANY.—*Bramwell* moved for a rule to shew cause why the writ of mandamus herein should not be quashed, on the ground that it was not warranted by the rule.

Rule nisi, unless the prosecutor would consent to amend the writ.

MAITLAND v. CLIFTON.—*Hawkins* moved for leave to add pleas. The declaration was by indorsee against acceptor of bill for 500*l.*; to which the defendant had pleaded several pleas traversing the material allegations in the declaration. The present application was for leave to plead in substance that the bill had been drawn in France, and was invalid by the law of France for not stating any consideration on the face of it, and that the plaintiff took with notice. WIGHTMAN, J.—Why were not those pleas pleaded in the first instance? *Rule refused.*

HAYES v. WILLIAMS.—*Knowles* shewed cause against a rule for a new trial obtained upon affidavits. *T. Jones*, contrà. *Rule absolute.*

DOE *dem.* THOMAS v. THOMAS. *Struck out.*

HARRISON v. DUNN.—*Prentice* shewed cause against a rule for a new trial obtained on the ground that the verdict was against the evidence. *Malcolm*, contrà.

Rule absolute; the costs to abide the event.

HARRIS v. NOYES.—*Petersdorff* shewed cause against rule for a new trial obtained on affidavits. *M. Chambers* and *Hodgson*, contrà. *Rule absolute.*

Friday, April 16.

DOE *dem.* DUKE OF DEVONSHIRE v. MEDHURST.—Tried before Jervis, C.J. at the Derbyshire Assizes: verdict for the defendants. *Bramwell* (*Hayes* with him) moved for a new trial, on the ground of misdirection. *Rule refused.*

REG. v. IRONSIDES.—Rule nisi for a criminal information. The defendant, in person, showed cause, and *Macaulay* in support of the rule. *Rule absolute.*

ARDELL v. THELLUSSON and ANOTHER, executors.—Tried in Middlesex: verdict for the plaintiff, 34*l.* *Humfrey* moved, pursuant to leave, to enter the verdict for the defendants. *Rule nisi.*

POPPY v. POPPY.—Tried at Norwich: verdict for the plaintiff by consent, with leave to defendant to move to enter the verdict for him. *O'Malley* now moved accordingly, and cited *Lunn* v. *Thornton*, 1 C B 379, *Tupfield* v. *Tillman*, 6 M. & G. 245; *Gale* v. *Burnell*, 7 Q. B. 850; *Jones* v. *Bale*, 7 B. & C. 491; and *Petch* v. *Tutin*, 15 M. & W. 110. *Cur. adv. vult.*

REYNOLDS v. TUPPER.—Tried in Middlesex: verdict for the plaintiff, 118*l.* 6s. *H. Hill* moved for a new trial on the ground of the verdict being against evidence and misdirection. *Rule nisi.*

DOE *dem* HUGHES v. DAVIES.—Tried in Cardiganshire, before Martin, B. *Grove* moved for a new trial, on the ground of the verdict being against evidence.

Cur. adv. vult.

DOE *dem.* SHREWSBURY v. ROE.—*Pearson* moved for judgment against the casual ejector. *Rule nisi.*

CASTELLI v. RUE.—*Willes* moved for a commission to examine witnesses, particularly two of the plaintiff's, at Constantinople and Leghorn. *Rule nisi.*

REG. v. CALDWELL.—*Huddleston* applied to discharge the bail recognisances in this case. *J. Gray* appeared on behalf of the prosecutor, and mentioned that the defendant had not appeared, and so the condition had not been complied with; but the prosecutor would not offer any opposition to the motion, if the Court could entertain it.

Rule refused.

TALLIS v. TALLIS.—*Cole* moved to set aside a demurrer to a plea as frivolous, or to strike out the allegation in the declaration of which the plea was a traverse. (*Cutts* v. *Surridge*, 9 Q B. 1015) *Rule nisi.*

EDGE v. TASSELL.—*W. S. Cross* moved to issue a ca. sa. upon a judgment obtained in the Court of Common Pleas at Lancaster, the defendant having removed out of the jurisdiction of that court. *Granted.*

AVERY v. ODAMS and ANOTHER.—Rule absolute for a new trial, by consent.—*Unthank*, for the plaintiff, and *Bramwell*, for the defendants. Costs of former trial and this rule to be costs in the cause.

BEAL v. NYE.—Rule nisi for a new trial. *Huddleston* appeared in support of the rule, but was not called upon.

Rule absolute.

QUEEN'S BENCH.

ROGERS v. HARRIS.—Rule nisi for a new trial, on the ground of the verdict being against the evidence. *Pearson* shewed cause, and *E. James* supported the rule. *Rule discharged.*

Saturday, April 17.

DOE *dem.* KING v. GRAFTON.—*Warren* moved for a new trial, on the ground of misdirection. *Cur. adv. vult.*

CONNELLY v. FISHER.—Tried in Middlesex, before Erle, J.: verdict for the plaintiff, 750*l.* *Barstow* moved for a new trial, on the ground of misdirection, and of the verdict being against the evidence. *Rule refused.*

MEACH v. DAW.—Tried in Dorsetshire: verdict for the plaintiff, 360*l.* *Crowder* moved for a new trial, on the ground of the verdict being against the evidence. *Rule nisi.*

HOWES v. BARBER.—*Unthank* moved to review the taxation herein. The question mooted was as to the allowance to parties to the action when examined as witnesses. *Rule nisi.*

GILL v. DENDY.—*Lush* moved to set aside the nonsuit herein. The case was entered last in the list for Essex, but, owing to the small number of entries, was disposed of before the arrival of the plaintiff's solicitor and witnesses at the assize town. *Rule nisi.*

ROBINSON v. JONES.—Tried at Chester, before Williams, J.: verdict for the plaintiff, 18*l.* 12*s.* 9*d.* *E. Beavan* moved to reduce the verdict to 40*s.* *Rule nisi.*

THE ROCHDALE CANAL COMPANY v. RADCLIFFE.—Rule nisi to enter the verdict for the defendant on the fourth plea to the second count. *Knowles, Tomlinson,* and *Cowling,* shewed cause, and *W. H. Watson, Willes,* and *Spinks,* supported the rule. *Cur. adv. vult.*

DOE v. WEIR.—Tried at Gloucester: verdict for defendant. *Whateley* moved for a new trial, on the ground of the verdict being against the evidence. *Rule refused.*

WALKER and OTHERS v. THE BRITISH GUARANTEE ASSOCIATION.—*Knowles* moved to enter judgment for the plaintiffs on the fourth plea, non obstante veredicto. *Cur. adv. vult.*

Ex parte KING.—*Willes* moved for a certiorari to bring up an inquisition, before the sheriff of Cheshire, for the assessment of damages under the Lands Clauses' Consolidation Act. *Rule nisi.*

Monday, April 19.

AMOTT v. HOLDER.—*Knowles* moved, pursuant to leave reserved, to set aside the verdict for the plaintiff and enter it for the defendant on both issues. *Rule nisi.*

PACK v. SKINNER.—This was an action for disturbance of a right of way, tried at the last Exeter Assizes. *Kinglake,* S. now moved to set aside the verdict found for the plaintiff, and for a new trial, on the ground of misdirection as to the proper effect of sec. 7 of the Limitation Act, with reference to a twenty years' user of the right of way in question; and also as to the evidence of immemorial user. (*Bright* v. *Walker,* 1 Cr. M. & R. 217.) [He also moved in arrest of judgment; but upon that point the rule was refused.] *Rule nisi.*

TIMMINS and WIFE v. GIBBINS, P.O.—This was an action for money had and received, tried at Stafford before Wightman, J. when a verdict was found for the defendant. (See Law T. April 10, p. 34.) *Keating* now moved, by leave of the judge, to enter the verdict for the plaintiffs for 65*l.* The female plaintiff had paid that amount into the defendant's bank at Dudley, on a deposit account, in notes of the Stourbridge Bank, which stopped payment the next day. The notes being transferred without endorsement, the transaction amounted to a sale of the notes, and the receiver must bear the loss. (Byles on Bills, p. 122.) *Rule nisi.*

MORISS v. OLIVER.—This was an action for wages as master of a ship; and the question was whether the defendant was liable as owner. At the trial, before Lord Campbell, C.J. at Guildhall, a copy of the registered transfer of the ship to the defendant was received in evidence, and a verdict was found for the plaintiff, damages 130*l.* *Slade* now moved for a new trial, on the ground that the transfer was improperly received in evidence, and that the verdict was against the evidence. He cited *Tinkler* v. *Walpole,* 14 East, 226; and *Smith* v. *Fuge,* 3 Campb. 456. The COURT agreed that the transfer would not be evidence of the ownership by itself, but it was a step in the proof; and, as there was evidence on both sides, they would not interfere with the verdict of the jury. *Rule refused.*

JONES v. EVANS.—*Trespass q. c. f.* *Plea*—A right of way on foot and with carriages and horses. Upon the trial before Williams, J. at Ruthin, a verdict was found for the plaintiff. *Lush* now moved for a new trial on the ground of misdirection and misreception of evidence. The plaintiff admitted the existence of a footway; and the question was, whether the way had been used for carriages and horses. The learned judge refused evidence of reputation as to the mode of user. *Rule nisi.*

Tuesday, April 20.

WALKER v. THE GUARANTEE SOCIETY.—Lord CAMPBELL, C.J. gave judgment. *Rule refused.*

DOE dem. TREVANION v. LAMBE.—*Crowder* moved for a new trial on the ground of misdirection, and that the verdict was against the evidence. *Cur. adv. vult.*

DOE v. CLARKE. *Rule nisi.*

NORTHEY v. JOHNSON.—This was an action for goods sold, brought against the defendant as shareholder of a mine, for the use of which the goods had been supplied. The question was, whether the defendant was a shareholder; and at the trial before Erle, J. in Cornwall, the verdict passed for the defendant. *Crowder* now moved for a new trial, on the ground of misdirection. *Rule refused.*

REG. v. THE INHABITANTS OF DENTON.—Indictment for non-repair of a highway, tried before Cresswell, J. at Liverpool: verdict for the Crown. *Knowles,* moved to enter the verdict for the defendants, and in arrest of judgment. (*R.* v. *Mawgan,* 8 Add. & Ell. 496.) *Rule nisi.*

CROSSTHWAITE (Administrator) v. GARDNER.—Assumpsit for work and labour, tried before Cresswell, J. at Liverpool, when a verdict was found for the plaintiff. *Knowles* moved to enter the verdict for the defendant. The plaintiff sued as administrator upon a building contract entered into by the intestate, but part of the work had been done by the administrator since the death of his intestate. He ought therefore to have declared specially. *Rule nisi.*

BARROW v. ROBINSON.—This was an action for work and labour [illegible] excavating a tank, tried before Cresswell, J. at Liverpool, when a verdict was found for the plaintiff. *Knowles* now moved to enter a nonsuit, on the ground that the written instrument which contained the terms of the agreement ought to have been stamped. The learned judge thought it was a mere proposal; but although signed by the plaintiffs only, it was an agreement. It was not signed till after the plaintiff's offer had been accepted. *Rule nisi.*

REG. v. WHITEHOUSE and OTHERS.—Indictment for conspiracy to defraud; tried before Wightman, J. at Stafford, when a verdict passed for the Crown. *Allen,* Serjt. now moved for a new trial, on the ground of surprise, and that the verdict was against the evidence. *Rule nisi.*

VAUGHAN v. STEVENS.—Case for injury to the plaintiff's reversion by depriving his house of the support to which it was entitled; tried before Erle, J. in Devonshire, when a verdict was found for the plaintiff; damages, 26*l.* 4*s.*: 15*l.* having been paid into court. *Kinglake,* Serjt. now moved for a new trial, on the ground of misdirection; the learned judge having allowed the jury to take into their calculation damage, not alleged in the declaration. *Rule nisi.*

DARE v. REYNOLDS.—*Allen,* Serjt. moved for a new trial in this case, which was tried before Wightman, J. at Gloucester, on the ground that the verdict was against evidence. *Rule refused.*

STUART v. THE ANGLO-CALIFORNIAN GOLD MINING COMPANY.—This was an action for refusing the plaintiff permission to sign the deed of settlement. Upon the trial, before Lord Campbell, C.J. in London, a verdict was found for the plaintiff. *Bramwell* now moved to enter the verdict for the defendant, on the ground that the plaintiff's shares had been legally forfeited by the company, under a clause in the deed of settlement, which enabled them to do so, if the shareholder neglected to execute the deed within three months from the date of it. He contended that under that clause no notice to the shareholder that the deed was ready for execution was necessary (*Banwen Iron Company* v. *Barnett,* 8 C. B. 406); that the clause was legal; and that at all events the plaintiff, who complained of not being allowed to sign the deed, could not object to it. Secondly, he contended that the company were not responsible for the wrongful refusal of the secretary. They could only be responsible for an act done under the common seal of the company, or by a resolution of the directors, or by the appointment of a general agent. (*Roe* v. *The Birkenhead Railway Company,* 21, L. J. Ex. 9.) [ERLE, J.—If a wrong is done under the sanction of the company, or those who are in the direction of the company, are not the company liable? *Yarborough* v. *The Bank of England,* 16 East, 6, and other cases, are against you. Lord CAMPBELL, C.J.—We all think that there is nothing in that point.] He also moved in arrest of judgment, on the ground that the declaration alleged a refusal to permit the plaintiff to sign the deed of settlement; whereas, it ought to have alleged a refusal of permission to sign the deed of settlement, *or a deed referring thereto,* according to the Act of Parliament. [ERLE, J.—Is it not the same thing? The deed referring to the deed of settlement means only a deed containing sufficient words of reference to the deed of settlement, and prepared for the purpose of avoiding the inconvenience of carrying the deed of settlement about the country for execution. WIGHTMAN, J.—If the company offered for execution by the plaintiff a deed referring to the deed of settlement, and that is an excuse, they might plead it. Lord CAMPBELL, C.J.—We all think the declaration good.]

On the first point, rule nisi.

LOWE v. THE LONDON AND NORTH-WESTERN RAILWAY COMPANY.—Assumpsit for use and occupation; tried before Jervis, C.J. at Derby. Verdict for the plaintiff; damages, 175*l.* *Macaulay* moved for a nonsuit, on the ground that assumpsit for use and occupation would not lie against a corporation, and that no contract under the corporate seal or by two directors was proved. (*Mayor of Stafford* v. *Till,* 4 Bing. 75; *Doe* v. *Taniere,* 12 Q. B. 1000.) He mentioned, as a further ground of his motion, that the plaintiff ought to have proceeded for compensation under the railway Acts. He also moved for a new trial on the ground that the verdict was against the evidence. *Rule nisi.*

DICKSON v. KAY.—*E. James* moved for a new trial, on the ground that the verdict was against the evidence, and on affidavits. *Cur. adv. vult.*

WILLIAMS (executor) v. LOOSE.—Assumpsit for the hire of a coach; tried before Erle, J. at Dorchester; when a verdict was found for the defendant. The only question was as to the liability of the defendant, who was one of several proprietors who horsed the coach in question, and divided the profits. The order was given by another proprietor; and the learned judge told the jury that partners might agree together that one of them should make the contracts with third persons on his own account and that if he dealt with any one who was aware of that agreement, he alone would be liable. *Crowder* now moved for a rule for a new trial, on the ground that the evidence raised no such [illegible], and that the learned judge had misled the jury by leaving that point to them. The COURT thought that there was evidence from which the jury might have inferred such an arrangement. *Rule refused.*

LEWIS v. NICHOLSON and ANOTHER.—This was an action for money had and received, tried before Lord Campbell, C.J. at Guildhall, when the plaintiff was nonsuited. The question was, whether the defendants were personally liable upon an undertaking which they had given as solicitors to the assignees of a bankrupt, that the proceeds of a sale should be paid to the plaintiff. *Shee,* Serjt. now moved to enter the verdict for the plaintiff for 22*8l.* upon the ground,—1st, That the defendants did not contract as agents: 2ndly, that if they did, they had exceeded their authority, and were therefore liable as principals. He cited *Downman* v. *Williams,* 7 Q. B. 103; *Thomson* v. *Davenport,* 2 Smith's Lead. Cas. 223, and notes thereto; *Harper* v. *Williams,* 4 Q. B. 232; *Smout* v. *Ilberry,* 10 M. & W. 1; *Ex parte Young,* 2 Dea. Rep. 240. *Rule nisi.*

DOE *dem.* HOWELL v. REES.—Ejectment, tried at the last Glamorganshire assizes by Martin, B. who directed a nonsuit. *H. Jones,* Serjt. now moved for a new trial. The lessor of the plaintiff claimed as devisee; and to shew seisin in the testator he relied upon an old lease executed by the testator, but was unable to give any evidence of enjoyment under that lease. *Doe dem. Lord Egremont* v. *Pulman,* 3 Q. B. 622, is an authority to shew that the lease was some evidence of seisin. By the COURT.—In that case the lease was admissible for a very different purpose. The lease executed by the testator himself was no act of ownership, until it was brought into life by some enjoyment under it. *Rule refused.*

Tuesday, April 20.

TOWERS v. WATERS.—*Atherton* moved for a rule to shew cause why the plaintiff should not pay the defendant his costs, notwithstanding the verdict for the plaintiff, on the ground that the plaintiff had, without reasonable cause, made an affidavit of debt in bankruptcy for a larger amount than that recovered by the verdict. The Court thought the affidavit quite insufficient to shew an absence of reasonable cause. *Rule refused.*

FERRELL v. GROVE.—This was an action on an attorney's bill, tried in Middlesex before Lord Campbell, when a verdict was found for the plaintiff. *Collier* moved to enter the verdict for the defendant upon the plea of "no signed bill delivered;" contending that it did not clearly appear, as to some of the items, whether they were for Common Law or for Chancery business. This was a case between London agent and country attorney, but the same rule applies. (*Smith* v. *Dimes,* 19 L. J. 60, Exch.; *Frimay* v. *Marks,* 16 M. & W. 843; *Keane* v. *Ward,* 19 L. J. 46, Q. B. By the COURT.—The rule is, that the bill must give reasonable information, and we think this bill does. *Rule refused.*

Re MARTER.—*Kingdon* moved to review the taxation of costs herein, on the ground that 22*l.* 4*s.* had been incurred by the client of Mr. Martyr, who was the provisional assignee of an insolvent, without obtaining an order of the Insolvent Court, according to ss. 42 and 156 of 1 & 2 Vict. c. 110. The bill had been referred to taxation on the application of [the creditors, and the Master had allowed the above sum of 22*l.* The creditors' assignee had been required to pay a sum into Court to meet the costs of various proceedings which had been taken; and the object of the present application was to prevent the payment of the said sum of 22*l.* out of that fund. By the COURT.—The application should be made to the Insolvent Court, which has control over the fund. As between the attorney and his client, the item is properly allowed. *Rule refused.*

WHITLOCK v. BRITTON.—*Burnie* moved for a new trial, or to reduce the damages to the sum of 1*l.* 10*s.* *Rule nisi.*

CRAKE v. FLAVELL.—*Udall* moved for a new trial, on the ground of misdirection by the Secondary of London, in telling the jury what amount of damages would carry costs. *Rule nisi.*

SHIELS v. WADGE.—*Huddleston* moved for a new trial in his case, which had been taken as undefended, upon affidavits explaining the defendant's absence, and swearing to merits. *Rule refused.*

DOE *dem.* WOOD v. KEIR.—Ejectment, tried before Wightman, J. at Gloucester. *Pigott* moved to enter verdict for the defendant as to part of the lands. *Rule refused.*

ROE v. MANSER.—*Hawkins* moved for a new trial, on the ground that the verdict was against the evidence. *Rule refused.*

CHATFIELD v. COX.—This was an action on a bill of exchange, to which the defendant had pleaded a special agreement accepted in satisfaction; and at the trial had a verdict upon that plea. *Hawkins* now moved to enter it for the plaintiff, on the ground that the instrument given in evidence in proof of the plea wanted a stamp. The question was, whether it related to the sale of goods. *Rule refused.*

REG. v. PRICE and OTHERS.—Mandamus to compel the defendants to do certain acts pursuant to an agreement, whereby several Welch counties combined for the erection and maintenance of a lunatic asylum. Tried before Williams, J. at Chester; verdict for the Crown. *Beavan* moved to enter it for the defendants on the first issue, reversing the agreement. The question was, whether the matter of the agreement was above the value of 20*l.* so as to require a stamp. *Rule nisi.*

DOE *dem.* ROWLANDS v. PEARCE.—Ejectment by mortgagee. Tried before Williams, J. at Beaumaris. *Lloyd* moved for a rule to enter the verdict for the defendants. The question was whether certain payments, on account of the mortgage money, would take the case out of the Statute of Limitations. (*Burn* v. *Bolton,* 2 C. B. 476.) *Cur. adv. vult.*

Wednesday, April 21.

ROCHDALE CANAL COMPANY v. RADCLIFFE.—The Court gave judgment for the defendant to enter the verdict for him on the issue on 4th plea, and granted a rule nisi to the plaintiffs to enter up judgment thereon non obstante veredicto.

DOCK COMPANY OF KINGSTON-UPON-HULL, Appellants; THE GUARDIANS, &c. OF THE POOR IN THE TOWN OF KINGSTON-UPON-HULL, Respondents.—To be reported. *Judgment for respondents.*

REG. v. AVERY.—Tried before Erle, J. at the Devonshire Assizes: verdict for the defendant. *Slade* moved for a new trial, on the ground of misdirection. *Rule nisi.*

MALLALIEU v. THE ANGLO CALIFORNIAN GOLD MINING COMPANY.—Tried at Maidstone before Parke, B.: verdict for the defendant on the third plea. *E. James* moved for a new trial on the ground of misdirection. *Rule nisi.*

PARIS v. SMART.—*Pearson* moved to deprive the plaintiff of the costs of the action, and to make him pay the defendant's costs. (*Adlington* v. *Appleton,* 2 Camp. 410.) *Refused.*

MARDELL v. THELLUSSON.—*Shee,* Serjt. made a cross motion in this case for a new trial, on the ground of misdirection. *Cur. adv. vult.*

REG. v. THE LEEDS AND BRADFORD RAILWAY COMPANY.—To be reported. *Order of justices quashed.*

REG. v. WILSON and OTHERS.—To be reported. *Judgment for the defendants.*

BLACKALL v. BREMER.—Tried before Parke, B. at the Surrey Assizes: verdict for the plaintiff. *G. Francis* moved for a new trial, on the ground of the verdict being against the evidence. *Rule nisi.*

COURT OF COMMON BENCH.

Reported by DANIEL THOMAS EVANS and VAUGHAN WILLIAMS, Esqrs. Barristers-at-Law.

EASTER TERM.

Thursday, April 15.

(Before JERVIS, C.J. CRESSWELL, WILLIAMS, and TALFOURD, JJ.)

ODAMS and ANOTHER v. AVERY.

Ship—Freight—Broker—Revocation of authority to receive freight.

The plaintiffs, merchants in London, shipped at New York a quantity of oil-cake on board a vessel chartered for London, of which the defendant was owner. The vessel was consigned to C. and Co. brokers in London, and the terms agreed on with the captain were, for a lump freight of 500 tons, 500l.; half to be paid in cash on delivery of the cargo, and the remainder by approved bills. Bills of lading were signed and given. The brokers, C. and Co. on the arrival of the vessel duly reported her, made out the freight-notes, and received 133l. 13s. 8d. for freight from the plaintiffs. Whilst the vessel was delivering the goods into the plaintiffs' barges, the captain, having learnt that the brokers were insolvent, refused to allow the barges to be removed with the goods until he had received an indemnity from the plaintiffs.

At the trial it was contended, that the shipowner had a lien on all the goods, whether shipped on bills of lading under the charterer or otherwise. The learned judge directed the jury that the plaintiffs were authorised to pay freight to the brokers, C. and Co. unless they had previously received notice that the brokers' authority was revoked:

Held, no misdirection.

This cause was tried before Williams, J. and a special jury, at Guildhall, during the sittings after last term. Verdict for the plaintiffs.

The action was brought to recover damages for the detention of a quantity of oil-cake, shipped at New York, for which the freight had been paid, and of which the plaintiffs held the bills of lading. At the trial it appeared that in 1850 the plaintiffs, who are merchants in London, purchased, by their agents at New York, a quantity of oil-cake, which was shipped for them on board a vessel chartered for England, called the *Mary Ensell*, of which the defendant, a shipowner at North Shields, was the proprietor. The vessel was consigned to Cooper, Fitton, and Co. brokers in London, and the terms agreed on with the captain were for a lump freight of 500 tons for 500l. half of which was to be paid in cash on delivery of the cargo, and the rest by approved bills. It was found, however, that the vessel would only carry 460 tons, and a proportionate deduction in the amount of freight was, therefore, agreed on between the charterer and the captain, and bills of lading were given. The plaintiffs having previously made arrangements for the necessary entries at the Custom-house, and for payment of the freight, the vessel arrived on the 20th of December. The brokers, Cooper and Co. duly reported her arrival, and made out the freight-notes, and on Saturday, the 28th of December, received 133l. 13s. 8d. for freight from parties who represented the plaintiffs. At this time the vessel was in the St. Katherine Docks, and was partly unloaded into the plaintiffs' barges; but the captain, learning that the brokers had become insolvent, refused the pass necessary for the barges to leave the dock, and ultimately only allowed them to go upon receiving an indemnity from the plaintiffs. The main question between the parties was, whether the plaintiffs, before they paid the freight to Cooper and Co. had received notice that the authority of those gentlemen to act as brokers had been revoked; and upon this point the evidence was very conflicting. The jury, however, found a verdict for the plaintiffs.

A rule having been obtained calling upon the plaintiffs to shew cause why the verdict should not be set aside and a new trial had, on the ground of misdirection and that the verdict was against the weight of evidence,

Bramwell, Q.C. and *Willes* now shewed cause against the rule.—[There was a long and minute analysis of the evidence by counsel on both sides, the question of fact in dispute being the main one contested at the trial, namely, whether the plaintiffs, before they paid the freight to the brokers, Cooper, Fitton, and Co. (who had become insolvent), had received notice of revocation of the brokers' authority. Williams, J. had told the jury that the plaintiffs were authorised in paying the freight to the brokers unless they had received notice not to do so. This was the misdirection complained of.]—It is difficult to see what is the misdirection of which the defendant complains in this case. The contract here is in writing on the bill of lading, the effect of which is, that the consignee shall have his goods on payment of a sum stated in the bill of lading. The defendant has to contend that the goods are not to be paid for on delivery. The bill of lading is in the ordinary course of business, and according to that the consignee has merely to pay the sum therein stated to be entitled to remove his goods. But it is said he is to pay more, and that a lien attaches upon the goods. This is an ordinary case of freight payable on a bill of lading, and the defendant has no right to lien upon the goods.

Byles, Serjt. and *Aspland*, in support of the rule.—This case has been before two juries, and they have come to opposite conclusions on the facts. In the Q. B. the jury found there was notice of revocation on the 28th of December; in the C. P. they found there was no such notice. If this rule should be discharged and the verdict allowed to stand, we shall be in an unsatisfactory position at a new trial which must follow in the Q. B. and it would be nearly useless our contesting it further. As to the question of misdirection, there were here two freights, one under the charter-party, and another on the bill of lading. It may be that we have not a lien on all the goods in the vessel: all I have to shew is, that we have a lien on these goods until the charter-party freight is paid. How are we know who is the assignee of the bill of lading?—that may get into a hundred hands. The question, then, is, on whom does the onus lie?—on the shipowner to give notice, or on the assignee of the bill of lading to inquire? [CRESSWELL, J.—What was the contract made by the shipper of these goods as to the freight?] The contract was between the shipper and the charterer, that the shipper should pay freight to the charterer. The captain made the contract with the charterer on the part of the owner. [JERVIS, C.J.—The owner gave the captain particular authority to contract that freight shall be paid under the charter on the delivery of the goods.] The question is new: we have looked into the cases, and cannot find any in which the point has been considered. [JERVIS, C.J.—You will find cases where the question was, whether there was fraud or no fraud.] It matters not to whomsoever the goods belong, the shipowner has a lien for his freight under the charter-party upon all goods put on board his vessel. Supposing freight payable by bills, he has a clear lien till the bills are paid. If several parties ship goods on board a vessel, the owner has a lien on every parcel for the charter-freight. *Saunders* v. *Vanzella*, 4 Q.B. 274, is a case opposed to the present leaning of the Court. The owner's lien is not for freight due on the bill of lading, because that is freight due from goods owner to the charterer, but in every thing shipped for the freight under the charter-party. We say that the owner of the goods in this case stands in the shoes of the charterer. It comes to this,—Is the shipowner paid by payment to the brokers, Cooper, Fitton, and Co. Putting it the other way—Surely the shipowner is to be paid. Is he paid in this case? Could he recover freight from the brokers, Cooper, Fitton, and Co.? [JERVIS, C.J.—Notice to Odams and Co. is not the point; the revocation of authority of Cooper, Fitton, and Co. is the question here. Was or was not their authority revoked?] We contend that payment to the charterer is not payment so as to discharge the goods from the shipowner's lien. When does the shipowner become liable in trover? They must give us notice that the freight under the bill of lading is paid to the brokers, Cooper, Fitton, and Co.

JERVIS, C.J.—I am sorry the view this Court has taken of this case conflicts with that of the Court of Q. B.; still it is our duty to give our opinion on the questions at issue. It seems to me that both on the point that the verdict was against the weight of evidence, and on the question of misdirection this rule must be discharged. No doubt much may be justly said upon the evidence on both sides; for it is direct conflict as regards notice; but the jury have come to a decision which is not dissented from by the learned judge who tried the cause. This Court, therefore, would not be justified in interfering to disturb the verdict unless it is clearly made out that it was against the weight of the evidence. We cannot say that it was. As regards the question of law I think the propositions contended for on behalf of the defendant is not consistent with sound principles of law. [His lordship here recapitulated the history and facts of the case, and referred to *Small* v. *Moates*, 9 Bing. 574, of which he read the marginal note.] The question here is, was the freight payable under the bill of lading paid, and if so, was it paid to the person entitled to receive it. I think it was. It is admitted that Cooper, Fitton, and Co. communicated to the shippers that by authority of the Master they were the persons to receive the freight, and they were no doubt duly authorised to do so. It therefore lay on the defendants to shew that their authority had ceased, and that notice had been given of that fact to the plaintiffs. The jury have found that there was no such revocation of authority, and the direction of the learned judge was right on this point.

CRESSWELL, J.—I am of the same opinion upon both points. There was a conflict of testimony at the trial, but I see no occasion to dissent from the finding of the jury. As to the other question, namely, that of misdirection, I am of opinion that when a ship is chartered as a general ship, and the captain signs bills of lading for payment of a certain freight, the consignees cannot be made liable for anything beyond that freight. It was not disputed that the vessel was consigned to Cooper, Fitton, and Co. or that they, as the brokers, were by custom the parties entitled to receive the freight. They sent out freight-notes without any previous revocation of authority. It was, therefore, on the defendant to shew that due notice had been given to the plaintiffs that the brokers' authority to receive the freight had been countermanded. This has not been shewn. The direction of the learned judge was, therefore, right, and the verdict must not be disturbed.

WILLIAMS, J.—I am of the same opinion. As to the ground of motion that the verdict was against the evidence, it was a question of fact for the jury. They have decided it, and I do not dissent from their finding; the verdict, therefore, must stand. With reference to the other point, Cooper and Co. had undoubtedly authority to receive the freight from plaintiffs unless their authority was revoked, and whether it was revoked or otherwise depends on the evidence, on which the jury have properly decided.

TALFOURD, J. concurred. *Rule discharged.*

STEBBING v. MOTTRAM.

Practice—Judgment as in case of nonsuit—Costs. Where the affidavit, on which a rule for judgment, as in case of a nonsuit, has been moved, does not show the venue or state whether the cause in which issue has been joined is a town or country cause, the Court having no record to refer to, will discharge the rule with costs.

Ball shewed cause against a rule nisi for judgment as in case of nonsuit obtained last Term by *Borthwick*. It is objected that the affidavit on which the rule was moved is defective. It states that issue was joined in this cause on the 19th of May last—that is to say, in the vacation after Easter Term, the latter having closed on the 13th of May. It does not appear in any part of the affidavit whether the cause is a town or country cause. This or the venue ought to have been shewn. Besides this, as two Assizes had not elapsed when the rule was moved, the defendant came to the Court too soon. The practice as to stating venue has been laid down in *Withers* v. *Spooner*, 5 M. & G. 268. The marginal note there shews that an affidavit in order to ground a motion for judgment as in case of nonsuit must state the venue. There is no record before the Court by which it may be ascertained whether the cause is a town or country cause. [CRESSWELL, J.—In which Term is it stated that issue was joined?] The affidavit states that issue was joined on the 19th of May. (*Ellis* v. *Stebbing*, 5 Scott, N. R. 167; 2 Dowl. N.S. 118.) It is submitted that as the practice was laid down, in regard at least to stating the venue, so long back as 1833, and followed by all the Courts ever since, this rule should be discharged with costs. [JERVIS, C.J.—Have you an office copy of the affidavit? If you have not, you cannot be heard.] I have an office copy.

Crosse, in support of the rule.—I cannot get over the objection made to the affidavit. If the Court is to assume that this is a country cause, there is an end to the matter.

CRESSWELL, J.—Your affidavit is insufficient.

JERVIS, C.J.—This rule must be discharged with costs. *Rule discharged.*

Friday, April 16.

Re JOHANNA CONNELL.

The Court will not grant a writ of habeas corpus to bring up the body of an infant, unless it be shewn on affidavit that the infant is kept against her will.

Scott applied for a writ of habeas corpus to the overseers of the parish of Lambeth to bring up the body of Johanna Connell. The application was made in behalf of a sister, who was of age. From her affidavit it appeared that the father died six years ago, leaving herself and two other children. The mother died in November 1848. One of the children, a boy, had been apprenticed; the other, a girl, had been placed by the overseers of the parish in an infant establishment, at Norwood. The parents were Roman Catholics. The deponent having an opportunity of placing her sister in an orphan asylum for Roman Catholics, had applied, through a Mr. Scott, in February last, to the overseers for permission to remove the child, who then wished to leave the asylum at Norwood. The permission had been refused; and deponent believed that such refusal was in consequence of a desire to prevent the child from being brought up a Roman Catholic.

JERVIS, C.J.—The application must shew that the child is kept against her will. This application only shews that in February last some person, of whom the overseers might have known nothing, applied for the removal of the child, who is stated to have been then anxious to go to a particular place, and did not go. For all that appears, there may now have been a change. *Application refused.*

Saturday, April 17.

STEADMAN *v.* CHAPPELL.

Attorney and solicitor—Practice—New trial—Costs.

An attorney brought an action for the amount of his bill. At the trial, the plaintiff put in a written retainer signed by the defendant, and the cause was proceeding as undefended, when the defendant presented himself and swore that he never retained plaintiff, and that plaintiff's name was not on the written retainer when he signed it, whereupon the verdict went for the defendant.

The Court held this a sufficient ground of surprise, the professional character of plaintiff being at stake, and granted a new trial.

The Court, in granting a new trial, on the ground of surprise, will follow the usual practice of granting the rule on payment of costs, notwithstanding the surprise was alleged perjury, by the successful party on his examination at the trial.

This action was brought by the plaintiff, an attorney, for work and labour alleged to have been done for the defendant upon retainer in defending an action of ejectment. At the trial, the case was treated as undefended until the close of the plaintiff's evidence, when the defendant presented himself as a witness on the other side, and swore that he never gave the plaintiff a retainer, and that he never employed him; but, on the contrary, that he gave a retainer, and paid the expenses of the action, to a person named Field, whom he believed to be an attorney, and who occupied chambers with the plaintiff. He further swore that the plaintiff's name which appeared on the retainer was not there when he signed it, but had been placed there afterwards without his knowledge or authority. The cause was tried before Jervis, C.J. at sittings in London. The jury having returned a verdict for the defendant, the present rule was granted on the ground of surprise.

Huddlestone (with him *Edwin James*, Q.C.) now shewed cause against the rule. The only ground of surprise alleged in the affidavit on which this rule was moved is, that the plaintiff could not have believed that the defendant would go the lengths of perjury which he did on examination at the trial, otherwise it is stated plaintiff would have been prepared to rebut defendant's evidence. This is not sufficient to justify the Court in setting aside the verdict of the jury. It was a simple question of credibility, the questions for the jury being, whether defendant had ever given plaintiff a retainer, and whether he had lent him 5*l.* The jury came to the conclusion that defendant's version of the story was true; and it being a question of fact, they were competent to decide it, and their finding, therefore, should not be disturbed. [JERVIS, C.J.—The Court will not grant a rule for a new trial on a mere conflict of affidavits; what it looks for are strong facts to shew that a new trial would be justified on the ground of surprise.] Yes; when a party asks for a new trial on such grounds, he must clearly satisfy the Court that he is in possession of evidence which will altogether rebut the testimony on which the case turned, and which surprised him at the trial. No such materials are furnished here; for the retainer produced cannot be accepted as conclusive here. [JERVIS, C.J.—If Steadman's was an honest case, he might reasonably say he was taken by surprise.] If this case should be sent to another jury, the result, in all probability, would be the same.

Hawkins and *Joyce*, in support of the rule, were not called on.

JERVIS, C.J.—We will not call on the plaintiff to support this rule. The question is not a question of mere amount, but one affecting the personal character of the plaintiff. His reputation is here at stake; there will therefore be a new trial, on payment of costs.

Hawkins urged, that as the necessity for coming to this Court for a new trial had been occasioned by what he alleged was perjury by the defendant, the plaintiff ought to have his rule without payment of costs.

By the COURT.—This cannot be acceded to. Mr Steadman can hardly hesitate between the payment of a few pounds costs, and the opportunity which this rule affords him of clearing his character as a professional man. He must take his rule on the usual terms.

Monday, April 19.

GRISEWOOD *v.* BLAYNE.

Share-jobbing.

An agreement for the sale and purchase of railway shares, amounting, in fact, to a bargaining for the payment of the difference, is a gambling transaction within the provisions of statute 8 & 9 Vict. c. 105, s. 18. It is right to leave it to the jury "did either party intend to buy or sell?" and if the jury find that neither party did intend to buy or sell, that is finding that the transaction is gambling.

In this case *Byles*, Serjt. moved for a rule to shew cause why there should not be a new trial, on the ground that the verdict was against evidence. The question was, whether an agreement for the sale and purchase of railway shares, being, in fact, a bargaining for the difference, was not a gambling transaction. The declaration stated that the defendant sold to the plaintiff shares in several railways at certain prices, on the terms that they were to be delivered on a future day, and then paid for; that the defendant was not then possessed of the shares, and would, therefore, have to purchase them; that the shares rose in price, so that the defendant would not be able to purchase except at enhanced prices; that it was thereupon agreed that the bargain should be rescinded, and that defendant should sell to plaintiff so many shares at the then market-price, and pay plaintiff the difference. Mutual promises. Breach, that the difference, 711*l.* was not paid within a reasonable time. Pleas—1st. Non assumpsit. 2nd. Traverse of the bargain. 3rd. That the contract was by way of wagering on the price of the shares, and was merely colourable, and that it was never intended that the said shares should be bought and sold, but was a mere wager, and the contract was after the year 1847, the date of the Gaming or Wagering Act. [JERVIS, C.J.—You must apply for judgment non obstante veredicto.] By 8 & 9 Vict. c. 109, s. 8, "All contracts by way of gaming or wagering are made null and void; and the question is, whether this is a transaction that comes within the meaning of the Act. It appeared by the evidence that the plaintiff was a stock and share jobber, and that defendant was desirous to speculate, and had contracted through his broker to sell to the plaintiff the shares mentioned in the declaration. It was left to the jury by Jervis, C.J. thus:—"What was Grisewood's intention, and what was Blayne's intention? Did either party mean to purchase or sell? If not, it is gambling transaction." Whereas it ought to have been left to the jury, was the intention of both parties so known to the other that no action would lie on the contract? A contract for the sale of goods to be delivered at a future day, is not a gambling transaction, although the one party has not the goods, and has not contracted for them, and never means to have them (*Hibblethwaite* v. *Macmorine*, 6 M. & W. 216); and it makes no difference that both parties are in the same position, and neither party means to have them; nor even if they say so in their contract by express stipulation. [CRESSWELL, J.—If so, under non assumpsit I should tell the jury the contract was not proved.] Suppose no such stipulation, and though both parties had no intention of buying or selling, yet did not know of this in the mind of the other, this would not be a gambling transaction. [CRESSWELL, J.—In that case each would intend to give the other the power of enforcing it.] The question is, was there a mutual understanding between the parties. If there was—that is, if both understood the transaction, and expressed it to each other, it is gambling. If they did not express it to each other, it is not gambling, and it should have been so left to the jury.

CRESSWELL, J.—I am of opinion that the direction to the jury was quite right. If neither party had an intention to buy or sell, and that question was left to the jury, it was properly so left. It appeared by the evidence that the transactions in some of the shares had continued for a long time, and that there were some previous dealings as to the others, and that at last a difference was to be paid. It is assumed that the thing was then to be settled by payment of the balance. The jury were, therefore, right in finding it a gambling transaction. And I think, also, that it was within the statute.

JERVIS, C.J.—I thought there was abundant evidence at the trial to shew it was a gambling transaction. And I am sure the jury understood that I put it to them, "what did each party intend, and was their intention known to each other?"

Rule refused.

BUSINESS OF THE WEEK.

Thursday, April 15.

[There being no motions ready at the commencement of business, the Court took the rules enlarged from last term.]

BELL (P. O.) *v.* FISK.

Byles, Serjt. on this case being called, stated to the Court that the parties were in course of arrangement, in two days their differences would probably be settled. Mr Hayes was ready to shew cause, and himself to go on, but in order to permit of amicable adjustment, he would ask the Court to order the case to stand over. The Court then made the order prayed, and the case *Stands over.*

STEBBING *v.* MOTTRAM.

Ball said he was ready, but his friend *Borthwick*, who was for the other side, was not in Court. It was a motion for judgment as in case of nonsuit; the defect in the affidavit being that it did not state where the venue was laid. [JERVIS, C.J.—What is your application?] I do not wish to press the taking of the rule in the absence of Mr. Borthwick. [JERVIS, C.J.—You must, or the case will be struck out.] I will then ask for judgment.

By the COURT.—Let the rule be discharged.

Rule discharged.

Master Ray stated that there were no more enlarged rules, and the Court at once proceeded to the old New Trial Paper.

ANONYMOUS.

Channell, Serjt. mentioned a case partly argued last Term, or in the sitting after Term, before the Court, with Maule, J. upon the bench. He asked whether the Court would take the case this Term, or direct it to stand over until Maule, J. should again form a member of the Court.

JERVIS, C.J.—I spoke to brother Maule about this case. We think of taking it the first Nisi Prius day in this Term. But when that would be he could not say; for he did not know where the Nisi Prius sittings would be held. The Sessions House in which the Court ordinarily sat at Nisi Prius in Term was under repair, and the Vice-Chancellor's Court, in which the Nisi Prius sittings were sometimes held, was now occupied by the Lords Justices. He was indeed informed that the commissioners for building the new Houses of Parliament had kindly provided a room five or six stories high, at the top of a tower, for the purpose, and it might be very good exercise for the young men of the profession to practise there; but whether he and his learned brethren could do so was another question. He rather thought the probability would be that the sittings at Nisi Prius would have to be postponed during the sittings in banco, for the country could not expect the judges to sit if it did not provide a court for them. This case, however, shall not be taken to-morrow; we can promise so much as that.

STEBBING *v.* MOTTRAM.

Crosse applied to have this case (in which the rule was discharged this morning, *Borthwick* being unable through indisposition to appear and support it) reopened.

Ball had consented, and the Court permitted the reopening. The case is reported suprà.

Saturday, April 17.

GRAHAM and ANOTHER *v.* CHAPMAN.

This was a part heard case; the question being whether the assignment of all a trader's goods for a by-gone debt was or was not an act of bankruptcy.

Byles, Serjt. and *Aspland* were heard. This case lasted great part of the day. At its conclusion the Court intimated that they would take time to consider their judgment. *Cur. adv. vult.*

COMBE *v.* BALL and ANOTHER.

Spicer moved for a distringas to compel an appearance. The defendant is John Dean Paul, of No. 4, Charles-street, Berkeley-square, and the process-server had in vain endeavoured to serve him. He made the necessary calls and appointments at the house of the defendant, and was informed by the servants that defendant was from home and could not be seen. The usual statement of belief that defendant was keeping out of the way to avoid service was made in the affidavit. [JERVIS, C. J.—Read that part of the affidavit which relates to search for an appearance.] The affidavit states that "search has been made in the proper place, and that defendant has not appeared according to the exigency of the said writ."

JERVIS, C. J.—That will not do.

Rule refused.

GASSIOT *v.* CARPMAEL.

This was an action to recover the sum of 52*l.* the value of a horse alleged to have been killed through the defendant's negligence. The cause was tried before Parke, B. at the last Surrey Assizes, verdict for the plaintiff.

Shee, Serjt. now applied for a rule calling on the plaintiff to shew cause why the verdict should not be set aside, and a new trial had, on the ground that the verdict was against the weight of evidence. I do not expect the Court to grant this rule unless the learned Judge who tried the cause will say that he was dissatisfied with the verdict. The facts were these. It appeared that in April last a cartload of manure, which had been previously ordered, was shot down by the carter in the Tulse-hill-road, near the defendant's premises, about six o'clock in the evening. The defendant's gardener was gone home, but the carter having pulled the bell, a maid servant looked out of the window, and made a gesture which he interpreted to mean that it was all right. A little while afterwards, the police requested that the manure might be removed, and this was partially done; but about nine o'clock, as the plaintiff was going by in his brougham, the coachman, not seeing the obstruction, drove over it, and upset the carriage. No great damage was done to the carriage, and it was driven home; but about an hour after arriving there, one of the horses died suddenly; and it being proved that the death was occasioned by an

injury sustained by falling over the manure, the present action was brought to recover the value of the horse. The jury found for the plaintiff, but it was now contended that a new trial should be granted, inasmuch as the manure had been delivered too late for the defendant to remove it that evening, and, therefore, if any one were responsible, it was the person who delivered it; and, moreover, because, if there had been any negligence by the defendant, there had been at least equal negligence on the part of the plaintiff's coachman.

The COURT, after having communicated with Parke, B. and, as that learned judge wished for time to refer to his notes of the trial, intimated that judgment would be postponed for the present.

Stands over.

JUPE *v.* THE GREAT WESTERN RAILWAY COMPANY.

This cause was called on, and ordered to stand over. *Stands over.*

Re YATES.

Russell applied to strike an attorney off the rolls, at his own request. The affidavit complied with all the requirements of the practice, distinctly stating that no proceedings were pending, or were contemplated, against the attorney. *Rule granted.*

BUSINESS OF THE WEEK.

Friday, April 16.

CROUCH *v.* NORTH-WESTERN RAILWAY COMPANY.—*Cowling* moved for a rule to show cause why the verdict for the plaintiff should not be set aside, and a verdict entered for the defendants. The plaintiff had sent a package, in which as a small parcel of gold studs, by the defendants as carriers. When the package was opened the studs were missed. The question was whether the defendants were liable, they having given a notice that they would not be liable for goods in a package, the contents of which were not declared, and that notice not having been complied with. *Rule nisi.*

ANDERSON and ANOTHER *v.* HILLIES and ANOTHER.—*Hugh Hill* moved for a rule to shew cause why the verdict for the plaintiff should not be set aside and a verdict entered for the defendants, or why the verdict should not be reduced by 24*l.* 10s. The plaintiff, a ship broker had by means of a bill enabled the master of a ship, who, with the defendants, was also part owner, to transmit money to a stranger abroad. The question was, was this such a payment as to make the defendants liable, the master and other part owner being now dead. The other point was technical as to the form of admissions.

Rule nisi on both points.

GRAHAM and OTHERS, Assignees, *v.* CHAPMAN.—*Bramwell* and *Willes* shewed cause.

Monday, April 19.

AUSTEN *v.* MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY COMPANY.—*Watson* moved for a rule to shew cause why the verdict for plaintiff should not be set aside, and a verdict entered for the defendants, or why there should not be a new trial. This was an action on the case against the defendants as common carriers, for negligently carrying some horses of the plaintiff. The jury found that the defendants had been guilty of gross negligence. It was now contended that the defendants were relieved from their liability as common carriers, by reason of the ticket given to the plaintiff, on which was a notice that the company would not be responsible for any alleged defects in the carriages unless complaint should be made before the time of leaving the station, nor for any damages, however caused, to live stock travelling upon their railway, or in their carriages or trucks. This, it was argued, was a special agreement, and not a mere notice

Rule nisi.

HEAP and ANOTHER *v.* BARTON and ANOTHER.—*Knowles* moved for a rule to shew cause why the verdict for the plaintiffs should not be set aside, and a verdict entered for the defendants. The defendants had taken some stables from the son of a Mr. Howard, who had mortgaged them to the plaintiffs. An ejectment was brought by the mortgagees. The plaintiffs subsequently undertook not to issue a writ of possession till a day named, on condition of the defendants not appearing to the action. After the day of the demise laid, but before the day named in the undertaking, the plaintiffs removed tenant's fixtures. It was contended that they were in by permission of the landlords, and had therefore a right to remove them after the end of the term; and that they would not, under such circumstances, be taken to have abandoned them to the landlords. *Rule nisi.*

DOE *dem.* HIND *v.* MAYOR AND BURGESSES OF THE BOROUGH OF MANCHESTER.—Sir *A. Cockburn* moved for a rule to show cause why a writ of haberi facias possessionem should not be set aside or delayed.

Rule granted and proceedings stayed.

HEDLEY *v.* SURREY GAS ASSOCIATION.—*Shee*, Serjt. moved for a rule to shew cause why the verdict for the defendants should not be set aside and a verdict entered for the plaintiff or for a new trial. After argument the matter was arranged.

BOGG *v.* PEARSE and ANOTHER.—*Montagu Chambers* moved for a rule to shew cause why the nonsuit should not be set aside and a new trial granted. *Rule refused.*

Tuesday, April 20.

SMITH *v.* WINTER.—This was a cause tried before Jervis, C.J. *Miller*, Serjt. now moved to enter the verdict for the plaintiff for 1*l.* 6s. 6d. on an issue of set-off. *Rule nisi.*

BOGG *v.* PEARCE.—*Lush* mentioned this case again to the Court; a difficulty had been found in drawing up the rule of yesterday. JERVIS, C.J.—You may draw up the rule in such a form as to involve the point you intend should be raised. *Leave accordingly.*

COSTANS *v.* EVANS.—This cause was tried before Wightman, J. at the last assizes for Gloucester: verdict for the plaintiff; damages 48*l.* *Keating*, Q.C. now moved for a rule to shew cause why the verdict should not be set aside and a new trial had, on the ground that the verdict was against the evidence, and also for misdirection. This was an action of trespass for seizing and taking plaintiff's goods; to which defendant pleaded the general issue. The question at the trial was whether the rent distrained for was due or not. *Rule nisi.*

WINTLE *v.* DAVIES.—This action was tried before the Sheriff of Middlesex: verdict for the defendant. *Macnamara* now moved to enter the verdict for the plaintiff, if the Court should be of opinion that payment proved was not payment in law. The sheriff's notes do not contain all the facts. (*Margetts* v. *Cowley*, 2 Scott's N. R. 583; *Linney* v. *Johnson*, 2 M. & W. 386.) The plaintiff was a wine-merchant in London, and defendant a tailor at Wolverhampton. The latter ordered six gallons of gin of plaintiff through one Baker, who professed himself an agent of plaintiff. The gin was sent to defendant with an invoice. When called upon to pay, the defendant set off a debt for goods supplied to the agent Baker. For the defence it was urged that defendant had a right to do this, Baker being a factor and having disposal of the goods supplied. JERVIS, C.J.—The evidence was, that defendant well knew that Baker was a mere agent. *Rule nisi.*

MESSER *v.* PARKER.—This action was tried before Jervis, C.J. at the sittings after term in London. Verdict for defendant on 2nd, 4th, & 6th issues; and for plaintiff in the remaining four issues. *Charnock*, now moved to set aside the verdict for defendant on the above four issues, and to enter them for the plaintiff. It appeared that the plaintiff, who is an optician, received an intimation from the defendant, the well-known carrier, that a packing-case belonging to him was at the defendant's warehouse, and he therefore went there to make arrangements for its removal. On arriving at the warehouse, he was requested by a clerk to accompany him to another part of the premises to see the case, and upon proceeding there he fell through a trap door communicating with a cellar, and left open for the purposes of the defendant's business. The consequence of the fall was that the plaintiff was severely injured, and it was to recover compensation for these injuries that he brought his action. The learned judge, who tried the cause, however, thought that upon the pleadings the action would not lie, and directed a verdict for the defendant on all the material issues. In support of the present motion the learned counsel now contended that as the warehouse in question was a public office, and as the public generally and in this case the plaintiff in particular, were invited to go there, the defendant was liable for any accident that occurred there through the defendant's negligence.

Rule nisi.

DOE *dem.* ROBERTS *v.* MOSTYN and OTHERS.—This was an action of ejectment tried in North Wales, before Williams, J. Verdict for the plaintiff. *Vaughan Williams* now moved for a rule to shew cause why the verdict should not be set aside and entered for the defendants, and why execution should not be stayed. The case will be reported next week. *Rule refused.*

PARKINSON *v.* MUSGROVE and ANOTHER.—This was an action against the sheriffs of Middlesex for an illegal distress, tried before Jervis, C.J. at the sittings after term Verdict for defendants. The plaintiff now moved in person for a new trial on affidavits negativing parts of the evidence given at the trial. CRESSWELL, J.—There is no the least ground for disturbing the verdict in this case. JERVIS, C.J.—This was a very vexatious and improper action *Rule refused.*

Re BANNERMAN.—*Knight* moved the Court for leave to be granted to a Mrs. Bannerman to execute a deed of conveyance, under the Fines and Recoveries Act, of some property to which she is entitled, her husband being insane and confined in a lunatic asylum. She became possessed of the property under the wills of John Bacon and Lady Johnson. [By the COURT.—We presume this is a proper application, and that every thing is regular.] *Knight.*—Yes. By the COURT.—You may take a rule.

Leave granted.

DOE *dem.* BENTHALL *v.* ROE.—*Colquhoun* moved for a rule for judgment against the casual ejector. There would be no necessity for mentioning this were it not that we did not move in the term within which we should have come for this rule. JERVIS, C.J.—In this Court the practice is, in such cases, to grant a rule to shew cause only.

Rule nisi.

ANONYMOUS.—*J. Brown* made absolute a rule for a suggestion to deprive plaintiff of costs, under the County Courts Act, moved a long time ago, no cause shewn.

Rule absolute.

The Court went into the Special Paper:—

ADDISON *v.* THE MAYOR, &c. OF PRESTON.—*Henderson* (*G. Denman* with him) was heard for the plaintiff. At close of plaintiff's case the Court rose. *Part heard.*

Wednesday, April 21.

ROBINSON *v.* GILL.—*Cowling* argued for defendant. *Welsby* for plaintiff. To be reported. *Cur. adv. vult.*

ABRAHAMS *v.* DENNIS.—*Byles*, Serjt. applied for a rule to show cause why the defendant should not pay the costs of proceedings subsequent to an undertaking by his attorney for settling the action. *Rule nisi.*

GLADSTANE and OTHERS *v.* ALLEN and OTHERS.—*Channell* for the plaintiffs. *Part heard.*

WILLIS *v.* LORD CANTERBURY.—*Smith* shewed cause why the order for special jury should not be set aside. The order was obtained on the ground that it was necessary in order to learn what were the proper charges in a tailor's bill. *Order set aside.*

ADDISON *v.* MAYOR, &c. OF PRESTON.—Special case. Held that the defendants were not liable to this action, which was one of debt. To be reported.

BAIL COURT.

Reported by T. W. SAUNDERS, Esq. of the Middle Temple, Barrister-at-Law.

Wednesday, April 21.

(Before Mr. Justice COLERIDGE.)

REG. *v.* THE RECORDER OF LEEDS.

Ex parte BARKER.

Order of affiliation—Appeal—Notice of recognisance.

Hardy moved for a rule calling upon the Recorder of Leeds and Jane Tasker to shew cause why a writ of mandamus should not issue commanding the said recorder to enter continuances and hear two appeals against two orders of affiliation, whereby Mark Barker was adjudged to be the putative father of two bastard children. The following were the circumstances under which this application was made. It appeared that the woman having been delivered of twins, she applied to justices for a summons against the putative father. Upon the hearing of the case on the 27th of December last, the justices adjudged the said Mark Barker to be the putative father, and verbally, at that time, made an order that he should pay 1s. per week for each child. Immediately upon this, the putative father gave verbal notice of appeal. Two orders were subsequently regularly drawn up and served, and the putative father duly entered into recognisances as required by law, but the notice which he gave the woman of his having done so, was in the following form:—

Borough of Leeds, in the county of York, to wit. } As attorneys for and on behalf of Mark Barker, of Leeds, in the county of York, woolsorter, we do hereby give you notice that the said Mark Barker has entered into a recognisance before Charles Gascoigne Maclea, esquire, one of her Majesty's justices of the peace acting in and for the said borough of Leeds, in the said county of York, to try an appeal at the next General Quarter Sessions of the Peace, to be holden at Leeds, in and for the borough of Leeds, against an order of affiliation made on the 27th day of December last, whereby the said Mark Barker was adjudged to be the putative father of two bastard children, of which you, Jane Tasker, had then lately been delivered. Dated the 5th day of January, 1852.

Yours, &c.

FERNS and ROOKE,

Attorneys for the said Mark Barker.

To Jane Tasker and to John Hope Shaw, esq. and Darnton Lupton, esq.

Upon the appeals coming on for trial at the Leeds Sessions, it was objected, on the behalf of the respondent, that the notice of recognisance was bad, there being no such order as that described, whereby the appellant was adjudged to be the putative father of two bastard children; the recognisance speaking also of only one appeal, whereas there were two. Against this objection it was contended, that the notice of recognisance was sufficient to convey to the woman all that it was necessary she should know. The learned recorder, however, thought the objection was good, and refused to hear the appeals.

It was now contended that the recorder was wrong, that the notice was sufficient, and that he ought to have heard the appeal. (*Reg.* v. *Holborow*, 3 New Sess. Cas. 723; 14 Law T. 201. *Rule nisi.*

REG. *v.* THE MAYOR, ALDERMEN, AND BURGESSES OF HARTLEPOOL.

Municipal Corporation—Non-election of auditors and assessors.

Cleasby moved for a mandamus commanding the mayor, aldermen, and burgesses of Hartlepool to proceed to the election of auditors and assessors for the borough, they having neglected to do so on the 1st of March, as required by the Municipal Corporation Act. *Rule absolute.*

REG. *v.* THE MAYOR, ALDERMEN, AND BURGESSES OF BANBURY.

Mellish moved for a similar rule under similar circumstances. *Rule absolute.*

BUSINESS OF THE WEEK.

REG. *v.* ROBINSON.—*Cowling* moved to make absolute the rule herein for a quo warranto against Mr. Robinson, for exercising the office of Alderman of Newcastle, no cause shown. *Rule absolute.*

REG. *v.* STREET and OTHERS.—In this case a certiorari had been obtained to remove into this court the certificate of allowance of a poor-law auditor, in order that the same may be quashed for the disallowance of some items for law expenses, and a return having been made, *Poulden* now moved to quash the certificate. *Rule nisi.*

GLYN *v.* WILSON and OTHERS.—*Willes* moved, on the part of the defendants, for a rule calling upon the plaintiffs to shew cause why a rule obtained for a mandamus to examine witnesses in India should not be set aside.

Rule nisi.

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY, and C. J. B. HERTSLET, Esqrs. Barristers-at-Law.

Thursday, April 15.

BARBAT *v.* ALLEN and ANOTHER.

Objection to witness—Discretion of judge—Withdrawal of evidence—Evidence of defendant's wife—14 & 15 Vict. c. 99, ss. 1, 3.

Where an objection to the admissibility of a witness is taken and decided on by the judge, and afterwards withdrawn, the judge may refuse to allow such withdrawal; and per Pollock, C.B. he may refuse to allow any such waiver, even though made before his decision.

The Law of Evidence Amendment Act does not

make the wife admissible as a witness for her husband in civil cases.

This was an action on promises, tried before Pollock, C.B. at the sittings after last Michaelmas Term. Verdict for the plaintiff for 26*l.* 8s. The declaration was for work done and materials provided, and for divers journeys and attendances of the plaintiff in and about the business of the defendants; there were also counts for money paid and on an account stated. The defendants pleaded—1. Non-assumpsit. 2. Fraud and covin. The plaintiff, a Frenchman, had been employed by the defendants to go to Paris for the purpose of inducing customers to come to certain hotels they had established in London during the Exhibition last year; and on the trial the counsel for the defendants proposed to call the wife of the defendant Allen to prove that the person introducing the plaintiff (the defendants' manager and agent) had made use of expressions shewing fraud. The plaintiff's counsel objected, and the Lord Chief Baron refused to receive the evidence. Subsequently the plaintiff agreed to withdraw the objection, but the judge refused to admit the evidence. In Hilary Term, *Giffard* obtained a rule *nisi* for a new trial, on the ground of such rejection of evidence.

Hertslet now shewed cause.—The waiver of the objection taken to the reception of the evidence of defendant's wife can be no ground for a new trial. The Court cannot put the parties in precisely the same position they held on the former occasion. That waiver was made for the purpose of buying peace, and to prevent the defendants having a ground for a new trial, as no case had then arisen on the construction of the 14 & 15 Vict. c. 99; and if this rule were made absolute, the plaintiff could again, on the new trial, object to the admission of this evidence; so that no end would be gained. The Court will not try a cause by rules created by the parties, but will adhere to the strict law of evidence; and a consent to withdraw an objection cannot interfere with the discretion of the judge. If parties were allowed to make rules for themselves by consent, a case might occur in which they might consent to take the evidence of a person ignorant of the nature of an oath; but no judge would receive such evidence. Evidence of this kind had always been held inadmissible, as being contrary to public policy, and therefore the maxim, "*Quilibet potest renunciare juri pro se introducto*" does not apply. It is laid down in Buller's N. P. 286, that the evidence of husband and wife shall not be received for each other, because their interests are absolutely the same; nor against each other, because it is contrary to the legal policy of marriage. In *Davis* v. *Dinwoody*, 4 T.R. 678, Lord Kenyon said, "Independently of the question of interest, husbands and wives are not admitted as witnesses either for or against each other; from their being so nearly connected, they are supposed to have such a bias upon their minds that they are not to be permitted to give evidence for or against each other:" and Buller, J. said, "That is now considered a settled principle of law." There is a case of *Barker* v. *Dixie*, Ca. Tem. Hardwicke, 264, very similar to the present. There, the defendant was willing that the plaintiff's wife should be examined, and Lord Hardwicke, C.J. said, "The reason why the law will not suffer a wife to be a witness for or against her husband is, to preserve the peace of families; and therefore I shall never encourage such a consent:" and she was not examined. (*Hall* v. *Hill and Ux.* 2 Strange, 1094; 2 Taylor on Evidence, 905; *Rex* v. *Frederick and Tracy*, 2 Strange, 1095; and 2 Starkie on Evidence, were also cited.) With respect to the construction of the 14 & 15 Vict. c. 99, it will be argued on the other side, that as the evidence of husband and wife for or against each other is particularly excluded by the 3rd section in criminal cases, and nothing is said about civil cases, that therefore in the latter such evidence is admissible; but the Court will not, on a mere inference of this sort, and without an express enactment, admit evidence which it has always hitherto been considered desirable, for the sake of the peace and happiness of families, to exclude. The opinion of the late Lord Chancellor on the proper construction of this Act is shewn by his judgment in *Perciral* v. *Caney*, 18 Law T. Rep. 150. Lord Truro there said,—"The long-established rule of law is, that a wife cannot be examined for or against her husband; and no alteration has yet been made in that established rule of law. It is a rule founded on a principle which is more valuable even than the administration of justice,—the necessity of preserving the confidence and happiness of domestic life." That was a judgment delivered on the 26th of January, after the Law of Evidence Amendment Act came into operation. For these reasons it is submitted the rule ought to be discharged.

Giffard, in support.—The wife is admissible as a witness for her husband under any circumstances. But first, as to the construction of the new Act, the 1st section repeals a certain portion of Lord Denman's Act; then the 3rd section says, that "nothing herein contained shall in any *criminal* proceeding render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband;" therefore, criminal cases being alone mentioned, this evidence is admissible in civil cases. "*Expressio unius est exclusio alterius.*" The words of the Act are to be construed so as to give effect to them all. The reason why such evidence was not admitted, was on the ground of interest, and this Act, by repealing a part of Lord Denman's Act, and admitting the parties to the suit, has destroyed that objection, since the interest of the husband and wife are identical; the evidence of the wife cannot, therefore, on the ground of interest, be any longer excluded. Then, as to the other ground that has been urged,—the sacredness of the conjugal relation. [POLLOCK, C.B.—The law considers that domestic happiness is worth more than arriving at the truth: it is the same with the relation of attorney and client. No doubt much might be obtained by examining the attorney; but the law says it is more desirable to sacrifice that means of getting at the truth, than to destroy the confidence that ought to exist between the parties.] The third section decides the question. In the case of *O'Connor* v. *Marjoribanks*, 4 M. & G. 440, the question was, whether the widow of A. was admissible as a witness in an action of trover by his personal representatives, for the purpose of shewing that she pledged the goods with the defendant by her husband's authority; and Talfourd, Serjt. argued that the admission of such evidence would have the worst consequences, and he contended that it would violate the sacredness of conjugal communications; and Maule, J. said, "The rule can scarcely stand upon that ground. If the question had arisen between third parties, the widow might clearly have been called to prove that she pledged the plate with her husband's consent or by his authority. That puts an end, therefore, to the sacredness of conjugal communications as the foundation of the rule contended for." [PARKE, B.—The old law was, that husband and wife were not admissible for or against each other. Then, does the new Act render such evidence admissible? The 1st section clearly does not: it repeals a part of Lord Denman's Act, so far as relates to parties to the suit, but leaves the husband and wife incompetent. The only question then is, whether the 3rd section renders such evidence admissible. That section comes in by way of proviso, and provides that nothing contained in that Act shall, in criminal cases, render any husband or wife competent or compellable to give evidence for or against each other; but in criminal suits the wife may be a single party to the suit, which is not so common in civil suits.] All the arguments shutting the husband's mouth are in favour of the defendant. The husband may himself now give evidence; and I contend that the wife may also; because the true reason for the non-reception of such evidence was, interest; and that is now removed, their interests being identical. (He cited in support the judgment of Tindal, C.J. in *Worrall* v. *Jones*, 7 Bing. 399; Gilbert's Law of Evidence, 130, 4th edit.; Taylor on Evidence, 872; *Aflalo* v. *Fourdrinier and Another*, 6 Bing. 306; *Pipe* v. *Steele*, 2 Q.B. 736; Co. Litt. 6 *b*.) Then as to the question whether such evidence may be received by consent: in the case of *Pedley* v. *Wellesley*, 3 C. & P. 558, Best, J. said he would admit such evidence on consent; and he said Lord Mansfield had permitted a plaintiff to be examined with his own consent, which he (Best, J.) thought was right. Take the case of an attorney. An attorney may give evidence of any fact not coming to him in his capacity of attorney. May it not be so here? In this case the wife of the defendant was to be called not to state any communication made to her by her husband, but a statement made by a third person. At all events, her evidence may be received in matters unconnected with conjugal confidence. For these reasons, it is submitted, this rule should be made absolute.

PARKE, B.—I am of opinion that this rule ought to be discharged. If the question had been merely whether, when the parties had waived an objection to the admissibility of a witness, the judge could refuse to receive his evidence, I should have paused before deciding that the Lord Chief Baron was right, although I am not prepared to say he would have been wrong. But in this case it was clearly in the power of the judge, after the objection had been taken and decided on by him and afterwards withdrawn, to refuse to allow the plaintiff's counsel to waive the objection so decided on. The only question then is, whether this evidence ought to have been received under the 14 & 15 Vict. c. 99; and I am clearly of opinion, on looking to the provisions of that Act, that it never was so intended. The 6 & 7 Vict. c. 85, enacts that no person offered as a witness shall thereafter be excluded by reason of incapacity from crime or interest, &c.; and it afterwards proceeds to provide, "that this Act shall not render competent any party to any suit, action, or proceeding individually named in the record, or any lessor of the plaintiff or tenant of premises sought to be recovered in ejectment, or the landlord or other person in whose right any defendant in replevin may make cognisance, or any person in whose immediate and individual behalf any action may be brought or defended, either wholly or in part;" now so much of that Act as I have read is repealed by the new Act; but the section proceeds, "or the husband or wife of such persons respectively;" and this latter part is left unrepealed, and consequently they remain as incompetent as before. The only question is on the third section, which enacts that nothing therein contained "shall in any *criminal* proceeding render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband." And it is argued on the principle, "*expressio unius est exclusio alterius*," that, therefore, in civil cases such evidence is to be received; but it cannot raise such an implication, and the third section was, in my opinion, introduced to make the matter more sure than it was before. The law, therefore, stands as settled by the first section, which leaves husband and wife as incompetent to give evidence for or against each other as ever.

PLATT and MARTIN, BB. concurred.

POLLOCK, C.B.—I also concur in the judgment of the Court, and think the rule ought to be discharged; but I still remain of opinion, that whatever the counsel in the cause may consent to, it is the duty of the judge to see that the whole law, including the law of evidence, is properly administered; and frequently, I think, he would be justified in calling upon parties to adhere more strictly to the law. Strictly speaking, all objection to the admissibility of a witness ought to be taken on the *voire dire*; and I have known judges say,—"Sir, you are now too late, and I will not admit your objection;" but by the present practice, a witness may be objected to at any time, subject to the discretion of the judge. It is not competent for parties to make their own law, and to request the Court to administer it. Counsel might consent between themselves, that a person who was not aware of the nature or obligation of an oath should be examined, or a person without being sworn; but surely the judge could, in his discretion, object to receive such evidence. As to the other question, I am of opinion, that, under the new law of Evidence Act, the evidence of the wife is inadmissible. There are other things in the world as desirable as obtaining the truth, and the peace of families is one of them. To secure this, the Legislature thought fit, as I think rightly, to sacrifice one of the means of arriving at the truth; namely, by the examination of the wife. The history of this Act was given by Lord Truro, in one of his judgments, in which he said, that when the bill was before the House of Lords, he moved that the clause which gave the Courts of Law the power of examining the wife, be struck out, and it was struck out accordingly. In another clause, there was, however, an enactment to prevent the reception of the evidence of the wife or husband in the trial of criminal offences. That portion of that clause, by an oversight, and in consequence of the late hour at which the bill was discussed, had been permitted to remain. For these reasons I am of opinion that this rule ought to be discharged. *Rule discharged.*

Friday, April 16.

REG. *v.* ELIZABETH JONES.

Vagrant Act—Conviction—Reputed thief—Frequenting a street.

Does the stat. 5 Geo. 4, c. 83, s. 4, render any reputed thief who is found frequenting any street with intent to commit felony, liable to be punished as a rogue and vagabond: or, is the clause limited to public streets, highways, &c., leading to rivers or canals, or highways adjacent to places of public resort?

The defendant had been convicted and sent to the Westminster House of Correction as a rogue and vagabond, under the 4th section of 5 Geo. 4, c. 83, and the conviction alleged that on, &c. the defendant being, &c., was frequenting a street, called Regent-street in, &c. with intent to commit felony.

Huddleston moved for a Habeas Corpus to bring up the body of the said E. Jones, in order that she might be discharged on the ground that the conviction was informal and bad. The question turns upon the construction to be put upon the stat. 5 Geo. 4, c. 83, s. 4 (the Vagrant Act). This case had been before Crompton, J. at Chambers, who referred the matter to the Court, and as the point has before arisen in the Court of Q. B., and a difference of opinion there existed among the learned Judges of that Court, it was deemed proper to make the present application to this Court; the case alluded to in the Court of Q. B. is, *Re John Brown*, 18 Law T. Rep. 238. The words of the statute are:—"Every suspected person or reputed thief frequenting any river, canal, or navigable stream, dock, or basin, or any quay wharf, or warehouse, near or adjoining thereto; or any street, highway, or avenue leading thereto; or any public resort or any avenue leading thereto;

or any street, highway, or place adjacent with intent to commit felony, shall be deemed a rogue and vagabond." This conviction does not allege that at the time of apprehension the party was in a highway, &c. leading to a river, or quay, &c., or adjacent to a place of public resort, nor does it state the street to be a public street or place of public resort.. A similar question was some time since before Patteson, J. at Chambers, who had subsequently written his opinion upon the subject; that opinion was in the following terms:—"I am of opinion that the words, 'leading thereto,' must be coupled with 'street and highway,' as well as with 'avenue,' and that the offence is confined to streets and highways leading to a river, &c. In the repealed statute, 3 Geo. 4, c. 40, no doubt can be raised, for 'leading thereto' is coupled directly and unequivocally with 'streets and highways.' The same construction must prevail as to the 5 Geo. 4, c. 83, for the Legislature never could have intended, by the alteration of a word or two, rendering the sense only somewhat doubtful, to introduce an entirely new and different offence. Prisoners must be discharged.—J. Patteson." The 5 Geo. 4 was not passed for the purpose of amending, but only of renewing the 3 Geo. 4, c. 40, which was about to expire; and the intention of the Legislature was, in the 5 Geo. 4, to refer to roads, streets, and highways, leading to canals or places of public resort; in the earlier part of the same section, the words shewed that the offences there described referred to all highways; but in the provision as to reputed thieves, the statute was restricted to certain particular highways. It would seem to appear that the Legislature wished to protect the valuable property on quays and canals, and navigable rivers, which was much exposed to depredation. The second objection to the conviction is, that it declared that this person did frequent a certain street, with intent to commit a felony, but it did not say with intent to commit felony *there*. *Fletcher* v. *Calthrop*, 6 Q. B. 880, shews that the word there should be inserted in the conviction; that was a case under the Night Poaching Act. [MARTIN, B.—The 5 Geo. 4, c. 83, does not say that the felony is to be committed there.] Nor did it in the case referred to.

Rule nisi, on the first point only.

FREGARN v. BARNS and BARTON.

Constables' duties—Parish constables—County constables.

When a warrant is directed to a parish constable only, can it be properly handed over to and executed by a county constable?

This was an action for false imprisonment, tried before Talfourd, J. in Wiltshire, when the plaintiff was nonsuited, but the damages were assessed at 15*l.* in case the Court should be of opinion the nonsuit was wrong, and leave was given to the plaintiff to move to set aside that nonsuit and enter a verdict in his favour for the 15*l.* if the Court should be of opinion the plaintiff was so entitled.

Kinglake, Serjt. moved accordingly.—The whole question turned upon the validity of the arrest. The plaintiff insisted the arrest was improper, for this reason,—the plaintiff was accused of an indictable offence, and the warrant for his apprehension was directed simply, "To the Constable of Dancy, in the said County." There was a constable of Dancy regularly appointed; but this warrant, instead of being executed by him, was handed over to the defendant Barton, who was only a county constable, and who, under the circumstances, therefore, had no power to execute the warrant in the manner he did, or at all, and the arrest was improper. The 5 Geo. 4, c. 18, s. 6, and the case of *Rex* v. *Weir*, 1 B. & C. 288, shew the clear statement of the law at that time. Then the 11 & 12 Vict. c. 43, repeals the former statute, but contains a similar section in substance and to the same effect, relative to this point as was in the previous Act. It was contended by the other side that under the Act for the appointment of constables, the 2 & 3 Vict. c. 93, s. 8, and the general powers therein contained, the county constable may do the act required.

MARTIN, B.—They have, doubtless, the power to execute the warrant in some way or other, provided it be properly directed to them; but here it appears to have been directed to the parish constable of Dancy, and to him only. *Rule nisi.*

Monday, April 19, 1852.

CLAY and NEWMAN v. SOUTHEN.

Two members of a company, which company was not registered, nor had availed themselves of the Joint Stock Companies Act, entered into a contract in their own names, although the contract appeared to be for the benefit of the company:

Held, that the two members who had so entered into the contract in their own names, may alone sue and be sued thereon.

This was an action of indebitatus assumpsit for goods sold and delivered, tried before Platt, B. when the plaintiffs obtained a verdict for £203. 13s. with leave reserved to the defendant to move to a nonsuit, if the Court should be of opinion the plaintiffs were not entitled to recover, the only point being whether the plaintiffs, who were members of a joint-stock company, yet without having availed themselves of the Joint Stock Companies Registration Acts, should have sued in their own names, or in the name of the company.

Alexander, Q.C. now moved accordingly. Although the contract here was entered into by or on the behalf of the plaintiffs, it was for the benefit of the company of which they were members, and the partners therefore were the proper parties to bring the action; the plaintiffs, being merely their agents, were not entitled to sue. [PARKE B.—Was there not a similar case to this some short time since? *Gray*, amicus curiæ.—Yes, the name of it was *Williams* v. *Marsden*]. *Williams* v. *Marsden* is nowhere reported, but Mr. Phipson who was in that case, and is in this, informs me the contract there was altogether a different one to the present: here the consideration is from the company. [PARKE B.—Where the contract is with the parties to the action, have they not the right to sue? The proprietors appear to be a fluctuating body of persons, so that it would be almost impossible to know who they all were.] That is their own default, they may have availed themselves of the Joint-Stock Companies Acts. *Lucas* v. *Beal*, 20 L. J. 134, C. P., is applicable, and probably it would be best to procure the actual agreement in *Williams* v. *Marsden*.

PARKE, B.—The plaintiffs are the actual contracting parties here in the contract, and the principle is so plain that I do not think it necessary to look into any other contract to decide this; on the face of the contract, they are the actual parties to it and may sue,—the rule is general either that they themselves may sue in their own names, or in the name of the company they represent, of which they are members, shewing that they were the agents duly authorized to enter into such a contract on behalf of the company, and I am clearly of opinion that the plaintiffs may sue and be sued upon this contract.

ALDERSON, B.—I am of the same opinion. *Lucas* v. *Beal* is a different case.

MARTIN, B.—I am also of the same opinion, and the contract seems to me to have been drawn so for the express purpose of suing in their own names if they pleased. I think they are entitled to do so, and of being sued also if it had been necessary.

Rule refused.

BUSINESS OF THE WEEK.

Thursday, April 15.

FOWLES v. THE GREAT WESTERN RAILWAY.—This was an action on the case against the defendants as carriers. The declaration alleged a contract to carry certain goods from Bristol to Brompton; that they were, whilst in the course of such carriage, and in the possession of the defendants, thrown down and broken: it also alleged negligence, and contained a count in trover. The first plea was, Not guilty, and that the goods were not delivered and received for the purposes alleged in the declaration. There were also numerous other pleas. At the trial a verdict had been entered for the plaintiff, and the defendants had obtained a rule to set aside the same and enter a verdict for the defendants. *Kinglake* shewed cause; *Butt*, contrà. The question was, whether the allegations contained in the declaration were supported by the evidence, as it appeared that the company, by the printed conditions on the back of the receipt for carriage, confined their liability to the limits of their line of railway, and that the evidence proved that these goods had been broken at Brompton whilst being removed by a carrier to the plaintiff's residence there. The Court thought this was a fatal variance, and directed a verdict to be entered for the defendants on that issue. *Rule absolute.*

BLUCK v. GOMPERTZ. *Cur. adv. vult.*

OXLEY v. COLLINS.—*Lush* moved for judgment on a warrant of attorney. *Granted.*

WISE v. COLLETT.—*Humfrey* moved for a rule to shew cause why the verdict found for the defendant in this case should not be set aside and entered for the plaintiff. The action was brought on a bill of exchange, and was tried before Pollock, C B. The defendant pleaded that the bill was given for a gambling transaction. At the trial the defendant began, and it became necessary to identify the bill in question. No notice to produce had been given, and the plaintiff, therefore, refused to produce it. *James*, for the defendant, then called the plaintiff's attorney, and asked him whether the bill was not in court. *Humfrey* objected; but his lordship decided that the question might be put and it was then admitted that the bill was in court, but that the plaintiff refused to produce it, as no notice to produce had been given. The defendant's counsel then asserted his right to give secondary evidence; and the Lord Chief Baron, after consulting the other judges, admitted the secondary evidence, reserving leave to the plaintiff to move to have the verdict entered for him, if such ruling was wrong. It was now contended that the object of the notice to produce was properly laid down in 1 Stark. on Evid. 404. It is there said, that "proof that the adversary or his attorney has the deed or other instrument in court, does not supersede the necessity of notice; for the object of the notice is, not merely to enable the party to bring the instrument itself into court, but also to provide such evidence as the exigency of the case may require to support or impeach the instrument."

Rule nisi granted.

BRADSTREET v. HAMMOND.—Tried at Norwich before Lord Campbell, C.J. when a verdict was returned for the plaintiff on both the issues joined, and a verdict for the defendant on what it was now contended was a mere suggestion, with leave reserved to move to enter a verdict for the plaintiff for four guineas. *Byles*, Serjt. now moved accordingly. The action was in replevin for taking certain goods at Vauxhall, in the county of Norfolk. Pleas—1. Non cepit; 2. Cepit in alio loco. The seizure was for poor-rate, and the question arose, whether the churchwardens and overseers were entitled to distrain in this place, that is to say, whether this house was situated in Norfolk or Suffolk. *Rule nisi granted.*

KEY v. COTTESWORTH. *Postponed.*

HILL v. PHILP. *Postponed, that copies of letters may be furnished by defendant.*

FRANCIS and WIFE v. DANMAN.—*Needham* moved for a rule to shew cause why the judgment signed herein, and all subsequent proceedings, should not be set aside, with costs, on the ground of irregularity. Pleas were delivered on the 13th March, and judgment signed on the 16th. The defendant was under terms to plead issuably. The question was, whether one of the pleas pleaded was an issuable plea. *Rule nisi granted.*

PHILLIPS v. GOLDSMID.—*Willes* moved for a rule calling on the defendant to show cause why the peremptory undertaking given herein should not be enlarged.

Rule nisi granted.

SAME v. SAME.—*Needham* moved for judgment as in case of a nonsuit. *Rule absolute if Willes's motion fails.*

GRIFFIN v. HUMFREYS. *Postponed.*

Friday, April 16.

SUTTON and OTHERS v. HEATH.—*Keating*, Q.C. moved to set aside the plaintiff's verdict for 365*l.* 9s. tried at Stafford before Wightman, J. and for a new trial, on the ground of surprise upon affidavits. *Rule nisi.*

SAUNDERS v. DAVIS and WIFE.—*Grove* moved in this case, tried before Martin, B. at Cardigan, to set aside the defendant's verdict, as being against the evidence and the summing up of the judge. It was an action for money lent, and upon an account stated. *Rule nisi.*

COPNER v. COPNER.—Tried in Middlesex, before Platt, B. and was an action of assumpsit on two promissory notes. The verdict was found by the jury for the plaintiff, and the defendant having obtained a rule to set aside that verdict, and have a new trial, *Davis* shewed cause. The question was whether, under the circumstances, a payment made by the defendant's wife was a sufficient payment to take the case out of the Statute of Limitations. *Anderson* v. *Anderson*, Holt's Nisi Prius, 521; *Pellithorpe* v. ——, 2 Esp. 511; *Burn* v. *Bolton*, 2 C. B. 476; *Waters* v. *Tomkins*, C. M. & R.; and *Cleave* v. *Jones*, and *Willes* v. *Newnham* were cited. [PARKE, B. mentioned *Foster* v. *Bates*.] *Butt* and *Hindmarsh*, contrà, not called upon.

Rule absolute for a new trial; costs to abide the event.

FLORY v. DENNY.—Tried before Adams, Serjt. at Bury, Suffolk: verdict for the plaintiff for 153*l.* 5s. with liberty to move for a nonsuit. *O'Malley* now moved accordingly. This was an action of trover for a moveable windmill and appurtenances. Pleas—Not guilty, and not possessed. The question was as to the validity of a mortgage, and it was contended that no valid assignment could take place without a deed or delivery. *Cur. adv. vult.*

HOLMES v. SIXSMITH.—Tried before Cresswell, J.; verdict for the plaintiff. *Wilkins*, Serjt. moved, pursuant to leave reserved, to enter a nonsuit. *Rule nisi granted.*

MORGAN v. GAUNTLETT.—Tried before Cresswell, J. at Durham. *Wilkins*, Serjt. moved for a new trial, on the ground that the verdict found for the plaintiff was perverse.

Rule nisi granted.

MONTAGUE v. CATER.—Tried before POLLOCK, C.B. at Guildhall; verdict for the plaintiff. *Bramwell* moved to enter a verdict for the defendant. *Rule nisi granted.*

Tuesday, April 20.

M'KINNON v. PENSON.—*Knowles* moved in arrest of judgment, on the ground that no cause of action was disclosed on the declaration. *Rule nisi granted.*

Ex parte E. JENNINGS, Gent. One, &c.—*James* moved, on behalf of one Blackstone, for a rule calling on Jennings to shew cause why he should not account for 2,000*l.*, 200*l.* and 50*l.* received by him on behalf of Blackstone, and pay over the balance due to him. *Rule nisi granted.*

WHITMORE v. MORGAN.—Tried before Martin, B. and a special jury at Guildhall: verdict for the plaintiff. *James* moved, on an affidavit of facts which had occurred since the trial, for a new trial.

Rule nisi granted, to come on as a motion.

NEALE v. LEVY.—Tried before Parke B. at Maidstone. *James* moved to set aside the nonsuit, and for a new trial.

Rule nisi granted, to come on as a motion.

SELLS v. BOWES.—MEGUISSON v. LADY GLAMIS.—Tried before Parke, B.: verdict for the plaintiff. *James* moved to enter a verdict for the defendant pursuant to leave reserved. Replevin.—Avowry.—Rent due and in arrear. Pleas in bar. *Non tenuit.—Rien in arrear.* The question was the same in both cases, and was, how far a parol demise operated as a demise of tithes. *Rule nisi granted.*

HILL v. PHILP.—This case, which was tried before the Chief Baron at the sittings in Middlesex after last Term, when a verdict was returned for the defendant, has several times been brought before the Court. It was an action brought against the keeper of a lunatic asylum for cruelty and improper treatment, and there was also a count in trover. The Lord Chief Baron told the jury that if the wife of the plaintiff gave the directions contained in certain letters produced, and the defendant's opinion went honestly with hers, the defendant was justified, and not liable to an action. That, it was contended, was wrong; and there was also a question raised as to whether the defendant was justified in delivering certain books and papers of the plaintiff to his wife. *James* moved for a new trial, on the grounds of misdirection, improper reception, and rejection of evidence. *Rule nisi granted.*

ELLICOMBE v. STEVENSON. *Cur. adv. vult.*

GANT v. GROOM.—Tried before Coleridge, J. at Chelmsford: verdict for the plaintiff. *Shee*, Serjt. moved for a new trial on the ground of misdirection. *Granted.*

SAME v. SAME.—*Shee*, Serjt. also moved in arrest of judgment, on the ground that the declaration was insufficient.

Rule nisi granted, Channell, Serjt. to have similar rules in the case moved by him.

COLQUHOUN v. SILVESTER.—Tried before Lord Campbell, C.J. at Derby: verdict for plaintiff, for 206*l.* *Macaulay* moved for a new trial, on the ground that the verdict was perversely against evidence.

Rule nisi granted.

WARD v. WARD.—Verdict for plaintiff; damages, 40s. *Macaulay* moved to enter a verdict for the defendant. The action was in trespass. Plea—Right of way by prescription.

EXCHEQUER.

He contended that nonuser by a tenant could not affect the reversioner. *Rule nisi granted.*

JOLLY v. HANCOCK and ANOTHER.—Tried before Wightman, J. at Stafford: verdict for plaintiff; damages, 30*l.* *Alexander* moved to enter a verdict for the defendant. The action was to recover a deposit paid on the purchase of an estate, and the question arose whether the certificate on the examination of a married woman, under 3 & 4 Wm. 4, c. 74, must be given up to the purchaser, or whether the memorandum of the commissioners on the back of the deed of acknowledgment was sufficient. *Rule nisi granted.*

PERRY v. DOIDGE and ANOTHER.—Tried before Erle, J. Devon: verdict for plaintiff; damages, 25*l.* *Kinglake*, Serjt. moved for a new trial, on the ground of misdirection. This was an action of slander, and the only question was whether the communication was privileged. *Cur. adv. vult.*

BRADSTREET v. HAMMOND.—In this case, *Palmer* moved for a cross rule to set aside the verdict entered for the plaintiff on two issues joined, and to enter a verdict for the defendant on the third issue, which the plaintiff contended was a mere suggestion. *Rule nisi.*

PONTING v. WATSON.—Tried before Talfourd, J. at Somerset Assizes: verdict for plaintiff, for 20*l.* *Slade* moved for a new trial. Action for libel and malicious prosecution. The question was, whether malice was established, and whether the law was not put in motion by the magistrates and not by the defendant. *Rule nisi granted.*

COE v. PLATT.—Tried before Cresswell, J. verdict for the defendant. *Atherton* moved, pursuant to leave reserved, to enter the verdict for the plaintiff. The question arose under 7 Vict. c. 15, s. 21, and was, whether an upright shaft connected with and worked by an horizontal shaft, the former being in motion, but not for manufacturing purposes, and the latter being in motion for manufacturing purposes, was within the meaning of that section. *Rule nisi granted.*

EVANS v. ATTWOOD.—*H. Davison* moved for across rule for a new trial, in the event of *Crowder* succeeding on the rule obtained by him. *Granted.*

GIBSON v. MARSDEN.—*Brewer* moved for a rule to compute. *Granted.*

COLBERT v. BRITTAIN.—*Pulling* moved for a distringas. *Granted.*

SAME v. SAME. *Granted.*

MEYLER v. KEIRAN.—*Fisher* moved to rescind order of Platt, B. This was an action on an Irish judgment, and the order was to set aside defendant's application for security for costs, the plaintiff undertaking to deduct any costs from the amount of the judgment recovered against the defendant. It was now argued that the judgment might be assigned. (9 Geo. 2, c. 5, Irish stat; *Fitzgerald* v. *Fitzgerald*, 19 L.J.; *Limerick, &c* v. *Fraser*, 4 Bing.)

Rule to shew cause why, if the plaintiff should not assign the judgment, or a part of it, as security, he should not find security for costs, granted.

Saturday, April 17.

ATKINSON v. STEVENS.

Judgment for the defendant, on the ground of the insufficiency of the declaration, with leave to the plaintiff to amend on payment of costs.

PELICHET v. LOADER.—Tried before the Lord Chief Baron, at the sittings in Middlesex after last Term: verdict for the plaintiff. *Knowles* moved for a new trial, on the ground of misdirection, and that the verdict was against evidence. The declaration charged the defendant, an attorney, with negligence in putting out 350*l.* the money of the plaintiff. The defendant and his father had always acted as a friend of the plaintiff, and had never been in the habit of making her any charge. The money had been lent to Sir Gregory Lewin, on the security of his promissory-note, accompanied by the deposit of certain shares in the Sheffield and Retford Banking Company, and the Sheffield and Manchester Railway Company. The Lord Chief Baron had left these question to the jury—1. Had defendant been employed as an attorney? The jury found he had. 2. Could the defendant have made out a bill? The jury found he could, and have required payment; and, 3. Was there such negligence as he was responsible for as an attorney? The jury found there was. It was now contended that the question of employment as an attorney never arose; that the declaration did not charge the defendant as attorney, and that therefore the true question was not left to the jury. *Rule nisi granted.*

JACKSON v. CHICHESTER.—Tried at Liverpool before Cresswell, J.: verdict for the plaintiff. This was a scire facias on a judgment for 200*l.* The defendant pleaded a discharge under the Insolvent Act, in Ireland. In the schedule, the plaintiff was described as "Mr. Jackson, merchant-tailor, Casson-street, Liverpool, England—about 100*l.* contracted 1844. Mr. Jackson holds my bill for about 60*l.*" The defendant's names were George Augustus Hamilton Chichester, and he was insolvent under the name of Hamilton Chichester. The judge thought the identity of the plaintiff, and his debt in the schedule of the defendant as the insolvent, was not made out, and directed a verdict for the plaintiff, reserving leave to move to enter it for the defendant if the Court should think differently. *Watson* now moved accordingly. He cited 3 & 4 Vict. c. 107, s. 57; *Forman* v. *Drew*, 4 B. & C. 15; *Wood* v. *Jowett*, 8. V. 20; *Reeves* v. *Lambert*, 8 V. 214. *Rule nisi granted.*

EVANS v. ATTWOOD.—*Trespass.* Tried at Cardigan, before Martin, B.: verdict for the plaintiff, damages, 60*s.* *Crowder* moved to enter a verdict for the defendant. The only question was, whether the plaintiff had such a title as would support an action of trespass. *Rule nisi granted.*

FOQUET v. MOOR.—Tried before Talfourd, J: verdict for the defendant. *Kinglake* moved to set aside the verdict, and enter the same for the plaintiff, or for judgment non obstante veredicto, there being no evidence to go to the jury; or for a new trial, on the ground that the verdict was against the evidence. *Rule nisi granted.*

THOYTS and ANOTHER (Assignees of GODDARD, an Insolvent) v. HOBBS.—Tried before Wightman, J. at the last assizes for Berks: verdict for plaintiff for 400*l.* *Keating* moved for a new trial, on the ground of misdirection. This was an action for money had and received. *Plea*—General issue. The question arose on the validity of a bill of sale to the defendant, executed by Goddard fifteen months before his insolvency. The judge, on referring to 7 & 8 Vict. c. 96, s. 19, had directed the jury that if at the time the insolvent made the bill of sale he did it with a view to petitioning the Insolvent Debtors Court at any time when the necessity should arise, they would find for the plaintiff. *Rule nisi granted.*

Monday, April 19.

OSGOLD v. COLLIS.—Tried at Winchester before Erle, J. *Crowder*, Q.C. moved to set aside the defendant's verdict, and for a new trial, on the ground of misdirection, and that the verdict was against the evidence. *Cur. adv. vult.*

HADEN v. LANCASTER. *Cur. adv. vult.*

GANT v. PATRICK. *Cur. adv. vult.*

HARTLEY v. HADLEY.—Sir *A. Cockburn* moved in this case (tried before the Chief Baron in Middlesex) to set aside the plaintiff's verdict, on the ground of misdirection and that the verdict was against the evidence. The action was for the infringement of a patent. *Rule nisi.*

GRAY v. LUTHWAITE.—*Murphy*, Serjt. moved in this case (tried before Alderson, B.) to set aside the plaintiff's verdict, as being against the evidence, and for a new trial. *Rule nisi.*

Wednesday, April 21.

VINCENT v. ZULUETA.—*Bramwell* moved, pursuant to leave reserved, to reduce the plaintiff's verdict by 1,400*l.* *Rule refused.*

OLIVER v. ABBOTT.—*H. Hill* moved herein. *To stand over for inquiry.*

PASCOE v. HILL.—*Shee*, Serjt. moved to set aside the defendant's verdict as being against the evidence. The cause was tried in Middlesex before Martin, B. and as he thought it quite a question for the jury, which they had decided, he was not dissatisfied with it. *Rule refused.*

ROSKRUGE v. CADDY.—Tried in Cornwall before Erle, J. The defendant obtained a verdict, with leave reserved to the plaintiff to enter it for him for four guineas. It was an action of replevin, avowry for rent in arrear, with pleas denying the tenancy and of any rent in arrear. By an agreement of the 24th September, 1849, defendant agreed to accept the plaintiff as his tenant for seven years (this was void as a lease, not being by deed in compliance with the statute), at the rent of 80*l.* a-year, but to be varied according to the price of corn. Plaintiff, in the second year of his tenancy, was distrained upon for rent up to Midsummer, which was clearly wrong, the tenancy being a yearly tenancy, commencing at Michaelmas, and the rent payable at that time. Defendant, finding he was wrong, abandoned part, and sold beasts of the plough, although more than sufficient to satisfy all the rent could have been otherwise taken. On the 30th September, 1851, he distrained again, and that is the distress complained of. The avowry did not set out the rent as variable according to the price of corn, or the agreement upon which the land was held; for although it was void as a lease, yet the holding must be taken to be upon the terms contained in the agreement as a tenancy from year to year. The avowry was, therefore, clearly bad. This was raised at the trial, but there no amendment was made, although an opportunity was offered, the rent also was uncertain, and it was doubtful whether a distress under the circumstances could be taken. *Rule nisi.*

SAME CASE.—*Collier*, moved for a cross-rule for a new trial, on the ground of misdirection, and cited *Daniel* v. *Gracey*, 6 Q.B. *Rule refused.*

BRANDON v. SEWELL.—*Humphrey*, moved to set aside the defendant's verdict obtained before Martin, B. in Middlesex, on the ground that the verdict was against the evidence, and on affidavits. *Rule nisi.*

DOE *dem.* BENHAM v. BENHAM.—*Collier* moved in this case, pursuant to leave given at the trial in Hampshire, to set aside the verdict found for the lessor of the plaintiff: the question arose upon the construction of the will of William Beavan. *Rule nisi.*

ALLCHIN v. EAST UNION RAILWAY COMPANY.—*Byles*, Serjt. moved to set aside the plaintiff's verdict for 1,095*l.* and for a new trial, on the ground of irregularity and misdirection, or to arrest the judgment. *Rule refused.*

SOUTH EASTERN RAILWAY COMPANY v. THE LONDON AND SOUTH WESTERN RAILWAY COMPANY.—Sir A. COCKBURN moved to set aside the plaintiffs' verdict pursuant to leave.

Rule nisi. The Court suggested that it had better be made a special case.

LANDMAN v. ENTWISTLE.—Sir A. COCKBURN, moved to set aside the defendant's verdict pursuant to leave, and to enter it for the plaintiff for 350*l.* The plaintiff was an engineer, and had brought this action against the defendant, as one of the directors of a railway between Greenwich and the north of Kent, for services rendered by the plaintiff as engineer. *Rule nisi.*

BARON and OTHERS v. ROSCOW and ANOTHER.—*Atherton*, moved in this case, tried before Cresswell, J. at Liverpool, to set aside the defendants' verdict, on the ground of surprise, and on affidavits. *Rule nisi.*

NORMAN v. MARCHANT.—*Hawkins* moved, under the County Courts Act, that the party here be now entitled to his costs, the Courts of Q.B. and C.B. agreeing in opinion the word "may," in the Act, should be interpreted as "must." *Rule nisi.*

BROWN v. WARD.—*Welsby* moved to set aside the defendant's verdict pursuant to leave to enter it for the plaintiff for two guineas, the amount of the replevin bond. *Rule refused.*

WARD v. BROMHEAD.—*Crasby* moved to enter satisfaction on the roll. *Rule nisi.*

WILKES v. KAYE.—*Phipson* moved in this case, tried at Stafford, to set aside the defendant's verdict, on the ground of surprise and on affidavits; it was an action of trespass. The COURT suggested an arrangement, as the expense of the motion, new trial, &c. would probably exceed the value of the land. *Rule nisi.*

ROLAND v. BOYCE.—Tried before the undersheriff of Middlesex. *Lush* moved for a new trial, on the ground of misdirection; the action was by the payee or maker of a note for 10*l.* Pleas—As to 3*l.* 5*s.* payment before action; to the further maintenance of the action - payment of the residue, with the costs of the action to the time of payment; the debt had been paid, but it appeared all the costs had not. *Rule nisi.*

MELLERSH v. RIPPEN.—*Lush* moved, pursuant to leave, for a new trial, on the ground that the notice of dishonour given in the action by the indorsee and drawer of a bill was insufficient; he referred to *Beachum* v. *Cash*, 1 Dowl. & Ry. N.P. Rep. 3. *Rule refused.*

Jan. 26 *and* 28, *and April* 19.

MILLER v. SALOMONS.

Jews—Members of Parliament—The form of oath required of members before sitting in the House of Commons.

The oath of abjuration required by statute 6 *Geo.* 3, *c.* 53, *to be taken by Members of Parliament on taking their seats in the House of Commons, must be taken in its entirety, as set out in that statute. Where, therefore, a Jew claimed to take, and did take, such oath, which was binding upon his conscience, but omitted the words "on the true faith of a Christian," and afterwards sat and voted in the House of Commons:*

Held (by Pollock, C.B. Parke and Alderson, BB.), that although the oath was so taken by the Jew, because that form of oath alone was binding on his conscience, yet he was liable to the penalties imposed on all who should presume to sit and vote as members without having taken the oath of abjuration in its entirety as set out in that statute. Martin, B. dissentiente.

The action was in *debt* for three penalties of 500*l.* each, alleged to have been incurred by the defendant by reason of his having sat and voted three times as member for Greenwich, without having previously taken the oath of abjuration in the form prescribed by law. The defendant pleaded that he did not owe the money, and the cause came on to be tried before Martin, B. at the sittings after last Michaelmas Term, when a special verdict was agreed upon. The special verdict found that the name of her present Majesty had been substituted in the form of the oath tendered to the defendant, by the authority of the House of Commons, in lieu of that of King William, and that the defendant had taken that oath, *omitting the words "on the true faith of a Christian,"* after having taken the oaths of allegiance and supremacy on the Old Testament, as the form of oath binding on his conscience, and that he had then sat and voted.

Channell, Serjt. (with whom was *M'Namara*) for the plaintiff. The defendant had not, under these facts, taken the oath of abjuration as required by law, and was, therefore, liable in the penalties sought to be recovered by the plaintiff. He would premise that it could not be disputed that the statutes authorising the oath of abjuration were still in force, and that the defendant, though a Jew, was bound to take it. There were only two questions here—first, assuming that the defendant was bound to take this oath could he be properly sworn on the Old Testament? and secondly, assuming him to have been so sworn properly, as he omitted the words "on the true faith of a Christian," could he be said to have taken the oath at all? In arguing these two questions the attention of the Court would be directed to two classes of statutes—those, first, which imposed on members the duty of taking the oaths of abjuration and supremacy; and, secondly, certain other statutes exempting certain classes from the necessity of taking them, either in part or in whole; these again being subdivided into those affecting Jews alone, or in common with other subjects, and those which applied to other classes alone, such as Quakers, Moravians, and Roman Catholics; and, finally, he should draw attention to the statute 1 & 2 Vict. c. 105, which was general in its character. Observing this division, the first statute he would cite was the 1 Eliz. c. 1, the object of which was to restore the supremacy to the Crown. The 19th section of this Act gives a form for the oaths of allegiance and supremacy, and concludes with the peculiar expression "So help me God and the contents of this book;" the oath being termed a "corporal oath upon the Holy Evangelists." Then came the 5 Eliz. c. 1, which repeats the same form of oath, the 16th section referring to the oath required of members. The argument from these statutes is, that the oath required by members was a Christian oath, to be taken by Christians on the Holy Evangelists. The 3 Jas. 1, c. 4, followed, which contained the germ of the present oath of abjuration. The 13th section speaks of it as an oath to be taken on the Holy Evangelists, and the persons taking it are required to be such as confess, or do not deny, that they have taken the holy sacrament within twelve months. The 15th section gives the form of oath very similar to the present oath, concluding with the words "on the true faith of a Christian," and it was called the oath of "obedience and allegiance." [MARTIN, B.—What was to become of Jews, then?] They were not contemplated at that time as being likely to offer themselves to take such oaths. The plaintiff contends that the oath is imposed by statute with respect to Christians alone; that it must be taken on the Holy Evangelists, and by Christians who had taken the sacrament. It is true that members of Parliament were not there included in terms, but the 7 Jac. 1, c. 6, extends the oath to them, as also to all subjects, and the 30 Car. 2, c. 2, superadded the necessity of signing a declaration against Transubstantiation. Pausing here to inquire into the position of a member of Parliament in those days, it will be found that he had to take the oath of supre-

macy and allegiance, and to subscribe the declaration against Transubstantiation. Can any one doubt, then, that the Legislature had imposed a Christian oath, to be taken by a Christian—Christianity, then, as now, being a part of the law of the land? or that the Legislature meant to exact a test of Christianity from those required to take such an oath under such forms and circumstances? [Alderson, B.—I cannot understand how any one can deny the Transubstantiation in the Lord's Supper who does not admit the Lord whose supper it is.] It was difficult to conceive such a state of things, and it followed that the Legislature meant to impose an oath on Christians; and that being so, it is for the defendant to shew that the statute so imposing that oath is repealed as far as he is concerned. The 1 Wm. & M. c. 1, then followed, which repealed the 13 Car. 2 as to the members, and substituted other oaths, but they were to be taken in the same manner and form as the former oaths had been. The 6th section, in giving the oath, omits the words, "*on the true faith of a Christian;*" but the oath being required to be taken as the other was, is not the less a Christian oath. The 1 Wm. & M. c. 8, is said to have abrogated the former oaths altogether; but it is odd that the 1 & 2 Wm. 4, c. 9 (not referred to in the discussions which have taken place elsewhere), still mentions them; and the statute of Wm. & M. c. 8, while it declares that no one shall be called on to take the repealed oaths, gives in the 3rd section new oaths, which by the 5th section are required to be taken before the same person as the former oaths are, and gives a form of oath of allegiance and supremacy very much in the same sense, concluding, "so help me God," and omitting the words, "*on the true faith of a Christian.*" So matters stood till the 13 Wm. 3, c. 6, which imposed the oath of abjuration in the form now required, though it has undergone alteration to the names of persons in whom the succession to the Crown was limited down to the 6 Geo. 3. In no other respect has it been altered, that change being rendered advisable on the death of the Pretender. This form is given in the 10th section, and the 9th section gives the penalty. This was followed by the 1 Anne, stat. 1, c. 22, and the 6 Anne, c. 7, which latter again altered the oath with reference to the Electress Sophia and Prince George, the 20th section giving the oath with a blank for the name of the sovereign, concluding with the expression "on the true faith of a Christian." This was succeeded by the 1 Geo. 1, stat. 2, c. 13, which carried out the alterations contained in the statute of 6 Anne, and introduced three oaths, namely, of allegiance, supremacy, and abjuration, and in the 16th section gave the penalties now sued for. That Act enacts that no member shall sit or vote till he shall have taken this oath, together with the declaration against transubstantiation, in such a manner and form as it had been formerly taken; so that there has not been any real alteration. On the death of the Pretender in 1765, the 6 Geo. 3, c. 53, was passed, which gives the oath as before in substance, and requires it to be taken as before. We say that under this Act the defendant was called on to take this oath of abjuration in its entirety, and that as he did not so take it he is liable to these penalties. The next class of statutes are now to be passed in review, and among them stand first those affecting the Jews themselves. Of these no printed copies are accessible save those in the library of the Inner Temple and the Parliamentary Rolls; but it is necessary to refer to them minutely, because great stress is laid upon them on behalf of the defendant. On examination, however, it is not apprehended that they will defeat the view taken of the other Acts by the plaintiff. The first of these is the 9 Geo. 1, c. 24, which was passed under these circumstances:—The statutes imposing the oath of abjuration on all subjects were followed by others which relieved parties who registered their estates from the penalties of the Abjuration Acts; and then comes the 10 Geo. 1, c. 4, which extends the time for taking such oaths and making such registration, and exempts certain persons from registering. Up to a certain point this is purely an Act of indemnity, there being a provision applicable to Quakers, and then follows a clause relating to Jews, and permitting them to take those oaths, omitting the words "on the true faith of a Christian." It will be argued that this is a conclusive exemption in favour of Jews; but it is not so, for its benefits are confined to the oath prescribed by 9 Geo. 1, which required it to be taken by all the king's subjects above eighteen years, at Quarter Sessions, or the alternative of registration. The true effect, then, of this Act is that the Legislature for that limited purpose permitted Jews to take this oath in that form, but it goes no further, and gives no general exemption to Jews from taking the oath in the form required of members of Parliament. The next statute is 13 Geo. 2, c. 7, for the naturalisation of foreign Protestants, where the same provision is made as to Jews; and that shews again only a limited exemption for a limited purpose. To this as to all other statutes the same observation refers. The oath required of members is a Christian oath, and is not affected by these peculiar provisions. Then come the Acts relating to Quakers, an examination of which will shew the great care and accuracy used by the Legislature when seeking to exempt certain classes from oaths imposed on all generally by former Acts. The 13 & 14 Car. 2, c. 1, is the first of these, and gives a penalty against all Quakers refusing to take oaths; but that was followed by the Toleration Act (1 William & Mary, sess. 1, c. 18), the 7 & 8 Wm. 3, c. 34; 1 Geo. 1, stat. 2, c. 6, making perpetual the permission to Quakers to affirm, which was carried out further by 8 Geo. 1, c. 6; the 22 Geo. 2, c. 4; and 9 Geo. 4, c. 32, which extended the former Acts to criminal as well as to civil cases; and, finally, the 3 & 4 Wm. 4, c. 49, passed in 1833, allowed Quakers to affirm in all cases where by any Acts an oath was required before. [Martin, B.—Mr. Pease had been elected before that Act, and had taken his seat.] Yes; but he was liable to penalties if he had voted without taking the proper oaths, though no action was brought, and he was no doubt well advised in seeking to protect himself. It has not been argued that Quakers were not exempt; they have been referred to expressly to shew with what care the Legislature expresses itself when it seeks to exempt any class from the necessity of taking these oaths. The real importance of the Act of Wm. 4 is, that it introduces into the affirmation the assertion of the affirmant being a Quaker, thus explaining its object and foundation. The next statute is the 10 Geo. 4, c. 7, which expressly repeals the necessity for signing the declaration against transubstantiation, and qualifies Roman Catholics to sit as members in other respects. The last Act is the 1 & 2 Vict. c. 105, which is entitled "An Act to remove Doubts as to the Validity of certain Oaths," and is that on which the defendant will, no doubt, rely. But it does not repeal the oath of abjuration. The contention of the plaintiff is not that in Courts of Law, where the statute law does not impose any particular form of oath, a Jew or Christian may not take an oath in that form which he declares to be binding on his conscience, and it is not intended to dispute the authority of *Ormichund* v. *Barker*, as reported in 1 Atkins, 19, but simply its application to the present case. The plaintiff's case is, that this oath of abjuration is a Christian oath, to be taken by a Christian, and if the Legislature has imposed a particular form of oath, none but the Legislature can alter or dispense with it. It has been shewn that the first Act required the oath to be taken on the Holy Evangelists, and on the true faith of a Christian. The oaths of allegiance and abjuration were the same. Then came the declaration against transubstantiation, all which must mean, if it means anything, that the oath was required to be taken by a Christian, who was called upon, in the most solemn way, to pledge his veracity by avowing his true faith as a Christian, and pledging his belief in Jesus Christ. No one could take such an oath who did not so believe and pledge himself, and though the oath was altered by 13 Wm. 3, it was still to be taken in the same manner and in the same forms as before. The first argument, then, is that this is a statutable oath intended to be a Christian oath—which cannot be altered in any way. Now, how is this affected by the case referred to of *Ormichund* v. *Barker*, where it was held that a Gentoo might be sworn after the fashion and form of his nation? It is contended that that decision does not impeach the assertion that this particular oath is a Christian one, but only decides that a Gentoo may be sworn and give evidence in India in the manner which is binding on him. In the next place, does the 1 & 2 Vict. c. 105, at all affect the position of the plaintiff? Certainly not. It contains no allusion to any repeal of former Acts, and rather points to oaths in courts of law, where it may be that oaths of abjuration may be taken by officers, and to which cases the Act may well refer, without affecting the oath of members. And every word may receive effect in that statute without holding that it repeals the former Acts. The words omitted by the defendant he will contend were not of the essence. But if it can be shewn that they were so when the Acts were passed, the question will arise whether the 1 & 2 Vict. c. 105, has repealed them, and the defendant's duty will be to satisfy the Court of that proposition. It is said that those Acts were aimed at Papists. Be it so. That only shews that the Legislature strove to the utmost to pledge every member to the Protestant faith, and the very places in which the words omitted by the defendant are found shew their importance, and that they were meant to form part of the oath itself. Whether, indeed, Jews were in contemplation at that time is immaterial. The question is, what was the law at the time? Everybody was just before that bound to attend worship in his parish church, and to subscribe the declaration against transubstantiation. It may be that there is Christianity without Protestantism, but there cannot be Protestantism without Christianity. It is based on it; and Christianity was, therefore, well made the test of qualification to all offices whatever. The Test Act was repealed, doubtless, but that affords no argument that this oath should be repealed. This is, indeed, the question in this case. But the defendant may urge that the 6 Geo. 3, on which we sue, has exempted Jews, because it says that the oath shall be taken with all the "benefits and savings," as in the former Acts, and that in the interval the 9 Geo. 1 and 10 Geo. 1 had passed. But they were temporary Acts, and had ceased to exist; and even if otherwise, it must be remembered that they had a particular object while the exemption there relied on does not go far enough. The plaintiff, therefore, was entitled to judgment.

Sir *F. Kelly* (with whom were *Willes* and *Goldsmid*) appeared for the defendant.—He ventured to submit that there were several grounds on which the action could not be maintained; and he would first remark that it was an action for penalties founded on penal statutes, which the Courts had ever adopted the practice of construing in favour of the subject when they were involved in any doubt. It was, moreover, an action on statutes which, if in force at all, would apply to certain classes of her Majesty's subjects with fearful effect. Jews were privileged to serve in Parliament; but if this action were to succeed, and these penalties were to be enforced, the result would be that Jews might be called upon by their countrymen to take their seats in Parliament at the risk and peril of taking oaths not binding on them, or they would be driven to relinquish those seats. On the contrary, these statutes, he submitted, ought to be so construed as to give the greatest possible amount of liberty of conscience to the subject. In order to decide for the plaintiff, the Court must be satisfied clearly that the words apply to the defendant, and that the Legislature plainly intended to apply the penalties to such a case. Such a construction amounts to a disqualification of all Jews; it amounts to a disqualification to sue, to be executor or guardian, and imposes on them the most fearful penalties and disabilities. The Court will not, therefore, enforce that construction of these Acts for which the plaintiff contends, unless they see that the words of the Acts apply expressly to this case; and on behalf of the defendant he begged to submit four distinct and specific grounds on which he hoped to satisfy the Court that they ought to give him their judgment. In the first place, he would contend that the 6th of Geo. 3, c. 53, was no longer in force to impose the oath of abjuration on members of Parliament. On the death of George III.—or, at all events, on that of George IV.—the power to administer it ceased in the officer of the House of Commons, by whom the verdict found that this oath was tendered to the defendant. That officer had no power to take upon himself to alter the oath prescribed by the 6th of Geo. 3, but the oath ought to be given in the whole terms as prescribed therein. That oath was one of abjuration of the descendants of the Pretender in favour of "our sovereign Lord King George," and it would be found that on every occasion when that oath was changed, the Legislature itself had interfered by an express enactment. Therefore, there was not now, in the absence of any such interference by the Legislature, any authority to administer that oath substituting "Victoria" for "George." In the next place, the defendant, if this oath be still in force, was at liberty to take it omitting the words in question, on the ground that wherever the Legislature imposes on any man the duty of taking an oath, it not only authorises but requires him to take it only in that form which is binding on him—swearing indeed to the whole substance, but in such form of language and with such ceremonies as he declares to be binding on him. If any other rule prevails it is where the form is devised as a test of any particular principles. Thirdly, the defendant would contend that under the 1 & 2 Vict. c. 105, he was by necessary implication authorised and bound to take the oath as he did; and fourthly, and finally, it would be argued that under the 10 Geo. 1, c. 4, which had not expired when 6 Geo. 4 was passed, but was in force, the authority to administer the oath was kept alive and terminated in 1766, or beyond the statute 6 Geo. 3, c. 53; thus giving a meaning and force to it which, as is contended by the defendant, is qualified by 10 Geo. 1. Before entering on these points, it was impossible not to express surprise that the plaintiff's counsel should have assumed in argument, that the oath of abjuration was still required by law to be taken, when the very essential point of the case denied that proposition. As to the first ground put forward for claiming the judgment of the Court, it is clear that the several Acts referred to must be viewed according to the particular times and circumstances at which they were passed. The form in which the Legislature framed the oath in the statute 6 Geo. 3, for altering the oath of abjuration on the death of the Pretender, shews this. The plaintiff argues that there is a power to alter an oath; but the defendant relies on Lord Coke, who in his 2nd Institute, when commenting on the statute of Westminster, defines an

oath, and says no oath allowed by statute or common law can be altered but by Act of Parliament. The Commons of England have agreed by their representatives to the imposition of a particular form of oath here, for which there is no authority by Act of Parliament. The allegation that "Victoria" was substituted for "George" ought to rest on the authority of an Act of Parliament, but the House of Commons alone has no power so to alter any oath. Even if there were no dispute as to the succession, no such power can be exercised; but suppose the case of a disputed succession to the Crown of these realms—suppose the birth of twins, Albert and Edward, and it was impossible to decide who was the elder of the two, the House of Commons might then by altering the oath take upon themselves to decide the question. The name of the sovereign is of the very essence and substance of the oath. All the Acts on this subject, down to 6 Geo. 3, shew that each was meant to be but temporary, and on each change of reign a new Act was passed to alter the oath in accordance with that altered state of things. The statute of 13 Wm. 3 is applicable only to his reign; so that of 1 Anne to hers, and 6 Anne provides for the substitution of "Sophia" or "George," according as the fact might be, a blank being left, and in the event George succeeded to the throne, whereupon the blank was filled up with his name. In his reign no new Act was wanted, and the oath so remained unaltered in form till 6 Geo. 3, when the change was made by reason of the death of the Pretender. On this statute this action is founded, but that Act prescribes the taking of an oath "in the form therein set forth," and in no other. The only legal authority existing is to administer an oath that "King George is the rightful Sovereign of these realms." Can that form be altered without an Act? [ALDERSON, B.—Your argument is, that the oath remained operative during the reign in which it was imposed, and no longer.] Unquestionably, and it is certainly debateable, whether it be the true contention or not. If it be doubtful, the defendant is entitled to judgment on this point, upon the well-recognised principle of construing penal statutes. No doubt there is some weight to be given to the long practice of using this oath, but that should rather be attributed to inadvertency than to mistake. All that can be said of it is, that every one became so accustomed to administer the oath in the name of King George, reign after reign, that they took upon themselves afterwards, when a William ascended the throne, to alter the name of the sovereign. The next Act is the 10 Geo. 1,—the Roman Catholic Act—which, though it may be cited against the defendant, is in fact in his favour. The oath there prescribed was made perpetual and applicable to all the succeeding reigns, so that the necessity for altering the oath in each reign is borne out by this very statute; and it is therefore clear that an oath once imposed by an Act can only be altered by the same power. The statute giving this oath to George, must receive its primal meaning in this case, and it cannot be read as imposing an oath in favour of George and all his successors in all time to come, which is the contention of the plaintiff here. That oath was temporary, and if the object of the Legislature of the day was satisfied with the primâ facie meaning of the words, why should we now take upon ourselves to extend that limited construction, and that, too, in order to impose a penalty on the subject and a restriction on liberty of conscience? On the one hand are the plain words of the Act and the practice of the Legislature to change the oath in every reign; and opposed to those is nothing but the practice of the House of Commons, for thirty years, to administer the oath without any such authority as the defendant contends to be necessary, and that practice creeping in only because no one's attention was ever drawn to the question. On this first ground, therefore, it is contended that the 6 Geo. 3, is not applicable to the defendant, and that there was no authority to administer to him this oath in any shape. The second proposition was, that under the Act of 6 Geo. 3, c. 53, upon which this action was founded, the oath of abjuration might be taken by a Jew with the omission of the words "on the true faith of a Christian." This depended, however, upon whether the provisions of 10 Geo. 1 continued and remained in force at the time the Act of 6 Geo. 3 was passed. The plaintiff supposed that the Act 10 Geo. 1, c. 4, had expired; but he would shew, that by a series of Acts to 6 Geo. 3, which imposed the oath now required to be taken, the Act of 10 Geo. 1 had been kept in force. The 6 Geo. 3 enacted, that from and after the 4th of June, 1766, the oath of abjuration prescribed in 10 Geo. 1 should be taken and subscribed within a limited time, but with benefit of the same savings, provisoes, and indemnities contained in any Acts then subsisting. The question was then, whether the Act 10 Geo. 1, which allowed the omission from the oath of abjuration, when it was taken by a Jew, of the words, "on the true faith of a Christian," had ceased and expired, or whether it had been continued, and was in force at the time of passing the 6th of Geo. 3, c. 53. [POLLOCK, C.B. inquired for a printed copy of the Act 10 Geo. 1, c 4, and was informed by Sir F. Kelly that no copies could be obtained at the Queen's printer's, although there was a copy in the library of the Inner Temple.] The oath of abjuration which, in its present form, was introduced by the 1st of Geo. 1, c. 13, was repeated in the 9th Geo. 1, c. 24, which extended the time allowed for taking the oath. A further extension was afforded by the 10th of Geo. 1, c. 4, the 17th section of which allowed the oath of abjuration to be taken by Jews, with the omission of the words "on the true faith of a Christian." The provisions of the 10 Geo. 1, amounted to a legislative declaration that the words "on the true faith of a Christian" were no necessary or essential part of the oath of abjuration. The oath of abjuration consisted of many parts, as a declaration of allegiance and obedience to the reigning sovereign, an abjuration of the right and title of the Pretender and his family, &c.; but it did not contain as any part of the thing sworn to the fact or statement that the party swearing was a Christian, nor was it the meaning and intent of the Legislature to impose that oath, or any part of it, upon any person as a test of Christianity. If the oath had been intended as a test of Christianity, it was impossible that the Legislature should have authorised its administration to a Jew. There was a series of Acts after the 10 Geo. 1, from the 2 Geo. 2, c. 31, to the 6 Geo. 3, c. 7, enlarging the time allowed for taking the oath of abjuration, which was, by the last-named Act, extended to the 24th of November, 1766, so that the time thus allowed was carried beyond the passing of the 6 Geo. 3, c. 53; therefore, the 10 Geo. 1 having sanctioned the omission of the words "on the true faith of a Christian," when the oath of abjuration was taken by members of the Jewish religion, and all the succeeding Acts referring to the same identical oath, the effect of these Acts was, that from the time of the 10 Geo. 1, the oath of abjuration, as taken by members of the Jewish religion, would be taken with that omission; whenever the law of this country imposed upon any subject of the realm the duty of taking an oath, the law not only permitted but required that that oath should be taken in such manner and form as to bind the conscience of the swearer. The oath of abjuration was not one which might or might not be taken, according to a person's pleasure or interests, but in many cases it became a matter of necessity on the part of members of the Jewish religion to take this oath, and the question was whether the law which compelled a Jew to take the oath compelled him to take it in a way which would subject him to the guilt at once of blasphemy and of perjury. It appeared from 1 Geo. 1, c. 13, and from the recital of the other Acts of Parliament, that their sole object was to secure the person and government of the sovereign, and the succession to the crown, and to extinguish the hopes of the Pretender and his family, and that these Acts had no religious aspect or tendency whatever. It was, in the first instance, provided that all persons holding public offices should publicly take the oaths of allegiance, supremacy, and abjuration, and afterwards it was enacted that these oaths should be taken by all members of the House of Commons before they could sit and vote. It must be borne in mind, that though it was competent to any man to accept or reject an office of profit, a person elected a member of the House of Commons became a member of Parliament, with all the duties and liabilities, as well as with all the privileges of the position, whether he would or no. A person so elected could not reject the office; he was a member by the election, and was subject to the jurisdiction of the House, even though he might have been returned against his own will. [POLLOCK, C.B.—A person does not become a member of the House of Commons until he has taken his seat.] He begged, with great respect, to differ from his lordship. He apprehended that, although a member of Parliament was, by the express terms of the statute, prevented from voting till he had taken the oaths, he was in every other respect whatsoever as much a member of Parliament before he had taken the oaths, whether with regard to duties, liabilities, or privileges, as he was after he had taken the oaths. It was stated in Dwarris on Statutes, supported by references to Hatsell, that, notwithstanding all the forms which were introductory to a member taking his seat in the House of Commons, a person, when returned—though he might not have taken his seat—was to all intents a member, except as regarded the right of voting, and was entitled to the same privileges as every other member. He begged their lordships' attention to the 10th and 11th sections of the Act 1 Geo. 1, c. 13. The 10th section empowered two justices of the peace, or any other persons specially appointed by the Crown, to administer and tender the oath of abjuration to any person or persons whom they might suspect to be dangerous or disaffected to his Majesty, and if the person to whom the oath was so tendered should refuse to take it, such person should be judged a Popish recusant convict, and liable to the penalties of præmunire. So that not only at the time when the Act was passed, but at the present day any two justices of the peace, if they suspected that any member of the Jewish religion was disaffected, might call upon him to take the oath of abjuration, and if he refused to take it, he became liable to the penalties of præmunire. The 11th section of the Act was, however, still stronger. It provided that two or more justices of the peace might, without any cause at all, summon any person to appear before them to take the oaths mentioned in the Act; and if such persons should not appear before the justices, or at the Quarter Sessions, they should be esteemed and adjudged Popish recusants convict. The question their lordships had to determine, then, was, whether it was the intention of the Legislature, and whether it was the true legal effect and construction of the Acts of Parliament, that this oath, when tendered to a member of the Jewish religion, should be sworn in such manner and form as might be conformable to and binding upon the conscience of the swearer. If the Court held that the oath must be taken by Jews with the words "on the true faith of a Christian," either the Jew must take the oath, using those words, and so commit blasphemy and perjury at once, or he must refuse to take the oath, and so be liable to all the penalties imposed upon Popish recusants convict. It was absurd to suppose that the Legislature, when imposing an oath of loyalty and allegiance which persons of all classes were to be compelled to take, could have intended to frame that oath in such terms that one class, at least, of the community would be unable to take it. Any one who looked into the recitals or enactments of the various Acts of Parliament from the Reformation to the present time must be convinced that all the oaths and tests which were imposed were directed solely and exclusively against Papists, and that it was never the intention of the Legislature to affect the Jews at all. After analysing the oath of abjuration, and contending that the words, "on the true faith of a Christian," formed no part of the oath or thing sworn to, he said, if it could be shewn that the Legislature intended to impose this oath as a test of Christianity, and intended that the person taking it should swear himself to be a Christian, he would admit that these were words of substance, and ought not to be rejected. [POLLOCK, C.B.—Unless the words "upon the true faith of a Christian" were the form of oath, there was no form at all, for in the stat. 6 Geo. 3, the addition of the words "So help me God," did not occur.] He was just about to mention that fact. In the 6 Geo. 3, which contained the oath as it was now administered, and upon which exclusively this action was founded, there was no form of swearing at all, unless they took the words "upon the true faith of a Christian" to be the form of oath. If the construction contended for on the other side were the true construction, the Acts of 1 Geo. 1 and 6 Geo. 3, amounted to this—that the Legislature were determined to make all the king's Jewish subjects swear they were Christians, or suffer the penalties of a præmunire. He referred to the works of Bishop Sanderson and Puffendorff for definitions of the distinction between the thing sworn to and the mere asseveration or words of swearing; the Legislature of this country, in exacting these oaths from Jews as well as Christians, must have intended that the form of swearing should be such as would bind the conscience of a Jew. He contended that the principle he was now maintaining had been established in the case of *Ormichund* v. *Barker*, namely, that when the law permits or requires an oath to be taken, such oath must be taken in a form and manner binding upon the conscience of the party swearing. The law of England admitted every description and form of words and every description of acts and ceremonies which might be necessary, according to the religious belief of the swearer. The Acts of Parliament to which he had referred were to be construed with reference to the mischief which the Legislature intended to remedy, and he would ask whether that mischief was anything but the hostility of the Roman Catholics and others who favoured the claims of the Pretender to the throne of England? If the Court held the words, "on the true faith of a Christian," to be part of the thing sworn to in the oath, it must follow that the Legislature intended that, besides swearing allegiance and abjuration, all persons who took the oath should swear themselves to be Christians. If that were not the intention of the Legislature, the words in question must be mere words of asseveration, by which the party taking the oath pledged his conscience to the truth of his declaration. The only remaining point on which he would address the Court was that arising under the statute 1 & 2 Vict. c. 105, which was entitled "An Act to remove

Doubts as to the Validity of certain Oaths," and the first observation he would make on that statute was, that it was declaratory of the law as it then stood. [Alderson, B.—I take it that if the defendant had been elected, and had taken his seat when the 9 Geo. 1 was passed, he might have taken the oath under the 10 Geo. 1, without the words "on the true faith of a Christian."] That would, no doubt, have been so, but he would not further advert to the construction of those statutes. The present object of his argument was to shew that under the 1 & 2 Vict. the defendant was relieved from the necessity of taking the oath with those words. That Act provided, that, "In all cases in which an oath might lawfully be administered to any person in any court of law or equity, or on appointment to any office, or on any occasion whatever, such person was bound by the oath, provided the same should have been administered in such form and with such ceremonies as such person might declare to be binding." The only construction which this Act could fairly receive was that oaths ought to be now administered only in such form as was binding on the parties taking them, and that it was competent to all who were required to take any oaths so to take them. This statute, then, virtually repealed the Acts imposing any particular form of oath, and that would entitle the defendant to the judgment of this Court. The oath was to be taken by every one at the requirement of two justices of the peace, and it would be for the Court, looking to the form of it, to say whether the Act and the oath should be read so as to favour liberty of conscience, and thereby to do justice, or so as to introduce into this country the most intolerable tyranny which could be devised. For these reasons, therefore, he submitted that the defendant was entitled to the judgment of the Court, and that these penalties could not be recovered.

Channell replied.—He should recall to the recollection of the Court the principal points which he had submitted to them in his opening. These were twofold. He first objected that the oath was not properly taken on the Old Testament; and, secondly, that the oath was a Christian oath, and that, not having been taken in its entirety, it had not been taken at all as required by law. He had suggested that these questions should be viewed in the spirit of the times when the oath was imposed on members by the Legislature, and having ascertained that spirit and the nature of the oath, the Court should then proceed to inquire whether the oath had been altered or repealed by subsequent legislation. Much stress had been laid on the case of *Ormichund* v. *Barker* by the defendant; but the Court would remember that he never flinched from that case. He knew the use to which it had been put elsewhere, and what had been said about it; but all that was answered by the fact that that decision applied to a country and to a state of things where no precise form of oath existed, and yet where it became necessary to administer an oath in some form to a witness—that could not be better done than in such form as that witness should declare to be binding on his conscience, and the case was so decided. But it presented no authority for saying that an oath couched in a form devised and prescribed by Act of Parliament with a view to Christianity could be taken legally in any other form and with any other ceremonies than those prescribed by that Act of Parliament. Such was the substance of the argument for the plaintiff, and the question it raised was, whether the 6 Geo. 3 was to be considered a dead letter or not, or whether "Victoria" should be substituted for the word "George." Now, every Act on the subject spoke of kings, not as individuals, but in their corporate capacity; and it was most absurd to say that these Acts did not so relate to them. The Act for the relief of the Roman Catholics of Geo. 4 spoke of the oath of abjuration as being "now by law required;" and the 3 & 4 Wm. 4, which relieved Quakers, also contemplated its existence under a William; so that the argument as to the cesser of the oath fell to the ground. Authorities, too, shewed that this objection was a futile one. They were, *Reg.* v. *Green*, Vent. 171, and 12 Coke Rep. 350. Then came the question, was this a Christian oath required to be taken in a particular form? and, in considering that question, he wished broadly, distinctly, and clearly to claim the right to examine contemporaneous Acts of the Legislature. He had a right to see what was done just before and after the passing of the Act requiring the oath of abjuration in its integrity, as a means of testing the meaning of the Legislature in passing that Act. That had not been used elsewhere, nor had the other side attempted to meet it here to-day. We must look at the spirit of the day to determine what the Legislature meant. Such an inquiry was all-important on the question whether this oath was or was not meant to be a Christian oath. Those contemporaneous statutes shewed that the oath was required to be taken on the holy Evangelists; that it contained the test of the "true faith of a Christian," and was accompanied by the necessity of subscription to the declaration against transubstantiation. All these things taken together shewed to demonstration that the oath was meant to be a Christian oath, and, unless we are to be met by the assertion that there is no such thing possible, we say that it is impossible to deny that this oath is such. Assuming that it is such an oath, the more important question remains, whether it can be taken without the words, "on the true faith of a Christian." Now these words are part and parcel and are of the essence of the oath, which is a statutable one. The defendant contends they are not part of the oath, because the Legislature never could be supposed to have compelled any man to commit blasphemy; but the answer to that is, that the Legislature does not impose on Jews any obligation to take this oath. All that they say is, if you presume to sit without taking a particular oath certain consequences shall follow. It is impossible to advert to the legislation of those days without recognising in it the spirit of persecution. Penalties were imposed on all who refused to take oaths in the abstract, and also on those who abstained from the parish church, and did not take the sacrament; and, though those restrictions were gradually altered, they evince the spirit of the age, and throw light on the meaning of imposing a particular form of oath. Though the Jews were relieved from taking that oath at the Quarter Sessions, where it was obligatory on all persons to take it, it by no means followed that the oath of a member, which was optional, and not obligatory, was also to be altered. It might well be that the Legislature, in dealing with the Parliament which was to govern a Protestant country under a Protestant succession, should, when imposing an oath on members, select a form which could only be taken by Christians, and an examination of 10 Geo. 1 shewed that the alteration was only "for the purposes of that Act;" so that the exception there really proved the rule. For these reasons it was contended that the oath was a Christian oath, and must be taken in its entirety; and, assuming that the Court would give judgment for the plaintiff, it only remained for him to say that, as to the second and third counts, he should enter a nolle prosequi. The declaration went for three penalties; but, as the finding of the jury in the special verdict was distributive, and the three votes were given on one day, the defendant could only be liable for one

Cur. adv. vult.

Monday, April 19.—The learned judges of the Court differing in their opinion each delivered his judgment as follows:—

Martin, B. said—This is an action to recover penalties alleged to be forfeited by the defendant under the statutes 1 Geo. 1, sess. 2, c. 13, s. 17, and 6 Geo. 3, c. 53, s. 1, by reason of his having voted in the House of Commons without having taken the oath of abjuration contained in the latter statute. The declaration stated that the defendant was duly returned to serve in Parliament as a burgess for the borough of Greenwich, and that he voted in the House of Commons without having taken and subscribed the above oath, and thereby forfeited the sum of 500*l*. There were two other similar counts, but they were abandoned, in order to raise the substantial question in controversy between the parties, and avoid any technical difficulty by reason of more than one penalty being recovered for alleged offences against the statutes committed on the same day. The plea was nil debet. The cause came on for trial at the sittings after last Michaelmas Term, when a special verdict was found, which stated that the defendant was duly elected and returned to serve in Parliament for the borough of Greenwich, and whilst he was a member voted in the House of Commons. That he was a British-born subject of the Jewish religion, and that the form and manner of taking an oath binding on the conscience of a Jew in cases where the words of the oath are to be repeated by the person taking the oath is, that he takes in his hand the Old Testament and repeats the words of the oath, and at the conclusion says, "So help me God," and then kisses the book; and that this form of taking an oath was and is binding upon the conscience of the defendant. That before he voted he came to the table of the House in the usual manner, and demanded to be sworn to the oaths required by law in the manner and form above-mentioned, upon the Old Testament, alleging it to be, as in truth it was, the form which was binding upon his conscience. That he then took the oaths of allegiance and supremacy in the form and manner aforesaid upon the Old Testament, and proceeded to repeat the oath of abjuration contained in the 6 Geo. 3, c. 53, substituting the name of Queen Victoria for that of King George, down to the words "upon the true faith of a Christian," which he deliberately and intentionally refused to repeat, and then added the words—"So help me God," and kissed the book. That the Speaker objected that he had not taken the oaths in the manner required by law, and requested him to withdraw, which he did not do, *and declared that he had taken the oath in the form binding upon his conscience, which the special verdict finds to be the truth*. The verdict then proceeds to state what took place with respect to the signature of the roll, and concludes by submitting to the Court whether the defendant had lawfully taken the oath of abjuration. The case was argued before us last Hilary Term, and it was contended, on behalf of the plaintiff, that the oath was a Christian oath, and could only be made by a Christian; that it could not be lawfully taken without repeating the words "upon the true faith of a Christian," which, as it was argued, were a necessary and essential part of the oath. Four points were made on behalf of the defendant:—First, that the oath was not now obligatory to be taken at all; that the obligation expired on the death of King George III. or, at all events, upon the death of George IV. and that there was no lawful authority to substitute the name of the reigning sovereign. I think this point is not tenable, and that the name of King George is introduced into the form of oath in its corporate character, and represents all his successors. See the case of *The Parliament of Ireland*, 12 Coke's Reports, 110, and *Rex* v. *Green*, 1 Ventris, 170. Secondly, that the words "upon the true faith of a Christian" were repealed by the stat. 10 Geo. 3, c. 4, to which I shall have occasion hereafter to refer. I also think this point not tenable. Thirdly, that by the true construction of the statutes an obligation is imposed upon all her Majesty's English subjects, whether Christian or Jew, to take an oath binding upon their consciences, pledging them to the several matters contained in the oath prescribed by the stat. 6 Geo. 3, c. 53. That the words "upon the true faith of a Christian" were not intended by the Legislature as a religious test at all, but were inserted for an entirely different object and purpose; and that when the person taking the oath is not a Christian, he not merely may, but ought to omit these words, and take the oath in the form binding upon his conscience; and that the oath so taken is made in a lawful manner, and relieves the taker from all penalties which are consequent upon the refusal or neglect to take the oath. This is the substantial question in the case. Fourthly, it was argued that the words "upon the true faith of a Christian" may be omitted by virtue of the stat. 1 & 2 Vict. c. 105. In the argument both the learned counsel concurred that, in the case of *Ormichund* v. *Barker*, 1 Atkins, 21, the true nature of an oath, and the law of England in regard to it, were rightly laid down and established; and both also expressed their concurrence in the doctrine of Lord Coke in the second "Institute," pages 479 and 718, viz. that a new oath cannot be imposed, nor an existing oath altered, except by authority of Parliament. The case of *Ormichund* v. *Barker* was decided by Lord Chancellor Hardwicke, assisted by the two Chief Justices and the Chief Baron, and has always been considered of great authority. The question was, whether the deposition of a Gentoo witness taken in India, on an oath administered to him in the form binding upon persons professing the Gentoo religion, was admissible in evidence in a suit in the Court of Chancery in this country. The form of administering the oath was that the witness touched with his hand the foot of a Brahmin, whilst another priest touched the hand of the latter. In the arguments and judgments in that case, the law and practice as to the administration of oaths to Jews was much discussed, and from the authorities there cited it appeared that the Jews were resident in England before the Conquest, and then took oaths; and an instance was cited from Wilkins's Saxon Laws of a writ issued to summon *sex legales homines et sex legales Judæos* to make a jury. Various other authorities were there cited to shew that oaths were administered to Jews before their banishment, which took place in the reign of King Edward I. (1 Maddox's History of the Exchequer, 261). It is there stated also that it is supposed that they were not by law permitted to return until the time of the Commonwealth; but, however this may be, there is no doubt that for a very long period of time there have been in England very many Jews, British-born subjects, equally entitled to the protection and subject to the control of the laws precisely in the same manner as the Christian subjects of the realm. The doctrine laid down by the Lord Chancellor and all the other judges was, that the essence of an oath was an appeal to a Supreme Being in whose existence the person taking the oath believed, and whom he also believed to be a rewarder of truth and an avenger of falsehood, and that the form of taking an oath was a mere outward act, and not essential to the oath, which ought to be admininistered to all persons according to their own peculiar religious opinion, and in such manner as most affected their consciences. The present oath of abjuration itself is contained in the statute 6 Geo. 3, c. 53, s. 1, but this statute was passed in 1766 merely for the purpose of making an alteration in its form, which became necessary in consequence of the death of the old Pretender, who died in 1765, and in order to ascertain its true construction it must be considered together and in connection with the stat. 1 Geo. 1, stat. 2, c. 13. This latter statute was made upon the accession of the House of Hanover, and

contains the three oaths, viz. of allegiance, supremacy, and abjuration; and, as has been already observed, the 6 Geo. 3, c. 53, merely alters the form of the latter oath, but makes no alteration in its substance. It was submitted by the learned counsel for the plaintiff in his very able argument, that in order to arrive at the true construction of these Acts of Parliament, it was necessary to go back to the old statutes, which originally imposed Parliamentary oaths, and attentively consider their provisions and requirements, and he referred us to the stat. 1 Eliz. c. 1, as the first statute bearing upon the subject. That was entitled "An Act to restore to the Crown the Ancient Jurisdiction over the Estate, Ecclesiastical and Spiritual, and for abolishing all foreign Powers repugnant to the same." The Act begins by reciting the statutes of King Henry VIII. for the extinguishment of all foreign powers and authorities, and the repeal of these statutes by an Act in the reign of Queen Mary, and proceeds to repeal the latter Act, and re-enact the former. This Act of Queen Elizabeth is obviously directed against the Pope and see of Rome, and has no relation whatever to Jews, who, as has already been observed, were then banished the kingdom. By the 19th section, all ecclesiastical persons, and all judges, justices, mayors, and other public officers, were required to make an oath upon the Evangelists of the Queen's supremacy. The words "upon the true faith of a Christian" were not contained in this oath. It concluded with the words "So help me God, and the contents of this book." Had this statute continued in force until the present time, the requirement that the oath should be taken upon the Evangelists would have raised a question somewhat similar to that in the present case; for although it was holden in the case of *Robeley* v. *Langston*, 2 Keeble, 311, that a Jew sworn upon the Old Testament was sworn upon the Evangelists, it seems to me that the opinion of the Lord Chief Baron in *Ormichund* v. *Barker*, that an oath upon the Old Testament was not an oath upon the Evangelist, is the better opinion. This statute did not extend to members of the House of Commons, but by the 5 Eliz. c. 1, s. 16, it was extended to them, and they were required to take the oath of supremacy before the Lord Steward. It is also obvious that this statute was solely directed against the Pope and the See of Rome. It begins by reciting "the hurts, perils, and dishonour befallen to the Queen, and the whole estate of the realm, by means of the jurisdiction and power of that See, and the danger then existing from the fautors of the said usurped powers, at that time grown to marvellous outrage and licentious boldness, and then requiring more sharp restraint and correction of laws than hitherto;" and every section of the statute is directed to the single object of the protection of the Queen and State against the Pope and persons of the Roman Catholic religion. The next statute to which we were referred by the learned counsel for the plaintiff, was the 3 Jas. 1, c. 4, and it was stated by him to contain the germ of the oath of abjuration. I concur with him in thinking that this statute has an important bearing upon the present question. The words, "upon the true faith of a Christian," first occur in it, and if the object and intention of the Legislature in inserting them was to create a test of Christianity, they then would be of the essence of the oath therein contained; but if they were inserted for an entirely different purpose and object, and were not intended as a test of Christianity at all, but as a test of, and security for, loyalty and obedience, they would then seem to be not of that essential nature. The Act is entitled, "An Act for the better discovering and repressing of Popish Recusants." It was passed immediately after the Popish plot, and begins by reciting, "that it was found by daily experience that many of his Majesty's subjects who adhered in their hearts to the Popish religion were religion were by its infection, and by the wicked counsels of Jesuits and others, so far perverted from their loyalty and allegiance as to entertain treasonable conspiracies, as appeared by the late attempt to blow up the King and Parliament, undertaken at the instigation of Jesuits and others by their scholars taught and instructed for that purpose." It then proceeds to make enactments directed against Popish recusants, and by the 13th section enacts, *that for the better trial how his Majesty's subjects stand affected in point of their loyalty and due obedience*, it shall be lawful for the bishop in his diocese, or any two justices of the peace, to call upon a great number of persons therein described, to take an oath upon the Holy Evangelists; "the tenour of which oath," the statute says "hereinafter followeth." The form is:—"I, ... B. do truly and sincerely acknowledge, profess, testify, and declare in my conscience, before God and the world, that our Sovereign Lord King James is lawful and rightful King of this realm, and of all other his [illegible] dominions and countries;" which is the same as beginning of the present oath of abjuration. It then proceeds to deny the authority of the Pope "to depose the king, or dispose of any of his kingdoms or dominions, or to authorise any foreign prince to invade them, or to discharge any of his subjects of their allegiance." It then proceeds, as in the oath of abjuration, to pledge the taker to bear "faith and true allegiance to his Majesty, his heirs and successors, and him and them to defend to the uttermost against all conspiracies and attempts whatsoever which should be made against his or their persons, their crown and dignity, by reason or colour of any sentence of excommunication, or deprivation, or otherwise, and to do his best endeavour to disclose and make known unto his Majesty, his heirs, and successors, all treasons, and traitorous conspiracies, which he should know, or hear of, to be against him, or any of them." And concludes thus, in the very words of the conclusion of the present abjuration oath:—"And all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken and according to the plain and common sense and understanding of the same words, without any equivocation or mental evasion or secret reservation whatsoever; and I do make this recognition and acknowledgment heartily, willingly, and truly, upon the true faith of a Christian: So help me God." It is apparent from this as well as many other Acts of Parliament, that an idea then, and long afterwards, prevailed that Roman Catholics were in a different condition with regard to oaths from persons of other religious denominations, and that the Jesuits taught that the Pope had power to grant absolution from oaths, and to dispense with the performance of and adherence to them, and that the Roman Catholics themselves made these Parliamentary oaths with mental evasions and secret reservations, which were supposed to have the effect of nullifying their obligation; and the conclusion of the oath is expressly directed against this supposed state of things. Now, Jews were not then resident in the kingdom, so that it is clear that the words "upon the true faith of a Christian" were not inserted with any hostile objects towards them; and the statute expressly declares that the oath was imposed *for the better trial of the loyalty and obedience of his Majesty's subjects*; and it is perfectly obvious to my mind that the words were introduced into the oath, not as a test of Christianity, but in order the more effectually to bind and affect the conscience of Roman Catholics. They were, according to their then, and present, opinion, the most perfect Christians, and I think these words were added in order to create the most sacred and binding obligation upon them, and for no other purpose. The Jews were never thought of, and, indeed, the Legislature, in all probability, never contemplated that there were any subjects of the kingdom who were not Christians. Members of Parliament were not included in this statute, but by statute 7 James 1, c. 6, they, and a great variety of other persons, were required to take the same oath. The next statute mentioned by the learned counsel for the plaintiff, was the 30 Charles 2, stat. 2, by which it was enacted that no person should vote in the House of Commons until he took the oaths of allegiance and supremacy, and made the declaration against transubstantiation therein contained. It was by means of this declaration that Roman Catholics were so long excluded from Parliament. No person of that religion could conscientiously take it, and it continued to be required to be made until the Roman Catholic Relief Act in 1829. Now, this was an Act of Parliament creating a direct religious test, and that the Legislature well understood how to create religious tests is evident, as well from it as from the Corporation Act, 13 Charles 2, sess. 2, c. 1, by the 12th section of which no person could be chosen to the principal offices in the corporations who had not taken the sacrament according to the rites of the Church of England within a year before his election; and the Test Act, the 25 Chas. 2, by which all persons bearing offices and places of trust under the Crown were required to receive the same sacrament within three months after their appointment. The next statute referred to was the 1 Wm. & M. c. 1, which enacted afresh the oaths of allegiance and supremacy, expressly naming therein King William and Queen Mary, and provided that they should be taken by all members of Parliament, together with the declaration against transubstantiation, within the same time as limited by the statute 30 Chas. 2, last mentioned. A question here arises, whether there was any oath or declaration at this time to be taken or made by members of Parliament which a Jew could not take, and it seems to me that there was none. The words "upon the Evangelists" do not occur in either of the last-mentioned Acts of Parliament, and there was nothing in the oaths of allegiance and supremacy themselves to prevent their being taken by a Jew. Indeed, these oaths remain in the same form at the present time, and the defendant was permitted to take them without ob- [illegible] the Old Testament, at the table of the House of Commons. The declaration against transubstantiation is expressly declared to be for the purpose of disabling Papists from sitting in either House of Parliament. It was not at all directed against Jews, and it seems to me that a Jew might have made it with truth. The next statute referred to by the learned counsel for the plaintiff was the 13 Wm. 3, c. 6, and it is by it that the original oath of abjuration was imposed. It is probable, as was suggested by the learned counsel, that it was to a considerable extent taken from the oath prescribed by the 3 Jas. 1, c. 4, but it certainly is the original oath of abjuration. The legislative measures with respect to it are as follow: By the 1 Anne, stat. 1, c. 22, the oath is altered in form by substituting the name of Queen Anne for that of King William, but the same persons are required to take it, and are subjected to the same penalties in case of neglect or refusal. By the 6 Anne, c. 7, s. 20, the oath was altered to meet the state of things expected to arise upon the death of the Queen without issue. By the 1 Geo. 1, c. 13, on the accession of the House of Hanover, the oaths of allegiance, supremacy, and abjuration were re-enacted; and by the 6 Geo. 3, c. 53, as has already been observed, the form of the oath of abjuration was altered to meet the state of things consequent upon the death of the old Pretender, and the penalty is due, if at all, by virtue of these two latter statutes. The ordinary rule for the construction of statutes is that laid down in *Haydn's case*, 3 Coke Rep. 7, viz.:—First, ascertain what was the common law; secondly, what was the mischief for which the common law had not provided; thirdly, what was the remedy provided by the statute; and, fourthly, what was the true reason of the remedy. This still continues to be the rule. In *Lyde* v. *Barnard*, 1 Mod. Mal. 99, it was laid down by the Court in their judgment that "Words in a statute may be construed in a sense different from the ordinary one when the Act is intended to remedy some existing mischief, and such a construction is required to render the remedy effectual, for an Act must always be construed to suppress the mischief and advance the remedy." In Bacon's Abridgment, tit. "Statute," it is said that "A thing which is within the letter of a statute is not within the statute unless it be within the intention of the makers." And again, "The construction to be put upon a statute is that which best answers the intention of the Legislature, and whenever this intention can be discovered it ought to be followed, although such construction seems contrary to the letter of the statute." Now, to apply the above rule to the present case. First, as to the common law. The only oath imposed by the common law upon the subjects of this realm is the oath of allegiance, which originated in the old feudal oath of fealty, and this oath all persons capable of taking an oath at all can lawfully take. Next, as to the mischief intended to be remedied by the statutes which contain the oath of abjuration. To my mind it is clear that the evil against which all these statutes were directed was the existence of persons disaffected to the succession of the Crown, as altered at the Revolution. The Act of the 13 Wm. 3, c. 6, which contains the original oath, is entitled, "An Act for the further Security of her Majesty's person, and the Succession of the Crown in the Protestant Line, and for extinguishing the Hopes of the pretended Prince of Wales, and all other Pretenders, and their open and secret Abettors." The words of the oath are in substance as follow, and clearly show the same thing:—"I, A. B. do truly and sincerely profess, testify, and declare, in my conscience, before God and the world, that our Sovereign Lord King William is lawful and rightful King of this realm, and of all other His Majesty's dominions and countries thereunto belonging. And I do solemnly and sincerely declare that I do believe in my conscience that the person pretending to be Prince of Wales during the life of the late King James, and since his decease pretending to be, and taking upon himself, the style and title of the King of England by the name of James 3, hath not any right or title whatsoever to the Crown of this realm, or any other the dominion, thereunto belonging. And I do renounce, refuse, and abjure any allegiance or obedience to him, and I do swear that I will bear faith and true allegiance to his Majesty King William 3." The oath then proceeds to pledge the person taking it to defend the King, to disclose all treasons and traitorous conspiracies known to him, and to support to the utmost of his power the limitation and succession of the Crown as it stood limited by the Acts of Settlement, and concludes with the same identical words used in the oath contained in the statute 3 Jac. 1, before mentioned. The statute 1 Geo. 1, s. 2, c. 13, is entitled, "An Act for the better Security of his Majesty's Person and Government, and the Succession of the Crown in the Heirs of the late Princess Sophia, being Protestants, and for extinguishing the Hope of the pretended Prince of Wales, and his open and secret Abettors," which is in substance the same title as that of the 13 Wm. 3, c. 6. By the 1st section the three oaths, viz. of allegiance, of supremacy, and of abjuration are re-enacted, and merely altered in form to meet the state of things consequent upon the accession of the House of Hanover.

By the 10th section two justices of the peace may tender the oath to any person whom they may suspect to be disaffected, and every person neglecting or refusing to take it is to be esteemed and adjudged a Popish recusant convict, and to forfeit, and be proceeded against as such. This involved the incapacity to hold any office or employment, to keep arms for his defence, to come within ten miles of London, to bring any action at law or suit in equity, to travel above five miles from his home unless by license upon pain of forfeiting all his personal property; and if required by four justices so to do to abjure and renounce the realm, and in the event of not departing within the time limited, or returning without the king's license, is to be guilty of felony and suffer death as a felon. By the 11th section, to the intent and purpose that no person may avoid taking the oath, two justices are authorised to summon any person before them to take it. By the 17th section, any member of the House of Commons voting without having taken the oath, in addition to the consequences before mentioned, and the penalty sought to be recovered in this action, is declared incapable to be the guardian of a child, to be an executor or administrator, to take any legacy or property under any deed of gift, or to vote at any election for a member to serve in Parliament; in short, is utterly deprived of the protection of the law and of the most common and ordinary natural rights of all mankind. It is to be observed that in all the preceding statutes the oath of allegiance, supremacy, and abjuration were required to be taken by persons holding certain offices, and in certain professions only, and that there was no legislative obligation upon the subjects of the realm generally to take them, but by the 10th and 11th sections of the last Act, the most extensive powers are given to two justices to compel all persons whom they may think disaffected or dangerous so to do under the most severe penalties. And I certainly think that whatever is the proper and legal form of administering the oath of abjuration to a Jew not a member of the Legislature, is the proper and legal form of administering it to a Jew who happens to be one, and that it cannot be lawful to omit the words "upon the true faith of a Christian," in the former case and to insist upon them in the latter. Next, as to the remedy proposed to be provided. To ascertain this rightly, it seems to me absolutely necessary to consider what was the prevailing state of opinion, with regard to political oaths, at the time when those statutes passed; and it is to my mind clear from the perusal of them, that from the reign of Queen Elizabeth down to that of King George III. it was considered by the Legislature to be a matter of the utmost benefit and advantage to the Crown and State that the subjects of the realm should take these oaths (of which the oath of abjuration was one), and that, not as a mere matter of form, but that the person taking them should be really bound in his conscience to the matter therein contained, and under a religious obligation to perform and abide by them; and I think the remedy provided, and meant to be provided, by the statute was, that persons should be compellable to take this oath of abjuration, and as a natural and legal consequence, as it seems to me, to take it in a manner and form binding upon their consciences, and thereby secure to the Crown and the Government the benefit and advantage arising from, and consequent upon, an oath to the above effect. At this time Jews were living in England in very considerable numbers, and in common with the other subjects of the realm, were liable to be called on to take the oath, and their neglect or refusal to take it subjected them to the penalties which I have mentioned. Now, to permit a Jew to make—much more to insist upon his making—an oath "upon the true faith of a Christian," seems to me to be absurd; but if these words be omitted, and the Jew be called upon and required to take the oath without using them, then, according to the finding of the special verdict, it would be obligatory and binding upon him to the fullest extent, and would secure to the Crown and Government the entire advantage and benefit contemplated and intended by the statute. It therefore seems to me that a construction which admits of the omission of these words in the case of a Jew is required to render the statute effectual, and directly tends to suppress the mischief and advance the remedy. If, however, it was intended by the Legislature that these words should be of the substance and essence of the oath, and that no one except a Christian should be admissible to take it, it was undoubtedly competent for them so to enact, and the oath could not be lawfully taken except they were used; but I think that there was no such intention. At this time there was no oath or declaration required which would have prevented a Jew from sitting and voting in Parliament, and I observe nothing whatever in the Act which has any tendency to shew that the Legislature desired or wished to exclude them. The whole frame of the statute is directed against persons opposed to the new limitation of the Crown, and who were truly believed to be principally Christians of the Roman Catholic religion, and I think the words "on the true faith of a Christian" were inserted in the oath, not as a test of Christianity, but for an entirely different object—viz. for the purpose of framing an oath in a form the most effectually binding upon the conscience of the Roman Catholics. I have already alluded to the then existing opinion, that persons of the Roman Catholic religion took oaths with mental evasions and reservations, which it was supposed relieved them from their obligation, and I think it clearly appears from the concluding paragraph of the oath that the real motive for the introduction of these words was to bind their consciences in the most solemn manner. The 11th section of the statute also shews that the statute itself was mainly directed against Roman Catholics, for one of the penalties thereby imposed was, that any member of the House of Commons voting without having taken the oaths shall be deemed and adjudged "a Popish recusant convict." It is obvious that the Legislature never intended that a Jew should be so designated, when it is considered that the offence of "recusancy" was purged by the "convict" making an acknowledgment of sorrow for not having attended Divine service according to the rites of the Church of England, and denying that the Pope has any power in this kingdom. There is another rule for the construction of statutes, which was enunciated by the late Mr. Justice Burton in the case of *Warburton* v. *Loveland*, 1 Hudson & Brooke's Irish Rep. 648, and which will be found in the judgment in *Becke* v. *Smith*, 2 M. & W. 195. It is as follows:—"It is a very useful rule in the construction of a statute to adhere to the ordinary meaning of the words used and to their grammatical construction, unless that is at variance with the intention of the Legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience, and no further." This rule has very frequently been relied upon of late years, and especially in this court; and in the judgment in *Becke* v. *Smith* was stated to have been adopted by it. Now, to apply this rule to the present case, what was the intention of the Legislature, to be collected from the statute itself, imposing the oath of abjuration? Upon this point I cannot think there is room for much difference of opinion, and that the intention was that all members of the Legislature, and almost all persons holding offices in the State, and all persons whatever suspected of disloyalty to the new succession, should be liable to be called on to take the oath, and should be bound in their consciences, by a religious obligation, to the several matters contained in it. In the case of Jews this intention can be fully effected, and all inconveniences avoided, by so far varying or modifying the language of the oath as to omit the words "on the true faith of a Christian;" for the special verdict finds that the Jews are bound by the oath when these words are omitted. Again, I do not think there can be any difference of opinion but that a Jew is liable to be called on to take the oath by virtue of the 10th and 11th sections, and it certainly seems to me a manifest absurdity, and quite repugnant to the statute, to allow him to take the oath upon the true faith of a Christian, and that this absurdity and repugnance is avoided by requiring him to take the oath, omitting these words; which form and manner of taking it is found by the verdict to be binding upon him. As I have already said, in my opinion, if this be the lawful form of administering the oath to a Jew not a member of the Legislature, it is a lawful form of administering it to one who is; the statute making no distinction between the one and the other. These are highly penal statutes, and ought to receive a just and reasonable construction. What is such a construction as is consonant with justice and reason, is a point upon which men's minds will much differ; but to mine it does not appear consonant to either to hold that a Jew—who is certainly liable to be called on to take the oath, and who, as is found by this special verdict, is perfectly capable of taking and being bound by it, and who is willing to take it in a form and manner binding upon his conscience, and who merely refuses to use the words "upon the true faith of a Christian," which are not at all applicable to him, or, in my opinion, intended by the Legislature so to be, and which if used by him would render the oath null and absurd, if not worse—is, by such refusal, incapable of suing either at law or in equity, to be guardian of his own children, to be confined within the limits of five miles from his home, to be incapable of keeping arms for his defence, or of having property bequeathed to him, and, at the discretion or caprice of four justices of the peace, to be liable to be banished, and in the event of his returning to the kingdom without the leave of the Crown, to suffer death as a felon. As I have already intimated, I am of opinion that upon the true construction of the statute, and in order to effectually carry out its object and intention, a Jew ought to take the oath of abjuration, omitting the words "on the true faith of a Christian;" and it appears true that a construction the other way, which of necessity leads to the consequences I have just mentioned, is not in accordance with what I consider to be the principle and practice of the law of England. As before observed, the stat. 6 Geo. 3, c. 53 merely alters the form of the oath and subjects persons neglecting or refusing to take it to the consequences as enacted by the former statute. There was another statute, the 10 Geo. 1, c. 4, which was relied upon by both the learned counsel as supporting their respective views. It was contended by the learned counsel for the plaintiff, that the 17th sec. of that stat. proved that the words "upon the true faith of a Christian" could only be omitted from the abjuration oath by an express enactment of the Legislature. On the other hand, it was argued by the learned counsel for the defendant—first, that the section continued in force until the present time; or, secondly, if it did not, inasmuch as there never was any intention of the Legislature to oppose any impediment to Jews taking the abjuration oath, that the omission to continue the enactment proved that the Legislature did not consider the use of these words by a Jew essential to the due taking of it. This statute appears to have been enacted under these circumstances:—by a stat. of the 9 Geo. 1, c. 24 (which passed in 1722), persons who neglected to take the oaths prescribed by the 1 Geo. 1, c. 6, before the 25th December, 1723, were obliged to register their estates, and the stat. 10 Geo. 1, c. 4, was made to amend this Act, by enlarging the time for taking these oaths until the 8th of November, 1724, and in the 17th section it was enacted that whenever any subject of his Majesty professing the Jewish religion should present himself to take the oath of abjuration "in pursuance of the above recited Act, or this Act," the words "upon the true faith of a Christian," shall be omitted, and such persons were to be sworn in like manner as Jews were admitted to be sworn to give evidence in courts of justice. These Acts of Parliament appear to be the foundation of a class of statutes which very soon became annual, and continue to the present time, known by the name of the "Indemnity Acts." This provision with respect to Jews is not to be found in any of them except in the statute above mentioned. I agree with the learned counsel for the plaintiff that this section, in its terms only, extends the oath prescribed to be taken by virtue of the statute itself, and the stat. 9 Geo. 1, c. 24, recited in it; but I do not think that the argument on either side is much advanced by reason of this 17th section. It is quite notorious that Acts of Parliament are frequently made, and that much more frequently sections are introduced to meet objections and set at rest doubts, without such consideration as to whether they be doubts really well founded or not; and, considering the class of persons by whom the oath is to be administered, it might well be that the Legislature thought it desirable, in the case of Jews, to expressly dispense with the words, "on the true faith of a Christian," although, upon the true construction of the Act by persons skilled in the law, the use of such words ought to be omitted. On the other hand, as was contended by the learned counsel for the defendant, the omission of this enactment in the subsequent Indemnity Acts may have a tendency to shew that the continuance of it was deemed unnecessary, and that Jews might lawfully take the oath without using the words; for there is no reason whatever to suppose that the Legislature at all desired to impose any difficulty upon Jews in respect of this oath. The arguments on both sides on this point do not appear to me to be of much weight. There was another Act of Parliament referred to by the learned counsel for the plaintiff, the 13 Geo. 1, c. 7, being an Act for naturalising such foreign Protestants and others (the others being Quakers and Jews) as should settle in the American colonies; and by the 3rd section of that Act it is recited that by reason of the words, "upon the true faith of a Christian," Jews may be prevented from receiving the benefit of the Act, and it is enacted that these may be omitted in like manner as by the 17th section of the 10 Geo. 1, c. 4. The argument from this section is the same; perhaps not so strong as that I have already referred to, and is open to the same answer. There were a variety of other statutes mentioned, beginning with the 13 & 14 Car. 2, with respect to Quakers. It is clear, from the provisions of this Act, that at that period Quakers were supposed to be a sect dangerous to the state, and their objection to take an oath (which they then and still object to take upon religious grounds) is treated as a crime. In course of time, however, the utter groundlessness of any suspicion that dangerous political principles were held by Quakers became apparent, and by various Acts of Parliament, cited by the learned counsel, they have been placed on the same footing as all the rest of her Majesty's subjects, and permitted to affirm in all cases where persons not objecting to take oaths are

called upon to make them. I do not think that these statutes much assist in arriving at the true conclusion upon the present question. The fourth point made by the learned counsel for the defendant was, that the defendant was authorised to omit the words "upon the true faith of a Christian," by virtue of the stat. 1 & 2 Vict. c. 105. I do not think that this statute has of itself such an effect; in truth, it merely enacts that the defendant was bound by the oath as taken by him, and would be liable to any temporal punishment consequent upon his swearing falsely to it; but in reality this special verdict finds that the defendant was so bound, and I think he would be liable to any penal consequences consequent upon this oath being false without the aid of this statute. There is, no doubt, considerable difficulty in duly considering the present question, arising from the circumstance that at the present day very many (probably the greater number of persons) are disposed to consider that the taking of these Parliamentary oaths creates no real binding obligation upon the conscience, and is a matter of no importance; but it was not so considered when the statute 1 Geo. 1 was passed. It is obvious from it, and a variety of other statutes passed in the reign of Queen Anne, that the Legislature attached a very great importance to the religious obligation imposed upon the conscience by taking them, and deemed that an immense public benefit and advantage was thereby obtained for the Crown and Government. And as a Jew, by omitting the words "on the true faith of a Christian," may be placed under the conscientious obligation created by taking the oath of abjuration, I think I best carry out the intention of the Legislature, and give the true legal construction to the statute, by holding the legal form of administering the oath to a Jew is to omit these words, and that I thereby render the statute more effective by suppressing the mischief and advancing the remedy contemplated by it. For these reasons I am of opinion that the defendant lawfully took the oath, and is entitled to the judgment of the Court.

ALDERSON, B.—My brother Martin has fully stated the pleadings and the findings of the jury in this case, and it is not necessary, therefore, that I should repeat them. On several points in this case there is no difference of opinion on the Bench. We all agree in thinking that, of the four points made by Sir F. Kelly, three, at all events, cannot be supported. The only point on which we entertained any doubt, and on which I regret to find we are not now agreed, is whether, in taking the oath of abjuration, Mr. Salomons, the present defendant, was bound to have added the words, "on the true faith of a Christian," to those which he did consent to utter and attest by his oath; or whether, by designedly and of purpose omitting those words, he is in fact to be deemed not to have taken that oath at all, and so to have incurred the penalties contained in the 16th section of 1 Geo. 1, c. 13. It is on this point alone, therefore, that I shall deliver my judgment, and I am obliged to say that I differ from my learned brother in his view of the case, and have come to a clear opinion that the plaintiff is entitled to our judgment. The real question is, whether these words are a part, and an essential part, of this oath, and are to be used by all who are required to take it, unless they have some special privilege for omitting them, expressly given by the Legislature. I take the principles on which our decision is to rest to be quite undisputed. Where an oath is to be taken in order to establish affirmatively or negatively any proposition by a witness, I agree that *Omichund* v. *Barker*, Willes, 538, has settled that it ought to be taken in that form and upon that sanction which most effectually binds the conscience of the party swearing. Thus, a Jew is to be sworn upon the Book of the Law, and with his head covered, a Brahmin by the mode prescribed by his peculiar faith; a Chinese by his special ceremonies, and the like. But it is also clear, and expressly admitted by Willes, C. J. in his judgment, referring to Lord Coke's authority on the subject, that in the case of oaths of office or of qualification, where the very form of the oath as well as the oath itself is prescribed by the Legislature, there the directions of the Legislature must be literally followed, and the oath must and can only lawfully be taken in the prescribed form, until that form be altered by the same authority which appointed it. The question, therefore, here is, has the Legislature required the oath of abjuration to be taken in a prescribed form, and are the words "on the true faith of a Christian," a part of that prescribed form? Now, it is to be observed—and it is of the greatest importance to advert to this—that the Legislature uniformly speak of "*the* oath of abjuration" where they require it to be taken; they do not use the indefinite article, but the definite one. The inference is inevitable, that they contemplate the allowance of but one oath of abjuration in one form, to be used by all persons required to take that oath. Whatever form of oath, therefore, was required to be taken by the Roman Catholic, the same form was to be adopted by the Protestant, whether Churchman or Dissenter; and the same (unless there be some special provision made, as in some cases there is) must be taken by the Jew or the Turk, or any other religionist who may be liable to take the oath as a qualification for office, or for any other required purpose. Unless this were so, the Legislature would never have fixed a form, but would have said that such persons must take "*an* oath" of abjuration "to the substance and effect following," and not "*the* oath" of abjuration "in the tenour following," as they have done. It seems to me that the legitimate result of my brother Martin's reasoning is, therefore, to make the Legislature, by a somewhat forced construction, use this indefinite mode of expression; whereas they have clearly used a definite one; so that it would follow, according to his view of the case, that they must be supposed to have allowed one form of the oath of abjuration to be used by Jews, another by Roman Catholics, and, possibly, another by persons of a different persuasion. This, however, is a conclusion so contrary to the words they have used, that I cannot bring myself to adopt it. If there be, in the absence of any special exception expressly made by the Legislature, but one form of the oath of abjuration to be adopted by all, we must proceed to inquire whether those words are an essential part of that form. I proceed, therefore, to examine how this clause first got into the oath of abjuration. It is not found in the oath prescribed in the reign of Elizabeth, but is first found in the 3rd of James 1, c. 4, which was passed upon the discovery of what is called the Gunpowder Plot. It is a curious fact, only lately brought to light by the publication of a manuscript from the Bodleian Library at Oxford by Mr. Jardine, that one of the main proofs used by Lord Coke when he laid that case before the jury was the production of a little book found in the chamber of Francis Tresham, one of the conspirators mentioned in the Act, called *A Treatise on Equivocation*. This treatise, corrected in the hand of the Jesuit Garnet, and having the *imprimatur* of Blackwell, the then arch-priest of England, discusses the question how far a person called upon, as he thinks unjustly, to make a declaration or promise, or to depose or swear to a fact within his personal knowledge, may lawfully equivocate by using ambiguous words or reserving mentally a sense of the words used different from that outwardly expressed by him, without incurring the sin of lying or the guilt of perjury. The question is there resolved in the affirmative, that he may lawfully do this, and among other propositions it is affirmed that even if he be required by the form of the oath tendered in terms to swear "without equivocation or mental reservation," he may still equivocate and mentally reserve without danger to his soul. But in that treatise there is one exception to all this. No person is allowed to equivocate or mentally reserve without danger, if he does so, of incurring mortal sin, when his doing so brings apparently his true faith towards God into doubt or dispute. For, though he may lawfully, on proper occasions, omit to avow his true faith, he must never, by what he says or swears, bring apparently his true faith into doubt or dispute with others. Now, this treatise being before the Government of James 1, and in the hands of his Attorney-General, and used at the trial of the Gunpowder Plot, we find in the same year, 1605, that in a statute enacted mainly to the same plot, these words,—"On the true faith of a Christian,"—are, for the first time, added to the oath of obedience then framed, and for the obvious purpose, as I think, of preventing effectually all such equivocation, by conclusively fixing a sense to that oath, which by no evasion or mental reservation should be got out of, without (even in the opinion of the Jesuit doctors themselves) incurring the penalty of mortal sin. They were therefore, I think, not merely a part of that oath, but the most effectual and stringent provision in it. I do not therefore call this properly an oath intended as a test of Christianity, which it was not, nor as a mere test of obedience, but an oath intended as a test of obedience, and framed so as to be a test against all equivocation also. But this, though the fact, to which I have referred, is a very curious confirmation of the view I take of the importance of the words on which this case turns, is not necessary to my opinion. It would be quite sufficient, I think, to affirm that the Legislature have said expressly, as they do, that an oath is to be taken "the tenour of which oath hereafter followeth," for "the tenour" implies that all the words which follow thereafter are part of the oath itself. It is to be observed that in all the course of legislation on this subject either these words, "the tenour of the oath," or equivalent expressions, are throughout used by the Legislature. I will shortly refer to them. In the first place, this same oath of obedience was by 7 Jac. 1, extended and applied to the members of the Legislature, and to all persons enumerated, who exercise any functions or hold any offices in the State. No one reading this Act can, I think, doubt that the Legislature meant this enactment to be general, and without any exception of persons, whatever may be their religious opinions. The 30 of Car. 2, c. 25, sec. 1, left these oaths untouched, adding, however, a declaration against transubstantiation. It is unnecessary to refer to the intermediate Acts of the 1 Wm. & M. c. 8, s. 1, more particularly. I come to the 13 Wm. 3, c. 6, which first established the oath of abjuration, and there the words are, that the persons required to do so shall take "the oath as hereinafter mentioned," setting out expressly the form, including and ending with the words "on the true faith of a Christian," introduced before into the old oath of obedience. This form of oath was not only to be taken, but subscribed also, which shews, I think (for there is no trace of double subscriptions to be found), that one form only was to be allowed and adopted, without addition or omission. With certain alterations in the reign of Queen Anne, applicable only to altered circumstances, and therefore not material to be adverted to, things remained up to the 1 Geo. 1, stat. 2, c. 13, when the three oaths, of allegiance, supremacy, and abjuration, were for the first time put together, and the Legislature there expressly require them to be taken "in the words following," and then set forth the oath of abjuration containing the words "on the true faith of a Christian." Now, how is it possible to give effect to the expression "in the words following," if we do not use all the words which follow? I cannot see how this difficulty is to be got over by construction. Lastly, we come to the 6 Geo. 3, c. 53, on which this case depends; by which it is provided that the oath of abjuration (the Legislature still using the definite article "the") shall be administered in such a manner and form as hereinafter set down and prescribed (that is to say, &c.), and then, as before, the oath is set out, ending with the same words "on the true faith of a Christian." Now, when I find the Legislature beginning with "the tenour of the oath," and going on with "the oath as hereinafter mentioned," then saying "the oath in the words following," and finally, "the oath to be administered in such manner and form as is hereinafter mentioned and prescribed;" and find also that all these expressions are followed by a form containing these very same words, how am I to escape from the conclusion that those words do form a part of the oath prescribed? But it is argued that to apply it to the Jew involves an absurdity, and that, according to what has been not improperly called the golden rule of construction, we must modify the literal construction of these Acts so as to get rid of the absurdity. I add (and I hold it to be part of the rule), only so far as is absolutely necessary to get rid of the absurdity. But let us see whether it is absurd to apply these provisions to the Jew as well as to the Christian. The Legislature did not require the first oath of obedience to be taken by all, but only by such persons as were reasonably liable to suspicion by two justices of the peace acting judicially, or by persons who had omitted to do certain acts. It may be, and it perhaps was, unjust in the Legislature so to enact; but we must take good care, in applying the golden rule, not to confound injustice with absurdity. The reason of the rule is, that the absurdity induces us to conclude that the Legislature did not intend. I am afraid if we say that in old times such as those of the Gunpowder Plot—the Legislature must be held not to have intended what now we judge to be unjust, we shall ourselves be guilty of the grossest absurdity. I am afraid that I should, if that were the proper principle to be adopted, be obliged to hold that almost all the penal statutes had no operation at all, for I think that the most of them were grievously unjust. I can see nothing in this, or the subsequent Acts containing the oath of abjuration, to induce me to believe that the Legislature did not intend literally what they said expressly, —viz. that those Acts and this oath were to apply to and to be taken by all the classes of persons therein named, of whatsoever form of religion—Catholic, Protestant, Quaker, or Jew, they might be—and in the very form set down. And I am confirmed, as I think conclusively, in this, by finding that where, on its being brought before them, the law was found to press unfairly on any of those persons, the Legislature has, from time to time, relieved them by dispensing with the swearing, and allowing the Quakers to affirm, and by dispensing with these very words of the oath, "on the true faith of a Christian," in the case of the Jews in certain cases. That dispensation, unfortunately, does not extend to this case; but its limited existence seems to me to shew conclusively the opinion of the Legislature itself on this point. The words of the 13 Geo. 2, c. 7, s. 3, are very remarkable. The Act recites, "Whereas the words 'upon the true faith of a Christian' are contained in the latter part of the oath of abjuration, and whereas the persons professing the Jewish religion may thereby be prevented from receiving the benefit of this Act;" and it enacts, that when a Jew proposes to take the oath, those words shall be left out; and it also refers to the limited indulgence as to those same words given the Jews, relieving them from the difficulties imposed

by those same words. That Act was passed in the 13th of Geo. 2. It is entitled "An Act to oblige 'all persons being Papists in Scotland,' and all persons in England, to take this oath of abjuration in its terms." Now, this recital clearly shews that Jews in England were included in the term "all persons," as indeed could not well be doubted, and that but for those indulgences they were always bound to take the oath of abjuration, including those words. And this Act was passed in 1739, when Lord Hardwicke was Chancellor, and Sir Dudley Ryder and Sir John Strange were Attorney and Solicitor-General; and the Acts of 9 & 10 Geo. 1 were passed when Lord Macclesfield was Chancellor, and Lord Raymond and Lord Hardwicke respectively Attorney and Solicitor-General. But it is now said that these Acts were wholly unnecessary, and that these great lawyers ought to have known it, and we are now, in the year of the Lord 1852, to awake from a sleep into which those great lawyers and the whole Legislature of those periods fell, and in which all persons ever since have remained, from 1739 down to the time of this argument. For it is in our own recollection that the present Lord Chief Justice of the Court of Queen's Bench gave relief by an Act of Parliament, leaving out these very words in the case of Jews. I cannot, therefore, believe this to be a reasonable conclusion. And besides, this argument really goes too far; for its legitimate extent ought to be to exempt Jews from taking any oath of abjuration under any circumstances whatsoever, seeing that, as it is contended, it is absurd that they should take any oath thus framed, and no other oath is expressly provided for them by the Legislature. No one surely can suppose that the Legislature intended this result; and, indeed, Sir F. Kelly did not even venture to argue to this extent. But let us now for a moment concede that there is an absurdity in requiring all such persons, under all circumstances, to take such an oath, and that under some circumstances it would be impossible to suppose that Jews were to be called on to take it. Then I say that the golden rule only requires us to stop where the absurdity stops. It cannot surely be absurd to say that the Legislature may have really intended to require such an oath from all men, Jews or Christians, who take office, or propose to exercise important legislative functions. If so, then it follows that the utmost that can be done would be to say that these Acts as to Jews must be, in construction, confined to the cases of their taking office, or proposing to exercise legislative functions, and that, in the other cases alone, they are not bound to take the oath at all. But such a construction, even if adopted, which I think would be wrong, could be of no service in the present case. I am therefore of opinion that these words do form a distinct and essential part of the oath, because they interpret and give a peculiar and stringent sense to the previous words of the oath, and are, in fact, incorporated in and form part of each sentence in that oath; so that, without them, no part of the oath has exactly the same meaning that it has when they are added to it. I believe that they were advisedly, and on great consideration, originally adopted (perhaps on Sir E. Coke's advice), and that they have been found effectual, and for that reason retained ever since. I think, therefore, that the oath is not taken at all if these words are omitted by the person swearing, and that Mr. Salomons has therefore voted without previously taking the oath of abjuration. I do most sincerely regret that I am obliged, as a mere expounder of the law, to come to this conclusion; for I do not believe that the case of the Jews was at all thought of by the Legislature when they framed these provisions. I think that it would be more worthy of this country to exclude the Jews from these privileges (if they are to be excluded at all—as to which I say nothing) by some direct enactment, and not merely by the casual operation of a clause intended apparently in its object and origin to apply to a very different class of the subjects of England. I regret also that the consequences are so serious, involving disabilities of the most fearful kind, in addition to the penalty sought to be in this action recovered, and, in fact, making Mr. Salomons for the future almost an outlaw. It is to be hoped that some remedy will be provided, for these consequences at least, by the Legislature. My duty is, however, plain. It is to expound, not to make, the law; to decide on it as I find it—not as I may wish it to be. It seems to me that the law on this point is quite clear, and that the judgment must be for the plaintiff.

PARKE, B.—The question of the defendant's liability to penalties for voting in the House of Commons after their speaker was chosen, and before the defendant had taken the oath required by the 6 Geo. 4, c. 53, though it necessarily occupied much time in the argument, appears to me to lie in a narrow compass. It depends mainly on the construction of that statute giving the form of the oath of abjuration, which every one, by the express words of the Act, who is required to take and subscribe to it must do, "according to the form therein set down and prescribed," within such time limited, in such manner, and with such observance of the same requisites, and with benefit of the same savings, provisoes, and indemnities as by any Acts then subsisting are directed and enacted; and in case of neglect or refusal, the statute provides that every one shall be liable to the same penalties and disabilities as are by law established. Those are, with respect to members of Parliament, the penalties imposed by 13 Wm. 3, c. 6, s. 10, the penalties for which this plaintiff proceeds. The form of oath is set out in 6 Geo. 3, c. 53. It has been already sufficiently adverted to, and I shall only state, as material to the present argument, the concluding words; and they are:—"And all these things I do plainly and sincerely acknowledge and swear, according to the express words by me spoken, and according to the plain common sense and understanding of such words, without any equivocation, mental evasion, or secret reservation whatever; and I do make this recognition, acknowledgment, abjuration, renunciation, and promise, heartily, willingly, and truly, upon the true faith of a Christian." Three questions arise on the construction of this Act. The first and by far the most important one is, whether the conclusion of this oath is only a part of the ceremony of administering the oath, or a substantive part of the oath itself. The second, of much less consequence, whether, by reason of the oath naming King George only, it ceased to be requisite after his death. The third, whether any exemptions were given by any statute in force at the time of passing the 6 Geo. 3; for to such exemptions it is contended that the defendant would be entitled. The first of these questions, on which it may be truly said that the case almost entirely turns, was ably argued on both sides. It is this,—What is the meaning of the words the Legislature have used in the concluding part of the formula of the oath? Are they a part of the oath itself, or merely the mode of administering it? Applying the established rule, and reading them according to their ordinary sense and their grammatical construction, I cannot bring myself to doubt that the words at the end of the oath are to be repeated by the party taking it, and he is to make use of these expressions: "And I do make this recognition, acknowledgment, abjuration, renunciation, and promise heartily, willingly, and truly, upon the true faith of a Christian." Nor can I doubt as to the meaning of those words. They cannot possibly mean that the party taking the oath swears that he makes it "heartily, willingly, and sincerely, upon the true faith" of any other person than himself. They cannot mean that he makes it with as much regard to truth, and with the same degree of faith, that any other person who is a Christian would do. They must mean that he swears with the true faith of a Christian, as he himself is, and, therefore, none but a Christian can take the oath. This appears to me to be the natural, plain, indisputable sense of the words used, and, consequently, unless they are for some just reasons to be qualified or altered, the oath must be taken in those very words, wh. . it cannot be except by a Christian. And, further, every person who is enjoined and required to take the oath of abjuration must take it in the above-mentioned form, by 6 Geo. 3, c. 54; and by the 1 Wm. 3, c. 6, s. 10, no member of the House of Commons shall vote in the House of Commons, or sit there during any debate after the Speaker is chosen, until he has taken the oath in the manner prescribed by the last-mentioned Act. It is impossible that an enactment can be more distinct and clear that every member of Parliament must take the oath in the form and manner so prescribed, or be liable to the penalties. No one by the express words of the statute can be exempted. It is, however, true that words which are plain enough in the ordinary sense may, when they would involve any absurdity or inconsistency, or repugnance to the clear intention of the Legislature, to be collected from the whole of the Act or Acts in pari materiâ, to be construed with it, or other legitimate grounds of interpretation, be modified or altered so as to avoid that absurdity, inconsistency, or repugnance, but no further (an instance of which in this Act of Parliament I shall hereafter advert to); for then we may predicate that the words never could have been used by the framers of the law in such a sense; and the main argument of the learned counsel for the defendant was that, if the words in question were read as part of the oath, it would be followed by such absurd, or at least by such manifestly unjust, consequences, as to lead to the conclusion that such could not have been the meaning of the words, and therefore that they ought to be modified or altered in a certain degree, and for the sake of avoiding that absurdity or injustice, in order to make sense of them they ought to be read, not *as part of the oath*, but as the mere mode of administering it, which precise mode would not be obligatory at common law, and certainly not since the statute 1 & 2 Vict. c. 105. The absurdity or injustice is stated to be this,—That every man who is elected to be a member of Parliament is bound to serve, and cannot excuse himself, and this enactment, understood in its ordinary sense, would prevent him from so doing. Again, it is said a form of oath with a similar provision is required by the statute of the 6 Geo. 3, c. 53, in all cases where the oath of abjuration is required by existing Acts, and one of them, the 1 Geo. 1, stat. 2, c. 13, requires it to be taken not only by all civil and military officers, schoolmasters, &c. but authorises two or more justices of the peace, or a person appointed by the Privy Council, or by a commission, to tender it to any person whom he or they shall suspect to be dangerous or disaffected to his Majesty or his Government; and upon neglect or refusal the person so neglecting or refusing is to be deemed a Popish recusant convict, and as such to be proceeded against; and it is said that it would be a flagrant injustice to construe the oath to apply to persons who were not Christians, and could not therefore take the oath, and that to avoid that injustice in this *one case* the latter words ought *in all cases*, when the oath is required to be taken, to be construed not to be part of the oath itself. But I think it quite impossible to maintain that there is any absurdity or any such manifest injustice in the provision that an oath shall be taken in the terms in question as to justify an alteration of its plain words in the present case. We must construe those Acts of Parliament without allowing ourselves to be influenced by any of the political feelings of the present day as to the proper policy to be pursued with respect to her Majesty's subjects professing the Jewish faith. Looking at these provisions of the Legislature in a judicial spirit, which we are bound to do, how can we say that it is a flagrant violation of natural justice and a manifest wrong to make a provision which has the effect of preventing all but Christians from being members of the Legislature of a Christian country? Whether it is a politic measure or not to exclude them is not within our province to inquire, and it would be very wrong in us to offer, or even to hint any opinion. There is no reason, therefore, on the ground of inconsistency or absurdity, to modify or alter the language of the oath in the case of members of the Legislature, which alone is the present question, and the only case in which practically the question is likely to occur. It is, therefore, unnecessary to consider whether there would be any reason to modify or alter it in the other cases provided for by the 1 Geo. 1, stat. 2, c. 13, on the ground of the supposed manifest injustice of exacting an oath from Jews which they cannot conscientiously take, and, upon their refusing to take it, to punish them as Popish recusants. Such a circumstance would practically never occur. The power given by the statute to two justices of the peace, or a commissioner, to tender the oath to all such as they or he should deem dangerous or disaffected to the king or his government (obviously meaning the abettors, secret and open, of the Pretender), it is highly improbable would ever be exercised against a Jew or a person not a Christian, who in those times were few in number in Great Britain, and who were very unlikely to be engaged in plots on behalf of the Roman Catholics to subvert the Protestant succession. If a Jew or any person not of the Christian faith should be guilty of conduct such as to lay him open to just suspicion of being so engaged (and it is only in cases of suspicion on just grounds that it is to be presumed that two justices of the peace or a royal commissioner would act), he would have himself to blame for subjecting himself to the discretionary power of those persons to have the oath prescribed by the statute administered to him. The conferring this power in any case was, undoubtedly a strong measure as applied to Christians, and was enacted only in consequence of the danger of the Protestant constitution; and though the measure, if enforced against a Jew who could not conscientiously take the oath, would be one of still greater severity, it is impossible to say it would be so flagrantly unjust as to enable one judicially to pronounce an opinion, that it could not have been the meaning of the Legislature in such a prescribed case that the oath should be administered in the prescribed form. If it be too severe, it is for the Legislature to mitigate its severity by altering the form of oath, not for us to interpret plain and clear words in a mode directly contrary to their ordinary sense, to avoid what may be thought a hardship. But, even admitting that there would be ground for a modification in such an improbable though possible case, the same reason does not apply to a member of Parliament, the only one now under consideration; there is no absurdity or injustice in requiring an oath that none but a Christian can take from every member of the Legislature, and consequently no ground for modifying or altering the terms of the oath as administered to any member on offering to take his seat; *adeo quæ frequentius accidunt jura adaptantur*. If, in the vast majority of possible cases, in all of ordinary occurrence, the law is in no degree inconsistent or unreasonable, construed according to its plain words, it seems to me to be an untenable proposition, and unsupported by authority, to say that the construction may be varied in every case

because there is one possible but highly improbable one in which the law would operate with great severity, and against our own notions of justi The utmost that can be reasonably contended is, that it should be varied in that particular case so as to obviate that injustice—no further. Because it would be hard to impose the oath in the terms prescribed in the case of a Jew suspected of disaffection by two justices, is that any reason why it should be altered in every other case, th ugh the express words may be insisted on in all such cases, the cases of ordinary occurrence without ny injustice? If we find a single extremely rare case, in which, on account of its apparent inconsistency, we can judicially predicate that the Legislature never meant the oath in its precise terms to be applied, can we conclude that they did not mean it in any other case? I think it clear we cannot. If this argument were to prevail, Roman Catholics themselves would be exempt from taking the full oath, and might legally insist upon the omission of the final words. It is then contended that the sole object of the Legislature in directing this oath to be taken was to affect Roman Catholic subjects—not to exclude Jews; and, therefore, that the enactment ought to be so construed as not to apply to them, which would be effected by holding the last words to be a part of the formula of administration only. It is, indeed, true, as a matter of history, that the occasion of prescribing this particular form of words was the danger which Parliament apprehended from a particular class of Christians, whose loyalty they doubted and whose sincerity they suspected, and, therefore, directed this oath to be taken in a manner which afforded a more perfect test of both, and a superior sanction to one in a less stringent form. But it is a fallacy to argue, that because the immediate object of the Legislature was to give a more binding effect to a Christian oath, not to exclude the Jews and others than Christians, therefore they meant all such to be admitted, and, consequently, that the terms of the oath ought to be modified so as to carry that object into effect, and to permit all not of the Christian faith to take the oath in a form binding on their consciences. Nothing was further from the contemplation of the Legislature. The truth is, they never supposed that any but Christians would form a part of either House of Parliament. The possibility that persons of the Jewish persuasion should be peers, or be elected Members of Parliament, probably entered into their contemplation as little as that of Mahomedans or Pagans being placed in either category. Both of these are, in effect, on precisely the same footing in this respect as the Jews, and the argument applies equally to all. In enacting a provision aimed at a peculiar class only of Christians, the Legislature have, in the most positive terms, required an oath from every member of the Legislature which none but a Christian can take; and this enactment must have the effect of closing both Houses of Parliament against every one but a Christian. To alter such strong words the clearest proof would be required of the intention of the Legislature to allow all who were not Christians to be admitted. But a case may be supposed where it might be done; for instance, if it appeared by the terms of the Act itself, or those in pari materiâ, that it was, notwithstanding the positive words, the object of the Legislature that all those not Christians should be admitted; for instance, to put the strongest case, supposing that there were a recital in the Act that all persons of whatever religion ought to be admitted to Parliament, and directed that an oath should be taken in the form in question, there would be an inconsistency and repugnance in the Act itself in imposing an oath in those precise terms, and then, according to the established rule, to carry the declared intention into effect, and obviate that inconsistency and repugnance, the language of the oath ought to be modified. This must in such a supposed case be held to have been within the Act in order to make sense of it; but it is far otherwise in the present case. The express words of the oath necessarily exclude all but Christians, and no intention to include all who are not Christians can be collected from the Act itself or any other Acts on the same subject, or in pari materiâ. None can be collected from the history of the times in which those statutes were enacted. It would indeed be a startling proposition that the Parliaments of Queen Elizabeth, Wm. 3, and Geo. 3, meant all, whether Christians or not (for they are all on the same footing in this respect), to be admitted to Parliament. As little inference can be drawn from enactments in the 1st of Geo. 1, stat. 2, c. 13, that persons refusing shall be deemed Popish recusants convict, and, as such, to forfeit, and be proceeded against. This is merely a mode of indicating the class of punishments to which the persons refusing were liable, and which are equally applicable to persons of all religious persuasions. If any argument could be derived from that expression, it would be that the enactments applied to Roman Catholics only, and it would prove too much. It is, however, said to follow from one of the established rules of construing acts of Parliament that the enactment in this case ought to be applied to Christians only, and my brother Martin relies much on that ground. That rule is, that we ought to consider what is the mischief intended to be remedied, and to construe the Act so as to extend the remedy and suppress the mischief; but this rule has, in my judgment, no application to this case. The mischief aimed at, no doubt, was the admission of a particular class of Christians without a solemn, searching, and stringent test of their veracity; and the enactment requires no extension to effect the purpose of suppressing that mischief, but does it effectually, when construed according to its ordinary meaning; but there is no rule of construction which authorizes a judge, when the remedy is complete, and the enactment is distinct and clear, and applies to all persons in express terms, to limit its operation to the particular mischief, and to alter the words for the purpose of effecting the repression of that only. This is, in truth, to legislate, and not to construe, and to legislate, too, in this case in a way which no one can for a moment suppose that Parliament, which enacted the law, could have ever thought of doing. How can a judge pronounce that a less stringent measure might have as well carried into effect the immediate object of the Legislature, and so proceed to construe the clause so as to give it that operation only? This would be to depart altogether from the proper duty of a judge, to alter the law, and not to expound it. Such considerations belong to the province of statesmen, and not of judges. I am, for the above reasons, clearly of opinion hat the oath ought to have been taken by the defendant, using the words in question as part of the oath, and, as he did not do this, it is quite unnecessary to decide whether if he had been willing to do so, and if he had insisted that he should be sworn on the Pentateuch, the oath administered in that form would have been sufficient. The second question arising on the construction of the Act is whether, as the form of the oath given by the 6 Geo. 3, c. 63, mentions the name of "King George" only, the obligation to administer it ceased with the reign of that sovereign, because it was applicable to no other than to him. I think this argument cannot prevail. It is clear that the Legislature meant the oath to be taken always thereafter; for the enactment is general, that it shall be taken without limit of time, and the oath is not confined to the existing monarch, but mentions the successors; and, as it could not be taken in those words during the reign of a sovereign not of the name of George, it follows that the name "George" is merely used by way of description of the existing sovereign, and that it must be altered from time to time in the name of the sovereign in the manner it was when actually administered in this case, in order to carry the obvious meaning of the enactment into effect. This is an instance in which the language of the Legislature must be modified in order to avoid absurdity and inconsistency with its manifest intentions. It is to be remarked, too, that the Legislature, in the 10th of Geo. 4, c. 7, s. 1, recognizes the oath of abjuration as that directed by law to be taken, and the constant practice in the late and present reign has been to administer it. The third question arises upon that part of the section of the 6th of George 3, which directs the oath to be taken "with benefit of the same savings, provisoes, and indemnities," as by the Act before mentioned, or any other Acts, or any part of them then subsisting, are directed and enacted. It is contended for the defendant, that there were statutes which gave an exemption to Jews, and which were existing at the time of the passing of the 6 Geo. 3. The first of these statutes is 9 Geo. 1. It is to oblige all Papists in Scotland, and all persons in Great Britain of the age of eighteen or upwards, who have not taken the oaths for the security of his Majesty's person and government required by the 1st Geo. 1, stat. 2, c. 13, to take them in one of his Majesty's Courts of Record at Westminster within General or Quarter Sessions of the county, &c. where they dwell, before the 25th of December, 1723, or to register their names and real estates on or before the 29th of September, 1724, under pain of forfeiture of their estates. The 10 Geo. 1 explains and amends the Act of 9 Geo. 1, extending the time for taking the oaths to the 28th of November, 1724 (with a proviso for all those in prison or beyond sea), and exempts those who take the oath on or before the day from the obligation to register, and extends the time to register to the 24th of June, 1725, but in default enacts that their estate shall be forfeited. This Act contains a proviso in favour of Quakers, and there is a clause which, after reciting that the following words are contained in the latter part of the oath of abjuration,—viz. "upon the true faith of a Christian," enacts that whenever his Majesty's subjects professing the Jewish religion shall present themselves to take the oath of abjuration in pursuance of that Act, or the recited Act (9 Geo. 1), the said words, "upon the true faith of a Christian," shall be omitted out of the said oath, and the taking of the said oath by such persons professing the Jewish religion without those words, in like manner as Jews are permitted to be sworn to give evidence in courts of justice, shall be deemed to be a sufficient taking of the abjuration oath within the meaning of this and the said recited Act (9 Geo. 1). It is clear that those Acts have no operation at all on the taking of the abjuration oath in Parliament. They apply only to the taking of the oath in Westminster-hall, or at the sessions, with a view of saving the necessity of registering the estates of those who take it,—and, further, neither was in force at the time of passing the 6 Geo. 3, the last having expired on the 24th of June, 1725. I may also observe, that the latter Act, 10 Geo. 1, shews that the Legislature at that time thought these words, "upon the true faith of a Christian," part of the oath itself, and that persons of the Jewish persuasion were obliged to take the oath with those words. It is, therefore, a legislative exposition of the meaning of the former Acts. But I do not lay very great stress on arguments deduced from legislative expositions. It is, however, a great confirmation of my opinion to find that the result of the application of the true rules for the construction of Acts of Parliament to this particular case corresponds with the exposition which the Legislature themselves give to those words in the reign of Geo. 1, when they thought it necessary to make a statutable provision for altering the oath in the case of Jews, and removing the words from it. In the course of the argument, reference was made to some Acts, and others, of which a list has been supplied, which it was said had the effect of continuing the 10 Geo. 1. The Indemnity Acts are:—2 Geo. 2, c. 31; 4 Geo. 2, c. 1; 6 Geo. 2, c. 4; 8 Geo. 2, c. 17; 9 Geo. 2, c. 26; 10 Geo. 2, c. 13; 12 Geo. 2, c. 6; 13 Geo. 2, c. 6; 27 Geo. 2, c. 13; 28 Geo. 2, c. 21; 29 Geo. 2, c. 32; 6 Geo. 3, c. 7; the Act of the 3 Geo. 2, c. 29, relating to the wills of Papists; and 11 Geo. 2, c. 11, and c. 17; 19 Geo. 2, c. 16, 28 Geo. 2, c. 10; 31 Geo. 2, c. 21; 33 Geo. 2, c. 13; Geo. 3, c. 26; 4 Geo. 3, c. 38, on the same subject; and 31 Geo. 3, c. 32, for the relief of Papists from certain disabilities. None of these statutes nor any others, appear to continue the 10 Geo. 1, c. 4, with respect to Jews, or to have any bearing upon the present question. Nor does the statute 1 & 2 Vict. c. 105, the Act to relieve doubts as to the validity of oaths, affect the present case. If the words in question were only the mode of administering the oath, the statute would have that effect, because the oath was administered in a form and with ceremonies which the defendant declared to be binding. But, if they form part of the oath itself, the statute has no application, and I am clearly of opinion that they form part of the matter to be sworn to; that is, part of the oath itself. I, therefore, am clearly of opinion that our judgment must be for the plaintiff.

Sir F. POLLOCK, C.B.—The facts of this case, and the circumstances under which it comes before the Court for judgment, have already been so fully and distinctly stated, that I may at once pass to the real question for our decision. I entirely agree with the rest of the Court as to three of the points made. I think that one only of the four points raised by the learned counsel for the defendant calls for an elaborate judgment, and that is, whether the defendant, by repeating the words of the oath of abjuration (omitting the expression, "on the true faith of a Christian"), and giving to the words so repeated the sanction of an oath, binding on his conscience, has complied with the stat. 6 Geo. 3, c. 53, s. 1, so as not to be liable to the penalties of 1 Geo. 1, c. 13, s. 17. The 6 Geo. 3 requires the oath to be administered in "such manner and form" as is thereinafter set down and prescribed (that is to say): then comes the form of the oath, the concluding part of which is, "upon the true faith of a Christian." The section goes on to enact, "that all and every person and persons who are enjoined and required to administer, take, or subscribe the oath of abjuration, shall respectively administer, take, and subscribe the oath of abjuration according to the form herein set down and prescribed, in such courts, within such time limited, in such manner, and with due observance of the same requisites, and with benefit of the same savings, provisoes, and indemnities, as by the said Act above mentioned, or by any other Acts, or any part of them, now subsisting, are directed; and in case of refusal, he or they shall be subject and liable to the same penalties and disabilities as by the laws and statutes aforesaid are enacted." Now, by the 16th section of the 1 Geo. 1, no member of the House of Commons shall vote in the House of Commons until he shall take the oath of abjuration in the manner directed; and the penalty of the violation of that section is 500*l*. This action is brought to recover that sum, and gives rise to the question I have already stated. It cannot (I think) be denied, apart from any grounds presented with a view to lead to a different construction, that the plain and obvious meaning of the statute is that the oath shall be administered and taken according to the very form set down and prescribed by the Act; but it is said that clear and substantial grounds for

a different construction may be found in the reasons for the decision adopted by my brother Martin. First, it is said, *Ormichund* v. *Barker* establishes that an oath is to be administered to a witness according to the rites of his religion, and so as to be binding on his conscience; and if it be so, that is sufficient. Then it is said, the defendant has taken the substance of the oath in a manner which is legal, being that which is binding on his conscience; and as the object of the statute was not to introduce a religious test, but to ascertain the loyalty of the party called upon to take the oath, and as anybody may be called upon to take it, and therefore Jews may be so called upon, and as it would be highly unjust, and therefore very absurd, to require Jews to take the oath in this form, subject (on refusal) to the very penal consequences contained in the Act, the Act cannot be so construed; but may be construed so as to give an opportunity to them, in common with all her Majesty's subjects, to take the oath in a form in which (according to their religious belief) they can take it. With respect to the case of *Ormichund* v. *Barker*, it appears to me to have decided merely this—that the common law of England agrees with the law of nations, that "the form of an oath is to be accommodated to the religious persuasion which the swearer entertains." These are the very words of Puffendorf, book iv. chap. 2, sec. 4. The intercourse of nations must frequently give rise to the necessity of the sanction of an oath in matters that concern both, sometimes with reference to treaties into which they may enter—sometimes with reference to the administration of civil or criminal justice. The sanction of an oath, if valid at the place where taken, ought to be considered valid everywhere (just as a marriage, valid at the place where celebrated, is, generally speaking, valid everywhere else); and as an oath is the personal act of the party taking it, if a witness be in a foreign land, his oath ought to be received as it would be received in his own country. In fact, a judicial oath—for justice is of all countries and climes—is governed by the law of nations; but an oath of office or of qualification is governed by the municipal law of the state which requires it to be taken, and by those laws alone. If a man cannot obey the municipal law of the country in which he resides, he is at perfect liberty to quit it. It may be a very sound reason for altering the law by a competent authority, but we are not, in my opinion, justified in substituting another law in its place; nor can we substitute another form than that which the law has provided. But it is said that it is competent to us, sitting here, so to construe the statute as to give to the defendant the relief which he requires; nay, that it is our duty, so to construe it, inasmuch as the opposite construction would lead to an injustice amounting to an absurdity. The general argument involved in this course of reasoning is certainly not without some appearance of authority. In some cases, no doubt, limited words in a statute have been said to be very much extended. The most remarkable instance of this is the Act commonly called "De circumspecte agatis" (the 13 Edw. 1), in which no bishop is named but the Bishop of Norwich. Lord Coke, however, in his *Second Instit.* commenting on this statute says—"The Bishop of Norwich is here put but for example; but it extendeth to all the bishops within this realm." The only remark I would make on this is, that if this turns on the mere construction of this statute, I do not believe such a construction of a statute would be tolerated in modern times. My own impression is, that the explanation of this very ancient statute—little more than 100 years from the time of legal memory—is, that the judges were by that document called upon to enforce, as to the Bishop of Norwich, that which was the known usage as the law of the land previously as to all bishops. There are other examples, more modern, where what is called a remedial law has been extended by what is called "necessary implication" or "reasonable intendment." On the other hand, the verbal effect of some clauses in Acts of Parliament has been restrained. Instruments requiring stamps, which are directed not to be received in evidence, but which, notwithstanding, have been received in evidence for collateral purposes, and other instruments, declared to be void to all intents and purposes, have been held to be void only so far as is necessary to accomplish the object of the Legislature. But, notwithstanding these and other instances that might be put, I very much doubt the soundness of the supposed rules of construction laid down, when applied to the acts of the Legislature. I admit that, with respect to the written contracts of parties and the wills of testators, we must endeavour to construe them as well as we can; and if one construction leads to manifest absurdity, and a different construction leads to a sensible result, we are at liberty to reject the construction which leads to the absurdity; but, then, it must be a "construction," not a substitution of something else, either by omitting what is there or introducing something that is not there; nor can we reject a will, however unjust we may think it, not even if we thought the injustice of it amounted to an absurdity: the absurdity must be something opposed to right reason, and not merely to our notions of policy and justice. But I do not think we are at liberty to use the same freedom with the statutes of the realm as perhaps we may be allowed to do with the contracts of parties and wills of deceased individuals. The language of a will must speak for itself, assisted by all external circumstances; the testator cannot explain it; and in the case of a written contract, for wise and sound reasons, the law does not allow it to be explained by parol evidence; but as to the Legislature, it continues with ability and wisdom to correct its own errors (if errors they be); to give effect to its own intentions, and to enforce its own views; and I think where the meaning of a statute is plain and clear, we have nothing to do with its policy or impolicy, its justice or injustice; its being framed according to our views of right, or the contrary. If the meaning of the language used by the Legislature be plain and clear, we have nothing to do but to obey it, and administer it as we find it; and I think, to take a different course is to abandon the office of judge, and to assume the province of legislation. But is it at all doubtful what the Legislature intended to enact when these statutes passed? I quite agree with my brother Martin, that the statute of 6 Geo. 3 must be considered in connection with the statute 1 Geo. 1; but I go further—I think it ought to be considered in connection with all the statutes in pari materiâ—and, making that comparison, let us see whether any doubt can exist as to what was the real intention of the Legislature in making the enactment under consideration, and whether it was not intended to require the oath to be taken in the very form of words set down, whatever might be the consequence of those words forming part of the oath. The earliest statute to which I think attention should be drawn is the 1st of Eliz. c. 1, intituled "An Act to restore the ancient jurisdiction of the Crown in matters ecclesiastical." By sec. 19 of that Act all public officers and public servants are to take an oath "according to the tenor and effect following," as is there stated; and by 5 Eliz. c. 1, s. 5, all such persons as are mentioned and set forth in that section; namely, persons who fill great offices of state, persons who occupy certain situations in the country, are required to take and pronounce a corporal oath upon the Evangelists, "according to the tenor, effect, and form" of the same oath verbatim; and by sec. 16 it is enacted, that "every knight, citizen, and burgess of the Parliament shall take the said oath" Now, I apprehend the effect of these statutes was to exclude from all the offices mentioned in the first statute, and from all the occupations mentioned in the second statute, every person who could not take the oath verbatim; and as by the 16th section of the second Act all members of Parliament are to take the oath, at this period no Jew could have been a member of the Legislature. By the statute 3 Jac. 1, c. 4, s. 15, "the tenor of which oath hereinafter followeth"—there is the oath of supremacy and allegiance, concluding with these words—"All these things I do plainly and sincerely acknowledge and swear, according to the express words by me spoken, without equivocation or mental evasion or secret reservation whatsoever, upon the true faith of a Christian;" Here, I believe, for the first time (as far as I am aware), is to be found the expression, "upon the true faith of a Christian;" "and to which oath so taken, the person so taking it shall subscribe his or her name or mark." Apparently the effect of this statute was to exclude Jews from any benefit that might arise from taking the oath, for they certainly could not take the oath "according to the tenor" (which is the same thing as verbatim), nor subscribe it as so taken; and I think no one can doubt, that if it had been pointed out to the Legislature of that time that the effect was to exclude all but Christians from taking the oath, they would have replied that such was their intention, at least that they had no intention to the contrary. By 7 Jac. 1, c. 6, various persons are required to take the oath; among others, knights, citizens, and burgesses, who are members of Parliament. These statutes remained in force till 1 Wm. & Mary, sess. 1, c. 8, s. 2, which repealed them and substituted other oaths in their place. The 12th section enacts, the oaths that are so substituted are to be taken in these express words. There is, then, the oath of allegiance and the oath of supremacy, and the oath against the doctrines that princes excommunicated may be deposed or murdered by their subjects, and a renunciation of any such things; but there is undoubtedly, by the 1 Wm. & Mary, no oath calling upon anybody to swear upon "the true faith of a Christian;" and from the 1 Wm. 3 to the 13 Wm. 3, no oath appears to have been required that would exclude Jews, unless it was necessary that the oath should be taken upon the New Testament. But the 13 Wm. 3, c. 6, imposed an oath on all persons holding any office, &c.; and the oath concludes, "upon the true faith of a Christian." The persons are required to take the oath hereinafter mentioned, and to which oath so taken the person shall subscribe his name. Members of Parliament are required to take it by the 10th section, and the penalty is imposed by the 11th section; and that is the first introduction of the clause which is now made the subject of the present action, being repeated in the 1st of Geo. 1. By the 1 Anne, stat. 1, c. 22, the oath is to be "administered in such manner and form as is hereinafter set down and prescribed." The 2nd section of the Act is this:—"That all and every person and persons who are enjoined or required to administer, take, or subscribe the oath in the said recited Act mentioned, shall administer, take, and subscribe the same, according to the form herein set down and prescribed, anything in the said recited Act to the contrary notwithstanding." The Act of Union of the 5 Anne, c. 8, art. 22, adapted the oath to the new state of things, under the union of the two kingdoms. The 6 Anne, c. 7, for securing the succession, enacted the oath to be taken after the demise of Queen Anne without issue; and it was to be taken "on the true faith of a Christian." The mode of taking remained the same. The 6 Anne introduces regulations respecting Scotland; and here it is enacted that suspected persons may be summoned anywhere. As far as I am aware, this is the first Act in which that sort of clause is introduced. The 8 Anne, c. 15, makes provision as to taking the oaths there mentioned, and they are to be taken in the words following. Having taken this review of the Acts which are in pari materiâ prior to the 1 Geo. 1, I would ask whether it can reasonably be doubted that the Legislature, in using the expressions—"verbatim" (in one Act), "according to the tenor" (in another), "in these express words" (in a third), and "according to the form herein set down and prescribed," in the Act of Anne, and in the very statute in question now before us,—meant what the words import. All these expressions really mean the same thing, viz. that the very words set down were to be used; and are we at liberty to omit or add anything on account of our notion of what is just or unjust? And are we to alter the oath so as to accommodate it to the conscience of a Jew, when it it is notorious that it was the avowed object of the Legislature to exclude even Christians, unless they were of one particular denomination? And if this relaxed construction cannot be put on the statutes of Elizabeth, of James 1, of William 3, and Anne (as I think it cannot), by what process of reasoning, under what authority, can we put a different construction upon the statutes of Geo. 1 and Geo. 3? But let us see what is the view taken by the Legislature itself upon this very subject. By the 9 Geo. 1, c. 24 (an Act which has happily expired), persons not taking the oath were obliged to register their names and real estates. The title of the Act is important. It has been suggested that these provisions of the law were directed against Papists only. That is not so. The title is—"An Act to oblige all Persons being Papists, in that part of Great Britain called Scotland, and all Persons in Great Britain (which must mean whether Papists or not) refusing or neglecting to take the Oaths appointed for the security of his Majesty's Person and Government, by several Acts herein mentioned, to register their Names and real Estates." It is manifest from this statute, and the title of it, and the enactments of it, that in Scotland these provisions were levelled distinctly against the Papists only, so that in Scotland the Jews were not within the provision of this Act; but in England it was levelled against all, whether Papists or not. The attention of the Legislature was drawn to the hardship of the case of the Jews, occasioned by this last Act, and redress was given by an Act which passed the following year, namely, by the 10 Geo. 1, c. 4; but the redress is limited to the grievance; and it was enacted that Jews might, for the purpose of the Act alluded to, take the abjuration oath, omitting the words "on the true faith of a Christian." So taking the oath, Jews were not to be required to register their names and real estates. There is nothing in that Act that makes the 17th section applicable to the 1 Geo. 1; and if that statute were now in force, it would not entitle Jews to take the oath, omitting the words "on the true faith of a Christian," for the purpose of holding office or sitting in Parliament. The effect of that statute is entirely confined to the 9 Geo. 1 and to the 10 Geo. 1, which enlarges the time for taking the oath again; and the same observation applies to the 13 Geo. 2, a statute I shall presently refer to; but every other effect of not taking the oath of abjuration is left untouched. Now, according to the view of my brother Martin, at that very time (for the construction of the Act cannot now be different from what it was then) not only was it unnecessary to pass any Act to relieve the Jews in respect of the registration of their names, but for any purpose whatever: it was competent, not only for a Jew, but for a Turk, a Hindoo, a Pagan, or any other (if by accident he were born in the realm, and were capable of taking any oath binding on his conscience), to take the abjuration oath, omitting

the words "on the true faith of a Christian," and to be elected and take his seat as a member of Parliament, and to fill any of the offices already alluded to, unless he were kept out by some other test. And as the essence of the matter is said to be taking substance of the oath in a manner binding on the conscience, I think it is not possible to stop short of this—that if a jury found that a Roman Catholic was bound by the oath, without the words "on the true faith of a Christian," even he might so take it. I cannot for this purpose discover any difference between a Roman Catholic and a Jew; as in the 13 Geo. 2, c. 7, an Act for naturalising such foreigners as shall be settled in any of his Majesty's colonies, there is a provision with reference to Jews, shewing that when the Legislature had its attention called to the subject, a provision was proposed to be made to relieve Jews from the necessity of taking the oath with these words, the exemption and privilege of omitting them is confined to the particular matter of grievance that was intended to be remedied: "And whereas the following words are contained in the latter part of the oath of abjuration, 'on the true faith of a Christian;' and whereas the people professing the Jewish religion may thereby be prevented from receiving the benefit of the Act, be it enacted, that whenever any person professing the Jewish religion shall present himself to take the said oath in pursuance of this Act, omitting the words, it shall be deemed a sufficient taking of the oath in order to entitle such person to the benefit of being naturalised by virtue of this Act; but every other consequence of the oath being by law required, with the insertion of the words, is left just as this relieving statute found it." With these statutes before me, and with the legislative commentary on them which the last two statutes and the 13 Geo. 2, c. 7, furnish, I think, we are not, as judges living though we do in a more enlightened and liberal age—to be liberal above what is written, or by any method of construction, when the statutes distinctly, expressly, and imperatively require one form, to substitute another as equivalent for the object or purpose, as we may think, of the Legislature, when every one acquainted with our history and the course of our legislation must in candour acknowledge that in any part of the reign of Geo. 1, Geo. 2, or the early part of Geo. 3, it was the furthest from the intention of the Legislature to admit into the House of Commons persons of the Jewish religion. The language used appears to me to be so clear, so distinct, so express and stringent, as to exclude a relaxed (although it may be called a liberal) construction by judges, quite as much as it is intended to guard against a mental reservation by those who think that the effect of an oath can honestly be so evaded. On these grounds I agree with my brothers Parke and Alderson, that our judgment ought to be for the plaintiff, and the judgment of the Court is therefore for the plaintiff.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. Keene, Esq. of Lincoln's-Inn, Barrister at Law.

(Before Lord St. Leonard's, L.C.)

March 30, April 15 and 21.

Re North of England Joint-Stock Banking Company, *ex parte* Straffon's Executors.

Joint-stock Companies Winding up Acts—Duties and liabilities of directors of public companies considered—Contributory—Member—Jurisdiction.

A. B. through his broker, purchased 120 shares in a banking company, and in respect of ten of them, his grandson, as his agent, executed the deed of transfer; no transfer of the other 110 shares was made, but dividends upon the 120 were from time to time received by A. B. Upon the company being wound up the executors of A. B. were, upon appeal (affirming the decision of the Vice-Chancellor), held to have been rightly placed on the list of contributories in respect of the whole number.

A. B. purchased of the directors of the same company (who by their deed of settlement were authorised to sell them) 580 shares. On these shares also A. B. regularly received the dividends, although the strict formalities of the deed of settlement were not complied with, yet, under the particular circumstances of the case, the executors of A. B. were held to have been rightly placed on the list of contributories in respect of those shares.

By an order of the Vice-Chancellor, A. B. in whose name 700 shares were registered, was declared liable to contribute to the expenses of the company to the extent of 120 shares, and a reference was made to the Master, to inquire as to his liability in respect of the residue of the shares. On an appeal by A. B. to discharge or vary the former part of such order (the latter part not being objected to), the Court affirmed the order of the Court below as to the 120 shares, and holding that it had jurisdiction, disposed of the whole of the case.

If directors act in contravention of or abuse their powers as between themselves and the general body of shareholders, they cannot maintain an act done in their violation.

If directors, not pursuing or obeying the directions of their Act, adopt a new rule, and hold out to the public that such new rule is a binding one, and money is lent on the faith of it, and the person who comes in under it is acknowledged as a purchaser and shareholder, and admits and treats himself as bound by it (although an informal transaction) such a course of dealing will operate so as to bind both parties, although the deed of settlement in respect of formalities is not obeyed.

The Courts have never held that every minute circumstance must be obeyed which the directors themselves ought to obey.

If directors, disregarding every minute circumstance (the shareholders not calling them to account for doing so), make a man a shareholder without going through all the necessary formalities, such a proceeding will be valid as between a party thus dealing with the directors and the directors themselves, so as to bind them.

If a man, dealing with another, professes to put forth a binding obligation (which he knows not to be so) signed by his own name, executed by one of his own relations as his agent, and which is executed by other parties who are dealing with him, and bonâ fide executed by them as a solemn instrument which he himself had executed, and on which he had acted as owner of the property professed to be thereby assigned by receiving dividends to which he would not have been entitled except on the assignment of that property, he will be bound by it.

When one party makes a representation to another by which the position of the latter is altered, the former is bound by it: he will not be allowed to set up the invalidity of a deed which he himself had professed to be a valid deed when he knew it was a nullity.

If a man, by representation that he is entitled to be registered, becomes registered, and is admitted de facto a shareholder, he is not at liberty to refer to any informality, and to insist on it that he is not a shareholder against those persons who do not dispute his liability.

If the directors of a public company do an irregular act, and admit a man, and treat him as a shareholder, they are both bound; and if directors, in violation of matters of regulation which are within their own power and competency, deal and are dealt with on the faith that everything was rightly done, the Court will presume that everything was rightly done as against those directors.

If, by a course of dealing with a company, scripholders have been permitted to become shareholders de facto, although no real transfer should have been executed, such a proceeding will be valid and binding.

Where it was known that a party was not an original scripholder, but stood in the place of another scripholder from whom he had had no transfer, such a proceeding was held to be binding.

If a man is bound to execute a settlement containing particular covenants, and, by the desire of the persons who have a right to call on him to execute such settlement, executes another instrument containing a covenant that he will obey, observe, and perform all the covenants in the principal deed, he is, as it were, by infusion a party to the deed of settlement just as much as if he had been an original party to and had executed it.

A man cannot be made liable as a member of a company without there is a privity between him and the company.

If a man be not liable as a member of a company, in order to bring him in as a contributory, it must be shewn that, although not a member, he was liable to the losses and demands of the company. The word "contributory" has a much wider signification than the word "member."

Where an Act of Parliament looks to the equitable as well as legal liabilities, but does not furnish on the face of it any particular remedy for the former, you cannot proceed by a scire facias against a man at law under a particular provision of that Act, without deciding whether he would be liable in any other way.

A man cannot be made liable on a judgment against the official public officer by scire facias, unless he is a legal member.

This was an appeal motion to discharge or vary an order made by the Vice-Chancellor, Knight Bruce, and to reverse and discharge an order of the Master (Farrer) to whom the winding up of the company had been committed, whereby the names of Henry Nelson and Jonathan Reavely, the surviving executors of John Straffon (the appellants), were included in, or retained, or ordered, to remain on the list of contributories of the said company, as contributories without qualification in respect of 700 shares in the said company, and that their names might be struck out and excluded from such list, or in case their names should in respect of any of the said shares be included in the said list, then that their names might be included with a qualification that in respect of each respective share they were liable only as contributories of the said company, subsequent to the several times of the respective alleged purchases thereof by the said John Straffon, and up to the time of the decease of the said John Straffon only.

The Vice-Chancellor, on exceptions to the Master's report, refused the motion as to 120 of such shares; and referred it to the Master to inquire what were the terms and nature of the contract as to the remaining 580.

The facts of this case are reported, 16 Law T. Rep. 531, and they, as also the material arguments of counsel, appear in the judgment.

From this order the executors appealed.

W. D. Lewis, in the absence of *Russell* and *Bethell*, opened the case for the appellants.

The Lord Chancellor, at the rising of the Court, said,—I wish counsel on both sides to consider whether this is open to any of the great questions which have been discussed: I do not mean to give any opinion at all binding on myself now, I going to enter into the facts; but it does appear to me to be a very simple case as regards the shares under that deed. Two of the officers of the company are parties to the deed, and Mr Straffon's name is on the deed as a party, and he covenants with those officers that he will perform the stipulations in that deed of settlement. It would be an absolute fraud on the part of Straffon, if he were allowed to withdraw from the deed, having acted upon it, and frequently received dividends. Mr. Straffon believed that he was a member of the company; he acted as a member of the company, and he entered the payments which he received in his cash-book, and wrote them off at the other side regularly. Therefore, he believed that he was a perfect member, and he would have been very much surprised if he had been told that he was not. As to those shares, supposing that deed of settlement to be so far binding on him that he could not withdraw from it, which does not involve the question, whether it was executed strictly by his authority or not, I think he would not have been allowed, as between him and his copartners, to withdraw from it; for he actually entered into the partnership, was in the receipt continually of dividends; he became de facto a partner, and he became such by what is not a forged, but by what is said to be an inoperative instrument; there can be no question as to that; but, then, was the deed executed within the meaning of this deed of settlement by that deed referring to it? It clearly was. I can easily understand that in the deed of settlement, after some time, and after there had been a great many changes, there was no room for it, and they took what was the same thing—two responsible officers of the company, who were parties to this separate deed; and the new purchaser covenanted with those two officers that he would obey all the conditions of the deed of settlement. I am clearly of opinion that there was an execution in effect, and in operation within the meaning of the deed of settlement itself. The deed of settlement provides that if a man executes the deed once in respect of any number of shares, it shall not be necessary for him to execute any further deed. That applies to so many further shares as were purchased of anybody else other than the directors, and consequently there is no want of formality in that respect. Then, the large number of shares seems to have been bought of the directors. I am not aware how they can be impeached: I am not aware what the question is as to principle. It may be a very difficult question, if A. sold to B. and the sale was informally carried into execution, and the company should come to B. the purchaser, and say, "You shall execute a deed that shall render you liable." That has been carried into effect upon an assignment of leaseholds, but has been carried too far, and has been corrected. The same principle applies to this case: I do not think, therefore, that they can do so. The directors are authorised by their deed of settlement to sell shares; they do sell shares; and there can be no better evidence than the certificates issued by themselves that they have sold their shares, and that Mr. Straffon was the buyer of them. He was found to be in possession of the shares by the receipt of the dividends, to which he could not have been entitled if he were not the purchaser according to the certificates. It has been clearly decided and settled in this court, that if one man sells to another shares, the seller is not at liberty, having received the money, to set the purchaser at

defiance and say,—"I will leave you liable." The seller has a right to be indemnified by the purchaser from the future liabilities in the partnership. He may therefore call upon the purchaser, and compel him to place himself in such a relation as will, under the deed of settlement, absolve the seller from further liability. The directors here are sellers, the man here is the purchaser, and therefore the directors, in the character of sellers, could compel this man, if necessary, to execute proper instruments. Circuity in the common case would do it, because the seller might insist upon being relieved; and when he was relieved the purchaser would be liable; but here the parties are the directors and the purchaser, therefore there is no circuity. The Court must consequently, I apprehend, hold that the directors, being the sellers, have that equity against the purchaser which now impresses upon him in this court the character of purchaser upon a completed contract, and there-fore liable.

Thursday, April 15.—*Lewis* proceeded with his argument.

Bacon, Rolt, and *J. V. Prior* appeared for the official manager.

Bethell in reply.

The following cases were cited:—*Hall's* case, 1 Mac. & G. 307; *Reaveley's* case, 1 De G. & S. 550; *Newry Railway Company* v. *Moss*, 14 Bea.; *Fenwick's* case, 1 De G. & S. 557; *Ness* v. *Angus*, 3 Ex. 805; *Ness* v. *Armstrong*, 4 Ex. 21; *Bosanquet* v. *Shortridge*, 4 Ex. 699; *Ex parte Morgan*, 1 Mac. & G. 225; *London Grand Junction Railway Company* v. *Freeman*, 2 Rail. Cases, 468; *Sheffield, Ashton-under-Lyne, and Manchester Railway Company* v. *Woodcock*, 2 Rail. Cases, 522; 7 M. & W. 583; *Cheltenham and Great Western Union Railway Company* v. *Daniel*, 2 Rail. Cases, 728; *Taylor* v. *Hughes*, 2 J. & L. 24; *Ex parte Besley*, 3 Mac. & Gor. 287; *Const* v. *Harris*, T. & R. 496; *Macquire's* case, 3 De G. & S. 31; *Sanderson's* case, 3 De G. & S. 66; *Dodgson's* case, 3 De G. & S. 85; *Re The Vale of Neath and South Wales Brewery Joint-Stock Company, Exparte Lawes*, 19 Law T. Rep. 14; and also the statute, 7 Geo. 4, c. 46.

Wednesday, April 21.—The LORD CHANCELLOR.—This case turned upon a decision of the Vice-Chancellor Knight Bruce, by which, as I understand it, he decided that the person in question was answerable to the extent of 120 shares, and sent it to the Master to inquire as to his liability in respect of the residue of the shares. I believe I have now all the evidence before me which can possibly be obtained in regard to any of the shares; I mean, therefore, myself to dispose of the whole of the case, and to discharge so much of the order as refers it to the Master to inquire as to the shares, ultra the 120 shares, and as the appeal has come before me, although that part is not objected to, I believe I have perfect jurisdiction to deal with the whole of the subject. Now the question really is whether this gentleman was or not a contributory. The case was argued before me to an extent that struck me as somewhat surprising. It was insisted that according to the law I had no power to place any person as a contributory to the liabilities of this company unless he was a perfect legal member according to every term of the deed; it mattered not what had been the transactions; there could be no estoppel, there could be no acceptance, there could be no binding dealing, but it all turned on the question simply whether or not he was a legal member bound by all the liabilities of the company, and entitled to all the benefits of the company according to the strict literal construction of the deed. It was further said that I was not at liberty to administer any equity; I must not look out of the deed, but I must examine the transactions by the deed of settlement; and I must not consider what the equities are, although equities might have to be administered and parties might be liable; but I am bound to look at the legal remedy, and cannot go beyond it. Now I believe that those rules so laid down, and so insisted on at the Bar, are not the rules by which I am to be guided in carrying the Winding-up Act into execution. The first thing to ascertain is, who is a contributory according to the Act of Parliament: according to the contention of the partner in this case, nobody can be a contributory who is not a legal member, bound as I have said by all the liabilities, and entitled strictly to all the benefits of the deed. Now that is in no respect consistent with the Act itself, because the Act says in section 3 of the interpretation of the different words that "the word '*member*' shall mean any person entitled to a share of the assets or accruing profits of any such company at the time of presenting the petition for dissolving the same or winding up the affairs thereof under this Act." That "the word '*contributory*' shall include every member of a company and also every other person liable to contribute to the payment of any of the debts, liabilities, or losses thereof, whether as heir, devisee, executor, or administrator of a deceased member or as a former member of the same, or as heir, devisee, executor, or administrator, of a former member of the same deceased, or otherwise howsoever." So that "contributory" here has a sense put upon it much larger than the word "member;" for the word "member" looks certainly like a person who is legally such, in the proper sense of the term; but a contributory is a man who is liable to contribute to the payment of the debts, liabilities, and losses of the company in anywise whatsoever. Therefore, all I have to consider is, in deciding whether a man is a contributory or not, to ascertain whether he is liable in any manner whatsoever to contribute to the debts, liabilities, and losses of the company. Now, sec. 76 directs that the official manager shall make out a list of the members "and other contributories of such company," together with so and so, and so and so; so that it is not simply a list of members, but it is "members and other contributories." It is perfectly, clear, therefore, without deciding generally who is exactly to be a contributory, which must depend on the special circumstances of each case, that the word "contributory" has a much larger meaning than the word "member." Now, in point of fact that has been decided in a case in this very company—*Reaveley's* case—in which it was decided, and which was afterwards affirmed by the Lord Chancellor, in that case shares in a banking company were purchased for an infant, without disclosing his infancy, the vendor signing a certificate required by the company's rules that the purchaser was of age: it was discovered that the boy was under age, and the father entered into a deed with the company by which he covenanted to indemnify them from all losses, and so on, which might be sustained by reason of his son having become a member during his infancy. He was held to be liable as a contributory. He in no sense a member, no more a member of company than any stranger in this Court, the son was a member, but he was liable indirectly to the losses, debts, and liabilities of the company to the extent to which he had benefited, and he was therefore held to come within the term, not of a member, which in no sense he was, but of a contributory, which in sense he actually was. That has received the confirmation of the Lord Chancellor, and has never been disputed. Now, where there is no privity between the company and the parties, and no liability, no question arises. Those are the cases, particularly, of *Ex parte Hall*, *The Newry Railway Company* v. *Moss*, and *Fenwick's* case. In not one of those cases was there privity; the parties were not in privity, and if they be not in privity it is quite clear they cannot be liable as members. Then, if they be not liable as members, you must, in order to bring them in as contributories shew that although they are not members, they are liable to the losses and demands of the company: those cases are altogether distinguishable from, and do not touch this case. Now, there is a class of cases very much relied upon, which are cases within the statute 7 Geo. 4, c. 46: these are the cases of *Ness* v. *Angus*, *Ness* v. *Armstrong*, and *Bosanquet* v. *Shortridge*. Now all those cases depend upon a particular Act of Parliament, for although that Act of Parliament looks to the equitable liabilities as well as the legal liabilities, yet it does not furnish on the face of it any particular remedy for equitable liabilities; but you cannot, as you ought not to be able to proceed by a scire facias against a man at law under that Act, under that particular provision, without deciding whether he would be liable in any other way. But you cannot make him liable on a judgment against the official public officer; you cannot make him liable by scire facias, unless he is a legal member. Now, those cases are distinguishable upon that ground; and in *Bosanquet* v. *Shortridge* there is no doubt the party there (although there might have been a case raised about . general conduct, and the way in which the business had been conducted), the directors—the company—disclaimed the act. The transfer was not good unless it had the sanction of the directors; the directors actually withheld that sanction; they refused that sanction, and therefore they did, and within moderate time, actually disclaim and put an end to adopting that informal act. I think that those cases stand on their own grounds, and can in no respect touch this. Now, I beg distinctly to be understood, in deciding this case, that I am not about to decide anything which would touch a question like that in *Ex parte Morgan*. Since I have sat here I followed that case myself, and I see that I followed the same rule before, when sitting in Ireland, and I shall therefore adopt the same rule now. I have no intention of laying down in any manner that directors can act in contravention of their powers, that if they abuse their powers as between themselves, and the general body of the shareholders, they ca maintain an act done in violation of their powers. But that is a totally different question from that which is now before me,—namely, whether if directors not pursuing or obeying the directions of their Act in respect of particular transactions, do choose to adopt a new rule and hold out to the public that that new plan of theirs is a binding one, and that men advance their money on the faith of that dealing, and that they acknowledge a person who comes in under an imperfect transaction as a purchaser and shareholder, and he admits and treats himself as bound by that which may be, and I assume it to be, an informal transaction, I say it is a totally different question, altogether, and a distinct question, whether such a course of dealing will not operate so as to bind both parties, although the deed of settlement in respect of formalities is not obeyed. But a course of dealing and transaction has been adopted which may be considered in point of fact in direct opposition to the provision of the deed of settlement. There would be no safety for mankind in dealings of this nature, extensive as they are, with so much money embarked in them, if the Courts had ever held, as they never have held, that every minute circumstance must be obeyed which the directors themselves ought to obey; but if they disregard them, if the shareholders do not call them to account for doing so, if a course of action had been adopted in the particular company without complaint, although they may have arrived at making a man a shareholder by what I should call a short cut, instead of going through all the necessary formalities, that may be perfectly good as between parties thus dealing with the directors and the directors themselves, so as to bind them. Now, with those general observations, let us see what the Acts of Parliament require, and what the facts of the case are, and what the law, as applicable to the point, is. I am, perhaps, taking more trouble than this case really deserves from any importance that belongs to it; with a view of endeavouring to come to some right conclusion in this court, if I can, as to what really is the operation of these proceedings, so that it may at least, so far as my opinion goes, be understood on what grounds we are proceeding, and that there may not be unnecessary expense in dealing with subsequent cases without the parties being aware what the opinion of the Court as to the law is where there has been a variation like that in this case from the strict rules of the deed of settlement. Now, this deed of settlement gives leave to the shareholders, "their respective executors, administrators, and assigns, with the consent of the directors, to sell or transfer their respective shares, such consent to be testified by the managing directors signing their names in the margin of the instrument of transfer." That is one of the great solemnities which it is said, and truly said, has not been obeyed literally in this case; "and for the purpose of obtaining such consent, the holder of the shares proposed to be transferred shall give notice in writing to the directors, to be left with the manager, at the banking house in Newcastle-upon-Tyne, of the proposed transfer, and which notice shall contain the respective names and addresses of such holder and the proposed transferee." Then, before any shares shall be sold, the same shall be offered to the directors at the lowest price, and in case they refuse to accede "to any transfer of shares, they shall, on the request of the holder thereof, be obliged to purchase the same out of the funds and on behalf of the company, at the value thereof for the time being set upon them as aforesaid." Now, here there are some things of form which are of substance, namely, that the party who wishes to sell must give notice to the directors of his intention, of his own name, and of the name of the proposed purchaser or transferee; and he must state what the lowest sum is he is willing to take: the directors have a right to purchase at that sum. If they neglect to purchase at that sum, the man has a right to sell. That is substance. Now, that substance has been complied with in every case. In every case before me,—in every purchase,—a notice was given of the intention to " stating the name of the owner, the name of the transferee, and the price the party was willing to take; in every case the directors having that before them declined to purchase, and then the shares were transferred in the way I shall presently shew, and the word "transferred" was written across each of those documents, and signed by one or more directors. Now, that which is not of substance, and which is considered as material, is, that the directors' consent was not testified by the managing directors signing their nar the margin of the instrument of transfer. Now let us see how far that can be supplied. Sec. 24 directs, "That the directors shall have power from time to time to make such regulations respecting the form, preparation, custody, and registration of the instrument of transfer of shares as shall appear to them expedient." It does not appear that they ever did make them, as I apprehend. "And all sales and transfers of any shares not made conformably to the provisions of the deed of settlement, and according to the regulations of the directors, shall be invalid at law and in equity," which words are very much relied on. "And every purchaser or transferee of shares shall, in respect thereof, if required by the directors, either expressly, or by a general regulation in that behalf, execute a deed, to be prepared for the purpose by the direc-

tors, whereby he may enter into covenants with the trustees, or the public officers of the company, duly to observe and abide by all the stipulations, provisions, and regulations for the time being, affecting or intending to affect holders of shares in this company." Then, passing over for the present some other clauses, there is a clause, the 32nd, which provides that "every person to whom shares shall be transferred, and who shall not then be a member of the company, and subject to the provisions of the deed of settlement in respect of any other shares, and every person who, being the husband of any female shareholder, or the executor, administrator, or legatee of any deceased shareholder as aforesaid, shall, by notice in writing as aforesaid, signify to the directors his desire to become a member of the company in respect of the shares vested in him in such capacity, and shall not, at the time of the said shares becoming vested in him by the means aforesaid, be a member of the company, and subject as last aforesaid in respect of any other shares, shall, as to all duties, obligations, claims, and demands upon or against him in respect of such shares, be considered a member of the company from the time of the same shares being so transferred to or so becoming vested in him as aforesaid; but as to all profits, rights, privileges, benefits, and advantages to arise from the same shares, no such person shall be considered as a member in respect of the same until he shall have executed the deed of settlement." So that here you observe a purchaser's liability accrues before his right to profit accrues; he may become liable to the burthen, but may not become entitled to the benefit, and that tells against this gentleman of course whose case is now before me, because he may have become liable, although he may not have become entitled to the benefit, and it shews that the argument that he must in all respects be a member before he can become liable, is not a sound one. Then clause 33 is an important one in this case—"Every person in whom any shares shall vest by transfer or otherwise, and who, previously to such vesting, shall have executed the deed of settlement, and who shall be a member of the company to all purposes in respect of any other shares, shall, as to all the shares so vesting in him as aforesaid, be considered as a member from the date of the transfer to him, or from the time of leaving his title to such shares in the banking-house of the company, or proving it as aforesaid, and shall not be required, nor shall it be necessary for him again to execute the deed of settlement." Then upon the transfer of shares the old certificates shall be given up and new ones given. Now in this case there were a great many shares which had become vested in those parties; there were two classes of shares, one which I have not yet alluded to, and the other which I have; the first consisted of 120 shares, which went through the process I have already described, and which it is not worth while going through in detail. The documents I have here; and I believe I describe them truly when I say that all the substance was performed; the notices were given, and the shares were offered to the company, the company refused to avail themselves of the offer, the holder then sold them regularly through a broker, and they were bought by the gentleman in question. Now the way in which it was managed in the purchase of the 120 shares was this, and that appears by the evidence in this matter to have been the scheme which was adopted by the directors in order evidently to save stamp-duty, and to avoid the necessity of formal transfers. It has been observed that the 24th section says, "that if the directors require it, the party coming in shall execute a deed to be prepared for that purpose," whereby they entered into covenants with trustees and public officers truly to observe the stipulations in the deed, so that there is an express direction for that purpose. Then, as I have already observed, it is provided by sec 33 "that members requiring additional shares need not execute the deed." Now on those two clauses the deed which I have now before me was evidently framed, and it is made between the persons who were the holders of those shares of the first part, the purchaser, Mr. Straffon, a gentleman whose property has be embarked in this speculation, of the second part, and the public officers of the company of the third part. Now, in that deed, which is a regular transfer of the ten shares, there is a covenant by Mr Straffon, the purchaser. He covenants with the persons who sold them, and with the persons who are there of the third part—the public officers of the company—"their successors, administrators, and assigns, that he, the said J. Straffon, shall and will, from time to time, and at all times hereafter in respect of the said shares hereby assigned, well and truly pay all instalments and sums of money due, or hereafter to become due thereon, and also perform, fulfil, and keep all and every the covenants, stipulations, provisions, and regulations contained in the deed of settlement of the said company," and also all other stipulations, provisions, and regulations for the time being affecting or intended to affect holders of shares in the said company. I think they made a mistake in that respect, for, in point of fact, this very deed was executing that very obligation; but it is only a work of supererogation: he covenants that he will do again the very act which he has just performed. Now this deed is executed regularly by the persons who were the holders, the sellers, and by the public officers; there is the receipt for the purchase-money, and Mr. Straffon's name appears to it in very legible characters, "John Straffon;" and there is an attestation by a person who has made an affidavit in this matter John M'Intosh Straughan: he witnesses this deed. Now this deed was sent to the company (I may as well dispose of that) as a deed executed by the purchaser upon the purchase in consequence of the notice served on the directors, and accepted by and acted on by them, and as the solemn deed of Mr. Straffon accepted by the company, dealt with by the company as a bonâ fide deed without the slightest knowledge that it had not been executed by the person who was represented on the face of it to have executed it, and who ought to have executed it, and the execution by the real party, Mr. Straughan witnessed. That deed being so acted upon and accepted by the company, Mr. Straffon receives the dividends: as a purchaser under and in consequence of that deed he receives dividends, regularly signs either by himself or by his agent the receipts for those dividends. He has an account-book, in which, among other things, he keeps an account of his property in this company, and he enters regularly, in a business-like manner, the dividends which were from time to time paid to him. He discharges the debtor side by giving credit for the sums from time to time paid to him. Then I am seriously asked in an elaborate argument to treat this as a *perfect nullity*, because it turns out that a grandson of this gentlemen signed the deed for him, believing himself to be authorised to do so, and who acted for him generally in his affairs; but Mr. Straffon himself having made the purchase, Mr. Straffon himself being the purchaser, perfectly competent to transact business, bought those shares himself in the market, transacted the business himself, and then acted upon this deed so sent forth as his deed; and I am seriously asked here, and told that I am bound to treat this deed as a deed which is a perfect nullity, because it is not executed by the party by whom it professes to be executed. But that fortunately for mankind is not the law of this or any other court. If a party dealing with another professes to put forth a binding obligation which he knows not to be so, I am told in argument, and it was insisted it is quite impossible there should be any estoppel in a case of this sort. Why should there not be an estoppel in a case of this sort as well as in any other? How can a party be heard to say in any court of law or equity, that that instrument sent forth as his own, professed to be signed by his own name, executed by one of his own relations, which is sent to his house, which is executed by other parties who are dealing with him, and bonâ fide executed by them as a solemn instrument which he himself has executed, on which he acts as owner of the property professed to be assigned to him, on which he received dividends as property to which he was entitled, that he could not have received except on the assignment of that property—how is it possible to maintain in a court of justice that that man is not bound by the instrument, but that he is to have all the benefits and reject all the liabilities and burthens which he professes on the face of the instrument to have become subjected to in consequence of, and in return for the benefits secured to him. Fortunately that is not the law of this court. If I had to decide this case for the first time, I should decide without the slightest difficulty that Mr. Straffon can never be heard to say against any person in the company that that was not his deed. And, I must do Mr. Straffon's memory the justice to say, that he never made any such statement. He died in the belief that those shares were his bonâ fide property in all respects, that he was entitled to the dividends, that he received them under his title, and that he was bound by the instrument. The contention is raised by his executors after his death, and not by himself, and therefore he is not open to the reproach, that having sent forth this deed as his own he attempts to escape from it. Now what is the law on the subject? Without going through a great many cases which may be easily accumulated, the point is, I believe, perfectly settled in the case of the *London Grand Junction Railway Company* v. *Freeman*. There in point of fact, scrip-holders were held to be entitled, although there had been no transfer of shares. That goes to another point of the case which I have had occasion to consider, and I will refer to the cases more peculiarly applicable to that point presently. But that shews that, although there has been no real transfer, yet if there has been a course of dealing with the company in which they have permitted scripholders to become shareholders *de facto*, that that is binding even although there has been no transfer, and even in a case where it was known that the man was not an original scripholder, that he stood in the place of another scripholder, and there was no transfer, yet that has been held, as it ought to be held, valid and binding. Now, in the *Sheffield, Ashton-under-Lyne, and Manchester Railway Company* v. *Woodcock*, there a purchaser sent in a transfer, which he knew to be void. There was a blank left for his name, and the consideration was untruly stated, and it was held to be a rule of law, that when one party makes a representation to another by which the position of the latter is altered, the party making the representation is bound by it, and he was not at liberty therefore to set up the invalidity of that deed which he himself had sent forth as a valid deed when he knew it was a simple nullity. But the deed was, as many of these deeds are, in blank; and the consideration was untruly stated. He knew, therefore, that the deed was perfectly void, and yet he executed it as a valid deed, and then he did just what the executors are attempting in this cause,—he attempted to set up the invalidity,—and he was told, and properly told, that he was estopped from doing so. In the case of the *Cheltenham and Great Western Union Railway Company* v. *Daniel*, a party who had not done the acts necessary to make him a proprietor, had claimed to be registered, and he was registered, although not entitled in consequence of the invalidity of the acts under the deed of settlement, he was not entitled to be registered; but they submitted and did register him. He then said, "I am not a shareholder; here the deed of settlement has not been pursued; there has been no real transfer; I have been improperly admitted." He was held to be bound by the representations in consequence of which he had been registered, and he was not at liberty to shew that invalidity which an utter stranger perhaps might have done. Now, those cases I myself followed in Ireland in the case of *Taylor* v. *Hughes*, and I have never had any reason to doubt that the law was well settled by those cases. The result, therefore, is just one directly opposite to that which has been so very strenuously contended for; for those cases prove, so far from its being necessary to make a man a contributory that he should be modo et formâ a member according to the strict provisions of the deed of settlement, those cases prove just the contrary, that if a man, either by representation that he is entitled to be registered, becomes registered and is admitted de facto as a shareholder, he is not at liberty to refer to any invalidity, and insist on it that he is not a shareholder against those persons who did not dispute his liability. If the directors themselves do an irregular act, and admit a man, and treat him as a shareholder, they are both bound. It is not an Act like that in *Morgan's* case, in direct violation of the substance of the powers which are given to them, but these are matters of regulation. They are within their own power. They are, in a sense, within their own competency; that is, they are not at liberty to disregard the deed, but if they do disregard the deed, and if they deal with mankind, and mankind deal with them, on the faith that every thing is rightly done, then I say when they do the least act, for example, when they give the certificates which I have before me in this case, you must presume every thing rightly done up to that time as against directors issuing certificates solemnly declaring that given person named in them is the person entitled to so many shares in that company. The law, therefore, I apprehend, turns out differently from what was insisted on; and, therefore, I am speaking generally as regards this case, and particularly as regards this particular deed, I am clearly of opinion that this deed is binding both at Law and in Equity on Mr. Straffon as a deed sent forth by him. I mean as far as regards his liability as a contributory that he never could be heard to say that that deed was not executed by him, and it is well for the people of this country that such is the rule of law. Now it was argued, on a great many points, that this transaction was altogether invalid. First, it was said, that the deed of settlement was not executed. Now, some of the clauses do certainly seem to refer to the execution of the deed of settlement by a new shareholder, but there is no express clause that he should sign the deed of settlement, though it seems to be considered necessary. But there is a clause that if the directors shall require it the party shall execute a deed of covenant to two of the public officers to abide by the deed. Now, this was done in the present case; and, as I have already said, it is proved by a witness that that was the course deliberately adopted by this company in the transfer of shares where there was a great number. The question is, whether, in point of law, it was necessary to execute the deed of settlement, whereby the execution of this deed was not in substance and in law, an execution of that deed of settlement? If I am to execute a particular part containing particular covenants—if I execute any instrument by the desire of persons who have a right to call on me to execute a particular deed—if I execute another deed like this one with a covenant with the partners that I will obey, observe, and perform all the covenants in the principal deed, where is the possible objection to that? Am I not

bound by the deed of settlement to observe all its provisions? Am I not, by infusion as it were, a party to the deed of settlement just as much as if I had been an original party and executed that very deed? Where, then, is the substance of the objection? There is nothing approaching to it. Now, I have already got rid of the objection that the directors did not sign the margin of transfer, because that was not necessary to make this gentleman liable in consequence of the dealings in this case, and under the authorities. Then the way in which the transaction as to the remainder of those 120 shares was managed was this. I have already referred to the clause, which says, that if a man has once become bound by the deed of settlement, he need not execute another deed of settlement; and the way in which this company transacted their business was, that when once a man executed the deed of settlement, they permitted the thing to go on by writing across the notices, without actually signing the deed of transfer. Now, I am clearly of opinion that that course of transaction bound them, and all dealing with them, and that neither this Court, nor any other Court, would ever permit the company, whatever might be the effect of the rules, to deal with the public in fair and bonâ fide transactions like these, and then to endeavour to reverse them, because all the solemnities have not been complied with. But the directors are not doing so. It is the representatives of the man who was to have the benefit. If there had been a benefit he would have claimed it, and the directors would not have withheld it from him; but there is a burthen, and the burthen they endeavour to disclaim, although they would have claimed the benefit. Now, these being the transactions according to the ordinary rule of business, and there being that express clause that it was not necessary for a party bound by the deed again to execute the deed of settlement, which is a work of supererogation, I think that every one of those transactions must be deemed valid and binding on both the directors and the shareholders. Then I consider as part of the same class all those shares which were not bought of the directors themselves. I consider them as a separate class which were afterwards purchased by this gentleman, and I therefore refer them to the same rules, and consider them to be bound by the same law. I am therefore of opinion—I am not dealing with those shares which were bought directly from the directors—I am clearly of opinion that this gentleman was liable as a contributory to the extent of all those shares, and that therefore, in that respect, the order must be varied and he must be declared liable. Now that brings me to only one other separate transaction, a different transaction, standing on different grounds. The directors, by section 25 of the deed, are authorised to buy shares, and when they have bought them, they are authorised to sell them for the best prices that can be obtained, or otherwise to deal therewith as to them shall seem most expedient:—"Every purchaser of such shares shall when and so soon as he shall have paid his purchase-money to the directors, and otherwise have complied with the provisions of the deed of settlement respecting purchasers of shares or such of them as may be applicable to the case now in contemplation, receive from the directors a certificate or transfer of the same shares under the hands of two of their body, and be thereupon recognised as a shareholder in respect of the same shares, and invested with all the rights, privileges, and qualifications incident to the complete ownership of such shares." I have already stated the purchasers may be liable although they may not have the benefit; then on every transfer of shares the certificate of former holders shall be cancelled and new certificates issued. Now the directors having a certain number of shares sold a number of those shares to this gentleman directly, and he bought them and paid for them, and obtained a regular certificate of them. It is now before me: it is directed to the directors of the company, to themselves:—"Take notice that we, the directors and proprietors of the North of England Joint-Stock Banking Company, have agreed to sell, and do propose to transfer unto John Straffon, of South Shields, in the county of Durham, ship owner, 100 shares now held by us in the capital stock of the North of England Banking Company," at so much per share. He declares that he is willing to buy, and that deed is witnessed by Mr. Bendies, who is the managing director, and written across it "Transferred," with two persons' names, both directors, I suppose. Now it is said, that this is totally void, because the clause in question requires that the party should have complied with the provisions of the deed of settlement respecting purchasers of shares, or such of them as may be applicable to the deed in question. Then they say there is no deed of transfer; that, consequently, there are no names of two directors in the margin, and so on. Now, this is a direct sale by the directors themselves to this gentleman. He paid his money. They gave what they considered a proper notice to themselves. They issue to him a certificate, which is before me, certifying that he is a shareholder, and entitled to these shares, and all the benefits, and they deal with him thereafter as a shareholder. They pay him dividends, and he receives dividends on those shares, just as he did on the others, and then I am asked to declare that this gentleman is not the owner of those shares, and not a contributory. Why? The cases which I have referred to go infinitely beyond this case. The directors having sold those shares, and issued the certificates to the purchaser as the holder of those, and frequently treated him as de facto the owner of those shares, never can be heard to say in a Court of Justice, that that person is not as they have represented him, and allowed him by that representation to become entitled to dividends, and to become liable to the responsibilities. They never can be heard to say that he did not fill the character which they themselves have attributed to him in their own document. I am, therefore, clearly of opinion that that was a valid transaction, without reference to the deed of settlement; I am by no means satisfied that it is not strictly good under the deed of settlement; for when he has paid his money, he is to comply with the provisions of the deed of settlement, or such of them as may be applicable to the case now in question, and when he has done so he is to receive from them the certificate of shares, and thereupon be recognized as a shareholder. If, therefore, they give him a certificate, and recognize him, can he or they be heard to say, for it amounts to the same thing, but particularly can he be heard to say, that there is something he ought to have complied with, but which they did not require, when I see the certificate under their hands that he paid the money and is a shareholder? I am perfectly content to believe, and to hold that every thing is rightfully performed up to and preceding the issuing of that certificate. When this case was first before me, the first day, I mentioned what of itself would be quite a sufficient ground on this head. These directors sell their shares; by the rule of this Court a seller can insist on a purchaser making himself liable to everything as the transferee of shares. They would have a right, therefore, as against the purchaser, to compel him to do all proper acts in order to relieve them from their liability as owners of the shares. He would have a corresponding right against them, and compel them in this Court, at all events if there was anything necessary in point of formality, to give effect to the sale and purchase and transfer of the shares he would have a power in this court to compel them to clothe him with every legal interest, with everything that remained in them. He was, therefore, the owner of the shares, and as such he was a member, if not a member strictly, he was a contributory, and therefore, I am clearly of opinion that this gentleman's representatives are liable for the whole 700 shares. I declare that to be the order. They must be put on the list as liable for the whole of the 700 shares, and this appeal must be dismissed, and dismissed with costs.

Bacon.—There were the costs of the motion before the Vice-Chancellor. The Master had put the parties on the list for the 700 shares. He did that which your lordship's judgment has now confirmed. There was an appeal from that to the Vice-Chancellor, who made the order which your lordship is now aware of, and I am to ask you that we may have the costs of that motion before the Vice-Chancellor.

The LORD CHANCELLOR.—No; I shall give no costs except of this motion.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

(Before the LORDS JUSTICES.)

March 12 and 29.

DAVIES *v.* DAVIES.

Lunatic not found so by inquisition—Breaking into capital—Maintenance.

A lunatic, not found so by inquisition, was entitled to a sum of Consols in court and other property, the income of which was not sufficient for her necessary expenses and maintenance, on the petition of the mother and brother of the lunatic the Court ordered part of the Consols to be invested by the brother in the name of the lunatic, in the purchase of a Government Annuity, to be paid by the Commissioners for the Reduction of the National Debt to the brother until further order, he undertaking to apply the same for the benefit of the lunatic.

This was a petition presented in the suit by Miss S. F. Davies, a lunatic, but not so found by inquisition, her mother, and her brother, H. P. Davies, for the purpose of having a sum of 762*l.* Consols, standing to the credit of the lunatic in the cause, and belonging to her absolutely, laid out in the purchase of a Government Annuity, or otherwise applied for her maintenance and support. It appeared that for the last seventeen years the lunatic, who was of the age of forty-seven years, had been in an asylum, at an annual charge of 50*l.*; that the income of the 762*l.* Consols and of other property to which the lunatic was entitled, was insufficient for meeting this charge, and the further necessary expenses of her maintenance, and that the deficiency had hitherto been made up by her mother and brother. It was stated that 762*l.* Consols would purchase a Government Annuity of 43*l.* 3*s.* 9*d.*

Stevens appeared for the petitioners, and admitted that there was no precedent for the present application in a case where a party had not been found lunatic by inquisition. No one appeared in opposition to the petition.

Lord Justice KNIGHT BRUCE.—What we are now asked to do would be a very wholesome jurisdiction to exercise. I much wish to do it, though I do not recollect anything so strong having been done.

Lord Justice Lord CRANWORTH, not being aware of any precedent to the contrary, it seems to be only carrying one step further what this Court does continually in reference to infants, in applying capital, for instance, for an apprenticeship fee.

Lord Justice KNIGHT BRUCE.—I am a little afraid; but I think it may be done, and that part of the Consols may be invested in the purchase of a Government Annuity for the benefit of the lunatic. The order ultimately made was, that the petitioner, H. P. Davies, should be at liberty to contract with the Commissioners for the Reduction of the National Debt, for the purchase of such an annuity as 600*l.* Consols would purchase. The contract to be entered into by H. P. Davies, as agent on behalf of the petitioner S. F. Davies, and the annuity to be purchased in her name. The Commissioners for the Reduction of the National Debt (*a*) to pay the annuity to the petitioner, H. P. Davies, until further order, he undertaking to apply the same to the maintenance of the petitioner, S. F. Davies.

March 25 and 26.

SPRYE *v.* REYNELL.

Costs—Staying proceedings until payment of—Waiver of right to stay proceedings.

By a decree of November 6, 1849, S. was ordered to pay the costs of Lady R. in certain suits. On November 20, 1851, pending an appeal, S. made a motion against Lady R. and Messrs. W. and G. her solicitors, for the production of certain documents, and for leave to file a supplemental bill in the nature of a bill of review, whereupon it was ordered that S. should pay to Lady R. and Messrs. W. and G. their costs of that application, and, with their consent, certain documents were ordered to be produced, and leave was given to S. upon his depositing 50l. with the registrar to answer costs, to file a supplemental bill in the nature of a bill of review against Lady R. and all other necessary parties, without prejudice to the hearing of the appeal, which was, however, to be stayed until the 15th December then next. On the 15th January, 1852, S. having deposited the 50l. filed the supplemental bill in the nature of a bill of review, against Lady R., L. W. and A. W. (two of the partners in the firm of Messrs. W. and G.), and C. W. who entered their appearance thereto on the 19th January, 1852. Afterwards attachments issued against S. for nonpayment of the costs, which he was directed to pay by the decree of 6th November, 1849, and by the order of the 20th of November, 1851. On the 1st March, 1852, the Master refused with costs to make any order on the application of Lady R., L. W. and A. W. to enlarge time for answering until six weeks after S. should have paid costs directed to be paid by the order of the 20th of November, 1851. On the 2nd of March, 1852, a motion being made in the Court below, on behalf of Lady R. and L. W. and A. W. that all proceedings against them for want of an answer should be stayed, until four weeks after S. should have paid them the costs directed to be paid by the order of the 20th of November, 1851, or for four weeks' further time to answer, they were allowed four weeks' further time to answer, without prejudice to an application to stay proceedings in the suit. On the 8th of March, 1852, a motion being made in the Court below, on behalf of Lady R., L. W. and A. W. that proceedings against them for want of answers might be stayed until three weeks after S. should have paid the costs directed to be paid by the oder of 20th November, 1851, and have cleared his contempt, and that all proceedings against Lady R. should be stayed until three weeks after S. should have paid not only the said costs but the costs in the two former suits directed to be paid by the decree of the 6th of November, 1849, the motion was dismissed with costs:

Held, varying the decree of the Court below, that

(*a*) It was stated by Mr. Stevens, that it had been ascertained that no objection would be raised by the Commissioners as to paying the annuity to the brother, under the order of the Court.

the payment of the costs directed to be paid by the order of November 20, 1851, was a condition annexed to the order, giving S. leave to file the supplemental bill in the nature of a bill of review, and as it had not been fulfilled, Lady R. and L. W. and A. W. were entitled to have proceedings stayed, that part of the motion being granted; but, on the ground of waiver, that part of the motion seeking to stay proceedings until the costs in the suits generally should be paid, was refused. No costs on either side.

On the 3rd of April, 1846, the original bill of *Reynell* v. *Sprye*, was filed by Sir Thomas Reynell, bart. since deceased, against R. S. M. Sprye and Henrietta Digby, his , and others, to set aside and obtain the cancellation of a deed of the 15th of July, 1843, whereby Sir Thomas Reynell had conveyed for the benefit of R. S. M. Sprye and Henrietta Digby, his wife, a moiety of an estate to which he was entitled in reversion at the time of the conveyance, and also a contract to convey the other moiety to the same parties upon the ground of fraud. On the 28th of August, 1846, the cross bill of *Sprye* v. *Reynell* was filed by R. S. M. Sprye and Henrietta Digby, his wife, against Sir Thomas Reynell and Charles Wilson, praying specific performance of the contract contained in Sir Thomas Reynell's letter of the 14th of May, 1844. Pending the suit Sir Thomas Reynell died, and the proceedings were revived in the usual way by a bill of revivor and supplement filed by Lady Elizabeth Reynell, the widow of Sir Thomas Reynell, who was his executrix and universal devisee and legatee, against R. S. M. Sprye and his wife, and by a bill of revivor and supplement filed by R. S. M. Sprye and his wife against Lady Elizabeth Reynell. When these causes came on to be heard before Vice-Chancellor Wigram, his Honour, by a decree dated the 6th of November, 1849, declared the deed of the 15th of July, 1843, and the contract contained in the letter of the 14th May, 1844, to be void, and decreed that the same should be forthwith cancelled. It was also, amongst other things, ordered that the original and supplemental bill of *Sprye* v. *Reynell*, should stand dismissed with costs, and that *such costs*, and also the costs of the plaintiff in the original and supplemental bill of *Reynell* v. *Sprye* (including therein the costs of Sir Thomas Reynell, deceased), *should be paid by the said* R. S. M. Sprye; all such costs to be taxed by the Taxing Master, to whom the taxation of costs in the said suit of *Reynell* v. *Sprye* stood referred. On the 20th of November, 1851, upon a motion being made before the Lords Justices on behalf of R. S. M. Sprye against Lady Elizabeth Reynell and Messrs. Walker and Grant, her solicitors, for the production of certain documents, and for leave to file a supplemental bill in the nature of a bill of review, alleging that he had, since the decree, discovered that various documents material to his case, the possession of which had been denied by Sir Thomas Reynell, in his answer to the cross bill, were, and at the time Sir Thomas Reynell put in his answer had been, in the possession of himself or his solicitors, it was amongst other things ordered that the defendant, R. S. M. Sprye, *should pay* to the plaintiff, Lady Elizabeth Louisa Reynell, and Messrs. Walker, Grant, and Company, *their costs of that application*, to be taxed by the Master in case the parties differed about the same; and after ordering, by the *consent* of the said Lady Elizabeth Reynell and the said Messrs. Walker, Grant, and Company, that certain documents therein specified should be deposited with the Clerk of Records, and writs for inspection by the respective parties, and should be produced at the hearing of the appeal then pending in the said causes of *Reynell* v. *Sprye* and *Sprye* v. *Reynell*, by the *consent* of the said Lady Elizabeth Reynell, and upon the said R. S. M. Sprye depositing 50*l.* with the Registrar of the Court to answer costs, in case the Court should think fit to award costs in respect of the proceedings had since the decree it was ordered that the said defendants, R. S. M. Sprye, and H. D. his wife, should be at liberty within two months from the date thereof, to file such supplemental bill in the nature of a bill of review against the said plaintiff, Lady Elizabeth Reynell and all, if any, other necessary parties as they might be advised; and it was thereby declared that the order was not to prevent or prejudice the hearing of the said appeal, but that the hearing of the said appeal was to be stayed until the 15th of December then next. On the 15th of January, 1852, the sum of 50*l.* having pursuant to the said order of the 20th November, 1851, been deposited with the registrar, the said R. S. M. Sprye and his wife, filed a supplemental bill, in the nature of a bill of review, against the said Lady Elizabeth Reynell, Lawrence Walker, and Arthur Walker, and Charles Wilson. On the 19th January, 1852, Lady Louisa Reynell, Lawrence Walker, and Arthur Walker entered an appearance to the last-mentioned bill. Afterwards, in pursuance of the decree of 6th November, 1849, the costs of the defendant, Lady Elizabeth Reynell, in the original and supplemental bill of *Sprye* v. *Reynell*, were taxed at the sum of 371*l.* 2s. 2d. and the costs of the plaintiff in the original and supplemental bill of *Reynell* v. *Sprye*, including therein the costs of Sir Thomas Reynell, deceased, were taxed at the sum of 1,171*l.* 13s. 9d.; and on the 2nd and 3rd of February, 1852, two attachments were issued against the said R. S. M. Sprye, the first for nonpayment of the said sum of 371*l.* 2s. 2d. and the second for nonpayment of the said sum of 1,171*l.* 13s. 9d. The costs of the motion of the 20th of November, 1851, were also taxed, and an attachment was issued against the said R. S. M. Sprye for nonpayment thereof. On the 25th of February, 1852, the defendants to the supplemental bill in the nature of a bill of review served on Mr. Moss, the plaintiff's solicitor in that cause, a warrant of that date, returnable on the 1st March before the Master, which was underwritten as follows: "At which time the defendants, Lady Elizabeth Reynell, Lawrence Walker, and Arthur Walker, will apply to the Master to enlarge the time for answering until six weeks *after the plaintiff R. S. M. Sprye shall have paid to the said defendants the costs directed to be paid by him by the order* in the suits *Reynell* v. *Sprye*, *Sprye* v. *Reynell, dated 20th of November*, 1851, giving leave to file the bill in this suit *for non-payment of which costs he is now in contempt*. The Master, on the 1st of March, 1852, refused to make any order upon the application, with costs. On the 2nd of March, 1852, a motion was made before the Vice-Chancellor Parker on behalf of the said defendants Lady Elizabeth Reynell, Lawrence Walker, and Arthur Walker, *that all proceedings against the said defendants for want of an answer might be stayed until four weeks after the plaintiff R. S. M. Sprye should have paid to the said defendants the costs* directed to be paid by him by the order in the suits of *Reynell* v. *Sprye* and *Sprye* v. *Reynell*, dated *20th November*, 1851, giving him leave to file the bill in this suit, and *for nonpayment of which costs he was then in contempt*, or in case the Court should not think fit so to order them, *that the said defendants might have four weeks' further time to answer the said plaintiff's bill*, and his Honour thereupon made an order giving the defendants, Lady Elizabeth Reynell, Lawrence Walker, and Arthur Walker, four weeks' time to answer, *without prejudice to an application to stay proceedings in the suit.*

On the 8th of March a motion was made before his Honour Vice-Chancellor Parker in the last suit of *Sprye* v. *Reynell*, on behalf of Lady Elizabeth Reynell and L. Walker, and A. Walker, that all proceedings in that cause against the defendants, Lady Elizabeth Reynell, and L. Walker, and A. Walker, for want of their answers, might be stayed until three weeks after the plaintiff, R. S. M. Sprye, should have paid to the defendants, Lady Elizabeth Reynell, L. Walker, and A. Walker, the costs directed to be paid by him by the orders in the suits of *Reynell* v. *Sprye* and *Sprye* v. *Reynell*, dated the 20th of November, 1851, and should have cleared his contempt; and that all proceedings in this cause against Lady Elizabeth Reynell for want of an answer might be stayed until three weeks after the said plaintiff should have paid, not only the said *, but also other costs in the said suits of Reynell* v. *Sprye* and *Sprye* v. *Reynell*, for nonpayment of which to the said Lady Elizabeth Reynell, he was then in contempt, and should have cleared his contempt. His Honour, however, dismissed the motion with costs, upon the ground that the Court had given the plaintiff, R. S. M. Sprye, by the order of the 20th of November, 1851, liberty to file a supplemental bill in the nature of a bill of review, upon a condition which had been fulfilled, for although by the same order the costs of the motion were ordered to be paid, his Honour did not consider that the payment of those costs or the costs incurred in the former suits was to be considered as a condition precedent to be performed before filing of the bill. This motion was now made by way of appeal from the decision of his Honour Vice-Chancellor Parker of the 8th of March last.

Lloyd, *Malins*, and *Shapter*, for Lady Elizabeth Reynell and the Messrs. Walker, contended—1st. The payment of costs directed to be made by R. S. M. Sprye by the order of the 20th November, 1851, giving him leave to file the supplemental bill in the nature of a bill of review, rendered it imperative upon him, as a condition precedent, to pay the costs before the filing of such bill, and that all proceedings against Lady Elizabeth Reynell and the Messrs. Walker ought to be stayed until three weeks after he should have paid such costs and cleared his contempt; 2ndly. That all proceedings against Lady Elizabeth Reynell ought also to be stayed until R. S. M. Sprye should also have paid the costs in the suits of *Reynell* v. *Sprye* and *Sprye* v. *Reynell*, and cleared his contempt. And that there had been no waiver on their part of the right to apply for such proceedings to be stayed. They cited *Partridge* v. *Usborne*, 5 Russ. 195; 3 & 4 Lord Bacon's Orders; Beam. Orders, 3; *Wilson* v. *Bates*, 3 My. & Cr. 197; *Bradbury* v. *Shawe*, 14 Jur. 1042; *Price* v. *Dalton*, cited 3 My. & Cr. 204.

Bethell and *Terrell* for R. S. M. Sprye and his wife, contended that proceedings ought not to be stayed. They cited *Bickford* v. *Skewes*, 10 Sim. 193; *King* v. *Bryant*, 3 My. & Cr. 191.

Lord Justice KNIGHT BRUCE.—This motion divides itself into two parts, namely, the general costs of the two suits of *Reynell* v. *Sprye* and *Sprye* v. *Reynell*, in which a decree has been made, and the costs of the motion in the month of November last. As to the costs of the motion on the 20th of November last, my original impression was against Lady Elizabeth Reynell and Messrs. Walker, Grant, and Company, or at least against the latter, but the progress of the argument has changed that impression. The motion was made in a cause in which Lady Elizabeth Reynell was a party, and it relates to the subject matter of that cause. It desired the production of certain documents for the purpose of an application for a rehearing pending an appeal in that cause. It moreover asked leave to file after the decree a supplemental bill, and it made parties to that motion four gentlemen, describing them by the name of Messrs. Walker, Grant, and Company. The Court, on that occasion, adjudicated without any consent, I believe, as to that part of it, that Captain Sprye, who made the motion, should pay the costs of it—that is, the costs of Lady Elizabeth Reynell and of these gentlemen; and that direction forms part of an order which gave leave to him to file the present bill. The consequence is, that these costs not being paid, the condition annexed to that order has not been fulfilled. The order which gave leave to file a supplemental bill in the nature of a bill of review, although it also asks in the alternative, or otherwise to set aside the decree upon the ground of alleged fraud, not being complied with, my learned brother and myself are of opinion that as the subjects are so intimately connected together by the means which I have mentioned, that there is a right on the part of Lady Elizabeth Reynell, and on the part of two of the solicitors whom I have mentioned, who have been made parties to the present bill, to stay the proceedings under the present bill until those particular costs have been paid, namely, the costs given to Lady Elizabeth Reynell and to Messrs. Walker, Grant, and Company, by the order of the 20th of November, 1851. Nothing has taken place to waive the right to the payment of those costs, for they have been claimed on every occasion. As I understand, they were claimed before the Master, and they were claimed by the application made to Vice-Chancellor Sir James Parker for the order; I mean that the costs were claimed by the motion under which Sir James Parker made the order now appealed from, and the right to which is reserved by that order. With respect, however, to the general costs of the suits of *Reynell* v. *Sprye* and *Sprye* v. *Reynell*, in which the decree was made, it is arguable whether a case of waiver has been established or not; and, therefore, as to that part of the case we must hear you in reply, Mr. Lloyd.

Lord Justice Lord CRANWORTH.—What my learned brother has said represents precisely the view I take.

Lloyd, in reply, contended that there had been no waiver on the part of his clients.

Lord Justice LORD CRANWORTH.—My learned brother and myself are both of opinion, that with respect to these costs, that is, the general costs of the suit excluding the costs of the order of the 20th of November last, that there has been that which amounts to a waiver on the part of your clients, Mr. Lloyd; for this reason, it may be reduced to a very simple form. Suppose your application for time had been an application having no reservation at all. Suppose it to have been not four weeks after any particular act to be done, but simply four weeks' further time to answer; that would have been a waiver of any right you had to stay the proceedings; that you do not dispute. Now, what you apply for, is four weeks after the particular act is done; that is not an absolute waiver, it is no waiver on that particular act being done; but that particular act being done, the application is the same as if it had been an application for time, there being no restriction. That is the view we take of it, and therefore the motion will be refused so far, that is, we think that the motion ought to be granted with reference to the costs of the motion of the 20th November last, and refused as to the more extended application, partly to be granted and partly refused; the proper course will be that the order should be made without any costs in the Court below, and no costs now.

Lord Justice KNIGHT BRUCE.—No costs on either side. On the ground of waiver we refuse to stop the proceedings in this suit in the nature of a supplemental suit, until the costs in the other suits are paid.

Lord Justice LORD CRANWORTH.—All proceedings in the cause against Messrs. Walker and Lady Elizabeth Reynell will be stayed till three weeks

after the plaintiff shall have paid the costs given by the order of 20th November last; that the order of the Vice-Chancellor be varied accordingly.

ROLLS COURT.

Reported by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

March 6 *and* 16.

COURTOY *v.* VINCENT.

Fund in Court—Accountant-General—Cheque—Annuity—Jurisdiction—Stats. **1 & 2** ***Vict.*** **c. 110, s. 14; 3 & 4** ***Vict.*** **c. 82.**

An annuitant, whose annuity was payable out of money standing in the name of the Accountant-General, was sued for a debt; and judgment being obtained against him, a writ of fieri facias was issued, but nothing was found for it to attach upon. The creditor then obtained an order to stop the Accountant-General from parting with a cheque for the amount of a half-year's annuity which had become due, but, upon a petition, the Court declined making an order authorising the sheriff to seize the cheque, or to direct it to be dealt with as if it was standing in the name of a trustee, and the petition was dismissed.

The stop order, however, was continued.

The petition in this case was presented by Frederick Courtoy, one of the seven children of William Courtoy, praying that the Accountant-General might be ordered not to pay to William Courtoy, or his solicitor, a cheque for 58*l.* 5s. but that he might deliver it to the sheriff of Middlesex, or allow him to seize it under a writ of fi. fa. in part satisfaction of a judgment of law, or that the cheque might be cancelled, and the money, together with all other sums which should accrue due during the life of William Courtoy, in respect of an annuity of 120*l.* payable to him for life, might be paid to the petitioner until the judgment obtained by him should be satisfied.

It appeared that John Courtoy, by his will, dated 28th May, 1814, gave the residue of his property to George Nooborm Vincent, Robert Lovelace, Rowland Edward Williams, and Charles Drummond, their executors and administrators, in trust to pay and apply the interest and dividends to the uses and purposes thereby directed; that is to say, to pay 200*l.* a year to his son, George Courtoy, for life; and he directed that, in case he should sell or dispose of the annuity, the same should cease; and on the decease of his said son George, the testator directed his executors and trustees should cause the sum of 4,000*l.* being about the principal sum requisite for the payment of such annuity, to be divided in equal shares amongst all and every the children of his said son George, should there be any living at his decease, as he, she, or they should arrive at twenty-one, or marry; but if any or either of them should die under the age of twenty-one without having been married previous thereto, his or her share should be equally divided among the survivors; but if only one child should be living, the whole was to go to that one child, and if no child who should attain twenty-one, or be married, then the 4,000*l.* were to be paid to the children of his son William Courtoy in the same manner as directed in respect of the children of his said son George. The testator also directed his executors and trustees to pay unto his son William Courtoy one annuity or clear yearly sum of 100*l.* (which upon the decease of M. A. Woolley he directed to be increased to 120*l.*) during his life, payable half-yearly; and upon the decease of his said son, to cause the sum of 2,000*l.* to be divided equally among his children at twenty-one or marriage, with benefit of survivorship; and he proceeded thus:—"I hope that my son William will feel that, notwithstanding his undutiful behaviour to me, and the bad manner in which he has conducted himself through life, yet that I have by this disposition of my property left for his benefit, sheltered him from the possibility of want, which I am afraid would soon have come upon him had I not taken this mode of protecting him; and in order the more effectually to prevent his defeating my intention in his favour, and to prevent his disposing of such annuity or making it subject to his debts, I hereby direct that the same shall become void and forfeited in case he shall sell or dispose of the same; and as my son William may depart this life leaving children or a child not of age to claim a part or the whole of such sum, then" he directed 100*l.* a year to be paid to his son's wife, or, if she should not be living, to be applied by his executors and trustees for the maintenance of such children till twenty-one or marriage. The will was proved by all the executors on the 7th of January, 1819, and a sum of 21,000*l.* Consols. was set apart in the name of the Accountant-General to answer the annuities. George Courtoy died in August 1818, without ever having had any children. William Courtoy had six children, all of whom were of age, and the petition was presented by one of them. In August 1818, one-seventh part of 4,000*l.* was directed to be paid to the petitioner, Frederick Courtoy, who, being then with his regiment in India, executed a power of attorney authorising William Courtoy to receive the same, and 589*l.* 6s. 6d. was accordingly paid to him. Of this only 70*l.* came to the hands of Frederick Courtoy, who brought an action for the balance, and on the 22nd of December obtained judgment for 519*l.* 6s. 6d. and 9*l.* 5s. 5d. costs. A writ of fi. fa. was then issued, and the sheriff of Middlesex was directed to levy the amount; but he had not been able to find any assets of William Courtoy to seize. A half-year's annuity, however, having fallen due in January last, the petitioner obtained a stop order restraining the Accountant-General from parting with the cheque, and now presented his petition.

Baggallay, in support of the petition, insisted that by the 1 & 2 Vict. c. 110, s. 12, the sheriff had power to seize money, bank notes, cheques, bills of exchange, &c.; and by the 3 & 4 Vict. c. 82, s. 1, the Superior Courts are authorised to make orders as to any stocks, funds, annuities, or shares, in the name of the Accountant-General of the Court of Chancery in like manner as if they had been standing in the name of a trustee. The Act, therefore, gave the petitioner a security upon the fund, which this Court would enforce by making such an order as would enable the sheriff to make the cheque available for payment of the debt. This was denied in *Watts* v. *Jefferyes*, 3 M. & G. 373, and the Court had held that a party was entitled to a stop order to restrain a debtor from receiving dividends of stock so as to prevent him from defeating or diminishing the security given by the Act.

Fooks, contrà, contended that the Accountant-General had no power to part with the cheque to the sheriff, and William Courtoy was paralytic, and incapable of instructing his solicitors respecting it. The annuity was one for William Courtoy for life, to be void in case he assigned it, and if the Court made any order the annuity became void, as the gift was a conditional limitation, which differed from a clause of forfeiture. The Court, therefore, would do no more than the annuitant was permitted to do by the will. In *Miles* v. *Presland*, 2 Beav. 300; 4 Myl. & Cr. 431, it was held that the Court had no jurisdiction under the 1 & 2 Vict. c. 110, s. 14, to charge moneys standing in the name of the Accountant-General with a debt upon a judgment at law against the party entitled to the fund.

Tuesday, March 16.—The MASTER of the ROLLS said he had considered the case, and he doubted whether he had power to make any order. He could not authorise the sheriff to seize the cheque, nor did he think he could direct it to be dealt with as if it was standing in the name of a trustee. He was of opinion, therefore, that he must dismiss the petition, that an opportunity might be given for an appeal.

Baggallay asked that the stop order might be continued.

The MASTER of the ROLLS thought he might continue the order.

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple Barrister-at-Law.

Saturday, April 24.

Re THE BRITISH ALKALI COMPANY.

Joint Stock Companies Winding-up Acts.—Discretion of Court.

Where a company had ceased to carry on business, but the governing body were bonâ fide putting in execution their powers under the deed of settlement to wind up the affairs of the company, the Court refused to make an order under the provisions of the Winding-up Acts, although a creditor of the company to a large amount was in a position to issue immediate execution for his claim.

This was a petition presented by Mr John Guest, a shareholder in the British Alkali Company, praying that the company might be dissolved, and the affairs thereof wound up, under the provisions of the Winding-up Act. The company was established in 1835, the capital consisting of 150,000*l.* in 6,000 shares of 25*l.* each. By the deed of settlement, dated the 13th of October, 1835, among other things, provision was made for the dissolution of the company. An Act of Parliament was afterwards obtained to enable the company to sue and be sued in the name of the secretary, or any one member for the time being of the company. By that Act it was provided that execution upon any judgment in any action obtained against the secretary, or any member for the time being, of the said company, whether as plaintiff or defendant, might be sued against any member or members for the time being of the said company. At an extraordinary general meeting of the company held on the 10th of September, 1838, the capital of the company was increased to 200,000*l.* by the creation of 2,000 additional shares of 25*l.* each. In 1845 the company ceased to pay any dividends. On the 21st of May, 1851, it was resolved to let the works of the company, and to discontinue the business thereof upon the same being so let. At a meeting on the 19th of June, 1851, the directors reported that 20,000*l.* should be immediately raised, and called on the shareholders to subscribe that amount. A fund was afterwards subscribed by the shareholders to meet the exigencies of the company. At a meeting on the 4th of October, 1851, where the formation of this fund was resolved upon, an estimated statement of the position of the company was made, by which it appeared that the assets of the company amounted to 14,118*l.* and the liabilities (including a debt of 18,526*l.* to Messrs. Glyn), to 37,047*l.* At a meeting on the 19th of November, 1851, it was resolved as early as circumstances would permit, to wind up the affairs of the company. By a judge's order, dated the 15th of June, 1850, made in an action brought by Messrs. Glyn against the secretary of the company, it was ordered that upon payment by the defendant of the costs forthwith, 5,682*l.* 12s. part of the debt on the 30th of October then next; 5,352*l.* 17s. 6d. on the 30th of January, 1851; 5,283*l.* 11s. 3d. on the 30th of April, 1851; 5,224*l.* 7s. 8d. on the 30th of July, 1851; 5,163*l.* 16s. 8d. on the 30th of October, 1851; 5,100*l.* 16s. 5d. on the 30th of January, 1852; and 3,036*l.* 19s. 9d. the residue of the debt on the 30th of April, 1852, all further proceedings in the cause should be stayed; but that in case default should be made in any payment as aforesaid, the plaintiffs should be at liberty to sign final judgment, and issue execution for the whole amount remaining unpaid at the time of such default, with costs, &c. Three only of these instalments were paid, and the sum of 15,489*l.* 0s. 9d. remained due to Messrs. Glyn, who were in a position to enter up judgment on the said order, and issue execution for the said sum. On the 5th of January, 1852, a notice was served upon the company, requiring immediate payment or discharge of the said debt, but they had not secured or compounded for the same. From the affidavits filed in opposition to the petition, it appeared that arrangements had been made with Messrs. Glyn, by which their debt had been agreed to be deferred under certain terms, and that the company's works had been let for twenty-one years, at a rent of 2,500*l.* per annum.

Malins and *De Gex*, in support of the petition, contended that the present circumstances of the company were such as to render it proper that its affairs should be wound up. The petitioner was liable to an execution, which might at any time be issued by Messrs. Glyn on account of their debt, and he was entitled to be relieved from such a liability. They referred to *Re Banwen Iron Company* (see 13 Law T. 400); *Re Sherwood Loan Company*, 1 Sim. N. S. 165; *Re The Pennant and Craigwen Company*, 18 Law T. 152; and *Re The St. James's Club*, 17 Law T. 219.

Terrell appeared for the Droitwich Salt Company.

The VICE-CHANCELLOR (without hearing *Daniel* and *Speed*, who appeared for a large majority of the shareholders to oppose the petition), said, that he considered that the making an order for winding up a company under the Winding-up Act was a matter in the discretion of the Court. It did not follow that because there were ingredients in the case which gave the Court jurisdiction to make the order, the Court would therefore make it. That appeared from the judgment of Lord Cottenham in the case of *The Wheal Lovell Mining Company*, 1 Mac. & Gord. 1. The question, he said, was, not whether it was a case in which the Court had jurisdiction, but whether the circumstances were such as to induce the Court having jurisdiction to exercise that jurisdiction. Here the case was one in which the company had ceased to carry on business; it had ceased to pay dividends, and all parties agreed that the company was to be put an end to. The state of the assets appeared to be this; that the debts of the company amounted to 37,047*l.* and the assets amounted to 14,118*l.* not including the works, which were let for 2,500*l.* a-year, so that it was plain that upon a very moderate valuation of the works there would be enough to pay the debts and leave a surplus. If the petitioner came to the Court with any case shewing that he was pressed by any of the creditors, and asking protection against any pressing demand, the Court would consider what was necessary to be done in that position of affairs. His Honour did not find that such was the case here. Messrs Glyn were creditors, and they seemed to consider that there was sufficient property to meet the claims on the company, and they were engaged in negociating how their claim was to be satisfied. This was a state of affairs which might give rise to a difference of opinion as to the mode in which the company ought to be wound up. The petitioner thought it should be done under the Winding-up Act, and on the other side the great majority of the shareholders considered that, as they had been doing all they could to wind up the company without the intervention of this Court, they would be able to do so, and there might be some surplus remaining for the shareholders. What

might be the result under the Winding-up Acts if this petition were to be granted, and these Acts to be applied against the wish of the shareholders, no one could tell. It was a very different case where there was insolvency or pressing demands against the shareholders which would result in actions against them speedily, or where there were liabilities to be enforced inter se, which could not so well be determined otherwise. His Honour did not think that he should be exercising a sound discretion if he were to make the order asked. The company had ceased to carry on business, and the governing body were bonâ fide putting into execution their powers under the deed of settlement to enable them to wind up the company under the deed, and his Honour saw nothing to shew him that they might not succeed. He thought, therefore, tha there should be no order on this petition.

April 20 *and* 22.

Re THE UNIVERSAL GAS-LIGHT COMPANY.

Joint-Stock Companies Winding-up Acts.

Provisional committee-man claiming as a creditor in respect of debts of the company paid by him allowed to prove for such debts, but not for the costs of defending actions brought against him for these debts.

This was a motion on behalf of two of the contributories of the Universal Gas-light Company, that an order of the Master, allowing a claim of Mr. Brooke as a creditor for 439*l.* 1s. 9d. might be discharged or varied. The company was provisionally registered in 1845, and in January, 1846, Mr. Brooke became a member of the provisional committee, but in July 1846 he requested the company's solicitor to withdraw his name. The company was completely registered in September 1846, and carried on business until March 1848. Actions were afterwards brought against Mr. Brooke and others, and Mr. Brooke had been compelled to pay some of these amounts, and also costs in resisting the claims made against him. The company was, on the 29th of June, 1850, ordered to be wound up. M Brooke carried in a claim before the Master for 734*l.* 3s. 5d. The first item in this claim was "various sums contributed at different times towards defraying the preliminary expenses of the said company, amounting to 30*l.* 17s. 9d.;" the other items consisted of the amounts paid in respect of the actions brought against Mr. Brooke, and the costs in defending them. The Master allowed the claim to the extent of 439*l.* 1s. 9d. including the first item before mentioned.

Greene, in support of the motion, said that the company was provisionally registered in Octol 1845, for the purpose of working Francis's patent for making gas, and was afterwards, on the 30th of May, 1846, again provisionally registered for the purpose of working the patent of Messrs. Corden and Smith. The two companies were distinct, and the claims paid by Mr. Brooke were in respect of the first company, and could not be allowed in the present matter.

Malins and *Henry Stevens*, for Mr. Brooke, contended that there was but one company, the change in the provisional registration not at all affecting the identity of the company. The deed of settlement recognised and adopted the proceedings of the provisional directors previous to complete registration.

Roxburgh, for the official manager, asked for his costs. The Master ought to have been applied to under the 17th section of the Winding-up Act of 1848, to review his order, instead of this appeal motion being made.

The VICE-CHANCELLOR said, that as to the 30*l.* 17s. 9d. the Master must review his decision. He would allow so much of the remainder of the sum as did not relate to the costs of defending the actions brought against Mr. Brooke, but he could not allow these costs. Upon this application there would be no costs on either side, and the official manager would have his costs out of the estate.

Friday, April 16.

Re THE GERMAN MINING COMPANY.

Joint-Stock Companies' Winding-up Acts—Costs.

Where contributories had successfully resisted a claim against a company ordered to be wound up, the Court allowed the costs incurred by them in such resistance to be paid out of the estate.

In this case, under a winding-up order, the London and Westminster Bank carried into the Master's office a claim against the company for 12,217*l.* composed of moneys advanced from time to time by the Bank to the directors of the company. This claim the Master allowed, the official manager not opposing. Afterwards, Messrs. Chippendale and others, who were contributories, obtained leave from the Master to appear as a class for the purpose of reopening the question, whether the alleged debt was due from the company. The question was argued before the Master, the Bank and the directors of the company being heard respectively by their counsel in support of the claim, and the Master allowed it. Messrs. Chippendale and other then moved before Vice-Chancellor Knight Bruce to discharge the Master's order, and the Vice-Chancellor ordered the motion to stand over, giving liberty to the Bank to bring an action. (14 Jur. 874.) An action was afterwards brought and tried in the Exchequer, and the jury found for the plaintiffs as to a portion of the debt, amounting to about 8,000*l.* and for the defendants for the remainder. The defendants then moved for and obtained a rule absolute for a new trial, a report of which appears in 17 Law T. 232, *Burmister* v. *Norris*. The plaintiffs not taking any steps to proceed with the new trial, Messrs. Chippendale and others now renewed their motion to discharge the Master's order, and they asked by their notice of motion as against the Bank all the costs incurred by them, as well those in the Master's office and of the appeal to Vice-Chancellor Knight Bruce as of the action, and the proceedings to obtain a new trial. On the motion coming on, the Bank, by their counsel gave up their claim to the debt, and the only question remaining was as to the costs.

Malins and *Drewry*, for the motion, said that this was a case of a purely legal claim. The Bank claimed a legal debt, and the result of the proceedings was that they had no such claim; and by their now giving up the claim in consequence of the judgment delivered at law when the rule for a new trial was made absolute, they were in the same position as if a new trial had taken place and a verdict had been given for the defendant. The Bank was therefore wrong from the beginning, and ought to pay all the costs occasioned by their unfounded claim, to the company, who for this purpose were represented by the class making the present application. They cited *Ex parte Hall*, 14 Jurist, 1067; and *Stevens* v. *Keating*, 1 Mac. & Gord. 659. They referred also to the 103rd section of the Winding-up Act, 1848.

Hetherington appeared for the Bank.

Bagg, for the official manager.

The directors were served, but did not appear.

The VICE-CHANCELLOR (without hearing *Hetherington* for the Bank), said that he did not consider that he had any thing to do with the costs at law: whatever was the course at common law must determine the question as to these costs. As to the costs of the proceedings in this Court, the Court had a discretion. His Honour did not think that the case of *Ex parte Hall*, which turned on a question between a contributory and the company, governed the present case, where a creditor had gone in before the Master and obtained a decision in his favour, and on an appeal the Court had sent it to law, and the case had ultimately failed. Subject to any thing that might be said by Mr. Hetherington, his Honour thought that there should be no costs of the proceedings in this Court or before the Master. The costs at law must follow the course of common law procedure.

Malins then asked that his costs should be paid out of the estate.

The VICE-CHANCELLOR said, that considering this was the case of some contributories successfully resisting a claim against the estate, he thought that for the purpose of their proceedings they had acted somewhat in the character of the official manager, and subject to anything the official manager might say, he considered they ought to have their costs out of the estate.

The official manager did not object, and the order was made accordingly, discharging the Master's order for allowing the debt. No costs on either side in this court, as between the Bank and the class of contributories. The costs at law to be determined according to the course of proceeding at law. The class contributories to have out of the estate all the costs hey had been put to, including any costs they might have incurred in the proceedings at law.

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. BENNET, Esq. of Lincoln's-inn, Barrister-at-Law.

March 4, 5, *and* 18.

LLOYD *v.* LLOYD.

Will—Construction—Condition in restraint of marriage—Repair of tomb—Charity.

A restraint of marriage as to a testator's widow is not void. The law recognising in the husband that species of interest in the widowhood of his wife as enables him to restrain her second marriage.

Otherwise as to any other woman.

A condition that if the testator's wife and another woman both should marry, and a gift over,

Held to be void.

A condition to keep a tomb in repair is not a charitable use, and therefore not illegal.

A devise of rents to the minister and churchwardens of a parish, upon trust, first, of taking 5l. to themselves, and then for the repair of the tomb,

Held to be void.

This cause came on for further directions on the Master's general report; and the questions decided turned upon the construction to be put upon the testator's will and codicils, which were as follow:—

"In the name of God, amen. I, George Lloyd, of No. 8, Park-street, Greenwich, in the county of Kent, do declare this to be my last will and testament. First, I hereby nominate, constitute, and appoint Mr. Robert Browning, jun. of Hatcham, Surrey, and Mary Martha Lockley, of Park-street, Greenwich, in the county of Kent, executor and executrix to this my last will and testament; and further, I request that at my decease my body may be placed in a good sound oak inner coffin, one a half-inch thick, and the outer one of good sound oak, one and a half inch thick, cemented together and varnished, and no cloth to be made use of on the outside of the coffin, and, at the expiration of fourteen days, shall be interred in the vault in St. Mary's church-yard, at Chatham, in the county of Kent; and further, I desire that every unnecessary expense attending my funeral may be avoided, and that no person or persons whomsoever may be deposited in the said vault after my remains are there interred save Mary Martha Lockley, if she continues a single woman, and living a chaste life. And further, I give and bequeath to Mary Martha Lockley my household furniture, glass, china, silver, plate, jewellery, linen, &c. &c. &c. for her own use and benefit, save and except the hereinafter-mentioned bequests. And further, I direct and empower my executrix or executor to pay my funeral expenses, and collect in all moneys, securities for money, and all other property of whatsoever description of which I may die possessed, now and hereafter, and that my said executrix or executor shall sell, or cause to be sold to the best advantage, the whole of my personal and real estate, and shall invest the proceeds of such sale in some Government Annuity for the benefit of my wife, Lucy Lloyd, and Mary Martha Lockley, No. 8, Park-street, Greenwich, Kent; and when the amount of the said Government Annuity is ascertained, then the said sum of money so raised by the way of an annuity on the joint lives of my wife, Lucy Lloyd, and Mary Martha Lockley, is to be equally divided, share and share alike, between Lucy Lloyd and Mary Martha Lockley, and at the death of either the above-named Lucy Lloyd or Mary Martha Lockley, her share at her death shall pass to the survivor of the two above-named Lucy Lloyd and Mary Martha Lockley on the day of her decease. And in case either Lucy Lloyd or Mary Martha Lockley should marry or live in a state of adultery, then her share shall pass to the other the same as if death had taken place; and should Lucy Lloyd and Mary Martha Lockley both marry, then their shares and interest shall pass to my nephew, Samuel Hayes, of Woolwich, Kent, in case Lucy Lloyd and Mary Martha Lockley fail in fulfilling the conditions of this my will. And, further I desire that my wife, Lucy Lloyd, and Mary Martha Lockley, shall, out of the annuity they receive, keep in good sound repair the tomb and vaults in Chatham church-yard that belongs to me, and cause to be painted the said tomb and vault every four years, or, if required, more frequent, and in default or failure they should lose and forfeit their claim to the annuity; and any person hereafter that shall receive the annuity shall be bound to perform the same conditions. And, further, I direct my executrix or executor to ascertain the amount of money received by my wife, Lucy Lloyd, from the Chatham Dock-yard Society (which may be by the secretary's yearly report), and when that amount is ascertained by my executrix or executor, she, Mary Martha Lockley, will be entitled to the half of the sum so received by my wife, Lucy Lloyd, from the said society; and should my wife, Lucy Lloyd, refuse to pay the half of the sum received by her from the society, then my executrix will stop so much of the share of the Government Annuity that my wife, Lucy Lloyd, should receive as will make good her half of the dock-yard pension money to Mary Martha Lockley, so that there may be an equal division of money between Lucy Lloyd and Mary Martha Lockley."

The testator afterwards duly made and executed a codicil to his said will, which codicil bore date the 12th day of October, 1844, and was duly executed and attested as by law required, and which codicil, as admitted to probate, was in the words and figures following:—"Having entered into an agreement with Mr. James Wilhelm Pyle, of Barnes, to let him my house, situate at Barnes-terrace, Surrey, on a lease for fourteen or twenty-one years from the 25th of March next, 1845, at a yearly rental of 48*l.* per annum to be paid quarterly, I now make this offer to Mr. James Wilhelm Pyle, that is, at the expiration of the first fourteen years of the said lease of twenty-one years, should he, the said Mr. James Wilhelm Pyle, wish to continue the lease and pay to my executrix or executor, should I at that time have departed this life, the sum of 48*l.* by quarterly payments during the lifetime of my wife, Lucy Lloyd, and Mary Martha Lockley, clear of all demands, such as quit-rent, land-tax, income or property tax,

or any parliamentary tax that may hereafter be passed, or any other rates or taxes or charges during the lifetime of the said Lucy Lloyd and Mary Martha Lockley; and further, this said Mr. James Wilhelm Pyle is to pay, after the death of my wife, Lucy Lloyd, and Mary Martha Lockley, within six months, the sum of two hundred pounds, clear of all costs, charges, and expenses, and to invest the said two hundred in the New 3¼ per Cent. Annuities, Bank, in the joint names of the minister and churchwardens of St. Mary's Church, Chatham, in the county of Kent, as trustees for the time being. If the above stipulations are fulfilled in every point by the said Mr. James Wilhelm Pyle, as respects the payment of the 48*l.* and the investment of the 200*l.* in the Bank of England, then I give and bequeath the said house at Barnes, Barnes-terrace, in the county of Surrey, to this Mr. James Wilhelm Pyle for ever; he, Mr. James Wilhelm Pyle, paying all fines, costs, and charges, to the lord of the manor, in making over the said house, at Barnes, Barnes-terrace, in the County of Surrey."

The testator afterwards duly made a second codicil to his said will, which second codicil bore date the 14th day of October, 1844, and was duly executed and attested as by law required, and which codicil, as admitted to probate, was in the words and figures following (that is to say): "And I further desire that my house at Barnes, Barnes-terrace, in the county of Surrey, now in the occupation of Mr. Pyle, shall not be sold, but let at a yearly rental, or on lease, to the best advantage, for the benefit of my wife, Lucy Lloyd, and Mary Martha Lockley, and the proceeds of the rent applied as my will sets forth, subject to all the conditions contained in my will, the same as if the house had been sold, share and share alike; and after the death of my wife, Lucy Lloyd, and Mary Martha Lockley (or in case Mr. James Wilhelm Pyle, of Barnes, refuses to accept of my offer to him in a codicil dated 12th day of October, 1844, as respects the said houses at Barnes), or in default of their, Lucy Lloyd and Mary Martha Lockley, not fulfilling the conditions contained in my will, I give and bequeath upon trust the said house at Barnes, in the county of Surrey, to the minister and churchwardens of St. Mary's Church, Chatham, in the county of Kent, for the said minister and churchwardens to apply the produce of the rent of the said house at Barnes as follows:—First, to take for themselves five pounds every year for their expenses out of the rent or proceeds of the said house at Barnes, and further to keep in good sound repair the vault and tomb, and cause the said tomb to be painted every third year that belongs to me in Chatham churchyard, then the residue and remainder of the said rent to be applied for the benefit of my nephew, Samuel Hayes, at Woolwich, in the county of Kent; and after the death of the above Samuel Hayes, of Woolwich, then the residue and remainder of the said rent is to be applied for the benefit of the Church Missionary Society attached to St. Mary's Church, Chatham, Kent; and I further desire, if Mr. James Wilhelm Pyle, of Barnes, accepts of the offer of the house at Barnes, Barnes-terrace, then the interest of the 200*l.* invested by him in the Bank of England, in the New Three-and-a-Quarter per Cents. in the joint names of the minister and churchwardens of St. Mary's Church Chatham, as trustees, shall be applied as follows:—First, the said minister and churchwardens to take for themselves each one guinea every year, then the residue and remainder of the interest of the 200*l.* is to be applied in keeping in good sound repair the vault and tomb, and cause the said tomb to be painted every third year that belongs to me in Chatham Churchyard; and if any surplus of interest after the expenditure of the cash on the tomb and vault, then it shall be given to the Church Missionary Society attached to St. Mary's Church, Chatham. And further I desire my executrix or executor to give all the pictures of Mrs. Lloyd's own performance, and any books of hers, or any other article that may be found in my house, if she, Lucy Lloyd, will declare upon her oath was hers before marriage with me, George Lloyd."

The points raised upon the construction of this will and codicils sufficiently appear in the judgment.

Torriano (with him *Roundell Palmer*) contended that the restraint against the marriage of the testator's widow was void, and relied upon *Sheffield* v. *Orrery*, 3 Atk. 283; *Rushton* v. *Cobb*, 5 Myl. & Cr. 145, S.C., 9 Sim. 615; *Morley* v. *Reynoldson*, 5 Hare, 570.

Haldane and *Surrage* for some parties in the same interest as the plaintiffs.

Malins and *W. A. Collins*, for the heir-at-law, contended that the restraint upon the marriage of M. M. Lockley was also good, and cited *Webb* v. *Grace*, 15 Sim. 384, S.C., 2 Phill. 701.

Begbie for the nephew.

JUDGMENT.

The VICE-CHANCELLOR.—The question in this case turns upon the construction of the will of George Lloyd. The will is not very intelligible, and the testator appears to have been a person who, though not entirely void of education, was not able to express his intentions in very clear and intelligible language, though it is not very difficult to come to a conclusion as to his general intentions. He left a widow, but apparently had no children, and a person named Mary Martha Lockley, who seems a friend, or a person for whom he desired to make a provision, though no relation. He had also a nephew, Samuel Hayes, and the principal objects of his bounty seem to have been his widow and Mary Martha Lockley, and in some degree he seems to have desired to do something for his nephew. [His Honour then read the first portion of the will.] There is then a clear intention that the executors should convert all the real and personal estate into money, and invest that money in a Government Annuity for the lives of his widow and Mary Martha Lockley, and the life of the survivor; for though in one passage he speaks of money so raised on their joint lives, yet he directs that on the death of either the annuity should go to the survivor. So far there is no difficulty whatever, he gives an annuity for their joint lives and the life of the survivor; then he goes on thus, "and in case either Lucy Lloyd," &c. Now, with respect to that which, as a condition subsequent, attaches to the previous gift, I think, according to the authorities, it is not void as regards the wife. The law recognizes in the husband that species of interest in the widowhood of his wife as makes it lawful for him to restrain a second marriage, that is to say that the provision which he has made shall cease. I have no doubt also, that with respect to either his wife or a stranger a testator may give an annuity to continue so long as she remains single and *unmarried*, but as to a person, not a wife, if he first gives her a life, or other estate, and then appends a condition to defeat that estate, if she marries, that would not be good. If I am right in this view of the law, the effect of that clause is, that if the wife should marry, her share would go over to Mary Martha Lockley; but if Mary Martha Lockley should marry she loses nothing. But then comes another condition or provision,—"and should Lucy Lloyd and Mary Martha Lockley both marry," &c. Now, this is a sentence, part of which is intelligible, but as a whole it is not very easy to say what the testator meant. So far as he meant to give the property over in the event of both marrying again, it is with respect to Mary Martha Lockley clearly void, as I said before. But the testator has added, "in case Lucy Lloyd and Mary Martha Lockley fail in fulfilling the conditions of my will," and then imposes another condition as to his tomb, and the difficulty is to know whether he meant to say, "If Lucy Lloyd and Mary Martha Lockley both marry, or fail in fulfilling the conditions," or if he meant to say in the conjunctive, "If they both marry and fail." My impression is that he meant at all events, that if they both, it was to go over, and I think that void. But he adds another condition as to the tomb. Now, I am satisfied that a condition for keeping a tomb in repair is not a charitable use, and is not illegal. It may be illegal to vest property in perpetuity in trust for that purpose, so as to create a perpetuity, but a direction that the wife and Mary Martha Lockley are during their lives to enjoy the annuity, and are to keep the tomb in repair is quite lawful: it is a valid condition imposed upon the enjoyment. I consider, therefore, that Lucy Lloyd and Mary Martha Lockley are well obliged out of the annuity to keep the tomb in repair, &c. Then there is a direction, about which there is no question, —that his executors shall ascertain the amount of money which the wife is entitled to out of a certain society which the Master must inquire about. But nothing turns upon that. So far then the testator directed conversion of all his real estate for the purpose of purchasing an annuity for lives, and by a codicil he refers to this. His real estate consisted of copyholds at Barnes, at which place he resided. He had granted a lease of it, and by this codicil he directs that if Mrs. Pyle, &c. In effect it comes to this; Mr. Pyle is lessee for fourteen years at 48*l.*; and he says,—"If you choose to accept this offer, you may do so upon the terms of paying 48*l* during the life of my wife and Mary Martha Lockley;" and then 200*l.* more, which are to be invested in the Funds; but he does not direct any trust, and it appears that Mr. Pyle has declined the offer. Then comes the second codicil, and by that referring to the fact that by his will he had directed a sale, he says, "it shall not be sold, but let," and so on. The language is entirely inartificial; and if you take it as it stands, it clearly does not express the meaning which ought to be extracted from the whole of the codicil. He meant, if Mr. Pyle does not accept the offer, then let the house continue to be let, and the rent be paid to Lucy Lloyd and Mary Martha Lockley during their lives and the life of the survivor, and after the death to the minister and churchwardens; and he afterwards devises it to the minister and churchwardens, if Lucy Lloyd and Mary Martha Lockley fail to fulfil the conditions of the will. As to one it is void; if the other is to take it is valid; and I see no reason why the limitation over in the event of heir not fulfilling that condition is not good, that is assuming that the devise over is valid. But the devise is to the minister and churchwardens; and he then goes on thus,—"First," &c. Now, the devise to the minister and churchwardens is declared to be upon this trust, first, to take 5*l.* which would not be of itself illegal, if the duty they were to perform was a duty which is valid; but the next trust is to keep in sound repair the vault and tomb, and this being a devise of the fee, or rather of the inheritance, of the copyhold to the minister and churchwardens, upon trust to cause a tomb to be painted every year, is, in fact a perpetuity, and I suppose it is for that reason that the Court at the hearing declared this devise to be void, and dismissed the churchwardens from the suit; and I am of opinion that, whether right or wrong, I am not here to alter it. But I think it right, and the effect of it appears to be, that everything which is contained in or grafted on the trust to the minister and churchwardens is void, and the trust is void. It is unnecessary, therefore, to consider the effect of the subsequent trusts; that is to say, of what is to be done with the rent after keeping the tomb in repair. It is to be applied to the benefit of the Missionary Society, which is of course void under the Mortmain Acts. Then he says:—"The interest of the 200*l.* invested in the joint names of the minister and churchwardens is to be applied as follows," &c. It is not necessary to comment on these ulterior limitations, they are clearly void, and have been declared to be so by the Court. The effect, then, of the whole is, that this property, after paying the costs of the suit, will have to be invested in the purchase of a Government Annuity for the life of Lucy Lloyd and Mary Martha Lockley, with a direction to pay the interest to those two persons in equal shares during their joint lives, they undertaking to perform the conditions contained in the will, with regard to the repair of the tomb and the painting of it, with liberty for any party to apply upon the death of either, or in any other event, for it is not necessary for me to determine now while they both remain single, what may be the result of the widow marrying again, or what may be the result of not performing the condition to repair. As to the copyholds, Mr. Pyle declining the offer, declare the widow and Mary Martha Lockley entitled to the rents in equal shares during their lives, and after their death the heir is entitled. The costs of the suit to be apportioned between the real and the personal estates.

The exact terms of the order to be settled in pursuance of these directions.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

Wednesday, April 21.

REG. v. THE HULL DOCK COMPANY.

Poor-rate—Several docks in different parishes—Distribution of the rate—Acreage principle.

A dock company possessed four different docks, communicating with one another, or intended so to do when the works were complete: parts of some of the docks were in different parishes, but one toll was paid for the privilege of using the whole or any part of the docks.

Held, that the poor-rate on the tolls was distributable among the several parishes according to the proportion of land of the docks in each parish.

The Dock Company at Kingston-upon-Hull appealed against a rate for the relief of the poor of 1s. in the pound, assessed upon them in respect of their docks situate in the parishes of Holy Trinity and St. Mary, in the town of Kingston-upon-Hull, which parishes are united for the purposes of relief to the poor, viz. by divisions into eight wards. The recorder confirmed the rate, with costs, subject to the opinion of this Court.

CASE.

The appellants are owners and occupiers of the docks and basins at the port of Kingston-upon-Hull, which, previous to the construction of the oldest of the said docks, was an ancient port formed by the river Hull, a part whereof adjoining the town of Kingston-upon-Hull, is known by the name of the Old Harbour, extending from a place formerly called Sculcoate-gate to the mouth of the river, and is vested in the mayor, aldermen, and burgesses of the borough, who receive considerable dues in respect of vessels using the port.

By the 14 Geo. 3, c. 56, s. 17, the appellants were incorporated as "The Dock Company at Kingston-upon-Hull," and empowered to make the dock now called the *Old Dock*, most of the north part of which is in the parish of Sculcoates, and the south part is in the parishes of Holy Trinity and St. Mary. The Act provides for the repair, maintenance, and cleansing of the docks and other works, and directs rates and duties of tonnage to the company for every ship or

vessel (the king's ships and ships employed in his Majesty's service excepted) coming into or going out of the said harbour, basin, or dock, within the port of Kingston-upon-Hull, or unlading or putting on shore, &c. The time at which these rates or duties were directed to be paid is pointed out in the following terms:—" And shall be paid at the time of such ships' or vessels' entry inwards or clearance or discharge outwards, or in case any ships or vessels shall not enter as aforesaid, then, at any time before such ships or vessels shall proceed from the said port, at the custom-house in the said port, so as no ship or vessel shall be subject or liable to the payment of the said rates or duties, or any of them, more than once for the same voyage both out and home, notwithstanding such ship or vessel may go out and return with a loading of goods or merchandise." Secs. 67 to 70 empower the guild or brotherhood of the Trinity House of Kingston-upon-Hull to appoint a dock master and assistants, with full power and authority to direct the mooring or removing of all vessels coming into, lying, or being in the said basin, or dock, or elsewhere within the said port or haven.

The entrance into the old dock from the old harbour was through its basin, situate within of the respondents' parishes. The liability of the appellants to be rated in the parish of Sculcoates established in *Reg.* v. *Sculcoates*, 12 East, 40.

The 42 Geo. 3, c. 91, ss. 1, 6, provides for making additional basins and docks at Kingston-upon-Hull, viz. "*The Humber Dock and Basin*," and sec. 6 renders the 14 Geo. 3, c. 56, applicable to the additional basin or dock and works. Sec. 56 gives power to purchase land for a third dock to meet the probable wants of the port.

By the 45 Geo. 3, c. 42, the same rights and privileges as then belonged to the port of Kingston-upon-Hull are extended to the docks and basins formed under the 42 Geo. 3, c. 91, and the same regulations and duties are imposed upon vessels entering into or loading or unloading therein, and upon goods, &c. loaded or unloaded in or passing through the same, as they were subject to in the port of Kingston-upon-Hull.

The *Humber Dock and Basin* and then the *Junction Dock* were completed. Additional docks were next made,—the *Victoria Dock* and the *Railway Dock*,—under the 7 & 8 Vict. c. 103, and the provisions of the former Acts incorporated into this last Act.

The dock master had power to remove the vessels from one dock to another, when obstructing the despatch of business. All the docks with the exception of the Victoria Dock, communicate with each; but it is intended that, when the works in progress are complete, the Victoria Dock shall communicate with the others, so that vessels entering one dock will be able to pass through and use all the docks.

No separate accounts are kept for the several docks, but the whole expenditure is carried to one general account. One set of officers superintend the entire docks (with the exception of interior officers or servants for each separate dock). The duties of the dock master extend over all the docks, but his assistants are assigned to separate docks. There are no separate or distinct rates or duties of tonnage payable for the use of any particular dock, or of the old harbour; but the same rates and duties are payable into whatever dock vessels may go, and whether they use only one dock or more, or all the docks, and whether they use the old harbour or not, and whether they load or unload all the cargo in one dock, or part in one and part in another. The duties attach and are payable as soon as the vessels enter any of the docks or old harbour.

Tonnage dues are received for vessels using the old harbour only, and since *Reg.* v. *The Hull Dock Company*, 7 Q.B. 2, are only rateable to the relief of the poor for the dues paid by vessels which use the docks, and not for dues paid by vessels which enter the port or use the old harbour only, a separate account of the latter dues being kept.

The area of the docks within the different parishes of Holy Trinity and St. Mary, and Sculcoates and Drypool respectively was admitted.

The net rateable value on which the appellants were rated, and the rate appealed against, had been fixed as follows:—From the gross receipts in respect of all the tonnage dues for the use of all or any of their docks, or the old harbour, were deducted first, the proper deductions usual in such cases, and then the amount of tonnage dues received in respect of vessels using the old harbour only. The balance, after making these deductions, was then divided into two parts in the proportion which the area of the docks and basin situate within the parishes of Holy Trinity and St. Mary bears to the area of that part of the old dock which is situate within the parish of Sculcoates; from the amount of this proportionate sum in respect of the area of land in the parishes of Holy Trinity and St. Mary the sum of 525*l.* was deducted for tonnage dues in the Victoria dock only.

The appellants contended that the entire rateable value of all their docks and basins, including the Victoria Dock and basin, ought to be jointly taken and then apportioned among the several parishes and places within which the same docks and basins are respectively situated in proportion to the areas of such docks and basins respectively within such parishes and places.

The respondents contended that both the rateable value and the area of the Victoria Dock and Basin ought to be excluded in calculating and apportioning the rateable value of the docks and basins situate within the parishes of Holy Trinity and St. Mary.

The Court held that the principle contended for by the respondents was right. But if this Court shall be of opinion that such principle is wrong, the order of Sessions and the rates are to amended as agreed upon.

W. H. Watson and *Archbold*, in support of the Order of Sessions, contended that the acreage principle ought not to be adopted, for in the case of the Victoria Dock the profits were earned wholly in the parish of Drypool. (*Reg.* v. *Hull Dock Company*, 7 Q. B. 2.) [Lord CAMPBELL, C.J.—That case will not assist us in deciding the present, for it does not enter into the principle of distribution. There the question was, whether the docks were rateable at all; here that is not disputed.] The part of the docks in one parish may be exceedingly valuable, and the part in another parish of very little value, and yet it is said the profits are to be clubbed together, and a division made according to the land in each parish, without regard to its actual value. Here the docks are separate and distinct, and one or another may be blocked up altogether, and if one should be blocked up would the acreage principle be applied in favour of the parish in which that might be? Take the case of a canal, that is one continuous line, and one common concern, with one common staff of officers, yet the parochial principle is applied; why not, then, here also? (*Reg.* v. *Kinglssinford*, 7 B & C. 236.) [ERLE, J. That is because you do not use the whole line of canal. But in these docks a general ship for the same toll may go round and unload or pick up her cargo at all the different warehouses.] *Reg.* v. *The South-Western Railway Company*, 1 Q. B. 563; and *Reg.* v. *Woking*, 4 A. & E. 40, were then cited. [WIGHTMAN, J.—How can you distinguish this case from one dock in different parishes?] Suppose the company were to let the Victoria Dock, of course the lessee would be entitled to the tolls on a vessel coming into that dock, and would be rateable only to the parish of Drypool. (*Reg.* v. *The London, Brighton, and South Coast Railway Company*, 15 Q. B.)

Hall and *Campbell Foster*, for the appellants, were not called upon.

Lord CAMPBELL, C.J.—I am of opinion that our judgment should be for the appellants for the reasons thrown out during the argument. The question here is not as to the rule for rating these docks, but as to the mode of distributing the proceeds of the rate among the different parishes. The parochial principle is, no doubt, to be adopted whenever it is practicable, but can that be adopted where the whole concern is one concern, and part in one parish and part in another? I do not see how any other than the acreage principle can be adopted in this case. The toll is paid for the use of land in two different parishes, and the land in one parish is just as much the meritorious cause of the toll as the land in the other parish. When the toll is paid a party has the right to carry his vessel into the other dock as well as into the dock in which the vessel first entered. The parochial earnings principle is clearly not applicable to such a case, and the acreage principle is the only other that can be applied.

WIGHTMAN, J.—The Court consistently with its former decisions would apply the parochial principle to this case if it could be applied, but here it is wholly inapplicable. These docks consist of different compartments in different parishes. And there is one toll for using the whole of the docks. It is impossible to apply the parochial earnings principle, and it cannot be distinguished from the case put in the course of the argument of one dock comprising an area parts of which are in different parishes.

ERLE, J. It appears to me that the whole of these docks form one entire rateable subject, and that the profit is derived from each part, but the toll is paid for the power of using the whole. If so then the rateable value must be apportioned to each parish in proportion to the quantity of land in each parish. This is like *Reg.* v. *Hammersmith Bridge Company*, 15 Q. B. 369, where a bridge was half in parish H. and half in parish B. and the toll was taken in parish H. only for use of the bridge, and it was held that the company was to be assessed on an equal sum in each parish. So here the rate must be apportioned on the same principle.

CROMPTON, J. concurred.

Rate absolute for amending the rate.

REG. v. THE LEEDS AND BRADFORD RAILWAY COMPANY.

Jervis Act—11 & 12 *Vict. c.* 13—8 *Vict. c.* 20. *The* 11 & 12 *Vict. c.* 43 (*relating to justices of the peace*), *is retrospective; and therefore where a complaint which arose in* 1847 *was not made till nearly four years afterwards, and the justices made an order thereon, this Court quashed the order, as having been made upon a complaint the matter of which arose more than six months before the order.* (11 & 12 *Vict. c.* 43, *s.* 11.)

Rule nisi for quashing an order of justices removed by certiorari, whereby they awarded a sum of money to be paid by the Leeds and Bradford Railway Company, pursuant to the Railway Clauses Consolidation Act, 8 Vict. c. 20.

The damage in respect of which the compensation had been awarded was done in the years 1846 and 1847, and the complaint and order were made nearly four years after.

Addison shewed cause.—The first ground on which this rule was obtained was, that it does not appear that the cause of complaint arose within six months from the time when the complaint to the justices and the order were made. This objection is founded on 11 & 12 Vict. c. 43, s. 11, which limits the time for making any complaint to six months from the act done. This provision is not retrospective; and before this Act there was no limited time—the party might have laid his complaint at any time. And it is a principle of construction not to defeat rights unless the construction of an Act of Parliament is clearly to destroy them. (*Moon* v. *Durden*, 2 Ex. 22, and cases there cited.) This is an order not made under the 11 & 12 Vict. c. 43, but under the 8 Vict. c. 20. [It is unnecessary to report the argument on the other points.]

Hall, in support of the rule.—The 11 & 12 Vict. c. 43, s. 11, was intended to apply to every complaint laid after the passing of that Act, and its coming into operation on the 2nd October, 1848, sec. 38. [He was then stopped by the Court.]

Lord CAMPBELL, C.J.—If the 11 & 12 Vict. c. 43, s. 11, has a retrospective operation, this case falls within it. Now, if it had been that the Act had come into operation immediately, the hardship would have been so great that we should not have construed it retrospectively, for the legislature could never have intended to inflict such hardship. But here by sec. 38 they give a time from the 14th August, 1848, when the Act passed, until the 2nd October, 1848, a period of upwards of six weeks, within which bygone complaints may be brought before the proper tribunal. That removes the difficulty; and *Towler* v. *Chatterton*, 6 Bing. 256 is strongly in point to shew that this Act is retrospective.

The rest of the Court concurring.

Rule absolute.

REG. v. WILSON and ANOTHER. (a)

Road—Person having management of—8 *Vict. c.* 20, *s.* 57—*Public road cut through by railway.*

A person who dedicates a road to the public, and voluntarily repairs it, who makes sewers under it, and manholes, and whose consent had been always obtained by parties wishing to communicate with the sewers, or interfere in any way with the road, is not a person having the management of the road within the meaning of 8 *Vict. c.* 20, *s.* 57 (*Railway Clauses Consolidation Act*), *and is not entitled to sue for the penalty thereby imposed on railway companies, for not restoring within the given time a road through which the railway has cut.*

A person having the management of the road within that section, must be a person clothed with some public duty, as trustee, commissioner, surveyor, or the like.

Mandamus against the defendants, two of the justices of the county of Kent.

The writ recited an information laid before the said justices, that the South Eastern Railway Company had cut and crossed a carriage-road (the Plumstead Villas-road). That Lewis Davis alone had the management thereof, and that he had not consented to an extension of the period allowed to the railway company for restoring the road, and that the road was not restored, whereby the railway company had forfeited to the said Lewis Davis 5*l.* and that he prayed that the company might be summoned to answer the premises.

The issuing of the summons and the hearing were then recited, and also that it was proved that Davis was seised in fee of the land over which the road was made, and that he made and dedicated it to the public in August 1846, and that he had from that time, at his own expense, repaired the road, and made a sewer under it, and drains and man-holes and frames for the gratings in the road, and that when any communication was made with the sewer, or any interference made with the road, Davis's

(a) June 2, 1851, a rule nisi was granted, calling on the defendants and the railway company to shew cause why the defendants should not proceed to adjudicate and determine upon the said information; but, on shewing cause before Wightman, J. it was contended that this was not a case within the 11 & 12 Vict. c. 44, and that the question ought to be decided by mandamus. The rule was made absolute by consent for a mandamus.

leave was first obtained, and that the road was a public highway, and that the parish had never adopted it, or become liable to keep it in repair. It was further recited that the justices had refused to determine that Davis was the person having the management of the said road, within the meaning of the Railway Clauses Consolidation Act, 1845.

The writ then commanded the justices to proceed to determine that Davis was the person having the management of the road, &c.

Return.—That it was not proved before the justices that Davis held the office of surveyor of the highways, wherefore the justices thought it doubtful whether Davis was in point of law the person having the management of the said road within the meaning of the said Act.

General demurrer to this return.

Needham (*Raymond* with him), in support of the demurrer. The sole question is, whether Davis is the manager of the road, within the 8 & 9 Vict. c. 20, s. 57 (The Railway Clauses Consolidation Act). That section enacts, "That if any such road be not restored within the periods fixed for that purpose, the company shall forfeit to the trustees, commissioners, surveyor, or other person having the management of the road interfered with by the company, if a public road, or, if a private road, to the owner thereof, 5*l.* for every day after the expiration of such periods during which such road shall not be so restored." Every person who dedicates a road to the public and de facto or de jure has the management of it, is a person having the management within the meaning of the above provision. [Lord CAMPBELL, C.J.—In what sense do you use the word management in your argument?] In comprehending such acts as appear in the mandamus to have been done by Davis. Certainly nothing has been done to make the parish liable to repair this road under the Highways Act, 5 & 6 Wm. 4, c. 50, s. 23. And if Davis is not liable to repair the road, no one is. He might be indicted for a public nuisance, if the road was suffered to be out of repair. (Bac. Ab. Highways, F.; *Reg.* v. *Kerrison*, 3 M. & S. 526.) A party may by his acts impose on himself the liability of repairing a road. (*The Grand Surrey Canal Company* v. *Hale*, 1 M. & G. 395.) Here Davis created the road, has always repaired and superintended it. [WIGHTMAN, J. If Davis sold the land, would the purchaser be bound to repair?] Davis would be bound to keep the road free from obstructions. (*Roberts* v. *Hunt*, 15 Q. B. 17.) The term manager is as extensive as possible, and was intended to include such persons as Davis.

W. H. Watson, for the defendants, was not called upon

The defendants' points were:—1. That the words "any other person having the management of the roads," in sec. 57, are to be construed as applicable to persons ejusdem generis with those before described, and as designating a person having a statutable or official authority or duty in reference to public roads. 2. That Davis does not appear to be liable to repair the road. 3. That if he is so, he is not thereby the person having the management of the road. 4. That if Davis be owner of the soil of the road, this does not make him a person having the management of the road. 5. That a private person, as such, cannot be a person having the management of a public road.

Lord CAMPBELL, C.J. — The question entirely turns on whether Lewis Davis is a person having the management of this road within the 8 Vict. c. 20, s. 57. If he has the management, then the penalty has been incurred, and he has a right to resort to his remedy for it; but if he is not the manager, the penalty has not been incurred. The manager must correspond to the persons described by the words used before, trustees, commissioners, and surveyor. In what respect was Davis the manager of the road? If it had been shewn that the dedicator of a road to the public was bound to keep it in repair, or if he had been liable to repair it ratione tenuræ, there might be reason to consider him as having the management of the road for the purpose of this Act. Before the Highway Act the dedicator was not bound to repair the road, but the obligation was thrown on the parish; and the exempting of the parish in that Act, unless certain things are done, cannot be said to throw the burden on the dedicator. It seems to me that that Act has no such operation. Here, if the railway company do not remove the obstruction, and restore the road, they may be liable to an indictment; but I think the Highway Act does not throw the onus of repairs on the dedicator. By dedication, he means the road to be used by the public when it can be used as such; and if he is guilty of any obstruction to it, he may be liable to be indicted; but if there is no obstruction, and the public have not the enjoyment of the road from the state of the weather, or from its being out of repair, the burden of repair is not thrown upon the dedicator. There is no duty here on the dedicator ratione tenuræ, and in that respect, the cases of bridges formed by canal companies are not applicable. Neither is he bound to repair ratione clausuræ, as in the case of lands adjoining a road inclosed by a party, who is thereby bound to repair as long as the inclosure exists. There is no authority to be found that the dedicator of a road is bound to repair, and the Acts that have been done by Lewis Davis to this road are voluntary and not compulsory.

WIGHTMAN, J.—The question is, not whether the railway company is not liable by indictment for having interfered with this road, but whether it is liable to this particular penalty to Davis as the manager of the highway? The Act treats a person as the manager on whom the duty is cast by law. Is any such duty cast on Davis? It is said that there is, by reason of his having dedicated the road to the public, and that therefore he is bound to repair it, unless it is the duty of some other person to repair it. Before the Highway Act it was the duty of the parish, and not of the dedicator, to repair it. No duty is cast upon him by that Act, and in all that he does to the road he is a volunteer.

ERLE, J.—The penalty is given on account of the interference with a public right, and no one but a trustee, commissioner, surveyor, or a person having the management of the road can sue for it. The claimant is not entitled to recover it unless he is within one of the classes above mentioned; and it appears to me that he is not within any of those classes, unless he is charged with some duty to the public. Davis has acted throughout as a private proprietor, and for his own private purposes. I know not his motive for acting at all; but he is not clothed with any duty to the public, and certainly there is no duty incumbent on him to repair the road in order to protect the rights of the public as passengers.

CROMPTON, J. delivered a similar judgment.

Judgment for the defendants.

April 17 and 21.

WALKER AND OTHERS *v.* THE BRITISH GUARANTEE ASSOCIATION.

Building society - Liability of treasurer.

A treasurer of a building society having received money for the society, which it was his duty to carry to the society's bankers, was robbed of it by irresistible violence, without any default of his, before he could pay it into the bank:

Held, that his sureties were not liable to the society for such money upon a covenant for his duly accounting for all moneys received on account of the society, the declaration alleging the receipt of 170l. on account of the society, and, as a breach, the not paying over that sum.

Covenant by the plaintiffs, trustees of a building society, against the defendants, as sureties, for the due performance by one Jones of his duty as treasurer to the society.

The declaration alleged that John Jones, as such treasurer, received 170*l.*; and that, according to the rules of the society, as such trustee he ought to have *paid over the same moneys* to the members of the society, to the credit of their account, within a certain time after he received the same, namely, during the next day: that he did not do so, nor had he paid the same, whereby the said moneys were lost to the association.

Plea That after Jones had received the moneys, and before the time when he ought to or could have paid the same, he, without any default or negligence, or want of due care on his part, was robbed by violence of the whole of the said moneys, by the same being feloniously and violently stolen and carried away from his person, and thereby he was unavoidably, and without any default of his, prevented from paying the said moneys to the bankers of the society. Issue thereon.

At the trial the verdict was found for the defendants upon this issue.

Knowles (*Mellish* with him) moved to enter up judgment for the plaintiffs upon this issue non obstante veredicto. The plea is no answer to the action. The accounting in this covenant, means not the rendering of an account, but paying over the money to the society. By the Friendly Societies Act (10 Geo. 4, c. 56), incorporated into the Building Societies Act, the duty and liability of treasurer are regulated, and sec. 20 gives priority to the society for moneys due to it from him over other creditors of the treasurer; and by sect. 22 the treasurer is to be personally responsible and liable for all monies actually received by him on account of the society. So that by the receipt of this money Jones became a debtor to the society, and the plea affords no answer for the breach of this covenant. This section makes the treasurer a debtor for the moneys received, and nothing but payment will discharge the covenant. It is no excuse for a debtor to say that he has been robbed; and by the operation of this statute a treasurer is more than a mere bailee of the moneys entrusted to him. [Lord CAMPBELL, C.J. —Do you say the statute makes the treasurer responsible in all cases?] No, only that the treasurer stands in the same relation to the society as regards liability as an innkeeper or carrier to their customers, and robbery is no answer to an action against them.

Cur. adv. vult.

JUDGMENT.

Wednesday, April 21.—Lord CAMPBELL, C.J.—We are of opinion that there ought not to be judgment for the plaintiffs non obstante veredicto. We consider the plea found for the defendants to be clearly a sufficient answer to the action. The condition of the bond is that John Jones should duly discharge the duties of his office as treasurer to a building society, and obey the directions of the trustees, and duly account to the trustees for all the money, goods, and chattels which he might receive on account of the society. [His lordship then stated the pleadings.] Jones is charged as bailee of specific moneys, which identical moneys it was his duty to carry to the bankers of the society. And the plea being found to be true; the defence is the loss of the money by irresistible violence. The general doctrine is not denied, that if the subject-matter be lost by "vis major" (which we translate "irresistible violence"), the bailee is not responsible. If, then, J. Jones, the principal, was guilty of no default, the defendants, as his sureties, cannot be. Reliance was placed upon the statute referred to, by which it is said, that as soon as the treasurer of such a society receives any moneys for such society, he, eo instanti, becomes the debtor of the society, and that payment alone can discharge him from his liability. We think that this must be confined to moneys received by him which he might use as his own, he being at liberty to pay the debt with other moneys. He cannot, in respect of the general receipt by him as treasurer, be considered both as bailee of the specific money and a debtor to the same amount, with the power of discharging his engagement by paying an equivalent sum from any source, or in any denomination of coin. According to the averment of this declaration, John Jones was undoubtedly bailee, and therefore he was not a debtor to that amount. As bailee in the relation in which he stood to the society, he was discharged by the robbery. If this were not so, his liability would be greater than that of a common carrier, for he would not be discharged by the act of God or the king's enemies; and, indeed, Mr. Knowles was driven to contend that if, while carrying to the bankers a bag of gold containing 170*l.* an earthquake had swallowed it up, he would still be a debtor to the society for the amount. But we are of opinion that the statute relied upon was not intended to cast such an extraordinary liability on the officer of such a society or upon his sureties. We, entertaining no doubt upon the point, think Mr. Knowles should not take a rule.

Rule refused.

Thursday, April 22.

REG. *v.* THE JUSTICES OF LANCASHIRE.

Lunatic order - Appeal—To what sessions—Stat. 8 & 9 Vict. c. 126, s. 62.

The appeal against an order for the maintenance of a lunatic pauper in an asylum under sec. 62 of 8 & 9 Vict. c. 126, must in all cases be made to the Quarter Sessions within the jurisdiction of which the parish from which the pauper was removed to the asylum is situate.

A rule had been obtained for a mandamus to the Justices of Lancashire to hear an appeal against an order for the maintenance of a lunatic pauper, made under s. 62, of 8 & 9 Vict. c. 126, by two justices of the county of Lancaster, within the borough of Liverpool. On the 5th Aug. 1851, the pauper being then lunatic and chargeable to the parish of Liverpool, which is wholly situate within the borough was removed to a lunatic asylum by order of a magistrate who was in the commission for the borough as well as the county. Subsequently, the settlement of the pauper was adjudged to be in the parish of Llandudno, in North Wales, and the order in question made upon that parish for the costs of maintenance. The borough of Liverpool has a separate Court of Quarter Sessions; but the charter of the borough contains no non-intromittant clause. Against the last-mentioned order the parish of Llandudno gave two notices of appeal, one to the borough and the other to the county sessions; but the former was abandoned. Upon the trial of the appeal at the Lancashire County Sessions, an objection was taken that the appeal ought to have been to the Liverpool Borough Sessions; and the Court so holding, the appeal was dismissed.

Pashley now shewed cause.—This case is governed by *R.* v. *The Recorder of Liverpool*, 4 New S. C. 116, where it was held that the appeal against an order of removal must be to the borough sessions, when the removal has taken place from a parish within the borough, overruling a dictum in *R.* v. *The Justices of Lancashire*, 12 Q. B. 305. The 62nd section of 8 & 9 Vict. c. 126, gives an appeal against the order for the maintenance of a lunatic pauper, "in like manner as if the same were a warrant of removal;" and if this had been a warrant of removal, the appeal must have been to the borough sessions, the sessions of the locality from which the pauper

was removed. (3 & 4 Wm. & M. c. 11, s. 10; *R.* v. *The Justices of Suffolk*, 2 Q. B. 85.) The Court has exhibited its desire fully to carry out the intention of the Legislature by rendering the proceedings in the two cases as nearly as possible uniform. (*R.* v. *The Justices of Glamorganshire*, 3 New S. C. 515; *R.* v. *St. Peter's in Barton-on-Humber*, 15 Jur. 153.)

Archbold and *Welsby*, contrà.—The order for the costs of maintenance cannot be made by borough justices; and it would be strange if the appeal was given from an order by t[...]unty justices to the borough, and not to th[...] county sessions. Sec. 62 of 8 & 9 Vict. c. 126, is satisfied by holding that the formal requisites of the appeal should be the same in both cases; and when it says, "in like manner as if the same were a warrant of removal," it means a warrant of removal made by county justices; in which case the appeal would be to the county sessions. *R.* v. *The Justices of Lancashire*, is expressly in point.

Lord CAMPBELL, C.J.—This case turns entirely upon the construction to be put upon s. 62 of 8 & 9 Vict. c. 126; and we have merely to see what the Legislature intended by that enactment. This is matter positivi juris; and it cannot be doubted that it was competent to the Legislature to give an appeal to the borough sessions from an order made by county justices. The question is, whether they have done so. The appeal against this order is given "in like manner as if the same were a warrant of removal;" then what is that? It is an appeal to the Quarter Sessions of the place from which the removal takes place. So, therefore, the appeal against this order of maintenance must be to the Quarter Sessions of the place from which the pauper lunatic was removed to the asylum. That place was the parish of Liverpool; and the appeal, therefore, is given to the sessions of the borough of Liverpool, and to no other sessions. This follows from *R.* v. *The Recorder of Liverpool*, in which *R.* v. *The Justices of Lancashire* was considered; for that case was decided upon the ground that the removal took place from the borough, and not in the least upon the fact that the county justices who made the order were sitting in Liverpool at the time.

COLERIDGE and CROMPTON, JJ. concurred.

Rule discharged with costs.

Friday, April 23.

BROUGHTON v. JACKSON.

False imprisonment—Justification—Suspicion.

To an action of false imprisonment and putting the plaintiff in irons, the defendant pleaded that he was commander of a ship, and the defendant was his servant, and had charge of his cabin and its contents, and access thereto: that two sums of money were stolen on two occasions out of defendant's desk in his cabin, which had been opened by means of a key: that plaintiff had access to where the key of the desk was kept, and that defendant believed no one could have had access to the key without the plaintiff's knowledge, and that defendant believed the plaintiff was either guilty or concerned in the stealing of the money. The plea averred that putting in irons was a reasonable mode of detainer.

At the trial the verdict on this plea was found for the defendant: and upon a motion in arrest of judgment, it was held to be a good defence to the action.

Trespass, for falsely imprisoning the plaintiff and putting him in irons.

Plea.—That the defendant was a lieutenant of the navy and commander of her Majesty's ship *The Lucifer*, on the high seas; and that the plaintiff was a servant of the defendant and steward on board, and had access to the defendant's cabin and charge of the goods and chattels of the defendant therein. That 2*l.* and 10*l.* were stolen on two several occasions from a desk in the defendant's cabin, and that the desk had been clandestinely opened by means of a key; that plaintiff had access to the place where the key of the desk was kept, and that defendant believed no other person than plaintiff could have had access to the key of the desk without the plaintiff's knowledge. That defendant having reasonable and probable cause of suspicion, and suspecting the plaintiff to have been guilty of, or concerned in, the stealing of the said moneys, committed the said trespasses in the declaration. The plea justified the putting of the plaintiff in irons "as a reasonable mode of detaining the plaintiff."

At the trial the jury found for the defendant on the plea of justification.

A rule nisi was obtained by the plaintiff to enter up judgment on that plea, non obstante veredicto, to come on as a concilium.

Keating (*Pigot* with him) shewed cause.—It is for the Court to say whether the facts in the plea shew a sufficient justification. The cases of actions for a malicious prosecution, without reasonable or probable cause, are analogous, and there [...] many which shew that such facts as are here pleaded would be amply sufficient evidence of a reasonable and probable cause for prosecuting. *Mure* v. *Kaye*, 4 Saun. 31, cited in moving for the rule, was on demurrer, and not after verdict. The following cases were then cited:—*Beckwith* v. *Philby*, 6 B. & C. 631; *Musgrove* v. *Newell*, 1 M. & W. 582; 2 Q. B. 186, S. C. mentioned per Alderson, B.; *Davis* v. *Russell*, 5 Bing. 354; and *West* v. *Baxendale*, 9 C. B. 141.

Prideaux, in support of the rule.—The plea ought to have shewn such grounds of suspicion as would justify a reasonable man in imprisoning a person. As captain of a ship of war the defendant had no power to act magisterially or to imprison the plaintiff. (22 Geo. 2, c. 23; 19 Geo. 3, c. 17.) Larceny is not cognisable by a court-martial. On general grounds this plea is insufficient. The suspicion of felony must be well grounded. At any rate there is no justification for putting the plaintiff in irons. [CROMPTON, J.—The plea justifies the putting in irons, "the same being a reasonable mode of detainer," and the jury found that it was.] The plea amounts to no more than this, that there was a felony committed at sea, and that defendant suspected the plaintiff on grounds that are not sufficient, and such as would place every servant in peril.

Keating, in reply. If the coercion was excessive the plaintiff should have new assigned.

Lord CAMPBELL, C.J.—I am of opinion that the plea is sufficient, and that it would have been sufficient on demurrer. The plea must shew reasonable and probable grounds of suspicion. It seems to me that the facts in the plea are sufficient. It is enough if the plea sets out facts which raise a reasonable suspicion, without setting out all the evidence thereof. The plaintiff contends that some positive act should have been alleged, and that the defendant's belief is not sufficient. But irrespective of the defendant's belief the facts pleaded do shew that it might be reasonably inferred that the plaintiff was the thief. As to the second objection that there is no justification pleaded to putting the plaintiff in irons; that is not so. That act is justified as a reasonable mode of detainer, and that has been proved. If there had been any excess of restraint that should have been new assigned.

WIGHTMAN, J.—It is for the Court to say whether the facts in the plea shew a reasonable cause for the acts done by the defendant. I think the jury having found the plea for the defendant that they do shew ample and sufficient cause. As to the second objection, there is a direct allegation in the plea that the putting in irons was a reasonable mode of detainer, and there is nothing to shew to the Court that it was an unreasonable one.

ERLE, J. delivered a similar judgment.

CROMPTON, J. I agree that the plea states a sufficient ground for the acts done, but I do not proceed on the ground that the defendant was justified, because he believed plaintiff to be the thief, or because he acted bonâ fide. The facts stated are rather slighter than those in any case that has yet come before the Courts, but taking them all together I think the plea sufficient. As to the second objection, if any circumstances can be imagined under which it would be right to have placed the plaintiff in irons the plea may be sustained.

Rule discharged.

Wednesday, April 28.

STAPLETON v. CROFT.

Husband and wife—Competency of wife as witness—14 & 15 Vict. c. 99.

The Evidence Amendment Act (14 & 15 Vict. c. 99) does not render a wife competent as a witness for her husband in an action to which he is a party.

ERLE, J. dissentiente.

A rule nisi for a new trial having been obtained by *Humfrey*, in this case, which was tried before Erle, J. and a verdict found for the defendant,

M. Chambers and *Welsley* shewed cause. The only question is whether the wife of the defendant, who was admitted and examined as a witness on behalf of the defendant, was a competent witness under the 14 & 15 Vict. c. 99 (the Evidence Amendment Act). It was contended that the grounds on which a husband and wife were not admissible for or against each other, previous to the 14 & 15 Vict. c. 99, were different in civil and criminal cases, and that they were not admissible in civil cases for each other, on the ground that their interests were identical, nor against each other on grounds of public policy. (Co. Litt. 6 b; 1 Bl. Com. 443; 2 Hale P. C. 279; 2 Hawk. P. C. sec. 67, p. 600; Bul. N. P. 286; *Rex* v. *Cliviger*, 2 T. R. 265; 4 T. R. 678; *Bentley* v. *Cook*, Brownl. 47; *O'Connor* v. *Marjoribanks*, 4 M & G. 410: 2 Stark on Evid. 549; Taylor on Evid. 898.) [WIGHTMAN, J.—Where neither is a party to a suit, the wife may be called as a witness to contradict her husband, or even to depose, as was done in *Doe d. Annesley* v. *Anglesey*, 17 St. Tri. 1276, that he is not to be believed upon his oath.] Then the effect of the 14 & 15 Vict. c. 99, which is an enabling statute, and to be construed so as to advance the object contemplated by its provisions, is to remove the reason of the rule excluding the wife as a witness on behalf of her husband, which was identity of interest, and that being removed, the wife's disability ceases, and the exclusion of her evidence by sec. 3, in criminal cases, is a strong argument to shew that it was intended that she should be admissible in civil cases.

Huddleston and *Holl*, in support of the rule.—There is no distinction in the grounds of the wife's inadmissibility in civil and criminal cases. (*Rex* v. *Serjeant*, R. & Moo. 352, Abbott.) It is necessary to look at Lord Denman's Act, 6 & 7 Vict. c. 85, and see how much of that is repealed by 14 & 14 Vict. c. 99, the 1st and 2nd sections of which latter Act apply to civil cases, and the 3rd to criminal cases. The wife is not a party to a suit in which her husband alone is suing, or being sued; nor is an action by her husband alone an action on her behalf. If she is competent, she is also compellable to give evidence by the same provision. *Barbat* v. *Allen*, 19 Law T. 65, Ex. is an unanimous decision of the Court of Ex. against the admissibility of the wife in this case.

Lord CAMPBELL, C.J. was sorry to say that, in his opinion, this rule ought to be made absolute, upon the ground that the wife had been improperly admitted as a witness. He said he was sorry, because, in his opinion, it would be an improvement of the law of evidence to admit her evidence, subject only to some restrictions. Thus she ought not in criminal cases to be admitted as a witness for or against her husband, and no communication that had passed between them in confidence ought to be disclosed. But with this limitation the proper administration of justice, and the investigation of truth, would be furthered by admitting her as a witness. However, on this matter he could not consult his private opinion, but must look to the language of the Act of Parliament, and see what the Legislature had enacted. It was clear that before Lord Denman's Act she could not be a witness for or against her husband; but in questions between strangers she might be a witness against her husband, or in contradiction of the evidence; as, for instance, in a case from the State Trials, where, in a contest between third persons, the husband had been called on one side, and the wife was produced on the other, to prove that he was not worthy of belief, for that she would not believe him on his oath. But where the husband was a party, it appeared to him (Lord Campbell) clear that she was not admissible as a witness, either for or against her husband. Such had been the general law before Lord Denman's Act, and that Act did not change the law in that respect. Then came the recent statute, which was known as Lord Brougham's Act, and for which in his opinion the country was much indebted to Lord Brougham, and that Act contained, in the second section, an enactment making the parties to the suit competent and compellable to give evidence; but it neither expressly nor impliedly made the wife a witness for or against her husband when he was a party to the suit. It did not expressly make her a witness—about that no one entertained any doubt; nor did it impliedly make her a witness. For she was not in law a party to suit, nor was it a suit brought on her behalf, when it was brought in the name of her husband, and in virtue of his rights. He need not refer to the account related by the late Lord Chancellor Truro, which shewed that the 3rd section of the statute could not be used impliedly to make the wife a witness, since that section had only been introduced to prevent the too extensive application of another section that had now been struck out, for in his opinion the statute itself was too clear to allow of the admissibility as a witness of the wife for or against her husband, in suits in which he was a party. He, therefore, entirely concurred with the construction which had been put upon this statute by the Court of Ex.; and as the wife had been admitted—and, as he thought, improperly admitted—as a witness, he was of opinion that the verdict could not be sustained, and that the rule for a new trial must be absolute.

WIGHTMAN, J. said that it was contended that the objection to the admissibility of the wife as a witness in a suit where her husband was a party was removed by the late statute. He was not of that opinion. In the first place, the terms of the statute only enabled and compelled the parties to the suit to be witnesses, and the wife was in such a case not a party. But, independently of the objection, on the very terms of the statute, it appeared to him that it never had been the intention of the Legislature to remove the objection of the wife's admissibility in such cases. The only ground of inadmissibility that was removed was that which was occasioned by the interest of the parties to the suit, and he did not think that, by any implication, the wife was thereby made admissible. The wife was properly excluded from being a witness for or against her husband, not only on the ground of the confidence which existed between them, and which, for the sake of the peace of their families and their own happiness, ought not to be disturbed, but also because the public had an

interest in the preservation of domestic peace, and could not safely allow it to be exposed to danger.

CROMPTON, J. was clearly of the same opinion, and should have entertained no doubt whatever upon the question but for knowing that his brother Erle entertained a strong opinion the other way. The question depended entirely on the construction of the Act of Parliament, and he disclaimed any desire to express an opinion on the ground of what would be more or less politic, or what would be worse, or what might be better done by the Legislature. He should say nothing, therefore, on the question of what public policy required, or what was prudent or proper with a view to the preservation of the peace of families. He looked to the words of the Act alone. It was clear that the wife was not an admissible witness before the Act; and he thought that, as to the Act itself, neither in express words nor by implied intentions had she been made admissible. The learned judge went very minutely through the provisions of the Act, and said that neither the legal unity of person nor identity of interest of husband and wife could make the wife a party to a suit brought by her husband, and consequently she did not come within the second section of the statute. Nor could the third section, which contained the exceptions as to criminal cases, make her admissible as a witness, for those exceptions were directed to criminal cases, and could not be used to shew that in civil matters, because civil matters were not likewise excepted, the wife and the husband could be witnesses against each other. He was therefore of opinion that the construction which had been put upon this statute by the late Lord Chancellor (Lord Truro), and the Court of Ex. was correct; and that the evidence of the wife, in this case, had been improperly admitted, and that the rule for a new trial must be made absolute.

ERLE, J. was of opinion that this statute making parties competent witnesses had rendered the wives of those parties likewise competent. By the principles of law the interests of husband and wife were united; the old law prevented the husband from giving evidence because he was a party interested. When that ground of objection was removed, and he was made a witness notwithstanding his interest, the wife likewise became capable of being a witness, for her interest was the same as his. The competency of the husband being restored, that of the wife was restored with it. Though she had not a direct, she had an indirect, interest in a suit brought by her husband, and the law took no distinction of direct or indirect interest, but made all persons competent witnesses in civil cases, notwithstanding their interest. The same reason excluded and exempted the husband and the wife, and that reason being removed as to the one it was removed as to the other. It seemed to him that when the statute took away the incapacity of the husband, so far as the interest was concerned, it also took away that of the wife. That brought him to the question, whether there was any other principle of exclusion besides that of interest. It was said that there was, and the other principle thus referred to was that of preserving the peace of families. There was no doubt that the law did desire most carefully to protect all interests connected with marriage; but it gave a definite meaning to its restrictions, and merely prevented the wife from being a witness for or against the husband, where their joint interests were concerned, and it did so, no doubt, with a view to avoid anything that had a tendency to promote domestic discord. But if the suit applied to other persons, then the wife was a witness equally with the husband, and might be called, as in the case in the "State Trials," even to contradict her husband. That case shewed that the fact of marriage alone did not render her incompetent. The law, as it seemed to him, ought not to be inconsistent with itself, and yet it would be so, if, after getting rid of this objection of interest, it refused to allow the husband and wife to be called as witnesses in cases where the interests of the husband were concerned, while it allowed them to be called in opposition to each other in cases where the interests of other parties were concerned. And so again it would, according as the proceeding was of a civil or a criminal nature. If the husband was assaulted or libelled he might seek a remedy either by action or indictment. If he brought an action, it was now declared that his wife would be excluded, though he himself might be a witness; but if he proceeded by indictment both would be admitted. Most of the authorities were cases in which the testimony of the husband as well as that of the wife was excluded, and of course both ought to be admitted or both excluded. His lordship here went through the various authorities, and then proceeded. In the County Courts a wife had been admitted, and so she had in the Courts of Bankruptcy; and therefore it seemed to him that the Legislature had been guilty of great inconsistency if the construction to which he was opposed could be put upon the Act. If the case was considered with reference to the interests of truth, the restriction seemed to be absurd, and if with reference to the peace of families, it seemed to him that the supposition that a husband would suborn a wife to perjure herself in his behalf, or would punish her if she spoke the truth against him, was one which could not be made in the present day. The wife often possessed essential knowledge of her husband's affairs, and in some instances, as in this particular case, she acted as the agent, and managed the business as to which she was called upon to give evidence. It was important that, under such circumstances, her evidence should be admissible: and he thought he had shewn enough to excuse himself for dissenting from his brethren, and for saying that his opinion as to the admissibility of the wife as a witness in a suit where her husband was a party remain unchanged.

Rule absolute for a new trial.

BUSINESS OF THE WEEK.

Thursday, April 22.

Doe dem. MALLEY v. EVERITT.—*Bramwell* moved for a rule for a new trial herein, on the ground that the verdict was against the evidence. *Rule refused.*

BAKER v. BLACK.—Trespass q. c. f.: tried before Coleridge, J. in the Bail Court, when a verdict was found for the defendant. The defendant had pleaded several pleas, justifying on the ground that the locus in quo was a public highway or paved public place within the meaning of the 57 Geo. 3, c. 29. *Knowles* now moved for a new trial, on the ground that there was no evidence to go to the jury that this was a paved public place or highway. It could not be a paved public place within the statute unless it was a highway; and it could not be a highway because it led only to a few private houses. (Hawk. P. C. Lib 1, c. 76, s. 1; *Daniel* v. *North*, 11 East, 375, n.; *Woodyer* v. *Hadden*, 5 Taunt. 125; *Wood* v. *Veal*, 5 B. & Ald. 454; *Poole* v. *Huskinson*, 11 M. & W. 827.) Lastly, an individual cannot abate a public nuisance unless he has sustained a particular injury. (*Dimes* v. *Petley*, 15 Q. B. Rep. 276.) *Rule nisi.*

POOLE v. PAYNE.—Trespass to a messuage, with a count de bonis asportatis, tried before Coleridge, J. in Surrey. There were several pleas, and the verdict was found for the plaintiff on some, and for the defendant on the other issues. *Horn* now moved to enter the verdict for the plaintiff on the latter issues. *Rule refused.*

BURLINGTON v. RICHARDSON.—This was an action on an award, tried before Coleridge, J. in Surrey, when a verdict was found for the plaintiff. *Willes* now moved to enter a nonsuit, or reduce the damages by 25*l.* or in arrest of judgment. The award was made upon a reference of an action of debt, in which, as to 25*l.* the defendant had suffered judgment by default; but as to the residue, had pleaded payment and set off; and by the terms of the submission, if the arbitrator found more than 25*l.* due, the defendant was to pay all the costs of the action, reference, and award. The arbitrator had found that the defendant was indebted to the plaintiff in 20*l.* beyond the 25*l.*; but the award was now objected to, on the ground that it contained no order to pay, and no finding as to the residue of the plaintiff's claim beyond the two sums of 20*l.* and 25*l.* Lastly, the damages are at all events too large, because they include the 25*l.* which cannot be recovered in this action. He cited *Donlan* v. *Brett*, 4 Nev & M. 854, *Watkins* v. *Philpotts*, 1 M'Clel & Y. 200, *Doe* v. *Horner*, 8 A. & E. 235. The COURT thought that there was nothing in the objections made to the award, but that the damages ought to be reduced, unless the plaintiff will consent to reduce the damages by 25*l.* *Rule nisi.*

FORIER v. MORRIS.—*Crowder* moved for leave to plead several matters. This was an action by the payee against the drawer of a foreign bill of exchange upon the refusal of the drawee to accept. The question was, whether the defendant should be allowed to plead that he delivered the bill on the terms of being paid, according to the usage of merchants, on the first foreign post-day after delivery; but had not been paid. (Byles on Bills, p. 97, citing *Munroe* v. *Borther*, 19 L. J. C.P. 133.) *Rule nisi.*

REG. v. THE INHABITANTS OF ST. MARY, ISLINGTON.—*Pashley* moved for a mandamus to the inhabitants of the above-named parish to assemble in vestry, and ascertain the sum which would be necessary to make provision for the relief of the poor and other charges, pursuant to a local Act, 5 Geo. 4, c. cxxv. s. 30. *Writ granted.*

REG. v. THE YORK AND NORTH MIDLAND RAILWAY COMPANY.—*Hugh Hill* moved for a rule calling on the defendants to shew cause why they should not permit the prosecutor of the mandamus to inspect their books, so far as they relate to the matters in question. (*Burrell* v. *Nicholson*, 1 Moo. & Rob. 304; 1 Myln & K. 608; *Smith* v. *Duke of Beaufort*, 1 Hare, 507.) Wigram on Discovery, was also cited. *Rule nisi.*

WHITING v. HOWE.—*Milward* moved for a distringas to compel appearance. The only difficulty was, that since the calls were made the writ had expired.

Rule refused.

REG. v. THE TITHE COMMISSIONERS.—*Archibald* moved to set aside a rule for a prohibition. Since the judgment of this Court for the defendants on a mandamus, the reason for the prohibition had ceased. *Rule nisi.*

KEANE v. STUART.—*Watson* and *Maynard* shewed cause against a rule for a new trial. *The Attorney-General* and *Keane* contrà.

Rule absolute for a new trial on payment of costs.

REG. v. WHITEHOUSE and OTHERS.—*Motteram* moved for a rule to shew cause why the commissioner who had sworn one of the affidavits, upon which a rule for a new trial had been granted in this case, should not attend at the Crown Office to complete the jurat. He had omitted the words "Before me." (*Reg.* v. *Bloxam*, 2 D. & L. 108, was mentioned.) *Rule nisi.*

Friday, April 23.

THE PROPRIETORS OF THE KENNET AND AVON CANAL v. WITHERINGTON.—*Phipson* (*Keating* with him) for the plaintiffs. *Whateley* (*Gray* with him) for the defendant.

Cur. adv. vult.

THE CROSS KEYS BRIDGE COMPANY v. THE COMMISSIONERS OF MENE OUTFALL.—Special case. *J. Wilde* (*Bubb* with him) for the plaintiffs. *Keating* (*Phipson* with him) for the defendants. *Cur. adv. vult.*

SMITH v. JAMES.—Demurrer to plea. *Macnamara* in support of demurrer. *H. J. Hodgson* contrà.

Judgment for the plaintiff.

Saturday, April 24.

REG. v. LONGWOOD. *Cur. adv. vult.*

REG. v. REV. E. WILLIAMS.—*Welsby* shewed cause. *Pashley* contrà. *Rule absolute.*

REG. v. SLAWSTON.—*Pashley* and *Merewether* in support of the Order of Sessions. *Maunsell* and *O'Brien* contrà.

Rule discharged.

REG. v. WICKENBY.—*Wilmore* in support of the Order of Sessions. *Boden* contrà. *Rule discharged.*

Monday, April 26.

REG. v. RAMSDALE.—Rule to impose a fine for non-repair of a highway. *Knowles*, for the prosecution. *Hall*, for the defendant. *Rule absolute.*

Ex parte THE TOWN CLERK OF MORPETH.—*Adolphus* moved for a rule for a mandamus to the Mayor to elect two auditors and an assessor.

Rule absolute in the first instance.

MEYER v. THORNTON.—*T. Jones* moved for a commission to examine witnesses viva voce at San Francisco. The plaintiff and witnesses were resident there, and the agent in London had not sufficient instructions to enable him to frame interrogatories. By the COURT.—The plaintiff must give to the defendant a statement of the points as to which he proposes to examine the witnesses, and the names of all the witnesses whom he now knows and intends to examine. Upon those terms, *Rule nisi.*

REG. v. DANIEL.—*Willes* moved for a rule for an attachment for disobedience to a subpœna from the Crown-office, obtained by the overseers of Merthyr Tydvil.

Rule nisi.

SIGRIST v. DRUMMOND.—*Wordsworth* shewed cause against a rule to enlarge a peremptory undertaking, unless the defendant or Emma Drummond should be produced as a witness at the trial. *Watson*, contrà.

Rule absolute to postpone the trial indefinitely, until the defendant or Emma Drummond should be produced as witnesses.

REG. v. EDWARD MASON.—*Couch* moved for a certiorari to remove an indictment for obstructing a footpath, which stood for trial at the last Cambridge Assizes, but was postponed, with the consent of the parties, on account of the pressure of business.

Rule refused, unless the other side will consent.

Re THE LONDON AND NORTH-WESTERN RAILWAY COMPANY and THE VESTRYMEN OF ST. PANCRAS.—Enlarged rule. *Struck out.*

MONTGOMERY v. ROSS.—Rule calling on an attorney to pay money. *Hawkins* shewed cause, and objected that the affidavits were improperly entitled; they were entitled in the cause, but described it as an action by two plaintiffs instead of by three. *Lush*, contrà. By the COURT.—We cannot proceed upon these affidavits; but we will discharge the rule without costs, and give the party leave to renew his application on amended affidavits.

Rule discharged upon those terms.

LLOYD v. FRANCE.—Rule to amend a certificate of Master Turner, that 638*l.* 5s. 7d. was due from defendant to plaintiff. *Lush* shewed cause. *Shee*, Serjt. contrà.

Referred back to the Master as to one item, on payment of the costs of this rule.

REG. v. THE INHABITANTS OF TURWESTON.—Rule to impose a fine for non repair of a road. *Power* shewed cause on affidavit, that the road was now repaired. A certificate of justices had been obtained, but not in time to be verified, and filed in answer to this rule. *Worlledge*, contrà. By the COURT.—When the certificate of justices is produced and verified, then the rule may be discharged.

Order accordingly.

REG. v. EVAN GRIFFIN.—Enlarged rule. *Struck out.*

REG. v. DUNNICLIFFE.—Rule for a quo warranto information, requiring the defendant to shew by what authority he exercised the office of Mayor of Derby. The objection was, that he had been improperly elected councillor, in the room of one Brampton, who had not lawfully vacated the office. The *Attorney-General* (with him *Milward*), shewed cause. Sir *A. Cockburn*, contrà, admitted that he was answered by the affidavits.

Rule discharged with costs.

REG. v. THE CLERK OF THE COUNTY COURT OF SURREY.—*Bramwell* and *C. Clark* shewed cause against a rule for a mandamus to issue a warrant of execution for the balance of a partially satisfied judgment. *Cur. adv. vult.*

REG. v. THE YORK, NEWCASTLE, AND BERWICK RAILWAY COMPANY.—*Knowles* shewed cause against a rule for a mandamus to summon a jury to assess compensation for the lands of Jane Fairless, comprised in a notice dated February 1849. The ground of objection to the rule was, that an arbitrator had already awarded liberal compensation upon the same claim. The *Attorney-General* and *Addison*, contrà.

Upon the company paying the sum awarded, rule discharged.

Tuesday, April 27.

DOE *dem.* HUGHES v. DAVIES. *Rule refused.*

DICKSON v. KAY. *Rule refused.*

DOE *dem.* TREVANION v. LAMBE.

Rule nisi for a new trial as against evidence only.

DOE *dem.* ROWLANDS v. PEARCE. *Rule refused.*

MARDELL v. THELLUSSON.—*Shee*, Serjt. moved.

Rule nisi for judgment, non obstante veredicto.

POPPY v. POPPY.

Rule nisi as to the point whether the growing crops passed.

FARDEN v. HORNSBY.—Point raised by the arbitrator for the opinion of the Court. *Gray* for the plaintiff. *Whitmore* for the defendant, not called upon.

Judgment for the defendant.

SIR T. R. GAGE v. THE NEWMARKET RAILWAY COMPANY.—Demurrer to plea. *Addison* in support of the demurrer. *Bramwell* contrà. *Cur. adv. vult.*

BOUVERIE v. PERCEVAL.—Point raised was, whether the reservation of 5½ per cent. on loan, secured by mortgage of lands in Ireland, the deed being made, and the parties resident in England, was valid. *Maude* for the plaintiff. *Malcolm*, for the defendant, admitted that the plaintiff was entitled to judgment. *Judgment for the plaintiff.*

KNIBB v. WARD.—*Field* moved to set aside an order of Pollock, C.B. for an inspection of documents.

Rule nisi.

FARROW v. MAYES.—*Manisty*, for the plaintiffs; *O'Malley*, for the defendant. *Cur. adv vult.*

MORRWOOD v. THE EASTERN RAILWAY COMPANY.—Demurrer. *W. L. Jones* prayed the judgment of the Court, the defendant's counsel consenting.

Judgment for the plaintiff.

Wednesday, April 28.

REG. on the prosecution of the Mayor, &c. of Ashton-under-Lyne v. SLATER.—Special case. *Cowling*, for the prosecutors; *H. Hill* and *Maynard*, for the defendant.

Judgment for defendant.

RAYNER v. ALLHUSEN.—*Watson* and *Willes* shewed cause. *Crowder* and *Manisty* in support of the rule.

Rule absolute for new trial.

COURT OF COMMON BENCH.

Reported by DANIEL THOMAS EVANS and VAUGHAN WILLIAMS, Esqrs. Barristers-at-Law.

Tuesday, April 20.

CROUCH v. NORTH-WESTERN RAILWAY COMPANY.

Liability of railway companies as common carriers—Effect of notice that they will not be responsible for parcels unless the contents are declared.

The North-Western Railway Company published a notice, with which the plaintiff was acquainted, that they would not be responsible for packed parcels unless the contents were declared, and that they would not carry them unless the contents were declared, and that the senders would be taken to warrant that parcels were not packed parcels. The plaintiff sent a parcel which the defendants knew to be packed, but declined to give the particulars. The parcel was taken by the company. It being left to the Court to say whether the notice and the sending of the goods under the circumstances was sufficient to prove a special contract under 11 Geo. 4 & 1 Wm. 4, c. 68, s. 6:

Held, that it was not sufficient, and that the defendants were bound to prove an assent to the terms of the notice.

The plaintiff Crouch is a carrier at Birmingham, who collects parcels to send by railway; these, when collected, are packed in one parcel and so sent to their destination and distributed. On the 27th of May last, and also on the 7th of June, some parcels were left at the plaintiff's office, and, according to his witnesses, sewn up in a canvas bag, and conveyed to the railway station to be taken to Liverpool. On the arrival of the bag it was, on both occasions, immediately received by the plaintiff's agent, and opened by him, and the goods (a packet of gold studs, another of cameos, and another of other jewellery) were missed. The declaration stated that the defendants were common carriers, and that plaintiff delivered to them certain goods to be safely and securely carried. The second plea traversed this allegation. In other pleas the Carriers' Act was set up as a defence, to which there was a replication that the goods were stolen by a servant of the defendants. A rule had been obtained to shew cause why the verdict (which had been found generally for the plaintiff) should not be set aside, and a verdict entered for the defendants on the traverse in the second plea, and why there should not be a new trial as to the felony on the ground of the evidence being insufficient. In April 1849 the defendants had published a notice that they would not be responsible for collected packages in one parcel unless the contents were declared with the names and addresses of those to whom they were sent, and that they would not carry such packages unless such declaration were made, and that the senders of parcels would be taken to warrant that they were not packed parcels. 11 Geo. 4 & 1 Wm. 4, c. 68 (the Carriers' Act), in s. 4, enacts that no notice shall be deemed to limit the liability at common law of carriers; and in s. 6, it is provided that nothing in that Act contained should be construed to annul, or in anywise affect, any special contract; and in s. 8, that nothing in the Act should protect carriers from liability for felonious acts of servants.

Wilkins, Serjt. and *J. Brown* now shewed cause.—As to the question of evidence, there was sufficient to support a verdict finding a felony on the part of the company's servants. As to the other point, the notice does not protect the company from responsibility. [JERVIS, C. J.—Crouch, jun. in his evidence, says, "When I was asked to declare the contents, I said I could not give the particulars." The goods were, however, left, and carried by the company. What is the effect of this? Is it a fresh contract? The notice at the end of it says, "You must warrant that it is not a packed parcel." Does that throw the responsibility on Crouch?] No. Crouch never consents to the terms of the notice. This notice is published after the cases which shew that the company could not charge more for packed parcels than other parcels. (*Parker* v. *The Great Western Railway Company*, 7 M. & G. 291; *Pickford* v. *The Grand Junction Railway Company*, 10 M. & W. 399; and *Crouch* v. *The North-Western Railway Company*, 2 Car. & Kirw. 789.) The company had no right to insist on the addresses being given. (*Parker's* case, 7 M. & G. 292.) [JERVIS, C.J.—Might they not require a declaration of the contents and addresses that they might not afterwards be made liable on the ground of felony by their servants when the articles said to have been lost might not have been there at all?] The notice is inoperative under the Carriers Act, sec. 4, and it is not brought under the proviso in sec. 6, as a special contract. Before this Act was passed a notice of this kind brought home to the parties would, in the absence of all contravening circumstances, have limited the liability of the company. (Story on Bailments, s. 558-560.) Sec. 4, therefore, must have this operation, that even though it be brought home to the party, it shall not limit the common law liability. Otherwise it has no operation at all. You must now, in order to make it a special contract, shew assent on the part of the person to whom the notice is given. In *Austen* v. *The Manchester and Sheffield Railway Company*, 20 L. J. 440, Q. B. the plaintiff himself had signed the ticket. So also in *Chippendale* v. *The Lancashire and Yorkshire Railway Company*, 21 L. J. 22, Q.B. *Shaw* v. *The York and North Midland Railway Company* only shewed that a company which had given a notice was not bound to carry according to their common law liability. Here there was no evidence of any assent.

Atherton, Q.C. and *Cowling*, in support of the rule. As to the question of evidence, the plaintiff was bound to shew that a felony was committed, and that it was committed by some one or more of the servants of the company, and by which of them. As to the question of contract, the defendants rely not only on the notice and the fact of its being brought home to the plaintiff, but on the evidence of the younger Crouch as to what took place at the time the parcel was delivered to the company. The plaintiff knew the terms of the notice; and young Crouch was asked, as was always done, what were the contents of the parcel. And he answered, I cannot give them. The parcel, however, is delivered to the company; and it must be taken on this evidence, that inasmuch as Crouch knew that one of the terms of the notice was, that the company would not be responsible for any parcel, unless the contents were declared, that he was content with and agreed to their taking his parcels without being responsible for any loss. [JERVIS, C.J. But the notice goes on to say, that the company will not carry unless the contents are declared; and then they do carry, knowing the parcel was a packed one. Their remedy was not to take, and as they did take, why should they not now be liable? Do they not by carrying waive the notice of non-responsibility?] Before the passing of the Carrier's Act, it was necessary to prove that notice had been given; now more is necessary, namely, that it should be brought home to the sender of the goods. Railway companies are not necessarily common carriers, only so sub modo. And here a notice, of which the plaintiff is proved to be cognizant, is given as to the terms upon which they would carry. And they must be taken to say to the plaintiff upon the delivery of the goods, "You, knowing the terms of the notice, must be taken to send them on those terms." [JERVIS, C J.—Suppose a notice given into a man's hands now, would that be an agreement?] No; but here there is more shewn, questions are asked. [JERVIS, C.J.—Yes, as to the particulars, but that is all. WILLIAMS, J.—What else does the plaintiff do but decline to give the particulars?] He does something more; he acts upon the notice. [WILLIAMS, J. I do not see that; suppose he had only shaken his head. CRESSWELL, J.—If the servant had reminded Crouch that the company would not be liable, and then the goods were left, perhaps in such case the company would not be responsible; but if he reminded him that the company would not carry without a declaration of the contents, and then they were left and carried, they must be taken to be liable. JERVIS, C J.—Yes, it is a question of fact, and the burden is upon you to prove it to the Court acting as jurymen.]

JERVIS, C J. delivered the judgment of the Court.—The rule for a new trial must be made absolute. I was not satisfied with the verdict upon the issue of felony by the company's servants at the trial. As to the other point, it being admitted, as it must be, that the notice itself was not sufficient to prove a special contract, it is for the defendants to make it out, and they have not done so to satisfy our minds.

Rule absolute for a new trial on payment of costs.

Thursday, April 22.

HAYES v. KEENE.

County Court—Prisoner, detention of, after expiration of warrant of commitment—Demurrer—Construction of Rule 121.

A debtor, having judgment against him in a County Court, and an order made on him to pay the debt and costs by instalments, made default, whereupon a judgment-summons was issued, and on his non-appearance thereto, a warrant of commitment was issued against him under the 131st rule of the "Practice and Proceedings of the County Courts," which directs that "such warrant shall bear date on the day on which the order of commitment was made, and shall continue in force for three calendar months and no longer." The warrant authorised the arrest of the debtor, and his commitment to prison "for the term of ten days from the date of the arrest." The warrant bore date on the 19th of September, 1851, and on the 16th of December following the debtor was arrested and delivered into the custody of the keeper of the prison to whom it was directed, who detained the debtor until the 25th of the same month, being seven days beyond the three months during which the warrant was to be of full force and effect.

The debtor brought his action of trespass against the gaoler for assault and false imprisonment, and the latter pleaded a justification under the warrant. To this plea the plaintiff replied that the warrant, by the 121st rule of the "Practice and Proceedings of the County Courts," was to continue in force three calendar months, and no longer, and that although he was arrested within that period, and was imprisoned under colour thereof ten days, yet he was unlawfully detained in prison seven days beyond the three calendar months during which the warrant had to run:

Held, on general demurrer, that the replication was no answer to the plea; for that, although the warrant was to remain in force only three months from the date of the order of commitment, the debtor, having been arrested within that period, was to be imprisoned for the number of days specified in the warrant, notwithstanding the three months during which it had force were expired before the debtor had completed the term of imprisonment which the County Court judge had ordered.

Trespass for assault and false imprisonment. The declaration stated that on the 16th of December, 1851, the defendant assaulted the plaintiff, and seized and laid hold of the plaintiff and imprisoned him in a certain gaol or prison for ten days then next following, contrary to law, and against the will of the plaintiff, whereby, &c.

The defendant pleaded that before the committing of the alleged trespasses in the declaration mentioned, and after the passing of the 9 & 10 Vict. c 95, to wit, on, &c. a County Court called the County Court of Surrey was duly constituted to be holden at Wandsworth, in the said county, and from thence hitherto hath been duly holden there under the said Act of Parliament; and after the constitution of the court, and before the trespasses in the declaration mentioned, to wit, on, &c. one Peter Plumley, then being the clerk of the said court, duly issued under the seal of the said Court a warrant of commitment, intituled,—"In the County Court of Surrey, holden at Wandsworth, between Alfred Rosling, plaintiff, and William Hayes, defendant," and directed to the high bailiff and others the bailiffs of the said Court, and to the Governor or Keeper of the Common Gaol at Horsemonger-lane, by which said warrant, after reciting that a Court holden at Wandsworth on the 2nd of May, 1850, the said Alfred Rosling, by the judgment of the said Court in a certain suit wherein the said Court had jurisdiction, recovered against the now plaintiff the sum of 6*l*. 17*s*. 1*d*. for his the said Alfred Rosling's debt, and the sum of 2*l*. 3*s*. 1*d*. the costs of the said suit, amounting together to 9*l*. 0*s*. 2*d*. and that, therefore, it was then and there ordered that the now plaintiff should pay to the clerk of the said court in Wandsworth, by instalments of the sum of 8*s*. every four weeks; and reciting that the now plaintiff, not having paid the said sum pursuant to the said order, a summons was, upon application of the said Alfred Rosling, duly issued from and out of the said court against the now plaintiff, by which summons he was required to appear at the said County Court holden at Wandsworth on the 6th of March, 1851, to answer such questions as might be put to him touching his estate and effects, and the manner and circumstances under which he contracted the said debt, and as to the means and expectations he then had, and as to the property and means he still had of discharging the said debt, and as to the disposal he had made of any property; and reciting that it was duly proved on oath at the said mentioned court, that the now plaintiff was personally served with the said summons; and reciting that the now plaintiff did not attend as required by such summons, or allege any sufficient excuse for not so attending; and thereupon it was ordered by the judge of the said Court that the now plaintiff should be committed for the term of ten days to the common gaol at Horsemonger-lane, in the said county of Surrey, according to the form of the statute in such case made and provided, or until he should be discharged by due course of law, the said high bailiff, bailiffs, and others, were thereby required to take the now plaintiff and deliver him to the governor or keeper of the common gaol at Horsemonger-

lane, and the said governor or keeper was thereby required to receive the now plaintiff; and him safely keep in the said gaol for the term of ten days from the arrest under the said warrant, or until he should sooner be discharged by due course of law, for which that warrant should be a sufficient warrant to the said high bailiff, bailiffs, and others, and to the governor and keeper of the said common gaol, which said warrant bears date, to wit, 19th September, 1851, and was duly signed and sealed, which said warrant afterwards, whilst the same was in force, and before committing of the said trespasses, &c. to wit, &c. was delivered by the said clerk to one William Goff, then being one of the bailiffs of the said court, to be executed in due form of law, by virtue of which said warrant afterwards, and before three calendar months from date thereof, &c. and before committing, &c. and whilst said warrant was in force, to wit, on 16th December, 1851, the said William Goff, &c. did then, within the jurisdiction of the said court, take and arrest the now plaintiff by his body, and did then forthwith convey him to the said common gaol at Horsemonger-lane, and did then, under and by virtue of the said warrant, deliver the now plaintiff to the defendant, who then was, and still is, governor and keeper of the said gaol, and the defendant did then receive the now plaintiff into the said gaol into his custody, as such governor and keeper; and the defendant further says, that he being such governor and keeper of the said common gaol, under and by virtue of the said warrant, safely kept and detained the now plaintiff in prison in the said common gaol from the time when he received the now plaintiff into the said common gaol as aforesaid, until he, the now plaintiff, was discharged from prison by due course of law, to wit, for the said time in the declaration mentioned, as the defendant lawfully might for the cause aforesaid, which are the said several trespasses in the declaration mentioned, &c.

Replication.—That after the passing of the County Courts Amendment Act (12 & 13 Vict. c. 101), and before the issuing of the warrant in the said plea mentioned, to wit, on 2nd February, 1850, Charles Lord Cottenham then being Lord Chancellor, duly authorised and appointed five judges of the County Courts to frame such general rules and orders as to them should seem expedient for and concerning the practice and proceedings of the County Courts, and for the execution of the process of such courts, &c. which said judges afterwards, and before the issuing of the said warrant under and in pursuance of the said appointment and authority, framed divers general rules and orders; and, amongst others, the following general rule and order (rule 121), that is to say: "Warrants of commitment whenever issued shall bear date on the day on which the order for commitment was made, and shall continue in force for three calendar months, and no longer, but no order for commitment shall be drawn up or served," which said rule or order was afterwards duly certified to Thomas Lord Truro, then being Lord Chancellor, under the hands of the said five judges, and was then submitted by the Lord Chancellor to three of the judges of the Superior Courts of Common Law, which said three judges then approved of the said rule, and the said rule was forthwith laid before the two Houses of Parliament, and became of the force of law. And the plaintiff further said that, although he was arrested under the said warrant within three calendar months from the date thereof, to wit, on the 16th December, 1851, and was imprisoned under colour thereof by the defendant for a term not exceeding ten days from the said arrest, to wit, until the 25th day of December, in the year aforesaid, yet the defendant imprisoned the plaintiff and detained him in prison in the said gaol and prison under and by colour of the said warrant after the expiration of three calendar months from the date thereof, to wit, from and after the 19th day of December, until and upon the 25th day of December, in the year last aforesaid, which is the imprisonment and trespass in the declaration mentioned, &c.

To this replication the defendant demurred generally "that the said replication is not sufficient in law," &c.

Joinder in demurrer.

At the foot of the warrant set out above in the plea there was this notice: "N.B. This warrant remains in force for three calendar months from the date thereof."

Channell, Serjt. and *D. T. Evans*, in support of the demurrer, contended that as the plaintiff was arrested and received by defendant into gaol under the warrant within three calendar months from the date of the warrant, the defendant was thereby justified, as keeper of the prison, acting under the warrant, in keeping the plaintiff in prison for the space of ten days, being the term of imprisonment mentioned in the warrant, notwithstanding three calendar months from the date of the warrant as limited by rule 121 of the Rules and Orders concerning the Practice and Proceedings of the County Courts, had expired before the term of the plaintiff's imprisonment mentioned in the warrant—that is to say, before the ten days' imprisonment had expired.

JERVIS, C.J.—Have we not considered this case on habeas corpus?

Giffard.—No.

JERVIS, C.J.—There was a case in which a similar question was raised; I mean *Re O'Neill* (20 L. J. 69, C.P.; 16 Law T. 235).

CRESSWELL, J.—What plaintiff has to contend for is very much like saying that after the expiration of a writ of summons the cause is at an end.

Giffard, in support of the replication.—It is submitted that judgment on this demurrer should go for the plaintiff. The rule set out in the replication is both clear and explicit. It provides that the warrant of commitment shall be of force and effect for three calendar months, from the date of the order of commitment, and no longer. Here the justification is that defendant was detained by a warrant, the force of which had expired; for he was detained seven days after expiration of three months from the day on which the order of commitment was made. The warrant is not only the warrant for capture, but also the warrant for detention; and its force under the rule recited had expired before the discharge of the plaintiff from prison. [WILLIAMS, J.—The warrant of detention and that of commitment are different.] Not in this case. The only authority the keeper of the gaol has is the judge's warrant of commitment, which also is the warrant of detainer. [CRESSWELL, J.—With your view of the point the man, though taken only three days before the expiration of the warrant, cannot be imprisoned for the period directed by the judge, except by fresh warrant.] The defendant might have gone to the judge under the 135th rule for another warrant. [CRESSWELL, J. How can you have a second warrant of commitment, the first having expired?] If the judge pleases he can grant successive warrants. [JERVIS, C.J.—Yes; but that is for a fresh offence: a manifest absurdity follows this argument. The man is held by reason of the judgment, and the purpose of the warrant is to apprise the gaoler of the judgment and subsequent proceedings, and to authorise him to hold.] The only manner in which the gaoler can justify is by the warrant, which expired before the release of the prisoner. As far as the gaoler is concerned, this is a warrant of detention,—and that only; he has nothing to do with the capture of the plaintiff; he has only to receive him and detain him during the period in which the warrant of commitment has force. There is but one order or warrant, which, therefore, serves for commitment and detainer. [TALFOURD, J.—There is the judgment of the County Court.] Yes. [JERVIS, C.J.—A summons issues, judgment follows, and then the warrant. The judge says, "Commit the debtor for ten days," which is the authority for the warrant, and the clerk, acting under the 9 & 10 Vict. c. 95, s. 111, makes a minute of the order, and the warrant issues. WILLIAMS, J.—You say this is the only authority for detention?] Yes. There is no other, unless the minute of the order of the judge made by the clerk in the court-book can be said to be such. [JERVIS, C.J.—What is the authority for commitment under the statute?] It is given in the 102nd section of 9 & 10 Vict. c. 95. [JERVIS, C.J.—As I understand that clause, it means that the gaoler shall be bound to receive and keep the defendant until the period for which he was committed expires by effluxion of time or by habeas corpus. There is here good ground of justification.] This case is different from one under a capias, because there are words imported in this warrant—that it shall not be of force and effect beyond three months—which a capias does not contain.

JERVIS, C.J. I should be very sorry if the Court felt constrained by any technical construction to give judgment for the plaintiff on this demurrer, because, in fact, by so doing, the Court would be impeding the operation of the County Courts Act, and such a decision would necessarily have the effect of obstructing the full execution of all warrants where a defendant kept out of the way until the term of the warrant was nearly expired. Either he could not be taken at all, or, if taken, must be discharged without having undergone the term of imprisonment awarded by the County Court judge. I am happy, however, to say, that, in the opinion of the Court, it is not necessary to adopt that construction. Construing the rule in the strictest way,—namely, that the warrant of commitment should bear date from the day that the order of commitment was made, and should continue in force for three calendar months, and no longer, having received the warrant which directed him to keep the defendant for the term of ten days from the arrest, the gaoler was bound to keep the plaintiff for the term so mentioned in the warrant. Those who made the rule had well considered the necessity of it; and the necessity was, that a party should not obtain a warrant of commitment, and keep it suspended over the head of a defendant for an indefinite period of time, for the purpose of harassment and intimidation; but there is no reason whatever, when the warrant was once executed within three calendar months, as prescribed by the rule, why the judgment recited in it should not be fully carried out. The defendant, therefore, is entitled to the judgment of the Court on this demurrer.

CRESSWELL, J. concurred.

WILLIAMS, J.—I am of the same opinion. I think that the meaning of the 131st rule is, that when once the warrant comes into operation, it is to operate fully as to the terms contained it.

TALFOURD, J. assented.

Judgment for the defendant.

COUNTY COURT APPEAL.

(Before MAULE, WILLIAMS, and TALFOURD, JJ.)

Wednesday, Feb. 24.

JUSTICE *v.* GOSLING and OTHERS.

County Court—Trespass and false imprisonment—Arrest by police constable—Conviction for furious driving—2 & 3 Vict. c. 47, ss. 54 and 63.

The plaintiff having been arrested and imprisoned by the defendants, who were police constables, on a charge of furious driving, brought an action of tort against them in the County Court. At the trial the plaintiff, in opening his case, stated that the defendants had taken him into custody and detained him for some time in a station-house on a false and unfounded charge of furious driving, and that on their evidence he had been convicted of the offence by two justices of the peace and fined 20s. For the defendants it was thereupon objected that by that admission the plaintiff had put himself out of Court. A copy of the conviction was put in evidence, the plaintiff admitted he had paid the penalty, and had not appealed against the decision of the magistrates; and the County Court judge, considering that the conviction was a conclusive answer to the action, so directed the jury, and a verdict was accordingly found for the defendants. The judge stated the case for this appeal, but it did not shew that the plaintiff committed the offence of furious driving within view of the defendants, so as to justify the arrest of plaintiff under 2 & 3 Vict. c. 47, s. 54:

Held, on appeal, that the direction of the County Court judge was wrong, and the judgment must be reversed.

This was an action brought in the County Court of Herts, holden at Barnett, before the deputy judge of that court, and now came before this Court by appeal from the direction of the judge at the trial of the cause.

The case was settled by the deputy judge, the parties themselves being unable to agree as to the statement of the same. The plaintiff brought his plaint in the above-mentioned County Court against the defendants, Gosling, Sumner, and Surman, for a tort in taking him into custody and detaining him at the police station at Barnet on (as he alleged in his particulars) a false and unfounded charge of furiously driving a horse and gig to the danger of passengers in the public highway. The plaintiff claimed 25*l.* damages. The cause was tried in the County Court before a jury on the 29th of August, 1851. On the hearing, the plaintiff stated that the two defendants first named arrested him between ten and eleven o'clock at night on the charge above mentioned; that the charge was false and unfounded; that before they took him into custody he informed them of his name and residence, gave them his card, and offered to verify his statement by a person in the neighbourhood; that the two defendants, notwithstanding, took him into custody, and delivered him to the third defendant, who, at their request, detained him in the police station at Barnet until he gave bail to answer the charge; that the charge was afterwards heard before the magistrates, who convicted him of the offence charged against him and fined him 20s. Thereupon the attorney for the defendants insisted that by this statement the plaintiff had put himself out of court. The judge then asked if the defendants could prove the conviction, on which an examined copy of the following conviction was proved and put in by the defendants:

"Metropolitan Police District and County of Middlesex, to wit.

"Be it remembered, that on the 28th day of April, A.D. 1851, Walter Justice, of Bernard-street, within the said metropolitan police district and county of Middlesex, solicitor, is brought before us, James Dickins, esq. and Charles Herbert Cottrell, esq. two of her Majesty's justices of the peace for the said county of Middlesex and county of Hertford, sitting at the Barnet Petty Sessions Court within the metropolitan police district and the said county of Hertford, and is charged before us with having, on the 22nd of April, A.D. 1851, at the parish of Finchley, in the said district or county of Middlesex, in the public thoroughfare there situate, there and then furiously driven a horse and gig along such thoroughfare to the common danger of the passengers in such thoroughfare; and it appearing to us, James Dickens, esq. and Charles Herbert Cottrell, esq. upon the oath of William Gosling and John Sumner, credible witnesses, that the said Walter Justice is guilty of the said offence, we do hereby adjudge the said Walter Justice to forfeit and pay for his said offence the penalty of twenty shillings, to be applied as the sta-

tute in that case made and provided directs. Given under our hands the day and year first mentioned.

"James Dickens.

"Charles Herbert Cottrell."

The plaintiff admitted he had paid the penalty so adjudged against him, and had not appealed from the conviction or taken any other steps to impeach its validity. The case concluded by stating "that thereupon the said deputy judge being of opinion that, under the circumstances hereinbefore mentioned, the said conviction was an answer to the plaintiff's claim for damages, directed the jury to find a verdict for the defendants. The plaintiff being dissatisfied with the said determination and direction in point of law, appeals against the same."

Raymond, for the plaintiff.—The direction of the County Court judge to the jury, that they should find for the defendants, was manifestly wrong. The judge never allowed plaintiff to go into his case; but the moment evidence of the conviction before magistrates of furious driving was admitted by the plaintiff, he seemed to think there was an end of the case, and he directed the jury to find for the defendants. The conviction was not admissible in evidence, so as to put the plaintiff out of court, as was here done. The conviction before magistrates was under 2 & 3 Vict. c. 77, secs. 54 and 63. [WILLIAMS J.—The proceeding was similar to an ordinary case at Nisi Prius, where the judge directs a nonsuit. MAULE, J.—It comes to this,—the plaintiff is taken into custody on a charge of furious driving, and convicted before a magistrate, as he says, on a false charge; the question, then, is, "was he ever convicted?"] A conviction of an offence is no evidence against a party in a civil action; it is not a proceeding between the same parties. It is also inadmissible, because the conviction might possibly have gone upon the evidence of the defendants themselves. (2 Phil. Ev. 23.) Secondly, a conviction for furious driving cannot be evidence where the question is not whether plaintiff was furiously driving, but a question of false imprisonment. The conviction, therefore, as regards this case, was wholly irrelevant. Thirdly, if the conviction was not irrelevant, and was conclusive as to furious driving, it was not conclusive evidence in a question of false imprisonment. Supposing the conviction exonerated the defendants from punishment for arresting the plaintiff, it would not justify their assaulting the plaintiff, and keeping him in custody for a length of time. The plaintiff was not allowed to state his case in full, but was cut short by the judge directing a verdict for defendants. There is nothing in the statute to justify this arrest. The 2 & 3 Vict. c. 47, authorises police constables to arrest individuals in certain cases, but it does not protect them in an arbitrary proceeding such as this. By sec. 54 police constables are authorised to arrest persons who, *in their view*, are guilty of furious driving in a public thoroughfare; but that power is limited by sec. 63, which enables a constable to take into custody any person committing offences within his view, provided that person does not give the constable his true *name* and *residence*. In this case the plaintiff gave the police constables his card containing both. [MAULE, J.—I observe sec 54 applies to particular offences therein specified. If a person commits either of these within view of the constable, whether he gives his name or not, the constable may take him into custody.] It was on the defendants to shew that they had good cause for imprisoning the plaintiff, and that the offence was committed within their view.

Ellis, interposing.—The case does not anywhere shew that the offence was committed within the view of the constables. You, therefore, cannot enter on that objection. It was not taken in the court below, and cannot now be entered into on appeal.

Raymond.—I reply to that by reference to a case of *Simmons* v. *Millingen*, 2 C. B. 524. The part of the marginal note most material is this:—"In trespass by A. against B. for false imprisonment, B. justified, on the ground of A. having wilfully and without excuse, within view of the constable who apprehended her, annoyed and disturbed the plaintiff and his family by knocking and ringing at his door. Held, that to support this plea under secs. 54 and 63 of 2 & 3 Vict. c. 47, it was necessary to prove the offence to have been committed within view of the constable." A justification for trespass, where it rests upon a statute, must be strictly followed. (*Matthews* v. *Biddulph*, 3 M. & G. 390.) On the statement of this case as settled by the deputy-judge, it is impossible to say how plaintiff opened his case.

MAULE, J.—There is a statement in the case that thereupon the judge was of opinion that "under the circumstances above mentioned the conviction was an answer to the plaintiff's claim." By this the judge must be taken to mean under the circumstances mentioned in the plaintiff's opening.

Ellis, for the respondents, was then called on.—The opening of the plaintiff is analogous to a declaration in case for malicious arrest and taking into custody on a false charge. The burden of proof lay on the plaintiff. [MAULE, J.—The present is an action of trespass for assault and false imprisonment. If you take hold of a man and convey him to a police office, that is a trespass, and you must justify it.] I rely on secs. 54 and 63 of the statute. The latter clause not only empowers a constable to take into custody persons who commit offences within view, but any one suspected of having committed or being about to commit a breach of the peace. In the present case the defendants had strong reasons for believing that the plaintiff had committed such an offence. [MAULE, J.—They did not say so; or, at all events, it is not shewn by the statement of the case.] As the case is incomplete, perhaps the Court will allow it to be re-stated.

MAULE, J.—We cannot order that. The decision of the Court below must be reversed with costs. There will be a new trial, with costs of appeal to the appellant. *Judgment reversed.*

Saturday, April 21.

RANDALL *v.* MOON.

Continuing action for costs.

Indorsee of a bill of exchange on its becoming due commenced actions both against the drawer and the acceptor. The drawer paid the principal, interest, and costs in the action against him under a judge's order, which was resisted by the plaintiff, who then continued his action against the acceptor for the costs of the writ. The acceptor had accepted the bill for the accommodation of the drawer, but that fact was not known to the plaintiff

Held, the plaintiff was entitled to continue his action against the acceptor for the costs.

Quære, whether payment under a judge's order resisted by plaintiff can be pleaded as a payment in satisfaction to him?

Macnamara moved, pursuant to leave reserved, to enter a verdict for the defendant, or to reduce the damages to 2*l.* 2*s.* the costs of the writ. This was an action by an indorsee of a bill of exchange for 49*l.* 18*s.* drawn by one W. A. Turner, and the defendant had pleaded to the further maintenance of the action that after bill due, and after action brought, the said Turner, on behalf and at the request of the defendant, paid the plaintiff, who then accepted the moneys in the declaration mentioned in full satisfaction of the causes of action, and that the plaintiff did not sue as Turner's trustee, &c. The replication denied the payment modo et formâ. At the trial before Maule, J. at the first Middlesex sittings in Term, it appeared that the defendant had accepted the bill for the accommodation of Turner, but that fact was unknown to the plaintiff, and that after the bill became due, the plaintiff commenced actions simultaneously against Turner and the defendant. A summons was taken out in Turner's action to stay proceedings on payment of debt and costs; it was resisted by the plaintiff, but an order was made and the money paid. It was now contended that such payment satisfied the causes of action; that is, the damages sustained by the plaintiff by reason of the nonpayment of the bill of exchange, that the costs of the writ were not part of the causes of action; and that the plaintiff could not continue his action against the acceptor for nominal damages and costs only. The payment by the principal (drawer) was also contended to be a discharge of the surety (acceptor), except as to the mere costs of the writ then issued against the acceptor, and these costs formed no ground for commencing or continuing an action. *Jones* v. *Broadhurst*, 9 C. B. 173; *Thame* v. *Boast*, 12 Q. B. 808; *Beaumont* v. *Greathead*, 2 C. B. 494; and *Nosotti* v. *Page*, 2 L. M. & P. 8, were cited upon the point of continuing the action for costs, and *Lord* v. *Ferrand*, 1 D. & L. 630, as to reducing the damages.

JERVIS, C.J.—We are of opinion there ought not to be any rule in this case. Even if the payment under the judge's order can be considered a payment and acceptance in satisfaction by the plaintiff of the drawer's liability within the meaning of this plea, yet it was not a satisfaction of the causes of action, *as against the acceptor*. The plaintiff was entitled to the costs of the writ in that action, and although the judgment in *Thame* v. *Boast* at first sight appears to go the length of saying that an action cannot be continued for costs merely, yet, on closer examination, it will be found to have proceeded upon the special facts in that case, and not to be an authority to that extent. The damages ought not to be reduced, because the plaintiff is entitled to the full amount secured by the bill, and may have to answer to some other party for that amount. But if it be not so, he will of course issue execution only for the amount actually due.

Rule refused.

Wednesday, April 28.

DOE *dem* PANTON *v.* ROE.

Practice.

In an action of ejectment, where two Terms have been allowed to elapse since the service of the declaration, the Court will not grant a rule nisi for judgment against casual ejector, although it be shewn that the delay occurred from indulgence to the tenant.

Power applied for a rule to shew cause why judgment should not be entered up against the casual ejector. Two Terms had elapsed since the declaration was served, but the delay arose out of indulgence to the tenant, who had promised to pay the rent, and had several times renewed his promise until February last, when he refused to pay or quit. The Court after two Terms have elapsed will in some cases grant a rule nisi. (*Doe dem. Crooks* v. *Roe*, 7 Jur. 970.) The declaration there had been served more than two Terms, there being a Chancery suit pending. The principle is the same here, where the delay has taken place out of indulgence shewn to the tenant, and on the faith of his promises. [JERVIS, C.J.—You have lost the benefit of the service by your own laches.] No, by our indulgence. [JERVIS, C.J.—That may or may not be. If we grant you a rule it will enable you vexatiously to increase the costs; you can serve the declaration again, and be in time for the Assizes, this being a country cause. CRESSWELL, J.—If the tenant had been shewn to have made these promises and then to have run away, there would be some reason for our granting a rule.] *Rule refused.*

BEAVAN *v.* WALKER.

Insolvent—Protection.

An insolvent to whom a protection has been granted after a verdict has been obtained against him in an action of tort, is not protected from arrest on a judgment signed after the protection granted.

A verdict in an action of tort was found against A. on the 5th December, 1851. He filed his petition on the 17th. Bill of costs in the action delivered 12th December. Final order made 20th January, 1852. Judgment signed the 5th of April. A. was subsequently arrested on the judgment:

Held, that the final order made under 5 & 6 Vict. c. 116, s. 4, did not protect him from such arrest; and that the words "protection from all process" in that section, mean from all process arising out of the subject matter of the Insolvent Debtors' Acts, which do not deal with actions of tort.

Held also, that where a verdict has been obtained and the bill of costs delivered, but judgment not signed before the final order, the sum for which the judgment will be signed is a matter of calculation, and comes within the words "debts and sums of money due or claimed to be due at the time of filing the petition," in 7 & 8 Vict. c. 96, s. 22.

Petersdorf shewed cause against a rule nisi which had been obtained for discharging the defendant out of custody. A verdict had been found against the defendant for 30*l.* 1s. 6d. for falsely representing himself to be lawfully in possession of a shop, and selling the good-will to the plaintiff, when, in fact, an action of ejectment was pending. He afterwards, and before judgment was signed, filed his petition under the Insolvent Debtors' Acts. The bill of costs was delivered before the filing of the petition. The question is, 1st. Whether the amount of the verdict and the costs is a sum due at the time of the filing of the petition; and, 2ndly. If so, whether the final order will protect an insolvent from arrest on a judgment in an action of tort. The words of stat. 7 & 8 Vict. c. 96, s. 22, shew that the petitioner is protected only from debts or sums of money due or claimed to be due. A verdict is not a debt, but only an inchoate proceeding ending in a judgment which is the debt. But however that may be, the insolvent is not protected from arrest on judgments in actions of tort. Ss. 4 and 10 of 5 & 6 Vict. c. 116, and s. 24 of 7 & 8 Vict. c. 96, shew that actions of debt, and not actions of tort, are contemplated. There are no cases on the point.

Hawkins, in support of the rule.—5 & 6 Vict. c. 116, s. 4, protects the insolvent from "all process." 7 & 8 Vict. c. 96, s. 26, makes the final order a protection from all process, and may extend to all costs, and may protect from damages. [CRESSWELL, J.—That is in an action brought by creditors. Would it protect an insolvent from arrest on a judgment in a case of crim. con.?]

JERVIS, C.J.—I am of opinion that this rule must be discharged. The express words of the various sections shew that they apply only to debts of creditors. It is manifestly absurd to suppose that "all process" may be applied to all cases. They only apply to all process which may arise out of the subject-matter with which the insolvent commissioner has authority to deal. 7 & 8 Vict. c. 96, s. 22, applies only to debts or sums of money due to different parties as creditors. This is a sum of money due certainly, but not to a person as a creditor. It applies where a sum is clearly due, but unascertained.

Rule discharged with costs.

ANDERSON and ANOTHER *v.* HILLIES and ANOTHER.

Shipbroker—Authority of master to receive payment by bill—Effect of admissions.

Where a balance is due from a broker to the owner of a vessel, and is settled between the broker and the master, if the broker offers to pay it to the master by cash, but he prefers to take it by bill, such payment is good against the owner.

Upon a settlement of accounts between the brokers and the master, the brokers offer to pay the

master the balance due to the owners by a cheque. He wishes to transmit the money to Jamaica, and the brokers, at his request, establish a credit for him at a bank here having a branch bank at Jamaica, to enable him to do so. The money is paid to his order by the bank there, and the brokers accept a bill drawn by him upon them for the amount, which is paid in due course:

Held, that the master was authorised to receive payment in that way, and that the brokers were entitled to charge it against the owners.

Where admissions are made on the faith of an account which is stated to have misled, the Court will hold the parties bound by the admissions, where it appears that no injustice was done.

A rule had been obtained to shew cause why the verdict for the plaintiff should not be set aside, and a verdict entered for the defendants, or why the verdict should not be reduced by 24*l.* 12s. The plaintiffs are shipbrokers in London, trading under the name of James Thompson and Co. The defendants were part-owners of the ship *Hastings*, and resided at New Brunswick. Thomas Gautt, the master, was a co-owner, and died on the 5th of October, 1849, having acted as master during the years 1848 and 1849, up to the time of his death. In those years the plaintiffs were employed as brokers of the ship. At the trial, most of the facts were proved by admissions. It appeared that in July 1849, on the return of the vessel from a voyage, a settlement was made between the plaintiffs and the master, in which 286*l.* 5s. 11d. was stated to be due from the plaintiffs to the owners, and they then offered to give the master a cheque for that amount. He was then about to sail for Jamaica, and having letters from the brokers enabling him to obtain money there for disbursements, did not want to carry the money with him, and, at his request, the plaintiffs, instead of paying him by cheque, established for him a credit at the Bank of British North America, they pledging their credit for repayment here of the sum paid by the Bank of British North America in Jamaica, to the order of the master. The bank in Jamaica accordingly paid to one Hastings the sum of 250*l.* and a bill for that amount was drawn by the master, and accepted by the plaintiffs on the 4th of September, 1849; it became due on the 6th of November, and was paid by the plaintiffs. And the first question was, whether this was a good payment to the master as against the owners. The second question depended on the form and effect of the admissions, leave being given to move to reduce the verdict by 24*l.* 12s. if the form of the account precluded its recovery. The account in question, marked B. and delivered by the plaintiffs to the defendants, charged them in one item with a sum of 92*l.* odd, for which the master had drawn upon them in Jamaica for disbursements. And in another item, with the sum of 24*l.* 12s. set down as money paid to the master. It appeared on the evidence that the master had received at Jamaica for the plaintiffs, who were on that voyage both charterers and brokers of the shop, some money for freight; and that the plaintiffs' agents then, instead of receiving that money from the master with one hand, and paying to him for disbursements money with the other, had allowed him to keep this sum of 24*l.* 12s. and had set it off against the freight that he had received; so that, in fact, the aggregate sum made up of 92*l.* odd, and 24*l.* 12s. had been disbursed by the captain; but having in his hands 24*l.* 12s. of the plaintiffs he had kept that, and drawn upon them for the 92*l.* odd.

Lush now shewed cause. The payment of the 250*l.* is good against the owners. The master was authorised to receive it in cash, and we offered to pay him by cheque, which is equivalent to cash. It was at his request that it was paid, in the manner stated. When he had the option of being paid in cash, but chose to be paid in another form, for the convenience of transmitting the money, he was paid so as to discharge us. *Marsh* v. *Reddie*, 4 Camp. 257; and *Strong* v. *Hart*, 6 B. & C. 160, are in our favour. As to the second point, Mr. Scott, one of the agents who happened to be in England, explained, that the master had received the 24*l.* 12s. for freight, and was allowed to keep it for disbursements.

Hugh Hill, in support of the rule.—Anderson, who was called at the trial, said, he never knew a payment made to a master in the manner this 250*l.* is said to have been paid. It was an unusual mode of payment, and being so is not made in a manner in which the master is authorized to receive it, and therefore bad against the owners. (Story on Agents, ss. 430, 431.) [CRESSWELL, J.—A bill is as good payment as cash, if taken by election of the party entitled to receive it.] As to the 24*l.* 12s. we were deluded in making the admissions, by the way in which the account was drawn up. If the whole sum had been charged in a lump for disbursements at Jamaica, attention would have been called to it as an unreasonable amount; and we should not have made the admissions, but have put them to the proof that such disbursement had been made. We ought not, therefore, to be strictly bound by the admissions.

CRESSWELL, J. to *Lush*.—You do not communicate to the other side how the 24*l.* 12s. was made out.

Lush.—No; we did not know, but Mr. Scott stated that the account had been shewn to the master, and that he had approved of it.

JERVIS, C.J.—We have some doubt as to the second point, can you not agree as to that?

Hugh Hill declined to agree.

JERVIS, C.J.—I should have been glad if the last point had been settled between the parties; the other is of considerable importance, and depends on this, namely, whether the master whose owners are entitled to the balance in cash of an account settled between the brokers and the master, was authorised to receive payment in the way he did, and could by so receiving it, bind the defendants the co-owners. I am of opinion that he could, according to *Marsh* v. *Pedder*, 4 Camp. 257. The money being offered him in cash or by cheque, which is equivalent to cash, and he declining so to take it, but preferring it by bill, or in the way he received it here, which is equivalent to taking it by bill, such payment was good. The second point is one of mere form. There is no doubt that Anderson paid the money, and although it is said that if the defendants had known that it was for disbursements, they would not have made the admissions, still, as the money was paid, I am not disinclined to view the matter strictly, and as the admissions were made, the rule will be discharged on both points.

CRESSWELL, J.—I am of the same opinion. The entry of the 250*l.* is as a payment to the master, made to him by bill. Under the circumstances mentioned such payment was good. As to the other point, there is an entry in the account of money paid to the master by persons who had shipped goods on board the vessel. That shews how the money got into the hands of the master. He disbursed it at Jamaica, and I think the plaintiffs are entitled to charge it against the defendants. The objection urged by Mr. Hill is to the form of the account, and is such a one as is generally made where there is no other. Taken strictly, it is not a good objection.

WILLIAMS and TALFOURD, JJ. agreed.

Rule discharged.

BUSINESS OF THE WEEK.

Thursday, April 22.

RICKETTS *v.* EAST AND WEST-INDIA DOCKS AND BIRMINGHAM JUNCTION RAILWAY COMPANY.—*J. Brown* asked leave for defendants to be at liberty to deliver the paper, books, with points of argument in this demurrer. JERVIS, C.J.—They may deliver them de bene esse; subject to any objection brother *Byles* may offer. In his absence we cannot say more than this.

Leave conditional granted.

GLADSTANES *v.* ALLEN.—This was a special case, part heard yesterday. *Lush*, for defendant, contended that the lien having attached on the goods the moment they were put on board the ship, nothing could divest the ship-owner of his right to freight. He relied on *Small* v. *Moats*, 9 Bing. 574. *Channell*, Serjt. for plaintiffs, contended that the case of *Small* v. *Moats*, was distinguishable. This would be a good bill of lading if it stopped at the first clause. (Abbot on Shipping, 289.)

Judgment for the defendant.

HOLMES *v.* SPARKES.—*Phipson* for defendant. This was a demurrer to the declaration in an action against the sheriff for extortion. The defendant demurred to the declaration as being insufficient because it did not set forth the facts so as to shew whether a levy had been made. If there is no levy there is no poundage. In an action on the statute the declaration must state the facts so as to demonstrate how the case comes within the statute. (Comyn. Dig. tit. Pleader, C. 76.) As to the word "levy," *Halkin* v. *Wells*, 5 T. R. 471. The question what is a levy was considered in *Chapman* v. *Boulby*, 8 M. & W. 252, *Ashby* v. *Harris*, 2 M. & W. 673; the principle in the last is the same as in the present case. (28 Eliz. c. 4; *Usher* v. *Walters*, 4 Q. B. 553.) Another ground of demurrer is, that this is in the declaration called the stat. 28 Eliz. whereas it has been held in many cases that such a misrecital of that statute is a fatal ground of demurrer. *Willes*, contrà.—As to the last ground of objection, no doubt it is a mistake to call the stat. 29 Eliz. it being properly stat. 28 Eliz; but as the description of the stat. is laid under a videlicet, it is not at all material. With regard to the principal ground of objection, as to the levy, that is not maintainable. The defendant complains that plaintiff has not stated what took place under the writ; it is not necessary he should have done so; he is only required to shew what has not taken place under the statute. In either case the sheriff does that which amounts to a levy. The other side contend that it is stating the result in law to say there was no levy; I say it is stating the result in fact. The cases cited in support of the demurrer do not apply here. (*Pilkington* v. *Cooke*, 16 M. & W. 615; Form of Declaration, Chitty Pl. 635; *Burton* v. *Lawrence*, 5 Ex. 816.) *Phipson*, in reply. The question is, whether this is a sufficient averment of circumstances from which the Court can infer there was no levy. JERVIS, C.J.—It seems to me that there is nothing in either of the points ingeniously urged by counsel for the defendant. It turns out that the statute, as recited, is shewn as being stat. 29 instead of stat. 28 Eliz; but it was referred to under a videlicet, and the objection cannot prevail. As to the other point, it is sufficient to say, "You have not levied," leaving it to the other side to raise that question on demurrer. But it is not necessary to go that length; for if the statement is, as here, sufficiently certain, it may be traversed. Judgment must therefore be for the plaintiff. CRESSWELL, J.—I am of the same opinion. The year is laid under a videlicet, and therefore that objection is of no avail. As to whether there was a levy or not, it was a question of law for the judge; and the other side, if dissatisfied with his ruling, might tender a bill of exceptions, and there would be full consideration whether he had wrongly decided on the point or not. WILLIAMS and TALFOURD, JJ. concurred.

Judgment for the plaintiff.

NOVELLO *v.* SUDLOW.—This was a special case stated for the opinion of this Court, the question being, whether the multiplication by lithography of Part songs, the property of the plaintiff, for distribution amongst the members of a choral society, was an infringement of the plaintiff's copyright. *Phipson* was heard for the plaintiff. *Part heard.*

Friday, April 23.

JUPE *v.* THE GREAT WESTERN RAILWAY COMPANY.—This action was brought to recover the value of a truss of silk sent by the railway of the defendants to London, with seven others; the other seven arrived safe. The eight trusses were proved to have arrived at Paddington, and to have been deposited in a warehouse there. It was also sworn that they were all placed on a cart of the defendants on the Monday morning, having been in the warehouse all Sunday. There was no evidence of the loss, but that only seven trusses arrived. There was no evidence of the defendants' carter and his boy loitering on the way, which, it was said, might have given a stranger an opportunity of stealing the truss. The jury found a felony by the company's servants. *Byles*, Serjt. with whom was *Brown*, shewed cause. Sir *A. Cockburn*, with whom was *Willes*, was heard in support of the rule. Held, that the evidence was not sufficient to support the verdict.

New trial on payment of costs.

HEALD *v.* CAREY.—*Bramwell* applied to the Court to review Master Rae's taxation. Three briefs had been delivered to counsel; one had been disallowed. The fees of counsel had been reduced. He had disallowed counsel's brief on moving for a new trial. The bill amounted to 700*l.*; the pictures, for which the action was brought, were worth about 150*l.* JERVIS, C.J.—It is a largish bill; it is a big bill. We will speak to Master Rae.

Saturday, April 24.

BEAVAN *v.* WALKER.—This was an action in the case, in which a verdict had passed for the plaintiff for 31*l.* 1s. 6d. which sum, with 55*l.* costs, the defendant had become liable to pay. He was arrested for this sum, and detained in custody. *Hawkins* now moved for a rule calling on plaintiff to shew cause why the defendant should not be discharged from custody of the sheriff of Middlesex, on the ground that after the delivery of bill of costs, and before judgment had been signed against him, the defendant petitioned the Insolvent Court, and filed a schedule, in which the debt and costs above mentioned were inserted. A final order of that Court was made for his discharge on 30th January; but, nevertheless, on the 5th April judgment for the debt and costs was signed, and the defendant was arrested on the 20th, and has since been detained in custody. By the COURT.—You may take a rule.

Rule nisi.

WHITE *v.* JOLLY.—*Dowdeswell* moved to enter a suggestion on the Roll, under 9 & 10 Vict. c. 95, to deprive a plaintiff of costs. The case arose before the passing of the late Act, and the question was as to concurrent jurisdiction of the Courts, and the pleading of a set-off. The Court, thinking the case was not distinguishable from a former case in this Court (*Woodhams* v. *Newman*), refused the rule. *Rule refused.*

HOTCHKINS *v.* BROOKS.—*Barnard* applied for a distringas to compel an appearance. The affidavit was held insufficient, because it did not state that the whole of High-street, Wapping, was in the county of Middlesex.

Rule refused.

Monday, April 26.

JOHNSON *v.* BINGHAM.—*Prentice* moved for a rule to shew cause why the judgment should not be set aside, as having been obtained by fraud. The action was on a bill which the defendant had accepted for the accommodation of one Osborne, the drawer, who was to raise money upon it. He was in difficulties, and other bills had been accepted for his accommodation, which had been asserted to have been forged. This bill was then given by him to the plaintiff for the sole purpose of its being shewn to other creditors to prove the other bills were genuine. (There was no pretence for saying they were forgeries.) Defendant, believing the plaintiff to be a bona fide holder, had suffered judgment to go by default, and had been arrested. It was now discovered that plaintiff was not a bona fide holder. Defendant was in prison.

Rule nisi, returnable on Thursday.

AUSTEN *v.* BROMLEY HILL IRON COMPANY.—*Raymond* applied for a rule to shew cause why a judgment having been obtained against the company, judgment should not issue against one Collins, a shareholder. *Rule nisi.*

BAKER *v.* SUMMERS.—*Crouch* applied for a summons to revive a judgment obtained in November 1841.

Granted.

MESSER *v.* ROPER.—*Charnock* applied for judgment on issue of nul tiel record.

Tuesday, April 27.

NOVELLO *v.* SUDLOW.—*Phipson* prayed that this case, fixed for to-day, might stand over, *Willes*, who had to argue for the defendant, being engaged, moving in the Ex. JERVIS, C.J.—We must go on. *Phipson*.—I must leave the case then to the Court. I do not wish to reply upon myself. By the COURT.—We will take time to consider our judgment. *Cur. adv. vult.*

RICKETTS *v.* THE EAST AND WEST INDIA DOCKS AND BIRMINGHAM JUNCTION RAILWAY COMPANY.—This was a demurrer to three pleas of the defendants, but in course of argument, counsel agreed to waive objections in point of form and turn the case into a special case for the opinion of the Court. *Tompson Chitty* for plaintiff; *Jos. Brown* for defendants. To be reported.

Judgment for defendants.

NOVELLO *v.* SUDLOW.—This case was, at request of *Willes*, re-opened, and he argued for the defendant. *Phipson* was heard in reply. The Court took time to consider judgment. *Cur. adv. vult.*

FOSTER *v.* CRABB.—*J. Brown* in support of demurrer.

Part heard.

BEER *v.* BEER.—This was an action of account. *Hake* now moved the Court to assign auditors to take the account within time to be fixed by the Court. (*Godfrey* v. *Sanders*, 3 Wils. 89.) We propose to meet at Serjeants'-

inn or in the Masters' room, on Monday, the 3rd of May. *Fooks*, for the other side, consented. JERVIS, C.J.—Settle amongst yourselves the place, and let the meeting be fixed for Monday, the 3rd of May. CRESSWELL, J.—Two of the Masters will attend in their room for that purpose on that day. JERVIS, C.J.—Let a rule be drawn up according to the form. *Rule accordingly.*

Wednesday, April 28.

——— *v.* BROOKS.—*Pearson* applied for a distringas to compel appearance. *Granted.*

BLAKE *v.* COOPER, a Lunatic.—*Collier* moved for a rule to enter appearance for the defendant. *Granted.*

GASSIOT *v.* CARPMAEL.—*Edwin James*, Q.C. and *Lush* shewed cause against a rule to shew cause why the verdict for the plaintiff should not be set aside and a verdict entered for the defendant. *Shee*, Serjt. in support of the rule. The defendant had ordered a load of manure, which had been left at his door in the evening after his gardener had left. The question was whether he was liable for the loss of the plaintiff's horse and damage done to his carriage by reason of an upset caused by the heap of manure. The Court were of opinion that the verdict which had been found for the plaintiff was unsatisfactory.

New trial on payment of costs.

UNWIN *v.* DEEDY.—*Deighton* moved for leave to enter an appearance for the defendant. *Granted.*

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY, and C. J. B. HERTSLET, Esqrs. Barristers-at-Law.

Friday, April 23.

REG. *v.* ELIZABETH JONES.

Vagrant Act—Reputed thief—Form of conviction.

The stat. 5 Geo. 4, c. 83 (the Vagrant Act), s. 4, does not render any suspected person or reputed thief who may be found frequenting a street with intent to commit felony, liable to be punished as a rogue and vagabond, unless the street be, and be described to be a street leading to some river, canal, or navigable stream, dock, or basin, quay, wharf, or warehouse, near or adjoining thereto, or a place of public resort, or place adjacent to some public resort, or avenue leading thereto.

Where the conviction of a person stated her to be a reputed thief who was found frequenting "Regent-street, in the county of Middlesex," with intent to commit felony, it was

Held insufficient, and the party having been brought up by habeas corpus, was entitled to be discharged.

The defendant had been convicted and sent to the Westminster House of Correction as a rogue and vagabond under the 4th section of the Vagrant Act (5 Geo. 4, c. 83), and the conviction alleged that on, &c. the defendant being, &c. was frequenting a street called "Regent-street, in the county of Middlesex," with intent to commit felony, and a rule nisi having been obtained (see *antè*, p. 66) for a habeas corpus, and the rule having been yesterday made absolute, no one appearing to shew cause against it, the writ issued, to which a return had been made, and the prisoner was in Court.

Huddleston moved that she be discharged out of custody, on the ground that the conviction was informal and insufficient: he referred to the case of *Re Brown*, 18 Law T. 238, where a similar point had come before the Court of Q.B. and the majority of that Court there held the conviction right, Patteson, J. differing in opinion; he submitted that the opinion of Patteson, J. upon the construction of the Act was the correct one, and that the word "street," as used in the Act, intended a street leading to some river, canal, or navigable stream, dock, or basin, or quay, wharf, or warehouse near or adjoining thereto; or to a street of or adjacent to public resort; in this conviction Regent-street was described only as in the county of Middlesex, without saying which Regent-street, and there were several in the county, or without even alleging it to be a place or street of public resort.

No one appeared to oppose the application.

POLLOCK, C.B.—This is an application to us to determine whether the party who has been brought into court pursuant to the writ, is upon this conviction correctly in custody, and the language as used in the commitment is, "that the said Elizabeth Jones was frequenting a certain street, called Regent-street, in the county of Middlesex, with intent to commit felony." Every other allegation required to satisfy the terms of the statute appears to be complied with, and all would seem to be right except the place described, where the party is stated to have been frequenting; and that as set out is literally nothing more than this,—that one Elizabeth Jones, being a suspected person, was frequenting some Regent-street, in Middlesex. The question is whether frequenting a street, or any street, by a suspected person, is sufficient to bring it within the terms and meaning of the Act, without describing the street to be a street of public resort, or leading to any river, canal, or navigable stream, dock, or basin, or any quay, wharf, or warehouse near or adjoining thereto? The case of *Re Brown*, decided by the Court of Q. B. has been cited, in which it appears three of the learned judges there were of one opinion, and Patteson, J. differing from them, of another. The conviction in that case was somewhat different to the present in its terms, yet notwithstanding that, I doubt whether I could have agreed with the majority of the members of the Court in the decision come to: the words of the Act are, "Every suspected person or reputed thief, frequenting any river, canal, or navigable stream, dock, or basin; or any quay, wharf, or warehouse near or adjoining thereto; or any street, highway, or avenue leading thereto; or any place of public resort, or any avenue leading thereto; or any street, highway, or place adjacent;" street adjacent, means street adjacent to the subject-matter referred to, not to any or every street of whatever description, whether public or private. The liberty of the subject is in question, and the Act is one which should not receive, I think, such laxity of construction. For these reasons I am of opinion the conviction cannot be supported, and the prisoner is therefore entitled to be discharged.

PARKE, B.—I am of the same opinion with the Lord Chief Baron, and we are bound to pronounce our opinion, although certainly it is different to the Court of Q. B. upon the decision in *Re Brown*. I think Mr. Justice Patteson's judgment there is the correct one, as also in the former one, which in the report is stated to have been before him at chambers; the cases upon principle are alike, and the conclusion he came to upon the construction of the Act I think was right; looking at the words of the Act, the object and meaning seem to me to be plain. "Every suspected person or reputed thief frequenting any river, canal, or navigable stream, dock, or basin, or any quay, wharf, or warehouse near or adjoining thereto, or any street, highway, or avenue leading thereto;" if it had stopped there, there could have been little doubt about it; but street is again repeated, and the words "leading thereto" must have a reference to the subject-matter preceding in every case; but then it goes on, "or any place of public resort, or any avenue leading thereto;" the word "thereto" means the same in both cases; then it says, "or any street, highway, or place adjacent;" place adjacent means adjacent to some place of public resort. If it had intended that a person should be apprehended under the circumstances required by that section of the Act in any street, or in any highway, the Legislature should have inserted street or highway only.

ALDERSON, B.—I am of the same opinion; according to the interpretation which it is said has been given to this Act it would be only to find out that a person has an intention to commit a felony, and I do not then see where he can go. The Act must certainly mean any canal, dock, quay, wharf, or warehouse,—and the intention was to protect such places from depredation,—or any street, avenue, or highway leading thereto; then it goes to another description of place which it might well have been the object also of the Legislature to protect, that is, places of public resort; where, in fact, pockets go, and are very likely to be picked,—as also in any avenue leading thereto, or street, highway, or place adjacent. It would be a very difficult thing for me to construe this statute to mean that any suspected person having an intention to commit felony, and being in a highway, is to be sent off finally to prison without trial except on a mere inquiry before a justice.

MARTIN, B. had left the Court.

The prisoner was ordered to be discharged.

Tuesday, April 27.

GARNEY *v.* HARRIS.

County Courts Extension Act—Construction of—Costs.

The 13 & 14 Vict. c. 61, s. 11, provides that if in any action of trespass plaintiff shall recover a sum "not exceeding five pounds," he shall have no costs, and the 12th section provides, that if the plaintiff shall recover "a sum less than the sum in that behalf hereinbefore mentioned," and the judge shall certify, he shall be entitled to his costs. Plaintiff in trespass recovered the exact amount of 5l.

Held, that the judge had power to certify for costs under the 12th section.

This was a case on the construction of the 13 & 14 Vict. c. 61 (the County Courts Extension Act). An action of trespass for assault had been brought in the Superior Court, and the plaintiff had recovered a verdict, with damages, 5l. and the judge who tried the cause had certified for costs under the power given by the 12th section of the Act.

Collier now moved for a rule to show cause why the Master should not review his taxation of costs, and why the judge's certificate for costs should not be set aside. The 11th section of the County Courts Extension Act provides that, "if in any action commenced after the passing of this Act in any of her Majesty's Superior Courts of Record, in trespass, trover, or case, not being an action for malicious prosecution, or for libel, or for slander, or for criminal conversation, or for seduction, the plaintiff shall recover a sum *not exceeding* 5l.: the plaintiff shall have judgment to recover that sum only, and no costs;" and the 12th section provided, "that if the plaintiff shall in any such action as aforesaid recover a sum *less than the sum in that behalf hereinbefore mentioned*, by verdict, and the judge or other presiding officer before whom such verdict shall be obtained shall certify, on the back of the record, that it appeared to him at the trial that the cause was one for which a plaint could not have been entered in any such County Court as aforesaid, or that it appeared to him at the trial that there was a sufficient reason for bringing the said action in the court in which the said action was brought, the plaintiff in such case shall have the same judgment to recover his costs that he would have had if this Act had not been passed." The plaintiff in this case could not have recovered his costs without a certificate from the judge under the 11th section, because he had recovered a sum *"not exceeding* five pounds," and he cannot be entitled to them with such certificate under the 12th section, because the power to grant such certificate is only given where the sum recovered is *"less than the sum in that behalf mentioned,"* that is in an action of trespass less than a sum not exceeding five pounds. Now, in this case, the plaintiff recovered the exact sum of 5l., which is not less or more, but equal to a sum not exceeding 5l. No doubt this is a *casus omissus* on the part of the legislature, but the Court is bound to adhere to the strict grammatical construction of the Act, and not usurp the province of the legislature by altering the words of the enactment to meet the presumed intention, and supply any supposed omission. According to the grammatical construction, "not exceeding five pounds" is the antecedent referred to in the 12th section. *Reg. v. The Inhabitants of the Parish of Mahe, Cornwall*, 5 N. & M. 241, decided that the provisions in 37 Geo. 3, c. 111, exempting from the stamp duties thereby imposed on every indenture of apprenticeship, "where a sum or value *not exceeding* 10l. shall be given, or contracted with, or in relation to the apprentice," does not extend to an indenture where *no* consideration passes. It is evident that the legislature never intended that when there was no consideration passed, there should be imposed a duty, and Lord Denman recognised the mistake of the Legislature in his judgment, but felt bound to take the act as he found it.

POLLOCK, C.B.—I am of opinion that there should be no rule in this case. Where the language of an Act of Parliament admits of but one interpretation, as in the case relied on, the Courts of Law have no right to alter it, however absurd the conclusions to which the words lead; but if there are several ways of construction, then I think we are bound to take that most in accordance with the spirit of the Act. There must be a difficulty of construction before we have any power to deal with an Act, so as to interpret its meaning; but in this Act I think it is quite clear that it was intended that the judge should have the power to certify in all cases in which, without his certificate, costs could not have been recovered; well, then, what is the meaning of the words "a sum less than the sum in that behalf hereinbefore mentioned?" Why a sum that would have been sufficient to entitle the plaintiff to recover costs.

PARKE, B.—I also think there should be no rule. According to the strict grammatical rule of construction, Mr. Collier may be right; but according to the rule acted on by the Courts of Law of late years, and a very valuable rule it is, we may depart from the strict grammatical construction when it leads to inconsistency, repugnancy, or absurdity, to be collected from the entire Act, and that would be so in such a case as the present.

PLATT, B.—An Act of Parliament should be read as anything else would be, with a view to understand the true meaning; and these two sections must be so read, with a candid mind, and with a disposition to ascertain the true meaning of the Legislature. It cannot be believed, but that the Legislature intended that the judge should have the power to grant his certificate, when costs were taken away by the 11th section, and nothing could be more absurd than the state of affairs which would ensue if the argument relied on should be permitted to prevail; to avoid this absurdity, we must construe these sections, so as to give them a reasonable construction when taken both together; and if there appear to be a mistake, it seems to me we are at liberty to correct, if we can clearly discover what the intention of the Legislature was. It is perfectly clear to my mind, that in this Act, the words "less than," ought to be substituted for "not exceeding," and taking them in that sense, the argument in favour of this rule must fail.

MARTIN, B.—I am of the same opinion, and I think, that on a literal construction of the words this application must fail, the words are, if the plaintiff shall recover a less sum than in that behalf hereinbefore mentioned, which means a less sum than would entitle him to recover costs without a certificate. We ought to read Acts of Parliament with a desire to arrive at the intention the Legislature had in framing them. *Rule refused.*

BUSINESS OF THE WEEK.

Thursday, April 22.

STUBBS *v.* STUBBS.—Tried at Chester before Williams, J. Verdict for plaintiff for 250*l.* *H. Jones*, Serjt. moved for a new trial on affidavits, alleging surprise and miscarriage of justice. *Cur. adv. vult.*

OLIVER *v.* ABBOTT.—Part heard yesterday. *H. Hill* was heard to-day. *Rule refused.*

DOE *dem.* JONES *v.* HUGHES, tried at Carnarvon before Williams, J. Verdict for the plaintiff. *Bearan* moved to enter a verdict for the plaintiff, or for a new trial. *Rule nisi granted.*

BELL *v.* HOMBY.—Tried before Alderson, B. at York. Verdict for the plaintiff for 136*l.* 12s. *Bliss* moved, pursuant to leave reserved, to enter a nonsuit, or to reduce the damages to 12*l.* 10s. *Rule nisi granted to reduce the damages.*

CARR *v.* THE LANCASHIRE and YORKSHIRE RAILWAY COMPANY.—Tried before Alderson, B. at York. *Tomlinson* moved in arrest of judgment on the ground of misdirection. *Rule nisi granted.*

STEVENSON *v.* DICKENSON.—Tried at York. Verdict for the plaintiff. *Hall* moved to enter the verdict for the defendant, or for a new trial, on the ground of misdirection. *Cur. adv. vult.*

DOE *dem.* ROGERS *v.* MOSTYN.—*T Richards* moved for a rule to show cause why proceedings taken subsequent to the order of the Lord Chief Baron should not be set aside. The question whether this order acted as a stay of proceeding. *Rule nisi granted.*

KIMPTER *v.* THE CITY OF DUBLIN STEAM-PACKET COMPANY.—Tried at Liverpool before Cresswell J. Verdict for the defendants. *Deighton* moved for a new trial, on the ground of misdirection. *Rule refused.*

HARTLEY *v.* HADLEY.—This was a cause in which a rule for a new trial was granted on Monday. *Knowles* now moved for a rule calling on a person to whom the defendant had assigned his property to shew cause why he should not give security for costs consequent on the new trial. *Rule nisi granted.*

MARSHALL *v.* CHAMBERS AND ANOTHER.—*Simon* moved for a distringas. *Granted.*

HUMPHREYS *v.* PEARCE.—*Atkinson* moved for a rule to set aside an award, on the grounds that it was not final, and misconduct of the arbitrator. *Rule refused*

BECK *v.* MARTIN.—*Unthank* moved to set aside a consent to an order for judgment, and all subsequent proceedings. *Rule nisi granted.*

CODRETT *v.* OLDFIELD AND OTHERS.—*Honyman* shewed cause. Plaintiff in person in support. *Rule discharged, with costs.*

HORTON *v.* THE WESTMINSTER IMPROVEMENT COMMISSIONERS.—*Garth* moved to rescind an order for the production of certain documents. *Rule nisi granted.*

Saturday, April 24.

Re PHILIP JAMES WINGFIELD.—*Slammers* moved to strike Wingfield off the rolls on his own application. *Granted*

BUTLER *v.* ALDEN.—*Robinson* moved to set aside the nonsuit, and to enter a verdict for the plaintiff. *Rule nisi granted.*

MITCHELL *v.* STEVENS.—*M Smith* moved to enter judgment on a sci. fa. with production of the record *Granted.*

SHEPHERD *v.* STEVENSON.—*Cleasby* moved that the Master should review his taxation of costs *Refused*

DAY *v.* ——*Unthank* moved to enter judgment on a warrant of attorney. *Granted*

DOE *dem* PATRICK and OTHERS *v.* THE DUKE OF BEAUFORT.—*Benson* moved that the Master might review his taxation of costs. *Refused.*

PEARSON, Clerk, *v.* BECK.—Tried at Chester before Williams, J., verdict for the plaintiff for 51*l.* *Evans*, Q C moved to set aside the verdict, and for a new trial, on the grounds that the verdict was against evidence, improper admission of evidence, and misdirection. *Rule granted on the two last points.*

THOMAS *v.* PHIPP.—*Ball* moved for a rule to shew cause why, notwithstanding the rule obtained herein for a special jury, this cause should not be tried by a common jury, at the first sittings in next Term, unless the defendant is ready with his special jury, or to set aside the rule obtained for a special jury, on the ground that it was obtained for delay *Rule nisi granted*

WARD *v.* BROOMHEAD.—*Cleasby* moved to set aside an order of Platt, B. *Refused.*

NEW TRIAL PAPER.

MORRISON *v.* NICOL.—*Crowder* and *Needham* shewed cause. *Part heard.*

Monday, April 26.

WISE *v.* SIMPSON.—*Lush* appeared in support of a general demurrer herein. *Pearson*, contra, not called upon. *Judgment for plaintiff.*

CANNAN *v.* THE SOUTH-EASTERN RAILWAY COMPANY. *Cur adv. vult.*

FIELD *v.* PARTRIDGE.—*Willes* moved to rescind an order of Platt B. which directed an execution to be set aside, no notice of taxation having been given. He referred to 5 Dowl. 79 and 125, and 1 Dowl 105 PARKE, B. referred to Lush's Book of Practice on the same point. *Rule nisi.*

BARTON *v.* WHITE.—A special case upon the construction of a will by order of Vice-Chancellor Knight Bruce; the question being one upon the meaning of the term "estate" therein, as to whether it passed the fee or an estate for life only. *Phipson* contended it passed only a life estate *Jno. Karslake*, contrà, not heard. The COURT held the term "estate," as used in the will, passed the fee, and that the case was not to be distinguished from *Gardner* v. *Hardinge*, B. Moore's Reports, 665; and mentioned *Putlow* v. *Fricker*, 20 L J. *Judgment accordingly.*

THOMAS *v.* WATKINS.—*Willes* appeared in support of a demurrer to the replication. This was an action of trespass for taking certain goods. Plea, under 11 Geo. 2, c. 19, that a distress was about to be taken for rent, and that the goods were clandestinely removed to avoid the distress. Replication.—That the goods were not the goods of Thomas, nor were they clandestinely removed to avoid the distress. Demurrer to the replication, on the ground that it was double, and for multifariousness, as a traverse of either of the facts alleged in the replication would have been a good answer to the plea. *Prideaux*, contrà.—The plaintiff here may have replied de injuria, if he had chosen. (See *Bowler* v. *Nicholson*, 12 A. & E. 341.) If he could, then he is not bound to do so; but may traverse two or more facts instead, as was decided by *Gorton* v. *Robinson*, 2 Dowl. N. S. 41; he also cited *Sutherland* v. *Platt*, 13 M. & W. 16 The objection to the replication is, that it is bad for multifariousness. (See *Chadwick* v. *Herepath*, 3 C. B. 885.) [MARTIN, B.—Why did you not reply de injuria, or deliver a replication single, in the ordinary way?] *Willes* was required to elect whether he would amend or join issue on the replication, or proceed with the argument. He chose *To amend or join issue in a month.*

GEORGE *v.* DEVEREAUX.—*Petersdorff*, in support of the demurrer to pleas. *Davis*, contrà. *Judgment for plaintiff.*

Tuesday, April 27.

GIBBS *v.* FREEMONT.—*Willes* moved for a rule to show cause why an order of Alderson, B. that the plaintiff should produce certain bills of exchange and protest, and the letter or letters, if any, transmitting the same, and for a stay of proceedings, should such be rescinded or varied. *Rule nisi granted.*

ESCRIL *v.* MASON.—Tried before Platt, B. at Guildhall, on the 22nd ult. Verdict for the plaintiff. *Bramwell* moved for a new trial. *To be mentioned again.*

SMITH *v.* STEVENS.—*Atkinson* moved for a rule to shew cause why the rule for a new trial obtained herein should not be set aside with costs. *Refused.*

——— *v.* WOODWARD.—*Bull* moved for a distringas. *Granted.*

GARVEY *v.* HARRIS.—*Collier* moved for a rule to shew cause why the Master should not review his taxation, and the certificate of the judge giving costs to plaintiff should not be set aside. *Refused.*

THOMAS *v.* PHIPP.—*Fitzherbert* shewed cause. *Ball*, in support. *Rule discharged.*

NEW TRIAL PAPER.

KEY *v.* COTTESWORTH.—*Willes* and *Knowles*, having been heard on a previous day, shewed cause. Sir *F Thesiger* and *M. Smith* in support. *Cur adv. vult.*

DR. ROTHSCHILD AND OTHERS *v.* THE ROYAL MAIL STEAM-PACKET COMPANY. *Part heard, to be resumed on Saturday.*

BAIL COURT.

Reported by T. W. SAUNDERS, Esq of the Middle Temple, Barrister-at-Law.

Tuesday, April 27.
(Before Mr. Justice COLERIDGE.)
REG. *v.* THE INHABITANTS OF ABINGER.
Highway—Repair—Costs.

Right of the prosecutor to his costs where, upon an indictment preferred pursuant to an order of justices, the defendant succeed upon a plea of liability of a third person to repair ratione tenuræ.

Pitt Taylor moved for a rule calling upon the justices of Surrey to shew cause why a mandamus should not issue commanding them to direct the costs of the prosecutor in this case to be paid to him, as directed by sec. 95 of the 5 & 6 Wm. 4, c. 50.

The following were the facts:—Application having been made to justices, under sec. 94 of the above Act, for an order for the repair of a highway, the duty and obligation to repair were disputed, whereupon the justices, pursuant to sec. 95, directed a bill of indictment to be presented at the next Quarter Sessions for Surrey, which was accordingly done. To this indictment the defendants pleaded the liability of another party to repair ratione tenuræ. At the trial the jury found for the defendants, and hereupon the prosecutor of the indictment applied for his costs under sec. 95, which enacts that "The costs of such prosecution shall be directed by the judge of assize before whom the said indictment is tried, or by the justices at such Quarter Sessions, to be paid out of the rate made and levied in pursuance of this Act in the parish in which such highway shall be situate," &c. The justices, however, refused to give the prosecutor his costs.

It was now contended that the justices were wrong, for that the section is imperative and gives them no discretion upon the subject, the prosecutor being entitled in any event to the costs of the prosecution. (*Reg.* v. *Yorkhill*, 9 C. & P. 218; *Reg.* v. *Pembridge*, 3 Q. B. 903. The cases of *Reg.* v. *Chedworth*, 9 C. & P. 285; *R.* v. *Paul*, 2 M. & R. 307; *R.* v. *Challicombe*, 2 M. & R. 311, and *R.* v. *Clarke*, 5 Q. B. 891, being those in which the road had been found not to be a highway.) *Rule nisi.*

Wednesday, April 28.
(Before Mr. Justice COLERIDGE.)
Ex parte JOHN ATKINS.
Articled clerk—Dispensing with the usual notice of admission under special circumstances.

Needham moved, on behalf of Mr. John Atkins, an articled clerk, that he may be allowed to take out his certificate on the last day of next Term, giving in the meantime such notice as the time will admit of. The circumstances under which this application was made were these:—This gentleman was articled to his father, and his period of service duly expired in January last, but he had as yet given no notice of his intention to apply for admission. His father being possessed of landed property in South Australia, it had been arranged that the applicant should proceed thither and superintend the property, and practise in his profession; and it was of consequence that the present season for the voyage should not be lost.

His LORDSHIP thought that, under the circumstances, the application might be granted. *Application granted.*

BUSINESS OF THE WEEK.

Wednesday, April 28.

GLYN *v.* WILSON and ANOTHER.—*Prentice* moved for a rule calling upon the defendants to shew cause why the plaintiff should not inspect and take copies of certain documents mentioned, so far as relates to the matters of the cause. *Rule nisi.*

Nisi Prius.

COURT OF QUEEN'S BENCH.

Reported by W. J. METCALFE, Esq. of the Inner Temple, Barrister-at-Law.

FIRST SITTINGS IN EASTER TERM.

Friday, April 16.
(Before COLERIDGE, J.)
BATEMAN *v.* BLUCK.
Highway—Cul de sac—47 Geo. 3, c. 29—Public paved place—Dedication.

A. the owner of a passage and court leading from the street to thirteen cottages, with gates at the entrance and without a thoroughfare, requested the commissioners for paving the parish to pave the Court; they did so, and a public gas-lamp was placed in it:

Held, strong evidence of the dedication of the passage and court to the public:

Held, also, a public paved place within 47 Geo. 3, c. 29, and a public highway.

A passage may be a highway, though it is not a thoroughfare.

This was an action of trespass for pulling down a wall which had been erected by the plaintiff in Hat and Mitre-court, St. John-street, Clerkenwell. The defendant pleaded "Not guilty;" secondly, that the close was not the property of the plaintiff; thirdly, that the wall was erected in a public paved place within the 47 Geo. 3, c. 29; that the wall incumbered it, and therefore the defendant entered and threw it down; fourthly, that it was a public footway and highway; that the wall obstructed it, and therefore the defendant entered and pulled it down. The plaintiff in his replications denied that it was a public paved place or a public footway and highway.

It appeared that the plaintiff was possessed of a house in St. John-street; that behind it were thirteen cottages approached only by a passage seven feet wide, leading from the street by the side of the plaintiff's house. The passage was inclosed by iron gates, which were put up by the plaintiff. The defendant was possessed of a house on the other side of the gateway. There was a public gas-lamp in the court, and the name of the court, "Hat and Mitre-court," was up over the entrance. Eighteen years ago the court was paved by the plaintiff's husband, but some time since the commissioners for paving and lighting the parish paved it at the request of the plaintiff. The plaintiff claimed the court under a deed. Some years ago a door was opened from the defendant's house into the passage, though the plaintiff then objected. The defendant subsequently used the door for the purposes of his trade, to the annoyance of the plaintiff and the injury of her property. The plaintiff then caused a wall to be built so as to prevent the defendant from using the door; this wall the defendant pulled down, and the present action was brought against him for so doing.

M. Chambers, Q C. for the defendant, contended that the court and passage in question formed a public highway. It had been once dedicated to the public by inviting the commissioners to pave it, and that dedication could not be withdrawn or retracted. No one had a right to say he would call upon the public to repair or improve his court, and still treat it as his own private court. If the public repaired, the public were entitled to enjoy it. The paving by the parish was such a dedication as precluded the court from remaining any longer private. It was also a public paved place within the statute 47 Geo. 3, c. 29. He also contended that the plaintiff's deed did not include the whole width of the passage, and therefore that the wall was not built upon her property.

Knowles, contrà, urged that the locus in quo was the property of the plaintiff; that it was not a public paved place within the statute, for unless it was before the paving a public place, the commissioners had no right to pave it, nor could the expense of such paving be allowed to the commissioners from the parish funds. (*Paul* v. *James*, 1 Q.B. Rep. 832.) Nor was it a public highway; it was without doubt originally private, and the invitation to the commissioners to pave it made no difference. They had no right to pave, and could not pave as public commissioners. And even if they could, it would not amount

to a dedication. There could be no dedication to the public of a mere private passage leading to a few private houses. Such passage could not be a public highway. [COLERIDGE, J.—The commissioners have paved up to the defendant's door and considerably beyond it; is not that strong evidence of a dedication?] A dedication to the use of the inhabitants of the cottages, but not of the public generally. There can be no dedication of such a passage to the public; it is only a cul-de-sac and cannot be a highway. (*Wood* v. *Veal*, 5 B. & A. 454.) [COLERIDGE, J.—That case only decided that a dedication by the tenant was not sufficient.] That was the point decided, but Best, J. adds, if the road is for the accommodation of particular persons only, it is not a highway. If in this case the plaintiff and the tenants of the cottages had agreed to keep the gates locked, could they not do so? [COLERIDGE, J.—That amounts to the same thing. The question is, whether it is public or not? I shall direct the jury that this passage may be a public highway though there is no thoroughfare, with leave to the plaintiff to take the opinion of the Court upon it.]

COLERIDGE, J.—In summing up the case told the jury, that in point of law the passage might be a public highway, and left it to them to say whether the place was the property of the plaintiff, whether it was a public highway, and whether it was a public paved place. *Verdict for the defendant.*

Knowles, Q.C. and *Garth*, for the plaintiff.

M. Chambers, Q.C. and *Lush*, for the defendant.

BANKRUPTCY.

LEEDS DISTRICT COURT.

(Before Mr. Commissioner AYRTON.)

Monday, Nov. 17, 1851.

Re WILSON.

Proceedings after an adjudication of bankruptcy are not void because there exist clerical errors and omissions in the duplicate of the adjudication served on the bankrupt.

Cariss, for the bankrupt, moved that the proceedings after adjudication be set aside in consequence of no duplicate of such adjudication having been served upon the bankrupt, as required by section 104 of 12 & 13 Vict. c. 106. That section enacts, "that before notice of any adjudication of bankruptcy shall be given in the *London Gazette*, * * * a *duplicate* of such adjudication shall be served on the person adjudged bankrupt." Now, in what is called the duplicate said to be served on the bankrupt, there is a blank where there ought to be the month "October," and the figure "1" is omitted in 1851. Then the name of the solicitor is erroneously written on the back of this duplicate.

Ford, for the petition, contrà.

Mr. Commissioner AYRTON.—The copy of the adjudication served is defective in omitting "October" and the figure "1" in the date (1851). It therefore is not, in fact, a duplicate. But the object of section 104 is, that the bankrupt may have full notice of the adjudication, in order that he may, if expedient, appear within seven days and dispute such adjudication. In this case the bankrupt does not wish to dispute the adjudication, but says all done since is null and void. If, indeed, the bankrupt had held himself aloof from the Court, and when written to by the official assignee, had answered, "What do you mean? I know nothing about you" he might have placed the petitioning creditor in a difficulty; but the bankrupt appears by his solicitor in court, and thereby admits he very well knows what is going on, and he has not taken, nor does he now take, any objection to the adjudication itself. I do not think the omission of "October" and "1" fatal to all subsequent proceedings, so as to render them absolutely null and void; and in point of equity, no injury has been done nor will accrue to the bankrupt by these clerical slips; the object of the clause is satisfied; the bankrupt has had notice of the adjudication, which he does not dispute. His appearance to-day cures the blot. I therefore do not perceive any reason for my interfering to stay proceedings.

March 26 and April 23.

(Before Mr. Commissioner WEST.)

Re NORWOOD.

Attorney—Lien.

The bankrupt's attorney has a lien on books deposited with him for a proper purpose prior to the act of bankruptcy.

This was a petition presented by the assignees, praying that a former attorney of the bankrupt might be ordered to give up the bankrupt's books of account, which had been deposited with him before the bankruptcy.

Blackburn, in support of the petition.

Saward, contrà.

Cases cited:—*Ex parte Hardy*, 1 Rose, 395; *Lambert* v. *Buckmaster*, 2 B. & C. 617; *Stevenson* v. *Blakelock*, 1 M. & S. 535; *Ex parte Bryant*, 2 Rose, 227; 1 Madd. 49; *Ex parte Rowden*, 2 D. & C. 182.

The facts sufficiently appear from the following

JUDGMENT.

Friday, April 23.—Mr. Commissioner WEST.—The bankrupt, being sued by Mr. Pulleine before his bankruptcy, placed his books containing his accounts with Mr. Pulleine in the hands of his attorney, for the purposes of his defence. The action resulted in a reference, and an award was made against the bankrupt for a reduced sum, for which Mr. Pulleine has proved under the bankruptcy. His costs remaining unpaid, the attorney claims a lien on these books, which the assignees seek by this petition to have delivered up to them. An attorney has a right to ask for some security for his costs. If he refuses to go on, he must deliver up the papers; but if the client discharges him, he may retain them until his bill be paid. This being undoubtedly the law as between the parties themselves, I conceive that where the books were deposited with the attorney before the act of bankruptcy, the assignees have no better title than the bankrupt: and that as he could not insist upon these books being given up, neither can they. (*Lambert* v. *Buckmaster*, *Ex parte Bowden*.) If deposited after the act of bankruptcy, of course no lien could attach. *Ex parte Hardy* was cited as in point; but it went on the ground that the books were part of the proceedings. The solicitor there held them in the bankruptcy, as solicitor to the assignees, and his possession of them was their possession. The decision merely was, that the solicitor to the assignees should deliver them up to the assignees. Here they were deposited for a proper purpose before the bankruptcy. There may be a difference of opinion as to whether they are part of the proceedings, and in this case I incline to think they are not, although it is alleged that the bankrupt could make out a more satisfactory balance-sheet if he had them to refer to. A point was made as to whether I had jurisdiction, as the party claiming the lien did not seek to prove before me. I think I have jurisdiction; but I decide the case on the ground that, for the reasons I have stated, the attorney's lien, in my opinion, still attaches. The petition will be dismissed; but as it is a point of some importance, I should not be sorry to have it taken to the Court of Appeal, unless an arrangement can be come to.

INSOLVENCY COURT.

Reported by DAVID CATO MACRAE, Esq. of the Middle Temple, Barrister-at-Law.

Thursday, March 18.

(Before Mr. Commissioner PHILLIPS.)

PROTECTION CASE.

Re EDMUND HENRY LENTHALL.

Death of assignee—Appointment of new assignee.

An assignee having been chosen at an adjourned first examination, and having died before the final order was granted,

Held, that a day might be named for the creditors to proceed to a choice of another assignee de novo.

This insolvent appeared for his final order, and it transpiring that the assignee chosen by the creditors at the previous examination had died in the interval,

Dowse and *Macrae*, for the opposing creditors, said it was desirable that a new assignee should be appointed to manage the estate.

Mr. Commissioner PHILLIPS doubted his power to appoint an assignee on the day for the final order.

Macrae said that this was the first case of the kind that had occurred since the transference of these statutes to that court. There could be no doubt of the power of the Court to appoint a new assignee in the place of the deceased (5 & 6 Vict. c. 116, s. 7, and 7 & 8 Vict. c. 96, s. 3), and he apprehended the same course should be pursued as in bankruptcy (7 & 8 Vict. c. 96, s. 73), and a day named upon due notice to creditors for a new choice.

Mr. Commissioner PHILLIPS doubted whether an appointment would be good on the day for the final order.

Macrae thought that under these circumstances it did not matter whether it was the day for the final order or any other day after the death of the original assignee. He apprehended the same course should be pursued as if the assignee had died a week hence instead of a week ago.

Cooke said that his learned friend had put the case correctly. He apprehended the same notice and the same course should be pursued as for a choice of assignees in bankruptcy.

A day was then named for a meeting of creditors for a new choice of an assignee. The usual notice, as in bankruptcy, to be given to the creditors of the day appointed for the meeting.

Ecclesiastical Courts.

PREROGATIVE COURT.

Reported by Dr. WADDILOVE, of Doctors' Commons.

Wednesday, Jan. 28.

(Before Dr. LUSHINGTON, sitting for Sir H. JENNER FUST.)

In the goods of J. THOMPSON.

The treasurer for the time being of a charity was appointed executor of a will. The person who filled that office at the death of the testator had ceased to do so at the time he applied for the probate:

Held, nevertheless, that he was entitled to the grant.

The testator appointed A., B. and C. "together with the treasurers for the time being," of six charitable institutions, executors of his will, and residuary legatees in trust, and residuary legatees, beneficially as to one-third of the residue of his estate. He died on the 17th of November, 1851, and on the 3rd of December following probate of his will was granted to A. and B. (C. having died in the lifetime of the testator) as the two surviving executors, power being reserved of making the like grant to the treasurers for the time being of the charities. At the time of the testator's death, L. H. was the treasurer of one of these charities, but he resigned that office on the 17th of December, when another person was appointed in his place; but the testator having died on the 17th of November previous, L. H. was at that time treasurer, and not the person who now filled that office. All the six treasurers now applied for probate, and were each described in the jurat as treasurer of their several respective charities at the time of the testator's death, and as such an executor named in this will. A question arose whether L. H. or his successor, was entitled to be joined in the grant.

Deane moved the Court to decree the grant to go in the words of the jurat, contending that the Court must look to the words of the will rather than to the intention of the testator. The same words were used in the bequest of the residue as in the appointment of the executors. L. H. was entitled to his third of the residue upon the death of the testator, as executor of the will; he was clearly, therefore, entitled to be joined in the grant of the probate; that he was, moreover, treasurer for some time after the testator's death, and was so when the grant was made to A. and B. and that he might then have been joined in the grant; that an executor might do many acts, such as bringing actions, paying and receiving debts due to the testator's estate, &c. before probate; the death of the testator clothed the executor with that character; and that L. H. was clearly entitled to be joined, he not having renounced, but rather power having been reserved for him to come in and prove when he should think fit.

Dr. LUSHINGTON.—Although I have some doubts whether a person appointed executor as treasurer of a society is entitled to be treated as an executor when he has ceased to be such treasurer; yet I do not feel disposed to refuse this grant. The case is a very peculiar one, looking at the manner in which the testator has bequeathed his property. I shall let the motion pass.

CROWN CASES RESERVED.

Reported by A. BITTLESTON, Esq. of the Inner Temple Barrister-at-Law.

Saturday, April 24.

REG. v. VINCENT and WEST.

Larceny—Allegation of property—Amendment.

A. was sent by his master, a carman, to the London Dock Company for two hogsheads of sugar, the property of B. By mistake, the Dock Company delivered two hogsheads belonging to C. On the road from the premises of the Dock Company to those of B., A. broke bulk and abstracted a quantity of sugar. He was indicted for larceny, and the indictment laid the property in A.'s master, but during the trial an amendment was made, and the property was laid in the Dock Company:

Held, that the amendment was authorised by the stat. 14 & 15 Vict. c. 100, s. 1; and that the property was properly laid in the Dock Company.

William Vincent and William West were indicted, at the Middlesex Sessions, for stealing, also for receiving, forty-five pounds weight of sugar, the property of Matthew Orchard. It appeared in evidence that Orchard was a carman, and was employed by Mr. Buck to convey two hogsheads of sugar, his property, from the London Docks to his warehouse, and that Orchard accordingly sent the prisoner Vincent with two delivery notes, and one of his horses and carts for that purpose; but that the clerk of the London Docks delivered to him by mistake two hogsheads of sugar belonging to a third person. It

was then contended that as the hogsheads so delivered to Vincent were not the hogsheads he was authorised to receive, no property in them passed to his employer Orchard; and upon the application of the counsel for the prosecution, the Court amended the indictment by describing the sugar as the property of the "London Dock Company."

The case then proceeded, and it was proved that after the hogsheads were delivered to the prisoner Vincent he conveyed them to a considerable distance from the premises of the London Dock Company, and was then met by the prisoner West with a horse and cart, and that, assisted by West, he abstracted the 45 lbs. from one of the hogsheads, and delivered the same to West, who drove away with it. It was then contended, by the prisoners' counsel, that the ownership of the property was still wrongly described, inasmuch as the property in the London Dock Company was founded on possession only, and therefore ceased as soon as they had parted with the possession, although under a mistake, and the goods had been removed from their premises.

The jury found both the prisoners guilty of larceny, and not guilty of receiving.

Two points were reserved:—1st. Whether the amendment was an amendment within the meaning of the statute, 14 & 15 Vict. c. 100, s. 1. 2ndly. Whether the property was rightly laid in the London Dock Company.

Judgment was postponed, and both prisoners were committed to prison to abide the decision of this case.

The case was now argued before Pollock, C.B., Parke, B., Erle, J., Talfourd, J. and Crompton, J.

O'Brien for the prisoner Vincent, and.

Metcalfe for the prisoner West.—Assuming that the amendment was properly made, the property is wrongly laid in the Dock Company. The special property which they had was lost when they voluntarily delivered possession of the hogsheads to the prisoner. That act was a conversion by them, and they were immediately liable to an action of trover, at the suit of the real owner. (*Devereux* v. *Barkley*, 2 B. & Ald. 702.) At that time no larceny was committed; the larceny, if any was committed subsequently by breaking bulk; and when the sugar was abstracted, the Dock Company had no longer any possession, or special property in it. They cited *R.* v. *Mucklow*, 1 Mood. C.C. 160; *R.* v. *Harding*, Russ. & Ry. 125; *R.* v. *Walsh*, Russ. & Ry. 218; *R.* v. *Thurborn*, 1 Den. C.C. 387.

Parry, contrà, was not called upon.

POLLOCK, C. B.—I believe that we are all of opinion that the conviction is right. Two points are reserved by this case: first, whether the amendment made, was an amendment made within the meaning of the statute; about which, I understand the learned counsel for the prisoners now to make no doubt; and, secondly, whether the property was rightly laid in the London Dock Company. We must assume that every thing else necessary to constitute the offence was properly proved; that a larceny was committed against some one; the only question is, was it against the London Dock Company? Now the London Dock Company certainly had a special property, as bailors of this sugar; and it is a mistake to suppose that whenever a person who has a special property, parts with the possession, he parts also with the special property. I think he certainly would not, where, as in this case, he merely by mistake, delivers over a wrong parcel. By that delivery no change is effected in the property, which remains as before. Under the circumstances of the present case it seems to me that the London Dock Company might be considered as bailors of the sugar to the prisoner, who, during the journey, broke bulk. No doubt the property might have been laid in the real owner of the sugar, to whom the company were responsible; but I think that it was not necessary so to lay it.

PARKE, B.—I am of the same opinion. No doubt the amendment was right; because the consignee never gave authority to the Dock Company to send these particular hogsheads; but it is an established rule of law, that either the bailor or bailee may maintain trespass (2 Roll. Abr. 551); and if so, the taking being felonious, the property may be laid in either; and I think that here the Dock Company must be considered as bailors.

ERLE, TALFOURD, and CROMPTON, JJ. concurred. *Conviction affirmed.*

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

(Before Lord TRURO, L.C.)

April 29, 30, and May 2, 1851, and Feb. 26, 1852.

MONRO *v.* TAYLOR.

Specific performance—Land partly freehold, partly leasehold—Abandonment of contract—Waiver of abandonment—Interest on purchase-money—Costs.

A. agreed to sell premises partly freehold and partly leasehold to B. The leasehold portion of the premises was held under a renewable lease from an ecclesiastical corporation. Previous to the contract, A. had applied for a renewal, when the lessors required that a plan of the demised premises should be inserted in the new lease shewing the boundaries and dimensions thereof. After the contract for sale, a plan was found on an old surrendered lease of the date of 1810, *drawn on the scale of a chain to an inch, stating the superficial quantity to be two roods. The lessors insisted that the statement of the quantity of the demised premises as being two roods only was incorrect, and was merely an approximation to the true dimensions, which they insisted ought to be ascertained by admeasurement, according to the scale, which would make the dimensions about two roods and a half, and refused to grant a lease unless the plan of the premises in the said lease was drawn in conformity with that of* 1810, *omitting the expression, "of the superficial quantity of two roods." On the defendant refusing to complete, save on the terms of the lessors' granting a lease the same, except as to dates, as the existing lease, on a bill filed by the vendor for specific performance of the contract of sale:*

Held, affirming the decree of the Court below, that under the circumstances of the case, the plaintiff, by the production of an attested copy of the lease of 1810, *had sufficiently shewn what part was leasehold and what part freehold, or, even if it were uncertain whether the dimensions of the leasehold should be considered as two roods or two roods and a half, such uncertainty was not an objection to specific performance:*

Held, also, allowing the plaintiff's exception to the Master's report, which was overruled by the Court below, that the interest ought to be allowed on the purchase-money from the time fixed for the completion of the contract, and not from the time when the attested copy of the lease of 1810 *was produced.*

The description of property in a contract for sale as being "partly freehold and partly leasehold," is not of so indefinite a nature as to constitute an objection to a decree for specific performance.

In a correspondence between a vendor and purchaser, a mode pointed out by either of them, by which a difficulty in the way of the completion of the purchase can be obviated, cannot be considered as the abandonment of the original contract or the substitution of a new one.

Abandonment of a contract may be waived by the subsequent conduct of the parties.

Semble, that a vendor contracting to sell property "partly freehold and partly leasehold" is, in the absence of a specific stipulation relieving him therefrom, under an obligation to shew the purchaser which is freehold and which is leasehold.

A contract by a lessee of an ecclesiastical corporation, whilst he was in treaty with the corporation for a renewal of his lease, to sell the leasehold premises, and although the renewal may have been intended for the benefit of the purchaser, does not create an obligation on the part of the vendor to renew the lease.

In the year 1832 the plaintiff purchased from the devisees and executors of the late Duke of Brunswick an estate and premises called Belmont House, at Vauxhall, part of which was freehold and part held under a lease from the Dean and Chapter of Canterbury for the residue of a term of twenty-one years. Since the purchase, the plaintiff twice procured renewals of his lease, and the last of such renewals was made on the 30th of June, 1838, by an indenture of that date, in which, amongst other clauses, there was a proviso that the lease should not be assigned without licence of the Dean and Chapter. On the 31st of July, 1845, the plaintiff entered into an agreement in writing with the defendant for the sale to him of the estate. That agreement was in the following terms:—"Memorandum that G. L. Taylor, of, &c. agrees to purchase of Robert Monro, of, &c. the premises called Belmont House, *partly freehold and partly leasehold*, for the sum of 7,750*l.* the purchase to be completed on the 1st day of November next. Possession to be given on signing the formal agreement to be drawn out agreeably to the terms of this minute, when the sum of 2,750*l.* is to be paid by Mr. Taylor on account of the purchase-money. The residue of the purchase-money is to be secured by a mortgage on the premises, payable at the end of three years, with 5*l.* per cent. interest in the meantime. Mr. Taylor to have the option of paying off the same at any earlier period on giving six months' notice in writing. Mr. Taylor agrees to take the same title as Mr. Monro took on purchasing from the devisees and executors of the late Duke of Brunswick. The stables now occupied by Mr. Robins are also to be purchased by Mr. Taylor, subject to such yearly tenancy, at a sum to be agreed upon between Mr. Taylor and Mr. Nelson or their umpire. The amount to be paid on the completion of the purchase. The fixtures and barges also on the premises, according to the schedule, to be agreed upon between the same parties, are to be purchased by Mr. Taylor at a valuation to be made by two appraisers, or their umpire, and paid for at the above period. The moveable furniture and other things on the premises are to be removed by Mr. Monro; Mr. Taylor to have the option of purchasing any part thereof at a valuation. Mr. Monro to bear such expenses as are usually borne by a vendor, and Mr. Taylor those usually borne by a purchaser, and each party to pay the expense of his own surveyor." That agreement was entered into by the defendant as chairman and on behalf of the Western Gaslight Company for the purpose of enabling the company to erect on the freehold part of the premises buildings of large dimensions, of great value, for the manufacture of gas, and to unite such buildings with others intended to be used for the like purpose, on land adjoining that which had been purchased by the company.

A formal agreement was prepared, but was not executed, and no part of the sum of 7,750*l.* was ever paid. The sum of 840*l.* was fixed upon by the appraisers or their umpire as the price of the stables, and the sum of 317*l.* 10s. 3d. as the price of the fixtures.

Anterior to the memorandum of agreement, the plaintiff had applied to the Dean and Chapter for a renewal of the lease. A negociation had taken place upon that subject, in the course of which the plaintiff had paid the fine for such renewal, but the Dean and Chapter refused to grant such renewal except on the condition that, for the proposed new lease, a plan of the demised premises should be inserted shewing the boundary and dimensions thereof. The boundary and dimensions of the estate in the whole were perfectly ascertained, and the freehold and leaseholds were not intermixed, but yet a visible boundary did not appear to have ever existed between the freehold and leasehold portions of the estate. The description in the lease was the same as that which had been contained in the immediately preceding lease and in the lease of 1832, under which the premises were held at the time of the plaintiff's purchase; and neither that description nor the description contained in the conveyance of the freehold part of the estate afforded any assistance in determining the precise boundary line between the freehold and leasehold part; but in a prior lease of the demised premises granted in the year 1810, there was a plan purporting to shew the boundaries of the demised premises, which plan is stated to be drawn on a scale of one chain to an inch, and having the quantity two roods specifically stated in the body of the plan; but upon applying the scale to the formal dimensions of the plan, it gives rather more than two roods in point of quantity. The Dean and Chapter contended that the specification of two roods, in words, was to be treated as an approximation only to the true quantity, and not binding upon them, and that the actual dimensions ought to be determined by admeasurement according to the scale, and therefore in any renewed lease, that the plan should be drawn in exact conformity with that of 1810, but omitting the specification in words of two roods as the quantity, and that they refused to grant a new lease, without such plan omitting the specification; and at one time they said they declined to grant leave to assign the lease of 1838, except on the condition, that when an assignee should require a new lease he would consent to the insertion of such a plan, with the omission, as aforesaid, in such new lease. Ultimately, however, they did grant an unconditional license to assign.

A long correspondence took place between Messrs. Few and Company, as the solicitors of the plaintiff, and the Honourable Daniel Finch, as the agent of the Dean and Chapter, and also between Messrs. Phillips and Son, the solicitors for the defendant, relating to the difficulty about the boundary of the leasehold estate, but it is only necessary to notice a few of the many letters that passed between them.

On the 17th of June, 1846, Messrs. Few and Company wrote to Messrs. Phillips stating, "The Dean and Chapter of Canterbury having positively declined to accede to the terms of the plan settled by their surveyor, and Mr. Nelson, we fear we have no alternative but to accept the lease they have tendered, and to obtain the license to assign to Mr. Taylor, and we beg to submit to you that according to the contract this is all we can be required to do, although we have had every desire to meet your views, and have used every exertion in our power to induce the Dean and Chapter to grant the lease with the plan containing, as settled, the boundaries, dimensions, and gross quantity."

On the 9th of July, Messrs. Phillips and Son wrote as follows:—"In answer to your letter of this day, we beg to say that we will recommend our clients to complete the purchase with Mr. Monro, if you will carry out our suggestions, and which we think we are fairly and strictly entitled to, viz. if you obtain a lease from the Dean and Chapter, agreeing verbatim in all respects with the language of the lease granted to Mr. Monro of the 30th of

June, 1838, except as to dates, and you obtain also a license to assign the same to Mr. Taylor, or the trustees of the company, as may be required. We are," &c. Those are the terms which they suggest.

On the 21st of July, Messrs. Phillips write to Messrs. Few and Co. thus:—"If a new lease be granted, why not in precisely the same terms as that of 1838? and if it be desirable to have a plan, why not a copy of that in 1810? Such a lease we should recommend our clients to take without any hesitation; or if you can obtain a license for assigning to our clients the existing lease without any condition, so that we may hereafter object to any unreasonable deviation, we think they ought to be satisfied, and therefore shall recommend it."

On the 25th of July, Mr Finch, the agent of the Dean and Chapter, wrote to Messrs. Few and Co. as follows:—"I have had an earlier opportunity than I had expected of laying your application for a license to assign this lease before the Dean and Chapter, and they have agreed to grant a license, provided notice is given to Mr. Taylor that the fine set and paid for the renewal of the lease was expressly on an understanding that the new lease should contain such a description and plan of the demised premises as should be approved by the Dean and Chapter. I have written to Mr. Taylor to this effect, and shall therefore prepare the license of alienation, and get the Chapter's seal as soon as I can, provided I hear nothing from you or Mr. Taylor which offers any obstacle thereto."

On the 28th of July, Messrs. Phillips write to Messrs. Few and Co. thus:—"This purchase having been made on the part of a public company, we were under the necessity of submitting the papers to counsel, and being advised by him that we ought to require from the vendor a definition of the boundaries between the leasehold and the freehold, and that we ought to require the description of the property to be similar to those in the leases of 1810 and 1838; we regret that we cannot recommend our clients to deviate from that advice by taking the license subject to the condition referred to in your letter to Mr. Taylor of the 25th instant. The contract entered into by Mr. Taylor will, we believe, justify us in taking an assignment of the lease of 1838, with a plan affixed to it similar to that of 1810, or without any plan, but then it must be without any conditions that the plan or parcels are hereafter to be altered. More than this we have not the power to agree to, and trust, therefore, that it will not be pressed."

On the 29th of July, Mr. Finch wrote to Messrs. Phillips and Son that the license to assign would not be granted. On the 3rd of August, Messrs. Few and Co. wrote to Messrs. Phillips and Son thus:—"We have just learned that a considerable quantity of the glass upon the premises contracted to be purchased by your client has been broken and destroyed by the thunder and hail storm of Saturday last, and also that other damage has been occasioned by reason thereof. We have thought it right to give you the earliest information of the fact, so that your client may have the earliest opportunity of repairing the loss, which, of course, will fall upon him. In regard to your last letter, we beg to say, that we had a personal interview with Mr. Finch, on Saturday last, and we hope to be able to send you a reply to-morrow."

Then Messrs. Phillips and Son wrote to Messrs Few and Co. this letter: "At a meeting of the Board of the Western Gas Light Company, held yesterday afternoon, your letter as to the damage done to this property by the storm of Saturday last was taken into consideration, as also the position of that property generally, and we are directed to acquaint you that as the leasehold and freehold portions of the property have not been defined as requested, and as the license to assign has been refused, the company had no alternative but to abandon the contract, and hold your client responsible for compensation."

On the following day, Messrs. Few wrote to Messrs. Phillips and Son, stating that the plaintiff would not accede to the abandonment of the contract, and that an arrangement had actually been made on the previous day with Mr Finch for granting a license to assign; and on the 10th of August Messrs. Phillips write to Messrs. Few, saying.—"We have only to repeat that as you have neither defined the boundaries between the freehold and leasehold parts of the property, nor obtained a license to assign, our client has been left no alternative but to abandon the contract, particularly as we have received notice that the Dean and Chapter claim a greater part as leasehold than has hitherto appeared to be such."

On the 11th of August Messrs. Phillips and Son write to Messrs. Few, stating that "it is with great reluctance that Mr. Taylor has been obliged to abandon the contract, the injury occasioned thereby to the Western Gas Light Company, for whom he acted in the transaction, being very considerable: after, however, having had notice that no new lease would be granted with parcels similar to the last, or with a plan like that of 1810, and without being able to induce your client to distinguish the leasehold from the freehold, he really had no alternative, and acting, therefore, under the advice of counsel, which he as the representative of a public company feels bound to do. We have only to confirm our former letters, the abandonment of the contract being determined upon."

Mr. James Phillips, a partner in the firm of Phillips and Son, deposed in the cause to the following effect:—That in the verbal communications which he had with Messrs. Few or their agents, a distinct statement was made that the defendant was quite ready to complete the contract on having the same unconditional title that the plaintiff was entitled to when he purchased from the Duke of Brunswick, but not otherwise.

In December 1846 this bill was filed by the plaintiff for a specific performance. The defendant put in his answer. The bill was afterwards amended at great length, and an answer was put in to the amended bill. The plaintiff and the defendant then entered into evidence, and the cause was heard before Vice-Chancellor Wigram, who made a decree dated the 26th of June, 1848, whereby it was declared that the plaintiff was entitled to the specific performance of the agreement of the 31st of July, 1845, subject to his making a good title according to the terms of the agreement; and it was referred to the Master to inquire whether the plaintiff could make such a good title; and if so, when it was made. The Master, by his report, found that the plaintiff could make such good title, and that he first shewed such good title on the 3rd of November, 1849, the day when an attested copy of the lease of 1810, and the plan thereto annexed, were produced by the plaintiff's solicitor and left in the Master's office. To this report the defendant excepted, on the ground that a good title could not be shewn, and on the other hand the plaintiff excepted, on the ground that a good title was shewn, and that before the filing of the bill.

The cause came on to be heard before Vice-Chancellor Wigram on these exceptions, and further directions; and a decree was made on the 20th of February, 1850, whereby the exceptions of both parties were overruled; and the Master was directed to compute the purchase-money due to the plaintiff, and to compute interest on the 5,000*l.* part of the purchase-money for three years commencing from November 1845, at the rate of 5*l.* per cent. and on the residue of the purchase-money for three years at the rate of 5*l.* per cent. and the whole of the purchase-money from the expiration of the three years from the date of the report, according to the agreement; and the Master was to take an account of the rents and profits from the 1st of November, 1845, and that what should be coming on the account of rents and profits should be deducted from what should be due to the plaintiff for interest; and upon the plaintiff executing a proper conveyance, it was ordered that the defendant should pay to the plaintiff what should remain due for principal and interest. Against both decrees the defendant appealed.

The *Solicitor-General* and *Amphlett* for the plaintiff.

Rolt, *Malins*, and *Mickelthwait* for the defendant.

The points raised in the arguments of counsel are sufficiently noticed in the judgment of the Lord Chancellor, and the cases cited thereon were *Price* v. *Strange*, 6 Madd. 159; *Green* v. *Pulsford*, 2 Beav. 70; *Grove* v. *Bastard*, 2 Ph. 619; *De Visme* v. *De Visme*, 1 Mac. & G. 336; and as to costs, *Long* v. *Colier*, 4 Russ. 269; *Scoones* v. *Morrell*, 1 Beav. 251, *Sidebotham* v. *Barrington*, 5 Beav. 261.

The LORD CHANCELLOR (Lord Truro) after stating the facts at considerable length.—I am of opinion the decree was perfectly right, except so far as it relates to the plaintiff's exceptions. It has been objected that the agreement ought not to be enforced on account of the generality of the expression, "partly freehold and partly leasehold," but I think this objection is groundless. I am not aware that it ever has been held that a *contract* for the purchase of a freehold and leasehold property must define the precise boundary of what it is of each; nor do I think, on principle, the indefiniteness of such a description in the purchaser's contract ought to be deemed a justifiable reason for not enforcing it. If the boundaries are known to the parties at the time of the contract, the indefiniteness of the description is manifestly immaterial; and even if it is not known at the time, and the purchaser should find the quantity of freehold is less than he expected, and this should be prejudicial to him, still if, as in the present case, there is no proof of concealment or misrepresentation on the part of the vendor, the purchaser would only have to blame himself for his own imprudence for not inquiring what were the relative quantities of the freehold and leasehold premises before he entered into the contract. As to the statement that representations respecting the boundaries were made prior to the contract, I think there is no sufficient proof of that whatever. But it is alleged that the correspondence shews that the original contract had been abandoned, and a treaty for a new agreement had been entered into. This, however, I do not think is the case. The letters merely amount to a mode of obviating the difficulty, which, in the opinion of the purchaser, stood in the way of completion of the purchase. It is further said that the defendant gave notice of his abandonment of the contract, and that notice had the effect of putting an end to the contract; but it appears to me, from the passage in Mr. James Phillips's evidence, that that notice was afterwards waived by the subsequent conduct of the firm; but besides, the circumstances of the contract were not such as, in my opinion, to entitle the defendant to give a notice of abandonment—to abandon the agreement. It is objected that this dispute, which has arisen respecting the division between the freehold and leasehold portion of the estate, is a reason why this Court should not enforce the agreement; but I cannot assent to that. I will assume, for the purpose of argument, that a vendor who contracts to sell property described as "partly freehold and partly leasehold," in the absence of specific stipulation relieving himself from the obligation, is obliged to shew the purchaser what part is freehold and what part is leasehold;" and in the present case, the stipulation that the purchaser should take the same title as the vendor had from the devisees and executors of the Duke of Brunswick, does not remove that obligation (for a knowledge of the tenancy of the different portions of the estate may be of the utmost importance as regards the beneficial use of the property). But assuming this to be the law, I think that by the production of the attested copy of the lease of 1810, the vendor sufficiently fulfilled his obligation to shew what part was leasehold and what part was freehold, even supposing it to be wholly uncertain whether the specification of "2 roods" is to be taken as conclusive as against the Dean and Chapter; or whether the dimensions ought to be determined by the application of a scale, and the larger quantity be thereby determined to be leasehold. I put out of the question the argument that the uncertainty is only an uncertainty in law, and an uncertainty that could be determined by a decree when pronounced which would determine what the contract was from the beginning, and I will assume that there is an uncertainty which could not be thus determined, and assuming this, it is such an uncertainty as ought not to be raised as a ground for refusing specific performance under the circumstances of the case. It is agreed on all hands that the leasehold part occupies the whole of the river frontage, and that the freehold occupies the whole boundary of the turnpike-road. The only uncertainty is, what is the exact position of the division line between the freehold and leasehold, and consequently whether the leasehold is only two roods or somewhat more, say two roods and a half. I lay no stress on the smallness of the quantity claimed by the Dean and Chapter, and I will suppose it to be of the utmost importance to the purchaser that the leasehold should consist of two roods only. Supposing this to be so, and assuming, nevertheless, that the additional part which is claimed by the Dean and Chapter really is freehold, and assuming what certainly may not be more prejudicial to the purchaser, that it is wholly uncertain whether that part is freehold or leasehold, and such an uncertainty can never be removed, the purchaser has sustained no damage, he has all that the vendor had, and all that the purchaser contracted to buy; for, considering the value of the goodwill of a tenant holding under the Dean and Chapter, he was satisfied to take the estate without stipulation as to the respective quantities of freehold and leasehold. All he has to do is to see that the leasehold embraces the larger rather than the smaller of the two quantities of the one or the other, of which it is admitted to consist, and to deal with the estate accordingly for the purposes to which he might think fit to apply it. After such a contract as that entered into, if two roods and a half had been the quantity mentioned in the body of the plan of the lease of 1810, it cannot be contended that the purchaser would be entitled to resist the specific performance, when it was under a general description which did not define the relative positions of the freehold and leasehold, and when there is no proof that any representations were made to him as to the quantity of the one or the other, or the boundaries between them; and how then can it be maintained that the purchaser is entitled to resist the specific performance, merely because the quantity mentioned in the body of the plan was two roods, while the scale on the plan from the Dean and Chapter, gives about two roods and a half when he purchased under a general description of "partly leasehold and partly freehold," and when there is no proof that at the time of the contract he was ever led to suppose, or had any reason to suppose that the leasehold consisted only of two roods, or the boundary line between the freehold and leasehold was of the one portion rather than of the other? To resist the specific performance upon those grounds when it could not have been re-

sisted if the quantity specified in the body of the plan had been two roods and a half is to resist the specific performance merely on account of the possibility of the quantity of the freehold being greater, and the bargain somewhat more beneficial in the present case than it would have been if the quantity mentioned in the body of the plan had been two roods and a half, and there had been no doubt that the leasehold consisted of as great an amount. As to the notice mentioned in Mr. Finch's letter of the 25th of July, which was to this effect:—"That the fine set and paid for the renewal of the lease was expressly on an understanding that the new lease should contain such a description and plan of the proposed premises as should be approved by the dean and chapter,"—that furnishes no reason why the contract should not be performed; for, independently of the consideration that the defendant purchased without any stipulation as to the relative quantities of the leasehold and freehold, the letter of Messrs. Phillips and Son, of the 21st, renders that notice immaterial, for they say,—"If you can obtain a license for assigning to our client the existing lease without any condition, so that we may hereafter object to any unreasonable deviation, we think they ought to be satisfied, and shall therefore recommend it." If the Dean and Chapter should hereafter insist when a renewal is applied for, that the plan in the lease of 1810 should be adopted, omitting the specification, of the quantity, and that the leasehold should be stated to amount to the quantity for which the Dean and Chapter have contended, that would merely be a demand which the defendant would be prepared to expect, and notwithstanding the expectation of which, in this case, his solicitors expressed their willingness to accept the assignment of the lease. But it is further contended that the delay which has taken place, and the position of the company on whose behalf the defendant purchased, furnishes a reason why the Court should not enforce the agreement. It is submitted by the answer, that by reason of the serious and prejudicial delay that had arisen previous to the month of August 1846, in the completion of the purchase, which would prevent the company from commencing the manufacture of gas, and proceeding with building operations which were absolutely necessary, and which had been determined on by the company on the defendant entering into the contract, the defendant was justified in abandoning the contract, and the more especially as the company had been compelled by reason of such delay to purchase other and less advantageous premises for the purpose of carrying on the manufacture of gas; there does not appear to me to be any evidence of this, or that the plaintiff or his solicitor was aware of the purpose for which the defendant or the company made the purchase. But even if that were otherwise, the defendant might have at once put an end to the delay by assenting to the claim of the Dean and Chapter, which he might have done without having any stipulation or understanding as to the quantity of the leasehold. Another objection urged by the defendant is, that the plaintiff contracted and was bound to procure a renewed lease for the defendant, but this is not so. It is true, the plaintiff, prior to the contract, was in treaty for a new lease, and he made an exertion to procure it; but the contract itself is silent in respect of any renewal, and the plaintiff, in the absence of express words, must be taken only to have assigned what he himself had, either in law or in equity, unless there were special circumstances creating an obligation independent of the contract. It was expected that the plaintiff would endeavour to procure a renewal, if it were only with a view to his own benefit in the event of the contract breaking off. But admit he did so for the benefit of the purchaser alone—and from the general tenor of the correspondence that would appear to be the case—that did not create an obligation on the part of the plaintiff to procure such a renewal. There is no proof of its being for any consideration, and therefore it is not one which a Court of Equity would enforce, even if it had not been waived by the defendant, as it seems to me to have been by the letter of 1846. With reference to the defendant's exceptions, I am of opinion for the reasons I have already given, that a good title is shewn, notwithstanding the uncertainty as regards the boundary line to which I have adverted. With regard to the plaintiff's exception to the report as to the time when a good title was shewn, I think the exception ought to be allowed. Looking at the correspondence, I conceive that the defendant, or his agent, must be deemed to have known, in the course of the correspondence before the institution of the suit, what was the precise point in dispute between the plaintiff and the Dean and Chapter; and consequently, for the reasons I have already given, the dispute did not shew that a good title could not then be made, and I think that interest ought to be allowed from the time fixed for the completion of the contract. With regard to the costs, even supposing that a good title was not shewn until the attested copy of the lease of 1810 was produced in the Master's office, I agree with the Vice-Chancellor, that the same kind of litigation would have arisen, even if the lease of 1810 had been produced before the filing of the bill, and the plaintiff is therefore entitled to the costs of the suit. The result is, that the appeals must be dismissed with costs, and the plaintiff's exceptions to the report must be allowed.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

April 19, 20, 28; *May* 4.

LORD JAMES STUART *v.* THE LONDON AND NORTH-WESTERN RAILWAY COMPANY.

Railway company—Agreement to purchase land—Conditional or absolute agreement—Agent—Claim to a specific performance refused—Action at law directed—Undertakings for trial.

In 1817, *a railway company being desirous of making a branch line through lands of the Marquis of B. in consideration of his withdrawing his opposition to their Bill, by their agent E. D. entered into an arrangement termed " heads of an agreement," which referred to a map annexed, by which the company agreed to purchase certain portions of the land marked A. B. C. and D. The company was to give the following sums:—As to A. 400l. an acre for land required for the railway, and an additional 100l. for making a road; as to B. 1,250l. an acre; as to C. 400l. an acre for what was required; as to D. 250l. an acre, and to pay 1,000l. for depreciation of homesteads. And the agreement contained the following clause:—" The above prices refer to the quantities of land required for the railway, and to the contents of the roads and severed portions, which are respectively to be accurately measured. The Marquis having withdrawn his opposition, the Bill passed on the 9th of July,* 1847. *On the* 1st *of September,* 1817, *a formal draft agreement was sent by the company to the Marquis's solicitor, which endeavoured to convert the " heads of agreement " into an agreement conditional on the company requiring the lands of the Marquis. A correspondence ensued of considerable length, which ended in nothing. The Marquis died on the* 18*th of March,* 1848, *having appointed the plaintiffs his devisees in trust, and executors. On the* 14*th of October,* 1848, *notice of the abandonment of the railway was given, but although a correspondence between the parties went on, the claim was not filed until the* 18*th of June,* 1850, *which was not brought to a hearing until the* 21*st of February last. The compulsory powers of the company ceased on the* 9*th of July,* 1850, *but the time to complete the construction of the railway does not terminate until the* 9*th of July next:*

Held, reversing the decision of the Court below, that it was not a case for specific performance, and that the plaintiff should be left to his legal remedy, the defendants entering into certain undertakings, necessary for the trial at law.

This was an appeal from the decision of his Honour the Master of the Rolls, who, on a claim filed by the plaintiffs as the devisees in trust of the late Marquis of Bute, decreed specific performance of certain heads of agreement entered into by the defendants, the London and North-Western Railway Company, by their agent, Mr. Edward Driver, on the 1st of April, 1847, for the purchase of certain lands belonging to the Marquis, in the parish of Luton, Bedfordshire, for the purpose of making a branch line from Watford to Dunstable. The facts of this case, which are somewhat similar to those of *Webb* v. *The Direct London and Portsmouth Railway Company*, 9 Hare, 129; reversed on appeal, 19 Law T. Rep. 2; are fully reported, 19 Law T. Rep. 13; and as it was heard before his Honour the Master of the Rolls, before the reversal of the decision of the Vice-Chancellor, Sir George Turner, in *Webb* v. *The Direct London and Portsmouth Railway Company*, his Honour considered himself bound by the authority of the Vice-Chancellor.

Roundell Palmer and *Steuart Macnaghten* for the plaintiffs, contended this was a more favourable case for specific performance than Webb's case, as there the Company was insolvent, and had lost the power of completing the line; in this case, the Company was powerful and solvent, and although they had abandoned, or postponed, the making of the line, their powers to make it would not cease until the 9th of July next. That the Company did not now want the land was no answer to claim for the specific performance of the agreement: suppose a person contracts to buy land in order that it might be added to the ground of his house, if his house be burnt down, surely he could not resist specific performance, because he no longer wanted the land. That the map annexed to the agreement formed part of it; that the terms "land required for the railway" mentioned in, and for which a sum per acre was to be given according to, the heads of the agreement, meant the land which had been required, not which should be required, viz. the land coloured blue in the map; there was, therefore, no uncertainty as to the lands to be taken by the company. (*Preston* v. *The Liverpool, Manchester, &c. Railway Company*, 1 Sim. N.S. 586; *Peacock* v. *Penson*, 11 Beav. 355; *Hawkes* v. *The Eastern Counties Railway Company*, 20 L.J. N.S. Ch. 243; *Edwards* v. *The Grand Junction Railway Company*, 1 Myl. & Cr. 650.)

[During the argument of the plaintiff's counsel, Mr. Willcock, in answer to a question put by Lord Justice Knight Bruce, said that in case an action should be directed, the company would admit at law that the contract termed "the heads of the agreement" was a contract under the seal of the company.]

Bethell, Willcock, and *Speed,* for the company, insisted upon the laches of the plaintiff. That the Act of Parliament passed and received the Royal Assent in July 1847, the notice of the intention to abandon the railway was given on the 14th of October, 1848, and the claim was not filed until the 18th of June, 1850, and not brought to a hearing until the 21st of February last. That the agent had no power to enter into an unconditional agreement; that the agreement was conditional on the railway being made, as that was the purpose for which it was entered into. The company were to pay for land "required for the railway," but that meant the land which was actually wanted, and as none would be wanted the company could not be called upon to make any payment; that there was, at all events, an uncertainty and ambiguity in the contract, especially as to what was meant by the terms "lands required for the railway," and "severed portions." Moreover, 1,000l. was to be paid for depreciation of homesteads, and the depreciation could not be ascertained until it was shewn what lands would be taken by the company. [*Palmer* hereupon waived all claim to the 1,000l. for depreciation.] That assuming the agreement to be unconditional, though it might be a proper case for damages at law, it was not for specific performance in equity. They cited *Moore* v. *Blake*, 1 B. & B. 69; *Heaphy* v. *Hill*, 2 S. & S. 29; —— v. *White*, 3 Swanst. 108 n.; *Clarke* v. *Moore*, 1 J. & L. 728; *Harnett* v. *Yielding*, 2 S. & L. 556; *Gervais* v. *Edwards*, 2 Dru. & War. 82; *Watson* v. *Reid*, 1 Russ. & My. 236.

Steuart Macnaghten, in reply.

Lord Justice Lord CRANWORTH.—This case was decided by his honour the Master of the Rolls on the authority of the case of *Webb* v. *The Direct London and Portsmouth Railway Company*; not as the case now stands, it having been brought by appeal to this Court, but as it was after the decision of the case by his honour the Vice-Chancellor Turner. As I understand from counsel, the Master of the Rolls seemed to intimate an opinion that but for that authority probably his decision might not have been such as in fact it was. If that be so, inasmuch as that case of *Webb* v. *The Direct London and Portsmouth Railway Company* has since been decided otherwise than it was decided by Vice-Chancellor Turner, we have not in fact the duty of substantially overruling anything that was meant to be decided by his honour the Master of the Rolls, and we shall be acting in conformity with what would probably have been his opinion but for a decision which he then thought binding upon him, though in fact that decision has since been overruled. Now I confess I think that this case is a weaker case than *Webb's* case, so far as the plaintiff is concerned, inasmuch as it was offered that this should be put into a train of inquiry at law. It is perhaps, not necessary, and perhaps not proper, to give any opinion about what the construction of the agreement is, but it seems to me much more doubtful whether there was any binding contract at all, which was the case in *Webb* v. *The Direct London and Portsmouth Railway Company*. Upon that however I give no opinion. It may be that there was such a contract, or it may be there was not such a contract. The ground on which we proceeded in *Webb* v. *The Direct London and Portsmouth Railway Company* was this, that whether it was a contract or not, the circumstances of the case made it such that it was not fit for this Court to interfere by way of specific performance, because these two circumstances conspired that complete relief might be obtained at law, if the parties were entitled to any relief,—and the principle of mutuality wholly failed, for it was impossible for this company to take the land which was their benefit in consideration of the money which they were to pay. Now it appears to me that that principle applies precisely in this case the same as it did in that. Supposing that this was a contract by Mr. Driver amounting to a positive contract, that if the Railway Act passed these specific pieces of land, assuming them to be defined, should be taken and a given sum paid for them, supposing that was so, then the only difficulty which the present plaintiffs are in is this, that it was a contract, not as it was in *Webb* v. *The Direct London and Portsmouth Railway Company*, binding on the defendants, because

it was entered into by Mr. Driver, as agent, who had no authority to bind them; therefore the interference of this Court on the principle of the case of *Edwards* v. *The Grand Junction Railway Company*, and one or two others, which were decided on the same principle, is not to be entertained. Now that may give a title to relief in this Court, but the only relief that that could give would be to put the parties in the same situation as they were in in the case of *Webb* v. *The Direct London and Portsmouth Railway Company*, when, in point of fact, the company, after the Act of Parliament had been obtained, entered into a contract binding themselves to adopt the contract entered into by the parties before the company came into existence. That is the course which appears to me, and, I think, my learned brother, and will be the course that will do substantial justice in this case. It was agreed in the outset that the defendants would enter into any admissions or stipulations that might be necessary to enable the plaintiffs to raise the question at law, and therefore what we propose to do is this, to make an order that the defendants consenting and undertaking that in the event of an action being brought against them before the end of Trinity Term next (for they must not have it hanging over their head), by or for the benefit, or under the direction, of the plaintiffs, touching or concerning the agreement of the 1st of April, 1847, the defendants will, in such action and for all the purposes thereof, admit that on the 10th day of July, 1847, a deed was duly executed by the defendants under their common seal, whereby they covenanted for themselves and their successors with the late Marquis of Bute, his heirs, executors, and administrators, that they would perform all agreements entered into, if any, previously to the 9th of July, 1847, by Edward Driver, acting, or purporting to act as their agent for the purchase of any land from the said Marquis to be taken and used by them for their intended railway, and for compensation to be made for any damage to be occasioned by the railway, (that is a matter for subsequent consideration), in the same way as if such agreement had been duly entered into by them under their common seal, after the passing of the said Act, the defendants consenting to dispense with profert in the said action

Lord Justice KNIGHT BRUCE.—Perhaps the time that the plaintiffs suffered to elapse after the passing of the Act of 1847, or, if no time before November, 1848, ought to count, then after October, 1848, before they filed in July, 1850, the present claim is fatal to it; but assuming that not to be so, I am unable to view the case as one for specific performance. In the first place, if the parties were reversed, could the defendants, as plaintiffs, have obtained a decree for specific performance? Against this, probably the mere circumstance of the abandonment of the undertaking for the purpose or alleged purpose of executing, which the land in question, or so much of it as in truth was proposed or agreed to be purchased, was purchased or agreed to be purchased, would have formed an insurmountable objection; if so, it may be thought to dispose of the actual contention, but, independently of any such consideration, I doubt whether to enforce specifically the terms, or any parts of the terms of the document before us, that of the 1st of April, 1847, would not, in the actual condition of circumstances, be against public policy, or, in other words, contrary to law, but, setting aside this point also, I am of opinion that the language of the document in parts of it necessary to be construed and acted upon, if there is to be a decree of any kind for specific performance against the defendants, it is too vague, too uncertain, too obscure, to enable this Court to act with safety or propriety for any such purpose for this very possibly is the intention of the agents concerned, that a more formal document, not merely by way of conveyance, but by way of contract, should be prepared and executed may account. But however this may be, the plaintiffs must, I conceive, be left to proceed at law as they may be advised; they will have the benefit of the concessions for facilitating their proceedings there, which the defendants have made by their counsel.

Bethell having requested the Court for further time to consider the terms of the undertaking, the minutes of the order ultimately drawn up were as follows: "Car. The defendants, by their counsel, consenting and undertaking that, in the event of an action being, before the end of Trinity Term next, brought against them by or for the benefit or under the direction of the plaintiffs, for the purpose of obtaining damages for the breach of the alleged agreement of the 1st day of April, 1847, and such action being prosecuted with due diligence, the defendants will in such action, and for the purposes thereof, admit that on the 10th day of July, 1847, a deed was duly executed by the defendants, under their common seal, whereby they covenanted for themselves and their successors, with the late Marquis of Bute, his heirs, executors, and administrators, that they would perform all agreements, if any entered into previously to the 9th day of July, 1847, by Edward Driver, acting, or purporting to act, as their agent for the purchase of any lands from the said Marquis, to be taken by them for the intended railway, and for compensation to be made for any damage to be occasioned by the said railway, in the same way as if such agreements or agreement, if any, had been duly entered into by them under their common seal on the day of the date thereof, and as if they had then been duly authorised by law to enter into such agreement or agreements, the defendants also consenting to dispense with profert in such action; and any of the parties are to be at liberty to apply to this Court as there shall be occasion.

ROLLS COURT.

Reported by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

Wednesday, Feb. 25.

THORNTON v. ELLIS.

Will, construction—Enjoyment in specie by tenant for life—Mortmain Act—Shares in railway, whether real or personal estate.

A testator by his will made a bequest in these words "The residue of my property of every description it may be at my death I bequeath the interest and produce thereof to my sisters for life, and to the survivor of them for life, and after the death of the survivor I bequeath the said residue as follows:" viz., to two charities in mortmain. The residue consisted of a sum of money in the funds, some furniture, a small sum of cash, and twenty railway shares.

Held, that the testator's sisters were not entitled to the income of the property in specie, but that it must be converted and invested in the Three per Cents. A question as to the Mortmain Act was raised, but was deferred till after the death of the survivor of the tenants for life.

This was a suit instituted by the British and Foreign Bible Society for the administration of the estate of John Ellis, late of Park-road, Stockwell, one of the record keepers in the Prerogative Court of Canterbury. Mr. Ellis by his will, dated 12th October, 1843, made a bequest in these words:—"The residue of my property of every description it may be at my death, I bequeath the interest and produce thereof to my sisters, Elizabeth Ellis and Sarah Charlotte Ellis for life, and to the survivor of them, and after the death of the survivor to "several other persons, for life successively," and after the death of the survivor I bequeath the residue as follows, that is to say, as to one moiety thereof to the British and Foreign Bible Society, and as to the other moiety thereof to the Home Missionary Society, for the benefit of the said society, and for carrying out the designs of those institutions." The testator appointed his said two sisters the executrixes of his will. The property of the testator consisted of a sum of money (about 2,000*l.*) in the funds, some furniture, 189*l.* cash, and twenty shares in the Great Western Railway Company. The testator died in May last, and on the 17th July a letter was written by the solicitors of the British and Foreign Bible Society to the executrixes respecting the residuary estate, and on the 8th of August, without waiting for a reply, they filed a bill for recovery of one moiety of the residue, and now asked for a decree to pay in the small sum of cash in hand, and to sell and convert the twenty railway shares, and invest the produce in Consols, and to pay the costs of all parties as between solicitor and client. Two questions, however, were raised: first, whether the railway shares were to be sold or to be enjoyed by the tenants for life in specie; and, secondly, whether they constituted real or personal estate, and whether or not therefore they were within the statutes of mortmain.

R. Palmer and *Baggallay* for the plaintiffs, the British and Foreign Bible Society.

Roupell and *Beavan* for the testator's two sisters, the tenants for life, contended that though the ordinary rule was to convert personalty and invest it in Three per Cents. yet that rule yielded to the intention of the testator to give it for life to the parties in its existing state; and here the words were "of every description it may be at my death;" that is not a simple gift of the interest of the residue, but a qualified gift. It means the whole interest and proceeds thereof—"every description it may be at my death." (*Collins* v. *Collins*, 2 Myl. & K. 703; *Bethune* v. *Kennedy*, 1 Myl. & Cr. 114.) As to the other point of the Statute of Mortmain it would be concluded by *Sparling* v. *Parker*, 9 Beav. 115, 450; *Walker* v. *Mylne*, 11 Beav. 507; and *Tomlinson* v. *Tomlinson*, 9 Beav. 459, but for the cases of *Myers* v. *Perigal*, 16 Sim. 533; and *Ashton* v. *Lord Langdale*, now on appeal before the House of Lords. The estate was small, and it would be a great hardship on the tenants for life to convert, as the suit itself had been a great hardship. The principle of *Howe* v. *Lord Dartmouth*, 7 Ves. 150, did not apply, for the property is not leasehold, nor a perishable interest, but as lasting as Consols; and it is not absolutely necessary that there shall be a conversion at all events without reference to the circumstances. It is not the rule of Court to call in a good mortgage, for instance. Then again what would be done if there were no Consols; and what was done when there were none? No danger to the fund was suggested, and there was no dispute, and no occasion for a suit to absorb the fund in litigation. At all events the costs ought not to be thrown on the estate, but ought to be postponed till the plaintiffs' moiety comes into possession, and paid out of that. They referred to *Morgan* v. *Morgan*, 14 Beav. 72; *Hinves* v. *Hinves*, 3 Hare, 609; *King* v. *The Hull Dock Company*, 1 T. R. 221.

The MASTER of the ROLLS.—There is nothing to be found in this will to entitle the successive tenants for life to enjoy these shares in specie; they must therefore be sold and converted, and the proceeds must be invested in Consols. With respect to the strong observations by Mr. Beavan that these shares are an investment of a permanent nature, and that the rule of conversion and investment in Consols could not have existed prior to the existence of that stock, it is to be observed that the rule has been settled by the decisions subsequent to *Prendergast* v. *Prendergast*, 11 Jur. 989, to be the invariable course of the Court, where one interested in the property requires it, to order the property to be got in and invested in Three-per-Cent. Consols. The Court held such to be the right of the parties entitled even prior to the determination of the case of *Prendergast* v. *Prendergast*. In that case the trustees had the absolute discretion to leave the property in its existing state of investment, and having refused to exercise the discretion, the Lord Chancellor required the property to be got in and invested. I do not intend to decide anything further than that these shares must be sold, and the produce invested in Consols, as proposed by the plaintiffs. I do not determine any question as to the Mortmain Act, except that the Master's report does not, I think, conclude the question, or that exceptions were necessary. There is considerable difficulty arising in the conflict of decisions, and I am not desirous of expressing any opinion on that point, but if I were to do so I should probably be found to follow the last decision. I feel the hardship of the case as to the testator's sisters; it is certainly a great hardship that they should have to bear the costs of the suit, but that is the fault of the testator himself, and if by his will he raises a question which requires the adjudication of the Court, his estate must bear the expense. I regret it should be so, but the Court is constrained to make a decree, as Mr. Palmer suggests.

Aug. 7 and Dec. 22.

GREENWOOD v. ROBERTS.

Will—Construction—Remoteness—Parties.

Gift of an annuity to T. N. for life, and after his decease to such of his children as may be then living equally during their lives, and at the decease of any of them, the capital sum producing his or her share of the annuity, to be divided equally amongst the children of him or her so dying. T. N. had one child, R. N. living at the date of the will:

Held, that the gift over to R. N.'s children was void for remoteness.

The widow of R. N. was plaintiff:

Held, that she had a sufficient interest to support the suit.

This was a special case on the construction of a will, raising a question of remoteness. It appeared that Richard Nicholson, late of Boroughbridge, by his will, dated 18th April, 1827, bequeathed all his stocks, securities, and personal estate and effects to his brothers Thomas and Joseph Nicholson, his nephew Richard Greenwood, and his nephew Richard Nicholson, the son of his brother Thomas, upon trust immediately after his decease to appropriate and set apart so much thereof as would produce an annual dividend of 700*l.* and to pay therewith or thereout the several annuities therein mentioned, being annuities to his brother Thomas and others for life, amounting in the aggregate to 700*l.* The testator then proceeded thus:—"And from and immediately after the decease of the said annuitants or any of them (except the said Richard John Greenwood, and the son, and three first named daughters of my said sister Mary Pickup), it is my will and design to continue and extend the annuity of each of them to the persons and in manner following, that is to say, my said brother Thomas Nicholson's annuity of two hundred pounds to and amongst such of his children as may be then living in equal shares and proportions during their respective natural lives, and at the decease of any of them, I order and direct that so much principal or capital stock as had been adequate to the payment of the annuity to which the child so dying had been entitled during his or her life shall be forthwith sold and converted into money by my said trustees, or the survivor or survivors of

them, his executors or administrators, and the actual produce thereof shared and divided equally amongst the children of him or her so dying, as and when they shall attain the age of twenty-one years, with interest in the meantime to be applied for their benefit and advantage. And I give them vested interests therein. And I further direct that if any of the children of my said brother Thomas shall at his decease be dead and have left issue, that such shall nevertheless be entitled amongst them, if more than one, to the same sum of money as they would eventually have been entitled to had their parent outlived the said Thomas Nicholson the father." And the testator thereby also extended and continued the other annuities in like manner, and provided that if any of the parties therein mentioned should sell or dispose of their share previous to the time of its falling due and payable, then the interest and share of such parties should be forfeited and cease and should be applied and paid in manner thereby directed in the event of the death of such parties before the time of their legacy falling due. And after giving several pecuniary legacies the testator concludes thus: "I do hereby nominate, constitute, and appoint the said Thomas Nicholson, Joseph Nicholson, Richard Greenwood, and Richard Nicholson, executors of this my will, and also my residuary legatees revoking all former wills by me made."

The testator died on the 6th of May, 1829, and on the 13th of June following his will was duly proved by all the executors therein named, and the sum of 23,333*l.* 6s. 8d. Three per Cent. Consols was appropriated to satisfy the said annuities. The annuity of 200*l.* was duly paid to Thomas Nicholson till his death, which happened on the 16th November, 1832. Thomas Nicholson left six children him surviving, viz. his son Richard, who was living at the date of and was mentioned in the will, and five others, and no child died in his lifetime leaving any issue surviving. After Thomas Nicholson's decease an annuity of 33*l.* 6s. 8d. being one sixth-part of the said annuity of 200*l.* was paid to his son Richard Nicholson till his death. Joseph Nicholson died on the 8th of June, 1834, and no severance of the joint tenancy created in the testator's residuary estate having been made the then surviving residuary legatees, Richard Greenwood and Richard Nicholson, by indenture dated 16th April, 1847, conveyed the real and personal estate to which they were entitled as residuary legatees to John Wood, his heirs, executors, &c. to the use of, and in trust for, Richard Greenwood, as to one moiety, and Richard Nicholson, as to the other moiety. Richard Nicholson died on the 26th of June, 1847, having by his will, dated 16th October, 1841, appointed his wife, Mary Frances Nicholson, sole executrix thereof, who duly proved the same on the 31st July, 1847. Richard Nicholson had issue four children, one of whom was still-born on the 10th of December, 1825, and the other three are still living; that is to say, Frances Amelia, born 5th June, 1824, and married to William John Roberts 13th July, 1842; and Richard Thomas Nicholson and George William Nicholson, who were born respectively on the 2nd of June, 1833, after the testator's decease. A question having arisen as to the construction of the gift or bequest contained in the testator's will of the principal moneys or capital stock producing the annuity of each child of the testator's brother Thomas in favour of the children of each such child, a special case was prepared for the opinion of the Court: the question for its consideration being, whether the children of the said Richard Nicholson, or any, or either, and which of them became, upon his decease, entitled to the principal moneys or capital stock, producing the annuity to which the said Richard Nicholson was entitled during his life, under the testator's will, or to any part or parts thereof, or whether such principal moneys or capital stock upon such decease fell into and became part of the testator's residuary personal estate.

Richard Greenwood, the surviving executor and residuary legatee of the original testator, and Mary Frances Nicholson, the widow and executrix of Richard Nicholson, were the plaintiffs, and William John Roberts, and Frances Amelia his wife, and Richard Thomas Nicholson, and George William Nicholson, infants, by Thomas Burleigh Scott, their special guardian, were defendants, T. B. Scott having been appointed, by an order of the 24th July, 1851, special guardian for the purpose of concurring in the special case on behalf of the infants.

Baggallay for the plaintiffs.

Rogers for the defendants, the infants.

F. T. White for the defendants, Mr. and Mrs. Roberts.

Monday, Dec. 22.—The MASTER of the ROLLS.—The question in this case arises on the construction of a bequest in the will of Richard Nicholson, dated the 18th of April, 1827, and the question is, whether the bequest of the principal of an annuity is good as an absolute gift over after a gift for life to Richard Nicholson, one of the nephews of the testator, or whether it is void as being in violation of the law against perpetuities, and falls into the residue, or, in other words, whether the children of Richard Nicholson became entitled to their father's share under the limitations in the will. It is admitted that the gift to the children of the children of Thomas Nicholson not living at the date of the will, is void for remoteness. On the question of the right of the plaintiffs to maintain the suit, the case of *Roberts* v. *Roberts*, 2 Phil. 534, has a material bearing, that being a decision that the contingent interest of the widow of the testator was sufficient to constitute her a proper party. It is to be observed also in decisions as to parties, that they are sometimes necessary, though it may afterwards turn out that they have no interest to be enforced; and in the above case the Lord Chancellor only decided that the widow had interest enough to support the suit. The case of *Leake* v. *Robinson*, 2 Mer. 363; *Lord Dungannon* v. *Smith*, 12 Cl. & F. 546; *Blagrove* v. *Hancock*, 16 Sim. 371, have a strong bearing in this case. The real question is, whether Richard Nicholson, the nephew, took as one of a class, or as an individual; if as one of a class, then the gift over to the second class is bad, if any of them are incapable by law of taking. I am of opinion I must treat the children of him or her so dying as a class, and then the testator has given the property to a class to be determined at a future period, and after that he has given it to another class, of which some are incapable by law of taking; therefore the case of *Leake* v. *Robinson* applies, and the gift over is void for remoteness.

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

Nov. 18 *and Dec* 2, 1851.

THACKWELL *v.* GARDINER.

Married woman—Defective execution of power of appointment.

A. was indebted to B. on a bond for 1,500l. Upon the marriage of B. to C. this bond was assigned to a trustee for B. for life, for her separate use, without restraint on anticipation, and after her decease for the children of the marriage, and in default of children, for such persons as B. should, by deed, attested by two witnesses, appoint, and in default of appointment, for her next of kin. B. and C. afterwards, in 1832 and 1836, received a part of the debt. C. having opened a banking account with E., F., G. and H. became indebted to them for advances, and they, being anxious to have B.'s guarantee, prepared a letter, to which C. obtained B.'s signature. The letter was dated in April, 1843, and stated that in consideration of the bankers having advanced money to her husband, B. guaranteed the repayment thereof upon demand to the extent of 600l. and deposited the bond as a collateral security, which bond she undertook to assign to them, at her expense, when called upon to do so. The bond was accordingly deposited with the bankers. In November, 1842, K. had been appointed trustee of the settlement. In 1844 B. took out administration to A. who was then dead. In 1846 the banking partnership was changed, E. and F. remaining in the firm, and having two new partners, L. and M. C. became bankrupt. E., F., L. and M. instituted a suit for the purpose of enforcing their claim against the bond debt, claiming a right to have a legal appointment by B. in their favour, there being no children of the marriage, and charging K. with wilful default in not recovering the moneys already paid on the bond to C..

Held, that the life interest of B. was charged by the letter of April 1843, with the balance due in 1846, when the banking firm was changed, but the bill, so far as it sought to charge K. with wilful default, was dismissed with costs.

By a bond dated the 1st of March, 1827, under the hand and seal of Harriett Gardiner (afterwards the wife of James Barrett), a sum of 1,500*l.* and interest thereon, was secured to be paid by Harriett Gardiner to Charlotte Gardiner (afterwards the wife of Richard William Gardiner). By a settlement dated the 1st of October, 1829, made upon the marriage of C. Gardiner and R. W. Gardiner, the said sum of 1,500*l.* and interest was assigned to Thomas Gwillim, upon trust, after the solemnization of the marriage, to call in and invest the same as therein mentioned, and to stand possessed of the said trust moneys and securities, and the interest and dividends thereof, upon trust, to pay the interest and dividends of the said trust moneys and securities to, or permit the same to be received by, the said C. Gardiner, during her life for her separate use, or to or by such persons as she, by writing, should from time to time, notwithstanding her coverture, direct or appoint; and it was by the said indenture declared that after the decease of the said C. Gardiner, the said trust moneys and securities, and the interest and dividends thereof, should be in trust for the children or child of the said C. Gardiner by the said R. W. Gardiner, as therein mentioned; and if there should be no child of the said C. Gardiner by the said R. W. Gardiner, who should become entitled to the said trust moneys and securities under the trusts thereinbefore declared, then that the said trust moneys and securities, and the interest and dividends thereof, should remain and be in trust for such persons or person, and in such manner as the said C. Gardiner alone, notwithstanding her coverture, should by any deed or deeds, or instrument or instruments in writing, with or without power of revocation, to be by her sealed and delivered in the presence of, and to be attested by, two or more witnesses, from time to time direct or appoint, give or bequeath, and in default of such direction or appointment, gift or bequest, and so far as any such appointment, gift, or bequest, if incomplete, should not extend, in trust for the next of kin of the said Charlotte Gardiner, according to the statutes for the distribution of intestates' estates, and as if the said C. Gardiner had departed this life unmarried and intestate. In March 1836, the said James Barrett was appointed a trustee in the place of Thomas Gwillim. On the 9th of December, 1841, James Barrett died, and on the 16th of November, 1842, John Brown was appointed the trustee of the said settlement. Upon the bond were two receipts indorsed, the one for 100*l.* dated the 18th of June, 1832, and signed by R. W. Gardiner and C. Gardiner, and the other for 645*l.* 18s 11d. dated the 26th of January, 1836, and signed by R. W. Gardiner, C. Gardiner, and James Barrett. In July 1842, R. W. Gardiner opened a banking account with Thackwell, J. Webb, Spencer, and Holbrook, who, under the firm of Webb, Holbrook, and Spencer, carried on the business of bankers at Ledbury, in the county of Hereford. On the 17th of April, 1843, R. W. Gardiner owed to the said bankers, on balance of the said account, 158*l.* 17s. 9d. The bankers having declined to continue the account unless R.W. Gardiner gave security for the said balance, and the balances which might thereafter be owing from them, the following letter, signed by C. Gardiner, was delivered to the firm:—

"Hepton, 17th April, 1843.

"Messrs. Webb, Holbrook, and Spencer.

"Gentlemen,—In consideration of your paying, or having already paid the cheques of my husband, Mr. Richard William Gardiner, or otherwise advancing him sums of money, I hereby guarantee the repayment thereof upon demand to the extent of 600*l.*; and I furthermore deposit as a collateral security a certain bond, bearing date the 1st March, 1827, from Harriett Gardiner to me, which bond I undertake to assign to you at my expense whenever called upon to do so.

"I am, Gentlemen, your obedient servant,

"C. GARDINER."

On the same day, the bond was deposited by C. Gardiner with the said firm. On the 31st of December, 1845, R. W. Gardiner owed on the balance of his account, 715*l.* 15s. 5d. On the 1st of January, 1846, Holbrook retired from the partnership, and a new partnership was formed between the present plaintiffs, Thackwell, J. Webb, Spencer, E. J. Webb, and Moore, and the debts and effects of the former partnership (including the said debt of 715*l.* 15s. 5d.) became the debts and effects of the new partnership. On the 17th of February, 1847, a fiat in bankruptcy was issued against R. W. Gardiner, and he was thereunder declared bankrupt. The plaintiffs proved their said debt under the fiat, and by the dividend paid thereunder, and sums received from sureties, the debt was reduced to 321*l.* 6s. 2d. which sum, with interest thereon from 17th January, 1847, and costs, the plaintiffs now claimed to be due to them. The original bill in this case was filed by the plaintiffs for the purpose of obtaining a declaration by the Court that by virtue of the said letter and deposit of the bond, they had a good equitable lien for the amount remaining due to them from R. W. Gardiner upon the balance of his banking account, upon such rights and interests of C. Gardiner, to and in the said bond and the moneys remaining secured thereby, as under the settlement of the 1st of October, 1829, she was entitled for her separate use, or which she had power to appoint or dispose of; for an account to be taken of what was due upon the balance of the said banking account, &c.; and for the sale of C. Gardiner's said rights and interests; or that she might be decreed to execute to the plaintiffs an assignment and appointment of her rights and interests, subject to redemption, &c. and for foreclosure. By the answer of Mrs. C. Gardiner, she stated that the bond had been deposited with the bankers by R. W. Gardiner, without her knowledge or consent; and that in April 1843 R. W. Gardiner hastily and suddenly placed before her some paper written, and by him stated to be written by Mr. Spencer, one of the said firm, and requested and urged her to sign the same immediately, saying that he, the said R. W. Gardiner, was in a great hurry, that the bank had become very troublesome, and that if she did not at once sign the paper put

before her, it would go badly with them both, or words to the like purport and effect; and that in consequence of his urgent request she did sign such paper, but without having read or been made acquainted with its contents. From the evidence of Mr. Holbrook, it appeared that the body of the letter was written by a clerk of the bank, as the deponent believed, in his presence, and that it was then delivered to Mr. Gardiner to get signed by Mrs. Gardiner, and when signed was returned to the bank by Mr. Gardiner, with whom all the communications on the subject of the transaction had taken place. A supplemental bill was afterwards filed, stating, among other things, that on the 27th of July, 1843, letters of administration of the estate of Harriett Barrett were granted to Charlotte Gardiner by the Consistory Court of Hereford, and that on the 17th of May, 1844, like letters of administration were granted to Charlotte Gardiner by the Prerogative Court of Canterbury, and charging Brown with wilful default, in not compelling payment of the two sums of 100*l.* and 615*l.* 18s. 11d. and praying accounts of Harriett Barrett's estate, and that Brown might be decreed to pay the two sums of 100*l.* and 615*l.* 18s. 11d. and such part of the personal estate of H. Barrett as might be found to have been misapplied by her administratrix, &c.

Bacon and *Bird* for the plaintiffs.

Willcock and *Haldane* for R. W. Gardiner.

Russell and *Torriano* for Mrs. Charlotte Gardiner.

Wigram and *Archibald Smith* for the defendant Brown.

Bacon in reply.

The following authorities were cited:—*Owens* v. *Dickenson*, Cr. & Ph. 48; *Hopkins* v. *Myall*, 2 R. & M. 86; *Morris* v. *Lane*, 1 Y. & C. C. C. 380, and 2 Sugden on Powers, 94.

The VICE-CHANCELLOR.—There are various points raised in this case, some of which I think it right to postpone my opinion upon; some of them I dispose of at once. The original bill is filed by the plaintiffs as bankers, asserting their title under a certain instrument of deposit against these defendants seeking to have an interest in the bond. A supplemental bill has been filed, proceeding upon that, and assuming that they have a title in the bond, seeking, as it were to realise the amount due on the bond, partly calling on Mr. Brown, the trustee, to make good some payments that had been made by the obligor on the bond, and partly to administer the estate of the obligor for the purpose of recovering the balance due on the bond, and seeking relief against Mr. Brown, the trustee, on the ground of wilful default. I have already said, with respect to one part of the wilful default charged against Mr. Brown, I can see no foundation whatever for it, because one part of the title of the plaintiffs proceeds on this, that Mrs. Gardiner dealing for value was able to make over the corpus of the fund. It appears that long before Brown became a trustee payments were made on account of the bond by the obligor to Mrs. Gardiner, for which Mrs. Gardiner had joined with her husband in a receipt. Surely she was able to join with her husband in receiving part payment of what was due on the bond. Nobody claiming under her can possibly dispute the propriety of those payments. Then there is a further case of wilful default made, that Mr. Brown after his appointment as trustee, allowed the money to remain out the hands of the representatives of the obligor, who was dead, and that he ought to have taken proceedings to have compelled the payment. The husband of Mrs. Gardiner, the personal representative, had become bankrupt; and it was alleged that on that ground there may be a loss; but I think this charge of wilful default admits of the same answer. The bond was to be paid out of the assets of the obligor, Mrs. Gardiner being the personal representative, and of course any claim in respect of the assets must have been a claim to be asserted against her and her husband. Her consent would be a complete justification of anything that Brown did; and it must be supposed, that if Mr. Brown forebore to institute proceedings against her and her husband, that that was a proceeding which had her concurrence; and, therefore, it appears to me the parties claiming under her cannot complain of Brown's conduct in not taking those proceedings. Therefore, it appears that so far as this bill seeks to charge Mr. Brown with wilful default, the case fails, and that part of the supplemental bill must be dismissed, and, I think, with costs. Then it is said on the other side, that the title of the present plaintiffs is not sufficiently made out to sue; that the persons who were bankers at the date of the memorandum on which the plaintiffs proceed were four persons, who constituted the firm, and only two of those persons are plaintiffs, and that two others have been joined with them. Assuming there is interest enough, upon which I do not give an opinion, and that the firm had a right to sue on the deposit, that right has continued in two of them, present plaintiffs, and I think the admission read by Mr. Bacon is quite sufficient to sustain the right of the present firm to sue, the objection in that view resolving itself merely into this, that the two persons having a right to sue are misjoined with persons whose right to sue was not proved. That is quite a different point from the point taken by Mr. Russell, which was this, that the security, which I must consider was a security given to four, was a security given to them at the time they were partners, and would not be a security for an altered firm. That is one of the points as to which I shall consider how the Court would direct a decree. The main point in the case is, whether this is one of those cases in which the Court would relieve against a defective execution of the power by a married woman, and that point, supposing the plaintiffs to make out their title, would depend on whether they could fasten themselves on the corpus of the fund, or for a life interest only? I reserve my judgment on that point. There are one or two other points,—one on the Statute of Frauds, and one or two others that I should like to consider before I dispose of the case. The bill is dismissed with costs, so far as it seeks to charge the trustee with wilful default, and I think the objection which has been urged to the form of the supplemental bill is an objection which resolves itself merely into a question of costs. I think if there is a decree to be made in the original bill there must be in the supplemental bill also. It appears to me that Mr. Brown is a necessary party, because he is the person to whom the bond was to be made over on the trusts of the settlement.

Tuesday, Dec. 2, 1851.—The VICE-CHANCELLOR.—In this case of *Thackwell* v. *Gardiner*, the plaintiffs' title is founded upon a letter of the 17th of April, 1843, signed by the defendant, Mrs. Gardiner, and addressed to Messrs. Webb, Holbrook, and Spencer, which is in these words:—"Gentlemen, In consideration of your paying, or having already paid, the cheques of my husband, Mr. Richard William Gardiner, or otherwise advancing him sums of money, I hereby guarantee the repayment thereof upon demand to the extent of 600*l.* and I furthermore deposit, as a collateral security, a certain bond, bearing date the 1st March, 1827, from Harriett Gardiner to me, which bond I undertake to assign to you at my expense whenever called upon to do so. I am, gentlemen, your obedient servant, C. GARDINER." It was contended by the defendants that this letter states no consideration moving to Mrs. Gardiner, and that for that reason it cannot be put in force as against her; and the cases of *Wain* v. *Warlters*, 5 East, 10; *Raikes* v. *Todd*, 8 Ad. & Ell. 846, and other cases, were referred to. It is to be observed that the instrument in question is not a mere letter of guarantee. It purports to deposit with the bankers as a collateral security the bond which is the subject of this suit; and it cannot be doubted that a conveyance pledge made by one man as a security for the debt of another, is supported by sufficient consideration. The plaintiff sues on Mrs. Gardiner's letter as an equitable assignment or appointment, and, viewed in this light, the decisions on the 4th section of the Statute of Frauds do not appear to me to have any material bearing on the present case. The next question is as to the effect of the instrument. Mrs. Gardiner, under the settlement of October 1829 is entitled to the income of the money secured by the bond for her separate use for her life without any restraint on anticipation. To the extent of this interest she is to be regarded as a feme sole, so that her life interest is bound by the security given to the bankers. Subject to this life-interest, and in default of issue of the marriage (and it appears there are none) the trust-moneys were to be held in trust for such person or persons, and in such manner as Mrs. Gardiner alone, "notwithstanding her coverture, should by any deed or deeds, or instrument or instruments in writing, with or without power of revocation to be by her sealed and delivered in the presence of and attested by two or more witnesses, from time to time direct or appoint, give or bequeath, and in default of such direction or appointment, gift or bequest, and so far as any such direction or appointment, gift or bequest, if incomplete, should not extend, in trust for the next of kin of the said C. Gardiner, according to the statutes for the distribution of intestates' estates, and as if the said Charlotte Gardiner had departed this life unmarried and intestate." It is contended by the plaintiffs that Mrs. Gardiner's letter operated as an execution of this power in favour of the bankers, who, it is said, as creditors or purchasers for value, are entitled in this Court to have an execution of the power, though defective for want of the formalities prescribed, established in their favour. There is no doubt that this Court will aid the defective execution of a power in favour of a creditor, or a purchaser, and that it will do so, although the donee of the power be a married woman. But the Court in such cases must be satisfied that the formalities which have not been observed, are no more than matters of form, and that the donee of the power has not by their non-observance been deprived of any of the protection which a due exercise of the power would have afforded her; and the Court looks with especial jealousy on a transaction in which the wife may have acted under the influence of her husband. The case of *Hopkins* v. *Myall*, referred to in the argument, illustrates the principles of this Court in this respect. In the present case the plaintiffs' case proved nothing beyond Mrs. Gardiner's signature to the letter. Mrs. Gardiner, by her answer, states that her husband placed the letter hastily and suddenly before her, saying it had been written by Mr. Spencer, one of the banking firm, and wished her to sign it immediately, saying that he was in a great hurry, and that the bank had become very troublesome, and that, in consequence of his urgent request, she signed it. In support of this case she has examined Mr. Holbrook, who proves in substance that he and his partners were desirous of having Mrs. Gardiner's guarantee, and that the body of the letter was written by a clerk of the bank, as he believes, in his presence, and that it was then delivered to Mr. Gardiner to get signed by Mrs. Gardiner, and when so signed, was returned to the bank by him; that all the communications on the subject of the transaction took place with Mr. Gardiner, and that he never saw Mrs. Gardiner on the business at all. It thus appears that Mrs. Gardiner's signature was obtained by her husband for his own purposes without that protection against his influence which the power contemplated in requiring any appointment by her to be made in the presence of, and attested by, two witnesses; and I am of opinion that the Court cannot regard the power as duly exercised to bind Mrs. Gardiner, as if she had signed it in the presence of witnesses. The consequence of that will be a declaration that the life interest of Mrs. Gardiner, under the settlement of the 1st October, 1829, and the bond of the 1st March, 1827, was charged by the letter of the 17th April, 1843, in favour of the banking firm of Messrs. Webb, Holbrook, and Spencer, and that such charge included any interest, or arrears of interest then due on the bond; and there must be a reference to the Master to inquire and state to the Court whether any and what balance was due at the time when the banking firm was changed, the security being only to the existing firm, and whether any or what balance on that day was due from Mr. Gardiner to the banking firm of Webb, Holbrook, and Spencer, in respect of their having paid or otherwise advanced him sums of money, and whether any such sum, or any or what part thereof, still remains due. That is the decree the Court would make on the original bill; and with respect to the supplemental bill, I think it right to dismiss it, so far as it seeks to charge the trustee with wilful default.

Wednesday, May 5.

STEAD *v.* BANKS.

Foreclosure—Judgment creditors.

The Court will make a decree of foreclosure as against judgment creditors of the mortgagor, fixing one time for all of them to redeem.

This was a claim filed by the first mortgagee, of certain freehold, leasehold, and copyhold hereditaments, against two subsequent mortgagees, some judgment creditors of the mortgagor, and the mortgagor for the purpose of obtaining a foreclosure.

Bazalgette appeared for the plaintiff, and submitted that as to the judgment creditors there should not be successive periods fixed for their right to redeem, but that one time should be mentioned in the decree for all of them.

L. Field, for the two subsequent mortgagees, consented to an immediate foreclosure decree.

The VICE-CHANCELLOR said, that the decree might be made as proposed. The only possible inconvenience would be if more than one of the incumbrancers were to go to the Rolls at the time named prepared with money to redeem, but if that should happen, the Court would, upon application, set it right. Judgment creditors ought not to stand exactly in the position of parties who advanced money on the security of the property. The decree would be for an immediate foreclosure against the first and second mortgagees, and the ordinary decree against the mortgagor and the judgment creditors together.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. HENRY COOKE, Esq. Barrister-at-Law.

Saturday, March 20.

GREGORY *v.* WILSON.

Agreement for lease—Specific performance—Forfeiture—Breach of covenant.

An agreement was entered into to take a lease of land, and to build a house, and when built, to repair and insure, and that the lease should contain a proviso for re-entry on nonpayment of rent or nonobservance of covenant. No lease was executed, but one was prepared, in the draft of which the tenant made pencil alterations, but not affecting the covenant to repair, and insure in some office. The tenant entered, built, and remained in

possession thirty years. The rent fell into arrear, and no insurance was effected. The landlord gave notice that he should proceed by ejectment for a breach of covenant; whereupon the representatives of the lessee, who had died, filed a bill praying an injunction to restrain the action being brought, and praying a specific performance of the agreement:

Held, that as the lessor could have determined the lease, if it had been executed, for breach of the covenants, specific performance ought not to be decreed.

The bill in this case was filed by Barnard Gregory and wife for the specific performance of an agreement for granting a lease. The statements in the bill were, that in 1813 Lady Wilson was seised for her life, and that Sir Thomas Maryon Wilson, her son, was seised in remainder in fee-simple, of a certain piece of land at Hampstead, in the county of Middlesex; that John Thompson, deceased, entered in that year into a contract with the agent of these two persons for the grant of a lease of part of the same piece of land for seventy-five years, for the purpose of a dwelling-house being erected by the lessee thereon; that a lease should be executed for the term of seventy-five years from the 29th of September, 1814, at the yearly rent of 42*l.*; and that the lessee should build a substantial dwelling-house on the land, at a cost of not less than 1,500*l.*; that a lease was prepared pursuant to the contract, but was never executed; that the draft was prepared, wherein various alterations were made in pencil by the lessee; that the lessee entered on the land, and expended, with the full knowledge of Lady Wilson and Sir Thomas Maryon Wilson, a sum not less than 4,000*l.* in the erection of a dwelling-house, with outbuildings, stables, and other erections, which were thereafter called or known as "Frognall Priory;" that Lady Wilson died in 1818, leaving her said son surviving, who, by his will, dated in 1806, devised his freehold estates to his eldest son for life, with remainder to his sons and daughters and their issue, with divers remainders over; that the said Sir Thomas Maryon Wilson died in 1821, leaving his eldest son, the tenant for life under his will, the present Sir Thomas Maryon Wilson, surviving; that the lessee, John Thompson, remained in quiet possession of the premises down to the year 1843, when he died. The bill then stated various legal proceedings in the Ecclesiastical Court respecting Mr. Thompson's will, and the ultimate grant of probate to Mrs. Margaret Gregory, the wife of Barnard Gregory, and proceeded to state, that on the 19th of March, 1847, a notice was served by the present Sir Thomas Maryon Wilson, as the lessor, to quit and deliver up possession of the premises at Michaelmas then next; that an action of ejectment was threatened, if compliance was not made with the demand, and it was prayed that Sir Thomas Maryon Wilson might be restrained from bringing or prosecuting any action of ejectment for the recovery of the premises, and that he and all other necessary parties might be decreed specifically to perform the agreement of 1813, by a grant of a lease in conformity therewith. The defendants (Sir Thomas Maryon Wilson and others), by their answer, said that the agreement was made for a lease containing the usual covenants to pay rent, to repair, to insure, and other ordinary stipulations: that the rent was in arrear, that the premises were out of repair, and that no insurance had ever been effected, and, therefore, that had there been a lease granted, it would have been forfeited by reason of the nonperformance of covenants, and agreeably to the power of re-entry for breach of the same. The draft of the lease, as prepared by the agent of the lessor, was proved in the cause, and this contained a covenant by the lessee to repair and keep in repair; for the lessor to have liberty to enter and view the state of repair, and to have power to distrain for all expenses he should be put to in repairing, in case he should do the repairs: that the lessee should insure in the Sun Fire-office, in the name of the lessors, and deposit the policy with, and hand the receipts for the premium to the lessor: that he would pay the rent of 42*l.* And it was mutually covenanted and agreed, that if the lessee should fail to pay the rent or to observe the covenants, the lease should be void to all intents and purposes; and it should be lawful for the lessor to re-enter and to evict him. On this draft lease it was proved Mr. Thompson had made many pencil alterations, but none of them related to the covenants to repair, or to the right of re-entry; and that relating to the insurance was altered so as to be effected in the names of both lessor and lessee, and to be in any office in London or Westminster.

Evidence was entered into as to the state of the external repairs, the several witnesses differing as to the amount of money necessary to be laid out, but all proving that the premises were out of repair. No evidence was offered of the insurance having been effected since 1836, nor did the plaintiff attempt to prove the payment of rent after 1845, or thereabouts; but the defendants produced evidence shewing that the representatives of the lessees, namely, the plaintiffs, Mr. and Mrs. Gregory, and their servants, obstructed the agents of the landlord when they went for the purpose of viewing the premises in order to ascertain the actual state of repair internally.

Bethell and *W. P. Murray* for the plaintiffs.—None of the agreements on which the defendants insist, formed any part of the original contract, for none of them were ever definitively consented to, but, on the contrary, Mr. Thompson, by his pencil alterations, shewed that he had not come to any precise and definite agreement. But even supposing this were not so, how can the Court, after such a lapse of time, and after such a degree of acquiescence refuse to throw its protection round a lessee who has expended money in building a house, and now is threatened with ejectment? Lapse of time, acceptance of rent, and every conceivable form of acquiescence, stand in the defendant's way. It is to be remarked, that in all cases where this Court has refused its assistance to a lessee to resist such an aggression of his landlord, there has been a lease duly executed, and not a mere contract; and more especially a contract undefined in its terms and uncertain in its stipulations. When a tenant, under a legal form of instrument, obstinately refuses to repair, the Court will no doubt deny to him its aid to defend himself against such an attempt; but no such case is shewn here, even if the actual lease were granted. The draft lease as to the covenant to insure being altered, shews that the terms in that respect were unsettled. The cases of *Hill* v. *Barclay*, 18 Ves. 60, and of *Reynolds* v. *Pitt*, 19 id. 134, were cited. Other points were also taken, which are referred to in the judgment of the Court.

Walpole and *W. M. James*, for Sir T. M. Wilson.—It is quite plain that the lessor was always willing to grant, but the lessee was always reluctant to have the lease; and as events have happened which, if they had occurred after the granting of the lease, would have worked a forfeiture, the Court will not lend its aid to the lessee to enforce a specific performance. To enforce a performance of an agreement, and thereby compel the execution of a lease which is in fact forfeited, would be an absurdity; and therefore the plaintiffs have ventured to ask for an injunction against the lessor pursuing his legal rights, and enforcing his legal remedies. With regard to the alleged waiver, it is to be remarked, that the covenants which have not been performed, have been continuing covenants, and therefore the breaches of them since the death of Mr. Thompson,—and they have been broken since that event, cannot be said to have been acquiesced in; on the contrary, the notice served on the lessees in 1847, shews the fact to be otherwise.

Rogers and *Swift*, for the remaindermen.

Bethell replied.

The VICE-CHANCELLOR.—The question in this case, under the particular circumstances, is, whether a specific performance of the agreement to grant a lease will be decreed; and the plaintiff argues that a Court will so decree; while, on the other hand, the defendant says it will not, because default which has been made in effecting insurances, and performing the repairs agreed to be done, amount to breaches of the covenants which would have been contained in the lease made in pursuance of the agreement, if such lease had ever been executed; and that they are breaches which, if the lease had been executed, would have entitled the lessor to re-enter and take possession of the premises. The plaintiffs insist that the cases where the Court has refused relief to tenants against the consequences of breach of their covenants, have only been where the legal relation has been fully established, and that such a relief has never been refused in cases like the present, where the rights of the parties are wholly in contract. They insist, moreover, that there has been a waiver on the part of the lessor; and that as to repairs, it is only in the case of a tenant obstinately refusing to perform his covenant that the Court declines to relieve against the breach. For the first argument no authority was cited, and I do not see any principle upon which the distinction can be maintained. The plaintiffs, and Mr. Thompson, under whom they claim, took possession of the premises under the contract, and have had the full advantage and benefit of that contract. Why should not those who have the benefit of the contract have also the liability? It is true, that until the legal relation is fully established, the lessor could not have the stipulated remedy; but there are many cases which shew that the Court will not interfere to create a legal relation, which, under the circumstances, could be dissolved immediately. Then the plaintiffs say that the covenant to insure was never finally settled, and rely on the draft lease, and the fact of the pencil alterations upon it made by Mr. Thompson. Looking however, at the nature of the alterations, and at the whole negotiation, it is clear that it was fully agreed that the lease should contain some covenant to effect the necessary insurances and repairs, and for the avoidance of the lease in case of neglect to insure and repair, and the rights of all parties must now be on the same footing as if a lease had been formally executed containing some covenant, on a breach of which the lessor would now have had a right to enter. It was then contended, that even if the lessor were in a position to avoid the lease, in consequence of the breaches of the covenant, or intended covenants, he had lost the right to do so by his continued acquiescence in the tenant's conduct. But the covenants are continuing covenants, and there is no ground for extending the acquiescence and waiver up to the present time, or beyond the life of Mr. Thompson. When, as in the present case, the ultimate right which is sought to be restrained is the legal right, it is necessary to make out a case fully for so doing. A Court of Equity will, no doubt, interfere in a proper case to control the legal right; but, as I said before, a strong case must be made out to induce it to do so. It was also argued, that the consequences of breach of covenants to repair and insure, and other covenants intended to be in this lease, would be relieved against, unless such breaches were obstinate and wilful: that considerable repairs have at one time been executed, and that the plaintiffs were only delayed in executing thorough repairs by the long litigation which ensued on the decease of Mr. Thompson. The cases of *Hill* v. *Barclay*, and *Reynolds* v. *Pitt*, were relied on. But it is obvious, from Lord Eldon's expressions in those cases, that his inclination was against extending relief to tenants from the forfeiture of their leases through non-observance of covenants. His lordship says, "There may be cases where, morally speaking, a Court of Equity would interfere with much less reluctance than in another sort of case;" and he then proceeds to distinguish wilful and obstinate refusals to comply with covenants from the cases of mere neglect or accident: but he does not distinguish them so far as to say that the Court will, in all cases of accident even, relieve against the breach. It was said that the Court will not permit any advantage to be taken of any default in observance of the covenant after the notice to quit has been given, for that the lessor taking upon him to determine the tenancy at a particular time, must be held to shew that he had a right then to determine it; and *Dowell* v. *Dew*, 1 Y. & C. C. C. 345, was cited for that. But that case by no means carries out the consequence attempted to be put upon it. I do not understand the expressions of the Vice-Chancellor at page 361 to mean that the tenant is relieved from all obligation of looking to his covenants on the mere ground that a notice to quit is pending. On the contrary, so far from a notice to quit being a waiver by the landlord of all subsequent observance of the covenants by the tenants, I am disposed to treat it as a notice by the lessor to the tenant to be more vigilant in the performance of his covenants. A tenant who had been lulled into negligence might, with far more justice, complain of any advantage which was attempted to be taken of that negligence; and the plaintiffs would have a far better ground for asking the favourable attention of the Court, if they had immediately gone to work to remedy, as far as possible, the breaches complained of. It is clear, moreover, that the refusal on the part of the plaintiffs to permit the surveyors and agents of the lessor to enter and view the state of repair of the premises, was in itself a material breach of covenant on their part. It is to be observed, that the covenants to repair generally, and the covenant to repair after notice, are separate and distinct covenants; and the cases of *Doe dem. Morecraft* v. *Meux*, 4 B. & C. 608; and *Hill* v. *Barclay*, to which I have before referred, shew this. As to the ground of hardship which was endeavoured to be set up, I do not think it is entitled to much weight. The observations of Lord Cottenham, in the case of *Mundy* v. *Joliffe*, 5 My. & C. 177, seemed to be relied on, where he says, "If, assuming the existence of the agreement, the landlord never complains of the conduct of his tenant, but permits him to act on the faith of the contract, it would require a strong case to enable the landlord to raise such objections for the first time when the tenant claimed the benefit of it." And I agree that a strong case would be necessary; for by refusing a specific performance of the agreement, this Court takes upon itself to determine the materiality and effect of the breaches in question, and refuses to allow the question to be tried at law; and therefore the Court must, as Lord Cottenham says, be well satisfied of what the issue of a trial at law would be as to the breach of covenant, and the consequences. Such being the principles which are found to guide the decision of the Court in such cases, it remains to apply them to the present case. And here there is no evidence of any insurance whatever having been effected from the year 1836 down to the date of the notice to quit, a period of eleven years; during all which time the lessor was deprived of that protection which he had a right to expect; and even before 1836, the evidence goes to shew that the insurance was irregularly kept up, and deficient in

amount. As to the state of repairs, there is not an exact agreement in all particulars among the surveyors who have been examined; but they agree in this, that the premises were out of repair in 1813; that their condition was still worse in 1845; and that this state of things still continued in 1817 and 1848, notwithstanding the repairs, to some extent, which were actually executed in 1841. Surveyors employed by the lessor, and examined by him in this cause, have proved that they were repeatedly prevented by the plaintiffs from inspecting the state of repair of the interior of the premises; a refusal which was in direct contravention of the covenant in the draft lease, to permit the lessor and his agents to enter and view the premises comprised in the lease. On the whole, therefore, I am of opinion that this bill must be dismissed, and as to all the other defendants, except Sir Thomas Maryon Wilson, dismissed with costs. As to Sir Thomas Maryon Wilson, since he has by his answer disputed any valid agreement for a lease having ever been entered into at all, the bill must be dismissed as against him, but without costs.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

Saturday, November 22.

Re HALL *v.* THE NORFOLK ESTUARY COMPANY. (a)

Transfer of shares—Payment of calls—Refusal of Secretary to register deed.

The secretary of an incorporated company refused to register, pursuant to sec. 15 of 8 & 9 Vict. c. 16, a deed of transfer of shares, upon which calls were still unpaid.

Held, that he was justified in so doing.

This was a rule calling upon the secretary of the Norfolk Estuary Company to shew cause why a writ of mandamus should not issue directed to him, commanding him to enter and register a memorial of a deed of transfer of twenty-four shares in the said company, in the name of Robert Wheble Bennett.

It appeared from the affidavits in support of the rule, that the Norfolk Estuary Company was incorporated by stat. 9 & 10 Vict. c 388, which enacted that the Companies Clauses Consolidation Act, 1845, 8 & 9 Vict. c. 16, should be incorporated into and form part of it; that 20*l.* per share should be the greatest amount of one call which the company should make on the shareholders, and that the number of shares into which the capital of the company should be divided should be 10,000, and that one month's notice at the least should be given on each call; that Robert Wheble Bennett was possessed of twenty-four shares in the company, and on the 13th of March last sold them to James Hall, and executed an assignment of them, bearing that date; that the vendor's broker on the same day lodged the deed of transfer with the secretary to the company for registration; that on the said 13th of March the vendor had paid all calls that had been made or were then due in respect of his said shares; that on the 27th of May the attorney for the vendor wrote a letter to the secretary of the company, demanding that the deed should be registered in the name of the vendees; that afterwards, the attorney for the vendor had an interview with the secretary, who required the city address of the purchaser, and stated that no such person as James Hall could be found at the place described in the deed of transfer, whereupon the attorney for the vendor stated that James Hall still resided there; that on the 11th of June the attorney wrote another letter to the secretary, stating that all the calls upon the shares had been paid up, and objecting to give a second address; that on the 13th of June the attorney for the vendor saw the secretary, when the secretary declined to register the deed, and it was returned to the attorney without being registered. The affidavit of the secretary of the company, in opposition to the rule, stated that on the 5th of February last, a call of 2*l.* 10*s.* per share was duly made by the directors of the company, pursuant to the powers of the Acts of Parliament enabling them in that behalf, upon all the shares in the said company, including the said twenty-four shares; that on the said 13th of March the said call in respect of the twenty-four shares remained wholly due and unpaid up to the 14th of April last.

Phipson shewed cause.

Wordsworth, contra.

The following cases were cited:—*Stikeman* v. *Dawson*, 16 L. J. 205, Chan., *Ex parte Tooke*, 18 L. J. 343, Q.B; *Sayles* v. *Blane*, 19 L. J. 19, Q.B.

PATTESON, J.—The question turns upon sec. 16 of the stat. 8 & 9 Vict. c. 16, which provides that no shareholder shall be entitled to transfer any share until all calls are paid. By sec. 14 the transfer of shares is to be by deed duly stamped; and then sec. 15 provides for the delivery of the deed to the secretary for registration. It seems, therefore, that the transfer of the shares and the deed are synonymous; and that the intention of the Legislature was to prevent any shareholder from transferring his interest in any shares except by deed, or until the calls due upon them should have been paid. Until the calls have been paid, therefore, the party has no right to have the deed registered; and the company are warranted in refusing to register it. They might, indeed, find themselves in a situation of some difficulty if they were to register a transfer which they knew to be ineffectual in consequence of calls not having been paid. This deed was not delivered as an escrow to take effect upon the payment of the calls; in which case a different question might have arisen.

COLERIDGE, J. concurred. The effect of sec. 16 is, that whilst calls remain unpaid the shareholder has no right to transfer them; and as on the 13th of March a call was unpaid, the deed of transfer of that date is altogether void for the purpose of registration by the company.

WIGHTMAN, J. concurred. *Rule discharged.*

(a) This case has been accidentally delayed.

Tuesday, April 20.

NORTHEY *v.* JOHNSON.

Mining copartnership—Cost-book principle—Verbal transfer of shares—Liability to third persons.

In an action by a creditor for goods supplied to a mine, conducted upon the cost-book principle against the defendant as a shareholder, it appeared that the goods had been ordered by the superintendent after the defendant had verbally agreed to transfer his shares to another partner, and had withdrawn from the partnership, into which he had originally entered by verbal agreement only. The learned judge told the jury, that if before the goods were ordered the defendant had agreed by word of mouth to transfer his shares to another shareholder, who had agreed to take them, or if he had given notice to the rest of the shareholders that he relinquished his shares to them, they had no longer any authority to pledge his credit:

Held, no misdirection.

This was an action for goods supplied to a mine in Cornwall, upon the order of one Dumont, the superintendent of the mine, and also a shareholder. At the trial, which took place before Erle, J. at the last assizes for the county of Cornwall, the only question was whether the defendant was a shareholder at the time when the goods were ordered. It appeared that the mine was conducted upon the cost-book principle, that the defendant had come into the partnership upon a verbal contract to take shares; and that before the goods were ordered, he had entered into a verbal agreement to give up his shares to Dumont or to relinquish them to the rest of the company. Several mine agents were called to prove that by the custom shares in such a mine could only be transferred by some written instrument; but the effect of their evidence was merely that they considered it prudent to get a writing. The learned judge, in summing up told the jury that if, before the contract with the plaintiff, the defendant agreed by word of mouth to transfer his shares to Dumont, and Dumont agreed to take them, or if the defendant gave notice to the shareholders that he relinquished his shares to the rest of the company, then that none of the shareholders, after that, had authority to pledge his credit, and the defendant was not liable. The jury found a verdict for the defendant.

Crowder now moved for a rule nisi for a new trial, on the ground of misdirection. Although the custom was not proved, still the general law as to the implied authority of one partner to pledge the credit of another applies to this case; because the mere verbal agreement amongst the partners themselves could not affect the rights of third parties, creditors of the mine, and, at least, some written notification to the purser or other officer of a change in the adventurers would be necessary in order to put an end to the liability of a shareholder to such third parties.

Lord CAMPBELL, C.J.—Mr. Crowder is obliged to admit that the custom was not proved to the requisite extent, and the question therefore is, whether enough has been done by parole to get rid of the defendant's liability; and it seems to me that enough has been done and that the verdict is properly found for the defendant; for he neither held himself out as a shareholder, nor did he authorise any one to pledge his credit.

WIGHTMAN, J.—The ground of this application is, that some formal act was necessary to get rid of the defendant's liability, and that there should be a written notice to the purser of a change in the adventurers; but I am not aware of any law to compel the shareholders in such an undertaking to pursue that course.

ERLE, J.—I think that it is a very important principle that a man cannot be made liable upon a contract, except it be made by himself, or by his authority. Here it is said that the defendant contracted by Dumont as his agent; but Dumont's authority to pledge his credit rested upon his consent to join in the mining undertaking; and I am of opinion that when one, who has by parole consented to join in such an undertaking, dissents from the mode in which it is conducted, or desires to withdraw, he has a clear right to give notice of that to the other partners, and to say, "You have no longer my consent to pledge my credit for the purposes of this undertaking. I am liable up to the present time; but I give you notice that I will not be liable upon any contracts which you may henceforth make." The usage proved by the pursers or mine agents was merely one of prudence, and does not create a law, or alter the rights of parties. But, although a shareholder may in this way get rid of his liability to third parties, this would not necessarily vary the mode of transferring the shares, or affect the question of title to them; and it must be understood that my observations apply to parties who have by agreement come into the working of a mine in the manner proved in this case.

CROMPTON, J. concurred. *Rule refused.*

CHATFIELD *v.* COX.

Stamp agreement relating to the sale of goods.

A. being indebted to B. the latter wrote to the former, requesting him to supply C. with goods to the amount of the debt, and charge the same to his credit. Upon which A. wrote. "In consideration of the above, I agree to supply goods to your order."

Held, an agreement relating to the sale of goods within the exemption in the Stamp Act.

Assumpsit on a bill of exchange for 47*l.* by indorsee against drawer.

Plea.—That Messrs. Cleaver and Watson were indebted to the defendant in 48*l.* and that it was agreed between the plaintiff, the defendant, and Cleaver and Watson, that the defendant should discharge Cleaver and Watson, that they should deliver to the plaintiff Roman cement to the value of 48*l.* and that plaintiff should accept, and that he did accept, this agreement in satisfaction of the note. That agreement being traversed, the defendant at the trial, which took place before Lord Campbell, C.J. in Middlesex, during the sittings after Hilary Term, produced in evidence in support of the plea an unstamped document to the following effect. It was addressed to Messrs. Cleaver and Watson, and signed by the defendant, and contained these words: "I request you to supply Mr. Chatfield with cement to the amount of 48*l.* and to charge the same to my credit standing with you." Under which was written: "In consideration of the above, we agree to supply Roman cement to your order." Signed "Cleaver and Watson." It was proved that the defendant had built a house for Cleaver and Watson, and that the arrangement was that they should supply the plaintiff with Roman cement to discharge a debt of 48*l.* due from them to the defendant. It was objected that the document was inadmissible for want of a stamp; but the learned judge received it, and a verdict was found for the defendant on that issue.

Hawkins now moved to enter a verdict for the plaintiff, pursuant to leave reserved. This is not within the exemption in the Stamp Act as an agreement relating to the sale of goods. It was a delivery of goods in discharge of an antecedent debt, and the sale of goods was not the primary object of the agreement. (*Smith* v. *Cator*, 2 B. & Ald. 778.)

Lord CAMPBELL, C.J.—I think that this is an agreement relating to the sale of goods, although no money was to be paid after the goods were delivered. There was an existing debt, in satisfaction of which the goods were delivered; and it is a sale of goods where the property is transferred for a pecuniary consideration. I do not think it makes any difference that the goods are to be paid for by an existing debt, or by a set-off.

WIGHTMAN, J.—The question of stamp depends upon the terms of the instrument; and this instrument would certainly be good evidence in an action for goods sold.

ERLE, J.—If a debtor has goods to sell, and he and his creditor agree that they shall be delivered in satisfaction of the debt, and they are so delivered, I apprehend they are goods sold.

CROMPTON, J. concurred. *Rule refused.*

Friday, April 23.

SMITH *v.* JAMES.

Demurrer—Promissory note—Giving time.

Plea to an action by payee against the maker of a note, that it was made by defendant as surety jointly and severally with A. and that it was agreed, without the consent of defendant, in consideration of A. paying more than five per cent. that plaintiff should give time to A. and that time was so given:

Held, bad on general demurrer.

Debt by the payee against the maker of a promissory note.

Plea—That defendant made the note jointly with one John James, whereby the defendant and the said John James jointly and severally promised to

pay to the plaintiff the amount of the said note, and that defendant never had or received any consideration for the said note, but the same was made by him as surety for the said John James. That after the note became due it was agreed between the plaintiff and John James, without the consent of the defendant, that in consideration of the said John James agreeing to pay plaintiff interest at a greater rate than five per cent. upon the amount of the said note, &c. that plaintiff should give to John James time, and forbear to sue him for payment of the said note. That such time was given without the consent of the defendant. Verification.

General demurrer.

Macnamara, in support of the demurrer.—There is no allegation that plaintiff knew the relation in which the defendant stood to John James, and the note imports that the defendant was principal, and the giving of time to one of two joint and several makers of a note is no objection to the plaintiff's suing the other where the plaintiff had no notice of his being a surety merely. (*Fentum* v. *Pocock*, 5 Taunt. 192.)

H. J. Hodgson, in support of the plea.—The plea is good on general demurrer; it may be open to the objection of duplicity, but it is a good plea of want of consideration after pleading over. [CROMPTON, J.—The plea admits there was consideration to John James.] (*Laxton* v. *Peat*, 2 Camp. 185; *Foster* v. *Jolly*, 1 C. M. & R. 703; *Abbott* v. *Hendricks*, 2 Scott's N.C. 183; *Thompson* v. *Clubley*, 1 M. & W. 212.)

By the COURT.—The rule is clear that by a plea you may deny the consideration, but you cannot set up a different contract to that declared upon. Here the plea sets up a different liability. This plea is bad upon the authority of *Harrison* v. *Cortauld*, 3 B. & Ald. 36. *Judgment for the plaintiffs.*

Saturday, April 24.

REG. v. REV. E. WILLIAMS.

Tithe Rent-charge—Contribution by one of several owners of land charged—Order of Justices under 5 & 6 Vict. c. 54, s. 16.

An order of Justices under s. 16, of 5 & 6 Vict. c. 54, recited a complaint made before them by the tenant of certain lands charged with one amount of tithe rent-charge, but belonging to two owners in several portions; that he had paid the whole, and that the defendant had not paid his just proportion (stating the sums). It then proceeded: "and we, having examined into the merits, &c. determine that the just proportion to be contributed by the defendant is 10s. 6d. per annum," and concluded by ordering payment of the sum due and costs:

Held, bad, for want of an adjudication that the matters of the complaint were true.

This was a rule to shew cause why an order of two justices removed by certiorari should not be quashed. The order was made by two justices of Denbighshire, on the complaint of E. H. the tenant of the lands numbered 115 to 160. in the apportionment of the tithes of Llandyrnog, that the farm lands, numbered from 115 to 160 consecutively, were charged with one amount of rent-charge, namely, 13*l.* 10s.; that the Rev. E. Williams was the owner of 160, and Captain M. of all except the land numbered 160; that E. H. had paid the whole sum of 13*l.* 10s. for the years 1849, 1850; that the just proportion for number 160 was 13s. per annum; that it had been demanded by complainant of the defendant and not paid. The order stated the complaint: that the defendant had been summoned, and had appeared; and then proceeded thus: "and now having examined into the merits of the said complaint, we do, in pursuance, &c. determine, that the just proportion of the said rent-charge so paid by the said E. H. to be contributed by the defendant in respect of No. 160, is at the rate of 10s. 6d. per annum." It then ordered 1*l.* 1s. to be paid by the defendant, and 6*l.* 18s. 6d. costs; and in default ordered the same to be levied by distress. The rule was obtained on the ground that the order was bad for not finding the complaint to be true. The 5 & 6 Vict. c. 54, s. 16, enacts that in case any land charged with one amount of rent-charge shall belong to two or more landowners in several portions, and the owner of any one of such portions, or his tenant, shall have paid the whole of such rent-charge, or any portion thereof greater than shall appear to him to be his just proportion, and contribution thereto shall have been refused or neglected to be made by any other of the said landowners or his tenant, after demand in writing made on them, or either of them, for that purpose, it shall be lawful for any justice of the peace acting for the county or other jurisdiction in which the land is situated, upon the complaint of any such landowner, or his tenant or agent, to summon the owner so refusing or neglecting to make contribution, or his tenant, to appear before any two or more such justices of the peace, who, upon proof of the demand and of service of the summons, as hereinafter provided, whether or not the party summoned shall appear, shall examine into the merits of the complaint, and determine the just proportion of the rent-charge so paid as aforesaid, which ought to be contributed by the landowner of such other portion of the said land, and by order under their hands and seals shall direct the payment by him of what shall, in their judgment, be due and payable in respect of such liability to contribution, with the reasonable costs and charges of such proceedings, to be ascertained by such justices; and thereupon it shall be lawful for the complainant to take the like proceedings for enforcing payment of the said amount of contribution and costs, and with the like restriction as to the arrears recoverable, as are given to the owner of the rent-charge by the said first-mentioned Act, or this Act for enforcing payment of the rent-charge."

Welsby shewed cause.—The Act says that the justices shall examine into the merits of the complaint. The order says, that "Having examined into the merits of the case," they find what the proportion is, and order that proportion to be paid by Mr. Williams, and direct distress in default. That is a compliance with the Act, and by implication, a finding, and adjudication of the facts stated in the complaint. There is no doubt about the land to which the finding applies.

Pashley, contrà.—The order does not contain any adjudication. It was the duty of the justices to determine "The just proportion of the rent-charge, so paid as aforesaid, which ought to be contributed." They, therefore, ought to have determined what the sum so paid was; whereas, by the order, they have only determined what the just proportion of that sum was. Unless, however, there was such sum paid as aforesaid, the justices had no jurisdiction. It is a settled rule of law, that all the facts necessary to furnish the jurisdiction must be found. (*R.* v. *Pitts*, 2 Dougl. 662) Thus in cases of removal under the statute of Car. 2, the place of settlement must be found, and in all the forms in Burns there is an adjudication that the facts are true. Jurisdiction cannot be given by intendment.

WIGHTMAN, J.(*a*)—The objection is well founded. No doubt the justices ought to have found all the facts stated in the complaint, for of course they must not take them for granted. The only question is, whether the finding of the facts appears by sufficient implication on the face of this order. We think it does not.

COLERIDGE, J. concurred. *Rule absolute.*

REG. v. THE INHABITANTS OF SLAWSTONE.

Poor—Removal—Sending notice of appeal—Within what time—Mode of computation.

By the stat. 11 & 12 Vict. c. 31, s. 9, notice of appeal against an order of removal must be given within fourteen days after the sending of a copy of the depositions:

Held, that in computing the period of fourteen days, the time of sending, in case the sending is through the post, is to be deemed that time at which, in the ordinary course of the post, the depositions would be received by the person to whom they were addressed.

This was an appeal against an order of removal made at Market Harborough, Leicestershire, on the 5th of August, 1851, by which the settlement of the pauper, Thomas Ward, Ann, his wife, and of their five children, was adjudged to be in the appellant parish. It came on to be tried at the Leicestershire Quarter Sessions, held at the Castle of Leicester, on the 14th of October, 1851, and the order was quashed, subject to the opinion of the Court of Queen's Bench upon the following

CASE.

The order was made at Market Harborough, Leicestershire, on the 5th of August, 1851, and on the 7th of the same month notice of chargeability, a copy of the order of removal, together with a statement of the grounds of removal, were sent by post from Market Harborough to the appellant parish. The solicitors to the appellant parish applied by letter, posted at Wisbeach, on the 26th of August, to the clerk of the justices by whom the order had been made, for a copy of the depositions, which was sent to them in a letter posted at Market Harborough on the 3rd of September, and received by the appellants' solicitor on the 5th of September. On the 17th of September, the solicitors of the appellant parish posted a letter at Wisbeach, containing a notice of appeal, which in the regular course of post ought to have arrived at Market Harborough, the post-town for the respondents' parish, on the 19th. On that day the pauper and his family were removed to the appellant parish. It appeared that the letter, in fact, reached Market Harborough upon the 20th. On these facts it was contended for the respondents that the appeal should be disallowed, as the notice thereof had not been given within the prescribed time. The Sessions allowed the appeal, and quashed the order. If the Court of Q. B. should decide that the notice of appeal was given in due time, the order is to be quashed; if otherwise, the order is to be confirmed.

Pashley and *Merewether* in support of the order of sessions. The use of the post-office instead of a messenger was first introduced by the 4 & 5 Wm. 4, c. 76, s. 79, which forbade actual removal until twenty-one days after notice of chargeability should have been "sent by post or otherwise" to the parish of settlement. The 11 & 12 Vict. c. 31, s. 9, gave to appellants a further extension of the time for giving notice of appeal of "fourteen days after the sending" of a copy of the depositions. The 10th section of the 14 & 15 Vict. c. 105, empowered appellants to send their notices of appeal by post. Taking these statutes together it is clear that the same modes of sending as were lawful before any of them passed are lawful still; and the question always must be—was the notice given in due time? That being so, it follows that the appellants are not to suffer by the laches of the post-office. He cited *Bishop* v. *Helps*, 2 C. B. 45; *Stocken* v. *Collin*, 7 M. & W. 515; *Dunlop* v. *Higgins*, 1 H. L. Cases, 387. And if not, the posting the letter so that in the due course of the post-office it ought within the fourteen days to reach the person who is to receive it, is enough. [They were stopped.]

Maunsell and *O'Brien*, contrà.—The construction must be such as not to give the appellant a greater period than fourteen days; and that period must not be taken to be one that is to be made up to him at all events, but only as one within which he must come. That being so, there ought not to be any difference made between sending by post and sending by a messenger. [Lord CAMPBELL, C.J.—A man must take the risk of the messenger whom he himself selects; but the post-office is by the Legislature made the agent of both parties to receive and take.] As the appellants might have applied by messenger, and yet substitute the post for the messenger, they made the Post-office their agent, and the time of sending dates from the putting the letter into the post-office, just as it would have dated from the putting the letter into the hands of the messenger.

Lord CAMPBELL, C.J.—It seems to me that the notice must be supposed to have been given at the time when in the ordinary and regular course of the post it would have been delivered to, and received by, the person to whom it was addressed. If that is correct, the notice was in this case sufficient. Were the other computation adopted the appellants would still be right, for that other mode must be applied reciprocally, and a posting on the 17th would have been proper in the case of a sending on the 3rd. I think, however, that the time of sending contemplated was that in which in the ordinary course of post the notice would have been delivered.

COLERIDGE and WIGHTMAN, JJ. concurred.

Rule discharged.

REG. v. THE INHABITANTS OF WICKENBY.

Insufficient notice of appeal against order for maintenance of lunatic pauper—Waiver—Question of fact.

Notice of appeal against an order for maintenance of a lunatic pauper was given on the 30th of June, after the time limited by law had expired. On the 4th of July a notice to produce documents was served on the appellants by the attorney for the respondents. At the trial, on the 8th of July, the Sessions found as a fact that the notice to produce was a waiver of the irregularity in the notice of appeal:

Held, that the question was one of fact for the Sessions, and that their decision on it ought not to be disturbed.

On appeal to the Court of Quarter Sessions, held by adjournment at Spilsby, in and for the parts of Lindsey, in the county of Lincoln, on the 8th day of July, 1851, against an order of maintenance of two justices, dated the 5th day of June, 1851, concerning one Henry Chambers, a lunatic pauper, whose settlement had been adjudged to be in the parish of Bardney, in the said parts and county, the Sessions quashed the order, subject to the opinion of the Court, on the following

CASE.

A copy of the order and duplicate notice of chargeability were served on the overseers of the appellant parish on the 7th of June; and on the 30th of June the appellants delivered to the overseers of the respondent parish a notice of appeal to the next Spilsby Sessions to be held on the 8th of July following, containing also the statement of the grounds of appeal. The parts of Lindsey are divided into two sessional divisions, for and in each of which the General Quarter Sessions are invariably held as follows, namely, on the Friday of the week in which Quarter Sessions are by law directed to be held at Kirton for the first division; and on the Tuesday following, by adjournment, at Spilsby for the second division; and the Sessions of which those held at Spilsby on the 8th of July, 1851, were an adjournment, were held at Kirton on the 4th of the same month of July.

(*a*) Lord Campbell, C.J. and Erle, J. were hearing Crown Cases Reserved.

By the rules and practice of the Sessions, ten clear days' notice of appeal is required. The appellants and respondents both attended the Sessions by their attorneys, and both brought witnesses to give evidence on the issues raised by the grounds of appeal. On the appeal being called on for hearing, the respondents required the appellants to prove the service of their notice and grounds of appeal, and the delivery of the before-mentioned notice and statement of grounds of appeal on the 30th of June having been duly proved, the respondents objected to the appellants being heard in support of their appeal, on the ground that by the rules and practice of the Sessions, the notice of appeal was served too late; and also that the statement of grounds of appeal had not been delivered fourteen days before the Sessions, as required by law. The appellants then gave in evidence a notice to produce certain documents delivered the 4th of July, 1851, signed by the attorney for the respondents, and directed to the churchwardens and overseers of the appellant parish, of which the material part was as follows:—

"As attorney for and on behalf of the churchwardens and overseers of the poor of the parish of Wickenby, the above-named respondents, I hereby give you notice, and require you to produce on the trial of this appeal, at the next General Quarter Sessions of the Peace, to be holden by adjournment at Spilsby, in and for the parts of Lindsey, in the county of Lincoln, on Tuesday, the 8th day of July instant, all books, papers, letters, copies of letters, and all writings and other documents in your custody, possession, or power, relating to the matters in question in this appeal."

The following letter from the appellants' attorney of the 5th of July to the attorney for the respondents, and the reply of the latter thereto of the same date, were also given in evidence:—

"Lincoln, 5th July, 1851.

"Re Chambers, lunatic pauper.

"Sir,—Mr. Andrew desires me to write you with respect to certain admissions which he thinks it would be advisable for both parties in this matter to make on the hearing of the appeal. Mr. Andrew will admit, on behalf of the appellants—1st. The service of the orders, and notice of the 7th and 8th days of October last. These cannot be produced without some expense, and Mr. Andrew hopes you will dispense with their production. 2nd. The service of the order of settlement and maintenance, and notice of the 5th and 6th of June last, and will produce them. Mr. Andrew will require the admission by the respondents of the service of notice and grounds of appeal, and their production at the appeal. Would you favour Mr. A. with a note per next return from with your answer to the above.

"I am, Sir (for Mr. Andrew),

"Your very obdt. servant,

"R. H. Daubney, esq." "Wm. Vessey."

Copy of reply of the respondents' attorney to the above.

"Market Rasen, 5th July, 1851.

"Wickenby and Bardney.

"Dear Sir,—I fear that I cannot with propriety make the admission you refer to in your letter of to-day, as I intend to object entirely to your notice. The admission you propose to make would save Wickenby no expense, I think, as the persons will have to be there that can prove the facts, whether they have to prove the service you mention or not.

"Yours very truly,

"Robt. Hesford Daubney.

"W. Andrews, esq. solicitor, Lincoln."

The appellants then contended that the circumstances amounted to a consent on the part of the respondents to try at the then sessions, and that they were thereby precluded from objecting that the notice had not been served in time. The respondents contended the notice from their attorney of the 4th of July was not intended to be, and was not either in fact or in law, a waiver of their objection to the time of service of the appellants' notice and statements of grounds of appeal, and that they were not deprived of their right to avail themselves of such objection; and they denied that they had ever consented and then refused to consent to the trial of the appeal at the then sessions, but persisted in their objection to the appeal being heard on the grounds before mentioned. The Court of Quarter Sessions then decided against the respondents, and allowed the appeal to be heard, and ultimately quashed the order upon the objection raised by the appellants under one of their grounds of appeal, not relating to the merits of the settlement, and not material to the present case, but granted a case for the opinion of this Court on the points above mentioned. If the Court of Q. B. should be of opinion that the Sessions are right, under the circumstances above stated, in allowing the appellants to be heard in support of their appeal, then the order of Sessions is to be confirmed, and the order of justices is to stand quashed otherwise the order of Sessions is to be quashed and the order of justices is to be confirmed.

Wilmore, in support of the order of sessions.—The question was not one of law, but one of fact, which involved a decision on the practice of the Sessions. The Sessions have found that there was, according to their practice, a waiver of the irregularity, and the Court will not interfere with that finding.

Boden, contrà.—The question was, whether the notice itself, not the fact of sending it, was a waiver. That could only be ascertained by construing the language of the notice. The Sessions did not construe it, but, as on a matter of practice, held that the mere sending the notice was a waiver of an irregularity known to those who sent the notice. This was wrong. *R.* v. *Sheard*, 2 B. & C. 856, was referred to.

Coleridge, J.—This rule ought to be discharged. There could be no doubt if this were a simple question of fact, but perhaps it is not so, and is rather a question of practice. Here a notice of appeal was given, and grounds of appeal also, but both appear to have been served too late. Subsequently to that having been done, the attorney for the respondents gave notice to produce a copy of the deposition. There seems to have been some objection to their being bound by the act of the attorney; but in this case it must be taken that what the attorney did was done by the party. When the case came on for trial, it was said that the delivery of the notice of appeal, and of the grounds of appeal, was too late. To that it was answered that the objection had been waived by the subsequent act of giving notice to produce; but Mr. Boden says, that the notice to produce must be made the subject of construction, and that upon construing it we are to say whether it amounts to a waiver; and he contends that if the notice be properly construed, it will appear that there was not an intention to waive. I think it is not a question of construction, but of practice. The Sessions thought that it was to be considered as a step in the case, and being a step taken by the opposite party, was a waiver of the objection. The Sessions, therefore, did not proceed on the supposed intention of the party, but on the ground of the rule of practice. I cannot say that they were wrong in that. They might have come to a different conclusion if they had decided the matter as one of construction; but on the question of practice I think they were right. I do not think that the analogy of the practice of the Superior Courts much assists us in this matter. It is entirely one relating to the practice of the Sessions.

Wightman, J.—I am of the same opinion. The question is whether we shall review the judgment of the Quarter Sessions on a matter of practice, on the ground that the circumstances before them did not warrant the judgment to which they came. This is clearly a matter within their jurisdiction. There was an objection to the notice of appeal. Were the Sessions right in saying that it was waived by the act done by the attorney requiring the production of a certain document? The Sessions do not seem to have decided this question on the construction of the notice; but on the effect of the act done, in taking a step in the case which it was only necessary should be taken on the assumption that what had been previously done was sufficient so far for bringing the case to trial. The analogy of the practice in the Superior Courts is not in favour of our reviewing the decision of the Sessions; and I think that in this case the Sessions did quite right.

Lord Campbell, C.J. (*a*)—I have heard enough of this case to enable me to say that I entirely concur. It is allowed that the defect might have been waived; and the question is, whether there was any evidence of waiver. That was entirely a question for the Sessions. It was not a question on the construction of a document; it cannot be pretended that this is, like a contract, to be set forth with perfect accuracy, but it was an act done by the attorney for the parties, which had the effect of waiving a previously existing objection. It was a step taken in the case, and he had authority to take it.

Wightman, J.—I may observe, that the case relied on is clearly distinguishable, for there by Act of Parliament there could be but one ground of waiver.

Rule discharged.

Wednesday, April 28.

Reg. v. The Mayor, Aldermen, &c. of Ashton-under-Lyne.

Highway-rate—The Towns Improvement Clauses Act—Special Act.

By a special Act for the improvement of a borough it was enacted that when any street should have been sewered, &c. and otherwise completed, &c. and declared to be a public highway, it should be for ever after repaired out of the highway-rate "hereinafter provided." The Act then provided that for maintaining the present highways when so sewered and completed as aforesaid, &c. a highway-rate should be made and levied upon all messuages, &c. lands, and tenements within the borough.

The borough consisted of A. division, subdivided into X. and Y. districts, and part of B. division, and each district and division, before the special Act, provided separately for its own highways.

In 1851 *certain highways of the X. district being out of repair, and not being sewered, &c. or declared as highways within the meaning of the above-mentioned enactment, a rate was made upon the X. district for the repairs by the corporation, assuming to act as surveyors of the highways:*

Held, that the effect of the special Act, in conjunction with ss. 48 *and* 49 *of the* 10 & 11 *Vict. c.* 34 *(the Towns Improvement Clauses Act), was to empower and direct the making of two rates over the whole borough, one for the repairs of the highways, declared to be such within the special Act, and the other for the repairs of the highways not declared to be such, and therefore that the above rate was bad, being made upon the X. district only.*

Appeal against a highway-rate for the old town division of the borough of Ashton-under-Lyne made by the town council of the borough as surveyors by virtue of the General Highway Act (5 & 6 Wm. 4, c. 50), and of the Towns Improvement Clauses Act 1847 (10 & 11 Vict. c. 34), and the Ashton-under-Lyne Improvement Act 1849 (12 & 13 Vict. c. xxxv.).

By consent the following case was stated for the opinion of this Court under 13 & 14 Vict. c. 45, s. 11.

The parish of Ashton-under-Lyne consists of four divisions: 1. The Ashton Towns division, subdivided into the Old Town and the Demesne districts; 2. The Audenshaw division; 3. The Hartshead division; 4. The Knott Lanes division.

The municipal borough of Ashton-under-Lyne consists of the Ashton Towns division and of part of the Audenshaw division.

Before the Ashton-under-Lyne Improvement Act 1849, the two districts of the Ashton Towns division and the three other divisions each maintained separately its own highways and had each separate surveyors.

The greater part of the Old Town district is a country district, and the Demesne district is nearly altogether covered by the town, and comprises a great number of houses and other rateable property.

Some of the highways in each of the Old Town and Demesne districts respectively had been before the rate now in question sewered, drained, levelled, flagged, and otherwise completed, and been declared to be public highways and been kept in repair out of moneys levied under the 25th section of the Improvement Act 1849. Others of the highways within those districts had never yet been sewered, drained, levelled, flagged, paved, and otherwise completed, nor declared to be public highways within the Improvement Act 1849.

In May 1851 certain highways in the Old Town district, not at that time sewered, drained, &c. being out of repair, the corporation assuming to be and acting as surveyors of the said Old Town district assessed and laid the rate in question upon the rateable property in the said Old Town district for the repair only of such highways within that district as had not at the time of the rate been so sewered, drained, &c. and at the same time assuming to be and acting as surveyors of the Demesne district laid another rate upon the rateable property within the demesne district for the repair only of such highways then out of repair within that district as had not been at the time of making the rate sewered, drained, &c.

The above rates are laid upon the rateable property within the said respective districts, to the exclusion of all other rateable property within the said borough, not within the said respective districts.

The respondents are occupiers of rateable property within the borough, but not within the Old Town district. They were liable to a rate for the repair of highways when made upon the borough, but not when laid upon the Old Town district exclusively.

The Old Town district contains arable, meadow, and pasture land, rated by the said rate to the full net annual value thereof.

In February 1850, the mayor, aldermen, and burgesses of the said borough laid a highway-rate on all rateable property within the borough under the Improvement Act, 1849, and collected and expended it in the repair of the highways throughout the whole borough, whether declared as such or not. In December 1850, another rate of the same kind was made, but expended in the repair of those highways only that were sewered, drained, &c. and declared as such.

The Improvement Act applies to the same district as that comprised within the municipal borough.

The mayor, aldermen, and burgesses are the commissioners entrusted with the execution of the Improvement Act. They have no revenues applicable to the repair of highways within the borough, except such as they may be entitled to raise by rates under the statutes above mentioned.

(*a*) His lordship had been sitting in the court for Crown cases reserved.

The question for the opinion of the Court is, whether the rate upon the property within the Old Town division for the repair of the highways within that district as had not been declared as such, and were not sewered, drained, &c. was valid. If it was, the rate was to be confirmed, if not, to be quashed.

By the Ashton-under-Lyne Borough Improvement Act, sec. 11, the Towns Clauses Improvement Act is incorporated into it.

Sec. 24 of the Borough Act enacts, that when any *street* made, or to be made, within the borough, shall have been sewered, drained, &c. and otherwise completed, to the satisfaction of the corporation, they are to certify and declare the same to be, and the same shall become, a public highway, and be for ever afterwards repaired out of the highway-rate hereinafter provided.

Then sec. 25 enacts that for maintaining the present highways, when so sewered, drained, &c. and completed as aforesaid, and such of the present and future streets as shall be declared public highways as aforesaid, the corporation shall direct a highway-rate to be made and levied upon the occupiers of all messuages, houses, shops, &c. yards, gardens, curtilages, lands, tenements, and hereditaments within the said borough.

By the Towns' Improvement Clauses Act, 1847, its provisions, save so far as varied by the special Act, apply to the town or district comprised in such Act, and to the commissioners appointed for improving and regulating the same.

And sec. 48 of that Act enacts that the commissioners shall be the surveyors of all highways within the limits of the special Act, and have all such powers and liabilities as any surveyors of highways are invested with, or subject to, by the laws for the time being in force.

Sec. 49 enacts that the commissioners shall be deemed guilty of a misdemeanour for refusing or neglecting to repair any public highway within the limits of the special Act, and be liable to be indicted.

Cowling for the respondents.

H. Hill and *Maynard* for the respondents.

The 12 & 13 Vict. c. xxxv. ss. 13, 20, 23, 24, 25, and 10 & 11 Vict. c. 34, ss. 47, 48, 49, 50, 156, 157, 161, and 199, were referred to and commented upon.

Lord CAMPBELL, C.J.—I am of opinion that this rate cannot be supported, not on the ground that there can be only one highway-rate which is to be applicable to all cases within the district, for sec. 25 of 12 & 13 Vict. c. xxxv. will not bear that interpretation, being applicable only to the maintenance of the permanent ways. Looking at the general Act and the special Act, there are to be two general rates over the whole borough,—one for the urban streets, and to that the rural part of the district contributes, for the words of sec. 25 direct the rate to be made and levied upon all lands within the borough. Then the urban part should contribute in like manner to the rural ways in the borough, and that object is to be attained by sec. 48 of 10 & 11 Vict. c. 34. The commissioners, by that section, are to have all the powers of surveyors of the highways, and it seems that as such they have the power of making and levying a rate for the repair of the rural roads within the borough, treating them as one district, although they were in separate districts, with separate liabilities before the 12 & 13 Vict. c. 35. There is certainly no express power to rate the whole borough for this purpose, but I think that there is impliedly. This view is also supported by sec. 49 of 10 & 11 Vict. c. 34. The conflicting sections are reconciled by this conclusion, that there are to be two rates, one for the repair of the urban streets within the borough, and the other for the repair of the rural ways to which respectively all the property within the borough is liable to contribute.

WIGHTMAN, J.—I am of opinion that this rate is bad, because it is made upon a part of the borough, and not the whole. There is, no doubt, a difficulty in reconciling all the provisions of these statutes. The effect of them, however, I think, is to enact that there shall be two rates applicable to different descriptions of repairs within the borough, the one to the urban ways, and the other to the ways that are not within secs. 24 & 25 of 12 & 13 Vict. c. 35, and that view is perfectly consistent with the justice of the case. The inhabitants of the rural part of the borough are bound to contribute to the repairs of the streets properly so called, and there is no reason why there should not be a reciprocity, and why the inhabitants of the streets should not contribute to the repair of the highways within the rural part of the borough.

ERLE, J. delivered a similar judgment.

Judgment for the appellants, with costs.

Thursday, April 29.

REG. v. THE JUSTICES OF SUFFOLK.

Disqualification of a judge—Interest—Conduct of magistrates at sessions—Certiorari—Notice.

At the hearing of an appeal against an order of removal, one of the magistrates present was a ratepayer in the appellant parish. During the hearing he pointed out documents and made observations to the chairman; but it was sworn that he took no part in the decision of the case: Held, nevertheless, that his interference was improper, and invalidated the order of sessions.

Notice of the application for a certiorari served upon that and another magistrate: Held sufficient.

A rule had been obtained for a certiorari to bring up an order of Sessions, quashing an order of removal, on the ground that one of the magistrates present, and taking part in the decision, was a ratepayer of the hamlet of Needham Market, to which the removal of the pauper had been directed. The affidavits in answer to the rule did not deny that the magistrate mentioned was present, or that he was a ratepayer in the appellant parish, or that he had during the hearing pointed out documents, and made observations to the chairman; but it was sworn that he sat on the left hand of the chairman, and took no part in, and exercised no influence upon the decision of the case; that the case was decided by the chairman and two other magistrates who sat on his right hand; that during the hearing the counsel for the respondents noticed the fact that the gentleman in question was a ratepayer, upon which the chairman said that he would take no part in the decision of the case, and the chairman swore that he understood the counsel to be satisfied with that assurance, or he would have requested the magistrate to withdraw.

Couch shewed cause.—The mere presence of a single interested magistrate would certainly not invalidate the proceedings, and here it is positively sworn that the magistrate abstained from taking any part in the decision. (*The Grand Junction Canal Company* v. *Dimes*, 19 L. J. Ch. 315; *Re Dimes*, 19 L. J. 158, Q. B.; *R.* v. *The Cheltenham Paving Commissioners*, 1 Q. B. 467; and *R.* v. *The Justices of Hertfordshire*, 6 Q. B. 753, were referred to). 2. Notice of this application was not served upon two of the justices who made the order, because the magistrate who was interested did not make the order; and he was one of the two served. (*Reg.* v. *The Justices of Herefordshire*, 14 L. J. M. C. 44.)

O'Malley and *Power*, contrà, were not called upon.

Lord CAMPBELL, C.J.—I am of opinion that this rule ought to be made absolute, and I am glad for the sake of the pure administration of justice that the application has been made. There can be no doubt that this gentleman was an interested party; and his duty was to have withdrawn from the bench during the hearing of the appeal. That is the example set by the judges of the Superior Courts, which magistrates at sessions would do well to follow. But in the present case the interested magistrate remained on the bench until the appeal was decided; and after he had been objected to, and had stated that he would not interfere, he did actively interfere, by pointing out documents and making observations to the chairman; and then he takes upon himself to swear what effect those observations had. As to the point that notice of the application was not served upon two of the justices who made the order, I agree in the decision of my brother Patteson in *R.* v. *The Justices of Herefordshire*, but in that case there was no interference. Here the magistrate remained during the whole proceeding, and the case must be considered as having been decided by and before him.

WIGHTMAN, J. concurred.

CROMPTON, J.—The question is, whether he interfered, not whether he influenced the decision.

Rule absolute.

TALLIS v. TALLIS.

Practice—Frivolous demurrer—Immaterial traverse—Striking immaterial averment out of the declaration.

Where the plaintiff demurs to a plea, on the ground that it is an immaterial traverse, the Court will not, as a general rule, put the plaintiff to the alternative of having his demurrer set aside as frivolous, or of striking out of the declaration the allegation traversed by the plea, unless the pleading should appear to have been framed with a view to entrap the defendant, but the question is one for the discretion of the Court or judge to be exercised according to the circumstances of each particular case.

Cutts v. Surridge, 9 Q. B. 1015, questioned.

This was an action for breach of a covenant not to carry on that part of the trade of a publisher usually known as the canvassing trade, in London or its neighbourhood, Liverpool, and other towns. The declaration alleged that the plaintiff was engaged in the canvassing branch of the publishing trade in the town of Liverpool, whereof the defendant had notice.

The defendant pleaded amongst other things, a traverse of the notice alleged; and to that plea the plaintiff demurred, on the ground that it traversed an immaterial allegation.

A summons was then taken out before the Lord Chief Baron, calling upon the plaintiff to shew cause why the demurrer should not be set aside as frivolous, or why the allegation of notice should not be struck out of the declaration; but that learned judge refused to make that order. A rule nisi in the same terms was then obtained; and against that rule

Dowdeswell now shewed cause.—Probably the allegation of notice is immaterial; but the question is sufficiently doubtful to render it prudent and proper for the plaintiff to insert it in the declaration. (*Vyse* v. *Wakefield*, 6 Mee. & W. 442; 16 Vin. Ab. tit. Notice.) Whether it be or be not material is a question which will be decided by the demurrer; and either party may upon that point carry the case to a Court of Error. The present application is founded upon *Cutts* v. *Surridge*, 9 Q.B. 1015; but that case does not rest upon very satisfactory grounds. [CROMPTON, J.—It has always seemed to me that in *Cutts* v. *Surridge* the plaintiff was compelled by the court to strike an allegation out of his declaration by the threat of treating as frivolous a demurrer which was not frivolous.] The averment of notice is commonly introduced; and is even found unnecessarily in the concise forms of declarations upon bills of exchange, settled by the judges.

Cole, contrà.—*Cutts* v. *Surridge* is expressly in point. The defendant traversed the allegation of notice, because it was deemed to be a material allegation; but if the plaintiff considers it immaterial, let him strike it out.

Lord CAMPBELL, C.J.—I think that this rule should be discharged. It cannot be made absolute unless it was imperative on the Lord Chief Baron to make the order either that the demurrer should be set aside as frivolous, or the allegation be struck out of the declaration; and I cannot think there is any such universal rule of practice. In *Cutts* v. *Surridge* the Court had reason to believe that a trap had been laid for the defendant, and that the pleading was not fair and bonâ fide. Here there is no reason to suppose anything of the sort. The allegation may be immaterial, but it cannot be said that it was intended for any dishonest purpose. Now we are called upon, in the first place, to set aside the demurrer as frivolous; but as at present advised, I think it a perfectly good demurrer; and that the traverse is bad, because it takes issue on a wholly immaterial allegation. Then am I to set aside as frivolous a demurrer which I consider to be perfectly good? Certainly not; but an alternative is proposed, viz. to strike the immaterial allegation out of the declaration. In this stage of the proceedings, however, I do not think that we should be justified in taking that course. If an allegation is improperly introduced into a declaration, application might be made at once to strike it out, instead of pleading to it, and then, after demurrer, applying to strike out that demurrer as frivolous; but I lay down no general rule. Each case must be left to the discretion of the judge to whom the application is made; and in this case, if the Lord Chief Baron had made the order, I by no means mean to say that I should have held that it ought to be set aside; but he dismissed the application, and I cannot say that he was wrong.

WIGHTMAN, J.—This is an application to the summary jurisdiction of the Court, to prevent the plaintiff from taking a step in the cause, which ordinarily he would be entitled to take, on the ground that it is wholly unnecessary, and would lead to fruitless expense. The case of *Cutts* v. *Surridge* is relied upon: but each case must depend upon its own particular circumstances; and we cannot make Mr. Cole's rule absolute without deciding against the position for which he contends. The rule cannot be made absolute unless we decide that the allegation of notice was wholly immaterial, and at present I certainly am of that opinion; but Mr. Cole says that he thinks it material; and Mr. Dowdeswell considers it doubtful. Under these circumstances, I think we ought not to interfere.

CROMPTON, J.—If *Cutts* v. *Surridge* is to be taken as establishing a general rule that whenever the plaintiff demurs to a plea on the ground that it is an immaterial traverse, he is to be put to the alternative of having his demurrer set aside as frivolous, or of being compelled to strike out of his declaration the allegation traversed, I cannot agree to that case; and I certainly see reason to doubt the grounds of that decision. If a practice has been adopted of requiring the plaintiff in such cases to strike the allegation out of his declaration under terror of having his demurrer set aside as frivolous, I think that that practice is not right. The demurrer is not frivolous if the allegation is immaterial. Here I think that the demurrer is good; and that, consequently, we cannot set it aside as frivolous. The defendant should, at all events, come at once, and not first plead to the objectionable allegation. The books are full of demurrers to immaterial traverses; but I am not aware of any instance in which the Court has ordered allegations to be struck out of a declaration unless they

were scandalous or prolix, or introduced to entrap the opponent. The allegation supposed to be immaterial may after all be the very one which a Court of Error might think essential to the sufficiency of the declaration. By granting the present application we should be deciding summarily that which both parties are entitled to have on the record. *Cutts* v. *Surridge* is not a satisfactory decision to my mind, although perhaps it may be supported on the ground that the pleading there was supposed to have been framed with the design of entrapping the opponent.

Rule discharged.

REG. v. THE YORK AND NORTH MIDLAND RAILWAY COMPANY.

Inspection of documents—Rule in equity as to discovery—Evidence to meet opponent's case.—Stat. 14 and 15 Vict. c. 99, s. 6.

In answer to a mandamus to a railway company, to make a railway, the company returned that they had no funds; upon which the prosecutors pleaded that the company had funds, and upon that allegation issue was joined:

Held, that the affirmative of that issue being upon the prosecutors, they were entitled, under 14 & 15 Vict. c. 99, s. 6, to inspect and take extracts from all the books of the railway company, relating to the matters in question.

This was a mandamus to the defendants to make a railway. Return that the company had no funds, nor the means of raising any; that they had raised and expended, according to their Acts of Parliament, all the money authorised to be raised. Plea, traversing those allegations, and issue thereon. A rule had been obtained, calling on the defendants to shew cause why the prosecutors should not be at liberty to inspect and take extracts from all books kept by the company pursuant to their Acts of Parliament, and all other books and accounts in their possession, relating to the matters in question. The matter had been before Coleridge, J. at chambers, who dismissed the summons, on the ground that the information sought for related to the defendants' case.

Addison shewed cause.—This is an attempt to enforce a discovery of the defendants' case; it is not an application for information necessary to the prosecutor's own case. It is true that the affirmative is upon the prosecutors; but the Act of Parliament authorising the company to raise funds, will be a sufficient primâ facie case to throw the burthen of proof on the other side. [Lord CAMPBELL, C.J.—Certainly, a Court of Equity will not interfere, and grant a discovery for the mere purpose of enabling a party to meet his opponent's case; and according to the stat. 14 & 15 Vict. c. 99, s. 6, we must be governed by the equitable rule.] *Bolton* v. *The Corporation of Liverpool*, 1 Mylne & K. 88; and *Pepper* v. *Chambers*, 16 Jur. 19, Ex. are in point. [Lord CAMPBELL, C.J.—But would it not be very material evidence in support of the prosecution, to shew that the company had a balance at their banker's large enough for the purpose?] Then the rule ought to be limited to such books as relate to funds in hand, and to the particular branch line which the defendants are called upon to make.

Hugh Hill, contrà.—The rule is limited to such books and extracts as relate to the matters in question; but here the affirmative is to be made out by the prosecutors; and for that purpose they are entitled to the inspection prayed. (*Burrell* v. *Nicholson*, 1 Myl. & K. 608; and *Smith* v. *The Duke of Beaufort*, 1 Hare, 507; 1 Phill. 209.) Such orders as these are frequently made at chambers.

Lord CAMPBELL, C.J.—I think that this rule ought to be made absolute. The information, which is sought for is substantially in support of the prosecutors' case; for the issue is, whether the company had funds, and the prosecutors' case is that they had. Technically therefore the affirmative is upon them; and in support of that issue all this information would be material. Of course a fair compliance with the rule is all that can be required; but it seems to me that the case comes within the rule laid down by the Act of Parliament, for which we are referred to the practice in the courts of equity.

WIGHTMAN and CROMPTON, JJ. concurred.

Rule absolute; the costs of inspection to be paid by the prosecutors, and the costs of the application to be costs in the cause.

Monday, May 3.

REG. v. THE LIVERPOOL, MANCHESTER, AND NEWCASTLE-ON-TYNE JUNCTION RAILWAY COMPANY.

Mandamus—Railway company—Abandonment of the line.

Where, after a railway company had virtually abandoned its project, and its compulsory powers had expired, and a small sum only remained in hand, shares had been transferred, a mandamus was refused to register the transfer of shares, the Court, upon the facts entertaining the opinion that the purchaser was desirous of having the transfer registered, not for the bonâ fide purpose of becoming the proprietor of the shares, but with the object of opposing the company and assisting the purchaser's father, who had instituted proceedings in Equity against the company.

This was a rule nisi for a mandamus to the company and secretary to register the memorial of a deed of transfer of five shares to W. T. Preston from a Mr. Smith, the registered shareholder. The company was incorporated in June 1846, and at a general meeting on the 3rd October, 1848, it was resolved, that in the then present state of monetary affairs it was expedient to defer the construction of the works till a more favourable season, and that 14s. per share of the amount paid up should be returned to the shareholders, and this resolution was confirmed on the 24th October, 1848. In pursuance thereof, an instalment of 10s. per share was returned, and received by Mr. Smith upon each of his shares. About 4,000*l*. now remained in the hands of the company. Soon after this resolution, the directors made a bye-law, that no shareholder should transfer his shares without the consent of the directors. Mr. Smith, it was shewn, was aware of the bye-law, and Mr. Preston did not state directly that he was not. The compulsory powers of the company expired in June 1851, and in July 1851 Mr. Preston purchased his shares of Mr. Smith. It was shewn that, as early as November 1848 Mr. Preston, the prosecutor, had made an application to the company to know whether the undertaking would be proceeded with or abandoned; and also that there was a suit in Chancery now pending between the company and Mr. Preston's father, who was a landowner upon the projected line of railway, relative to the purchase of lands for the line. The applicant had commenced an action against the company, which it was stated was for the refusal to register the transfer, and served the writ upon the secretary, but afterwards the service was countermanded.

Sir F. Thesiger for the company, and *Atherton* (*T. Atkinson* with him) for the secretary, shewed cause against the rule. This rule was granted upon secs. 14 and 15 of 8 Vict. c. 16 (the Companies Clauses Consolidation Act), which enact that shareholders may transfer their shares by deed, and that the secretary shall enter a memorial of the deed of transfer in the register of transfers. These sections contemplate an actually existing company, and not the case of one like the present, which is virtually abandoned, or exists only for the purpose of winding up its affairs. (*Rex* v. *The London Assurance Company*, 5 B. & Ald. 899.) Secondly, this is not a bonâ fide application; the applicant is now seeking to become a registered shareholder, not with the view of becoming the proprietor of these shares, but with the view of getting information of the company's proceedings and assisting his father in the controversy with the company. It is, therefore, submitted that this Court will not interfere by allowing the prerogative writ of mandamus to issue in such a case. They also contended that this writ would not be granted, as Mr. Preston had chosen his remedy by action, and also that Mr. Smith was estopped by what he had done from transferring his shares.

Bliss and *Wheeler*, in support of the rule.—This project has not been abandoned under the Railways Abandonment Act, nor are its affairs being wound up under the Winding-up Act. There is a sum of 4,000*l* in hand, and it was illegal on the part of the company to return part of the subscribed capital in October 1848, as they were bound by their contract with the public to form the line of railway, and their powers had not then expired. As one of the public, Mr. Preston has an interest in seeing that the company's funds are properly distributed; and as a shareholder he could, by a bill in Equity, enforce a proper distribution. Here there is such an interest still existing in the company, that Mr. Preston ought to be enabled by this writ to obtain the status of a registered shareholder, and exercise all the privileges of one. (*Reg* v. *The London and North-Western Railway Company*, 20 L.J. 399, Q.B.; *Reg* v. *The Eastern Counties Railway Company*, 10 A. & E. 531.)

Lord CAMPBELL, C.J.—I am of opinion that this rule ought to be discharged. I do not proceed upon the ground of the estoppel on Mr. Smith, the purchaser, nor upon the bye-law, for I much doubt whether that was binding; nor upon the ground of the pending action, for that was virtually abandoned, but I proceed upon this ground, that it is quite clear that Mr. Preston is not proceeding bonâ fide for the purpose of becoming a shareholder. It is said that it is his object to see to the application of the funds, but that is a matter only affecting the shareholders among themselves.

COLERIDGE, J.—I am of the same opinion. I desire to limit my judgment to the personal disqualification of the party who applies for this writ, and not to express any opinion as to the validity of this bye-law, or as to whether the shareholders could estop themselves from transferring their shares by what they have done here. At a time when the existing shareholders were of the same mind, the project was suspended indefinitely. Mr. Preston then, with necessary notice of that fact, buys five shares. I say with necessary notice, because the transfer had the 10s. returned stamped upon the face of it, and that must have led him to make inquiries and get the necessary information. Then what motive could he have in becoming a member? I cannot resist the conclusion that it was for the purpose of opposing the company, and forwarding the interest of his father.

ERLE, J.—Before we could make this rule absolute, we should see that the applicant has a legal right to that which he asks for, and no adequate remedy. When the compulsory powers of a railway Act have expired, this Court has uniformly decided that the species of legal right it gives is at an end. That alone would be sufficient to discharge this rule.

CROMPTON, J.—I also think that the applicant in this case does not come bonâ fide, but for an indirect and improper motive.

Rule discharged.

Tuesday, May 4.

LLOYD v. OLIVER.

Bill of exchange—Form of instrument.

In an action by indorsee against acceptor of a bill of exchange, the instrument sued upon was in the following form:—"London, July 17, 1851. Two months after date I promise to pay to E. R. L. or order, 99l. 15s. value received. (Signed) H. O." In the corner was the name of the defendant; and his acceptance was written across the instrument.

Held, that this might be treated by the indorsee either as a bill of exchange or a promissory note.

This was an action by the indorsee, against the acceptor of a bill of exchange, and the defence set up was, that the document on which the action was brought was not a bill of exchange. On the trial before Erle, J. at Guildhall, the verdict was entered for the plaintiff. The instrument in question was in the following terms:—"London, July 17th, 1851. Two months after date I promise to pay to E. R. Lloyd, or order, 99*l*. 15s. for value received. (Signed) Henry Oliver." In the corner were the words "John Edward Oliver, Birmingham," and across it was written "Accepted, John Edward Oliver." The action was brought against John Edward Oliver.

Gray now moved for a rule nisi for a nonsuit or new trial, on the ground that the instrument was a promissory note. The words "I promise to pay" could not be rejected. (*Block* v. *Bell*, 1 Moo. & Rob. 149; *Edis* v. *Bury*, 6 B. & C. 433; *Edwards* v. *Dick*, 4 B. & Ald. 212.)

Lord CAMPBELL, C.J.—I am clearly of opinion that as against the drawer this instrument may be treated as a bill of exchange, and that it might have been so treated even before it was accepted, because it was directed to John Edward Oliver. The meaning of this must be that J. E. Oliver was required to pay 99*l*. 15s. two months after date. I do not reject the words "I promise to pay," because they might be considered as an expression of what would otherwise be implied by law, that the drawer of the bill promised to pay if the person to whom it was directed did not pay. It might, as against Henry Oliver, also be treated as a promissory note, as Lord Ellenborough had frequently held that such an equivocal instrument as this might be treated either as a bill of exchange or as a promissory note, as against the person who framed it.

ERLE, J.—The language of this instrument, according to mercantile usage, clearly points it out to be a bill of exchange. It was proved at the trial that it had never been out of the hands of the person who framed it. Mr. Lloyd stated that he had given it to Oliver to get accepted, and he brought it back with the names of the drawer and the acceptor, but with the addition of the words, "I promise to pay." Such an instrument might surely be considered either as a promissory note or as an acceptance.

CROMPTON, J. concurred. *Rule refused.*

Wednesday, May 5.

DOE dem KING v. GRAFTON.

Landlord and tenant—Notice to quit.

By agreement on the 19th April, the premises were let at the yearly rent of 42l. payable quarterly; the first payment, 7l. 13s. 6d. to be made on the 24th of June next, being the proportion of rent due up to that time. The lessee was to enjoy at the said rent until one of the parties should give to the other six months' notice to quit; and at the expiration of "any" such notice to leave the premises in as good condition, &c.

Held, a half-yearly tenancy, commencing from the 24th of June; and that a notice to quit given at Midsummer and expiring at Christmas was valid.

Ejectment, tried before Lord Campbell, C.J.

The defendant was let into possession of the premises in question, part of a house in Chancery-lane, under an agreement dated the 19th of April, 1841; the reddendum clause was at the yearly rent

of 42*l.* payable quarterly, the first payment of 7*l.* 13s. 6d. to be made on the 24th of June next, being the proportion of rent to that time; and the habendum clause provided that the defendant should and might hold and enjoy the said premises at the said rent until one of the said parties should give unto the other six calendar months' notice, in writing, to quit; and the agreement then stipulated that the defendant should and would, at the expiration *of any such notice*, leave the said premises in as good condition, &c.

It was objected that the six months' notice to quit given by the lessor of the plaintiff at Midsummer and expiring at Christmas was bad, as it did not expire at the end of the year of the tenancy. On the other side it was urged that this was a half-yearly tenancy, and therefore that the notice was good, and the learned judge being of that opinion overruled the objection, and the verdict was entered for the lessor of the plaintiff.

A rule nisi having been obtained for a new trial, on the ground that the above ruling was wrong,

Hayes shewed cause.—The agreement creates a half-yearly tenancy. The clause as to payment of rent from 19th April to Midsummer removes that period altogether from the holding, and indicates that the term was to commence from Midsummer. No doubt the words "at the yearly rent of 42*l.*" if they stood alone, would import a yearly tenancy, but the clause as to notice to quit shews clearly that the tenancy was to be a half-yearly one, else no effect will be given to the words "at the expiration of *any* such notice;" for, if the tenancy is construed to be a yearly tenancy, there can only be *one* such notice expiring at the end of the current year. (*Kemp* v. *Derrett*, 3 Camp. 509; *Wilson* v. *Abbott*, 3 B. & C. 88; *Doe* v. *Donovan*, 1 Taun. 555; *Brown* v. *Burtenshaw*, 7 Dow. & Ry. 603.)

Warren, in support of the rule.—This agreement clearly delineates a yearly tenancy, with all its incidents, and the notice to quit should have expired at the end of the current year. The rent spoken of is a yearly rent; and effect may be given to the clause as to notice to quit, by holding that the word "any" refers to a notice to be given by *either* of the parties. (*Doe* v. *Johnson*, 6 Esp. 10.)

Lord CAMPBELL, C J.—I am of opinion that the notice to quit was sufficient. I never can doubt from the agreement, that it was the intention of the parties to create a half-yearly tenancy, commencing at the 24th of June. If there had been any authority shewing that a different construction was to be put upon this agreement, I should have felt bound by it, but none of the cases to which we have been referred shew that Mr. Warren has failed to make out that this agreement imports a yearly tenancy. I take it that the words "at the yearly rent of 42*l.*" were only introduced to form the basis of the calculation for the half-quarter, and to shew that the rent would afterwards be at that rate. That explanation satisfies the term "at the yearly rent of 42*l.*" Then, what is there next to shew that it was to be a yearly tenancy? The habendum clause contains the only language that shews what the term was to be, and how long is that? Not from year to year, but only until one of the parties should give to the other six months' notice to quit. That indicates the term, which is not to be less and need not be more than six months. This, then, not being a yearly tenancy, the rule does not apply that the notice to quit must expire at the end of the year when the tenancy commenced. Then, may the notice to quit commence from Midsummer? The express stipulation that the half-quarter is to be paid up to the 24th June, shews that the tenancy starts from that time; and the other clause shews that it is to continue until either party gives to the other six months' notice to quit. Then, six months' notice to quit having been given on the 24th of June, the lessor of the plaintiff was entitled to recover.

WIGHTMAN, ERLE, and CROMPTON, JJ. delivered similar judgments. *Rule discharged.*

BUSINESS OF THE WEEK.

Thursday, April 22.

REG. v. THE GREAT WESTERN RAILWAY COMPANY.—*Kinglake*, Serjt. moved for a rule nisi for a mandamus to compel the defendants to make a railway from Newton St. Loe to Radstock, in Somersetshire. *Rule nisi.*

GILFORD v. JAMES.—*Unthank* moved for a distringas to compel appearance. *Rule absolute.*

LING v. GOSSETT.—*H. Mills* moved for a rule calling on the defendant to allow the plaintiff to inspect and take extracts from the title deeds, for which this action of detinue was brought. *Rule nisi.*

POCOCK v. PICKERING.—*B. C. Robinson* moved for a rule to rescind an order of a learned judge, setting aside a warrant of attorney and all subsequent proceedings. He contended that the attestation clause was sufficient. (*Lewis* v. *Lord Kensington*, 2 C.B. 462; *Poole* v. *Hobbs*, 8 Dowl. P. C. 113) *Rule nisi.*

REG. v. THE INHABITANTS OF MONK'S KIRBY.—*Hayes* shewed cause against a rule to set aside the side-bar rule for costs. The defendants had been convicted upon an indictment for non-repair of a road, which they had removed into this court by certiorari. The question was, whether the prosecutor, the clergyman of a neighbouring parish, was entitled to costs as a "party grieved or injured," within sec. 3 of 5 Wm. & Mary, c. 11. His affidavit, in answer to the rule, stated that he had frequent occasion to go into a parish adjoining his own for the purposes of performing divine service there; that by reason of the nonrepair of the road in question he was obliged to go by a circuitous route, which increased the distance by two miles each way, and cost him two tolls each time he went. *R.* v. *Taunton St. Mary*, 3 M. & S. 465, was cited. *Bittleston*, contrà.—The prosecutor never had any use or enjoyment of this road, which had been quite out of repair, and fallen into disuse many years before he came into the neighbourhood. All the population of the neighbourhood for a great distance from the road might make out a case of grievance as strong or stronger than this. Besides sec. 3 of 5 W. & M. c. 11, does not apply to indictments for the nonrepair of highways, where the right to repair is in question. Such cases are provided for by s. 6. (*R.* v. *Dewsnap*, 16 East, 194; *R.* v. *Incledon*, 1 M. & S. 268; *Ireson* v. *Moore*, Salk. 15.) By the COURT.—The uniform practice has been to grant the costs in these cases, if the prosecutor appears to be a party grieved; and he is clearly so in this case. *Rule discharged with costs.*

R. v. THE JUSTICES OF DERBYSHIRE.—*Pashley* moved for a rule for a mandamus to enter continuances, and hear an appeal against an order of removal. *Rule nisi.*

REYNOLDS v. TUCKER.—*Gray* shewed cause. *Willes*, contrà. *Rule absolute for a new trial.*

STUART v. THE ANGLO-CALIFORNIAN GOLD MINING COMPANY.—*Edwin James*, *Paterson*, and *Thompson* shewed cause against a rule to enter the verdict for the defendants. *Adjourned.*

Friday, April 30.

QUARTERMAN v. THE GUARDIANS, &c. OF OXFORD.—Demurrer to plea. *Phipson*, for the plaintiff. *Tomlinson* for the defendants. *To be amended.*

HESELTINE v. SIELY.—Demurrer to a plea to a promissory note, that the defendant, being indebted to the plaintiff in the amount thereof, and having filed his petition for relief in the Insolvent Court, and inserted the plaintiff's debt in the schedule, was threatened with opposition to his discharge by the plaintiff, and that it was agreed that the note should be given and the opposition abandoned, which was done; and that the defendant was discharged by the Court *from the debt* in respect whereof the note was given. *H. James*, in support of the demurrer. The plea is double: the fraudulent agreement vitiates the note, and the discharge from the debt is a second defence. *Ball*, in support of the plea, urged that it followed the precedent in 3 Chit. Plead. and also that in *Warner* v. *Haynes*, 6 C. & P. 666; but seeing the Court were inclined to think the plea bad for duplicity, consented to amend. *To be amended.*

FORD and ANOTHER, Executors, v. HEALE.—Demurrer to plea of set-off. The declaration contained counts on promises to the testator, and also a count upon an account stated with the plaintiffs as executors, and the plea of set-off was to the whole declaration. *Willes*, in support of the demurrer, objected that as the account stated with the executors might be either in respect of moneys due to the testator, or of moneys due on the sale of assets by them, the plea of set-off to the whole was bad, as the debts would not be due in the same right. *Rose*, in support of the plea, elected to amend. *To be amended.*

BOSTOCK v. SIDEBOTTOM.—Demurrer to the replication. *Maynard* (*Collier* with him) in support of the demurrer. *J. A. Russell* contra. *Judgment for the plaintiff.*

LOWNDES v. THE EARL OF STAMFORD AND WARRINGTON.—Demurrer. Sir *F. Thesiger* (*Garth* with him) for the plaintiff. *J. A. Russell* for the defendant. *Cur. adv. vult.*

CHAPMAN v. DESVIGNES.—Demurrer. *Hayes* in support of the demurrer. *Couling*, contra. *Judgment for the plaintiff.*

BARNEWALL, P.O. v. QUILTER.—Demurrer to plea. *Bramwell* (*Shee*, Serjt. with him), for the plaintiff. *Willes*, contrà. *To be amended.*

Saturday, May 1.

REG. v. THE INHABITANTS OF HANTS.—This was a question as to the liability to repair several bridges in the Isle of Wight. *Crowder* (*Barstow* with him) for the Crown. *Kinglake*, Serjt. (*Smirke* with him), for the defendants. *Cur. adv. vult.*

REG. v. THE INHABITANTS OF HUSTHWAITE.—*Rose* and *Lefroy*, in support of the order of Sessions. *Bliss* and *Price*, contra. *Order confirmed.*

THE OVERSEERS OF BIRKENHEAD v. THE TRUSTEES OF BIRKENHEAD DOCKS.—This was an appeal against a poor-rate. *Archbold*, in support of the rate. *Pashley*, contrà. *Cur. adv. vult.*

Monday, May 3.

JACK v. GILL.—Tried before Coleridge, J.: verdict for the defendant. *Bramwell* moved for a new trial. *Rule refused.*

HENDERSON, Official Manager of the North of England Bank, v. DOLPHIN. *Hill* moved for a new trial, on the ground of the verdict being against the evidence, and of surprise. *Stands over.*

Lord CANNING v. RAPER.—Tried before Coleridge, J.: verdict for the defendant on the 3rd plea. *Ogle* moved to enter the verdict for the plaintiff on that plea, or for a new trial. *Stands over.*

THE ROCHDALE CANAL COMPANY v. RADCLIFFE.—This was a rule to enter the judgment for the plaintiffs on the 4th issue, non obstante veredicto. *Judgment for the plaintiffs.*

KEANE v. STEWART.—*W. H. Watson* moved to refer it to the Master to take an account of the defendant's set-off, and for stay of judgment in the meantime. *Rule nisi.*

Tuesday, May 4.

EDEN v. WILSON.—Special case from Chancery, on the construction of a will. *Judgment for defendant.*

GUARDIANS OF CHELMSFORD UNION v. THE LOCAL BOARD OF HEALTH.—Question as to the validity of a district rate made by the defendants. *Judgment for the defendants.*

Wednesday, May 5.

REG. v. THE LANCASHIRE AND YORKSHIRE RAILWAY COMPANY.—*Wilkins*, Serjt. *Atherton*, and *Tomlinson*, shewed cause against a rule nisi for a mandamus. The *Attorney-General*, in support, was not called upon. *Rule absolute.*

CASTELLI v. GROOM.—*Bramwell* and *Karslake* shewed cause, and *Willes* supported a rule for a commission to examine the two plaintiffs abroad. *Rule discharged.*

REG. v. THE JUSTICES OF LONDON.—The *Solicitor-General*, *Clarkson* and *Bodkin*, shewed cause against a rule nisi for a certiorari, and *Byles*, Serjt. *Bliss*, and *Pulling*, supported it. *Rule discharged without costs.*

SEAFIELD v. THORNTON.—*J. Wilde*, moved to rescind an order of Pollock, C.B. striking out one of the counts in the declaration. *Rule refused.*

STEWART v. THE ANGLO-CALIFORNIAN GOLD MINING ASSOCIATION.—*Bramwell* and *Gray* were heard in support of the rule to enter the verdict for the defendants on two pleas. *Cur. adv. vult.*

COURT OF COMMON BENCH.

Reported by DANIEL THOMAS EVANS and VAUGHAN WILLIAMS, Esqrs. Barristers-at-Law.

Tuesday, April 27.

RICKETTS v. THE EAST AND WEST INDIA DOCKS AND BIRMINGHAM JUNCTION RAILWAY COMPANY.

Railway company—Liability to keep fences in repair—Negligence—8 & 9 Vict. c. 20, s. 68.

The plaintiff's sheep escaped from his close through his own fence into a close belonging to N. and thence through the fence of the defendants (a railway company), which, by stat. 8 & 9 Vict. c. 20, s. 68, they were bound "to make and maintain sufficient," into and upon defendants' railway, where they were run over by a train and killed.

The plaintiff brought his action on the case for the loss sustained, and the defendants pleaded the facts in answer thereto.

Held, that the defendants were not liable to the action, the plaintiff's sheep being trespassers on the close of N.

The duty imposed on railway companies by the Railways Clauses Consolidation Act, 8 & 9 Vict. c. 20, s. 68, "to make and maintain sufficient fences for separating the land taken for the use of the railway from the adjoining land not taken, and for protecting such land from trespass, or the cattle of the owners or occupiers thereof from straying thereout by reason of the railway" extends only to fencing against the owners or occupiers of adjoining lands, and not against strangers. It does not extend the common law liability; and there is no obligation on railway companies to erect and maintain fences of more than ordinary strength, either against the occupiers of the adjoining lands or against strangers, by reason of their carrying on a dangerous business, the statute having provided all that is necessary for the rights of individuals and the security of the public.

Case for non-repair of fences, by which plaintiff's sheep strayed on the railway of the defendants, were run over by a train, some killed and others wounded.

The declaration contained two counts: the first count stated "that certain sheep of the plaintiff were depasturing and lawfully being in and upon certain lands, which were and still are situate, lying, and being, adjoining to, and abutting upon the railway of the defendants, and to and upon land taken for the use thereof." It then alleged that "it was the duty of the defendants to make and erect a sufficient fence in and upon the land taken for the use of the said railway, for protecting and preventing cattle or sheep depasturing, or being in or upon the said lands adjoining to or abutting upon the defendants' railway, from straying or escaping out of, or off, or from the said adjoining lands to or upon the said railway."

Breach, "that the defendants, not regarding their said duty, did not, nor would erect, or cause to be erected, in or upon the said land so taken for the use of their said railway, or adjoining to the same, a sufficient or any fence for protecting or preventing the sheep of the plaintiff so depasturing, and being in and upon the said lands adjoining to and abutting upon the defendant's railway, from straying or escaping out of the said adjoining lands upon the said railway of the defendants, but the defendants wholly omitted so to do, *per quod*, &c.

The second count alleged that the defendants made and erected a fence in and upon, &c. sufficient for protecting and preventing cattle depasturing on lands adjoining their railway from straying or escaping out of the said lands to or upon their railway; and having made such a fence, it became and was the duty of the defendants from time to time to maintain the said fence sufficient for protecting and preventing cattle and sheep depasturing upon adjoining lands from straying or escaping out of the same to or upon the said railway of the defendants.

Breach—Neglect of duty to repair and keep up the fence, &c.

The defendants pleaded several pleas. To the fourth, sixth, and seventh pleas the plaintiff demurred specially. But in course of the argument it was agreed between counsel, with the consent of the Court, to waive all objections of form, and argue the case on a statement of facts, in order to avoid further expense and litigation. The facts were as follow:—The plaintiff's sheep escaped through his fence into a close belonging to the Great Northern Railway

Company, and from thence through a fence belonging to the defendants to and upon their railway.

The case was then argued as upon general demurrer to the seventh plea, which stated "that the Great Northern Railway Company, before the committing, &c. were seised in their demesne as of fee, and also possessed of, and in the said lands so adjoining to and abutting upon the said railway of the defendants, from out of which the sheep of the plaintiff escaped and strayed into and upon the said railway, and that the said sheep of the plaintiff when they so strayed and escaped as aforesaid were wrongfully and unlawfully in and upon the said lands of the said Great Northern Railway Company trespassing and doing damage there, without the leave and licence of the last-mentioned company, and that the plaintiff was not at any or either of the times aforesaid the owner or occupier of the said lands from and out of which the said sheep so escaped into and upon the said railway as aforesaid."

Demurrer and joinder.

Tompson Chitty for the plaintiffs.—It is submitted that both upon principle and authority the plaintiff must be taken as the occupier of the close through which his sheep escaped to the defendant's railway. The defence here set up is no answer to the plaintiff's claim. (*Fawcett* v. *The York and North Midland Railway Company*, 20 L.J. 222, Q.B.; 15 Jur. 153, 16 Law T. 439.) [Jervis, C.J.—That case differs so far as there the animals were on a public road. Cresswell, J.—The statute (5 & 6 Vict. c. 55) imposed a clear duty on the defendants to keep gates at level crossings closed against all persons and cattle in the highway whether lawfully there or not.] The 5 & 6 Wm. 4, c. 50, regulates the obligation on landowners as against the public. By the common law the defendants were bound to make and use their railway in such a manner as that injury may not accrue. There is authority for this in *Barnes* v. *Ward*, 19 L.J. 195, C.P.; 14 Jur. 334; and in *Davies* v. *Mann*, 10 M. & W. 546. [Cresswell, J.—In *Barnes* v. *Ward* the plaintiff was exercising a public right on a public highway.] Here he was in the enjoyment of a right conferred by statute made expressly to protect him. By the Railway Clauses Consolidation Act (8 & 9 Vict. c. 20, s. 68, an obligation is placed upon railway companies as regards the owners and occupiers of land adjoining the railway "to make and maintain sufficient posts, rails, hedges, &c. for separating the land taken for the use of the railway from the adjoining land not taken, and for protecting such land from trespass, or the cattle of the owners or occupiers thereof from straying thereout by reason of the railway," &c. In the next place, I contend that as the plaintiff's sheep, as it were, involuntarily wandered from his close and got on the railway of the defendants, and as the defendants were exercising what may be called a dangerous business, there was a duty on them to take extraordinary caution for the avoidance of casualties and to fence off their land securely. It would have been different if the sheep had escaped into an ordinary field and not a railway. For these reasons it is submitted judgment should go for the plaintiff.

J. Brown for the defendants.—I submit that the defendants in this case are entitled to judgment. Is there any statutory or common law liability? If there be, the first will dispose of the second. In all the precedents I have discovered, wherever there was a right at common law, it was in a case where plaintiff's land abutted on the land of the defendant, or at all events plaintiff had a right of common adjoining to the defendant's land. The form of declaring in such cases invariably followed has been that given in Chitty on Plead. 592. The earlier precedents are much the same. (Lilly's Entries, 70; Hearn's Pl. 61; Morgan's Precedents, 166; 8 Wentworth's Index, 69, 70; *Booth* v. *Wilson*, 1 B. & Ald. 159; *Powell* v. *Salisbury*, 2 Y. & Jerv. 391.) *Dovastone* v. *Payne*, 2 Hy. Bl. 527, is a direct authority for this position. It was an action of replevin. The argument of *Williams*, Serjt. in that case was supported by the judgment of the justices of the C. P. so far as this, that "if cattle escape from an adjoining close through the default of the plaintiff's fences, the defendant must shew that he had an interest in that close, or a licence from the owner to put his cattle there." Eyre, C.J. in the judgment there, says,—"The party who would take advantage of fences being out of repair as an excuse for his cattle escaping from a way into the land of another must shew that he was lawfully using the easement when the cattle so escaped." If the present had been a case under the common law, *Dorastone* v. *Payne* would be an authority directly in point. Another case to the same effect is *Sir Francis Leke's* case, 3 Dyer, 365 *a*. Next, as to the defendant's obligation to fence. [Williams, J.—It turns between a statutory liability and a common law liability, whether the statute imposes an additional liability on the defendants to keep up the fences.] The liability created by sec. 68 of 8 & 9 Vict. c. 20, extends no further than the common law liability—that which has existed by custom between neighbours, and nothing more. It is the owner of the adjacent land, and not a stranger, such as is the plaintiff, who has an interest in the fences of the railway so as to oblige the defendants to keep them in strong condition. The plaintiff's sheep being trespassers, the defendants were not bound to fence against him: his duty was to keep his cattle, at his own risk, from straying on our land. [Jervis, C.J.—I find it so laid down in 2 Wms. Saund.] Yes; and also in Viner's Abr.; *Boyd* v. *Tamlyn*, 6 B. & Cr. 337; *Rex* v. *Pease*, 4 B. & Ad. 30. The judgment of Parke, B. in *Rex* v. *Pease* altogether negatives the argument of common law liability. It has been decided that a man who uses his land in a negligent manner is not liable to trespassers unless the act of negligence is unlawful. (Gale on Easements, 299; *Lynch* v. *Nardin*, 1 Q.B. 29; *Jordan* v. *Crompton*, 8 M. W. 782.) The only injury imputed to defendants is, that they did not keep up their fence: the Court is satisfied that, as against the plaintiff, there was no obligation on them to do so, therefore the judgment should be, that the plaintiff is not entitled to maintain this action.

Chitty, in reply.—The statute must have meant that the defendants should do something more than repair the fences as against the adjoining owner. They had to do more than is imposed by the Common Law on an ordinary person. (*Vere* v. *Lord Cawdor*, 11 East. C. 568.)

Jervis, C.J.—I am of opinion that the defendants are entitled to the judgment of the Court. This being a case of very considerable importance, the parties have very properly agreed to disencumber it of technicalities, and bring it before the Court on the facts. It is admitted that the facts are these. The plaintiff's sheep strayed through his fence on to a close of the Great Northern Railway Company, and thence through a fence of the defendants upon their railway, where several of them were killed. The matter has been viewed in three ways. Admitting that the defendants, by the Act of Parliament, were bound to repair the fence of the adjoining close, that was as against the owner of that close, and there was no liability to the plaintiff. It was by defect of the fence of the plaintiff's close adjoining that of the Great Northern Railway that the sheep had got on to the defendants' railway and had been killed. Under these circumstances it was said, admitting that the defendants were bound to repair the fence, as against the occupiers of the adjoining close, yet the present plaintiff was not entitled to recover. The rule had been well stated in a note to *Pomfret* v. *Ricroft*, in 2 Wm. S. in which it was laid down that this kind of action would only lie against a person who could be shewn to be bound by prescription or obligation to repair the fences of the adjoining land. The defendants would not be liable for injury to sheep escaped from the adjacent close, unless the plaintiff had an interest in that close, or a licence from the occupier to put them there. Applying that rule, had the plaintiff any right to have his sheep in the close adjoining the defendants' railway? It was admitted that they were there, not by right, but by trespass; by deficiency of the fences of the adjoining close. That being so, the plaintiff would not be entitled to recover damages. The next question was, in what respect did the Act of Parliament vary the ordinary responsibility of the defendants? So far from varying it, it had properly taken the general rule of law as the measure of liability. It said, in making the fences, the fences shall be made against the owner and occupier of the adjoining close. This view may at first sight appear to conflict with *Fawcett* v. *The York and North Midland Railway Company*, cited in the argument; but in reality it does not, for there the Act of Parliament imposed a positive and express duty to keep the gates at a crossing on the railway always closed, so that there, though the horse was a trespasser, as there was an undeniable breach of duty, it was properly held that plaintiff was entitled to recover. It was said in the third place, if this was not a common law liability, or given by statute, yet, by reason of the danger of the trade which is carried on, extraordinary caution was required. I think that is not so. The Legislature authorised the defendants to carry on the railway, and have done what they thought necessary to protect the neighbouring country from injury by reason of the railway. It seems to me, therefore, according to all the points put, that the defendants are entitled to the judgment of the Court.

Cresswell, J.—I am of the same opinion, that the plaintiff is not entitled to recover upon the facts before the Court. There is no complaint against the company of negligence, no allegation that they conducted their business in other than a careful manner. I think the obligation on the defendants is co-extensive with prescriptive liability to keep fences in repair against adjoining owners and occupiers, and against them only, and you cannot extend it further.

Williams, J.—I entirely concur with my learned brothers in opinion as regards this case. I think *Dovastone* v. *Payne* conclusive. The only question is, whether the obligation as regards fences imposed on the company by Act of Parliament, is similar to the common law obligation, or whether it is extended by the Act so as to come within the principle of *Fawcett* v. *The York and North Midland Railway Company*. I think it is not within that case, and that the plaintiff here, being a mere stranger, cannot found any action upon such a liability in the defendants.

Talfourd, J. concurred.

Judgment for the defendants.

Friday, April 30.

Heap *v.* Barton and Another.

Landlord and tenant—Tenant's right to remove fixtures after the expiration of the term.

A. a mortgagee, who had dealt with the defendants as yearly tenants, demands possession of premises. B. & C. the tenants, on the 4th February, disclaim the tenancy. A. commences an action of ejectment; an agreement is entered into on the 19th of February, by which A. undertook not to issue the writ of possession until the 25th March, on condition of B. & C. not appearing to the action. B. & C. subsequently remove tenant's fixtures:

Held, that they were precluded by the form of the agreement from so doing.

In this case, which was tried at Liverpool before Cresswell, J. it appeared that in 1821 some stables and other premises were mortgaged by one Howard to the father of the plaintiff. In 1841 the premises were let by a son of the mortgagor, who had been left in possession, but was then dead, to the defendants, who put them into repair, and set up some fixtures, the subject of the present action, which were admitted to be tenants' fixtures. In 1851 there was a demand of possession made by the mortgagee, who had dealt with the defendants as tenants from year to year, a disclaimer of the tenancy by the defendant on the 4th February, and an action of ejectment commenced by the plaintiff, in which the demise was laid on the 5th February. On the 19th a memorandum of agreement was signed by the parties, by which the plaintiff undertook not to issue a writ of possession till the 25th March, on condition that the defendants would not appear to the action. Before the 25th of March, but after the day of the demise laid, and probably after the agreement was entered into, the fixtures were removed by the defendants. Declaration was for breaking and entering and removing the fixtures. The third plea justified the removal of the fixtures under the agreement. Verdict for the plaintiff, with leave to move to set it aside and enter it for the defendants on the third plea.

Atherton (with him was *J. Brown*) now shewed cause against the rule, which had been obtained on a former day. The third plea being confined to the removal of the fixtures, the plaintiff is at all events entitled to keep his verdict as to the breaking and entering. We do not deny that according to the evidence the mortgagee had treated the defendants as tenants from year to year; but that tenancy was terminated by disclaimer on the 4th of February, and after that time the defendants could not remove the fixtures, according to the general rule that tenants cannot remove fixtures after the end of their term (*Hallen* v. *Runder*, 1 C. M. & R. 275; *Weeton and Others* v. *Woodcock and Others*, 7 M. & W. 14.) And the memorandum of agreement is not to be extended in its meaning, that being merely that things were to remain as they were, and some costs be saved; and, besides, between the 5th and the 19th, the date of the agreement, the possession of the defendants was absolutely wilful. When the agreement was made the evil day was put off, and when it came it came with all its consequences; and when plaintiff entered, the entry related back so as to sustain this action. *Penton* v. *Robarts*, 2 East. 88, is certainly a strong case, and is the one most in favour of the defendants. In that case there seems to have been a continued possession, although after the term, and if it stood alone, would be considerably against us. But *Davis* v. *Jones*, 2 B. & Ald. 165; and *Minshall* v. *Lloyd*, 2 M. & W. 450; establish the rule that the tenant can only remove during the term, and that that right can only be extended if the former tenancy is continued with all its rights. If the tenant does not remove fixtures before the expiration of his tenancy, he is taken to have abandoned them to the landlord. That doctrine is recognised in *Lyde* v. *Russell*, 1 B. & Ad. 391; in which case *Penton* v. *Robarts* is in substance overruled. There is nothing in the agreement to shew that the defendants were to be continued as tenants, and if so *Fitzherbert* v. *Shaw*, 1 H. Blackstone, 258; in which case there was an agreement similar to the one in this, is directly in favour of the plaintiff.

Knowles, Q.C. and *Cowling*, in support of the rule, relied on *Penton* v. *Robarts*, and denied that there was any general rule, that if fixtures were not removed during the term they became a gift in law to the landlord. Lessee of tenant of life may re-

move within a reasonable time. The rule is, therefore, not inflexible, but variable according to circumstances, and if the tenant remains in possession, circumstances shew, or may shew, that he does not mean them to be a gift. Park, B. in *Minshall* v. *Lloyd*, uses the expression, "or while they remain in possession after the tenancy has expired," which agrees with *Penton* v. *Roberts*, where it was left to the jury to say, whether the removal was within a reasonable time. We have a right to remove independently of the agreement. The entry of the landlord relates back by fiction of law for some purposes, such as the recovery of mesne properties, but not for all; and *Penton* v. *Roberts* shews that the tenant, though in by a kind of sufferance, may remove until actual entry by the landlord.

JERVIS, C.J.—This rule must be discharged. The questions which have been raised in the course of the argument, as to the power of the tenant to remove fixtures after the term has expired, are questions of importance, and might require consideration, but I am of opinion, that in this case, the form of the agreement precludes the removal of the fixtures. I think it means that the matter should be suspended till the 25th March, and that the premises should then be delivered up in the state they were at the time of entering into the agreement. If it had been intended that the fixtures should be removed, it would have been so expressed in the agreement. *Fitzherbert* v. *Shaw*, therefore, is decisive of the case.

The rest of the Court concurred.

Wednesday, May 5.

SMITH *v.* WINTER.

Where it is agreed that the amount due in the settlement of accounts should be carried on to the next account, and worked out, that is a good answer to an action brought on a subsequent account under the general issue.

This was an action, tried before Jervis, C.J. at Westminster, in which it appeared that the plaintiff in his particulars of demand, claimed 23*l.* 6s. 1d.; that 4*l.* had been paid into Court, and that, as to the rest, the defendant had a good defence under the pleas of payment and set-off, except as to the sum of 1*l.* 6s. 6d. about which there was some doubt. There had been a settlement of accounts between the parties more than six years before action brought, in which there was found to be a balance in favour of the defendant to the amount of 1*l.* 6s. 6d.; and it was then agreed that this should be carried on to the next account, and allowed for in it. It formed part of the defendant's set-off, and to it the Statute of Limitations had been pleaded in the replication.

A rule nisi had been obtained to enter the verdict for the plaintiff for that amount.

Byles, Serjt. and *J. Brown* shewed cause.

Miller, Q.C. appeared in support of the rule.

The COURT were of opinion that the rule must be discharged. The plea of payment cannot be established as covering the amount, but that does not entitle the plaintiff to have the verdict entered for him. The question arises under the general issue. The evidence shews that it was agreed that the balance should be worked out, and be taken as a payment, and therefore to that amount the defendant was never indebted.

BUSINESS OF THE WEEK.

Thursday, April 29.

FOSTER *v.* CRABB.—This was a question as to which of two parties was entitled to have continuing possession of title deeds. The case was part heard on Monday. *Gray* was heard, and *J. Brown* in reply this day. The Court took time to consider its judgment. *Cur. adv. vult.*

PARKER *v.* WALMSLEY.—This was an action on an agreement to transfer certain shares to the plaintiff in the Gloucester, Aberystwith, and Central Wales Railway. The declaration contained two counts, and the defendant, in one of his pleas to the whole declaration, pleaded that the sums of money in the two counts mentioned were one and the same. *Montague Smith* in support of the demurrer. JERVIS, C.J.—It is impossible this can be a good plea to the count on account stated. *Macnamara* in support of plea. Where two counts are identified as on one cause of action, and the plea thereto is good as regards the most material of the two counts, the Court will sustain it. It is immaterial whether it is good to both counts. There is a case not overruled, in which the same objection was considered. The plea does not set up illegality. JERVIS, C.J.—You must amend your plea on payment of costs, and within reasonable time, so as to enable the case to be tried or argued in three days. *Leave to amend.*

MOFFATT *v.* DIXON.—*Thompson* asked the Court to allow this case to stand over in order to accommodate the convenience of *Byles*, Serjt. who was then engaged. *To stand over.*

FISHER and ANOTHER *v.* BELL, P.O.—This case had been before the Courts of Ex. and Q.B. and conflicting judgments given upon it. It was a demurrer to the declaration. *Channell*, Serjt. was heard in support of the demurrer. *Barstow* and *Rowley*, contrà. *Cur. adv. vult.*

DOE *dem.* BENTHALL *v.* ROE.—*Colquhoun* made absolute a rule nisi obtained on a former day, for judgment against the casual ejector. It should have been moved last Term. *Rule absolute.*

Friday, April 30.

WILLIAMS *v.* BUTLER.—*Reed* applied for a rule nisi to compute, and for leave to serve notice of the rule by affixing it up in the Common Pleas Office, and by sending copies to defendant's lodgings in Victoria-square, and to defendant's residence in Ireland. JERVIS, C.J.—Before granting we must know how the declaration was served.

JOHNSON *v.* BINGHAM.—*Fortescue* shewed cause against a rule nisi which had been obtained for setting aside the judgment in this case, and for discharging the defendant out of custody. *Prentice* in support of the rule. The COURT discharged the rule, it appearing that the bill sued on, which the affidavits on the part of the defendant stated had been handed over to the plaintiff, not as a bonâ fide holder, but for another purpose, had been indorsed, and this indorsement not being explained.

Monday, May 3.

CROUCH *v.* THE NORTH-WESTERN RAILWAY COMPANY.—*Cowling* moved for a rule to shew cause why he should not have leave to amend the pleadings. *Rule nisi.*

HOLMES *v.* PARKES.—*Phipson* moved for a rule to shew cause why, on the payment of 8*l* odd into court, all proceedings on the judgment should not be stayed, or why it should not be referred to the Master to review his taxation. *Rule nisi.*

Saturday, May 1.

ROBINSON *v.* GILL.—JERVIS, C.J. delivered written judgment in this case. *To be reported.*

BALDWIN *v.* BAUERMAN.—*T. Jones* moved for a rule calling on the plaintiff's attorney to shew cause why he should not give full particulars of the occupation, calling, and place of abode of the plaintiff in this action. An undertaking had been given by the defendant to appear to the action, and a summons was taken in the terms of this rule, but Maule, J. dismissed it on the ground that the application was too late; it should have been made, according to that learned judge, within four days after the undertaking to appear was given. Since that it has been discovered that the plaintiff is charged with felony, and has absconded. An advertisement [illegible] been published in the *Police Gazette*. (Rule of Court, 2 Wm. 4, c. 79, s. 19.) [JERVIS, C.J.—You lie by, and directly you find that the plaintiff's attorney is in such a position, through the absconding of plaintiff, that he cannot comply with your demand, you come for this rule!] The defendant swears in his affidavit that he has a good defence on the merits, and that he makes this application in order to be in a position to get security for costs. JERVIS, C.J.—As that is so, you may take a rule to shew cause, and in the meantime stay of proceedings. *Rule nisi.*

BELL, P.O. *v.* FISK.—This was a rule to enter up judgment on a warrant of attorney thirteen years old. *Hayes* shewed cause against the rule. The COURT made absolute the rule, without hearing *Byles*, Serjt. in support of it. *To be reported.*

BERR *v.* BERR.—*Fooks* applied to the Court to enlarge this rule, the defendant having undertaken to appear personally before auditors appointed by the Court in an action of account. The ground of application was dangerous illness of the defendant, as certified by the surgeon in attendance on him. *Hake* opposed the motion, on the ground that witnesses were on their way from Dorsetshire to be examined before the auditors according to the terms of the rule. Ultimately it was arranged that the witnesses for plaintiff should come up and be examined on Monday, but, as regards the defendant, the rule to be enlarged. *Rule enlarged accordingly.*

HEALD *v.* CAREY.—In this case the Court said there would be no rule.

WILLIAMS *v.* BUTLER.—In this case, which was mentioned yesterday, *Reed* applied and obtained leave to enter an appearance for the defendant sec. stat. *Application allowed.*

Tuesday, May 4.

Re THOMAS HAKEWILL.—*Kenealey* asked the Court to call Thomas Hakewell, against whom a writ of habeas corpus was yesterday granted by Maule J. ordering him to bring up five children and surrender them to the custody of the mother, or shew good cause for detaining them. Hakewell was then called, but as the writ was only issued yesterday and sealed to-day, the COURT ordered the case to be mentioned again before its rising. *Stands over.*

MOFFATT *v.* DIXON.—This was a demurrer to the 3rd plea of the defendant. *Byles*, Serjt. and *Thompson* in support of the demurrer. *Mansty* contra. Judgment for the plaintiff. *To be reported.*

FREEMAN *v.* LEE.—*Raymond* moved for judgment in this case, on the ground that the paper books had not been delivered four days before argument. [JERVIS, C.J. to *Karslake*.—The rule is, that they must be delivered four clear days, what say you to that?] *Karslake*.—We understood we were to deliver them by the 23rd or 24th of April. JERVIS, C.J.—The answer is insufficient, therefore there will be *Judgment for plaintiff.*

MYERS *v.* PERIGAL and OTHERS.—This was an issue directed by the Lord Chancellor for the opinion of the Court, the question being whether a bequest of sha[res in] a banking company, which had a beneficial interest in lands, not incorporated under the Joint-Stock Companies Act, were within the Statutes of Mortmain. The case was argued at great length. *Byles*, Serjt. *Renshaw*, and *S. Lucas*, appeared for the next of kin, and contended that the bequest was void. *Cowling*, for the defendants. *Cur. adv. vult.*

Re HAKEWELL.—*W. M. Cooke* prayed an enlargement of the habeas corpus in this case. The rule was only sealed at one o'clock to-day, and there was no personal service. *Kenealey*.—There was service at the house where the children are kept in duress, upon Hakewell's brother. We ask for attachment, as there is no return to the writ. [JERVIS, C.J.—According to the practice of this Court, you must shew there has been actual service.] The original writ was served at the house, according to the Act 56 Geo. 3, c. 100. JERVIS, C.J.—You may treat this as reasonable service to-day, and you may come here for return to the writ at the sitting of the Court to-morrow, but you must not move criminally till half-past [illegible] o'clock. *Stands over.*

LAMPLOUGH *v.* THE EAST-UNION RAILWAY COMPANY.—*Dodson* prayed the Court to allow this cause to stand over till Saturday. JERVIS, C.J.—If the other side are agreed, we will hear it on Thursday. *Stands over.*

Wednesday, May 5.

AUSTEN *v.* THE BROMLEY HILL IRON COMPANY.—On *Raymond's* application. *Rule absolute.*

GREGORY *v.* THE DUKE OF BRUNSWICK.—*Mansty* shewed cause against a rule which had been obtained to amend the record, by striking out the affirmance of the judgment of this Court by the Ex. Ch. and inserting the judgment actually pronounced (which slightly varied from the judgment of the Court). The case, after the mistake was made, was taken into the House of Lords; it was now referred by the Court to the Master, to ascertain, first, whether the plaintiff knew of the mistake before the writ of error was brought; secondly, when he first knew of it; and, thirdly, when the defendant first knew of it.

MESSER *v.* PARKER. *Part heard.*

Re HAKEWELL.—*Cook* appeared for Mr. Hakewell, and put in a return to a writ of habeas corpus, of which the purpose was to compel him to produce his children in court. *Kenealey* objected to the sufficiency of the return, and argued that the Court had power to compel Mr. Hakewell to deliver up his children. The COURT were of opinion that they had no such power over the father.

AUSTIN and ANOTHER *v.* THE MANCHESTER, &c. RAILWAY COMPANY.—*Hawkins* continued the argument in support of the rule. *Cur. adv. vult.*

SMITH *v.* WINTER. *Part heard.*

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY, and C. J. B. HERTSLET, Esqrs. Barristers-at-Law.

Monday, Jan. 19.

ATKINSON *v.* STEPHENS.

Pleading.

Declaration alleged that plaintiff shipped on board defendant's vessel at port B. bound for L. certain goods to be carried from the one port to the other, that such goods were afterwards sold for the benefit of the voyage, the master being unable during the voyage to obtain money in any other way, whereby defendant became bound to pay the plaintiff the value of such goods the amount they would have produced at their port of destination.

Plea (founded on the stat. 53 Geo. 3, c. 159), as to the damage beyond the value of the ship, that defendant was not liable, as before the goods reached their destination, and whilst on their voyage in the care of the master of the vessel, he sold them without the authority of the defendant. On demurrer thereto,

Held, that the plea was bad, as being a plea to the damages, and not to the cause of action; also, that the declaration was bad, as no such promise as that alleged followed as a consequence, of law from the facts stated, there being no averment that the vessel did arrive at her destined port of delivery. If a master sell the goods of a shipper at an intermediate port for necessary repairs, the shipper cannot claim the price of similar goods at the port of delivery unless the vessel arrives at the port; therefore the promise here to pay the value without any such condition, as if the goods had arrived at the port of delivery, does not follow as an inference of law from the premises.

This was a demurrer to the plea.

J. Wilde appeared for the plaintiff.

Willes, for the defendant. *Cur. adv. vult.*

Saturday, April 17.—POLLOCK, C.B. delivered judgment. The second count of the declaration states that the defendant before and at the several times mentioned in this count (to wit), on the 1st January, 1819, was the owner of, and interested in, a certain ship or vessel called the *Harriett*, then being at a certain port, Buenos Ayres, and bound from thence to a certain port, to wit, the port of London, in the United Kingdom; and the plaintiff, at the request of the defendant, caused to be shipped on board the vessel certain goods and merchandise. Then the count sets out that the merchandise was sold for the purpose of obtaining the benefit of the voyage, and then it alleges this promise,—after alleging that the goods were sold, and that the ship and freight would have been wholly lost, and that the master could not then obtain money in any other way, and that with the sum of money so realised by the sale of the goods, together with a sum of money realised by the sale of other goods, the costs and expenses incurred in and about the premises were unpaid by the defendant; and the defendant then, in consideration that he would, on the request of the plaintiff, pay him, the plaintiff, the value of the said goods and merchandise of the plaintiff so sold as aforesaid, and contracted to be carried as aforesaid, for which the same might have been sold, had the same been delivered by the defendant to the plaintiff at the port of London; and the plaintiff avers what the value of the goods would have been when they arrived in the port of London, and that is the amount claimed in the action by the plaintiff; and the plea professes to raise a defence, "and for a further plea to the second, third, and fourth counts, so far as the same claim or seek to recover damages, they are beyond, or to a greater amount than the value of the ship;" and with respect to the breach of promise says, "that the plaintiffs ought not to maintain their action against them to recover any damages beyond or to a greater amount than aforesaid in respect of the

breaches of promise in the second, third, and fourth counts complained of, because the several goods and merchandise in the second, third, and fourth counts mentioned, were so caused to be shipped and loaded on board, the ship being the same ship in the several counts mentioned as therein alleged, at the same time, and to be carried on the same voyage as part of the same cargo, and afterwards the said ship sailed on her voyage; and after the said ship had so sailed with the said goods and merchandises on her voyage, and before any part of the said goods and merchandises were carried and conveyed to the port of London, and while the said goods and merchandise were in the custody and control of the master of the ship, for the purpose of being so carried and conveyed, the master of the ship wrongfully and without any authority in that behalf from the defendant, and without the knowledge, privity, or consent of the defendant, sold and disposed of the said goods and merchandise." The pleadings are similar on two other counts, namely the third and fourth counts, for two other parcels of goods. Tl first question raised on the argument was, as to the sufficiency of the plea, which was founded on the statute 53 Geo. 3, c 159. The Court intimated its opinion that the plea could not be supported in point of law. If this be a loss or damag within the statute, which is, to say the least, very doubtful, and indeed we think it is not, because it is only a lawful mode of borrowing money for the necessary purposes of the ship, the plea is bad in form, being a plea to the damages, and not to the cause of action. Mr. Willes, indeed, found himself obliged to give up the plea, and addressed himself to the declaration, and the only question now is whether the second count of the declaration is good? And the third and fourth stand on precisely the same footing as the second. The objection to the second count is that the part consideration alleged does not support the precise promise stated. No such promise follows as a consequence of law from the facts as previously stated, for it is argued that though the defendant may be bound to pay the price of the goods at the place of sale, or at the port of delivery at the option of the plaintiff, yet he is only to be bound if the ship arrives at the port of destination, and there is no qualification of that sort alleged in the promise, nor any averment that the vessel did arrive at her destined port of delivery; and we think that this objection ought to prevail. The authorities, indeed, in the English law upon this subject are few, and consist of the case of *Richardson* v. *Nurse*, 3 B. & Ald. 237; *Alers* v. *Tobin*, before Lord Ellenborough, cited in Abbot on Shipping, 372, *Campbell* v. *Thompson*, 1 Starkie, 490; *Duncan* v. *Benson*, 1 Ex. Rep. 537; and 3 Ex. Rep. 645, in Error; also in the case of *Hallett* v. *Wigram*, which is in the 19 L. J. 281, a decision in the Common Pleas. None of these authorities give any countenance to the doctrine that if a master sell the goods of a shipper at an intermediate port for necessary repairs, the shipper can claim the price of similar goods at the port of delivery, unless the vessel arrives at that port; and therefore the promise in this case, which is to pay the value without any such condition, as if the goods had arrived at the port of delivery, does not follow as an inference of law from the premises. In the case of *Hallett* v. *Wigram*, the vessel had arrived at the port of delivery; it was so averred in the declaration, and a promise to pay the value at that port on request, was a correct statement of the promise, which the law would infer. Whether the plaintiff be entitled to recover the price, for which the goods actually sold, which Lord Tenterden thinks he cannot do unless the vessel arrives, because the merchant ought not to be in a better situation than he would be if the goods had not been sold, is a question that does not arise on the record as it is now framed. Our judgment must therefore be for the defendant for the insufficiency of the declaration; but Mr. Wilde, for the plaintiff, having requested leave to amend if our opinion should be against him, he is at liberty to do so on payment of costs.

Judgment for defendant, leave to amend given.

Wednesday, April 29.

The JUSTICES of BEDFORD, Appellants, *v.* The OVERSEERS of ST. PAUL'S, BEDFORD, Respondents.

Rating—Houses occupied by officers of gaol.

Houses occupied by the governor and warder of the gaol, outside the gaol, but found to be proper and convenient for the performance of their duties in the gaol

Held, not to be rateable to the relief of the poor.

This was a special case stated for the opinion of this Court by consent of the parties, and by order of Martin, B under the 12 & 13 Vict. c. 45, sec. 11; and the questions sought to be raised were, whether certain houses occupied by the governor and warder of the county gaol, which is situate in the parish of St. Paul's, Bedford, were liable to be rated to the relief of the poor of that parish as forming part of the gaol. The rate was made under the 43 Eliz. and it appeared that formerly these officers occupied portions of the gaol within the external walls, but that the county justices, under the sanction of the Secretary of State, rebuilt and enlarged the gaol, and by the rules laid down for their governance erected the houses in question outside and immediately in contact with the prison walls, there being no access from them to the prison except through the general entrance. Soon after this, the justices caused a door to be made through the back wall of the Governor's house to the prison; but the warder's have remained as originally erected. The houses stand on either side of the prison entrance, and are surrounded by a low wall on those sides which are not in contact with the external wall of the prison. This being the state of the premises, it appears that the churchwardens rated the justices for the gaol, and the governors and warders for their houses, and a joint appeal was entered for the borough sessions; but the churchwardens abandoned the gaol and persisted in their claim to rate the houses. This case was framed for the opinion of the Court.

Worlledge and *Mills* appeared for the respondents, and contended that as the officers had the exclusive occupation of these houses, which were more than was absolutely necessary for the discharge of their respective duties, they were rateable. The case finds that the houses are proper and convenient, but it does not say that they are actually necessary. If these parties lived in a different part of the town altogether, and received by way of remuneration, instead of a house to live in, a higher salary to find their own house, they would be rateable. He cited the *Hampton Court* and *Chelsea Hospital* Cases, and *Reg.* v. *Sheppard*, 1 Q. B. 170.

Tozer and *Pearce*, contrà, not called upon.

POLLOCK, C B.—I think this rate cannot be supported. These houses are by the case found to be proper and convenient" for the persons inhabiting them to perform their required duties at the prison. 'Proper and convenient," must mean "suitable," and the houses are not liable to be rated.

ALDERSON, B.—If they are necessary for the performance of their office and duties, surely they are not rateable. They are for them suitable for their convenience, that they may visit the gaol day by day, and every day. This case comes within *Reg.* v. *Sheppard*. there the premises were within the gaol, and here they are an excrescence only. The justices say the houses are proper and convenient, and we are bound by that, and I think concluded.

MARTIN, B.—I am also of the same opinion, and think *Reg.* v. *Sheppard* governs this case.

Rate set aside. Judgment for the respondents and costs allowed.

THE JUSTICES OF BEDFORD, Appellants, *v.* THE COMMISSIONERS OF BEDFORD IMPROVEMENT, Respondents.

The Commissioners of Bedford Improvement rated the county gaol, under a local Act of Parliament, for keeping the streets of Bedford in repair, and other purposes therein mentioned, "for every yard of running length in front of such building." The gaol had two fronts which were accessible, and for some time it was rated only for those two sides, but as its four sides abut on streets, the rate has lately charged all four sides as being "in front"

Held, that the county gaol was liable to be rated, and for the four sides; as each side abutted on a street, with the privilege of putting doors and windows therein, to open on each street; each side was in front, and could derive the benefit of the streets improvement.

This also was a special case by order of Martin, B. for the opinion of the Court under the Bedford Improvement Act, which appointed certain commissioners for keeping the streets of Bedford in repair, and for other purposes mentioned by the Act. The questions now raised were, first, whether the county gaol was liable to be rated at all by the commissioners; and, secondly, whether, if so, the commissioners were justified in the extent and principle to which they had assessed that building.

Worlledge (*Mills* with him) for the respondents.—By the local Act the gaol or such public buildings are to be rated at the rate of 1s 6d per yard "for every yard of running length in front of such build- The gaol, though it had at the passing of the local Act two fronts, which were accessible, and in respect of which alone it was then rated, does in fact abut on four streets in part, the sides being in front of two streets; and the commissioners now claimed to rate it for every yard of frontage on all sides which abutted on any street.

Tozer (*Pearce* with him), for the appellants, was called upon by the Court, and contended that the gaol was only liable for the extent of yards "in front," that is on the main front, through which alone was there now any access to the area inclosed by the walls. The gaol was not liable to be rated at all, because by the 4 Geo. 4. c. 64, s. 48, gaols locally situate out of the county shall be deemed part of the county, and subject to the jurisdiction of the justices of the county. The proviso at the end of the 8th section of the Municipal Corporation Act shews that every county gaol taken to be for any purpose within any county shall still for all such purposes be taken to be so. The 32nd, 50th, and 59th sections of the local Act are important, showing the construction to be given. The other question is upon the term "front," as used in the Act. Front cannot mean "back" or "side" of the gaol; so that if the four several sides were in four different streets, each side would not not be rateable as the front. Supposing the gaol to be situated in an inclosure some short distance back from the road, with a narrow gateway from the street leading to the prison, that whole side of the prison fronting the street would be rateable as the front, but not the sides or back thereof.

Worlledge, in reply, stopped by the Court.

POLLOCK, C.B.—We are all of opinion in this case that our judgment must be for the respondents on both points. The 4 Geo. 4 was intended to give jurisdiction to the county justices to commit to their gaols, which were often situated in a town, possessing exclusive jurisdiction, but no further; and if such property was rateable to the borough, it remained so after the Act. As to the meaning of the term "front," it is that part of the gaol which comes against the street. If the four sides come severally into four different streets, each side is front for the purpose of being rated. Doors and windows might be put in on every side, and every side derive the benefit of the street adjacent; and that is front wherever it abuts on the road. The rate is therefore, I think, perfectly correct.

PARKE, B.—I am of the same opinion. The question is, what construction should be put on the word "front," and I think each side abutting on the street is front; with respect to the benefit they derive, the side of the gaol coming against the street is certainly the front to that particular street; they may make use of those sides as fronts to those streets by putting in doors and windows there, and derive the advantages and benefits of those streets accordingly; front means fronting upon the street, and they must pay according to the number of yards each side of the gaol is abutting on the street.

ALDERSON, B.—I am of the same opinion.

MARTIN, B.—I am also of the same opinion. The gaol is locally in the town of Bedford, and it is clear that the property is to be rated for its improvement, and for the repair of the streets, and whenever any building to which the assessment per yard of "running measure in front" is applicable, or fronted or abutted more than one street, it is liable on all, though there may be no access to it on more than one, because the owners might open doors and windows to all the streets on all sides if they pleased, and so avail themselves of the benefit of the expenditure of all the streets on which it abutted.

Rate affirmed. Judgment for the respondents, with costs.

Feb. 7 and 9.

STANSFIELD *v.* HELLAWELL.

Replevin bond 9 & 10 Vict. c. 95, ss. 121—127.

The judge of a County Court took the bond provided for by the 127th section of the County Court Act to himself, instead of to the other party to the action, as desired by the Act

Held, that the bond was made to the judge as a trustee, and might be sued on by him. And also that by declaring in the Court above, the opposite party had waived the irregularity.

In this case a rule nisi had been granted in Michaelmas Term, calling on the plaintiff to shew cause why the judgment obtained herein should not be arrested, or why the damages should not be reduced to a nominal sum. The facts and pleadings fully appear in the judgment.

H. Hill (*Cowling* with him) now shewed cause, and contended that this was a perfectly good and valid voluntary bond, and was not avoided under the statute; the words of the statute are merely directory. Here the tenant obtained the removal of the goods by his own act, the landlord being no party to it, and the tenant received the entire benefit: the judge, by taking the bond to himself, merely took it as trustee. Many instances may be cited of bonds given under a statute being held valid, although the requisitions of the statute had not been strictly complied with. In the case of an administration *durante minore ætate cum testamento annexo*, which is not within the 21 Hen. 6, yet if the ordinary has taken a bond from the administrator conditioned for the due payment of debts and legacies, a breach may well be assigned that, though he had more than sufficient to pay all the debts, he has not paid a legacy. (1 Wms. Exors. b. 5, c. 4.) So also a replevin bond, with only one surety instead of two, as required by 11 Geo. 2, c. 12, s. 3, may be sued on. He cited also *Blacket* v. *Crissop*, 1 Ld. Raym. 278; *Austin* v. *Howard*, 2 Marsh, 352; *Dunbar* v. *Dunn*, assignee, 10 Price, 54; and called the particular attention of the Court to the judgment in the last case; *Folkes* v. *Doeminique*, 2 Str. 1137.

Watson (*Hall* with him) was called on to support the rule.—The 121st section points out the only method by which actions of replevin can be legally removed, and it is a condition precedent that the preliminaries required should be complied with. This bond is illegal and void. He cited *Morris* v. *Chapman*, Thos. Jones' Rep. 24; *Martin* v. *Blithman*, Yelv. 197; *Beawfage's* case, 10 Rep. 100, *b.*; *Wright* v. *Lord Verney*, 3 Dougl. 240. This was an illegal act done by mistake, and no one can take advantage of it. The judge cannot be considered as a trustee, for this was evidently an error, and a man cannot be made a trustee by an act done in mistake, and by ignorance of the law.

Cowling was called on to reply, and cited Com. Dig. tit. "Parliament R," 23 & 25; *R.* v. *Pinney*, 2 B. & C. 322; *Cole* v. *Green*, 6 M. & G. 872; *Edmonds* v. *Challis*, 7 C. B. 436. *Cur. adv. vult.*

JUDGMENT.

PARKE, B.—This was an action on a bond for the sum of 1,759*l.* 15s. 3d.; and there is a plea which stated that the bond was given to the judge of the County Court with a condition to prosecute a certain claim entered in the County Court, in which Hellawell was the plaintiff, and Eastwood and others were defendants, with effect, and without delay, to prove before the Court in which such suit should be tried that there was a ground for believing that the rent or damages in respect of which the distress had been taken was more than 20*l.* Then it proceeds to state the condition of another bond, which was also in another proceeding; and then it states that the bond was given in order to obtain the removal of a plaint to one of the Superior Courts at Westminster to the plaintiff, who was then the judge of the court; that the rent in respect of which the distress was taken was more than 20*l.*; and that it was entered into to the plaintiff instead of being made to the other party to the said plaint, Eastwood and others, contrary to the form of the statute. Then they aver that it was made to the plaintiff, being only as preliminary to the removal of the suit; and that the plaintiff accepted from the defendant illegally the said writing obligatory in the said first count mentioned as an inducement to the plaintiff to assent to such removal of the said plaint, and to make a return agreeable to a writ of certiorari which Hellawell might procure for removing the said plaint, and so it was void. And there is a similar plea to the second count of the declaration; and there is one issue as to the truth of the allegations contained in the pleas. And then breaches are assigned: and the breaches assigned are, that after the making of the said writing obligatory, the defendant Hellawell duly removed the suit out of the said County Court into the Court of Ex.; that Hellawell declared in that court against the defendants in the court below, but did not prosecute his suit in the Ex. with effect, such proceedings were had therein that it was adjudged that he should take nothing by his writ, &c.; and that the defendants should have a return of the goods under the distress irreplevisable with costs, &c. whereby the bond became forfeited. And he further says that the plaintiff commenced to prosecute the action on behalf of, and for the benefit of, the said Eastwood and others, who were the landlords of the plaintiff; and then there is another breach with regard to the second count. Upon the trial, my brother Platt reserved the point; the objection being taken. My brother Platt directed the damages to be assessed to the amount of the costs which Eastwood had sustained in that suit, and which were awarded in that suit. Then in arrest of judgment there was a motion made that the bond was void under the statute, and if not void under the statute, the damages instead of being assessed at 178*l.* ought to have been nominal, merely because the plaintiff was the judge of the Court, and had sustained no damages. With respect to the bond being void, we are clearly of opinion it is not void under the statute. By the 121st sec. 9 & 10 Vict. c. 95, there is a provision "in case either party to any action of replevin shall declare to the Court in which the action shall be brought that the title to any corporeal or incorporeal hereditament, or to any toll, market, fair, or franchise, is in question, or that the rent or damage, in respect of which the distress shall have been taken, is more than the sum of 20*l.* and shall become bound in two sufficient securities to be approved, of by the clerk of the court in such sums as the judge shall think reasonable, regard being had to the nature of the claim and the alleged value and amount of the property in dispute, or of the rent, or damage, to prosecute the suit with effect and without delay, and so prove before the Court in which the suit shall be tried, that such title is in dispute between the parties, or that there was ground for believing that the said rent or damage was more than 20*l.*; then, and not otherwise, the action may be removed before any Court competent to try the matter, in such manner as has been accustomed." Now, by the 127th section there is a provision, that every bond to be given on the removal of any action out of the County Court, or upon staying the execution of any such warrant of possession as aforesaid, or on moving for a new trial, or to set aside a verdict, judgment, or nonsuit, shall be made to the other party to the action, at the cost of such other party, and shall be approved by the judge and attested under the seal of the Court; and if the bond so taken be forfeited, or if, upon the proceeding for securing which, such bond was given, the judge before whom such proceeding shall be had, shall not certify upon the record in court that the condition of the bond has been fulfilled, the party to whom the bond shall have been so made may bring an action of debt and recover thereon. Therefore, in this respect, the judge of the County Court did not follow the direction of the Act, because he took the bond to himself, no doubt by mistake, instead of taking it to the defendant in the action, and the opposite party in the replevin suit. The pleas which aver that this was done illegally and intentionally were disproved, consequently the verdict was found for the plaintiff on those pleas, and the question arises entirely on the record. We are of opinion that the preliminaries pointed out in the section of the statute are not imposed as a condition precedent to the validity of the bond which they require should be taken. The only consequence is that the suit is not properly removed. The bond itself is not thereby made void; it was a voluntary bond, and may be sued upon by the judge of the Court. We are of opinion that the bond is good, and the rule in arrest of judgment must be discharged. The only remaining question is, what amount of damages the plaintiff is to have? Now, this is not an objection on the record, for there is a proper suggestion of breaches; the bond has clearly been broken; then, what damages the plaintiff sustains is a matter for the jury to decide. On the facts of this case there is no doubt ample evidence to shew that the judge of the court in this case took the bond in the nature of a trustee for the opposite party to the suit, and the damages he recovers will be for the benefit of the opposite party. There is clear evidence that being trustee, he is entitled to recover the full amount of the costs which the party for whom he is trustee is put to. We are of opinion, therefore, that in this case the plaintiff must be considered as having sustained damages to the full amount of the costs, and, consequently, both the rule to arrest the judgment, and the rule also to reduce the damages, ought to be discharged. The suit was improperly removed from the County Court, no doubt, but then the Court above having jurisdiction over the question, because they have a right to try replevins properly brought before them, they have general jurisdiction over the case; and then the irregularity in not removing the suit by a proper mode, viz. a certiorari, grounded on the proper bond, has been waived by the party declaring in the court above, and that Court proceeding to judgment, the opposite party getting his costs. The proceedings were coram judice, though irregularly brought here, that irregularity has waived, consequently the damages were properly given by the Court to the opposite party; and being given to the opposite party, the plaintiff may sue on this bond as a trustee for the opposite party. *Rule discharged.*

Thursday, April 29.

MAGUIRE *v.* KINCAID.

Plea of nul tiel record Issue—Notice—Practice.

Where to a plea of nul tiel record the plaintiff joined issue, and gave notice to the defendant on Saturday of his intention to produce the record on the following Monday it was

Held, that the notice was sufficient.

This was an action on a judgment. Plea, nul tiel record. Replication, joining issue. The plaintiff had given notice to the defendant Saturday of his intention to produce the record on the following Monday.

Honyman now moved for a rule to shew cause why the judgment which had been signed, and all subsequent proceedings, should not be set aside, with costs, on the ground that the notice was too short. He contended that four days' notice should have been given.

PLATT, B.—Is not the notice given sufficient?

PARKE, B.—It is a notice of the plaintiff to produce his own record and support his own issue.

POLLOCK, C.B.—You can come here and see that it is all right. *Rule refused.*

Friday, April 30.

WHITEHEAD *v.* LORD, Administrator, &c.

Attorney's bill—Statute of Limitations.

Where an attorney or solicitor undertakes a suit at law or in equity, he must carry it on to its termination, before a cause of action arises enabling him to sue for the amount of his fees: unless he gives a reasonable notice that he shall discontinue such suit if he be not paid or supplied with the necessary money required, or the client dies; in either case a cause of action would then arise, and the Statute of Limitations begin to run from that time, and from that time only.

This was an action upon an attorney's bill of costs tried in Middlesex before Martin, B. when a verdict was returned for the plaintiff for 68*l.* A rule nisi had been obtained to set aside the plaintiff's verdict on the issue raised on the plea of never indebted, or on the issue raised on the plea of the Statute of Limitations, and to enter a verdict thereon for defendant.

Bramwell and *Gray* shewed cause.—The defendant was administrator of Ann Lord, deceased, who had employed the plaintiff to defend her in a Chancery suit to which she had been made a party by bill of revivor; the last step taken therein by the present plaintiff, Mr. Whitehead, was eleven years previous to the 4th of November, 1851, when the present action was commenced. An attorney who undertakes a suit at law or in equity, is bound to conduct it to its termination before the cause of action properly arises to entitle him to sue for it, unless indeed he gives a reasonable notice to his client that he shall proceed no further without payment; at the expiration of that notice, being within a reasonable time, he may discontinue the suit, and a cause of action then arises for his bill of costs, and the Statute of Limitations would begin to run from the time such right of action accrued, and not before. (*Harris* v. *Osborne*, 4 Tyrwhitt, 445; and 2 Crompt. & Mees; *Vansandan* v. *Brown*, 9 Bing. 402; *Williams* v. Jones, 2 Q.B. 276.) [PARKE, B. —A Chancery suit has so many out-branches that if he is to wait till its termination he may have, in some instances, to wait nearly 100 years.] He has the remedy in his own hands by giving notice that he shall discontinue in a reasonable time unless money is furnished. No decree has ever yet been pronounced, and the notice given was shortly before the action, so that the Statute of Limitations did not begin to run till then, and is no answer to the claim now made. 1 Daniel's Chancery Practice was referred to.

Phipson, contrà.—The Statute of Limitations is a bar; the last step taken in the suit in Chancery was eleven years before this action was brought, so that for five years after the plaintiff did anything in the Chancery suit, and before the statute began to run, he had the opportunity to give notice—if such notice be necessary—or to enforce the payment of his costs, he was bound to take some course within a reasonable time, which length of such reasonable time is for the Court or jury to determine. The plaintiff waits over for eleven years, and then brings this action; there are other circumstances besides the giving reasonable notice of discontinuing, which may give a cause of action. (See *Nicolls* v. *Wilson*, 11 M. & W. 106.)

POLLOCK, C.B.—I am of opinion this rule should be discharged. The only question is, whether the Statute of Limitations is a bar to the plaintiff's claim, and on examination of the cases it would appear that an attorney is not entitled to bring an action for his fees in the duration of the suit, without some proper and reasonable notice requiring payment. There are, Mr. Phipson says, other circumstances which may give the attorney a cause of action from which the Statute of Limitations may begin, but probably this arises from the expression of opinion in the judgment of the case he referred us to, without its being at all necessary to the decision of the case in which it was expressed, and not of very much weight. The rule laid down is generally that as long as a suit at law or in equity is going on, so long is the attorney bound to attend, and so long does the Statute of Limitations not apply. It does not, in fact, apply until the attorney has a proper cause of action either by bringing the suit to a termination or giving some reasonable notice requiring payment. It has been suggested that this, too, must be in a reasonable time; and what is a reasonable time for such a purpose should be left to the jury to determine. I do not at all agree to that: leaving such questions for a jury would indeed bring matters into great difficulty, and be a most strange way to decide it,—as strange in principle as it would be mischievous in practice. Until some communication is made by the attorney to his client, or the suit determined, an action could not be brought; and the statute would apply only from that time.

PARKE, B.—I am of the same opinion. *Harris* v. *Osborne* is an authority in point, as far as it goes, with this qualification, that the attorney is to bring the suit to a termination as far as he can, and on the death of the client, as in this case, a cause of action at once accrues to the attorney for his charges in the suit he conducted for the deceased, and he can sue the executor at his death. Or on reasonable notice that he should discontinue the suit unless supplied with funds he would be entitled to do so, and to maintain an action for his fees unless paid. Mr. Phipson intimates another also, that is, if he permits the suit he is conducting for his client to sleep so long, he may sue after a reasonable time has elapsed; but I think not. There is no authority for it: he may adopt the course of giving notice as in *Harris* v. *Osborne*; that was not necessary however, in this case, although it was done just be-

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fore the action was brought, because when the client died he had a cause of action, it then commenced, and from that time, and not until then, did the Statute of Limitations begin to run. The six years had not elapsed, and this rule must be discharged.

PLATT, B.—I am also of the same opinion. No doubt, an attorney may not stop in the middle of a suit; but if he wishes to be furnished with money to go on, he must give a fair and reasonable notice to the client to pay him, or furnish him with the funds necessary for the purpose. What is the case here? The plaintiff became solicitor for his client in the conduct of a suit in Chancery. There has been no decree in that suit up to this moment; but for eleven years it was allowed to sleep, no step being taken in it; the client then died, and this action is brought against the administrator. The Statute of Limitations, under such circumstances, is no bar to the action.

MARTIN, B.—I am of the same opinion; and the question to test when the Statute of Limitations began to run is, when could the plaintiff have first brought this action? I do not think he could properly have brought his action for his bill of costs until after the expiration of a reasonable given time requiring the money; or some step taken to put an end to the suit altogether. *Rule discharged.*

THOMAS v. CROSS.

Payment, or set-off—Evidence.

The defendant was indebted to the plaintiff on a bill of exchange then due, 25l.: the defendant handed to plaintiff 9l. and a 17l. bill of exchange in payment of the 25l.: the plaintiff kept the 9l. and returned the 17l. bill, he refused to keep both in satisfaction of the 25l. or return the 9l.

Held, by Pollock, C.B. and Platt, B. that the 9l. so paid must be taken as a payment of the 9l.: Parke and Martin, BB. that it could be treated only as set-off, and not payment.

This was an action tried before Platt, B. in Middlesex, and was upon a bill of exchange to recover 25l. 6s. The first plea was as to 9l. payment; and, second, as to the residue. Set-off. A rule nisi had been obtained to set aside the defendant's verdict on the first plea, and to enter it for the plaintiff instead. The facts appeared to be these:—The 25l. bill being due, defendant took to the plaintiff 9l. and another bill for 17l. to pay and satisfy the 25l. bill. The plaintiff received the 9l. on that offer being made, and refused the 17l. bill, declining to accept the two in discharge of the 25l. and said he should keep the 9l. on another account, and ordered defendant out of his office, so that the plaintiff would neither give back the 9l. as required, nor keep it with the 17l. bill, in lieu of the 25l. bill. The question now, therefore, became material in reference to the costs of the action under the County Courts Act, whether the 9l. so kept by the plaintiff should be treated as a payment or set-off; if the former, the plaintiff would not get his costs by reason of the County Court Act, but if it were held to be a set-off, then he would. The jury found a verdict for the defendant as to the 9l. on the plea of payment.

Bramwell, Q.C. shewed cause, and contended it was a payment; it was so treated by defendant and plaintiff at the time, and so found by the jury.

J. Brown, contrà.—This could only be treated as set-off, and the short test is this, had the plaintiff the right to keep it, the next hour after it was so paid to him, in the way that has been stated? If he had not, then it is set-off, and not payment. The defendant could have sued the plaintiff in an action for money had and received, for this 9l. and also in trover, if necessary, for the 17l. bill; therefore, it must be considered as a set-off only.

POLLOCK, C.B.—I regret there should be any difference of opinion upon the Bench as to this case; but after listening to the arguments, my own opinion is, that this was made a payment conditionally; the plaintiff had no right to keep the money, if he did not so receive it; but he received it at the time, it was paid by the defendant, as payment; he kept it as such, and I think this rule ought to be discharged.

PARKE, B.—The question is, what opinion should we form on the law as applicable to the facts here between payment and set-off; and I think the verdict should be for the plaintiff, on the ground that was not a payment, but a set-off. The 17l. bill, and the 9l. were offered to the plaintiff, on condition that he should take them for the 25l. bill; this he refused, but kept the 9l. and the condition, therefore, was not complied with. Defendant had then a right to demand it back, and I think upon the evidence it is only a set-off, not payment, and that there was no evidence for the jury to say it was payment; the circumstance of his so stating it on the record, shews he intended to treat as either one or the other. What evidence was there of payment? The plaintiff did not take it on the bargain, as it was offered, and the defendant could have brought an action to have recovered it back; in my opinion it is only set-off.

PLATT, B.—I think this rule should be discharged, and that there was evidence to go to the jury to shew it was payment; it was made on the faith of its being payment, and was so intended; the defendant went to the plaintiff with the 17l. bill and the 9l. and he parted with the 9l. only as payment; afterwards the plaintiff declined, and said to the defendant, "You may have back the bill, but not the money." I do not think it is competent for him now (to answer his purpose) to repudiate the payment, and say it was no payment; the jury have found from the evidence of the defendant, whom they believed, that it was a payment, and I think they were right.

MARTIN, B.—I regret much that I have to give any opinion upon this case; but as I do so, I agree with my brother Parke in thinking this is more properly a set-off; if a party is liable to pay money on a certain day, and takes it, that is payment; if not then paid when due, you must at any time afterwards get the assent of both parties to any proposition intended as payment; here, there was an overdue bill, it was a debt; both must then agree, one to pay, and the other to accept to make it payment; but that was not so here, the justice however of this particular case would appear to be the other way, so that I do not at all regret the result of the present rule. *The rule drops—no costs.*

BUSINESS OF THE WEEK.

Wednesday, April 28.

DOE *dem.* KIMBER *v.* CAFE.—A special case upon the construction of a will. *Cur. adv. vult.*

THE DUKE OF BEAUFORT *v.* VIVIAN.—*Quain*, in support of a special demurrer to the declaration, on the ground of uncertainty. *Jas. Brown*, contrà. *Judgment for plaintiff.*

CROUCH *v.* THE LONDON AND NORTH-WESTERN RAILWAY COMPANY.—*J. Brown*, in support of demurrer to pleas. *Atherton*, contrà. *To amend upon terms agreed on.*

HAYLING *v.* OKEY.—A demurrer to the replication. *Cur. adv. vult.*

Thursday, April 29.

TOPLIS *v.* FORBES.—*Willes* moved for a distringas to compel appearance. *Granted.*

KINGSTON *v.* IBBETSON, Bart.—*Honyman* shewed cause against a rule to set aside notice of trial herein. *T. Williams* in support. *Rule absolute.*

NEW TRIAL PAPER.

GALVANISED IRON COMPANY *v.* WESTOBY. *Cur. adv. vult.*

Friday, April 30.

DWYER *v.* COLLINS. *Cur. adv. vult.*

MAY *v.* COLLETT.—*Gordon Allan* moved for leave to enter an appearance for defendant, on the return of the sheriff to the writ of distringas of nulla bona and non est inventus. *Rule granted.*

Saturday, May 1.

DE ROTHSCHILD *v.* THE ROYAL MAIL STEAM-PACKET COMPANY.—The Court said at present they would not call on *Sir A. Cockburn* to continue his argument.

HILL *v.* PHILP. *Postponed.*

COLLINS *v.* GRIFFITHS.—*Hance* moved for a distringas to compel appearance. *Granted.*

RALPH *v.* BAXTER.—*Honyman* moved for a distringas to compel appearance. *Granted.*

LANDMAN *v.* ENTWISTL.—The *Attorney-General*, *Hoggins*, and *Smithurst* shewed cause. *Sir A. Cockburn* and *Bramwell* contrà. *Rule discharged.*

ESCRIT *v.* MASON.—*B*[illegible] moved for a new trial on affidavits on the ground of surprise. *Rule nisi granted to come on as a motion.*

HADDEN *v.* LANCASTER. *Rule nisi granted.*

JOLLY *v.* HANCOCK. *Rule nisi granted.*

ELLICOMBE *v.* STEVENSON. *Rule refused.*

STEVENSON *v.* DICKINSON. *Rule refused.*

NEWBOLD *v.* THE EAST LANCASHIRE RAILWAY COMPANY. *Rule discharged with costs.*

STUBBS *v.* STUBBS. *Rule refused.*

OSGOLD *v.* COLLIS. *Rule refused.*

PERRY *v.* DODGE and UX. *Rule nisi granted.*

Monday, May 3.

SPECIAL PAPER.

COLLIFED *v.* FAGG.—This was a demurrer to a sur-rejoinder. *Dowdeswell* for the defendant. *Jones* for the plaintiff. *Cur. adv. vult.*

STAFF *v.* MORRISON.—This was a demurrer to the declaration. *J. Grey* for the defendant, and *Phipson* for the plaintiff. *Leave to amend, or judgment for the defendant.*

SOUTH YORKSHIRE RAILWAY and RIVER DUNN COMPANY *v.* JOHNSON.—This was a demurrer to certain pleas. *Phipson* for the demurrer. *Garth* contrà. *Pleas to be struck out, with liberty to the defendant to give evidence under the general issue, or judgment for the plaintiff in three days.*

SOUTH YORKSHIRE RAILWAY and RIVER DUNN COMPANY *v.* KNIGHT. *Same judgment.*

POOLEY *v.* HADFIELD.—Demurrer to a plea. *Willis* in support of the demurrer. *Welsby* contra. *Plea to be struck out.*

Tuesday, May 4.

HORTON *v.* THE WESTMINSTER IMPROVEMENT COMMISSIONERS.—*Bramwell*, Q.C. and *Honeyman* shewed cause against the rule nisi obtained to rescind the Chief Baron's order, which required the plaintiff to show certain books and other documents for the defendants' inspection. *Shee*, Serjt. and *Garth*, contrà. *Defendants' affidavits to be amended.*

NEALE *v.* LEVY.—*Chambers*, Q.C. shewed cause against a rule obtained to set aside a nonsuit directed by Parke, B. on the ground that an agreement on which the action was brought was not produced stamped. *James*, Q.C. contra (stopped in argument). *Rule absolute for a new trial.*

ASH *v.* DAWNEY.—*Fortescue* shewed cause against a rule obtained for leave to plead another plea in this case. *H. Hill*, contrà (not heard). *Leave given to plead the plea required.*

MANNING *v.* WARLICK.—*Joyce* shewed cause against a rule obtained for the costs of the day. *Simon*, contrà (not heard). *Rule absolute.*

BAIL COURT.

SELLS *v.* BOWES. *Cur. adv. vult.*

Wednesday, May 5.

WHITTAKER *v.* WISLEY.—*O'Malley* moved for a rule to bring back the venue from Cambridge to Middlesex. *Rule nisi granted.*

DANSON *v.* LE CHATTELIT and STEELE.—*Hall* moved for a rule calling on the governor of Coldbath-fields prison to shew cause why an attachment should not issue against him, he having, in consequence of a rule made by the justices, refused to permit a person confined in the prison to be served with civil process. *Rule nisi granted.*

Re JOHN SMITH, One, &c.—*Cole* moved for an attachment for disobeying an order which had been made a rule of Court. *Rule nisi granted, returnable on Saturday.*

KIRKPATRICK *v.* KIRK and OTHERS.—*Fortescue* moved for a rule calling on the Bailiff of Yorkshire to shew cause why an attachment should not issue against him for extortion. *Rule nisi granted.*

PALMER *v.* TROKE.—*Wells* moved for judgment, as in case of a nonsuit. *J. Brown*, shewed cause. *Rule discharged on a peremptory undertaking.*

FLORY *v.* DENNY. *Rule refused.*

BELL *v.* HOMLEY.—*H. Hill* shewed cause. *Bliss* in support. *Rule discharged.*

CONTURIER *v.* HASTIE and ANOTHER. *Part heard.*

BAIL COURT.

Reported by T. W. SAUNDERS, Esq. of the Middle Temple Barrister-at-Law.

(Before Mr. Justice COLERIDGE.)

Friday, April 30.

Ex parte JOHN HARRISON.

Order of affiliation.

It is no objection to an order of affiliation that it is made after the lapse of twelve months from the birth of the child, if, in fact, the complaint of the woman was made within that period;

Nor that the summons was not issued till many months after the application for it;

Nor that the order directs payment of the weekly sums for a longer period back than thirteen weeks;

Nor that it was made more than forty days after service of the summons, the hearing having been adjourned from time to time, and the first hearing having been within the proper time.

This was a motion to quash an order of affiliation made by two justices of the county of Durham, whereby they adjudged one John Harrison to be the putative father of a bastard child. The order had been previously removed into this court by certiorari. The following were the circumstances:—

In August 1850, an order of affiliation was made by two justices of Durham, at the instance of one Mary Robinson, upon the said John Harrison, in respect of a bastard child, born on the 10th of May in the same year. Against this order he appealed at the next sessions, at which the order was quashed. Subsequently, he was again served with a summons, bearing date the 23rd day of July, 1851, to appear before justices to shew cause why an order should not be made upon him for the maintenance of the said child. To this summons he duly appeared on the 5th of the following August, when the hearing was adjourned to the 2nd day of September, on which day it was again adjourned to the 11th day of September, when an order was made upon him.

The summons was in the ordinary form, and recited that application had been made by Mary Robinson, who had been delivered of a bastard child, &c. "*within twelve calendar* months from the date hereof" (23rd of July, 1851). The following was the form of the order:—

"Durham, to wit.—At a petty session of her Majesty's justices of the peace for the county of Durham, holden in and for the north-west division of Darlington Ward, in the county of Durham, at Wolsingham, in the said division, on the eleventh day of September, in the year of our Lord one thousand eight hundred and fifty-one, before us, William Nicholas Darnell, clerk, and George Darnell Wooler, esquire, two of her Majesty's justices of the peace for the said county.

"Whereas one Mary Robinson, single woman, residing at Daddry Shield, within this division, did on the twenty-eighth day of October, in the year of our Lord one thousand eight hundred and fifty, having been delivered of a bastard child within twelve calendar months prior thereto, make application to William Nicholas Darnell, clerk, one of her Majesty's justices of the peace acting for this division, for a summons to be served upon one John Harrison, of Sidehead, in the parish of Stanhope, in the county of Durham, whom she alleged to be the father of the said child, and the said justice thereupon issued his summons to the said John Harrison to appear at a Petty Session to be holden on the fifth day of August, in the year of our Lord one thousand eight hundred and fifty-one, for this division, in which the said justice usually acts, to answer her complaint touching the premises. And whereas, the said John Harrison having been duly served with the said summons within forty days from the said fifth day of August last, from which day the hearing of this case was adjourned to the second day of September instant, and from which said second day of September the hearing of this case hath been further ad-

journed to this eleventh day of September and being now present; and the said Mary Robinson having on the said fifth day of August last, and also on the said second day of September instant, and on this eleventh day of September applied to us the justices in Petty Sessions assembled for an order upon the said John Harrison, according to the form of the statute in such case made and provided, and it being now proved to us in the presence and hearing of the said John Harrison, that the said child was, since the passing of an Act, passed in the eighth year of the reign of Her present Majesty, intituled, 'An Act for the further Amendment of the Laws relating to the Poor in England;' that is to say, on the 10th day of May, in the year of our Lord, one thousand eight hundred and fifty, born a bastard of the body of the said Mary Robinson; and we having in the presence and hearing of the said John Harrison, heard the evidence of such woman upon oath, and such other evidence as she hath produced, and having also heard all the evidence tendered on behalf of the said John Harrison, and the evidence of the said Mary Robinson, the mother of the said child, having been corroborated in some material particular by other testimony to our satisfaction, do hereby adjudge the said John Harrison to be the putative father of the said bastard child, and having regard to all the circumstances of this case, we do now hereby order that, the said John Harrison do pay unto the said Mary Robinson, the mother of the said bastard child, so long as she shall live, and shall be of sound mind, and shall not be in any gaol, or prison, or under sentence of transportation, or to the person who may be appointed to have the custody of such child, under the provision of the said statute, the sum of two shillings and sixpence per week, from the said twenty-eighth day of October, one thousand eight hundred and fifty, being the day upon which such application was made to the said justice as aforesaid, until the said child shall attain the age of thirteen years, or shall die, or the said Mary Robinson shall marry: and we do hereby further order, the said John Harrison to pay to the said Mary Robinson, the sum of one pound fourteen shillings and sixpence, being the costs incurred in obtaining this order, and the sum of ten shillings for the midwife.

"Given, under our hands and seals at the Sessions aforesaid, "W. N. DARNELL, (L.S),
"GEO. DILL. WOOLER, (L.S)."

By sec. 2 of the 7 & 8 Vict. c. 101, it is enacted that any single woman who may be delivered of a bastard child may at any time within twelve months from the birth of such child make application to any one justice of the peace for a summons to be served on the man alleged by her to be the father of such child, and such justice shall thereupon issue his summons to the person alleged to be the father of such child to appear at a Petty Session to be holden after the expiration of six days at least for the petty sessional division in which such justice usually acts.

The 3rd section, after pointing out the course of proceeding at the hearing, empowers the justices, in the event of their adjudging the man to be the putative father, to proceed to make an order on the putative father for the payment to the mother of a sum of money weekly, &c. such sum (except in the cases pointed out) not to exceed "*two shillings and sixpence per week from the time of the making of the application.*" The section then provides for compelling payment of these sums, but provides "that if the woman have allowed the weekly payment to be in arrear for more than thirteen successive weeks, without application to a justice, the man shall not be called upon to pay more than the amount due for thirteen weeks in discharge of the whole debt, and no warrant of distress shall be issued for more than the amount of arrears for thirteen weeks' payment in discharge of the whole arrears or debt."

Price now moved to quash the order of affiliation, and contended, first, that as the Act of Parliament limits the period for an application for an order of affiliation to twelve months from the time of the birth, and as the order in this case was made after such twelve months had expired, the justices acted without jurisdiction.

COLERIDGE, J.—I can see no objection upon this ground The statute only requires that the complaint should be made within twelve months after the birth of the child, which appears upon the face of the order to have been done: it is immaterial as far as their jurisdiction is concerned when the order was made.

Price.—Secondly, the order states that application for a summons was made on the 28th of October, 1850, whereas the summons itself is not issued until the 23rd of July, 1851, being nine months afterwards; and the summons itself states that the woman was delivered of a bastard child within twelve months from its date, which was not the fact.

COLERIDGE, J.—This is no objection to the order, which discloses that the application for the summons was made in due time. There is no defect of jurisdiction upon this ground.

Price.—Thirdly. The statute gives the mother a right to recover only thirteen weeks' arrear; but this order, by directing the payment of the 2s. 6d. a week from the 28th of October, 1850 (the date of the application), impliedly requires the putative father to pay for ten months.

COLERIDGE, J.—It is quite consistent their making such an order, and yet not enforcing the payment for more than thirteen weeks. They are empowered to make an order for such a payment from the time of the application, but are restricted from allowing more than the amount for thirteen weeks to be recovered.

Price.—Fourthly. The summons is dated the 23rd of July, and requires the defendant to appear on the 5th of August; but in fact the order was not made until the 11th of September, being more than forty days, and therefore contrary to the provisions of sec. 4 of the 7 & 8 Vict. c. 101, which directs that "no such order shall be made unless applied for at such petty sessions within the space of forty days from the service of the summons after the birth of the bastard child on the person alleged to be the father of such bastard child."

COLERIDGE, J.—The delay in making the order arose in consequence of the adjournments, which cannot affect the validity of the order. It seems to me, therefore, that you are not entitled to a rule.

Rule refused.

Monday, May 3.
(Before Mr. Justice WIGHTMAN.)
SMALL *v.* BATHO.
Taxation of costs—Allowance to witnesses.

A party cannot claim costs incurred in qualifying a witness to give evidence. Where, therefore, on the taxation of the plaintiff's costs, he made a claim in respect of the loss of time of witnesses engaged in searching after the defendant in order to identify him:

Held, that he was not entitled to such costs.

This was an application on the part of the plaintiff for a rule for the Master to review his taxation The action was for criminal conversation, and was set down for trial at the sittings after last term, and by consent a verdict was taken for the plaintiff with 200*l.* damages. It being necessary that certain witnesses from the country should identify the defendant, a notice had been served upon the defendant's attorney requiring the defendant to be present at a certain time and place in order to be identified, which notice was not complied with, and with reference to which the defendant's attorney admitted before the Master he had recommended his client to keep out of the way. Upon the taxation of the plaintiff's costs, the master allowed for the foregoing witnesses in respect only of three days—namely, one for coming to London, one for the day of trial, and a third for returning to the country; but on the part of the plaintiff, it was contended that inasmuch as these witnesses were necessarily engaged several days in looking out for the defendant in order to identify him, a longer period than three days ought to have been allowed.

Barstow now contended that under the circumstances the costs of these witnesses ought not to have been limited to the three days.

WIGHTMAN, J.—What is this but qualifying a witness to give evidence? You say you ought to be allowed for the time you were engaged in looking out for the defendant.

Barstow.—This is not actually qualifying himself to be a witness; the defendant should have shewn himself as required by the notice; he has wilfully kept himself out of the way to avoid being seen. (*Pilgrim* v. *The Southampton Railway Company*, 8 C. B. 25.)

WIGHTMAN, J.—There is the case of *Graratt* v. *Attwood*, 1 Bail Court Cases, 27, which is precisely in point, which shews that you have no right to costs incurred in qualifying a witness to give evidence. This is just that case; you want to be allowed the costs of a witness engaged in endeavouring to speak to the identity of the defendant. It may be very well worth the plaintiff's while to obtain such evidence, but the cost of it must not be thrown upon the defendant.

Rule refused.

Ex parte JOHN HAYLOCK.

Habeas corpus to bring up a party from gaol in order that he may be discharged for want of jurisdiction in the justices to commit.

Prentice moved for a writ of habeas corpus to bring up one John Haylock, now a prisoner in the House of Correction at Ely, in order that he may be discharged. The commitment was for three months in default of not entering into his own recognizance with two sureties to keep the peace. The charge against him as appeared by the warrant was that he had on a certain day written upon the pavement of a certain lane called "Chapel-lane," in the parish of St. Mary, Ely, the words "Donkey Watts the Railway Jackass," which words were deemed to be offensive to one John William Watts, and which words had been frequently written for some time past.

Writ granted.

Wednesday, May 5.
(Before Mr. Justice COLERIDGE).
EARL *v.* DOWLING.
NEW TRIAL.

A cause which stood No. 6 in the list for the day was duly reached by a quarter to eleven on that day, and was tried, and a verdict returned for the plaintiff, neither the defendant's attorney nor counsel being present. A rule subsequently obtained for a new trial, upon payment of costs, was discharged, nowithstanding the defendant swore to merits, and stated that he and his witnesses were present at the trial, no satisfactory reason having been assigned by his attorney for his own absence.

This was an action for false imprisonment, to which the defendant pleaded not guilty, and was entered for trial at the second sitting in the present Term, and stood No. 6, in the list of causes for Friday the 20th of April last. The Court sat at the usual hour of ten in the forenoon, and all the previous causes having been disposed of, the present cause was called on at a quarter to eleven o'clock, and neither attorney nor counsel for the defendant being present, the counsel for the plaintiff went through his case and proofs, and the jury returned a verdict, with 10*l.* damages. Shortly afterwards, when too late, the defendant's counsel and attorney appeared in court.

The present rule was subsequently obtained by *Duncan*, calling upon the plaintiff to shew cause why, upon payment of costs, there should not be a new trial; and upon moving for the rule an affidavit was used, in which the defendant stated, that he himself was present with his witnesses in good time, although neither his counsel nor attorney was there, and that he had a good defence upon the merits.

Lilley now shewed cause, and contended, that as the cause was taken in its due course, and as there were no special circumstances stated in the affidavit, accounting for the absence of the defendant's counsel and attorney, the rule ought to be discharged, and that the fact of the cause being No. 6 in the list did not entitle the defendant's attorney to speculate on its not coming on so early as a quarter to eleven o'clock.

Duncan, in support of the rule, urged, that as there were five cases before the present on the day of trial, two of which, from their being brought by public companies, it was fair to presume, would last some considerable time, and as the case, though standing No. 6, was actually called on at a quarter to eleven o'clock, the defendant, as he swears to merits, ought to be permitted to have a new trial on payment of costs.

WIGHTMAN, J.—But the attorney himself assigns no reason for not being present. The cause is taken in due course. Neither attorney nor counsel is here, the action is tried, and a verdict returned for the plaintiff. If the attorney could assign any reasonable cause for not being present, it might alter the case. His Lordship then said, he would speak to Mr. Justice Coleridge, before whom the cause was tried.

To-day Mr. Justice COLERIDGE said, that Mr. Justice Wightman had requested him to direct the rule to be discharged.

Rule discharged.

BUSINESS OF THE WEEK.

Tuesday, May 4.
(Before Mr Justice WIGHTMAN)

EARL *v.* DOWLING.—*Lilley* shewed cause against a rule for a new trial herein. *Duncan* contrà. *Cur. adv. vult.*

CRAWSHAW *v.* THE YORK AND NORTH MIDLAND RAILWAY COMPANY.—*Temple* moved for a rule to set aside the award herein, on the ground of uncertainty.

Cur. adv. vult.

WITHERELL *v.* GEORGE.—*Phipson* moved for a rule for a review of the Master's taxation herein The action was in trover, and the defendant pleaded payment of 75*l.* into court, to which the plaintiff replied damages ultra After this the plaintiff took out a rule to discontinue, which rule was in the usual terms When the parties attended before the Master, the defendant claimed his full costs from the commencement of the action, and the plaintiff, on the other hand, claimed his costs up to the time of the payment into court, which latter costs the Master held he was entitled to have. It was now contended that as the plaintiff had chosen to discontinue the action, it was the same as though he had gone on to trial and had a verdict against him (*Berwick* v *Symonds*, Sayer, 196, *Crosby* v ———, 2 M & S. 335; *Maclean* v *Phillips*, 18 L. J 248, C P.; *Howarth* v. *Samuel*, 1 B. & Ald. 567; *Lock* v *Wright*, 8 T. R. 186)

Rule nisi.

In the matter of THE MAIDSTONE HIGHWAY-RATE.—*Bramwell*, Q.C moved for a rule, calling upon certain justices to issue a distress-warrant (under circumstances stated), to recover the amount of a highway-rate.

Rule nisi.

Re HARRISON.—*Atkinson* moved for leave to take off the file the certiorari obtained to remove into this Court an order of bastardy, which order this Court had on motion refused to quash (see *Ex parte Harrison*, Friday, April 30), and for a writ of procedendo, to send back the said order to be enforced.

Application granted.

INSOLVENCY COURT.

Reported by DAVID CATO MACRAE, Esq. of the Middle Temple, Barrister-at-Law.

Thursday, April 29.

(Before Mr. Commissioner PHILLIPS.)

Re ISAAC GABRIEL COSTA.

Discharge from custody by detaining creditor—Adjudication by Court.

Held, that a prisoner who has been already legally discharged by his detaining creditor, may be discharged by the Court.

This insolvent came up in the custody of the gaoler in the morning, but at a later period in the day the governor of the prison arrived with his discharge by his detaining creditor. The discharge had been lodged at the prison upon the morning of the preceding day, between eleven and twelve o'clock. The discharge bore the red seal from the sheriff's office, which shewed that there had been a search at the sheriff's office, and that the prisoner was discharged from all detainers. The discharge had been duly lodged at the prison, but had been overlooked by the governor, and the result was, that the insolvent was not aware of his discharge until after he reached the court on the subsequent day in the custody of the gaoler. There had been some negociation with the insolvent on behalf of the detaining creditor, with a view to the payment of the costs of action on the bill, and to renewing the debt. Upon this failing the discharge was lodged at the prison.

Dowse, for the insolvent, said this was an attempt to commit a gross fraud upon the Court, and great injustice to the insolvent. There were cases in which the Court had discharged insolvents who had come up in custody, although their discharge had been lodged on the previous day. He therefore prayed the Court in this instance to adjudicate.

The insolvent had no counsel.

Mr Commissioner PHILLIPS said that the circumstances of this case were new to him. He was exceedingly glad to hear that there were precedents in other courts to adjudicate under such circumstances. This was an attempt to turn the machinery of this court into an instrument of torture. Was it to be endured that this Act of Parliament was to be turned to a purpose like the present? This man was not out on bail, and this creditor gave notice of opposition. He had a right to do all this, and the question for the Court was,—Is this right (of discharge) exercised bonâ fide, or as an instrument of extortion and fraud upon the other creditors? The day before the hearing the creditor goes to the sheriff's office and gets the discharge. If the discharge had been lodged instanter and without ambiguities, the circumstances might have been different, but he first sees the insolvent for a most unjustifiable and improper purpose, to get his costs in the first place, and his client's debt renewed by bills in the second place. Under these circumstances the Court would not have listened for a moment to any opposition by him, and he should discharge the insolvent.

The learned Commissioner pronounced the usual adjudication of discharge, as in the case of "a prisoner in custody."

NOTE.—*Re Shine*, before Mr. Commissioner ANDREWS, in the Irish Insolvent Debtor's Court (1 Cox & Macrae, 162). The note to that case is as follows:—"Where the case of an insolvent has been fully heard, and is postponed to the following day, with a view to give judgment, which the Court intimates will be adverse, and in the mean time the insolvent settles with his detaining creditor, and is discharged from custody, the Court has no jurisdiction over him." "Quære, are his bail discharged?" There is also another case to the sa[me] effect in the Court in London. *Re Camillo Maper* before Mr. Chief Commissioner REYNOLDS, 11 Law T. 103. In this case the hearing was adjourned, and upon the insolvent appearing upon the day named for his adjourned hearing, the attorney for the detaining creditor intimated that he had sent a discharge to the prison, but the governor having refused to receive it, he had lodged it at the sheriff's office. The insolvent was out on bail. The Chief Commissioner said "The insolvent is out of custody, and I have no authority further to interfere." The insolvent then left the court.

HOUSE OF LORDS.

Reported by JAMES PATERSON, Esq Barrister-at-Law.

Monday, March 29.

HUTCHINSON *v.* FERRIER and ANOTHER.

Practice—Bill of exception—Documents affixed—Evidence—Stamp—Trespass—Demise.

A bill of exceptions, tendered to a judge's ruling, that certain documents could not be received for want of a stamp, did not set forth the documents, but after the seal of the judge were these words: "The following are the letters referred to in the bill of exceptions." They were then set forth, but not authenticated by the judge's seal:

Held, they did not form part of the record, and could not be looked at by the House.

In trespass qu. cl. fr. under a special traverse of plaintiff's title, plaintiff's witness said certain letters had passed annually between plaintiff and his lessor as to the demise.

Held, the demise sufficiently appeared to be by writing, and plaintiff was bound to produce the letters, whatever they were:

Held, also, the judge having on exception rejected the letters for want of a stamp, it not appearing in the bill of exceptions for what purpose they had been tendered, it must be presumed that they were tendered to prove a lease, and therefore were properly rejected:

Held, further, on the judge rejecting the letters for want of a stamp, it was not competent for plaintiff's counsel to except to this ruling, as implying that his case could not be proved without the documents, but he was bound to go on with any further evidence he might have had sufficient to maintain the issue, and then to have excepted to the rejection of that further evidence.

This was an appeal in the nature of a writ of error on a bill of exceptions from the Court of Session in Scotland. An action of trespass had been brought by the appellant, who alleged in the pleadings that he was tenant, under the corporation of Edinburgh, of a strip of ground, which lay along part of Morton-street, Leith. Adjoining this strip was a wood-yard, which he also had [occu]pied until 1837, as tenant of the respondents (defendants). During the time appellant had occupied both these premises, he had broken out a gateway in the wall which divided the wood-yard from the strip of grou[nd, an]d had thus used part [o]f the Strip as a road[way] or entrance to the wood-yard, to take in his logs of wood. In 1837, when he ceased to be tenant of respondent's wood-yard, the corporation of Edinburgh closed up the gateway, which was reopened by the respondent, who insisted on using it as an entrance for himself and tenants to the wood-yard as before. During a long series of litigation from 1837 to 1846, which followed the [reo]pening of the gateway, appellant admitted that [r]espond[ent]s had been in its exclusive po[ssession an]d enjoy[me]nt and the present action of 500*l.* damages was f[or] his being so long deprived of the use, and kept out of the possession of the small part of the strip used as such entrance. Respondents denied plaintiff's title, and pleaded what was equivalent to [a] [n]on tenent [insimul cum querente]. Such being the state of the pleadings, the Court gave out the following issues for trial:—"1. Whether, during th[e] period from Whitsunday, 1837, to Whitsunday, 1846, plaintiff was tenant of and under the corporation of Edinburgh of [a str]ip or piece of ground lying, &c. 2. Whether, during the said period, or part thereof, the defendants wrongfully took possession of a gateway or entrance in the wall of the said strip or piece of ground, and of a portion of the said strip or piece of ground as a roadway or entrance to, and exit from, the said [woo]d-yard, and during the said period, or part thereof, wrongfully continued to occupy and possess the said gateway and portion of ground, and to exclude the plaintiff therefrom." The plaintiff called two witnesses, and the bill of exceptions thus sets forth the evidence of the second witness, and what followed:—"James Robertson, is chamberlain of the city of Edinburgh, and has been so since 1838; knows the property occupied by Mr. Hutchinson, who had occupied it before witness's time; and his father had held it from year to year. There never was any lease to him. He was annually asked if he was to continue, and he answered; and ordinary 'missives' (or memorandums) passed every [year] relative to that ground in the form of letters. The counsel for defendants here objected that, in respect of the existence of these missives or letters which are in court, plaintiff cannot prove his tenancy otherwise than by their production.

The following statement was merely to explain the facts for informing the Court in reference to this objection, but not as evidence to the jury. 'Looks at letters. They began in 1836, and go down till 1846. The first year from 1836 was at a rent of 16*l.* and it has been the [sa]me ever since. Sh[own] two receipts by the city chamberlain: these are for 8*l.* each half-year, and it has continued 16*l.* ever since, he is quite sure.'

"The judge, after argument of counsel, sustained the objection, that the letters or missives which passed between the city chamberlain and the plaintiff, offered in evidence, were not stamped, and therefore could not be admitted as proving leases between Mr. Hutchinson and the Corporation of Edinburgh of the subjects in question; and that these being in existence, the tenancy cannot be proved without them. The counsel for plaintiff excepted to the above ruling, that the letters constituted written leases, and which, not being stamped, could not be given in evidence, nor the contents thereof, nor the plaintiff's tenancy proved without them. And it being stated by plaintiff's counsel that, in consequence of the deliverance of the judge, he would not give further evidence, nor ask for a verdict, the jury did then, under the direction of the judge, give a verdict for defendants. Whereupon plaintiff's counsel requested the judge to sign the said bill of exceptions, &c. (Sealed) D. Boyle, judge." The following are the missives or letters referred to in the bill of exceptions. Then follow a series of letters, of which we give the following two as a specimen:—"Edinburgh, Feb. 7, 1839. Sir,—Have the goodness to inform me whether you intend to continue for another year in the property belonging to the city of Edinburgh, in Morton-street, Leith, at the same rent as that of last year, from the term of Whitsunday next (May 15)." "Leith, Feb. 8, 1839. Sir,—In answer to your favour of yesterday's date, I beg to say, that I intend to continue for another year, from Whit Sunday next, as tenant to the city of Edinburgh, in the property, Morton-street, at the same rent as last year.—I am," &c. The other letters are nearly to the same effect, but contain allusions to other matters. The Court below, having disallowed the exceptions tendered, a writ of error was sued out, and the case now came before the House of Lords.

R. Palmer, Q.C. and *Forsyth*, for appellant.

Byles, Serjt. and *Anderson*, Q.C. for respondents.

The arguments turned chiefly on whether the letters in question were leases by the law of Scotland, and upon the effect of the evidence, which points are sufficiently alluded to in [the] judgment.

LORD CHANCELLOR.—My lords, in this case it was thought necessary by your lordships to consider the different points which were argued at the bar. Since the argument, the attention of my Lord Brougham and myself has been drawn by my Lord Truro to the frame and contents of the bill of exceptions, and upon that I apprehend now that our decision will turn. I always regret when we have to decide a case upon a question not argued at the bar, but still, as the point appears to be free from doubt, it is upon that point that the decision will rest. At the same time, I have satisfied myself, that the merits of the case will agree with the question of form, and that both upon the form and upon the merits, the order complained of must be affirmed with costs. The question in contention was simply upon a right of way between two pieces of ground, a wood-yard belonging to one party, and a strip of ground held under the city of Edinburgh by the other party, and the question now turns upon the right of the appellant to claim damages in respect of the wrongful entry and possession, excluding him from the possession of that gateway, which he asserted formed a part of the ground which he held under the city of Edinburgh. My lords, when the case was originally argued, the two issues were directed which appear upon the record. Now, at the trial two witnesses were examined for the plaintiff, who had the affirmative, both of whom swore that there had been no lease for years granted expressly, but one of whom stated that the property had been held from year to year, and that there never was any lease of it. This is Robertson's evidence. There never was any lease to him. He was annually asked if he was to continue, and he answered, and ordinary missives passed every year relative to that ground in the form of letters. The counsel for the defendants here objected, that in respect of the existence of these missives or letters which are in court, the plaintiff cannot prove his tenancy otherwise than by their production. Then comes this very singular statement, which is very well calculated to embarrass any body who has to decide this case. "The following statement was merely to explain the facts, for informing the Court in reference to this objection, but not as evidence to the jury." In point of fact, therefore, nothing went to the jury—it never got to the jury, and the question itself was never submitted to the jury. Then comes this statement: "Looks at letters." Who looks at letters? "They began in 1836, and go down till 1846. The first year from 1836 was at a rent of 16*l.*, and it has been the same ever since. Shewn two receipts for 1837 by Mr. Turnbull—these are for 8*l.* each half year, and it has continued 16*l.* ever since; he is quite sure." Your lordships will observe, that although it might be a fair inference here, that it is the witness who looks at the letters, it is not stated, nor is it stated what the letters were. So far as we have gone, there is nothing whatever to identify any particular letter. Then "the Lord-Justice General after argument of counsel sustained the objection that the letters or missives which passed between the city chamberlain and the plaintiff, offered in evidence." Now it does not appear that they were offered in evidence to begin with, for it is stated that they were only to instruct the Court, and not to be offered in evidence; "are not stamped, and therefore could not be admitted, as proving leases between Mr. Hutchinson and the city of Edinburgh of the subjects in question, and that these being in existence the tenancy cannot be proved without them." Your lordships will observe

that there is no assertion that they are leases, or that they were tendered as leases, but the ruling is that the letters offered in evidence were not stamped, and therefore could not be admitted as proving leases. Now it will be seen in a moment that the exception is to a different point. The exception is not to the ruling; the exception is this: "The counsel for the plaintiff excepted to the above ruling that the letters which passed between the city chamberlain and the plaintiff during the period in question constituted written leases." There was no such ruling. He stated that to be the ruling, but the ruling which is the subject of the bill of exceptions is of a totally different nature. It is that not being stamped the letters could not be admitted as proving leases, but there was no ruling by the judge that they did constitute written leases. Then it goes on, "and which not being stamped could not be given in evidence, nor the contents thereof, nor the plaintiff's tenancy proved without them." The consequence of which is, that the ruling is one way and the bill of exceptions is another, and therefore does not meet the case. "And it being stated by plaintiff's counsel that in consequence of the deliverance of the judge he would not give further evidence nor ask a verdict, the jury did then, under the direction of the judge, deliver their verdict, finding for the defendant." The appellant, therefore, upon that occasion withdrew from the contest. He did not pursue the question as he should have done. He did not attempt to tender any other evidence, and therefore it appears clearly that there is nothing here which the House can deal with as regards the bill of exceptions. What are the letters? The letters are in an appendix, but although they are in the appendix they do not form part of the bill of exceptions; and it is perfectly clear, when your lordships come to look at the letters, that they could not have been tendered either according to the real ruling of the judge or according to the bill of exceptions, because many of those letters which are in the appendix are no more leases, or even agreements for leases, than any paper on your lordships' table. They are in relation to the property, but in no respect upon any construction constituting either a lease or an agreement for a lease, and therefore it is perfectly clear that those letters, so in the appendix which do not form part of the record, are letters which could not properly have formed part of the record according to the ruling in the bill of exceptions; and not forming part of the record, your lordships are not at liberty to look at them. It has been ruled in this house repeatedly from *Galway* v. *Baker*, 5 Cl. & Fin. 157, down to the *Bishop of Derry's* case, 12 Cl. & Fin. 641, that your lordships are not at liberty to look out of the record, and that in cases of difficulty infinitely greater than that now before your lordships. These letters, therefore, not forming part of the record, they cannot be looked at, and then there is no question to trouble your lordships with. My lords, that would be quite sufficient for the decision of this case. But as regards the merits of the case I think it is equally clear. The merits stand thus. The question to be proved was the tenancy, but it was not a question to be proved ordinarily between lessor and lessee, nor was it a common case in which a man had actually had demised to him property beyond dispute. But it was a question in which Ferrier, the defendant, setting up an adverse title which he had not succeeded in establishing in himself, but setting up an adverse title, it became essential that the plaintiff should have shewn a title in himself, not in the ordinary way of holding simply as a tenant, but shewing that he had from the city of Edinburgh a title superior to the title of Ferrier, because it really was a question of title in dispute. It was not a question of a clear undoubted demise by A. to B. and then an entry by C. but it was a case in which C. had held during the whole period of the supposed tenancy, and therefore claimed to hold in his own right, and adversely to the city itself; therefore it was a question of a totally different nature. Consequently in order to recover upon the merits, it would have been necessary for him to have shewn that he actually had held the property rightly under the city of Edinburgh. Now he has shewn no such thing, when the letters are produced, independently of the question of title. Now, my lords, the way in which Mr. Hutchinson held this property, if he did hold it under the city of Edinburgh, was by these missives or letters a yearly letting. They were restrained from letting for more than a year: a yearly letting took place by letters. "Do you wish to continue for another year at the same rent? Yes, I do." Or, "Am I to continue for another year? Yes, you are." Ferrier was all this time enjoying the gateway in question. Now, it did not seem to be disputed at the Bar that this property, so held by Ferrier, was capable, by the law of Scotland, of being demised. That point was not raised. It might have been made a question whether you could demise that which adversely was in the hands of another person, and for which possession could not be given. Looking at the nature of a contract for a lease in Scotland I shall say no more upon that point. It was admitted in the argument that if the letters in question amounted to an agreement and were not leases, they did not require to be stamped. So that the letters in that way were certainly considered to be valid, but it was urged at the Bar, and at the same time in the pleadings, your lordships find, that the question is always raised whether or not the property was let. Now, my lords, when I come to look at these missives or letters, which I am now looking at for the purpose of satisfying your lordships that you can decide upon the merits in perfect agreement with the strict rule of pleading to which I have referred, I find that it never could have been the intention of either of these parties to give Mr. Hutchinson any right to the property which would enable him to proceed against Mr. Ferrier, or, what is much more important, to proceed against themselves. If Mr. Hutchinson under these missives was at liberty to maintain this action, he could maintain an action against the city of Edinburgh for devising to him property which they had no title to do, and they might be liable to a similar action to this with 500*l.* damages laid for not giving to this gentleman the possession of that gateway, which formed part of that strip of ground, the whole of which was let at 16*l.* a-year, from year to year. Now, my lords, when we come to look at the letters, it is impossible to suppose that the parties had any such thing in contemplation as an actual letting, which should give a right of that sort. For if we put a fair and candid construction upon all this correspondence, looking at it not as a Court of Law, which your lordships are not entitled to do, but looking at it for the purpose of ascertaining whether the merits are with the party or not, against whom your lordships will probably decide, that this property was never intended to be demised in a way so as to create a tenancy absolutely as between the city of Edinburgh and this gentleman; and that therefore, upon that ground alone, he never, in the true sense of the question intended to be submitted to a jury, could have recovered the damages, or any portion of the damages, which he sought. I move that your lordships do affirm this order, with costs.

Lord BROUGHAM concurred, and merely referred to Lord Truro's written statement, which he had read, and with which he entirely agreed.

Lord TRURO, after stating the facts of the case, as already stated, and repeating the general argument of the Lord Chancellor, thus concluded:—My lords, the remaining exception refers to the opinion expressed by the judge that the missives or letters, being in existence, the tenancy could not be proved by any other evidence. Upon this point, I submit to your lordships that no exception lies, and that it was the duty of the appellant's counsel, if he had any other evidence which he was prepared to contend ought to have been received in maintenance of the issue, to produce it, and if rejected upon its being tendered, to except to the rejection, and that it was not competent to the appellant to rest upon the opinion so expressed by the judge. The respondent had a right to see what that evidence was, and he might not have objected to it, or might have waived any objection, although the evidence might have been objectionable, preferring to rely upon some answer to it, or upon its failing to satisfy the jury, rather than to risk the case upon the validity of the objection; but by the appellant choosing to rest upon the opinion expressed by the judge, the respondent was deprived of the exercise of that discretion, and the judge could not waive the production to the prejudice of the respondent. Upon the whole, it appears to me, by the appellant's evidence, that the letting by the corporation to the appellant was by writing; and that as the issue was a distinct precise issue, whether a specific defined spot of ground was included in the demise, the appellant was bound to produce the written document by which the demise had taken place. The distinction is obvious between the evidence receivable to prove the mere fact of A. being tenant of B. where the subject of the tenancy is undisputed, and where the sole question is, if A. is tenant of some precise disputed spot; in other words, where the question is, parcel or no parcel of the land let. I also think that, upon the bill of exceptions, even if it sufficiently appears that the letters were at all offered in evidence, it must be taken that they were offered as proving leases, and for no other purpose, and that so offered, they were properly rejected, not being stamped. I also think that the bill of exceptions ought not to be allowed, because the letters, the rejection of which is the ground of the exception, do not sufficiently appear upon the record to enable the House judicially to apply the ruling to them. It also appears to me, my lords, that if they had been read to the jury, they did not furnish sufficient evidence to warrant a verdict, that the ground purporting by the letters to be let comprised the disputed spot. That if the letters did purport to let the disputed spot to the appellant, there was no sufficient evidence of title in the corporation to that spot to warrant a verdict. Further, my lords, regard being had to the fact that neither the corporation nor the appellant were in possession of the disputed spot during any part of the time mentioned in the issue, I think even a formal lease would not—quoad the disputed spot—have created the relation of landlord and tenant as between the corporation and the appellant in a sense that would sustain the present suit. I am also of opinion that the ruling of the judge, that the tenancy could not be proved by any other evidence, did not furnish a valid ground of exception, for the reasons I have stated. I therefore agree with my noble and learned friend on the woolsack, that the judgment of the Court below ought to be affirmed.

Judgment affirmed with costs.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. KEENE, Esq. of Lincoln's-Inn, Barrister-at-Law.

(Before LORD ST. LEONARDS.)

Friday, April 16.

EVANS v. PROTHERO.

Issues at law—Evidence—Receipt inadequately stamped—Collateral matter.

Two issues were directed out of the Court of Chancery, one whether an agreement had been entered into by and between E. R. and J. R. for the purchase of certain premises situate at, &c., the other whether the purchase-money had been paid in pursuance of that agreement. At the trial, an inadequately stamped receipt from J. R. for 21l. "being the amount of the purchase for three tenements sold by E. R. at," &c. was received in evidence, and the jury found for the plaintiff on both issues. Upon a motion for a new trial on both issues, Vice-Chancellor Wigram held that the document had been properly received in evidence upon the first issue, and consequently refused a new trial upon that, but granted a new trial on the second. On an appeal by the defendant as to the first issue, and by the plaintiff as to the second, Lord Cottenham directed a new trial upon both issues, holding that the document had been improperly received in evidence, "the fact of the payment of the consideration-money being one of the means by which the affirmative might be established, and not collateral to the object and purpose of the document as a receipt." On the trial of these issues, Baron Parke rejected the document as inadmissible. The jury found for the plaintiff on both issues.

On an appeal for a new trial, Lord St. Leonards (affirming the order of Vice-Chancellor Knight Bruce) refused the motion with costs, holding that although the document might not be receivable in evidence as a receipt, yet that it might be so received as an agreement.

Where there appears on the face of a document every thing that will constitute a valid agreement within the Statute of Frauds, such a document may be received in evidence as an agreement, though by the reason of the insufficiency of the stamp, it can not be so received as a receipt.

This was a motion by way of appeal from his Honour the Vice-Chancellor Knight Bruce, for a new trial.

The bill was filed by James Evans, as the executor of Jenkin Richards, who it was alleged had purchased the property in question from Evan Richards, against Henry Prothero, who alleged himself a purchaser from Thomas Richards, as the administrator of the said Evan Richards, and against the said Thomas Richards. Its object was to restrain certain proceedings at law, which had been instituted by the defendants for the recovery of the property, and for the specific performance of an alleged agreement for its purchase.

The facts were shortly these: Evan Richards was possessed of certain leasehold premises, situate at Merthyr-Tydvil, in which his brother, Jenkin Richards, came to reside with him. In 1827 he was said to have purchased those premises from his brother, the principal evidence of which was the following receipt:

"Received, this 25th August, 1827, of Mr. Jenkin Richards, now and before, the sum of twenty-one pounds, being the amount of the purchase of three tenements, sold by me adjoining the River Taff.

"Received the contents, + EVAN RICHARDS.

"Witness, JOHN SWAINE."

Jenkin Richards thereupon took possession of the property, and so continued till his death, in 1829. In 1828, he made a will, bequeathing the property to the present plaintiff, who thereupon took, and has ever since remained in possession, and in the course of his occupation improved the premises by building upon part of them a cottage. In 1841, the de-

fendant Prothero brought an action of ejectment against the plaintiff to recover possession of the premises on two grounds:—1st. That they were not included in the lease under which the plaintiff made his title. 2nd. That if they were, the lease was forfeited, and the defendant Prothero entitled to enter as reversioner. On the trial of the ejectment, a reference was agreed upon, under which a verdict was awarded for the defendant (the present plaintiff). Prothero having subsequently discovered that the lease itself under which the present plaintiff claimed was also claimed by the personal representative of Evan Richards, viz. his son, the defendant, Thos. Richards, applied to him and procured an assignment of the lease to which he had entitled himself, subject to the right (if any) of the plaintiff. Upon this he brought a second action of ejectment, and having proved the assignment, obtained a verdict, which was afterwards set aside by the full Court under the statute 32 Hen. 8, c. 9. In 1846, the plaintiff being then in possession, the defendant Prothero brought a third ejectment on a demise by the defendant T. Richards, and on the trial, it being stated that Prothero had obtained a fresh assignment since the last trial, and since the passing of the statute 8 & 9 Vict. c. 106, he was put by the Court to elect the demise on which he would go: he took the demise of the defendant T. Richards. It was afterwards objected that a demand of possession ought to have been made, and that the stamp on the letters of administration was insufficient. On the latter ground, the verdict taken on the demise of T. Richards was set aside. On the trial of this third ejectment it was necessary, before ultimately deciding the question, whether a demand of possession should have been made, that the jury should find in what character the plaintiff was in possession of the property, whether as purchaser or under Jenkin Richards. They decided in favour of the former. Upon this the defendant Prothero brought a fourth ejectment, in which the present plaintiff allowed a verdict to be given against him without appearing.

In the mean time, in February 1846, the plaintiff filed his bill, stating the result of the last trial, and praying the benefit of what had taken place at law, and a restraint from proceeding further in the actions. On the original hearing of the cause before Vice-Chancellor Wigram, in 1848, his Honour directed the trial of two issues,—first, whether an agreement had been entered into by and between Evan Richards and Jenkin Richards, for the purchase of the premises in question; and, secondly, whether the purchase-money was paid in pursuance of that agreement.

These issues were tried at Cardiff on the 19th of July, 1848, and the above-stated receipt was [illegible] and proved in evidence. It was originally impressed with a sixpenny instead of a shilling stamp, but when produced it had an additional stamp of 1*l.* Wightman, J. refused to receive it in evidence. On both issues the jury found a verdict for the plaintiff, although the learned judge directed them that no evidence had been produced to prove the agreement.

The defendants, on the 6th of December, 1848, applied to Vice-Chancellor Wigram for a new trial, but his honour refused the application. They then appealed to the Lord Chancellor, who, on the 16th of March, 1849, directed a new trial of the issues, holding that no evidence of the agreement and purchase had been produced. (*Vide* 13 Law T. 417.)

The new trial took place at Cardiff on the 16th and 17th of August, 1849, when the above-mentioned document was again tendered in evidence by the plaintiff. Its reception was objected to by the defendant, who contended that the document was not an agreement or conveyance of the premises in question. Platt, B. overruled the objection. The jury found for the plaintiff on both issues.

Whether the objection of the insufficiency of the receipt-stamp had been really taken at the trial did not very clearly appear, the affidavits on that point being contradictory.

A motion was again made to Vice-Chancellor Wigram for a second new trial, when the Court, on the 6th December, 1849, declared that the receipt was admissible in evidence to prove the first issue, but that there must be a new trial on the second (14 Law T. 308.)

The defendants then appealed to the Lord Chancellor. The plaintiff also asked to discharge the order of the Vice-Chancellor granting the new trial of the second issue; but the discussion before his lordship was confined to the question raised by the defendant. His lordship, in his judgment, said, that the fact of the payment of the consideration money was a most important fact upon both the issues, upon the latter, it was the whole question, and upon the first it was one of the means by which the affirmative might be established. The agreement might itself have been proved; a conveyance might have been proved, which would have assumed and so proved the agreement, or payment of the consideration-money might have been proved, which might have assumed the fact of the agreement. Upon both issues, therefore, the fact of payment was of the utmost importance, and went directly to the matter in issue; and if the document in question was properly received in evidence, and the jury were right in giving credit to it as genuine, the conclusion of the jury in favour of the plaintiff could not, with any prospect of success, have been disputed. But the question was, was that receipt, not being upon a proper receipt-stamp, receivable upon those issues? It had been rejected at a former trial by Wightman, J. but was received upon the last trial by Platt, B.; and it was then contended that it could not have been received to prove payment of the money, the object not being to prove such payment, but an object quite collateral, namely, to establish the fact of the agreement. The House of Lords, in the case of *Matheson* v. *Ross*, 2 H. L. Cases, 286, proceeded upon the ground that the paper there in question, though there was upon it a receipt for a balance, was also a statement and settlement of accounts, which was quite unconnected with the fact whether the balance had or had not been paid, which was not in question in the case; and the House thought that, for the purpose of shewing the state and balance of the account, the paper might be received, and being altogether collateral to the object and purpose of the paper as a receipt. In that case the opinion of his lordship in favour of the admissibility of the document was qualified by these observations. "Most of the cases go to shew this, that if, in a particular instance, the matter to be proved is the payment of money, and the payment is to be proved by the production of a written document of an acknowledgment of payment, or what is called a receipt, the Stamp Acts immediately apply to such document so produced, and for such a purpose, whether it is for the direct purpose of proving payment as a discharge between debtor and creditor, or whether it is for an indirect and collateral purpose, as to shew some right in, or advantage belonging to, a party, in consequence of such payment; where, for instance, a matter collateral is to be proved by the proof of the fact of payment, and that fact of payment is established by a receipt, such a case is clearly within the provisions of the Stamp Acts: that, however, is not the present case." It was, however, the case then under consideration. The object of producing the document was to prove the fact in the issue called collateral, namely, the agreement, by proof of the fact of payment, and that fact of payment was attempted to be established by a receipt not having a proper stamp. It appeared to him (the Lord Chancellor), therefore that under and upon the principle of the case referred to, the document ought not to have been received, and as he could not doubt but that the verdict of the jury was much influenced by that document, he was compelled to send these issues to another trial.

These came on to be tried at Cardiff in July, 1850, before Parke, B. On this last trial the document was again tendered, and described as a receipt, and represented as having been read as such on the former trial. His lordship rejected the document, and although the jury were particularly guarded by him against being influenced by its production on former trials, and were told that there was a powerful body of evidence for the defendant, and not much in favour of the plaintiff; the jury found a verdict for the plaintiff on both issues.

The defendants in December last moved before the Vice-Chancellor, Knight Bruce, for another new trial of the issues, which motion his Honour refused, with costs.

Hence the present appeal.

Walker and *Pulling* (of the Common Law Bar) appeared for the appellants, and cited the following cases: *Beeching* v. *Westbrook*, 8 M. & W. 411; *Hawkins* v. *Warre*, 3 B. & C. 690; *Jones* v. *Ryder*, 4 M. & W. 32; *Doe dem. Wyatt* v. *Stagg*, [illegible] Scott, 690; *Corder* v. *Drakeford*, 3 Taunton, 382; *Math[illegible]* . *Ross*, 2 House of Lords Cases; and also 9 Geo. 4, c. 14 (Lord Tenterden's Act.)

W. M. James appeared for the plaintiffs, but was not called on.

LORD CHANCELLOR.—In this case there have been altogether, as I understand it, seven trials, and the motion before me is for an eighth. There have been no less than three issues, and the property is stated to be worth a little more than 120*l.* It was said, and said truly, that justice does not depend on the amount of the property in dispute, yet in cases where the property is so small as it is here, and where the Court is convinced that no injustice will be sustained by refusing a new trial the discretion with which this Court is entrusted, when dealing with such matters, ought to be exercised; where there have been several trials it is most necessary to look to the value of the property, as to whether it can bear the expense of another; this is a case on which I consider it imperative to exercise that discretion. I therefore will not allow this contest to go on by directing a new trial. I consider that the time has arrived when these parties ought not to be allowed to tear each other to pieces for a property, the acquisition of which must be almost the ruin of even the person who ultimately obtains it. This case is a very simple one. Two brothers, both in very humble circumstances, Evan and Jenkyn Richards, lived together. One of them had a small leasehold property, of a very trifling value which was subsequently slightly increased by a cottage which had been erected. It seems to have been a cottage in which both dwelt, the alleged purchaser having come to reside with his brother; his brother died and he then took possession, alleging that he had purchased the property. In support of his claim he produced a document purporting to be a receipt to this effect: "Received this 25th August, 1827, of Mr. Jenkin Richards now and before the sum of twenty-one pounds, being the amount of the purchase of three tenements sold by me adjoining the river Taff. Received the contents." This document was signed by Evan Richards and witnessed by John Swaine; and this unfortunate document has been the cause of all the contention which has arisen out of this suit. Now this long litigation has been occasioned by the want of an additional sixpenny stamp; for if it had been properly stamped there would have been an end to all dispute. The want of this additional stamp has had the effect of rendering this document inadmissible as a receipt; but at the outset of these trials we find that this document was tendered in evidence as a receipt, but was rejected by the learned judge; so that the defendant, who is now moving for a new trial has nothing to complain of. Although this document was not then considered as admissible, yet the several learned judges before whom this case has subsequently come have differed upon this very point. Now is this document to be treated as a nullity simply because it is on a sixpenny instead of a shilling stamp? If this paper is not receivable as a receipt in consequence of the defect in the stamp, why should it not be so received as an agreement. It appears clear that the money expressed to be received is the amount of the purchase; the man who paid it was the purchaser; the man who gave the receipt was the seller; the property is described; there is, therefore, every thing on the face of this document to constitute a regular valid document within the Statute of Frauds; why, therefore, should it not be stamped as an agreement, and why should it not be received as such?—not, I admit, as a receipt, because the fiscal regulations of this country have excluded it; it is, therefore, I consider, a perfect agreement, and with all deference to the higher authorities (I do not mean to give a decided opinion, for it is not necessary for me to do so; and with the very learned decisions that are the other way, I should not do so without great consideration), yet I am bound to confess, that the inclination of my present opinion is, that I should have received it as such if it had been tendered to me. Now it has been said, that the tendering of this document had great influence over the mind of the jury. There is no doubt that it had, and if a new trial were now granted it would have the very same result, unless the Court prohibited the tender; a course which I am not prepared to adopt. I cannot help saying that it is a melancholy thing that the necessity for a stamp law should be the means of creating so much confusion in the transactions of men, and lead to the perpetration of so much injustice. But this case does not rest upon that document only. It must be recollected that the purchaser actually devised this property, and might so be considered as treating it as his own. It is not a very common thing for a man to deal with by his will property which does not belong to him. Men do not often bequeath property to which they believe they have no title. On the part of the defendant at the several trials, a great deal of evidence was adduced, and one of the learned judges before whom the case was tried, in his charge to the jury, said "the evidence for the plaintiff was very slight, the evidence for the defendant strong; if you believe the evidence for the defendant there is an end of the case." Yet with these observations the jury came to a conclusion in favour of the plaintiff, as they had done several times before, and, from what I have heard of the evidence, my impression is, that if the point were sent to twenty other trials, they would very likely come to the same conclusion. The object of the defendant is to get a verdict in his favour; and, so long as the case remains open, there will be grounds raised for new trials. I am perfectly satisfied with what has been done; and, in refusing a new trial, I feel I am saving the parties from endless and ruinous litigation, and facilitating the ends of justice, by putting the case in a way to be decided on its merits. Believing the case of the plaintiffs to be the true one, I, with as much satisfaction as I ever felt on such an occasion, refuse this motion, and I refuse it with costs.

Motion refused, with costs.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

(Before the LORDS JUSTICES.)

Monday, April 19.

TURNBULL *v.* WARNE.

Order made on motion by a defendant, under the eighteenth order of April, 1850, *to sue out writ of summons against persons certified by the Master to be proper parties, the plaintiff having since the hearing, neglected to take any proceedings in the suit.*

W. D. Lewis moved, by way of appeal, from the decision of Vice-Chancellor Sir George Turner, that the defendant might be at liberty to sue out a writ of summons, under the eighteenth order of April, 1850, for the purpose of making certain persons parties to the claim, who had been certified by the Master to be necessary parties thereto. The plaintiff had not since the hearing appeared in any of the proceedings before the Master, or otherwise moved in the suit. The Vice-Chancellor thought, that as the order distinctly said that the plaintiff was to issue the writ, he had no power to make an order for the defendant to do so.

Their LORDSHIPS, however, were of opinion, that the defendant might issue the writ of summons, as the word "defendant," in the eighteenth order of April, 1850, meant the party prosecuting the decree; and, moreover, as the Court had general authority to make such order.

Thursday, April 29.

COOPE *v.* CARTER.
COOPE *v.* CARTER.
COOPE *v.* TOWNSEND.

Trustee—Executor—Inquiry as to wilful default when directed—Practice.

A bill sought to charge persons named as trustees of a settlement, for what they might but for their wilful default, &c. have received. At the hearing it was dismissed as against the representative of one of them, with costs, he never having acted as trustee, and the common accounts only were directed as against the representatives of the other trustee. The case coming on, on further directions,

Held, reversing the decision of the Court below, that no inquiry ought to be directed as to wilful default.

This was an appeal from the order of his Honour the Vice-Chancellor Sir James Wigram, dated the 16th of February, 1850, made on *further directions*, whereby amongst other things it was referred back to the Master to inquire and state to the Court the amount and particulars of which the fortune of Frances Cresswell, assigned by an indenture of settlement of the 13th of May, 1815, consisted. And in case the said Master should find that the said fortune consisted of any other particulars than the 500*l.* Three-and-a-Quarter per Cent. Annuities in his report, dated May 7, 1849, mentioned, then *it was ordered that the said Master should inquire and state to the Court whether R. L. Townsend, then deceased, could with due diligence, and without wilful neglect or default, have received any, and what part of such particulars*, and that was to be without prejudice to any question in the cause, &c.; and the said Master was to be at liberty to state any circumstances specially, &c.; and the Court reserved the consideration of all further directions and costs until after the said Master should have made his report, with liberty for any of the parties to apply.

It appeared that Samuel Walbank, by his will, dated 21st November, 1803, gave to the Rev. Dr. Townsend and J. Pitt (both since deceased), 2,000*l* upon trust for his wife for life, and after making a bequest of his household goods, furniture, &c. he gave the residue of his personal estate and the said 2,000*l.* after his wife's decease, to his children by his said wife; and he appointed the said Dr. Townsend and J. Pitt executors. The testator died, leaving his widow and five children, one of whom, Frances, married Edmund Cresswell. On the 13th February, 1807, Dr. Townsend and J. Pitt proved the will. By a settlement made on the marriage of Frances Walbank with Edmund Cresswell, dated 13th May, 1815, she assigned to Dr. Townsend and R. Carter the fifth share, to which she was entitled under the will of the testator, upon certain trusts, under which the plaintiffs in these suits are interested. Dr. Townsend, it appears, alone acted as trustee. Frances Cresswell died in August, 1829. On the 2nd of April, 1830, the children of the testator and Edmund Cresswell executed a general release to Dr. Townsend and J. Pitt, as trustees and executors of the will of the testator, and the sum of 500*l.* Four per Cent. Annuities (afterwards reduced to Three-and-a-quarter per cent. Annuities) was transferred into the name of Dr. Townsend as trustee of the settlement of Frances Cresswell. Dr. Townsend died in June, 1830, having appointed the defendants, R. L. Townsend and John Haines, his executors; and on the 27th of April, 1842, the plaintiffs, J. R. Coope and H. M. Daniel, were appointed trustees of the settlement, in the place of R. L. Townsend and R. Carter. The original bill was filed on the 24th January, 1843, by the Rev. R. Coope and his co-trustee, J. R. Daniel, the wife of the Rev. J. R. Coope, and the other children of Edmund Cresswell, praying that the amount of the fortune of Frances Cresswell, which had been received by the late Dr. Townsend and R. Carter, who were alleged to have acted jointly as the trustees of her settlement, or which, but for their or either of their wilful neglect or default, might have been received, might be ascertained, and that it might be declared that the said R. Carter, personally, and the said R. L. Townsend and J. Haines, as executors of Dr. Townsend, out of his personal estate, might be decreed to pay or make good the whole or such part of the fortune of the said Frances Cresswell as should not have been duly invested pursuant to the trusts of the settlement. R. Carter afterwards died, and the suit was revived against his executor, W. Carter. On the 19th of January, 1846, by a decree made by his Honour Vice-Chancellor Wigram, it was ordered that the bills *should be dismissed with costs as against the defendant*, W. Carter (R. Carter, it appears, not having acted as trustee), to be paid out of the fund and cash in Court, and it was referred to the Master to inquire and state to the Court the amount and particulars of the fortune of Frances Cresswell assigned by the indenture of settlement of the 13th of May, 1815, which had been received by Dr. Townsend, deceased, or by any other person or persons by his order or for his use. And the said Master was to be at liberty to state any circumstances specially *with regard to the matters aforesaid.* No account as to wilful default was, it may be observed, directed, nor did the representatives of Dr. Townsend apply to have the bill dismissed, so far as it prayed wilful default. On the 7th of May 1849, the Master made his report, whereby, after stating certain facts and documents brought forward in his office, by which the plaintiffs alleged it was shewn that there had not been an equal division of the property of the testator between the five children, and that the share of Frances Cresswell ought to have been 1,000*l.* and not merely 500*l.* the Master, however, found that the amount and particulars of the fortune of the said Frances Cresswell assigned by the indenture of settlement of the 13th of May, 1815, which had been received by Dr. Townsend, deceased, or by any person or persons by his order, or for his use, consisted of the sum of 500*l.* Three and-a-Quarter per Cent. Annuities, appearing by the deed of release of the 2nd April, 1830, to have been transferred by the trustees and executors named in the will of the said testator, Samuel Walbank, on the 1st of April, 1830, into the name of Dr. Townsend, deceased, as trustee of the said indenture of settlement. Exceptions were taken by the plaintiffs to the Master's report, which were abandoned when the cause came on to be heard on further directions, when the order before mentioned, and from which the defendants now appeal, directing an inquiry as to wilful default was made by his Honour Vice-Chancellor Wigram, on the ground, it seems, of the facts and documents stated in the Master's report before alluded to. The question raised for the decision of the Court was, whether under the circumstances, the inquiry as to wilful default was properly directed.

Kenyon Parker and *T. H. Hall*, for the appellants, the representatives of Dr. Townsend, contended that no inquiry as to wilful default ought to have been directed. They cited and commented on *Garland* v. *Littlewood*, 1 Beav. 527; *Green* v. *Badley*, 7 Beav. 271.

Bethell and *Daniel*, for the plaintiffs, the respondents, contended, that an inquiry as to wilful default was properly inserted in the decree; that when the prayer for relief was not exhausted, the Court might, on further directions, on materials contained in the Master's report, make inquiries for the purpose of working out the relief asked by the prayer, and which was not touched in the decree on the original hearing: that the Vice-Chancellor was right, as the additional materials contained in the Master's report warranted an inquiry, especially as the Master was in the original decree directed to report circumstances specially. These materials warrant the inquiry, as it appears from them that Dr. Townsend paid more to one sister than another. The Bill also contains further charges against the person sought to be charged, namely, Dr. Townsend. [Lord Justice KNIGHT BRUCE.—Was there a different case made against Dr. Townsend and Mr. R. Carter?] It does not seem that there was. It must be remembered that Dr. Townsend was executor of the testator, as well as trustee of the marriage settlement, and that Carter was trustee of the settlement only, although it appears that he never acted as trustee, and the money was standing in the sole name of Dr. Townsend. They cited *Rowley* v. *Adams*, 7 Beav. 395, 548.

Lord Justice KNIGHT BRUCE.—This suit relates to a case of a trustee who died in the summer of the year 1830, and the suit was not instituted until the month of January, 1843. As the bill was framed, it did not state this deceased gentleman (Dr. Townsend) to have been sole trustee, or sole acting trustee; it represented him and Mr. R. Carter to have been, and to have acted, as trustees jointly. The error in that statement would have been of little importance had Dr. Townsend been alive, as he would have known the facts and circumstances of the case, but his personal representatives could not be supposed to know the facts or circumstances equally well, if at all. They were brought to a hearing, thinking that the acts complained of were the acts equally of Mr. R. Carter and the deceased Dr. Townsend; at the hearing, they find that Dr. Townsend is alone to be made the object of attack; Mr. R. Carter, or his estate, which is the same thing, being dismissed, on the ground, it is to be supposed, that Mr. R. Carter had never accepted the trusts. I am not quite sure that, as Dr. Townsend had died before the suit was instituted, that circumstance to which I have just referred, namely, the dismissal of Mr. R. Carter, is not of itself sufficient to support the present appeal. But I would rather not decide the case upon that ground. When the case came on at the original hearing, an account was directed, of which no complaint was made. Dr. Townsend was a trustee, and he was properly directed to account. Nothing more was done, of which, though Dr. Townsend's representatives could complain, they did not take the course which they might have done, namely, of having the bill dismissed, so far as it prayed wilful default, inasmuch as no direction was given on that subject. The account was taken, everything was duly accounted for, no complaint was made against Dr. Townsend or his representatives, but certain facts and documents were brought forward in the Master's office, and in consequence, on further directions, the Court made the inquiry, now complained of, which is not a finding on any adjudication. Whether the inquiry as to wilful default ought to have been directed is the point now before us. To go back to the original hearing: I apprehend that Lord Eldon often said, that, as a general rule, in order to obtain a direction for wilful default against an executor or trustee, you must allege a case, pray for it, and prove one act at least of wilful default; and, doing so, you may have a general decree as to wilful default; that is the course of the Court. But this state of circumstances may arise: namely, a case of wilful default may be alleged, and a prayer founded on it; but circumstances appearing, by admission or proof, may raise a case of suspicion in the mind of the Court on the question whether an act of wilful default has been committed or not. In such a case I can conceive that the Court, if it is likely that further evidence may be obtained, ought to direct an inquiry, short of directing wilful default, in order to ground upon that a new order to direct an inquiry as to wilful default at a future stage, but then the inquiry should be directed in such a way as to call the defendant's attention to the facts to be investigated. For instance, if the allegation be that a sum of 1,000*l.* be lost by wilful default, the inquiry ought to be under what circumstances it was lost and the facts bearing on the loss, and the nature of the transaction. Then the evidence will be supplied, and when it comes back to the Court, an inquiry as to wilful default may be directed. I can conceive the propriety or even the necessity of such a case, but it is not the habit of the Court, when a trustee, who, although he has acted erroneously, has acted in good faith, should be treated with severity. That however was not the case here, the case taken here was tantamount to an adjudication (it not appearing that there was any wilful default) that there was no wilful default to be inquired into, because the account was only a general account of the receipts of the trustee. It is said that there was a direction to report circumstances specially, but Sir William Horne, a Master of great learning and experience, said, and said most truly, that with regard to special circumstances, they must be stated with respect to the "matters aforesaid;" that is to say, the question of receipts and allowances. All other questions were not before him, and the danger of perjury in the event of false evidence in this case would not arise, because the evidence would not be material, as not addressed to matters in issue. It is said the evidence was documentary here, but the rule is the same, nor were the defendants called upon to address themselves to the evidence before the Master, because the Master was not to inquire as to wilful default. This decree was so worded as not to enable the Court on further directions to look at the new evidence produced before the Master, inasmuch as it was not evidence for such purpose; the consequence is, in my judgment, without denying that a case may exist in which on further directions an inquiry as to whether wilful default has been committed may be directed, this is not such a case, and, in my judgment, if there was nothing more in this case than

this, the inquiry had better be erased from the decree. But assuming that, according to the ordinary practice of the Court, there is nothing to prevent an inquiry being directed, it still remains to consider whether there was matter enough on the facts and documents stated in the Master's report to render this inquiry before the Master probably useful. I am of opinion that at the utmost extent they raised a doubt as to an obscure matter as to which all the persons who could have given information have passed to their graves, and that is more or less matter of conjecture. There would be a great hazard of a miscarriage of justice if this matter should be gone into. I am of opinion, therefore, that the inquiry had better be struck out.

Lord Justice Lord CRANWORTH concurred in the result, on the latter ground, namely, that, assuming that the state of the pleadings and the practice of the Court warranted the inquiry, that the facts of the case (which his lordship stated at some length) led irresistibly to the inference that the accounts had been properly taken, and a proper distribution made of the testator's estate; that Dr. Townsend had had transferred into his name the whole of the fortune of Frances Cresswell assigned by her marriage settlement, namely, the 500l. 4l. per Cent. Annuities: and that therefore there had been no ground shewn for an inquiry as to wilful default.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. HENRY COOKE, Esq. Barrister-at-Law.

April 19 and 20.

THE EASTERN ARCHIPELAGO COMPANY. McBRIDE v. LINDSAY.

Chartered company—Shareholder—Demurrer.

A bill was filed by a party who had taken shares in a company established by a Royal Charter, against the directors and against the company, alleging that the charter had been obtained by misrepresentation and fraud, and that the terms of such charter had not been complied with, which rendered it revocable by the Crown, and praying that the directors might be decreed to repay to the plaintiff the money he had paid for calls on his shares, that the directors and the company might be restrained from proceeding against the plaintiff for any further calls, that the directors might be restrained from making any contracts in the name of the company whereby the plaintiff might be rendered liable, and that the defendants might indemnify the plaintiff against such liability. Demurrers for want of parties and for want of equity were put in:

Held, that as there was no proof that any misrepresentations had been made to the plaintiff individually, his case was that of the other shareholders, and as he asked for payment to himself, to which he was no more entitled than the other shareholders, no such decree could be made in their absence.

Held, also, that as the plaintiff had taken shares after the grant of the charter, which was not revoked, he became a member of the company, and that he [was] not entitled to relief merely because he [a]lleged that the directors and the other shareholders had [concur]red in the alleged illegal acts.

Held, further, that one partner cannot call on this Court for a decree to compel repayment to him of his share of the capital of the partnership on the ground of an alleged fraud committed by the directors of the same partnership. The demurrers were, therefore, allowed both for want of equity and for want of parties.

The bill in this case was filed by Mr. John David Macbride against Mr. Hugh Hamilton Lindsay, Mr. John Macgregor, Mr. C. R. Drinkwater Bethune, Mr. Henry William Barnard, Mr. Alexander Nairne, Sir John Nicholl, Mr. Henry Wise, and other persons described as the directors of the Eastern Archipelago Company, and the corporation of that company and others, and it stated, among a great number of facts, the cession of the island of Labuan to the British Crown, in 1846, and an agreement made in 1846, whereby the sultan of Borneo conceded the coal in a large district of the mainland of that island to Sir James Brooke, and that such grant was taken by Sir James Brooke, not for his own benefit, but that he might dispose of it in such a manner as should be most conducive to the promotion of British commerce with Borneo, and the advancement of civilisation among the native tribes; that the defendant, Henry Wise, who had been the agent of, and was in the confidence of, Sir James Brooke, in or previously to the year 1847, formed an idea of establishing a company for working the coal so granted to Sir James Brooke by the sultan, and the coal to be found in Labuan, and that Mr. Wise communicated his project to Sir James Brooke, who promised to make over the grant to him, if the Government approved of his doing so; that Mr. Wise applied to the Board of Trade, and obtained a charter under the great seal, dated the 17th of July, 1847, which, after reciting that it had been represented to her Majesty that John Melvill, Philip Anstruther, and Henry Wise, and others, had agreed to subscribe 200,000l. in 2,000 shares of 100l. each, and form a company to be called the Eastern Archipelago Company, for the purpose of purchasing, and acquiring, holding, settling, improving, cultivating and planting, letting, farming, selling, or otherwise dealing with and making a profit of lands in Labuan and the lands adjacent, and working the mines therein, and raising coals, stones, earths, minerals, and metals, and trading therewith, and with the inhabitants of the said islands and lands; her Majesty granted and ordered that Messrs. Melvill, Anstruther, and Wise, and all such other persons as should or might become members of the company, should be a corporate body under the said name, with the powers of dealing in and holding lands as therein mentioned, and that at the least 100,000l. part of the said capital, should be subscribed for, and 50,000l. paid up, within twelve months from the date of the charter, and that the company should not commence business until it should have been certified to the Board of Trade, by at least three of the directors, that such proportions of the capital had been so actually subscribed for and paid up, and which certificate was to be indorsed upon the charter; and it was directed that the deed of settlement should be prepared to the satisfaction of, and be deposited with, the Board of Trade, within twelve months from the date of the charter; and it was provided that if the company should fail to comply with any of the directions therein contained, it should be lawful for her Majesty to revoke the said charter. The bill charged that John Melville and Philip Anstruther had never any interest in the concern, and that their names were used by the defendant, Henry Wise, for his own purposes, to mislead the Board of Trade; that Sir James Brooke intended and believed that the contract would be used for the formation of a company with sufficient capital effectually to carry out his views, and develope British commerce in those island[s]; that the defendant, Henry Wise, obtained from the Crown a demise of certain coal in Labuan, for a term of years, that having obtained the charter and demise, the defendant Wise determined to assume that he had acquired such interests for his own benefit, and not for the purposes of a projected company; that in prosecution of his scheme he prevailed upon Alexander Nairne, Sir John Pirie, the defendant Lindsay, and others, "to enter into an agreement of the 31st of January, 1848, whereby he, Wise, was to be one of the managing directors of the company, and to be paid 6,000l. in six months after the formation of the company, and 3,000l. a-year during the first ten years of its existence, and receive 100 shares, the calls on which were to be paid out of the capital of the company, and 2l. 2s. per cent. on the dividends and bonuses of the company when the same should not be less than 7l. 10s. per cent. on the capital, and 800l. as a managing director, and 2l. 10s. per cent. ... the general dividends and bonuses; such salary and latter per-centage not to exceed 1,800l. in the whole, he, Wise, thereby binding himself to give his best services to the affairs of the company during its existence, and at the end of twenty years, or the dissolution of the company, his rights were to revert to him." After stating that prospectuses were issued and that the plaintiff and other persons solicited for shares, and after setting forth the deed of settlement the bill stated that Henry Wise and two others of the directors certified to the Board of Trade that half of the capital had been subscribed, and that 50,000l. had been paid up, but that the plaintiff had lately discovered that such certificate was untrue; that only 1,116 shares had now been taken, 100 of which were the shares to be allotted to Henry Wise; and that 100,000l. was not subscribed for; and that 50,000l. was not paid within the twelve months; that the deed was not deposited with the Board of Trade within a year, as the charter required: that it was from the beginning altogether impossible that the company could be carried on with such amount of capital, so as to produce profit or fulfil the intentions of the Government or Sir James Brooke; and that the directors ought at the end of the twelve months to have returned the deposits, and ought not to have commenced or continued business in the name of the company, or made any further calls. The bill then prayed that the directors of the Eastern Archipelago Company might be decreed to repay the plaintiff the sum of 300l. which he had paid for calls on his shares in the company, and that the company might be restrained from proceeding against the plaintiff for any further calls, and that the directors might also be restrained from entering into contracts, or carrying on business in the name of the company, whereby the plaintiff might be rendered liable, and that the defendants might indemnify him against such liabilities. To this bill demurrers were put in for want of equity and for want of parties by the defendants the directors, and by the Eastern Archipelago Company.

Russell and *Freeling*, for the demurrer of the directors.—All the statements in the bill were most slanderous and the charges most untrue, yet it must be admitted for the purposes of a demurrer that they must be taken as true. Admitting thus far, it is the duty of the advisers of Mr. Wise, who was only carrying into effect, or endeavouring to do so, the great project of Sir James Brooke for the civilisation of the natives, and for the cultivation of the resources of this distant region, to deny in the outset, as they do the charges thus made against the directors. Even supposing all the statements in the bill to be true, they afforded no ground for the interference of the Court. The plaintiff had executed the deed, in which the agreement he now complained of is recited, and he is therefore bound by it, especially as it was made openly and with full knowledge of all parties. The bill shews that a corporation was intended to be formed, which was intended to be bound by the charter and the deed of settlement. There was only one plaintiff, and he sued in his own account, and that could not be permitted. The charter was still in existence; it was still valid; it had not been revoked; it did not follow from anything which had been said that it ever would be. The company was an existing company and corporation, and the utmost extent of the charge was, some or one of the partners had acted improperly. It was not in the power of every member of the corporation, therefore, to withdraw from the concern. If the directors had acted improperly, the correct remedy of the plaintiff was to call a general meeting of the corporation and obtain redress by an act of that body, by removing their directors if necessary, or by otherwise correcting the error or irregularity. The corporation being an existing body until the charter should be revoked, no such relief as the plaintiff asks can be granted to him. The violation of the charter, if there has been one, may be the ground of the interference of the Crown to correct the error or repair the mischief done, or to revoke the powers conferred; but this Court cannot be called upon to annihilate the corporation, as in effect this bill asks. If it could be shewn by Mr. M'Bride that no corporation exists, either in fact or in contemplation of law, he might be entitled to what he seeks,—namely, to be repaid all he has advanced; but so long as the money he has subscribed forms part of the funds of an existing corporation he can have no such right. He has no remedy against the defendants at all, and if he ever had any remedy it was at law, but is not, nor ever was, in equity. No withdrawal of himself or his money can be effectual so long as the corporation is in existence. At any rate, he cannot proceed in the absence of all the other members of this commercial corporation. This is not only a body of that description, but it is a partnership, and must be governed by the principles laid down by Sir James Wigram in *Foss* v. *Harbottle*, 2 Hare, 191, in which it was decided that such a bill was open to a demurrer for want of equity. On another ground, that bill is not sustainable; it says the money was not paid up within the year, as required by the charter, but that has been already answered. The bill is wholly experimental; it is really a bill of discovery in aid of a writ of scire facias to repeal the charter of incorporation; one, in fact, to relieve the plaintiff from all the liabilities which he has deliberately incurred, and to throw them on the other members of the corporation. He does not venture to insinuate that this affair was, as in *Colt* v. *Woolaston*, 2 P. Wms. 153, a mere bubble. There the purpose was absurdly said to be to extract oil from radishes, here to confer civilisation on a large and valuable population, to raise and render available the large coal fields in Borneo and Labuan, and to develope the other resources of a rich province. No fraud is even alleged prior to the granting of the charter, excepting that one of the persons who intended to be one of the directors did not become so, and for this reason—he became bankrupt! The objections subsequently to the grant of the charter are both curious and unsubstantial. The plaintiff says there was delay in depositing the deed with the Board of Trade, and then obtaining the certificate of that body by false representations. The certificates are, however, conclusive, as appears by the case of *The Bauven Iron Company* v. *Barnett*, 8 C. B. Rep. 106; and the allegations of fraud relate to matters in which, if true, all the other members of the corporation are as much interested as the plaintiff, and without whose presence they cannot be heard or decided on. (*Mozley* v. *Alston*, 1 Phill. 790; *Lord* v. *The Copperminers' Company*, 2 De G. & Sm. 308; and 2 Phill. 740.)

Sir *W. P. Wood*, for the demurrer by the company. This bill is one of a hybrid character; and even if the allegation of fraud be capable of proof, still it is demurrable according to the authority of *Wallworth* v. *Holt*, 4 Myl. & Cr. 619; *Richardson* v. *Larpent*, 2 Y. & C. C. C. 507; and such cases. Were the Court to be induced to grant the prayer of

this bill, the effect would be to paralyse the whole company at the instance of one of its members, and that, too, without the presence of the other parties. Nothing is so well settled as that where the acts complained of are those of the partners themselves, no one of those partners can sue on his own behalf alone. The certificate of the Board of Trade is conclusive, both on the authority already cited and on the authority of the charter itself; and if there be any informality, the charter itself states that the Crown may revoke it, or partially do so, and on such terms as to the Crown shall seem proper. This is only an indirect attempt to obtain aid in presenting a scire facias for its repeal. The demurrer of the corporation ought to be allowed, because the plaintiff seeks relief in the absence of the other members of the corporation, all of whom must be interested in the question—interested either in obtaining the same relief, if they have been deceived, as the bill alleges, or interested in opposing the attempt of the plaintiff to withdraw his subscription from the funds of the corporation, if their interests are identified with those of the company.

Rolt and *J. V. Prior* for the bill.—The arguments addressed to the Court in support of these demurrers have been such as would be of weight at the hearing of the cause, but are wholly inapplicable when the truth of the allegations must be taken as admitted. The bill relates exclusively to the personal interests of Mr. McBride, and not to the general interests of the company. [The VICE-CHANCELLOR.—How can the Court take a man out of a corporation?] All that the plaintiff asks is to have his money, and to be indemnified against future liabilities, on the ground that the condition on which the charter was granted has not been fulfilled. If the company think fit to carry on its business contrary to those conditions, there may be liabilities incurred from which he is entitled to be protected personally and individually. What can be a stronger fact against the defendants than that there existed an agreement previously to the formation of the company that two of its members, Melvill and Anstruther, were not to be called on to contribute anything towards its capital? The directors had no right to place in peril the plaintiff's credit, as they would do according to the allegation of the bill, although, of course, that is a matter to be proved; but if it be proved, it is a good ground of equity. It is very probable that the plaintiff has been induced to join the undertaking from connecting the name of Sir James Brooke with the progress of civilisation. That gentleman has, however, ceded his right to the coal mines, as the bill alleges; but this, the plaintiff states, has been concealed. It is clear that the plaintiff entered into his agreement upon certain conditions. These conditions were, that the company should be commenced and carried on according to the provisions of the charter. Sir James Brooke was, no doubt, actuated by no other motive than that of advancing the progress of civilisation, and he had transferred his interest to Mr. Wise with the same object, and in the confidence that they would be exercised for the same purposes. Mr. Wise, as the bill states, obtained a charter on fraudulent representations, which misled the officers of the Crown. The concession has not been accepted or transferred by Sir James Brooke for his own personal benefit, but for the benefit of the company which he expected would be formed. It now appears that the charter was obtained upon representations which were untrue, and as it was only upon the faith of the charter and of its provisions being observed, and for the purposes of promoting civilisation in the Archipelago, that the plaintiff took shares in the undertaking, he has never, in truth, become bound as a member of the corporation, and the calls which he has paid have been obtained by the concealment from his knowledge of the true facts of the case. This entirely removes all difficulty with regard to his obligations to the company, to which, in fact, he has never belonged. The plaintiff does not seek, as the argument of the defendants has sometimes represented, to dissolve the company. It is open to the plaintiff, as to any other subject of the Crown, to apply for a scire facias for the purposes of repealing the charter; but that must be an application to another court, and in a different form of proceeding. The plaintiff insists upon this,—that however the other members of the company may desire to go on, he (the plaintiff) is not bound to do so, and is entitled to withdraw his capital. [The VICE-CHANCELLOR.—Have not all the shareholders a common interest in this question? Can the Court take this portion of the capital of the company away without giving every individual shareholder an opportunity of being heard by being made a party to the suit?] The shareholders are all parties in the corporation, which is made a defendant in its corporate capacity. The plaintiff contends, first, that he has never become a member of the company. He did not become such member by executing the deed, for the deed pointed to a future period. The business was not to commence until the 100,000*l.* were subscribed, and 50,000*l.* paid up according to the charter. That was the condition. Of course, some parties must sign first, but signatures do not bind them unless the company should be completely formed, and the three directors certified that it was so, but the company was never completely formed according to the provisions of the charter. Secondly, the plaintiff only became a member of a company of which Melvill and Anstruther were also members, and this they had not become, but, as the bill states, they only allowed their names to be used. Thirdly, the plaintiff cannot be held to have become a member of a corporation under a charter which he believes not to be effectually carried into effect, and which, therefore, appears to be no more than a piece of blank paper, which the Crown can revoke at any moment. But, supposing he did become formally a member, yet he has been made so only by means of a fraud—by means of a certificate given contrary to the truth, in order to comply literally with the terms of the charter. The existence of this certificate might deprive the plaintiff of the power of resisting the call in any action at law; but it is a fraud against which this Court will relieve, as it relieves in cases of certificates to be given by the engineers of railway companies to their contractors, where it is alleged that such certificates are fairly due, but are withheld by collusion with the company. The rules with regard to parties are rules of convenience, and in the case stated by the bill, the Court will be satisfied that the directors, who are defendants, sufficiently represent the other shareholders. It is not the law of this Court, that the certificate is a bar to any proceedings where it is alleged that the certificate was obtained by fraud. (*Waring* v. *the Manchester, Sheffield, and Lincolnshire Railway Company*, 2 Hall & Twells, 239, and *Macintosh* v. *the Great Western Railway Company*, id. ib. 250.) It is no argument to say that the plaintiff must seek his remedy at law, as that course would be very circuitous, and probably not very satisfactory. As to the demurrer for want of parties, the company represent every shareholder, except the plaintiff, who denies his liability to be treated as one. One part of the prayer is against any future call on the plaintiff; this call could not of course be made by any body but the directors. Another reason for suing alone is that the names of the other shareholders cannot be easily ascertained, as the shares are transferable and very numerous.

Russell in reply.

The VICE-CHANCELLOR.—The case stated by this bill appears to be in some degree the private and individual case of Mr. M'Bride, and in some degree a case which he has in common with the other members of the corporation. The first point made by the bill is, that through the medium of false representations made to Sir James Brooke and to the Crown, Mr. Wise, acquired for his own interest, rights which had been intended by the Crown and Sir James Brooke to promote civilisation in the Eastern Archipelago; that these rights were obtained by representations, that they would be employed for the benevolent purposes intended by the Crown and by Sir James Brooke, and that they were devoted by Mr. Wise to his own private objects. Now, this Court has in this case nothing to do with these questions, as they may affect Sir James Brooke or the Crown. If it should be thought proper to institute proceedings, the facts stated, if they are true, may form a ground for applying to set aside the grant which has been obtained. The statements, however, are brought to bear on this case by the allegation that the directors knew of and fraudulently concealed these facts. It does not, however, appear by the statements of the bill, that any false representations have been made to the plaintiff individually. In this respect the case of the plaintiff is common with that of all the other members of the company. If the Court decrees repayment of his deposit and calls to the plaintiff, it must on the same grounds decree a like repayment to any other members of the company. The plaintiff, therefore, seeks relief for himself exclusively, to which relief other shareholders are equally entitled, and this I cannot do in the absence of such other shareholders. The demurrer must, therefore, be allowed for want of parties. It would not, however, be satisfactory to part with the case on that ground alone. It has been argued that the plaintiff has never become a member of the company. The charter provides, that if the provisions thereby prescribed are not complied with, it shall be lawful for her Majesty to revoke and make void the charter or determine the same upon such terms as her Majesty shall think fit. This clause does not determine or make void the grant, but only reserves power to the Crown, if it shall think fit, to revoke the grant. The charter does not, therefore, determine by anything which has been done. At a certain time after the granting of the charter the plaintiff took shares in the company, and I think that he thereby became a member of the corporation within the terms of the charter. I am of opinion that the charter and the deed executed by the plaintiff could not mean that the company should not exist antecedently to the certificate to be given by the directors. The plaintiff, by asking that his contribution to the capital of the company should be restored to him on the ground of a fraud, which he alleges has been committed upon him by the directors, seeks relief the effect of which would be prejudicial to all the other shareholders. It is, however said, that all the other parties have sanctioned and concurred in the acts of the directors; this, however, is not the allegation. The bill states that the defendants, the directors, "allege that the other shareholders have sanctioned and concurred," but the Court cannot make a decree which would be injurious to other parties in their absence, merely because the directors may have chosen to allege that the other parties have precluded themselves from asking similar relief. Upon the whole, therefore, I am of opinion that Mr. McBride has made himself a member of the company, and that there is not sufficient ground laid by the bill for granting the relief which it asks in the absence of the other shareholders. It is quite clear that one partner cannot call on this Court for a decree to compel repayment to him of his share of the capital of the partnership, on the ground of any alleged fraud which is said to have been committed by the managing directors of the partnership. When he asks that his capital may be restored, he asks that the interests of all the other partners of the company may, to the extent of the withdrawal of his capital, be prejudiced or diminished. The demurrers must be allowed, but the defendants may have leave to amend within a month.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

Wednesday, May 5.

CASTELLI *v.* GROOM.

Commission to examine parties as witnesses abroad.—If a commission can issue, under the 1 *Wm.* 4, *c.* 22, *and* 14 & 15 *Vict. c.* 99, *to examine abroad the parties to an action upon interrogatories, the party applying must shew that the issuing of such a commission would be conducive to the due administration of justice; and it is not enough to shew merely that the parties are resident abroad.*

A rule nisi was obtained on a former day, for a commission to Leghorn and Constantinople, for a commission to examine the two plaintiffs as witnesses.

It appeared that the two plaintiffs had been adjudicated bankrupts; that that adjudication had been confirmed; that an appeal was made to the Lords Justices, who directed the present action to be brought to determine the validity of the petitioning creditor's debt and of the act of bankruptcy. One of the plaintiffs resided abroad, and had never been in this country. The other was now resident abroad.

Bramwell and *Karslake* shewed cause.—There may be cases in which it is expedient that a commission should issue to examine the parties to a suit; as where they are merely nominal parties, or are too ill to come to this country, or their evidence is only required as to some trifling matters, or to prove some formal documents; but in a case like the present, where the parties have taken every step they could to annul the proceedings in bankruptcy, and now absent themselves from the country to defeat their creditors, this Court will not interfere to assist them in avoiding a cross-examination vivâ voce. (*Carruthers* v. *Graham*, 9 Dowl. 947.)

Willes, in support of the rule.—As to one of the plaintiffs, he never resided here; and the objection as to his running away cannot apply. The words of 1 Wm. 4, c. 22, s. 4.—"it shall be lawful, &c. to order a commission to issue,"—are imperative on the Courts, being used to give jurisdiction; and the Courts have no power to refuse, unless a case of misconduct is made out on the part of the applicant. Then the 14 & 15 Vict. c. 99, renders the parties competent, and there is no reason why the 1 Wm. 4, c. 22, should not be applicable. The plaintiff is dominus litis, and the party to complain of delay. If the action is delayed, the defendants are not prejudiced. (*Dye* v. *Bennett*, 9 C. B.; 1 L. M. & P. 92, S. C.)

Lord CAMPBELL, C.J.—I am of opinion that this rule ought to be discharged. I do not lay down any general rule that the parties to an action may not be examined upon interrogatories abroad, but that it must be shewn that the issuing of the commission would be conducive to the due administration of justice, and that it is not enough to shew that the parties to be examined are without the jurisdiction of the Court. If the rule contended for were to prevail in all cases, the parties would only have to sail across the Channel, and then they might insist on being examined on interrogatories. It is true that in many cases the words "it shall be lawful" in an Act of Parliament are obligatory; but upon this statute I

am of opinion that a party has a primâ facie right to a commission to examine witnesses abroad only upon shewing that it would be conducive to the due administration of justice; and it seems to me that upon the facts of the present case it would not be conducive to the due administration of justice to grant a commission.

WIGHTMAN and ERLE, JJ. concurred.

CROMPTON, J.—I declined to make the order in this case at chambers, on the ground that it was discretionary in the judge to grant the commission. The cases shewing that it is discretionary are collected in note (*h*) at p. 1121 of Chit. Sts. by Welsby and Beavan. I concur in the view of the facts taken by the rest of the Court. *Rule refused.*

Friday, May 7.

LEWIS v. NICHOLSON and ANOTHER.

Agent - Liability of, acting without authority.

A party who enters into a contract expressly as the agent of another, cannot be sued upon the contract, although made without authority, but must be sued for the deceit, in representing that he had such authority.

Quære, whether he can be sued in assumpsit upon an implied undertaking that he had such authority.

This was an action upon the following undertaking, sent in a letter to the plaintiff's attorney from the defendants, who were the attorneys of the assignees of the bankrupt:—

"In consideration of J. H. Lewis, for whom you act, consenting to the sale by Lewis and Son, of the bankrupt's printing materials and other effects, &c. we hereby, *on behalf of the assignees*, consent that the net proceeds shall be paid over to you or your client, to the extent of the balance now remaining due under the bill of sale.

(Signed) "NICHOLSON and PARKER."

The letter from the plaintiff's attorney, in answer, was:—

"In compliance with your undertaking, I consent, &c."

At the trial before Lord Campbell, C.J. it appeared that the defendants were not authorised to enter into this undertaking by the official assignee, but by the trade assignee only. The defendants' counsel objected, that the defendants could not be sued upon the contract, and that the proper form of action should have been case, for misrepresenting that they had authority to enter into the undertaking; and the learned judge being of that opinion, nonsuited the plaintiff.

A rule nisi having been obtained to set aside the nonsuit and enter a verdict for the plaintiff for 223*l*.

Bramwell and *Willes* shewed cause, and *Shee*, Serjt. and *Macnamara* supported the rule.

Cases cited: *Jones* v. *Downman*, 4 Q. B. 219, in error, 7 Q. B. 103; *Burrell* v. *Jones*, 3 B. & Ald. 47; *Jenkins* v. *Hutchinson*, 18 L. J. 275, Q. B.; *Thomas* v. *Hewes*, 2 C. & M. 530, note; *Polhill* v. *Walter*, 3 B. & Ad. 114; *Harper* v. *Williams*, 4 Q. B. 219; *Norton* v. *Herron*, 1 C. & P. 648, *Cass* v. *Rudele*, 2 Ver. 280; *Ex parte Evans*, 2 Dea. & Ch. 470; *Ex parte Young*, 2 Deac. 240; *Bothomley* v. *Usborne*, 2 Peake, 99; *Mancke* v. *Clarke*, 10 Bing. 102; *Jones* v. *Walsley*, 4 Esp. 220, 2 Smith's L. C. 223 b.; Storey on Agency, 261, n, 3rd ed.

Lord CAMPBELL, C.J.—I am of opinion that this rule ought to be discharged. Looking at the face of the contract, it seems to me that it did not intend to make the parties themselves liable, and that it does not do so. The contract is to be gathered from the two letters which passed between the plaintiff's attorney and the defendants acting for the assignees. It is quite clear that the plaintiff's attorney was acting only as agent, and that it was to the plaintiff, and not to his attorney, that the undertaking was given. The defendants were acting for the assignees, and they intended and expressed themselves sufficiently to shew that they were acting not as principals, but as agents, undertaking thereby that they had authority to act for the assignees. Instead of entering into a personal undertaking, they say, "We hereby consent on behalf of the assignees," that is, we give the consent of the assignees, not our personal consent; and it was the assignees who hereby authorised us to give our consent." Then the answer to the letter of the defendants meant the undertaking given by the defendants, and merely relates to the letter itself, and the construction of that I have stated. If that be so, I am quite clear that you cannot construe the contract by the subsequent declarations, written or verbal, of the parties. With regard to the authorities, this seems to come much nearer to *Jones* v. *Downman* than any of the others, and the Court of Error in that case said that the words "I undertake (on behalf of E. & Co.)" were to be taken as a declaration of agency. In *Burrell* v. *Jones*, there were not the words "on behalf," &c. In the present case there could properly be no undertaking on the part of the defendants but there might well be on the part of the assignees. Assuming then that, on the face of this contract, they are acting as agents, are they liable to be sued upon this contract, there being no authority to them for entering into such an undertaking so as to bind the official assignee? It has been reported that Bayley, B. laid down the general rule that where an agent makes a contract in the name of his principal, and it turns out that the principal is not liable for the want of authority in the agent to make such a contract, the agent is personally liable *on the contract*. I must dissent from that doctrine. I think it must be confined to cases where the party professing to give the undertaking could undertake. In *Jenkins* v. *Hutchinson*, it was held that a party who executes an instrument in the name of, and expressly as agent for another, cannot be treated as a party to the instrument, so as to be sued upon it, unless he be shewn to be the real principal. I go further, and say, that when a party clearly and expressly contracts in the name of, and as agent for another, he cannot be sued upon the contract. If he has been guilty of fraud, he may be sued in an action for the deceit, or perhaps he may be sued upon the implied undertaking that he had authority. He may be liable in damages for the loss sustained, but to say that he would be personally liable, when he is expressly contracting as agent, would be in my opinion for the Court to make the contract.

WIGHTMAN, ERLE, and CROMPTON, J.J. delivered similar judgments. *Rule discharged.*

BISHOP v. HATCH.

Judgment Interest—1 & 2 Vict. c. 110, s. 17.

The plaintiff having issued execution for debt and costs at the time the 1 & 2 Vict. c. 110 came into operation, before the amount thereof was satisfied but after that Act came into operation, issued a fresh writ of execution for the interest upon the judgment debt only, and subsequently received under the first execution the debt and costs.

Held, that the defendant was not entitled to enter up satisfaction on the judgment until the interest was paid under the second writ of execution.

A rule nisi having been obtained to enter up satisfaction on the judgment roll, it appeared that the plaintiff obtained judgment for 575*l*. 12s. debt and costs, against the defendant, a beneficed clergyman, and issued a sequestrari facias thereon in Hilary Term, 1833. At that time the defendant's living was under sequestration, at the suits of other parties. In October 1838, when the 1 & 2 Vict. c. 110 came into operation, the plaintiff's debt and costs were unpaid, and in fact, there were no funds in hand to satisfy the plaintiff's judgment till February 1851; and the plaintiff did not receive the amount due to him until September 1851. In February 1851, the plaintiff issued a new writ of sequestrari facias for interest upon the judgment, from October 1838, up to the 11th of February 1851.

Phipson shewed cause.—The defendant is not entitled to enter up satisfaction on the roll, as the interest on this judgment debt has not been paid. The 1 & 2 Vict. c. 110, s. 17, is express that every judgment debt shall carry interest from the time of the commencement of this Act, that is, from Oct. 1, 1838, in cases of judgments then entered up, and not carrying interest, until the same shall be satisfied. And the section then proceeds to shew how such interest is to be obtained:—"And such interest may be levied under a writ of execution on such judgment." The plaintiff here has pursued the remedy given by the statute for the interest. (*Watkins* v. *Tarpley*, 5 D. & L. 226.)

Willes and *Mills*, in support of the rule.

WIGHTMAN, J.—I am of opinion that this rule must be discharged. I entertain no doubt that interest may be levied under the execution. The express words of the statute give such a right, and it would be strong to hold that, notwithstanding the statute, the party has no remedy to recover interest.

ERLE, J.—The defendant is not entitled to compel the plaintiff to enter up satisfaction on the judgment without first obtaining the interest due; for, after the judgment, a statute was passed giving a plaintiff who had recovered a judgment, a right to interest; and I see no reason why an execution should not issue for the interest alone.

CROMPTON, J. concurred. *Rule discharged.*

BUSINESS OF THE WEEK.

Thursday, May 6.

REG. v. THE SOUTH WALES RAILWAY COMPANY.—The *Attorney-General* moved for a rule for a mandamus to the above-named company to complete a branch-line running on the south side of Milford haven. The compulsory provision would expire in May, 1853. *Rule nisi.*

REG. v. MAJOR.—Indictment for perjury in an affidavit. The defendant having been convicted, was now brought up for judgment. *Edwin James* was heard in mitigation. *Byles*, Serjt. and *Collier*, for the Crown.

Sentence—two years' imprisonment with hard labour.

POCOCK v. PICKERING.—This was a rule to set aside an order of the Lord Chief Baron setting aside a warrant of attorney, and subsequent proceedings. *Bramwell* and *Hull*, in shewing cause, took a preliminary objection that the affidavits did not disclose the materials upon which the Lord Chief Baron had proceeded. (*Needham* v. *Bristowe*, 4 M. & G. 262.) *B. C. Robinson*, contrà.

Rule discharged with costs.

CHAPPEL v. DAVIS.—*Barstow* moved for a rule to review the Master's taxation herein. The question was as to the costs of a reference under a local Act of Parliament.

Rule refused.

Re OWEN.—*Archbold* moved for a rule to quash an order of magistrates brought up by certiorari. The order directed a surveyor of highways to repair the whole of a road partly situated in another parish. *Rule nisi.*

AMOTT v. HOLDEN.—*M. Chambers*, *Bramwell*, and *T. Chitty* showed cause against a rule to enter the verdict for the defendant, upon a plea of the Statute of Limitations, and also upon a plea of bankruptcy of the defendant. *Knowles*, *Henderson*, and *Milward*, contrà.

Rule discharged so far as related to the plea of the statute. upon the other point cur. adv. vult.

Friday, May 7.

THE CROSS KEYS BRIDGE COMPANY v. THE COMMISSIONERS OF NENE OUTFALL.

Judgment for the defendants.

FARROW v. MAYES. *Judgment for the plaintiff.*

REG. v. THE COUNTY COURT OF SURREY.

Judgment for the Crown.

KING v. THE SHERIFF OF CHESHIRE.

To be turned into a special case.

POCOCK v. PICKERING.—*B. C. Robinson* moved to rescind an order of Pollock, C B. setting aside a warrant of attorney. A previous rule to that effect had been discharged by reason of technical defects in the affidavits.

Rule nisi, on payment of costs of former application.

Saturday, May 8.

MEYER v. THORNTON.—*Jas. Wilde* showed cause against a rule for a commission to examine witnesses, vivâ voce, at San Francisco. *T. Jones*, contrà. *Rule absolute.*

KEANE v. STEWART.—*D. D. Keane* showed cause against a rule for referring it to the Master to take an account of the sums to be allowed to the defendant under his pleas of payment and set-off, and to be deducted from the amount of the verdict. *Watson* and *Maynard*, contrà.

Rule absolute, with costs.

RICHARDS v. CAMERON'S COALBROOK, &c. COMPANY.—*Willes* shewed cause against a rule for issuing execution against Baron Salomons as a member of the company, upon a judgment obtained against the company in June 1849. *Needham*, contrà. The COURT thought that due diligence had not been used by the plaintiff for the purpose of putting in force his remedy against the property of the company. *Rule discharged.*

HOWES v. BARBER.—*Lush* shewed cause against a rule to review the Master's taxation. The Master had allowed the plaintiff, a mariner, who was examined as a witness in his own behalf, subsistence money as a witness, and the question was, whether he was right in so doing. *Unthank*, contrà. *Cur. adv. vult.*

REG. v. THE MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY COMPANY.—*Phipson* moved to enlarge the rule; *Watson* consenting, *Rule enlarged.*

HENDERSON v. DOLPHIN.—*Watson* consented in this case that the jury should be discharged from giving a verdict on the second issue. Therefore, *Rule refused.*

REG. v. FRANCIS.—*Phipson* shewed cause against a rule for a quo warranto information. *M. Smith*, contrà, was not called upon. *Rule absolute.*

Re ———.—*Macaulay* moved for a habeas corpus to bring up a wife at the instance of her husband.

Rule nisi.

REG v. THE RECORDER OF LIVERPOOL.—*Archbold* moved for a mandamus to enter continuances and hear an appeal.

Rule refused.

REG. v. ———.—*Cook* moved for a rule to admit a prisoner to bail. *Referred to Erle, J. at chambers.*

KNILL v. WARD.—*Gray* shewed cause against a rule for setting aside an order of a judge directing an inspection of documents pursuant to sec. 6 of 14 & 15 Vict. c. 99, and for preventing that order from being made a rule of Court. He objected that the application was too late. *Field*, contrà, contended that it was not, but that, at all events, the order ought not to be made a rule of Court, because the notice given to the party of the inspection required was not sufficiently specific. By the COURT.—The application to set aside the order is too late, but the notice is not sufficiently specific. It merely follows the terms of the order. The order, therefore, must not be made a rule of Court. *Rule discharged in part, and absolute in part.*

Monday, May 10.

COUNTY COURT APPEALS.

OLDING v. SMITH.—Sir *F. Thesiger*, Att.-Gen. for the appellant. *Keating*, contrà. *Judgment reversed.*

COOPER v. STEVENSON.—*Petersdorff* for the appellant. *C. G. Addison*, contrà. *Judgment reversed.*

MORVILLE v. THE GREAT NORTHERN RAILWAY COMPANY.—*Phipson* for the appellant. *Cowling*, contrà.

Judgment reversed.

COURT OF COMMON BENCH.

Reported by DANIEL THOMAS EVANS and VAUGHAN WILLIAMS, Esqrs. Barristers-at-Law.

BUSINESS OF THE WEEK.

Thursday, May 6.

MYERS v. PRIGAL.—This part-heard case was resumed. *Byles*, Serjt. replied at great length, contending that the shares in question could be considered as property savouring of realty. The Court took time to consider judgment.

Cur. adv. vult.

MESSER v. PARKER.—In this case *Chadwick Jones*, Serjt. was heard in reply supporting the rule. [JERVIS, C.J. objected that, inasmuch as it did not appear in the declaration that the plaintiff had lawful business at the office where the injury he sued for happened to him, and that being so, his case was gone. The plaintiff might, however, have leave to amend and go down again to trial, but that could be only on payment of costs.] *Charnock*, on same side, said he could convince the Court they ought to grant the rule, and that the action might be maintained in its present form. [JERVIS, C J.—We offer you, with consent of *Chambers*, Q C. on other side, to enter a nonsuit, so that you may begin again. If you go on, you must take your chance of the rule.] The difficulty is as to costs; our

attorney not being present, we do not know what to do. [JERVIS, C.J.—Let the case stand over till to-morrow, in order that you may see your attorney. It is a reasonable request.] *Stands over.*

COSTINS v. EVANS.—This cause was tried before Wightman, at the Spring Assizes in Gloucester. Verdict for the plaintiff. *Watson* and *Phipson* showed cause against a rule obtained on a former day by *Keating*, Q.C. to shew cause why the verdict should not be set aside and a new trial had, on the ground of misdirection, and that the verdict was against the weight of evidence. They contended, as regards the point of evidence, that it was conflicting and entirely for the jury, and there was no reason to suppose another jury would arrive at a different conclusion, whilst the learned Judge who tried the cause had said he was not dissatisfied with the verdict. As to the ground of misdirection, it is hard to see what the misdirection was. It was said the learned judge had told the jury that defendant was concluded by an account put in evidence, shewing a payment on part of plaintiff by one Onely, and that he should not have done so. It does not, however, amount to misdirection. *Keating*, Q.C. was heard in support of the rule. [JERVIS, C.J.—I think it would be more satisfactory that there should be another trial of this case; the evidence being doubtful and conflicting. As we decide on the point of verdict against evidence, it will not be necessary to consider the other point. We will, however, speak to Brother Wightman as to the terms on which the rule shall be made absolute, whether as usual on payment of costs or otherwise.]

Rule absolute for new trial, but conditional as to costs.

Friday, May 7.

GRAHAM and OTHERS (Assignees) v. CHAPMAN.—JERVIS, C.J. delivered the written judgment of the Court. The rule for entering the verdict for the plaintiff was made absolute.

NOVELLO v. SUDLOW.—TALFOURD, J. delivered the written judgment of the Court, which was in favour of the plaintiff.

JOHNSON v. BINGHAM.—*Tomlinson* applied for an attachment against the defendant, who had not paid the costs of a discharged rule. *Rule nisi.*

John Funis Pocock applied to have his name struck off the Roll of the Court. *Rule granted.*

ABRAHAM v. DENNIS. *Settled on terms.*

BALDWIN v. BALEKMANN.—Rule discharged, upon the plaintiff giving security for costs, the plaintiff not to be necessarily one of the sureties. Stay of proceedings in the mean time, and the security to be given before next term.

COLEMAN v. LEE and ANOTHER.—*Charnock* shewed cause why the judgment should not be entered as in the case of a nonsuit.

Rule discharged, the plaintiff undertaking to try next term.

MESSER v. PARKER.—This was an action brought against the defendant, in order to recover compensation for injuries sustained by the plaintiff in falling through a hole in the defendant's warehouse, where the plaintiff had gone to look at some packing-cases that had been deposited there. *Chadwick Jones*, Serjt. and *Charnock* were for the plaintiff, and *Montague Chambers*, Q.C. for the defendant.—After argument as to the liability of the defendant, *M. Chambers*, on the part of the defendant, for whom the jury, under the direction of Jervis, C.J. had found a verdict, offered a stet processus, which was accepted.

——— v. EVANS.—The Court stated that the costs in this cause should abide the event.

Saturday, May 8.

FOSTER v. CRABB.—JERVIS, C.J. delivered written judgment in this case. The action would not lie. Of two parties jointly interested in a deed, he who first gets possession of it, is entitled to keep it. This is to avoid unseemly contentions and perpetual dissatisfaction between the parties. Judgment therefore for the defendant.

To be reported.

AUSTEN v. MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY COMPANY.—CRESSWELL, J. delivered written judgment herein. The rule for arresting the judgment must be made absolute. The declaration discloses no sufficient cause of action; there consequently must be judgment for the defendant. *To be reported.*

LAMPLEIGH v. SOUTH EASTERN RAILWAY COMPANY.—*Dodson*.—No arrangement having been entered into by these parties, the Court is prayed to make absolute the rule. *Rule absolute.*

UNWIN v. DERBY.—*Deighton* mentioned rule to compute. *Rule absolute.*

WILLIAMS v. BUTLER.—*Holl* asked to make absolute a rule to compute. This was a case, in which the Court had ordered special service, that copies of the rule should be served at Delahay-street, and at 3, Victoria-square. [JERVIS, C.J.—Was there also a letter sent?] That does not appear. [JERVIS, C.J.—Part of the terms on which the rule was granted, was, that a letter should be sent to the defendant. As it is not shown that the order has been complied with, this rule cannot be made absolute.]

Rule discharged.

HEATH v. SAMPSON.—*Heath*, for the plaintiff, prayed the Court to enlarge the time, for a commission to examine witnesses at New Orleans. [JERVIS, C.J.—Is this so clear a matter of course, that the other side may not have objections?] We gave defendant notice two days ago, that this application would be made to-day. The commission is returnable to-day. [JERVIS, C.J.—Why did not you come here before?] We continually expected the evidence would arrive, and the necessity for this motion would be thereby prevented. [JERVIS, C.J.—You may take a rule returnable next term.] It was then arranged, the case should stand over to the close of the day, in order that the other side might be asked its consent. Before rising of the Court, *Heath* stated that defendant's solicitor had consented to the enlargement prayed; and the Court thereupon ordered enlargement. *Application granted.*

EDWARDS v. CHAMPION.—*Willes* mentioned this case, which was an issue directed from Chancery: it had been entered in the paper, but there had not been time to settle the points for the opinion of the Court.

Enlarged.

WYATT v. STARLING.—*Hawkins* moved for a distringas to compel an appearance. *Granted.*

BISHOP v. FURLEY.—*Channell*, Serjt. moved for a rule calling on plaintiff to shew cause why defendant should not be at liberty to add a plea. The application had been made before Maule, J. at chambers, who refused to accede to it. It was an action of assumpsit with a count for money had and received. The declaration was delivered in March, and defendant on 17th April had pleaded non assumpsit, payment, and set-off. He now seeks to add a special plea, on the authority of *Packwood* v. *Dunn*, 3 Q.B. 822. The affidavit states that this application is not made for delay, the defendant having a good defence on the merits. The affidavit does not disclose the ground on which the Judge at chambers refused the rule. It is asked that the present rule may be returnable next term. [JERVIS, C.J.—You may take a rule.] *Rule nisi.*

WINTLE v. DAVIS.—*Bramwell* and *Pearson* shewed cause against rule obtained by *Macnamara*. The Court without calling on *Macnamara* in reply, made the rule absolute.

To be reported.

BOGG v. PEARSE.—*Chambers*, Q.C. prayed the Court to allow a variance to be made in the terms of the rule granted in this case. It had been drawn up with leave for plaintiff to enter the verdict on three issues only, whereas he desired to enter it on several other of the issues joined.

Granted.

HOPPER v. BUDD.—*Couch* shewed cause against a rule for judgment as in case of nonsuit obtained by *Welsby*. The affidavit shews that the plaintiff cannot safely proceed to trial without a letter which is now in the possession of a solicitor named Watson, who states that he cannot find it. The plaintiff asks the Court to discharge this rule on giving a peremptory undertaking to try at the sittings after Term, when secondary evidence must be given of the letter, if in the mean time it should not be discovered. *Welsby*.—Notice of trial in this cause was given for the first sittings in 1851. The affidavit does not state there is the slightest probability that the letter would ever be found. [JERVIS, C.J.—Let the rule be discharged on giving a peremptory undertaking as proposed.]

Rule discharged.

Re LYDIA PARROTT.—*Hayes* moved the Court to permit Lydia Parrott, a married woman, to convey certain property under the Fines and Recoveries Act. She was married in 1804, and three months afterwards her husband deserted her to live with another woman. She has since heard that he has been tried for felony, convicted, and transported. There is this peculiarity in the case which the Master thought should be mentioned to the Court, that the woman gives in her affidavit no *addition* to her name. [JERVIS, C.J.—There is a rule of Court against the application; she ought to have described herself as a married woman.] The statement by her whether she is wife, widow, or single woman, is not her *addition*, for that would be simply a description of her state and condition. [JERVIS, C.J.—Let an order be made upon a proper affidavit, giving her description as Lydia, wife of, &c. or Lydia, gentlewoman. The rule will then be drawn up by the officer on the production of a proper affidavit.]

Rule conditional.

JACOBS v. JOEL.—*Hawkins* shewed cause against rule for judgment as in case of nonsuit, obtained on a former day by *Digby Seymour*. The rule was discharged.

To be reported.

FOSTER v. CRABB.—*Young* asked permission to amend a plea in this cause on payment of costs, denying that the trustee had ever received the deed. [JERVIS, C.J.—You had better mention it to counsel on the other side.]

Stands over.

FENN v. ROBERTS.—*Macnamara* shewed cause against rule obtained by *Lush*. *Rule discharged with costs.*

To be reported.

DODD v. LUMLEY.—*Hayes* moved for a distringas, the affidavit being sufficient. *Rule granted.*

Re WILLIAMS, One, &c.—*M. Lloyd* moved to strike an attorney off the rolls, at his own request. *Rule granted.*

BURKETT v. HART.—*Couch* moved for a distringas.

Rule granted.

ANONYMOUS.—*Willes* asked the Court to enlarge a rule in a case where *Phipson* was on the other side, but was not prepared to argue the case. *Rule enlarged.*

Tuesday, May 11.

The Court, with the substitution of Maule, J. in bet the Lord Chief Justice, sat and heard three appeals from the County Courts, which will be duly reported.

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY, and C. J. B. HERTSLET, Esqrs. Barristers-at-Law.

Friday, Jan. 30.

NEWBOLD and ANOTHER v. THE EAST LANCASHIRE RAILWAY COMPANY.

Award—Setting it aside.

Agreement that arbitrator should award a money compensation for the damage, or instead thereof actual repairs of the damage done.

Atherton, Q.C. and *J. Henderson*, had obtained a rule to set aside the award made herein, on the ground that the arbitrator had misled (accidentally) the parties.

Bramwell and *Gray*, contrà.

The facts and circumstances of the case sufficiently appear in the Judgment of the Court.

Cur. adv. vult.

Saturday, May 1.—POLLOCK, C.B. delivered Judgment. This was a motion as to setting aside an award. The affidavits were of some length, but when the answer comes to be considered with reference to the objections taken, we are of opinion that the rule must be discharged, and of course with costs.

The motion was founded upon this suggestion, no doubt to some extent supported by the affidavits that were used by Mr. Atherton when he moved the rule. The ground of the application was this, that there being a question between Newbold and the Railway Company in respect of some damages, it was referred to an arbitrator to decide all matters in difference between them, and Mr. Fisher was the arbitrator who was so selected. It was said that it was a question for him to decide, whether he would award that the Railway Company should do the work, and make the reparations that were necessary to restore things to the condition in which they were before the damage was done, or whether he was to award a sum of money in gross instead of them. It was contended on the part of Mr. Atherton that he had misled the parties, not perhaps otherwise than accidentally, or not wantonly or fraudulently, but it was suggested that he had led them to expect that he would award the damage to be repaired, and that he would not award the amount of damage in money; that in consequence of that, they abstained from giving a great deal of evidence that they otherwise would have given, and which, had it been given, would have materially affected the result, and that they left in the expectation that he would merely award such and such repairs to be done, and that that would be the mode in which he would put an end to their differences. When Mr. Bramwell came to shew cause against the rule, he produced the affidavit of one of the parties, Mr. Newbold, the partner, I think, of the attorney, and of the arbitrator himself; and from that it appears that originally—it being suggested that the award should be in the shape of a money compensation, or by actual repairs—that that was objected to on the part of the defendant, and actually struck out of the original draft. The passage in the affidavit of James Park, who is the partner of Mr. Newbold, the plaintiff, is this: he says, that the draft agreement of reference was prepared to give to the plaintiff compensation for putting and continuing the plaintiff's mill, buildings, and premises in good and substantial repair, and the attorneys for the company struck the clause out of the draft agreement, and wrote in the margin thereof the following words—"The company are not to do any more work; the matter is to involve a money question only; it is understood that the company are to do nothing to the premises." That is put with their signature. Subsequently, it appears that Mr. Martin Fisher, the arbitrator, suggested that no evidence should be given upon the actual subject, either of the repairs or of the expenses; that he was able to judge for himself, and power should be given to him by the plaintiffs and defendant to order the repairs to be done as he might think proper on personal inspection, and the suggestion was absolutely refused and declined by the said John Grundy in the first instance, but was acceded to ultimately on the part of their clients, with this addition, that as he (Grundy) contended the repairs done were sufficient, the power was to be given to the arbitrator to order further repairs to be done, or that he was to give the money payment. And upon going over the whole of the affidavits, especially the affidavit of the arbitrator, it appears to be perfectly clear that it was left to the arbitrator to award either the one or the other,—that nobody was or ought to have been at least, deceived by any such arrangement; that the result of the whole matter is, that the company may be extremely dissatisfied with the award, but that is properly a question of merits, upon which ground we cannot set it aside. It appears to us, therefore, that the objections taken by Mr. Atherton, when he moved for the rule and apparently substantiated by his affidavits, are completely removed and answered by the affidavit on the other side. We are therefore of opinion that the rule must be discharged with costs. *Rule discharged.*

April 22 *and May* 1.

STEVENSON v. DICKENSON.

Bill of sale—Possession—Seizure under fi. fa.—Growing crops.

POLLOCK, C.B.—This was a rule moved for by my brother Wilkins in a cause tried before Alderson, B. The point left by the learned judge to the jury was this, that if they believed the transaction to be true, then he thought the plaintiff was entitled to recover a quantity of hay that had been seized which had grown upon the premises. Now, the circumstances were these: an action had been brought against the father, and he, expecting that there would be damages recovered against him, and that there would be judgment, no doubt purposely transferred the property to his son; with the assent of the landlord, the son took possession, manured the farm, laboured it, and at length reaped or mowed a crop of hay, and that was the hay that was seized, and it was contended that it might be seized because the farm continued to be the property of the father,—that is not so; in point of fact the transfer was made; then, the growing crop in the meantime, while the son was in possession, and while the son was giving his labour to the land and manuring it, and doing that which would end in there being a crop of hay,—all the fruits of the land to that time belonged to him. Alderson, B. left to the jury to inquire whether they believed the transaction really was so; they found that it was, and the learned judge said, if that was so, then the hay was

the property of the son and not of the father. We think that direction was perfectly right, and that in this case there ought to be no rule granted.

Rule refused.

Wednesday, May 5.

LAYTH v. AULT and ANOTHER.

To a declaration in debt for goods sold and delivered A. one of the defendants pleaded that, at the time of the debt accruing he and one B. carried on business as partners, and that the goods for which the action was brought were bought by them as partners, and that he A. was about to retire from the partnership, of all which plaintiff had notice and that it was agreed that 12l. should be paid the plaintiff, and that she should relinquish and abandon her claim against the defendant A. for the residue, and that defendant B. should become solely and separately liable to pay the plaintiff the said residue

Held, [illegible] *defence—distinguished from* Lodge v. Dicas, *per Pollock, C. B. and Parke, B. overruling that case, and* David v. Ellice, *per Martin, B.*

This was an action against Henry Ault and Samuel Wood, tried in the Manchester Court of Record; (a) it was an action in debt for goods sold and delivered, and on an account stated. The defendant Ault had pleaded inter alia, "That the said account stated in the said second count in the declaration mentioned, was stated of and concerning the said debts in the said first count of the declaration mentioned, and not otherwise, and not for or concerning any other debt or sum of money; and that the said debt in the said first count of the declaration mentioned, is and are the same with the said debt in this second count mentioned, which said debt was incurred by the defendants to the plaintiff for goods sold and delivered, and not otherwise; and the said defendant, Henry Ault, further saith, that, at the time the said last-mentioned debt was incurred by the defendants to the plaintiff, the said defendants, Henry Ault and Samuel Wood, carried on business as partners together; and the said goods in the first count mentioned were purchased from the plaintiff by the defendants as such partners as aforesaid, to wit, for the purposes of their said business, and not otherwise; and the said debt was incurred by the defendants as such partners as aforesaid, and not otherwise. That after the said debt was so incurred as aforesaid, and before the commencement of this suit, to wit, &c. the said defendant, Henry Ault, was about to retire from the said partnership, and the said partnership business was thereafter intended to be carried on by the said defendant, Samuel Wood, alone, of all which the plaintiff then, to wit, &c. had notice, and thereupon by a certain agreement then made by and between the plaintiff and the defendants, it was agreed that the plaintiff should be then and there be paid the sum of 12l. in part payment of her said debt, for goods sold and delivered to the said partnership, and in satisfaction and discharge of the sum of 12l. part thereof, and that the plaintiff should relinquish and abandon her claim against the defendant, Henry Ault, for the residue of the said debt, and that the said defendant, Samuel Wood, should become solely and separately liable to pay her, the plaintiff, the said residue of her said debt, and that the plaintiff should and would accept and take him, the said defendant, Samuel Wood, alone, as the debtor of her, the plaintiff, for the said residue of the said debt, instead of the said defendants jointly, and should have no further claim against the said defendant, Henry Ault, in respect of the said residue of the said debt; and, accordingly, thereupon, and before the commencement of this suit, to wit, &c. in pursuance of the said agreement, and in consideration of the premises, the said plaintiff was paid, to wit, by the defendants, and did accept and receive, to wit, from them the said sum of 12l. in part payment of the said debt and in full satisfaction and discharge of the said sum of 12l. part thereof, and the said defendant, Samuel Wood, promised and undertook to and with the plaintiff to pay her on request the said residue of the said debt, and to become solely and separately liable therefor, and the plaintiff did accept, and take him, the said defendant, Samuel Wood, alone as the debtor of her the plaintiff, for the said residue of the said debt, and did wholly relinquish and abandon her said claim against the said defendant, Henry Ault, for the said residue, which said debt is the same debt as that in the said declaration mentioned." Verification.

To this plea the plaintiff joined issue, and on this issue a verdict was found for the defendant.

Cowling (with him *Wheel*[illegible]) moved for [illegible]. There is no consideration for the exoneration of the defendant Ault from this debt, and it does even appear that the partnership between him and Wood has, in fact, been dissolved. The past payment amounts to nothing, and there must be a further security given. (*Thompson* v. *Perceval*, 5 B. & Adol. 925; *Hart* v. *Alexander*, 2 M. & W. 484; *Bedford* v. *Deakin*, 2 B. and Ald. 210; *David* v. *Ellice*, 5 B. & C. 196; *Lodge* v. *Dicas*, 3 B. & Ald. 611.) These cases fully support this principle. [PARKE, B.—The rule is, that there shall not be a further security given, but a different security. It is perfectly clear that the Court will not measure the consideration when that substituted is of a different nature from that originally existing; that is so laid down by Lord Denman in *Thompson* v. *Perceval*.] *Hart* v. *Alexander* is the only case in which a plea of this kind has been pleaded. There is no case yet in which the discharge of one of two persons has been held sufficient consideration for a new agreement, and the Court will not recognise such a contingent advantage; he referred also to the judgment of Lord Cottenham, in the case of *Winter* v. *Innes*, 4 Myl. & Cr. 108, 109.

POLLOCK, C.B.—We are all of opinion that in this case there ought to be no rule. At first it would appear that the distinction between this case and *Lodge* v. *Dicas* is very trifling, but in the judgment of Holroyd, J. a point is referred to which may serve to distinguish them: he says, "It was proved at the trial that there was an agreement that Rondeau (the late partner of the defendant Dicas) should receive the partnership debts and discharge this demand;" and, he continues, "unless it could have been shewn that the plaintiffs were parties to the agreement between Dicas and Rondeau, there is no consideration whatever for the promise proved to have been made." The present pleas are founded substantially on this: the defendant Ault says, "I was going out of the partnership, and the other defendant was to remain, and you, the plaintiff, knew this and agreed to receive a certain sum, and to release me from further responsibility, looking solely to the continuing partner for payment of the residue." Where parties agree to an arrangement the Court will not inquire as to the amount of the consideration, it is entirely in the mind of the parties agreeing, and the Court will not measure the quantity; if it be possible that an advantage may accrue, the Court will support it. I think this case may be distinguished from *Lodge* v. *Dicas*, although I do not think I should place much stress on so subtle a distinction.

PARKE, B.—I am of the same opinion. It is clear that the Court will not inquire into the amount of the consideration when its nature is changed. It is the folly of the parties making the bargain, with which we cannot afterwards interfere. There is a strong case in support of this (*Andrews* v. *Boughey*, 1 Dyer, 75 a, pl. 23); there to a declaration for delivering 373 lbs. of bad wax, upon an assumpsit for 400lbs. of good wax, stating half the price to have been paid in hand the rest to be paid upon a day agreed on, a plea of 20 lbs. of wax given and accepted in satisfaction was held good; the law leaves the parties to arrange their own bargains. Well, then, can it be doubted but that the advantage of having one debtor may be greater than two? It is clear that several cases might be put in which it would be expedient to take the security of one and to have the right to sue one and so avoid the chance of a plea in abatement. An old rich man might be in partnership with a young one who was poor, and it would clearly be advantageous to release the latter and leave solely the former to look to for payment, and so probably avoid the necessity of applying to the Court of Chancery. The case of *Lodge* v. *Dicas* was put on different grounds, and the simple point of whether one debtor might not be better than two does not appear to have been considered.

ALDERSON, B.—I am of the same opinion. It is demonstrable that the separate security of A. may be better than the joint security of A. and B. and that is sufficient to decide this case.

MARTIN, B.—I quite agree that there should be no rule, but I think that *Lodge* v. *Dicas*, and *David* v. *Ellice*, are overruled by this judgment; and I think it is much better so to decide than to search for subtle distinctions.

Rule refused.

Saturday, May 8.

CARR v. THE LANCASHIRE AND YORKSHIRE RAILWAY COMPANY.

Horses carried by railway—Liability of company—Gross negligence—Special contract.

The plaintiff sent a horse to the railway company, for the purpose of being carried along their line before the train left, by which the horse was to be carried, a special contract was signed between the parties, whereby the plaintiff agreed "to take all risk of conveyance whatsoever, or howsoever caused." During the journey the horse was killed, and the jury found through the gross negligence of the company's servants:

Held, notwithstanding that the company were entirely exempt from all liability, under the terms of the special contract previously entered into by the plaintiff and defendants. Platt, B. dissentiente.

This was an action brought to recover the value of a horse sent by the plaintiff, to be conveyed by the defendants along their line of railway; the horse was killed whilst on its journey, in consequence of an accident which occurred during the time the horse was upon the railway. Previously to the company's receiving the horse to be carried, a special contract was entered into between the parties, as is usual with the company in all cases where persons send such animals to be conveyed by them upon their railway. The special terms of contract were, that the person sending the horse, and not the company, "should take all risks of conveyance whatsoever, or howsoever caused." The action was tried at York, when the jury found a verdict for the plaintiff; and also that the accident by which the horse was killed occurred through the negligence of the company's servants. A rule nisi had been obtained to arrest the judgment, on the ground that there was no sufficient cause of action, and that the company were exempt by reason of notice, and the special terms of the contract entered into.

Atherton, Q.C. and *Cowling*, for plaintiff, shewed cause, and contended that the defendants were not exempt by reason of any notice, or the terms of their special contract, in this case, which had been entered into; and that it was not competent for the company to relieve themselves from the necessity of taking ordinary care, and avoiding gross negligence. The jury found expressly that the horse was killed by reason of the gross negligence of the company's servants, the company are bound, under any circumstances, to take due and proper and reasonable care in discharge of their duties as carriers, and such gross neglect as found in this case does not bring it within the terms "risk of conveyance" mentioned in the contract. It is true the liability may be avoided by a special agreement founded on a good consideration, but nothing will dispense with the necessity of ordinary care, that is a liability imposed by law. There has been no distinction yet taken between animals and goods. (*Wyld* v. *Pickford*, 8 M. & W. 443; *Beck* v. *Evans*, 16 East, 241; *Riley* v. *Horn*, 5 Bing.; Story on Bailments, 365; 1 Stark.; *Ellis* v. *Turner*, 8 T. R. 531; *Garnett* v. *Willan*, 5 B. and Ald. 53; *Sleat* v. *Fagg*, Ib. 343; *Furnival* v. *Coombes*, 5 M. and G. 776; *Chippendale's* case, 21 L. J. 22, Q.B.; and the Carriers' Act.)

Wilkins, Serjt. and *Tomlinson*, contrà, in support of the rule, were stopped in argument.

PARKE, B.—The rule in this case ought to be made absolute to arrest the judgment. It is competent to the parties to make what special agreement they please, and the only question is as to the effect of that special contract now before us. It was not unusual before railways became so general as they now are, in certain cases for carriers and other persons conveying goods for reward to limit their responsibility, so that they were previously protected by notice, except in cases of gross negligence. Whether these defendants are liable as mere common carriers, is a point we cannot discuss upon this inquiry, or if any common carrier is always bound to carry that commodity safely, independent of accident, which he has made a public profession to carry; because, here is a special contract as to the conveying this horse along the defendants' line of railway, and the only question is upon the construction of that special contract. Formerly goods, and such like, were only carried by carriers, but at present almost everything is conveyed by railway, now a new species of commodity quite has therefore to be carried. The carriage of a horse is a very dangerous thing, for many reasons; and it is very reasonable under such circumstances, I think, that carriers should protect themselves from the great risk they would otherwise necessarily have to encounter, by means of a special contract; the question for us now is, whether they have done so here. The jury said they were guilty of gross negligence upon the occasion when the plaintiff's horse was killed; yet, I am of opinion that all the company were bound to do here, under the terms of this special contract, was to find their own carriage in the ordinary way provided by them for the regular conveyance of horses upon the railway, and the owner then is "to take all risk of conveyance whatsoever;" therefore, the risk is that of the owner, not of the company; the contract is expressly. [Here the learned Judge read the contract.] Therefore, the contract is, that the owner shall abide by all the damage done; this is the reasonable and proper construction of it. There was a case in the Court of C. P. in which judgment has been, I believe, delivered to-day in accordance with the principle of this decision, though the facts and circumstances of that case differed from the present. One of the risks here, is a risk against which there was a provision in the special contract; the loss sustained was, therefore, provided against, and we are not to fritter away express contracts, made by parties under such circumstances; the judgment, therefore, ought to be arrested.

(a) See 8 & 9 Vict. c. 117, s. 13.

EXCHEQUER.

ALDERSON, B.—I am of the same opinion: the railway company undertake to carry the plaintiff's horse on certain terms, and under particular conditions; now, what are those terms? They are, that the plaintiff shall be at "all risks whatsoever;" probably, that would be held to be limited to risk of conveyance, and scarcely apply, in case the horse should have been stolen; but the manner in which this accident happened and the loss incurred is clearly within the terms used in the special contract,—"risk of conveyance howsoever caused." On the plain construction of the agreement entered into between these parties, the loss is not one otherwise than is provided for in that agreement, and the company are not liable.

PLATT, B.—This is an action brought by the plaintiff to recover from the defendants the value of a horse sent by the plaintiff to be carried by the defendants upon their railway; and the declaration states [The learned Judge stated the pleadings]. The defendants are found to have been guilty of gross negligence; does the contract then entered into between the parties exempt them from all liability when gross negligence is charged against them, and expressly foun dto have existed by the jury? [The learned Baron read the contract.] My brother Parke has put it, that the kind of commodity is different now to be carried to what it formerly was, and it is fit to limit the risk and specify particularly the terms of conveyance, particularly so for the carriage of horses. It is however very common now to convey horses by railway by means of trucks; the animal may be bruised or otherwise injured, perhaps, during the journey to its destination, notwithstanding all due and ordinary and proper care has been taken, against which it would undoubtedly be correct that some special provision may be made by express contract; and this may be right and necessary, and might be distinguishable; but except all the old cases are gotten rid of, I do not see how the carrier is to be exempt from his own *misconduct and gross negligence.* I do not mean to say I am right; I ought, certainly, to doubt my own opinion, after what has been said by my learned brothers upon the subject; but I cannot say that I think the language of this contract exempts the company from liability. It says, "all risks of conveyance whatsoever;" that means risk of conveyance, as it seems to me, casual or incidental in the conveyance, but not that which happens through their own gross negligence or misconduct, apart from or not incidental to the conveyance of the horse in actual carriage. If ordinary care had been used by the company's servants upon the occasion in question there would have been no loss; most probably no damage; and for that negligence I think they ought to be responsible. I am bound therefore to express my opinion, although it differs in this case from the rest of the members of the Court.

MARTIN, B.—I agree with my brothers Parke and Alderson. The plaintiff is estopped from enforcing this claim against the defendants by his own contract which he entered into with them: the horse was to be carried according to the terms of that contract, that the plaintiff should be at all risks of conveyance howsoever caused; those are the terms of the contract. It was quite competent for them at common law so to contract, and that agreement would be binding upon both parties; but if there be any doubt upon it, the Carriers' Act sets that at rest, because it gives the power to persons desirous of doing so specially to contract. We are then to look at what the terms of this contract are; they may so contract as to render each other not liable in respect of gross negligence. Was this, then, a proper legal contract? If so, as I think it was, it is impossible for language to be more clear and plain than this is; it is that the plaintiff shall be at all risks of conveyance whatsoever or howsoever caused. If the company wished to have protected themselves from gross negligence, it seems to me they could have been scarcely better prepared. We are then to see if this contract be legal; and if so, to give it its true meaning and effect. They who enter into it must judge for themselves what their terms shall be, and we to determine its legal effect. And in all this there is no such great hardship as may be by some imagined; for when a person contemplates sending horses or the like, in this way, with the risk of conveyance upon himself, it is very easy to insure. Underwriters would insure upon this in the same way as underwriters usually do upon ordinary policies of insurance. The construction which I have put upon this contract is, I think, the true one, and therefore that the defendants are not liable in this action. *Judgment to be arrested.*

BUSINESS OF THE WEEK.

Thursday, May 6.

FIELD v. PARTRIDGE.—*Wordsworth* shewed cause against a rule obtained to rescind an order of Platt, B. which directed the judgment and subsequent proceedings here to be set aside, on the ground that no notice of taxation was given: it is contended by the other side that the taxation only, and not the judgment, should be set aside, and that the order was to set aside too much. PARKE, B.—*Taylor* v. *Murray*, 3 M. & W. 142, is an authority upon which I have very frequently acted and is correct. *Willes*, contrà, not heard. *Rule absolute.*

GIBBS and OTHERS v. FREMONT.—The *Attorney-General* shewed cause against a rule obtained to rescind in part an order of Alderson, B. which directed an inspection of (amongst other things) a protest and certain letters to be given to the defendant by the plaintiffs. The action was brought upon four bills of exchange, dated in 1847, and were drawn upon the secretary of state of the United States, and on a public account; the plaintiffs received them in June, 1850, and these letters it was believed would materially assist the defendant's case. [PARKE, B.—Under this Act of Parliament (14 & 15 Vict. c. 99, s. 6), you cannot have a fishing order to assist you, you must state first of all what your case is, and then what you require to establish it.] The defendant was not liable upon those bills in the way it was sought to make him: the plaintiffs obtained the bills with knowledge of all the circumstances and long after they were overdue, these letters would shew how this was. *Willes*, contrà.—The defendant has failed in making out right to such an order as this, or to shew the relevancy of these letters to the case set up; under this Act of Parliament it is necessary to shew to the Court or judge the actual relevancy of these letters to be produced to the defence set up; so would it be on discovery upon a bill of equity being filed, the subject and principles were well discussed in Wigram on Discovery. PARKE, B.—The parties can only compel a discovery where a case is made out in Equity, and we can [illegible] more here under this Act; you can only have the assistance in th[illegible] respect of a Court of Equity to prove your own case, and not to enable you to pick holes in that of your adversary the object is not to discover, but to give relief where it becomes necessary, the object being pointed out. ALDERSON, B.—You must make in your affidavits such a case as would entitle you to relief by bill in Equity. PARKE, B.—Yes, you must make out by proper affidavits and shew upon them what a bill in Equity and an answer would make [illegible] to entitle a party to a discov[illegible]y. POLLOCK, C.B.—[illegible]ust own this at present seems to [illegible] to be a [illegible] narrow construction of this Act of Parliament, and I incline to think it is enough here by affidavit to suggest that there is some specific document necessary to be seen by the opposite party for the assistance of his case to entitle him to see it in the hands of his opponent in the cause; these affidavits, however, at present seem to be, we all think, insufficient; therefore the affidavits had better be amended and the matter again referred to my brother Alderson, so that, as the matter is a very important one, it may come more fully before the Court, argued, and the opinion of the several judges taken upon it.

Rule absolute, affidavits to be amended accordingly.

DOE *dem.* ROGERS v. MOSTYN.—*Welsby* shewed cause against a rule obtained to set aside the trial, verdict, and subsequent proceedings, and he had obtained a cross rule to set aside an order previously made of the Lord Chief Baron. *Vaughan Williams*, contra. The COURT in consequence of what had taken place at the trial, made the

Rule absolute, the cross-rule to drop.

FRANCIS and WIFE v. DANNAN.—*Watson* shewed cause against a rule obtained to set aside an interlocutory judgment signed, on the ground that the plea pleaded was not in accordance with the abstract, or an issuable plea. It was an action of covenant on a mortgage deed, and the plea (among others) was that after the mortgage, &c. the property was reconveyed, and that nothing was ever due under the mortgage. *Bell* and *Needham*, contrà, not heard. The COURT said it was doubtful whether the plea was not good: the judgment signed, because it was not issuable, certainly ought not to stand. *Rule absolute.*

EAGLAND v. BOYCE.—*White* shewed cause against a rule obtained, to set the verdict in this case obtained, before the Under-Sheriff for misdirection. The action was on a bill, plea as to part of the amount payment before action, and as to the other part, the residue, and the costs payment of the same, with the costs up to the time of payment after the action. Two actions had been brought on the bill, one had been settled by the debt, and the costs of that action being paid, but the costs of the other action (which was this action) had not been paid, and this suit was continued for those other costs. *Thame* v. *Boce*, 12 Q.B. 108, and *Beaumont* v. *Greathead*, 2 C.B. 494, were relied upon by the defendant. *Lush*, contra. There was no evidence given by the defendant at all, his plea was, therefore, not proved, and the Under Sheriff was wrong in leaving it to the jury whether it was proved or not, or for them to say if the plaintiff had been paid. He had a right to continue the action for the costs of this the second suit if he pleased. Both the cases cited were very distinguishable from the present. *Rule absolute.*

BRANDUS v. LUMLEY.—*James*, Q.C. moved for a writ of distringas against the defendant, the proprietor of the Opera, in the Haymarket, to compel appearance, the debt claimed being 8,000*l*. *Rule granted.*

Friday, May 7.

DOE *dem.* KIMBER v. CAFF. *Judgment.*

CANNAN and OTHERS v. THE SOUTH-EASTERN RAILWAY COMPANY. *Judgment to enter nolle prosequi.*

NORMAN v. MARCHANT. *Crowder* shewed cause against a rule calling on the defendant to shew cause why the Master should not tax the plaintiff his costs, and why he should not recover the same, notwithstanding that the sum recovered was less than 20*l*. *Hawkins* in support.

Rule discharged.

HICKIE and ANOTHER v. SALAMO and ANOTHER.

Cur. adv. vult.

HARTLEY v. HADLAND. *Rule enlarged.*

ESCRIT v. MASON. *Rule enlarged.*

MORGAN v. WHITMORE.—Trover. Pleas not guilty and not possessed. *Watson* shewed cause against a rule for a new trial. *James* and *C. Pollock* in support.

Rule discharged.

WOOD v. RIPLEY.—This was an action for fouling a water-course. A verdict had been returned for the defendant on the third and fourth pleas, and for the plaintiff on the first and second pleas, and new assignment. *Knowles*, having obtained a rule to enter a verdict for the plaintiff on the third and fourth pleas, *Watson*, *H. Hill*, *Tomlinson*, and *Unthank*, shewed cause. *Bliss*, *Knowles*, *Cowling*, and *Adolphus*, contrà.

Rule discharged, on terms agreed upon.

CARR v. THE LANCASHIRE AND YORKSHIRE RAILWAY COMPANY. *Part heard.*

BAIL COURT.

Saturday, May 8.

(Before ALDERSON, B. sitting alone in the Exchequer Chamber.)

BARRON v. ROSCOE. *Rule enlarged.*

WEED v. MAY.—*James* shewed cause against a rule for a new trial, on the ground of surprise. *Marshall*, in support.

Rule absolute, on payment of costs. Amount of debt to be brought into court within a week, otherwise rule discharged.

BERNERS v. EUSTACE.—*Temple* moved for a distringas to compel appearance. *Granted.*

—— v. ——.—*Field* showed cause against a rule for the costs of the day for not proceeding to trial. *Hayes*, in support. *Rule absolute.*

WHITMORE v. BATHAM.—*Phipson* shewed cause against a rule for judgment, as in case of a nonsuit.

Rule to enter a stet processus.

WARD v. BROOMHEAD.—*Lush* showed cause against a rule obtained for leave to enter satisfaction on the Judgment roll. There had been no actual satisfaction, only a technical one of this Judgment, and this rule ought to be discharged; there is no precedent at all for it. He referred to *Vigers* v. *Aldridge*, 4 Burr. 2482; *Simpson* v. *Hanley*, 1, M. & Pel. 696. PARKE, B.—This is too important a question to be decided in this way on motion. *Cleasby*, contra.

Rule discharged, unless terms agreed to.

SUTTON v. HEATH.—*Alexander* Q.C. and *Gray*, shewed cause against a rule for a new trial, on affidavits. *Keating* and *Whitmore* contra.

Rule absolute, upon payment of costs.

Wednesday, May 12.

COUNTY COURT APPEALS.

(Before ALDERSON and MARTIN, BB.)

STOCKER v. THURSCOTT. *Judgment for the appellant.*

SHEPHERD v. THE GREAT NORTHERN RAILWAY COMPANY.—This case had been referred back to the Judge for amendment, by Park and Platt, BB. before whom it was heard, on the 21st February. *Phipson* now appeared for the appellants, the defendants below. *Field*, for the respondent.

The Court said it was desirable that the Judge who originally heard the case should be present; judgment to be as of this day.

BROADBENT v. RUSTON. *Judgment for the respondent.*

EXCHEQUER CHAMBER.

Reported by ADAM BITTLESTON, Esq. of the Inner Temple Barrister-at-Law.

ERROR FROM THE QUEEN'S BENCH.

Monday, May 10.

THE GRANTHAM CANAL COMPANY v. THE AMBERGATE, &c. RAILWAY COMPANY.—ALDERSON, B. delivered the judgment of the Court. *Judgment reversed.*

M'GREGOR v. THE OFFICIAL MANAGER OF THE DOVER AND DEAL RAILWAY COMPANY.—*Watson* (Sir *F. Kelly*, Sol.-Gen. with him), for the plaintiff. *Channel*, Serjt. contra. *Cur. adv. vult.*

BAIL COURT.

Reported by T. W. SAUNDERS, Esq. of the Middle Temple, Barrister-at-Law.

Thursday, May 6.

(Before Mr. Justice COLERIDGE.)

Ex parte JOHN HAYLOCK.

Warrant of commitment—Habeas corpus—Discharge.

On a return to a habeas corpus a warrant of commitment was set out, that the prisoner had been charged on the oath of T. P. "with having, about one o'clock, on the morning of yesterday, written on the pavement, in a lane called Chapel-lane, in the said parish of Saint Mary, the following offensive words, reflecting on the character of Mr. Robert Johnson Watt, Station Master of the Ely Railway Station, (that is to say,) "Donkey Watt, the Railway Jackass." The warrant then went on to say, "And it having been stated to me on the oath of the said Thomas Palmer, that the continued writing for some time past of these offensive words was calculated to provoke a breach of the peace, and the said Thomas Palmer having prayed that the said John Haylock might be required to find sufficient sureties to keep the peace, he, the said justice, ordered and adjudged him to enter into his recognisance in the sum of 30l. and two sufficient sureties in the sum of 15l. each, to keep the peace for the space of three calendar months, and that insomuch as the said John Haylock had refused to enter into such recognisance, he directed him to be imprisoned in the House of Correction for three calendar months, unless he, in the meantime, entered into such recognisance," &c.

Held bad; and the prisoner was discharged.

On a former day *Prentice* obtained a writ of habeas corpus to be directed to the House of Correction at Ely, in the Isle of Ely, commanding him to bring up one John Haylock, a prisoner, in his custody. The keeper of the said House of Correction, in obedience to such writ, now produced the said John Haylock, and returned that he held him in custody under the following warrant:—

"Isle of Ely } To the Constable of the Parish of
to wit. } the Holy Trinity in Ely, in the said Isle, and to the Keeper of the House of Correction at Ely, in the said Isle.

"Whereas John Haylock, of the parish of Saint Mary, in Ely, in the said isle, farmer, hath this day

been brought before me, the Reverend John Henry Sparke, clerk, one of Her Majesty's Justices of the Peace for the said isle, charged on oath of Thomas Palmer, a porter, in the employ of the Eastern Counties Railway Company, residing in the said parish of the Holy Trinity in Ely, *with having*, about one o'clock on the morning of yesterday, *written on the pavements, in a lane called Chapel-lane, in the said parish of Saint Mary, the following offensive words, reflecting on the character of Mr. Robert Johnson Watt*, Station Master of the Ely Railway Station, (that is to say,) 'Donkey Watt, the Railway Jackass;' and it having been stated to me, on the oath of the said Thomas Palmer, that the continued writing for some time past of these offensive words, was calculated to provoke a breach of the peace, and the said Thomas Palmer having prayed that the said John Haylock might be required to find sufficient sureties to keep the peace towards her Majesty and all her liege subjects; I, therefore, the said justice, have ordered and adjudged, and do order and adjudge, that the said John Haylock shall enter into his recognisance in the sum of thirty pounds, with two sufficient sureties, in the sum of fifteen pounds each, to keep the peace towards her Majesty and all her liege people, for the space of three calendar months now next ensuing; and insomuch as the said John Haylock hath refused to enter into such recognisance, and find such sureties as aforesaid, I do hereby require and command you, the said constable, forthwith to convey the said John Haylock to the said House of Correction, and to deliver him to the said keeper thereof there, together with this warrant; and I do require and command you, the said keeper, to receive the said John Haylock into your custody, in the said House of Correction, and him there safely to keep for the space of three calendar months, unless he, in the meantime, enter into such recognisance, with such sureties as aforesaid, to keep the peace in the manner and for the term aforesaid: herein fail not.

"Given under my hand and seal, the thirtieth day of April, one thousand eight hundred and fifty-two."

The return having been read,

Prentice moved that the prisoner might be discharged.

Wells for the committing justices contended that the warrant was good. [COLERIDGE, J.—The defendant is committed in respect of a continued writing with which he is not identified.] That allegation may be rejected as surplusage, and then the warrant will stand that he is committed with respect to the writing of the words mentioned in the warrant, which amount to a libel; these words he is clearly charged with having written. [COLERIDGE, J.—There is no adjudication that he *did* write the words, it is only that he is *charged* with having written them. If this had been a committal for inquiry it might have done, but here the committal is upon a final adjudication.] If it amounts to a libel the justices had jurisdiction to make him enter into recognisances. [COLERIDGE, J.—Yes for inquiry; but here is a man sentenced to three months imprisonment.] He referred to 2 Hawk, c. 16, s. 2; *Butt* v. *Conant*, 1 B. & B. 348; and *Reg.* v. *Bartlett*, 1 Dow. & L. 95.

COLERIDGE, J.—My opinion is certainly against this commitment. It is quite clear that the justices did not intend to commit so much for the mere act, as for the *continued* writing—that in part was the subject matter of the grievance, but if that is struck out then there is only a charge and no adjudication, but, nevertheless, there is a commitment. The prisoner must be discharged. *Prisoner discharged.*

REG. v. THE RECORDER OF LEEDS.

Order of affiliation—Sufficiency of notice of recognisance.

A. B. was adjudged to be the putative father of twin bastard children, and two separate orders were drawn up and served. Having given notice of appeal he only entered into two recognisances as by law required, and by his attorneys sent the mother notice thereof, which notice stated that he had "entered into a recognisance before," &c. "to try an appeal," &c. "against an order of affiliation made on the 27th day of December last, whereby he was adjudged to be the putative father of two bastard children." Two appeals were duly entered, one against each order, but upon their coming on for trial, it was objected that, there was not sufficient notice of recognisance, inasmuch as, first, there was no such order, and second, that there was no such recognisance as that mentioned in the notice, and upon this objection the Recorder dismissed the appeals.

Upon a rule for a mandamus to the Recorder to enter continuances and hear the appeals,

Held, that reasonable notice had been given, and that the Sessions ought to have heard the appeals.

On a former day Hardy obtained a rule calling upon the Recorder of Leeds, and Jane Tasker to shew cause why a writ of mandamus should not issue commanding the said Recorder to enter continuances and hear two appeals against two orders of affiliation, whereby Mark Barker was adjudged to be the father of two bastard children. The rule was moved upon the following statement of facts. Jane Tasker having been delivered of twin bastard children, applied for a summons against the said Mark Barker as the putative father. Upon the hearing of the case the justices adjudged him to be the putative father, and at that time made a verbal order for payment by him of one shilling per week for each child, subsequently two formal orders, one in respect of each child were duly drawn up and served. Immediately upon the adjudication, the putative father gave verbal notice of appeal, and in due time entered into two recognisances pursuant to the 7 & 8 Vict. c. 101, s. 1. Subsequently he gave the woman notice in these words:—

"Borough of Leeds, in the County of York, to wit. } As attorneys for and on behalf of Mark Barker, of Leeds, in the county of York, wool sorter, we do hereby give you notice, that the said Mark Barker has entered into a recognisance before Charles Gascoigne Maclea, esquire, one of her Majesty's justices of the peace, acting in and for the said borough of Leeds, in the said county of York, to try an appeal at the next General Quarter Sessions of the Peace, to be holden at Leeds, in and for the borough of Leeds, against an order of affiliation made on the 27th day of December last, whereby the said Mark Barker was adjudged to be the putative father of two bastard children, of which you, Jane Tasker, had then lately been delivered.

"Dated the 5th day of January, 1852.

"Yours, &c.

"Ferns and Rooke,

"Attorneys for the said Mark Barker.

"To Jane Tasker, and to John Hope Shaw, esq. and Darnton Lupton, esq."

Sec. 3, of the 8 Vict. c. 10, after imposing some additional conditions to the recognisance, directs that "the party entering into any such recognisance shall forthwith give or send a notice in writing of his having so entered into such recognisance to the woman in whose favour the said order shall have been made." When the first of the two appeals came on for trial, the appellant was required to prove his notice of recognisance, and upon his proving the giving of the foregoing notice, it was objected, first, that there was no such order as that described in the notice; secondly, that he had entered into no such recognisance as that mentioned. The recorder, thinking the objections well founded, held the notice to be bad, and dismissed the appeal. The second appeal, on being called on, shared the same fate.

Pickering now shewed cause, and contended, that as there was in fact no such order as that described in the notice, there being two orders, one for each child, and not one for both children; and as there was no recognisance to try any such appeal, there being distinct recognisances for each of the two appeals, the appellant had given no proper notice. That the cases of *R.* v. *The Justices of Lincolnshire*, 3 B. & C. 548; and *R.* v. *The Inhabitants of Kimbolton*, 6 A. & E. 603, shew how strictly parties are to be held to their notice. That the cases of *R.* v. *Holborow*, 3 New Sess. Cas. 723, which merely decided that it is not necessary to set out in the notice the condition of the recognisance; and *R.* v. *The Justices of Oxfordshire*, 1 Q. B. 177, relied upon by the other side, was where there were three separate convictions against three persons for unlawful fishing, and they gave a joint notice of appeal, but signed by each, and it was there held that the notice was good in respect of each appellant, but that such case had no application to the present case, in which the statutable requisites had not been complied with. [COLERIDGE, J.—The question is, whether *Reg.* v. *Oxfordshire* does not establish a principle of construction. It seems to decide that a notice may be good, though inaccurate as to the facts; for there it would appear from the notice that there was only one conviction.] In that case each gave a notice, though in one document.

Hardy, in support of the rule, contended that the simple question was, whether or not there was sufficient upon the face of the notice to convey the required information to the woman; that it was obvious the notice applied to both appeals, as it speaks of both children, and it would be idle to appeal against [illegible] rder without also appealing against the oth[illegible] In *Reg.* v. *Oxfordshire*, Lord Denman says, "The question must be, whether there can be any doubt as to the order to which the notice refers; here there could be none. And in *Reg.* v. *The Justices of Denbighshire*, 9 Dowl. 509, cited in *Reg.* v. *Oxfordshire*, where the notice of appeal against an order of removal misdescribed the Christian name of one of the removing justices, and the Sessions refused to hear the appeal, Mr. Justice Williams made a rule absolute to enter continuances and hear the appeal, on the ground that the description was *sufficient to give reasonable notice*. That notices of trial in civil actions have always been liberally construed; that all that was required was to shew that the appellant meant to go to trial. (*R.* v. *Holborow*, 3 New Sess. Cas. 723.)

COLERIDGE, J.—The best opinion I can form of this case is, that the rule ought to be made absolute; and I think this should be so, looking at the plain intention of the Act of Parliament, and the principle laid down in *Reg.* v. *Oxfordshire*. The statute was framed for the purpose of avoiding technicalities. It requires the putative father to enter into a recognisance, and to give notice of his having done so to the woman. It then goes on to say, "and in default of his giving or sending such notice or notices as aforesaid, the appeal shall not be heard." The circumstance that the justices at the hearing pronounced but one order in respect of the two children is very natural; they adjudicated upon the entire case in one sentence, that the man is the father of the two children; but afterwards their judgment is reduced to two separate orders. At the time of the hearing, the father gives a notice of appeal, and it is not disputed that he has entered into proper recognisances, and the only question is, whether or not he has given a proper notice. The notice itself says that he "has entered into a recognisance," and Mr. Pickering argues, that supposing he had been convicted of three separate offences, how would this notice have been good? But that is not the case here. In the present case, he says he appeals against an order, whereby he was adjudged to be the putative father of two bastard children. Now, what could be understood from this, but that he intended to appeal against the two orders? There can be no doubt, therefore, that he gave sufficient information. But is the appellant tied up by any strict rule of law? *Reg.* v. *Oxfordshire* lays down a rule as to a reasonable notice. In that case there was one notice by three appellants against three separate convictions, one against each; and it spoke of a conviction 'against us," and it was contended that there was no such conviction. But the Court said, that that was not the point, but it was whether or not reasonable notice had been given. I should say also that the statute in the present case, which contains a schedule of forms, gives no form for such a notice as this, which, therefore, leaves the matter still more open. The rule must, therefore, be absolute.

Rule absolute.

Friday, May 7.

(Before Mr. Justice COLERIDGE.)

WILDE v. SHERIDAN.

County Court—Prohibition.

Where a plaintiff sues by leave of a County Court judge for the district "in which the cause of action arose" by virtue of sec. 60 of the 9 & 10 Vict. c. 95, the whole cause of action must have arisen in such district.

A. who resided at Norwich, drew a bill of exchange upon B. who resided in London, at which place he accepted it, and transmitted it back to A. at Norwich. B. having indorsed it and paid it, on its being dishonoured sued A. (by leave of the judge) in the County Court of Norwich:

Held, that the judge of such County Court had no jurisdiction.

This was a rule calling upon the plaintiff to shew cause why a writ of prohibition should not issue to the judge of the Norwich County Court prohibiting him from further proceeding in this cause.

This was an action brought in the above County Court by the plaintiff as the drawer and indorser of a bill of exchange against the defendant as acceptor. The bill was drawn at Norwich by the plaintiff, who resided there, upon the defendant, who resided in London, payable three months after date for 25*l.* value received. The defendant accepted it "payable at Robarts and Co.'s London." Having so accepted it the defendant transmitted it to the plaintiff at Norwich, who, in the course of business, payed it away, and on its being dishonoured paid the amount to the holder. In order to bring the present action the plaintiff applied to the judge of the Norwich County Court for leave to sue in such court pursuant to sec. 60 of the 9 & 10 Vict. c. 95, which enacts that the summons may issue in any district . . . "*in which the cause of action arose.*" At the trial in the County Court it was objected, on the part of the defendant, that the judge had no jurisdiction, the cause of action having arisen in London and not at Norwich. This objection was, however, overruled, and a verdict given for the plaintiff, with a stay of execution. A rule nisi having been obtained by *Joyce*,

Phipson now shewed cause, and contended that the judge of County Court had jurisdiction—that this being a bill not specially made "payable at Robarts and Co. London, and *not* elsewhere," was payable to plaintiff wherever he might be, and being at Norwich was payable to him there—that the cause of action was the nonpayment of the bill at its maturity, and the contract itself is the delivery of the instrument to a party who has a right to sue upon it, which here was at Norwich. (*Buckley* v. *Hann*, 19 L. J. 151, Ex.; *Roff* v. *Miller*, 19 L. J. 278, C. P.; *Huth* v. *Long*, 19 L. J. 325, Q. B.)

Joyce, contrà, argued that the contract was the *acceptance*, which being in London, the cause of

action arose there; that to enable the plaintiff to sue in Norwich it must be shewn that the entire cause of action arose there, which was not so in the present case. *Cur. adv. vult.*

COLERIDGE, J. now delivered judgment.—This was an action by the drawer of a bill of exchange, drawn at Norwich, accepted in London, payable at Robarts and Co.'s, and sent so accepted to the plaintiff at Norwich, in which jurisdiction the plaintiff sued by leave of the judge, under the 9 & 10 Vict. c. 95. The question is, whether the whole cause of action arose within the jurisdiction of that County Court, and I am of opinion that it did not, assuming the cause of action to be made upon the contract and breach of it. It was urged against the rule that this being a general acceptance it bound the defendant to pay anywhere, and the breach therefore was at Norwich by the nonpayment; and further, that the acceptance was not perfect until the actual delivery to the defendant at Norwich, so that the contract also must be considered as having been made there. The case of *Buckley* v. *Hann*, 19 L. J. 151, was cited in support of this latter position, in which the indorsement of a bill of exchange sent to London was held to have been made in Middlesex, so it was admitted that an acceptance in Piccadilly in one jurisdiction and drawn at Billingsgate in another jurisdiction, was held complete in the former jurisdiction. (*Roff* v. *Miller*, 19 L. J. 278.) This case was decided soon after the other, though they do not govern each other, and both appear to have been well decided. The acceptor of a bill has no property in it; either before the acceptance he receives the drawer's paper and writes his name upon it and makes his promise, and he may, before communication with the drawer, revoke it (*Cox* v. *Troy*, 5 B. & Ald. 474), but his promise, unless he revokes it, is complete, and takes effect from the time it was made. I am aware of Baron Bayley's judgment in that case, but I think it is to be confined to the case then before the Court. In *Smith* v. *M'Clure*, 5 East, 476, where the declaration by the drawer alleged a delivery to the defendant, and an acceptance by him, demurred to it because it did not go on to allege the delivery back, Lord Ellenborough said the acceptance must be taken to be perfect, and after acceptance if the acceptor improperly detained it, the drawer might sue on it; imperfect acceptance gives a right of action, but Lord Ellenborough's language imports that the acceptance might be perfect without a delivery. In the present case the acceptance has been delivered, and the question is, where the contract which that acceptor enters into is to be considered as made. Storey, in his Conflict of Laws, directs attention to acceptance as contracts in the place where made, or where to be performed. In America it had been held that an acceptance was payable anywhere. A contract to pay generally is governed by the law of the country where it is made. All debts between the original parties are payable everywhere unless there is a special provision. No doubt where a bill is sent from one country to the acceptor in another, who there accepts it, it would be held the contract was made in the country of the drawee. The contract in this case was made in London, and therefore the whole cause of action did not arise in Norwich; therefore the judge of the Norwich County Court had no jurisdiction, and the prohibition must issue.

Rule absolute.

BUSINESS OF THE WEEK.

Thursday, May 6.

WHITLOCK *v.* BRITTAIN.—*Udall* shewed cause against a rule to reduce the damages herein, or for a new trial. *Burney*, contrà. *Rule on terms.*

Friday, May 7.

REG. *v.* THE GREAT NORTHERN RAILWAY COMPANY.—The *Attorney-General* moved for a rule for a mandamus to be directed to the above Company, directing them to make a branch line, pursuant to their Act. *Rule nisi.*

Ex parte POLLARD.—*Huddleston* moved for a certiorari to remove into this Court, a warrant of appointment of overseers for the township of Chalbury and Walcot, Oxfordshire, in order that the same may be quashed as regards the appointment of Mr. Pollard, who, being a practising surgeon, and a member of the College of Surgeons, claims to be exempt from serving the office, by virtue of the 18 Geo. 2, c. 15, s. 10; *R.* v. *Great Marlow*, 2 East, 244; *R.* v. *Standardhill*, 4 M. & S. 378. *Writ granted.*

REG. *v* THE SHERIFF OF SURREY.—*Paterson* moved for an attachment against the Sheriff of Surrey, for not returning a writ. *Rule nisi.*

Re REEVES and OTHERS.—*Crowder*, Q. C. and *Millward*, shewed cause against a rule, calling upon the Messrs. Reeves, who are attorneys, to pay over certain sums of money. *Hawkins* in support of the rule.

Referred to the Master.

Saturday, May 8.

(Before Mr. Justice WIGHTMAN).

AYLWARD *v.* BATES and OTHERS.—*Hawkins* moved in this case (which was on a bill of exchange, and tried before the sheriff), to enter a nonsuit. *Rule nisi.*

REG. *v.* THE NEWPORT AND ABERGAVENNY RAILWAY COMPANY.—*Alexander*, Q. C. moved for a rule for a mandamus to the above Company, to compel them to make a branch line. *Rule nisi.*

REG. *v.* THE INHABITANTS OF ABINGER. — *Pashley*, Q. C. and *Robinson*, shewed cause against this rule. *Pitt Taylor* and *Sumner*, in support. *Cur. adv. vult.*

REG. *v.* SAVILLE.—*M. Smith* moved for a rule, calling upon prosecutor of this information, to pay the costs. *Rule nisi.*

Re J. F. GOODRIDGE.—*Pashley* shewed cause against this rule. *Phinn*, in support. *Rule absolute.*

CRAKE *v.* FLAVELL.—*Charnock* shewed cause against a rule, calling upon the plaintiff to shew cause why the verdict in this case should not be set aside, and a new trial had, unless the plaintiff would consent to enter a verdict for 1*l.* 14*s* 6*d.* only.—*Udall* contrà. *Rule discharged.*

Ex parte BAYLEY, *re* THE TAFF VALE RAILWAY COMPANY.—*Sir A. Cockburn*, Q.C. moved for a certiorari to bring up an inquisition, assessing damages to Mr. Crawshaw Bayley, in respect of certain lands taken by the Taff Railway Company, to be quashed. *Refused.*

REG. *v.* THE COMMISSIONERS OF LAND TAX.—*Watson* (*Hall* with him) moved for a rule, calling upon the Commissioners of Land Tax, for the Tower Hamlets, to shew cause why a writ of mandamus should not issue, commanding them to assess the land-tax equally within their division. *Rule*

Ex parte POTHECARY. *O'Malley* applied for a mandamus to the Lord of the Manor of —— to accept surrenders. *Rule nisi.*

Ex parte HAYNES.—*Pashley* for a rule, to shew cause why a mandamus should not issue to the vicar, churchwardens, and inhabitants of the parish of Hillingdon, Middlesex, commanding them to meet in vestry, and proceed to elect a surveyor of that parish. *Rule nisi.*

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

April 23, and May 7, 8, and 10.

LUMLEY *v.* WAGNER.

Breach of contract—Injunction—Agency.

B. was an intimate friend of A. W. and J. W. his daughter, and also of L. the lessee and manager of an English theatre, and B. had, in 1851, been engaged on behalf of J. W. in negotiating with the proprietor of a foreign theatre for her professional services there. In 1851 B. brought to J. W. the printed form of a contract with L. for J. W.'s performance at his theatre, which form contained a clause restricting her from performing at any other theatre or place during the term of the engagement. A. W. objected to this clause, and drew up a contract, omitting that part, and he and J. W. signed it at Berlin. B. took this contract to L. at Paris, when L. objected to the omission of this clause, and B. then added a clause restricting J. W.'s performance without L.'s permission, and signed it "for J. W. and authorised by her." L. then signed a duplicate of the contract, with the additional clause, and gave it to B. who conveyed it to J. W. In subsequent correspondence J. W. and A. W. referred to the contract, but upon meeting B., A. W. stated his objections to the addition, upon which B. said that when J. W. arrived in London L. would comply with any wish of hers on the subject. By the contract L. engaged to pay 300l. in advance on the 15th of March. The performance of the contract by both parties was delayed by mutual consent. On the 9th of March, A. W. wrote to L. that if he then sent the bill of exchange for 300l. it was to be addressed to the place he then wrote from, but if from the 2nd of April, to Hamburgh. On the 18th of March L. wrote to A. W. that he had paid 300l. to B. for J. W. On the 12th of March J. W. wrote to B. that she should be at S. up to the commencement of Passion Week, and at Hamburgh during the whole of that week (commencing the 5th of April). J. W. entered into a contract with G. the manager of another English theatre, on the 5th of April, and on the 6th she entered a notarial protest, that in consequence of L. not having paid the 300l. her contract with him was at an end. On the 15th of April L. tendered the 300l. to A. W. and J. W. at Hamburgh, but it was refused. G. having announced J. W.'s appearance at his theatre, the Court, at the instance of L. granted an injunction against G. and J. W. restraining her performance there.

This case came on to be heard on the 23rd of April, on a motion for an injunction to restrain the defendants, Johanna Wagner and Albert Wagner, from violating or committing any breach of the last article in the agreement in the bill mentioned, of the 9th of November, 1851, and that the defendant Johanna Wagner might be restrained from singing and performing, or singing, at the Royal Italian Opera, Covent-garden, or at any other theatre or place, without the sanction or permission in writing of the plaintiff, Benjamin Lumley, during the existence of the said agreement with the plaintiff, and that the defendant Albert Wagner might be restrained from permitting or sanctioning the defendant Johanna Wagner singing and performing, or singing, as aforesaid; and that the defendant Frederick Gye might be restrained from accepting the professional services of the defendant Johanna Wagner, as a singer and performer, or singer, at the said Royal Italian Opera, Covent-garden, or at any other theatre or place, and from permitting her to

sing and perform, or to sing, at the said Royal Italian Opera, Covent-garden, during the existence of the said agreement with the plaintiff, without the permission or sanction of the plaintiff. From the evidence adduced on the application for the injunction, the following appeared to be the circumstances. In November, 1851, Dr. Joseph Bacher, who was an intimate friend of the defendants Albert and Johanna Wagner, as well as of the plaintiff, as the agent of the defendants Wagner, came to Berlin, and there an agreement in writing, in the French language, bearing date the 9th of November, 1851, was signed, the translation of which agreement, as given in the bill, was as follows:—

"The undersigned Mr. Benjamin Lumley, possessor of her Majesty's Theatre in London, and the Italian Opera at Paris, of the one part, and Mademoiselle Johanna Wagner, cantatrice, of the court of his Majesty the King of Prussia, with the consent of her father, Mr. A. Wagner, residing at Berlin, of the other part, have concerted and concluded the following contract:—1. Mademoiselle Johanna Wagner binds herself to sing three months at the theatre of Mr. Lumley, her Majesty's, at London, to date from the 1st day of April, 1852 (the time necessary for the journey comprised therein), and to give the parts following—1, Romeo ('Montecchi'); 2, Fides ('Prophète'); 3. Valentine ('Huguenots'); 4. Anna ('Don Juan'); 5. Alice ('Robert le Diable'); 6. an opera chosen by common accord. 2. The first three parts must necessarily be—1st, Romeo; 2nd, Fides; 3rd, Valentine. These parts once sung, and then only she will appear, if Mr. Lumley desires it, in the three other operas mentioned aforesaid, but beyond these six parts she shall not sing any other. 3. These six parts belong exclusively to Mademoiselle Wagner, and any other cantatrice shall not presume to sing them during the three months of her engagement. If Mr. Lumley happens to be prevented by any cause soever from giving these operas, he is nevertheless held to pay Mademoiselle J. Wagner the salary stipulated lower down for the number of her parts, as if she had sung them. 4. In the case where Mademoiselle Wagner shall be prevented by reason of illness from singing in the course of a month as often as it has been stipulated, Mr. Lumley is bound to pay the salary only for the parts sung. 5. Mademoiselle Johanna Wagner binds herself to sing twice a week during the run of the three months. However, if she herself be hindered from singing twice in any week whatever, she will have the right to give at a later period the omitted representation. 6. If Mademoiselle Wagner, fulfilling the wishes of the direction, consent to sing more than twice a week, in the three months, this last will give to Mademoiselle Wagner 50*l.* sterling for each representation extra. 7. Mr. Lumley engages to pay Mademoiselle Wagner a salary of 400*l.* sterling per month, and payment will be made in such manner, that she will receive 100*l.* sterling each week. 8. Mr. Lumley will pay, by letters of exchange, Mademoiselle Wagner, at Berlin, the 15th of March, 1852, the sum of 300*l.* sterling, a sum which will be deducted from her engagement by his retaining 100*l.* each month. 9. In all cases, except that where a verified illness would place upon her a hindrance, if Mademoiselle Wagner shall not arrive in London in eight days after that whence dates her engagement, Mr. Lumley will have the right to regard the non-appearance as a rupture of the contract, and will be able to demand an indemnification. 10. In the case where Mr. Lumley shall cede his enterprise to another, to have the right to transfer this contract to his successor, and in that case Mademoiselle Wagner has the same obligations and the same rights towards the last as towards Mr. Lumley. Berlin, the 9th of November, 1851.

"JOHANNA WAGNER.
"ALBERT WAGNER."

In the same month of November Bacher met the plaintiff at Paris, when the plaintiff objected to the agreement as not containing a usual and necessary clause, preventing the defendant Johanna Wagner from exercising her professional abilities in England without the plaintiff's consent; whereupon Bacher, as the agent of the defendants Wagner, added and signed an article in writing, in the French language, to the agreement, the translation of which was as follows:—

"Madlle. Wagner engages herself not to use her talents at any other theatre, nor in any concert or reunion, public or private, without the written authorization of Mr. Lumley.

"Dr. JOSEPH BACHER, for Madlle. JOHANNA WAGNER, and authorised by her."

A duplicate of the agreement, with the supplementary clause, was then signed by the plaintiff, and delivered to Bacher, as the said defendant's agent. Bacher forwarded the contract, which had been signed by Lumley, to Johanna Wagner, and afterwards received a letter, signed by her, and dated the 27th of November, 1851, of which the following is a translation:—

"Berlin, Nov. 27, 1851.

"MY DEAR FRIEND,—You must excuse my not having yet answered the contract (contracts?) which you forwarded to me, but I am not to blame; for, owing to a few days' absence from my beloved Berlin, it was on my return that I found that parcel, for which receive my best thanks. All is in the best order. In the meanwhile I have been astounding the good folks of Leipsic and Magdebourg in my performance of Romeo. I know not how many fainted when they were informed that for one night only Romeo would appear and sing, and then vanish, and leave them, comfortless, in the lurch. Oh how terrible! To-morrow I sing Alice, in Roberto. The lessee is much embarrassed, inasmuch as Madame Caster has given out an indisposition, with hoarseness, which will prevent her appearing for a month, or probably longer, and thus not sing before the new year, so that I (poor creature) am compelled to sing for two. Lucretia will be represented for the first time on Thursday, and repeated on the Monday following. That is all I know of at present. Meyerbeer is coming to me respecting some alterations in the part of Alice. I will not detain this letter any longer, and, therefore, conclude it with warmest regards and thanks, best friend. Our grand maestro is (God be praised) pretty well again, at least he goes out a good deal. Is there any chance of your coming to Berlin before you return to Vienna? If you could manage it, it would be a source of great comfort to your much obliged,

"JOHANNA WAGNER.

"Pray make my compliments to both the directors, Messrs. Lumley and Roqueplan."

The following is a translation of a letter from the defendant Johanna Wagner to the plaintiff, and dated the 6th of February, 1852:—

"Mr. Benjamin Lumley, director of the Italian Opera, Paris.—Sir,—As a true Christian I acknowledge all my sins, and it is not one of the least not to have replied to your amiable letter. I was daily on the point of doing it, but a thousand different things prevented me, and I became more guilty day by day. I have not the intention to excuse myself, but I expect in you a judge full of indulgence and charity. At present I express to you great thanks for your amiable intentions on my account, and I hope that all our wishes will be accomplished, at the same time yours as mine. Besides that, I have at this moment got a little thing to ask you, and I have the confidence in your indulgence that you will reply to me soon, and that you will not take your revenge in keeping silent. More than eight weeks ago I wrote to Mr. Bacher; he has written to me, and, during his presence in Berlin, assured me in person, that all would be arranged according to my desire; nevertheless, I made the contract with you, Sir, and that is why I ask you once more if you consent that I put off the beginning of my contract for London for fifteen days, so that it will begin the 16th of April, instead of the 1st? It would expire, then, the 15th of the month of July, instead of the 1st of that month; considering that I am still too occupied the next two months by the labours at Berlin, and by the preparations for my Italian débuts at London, besides that I shall have absolute need of some days of repose for my health before my departure for London. On the other hand, I am of opinion that it will be very agreeable to you to have fifteen days more for the preparation of the opera of the 'Prophète,' quite new at your house. For me, I hold absolutely to début there as Fides; the second part will be afterwards Romeo. It is agreed, is it not? Will you have the goodness to answer me definitively to these demands? and you will be very agreeable to do it as soon as possible. M. De Bulson, intendant of the Royal Opera here, presses me to give him again some more representations, with reference to a revived opera, for which occasion I must arrange my time to a minute. Mr. Bacher has told me certainly 'yes;' nevertheless, I find myself obliged to ask once more yourself.

"Will you receive my respects, and my very distinguished consideration?

"JOHANNA WAGNER,

"Cantatrice of the Court of His Majesty the King of Prussia.

"Berlin, Feb. 6.

"I should arrive then at London about the 15th or 16th of the month of April."

In February, 1852, Bacher received from A. Wagner a letter, dated the 21st of that month, and thus translated:—

"DEAR FRIEND,—You would wait long for a letter rom Johanna. I myself do not know whether you, wandering Jew, are now in Vienna; however, I write at all events to inform you that we have sent the necessary letter to Mr. Lumley, and requested him, pro forma, to defer once more the fulfilment of the contract for a fortnight longer, which has been already settled between us. He (Mr. Lumley) answered very politely, and agreed to it; however, he would have wished her to be present for a longer time at the rehearsals of the 'Prophète,' but it is impossible, as everywhere this time, as usual, Johanne has much work to do before her journey, and it is merely a short time ago that she began studying her Italian parts, and she requires a fortnight's rest before undertaking in London another work which will require all her energy. I should otherwise bring her, checkmate, to London, but that would not do. We shall try to be there at the appointed moment, and from Hamburgh, where she will remain at her sister's during Passion-week, she will probably leave on Easter Monday. Johanna remains for her début in the 'Prophète,' being sure of a quiet, extreme, and sure success. They prefer 'Romeo,' because they say she alone makes Romeo. If she succeeds, the people will go to the 'Prophète' for her sake alone; but they would not go for the whole of Lumley's 'Prophète,' since it is much better at Gye's: there is something for both, but 'Tab' is preferable to 'Fid.' That, however, in which everybody agrees, is, that we have made a very bad bargain as regards money matters; that clause pressed by you on us which prohibits us from singing at concerts, it is a real loss, especially as we are to have neither apartments nor carriage free, which have been granted to others. England is only to be valued for the sake of her money.(a) I am curious to hear how your speculation is terminating. You appear to be the very man for it. Farewell! let us hear from you. Receive our best compliments, and if you wish to hear from us, Johanna will tell you. A thousand compliments from yours truly, "A. WAGNER."

The plaintiff afterwards, at the request of A. Wagner and his daughter, through the agency of Bacher, extended the time stipulated by the first article of the agreement, from the 1st to the 15th of April. In March, 1852, the plaintiff received from A. Wagner a letter, dated the 9th March, of which the following is a translation:—

"SIR,—From day to day it has been my daughter's intention to write to you, but a young girl and a singer, so much occupied as she really is, very seldom finds the necessary time to write a letter. Nevertheless, time presses, and for that reason I find myself forced to address you for her, by writing to you that we perfectly well understand your intentions; but what is to be done? The Court and the direction of our theatre press to profit still as much as possible of the short stay of my daughter in such a way, that some time will be absolutely necessary for her, both for repose after such arduous labour, and also to enable her to learn by heart the Italian words for (des) her début in London, which her continued duties have prevented her doing. Will you be good enough to have the preparatory rehearsals of the 'Prophète,' and leave us to profit by your consent, and put off for fifteen days the commencement of the engagement, so that it should begin the 16th of April, and continue until the middle of July? If you send the bill of exchange, be good enough to address it, either at this time to Berlin, or from (des) the 2nd of April, to Hamburgh, to Engel and Co., Ferdinand-street, where we shall remain some time with our daughter and sister, recently married.—Accept, &c.,

(Signed) "ALBERT WAGNER."

On the 11th(b) of March, the plaintiff sent a letter to A. Wagner, at Berlin, in reply to his said letter of the 9th, and informing him to the effect, that he (the plaintiff) had paid the sum of 300*l.* to the said J. Bacher, for the defendant Johanna Wagner, and that he had no doubt that before his said letter reached him, the same would have been duly paid over. To this letter the plaintiff received no reply, but on the 10th of April he received at Paris the protest in the German language, dated the 6th of April, 1852, of which the following is a translation:—

"Before me, J. C. H. Stockfleth, notary of the free Hanse town of Hamburgh, and before the two citizens, namely, Adolph Rese and Edward Possellt, of this town, witnesses, there appeared Miss Johanna Wagner, Royal Prussian Court, opera singer, assisted by her father, Mr. Albert Wagner, teacher of singing, who are both present at Hamburgh, and residing in the suburb of St. George, Guilittstrasse, No. 17, and produced a contract in the French language, which has, according to their affirmation, been signed by them at Berlin, on the 9th November, 1851, the same having likewise been signed by Mr. B. Lumley, manager of the Royal Theatre, in London, as well as of the Italian Opera, at Paris, on the 15th of November, 1851. The eighth paragraph sheweth, Monsieur Lumley will pay by lettres de change, to Madlle. Wagner, at Berlin, the 15th of March, 1852, the sum of 300*l.* sterling, a sum which will be deducted from her salary, in retaining 100*l.* each month. The aforesaid parties, as plaintiffs, then deposed as follows:—They had expected in vain, up to the present moment, the remittance of 300*l.* promised in the before-mentioned paragraph to Miss Wagner by Mr. Lumley. They therefore could not but consider the whole contract as void, inasmuch as even the first stipulation had not been fulfilled by Mr. Lumley, though he had bound himself to do so. They certainly in thinking so felt to be in the right, since they had been informed by another party that Mr. Lumley might be considered as generally very deficient in the fulfilment of his money obligations, and more than that in other matters; and such being the case, the contract too must be void, and they, for their own parts, could not recognise its validity for any longer period, whilst, at the same time, they should reserve for themselves every legal step bearing upon the matter; and for that purpose requested the notary to furnish them with a legal act, not only to register this solemn declaration on their parts, but to be himself able to appear for them and protect them by law. Done at Miss Wagner's (and her father's) residence, this 6th of April, 1852. This declaration has been read in the presence of the parties just mentioned, and agreed to by them; and they further placed the original document in my hands (in the event of copies of it having to be served), signed by the witnesses as well as by myself, and sealed with my own seal of office. The original has been signed as follows:—

"JOHANNA WAGNER, Opera Singer, Royal Prussian Court.

"ALBERT WAGNER, paternal guardian."

This protest was accompanied by a letter in the French language, thus translated:—

"Hamburgh, April 6th, 1852.

"SIR,—Not having received on the 15th of March, or even up to the 1st of April, the sum of 300*l.* stipulated in the clause 8 of our contract, I consider that contract annulled on your side, and therefore think myself justified in sending you the inclosed formal protest, and feel also at liberty now to dispose elsewhere both of my talents and of my time.

"I am very sorry for it, but am, nevertheless, compelled to do so, on account of my reputation as an artiste, and also of my interest.

"Yours, "JOHANNA WAGNER."

Upon receipt of the protest and letter, the plaintiff at once proceeded to Hamburgh, and had several interviews with J. Wagner and A. Wagner to induce them to fulfil their agreement, and through a notary public tendered to them 300*l.* in two Bank of England notes; but they refused to receive them. The plaintiff, in his affidavit, stated that the defendant F. Gye was the lessee or manager and director of the Royal Italian Opera, Covent-garden: that he well knew of the agreement of the 9th of November, 1851, having been entered into, and he was, at the time the same was so entered into, at Berlin, and endeavoured to prevent and frustrate the same: that the plaintiff had been informed and believed that F. Gye had frequent communications with the defendants J. Wagner and A. Wagner, and represented to them that her Majesty's Theatre was closed, and that he (the plaintiff) would not reopen the same, and that he was known as a person who never fulfilled his pecuniary or other engagements, and that defendant J. Wagner would never be paid for her services the sum stipulated by the said agreement, and that the said agreement was void in consequence of J. Wagner's not having received the said sum of 300*l.* and that such agreement, by the laws of England, could not be enforced: that the plaintiff had been informed and believed that Gye offered to pay J. Wagner and A. Wagner 2,000*l.* for two months' services of J. Wagner, if they would break the agreement with the plaintiff, and that Gye also offered to indemnify the defendants J. Wagner and A. Wagner against all damages which might arise to them by reason of the non-fulfilment of their agreement with the plaintiff; that Gye, in consequence of such false representations, succeeded in inducing the defendant J. Wagner to enter into an engagement in writing, dated the 5th of April, 1852, that J. Wagner should for a larger sum than that stipulated by the agreement of the 9th of November, 1851, sing at the Royal Italian Opera, Covent-garden, for Gye. The defendants J. Wagner and A. Wagner arrived in London on the 19th of April, from Hamburgh, for the purpose of carrying into effect their engagement with Gye, and the first appearance of Mademoiselle Wagner was announced in the newspapers to take place at the Royal Italian Opera, Covent-garden, on the 21th of April. In his affidavit, the plaintiff stated that the pecuniary loss occasioned to him was at present unascertainable, but would, he believed, amount to more than 30,000*l.* Other affidavits were also filed as to the loss which would be occasioned to the plaintiff by Mademoiselle Wagner's not performing her contract with him.

Bacon and *Hislop Clarke* appeared in support of the motion for the injunction.

Malins and *Martindale* appeared for the defendants, who, however, had no opportunity of meeting the plaintiff's case by filing affidavits in opposition.

The cases of *Kemble* v. *Kean*, 6 Sim. 333; *Dietrichsen* v. *Cabburn*, 2 Ph. 52; and *Hills* v. *Croll*, 2 Ph. 60, were referred to.

The VICE-CHANCELLOR (without hearing *Bacon*

(a) In the translation on the part of the defendants of this passage, it is thus rendered: "England rewards, indeed, only with money."

(b) This date, as it afterwards appeared, should have been the 18th; but in the affidavit first filed it was stated to be the 11th.

in reply) said, that the urgency of the application compelled the Court to act upon ex parte statements. But although this was a difficulty of frequent occurrence, it was one of which the defendants could not complain, if they declined, as they were entitled to do, to give an undertaking which would relieve this Court from the difficulty. As to the existence of the contract, there was no doubt. The contract signed by Mr. Lumley, and the only one, was that which contained the supplemental article, and which alone the Wagners ever possessed. They had, moreover, communicated subsequently with Mr. Lumley, on the footing of this being a contract binding on them all. It was expressly referred to as such by their letter of the 21st of February. It commented on it, but made no protest against it. Then what was the doctrine of the Court? If an individual contracted to perform an act for a valuable consideration, and, as part of the same contract, stipulated to forbear to do whatever was inconsistent with it, the Court would restrain that party from acting in derogation of the latter part of the agreement, although the Court might not be able to enforce specific performance of the former part. This view of the case was followed by Lord Cottenham, in *Dietrichsen* v. *Cabburn*, 2 Ph. 52, after several previous cases, which were supposed to throw some doubt on the practice; but he had merely acted on a precedent established by Lord Eldon in *Morris* v. *Colman*, 18 Ves. 437. The idea of the injunction being only incidental to the specific performance of the entire contract, seemed to have caused some doubts, which proved to be without foundation. As to Mr. Lumley's performance of his part of the contract, how did the case stand? He had left in the hands of the agent, Dr. Bacher, a fund sufficient to pay the 300*l.* and Mr. Albert Wagner had named Hamburgh and the 2nd of April as the place and time at which the money might be paid, thereby dispensing with the 15th of March as being a time which was to be deemed of the essence of the contract. His Honour did not think the payment at the particular period was a condition precedent; but undoubtedly, if Mr. Lumley had not acted as he had done, the Court could not have assisted him. He must therefore grant the injunction, the defendants having liberty, if so advised, to give notice the next day to dissolve it.

Bacon said that the motion was not pressed against M. Albert Wagner.

Friday, May 7.—A motion to dissolve the injunction was now brought on, further affidavits on both sides having been filed. By the affidavits of the Wagners, it was altogether denied that Dr. Bacher acted in any way as their agent; but it was stated that they had treated with Bacher as the plaintiff's agent.

The opinion of Dr. Bach on the Prussian Law was put in evidence on behalf of the defendants, and was in the following terms:—

"In applying the law of Prussia to the agreement of 9th November, 1851, as it originally stood, with regard to the payment of 300*l.* stipulated therein, to be made in Berlin, on the 15th March, 1852, Mdlle. Wagner would have had the right, on the day subsequent to the non-fulfilment of this condition by Mr. Lumley, to determine forthwith the said agreement; but, as the law expresses, at her own risk. If she then could prove satisfactorily to the Court the fact of such non-fulfilment on the 15th March, 1852, not only the determination of said agreement would have been confirmed by the Court, but she would have been entitled to such damages as she might have been able to shew to have actually sustained in consequence of such non-fulfilment. On the other hand, had she been unable to prove the non-fulfilment, then, and in such case, Mr. Lumley would have been entitled to full damages in consequence of such determination.—General Common Law of Prussia, part I. titulus 1, secs. 408, 409, 410; part I. titulus 13, sec. 27.

"The same principle of law laid down as to the first agreement will apply to the altered clause by the letter dated Berlin, 9th March, as regards the date of April 2nd. Mr. Lumley having accepted this condition by his letter of the 18th of March, so as to give it a bilateral character, provided that the obligation to the payment was stipulated to be on the 2nd of April.

"A notarial protest against any act of commission or omission, and a declaration consequent thereon of the protesting party, is received as evidence of all such facts in all the courts of Prussia and Germany: such an instrument is considered an official notice by the law of nations. And I am strongly inclined to the opinion that a Prussian Court of justice would have given relief to Mdlle. Wagner, and effect to her protest, made subsequent to the 2nd of April, in consequence of Mr. Lumley's second non-fulfilment of the agreement by his letter; especially if she could likewise satisfy the court that Dr. Bacher was Mr. Lumley's agent, *and not hers*, when he signed at Paris, and in her absence, a clause in favour of his principal, but onerous to herself, and prejudicial to her interests, and for which he had no documentary power of attorney or other authority given by herself.

"The Court, under such circumstances, would require strict proof of the bona fides of the parties, and of the absence of any collusion between the plaintiff and his agent, even were the agent afterwards authorised by the defendant to act also for her. The law is very jealous in such a case.—General Common Law of Prussia, part I. titulus 13, s. 27. Borneman, book III. s. 214; book IV., b. 236, 237.

"Mdlle. Wagner, being a Prussian subject, has attained the age of majority on the completion of her 24th year. I am further of opinion, that if there is evidence to show that Dr. Bacher was Mr. Lumley's attorney or agent on the 9th of November, 1851, at the time when Mdlle. Wagner executed the first contract at Berlin, he could not sign on her behalf a clause of renunciation to a right of profit, without a special act of attorney; or, at least, an instrument qualifying him as her general mandatory, and without which the clause of renunciation was ab initio of no validity whatever, and not binding upon Mdlle. Wagner, unless *by a subsequent express consent*. Even were Mr. Lumley not Dr. Bacher's principal, he would still have been required by law to obtain from Dr. Bacher the exhibition of a power of attorney or other mandatory instrument from Mdlle. Wagner, in order to enable him to hold Mdlle. Wagner responsible for any infringement of the said renunciatory clause. — General Common Law of Prussia, part I. titulus 13, secs. 22, 103, 104, 228, 91, 92, 96. (Signed)

"ADOLPHUS BACH.

"Sussex Chambers, Duke-street, 1st May, 1852."

Bethell, Malins, and *Martindale* appeared in support of the motion to dissolve the injunction.

Bacon and *Hislop Clarke* appeared for the plaintiff.

Bethell, in reply.

The following authorities, in addition to those before cited, were referred to: *Flack* v. *Holm*, 1 J. & W. 405; Story's Conflict of Laws, 375, s. 280; *Don* v. *Lippman*, 5 Cl. & Fin. 1,12, & 13.

The VICE-CHANCELLOR.—The jurisdiction of the Court sought to be administered on this occasion was founded on a clause in the agreement between Madlle. Wagner and her father on the one hand, and Mr. Lumley on the other hand. [His Honour here stated the clause.] It was said first that this clause formed no part of the agreement, and that Dr. Bacher introduced it without her authority. It was also said that it had been unfairly obtained—that it had been obtained by a course of practice on the part of the plaintiff, or of his agent, Dr. Bacher, which would not entitle the former to the assistance of the Court, even if it did in fact form a part of the agreement. It was also said that the plaintiff had failed in the performance on his part of a certain other clause, and, moreover, that the bill proceeded on misstatements of material matters of fact, and that, under these circumstances, the general jurisdiction of the Court, to which he had referred, could not be set in action. The first question the Court had to consider was, whether this particular clause formed a part of the agreement between the parties. The facts appeared to be these. [His Honour repeated the facts.] If the matter had stopped here, he should be of opinion that the clause had been introduced without authority, and that, therefore, it could not be considered binding on the Wagners. But agency might be created by antecedent authority, or by subsequent adoption, and here it was important to ascertain whether there had been any subsequent adoption by the Wagners. His Honour observed that, in his opinion, the case might be disposed of without the Court deciding on conflicting matters of fact between the parties. [His Honour then reviewed the subsequent proceedings between the parties.] The first question in the case—namely, whether that clause was part of the contract—must, in his opinion, be decided, without any doubt, in the affirmative, and that, if the clause had been originally introduced by Dr. Bacher, without authority, it had afterwards been sanctioned by the Wagners, and was binding on them. The next question was as to the unfairness imputed to Mr. Lumley and to Dr. Bacher with respect to this agreement. On this point, it must be borne in mind that there was no imputation as to the unfairness of the contract, except with respect to the clause of which he had just been speaking, for it was not suggested that any advantage had been taken of this young lady as to the remuneration which she was to receive. The whole of the comments of the defendant's counsel on the unfairness turned upon that clause having been introduced by Mr. Lumley's agent, to enable Mr. Lumley, it was said, to take advantage of her. In reference to the clause itself, he might observe that it seemed to be admitted on all hands that some clause of this kind was "a clause of course" in all contracts of this nature, for it only restrained this young lady from entering into professional engagements which would be inconsistent with her engagement with Mr Lumley. It appeared that Mr. Lumley introduced a clause in the contract which was a subject of discussion between Dr. Bacher and the Wagners, before the contract at Berlin was signed; and it appeared that the objections raised by the latter were objections to the improper generality of the clause; (that is, that it went too far) and that it was most unusual to restrain a singer of eminence from singing at private concerts without the consent of the person with whom she had made an engagement. It would appear that the Wagners did not object to the clause in toto. [His Honour then stated the facts relating to this clause.] With their eyes open, it would appear that they were content to leave the use of that clause in Mr. Lumley's hands. For these reasons, therefore, he did not think that the clause was unfairly introduced into the contract. The next point was that in consequence of the non-performance of the 8th clause, Mr. Lumley had lost his right to sue on the agreement either in law or equity. The stipulation was, that Mr. Lumley should pay to the Wagners the sum of 300*l.* by a particular time. Really, as he understood the rule of law, this stipulation was what was called an independent and not a conditional clause of the agreement—that was that the non-payment of the money at the time and place mentioned in the agreement did not of itself destroy the agreement. He admitted, however, that any breach of it might affect the question of damages, but the simple non-performance of it would not be a bar to an action, for it might be excused. If he thought that this were a condition precedent, the performance of which had not been dispensed with, Mr. Lumley would have a legal title, and then the Court would have nothing to do with the conduct of the parties as to their fair dealing, but the only right the Court would recognise would be the legal right to bring an action on the contract. The well-known doctrine as to time being of the essence of the contract was peculiar to this Court in cases of specific performance; but it had nothing to do with the question before the Court. Although, however, he did not consider it as a dependent condition, it was, he must say, of essential importance to be considered, because if there had been shewn on the part of Mr. Lumley want of willingness or good faith to comply with the stipulation, he thought that gentleman would have come in vain into that Court to ask it to exercise that very stringent power which it possessed by way of injunction. It would be incumbent, therefore, on Mr. Lumley, not having paid the money, as it was allowed he had not done, at the time stipulated, to shew under what circumstances the non-payment took place, and that they were such as to excuse his non-performance of this part of the contract. It was requisite, therefore, carefully to examine what took place with reference to the payment of the 300*l.* [His Honour then repeated the facts relating to the non-payment.] He thought, therefore, that, under these circumstances, the defendants were not justified on the 5th of April in entering into a new contract with Mr. Gye nor in entering into a notarial protest, on the 6th, putting an end to that which already existed with Mr. Lumley. If that were the case, he did not think that anything which took place afterwards was of very great importance, because, in fact, the whole contract, and the circumstances attending its fulfilment or non-fulfilment, were then at an end. The money was tendered on the 15th of April, and an earlier tender was excused by the circumstances which took place after the contract was broken. Dr. Bacher had sworn that he had the 300*l.* with him at Hamburgh, and his Honour saw no reason to doubt but that he had that sum with him as a means of performing the contract on the part of Mr. Lumley. The non-payment of the money during the time extending between the 15th of March and the 15th of April was sufficiently excused by the letter of the 9th of March, and also by the communication which had taken place with Bacher. He found that the protest was in general terms for the non-payment of the money on the 15th of March, and he could not really doubt that there was a right of action upon the contract. It had been represented that there were mis-statements in the bill, but he did not think that any of them were material, or that the mis-statement as to the date of the letter of the 18th of March was sufficient to make the bill fall as a ground for sustaining the injunction. If that were so—if the agreement were such as had been stated—if there had been a breach of the agreement—if Mr. Lumley had not lost his rights under that agreement—he really thought that there was a case for following the opinion of Lord Cottenham in the case of *Dietrichsen* v. *Cabburn*, where his Lordship stated that he did not see why cases of actual partnership should be more favoured in the exercise of the jurisdiction by injunction than others, and the opinion of Lord Eldon in the case of *Morris* v *Colman*. He had no doubt as to the facts and the law of the case, and he thought that it was a case for the interference of the Court by way of injunction. He stated this was his opinion when the motion was first made, and he was bound to act upon

his own opinion. He should regret if the view which he took were erroneous, and if injury were sustained by the parties; but he knew that if such were the case, his decision could be corrected elsewhere. As to the point which had been urged that this was a foreign contract, that really was a question which was not material here. If it were a valid contract, and Madlle. Wagner was bound not to act in contravention of its stipulations, any references to the law of the place where it was entered into, or the mode of proceeding there, was unnecessary to be considered, and the Court would not leave the party to a remedy by an action for damages, but interfere by injunction. In this case there was a contract, and the Court was bound to prevent any violation of it, so far as it had the power of doing so. For these reasons he should continue the injunction, and if the defendants wished it, the plaintiff must undertake to bring an action.

Bacon asked for costs.

The VICE-CHANCELLOR said that the costs of the motion must be costs in the cause.

HOUSE OF LORDS.

Reported by JAMES PATERSON, Esq. Barrister-at-Law.

Monday, April 19.

ANSTRUTHER *v.* EAST OF FIFE RAILWAY COMPANY.

Railway—Landowner—Injunction—Compelling to make railway—Paying back deposits.

A railway company, soliciting their Bill in Parliament, wrote to A. a landed proprietor, but not a shareholder, that in return for his support they would refer all his claims to a certain arbiter. A. agreed, and with his support the Bill passed, but no step was ever taken to make the railway. At last the shareholders resolved to go to Parliament to dissolve their company and have the deposits returned. A. then prayed an injunction to restrain the directors from either going to Parliament or paying back the deposits, until their agreement with him should be performed and the statute complied with:

Held, the circumstances did not amount to a special contract sufficient to sustain such injunction.

Semble, a mere landowner, as such, cannot compel a railway company to make their railway, where no step has ever been taken towards its execution.

This was an appeal from the Court of Session in Scotland. The appellant had filed his bill for an injunction under the following circumstances:—In the year 1845, certain individuals formed themselves into a company, for the purpose of making a railway from Markinch to Anstruther Easter, with a branch to the Kirkland Works, to be called "The East of Fife Railway." As the projected line passed through plaintiff's lands, he entered into communication with the promoters, and on their removing some of his objections to the route, he intimated that he would give them his support. While they were soon after soliciting their Bill in Parliament he entered int terms with them contained in following letter from their solicitor:—

"24 June, 1846.

"Sir,—In reference to the conversation which the deputation of the East of Fife Railway Company have had with you, on the subject of your claims against that company, both as heir in possession of the estate of Anstruther, by the formation of that railway, and for your support of and exertions in regard to the measure, I have to offer you, on behalf of the company, that all such claims shall be referred to Thomas Rennie Scott, of Castlemains, near Douglas, as sole arbiter, and that in terms of the Lands Clauses Consolidation (Scotland) Act. The deputation suggest Mr. Scott, as they understand he was proposed by the Caledonian Company as sole arbiter in reference to your Lanarkshire property, and is now acting as arbiter in reference to their claims. "I am," &c.

The bill then alleges that plaintiff approved of the arbiter proposed, and that on the faith of the agreement contained in this letter, he not only withdrew all opposition, but gave his best support to the Bill, which duly passed on 16th July, 1846. The preamble of the Act is to this effect:—"Whereas the making of a railway, &c. would be a great public advantage, by facilitating communication between, &c.; and whereas the persons hereinafter named are willing at their own expense to carry such undertaking into execution, but the same cannot be effected without the authority of Parliament," &c. By the Act, the period within which lands were to be purchased is limited to three years, and the period for the completion of the works to seven years from the passing of the Act. But no step had ever been taken towards the formation of the railway or the purchase of the lands, and only 5*l.* per share of the capital had been paid up. The shareholders at a meeting in March, 1849, resolved, that the directors should forthwith proceed to pay back the money to the shareholders, and to apply to Parliament to dissolve and wind up the company (there being no Winding-up Act for Scotland). The injunction thereupon prayed for by plaintiff was "to restrain the said defendants (directors) from taking any steps or proceedings having for their object the dissolution of the said company, and from returning or paying back to the shareholders the money advanced and paid by them into the said company in the shape of deposits or calls on the shares of the capital stock of the said company, held by the shareholders thereof, and from violating the contract or agreement entered into between the plaintiff and the said company, so long as the said agreement remains unimplemented by the defendants, and from acting in any other way prejudicial to the interests of the plaintiff under the said contract or agreement, or contrary to the provisions of the Statute incorporating the said company." The defendant demurred, on the ground that the plaintiff was not a shareholder, and that the agreement was not to make the railway, but merely to refer to the arbiter any disputes if they should arise. The Court of Session dismissed the bill with costs, and the plaintiff appealed to the House of Lords.

Rolt, Q.C. and *Powell*, for appellant.—A landed proprietor on a line of railway, for making which an Act has been obtained, is entitled to a mandamus to compel the company to go on and make the railway. (*R.* v. *Eastern Counties Railway Company*, 10 Ad. & El. 531.) A landowner can be in no worse position than a shareholder; for the principle is, that it is for the public advantage as well as their private interest that the railway should be made. Here there is also a special contract. Appellant withdrew his opposition, and forbore to give his support to other schemes on the faith that this railway would be made, and the Court will enforce specific performance. (*Edwards* v. *Grand Junction Company*, 1 My. & Cr. 650; *Stanley* v. *Chester and Birkenhead Company*, 9 Sim. 264.) In these circumstances, all that is required in order to ground an application for an injunction is to shew, as we have done, that defendants intend so to deal with the funds of the company as to render it impossible to carry out the scheme. The prayer of the injunction is not to restrain defendants from going to Parliament to ask powers to dissolve the company, which we admit we cannot prevent (*Heathcote* v. *North Staffordshire Company*, 20 L. J. 82, Ch); but if the injunction is too large, we are willing that it should be cut down, so as not to include this. [LORD CHANCELLOR.—Have you since brought your action, to have your rights established?] We have, and have lost it; but we may still appeal. [LORD CHANCELLOR.—Can you shew me a single case in which Equity has interfered to compel a railway company to make a railway where no step has ever been taken to execute the works?] Perhaps not.

Bethel, Q. C. for the respondents, was not heard.

The LORD CHANCELLOR.—My lords, in this case your lordships are asked to decide the most important questions of law which could arise, if they could be maintained upon this interlocutor. What is prayed for is a general injunction at the very period when, in a suit for specific performance, the right has been denied by the Court below—the absolute right upon which this very injunction must be founded, and upon which this injunction must issue, upon the assumption that the right will be established and that not now being before your lordships' House, you are asked to set up that injunction which has been dissolved in effect by the Courts in Scotland. Now, my lords, the case is of this nature, there being a common railway Act of Parliament, having nothing peculiar about it, the appellant, who is a large landed proprietor, appears to have interfered, or to have mixed himself up with the company, in his character of a landed proprietor. Before the passing of the Act, there was an agreement, as it is called, depending upon two letters, the binding nature of which, and the terms of which, would require great consideration before they could be executed as an agreement, but the effect of which letters is, that all the appellant claims in respect of his property, which may be taken or may not be taken, and his claims for services rendered to the company towards obtaining the Act of Parliament, are to be referred to arbitration. There is not the slightest proof that any attempt has been made to carry that alleged agreement into effect; and then, as the company has in point of fact failed, for there has not been a single act done towards the execution of any of the works, the company having failed to carry its purpose into execution, the appellant applies for an injunction, which he prays in these terms [His lordship then read the prayer, as above quoted]. He means in the first instance to bring an action at law to have his rights declared, but he desires in the first instance this injunction. Now, my lords, suppose such an injunction to be obtained, it would be one of the most important matters that could possibly come before your lordships. It has never been established that a mere landowner, as such, can come and ask that a company, not having taken a single step towards the execution of an intended project—and I speak now of a railway—shall be compelled to execute that railway. However, upon that I give no opinion, because, if that is to be decided, it is a point of so much importance, that it must be decided by a different course of proceeding from that which is before your lordships' House. Now, my lords, as regards the agreement, it is impossible that there can be any injunction. It is an agreement that there shall be a reference to arbitration, and, before you can take any step to enforce an injunction as regards that agreement, it must have been shown that the reference to arbitration has failed, that the arbitrator had been desired to act, but no step has been taken. The case is perfectly naked in that respect. There is no foundation for saying that any step has been taken towards the execution of the contract, and what is it that is asked of your lordships? First of all it is perfectly clear, that the terms in which the injunction is prayed for, would include that Act of Parliament. It is admitted, that a person, standing in the situation in which the appellant stands (because he is not a shareholder) is not a person with whom a contract has been specifically made, he is a person who may be damaged, or who may be benefited by the act to be done, but he is not a person, upon the point upon which I am now addressing your lordships, who has any contract entered into with him; and what is asked of your lordships is this, that you will prevent the company from going to Parliament, which gave the power, and asking Parliament to put an end to this proprietary, as the project may turn out to be mischievous, instead of beneficial. Now, my lords, if a party has any right to oppose such an Act, he is at perfect liberty to go before the House and be heard upon the ground of his interest, if he have any; but is it possible that an injunction can be granted in that respect? Then it is said, you may qualify the injunction, that is to say, you may cut off three-fourths of that which is asked, and grant something simply for the purpose of this appeal. But I am sure that your lordships, will not allow parties to withdraw a part of that which they ask, and which is the material part of it, and then to fall back upon something which is comparatively unimportant, simply for the purpose of maintaining an appeal before your lordships' House. My lords, I think it is perfectly clear, that upon the first point laid, your lordships would never be advised to decide that point upon a pleading like that before your lordships. Upon the point of a decree against the Act of Parliament, I think that is out of the question. Then comes what has been much insisted on at the Bar, namely, the prayer, that the company may be restrained from paying back to the shareholders the money they have paid them. What possible right, my lords, can this landowner have to interfere with the money of the shareholders, as between themselves? If the money is wrongfully paid back to them, they will, if they are liable, still be liable to every action which exists now in the appellant. But he has no right to these specific funds. They could be paid without his interference in either one way or the other, and I think, my lords, that a more mischievous thing could not be imagined than that any mere landholder should be able to come to your lordships' House, seeking to interfere with the manner in which the money of the shareholders must be appropriated (for it amounts to that) if the money is to be paid back. If this large prayer were granted, it would be sufficient to interfere with the actual arrangements of the company, with regard to their own money. My lords, no such injunction ever was granted, and I believe never will be granted. The action at law has failed, and the appellant I hope, will not be advised to bring it to your lordships' House. If he should do such a thing, it will be considered then in a shape to enable your lordships to give a clear opinion upon the point of law, but as the matter stands I think it is quite impossible to maintain this appeal, and, therefore, I propose to your lordships, that it be dismissed with costs.

Interlocutor affirmed with costs.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. KEENE, Esq. of Lincoln's-Inn, Barrister-at-Law.

Wednesday, May 5.

Re WALKER'S Trust.

Will—Construction.

A. gave a life interest in all his property to his wife, and after her death he directed that all his property in the funds or elsewhere of every description should be sold and equally divided between his children, B. C. D. E. and F.; and he further directed that his executors should, upon dividing the whole of his said property equally as above directed, immediately lay out the whole of the

moneys that would belong to D. E. and F. his above three daughters, as their shares of his said property in the Three per Cent. Consolidated Annuities; and that neither of them, his before-mentioned daughters, should have the power of receiving more than the dividends due upon their respective shares. But in case of the marriage of all or either of his aforesaid daughters, the child or children of either of them his said daughters that should outlive their mother or mothers, should have his, her, or their mothers' shares at their own disposal, both principal and interest; and in case of the death of one or more of his aforesaid children that might die unmarried, his, her, or their shares and share should be equally divided among the survivors of his aforesaid children or their children, and he gave and bequeathed unto his executrix and executor all the rest and residue of his estate and effects both real and personal: one of the daughters, who outlived the testator and the tenant for life, died without having been married; on the petition by her executor for her share of the testator's property, which had been paid into court under the Trustee Relief Act, it was

Held (affirming the decision of the Court below), that her surviving brothers and sisters, and not her representatives, were entitled.

This was an appeal petition from an order of his Honour the Vice-Chancellor Knight Bruce.

William Walker, by his will, dated the 27th of December, 1799, after giving a life interest in all his property to his wife, directed that at the death of his wife all his aforesaid property in the funds or elsewhere, of every description, should be sold and equally divided between his children,—William Walker, Josiah Henry Walker, Ann Kemp, Elizabeth Sarah Walker, and Sarah Mary Walker; and that his executors should, upon dividing the whole of his said property equally as above directed, immediately lay out the whole of the moneys that would belong to his above three daughters, as their shares of the said property, in the Three per Cent. Consolidated Annuities, and that neither of them, his aforesaid daughters, should have the power of receiving more than the dividends due upon their respective shares; but in case of the marriage of all or either of his aforesaid daughters, the child or children of either of them his said daughters that should outlive their mother or mothers should have his, her, or their mothers' shares at their own disposal, both principal and interest; and in case of the death of one or more of his aforesaid children that might die unmarried, his, her, or their shares and share should be equally divided among the survivors of his aforesaid children or their children, and he appointed and constituted his aforesaid wife and his son, William Walker, executrix and executor of that his will, and he gave and bequeathed unto his executrix and executor all the rest and residue of his said estate and effects, both real and personal.

William Walker, the testator, died 1802; his widow in 1838.

Elizabeth Sarah Walker, one of the daughters of the testator, died in May, 1849, without having been married, and by her will appointed Joseph Piper (the petitioner) her executor. William Walker paid into court 234*l*. 11*s*.; the produce of the share of the said testator's property bequeathed to his daughter, Elizabeth Sarah Walker. The petitioner, as the sole executor of E. S. Walker, in the events which had happened, claimed to be absolutely entitled to the trust fund. On the hearing of the petition before the Vice-Chancellor Knight Bruce, his Honour dismissed it, but without costs. From this order the petitioner appealed.

Shebbeare, for the petitioner, argued first, that by virtue of the direction for a division of the property upon the decease of the testator's wife, each of his children took an absolute interest in their respective shares, and that, consequently, the said Sarah Elizabeth Walker became in the first instance absolutely entitled to a fifth share. Secondly, that the effect of the immediately succeeding clause was merely to affect the shares of the three daughters, with trusts in favour of their children, in case of their leaving any, but not to reduce the previous gifts to mere life estates, the restriction as to their receiving only the dividends not defeating the vesting of their shares; and, consequently, in the event (which had happened), of there being no child of Sarah Elizabeth Walker, the absolute gift to her remained, and that her share, therefore, was vested in the petitioner as her executor. (*Ring* v. *Hardwick*, 2 Beav. 352; *Meyer* v. *Townsend*, 3 Beav. 443; *Lassence* v. *Tierney*, 1 Mac. & Gord. 551.) Thirdly, that the third clause, which referred to all the children (as well sons as daughters) of the testator, was quite independent of the second, which related only to daughters; and that in order to make the third clause consistent with the first, which directed a division upon the death of the wife, this third clause must refer to a dying unmarried *in the widow's lifetime*: as otherwise the shares of the sons would be tied up during the whole of their lives, which could not be presumed to have been the intention of the testator; and it was to be observed that this clause did not, like the preceding, contain any direction for an investment or settlement. (*Browne* v. *Lord Kenyon*, 3 Madd. 410; *Cripps* v. *Wolcott*, 4 Madd. 11; *Da Costa* v. *Keir*, 3 Russ. 360; *Home* v. *Pillans*, 2 Myl. & Keen, 15; *Edwards* v. *Edwards*, 16 Jur. 259.) Lastly, that the residuary clause did not affect the question, as that would apply to a lapse by the death of either of the children, in the lifetime of the testator.

Follett, *Steere*, and *Roxburgh*, appeared for the several parties, and supported the order of the court below.

Shebbeare in reply.

The LORD CHANCELLOR.—There can be no dispute as to the rules which govern this case. The rule of law is plain, the only difficulty is, as to the method of applying it to the present will. If there be an absolute gift in the commencement of a will, and subsequent modifications which do not exhaust the whole interest, or which do not take effect on the failure of such modifications, the absolute gift remains. It is also a general rule that if you dispose of a fund that is already ascertained after a tenancy for life, the period of division would be referable to the death of the tenant for life, if there is no period at which the division or distribution should take place. The main question, however, in the present case is, what was the intention of the testator. The testator gives the principal to his wife for life, and after her death to his sons and daughters. If that clause had stood alone, without doubt each of the daughters would have taken an absolute gift. The testator then directs that when the period for division shall have arrived, the shares of his daughters shall be invested in the Three per Cents. and the interest paid to them for life. The death of the tenant for life is not the period of distribution, because it is not until the death of the mother that the daughters are to come into the possession of the dividends. "But in case of the marriage of all or either of his aforesaid daughters," then the testator directed "that the child or children of either of them his said daughters that should outlive their mother or mothers, should have his, her, or their mother's share at their own disposal, both principal and interest;" so that after the death of a daughter leaving a child or children, there is a regular gift over in its or their favour. The interest of the daughters is restricted to their receipt of the dividends, and that at once shews that the death of the tenant for life was not the period for division, but that it must of necessity apply to the death of the daughter. Then "in case of the death of one or more of his aforesaid children, dying unmarried, his, her, or their shares or share he directed should be equally divided among the survivors of his aforesaid children, or their children." Now, by this clause, should either of his children die unmarried, there is a gift over to his surviving children and their children, and although that clause refers to the sons as well as the daughters, yet such subsequent modification will not have the effect of cutting down the previous gift, and it is no reason to say that it does not apply to the daughters, merely because it cannot apply to the sons. If that clause had stood alone, it would have admitted of two constructions, referable to the death of the testator, or the tenant for life; but the latter clause is explained and governed by the preceding clause. Now that clause creates a gift in favour of the children of the daughters, and it is clear therefore that it does not, and cannot, refer to the death of the mother, but to the death of the daughters themselves. There are no words to shew that the daughters were only tenants for life, but no doubt that is the effect of the will, and in a case like the present, where the Court can put a natural construction on one clause and has doubt as to the other, it must take the clear construction as its rule for the government of that which is not clear. I am, therefore, of opinion that the share of such of the daughters as should die unmarried is not to be taken as referring only to such as should so die in the lifetime of the tenant for life, but is a restriction taking effect at the deaths of the daughters themselves, and consequently that the share of Elizabeth Sarah Walker survived to such of her brothers and sisters as were living at her death. The order of the Court below must therefore be affirmed.

The petition of appeal was dismissed, but, following the order of the Court below, without costs.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

May 1, 3, 4.

(Before the LORDS JUSTICES.)

SPARROW *v.* THE OXFORD, WORCESTER, AND WOLVERHAMPTON RAILWAY COMPANY.

Railway company—Notice to take part of manufactory—92nd section of Lands Clauses' Consolidation Act.

A railway company gave notice to manufacturers to take a small piece of land, which was inclosed within the wall surrounding their manufactory, but which at the time the Act passed, and when the notices were given, was not covered with buildings, though it was soon after:

Held, that as the vacant space was necessary for the operations of the manufactory, it constituted a part thereof, within the meaning of the 92nd section of the Lands Clauses' Consolidation Act, incorporated in the special Act:

Held also, that according to that section, the provisions of which must be construed as optional, and not imperative, as far as the owners of land are concerned, the railway company were compellable if they insisted on taking a part, to take the whole of the manufactory.

Held also, reversing the decision of the Court below, that certain sections of the special Act, by which certain benefits were reserved for the owners of the manufactory, and another adjoining owner of property, were not inconsistent with the 92nd clause, so as to prevent its incorporation, on the ground that if the company took the whole of the manufactory, such reservation would be useless: first, because non constat that the owners of the manufactory would not be willing to sell a part only thereof; and secondly, because the reservation was not for their exclusive benefit.

Held also, that another section of the special Act, which no building was to be erected on part of the land required by the company, without the consent of the company in writing, was not inconsistent with the notion of the incorporation of the 92nd section.

The mere fact that in another section of the special Act, the company were required to purchase certain properties, was held not to be inconsistent with the intention that the 92nd clause should be incorporated in the special Act.

A railway company having given notice to take the surface of land which constituted part of a manufactory, and which they were restrained from taking by an interim injunction:

Held, that they could not on the hearing set up the case that they could avoid taking part of the manufactory, by making a tunnel underneath it.

Semble, by tunnelling under part of a manufactory, a company in effect would take part of the manufactory.

Where the construction of an Act of Parliament under which property is to be compulsorily taken, is doubtful, it should be construed most favourably to those who seek to defend the property from innovation.

In this case the bill was filed by Messrs. Sparrow, the owners of, or parties interested in, certain pieces of land at Wolverhampton, on which was situated a large tin-plate manufactory. The object of it was to restrain the defendants, the Oxford, Worcester, and Wolverhampton Railway Company, from entering upon, or taking possession of, the pieces of land which had been required by them by their notices of the 25th of June, 1851, or mentioned in the schedule to the defeazance of a bond given by them, and from committing waste thereon, and from proceeding to take any measures to acquire the same by compulsory purchase, or at least that they might be so restrained, unless they, at the same time, proceeded to purchase the *whole* of the aforesaid manufactory, and made compensation to the plaintiffs for all consequential damages.

The Lords Justices, overruling the decision of his Honour the Vice-Chancellor Turner (reported 18 Law T. Rep. 453), granted an injunction until the hearing; and by an agreement between the parties, the cause now came on to be heard before their lordships, upon affidavits made by both parties, which were to be treated as evidence in the cause.

The principal questions were, whether the pieces of land, numbered 161 in the plan, which the company had given notice to take, were not *part* of the plaintiffs' manufactory, and if so, whether the defendants were not compellable, under the 92nd section of the Lands Clauses' Consolidation Act, at the option of the plaintiffs, to take the *whole* of the manufactory. The defendants contended that that section was not incorporated in the special Act, as being inconsistent with its provisions.

Another question raised for the first time at the hearing before their lordships, but not much relied on, was, that at all events the company might make a tunnel under that part of the land which they had given notice to take, and as they would not thereby, as they contended, take any part of the manufactory, they could not, even supposing the 92nd section of the Lands Clauses' Consolidation Act to be incorporated in the special Act, be compelled to take the whole of the manufactory.

Another question, to which the attention of the Vice-Chancellor in refusing the injunction appears to have been mainly directed,—namely, that the notice to take the land was not delivered in time—was in effect given up by the plaintiffs.

The material facts of the case, and the arguments of the counsel on both sides, are sufficiently stated in their lordships' judgments.

Sir *W. Page Wood*, *Malins*, *Shapter*, and *Gray*, for the plaintiffs.—They cited *Brocklebank* v. *The Whitehaven Junction Railway Company*, 15 Sim. 632; *Barker* v. *The North Staffordshire Railway Company*, 2 De Gex & S. 55; 5 Rail Cas. 401.

Bethell, *Rolt*, *Willes*, and *J. W. Bovill*, for the defendants, cited *Taylor* v. *Clemson*, 3 Railw. Cas. 65, 725; *Doe dem. Armistead* v. *The North Staffordshire Railway Company*, 20 L. J. N.S. 219, Q.B.; *Reg.* v. *The London and South-Western Railway Company*, 12 Q. B. Rep. 775.

Lord Justice Lord CRANWORTH.—I do not think we need call for a reply. We have had ample time since this was before us for considering the subject, and we have turned it over in our minds upon more occasions than one, and more particularly as we have had plenty of time, because the question was not new to us, it having been substantially discussed upon the motion for the injunction. The bill was filed on the 10th of September last, the object of which was to obtain an injunction restraining the defendants, the Oxford, Worcester, and Wolverhampton Railway Company, from entering upon or taking possession of certain pieces of land required by them in the notices they gave on the 25th of June, 1851, mentioned in the schedule and the defeazance of the bond, which they afterwards gave; and from proceeding to take measures to acquire the said pieces of land by compulsory purchase. The plaintiffs are owners or parties interested in a large tin-plate manufactory at Wolverhampton, a model of which is now before us, and it appears that one of these gentlemen purchased the manufactory from some person of the name of Henderson, about three or four years ago, shortly before the time when this present Act of Parliament, which has been so long under discussion (the Oxford, Worcester, and Wolverhampton Railway (Deviation) Act, 11 & 12 Vict. c. 133), passed, which obtained the Royal assent on the 11th of August, 1848; and soon after they purchased it, having been left, as I collect, rather in a dilapidated state, they improved it, and added some buildings, which buildings were situate upon the line of the projected railway. The company having been previously incorporated, the Act of Parliament, as I have already stated, passed on the 11th of August, 1848; and they took no steps with reference to the land that they required, for this portion of their intended line at least, until the 25th of June, 1851, nearly three years after the Royal assent was given to their bill, nearly, therefore, at the expiration of the time during which they had a power by compulsory process of taking land on giving such notice within the time limited for that purpose by the Act. They did give a notice to the present plaintiffs that the railway would pass through their land, and that 19¼ perches would be required by the company; that it was their intention to take the same and contract for it; and they thereby offered to contract for the purchase of the plaintiffs' interest, and for compensation for damages, &c. It was such a notice, in short, as is required by the Act to be given by the company when they want compulsorily to take land belonging to another person through whose land the railway is to pass. The plaintiffs, upon the receipt of that notice from the company, delivered a counter-notice, claiming that if the company took the piece of land which they proposed to take—a *small portion* of that which I will at present call their manufactory—then they would require the company to take the *whole* of the manufactory; and that counter-notice which they gave is authorised, as they contend, by the 92nd section of the general Act, which has been so often under consideration, and which provides shortly, "that no party shall at any time be required to sell or convey to the promoters of the undertaking (that is, of the railway), a *part only* of any house or other building or manufactory, if such party be willing and able to sell and convey the whole thereof." The company disputed their obligation to take the whole, and contended that they were entitled to take a part only, which was included in their notice, namely, about nineteen perches, being the little portion that runs to the southern end of what for the present I will call their manufactory, skirting along the Stour Valley Railway. In this state of things, on the 10th of September last, the plaintiffs filed their bill for an injunction to restrain the defendants (the company) from proceeding to take a *part*, without taking the *whole*. That was substantially the object of the injunction. An application was made, shortly after the bill was filed, to his Honour the Vice-Chancellor Turner, to obtain an interim injunction; but his Honour did not grant that injunction, thinking, amongst other things, for his refusal, that the 92nd section of the general Act did not form part of the company's Act, that it was not by implication incorporated with it: and there were other grounds also upon which he refused to grant the injunction. The ... to us by way of appeal from his Honour the Vice-Chancellor Turner, and the case was argued at considerable length in the month of February last. We thought at the time, all we had then to decide was this, whether a sufficient case was made out to make it expedient, that in the mean time, and until the cause could be heard, the defendants should be restrained from doing what they were proposing to do, and that matters should be left in statu quo till the cause was heard; and therefore we granted an interim injunction; and at the same time, by arrangement with the parties gave them a facility to have the cause heard speedily, both parties agreeing that, instead of examining witnesses, each party should make what affidavits he thought fit, and those affidavits should be treated as evidence in the cause, and that the cause should be set down to be heard before us, and should be heard therefore speedily, and not in the ordinary course. It has now been so heard; and the question is, upon this hearing, whether or not the plaintiffs have entitled themselves to the relief which they ask. Now, there were two main questions for consideration; one a question of fact, and the other a question of law. The question of fact was this; whether that which the defendants proposed to take did, within the meaning of the Act, constitute a *part* of the manufactory? and, secondly, the question of law was,—supposing it to constitute *part* of the manufactory, were they enabled to take it without taking the *whole*? Now, on the question of fact, that again divides itself into two questions; one of which is, perhaps, rather a question of law and of fact, arising out of the consideration of that which is mere fact. What they proposed to take was a certain piece of land inclosed within the wall that surrounded the manufactory, but which, at the time the Act passed, was not covered with buildings, though it was within the wall of that which is called the manufactory. Soon after the passing of the Act (the plaintiffs having made their purchase just before the Act passed), considerable additional buildings were put upon that piece of land, which was vacant at the time the Act passed, or the greater portion of it was vacant; the whole, probably, was vacant when the Act passed; additional buildings were put upon it, and there can be no possible doubt but that these additional buildings constitute part of the manufactory in the strictest sense; but then it was contended, that what was to be looked at was, not the state of matters when the company proceeded to take the land, but the state of the property at the time when they gave the notice; and it was said, at that time those buildings did not exist; at that time it vacant ground, within the wall, it is true, of the manufactory, but not having any manufacturing process carried on upon it, and therefore not constituting, within the meaning of the Act, part of the manufactory. Now we do not feel it necessary to decide the question, as a matter of law, what is to be regarded as the state of the property at the time the Act passed, or at the time when the land was taken by the company. We do not consider it at all necessary in the case to look at or to discuss that question; because we are both most clearly of opinion, without the least difficulty or hesitation, that this was, to all intents and purposes, part of the manufactory at the time the Act received the royal assent; and we think so, as a jury coming to the conclusion what did or did not, at that time, constitute a part of the manufactory. Well, on all these questions there may be nice lines sometimes, on which it may be difficult to say on which side of the line particular piece of land or a particular building lies; whether it be outside, so as not to be part of the manufactory, or inside, so as to be part of the manufactory? But we do not feel ourselves driven to any refined discussion about this case, because, looking at this model, which is taken to be an accurate representation, it appears (I speak this only for myself) that there is singularly little of vacant space within the wall. I can easily believe what one or two of the witnesses said, that they were always pressed for room in order to have a place where they might deposit their rubbish and the scoria that came from the furnaces. The manufactory could not go on without that, any more than it could go on without the furnace itself. It seems to me, and I am sure to my learned brother, to be perfectly clear that in this case, everything included within the wall constitutes part of the manufactory; and, indeed, when I say within that wall, describing a very large portion of the manufactory, the outer wall of the building is the wall. Sometimes there is a little vacant space between the buildings and the wall, which is meant for the purpose of inclosing and surrounding that which evidently, and popularly, and rationally constitutes part of the manufactory. Therefore, it seems to me to be perfectly immaterial to consider whether the buildings were on that vacant space, after the Act received the royal assent, or whether we are to consider the state of the property after the buildings were erected, or before; because, whether considered in the one light or the other, they clearly constituted part of the manufactory, within the only rational meaning that could be attributed to that word. Then, constituting part of the manufactory, the company giving notice that they would take a piece of land that constituted *part* of the manufactory, are they, or are they not, bound to take the *whole* of the manufactory? Now that depends upon a question of law, whether or not the 92nd section, which I have already read, was or was not, expressly or impliedly, incorporated into the special Act (11 & 12 Vict. c. 133). Now, Mr. Willes referred to the language of the Lands Clauses Act itself to show (as if that was the text) whether it was incorporated or not. It may be one mode of ascertaining it; but it is not the best mode. The best mode is to look at the special Act, and see what the 2nd clause of the special Act says; and that Act says,—" Be it enacted, that the provisions of the Lands Clauses Consolidation Act shall, so far as the same *are applicable*, and *are not inconsistent* with the provisions hereinafter contained, be incorporated with and form part of this Act." Now it is not disputed that the provisions of the 92nd section are applicable in the sense in which the words are thus used; but what was intended was, that the 92nd section was inconsistent with the provisions thereinafter contained; and it is upon that point that we have had—the greatest difficulty, I will not say, but I will say—the greatest pressure upon our minds; because it appears to have been the opinion of a judge of the highest eminence, and for whom we both, in common with all the profession, feel the most profound respect,—it appears to have been his opinion, that it was not incorporated within the Act; therefore we have felt very diffident (I speak for myself, and, I may say, my learned brother, is diffident) of the opinion we have formed; and the reason is, because it certainly appears to us pretty clearly to be decided in the contrary way from that which Vice-Chancellor Turner decided. We thought it pretty clear from the beginning, that there was nothing in any of the subsequent provisions inconsistent with the notion of the 92nd section being incorporated in that Act: and I proceed, therefore, shortly to see what are the grounds on which it was contended, here and before the Vice-Chancellor, that the 92nd section was not incorporated, because it is inconsistent with the Act. Now, I think the argument has always proceeded upon a fallacy. It was assumed that the 92nd section was imperative, as my learned brother just now said; it was assumed that the enactment was, that they *must* take it; whereas it only is, that they *must* take it *if the other party requires it to be taken*; but it would have been the height of injustice to enact that in all cases they must take it *in invitum*. The owners of the manufactory might say in many cases, "It is quite immaterial whether you take the whole or not,—it is immaterial to us whether you take merely this part or the whole;" and then they are not bound to take the rest. It seems to me, the whole argument on the part of the defendants has proceeded on this fallacy; for when one looks at the different arguments which have been deduced from the 12th, 13th, and 14th sections, and considering that the 92nd section was not, that, under all circumstances, the land *must* be taken, but only that it *must be taken if* the owner of the manufactory requires it to be taken, all the difficulty appears to me to vanish. The 13th section, which was mainly relied on, has enactments to this effect. It appears that a gentleman of the name of Crane was the owner of other adjoining land to this manufactory, and by arrangement between the plaintiffs (the owners of this property) and Mr. Crane, for their common convenience, it was arranged that there should be a side line, as it is called—a little private railway, that was to run on, for the accommodation of both the plaintiffs' works and Mr. Crane's,—that was to run on for a considerable way down to the west, so as to join, not this railway, but the Stour Valley Railway, evidently with a view to the accommodation of those parties who were interested in that side line or private railway. The 13th section enacted, "that such part of the railway, by that Act authorised to be made, as should pass through any of the several plots, pieces, or parcels of land, in the parish of Wolverhampton, &c. numbered 159, 160, 161, and 162, on the plan, and so much of the piece of land numbered 158, as was thereinafter defined (that is, those pieces of land for which this side line or private railway was to be formed), should be arched or covered over, &c.; and such arching or covering should commence at the centre of the south-eastern pier of the sixth arch of the Birmingham, Wolverhampton, and Stour Valley Railway viaduct now erecting, &c.; and such arching or covering shall be continued in such manner and of such strength as shall make it sufficient to bear and carry over and upon the same a branch railway, or branch railways, to be worked by horse-power; and in case the owner or owners for the time being, and other parties interested in the said plots, pieces, or parcels of land, and the said company, should differ as to the manner of constructing, or as to the strength of such arching or covering, the same should be settled by arbitration, in manner prescribed by the Railways Clauses Consolidation Act, 1845, with re-

spect to the settlement of disputes by arbitration." Now the argument was, that that provision is inconsistent with the notion that the company should take the whole of this manufactory. If so, it was said, for what purpose make an enactment about making a railway, which will in truth be their own railway?—they might deal with it as they thought fit. But there are two answers to that: first, the answer I have already hinted at, namely, that non constat the railway company would be called upon to take the manufactory—it might be that the plaintiffs might choose to retain their manufactory, and then this secures to them the benefit; and secondly, there is another argument, which completely satisfies this clause; which is this, that this side line or private railway, was not for the exclusive benefit of those parties;—certainly one other proprietor, Mr. Crane, was interested. I do not know that I rightly collected whether any other persons were or not—it is quite immaterial. There is no doubt, the party mainly interested was Mr. Crane: therefore the provision in the 13th section was absolutely necessary to secure Mr. Crane, if there is nobody else interested in the private railway—it was absolutely necessary to secure the interest of the plaintiffs, if they should not call upon the defendants, under the 92nd section, to take the whole of the manufactory. Therefore it seems to me that there is nothing whatever inconsistent with the 13th section in supposing that the 92nd section was to have its full operation. With regard to the 14th section, it is thereby enacted, "that the owner or owners for the time being of the said several plots, pieces, or parcels of land, lastly hereinbefore mentioned, and all other persons interested therein, shall have and enjoy the same powers, rights, privileges, easements, and authorities over, above, and upon the upper surface of the said arching or covering, including the power of making, maintaining, and working the said branch railway or railways, to be worked by horse-power as aforesaid, over and upon the said arching or covering, as the said owner or owners, or other persons, now have and enjoy, in, upon, and over the said several plots, &c. Provided always, that the said owner or owners, or other persons, shall not be at liberty to erect upon the said arching or covering any building or buildings without the consent in writing of the said company," &c. Now it is argued that what the 14th section shews is this, that it is impossible that the 92nd section can be considered as incorporated; for this reason: when this railway was made, there was a provision in the 14th section that no buildings should be erected upon the new side line or private railway (which included part of that which therefore is now to be taken from the plaintiffs) without the consent, in writing, of the company. They would be running over this railway; therefore the company were interested in seeing that nothing should be done to damage them. For what purpose, it is said, stipulate for that, if the company itself is to become the proprietor of the manufactory, as an adjunct to which, the private railway is to be erected? But the same answer applies. The company may become the proprietors, and then this would become superfluous. Of course they could not give a consent in writing to themselves. They may do what they think fit with their own property. It may be, that they may not become the proprietors; then such stipulation is necessary. Then again Mr. Willes has particularly directed our attention to the 12th section, which he says is inconsistent with the notion that the 92nd section was part of this Act. The 12th section provides that certain properties, as they are called, numbered respectively 90, 91, 130, and 140 (being, I will assume for the present, all of them manufactories,—they are all either houses or manufactories, or something that would come within the same class as that which is referred to in sec. 92)—the 12th section enacts, that the company *shall, and they are hereby required*, to purchase *all* these properties, being all included within the line of deviation, but not, apparently, according to the Parliamentary plan that was handed up to us, not the properties that would be taken, unless there should be a deviation from the intended line of railway. Then, it is said, for what purpose do you enact that these particular manufactories should be taken, when the 92nd section would have effected all the purposes? That is a complete fallacy. The 92nd section only gives authority to the owner of a manufactory to insist upon the *whole* being taken, *if* any *part* is taken; because this enactment, as to the properties numbered 90, 91, 130, 131, and 140, positively stipulates that they shall take the whole of it. It is obvious, on looking at the plan, that a large portion of this must have been taken in some way, to stop the mouths of the opposing parties, who were the owners of properties, because they cannot use them all for the purpose of the railway,—they are all along out of the line that was contemplated, though within the line of deviation; and therefore I conclude it was to buy off opposition, that this enactment was introduced. It is sufficient for the purposes of the present object to say, that it is a perfectly different enactment from the 92nd section. The 92nd section does not say that you shall take every manufactory that is within your line of deviation; but it says, if you take a part of the manufactory, you shall, if the owner wishes it, take the whole of the manufactory. What is enacted by the 12th section is different; namely, with regard to five several manufactories within the line of deviation, but not probably in the line that will be touched by the railway, you shall take and pay for those, whether you use them or not. It appears that this also wholly fails as a reason for inducing us to suppose that the 92nd section is inconsistent with the provisions of this Act. Another argument was pressed upon us, but I thought at the time it was unfounded,—that those clauses were introduced in consequence of some application that was made to the Houses of the Legislature,—to the House of Commons, I think, where the Bill was then pending. In the first place, the fact I think wholly fails, as far as the plaintiffs were concerned. It is true, they petitioned the House of Commons,—so it was stated and not controverted,—against the Bill passing, because they thought it would damage their works; and I must say that there appears to me that there was everything like bona fides on the part of the plaintiffs, because they were laying out large sums of money in extending and improving their manufactory. They thought it would materially* damage them, and they petitioned against the passing of the Bill. They did not appear, it is said, by counsel. Mr. Crane did; and very likely they were in communication with him; and Mr. Crane got this enactment, I dare say, put in with regard to the private railway. That was a benefit to them; they were glad of that: but it is quite clear they did not think it went far enough, that the Act secured them in the way they wanted to be secured, for they petitioned the House of Lords that, notwithstanding the introduction of that clause, the Bill might never pass into a law. It is said that they had estopped themselves from this argument about the 92nd section, by representing that the effect of it would be, that they could not insist upon the 92nd section. I think that was very lamely made out; for if ... , did, we cannot of course be bound by their view of the law, and it is very strong in their favour on the question of fact—that they never meant to consent; but what they meant to do was, to insist upon the whole being taken, if any part of it was taken. It seems to me, as far as it has any bearing, it is in favour of the plaintiffs rather than against them; it shews that they had their attention alive to the subject—that they had the 92nd section in their contemplation, and they meant to insist upon it if they could. Now that being the state of the case, the conclusion at which we have arrived is, that in point of fact the property that the railway company has given notice to take, was, at the time they gave the notice, part of the manufactory, and that the 92nd section entitles the owners of the remaining part of that manufactory to insist upon the whole being taken. The only remaining question is that which has been raised now for the first time. It came upon us entirely by surprise, that although they have given a notice, in the ordinary way, that they mean to take the land, and that they are now entitled, if they cannot take the land, to burrow under it, as it were,—to make a tunnel, which, they say, they are able and willing to do, without taking or touching any part of the surface. It is a sufficient answer to that argument, to say, that it has been raised since the matter was before us, and since we granted the interim injunction. The notice is a notice which entitles them to take the land. If they are not restrained from proceeding under that notice, they may take the land in spite of what they are now saying. We should have found the means of compelling them to abide by an undertaking if there were any. A great number of arguments were urged upon us in this way. It was said, Suppose the manufactory was at the top of a hill, and you were burrowing under it at the distance of 1,000 feet, are you then taking part of the manufactory? I do not feel myself called upon to answer that question; but if I were, I rather believe that you are, on the principle of the maxim,—"*Cujus est solum ejus est usque ad inferos,*" Do you mean to say that if you were an inch below the surface you would not take a part of the manufactory? It might all fall down if you undermined any portion of it; and I am rather inclined to think that, however deep below, it would be within that enactment. If that has been a *casus omissus*, I think it ought to be construed in a way most favourable to those who have been seeking to defend their property from innovation. I do not think that arises, because here is a notice to take the land; and upon that notice they are proceeding to take it in the ordinary way. That is virtually what was contemplated when the notice was given; and it is perfectly obvious, from the language of the bond they gave, that that is what they are to do; for they have given a bond, under the 83rd section, to enter, and in that bond they have stated thus: that 150*l.* has been assessed as the value for the purchase in fee-simple of the messuage, tenements, hereditaments, and the several lands mentioned, numbered 161; and that 350*l.* has been assessed as the value for severance. It is perfectly obvious that what is meant is, that they are to take that land, and pay 150*l.* for the value of the building, and 350*l.* for the inconvenience occasioned by the severance. That is the way they put it themselves; and I cannot but come to the conclusion that this is a mere after-thought. I do not think they would have the liberty of doing it, unless they had given a proper notice for the purpose; but it is quite obvious, either they are entitled under this notice, to take the land, or to do nothing. I think, therefore, the plaintiffs are entitled to the relief they ask. The injunction, therefore, will be made perpetual, in the terms in which it was made before, except with this suggestion, that there should be something, I think, of this sort,—the plaintiffs being ready and willing, and undertaking to make a good title to the same, to convey the same. I suppose there will be no difficulty about that. Of course, if you have not a good title to the manufactory, you will not be able and willing to convey it.

Lord Justice Knight Bruce.—I have but a very few words to say, after what Lord Cranworth has said; being very clearly of opinion that the plaintiffs are entitled to a decree, perhaps the few words I am about to say are superfluous. I continue to entertain an opinion differing from the judgment, which I hold in the highest respect and estimation, upon the question of the effect of the 12th, 13th, and 14th sections. I am of opinion, for the mere reason that it is competent to the plaintiffs, if they should think fit, to sell *part* and *not* the *whole*, that those three sections do not prevent the application or incorporation of the 92nd section in the special Act. I am, however, clearly of opinion, upon the undisputed facts of the case, that whether the state of the property at the time when the notice of June last was given, or at the time of the passing of the special Act, is regarded for the purpose, that the land which the company require is part of the plaintiff's manufactory within the meaning of the 92nd section, incorporated, as I have said that I think it is, in the special Act. Observations were made upon the petition to the House of Commons, and upon the petition to the House of Lords—I mean upon the allegations in those two petitions. These allegations may or may not have been accurate. Fraud or unfair intention as to either of these petitions is entirely out of the case. It is not pretended that either of them amounted to it. They might by possibility, however, have been so worded as to amount to representations of fact, or of intention, from which, if they had induced a particular line of conduct on the part of those to whom they were made, it might not have been allowable to the plaintiffs to depart. I am of opinion, however, that the case is not brought so high, and that there is no evidence that by reason of the representations contained in either petition, the company was induced to adopt any line of conduct to its prejudice which otherwise would not have been adopted. Then with regard to the design now said to be practicable, and intended, of carrying the railway under the surface of the land in question, in such a manner as not to disturb or interfere with it; one sufficient answer to that has been stated independently of others that might be given; which is this, that the notice of June was a notice to purchase merely and absolutely the fee-simple of the land specified in it. That notice (whether amounting to a contract or a declaration of intention, forbidden by law to be receded from, is of no importance) had the effect of a contract, and moreover the effect of giving the plaintiffs the right to say that their land should not be taken—that their land should not be used,—I mean the land mentioned in the contract,—unless, if they desired to sell the *whole* of the manufactory, the defendants should purchase it. From that position the defendants, however desirous to recede, are, in my opinion, not entitled to recede. Substantially, therefore, I agree entirely with the decree, that it must be with the plaintiffs; and I believe that my learned brother also agrees with me that these defendants ought to pay the costs of the suit, including the costs of the original motion for the injunction. The particular form and language of the decree may require a little consideration, because it is not necessary that the particular language of the original injunction should be now exactly adhered to. It may be right, but it is not necessary

ROLLS COURT.

Reported by J. Macaulay, Esq. of the Inner Temple, Barrister-at-Law.

Jan. 28 *and* 29.

Edwards *v.* Edwards.

Will, construction—Absolute vested interest of—Dying without leaving issue—Period of distribution.

The

whom

estate

no children, his or her share shall be equally divided between the other two, and for their heirs for ever," do not divest the share of a child who survived the tenant for life, but died without leaving issue, his share is in that case an absolute vested interest not subject to be divested.

The rule of this Court is, that the contingency, or the event which the testator speaks of as a con-

die without leaving issue, then to B. in which case it cannot be referred to any period of distribution, but must be a general contingency to go over.

This was a special case for the opinion of the Court, under the provisions of the late Act. It appeared that William Edwards, of Llangaloch, Glamorganshire, made his will bearing date the 10th of November, 1810, and thereby amongst other things gave, devised, and bequeathed all his freehold and leasehold messuages, tenements, lands, and heredi-

paid unto the testator's wife Mary, the rents, issue and profits of the said freehold and leasehold estate during her life, so long as she should remain his widow; but if she should marry, then she was to have an annuity. Then came this clause, "I give, devise, and bequeath to my eldest son John all that my leasehold messuage or public-house, called Penllergau Arms, and the malthouse and all other buildings and premises belonging to, or situate in, the village of Lllangefelach. And also all that my freehold property called Tyr-pennychwl; and also that messuage or public-house called Welcome Inn, and all buildings and land belonging to it, situate near Mynyddbach, in the parish of Llangefelach, for him and his heirs for ever, to possess immediately after his mother's death, or after his mother's marriage." The testator then made similar devises and bequests of freehold and leasehold property, which he particularly described, to his daughter Mary and his son William; and proceeded: "If my said dear wife shall remain my widow, they, my said trustees, or the survivor of them, shall assign and transfer to each of my children their shares immediately after her death and as soon as they arrive to twenty-one years of age; and they my three children shall pay to their mother as above mentioned. Further, my will and meaning is, that if one of my said three children shall die and leave no children born in wedlock, his or her share shall be equally divided between the other two, and for their heirs for ever; and if two of my children shall die and leave no children born in wedlock, their shares shall go to the surviving one and his or her heirs for ever." The testator appointed Henry Griffiths, John Powell, and his said wife Mary, his executors.

The testator died on the 15th July, 1841, leaving his wife and three children surviving, and on the 27th of April, 1842, his will was proved by Henry Griffiths and Mary Edwards. On the 3rd October 1845, Mary Edwards died without having married again. John Edwards attained twenty-one on the 7th of June, 1848, and in October following he married the defendant Rebecca Edwards. On the 26th of April, 1850, he made his will, and thereby amongst other things he gave and devised all and every his freehold and leasehold estate whatsoever and wheresoever, whether in possession or reversion, remainder or expectancy (over which he had a disposing power) unto his wife Rebecca for life, and from and after her decease for the benefit of his children as therein mentioned; but in the event (as happened) of there being no child of the testator by his said wife living at the time of his decease, or in case his said wife should marry again, he gave and devised all the said freehold and leasehold estates unto and between his sister Mary Edwards and his brother William Edwards absolutely in equal shares, as tenants in common, upon condition of paying his wife an annuity as in his said will mentioned; and he appointed Henry Griffiths his executor. John Edwards died on the 5th of May, 1850, leaving his wife him surviving, but never had any child. His will was duly proved on the 7th of June, 1850. The debts and funeral and testamentary expenses of William Edwards have all been paid. Mary Edwards and William Edwards the son have attained twenty one. The legal estate in the freeholds and leaseholds devised and bequeathed as aforesaid by William Edwards is now vested in Henry Griffiths, who is willing to convey and assign as directed by the Court. Questions, however, arose with reference to the claims and interest of the defendant Rebecca Edwards, on the one hand, and the plaintiffs Mary Edwards and William Edwards the son, on the other, Rebecca Edwards contending that her hus-

bequeathed to him as aforesaid; or if that were not so, that she was entitled at least to dower on the freeholds; and the said Mary Edwards and William Edwards the son contending that Rebecca Edwards has no interest whatever in the freeholds and leaseholds so devised and bequeathed to her husband, either in respect of dower or otherwise, and that the same ought to be conveyed to them, their heirs, execu-

stances aforesaid, by virtue of the will of William Edwards, take a fee in the freeholds and an absolute interest in the leaseholds devised and bequeathed to him, so as to be capable himself of devising and bequeathing them; 2nd, If he did not take such fee and absolute interest, whether his widow is or is not entitled to dower out of the freeholds so devised by the said will of the said William Edwards; and 3rd, Whether, in the events which have happened, the plaintiffs are or are not entitled to an absolute conveyance and assignment to them, their heirs,

question is as to the executory devise over, whether by the will of the testator an absolute fee was given to John Edwards, or whether there was an executory devise over to the children. If the latter, then a question of law arises. The authorities all come to this, that there is one construction where the gift over is made to take effect on death simpliciter, which must happen at all events, and another construction where it is made to depend not only upon that, but upon another contingent event which might or might not happen. In the first case, the death of the testator is the event upon which the gift over depends, if there be no antecedent tenancy for life, and where there is a tenancy for life, then the tenant's life is the event referred to. Then as to the second class of cases—where there is an absolute gift, and an event which may or may not happen, a contrary principle to that in the former case is established, and the gift is to be looked at without reference to the preceding tenancy for life (*Allen* v. *Farthing* Jarm. Wills, 688; 2 Madd. 310); and you must refer to the death of the testator or tenant for life only where it is an event certain, as death. Where there is a collateral event, the words must be taken in their natural sense. Then as to the question of dower raised by John's wife. Though the estate is an equitable estate, she being married subsequently to the Dower Act, would be entitled to dower if John took a fee, there being no difference between the right to dower and curtesy. He cited *Child* v. *Giblett*, 3 Myl. & K. 71; *DaCosta* v. *Kerr*, 3 Russ. 360; *Galland* v. *Leonard*, 1 Swanst. 161; *Home* v. *Pillans*, 2 Myl. & K. 15; *Barker* v. *Barker*, 2 Sim. 249; *Moody* v. *King*, 2 Bing. 447; 2 Rop. Husb. and Wife, Jac. ed. Add. No. 2.

Shebbeare, contrà, referred to *Clayton* v. *Lowe*, 5 Barn. & Ald. 636; *Barker* v. *Fox*, 6 Beav 82; *Home* v. *Pillans*, 2 Myl. & K. 15; *Moody* v. *King*, 2 Bing 447.

Gifford, in reply, cited *Cripps* v. *Wolcott*, 4 Madd. 11, and *Woodsworth* v. *Wood*, 1 H. L. Ca. 129.

Thursday, Feb. 5.—The MASTER of the ROLLS.—The question in this case arises on the construction of a clause in the will of a testator, of the name of William Edwards. The testator gave all his real estate to trustees, in trust for his widow for her life or during her widowhood, subject, as to part, to a certain annuity, and his will then proceeds thus: "If my dear wife shall remain my widow, then my said trustees, or the survivor of them, shall assign and transfer to each of my children their shares immediately after her death, and as soon as they arrive to twenty one years of age, and they my three children shall pay to their mother as above-mentioned. Further, my will and meaning is,"—this is the clause that raises the question,—"that if one of my said three children shall die and leave no children born in wedlock, his or her share shall be equally divided between the other two, and for their heirs for ever; and if two of my children shall die and leave no children born in wedlock, their shares shall go to the surviving one and his or her heirs for ever." The testator at his decease, left his widow and three children, a son and two daughters, surviving him. The children all attained the age of twenty-one, and survived the wife, after which the son died without issue: and the question is, under these words, whether on attaining his age of twenty-one years, he took an absolute interest in the lands devised, or whether, on his afterwards dying without leaving a child, his share went to his sisters. The principles which apply to cases of this description are well established, nor do I think that they are of difficult application to the facts of the

am of opinion, however, ... case, and upon the words here occurring, the construction to be put upon these words must be the same in the case of real estate as if the subject-matter were the bequest of a legacy. There are four classes of cases, in which questions of this description have arisen, and it will be necessary for me shortly to refer to each of them, in order to make my decision in the present case

shall die then to B. the second as that of a gift to A. and if he shall die without leaving a child then to B. The third and fourth classes of cases are where gifts of this description to A. and B. are preceded by a life estate, or some other interest of partial duration, and may be described thus: a gift to one for life, and after his decease to A. and if A. shall die then to B.; and fourthly, a gift to one for life and after his decease to A. and if A. shall die without leaving a child, then to B. It is obvious that in the first class, as the gift to A. takes effect, if at all, ... on the death of the testator, the words

contingent by reference to ... particular period; and as no period of time is mentioned in the will, it is necessarily presumed that the period of time to which the testator refers, is the period of possession or payment, that is his own death, when the legacy to A. will take effect; and the subsequent limitation is introduced to prevent a lapse of the legacy in case A. did not survive the testator. In such cases, therefore, the rule may be considered to be settled, that the bequest must be read somewhat to this effect; that is to say, a bequest to A. but if A. shall die before the bequest becomes vested in him, then to B; and the consequence is if A. survives the testator he takes an absolute vested interest in the legacy, and not a life interest to A. with remainder to B. This is clearly settled by a great variety of authorities, which are referred to in the elaborate judgment of Lord Brougham, in *Home* v. *Pillans*. It can scarcely be necessary, to observe, with respect to the observations which I make upon these cases, that the rule of law which does not enable a legatee to compel payment of his legacy for a year does not affect the question which I am now stating; although, for the convenience of administration the executor is not compelled to assent to the legacy before he has ascertained what the assets are, and convenience has fixed that period at twelve months, and the legatee is entitled to it immediately upon the death of the testator. In the second of the supposed cases there is a manifest distinction. There the event spoken of on which the legacy is to go over is not a certain, but a contingent, event. It is not in the case of the death of A. but in case of his death without issue or without leaving a child, and here it would be importing a meaning and adding words to the will if it were to be construed to import, as a condition to entitle B. to take upon the death of A. without issue, it was to happen at some particular period. In these cases it has always been held, if at any time, whether before or after the death of the testator, A. died without leaving a child, the gift over takes effect and the legacy vests in B. This is best established by the case, which was particularly referred to by Mr. Gifford, of *Allen* v. *Farthing*, which is mentioned in Maddock, but which, in fact, is only reported in the second volume of Mr. Jarman's book on Wills. All those cases are, of course, liable to be varied by the force of particular expressions which the testator may have made use of in his will importing a different intention, and there are many cases of this description, but they do not affect the rule; on the contrary they must be held tacitly to admit the application of it, inasmuch as they are treated as exceptions to any existing rule. In the third class of cases where a life estate is given, the same rule which applies to the first class of cases in my opinion applies equally, but the application of it fixes a different period of time. In the first case the rule is if A. die before the period of possession or payment, that is, before the death of the testator, the legacy goes to B. In the class of cases I am now considering the rule is, I think, the same, namely, that if A. die before the period of possession or payment, that is, before the death of the tenant for life of the legacy, the legacy goes to B. There is the case of *Harvey* v. *M'Loughlin*, reported in 1 Price, and which is cited with great approbation by the Vice-Chancellor, Sir James Wigram, in *Salisbury* v. *Petty*, 3 Hare, 92; and it may further be observed, that the propriety of giving effect to the testator's will making a contingent event by referring that event to the period when the legacy is vested in possession rather than to the death of the testator, where those periods are not

identical (which they often or usually are) was the ground on which the House of Lords reversed the decision of Lord Cowper in *Bindon* v. *The Earl of Suffolk*, 1 P. Wms. 96, although the principle of that decision was to be recognised, and has always since been maintained. The case of *Bindon* v. *The Earl of Suffolk* will be familiar to the bar. It was a case in which the testator gave an interest in a debt which was to be got in, and gave no legacy, in fact, until the legacy was got in and the House of Lords approving the principle of Lord Cowper's decision, yet held that the death before the debt was got in made the gift over take effect. The case before me comes within the last class of cases, where a life estate is given to one of the subjects of the gift, and on the determination of that estate the subject of it is given to A. with a direction that if he shall die leaving no child, his share shall go to the survivor. In this class of cases it is obvious that the event of death without leaving a child may be applied either to the period of distribution, or to any period of time either before or after that period, whenever it may occur: nor, if it were res integra, would it be easy, in the absence of any indication of intention to be collected from the rest of the will, to determine which of those constructions ought to prevail. I consider it however settled, both by principle and authority, that in the absence of any words indicating a contrary intention, the rule is that these words indicating death without leaving a child, in which case the gift over is to take effect, must be considered to refer to that event occurring before the period of distribution. The principle which regulates such cases is to be found in an often-expressed desire of the Court to avoid a case so inconvenient as one which must suspend the absolute vesting of the subject of the gift during the whole life of the legatee or devisee—a principle which seems materially to have influenced Lord Brougham in his decision in *Home* v. *Pillans*. Decided authorities, however, concur with the principle in this case; and the very point in question has arisen that was determined in the cases of *Da Costa* v. *Keir*, 3 Russ. 360; and *Galland* v. *Leonard*, 1 Swanst. 161; and *Giblett* v. *Child*, 3 Myl. & K. 71. In both these cases a previous life estate had been given, after which the legacy was given to one, with a gift over, in case that person should die leaving a child, to that child, and if none, to a third person. In both cases the Court determined that the legatee having survived, the tenant for life was entitled to the fund absolutely. Neither does the case of *Home* v. *Pillans*, 2 Myl. & K. 15, present to my mind the difficulties which appear to have suggested themselves to Mr. Jarman in his comment upon that case. That was a case where a legacy was given to two persons, "when, and if they attain their ages of twenty-one years," and in case of the death of either of them leaving a child, then the share of the legatee so dying was to go to that child. There was no gift, therefore, unless the legatee attained twenty-one, and this period was not identical with that of the death of the testator; consequently, if the dying without leaving a child could upon principle and authority—as I believe it to be—be fairly and properly considered to have reference to the period of distribution, as where that period is not the death of the testator, that it is in accordance with the principle that Lord Brougham decided, that the dying without leaving a child had reference to that event occurring upon that period of distribution in like manner as if that period had been appointed to take effect after a life estate, or after any other partial interest. In this case Lord Brougham observes, "It may be stated as a general proposition, that where the bequest over is in case of the legatee's death and no other reference can be made, the period taken is the life of the testator; but where another can be found that will be preferred, in order to avoid the supposition of the testator having contemplated and provided against the lapse. A preceding gift for life, or any other interest less than the gift of the property, will furnish this reference." For all these reasons I am of opinion that the son who survived his mother as tenant for life took an absolute vested interest in the share of the testator's property, not liable to be defeated upon his afterwards dying without leaving a child surviving him.

Shebbeare.—Then it will be a simple declaration.

The MASTER of the ROLLS.—Yes.

Giffard.—Of course the costs will be according to the agreement out of that share?

The MASTER of the ROLLS.—If I am right in the view which I take of the principle of these cases, the effect is as it appears to me, that the rule of the Court is, that the contingency, or the event which the testator speaks of as a contingency, is always referable to the period of payment or distribution, except in the single case where there is a simple gift to A. and if he shall die without leaving issue, then to B. in which case it cannot be referred to any period of distribution, but must be a general contingency to go over.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. HENRY COOKE, Esq. Barrister-at-Law.

Dec. 20 *and* 21, 1851, *and Feb.* 18.

LONG v. STORIE.

Usury—Mortgagors and mortgagees—Transfer of mortgages—Statute 12 *Anne*, *c.* 16.

An estate was mortgaged for 7,500*l. and the equity of redemption was mortgaged for* 5,000*l. to another party; a third party agreed to lend* 12,500*l. at five per cent. or if interest regularly paid, at four per cent. and take a transfer of both the former mortgages. The third party had his money ready at the time, but the first mortgage could not be transferred on account of some difficulty with the mortgagor, but* 5,000*l. were paid to the mortgagee of the equity of redemption, and that security was at once transferred. The mortgagor signed an agreement that interest on the* 7,500*l. mortgage when transferred should run as from the date of the agreement, and that the deed of transfer should bear date the same day as the agreement. The* 7,500*l. were paid, and the deed of transfer of the first mortgage was executed six weeks after the date of the agreement:*

Held, that although the transferee of the 7,500*l. mortgage took interest at four per cent. for the six weeks before the actual execution of the deed, yet as he might lawfully take interest at five per cent. for the actual execution of the deed which would exceed in amount the interest received, the transaction was not usurious within the meaning of the statute* 12 *Anne*, *c.* 16, *and that the contract was that interest should be paid at four per cent. not under the deed, but on the agreement, calculated at the rate mentioned in the deed. The word "reserved" used in the statute interpreted.*

This was a suit of a very complicated character, but the case in its main feature may be stated in a moderate compass. By indentures dated the 14th or 15th of May, 1843, the Rev. Job George Storie appointed and conveyed the advowson of the living of St. Giles, Camberwell, to the trustees of the Norwich Union Assurance Society, for securing the due payment of 7,500*l.* with interest after the rate of 5*l.* per cent. per annum. By an indenture dated 29th of the same month of May, Mr. Storie mortgaged the equity of redemption, to Mr. Cockell for securing the due payment of 5,000*l.* with interest after the rate of 5*l.* per cent. per annum. After this, Captain Long and Mr. Storie entered into a treaty, by which, Captain Long was to advance 12,500*l.* at per cent. interest, and the terms were contained in an agreement dated 26th December, 1843 (exhibit A), which was signed by the solicitors of both parties. By this it was arranged and agreed, that the mortgages of the advowson should be transferred to Captain Long; that Mr. Storie should assign life policies for sums not less than 12,000*l.*, and should execute a warrant of attorney, to confess judgment, and that execution should issue if the interest should get into arrears. It was also stipulated, that if the interest should be paid within one month of its falling due, only 4 per cent. should be paid instead of 5 per cent.; it was also agreed, that there should be a power of sale, if the interest money should fall into arrear for two months; but if the sum was paid regularly, the principal should not be called in, for ten years. On the 25th of March, 1844 (exhibit C), the solicitor of Captain Long wrote a letter of that day to the solicitor of Mr. Storie, stating that the writer held in his hands Captain Long's cheque for 12,500*l.* and that the money was ready to be paid on the execution of the deeds of transfer of the mortgages. On the 29th of the same month of March, a memorandum of that date (exhibit E) was made and was signed by Mr. Storie, which, after reciting that Captain Long had that day paid to Mr. Cockell, the mortgagee of the equity of redemption of the advowson, 5,000*l.* on behalf of Mr Storie, proceeded in the following words: "And whereas a deed of transfer from the Norwich Union Assurance Office, to the said John Long of a mortgage debt of 7,500*l.* has been prepared, but has not yet been executed, and the said John Long, being prepared with the said sum of 7,500*l.* (which is a first charge upon the advowson of Saint Giles, Camberwell), I hereby undertake that the said deed of transfer from the Norwich Union Assurance Office shall bear date as of this day, and that interest on the said sum of 7,500*l.* according to the rate mentioned in the said deed, shall be calculated and payable to the said John Long, from this day. I also undertake to execute a warrant of attorney to enter up judgment against me for the said sum of 5,000*l.* when required to do so." Contemporaneously with this memorandum a deed of transfer of Mr. Cockell's mortgage was executed to Captain Long, with a covenant to pay, 5*l.* per cent. interest, and a proviso that if interest were regularly paid 1*l.* per cent. would be accepted, and on the execution of this the 5,000*l.* were paid. A deed was also prepared, also bearing date 29th of March, 1844, professing to be a transfer of the first mortgage from the Norwich Union Assurance Company to Captain Long, in consideration of the 7,500*l.* The proviso for redemption was on payment, with interest at 5 per cent. from the day of the date thereof and a proviso that the rate of interest should be 4 per cent. if the same were regularly paid within thirty days of its falling due. This deed was not actually executed until the 4th of May, after its date, although the interest was reserved as from the 29th of March preceding.

One of the many questions made in the suit was whether this transaction was not tainted with usury, it being proved that the 7,500*l.* were paid to the Norwich Union Assurance Company on the 4th of May, and interest on the same at 10 per cent. down to that day, amounting to 363*l.* 5*s.* 10*d.*, while as before mentioned, the interest on the transfer was reserved for the five weeks between these two dates.

Bethell, *Follett*, and *Bazalgette*, for the plaintiffs.

Rolt, *Trip*, *Shebbeare*, *Schomberg*, and *J. H. Palmer*, for the several defendants.

Several cases were cited, and the same, together with the chief points in the argument on the question of usury, are noticed in the judgment.

Wednesday, *Feb.* 18.—The VICE-CHANCELLOR detailed the facts of the case, and then proceeded: It has been argued that the 7,500*l.* not having been paid until five weeks after the date of the deed, and the interest being reserved from the date of the deed, that that is not a valid transaction within the statute of 12 Anne, c. 16. That statute in the first section enacts, "that no person after the 29th of Sept. 1714, upon any contract which shall be made after that day, shall take, directly or indirectly, for the loan of any moneys, wares, merchandise, or commodities whatsoever, above the value of 5*l.* for the forbearance of 100*l.* for a year, and so after that rate for a greater or less sum, or a longer or shorter time. That all bonds, contracts, and assurances whatsoever, made after the time aforesaid for the payment of any principal, or money to be lent or covenanted to be performed upon, or for any usury whereupon or whereby there shall be reserved or taken above the rate of 5*l.* for every 100*l.* as aforesaid, shall be utterly void, and that 'all persons who shall upon any such contract, take, by way or means of any corrupt bargain, loan, &c., or by any deceitful way or means, or by covin engine, or deceitful conveyance,' a larger amount of interest than five per cent. shall forfeit treble value." Now it is to be observed that Capt. Long did not in the result take more than 5 per cent. interest. He actually received on the 29th of September, 1844, under the terms of the deed, interest at the rate of 4 per cent. for 183 days from the 29th day of March; and the greatest amount which by the statute of Ann he was entitled to take was interest at 5 per cent. for 147 days from the 4th day of May. This is greater than the sum he actually received, and therefore there was no taking of usurious interest within the statute of Ann; whatever interest may have been reserved, there was not a larger amount actually taken than the statute permits. Then, was there a larger, *i. e.* an usurious interest reserved? The words of the statute are, that "all bonds, &c. whereupon or whereby there shall be reserved or taken above the rate of 5*l.* for every 100*l.* as aforesaid," *i. e.* for a year, are to be void. It is clear, that on the face of the deed itself, there is no reservation of usurious interest—no reservation above 5*l.* for every 100*l.* for a year, because the clause of redemption stipulates for the legal amount of interest, viz. 5 per cent. per annum. But then it was said that the deed does not represent the real, at least the entire, contract between the parties; because no money was paid till May, and that the real contract was to be found in the agreement contained in the memorandum of the 29th March, 1844 (exhibit E). Now this stipulates that the interest to be paid shall be calculated according to the rate mentioned in the deed. This, therefore, is the same contract as the contract in the deed, except as to the period from which the interest is to run; and therefore, on the face of the contract, there is no usury,—not, I say, on the face of the contract. Now, what is the meaning of the word "reserved" in this statute? The cases have perfectly settled this point. In *Floyer* v. *Edwards*, Lofft, 594 and 599, Lord Mansfield says, "An actual borrowing of money, with a penalty on forbearance, is no usury, if the party borrowing can discharge himself by payment within the time. And the case in Croke which says this (*Roberts* v. *Trenayne*, Cro. Jac. 507), is much stronger than the present case, by the difference of the penal sum, which is greater. In the case in Hawkins's Pleas of the Crown, b. 1, c. 29, s. 36, it is expressly said, that "where it is in the election of the party borrowing to discharge himself, and so avoid paying the increased interest, this is not usury." And so in *Burton's* case (5 Rep. 69a (139), "It being in the election of the grantor to have paid and frustrated the rent, this is not usury." Another important case (not cited in the argument), is *Tate* v. *Wellings*, 3 T. R. 531.

There the obligor of a bond had applied to the obligee for the loan of a sum of money which the obligee agreed to let him have, but said he should expect the same interest as that which he was then receiving in the Short Annuities, viz. eight and a-half per cent., which being assented to, it was agreed that the money should be raised by a sale of Short Annuities, to the amount of 912*l.* 12s. 6d. and a bond was drawn up, dated Sept. 1, 1784, by which the obligor was to replace the amount in the same stock, on the 1st Sept. 1785, but if it were not replaced by that time, he was then to repay that sum (912*l.* 12s. 6d.) on the 1st of January, 1786, or to pay in the meantime such interest as the stock would have produced; and it was held that, because he had in the first year the option to replace the stock, and so release himself, that saved the ulterior contract, by which after the first year he was bound to replace the principal and interest beyond five per cent. "I have had some doubt in the course of the argument," says the Lord Chief Justice (at p. 537), "whether, as the defendant had no power to replace the stock after the expiration of the year, it did not become a loan of money from that time, with a reservation of usurious interest, and that the pretence of transferring the stock was merely a colour for the usurious transaction. But my doubt is now removed, for this colour is expressly negatived by the finding of the jury. If, then, this transaction was legal during the first year, is there any thing superadded to make it usurious? I think not." And Buller, J. says, "in order to support the defence set up, it must be shewn that the contract was usurious at the time it was entered into, for if it were legal at that time, no subsequent event can make it usurious." I therefore am of opinion, that neither in the deed nor in the memorandum in this case is there a usurious reservation of interest within the statute. I do not say that such a construction might not be put on the deed and *agreement* if there were any evasion, if this was a mere contrivance, if there had been an agreement that the money should not be paid at the day of the date of the deed, or if there had been any thing to indicate an intention to secure or to take more than the legal rate of 5 per cent. per annum. There is, however, nothing in support of such a case; on the contrary, the whole evidence is against it. In *Bangley's* case, 1 Rose, 171, the warrant of attorney was given for securing repayment of 600*l.* and interest from the 25th March. It was said by Lord Eldon, that if the 600*l.* were not paid at the 25th March, but were, in fact, advanced in parcels at different times, the last of which was on the 1st of June, it was impossible to say that the transaction was not usurious." But in the present case, the evidence clearly shews that the intention was to advance the money immediately; and that the only reason why the money was not advanced on the execution of the deed was because the borrower was unable to carry out his part of the agreement; and this brings the case within the subsequent expressions of Lord Eldon, which explains what was meant by the part just quoted. "It has been said that Bangley had the 600*l.* ready, that the bankrupt might have had it, and the case has been assimilated to that of a banker; and if that was in fact the agreement, and the transaction was boná fide, that the money being paid as it were to the bankrupt, and repaid by him to the lender, or left in his hands to be drawn out as he, the bankrupt, wanted it, I do not think the money not being paid at a subsequent day, though a breach of the contract, would affect it with usury." And here the money was left in Captain Long's hands, if in his hands at all, for the express purpose of being paid to the Norwich Union Company at the fitting time. Independently, however, of the grounds upon which it may be held, that the deed itself is not usurious, the effect of the agreement and the dealings of the parties might be, that the contract might be void although the deed itself was not usurious. Now, if we look at the position of the parties, we find Captain Long to have got a transfer of the second mortgage from Cockell for 5,000*l.*, but the first mortgage for 7,500*l.* was *still outstanding* in the Norwich Union Company. The effect would be, that interest on the first mortgage was running on, and erecting itself into a charge on the land as against those claiming on the second mortgage. A stipulation, therefore, that the deed of transfer of the first mortgage should bear date on the day of the date of the transfer of the second mortgage, would not necessarily be a usurious stipulation: it might have this construction, that Storie undertook to pay this *interest* so as to prevent it being a charge on the land. And it is evident that something of this sort was intended; for otherwise why is mention made of the second mortgage at all? What is the meaning of the recital of there having been that security entered into, and of the transfer of it? and then the agreement that the deed of transfer of the first mortgage for 7,500*l.* shall bear date as of that day (viz. 29th March), and that interest thereon shall be payable from that date (not under the deed, but) calculated according to the rate mentioned in the deed?

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. BENNET, Esq. of Lincoln's-inn, Barrister-at-Law.

Saturday, May 8.

Re THE STAFFORDSHIRE AND SHROPSHIRE RAILWAY COMPANY.

Winding-up Acts—Payment into court.

A party who admitted that he had had a sum of money in his hands belonging to an association, but who also said he had parted with it, will not be directed to pay the same into court. The 66th section of the Winding-up Act not applicable to such a case.

Daniel moved to discharge the Master's order, directing a gentleman named Archibald to pay to the official manager the sum of 4,940*l.* being the amount admitted by him to have been in his possession previously to the company having proved abortive. The usual winding-up order had been obtained, and the matter was referred in the usual way to the Master. The Master, upon the application of the official manager, personally examined Mr. Archibald, who admitted that he had, in 1846, in his possession the sum of 4,940*l.* part of which he had handed over to his co-trustee. Upon this admission the Master directed Mr. Archibald to pay the amount to the official manager, under the 66th section of the 11 & 12 Vict.(*a*) which provided that where any funds, books, &c. were in the hands of trustees, agents, bankers, &c. to which the company were primá facie entitled, it should be lawful for the Master to order the same to be transferred to the official manager.

Roxburgh, for the official manager, submitted that the intention of the Legislature was to give the Masters jurisdiction without the circuitous proceeding of filing a bill.

The VICE-CHANCELLOR said, that he must say, that in his opinion, the meaning of the Act was, that where there should be a distinct admission that the party held a fund to which primá facie the company or association was entitled, then it should be lawful for the Master to order the same to be transferred; but it never was intended where the party, as here, admitted that he had had the fund, but had parted with it, that in such case the Master should have power to order him to pay it over to the official manager, without the sanction of the Court. He thought, therefore, the Master was wrong, and the appeal would be allowed. Some discussion then took place as to the costs, and his Honour eventually directed Mr. Archibald to have all the costs (not including his costs as witness) out of the estate. *Order accordingly.*

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

Saturday, May 1.

REG. *v.* THE INHABITANTS OF UTHWAITE.

Poor—Settlement by payment of rates, and renting a tenement—Joint tenants—Evidence.

In support of an order of removal it was proved that T. A. and W. A. father and son, were joint tenants of a farm, of the requisite value, in the appellant parish, that W. A. resided in the farm-house; but that the rent was paid by the hands of T. A.; that during the year of occupation three rates were made, which were demanded of T. A. and paid by him, but that in the rate-book the property was rated to the first two rates in the name of "Mr. A." and to the last in that of T. A.:

Held, that there was evidence for the sessions of a settlement gained by W. A. by payment of rates under 6 Geo. 4, c. 57, s. 2.

Upon appeal against an order of removal the sessions confirmed the order, subject to a case. The grounds of removal were, that the pauper's husband, William Atkinson, in 1844, rented a house and farm in the appellant parish, and was rated and paid the rates in respect thereof. No question was raised as to the sufficiency of the property in point of value to confer a settlement; but it appeared that the house and farm were rented by William Atkinson and his father Thomas Atkinson, as joint tenants; that the farming stock belonged to the son, who lived in the farm-house and occupied the farm; but that the rent was paid by the hands of the father; of and by whom also the rates were demanded and paid. These rates were made during the year of occupation; and in the rate-book the property was rated to the first two rates in the name of "Mr. Atkinson;" in the last in that of Thomas Atkinson. The question was, whether there was any evidence to warrant the sessions in holding the settlement established.

Rose and *Lefroy*, in support of the order of Sessions, contended, first, that there was evidence of a settlement by payment of rates. As William was in occupation, the "Mr. Atkinson," in the rate book, must be understood of him; and the payment by one of two joint tenants is a payment by both. 2. That there was evidence of a settlement by renting a tenement. To establish that, a rating for a whole year must be shewn; and it is shewn, because the rating of one joint tenant is the rating of both. The payment of the rent by the father also inures to the benefit of the son. (They referred to the following statutes and cases: 3 Wm. & M. c. 11, s. 6; 6 Geo. 4, c. 57, s. 2; *R.* v. *St. Mary Kalendar*, 9 Ad. & Ell. 626; *R.* v. *St. Lawrence Appleby*, 6 Q. B. Rep. 812; *R.* v. *Heckmondwicke*, 2 Doug. 561; *R.* v. *Bridgwater*, 3 T. R. 550; *R.* v. *Hulme*, 1 Q. B. Rep. 538; *R.* v. *Painswick*, Burr. S. C. 465; *R.* v. *Walsall*, Cald. 35; *R.* v. *St. Marylebone*, 15 Q. B. Rep. 399.

Bliss and *Price*, contrà.—First, there was no evidence of any rating of William; the Sessions have not found the fact. The evidence shews that Thomas and not William was *rated*; and Thomas must be taken to have paid in discharge of his own liability, and not as agent of William. The mere joint tenancy creates no agency between them for this purpose. Secondly, this is not such a tenement as will satisfy the statutes. It must be wholly rented by the party who claims the settlement, and *R.* v. *St. Lawrence Appleby* is wrongly decided. *R.* v. *Berkswell*, 6 Ad. & Ell. 282, was not cited in that case. (*R.* v. *Weobly*, 2 East, 68; *R.* v. *Whittlebury*, 6 T. R. 464; *R.* v. *Field*, 5 T. R. 587; *Moss* v. *The Overseers of Lichfield*, 1 Piggott & R. El. Cas. 118; *R.* v. *Caversuall*, 10 Ad. & Ell. 270.)

Lord CAMPBELL, C. J.—The only question put to us is, whether there was *any* evidence to support the finding of the Sessions; and I am of opinion that there was. There was a joint tenancy by the father and son of land of sufficient value; but the circumstance of the joint tenancy is, I think, wholly immaterial. First, as to the assessment, was there not some evidence that William was assessed? He alone was in occupation, and I think we may fairly presume that that was known, and that "Mr. Atkinson" in the rate-book, meant William. Secondly, as to the payment, it was made by Thomas; but then he might either maintain an action for the money so paid, or in equity he would be entitled to take credit for that payment. In effect it was a payment by both, and therefore payment by cash.

WIGHTMAN, J.—We have not to determine on the weight of the evidence, and it is perfectly clear that there is some evidence that William was assessed. As to the payment, I feel more doubt; but though it is a payment by one whose name is not in the rate, I do not think we can treat it as a mere voluntary inoperative payment, as Mr. Bliss contends.

CROMPTON, J.—I think that there was plenty of evidence as to the assessment; and I cannot see much doubt as to the payment. It seems to me that the reasonable conclusion is, that both the rent and the rates were paid by the father on his own and his son's behalf; and it is properly put by Mr. Rose, that the statute does not require payment by the lands of the party assessed, but payment by him or his agent on his behalf.

Order of sessions confirmed.

REG. *v.* THE CLERK OF THE COUNTY COURT OF SURREY.

County Court—Judgment for debt and costs—Payment of debt by plaintiff to defendant out of court—Execution for costs.

A plaintiff who has obtained judgment for debt and costs, in the County Court, and has received from the defendant, out of court, either the whole or part of the debt, is entitled to a warrant of execution for the residue of the debt and the costs, or for the costs alone as the case may be, although in form the judgment is to pay the money into court.

A rule had been obtained, calling upon the clerk of the County Court of Surrey to shew cause why a writ of mandamus should not issue, commanding him to issue, under the seal of the Court, a warrant of execution to the high bailiff, to levy the sum of 5*l.* 7s. 2d. upon the goods of one John Meyer, pur-

(*a*) Sec. 66, 11 & 12 Vict. c. 45: "And be it enacted, that after the appointment of the official manager of the company, the Master shall from time to time, by order to be made upon the application of the official manager, or of any contributory, order and require any contributory, trustee, receiver, banker, or agent, to pay, deliver, or transfer forthwith, or within such time as the Master shall direct, into the hands of the official manager, *any sum or balance, books, papers, estate, or effects which shall happen to be* in his hands for the time being, *and to which the company* is primá facie entitled, or which, in the case of a contributory, shall appear to the debit of his account as contributory with the company, as entered in the books of the company, anything in the present practice of Courts of equity to the contrary notwithstanding: provided nevertheless, that it shall be lawful for the person upon whom any such order shall be made to apply to the Master to discharge or vary any such order, or to enlarge the time thereby fixed for such payment.

suant to sec. 94 of 9 & 10 Vict. c. 95. It appeared by the affidavit that the overseers of Christchurch had recovered judgment against Meyer in the County Court for 34*l.* 10s. 10d. debt, and 5*l.* 7s. 2d. costs. The judgment was in the usual form requiring the defendant to pay the amount into court; but, instead of so doing, the defendant paid to the plaintiff himself out of court, and the plaintiff received the sum of 34*l.* 10s. 10d. The costs however were not paid; and the plaintiffs applied, first to the clerk and then to the judge of the court, for a writ of execution to levy the costs only; but they thought that under the County Courts Acts and the rules framed thereunder they had, under the circumstances, no power to issue execution for the costs.

Monday, April 26.—*Bramwell* and *C. Clark* shewed cause. The difficulty in this case arises from the payment having taken place out of court, which is not contemplated by the statute. The Legislature clearly intended these courts to be self-supporting, and the different steps in the proceedings are to be conducted through the intervention of the Court, and upon payment of certain fees. Consequently there is no provision for issuing execution for a part under circumstances such as exist in this case. There may be a partial execution where the debt is made payable by instalments (sec. 95); and there is also a remedy upon any unsatisfied judgment, by what is termed a judgment summons under sec. 98 of the first Act; but there is no authority given by the Act to issue the warrant of execution for less than the whole amount ordered to be paid (sec. 94). If the warrant was issued for less, there would appear upon the proceedings in court no satisfaction of the judgment; because the payment out of court would never be recorded in any way. (They referred also to ss. 109, 110; 12 & 13 Vict. c. 101; s. 7; *Webber* v. *Hutchins*, 8 M. & W. 319; and to the rules (cxix. to cxxiv.) and forms of proceedings sanctioned by the judges.)

Brewer, contrà.—One of the forms is applicable to the case of a residue remaining unpaid; and unless there can be partial execution in a case like this, the plaintiff has no remedy.

Cur. adv. vult.

Lord CAMPBELL, C.J. now delivered the judgment of the Court.(*a*)—Upon this rule a question has been raised—a most important question—whether a plaintiff who has recovered a judgment in a County Court for debt and cost, and has received the debt out of the court, is entitled to a writ of execution for the costs. For the defendant it was contended, that according to the statute and the form of judgment, and the rules and practice of the County Court, the whole of the sum recovered ought to be paid into court, or to the officer of the Court, and if the plaintiff received any part himself, he lost the right to an execution for the residue. But we find nothing in the statute or the rules to support this view. Provisions are made in both for execution where the residue after part satisfaction (see section 95 of the Act, and rules 120, 121, and 122),—and no provision is found prohibiting part satisfaction to a plaintiff without the intervention of the Court. The order to the defendant, in the form of the judgment, to pay the money into court, is directory, and for the benefit of the defendant, if he chooses to adopt that mode of payment. The defendant further alleges that the Legislature intended to secure a sufficiency of fees for the support of the County Courts, and that the bringing of all moneys recovered into court is important for this purpose. This part of the argument seemed to indicate that the County Courts were instituted merely as machines for grinding costs and raising revenue for the Chancellor of the Exchequer. But we think that there was not any intention to create useless costs. Plaintiffs generally in our courts are entitled to prosecute or settle their suits as they choose, and we see no reason for considering the County Courts to stand in a different situation in this respect from the other tribunals of the country. It is obvious that the plaintiff's power of settling with the defendant without an execution may be the means of saving expense; by so settling for a part he does not, in our judgment, incur any incapacity in respect of obtaining execution for the remainder. As the judge when applied to had declined to order a writ, we think the rule ought not to be drawn up within a week of issuing the execution, as prayed, otherwise the rule will be absolute. I wish it to be understood that it is our clear opinion that if the whole of the debt has been paid there may be execution for the costs, and if a part has been paid there may be execution for the residue and for the costs.

Rule absolute, unless execution is sued.

Tuesday, May 4.

WILSON *v.* EDEN.

Devise — Construction — Republication — Stat. 1 *Vict. c.* 26, *s.* 26—*When leaseholds pass under general devise of real estate.*

A testator by his will, made in 1815, *after giving certain legacies, bequeathed " all the rest, residue, and remainder of his personal estate, goods, and chattels whatsoever and wheresoever, subject to the payment of his debts and legacies, to D. absolutely, to and for his own use and benefit." The testator further devised, " all and singular his manors, rectories, advowsons, messuages, lands, tenements, tithes, and hereditaments, situate, lying, arising, or being at or near Windlestone, in the county of Durham, and all other his real estate in the said county, and all his estate and interest therein, to trustees to the use of D. for life, and after his decease to the use of the first and other sons of D. in tail male." D. died in the life-time of the testator, who in* 1841 *made a codicil, whereby he appointed another executor, and ratified and confirmed, and republished his will. The testator, at the time of his death, was possessed of both freehold and leasehold estates in the county of Durham:*

Held, that the will having been republished by the codicil, came under the provisions of the statute 1 *Vict. c.* 26, *and that by virtue of the* 26*th section, the leaseholds passed to the trustees under the general devise of the real estate, no contrary intention appearing on the face of the will.*

In considering whether such contrary intention does appear, the Court will not have regard to technical rules of construction; but will endeavour to ascertain from the language of the instrument, in connection with such surrounding circumstances as may be proved in explanation of it, whether the testator did or did not intend that the leaseholds should pass.

By order of the Master of the Rolls the following case was stated for the opinion of this Court:—

Sir Robert Johnson Eden, late of Windlestone, in the county of Durham, bart. duly made and published his will, dated the 14th of April, A.D. 1815; and after directing the payment of all his debts, funeral and testamentary expenses, and after giving certain annuities (with the payment of which he charged his real estates) and after giving certain legacies, he thereby gave and bequeathed as follows:—" I give and bequeath all the rest, residue, and remainder of my personal estate, goods, and chattels whatsoever and wheresoever, after and subject to the payment of my just debts, funeral, and testamentary expenses, and the said legacies and bequests (except the said annuities) herein by me given as aforesaid, and all my estate and interest therein, unto my brother, Morton John Davison, esq. late Morton John Eden, absolutely, to and for his own use and benefit." And the said testator gave and devised as follows:—" I give and devise all and singular my manors or lordships, rectories, advowsons, messuages, lands, tenements, tithes, and hereditaments, situate, lying, arising, and being at or near Windlestone, West Auckland, St. Helen's, Auckland, and Bishop's Auckland, in the county of Durham, or in the city of Durham, and Brignal, in the county of York; and a parcel of land purchased by me of the late Mrs. Mary Lambton, at Romanby, near North Allerton, in the North Riding of the county of York; and all other my real estates in the said counties of Durham and York, and elsewhere, in Great Britain, and all my estate and interest therein, unto Robert Eden Duncombe Shafto, of Whitworth, in the county of Durham, esq.; William Nesfield, of Brancepeth, in the county of Durham, clerk; and Thomas Hopper, of the city of Durham, esq. and their heirs, subject to the said annuities, &c. so given and devised as aforesaid; to hold the same unto the said R. E. D. S., W. N., and T. H., and their heirs, subject as aforesaid, to and for the several uses upon the trusts and to and for the intents and purposes and under and subject to the powers, provisoes, declarations, and limitations hereinafter limited, declared, or expressed of and concerning the same; that is to say, to the use of my said brother, the said Morton John Davison and his assigns, for and during the term of his natural life, without impeachment of or for any manner of waste; and from and immediately after the determination of that estate by forfeiture or otherwise in his lifetime, then to the use of R. E. D. S., W. N., and T. H. and their heirs during the life of the said M. J. D. upon trusts to support and preserve the contingent uses and estates hereinafter limited from being defeated or destroyed, and for that purpose to make entries and bring actions as occasion shall require; but, nevertheless, to permit and suffer the said M. J. D. and his assigns during his life to receive and take the rents, issues, and profits of the said hereditaments and premises to and for his or their own use and benefit; and from and immediately after his decease, to the use of the first son of the said M. J. D. lawfully begotten, and of the heirs male of the body of such first son lawfully issuing; and for default of such issue, to the use of the second, third, fourth, and all and every other the son and sons of the said M. J. D. lawfully to be begotten, severally, successively, and in remainder one after another as they shall be in seniority of age and priority of birth, and of the several and respective heirs male of the body and bodies of all and every such son and sons lawfully issuing, the elder of such sons and the heirs male of his body being always to be preferred, and take before the younger of such sons, and the heirs male of his and their body or bodies; and in the default of such issue to the use of Sir Wm. Eden, bart. his heirs and assigns for ever." And the said testator thereby constituted and appointed the said M. J. D. executor of his said will.

The testator afterwards signed and published a testamentary paper, bearing date the 9th of March, 1835, purporting to be a codicil to his said will, and containing certain additions to, and alterations of, the annuities bequeathed by his said will, but not in any other manner affecting such will.

Morton John Davison, the brother of the testator, and the sole executor named in the will, died on the 28th of June, 1841, in the life-time of the testator, and without ever having had any issue; and after his death the testator duly signed and published another codicil to his said will, in the words and figures following:—" This is a codicil to the last will and testament of me Sir R.J.E. of," &c. which will is dated the 24th day of April, 1815. " Whereas by my said will I appointed as the executor thereof my only brother M. J. D. who died on the 28th day of June last, now I do by this codicil appoint my nephew J. M. the sole executor of my said will; and I hereby ratify, confirm, and republish my said will. As witness my hand," &c. The said J. M. afterwards took the name of Eden.

The testator died on the 3rd of September, 1844, without having revoked or altered his said will, except so far as the same was altered by the said codicils thereto, and without having revoked or altered the said codicils or either of them. And the said will and codicils have since been duly proved by the said John Eden, the executor thereof. The testator was, at the time of his death, possessed of several leasehold estates in the townships of Merrington and Middlestone, both in the parish of Merrington, in the county of Durham, held under various leases from the Dean and Chapter of Durham for terms of twenty-one years respectively, a part of which leasehold estates was acquired by the testator's father in the year 1772, and the remaining portion thereof had been acquired by his father or himself at various times since. (The dates of the different purchases were inserted.) And the Dean and Chapter of Durham have hitherto renewed the leases under which the said estates were held at the end of every seven years (according to their usual custom with respect to property held under leases from them), but the leases contain no covenant on their part to do so.

In the year 1833, the Dean and Chapter of Durham demised the coal mines under the said leasehold estates and other adjoining land, with power to erect cottages and make a railway; and several cottages have accordingly been erected and a railway made through part of the said leasehold estates. The testator was not, at the time of his death, possessed of or entitled to any leasehold estates for years, except in the townships of Merrington and Middlestone.

The township of Middlestone was heretofore in the parish of St. Andrew Auckland, but was, on the 26th of April, 1845, annexed to the said parish of Merrington.

The parish of Merrington is intersected by a high ridge of hills, ranging east and west, upon the summit of which the church and village of Merrington are situated; and the greater portion of the said leasehold estates (to the extent of 539 acres 38 perches, or thereabouts) lie to the south of the said ridge, and extend to and for about 2,050 yards, abut on the northern boundary of the freehold manor and estate of the testator in the township of Windlestone, heretofore in the parish of St. Andrew Auckland, but now forming part of the new parish of Coundon, which was made a parish in the year 1842, and adjoin the said freehold estate of Windlestone, but are in part separated therefrom by a turnpike-road, and in part by the ordinary hedges of the country, through which are necessary communications for those tenants who hold both freehold and leasehold in the same farm; and in some instances the leaseholds were let and occupied with the said freeholds at undivided yearly rents. The said leasehold estates are not intermixed with or surrounded by the freehold lands of the said testator at Windlestone, but, with the exception of one plot containing about 18 acres, they lie together, and a part of them are about a quarter of a mile from the mansion of Windlestone; but the turnpike-road between Bishop's Auckland and Rushyford lies between them and the said mansion. The remainder of the said leasehold estates, containing about 17a. 1r. 12p. lie on the northern side of the aforesaid ridge, and about two miles from the testator's freehold mansion and estate at Windlestone.

The testator was at the respective dates of making his will and death seised of or entitled to not only the said freehold manor and estate of Windlestone

(*a*) Lord Campbell, C.J. Wightman, Erle, and Crompton, JJ.

(which comprises the whole township of Windlestone, and contains 1,182a. 2r. 29p.), but also two freehold closes of land immediately adjoining the said Windlestone estate, and situate in the township of Coundon, and containing together about sixteen acres, and the freehold tithes thereof; and also some detached portions of freehold lands, in the said township of Merrington, and containing together about 106 acres; and the freehold tithes of parts of the said leasehold estates in Merrington and of Middlestone; an estate in the township of West Auckland, chiefly freehold and copyhold, with the freehold tithes thereof; and two leases for lives containing together 1,062 acres, or thereabouts; and freehold land in the township of St. Helen's Auckland, containing 381 acres, or thereabouts; two freehold fields containing together about nineteen acres, in the township of Bondgate, in Auckland; and the freehold message in the city of Durham; but which said freehold fields and messuages were afterward sold by the testator in his lifetime. The said freehold mansion and estate of Windlestone have been in the possession, and the residence, of the family of the said testator for upwards of 100 years; and there are several cottages (some of which are ornamental) and other buildings standing upon that part of the said leasehold estates, which is nearest the said mansion; and which buildings consisting of three cottages, called Well Houses, were in the lifetime of the testator occupied by persons employed about the said mansion and estate at Windlestone; and the testator during his lifetime expended upwards of 40,000*l*. in rebuilding or restoring the said mansion and premises.

On the 20th of Feb. 1845, E. W. one of the sisters and next of kin of the testator, filed her bill in the Court of Chancery against J. E. the executor of the testator, and Sir W. E. and others, praying (amongst other things) that it might be declared, that the testator died intestate as to his leasehold estates, and that an account might be taken of the rents and profits, &c.

The question for the opinion of the Court is, whether the leasehold estates, of which the testator, Sir Robert Johnson Eden, died possessed, passed under the devise in his will, of all and singular his manors or lordships, rectories, advowsons, messuages, lands, tenements, tithes, and hereditaments, situate, lying, and arising, or being at or near Windlestone, West Auckland, St. Helen's Auckland, and Bishop's Auckland, in the county of Durham, or in the city of Durham, and Brignall, in the county of York; and all other his real estates in the said counties of York and Durham, and elsewhere in great Britain, and all his estates and interest therein.

The whole will was to form part of the case, and in addition to the parts set out, the following are also material:—"Provided always, and I do hereby declare my will and mind to be, that it shall and may be lawful for the said M. J. D. when and as he shall, by virtue of the limitations aforesaid, be in the actual possession of, or entitled to, the rents, issues, and profits of the said hereditaments and premises, by any deed or deeds, &c. to grant, limit, or appoint to, or to the use of, any woman or women whom he may marry, either before or after any such marriage, for the life of any such woman, for her jointure, and in bar, or without being in bar, of her dower, any annual sum or yearly rent-charge, not exceeding the annual sum of 1,000*l*. &c. to be issuing out of and chargeable upon all or any part or parts of the said hereditaments and premises hereinbefore devised, with the usual powers and remedies of distress, entry, &c.; and also to limit and appoint the hereditaments which shall be so charged as aforesaid, to any person or persons for any term or terms of years, upon such trusts, for the better securing the payment of any such yearly rent-charge as to the said M. J. D. shall seem meet, &c. Provided always, and I do hereby declare my will and mind to be, that it shall and may be lawful to and for the said M. J. D. during his lifetime, and after his decease for the person or persons who shall for the time being, under or by virtue of the limitations aforesaid, be in the actual possession of or well entitled to the hereditaments and premises aforesaid, or the rents, issues, and profits thereof, from time to time to demise and lease all or any part or parts of the said hereditaments and premises, with the appurtenances, to any person or persons, for any term or number of years not exceeding twenty-one years in possession, and not in reversion or by any way of future interest, so as there be reserved and made payable on every such lease, during the continuance thereof, the best and most improved yearly rent or rents," &c.

Sir *F. Kelly*, Sol.-Gen., for the plaintiff, submitted to the Court three points: 1. That before the Wills' Act, 1 Vict. c. 26, the leasehold property of the testator would not have passed under the general devise of realty contained in this will. 2. That that general devise of the realty was not within s. 26 of the Wills' Act. 3. That even if that section applied at all, the leaseholds did not in this instance pass, because a contrary intention appeared upon the face of the will. The Court of Exchequer had come to a different judgment upon all the three points (see *Wilson* v. *Eden*, 5 Exch. Rep. 752); but the Master of the Rolls had, notwithstanding that decision, sent this case for the opinion of another court of law, the judgment of the Master of the Rolls himself having been the other way (see the case reported 11 Beav. 237; 17 L. J. Ch. 459). The following authorities were now cited: *Rose* v. *Bartlett*, Cro. Car. 292; *Thompson* v. *Lady Lawley*, 2 Bos. & P. 303; *Addis* v. *Clement*, 2 P. Wms. 456; *Lowther* v. *Cavendish*, 1 Eden, 99; *Lane* v. *Earl Stanhope*, 6 T. R. 345; *Davis* v. *Gibbs*, 3 P. Wms. 26; *Pistol* v. *Riccardson*, 2 P. Wms. 459; *Arkell* v. *Fletcher*, 10 Sim. 299; *Day* v. *Trigg*, 1 P. Wms. 286. (a)

Malins, contrà, was not called upon.

Lord CAMPBELL, C.J.—Having attentively considered the language of this will, and the judgments of Lord Langdale and the Court of Exchequer, as well as the argument now addressed to us, I entertain no doubt upon the proper construction of this will. I concur entirely in the judgment of the Court of Exchequer, and in the reasoning upon which it is founded. I give no opinion as to the decision which would have been pronounced in this case before the Wills' Act; it is unnecessary to do so, because I entertain no doubt that this devise does come within the 26th section of that Act, which enacts "that a devise of the land of the testator, or of the land of the testator in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a customary copyhold or leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include the customary copyhold and leasehold estates of the testator, or his customary copyhold and leasehold estates, or any of them to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will." Now here we have a devise of the lands of the testator in a place most distinctly set out. The words are: "I give and devise all and singular my manors or lordships, &c. lands, tenements, tithes, and hereditaments, situate, &c. and a parcel of land purchased by me of, &c. at, &c." It is admitted by the Solicitor-General that if the devise stopped there, sec. 26 would apply; but he contends that the devise is taken out of the operation of that section by the following words: "and all other my real estates in the said counties and elsewhere in Great Britain;" but I do not feel the force of that argument, and if the section would apply to the devise without those words, I cannot understand why it is less applicable to a devise with them; and the republication of the will by a codicil executed subsequently to the Wills' Act, brings it under the operation of that statute. Unless, therefore, a contrary intention appears by the will, the Legislature has provided that under this devise the leasehold estate shall pass. That brings us to the question, whether any contrary intention does appear by the will; and in considering that question, we are not to look at any mere technicalities, but taking into account the facts which existed, and which are applicable to the explanation of the will, we must see, if we can, what really was the intention of the testator, as it appears by his will. The question is quite different from that which arose before the Wills' Act, because at that time the cases depended upon certain technical rules of construction; and in order to pass leaseholds by a general devise of realty, that intention must have been clearly manifested by the will. In those cases technical rules often prevented the Courts from giving effect to the real intention of the testator, and judges were compelled to say *quod voluit non dixit*. Here, without reference to technical rules, we are to see what the testator really did intend; and I think it clear that he intended the church leaseholds to pass with his freehold estates by the devise of the realty. The whole had previously been treated as one estate, and it was so to be treated thereafter; nor do I see any incompatibility in the direction that it should be so treated thereafter. The church property had always been considered as belonging to the family; and though it is true, as the Solicitor-General has observed, that under the devise the first tenant in tail of the freehold estates would take an absolute estate in the leaseholds, I do not think the observation one of much weight, because the first tenant in tail would only have to execute a deed of recovery, and then he would have an absolute estate in the freeholds as well as the leaseholds. It seems to me that there is, at least, nothing in the will to shew a contrary intention, and if so, the effect of s. 26 is, that the leaseholds pass under the general devise of the realty.

ERLE, J.—I also have considered the judgment of the Court of Exchequer, and am satisfied therewith. It seems to me that the words of this devise are within the operation of sec. 26. As chattels real, the church leases are capable of passing under that devise, and they must pass unless an intention that they should not pass is made to appear; and I cannot find that intention. In dealing with that question, I may look at the circumstances in connection with which the will must be read. I may have regard to the nature of the property, and the circumstances which existed with respect to it at the time when the will was made; and I find that these leaseholds were church leaseholds, perpetually renewable on payment of a fine,—a peculiar kind of property, often considered almost as permanent as a fee. Then I must consider the contiguity of the church lands to the freeholds,—the unity of occupation, if I may so speak, part of the church lands being leased with part of the freeholds, and part used for ornamental purposes; and the result is, that the church lands and freeholds appear to me to have been contemplated as one estate. On the other hand, this is a strict settlement of the real estate; but is technically very inaccurate in expression when applied to personalty; and it is assumed from the framing of the will, that the testator was perfectly aware that leaseholds are personalty. Therefore, it is argued, he must have intended the leaseholds to pass as personalty, and not under the devise of realty. But if the testator's supposed legal knowledge is to be at all imported into the construction of the will, I apprehend that two propositions ought to be established—not only that he had the knowledge that leaseholds are personalty, but also that he was aware that these lands were leasehold. He might well have supposed that these lands in Merrington were held by the same title as the adjoining lands; and I cannot, therefore, accept the supposed legal knowledge as countervailing the effect of the other circumstances of this case.

CROMPTON, J.—Since the statute the burthen is shifted, and now it is thrown upon those who assert that the leaseholds did not pass to make out that the testator's intention was that they should not pass. No such intention appears in this case; and, indeed, very likely both properties would have been spoiled by dividing them. *Judgment for the defendant.*

Tuesday, May 4.

THE GUARDIANS OF THE CHELMSFORD UNION *v.* THE LOCAL BOARD OF HEALTH OF CHELMSFORD.

Public Health Act—Local board—Powers of rating—Exemptions conferred by previous local Acts for paving and lighting.

Under a local Act commissioners were empowered to pave and light the town of C. and authorised to impose rates upon a certain limited district only, the statute expressly exempting from rateability all lands beyond the specified limits, and certain descriptions of lands within them. Pursuant to the provisions of the Public Health Act, a local board was appointed for C. and under the regulations contained in the provisional order, the local board had authority to light and pave a much larger district than that which was previously lighted and paved by the commissioners: and all the unrepealed powers of the commissioners were transferred to them: but several of the clauses of the local Act, and amongst others the rating clause, were repealed from the time of the confirmation of the provisional order. Under sec. 88 of 11 & 12 Vict. c. 63, the local board imposed a rate for the purposes of paving and lighting only upon the whole of the extended district:

Held, that they had authority so to do, inasmuch as by the provisional order they had the same power of paving and lighting the extended district, which the commissioners formerly had over the smaller district; and sec. 88 only kept alive those exemptions, which the local Act had conferred upon certain kinds or descriptions of property, but did not limit the power of rating to the ancient local limits.

This was an action of replevin, brought for the seizure of certain goods of the plaintiffs on a distress for a rate made by defendants under "The Public Health Act 1848," and by consent and pursuant to an order of Wightman, J. the parties agreed upon the following case:—

The defendants are the local Board of Health established for the parish of Chelmsford, in the county of Essex, under the Public Health Act 1848, and they made the rate under which the distress was levied under and by virtue of the provisions in that Act contained. The rate bears date the 29th day of August, 1851, and is entitled as follows:—

An assessment for a general district rate made by the Chelmsford Local Board of Health for defraying such expenses as are by law chargeable upon that rate, &c. &c.

The only question raised was, whether the plaintiffs were liable to be rated for the Union Workhouse and premises for which they were so assessed as aforesaid.

In the year 1789 an Act of Parliament was passed (29 Geo. 3, c. 44), intituled "An Act for Paving the

(a) In the course of the argument, Lord Campbell took occasion to mention that the late Mr. Tyrrell was the author of the Wills' Act, and that Mr. Brodie is the author of the Fines and Recoveries' Act.

Footways of the several Streets, public Passages, and Places within the Town of Chelmsford and Hamlet of Moulsham, in the Parish of Chelmsford, in the County of Essex, and for cleansing, lighting, and watching the said Town and Hamlet, and for removing and preventing Nuisances, Annoyances, and Encroachments therein."

Section 24 of this Act is that under which the commissioners are empowered to raise money by rates for the purposes of that Act.

Section 28. "Provided also that no person shall be subject to the payment of any rate or assessment, by virtue of this Act, for or in respect of any lands, hop gardens, or garden grounds, other than such gardens as are adjoining to, and let or occupied with any messuage or tenement within the said town or hamlet, subject or liable to be rated by this Act, or of any tithes, or any moduses, or other payments in lieu of tithes; and that no person shall be subject to the payment of any rate or assessment by virtue of this Act, for or in respect of any houses, buildings, gardens, tenements, or other hereditaments or estates within the said parish of Chelmsford, situate in, or near, or next adjoining to the street or highway called Duke-street, leading from Chelmsford aforesaid to Braintree, in the said county, that now are or hereafter shall be erected, or built beyond, or at a greater distance from the parish church of Chelmsford aforesaid, than the messuage or tenement now in the occupation of Elizabeth Blencowe, widow, and next adjoining to a house, called or known by the name of the Red Cow, nor for or in respect of any houses, buildings, gardens, tenements, or other hereditaments or estates, within the said parish of Chelmsford, situate beyond the end of a certain street called New-street, in the parish of Chelmsford aforesaid, nor for or in respect of any houses, buildings, gardens, tenements, or any other hereditaments or estates within the said hamlet of Moulsham, situate beyond or at a greater distance from the bridge dividing the said town and hamlet, than the messuage or inn, called or known by the name or sign of the Anchor," &c.

In the year 1823, the commissioners under the said Local Act, obtained a further Act (3 Geo. 4, c. 39) the provisions of which are not material. These Acts continued in force, and were carried into execution by the commissioners appointed under them, until the establishment of the Local Board of Health. Since the passing of the first and second mentioned Acts new streets have been formed, and new houses built within the parish, and some of such streets and houses have been formed and built within the hamlet of Moulsham, beyond the limits mentioned in the 28th section of that Act, but no property beyond these limits was ever rated under the Local Acts. In the autumn of the year 1849, the inhabitants of the parish of Chelmsford duly petitioned, under the provisions of the said Public Health Act, 1848, to have that Act applied to the parish of Chelmsford, and on the 22nd May, 1850, a provisional order for the application of the Public Health Act to the said parish of Chelmsford was duly made and issued by the General Board of Health.

By the provisional order (made part of the case) the entire parish of Chelmsford is constituted a district for the purposes of the Public Health Act.

By the Public Health Supplemental Act, 1850 (13 & 14 Vict. c. 32), the provisional order was confirmed and made absolute. In the month of Sept 1850, a Local Board of Health was duly elected for the said district of Chelmsford, and having previously made a general district rate for general purposes, on the 29th day of August, 1851, they made under the provisions of the 87th and 88th sections of the said Public Health Act, a second general district rate (being the rate hereinbefore mentioned) for the purpose of defraying the expense of paving and lighting portions of the said district requiring the same, such expense being legally chargeable upon that rate, and being expenses for which a rate might have been theretofore made under the local Act.

In this rate, all houses and other property in the said parish and district, as well within as beyond the limits defined in the 28th section of the Local Act, have been included.

In the year 1835, under the provisions of the Poor Law Act, the union called the Chelmsford Union was formed, and the union workhouse is situate in the parish of Chelmsford, but beyond the limits mentioned in the 28th section of the Local Act, the said union house and premises were never rated or assessed by the commissioners under the Local Act, but are assessed by the defendants in the rate in question.

The rate having been made upon the plaintiffs, as before mentioned, the plaintiffs declined to pay it, on the ground that they were not liable to be rated for or in respect of the said union house and premises, and, therefore, proceedings to enforce the payment thereof were duly taken before Justices of the Peace for the county of Essex, who determined and adjudged that the plaintiffs were so liable, and granted a distress warrant, under which the defendants levied for the amount of the said rate and costs, and no objection is intended to be raised to the regularity of any of these proceedings.

The question for the opinion of the Court is, whether the plaintiffs were liable to be rated or assessed in the said rate of the 29th August, 1851, for or in respect of the said union house and premises.

The provisional order, after reciting the passing of the two Acts above mentioned, and that it appeared to the said general board to be expedient that the said Public Health Act, except as hereinafter mentioned, should be applied to the said parish, &c., and that provision should be made with respect to the said local Acts of Parliament, and the repeal, alteration, extension, and future execution thereof; but the same cannot be done without the authority of Parliament.

Now, therefore, in pursuance of the power vested in the said board by the said Public Health Act, we, the said General Board of Health, do by this provisional order under our hands and seal of office, order and direct (inter alia) as follows, that is to say:—

That from and after the passing of any Act of Parliament confirming this present order, the Public Health Act, 1848, and every part thereof, except section 50, shall apply to and be in force within and throughout the entire area, places, and parts of places comprised within the boundaries of the said parish of Chelmsford, in the county of Essex, and that such parish shall be and constitute a district for the purposes of the said Public Health Act accordingly. That from and after the day appointed for the first election of the local board of health for the said district, the said local Acts shall be repealed, except the sections 10, 13, 16, 17, 18, 19, 21, 23, 16, of the said firstly recited Act, and sec. 6 of the secondly above recited Act, and except as to so much of the said Acts as relates to any rate, &c. made, &c., or to any act, matter, or thing done, or any offence committed, &c. previously to the passing of any Act of Parliament confirming this order.

That from and after the day appointed for the first election of the said local board, all the powers, &c. of the commissioners under the said local Act, and of their officers, &c. except watchmen, shall wholly cease, and such of the said powers, authorities, and duties, as are granted or imposed by so much of the said local Acts as shall not be repealed according to the provisions of this order, shall, so far as the same are or shall not be repugnant to, or inconsistent with, the said Public Health Act, or this order, or any bye-law to be made under the said Public Health Act, be transferred to, and be had and exercised by, the said Local Board of Health, and by such of the committees, officers, and servants of the said local board as shall be appointed by such board in that behalf, &c. in the same manner, as nearly as may be, as if such powers, &c. had been granted, &c. by the said Public Health Act; and from and after that day the said local board shall be the commissioners for executing such parts of the said local Acts as shall not be repealed according to the provisions of this order; and all lands, buildings, works, rates, &c. and all other property and state whatsoever belonging to the said commissioners shall be transferred to the said local board as fully, &c. and shall be held as nearly as can be by the said local board, upon the same trusts, and to and for the same uses, intents, and purposes, as the same were or would be held by such commis-

Baddeley for the plaintiffs.—The power of the defendants to impose this rate depends upon s. 88, of 11 & 12 Vict. c. 63, which provides that the special and general district rates shall be levied upon all such kinds of property as are assessable to any rate for the relief of the poor; with this, amongst other provisoes,—"That if within any district or part of district, any kind of property shall, before the passing of this Act, hav been exempted from rating by any local Act, in respect of all or any of the purposes for which general or special district rates may be made under this Act, the same kind of property shall, in respect of the same purposes and to the same extent within the parts to which t exemption applies, but not further or otherwise, be exempt from assessment to any general or special district-rates under this Act." The consequence is, that the old exemptions are kept alive, and the local board have no greater power of taxation than the old commissioners had. The exemption being clearly expressed can only be taken away by words clearly having that effect, and there is nothing in the general statute or the provisional order which has that effect. The powers and the property of the commissioners are by the latter transferred to the local board, but "upon the same trusts and to and for the same uses, intents, and purposes" as before. (He referred to *R.* v. *The Manchester and Salford Waterworks Company*, 1 B. & C. 630; Vin. Ab. Statute, "Construction.")

Channell, Serjt. contrà.—This rate is made for the same purposes for which a rate might have been made under the local Act, but it extends over a larger district. The defendants rely upon the provisional order as giving them power to apply the local Act with the alterations and extensions therein provided for; and they have now complete powers of paving and lighting—of paving by s. 68 of 11 & 12 Vict. c. 63; and of lighting by one of the unrepealed clauses of the local Act (s. 13). But it is said that s. 88 keeps alive the exemptions given by s. 28 of the local Act, and that is the principal question. It does keep alive certain exemptions, namely, those which relate to certain kinds or descriptions of property, as, for example, the hop gardens mentioned in s. 28; but it does not confine the power of rating to the old local limits.

Baddeley, in reply.

Lord CAMPBELL, C.J.—It seems to me that the provisional order, which has the effect of an Act of Parliament, puts an end to all difficulty. If the local board could not make a rate upon the whole district, but were confined to an assessment upon the property within the ancient limits, great injustice would be done, because many of those who derive the benefit would escape the burthen; but the effect of the provisional order is to make the benefit and the burthen coterminous; for whatever powers the commissioners had within the ancient limits, the local board now have over the whole parish of Chelmsford. It is perfectly clear that they may pave and light the whole of that district, and equally clear that they may lay a rate for those purposes upon the whole district. But then we come to the exemptions; and it is said that s. 88 keeps alive the exemption of all property beyond the ancient limits; but, in my opinion, that is not so. I think that the 88th sec. of the general Act is very carefully and skilfully drawn; for when we look to s. 28, of the local Act, we see that two exemptions are there provided for—one relating to certain kinds or descriptions of property; the other, relating to local limits; and probably it may be so in other local Acts. Then s. 88 does not include the exemption founded on locality, which would be unjust; but it preserves the exemption of certain species of property, which were within the old, and are within the new district. "The same kind of *property* shall, in respect of the same purposes, and to the same extent, within the parts to which the exemption applies, but not further or otherwise, be exempt." Therefore if, by s. 28 of the local Act, poorhouses had been exempt, this union workhouse would still have retained its exemption under s. 88 of the general Act, as the farms and the hop gardens retain their exemption. But as no such exemption exists, I think that it is liable to be rated to the general and special district rates, though locally situate beyond the ancient limits.

ERLE, J.—I am of the same opinion. Section 88 throughout uses the same language:—"Such kinds *of property*" are to be rated as are assessable to rates for the relief of the poor; and *any kind of property* exempt by local Acts, is to retain its exemption. Under this local Act, there is an exemption of certain kinds of property; and the power of rating is also confined to certain local limits. It is hardly correct to say that property beyond those limits was *exempt*, because the power of rating did not extend beyond them.

CROMPTON, J.—I also think that it would be straining the words to apply "any kind of property" to a whole district not liable to be rated under the local Act. The words "within the parts to which the exemption applies" raised some little doubt in my mind at first; but it is clear that their operation is restrictive and not enlarging.

Judgment for defendants.

April 27 and May 7.

FARROW and ANOTHER, Assignees of a Bankrupt, *v.* MAYES.

Bankrupt—Judge's order by consent—12 & 13 *Vict.* c. 106, *s.* 137.

After issue joined in a hostile action against the bankrupt at the suit of the defendant, the bankrupt took out a summons for stay of proceedings on payment of debt and costs, and upon the parties attending at chambers before the judge, an order was made for stay of proceedings on payment within a given time. Default was made in payment, and judgment signed and execution levied, and the debt and costs paid to discharge the execution. The judge's order was not, nor was any copy thereof filed within twenty-one days after the order, pursuant to the Bankrupt Act, 12 & 13 *Vict.* c. 106, *s.* 137.

Held, that the judge's order was an order by consent, and that the judgment and execution thereon were void under the 12 *and* 13 *Vict.* c. 106, *s.* 137, *as against the assignees of the bankrupt, who were entitled to recover the money paid by the bankrupt upon the execution, as money had and received to their use.*

This was an action by the plaintiffs, as assignees of one Stewart, a bankrupt, to recover the sum of 96*l.* odd, from the defendant, under the following circumstances.

The defendant, in October, 1849, sued Stewart before the bankruptcy, for 75*l.*; on the 26th of November, 1849, the bankrupt took out a summons at chambers for stay of proceedings, which was duly

attended, and a judge's order was drawn up in the usual form, "upon hearing the parties, and by consent," &c. for a stay of proceedings upon payment of the debt and taxed costs on the 16th of December, 1849. Default being made in payment, judgment was signed on the 18th of December, a fi. fa. issued on the 19th, a levy made on the 20th, and on the 22nd of December, the sheriff being paid 105*l.* for debt, costs, and expenses, quitted possession. Stewart became bankrupt in February, 1850.

Neither the judge's order, nor a copy thereof, was filed pursuant to the 12 & 13 Vict. c. 106, s. 137.

The plaintiffs contended that the execution was void under the following section of the Bankrupt Act, and that the money paid over to the defendant became money had and received to their use as assignees.

By the Bankrupt Act, 12 & 13 Vict. c. 106, s. 137, every judge's order made by consent given by any such trader defendant in any personal action, and whereby the plaintiff shall be authorised forthwith, after the making of such order, or at any future time, to enter up judgment, or to take out execution; a true copy of such order shall, together with an affidavit of the time of such consent being given, and a description of the residence and occupation of the defendant, be filed with the officer within twenty-one days after the making of such order, &c. in like manner as a warrant of attorney and a cognovit, &c. &c. otherwise such judge's order, and any judgment entered up thereon, and any execution issued or taken out on such judgment, shall be null and void to all intents and purposes; and the provisions of the 3 & 4 Geo. 4, c. 39, and 6 & 7 Vict. c. 66, as to filing warrants of attorney and cognovits, and entries and searches relating thereto, &c. shall be applicable to every such judge's order.

Manisty for the assignees.—This was a judge's order, obtained by consent, within the 12 & 13 Vict. c. 106, s. 137. The summons for stay of proceedings was taken out by the bankrupt, a trader, being the defendant in the action at the suit of the now defendant, and the order is drawn up by consent. The judge could not have made any order of the kind unless the parties had consented to it. *Bryan* v. *Child*, 5 Ex. 368, shews that judgment and execution upon a judge's order, not duly filed under the above section, are void against the bankrupt's assignees, although binding upon the bankrupt himself.

O'Malley (*Hayes* with him).—Cases like the present were not contemplated by the Act; the provision was aimed at cases where parties by giving a judge's order in the first instance, instead of a warrant of attorney or cognovit, sought to evade the penalties against warrants of attorney and cognovits. Here the proceedings are hostile to the last. By the County Courts Amendment Act, it is lawful for defendants to go before the Court and confess judgment, and that is analagous to what was done in this case. *Biffin* v. *Yorke*, 5 M. & G. 428, proceeded on the 3 Geo. 4, c. 39, and 1 & 2 Vict. c. 110, s. 60, the words of which are different to those in the present Act. Sec. 137 is to be read with reference to sec. 133. And the money being paid over before the bankruptcy, the remedy, if any, is not for money had and received. *Cur. adv. vult.*

JUDGMENT.

Friday, May 7.—Lord CAMPBELL, C.J.—We are of opinion that the judgment and execution herein are rendered null and void by the 13 & 14 Vict. c. 106, s. 137, because the judge's order on which it was signed was obtained with the consent of the defendant, and was not, nor was any copy thereof filed within twenty-one days after such consent. We think that the judge's order for judgment was obtained with the consent of the defendant, though it was made upon a bonâ fide application by the defendant to stay proceedings upon terms in a hostile action, and although the defendant had at first wished to draw up the order, and only neglected to do so because the plaintiff had an order to enable him to go to trial. No defence arises in the action. The course of legislation upon this subject make it clear that the enactment was intended to render void all such judgments, though signed within twenty-one days after given, and all such executions, though executed before the date of the Act, without notice of an act of bankruptcy. We think it follows that money had and received under the execution, becomes by the bankruptcy the money of the assignees, and so recoverable under it. The inconvenience arising from annulling the judgment and execution by the bankruptcy, makes the filing a judge's order for judgment a matter requiring careful attention. Of course it will be necessary in all such cases that the consent order, or a copy thereof, should be filed, with an affidavit delivered, of the time when such consent was given.

Judgment for the plaintiffs.

Monday, May 10.

COUNTY COURT APPEAL.

MORVILLE *v.* THE GREAT NORTHERN RAILWAY COMPANY.

Carrier—Liability for negligence—Notice—Special contract.

A common carrier for hire received a horse to be conveyed from A. to B. At the time of the receipt of the horse, he required the owner to sign a ticket, which, after stating the amount paid for the conveyance of the horse and the termini of the journey, contained the following words: "This ticket is issued, subject to the owner's undertaking to bear all the risk of injury by conveyance and other contingencies; and the owner is required to see to the efficiency of the carriage before he allows his horses or live stock to be placed therein. The charge being for the use of the carriages and locomotive power only, the company will not be responsible for any alleged defects in their carriages unless complaint be made at the time of booking, &c. nor for any damage, however caused, to horses, cattle, or live stock of any description travelling upon the railway &c. I have examined the carriages, and am satisfied with their sufficiency and safety." Then followed the signature of the owner.

Held, that this was not a mere notice under sect. 4, but a special contract within the 6th section of the Carriers' Act, and protected the carrier from liability for damage done to the horse through his negligence in the course of its journey.

This was an appeal from the County Court of Yorkshire, holden at Pontefract.

This is an action brought to recover the sum of 27*l.* the amount of damages alleged to have been sustained by the plaintiff in consequence of the negligence and carelessness of the defendants' servants, whereby the plaintiff's horse was injured. On the trial of the cause in the said County Court on Tuesday, the 25th day of November last, before the judge of the Court, without a jury, the following facts appeared in evidence.

The plaintiff is a veterinary surgeon and dealer in horses, residing at Wakefield, and the defendants are common carriers by railway for hire, from (among other places) Hirkstead, in the county of Lincoln, to Wakefield, in the county of York.

On the 11th day of August, 1851, the plaintiff, who had been at the Horncastle horse fair, brought a horse, which he had there purchased, to the Hirkstead station of the Great Northern Railway Company, for the purpose of having it conveyed from thence by railway to Wakefield, and on the arrival of the down train from London, it was safely placed and tied up in a horsebox. The plaintiff then went into the company's office and paid the charge demanded for the carriage of the horse to Wakefield, and upon such payment signed, in a book kept by the clerk at the station, a memorandum or ticket, an exact copy of which is annexed to this case, and is marked with the letter A. The clerk then handed to the plaintiff what he (the plaintiff) understood to be a duplicate of the ticket signed by him in the book, but which does not contain that part in italics relating to the sufficiency of the carriages. The paper (B.) hereunto annexed, is an exact copy of the ticket so given to the plaintiff.

On the arrival of the train at Knottingley, the horse-box, containing the plaintiff's horse within it, was detached from the London train and shunted upon the Wakefield line by the servants of the defendants, in order to be attached to another train proceeding to Wakefield, and in so doing a concussion took place between the horse-box and a truck or carriage on the latter line, which caused the injury which, on the arrival of the horse at Wakefield, it was found to have sustained.

The counsel for the defendants contended that the accident had not arisen either from gross negligence or misfeazance on the part of their servants, and that the ticket signed by the plaintiff was a special contract entered into by him, disclosing the precise terms upon which the defendants undertook to convey the plaintiff's horse, and that it was a bar to the plaintiff's recovering in the action; and he cited amongst other cases in support of his position, *Austin* v. *The Manchester, Sheffield, and Lincolnshire Railway Company*, 20 L. J. R. (N. S.) 440, Q. B.; and *Chippendale* v. *The Lancashire and Yorkshire Railway Company*, 21 L. J. R. (N. S.), 22, Q.B. The plaintiff's attorney contended that the ticket above set forth was only a special contract as to the sufficiency and safety of the carriage or horse-box, and that the preceding paragraph did not purport to be, and was not in effect any contract or agreement whatever between the plaintiff and defendants, but was a mere notion in restriction of the common law liability of the defendants as carriers, and as such was void under the 4th section of the statute 1 W. 4, c. 69. The judge took time to consider his judgment, and on the 20th of January last at Pontefract, gave such judgment in favour of the plaintiff, ordering the verdict to be entered for him, and assessing the damages at 21*l.*; but the judge expressly found that the injury done to the horse had not been caused by any misfeazance, wilful misconduct, or gross negligence on the part of the defendants or their servants, but was the result of the want of due care only in shunting the horse-box at Knottingley, as above stated. The question for the opinion of the Court of Q.B. is, whether the defendants upon the construction of the said ticket signed by the plaintiff as above mentioned, and upon the finding of the said County Court judge, are protected from their liability to pay the damage occasioned as above stated.

The following is a copy of the ticket mentioned in the case, and marked A. The ticket marked B, was substantially a duplicate of that marked A, except that it did not contain the last paragraph, "I have examined the carriages," &c.:—

The Great Northern and East Lincolnshire Railway Company.

"Ticket for horses, cattle, sheep, pigs, dogs, and live stock of every description.

"No. 71. Date. August 15, 1851.

"From Hirkstead to Wakefield.

		£	s.	d.
1 Horse	@	0	19	6
Cattle	@			
....	@			

Paid.

"This ticket is issued subject to the owner's undertaking to bear all the risk of injury by conveyance and other contingencies; and the owner is required to see to the efficiency of the carriage before he allows his horses or live stock to be placed therein; the charge being for the use of the railway carriages and locomotive power only, the company will not be responsible for any alleged defects in their carriages or trucks, unless complaint be made at the time of booking, or before the same leave the station; nor for any damage, however caused, to horses, cattle, or live stock of any description travelling upon their railway, or in their vehicles.

'*I have examined the carriages, and am satisfied with their sufficiency and safety.*

"(Signed) JOHN MORVILLE,

"Owner, or on the owner's behalf."

Phipson, for the appellants, contended that the ticket signed by the plaintiff, constituted a special contract, and therefore fell under the 6th, and not under the 4th sec. of the Carriers' Act. By the 4th sec. no mere public notice given by carriers can limit their liability; but the 6th sec. provides that that Act is not to affect any special agreement made between the parties. A mere notice would not require the plaintiff's signature; but the company required that in order to constitute it a special agreement, and the terms of it clearly exempt them from liability for the loss of which the plaintiff complains. This question was before the Court of Ex. on Saturday, and that Court held, that a ticket thus signed constituted a special contract. He also cited *Shaw* v. *The York and North Midland Railway Company*, 18 Law J. 181 Q. B. and the cases above mentioned.

Cowling, contrà, contended that this ticket was not a contract between the parties, but a mere notice, and that the plaintiff's signature was required as an acknowledgment that he had received the notice, so as to dispense with proof, which would otherwise be necessary. In the Court of Ex. on Saturday, Platt, B. dissented from the judgment in the case of *Carr* v. *The Lancashire and Yorkshire Railway Company*, 19 Law T. and it is submitted that that judgment cannot be sustained, if the facts were the same as those in the present case.

COLERIDGE, J.—I am of opinion that the judgment of the judge of the County Court in this case was wrong. It appears to me, that this ticket was not a mere notice, but a contract, and was, therefore, not within the 4th, but was within the 6th sec. of the Carriers' Act. As a mere notice the plaintiff would have been bound by it when it was shown him, without signing it; but the company wished to make it more than a notice, and therefore he was required to sign it. He did sign it, and then it became a contract, and by the very extensive terms introduced into it the company are protected from liability.

ERLE, J. concurred. *Judgment reversed.*

COUNTY COURT APPEAL.

OLDING *v.* SMITH.

Truck Act—Payment in current coin of the realm—Evasion of the Act—Pay-office adjoining shop—Intimidation—Evidence to affect the employer.

In an action for wages, by a collier, it was proved that he had received the amount due to him, in the current coin of the realm, at a pay-office, adjoining a shop kept by his employers (a Joint Stock Iron Company) for the sale of goods to their own workmen, and other people; but that he had spent the money in the masters' shop immediately upon the receipt of it. In order to shew that he had dealt at the shop under compulsion, evidence was offered of a conversation, between the plaintiff and the overlooker under whom he worked. The overlooker had no authority to employ or dismiss the men under him, which was the duty

of the coal agent, but he stated that he had received a paper from a clerk in the office of the coal agent, whose principal duty was, to ascertain the amount of work done by the men, containing a list of the persons whom he was to remember as not dealing at the shop, that that paper contained the plaintiff's name, and that he produced it at the time of the conversation above mentioned. In that conversation, the overlooker threatened the plaintiff with his employers' displeasure, if he did not deal more largely at the shop:

Held that that statement was not admissible in evidence against the plaintiff's employers:

Quære, if the evidence had been admissible whether it would have rendered subsequent payments of money spent at the shop, invalid as contrary to the Truck Act.

Upon appeal from the decision of the judge of the County Court of Monmouthshire holden at Tredegar, the learned judge stated the following case.

This action is brought to recover the sum of 41l. 16s. 9d. as a balance of wages due to the plaintiff from the Rhymney Iron Company for cutting coal. The defendant is the chairman of the directors of that company. The plaintiff has been a collier in the employ of that company for several years down to the month of November last. The particulars of demand embrace a period extending back from November 1851 to the month of January 1850; during that time it was admitted on both sides that the plaintiff had earned altogether the sum of 64l. 15s. 9d. and that he had received of this amount the sum of 24l. 16s. 6d. either in cash at one of the company's pay offices, or in the ordinary monthly stoppages for doctor and fund, and such like. The remaining sum of 39l. 19s. 3d. was the amount in dispute, the plaintiff contending that the payment to him of this sum of 39l. 19s. 3d. was a payment in goods and not in cash, and therefore void under the Act of the 1 & 2 Wm. 4, c. 37, commonly called the Truck Act. [The 3rd section of that Act was set out in the case.]

The Rhymney Iron Company is a joint-stock company, having iron works at Rhymney, in Monmouth, where they employ about 4,000 colliers, miners, and other workmen. They have an office there at which the general business of the works is transacted, the accounts kept, and wages paid, which is hereinafter referred to under the name of "The company's monthly pay-office," and the cashier at such office is hereinafter referred to as "The company's cashier."

There is a general shop at the works which is kept by Mr. Buchan in partnership with the Rhymney Iron Company, under the firm of Andrew Buchan and Co.: adjoining this shop is an office where a portion of the workmen are paid their advances by Andrew Buchan and Co. under orders from the Rhymney Iron Company in the manner hereinafter mentioned, and which is hereinafter referred to as the pay-office adjoining the shop of Andrew Buchan and Co. The cashier employed there was, during the period comprised in the plaintiff's account, employed by Andrew Buchan and Co., and is hereinafter referred to as "the cashier in the office adjoining the shop." This office is divided from the shop, and though having an internal communication with the shop, has a different outer entrance, so that persons having business there, and also at the shop, must go out into the thoroughfare in passing from one to the other. The colliers employed in each pit or level, work under the immediate superintendence of an overman or gauger, who acts under the directions of the coal agent, and has nothing to do of his own authority with the hiring or discharge of the colliers, nor with the payment of their wages, or even calculating the amount of them. It is the province of the coal clerk to ascertain the amount of each man's earnings, which he does from the weigher's daily account of the quantity of coal cut by the party, and from the overman's monthly account of "dead work" done by him, by which is meant the opening of stalls and headings, and other works necessary to the getting of coal, but not the cutting of the coal itself.

The duty of the overman is to overlook the colliers, and see that the work is properly performed. He reports any instances of misconduct, and discharges the offending parties when authorised by the coal agent, and conveys requests to the coal agent or coal clerk, when any men are desirous of having advances on account of their current earnings out of the usual course. In these instances the overman informs the coal agent, or the coal clerk, about how much "dead work" the party is entitled to be paid for before it is actually measured, and the coal agent determines whether an advance shall be made or not.

The system of payment which the company adopt is as follows:—

The workmen in their employ are settled with monthly, at the company's monthly pay-office, up to the last Saturday in every month, when a pay ticket is delivered to each workmen, crediting him with the amount of his earnings during the month, and debiting him with the balance due from him at the preceding month's settlement (if any) with the cash advanced at both pay-offices during the month, and with the amount of the usual monthly stoppages. A balance is struck at the foot of the pay ticket, which, if against the workman, is carried to the debit of his next month's account, and if in his favour, is paid him in cash. Besides the monthly settlement, the workman is allowed to draw at the end of every week such an amount as the coal clerk thinks fit, having regard to the estimated amount of his earnings during the week, and which he enters in a book kept at the company's monthly pay office, where such draw is also paid in cash. Besides these payments, advances are also made on account of wages at the pay-office, adjoining the shop of Andrew Buchan and Co., in the following manner:—The coal clerk makes up every week a book called the "Advance Book," in which is entered against each man's name, a certain sum calculated by reference to his probable earnings, and which book is carried down to the cashier in the office adjoining the shop of Andrew Buchan and Co., as his authority for the payment of the said advances. The workmen are at liberty to draw the amount of the orders entered in the advance-book in cash, without having any dealings whatever with the shops for goods, and it was shewn that the cashier in the office adjoining the shop of Andrew Buchan and Co. had paid during the five months ending June 1851, an average per month of 287l. 4s. 7d. to workmen in the company's employ, no part of which was spent in the shop. The plaintiff had in this way received numerous small sums, amounting to 1l. 9s., forming part of the above-mentioned claim of 39l. 19s. 3d., and expended the remaining part of that sum in goods at the shop of Andrew Buchan and Co.

When the workman determines on dealing at the shop, the mode of dealing is as follows:—The workman first procures from the shop a small pass-book, at his own cost, and whenever he wishes to draw anything on account of the sum authorised in the advance-book, he either takes or sends the pass-book to the cashier in the office adjoining the shop of Andrew Buchan and Co. who refers to the advance-book and enters in the left-hand margin of the pass-book the amount for which he then finds that the workman is entitled to draw. The bearer of the book, who is generally the wife or one of the family of the workman, then takes the book into the shop and gives it to the shopman, who permits such person to select any goods to an amount not exceeding the amount so entered. After the goods have been selected, the shopman enters in the money column of the pass-book, "cash," being the amount of the goods selected, and the book is then taken by the bearer to the cashier in the office adjoining the shop of Andrew Buchan and Co. who gives him in the current coin of the realm the amount so entered in the money column. He then enters into the shop, and, on payment of the money he has so received from the cashier, he receives the goods and takes them away. It was proved, however, that men sometimes go away with the money thus received from the cashier, without taking the goods they had ordered. All the moneys paid by the cashier in the office adjoining the shop of Andrew Buchan and Co. are repaid to Andrew Buchan and Co. by the Rhymney Iron Company.

It was proved upon the trial that there were other parties than the company's workmen who dealt at the shop of Messrs. Buchan and Co. and that the moneys paid in the shop by parties not getting their cash from the office adjoining the shop were put in a separate and altogether a distinct till from the moneys brought from the last-mentioned office. It was also proved that the cashier at the office adjoining the shop, who is supplied with money by A. Buchan and Co. kept his distinct account books, in one of which he entered the moneys which were not to be spent in the shop, and in the other those that were.

The first of these books furnishes a check upon the cashier as to the money put in his cashbox. It was further proved that the sum kept by this cashier was but small, sometimes not lasting anything like the whole day, and that as soon as it was exhausted he went to the till in the shop and cleared it to replenish his cashbox, and so the same money went round and round, and when there was not enough to be had from the till in the shop, he was supplied with more cash by Andrew Buchan and Co.

It was proved that, of the workmen in the employ of the company during the year 1850 and 1851, 437 men, earning on the average 1,240l. a month, did not deal at the shop of Andrew Buchan and Co. that 409 men dealt partially, expending only 265l. per month, out of 1,321l. their average earnings, and that Andrew Buchan and Co. had altogether in number not exceeding 1,300 customers among the company's workmen.

The learned judge, in giving judgment, divided the time over which the plaintiff's account ran into two periods, viz. from January 1850, to January 1851 (both months inclusive), and from February 1851, to November 1851, in the former of which periods the plaintiff received 22l. 16s. and in the latter 17l. 2s. 5d. at the office adjoining the shop of Andrew Buchan and Co. The whole of these two sums (except the sum of 1l. 9s. above mentioned) was paid away by the plaintiff in the shop immediately after it had been received, for goods which he had just before selected in the manner before mentioned. So far as regarded that part of the plaintiff's claim which was included in the first period from January 1850, to January 1851, amounting to the sum of 22l. 16s. there was no evidence of any influence having been exercised on the part of the plaintiff's employers, or of Andrew Buchan and Co. to induce him to deal at the shop, and the judge being of opinion that that amount was received by the plaintiff in the current coin of the realm, within the letter and spirit of the said Act of the 1 & 2 Wm. 4, c. 37, gave judgment for the defendant with respect to that portion of the plaintiff's demand. But with regard to the remaining sum of 17l. 2s. 5d. he gave judgment for the plaintiff, considering upon the evidence hereinafter mentioned, that subsequently to the month of January, 1851, the plaintiff did deal at the shop of Andrew Buchan and Co. under some degree of constraint. The plaintiff worked under an overman named David Humphreys, and the plaintiff's attorney proposed to give evidence of a conversation alleged to have taken place between David Humphreys and the plaintiff, in the month of January, 1851. It was objected that the conversation, supposing it to have taken place, was not evidence against the company, the statement of David Humphreys not being within the scope of his authority. The judge at first allowed the objection, but it was afterwards proved that at the time of the conversation alluded to, a paper was produced by David Humphreys, containing a list of names of men working in his level, including the plaintiff's, and David Humphreys, on being examined respecting it, stated as follows:—"I had a list from the office of four or five names; James Olding's name was in it; I had it from William Hemis, the coal clerk. He is a clerk under Mr. Bedlington (the coal agent) in the office. I had the paper from William Hemis, to remember the names that did not deal at the shop." Upon this the judge held that whatever was said by David Humphreys when he produced the list to the plaintiff was admissible against the Rhymney Iron Company. The evidence of what really took place at that interview was conflicting, but the finding of the learned judge in reference to this evidence was, that Humphreys intimated to the plaintiff that unless he complied with his employers' wishes by dealing more largely at the shop, he would incur their displeasure, and the risk of being dismissed from their service. Upon the facts thus found by him the judge drew the following conclusion in law:—Believing that the plaintiff was induced by threats communicated to him through the ordinary channel of communication between him and his employers to deal more at the company's shop than he would have done had he been permitted to follow his own inclinations, and considering that the effect of this intimidation is to make the delivery of the goods and not the cash payment the real payment, he was of opinion that the plaintiff was entitled to his judgment for 17l. 2s. 5d. The questions submitted for the determination of the Court of Appeal are—1st.: Whether the evidence of the plaintiff and Samuel Rogers as to what was said by David Humphreys to the plaintiff under the circumstances stated in this case, was admissible. If the Court should be of opinion that it was not, then the judgment to be entered for the defendant as to the said sum of 17l. 2s. 5d. 2nd: But if the Court should be of opinion that such evidence was properly admitted, then whether the said sum of 17l. 2s. 5d. by the cashier in the office adjoining the shop of Andrew Buchan and Co., under the circumstances stated in this case, was a legal payment in satisfaction and discharge of the plaintiff's wages to that extent. If the Court should be of opinion that it was, then the judgment to be entered for the defendant as to the said sum of 17l. 2s. 5d.; if otherwise, then the judgment of the County Court to stand.

The *Attorney-General*, with him *T. Challoner Smith*, for the appellant. This case is of great importance, because the Rhymney Iron Company employ a very large number of men, and in the course of business which they have adopted, have proceeded upon the best legal advice. The Truck Act, 1 & 2 Wm. 4, c. 37, does not prohibit masters from keeping shops for the sale of goods to their workmen; and it is highly beneficial to the workmen when they do so. It is a great safeguard against improvidence. That Act prohibits payment otherwise than in the current coin of the realm; but this case finds, that the workmen at the Rhymney Iron Works are always so paid. [Coleridge, J.—The question would rather seem to be, whether the payment was not colourable.] If so, there can be no ground for the distinction made by the judge between the first part and the second part

of the plaintiff's demand; because the mode of dealing was the same during the whole period. The first question here is, whether the evidence of intimidation was admissible; and it certainly was not; because Humphreys had no authority to bind the company by any declarations which he might choose to make, wholly beyond the sphere of his duties, especially when those declarations would render the members of the company liable to heavy penalties. (Sec. 9.) It was no part of the duty of Humphreys or the coal clerk to endeavour to compel the men to deal at the shop. Secondly. The mode of dealing was perfectly legal. [COLERIDGE, J.—Suppose the money is paid and received upon the express understanding that it should be spent at the shop?] That is a very different case from the present. Here it is found that the dealing is voluntary; and an illegal threat, if given, would not bind the master. He referred to *Chawner* v. *Cumming*, 8 Q. B. 311; *Lane* v. *Pratt*, 1 Law T. 623.

Keating, contrà.—Sec. 2 of the statute shews the intention of the Legislature, which was to prohibit every sort of interference by the master with the disposal of the workman's wages. The plaintiff has not appealed against the judgment of the Court below; but if he had, strong reasons might be adduced for saying, that as to the first part of the claim, the judgment was wrong. First, the evidence of intimidation was admissible. So long as the company continue to be shopkeepers, inferences may fairly be drawn from their making it their interest to have customers; and the list of names produced by Humphreys came through the ordinary channel of communication between the workmen and their employers. The coal agent is virtually the master, and the paper comes from his office. Besides, sec. 25 of the statute interprets employers to include all clerks or other persons engaged in the employment or superintendence of the workmen. [He was stopped.]

COLERIDGE, J.—As we have formed a clear opinion on the first point, it is unnecessary to hear any further argument upon the second and more important question. I think that the learned judge did wrong in admitting this evidence; and, first, to dispose of sec. 25 of the statute, it seems to me that that section has no bearing on this question. The meaning of that section is, that whenever you find the word "employer" in that statute, you may read it as meaning "masters, bailiffs, foremen, managers, clerks, and other persons engaged in the hiring, employment, or superintendence of the labour of any such artificers;" for example, when sec. 2 speaks of a contract to be made between any artificer "and his employer," the interpretation clause takes effect; and would render the section applicable though the contract was made not by the real employer, but by some manager or clerk, as Bedlington or Hemis; but the section does not affect the question of agency, as it arises here. Then was Humphreys, the agent of the company, to bind them by his statement to the plaintiff? His duties are distinctly stated in the case. He acts under the coal agent; he has nothing to do with hiring or discharging the men; but he communicates messages to and fro between the workmen and the officers above. I think, therefore, the judge properly rejected the declaration of Humphreys in the first instance; but he appears to have thought that the production of the list of names received from the office of the coal-agent altered the case. But first that list is traced no farther back than to Hemis, the coal clerk, whose duty is to ascertain the amount of the men's earnings, and who also is engaged as a clerk in the office of the coal agent. Could Hemis then bind his superior Bedlington by such a communication? I think it would be very dangerous to hold that he could, and if he could not bind Bedlington, à fortiori, he could not bind the company. If a person employed in a subordinate situation does or says something within the scope of his employment, it may fairly be presumed that he has a general authority which renders such declarations binding upon his employer; but when he goes beyond the sphere of his duties, and still more if he does something illegal, and attended with penal consequences, it would be very unjust and unreasonable to hold his employer bound by his acts. Humphreys may have been the ordinary channel of communication between the men and their employers, but a master who usually communicates with his inferior servants by an upper servant is not on that account bound by any communication which that servant may choose to make to those under him. For these reasons I am of opinion that the evidence was not admissible, and our judgment must be for the defendant.

ERLE, J.—This is an action by a labourer for his wages; to which the answer is, payment in money; and the plaintiff replies, the payment was ostensibly in money, but really in goods, contrary to the Truck Act. The plaintiff says, "You made that illegal arrangement with me;" and he endeavours to shew such an arrangement made with Humphreys or Hemis; and that evidence is not admissible without some evidence of authority in them to make such an arrangement. Their duties are stated, and it seems to me clearly that it does not fall within the sphere of those duties to enter into a contract of that kind, attended by such important consequences; and unless some such "arrangement" can be proved as is described in sec. 25, the plaintiff has no answer to the defence set up. *Judgment reversed.*

COURT OF COMMON BENCH.

Reported by DANIEL THOMAS EVANS and VAUGHAN WILLIAMS, Esqrs. Barristers-at-Law.

Wednesday, April 21.

ROBINSON *v.* GILL.

County Court—Duty of clerk—Order to pay by instalments.

It is not the duty of the clerk of a County Court to prepare a notice of an order made by the judge upon the defendant to pay by instalments.

An order to pay by instalments is a part of the judgment.

An action was brought in a County Court against A. and B. and in the absence of A. it was adjudged that the plaintiff should recover a certain sum, and an order was made that it should be paid by weekly instalments. The clerk of the Court prepared an incorrect notice, which was served on A. His goods were afterwards seized, the instalment, according to the real order, not being paid. In an action brought by A. against the clerk for breach of duty

Held, that the clerk was not liable, there being no such duty as alleged.

The defendant was clerk of the County Court of Cheshire, and this action was brought against him for alleged neglect of duty as such clerk. On the 24th of Oct. 1851, an action was brought by one Cook, in the County Court of which the defendant was clerk, and 17*l.* recovered against the present plaintiff and another person, who were joint defendants in that action. The judge ordered that the defendants should pay 3*l.* down and the rest by weekly instalments. The defendant prepared a notice of the order, but by mistake stated the instalments to be payable monthly, instead of weekly. The plaintiff not having paid the first instalment according to the order, Cook, the plaintiff in the cause in the County Court, issued a warrant of execution, under which the plaintiff's goods were taken. He thereupon commenced an action against the present defendant for breach of duty, the first count of the declaration being for a misfeasance in making out a .. notice, the second being for a nonfeasance. With respect to the judgment and order, the allegations in the declaration was "that it was adjudged that the plaintiff should recover a certain sum, and *thereupon it was ordered* that" the money should be paid by instalments. The declaration was demurred to generally.

Cowling, in support of the demurrer, argued that there is no such duty imposed upon the County Court clerk as is alleged in either count. Secs. 92, 94, and 95 of the County Court Act shew that if default is made in payment of instalments, execution is to issue at once without any intermediate step. It is not the duty of the clerk to prepare a notice of the judgment, that being made in the constructive presence of the defendants, and the order to pay by instalments being a part of the judgment. (*Ely* v. *Mould*, 5 Exch. 819.) But in this case one of the defendants might have been, and probably was, present in court at the time. In *Ely* v. *Mould* the order was for payment forthwith; but the Act makes no difference between an order to pay forthwith, and to pay by instalments: they are equally a part of the judgment. The 111th of the New Rules of Pract. directs that orders for payment of money shall be served; but it does not say in what cases; and it will not apply to this.

Welsby, contrà. The declaration alleges that it was adjudged that the plaintiff should recover a certain sum. This was a complete judgment; and what follows, viz. "and thereupon it was ordered that" the money should be paid by instalments, is an order distinct from the judgment, and is in the nature of a warrant or precept within the 27th section of the Act. The 92nd section shews that this order is not the judgment. A judgment imports a payment forthwith, and during that the defendant is supposed to be present so as to have notice of it. But an order to pay by instalments is inconsistent with a judgment to pay forthwith, and different from it, and comes within the 111th rule, which directs that "orders for payment of money or costs, or both, shall in all cases be served by the bailiff." And if so, it was the clerk's duty to prepare the notice for the bailiff to serve. And even if this rule is only directory, still it is imperative on the officer; and if he undertakes the duty and proceeds in it incorrectly, he is liable. In *Ely* v. *Mould* the money was to be paid forthwith, and it is a mere judgment. But here there is an order varying the effect of the judgment in favour of the then defendants.

Cowling in reply.—The order is not distinct from the judgment. They must be assumed to have been made at the same time; and the judgment would not have been complete without an order as to how the money should be paid. *Cur. adv. vult.*

Saturday, May 1.—JERVIS, C.J. delivered the written judgment of the Court.—The question in this case is raised by a general demurrer. The declaration contains two counts; the first is founded on a misfeasance, and the second on a nonfeasance. We will consider the second first, as that raises a question on both counts which it will be well to consider unencumbered by the other point. After referring to the judgment and order set out, the first count avers, that after the making of the order, "it became and was the duty of the defendant, as such clerk as aforesaid, to prepare, or cause to be prepared and made out, a notice in writing of such order, to the intent and in order that the same might be delivered or transmitted to, or left for the now plaintiff, as such defendant in the said cause, and to take due and proper care that no execution should issue out of the said court founded upon the said judgment and order, without such notice having been first prepared and made out as aforesaid; yet the plaintiff in fact says that the defendant, not regarding his duty in that behalf, did not, as such clerk as aforesaid, prepare or cause to be prepared or made out any such notice in writing, but on the contrary wholly neglected and omitted so to do." It then alleged, that "through the mere negligence and breach of duty of the defendant in that behalf, he, the plaintiff, did not at any time receive any notice of the said order, and was from thence continually until the time of committing the grievances next hereinafter mentioned, wholly ignorant of the making thereof, and by reason thereof made default in payment of divers of the said instalments thereon, and thereby directed to be paid as aforesaid." And then certain consequences followed, of which he complains. The allegation of duty in this case is not a matter of averment and proof, and therefore to make the defendant liable, he must have omitted to perform some legal duty. The statute of 9 & 10 Vict. c. 95, imposes no such duty in terms. The 27th section, referred to by the plaintiff's counsel in the argument, being confined to the issuing of summonses and warrants; the 92nd, the 94th, and 95th, which empower the judge to order by instalments the payment of a debtor, and define the mode of proceeding for the recovery of the debt, being silent upon this subject. But it is said the new rule, 111, casts this burthen on the County Court clerk, because in all cases all orders, &c. are to be served by the bailiff of the home Court; the clerk is the proper officer to make out the documents to be served by the bailiff, and the duty of preparing the orders, therefore, is cast upon him. In our opinion, this rule has no such operation. It does not enlarge the duties of the County Court clerk beyond the provisions of the Act of Parliament, but was framed merely for the purpose of pointing out by whom service was to be made. The orders which require service within the provisions of the statute, or by the practice of the Court, do not include judgments. The rules of practice drawn up by the judges are not an exposition of the statute; but, assuming that some orders for the payment of money and costs may require service, they say such service shall be made by the high bailiff of the County Court. But it may be, that if the order ought to have been served, that the defendant, without reference to the Act or the new rules, may be liable. It is unnecessary to discuss the defendant's liability in that case, if, in our opinion, it was not necessary to serve this order; and we are of opinion that this point is well decided in *Ely* v. *Moule*, 5 Exch. 918. The first count of the declaration referred to in the second count states a judgment and order given for debt and costs, and "thereupon it was ordered that the debt should be paid by instalments." The order for payment is part of the judgment, and it becomes unnecessary to consider what ought to have been done with the judgment. When the judgment was delivered, the order being part of the judgment, must have been known; and no service was necessary. These observations dispose, also, of the principal question upon the first count, which proceeds upon the misfeasance of the alleged duty by the defendant, in making out a copy of the order so inaccurately, that the plaintiff was misled and induced not to pay the instalment in due time. If the defendant was not legally bound to make out such notice, the fact of his having made out an incorrect notice will not give the plaintiff a cause of action; and we have already expressed our opinion upon that point. But this count contains, also, a further allegation, namely, that it was the practice of the County Court for the clerk to make out a copy of the order for payment of the debt by instalments, to be served upon the defendant. If such a practice exists, it may be contended that the proceedings in question were irregular. But we need not give any opinion upon this point; for whether they were regular or irregular, no action will lie in such a case for a mere irregularity of this description. It is observed, that the practice of the Court is mentioned by the Act of Parliament. It may be, that

the form of the rule and the schedule of fees may have led, in point of fact, to the practice of serving a notice of judgment in such a case; but, in our opinion, they do not warrant such a practice, and do not establish a legal necessity of pursuing such a course. For these reasons, we are of opinion the defendant has not been guilty of any breach of duty, and therefore is entitled to the judgment of the Court.

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY, and C. J. B. HERTSLET, Esqrs. Barristers-at-Law.

Monday, Jan. 19.

WILLIAMS *v.* ROBERTS.

Pleading.

Landlord and tenant—Fraudulent removal of goods to avoid a distress—Following them and breaking and entering to distrain such goods without a previous demand.

Declaration in trespass for breaking and entering the close and stable of the plaintiff, damaging and destroying divers locks, and carrying away certain goods of the plaintiff.

Plea, admitting that the goods seized were, at the time of the seizure, the goods of the plaintiff as averred in the declaration, but justifying that seizure on the ground that the goods had been, within thirty days before, fraudulently carried off by the tenant, being his own goods, from the demised premises, to prevent a distress for rent, and locked up on the plaintiff's close, and averring the locks to have been broken in the presence of a constable.

Demurrer thereto.

Held, that the plea stated a good prima facie case within the 11 *Geo.* 2, *c.* 19, *s.* 1, *and if the plaintiff intended to bring himself within the next section, which comes by way of proviso, that no landlord should take or seize goods as a distress which have been bonâ fide sold for a valuable consideration to persons not privy to the fraud, he should, according to the rules of pleading, have so replied. In the absence of such a replication, the plaintiff must be taken to have been either merely in possession of the goods, or a bailee, or to have been donee without value; and therefore the liability of those goods to distress still continued:*

That it was unnecessary to prove any previous request to enter the premises, or demand to have the goods delivered up before breaking such locks as are necessary to obtain the goods, in exercise of the right given by the statute. The presence of the peace-officer is a protection against any excess

That there was no argumentative traverse by the plea, because it admitted the goods to be the plaintiff's at the time of seizure, and avers that they were the tenant's at the time of removal.

This was an action of trespass for breaking and entering the plaintiff's premises and taking away certain goods. *Plea*—That one Owen Owens rented certain premises of the defendant, and that the goods in question were fraudulently removed by Owen Owens to the premises where the trespass was alleged to have been committed, in order to avoid such goods being seized under a distress for rent; and that defendant followed them in order to take them as for the rent due in respect of the premises so occupied by the said Owen Owens, of the defendant.

To this there was a special demurrer.

Cowling, in support of the demurrer.—The plea is bad both in form and substance. It states the trespass to be for taking goods of and belonging to the plaintiff; but it does not confess them to be the plaintiff's, nor does it distinctly traverse that fact. *Fletcher* v. *Morillier*, 9 A. & E. 457, is identical with the present case upon this point. The plea is bad in substance, because it admits the goods to be those of the plaintiff; and then, if so, they could be only taken under the 11 Geo. 2, c. 19, s. 7. It does not state that they were conveyed away as under the statute would enable the landlord to retake or take; as under that statute, two things must concur,—a fraudulent removal, and also that they have not been bonâ fide sold. (1 Saund. 233, *b*, note *b*.) It is an argumentative traverse of the goods being the plaintiff's. (*Bailey* v *Bidwell*, 13 M. & W. 73; *Thornton* v. *Adams*, 5 M. & Sel. · *Rich* v. *Woolley*, 7 Bing.; *Angel* v. *Harrison*, 17 L. J. 25, Q.B.) It was necessary also that the defendant should have alleged a *demand* for permission to enter in the first instance. *Harper* v. *Carr*, 7 T. R. 270, was referred to.

Willes, contrà.—It was not necessary, under the circumstances, to make or allege any previous demand to enter upon the premises in question to seize the goods. Here it was a mere entry into a stable, not a dwelling-house. (*Ratcliffe* v. *Burdon*, 3 Bos. & Pul. 223; *Hutchison* v. *Burch*, 4 Taunt. 619; *Patrick* v. *Colerick*, 3 M. & W. 483.) It should have been distinctly shewn that the plaintiff was a participator in the fraudulent removal of the tenant's goods: the tenant may have deceived him, and if so, he would have his remedy for it. But it is unnecessary to allege more than the statute requires, and the plea does state everything required by the statute; and it is unnecessary for the plaintiff to bring himself within the proviso in the 2nd section of the Act. (*Thibault* v. *Gibson*, 12 M. & W. 88; Williams's Saunders, 262 (*a*); *Washbourne* v. *Burrows*, 1 Exch. 107; *Upton* v. *Bassett*, Cro. Eliz. 445.) In *Fletcher* v. *Morillier*, there was an averment that the plaintiff was privy to the fraudulent removal of the goods; and that is the distinction between that case and the present. [PARKE, B.—Suppose another person brings goods and places them in my field or house, without my knowledge or consent, does the law allow another to enter and take them away without any notice to me, or to break my door or gate for that purpose?] The statute permits a landlord to enter with a peace-officer, wherever the goods are which have been so fraudulently removed from his tenant's premises to prevent their being taken under a distress for rent.

Cowling, in reply. *Cur. adv. vult.*

JUDGMENT.

Monday, April 26.—PARKE, B.—This case was argued before my brothers Alderson, Platt, and Martin, and myself, at the sittings after last Term. The *declaration* was in trespass, and stated that the defendant broke and entered a certain close of the plaintiff, called the stable, in the county of Carnarvon, and broke open, pulled down, and damaged two doors of the plaintiff, of and belonging to the said close, and then took and carried away the same, and converted them to his own use. The *pleas* were—first, Not guilty; secondly, That the close, &c. were not the property of the plaintiff; thirdly, That the goods and chattels were not the plaintiff's; and the fourth plea states, that one Owen Owens, for a long time, to wit for the space of half a year, next before and ending on the 1st day of September, A.D. 1850, and from thence until and at the same times, when, &c. held and enjoyed a certain water corn-mill and premises, situate in the parish of Aber, in the county of Carnarvon, under and by virtue of a certain demise thereof, theretofore, to wit, on the 1st day of September, 1849, made by the defendant E. G. Roberts to the said O. Owens, for the term, to wit of one year, from thence next ensuing, and so on from year to year, so long as the said defendant and the said O. Owens should respectively think fit, at and under the yearly rent of 130*l*. payable half-yearly, by even and equal portions; the reversion thereof, to wit in fee, then and still belonging to the defendant, the said E. G. Roberts. And the defendants further say, that on the day and year first aforesaid, a large sum of money, to wit the sum of 65*l*. of the rent aforesaid, for half a year of the said term, ending on the same day and year, became and was due and payable from the said O. Owens to the defendant the said E. G. Roberts; and at the several times when, &c was in arrear and unpaid; and the said O. Owens, after the said rent became and was due and payable, and whilst the same was actually due, in arrear, and unpaid, and within thirty days next before the said several times when, &c. the said O. Owens fraudulently and clandestinely conveyed away and carried off and from the said premises so held and enjoyed by him as such tenant thereof as aforesaid, the said goods and chattels of him in the said declaration mentioned, being the proper goods and chattels of him the said O. Owens, in order to prevent the said defendant from distraining the same for the said rent so before and at the time of the said removal actually due, in arrear, and unpaid as aforesaid; and for that purpose conveyed the said goods and chattels in the [sa]id declaration mentioned to the said close [in] which, &c.; and because the said goods and chattels which had been so fraudulently and clandestinely conveyed away and carried off by the said O. Owens, as aforesaid, still remained and were in the said close, in which, &c. to which the same had been so conveyed as aforesaid, and were there kept locked up so as to prevent them from being seized and taken as a distress for the said arrears of rent, the said E. G. Roberts in his own right, and the said other defendants as the servants of the said E. G. Roberts, and by his command, afterwards, and while the said rent so remained due, in arrear, and unpaid as aforesaid, and within thirty days next after the said goods and chattels were and had so been fraudulently and clandestinely conveyed away and carried off as aforesaid, and whilst they remained so kept locked up as aforesaid, that is, at the time when, &c. entered into the close in which, &c. in the said declaration mentioned, in order to seize and take the said goods and chattels so therein being as aforesaid, as a distress for the said arrears of rent so due and owing as aforesaid; and did thereupon, at the several times when, &c. and within thirty days next after the said goods and chattels had been and were so fraudulently and clandestinely conveyed away and carried off as aforesaid, in the said close in which, &c. take and seize the said goods and chattels so there found, as a distress for the said arrears of rent, the same then remaining due, in arrear, and unpaid; and because, on the occasion aforesaid, the said goods and chattels had been and were put and kept in the said close in which, &c. locked up, so as to prevent them from being taken or seized as a distress for the said arrears of rent, and so that the defendants could not, without breaking open and entering the said close, seize the said goods as aforesaid, the defendant E. G. Roberts in his own right, and the other defendants as bailiffs of the said E. G. Roberts, and by his command, on the occasion and at the time aforesaid of entering and taking the said goods in the said close, were forced and obliged to, and did, in order to seize the said goods as aforesaid, first calling to their assistance the constable of the place where the said close and goods were, according to the form of the said statute, and with his aid and assistance, in the daytime, break open and enter the said close in order to take and seize, and did then, as aforesaid, take and seize the said goods and chattels for the said arrears of rent, according to the said statutes; and in so breaking and entering the said close, did, to a small and necessary extent, commit the supposed trespasses, so far as they relate to the said doors, locks, staples, hinges, bolts, bars, and latches; and the defendants, on the occasions aforesaid, did no unnecessary damage, and no more than was necessary to enable them to seize the said goods as aforesaid, for the purposes aforesaid. There was a replication to the first, second, and third pleas, and a special *demurrer* to the fourth for insufficiency in law; and, amongst the causes of demurrer, that it is improperly pleaded to the whole declaration, and contains an argumentative traverse of the goods being the plaintiff's. The plea admits that the goods seized were, at the time of the seizure, the goods of the plaintiff, as averred in the declaration, but justifies that seizure, on the ground that the same goods had been within thirty days before fraudulently carried off by the tenant, being his own goods, from the demised premises, to prevent a distress for rent, and locked up on the plaintiff's close; and it avers the locks to have been broken in the presence of a constable. The question on general demurrer is, whether the plea states a good primâ facie case within the enactment of the 11 Geo. 2, c. 19, s. 1. I think it does. If goods of *the tenant* are fraudulently conveyed away, they are by that section made liable to a distress within the period of thirty days, to whatever place removed. By the general terms of the section, liability attaches to the particular goods themselves, not merely so long as they continue the goods of the tenant. And then the next section, which states by way of proviso, that *no* landlord should take or seize goods as a distress which have been bonâ fide sold, for a valuable consideration, to persons not privy to the fraud, operates as a defeasance of the provisions of the former section, and takes all goods so sold out of its operation. If the plaintiff fell within that category, he ought to have so replied, according to the rules of pleading. And a reason for this enactment being made in the shape of a proviso is, that the plaintiff knows his title to the goods better than the landlord, and the defendant ought not to be called upon to plead a part of his justification, that they were not so sold. In the absence of such a replication, the plaintiff must be taken to have been either merely in possession of the goods, or a bailee, or to have been donee without value; and therefore the liability of those goods to distress still continued. But it was then contended that the plaintiff's close could not be entered, and still more his locks could not be broken, unless he was a party to, or at least cognisant of, the fraudulent removal of the goods; for it would, it was said, be a hardship on him if innocent, and if the goods were locked up without his privity or knowledge in his close, that his locks should be broken, and further, that it could not be a justifiable act to break open his gates without a previous request to open them. And though the statute in express words requires neither one circumstance nor the other, one or both must by implication be deemed necessary, on the plain principles of justice. I do not think that either of these circumstances were necessary conditions to the exercise of the right given by the statute. According to the ordinary construction of the words they are not requisite, nor are they, I think, implied. Though in some cases it might be just to require both circumstances, in the great majority which occur it would not be so; for, generally, goods fraudulently removed are not secreted in a man's close or house without his privity or consent. The Legislature may be presumed to have had this in their contemplation,—"adeo quæ frequenter accidentia adaptantur." The remedy against the fraud of the tenant given by the Act is a stringent one, and meant to be operative; and if it were made a condition to the exercise of this power, that the landlord should prove the privity of the person in possession of the goods, [it m]ight be very difficult to do so, or to ascertain that within the period allowed to distrain them,

the remedy would be of little value. Again, if the gate of a field could not be broken open without a previous request to open it, it may easily be conceived that a great impediment would be interposed by the necessity of searching for and finding the occupier, in order to make a request, and as it rarely happens that the occupier of the field would be innocent, the statutory provision is by no means on the whole unjust, and the presence of the peace officer is a protection against any excess. Besides, if the plaintiff were really innocent of all collusion with the fraudulent tenant, or person placing the goods on his close, he would have a remedy against them for the damage sustained by the act of the landlord. I think, therefore, the plea is good on general demurrer. The grounds of special demurrer are also insisted on. The first ground is, that the statement that the goods were those of the tenant, is inconsistent with the allegation in the declaration, that they were the plaintiff's, and so an argumentative traverse; and if the plea admits the goods to be the plaintiff's, then the right to distrain did not exist, because it applies only to cases in which the tenant removes his own goods. But this is a misapprehension. The plea admits the goods to be the plaintiff's at the time of *seizure*, and avers that they were the tenant's *at the time of removal*, in which there is no inconsistency whatever. Both may be perfectly true. There is, therefore, no such dilemma as suggested in the special demurrer. From some passages in the judgment of Lord Denman, in *Fletcher* v. *Marillier*, 9 Adol. & Ellis, 461 (if the report be correct), it would appear that the difference between the time of *removal* and of seizure was not adverted to; but the case itself is distinguishable, as the plea admitted the goods, *at the time of seizure*, to be the property of, and in the possession of the tenant, and no colour of title was given to the plaintiff; and that is pointed out as a cause of special demurrer, and also relied upon in the judgment. Our judgment, therefore, is for the defendant.

Judgment for the defendant.

Friday, Feb. 6.

THE ATTORNEY-GENERAL v. LORD HENNIKER.

Legacy—Power of appointment—Appointment with a condition—Liability to legacy duty.

A power is given by will of the first Lord H. to the second Lord H. to appoint 2,000l. to his wife if he thinks fit, and he is to appoint it to his wife, in the same instrument by which he appoints, he imposes on her the condition of relinquishing her dower, or free-bench of all the copyhold estates. The question was, whether that was to be considered as a purchase of the dower or thirds, as to be treated as a purchase in fact, or whether it was a condition on the receipt of the legacy, which condition she accepts, and makes no conveyance, but is still the recipient of the legacy:

Held, to be nothing more than an appointment of the legacy, upon a condition. She knows by the instrument by which the legacy is appointed that it is a legacy, and if she takes it, she takes it as a gift of the testator, no matter whether the person who exercises the power of appointment annexes a condition to the gift or not, still it is a gift of the testator, and is taken from the testato[r]. Therefore it becomes liable to legacy duty.

The *Solicitor-General* (*Sir P. Wood*) argued the case for the Crown and referred to *The Attorney-General* v. *Jackson*, 1 C. & Jer.; *Stow* v. *Devonport*, 5 B. & Adol. 359; *The Attorney-General* v. *Pickard*, 3 M. & W. 552, and 6 M. & W. 348; 2 Sugden on Powers (7th edit.), 73; and *Newport* v. *Savage*, in the Appendix.

Hoggins, Q.C. contrà, cited *Blower* v. *Morrett*, 2 Vesey, sen. 420. *Cur. adv. vult.*

Saturday, February 7.—PARKE, B. delivered judgment. This was a special verdict which was argued before us yesterday, and we took time and have considered the case, and are of opinion that judgment ought to be in favour of the Crown. The special verdict states, and the information states also, that John Minet Henniker made his will on the 26th of July, in the year 1821, and after disposing of his property in different ways by the will, gave directions as to the purchase of estates in Suffolk with the proceeds of the estates in Essex and other counties; and the will contains a clause with a power enabling the tenant for life who shall be entitled to the rents and profits of the estates, to direct the estates to be sold and a deed of settlement to be made of the estate; and there should be inserted in that settlement a power that the tenant for life shall be entitled to the rents and profits of the estate, so settled by deed or will, duly executed, to charge all, or any part of such estates with any annual sum or sums of money not exceeding one-third part of the annual value thereof, unto, and for the benefit of, any woman or women whom he or they might respectively happen to intermarry. The special verdict then proceeds to state the death of John Henniker, the first Lord Henniker, and that John Minet Henniker afterwards succeeded to that estate, and became the second Lord Henniker, and that he by his will directed the property in question to be, with the payment of the annual sum of 2,000l. of lawful money of Great Britain, free and clear from and without any other deduction whatsoever, unto and for the benefit of his wife Mary Lady Henniker, during the term of her natural life, the said yearly rent or annual sum of 2,000l. to be in the nature of and in full for the jointure of his the said John Minet Henniker's said wife, and to be in lieu, bar, and satisfaction of and for her dower, or thirds at common law, or by or on account of custom, free bench, or widow's part, which she could, should, or otherwise might have or claim, of, in, or out of the freehold, copyhold, or customary manors, messuages, farms, lands, tenements, &c. of the second Lord Henniker. And then it proceeds, also "in case he, the said John Minet Henniker Major Baron Henniker, was not authorised and empowered by the said will of the said testator, John Henniker Major Baron Henniker, to charge the estates thereby devised and directed to be purchased and settled respectively as aforesaid, with the payment of so large an annual sum as 2,000l. by way of jointure, the deficiency, if any, should be a charge upon, and said John Minet Henniker Major Baron Henniker thereby expressly charged and made liable such part and parts of certain of his real estates and hereditaments in and by his said will devised as should not be sold under the trusts in his said will contained as hereinafter mentioned, with and to the payment of such deficiency." Then it proceeds to state the death of Lord Henniker, and the entry into the receipt of the profits; that Lady Mary Henniker was a stranger in blood, and that the value of the estates, or the rent of a third of the estates, was only 1,116l. 13s. 4d., and then it proceeds to state a calculation, in case there should be a deduction for the value of the dower, or thirds free bench of Lady Henniker. In the course of th[e] argument, the points in dispute between the parties were ultimately reduced to one single point. It is perfectly clear, in the first place, that though no deed was executed,—and indeed it was not denied by Mr. Hoggins, who on behalf of Lord Henniker was desirous it should be taken on the merits,—it is perfectly clear, though no deed was executed, there was an equitable power to charge the estates with an annuity. The case therefore falls within the principle of the decision of this Court in the case of the *Attorney-General* v. *Pickard*. In the next place it is perfectly clear that the present Lord Henniker, either as the heir of his father, who was the surviving trustee, or as the tenant for life in possession, was the person who, by the Act of Parliament, was bound to pay any duty either as trustee or as the person in possession. In the next place it is clear that after decision of the *Attorney-General* v. *Pickard*, this case may be considered precisely in the same way as if, instead of an annuity charged upon the lands, there had been a bequest of a sum in gross, say 1,000l. to be appointed, if the second Lord Henniker died before, to his wife; then the only question in the case is, whether there had been such an appointment to the wife, or a taking by the wife by virtue of that appointment, so as to make her a recipient of the legacy. There was a little doubt in the course of the argument—a doubt which was removed from the minds of all the Court by the reply of the Solicitor-General. The case, therefore, becomes this:—A power is given by the will of the first Lord Henniker to the second Lord Henniker to appoint the 2,000l. to his wife if he thinks fit, and he is to appoint it to his wife; and by the same instrument by which he appoints he imposes on her the condition of relinquishing the dower or thirds freebench of all the copyhold estates. The question is, whether that can be considered as a purchase of the dower or thirds freebench so as to be treated as a purchase in fact, or whether it is a condition on the receipt of the legacy, which condition she accepts and makes no conveyance, but is still the recipient of the legacy. Now, we are of opinion that thi[s is] nothing more than an appointment of the legacy upon a condition. She knows by the instrument by which the legacy is appointed that it is a legacy, and if she takes it she takes it as a gift of the testator; and no matter whether the person who exercises the power of appointment annexes a condition to the gift or not, still it is the gift of the testator, and is taken from the testator; therefore it becomes liable to legacy duty. There were some points raised in the course of the argument of a nice character, which might have raised some question if this had been a condition annexed to the legacy by the testator himself; then there would have been a question whether the whole of the money so received by the legatee was a legacy, or whether a part of it was not a purchase of some interest that might possibly reduce the duty to be paid upon the legacy, and so the difference in value between the legacy and the estate given up in consideration of it. It may be so; that is a point that may be settled hereafter if it becomes necessary. It is enough to say that that point does not arise here, because this is just a case in which there is no condition annexed by the testator; nor does it make any difference in this case whether the legatee is liable to pay legacy-duty or not. There is nothing in the argument of the case to shew this. If the question was hereafter to arise between Lord and Lady Henniker, or an endeavour to recover back the money he was compelled to pay as legacy-duty, it may be material to consider whether or not the legacy-duty was to be paid by the legatee, or out of the estate; but no question arises about that matter here. The case is precisely the same as the one I have already stated; it comes to that simple case, and on that simple case the Court is of opinion that the person taking the legacy takes it only by the gift of the testator, and, consequently, must pay the legacy-duty.

ALDERSON, B.—The second will creates the liability to the duty.

PARKE, B. The sums are agreed on upon which the duty is to be paid.

Hoggins.—It will be purely nominal, on the principle of your lordship's judgment.

PARKE, B.—On the whole of the interest to the extent of the rent of the Suffolk estates; the legacy-duty is to be payable upon that.

ALDERSON, B.—That is the amount of the annuity for which legacy-duty was payable.

PARKE, B.—Confined to the Suffolk estates.

ALDERSON, B.—At the time of the appointment.

PARKE, A.—Not exceeding one-third of the value at the t[ime] of the appointment; consequently, when the will took effect on the death of the second Lord Henniker, the value of the estate was to be determined, and the duty is to be paid on one-third of the annual receipts of the estate.

Judgment in favour of the Crown.

Wednesday, April 28.

DOE *dem.* KIMBER *v.* CAFE.

Will—Construction of—Devise to trustees.

A testator by will gave and devised to three trustees, and their heirs and assigns, "all that my freehold house, No. 23, situate on the south side of Portland-street, now in the occupation of Mr. May, and all the appurtenances thereon, upon trust, nevertheless, to receive the rents, issues, and profits thereof, and after deducting all taxes and expenses whatsoever, to pay the same quarterly, as the same should accrue and be received, unto such person and for such purposes as my said daughter, E. McIntyre, shall in writing, signed by her hand, after every quarter-day has elapsed, and so as not to be anticipated or disposed of, direct or appoint, and for want of such appointment into the proper hands of my said daughter, to and for her sole and separate and peculiar use, and not to be liable to the debts, control, or engagements, or intermeddling of her present or any future husband, and from and immediately after the decease of my said daughter, upon trust to pay and apply the said rents, issues, and profits for or towards the maintenance, education, and bringing up of my said daughter's children then living, during their minority, and upon the youngest living of my said daughter's children attaining the age of twenty-one years, I give and devise the said house and premises unto all the children of my said daughter who shall be then living, in equal shares and proportions, share and share alike."

Held, that the estate given to the trustees and their heirs was restricted to the life of E. McIntyre and the minority of all her children, that the estate of the trustees and their heirs was to continue only whilst the objects of the trust required it.

This was an action of ejectment brought to recover an undivided third part of certain premises described in the will of James Cole, which was dated in July 1806, and the question was, what estate passed under the will.

Bramwell, Q.C. and *Barstow* appeared for the lessor of the plaintiff, and contended that as this was a devise without words of inheritance, it was not a devise of a trust, but of a legal estate.

Manisty, contrà.—This is a devise of a beneficial estate, with no devise over; there is an express devise to the trustees in fee here. (*Knight* v. *Selby*, 3 M. & Gr. 92; *Moore* v. *Cleghorne*, 10 Beav. 421-3, and *Challenger* v. *Sheppard*, 8 T. R. 597; 12 Jur. 591; *Watson* v. *Pearson*, 2 Ex. 581; *Blagrave* v. *Blagrave*, 4 Ex. 568; *Doe dem. Tomkyns* v. *Willan*, 2 B. & Ald. 84. *Cur. adv. vult.*

JUDGMENT.

Friday, May 7.—PARKE, B.—The question in this case turns upon the construction of the will of James Cole, made in the month of July, 1806; and by that will James Cole gave and devised to Ann Cole, James Lumley, and James Lodge, and their heirs and assigns, "all that my freehold house, No. 23, situate on the south side of Portland-street (being the premises in question), now in the occupation of Mr. May, and all the appurtenances thereon, upon

trust, nevertheless, to receive the rents, issues, and profits thereof; and after deducting all taxes and expenses whatsoever, to pay the same quarterly, as the same should accrue and be received unto such person, and for such purposes as my said daughter, Elizabeth McIntyre, shall, in writing, signed by her hand, after every quarter-day has elapsed, and so as not to be anticipated or disposed of, direct or appoint; and for want of such appointment into the proper hand of my said daughter, to and for her sole, and separate, and peculiar use, and not to be liable to the debts, control, engagements, or intermeddling of her present or any future husband, and from and immediately after the decease of my said daughter, upon trust, to pay and apply the said rents, issues, and profits, for or towards the maintenance, education, and bringing up of my said daughter's children, then living, during their minority; and upon the youngest living of my said daughter's children attaining the age of 21 years, I give and devise the said house and premises unto all the children of my said daughter who shall be then living, in equal shares and proportions, share and share alike." The lessor of the plaintiff was the devisee of Wm. Cole, the heir-at-law, and residuary devisee of J. Cole. The defendant claimed under the three children of Elizabeth McIntyre, all of whom conveyed their interests in the property in question to the defendant. If they were entitled as tenants in common in fee the plaintiff must fail; if they were only tenants in common for life, one of them being now dead, the lessor of the plaintiff will be entitled to recover an undivided third part. We are of opinion that he is so entitled. It was properly admitted by Mr. Bramwell for the plaintiff, that this being a devise to trustees and their heirs, if the trust had been first to a feme covert, then for the maintenance of her children, then for her children in equal shares and proportions, share and share alike, the children would then have taken a fee on the authority of the cases of *Moore* v. *Cleghorn*, 10 Beavan, 423, and *Knight* v. *Selby*, 3 M. & G. 93. In such a case, everything the trustees took would have been given for the benefit of the devisee, and there would have been no resulting trust for the heir. But it was contended, and we think rightly in this case, that the estate given to the trustees and their heirs was restricted to the life of Elizabeth M'Intyre and the minority of all her children, on the principle that unless a different intention appears, the trustees, although the estate is devised to them and their heirs, took that quantity of interest only which the purposes of the trust require, and the trusts expressed in the devise of the house in question do not require the estate to continue after the youngest child has attained twenty-one; and the devise over is a direct devise to the children, not in trust for them; and if this direct devise had stood alone, there can be no question the children would have taken life estates only as tenants in common. A direct devise, however, may, by the context, be shewn not to give a legal estate to the devisee named, and the legal estate may, if the purposes of the will require it, continue in the trustees. *Doe dem. Tomkyns* v. *Willan*, 2 B. & Ad. 87, cited for the defendant, is a case of that sort. In that case, Bayley, J. relied on the necessity of the estate continuing in the trustees and their heirs to support contingent remainders to the children of one of the devisees, as well as the indefinite power to demise it for the best rent, as shewing the estate of the trustees was to continue. In the present case, there is nothing but a leasing power for a limited term, and at the best rent, contained in the subsequent clause of the will set out in the case to shew that the legal estate was meant to continue always in the trustees. We think this is not enough to call upon us to read the direct devise to the children as if it had been a trust in their favour. It is true that a power to lease affords an argument of weight in favour of the legal estate being intended to be given to the trustees, especially if it had been intended, as in *Doe* v. *Wellbank*, 2 B. & Ad. 154; but it is not conclusive, and in this case there is no necessity for the purpose of effecting the testator's object that the trustees should have more than a power to be exercised, while the estate vested in them for the purpose of the trust continues. The authority to lease extends to all the houses devised to them, and in one of the devises an estate in fee is devised to the grandson on attaining twenty-one, and it cannot be supposed it was meant they should lease for twenty-one years in that event. It seems to us that the most reasonable construction is, to hold the estate of the trustees and their heirs is to continue only whilst the objects of the trust require it, and the power to lease is a power only to be exercised during the continuance of this estate so limited to the trustees. The devise, therefore, to the children, is a decided devise to them, as the words import, and unquestionably they do not take more than life estates under that devise. The plaintiff is therefore entitled to our judgment.

Judgment for the plaintiff.

April 27 and May 8.

KEY *v.* COTTESWORTH.

Where it is the intent of a merchant resident abroad to preserve his right in property transmitted to England until certain bills drawn by him to cover the purchase-money, are accepted, the bill of lading should be transmitted by him indorsed in blank to an agent, to be delivered over when the bills have been so accepted; and where such a precaution was neglected, it was

Held, that the property in the goods at once vested in the consignee.

This was a motion for a new trial. The action was for money had and received, and was tried before Martin, B. at Guildhall, at the sittings after Michaelmas Term. The plaintiff sought to recover the sum of 671*l.* 15*s.* 9*d.* the proceeds of two parcels of Indian handkerchiefs sold by the defendants. The plea was, Never indebted. The case was mainly tried upon admissions. The plaintiffs were merchants at Madras, and Messrs. Scott, Bell, and Co. were their correspondents in London. The defendants were merchants in London, acting generally as commission-agents for Messrs. Kilgour and Leith, merchants at Glasgow. On the 5th of February, 1847, Messrs. Kilgour and Leith addressed a letter to the plaintiff as follows:—"Enclosed are patterns of a third order for handkerchiefs, which we will thank you to have put in hand immediately on receipt. This order has been too long delayed, and if you can by any means hurry execution, we will feel particularly obliged. You will draw for cost, and consign goods as before." The patterns were inclosed, together with a detail of the order. The transactions which had taken place before were these. In 1845, Messrs. Kilgour and Leith were desirous of procuring handkerchiefs from the plaintiff at Madras, and in order to provide for payment, they wrote several letters to the defendants to induce them to open a credit for the purpose. The defendants ultimately assented, and on the 17th of September, 1845, addressed the following letter to the plaintiff:—"At the request of Messrs. Kilgour and Leith, of Glasgow, we beg to open a credit in your favour to the extent of fifteen hundred pounds (1,500*l.*), to be applied to the execution of an order they have given you for Madras handkerchiefs, and for cost of which, as produced, you draw on us at the customary date, on forwarding bills of lading to our order, and timely orders for insurance." In consequence of this letter, and the two orders for handkerchiefs transmitted by Kilgour and Leith to the plaintiff, the latter executed the order and forwarded the goods and the bill of lading to the defendants, who received, accepted, and paid the bills drawn on them in accordance with the letter of the 17th of September, to the extent of 1,500*l.* therein mentioned, and this transaction was closed. In consequence of a letter of the 5th of February, 1847, from Messrs. Kilgour and Leith, the plaintiffs executed the order therein contained, and the goods ordered were shipped for England in two vessels, the *Providence* and the *Essex*. The goods by the *Providence* were shipped on the 21st of August, 1847, and they, as well as the goods shipped by the *Essex*, were stated in the admissions to have been shipped on the said order and on the account of Messrs. Kilgour and Leith; and the bill of lading was dated the 21st of August, and was in the usual form. It stated the goods to have been shipped by the plaintiff, and to be deliverable to the defendants or their assigns, on payment of the freight. Upon the same day the plaintiff addressed the following letter to the defendants:—

"By desire of our mutual friends, Messrs. Kilgour and Leith, of Glasgow, we beg to hand you herewith invoice and bill of lading for nine cases Madras handkerchiefs, shipped on the *Providence*, Captain S. Hicks, to your address, and against which, we have, as usual, drawn upon you at six months, for the equivalent of the amount of invoice in 369*l.* 2*s.* 1*d.* being at the current exchange of 2*s.* per rupee, and which will no doubt be duly protected. These goods have been placed in a cabin, to prevent the chance of their sustaining injury from the cargo; and as they have not been insured, we trust you will cover the risk on your side."

The bill of lading and invoice mentioned in this letter were inclosed, and the letter and its contents received by the defendants on the 26th of October, in due course. The heading of the invoice was as follows:—"Madras, 26th August, 1847. Invoice of nine cases of Madras handkerchiefs, shipped by the undersigned Messrs. Binney and Co. on board the *Providence*, Capt. Hicks, consigned to Messrs. Coleswell, Panell, and Pryor, London; on account and risk of Messrs. Kilgour and Leith, of Glasgow." The goods by the *Essex* were shipped on the 9th of October. A bill of lading in blank, indorsed by the plaintiff, and invoice, substantially in the same form, were inclosed in a letter from the plaintiff to the defendants, dated the 12th of October, which was received by the defendants on the 22nd of November, and the letter is as follows:—

"By desire of our mutual friends Messrs. Kilgour and Leith, of Glasgow, we have the pleasure to hand you herewith invoice and bill of lading for eight cases Ventapollam handkerchiefs, shipped on the *Essex*, Captain W. N. Howard, to your care, and we have, as usual, drawn upon you at six months for the equivalent of the amount of invoice in 302*l.* 13*s.* 8*d.* being at the current exchange of 1*s.* 11½*d.* per rupee, and which will, doubtless, meet due honour. We leave the insurance to be effected on your side."

On the 27th of October, Messrs. Kilgour and Leith stopped payment. The goods by the *Providence* arrived in London upon the 21st of October; the goods by the *Essex* about the 3rd of March, 1848. Both parcels were received by the defendants under the bills of lading, and both were sold by them, and the proceeds, amounting to 671*l.* 15*s.* 9*d.* sought to be recovered in this action, received by the defendants. Kilgour and Leith were before, at the time, and still are indebted to the defendants upon a balance of account in a larger sum. On the 21st of October, Scott, Bell, and Co. having received the bill drawn against the goods by the *Providence*, caused it to be presented for acceptance to the defendants, who ultimately refused to accept it. The second bill was also presented for acceptance on the 22nd of November and dishonoured, and both bills were duly protested. On the 4th of March, 1848, Messrs. Olverson and Co. the plaintiff's attorneys, addressed the following letter to the defendants.

"We have been directed on behalf of Messrs. Binney and Co. of Madras, to give you notice that in consequence of the insolvency of Messrs. Kilgour and Leith, of Glasgow, on whose account they shipped the undermentioned goods, they claim to stop the said goods in transitu. We understand that bills of exchange were drawn by Messrs. Binney and Co. upon you, in payment of the invoice cost of these goods, and that you have refused to accept these drafts, but still have a wish to retain the property. Messrs. Binney and Co. are advised, that as you have thus refused to fulfil the terms upon which the goods were consigned to you, and as the goods themselves never have reached the insolvent house, on whose behalf they were shipped, the transitus is not at an end, and the right of stoppage still subsists. The goods therefore are claimed on behalf of Messrs. Binney and Co. who are willing, and we hereby offer on their behalf, to pay you any claim for freight or otherwise which you may legally have upon the goods. We give you this notice preparatory to such steps being taken on behalf of Messrs. Binney and Co. as may be advised to be proper to enforce the delivery of the property, and it is conceived that if there be any question of the right of stoppage in transitu, there can be no doubt that you can have no right to retain the property when you refuse to honour the bills drawn against such property. Messrs. Binney and Co. have remitted the triplicate bills of lading, &c. Messrs. Kilgour and Leith's original letter of orders."

The defendants refused to deliver up the goods, or accept the bills, or to pay the invoiced price. The plaintiffs thereupon commenced this action. It was contended at the trial, on behalf of the plaintiffs, that the sale of the handkerchiefs was a sale on a condition, either precedent or subsequent, that the defendants should accept the bills drawn on them in respect of the handkerchiefs, and that upon their refusal to accept, the condition precedent was never performed, and that the property in the handkerchiefs never passed out of the plaintiffs, and that they were therefore entitled to them or their proceeds; and that if this were not so, at all events, it was subject to the condition subsequent, that the defendants should accept the bills; and if not, the property should revert, which condition was broken; so that thereby the plaintiff became entitled to the goods or their proceeds; and whether the sale was on a condition or not, was a question for the jury, and ought to have been left to the jury. On the other hand it was contended, on behalf of the defendants, that it was not a sale upon a condition at all; that it was an absolute sale by the plaintiff to Messrs. Kilgour and Leith; and that upon the shipment of goods by the plaintiff on account and risk of Messrs. Kilgour and Leith, followed up by the transmission of the bills of lading to the defendant, one bill of lading making them the consignees and the other the indorsees, the property and possession absolutely vested in Kilgour and Leith, and those goods thereby became theirs, and were at their sole risk, and they, and they alone, were entitled to them or their proceeds, and that if the plaintiffs had any right of action against the defendants, which on their part was denied, it was upon a contract to accept the bills to be held from the acceptance of the goods, with notice of the contents of the letters of the 21st of August and the 12th of October; and that whether it was a sale upon a condition or not was a question of law for the judge, and not one of fact for the jury; the entire case, so far as related to the contract of sale, being contained in written documents, and the parties never having had any personal communication with each other. The learned judge was of opinion that

there was no question for the jury in this case, and that it was for him to decide what the contract was; and he thought the sale to Messrs. Kilgour and Leith was an absolute, not a conditional one; and that the property vested in them upon the delivery on board the ship, and the transmission of the bills of lading to the defendants; and that the plaintiff could not maintain the present actio[n against] the defendants, who have received the goods and disposed of them under the authority of Kilgour and Leith, and could not bring an action for the proceeds; and by his direction the plaintiff was nonsuited. A rule having been granted for a new trial.

Knowles (with him *Willes*) now shewed cause.

The Attorney-General (*M. Smith* with him), contra. *Cur. adv. vult.*

JUDGMENT.

PARKE, B.—We are of opinion that the ruling of the learned judge was correct. We think that the question, what was the contract between the parties, was, in this case, entirely one of law, for the judge to decide upon; nor was there any evidence of usage to which the letters refer which would be matter to be left to the jury. Looking at the written documents alone, the learned judge was quite right in the view he took at the trial, that the property vested by the transmission of the bills of lading, in the manner described, to the defendants, with the invoices at the same time. If it had been the intent of the vendor to preserve his right in that property until the bill drawn against it was accepted, he ought to have transmitted the bill of lading, indorsed in blank, to an agent, to be delivered over only in case the acceptance took place. Having delivered them without that qualification, the property vests in Kilgour and Leith, or the defendants, as their agents. Our judgment in this case is in conformity with that of the Court of Ex. C[h.] the case of *Wilhemshurst* v. *Bowker*, 7 Man. & G. 882; but there is a passage in the judgment of Lord Abinger which was much relied on by the learned counsel for the plaintiff. The circumstances of the two cases are very similar, and Lord Abinger stated, if the facts had been before a jury, he was not prepared to say that they might not have drawn the inference that the remitting of the bankers' draft, the mode of payment agreed on in that case, was a condition precedent to the vesting of the property; in that case, there may have been some particular facts to go to the jury. But in that case it was only the obiter dictum of Lord Abinger. It is sufficient to say, for the reasons before given, w[e] think that in this case there was no question of fact as to the contract to be submitted to the jury. Several other cases were cited on collateral points, to which it is unnecessary to refer. The rule is therefore discharged. *Rule discharged.*

CROWN CASES RESERVED.

Reported by A. BITTLESTON, Esq. of the Inner Temple Barrister-at-Law.

Saturday, April 21.

REG. v. BALDRY.

Evidence—Confession—Admissibility—Inducement or threat.

A constable, upon apprehending a prisoner on criminal charge, addressed to him these words, "You need not say anything to criminate yourself. What you do say will be taken down, and used in evidence against you."

Held, that those words did not import any threat or inducement to the prisoner, and that a statement made by him subsequently, was admissible in evidence against him upon his trial. R. v. Drew, 8 C. & P. 140, R. v. Morton, 2 Moo. & Rob. 514; R. v. Furley, 1 Cox C. C. [106] and R. v. Harris, ib. 106, overruled.

The prisoner was tried before Lord Campbell, C.J. at the last Suffolk Assizes, upon an indictment for an attempt to poison. Upon the trial a statement made by the prisoner to the constable, who apprehended him, was offered in evidence; but objected to by the prisoner's counsel, because, before the prisoner made the statement the constable had addressed him in these words:—"You need not say anything to criminate yourself. What you do say will be taken down, and used in evidence against you." The learned judge received the evidence; but reserved the question for the opinion of this Court.

The case now came on for argument before Lord Campbell, C.J. Pollock, C.B., Parke, B. and Erle and Williams, JJ.

H. Mills for the prisoner.—A confession must be perfectly free and voluntary to be admissible in evidence; and it language is used to a prisoner which can convey to his mind any influence of hope or fear, his subsequent statements are scrupulously rejected. The cases have gone to the utmost length upon this point; and several of them are distinct authorities applicable to the present case; especially those of *R.* v. *Drew*, 8 Car. & P. 140; and *R.* v. *Morton*, 2 Moo. & Rob. 514, decided by Coleridge, J; and those of *R.* v. *Furley*, 1 Cox C. C. 76, and *R.* v. *Harris*, ib. 106, decided by Maule, J. who expressly held, that to tell a prisoner that whatever he said would be given in evidence against him was sufficient to exclude the statement subsequently made by him. The prisoner might have understood that the prosecutors bound themselves to give in evidence whatever he said; and that supposition is strengthened by the language of 11 & 12 Vict. c. 42, s. 18, which requires the committing magistrate to tell the person charged that what he says *will* be taken down and *may* be used in evidence against him. It is enough that the words used may have influenced his mind either to hope or fear something from confessing; and he may even have interpreted them to mean that the case was so clear against him that if he spoke the truth he must confess his guilt.

The following authorities were referred to.—*R.* v. *Warwickshall*, 1 Leach, 263; *R.* v. *Cass*, ib. 293, n.; *R.* v. *Thomas*, 6 Car. & P. 353; *R.* v. *Sheridan*, 2 Lewin; *R.* v. *Enoch*, 5 Car. & P. 535; *R.* v. *Garner*, 18, L. J. M. C. 1; *R.* v. *Barrett*, 4, Car. & P. 570; *R.* v. *Mills*, 6 Car. & P. 146; *R.* v. *Thompson*, 1 Leach, 291; *R.* v. *Arnold*, 8 Car. & P. 621; 4 Bl. Com. 357; 2. Russ. on Crimes, 832; *R.* v. *Warrington*, 15 Jur. 318. As to the last case Parke, B. referred to his notes of the trial, and said that the words used were, "It would be better for you to confess," not those mentioned in the Jurist report.

No counsel was instructed on behalf of the Crown.

POLLOCK, C.B. I am of opinion that this conviction was right, and the evidence properly received. The ground upon which the rule of law proceeds is that it would not be safe to receive a statement made under the influence of any hope or fear; not that the law presumes that any such statement would be false, but only that it would be unsafe to rely upon it. But does the rule apply to this case? It has often been held that a caution to speak the truth will not exclude the statement (*R.* v. *Court*, 7 Car. & P. 195); yet even in that case the person charged might have understood the caution as meaning that he could not tell the truth without confessing his guilt. The answer is that he ought not so to have understood it, and it would indeed be strange to find a decision that an invitation to tell the truth, when there is no obligation to speak at all, can be considered as influencing the mind either by hope or fear. When however the admonition [is c]oupled with an expression that it will be better for the prisoner to do so, then the statement has been excluded, as in *R.* v. *Garner*, 1 Den. C. C. 359. The real question is, whether the language used can be understood as conveying some intimidation, or offering some reward which might induce the person addressed to speak at all; the objection does not consist in the inducement to acknowledge guilt, but the inducement to speak at all; and perhaps the words "it will be better for you to speak the truth," may be objectionable on the ground that they import an inducement to say something. Now excepting the cases decided by my brothers Coleridge and Maule, there is no authority for saying that the words used in the present case are at all sufficient to exclude the stat[ement]; and it certainly appears to me that the effect [o]f them must have been to leave the prisoner in a state of perfect indifference whether he should open his mouth or not. With regard to the cases of *R.* v. *Drew* and *R.* v. *Moreton*, before my brother Coleridge, and the cases of *R.* v. *Furley* and *R.* v. *Harris*, before my brother Maule, I must say that I cannot assent either to the decisions or to the reasons given in those cases. We are not to torture expressions, or consider what a man may possibly have misunderstood them to mean; for if so, even the words of the statute which has been referred to (11 & 12 Vict. c. 42, s. 18) might be ingeniously twisted to mean something different from that which was intended. I deem it important for the protection of innocence, that every man when he is charged with an offence should be distinctly told the nature of it; and that attention should be paid to anything which at that moment he may choose to say with regard to it, as he may be in a situation to make some statement which may ultimately lead to the proof of his innocence; but it is also important that he should be reminded that he is under no obligation to criminate himself, and that if he does state anything to criminate himself, it will [be] given in evidence against him; and it is quite clear to me that no person addressed as this prisoner was could have misunderstood the meaning of the words, or have be[en in an]y way removed from that steady self-possession which is necessary to render his confession admissible against him.

The other Judges concurred.

Conviction affirmed.

BANKRUPTCY.

HULL DISTRICT COURT.

Wednesday, April 8.

(Before Mr. Commissioner AYRTON.)

Ex parte HARRIS *re* HARRIS.

Semble, the Court of Bankruptcy has no jurisdiction to annul with consent of creditor, save under secs. 130, 131.

Where the bankrupt may have to be prosecuted for offences under the bankrupt law, the Court will not so annul, even if there be jurisdiction.

This was a petition to annul the adjudication, with the consent of all the creditors, including the assignees.

Shackles, for the bankrupt.—The Court has power to annul the adjudication, as was formerly done, with the consent of all the creditors who had proved or claimed. In this case, in deference to the opinion of the Court, much more has been done, as the consent of 147 creditors has been procured; in fact, every creditor but three has signed, two being corporations, but the corporate seal has not been affixed; and the third, a creditor for 12s. 6d. is abroad, and owes the estate 5*l.* He cited and commented upon 6 Geo. 4, c. 16; 1 & 2 Wm. 4, c. 56; Lord Eldon's order, 1818; *Ex parte Duckworth*, 16 Ves. 416; *Re Chambers*, 4 Dea. & Ch. 578; 10 & 11 Vict. c. 102; 12 & 13 Vict. c. 106, ss. 12, 104, 230, and 231; *Carter* v. *Carter*, 8 Nov. 1851; *Ex parte Kimbell*, 1 Mont. & De G. 138.

Mr. Commissioner AYRTON.—In this case I am asked to order the adjudication to be annulled, such order being consented to by the creditors. Formerly the Lord Chancellor, who issued the Commission of Bankruptcy, possessed, under his general assumed jurisdiction, an almost absolute control over it, so far as regarded superseding it afterwards; and this power, under the designation of annulling the fiat, was afterwards exercised by the Lord Chancellor after the institution of the Court of Review; for though the Court of Review (and afterwards the Vice-Chancellor) were constantly in the habit of ordering the fiats issued by the Lord Chancellor to be annulled, yet these orders were invariably accompanied by the words "if the Lord Chancellor shall think fit," and the fiat was not annulled till the Lord Chancellor's confirmation of the order was procured. It is not, therefore, doubted, that formerly a method existed by which a commission could be superseded, or a fiat annulled, at any time, with consent of all the creditors who had proved or claimed under the bankruptcy. My doubt is, whether the Commissioners of the Court of Bankruptcy possess any such general jurisdiction. When the Bankrupt Law Consolidation Act passed, in 1849, all jurisdiction in bankruptcy, save on appeal, was supposed to have been taken away from the Vice-Chancellor, and it was at first supposed that the whole of the Vice-Chancellor's jurisdiction, save the appellate, was transferred from his Honour to the Commissioners of the Court of Bankruptcy, by the 12th clause: for instance, it was thought that a bankrupt, after the lapse of the seven or fourteen days mentioned in section 104, might still prefer a petition to the commissioner under this general jurisdiction, to annul the adjudication, for any defect of the requisites, such as the utter want of any petitioning creditor's debt, and so forth; and thus it was decided by the Vice-Chancellor Knight Bruce, in *Re Dimmock;* but, on appeal (*Ex parte Carter, re Dimmock*, Law T.), it was decided that if the bankrupt did not avail himself of sec. 104, by applying to the commissioner within the seven or fourteen days, as the case might be, or did not appeal within the time allowed, then, by sec. 233, the *Gazette* containing the adjudication was declared conclusive evidence of the bankruptcy as against the bankrupt. This decision of the Court of Appeal was made on an adverse application. I mention it here, because it shews that the power of the commissioners, as to annulling, is not so extensive as was supposed, and that we must be very wary lest we inadvertently exceed the limits of our jurisdiction. If the commissioner has not power to make an order adversely, can any consent confer jurisdiction? For it must be remembered that this is not a mere question of practice. If I act without jurisdiction, my order is, of course, a nullity; and many years after such an order has been made, some conveyancer may discover its invalidity, and object to a title to land, on the ground that the order annulling is itself a nullity, and the estate still vested in the assignees under the bankruptcy. The present application is to annul, with the consent of creditors. Formerly the practice was to make this order without requiring the consent of every one of the creditors, it being sufficient if the consent was obtained of so many of the creditors as had actually proved or claimed under the bankruptcy at the time the order was made. In the case now before me, every creditor who has proved or claimed, and all the assignees, do consent to the adjudication being annulled; in

fact, I am assured that all the creditors have signed their assent but three; two being corporations, and the third abroad. The question then is, have I jurisdiction to make the order asked? Mr. Shackles, who appears for the petition, states that such orders are habitually made in the London and other Courts of Bankruptcy. If so, I should certainly be most anxious to follow the precedents set by my learned colleagues. Having regard, then, to the warning of the late decision in *Ex parte Carter*, can I find that I have jurisdiction to make such an order, which undoubtedly would formerly have been made by the Vice-Chancellor in Bankruptcy, and confirmed by the Lord Chancellor? Sec. 12 of the Bankrupt Law Consolidation Act, 1849, says, that the Court (that is, the Commissioner), in the exercise of its primary jurisdiction, by virtue of this Act, shall have superintendence and control in all matters of bankruptcy. I confess that I am at a loss to know what meaning to give to the word "primary," not being aware of any secondary jurisdiction; but, passing that by, the words "control in all matters of bankruptcy," would appear to give a very extensive jurisdiction indeed; but, on reading on a little further in section 12, I find myself cautioned by the words, "save and except as may be by this Act otherwise provided." Does, then, the Act "otherwise provide," touching the subject-matter of this petition? That subject-matter is a petition to annul the adjudication, with the consent of the whole of the creditors who have accepted a composition, as I have been informed by Mr. Shackles. It appears, on turning to the Act, secs. 211 and 231, that the Legislature contemplated a complete provision touching arrangements or compositions. One subdivision of the Act relates to arrangements between debtors and their creditors under the superintendence and control of the Court; another subdivision relates to arrangements by deed; and then we arrive at the subdivision which comprises secs. 230 and 231, which clauses contain a special enactment, laying down the method of proceeding in cases similar to the present. Sections 230 and 231 are thus headed—"Of composition after bankruptcy"—"And with respect to compositions after adjudication of bankruptcy, be it enacted;" and then two sections follow, pointing out how the consent of nine-tenths of the creditors is to be obtained, and then the adjudication is to be annulled, and the petition for adjudication dismissed. It appears to me, that the terms of these clauses, coupled with the indication of the intent of the Legislature, afforded, as I think, by the words "and with respect to compositions after bankruptcy" (and this is a composition after bankruptcy), shew that this Court does not possess any power to annul with consent of creditors, save under secs. 230 and 231, and that I have not any jurisdiction to annul, on a composition, save under those clauses. If indeed every single person who was a creditor at the time of filing the petition for adjudication, and every person who could by possibility have a right to prove his debt under the bankruptcy, if all these were to consent to my making an order, at their own risk, I do not say that I might not, in a proper case, venture to order the petition for adjudication to be dismissed; because, though, as I think, I have no jurisdiction so to order (save under secs. 230, 231), yet, if every person who could by possibility object to the order, were to consent to its being made, then I think that I might venture to do so, because, though invalid, yet its invalidity might never be questioned, and the bankrupt would take the order suo periculo. I say I would venture to do so *in a proper case.* Now, with reference to the particular instance before me, I regret to have to say, that even if I thought that I had jurisdiction now to make the order asked, yet I entertain very serious doubts, to say the least, whether, under the very extraordinary circumstances attending this bankruptcy, of which I have judicial notice, I ought not, in the exercise of my discretion, to refuse to annul this bankruptcy till the bankrupt shall have passed his last examination, and makes his application, under secs. 230, 231. It being familiar law, that where an application was made to the general jurisdiction of the Lord Chancellor to annul, the order was entirely in his discretion. Two young men have been declared bankrupts in this court, and have both been examined before me. They both have been connected, in the way of business, with this bankrupt, Harris, and they have both made statements, in open court, which have not hitherto been contradicted, which, if true, would shew that this bankrupt has been engaged in a most scandalous and nefarious system of swindling; and they have both stated, what for the credit of human nature every one would wish to be incredible, but which has not yet been disproved, that this bankrupt advised them both to insure their stock, and then remove such stock, and set fire to their premises, with intent to defraud the assurance office. I will say no more of the statements made by these young men but this, that if only a portion of the charges made by them against the bankrupt is true, he may have to answer at the bar of a criminal court for offences against the bankrupt law; in which case, to annul this bankruptcy, might amount to allowing a species of compromise of criminal offences. Under these circumstances, I think it fit that this bankrupt should pass his last examination, as required by section 230, and then apply, under that section, to annul with consent of nine-tenths of his creditors. I notice that the conclusion of section 231 contains an enactment which it may be highly expedient to insist upon in a case like the present. It is as follows:—"And if any creditor shall agree to accept any gratuity or higher composition for assenting to such offer, he shall forfeit the debt due to him, together with such gratuity or composition; and the bankrupt shall, if thereto required, make oath before the Court, that there has been no such transaction between him and any of the creditors; and that he has not used any undue means or influence with any of them to attain such assent." I have to notice that the petition was not quite prepared to ask for the order to annul till Friday, the 3rd of April, and this, the 8th of April, is the day appointed for the bankrupt's last examination. In conclusion, I will observe, that if there were no appeal from my decision, I might be tempted to make an order which I am told is commonly made in London; but, entertaining grave doubts on the question of jurisdiction, I wish the point to be set at rest by the Lords Justices.

INSOLVENCY COURT.

Reported by DAVID CATO MACRAE, Esq. of the Middle Temple, Barrister-at-Law.

Monday, Nov. 3.
(Before Mr. Commissioner LAW.)
Re MONTGOMERY HUNTER.

Voluntary assignment of military pay to creditors—Officer in the East-India Company's service.

Quære.—When the Court has no power to enforce a compulsory setting aside of pay or half-pay of a military officer in the East-India Company's service, can it enforce a voluntary undertaking of that description to avoid opposition by creditors?

This insolvent, an ensign in the 18th Bengal Native Infantry, came up for his hearing, when he was opposed by *Sargood* for a creditor, and supported by *Cooke*. The insolvent had been in England at home on sick leave. It was essential that he should get back to India by the 27th of nex January, which a remand would effectually prevent, and to avoid this he offered to set aside for the benefit of his creditors a sum of 60*l.* per annum out of his pay, which creditors assented to.

Mr. Commissioner LAW said, he doubted whether the East-India Company would agree to this. H knew it would not be agreed to in her Majesty's service. He thought the Court ought not to do that by a side wind which it could not do directly The learned Commissioner referred to the case of *Dax*, 1 C. C. Chron. 283, a report of which he had seen in the LAW TIMES. In that case an undertaking, which was made a rule of Court, had been entered into by the insolvent at the hearing, and subsequently a question rose as to whether the Court could enforce that rule made upon the insolvent' undertaking, and the point was argued before the full Court. He (Mr. Commissioner Law) had not made the orde., but he very strongly objected to act upon it, and all agreed that the order ought not to have been made and that the consent ought not to be enforced. He himself felt an objection to do things by a contrivance which the Court could not do directly.

Sargood observed that it would be a mere abstract undertaking, and to give a power of attorney, to receive his pay.

Cooke said it would be a benefit to all parties.

Mr. Commissioner LAW.—As both parties wish that there should be a discharge upon an undertaking, let the insolvent make it. I have my doubts as to what the result may be.

The insolvent then entered into the following undertaking:—

"In the Court for Relief of Insolvent Debtors.

"In the matter of M. H. a prisoner in the Q. P. an insolvent debtor.

"I, M. H. the above-named insolvent, do hereby consent and undertake to pay to the provisional assignee of this honourable Court, or to any other assignee who may be appointed under this insolvency, the sum of sixty pounds per annum, by quarterly payments of fifteen pounds, on every first day of January, April, July, and October, the first of such payments to be made on the first day of April next, and in case of my promotion, such yearly sum to be increased by ten pounds. And I further undertake, if required, to give to such provisional or other assignee, a power of attorney to receive such sum out of my pay from the Honourable East India Company. And I al[illegible] it to this undertaking being made a rule of this [illegible]ourable Court.

"Dated this 3rd day of November, 1851.

"Witness, L. S. attorney for the plaintiff."

NOTE.—Nothing has been paid into Court under this undertaking. Possibly the insolvent's attorney arranged with the attorney for the opposing creditor.—REPORTER.

Irish Reports.

LORD CHANCELLOR'S COURT.

Reported by J. BLACKHAM Esq. Barrister-at-Law.

July 23 and 24, 1851, and Jan. 29, 1852.
O'GRADY *v.* BUIST.

Statute of Distributions—Personal estate—Advance by administrator—Interest.

All the children of an intestate were advanced: Held, that the fact of all being advanced did not take the case out of the 2nd section of the Statute of Distributions, but the assets must be brought into hotchpot, and distributed equally.

Where advances were made by the administrator to the children, and the advances are to be brought to hotchpot, the Master charged the children with interest on the advances:

Held, on objection, that this finding was wrong.

This was a bill to administer the assets of William Wise, deceased. The plaintiff, Mr. O'Grady, was married to Anne Wise, a daughter of William Wise by his first wife, and the plaintiff, by his marriage settlement, became possessed of a sum of 33,000*l.* The defendants were the minor children of William Wise by a second wife. They were entitled under their mother's marriage settlement to a sum of 4,000*l.* each. William Wise died intestate, leaving large personal estate. The Master directed these several sums to be brought into hotchpot. Advances had been made from time to time to Mrs. O'Grady as well as to the minors by the defendant Buist, who was the administrator of William Wise. The Master directed that interest should be charged upon all their advances, including the sums brought into hotchpot.

To this finding the plaintiff took objections.

Brewster, Q.C. *F. Fitzgerald*, and *Jennings*, for the plaintiffs. They cited *Edwards* v. *Freeman*, 2 P. W.; *Andrews* v. *George*, 3 Sim.

Greene, Q.C. (with *Leslie* and *O'Flynn*), for the minor defendants. They cited *Kircudbright* v. *Kircudbright*, 8 Ves. 1; *Gettings* v. *Steele*, 1 Swan. 199.

Thursday, Jan. 29.—The LORD CHANCELLOR.—This case stood over, not from any serious doubt on my mind, but on account of the novelty of the case. The case was this:—In the year 1816 a decree was made in this cause to take an account of the assets of William Wise, and that decree also declared that DeCourcey O'Grady, the husband of Anne O'Grady, deceased, and the minors, William Wise and Charles W. Wise, were entitled each to one-third of the property of William Wise; and the decree also directed certain accounts to be taken of the assets of William Wise. The Master has taken those accounts, and has also found the parties hereto to be in a position to be entitled to the benefit of the Statute of Distributions; and the Master also has found that certain portions were given by way of advances to these several parties, and he has debited the parties with the sums so advanced. So far the Master has acted rightly, but in addition to this he has also taken an account of the interest which accrued due on the sums so advanced, after the expiration of a year from the death of William Wise, and charged the parties with this interest in addition to the sums actually advanced. The plaintiff, De Courcy O'Grady, objects that he should be compelled to bring into hotchpot any part of the sums charged against him and the minors, except as to the 4,000*l.* which has been charged against them. The first point contended for at the hearing of the cause was, that this was not a case within the 7 Wm. 3, c. 6, s. 2, inasmuch as in this case all the children were advanced. To adopt that view would, in my mind, be a great departure from the principle of that statute, which does not exclude the case before the Court. The object of the statute was to provide for all the children equally, if unadvanced, and if advanced to equalise their portions, as was done in the case of *Edwards* v. *Freeman*, 2 P. W. 436; therefore, on this point, I am of opinion that the Master has properly charged the parties with the sums to be brought into hotchpot. On the second question which has been contended for, as to the interest on the sums advanced, no case has been cited but that of *Andrews* v. *George*, 3 Sim. 393. that case was not decided upon the construction of the Statute of Limitations, but on the special words of the will, and the reporter suggests in a note that in cases of advancement the Court might make a charge for interest. The principle upon which this question is to be decided must depend upon this,—what is it has been advanced to the party? An advance of money is of no value except for what it produces, and to charge a party with interest is to charge him twice over. What it is should be brought into hotchpot is stated by Lord

Eldon in *Kircudbright* v. *Kircudbright*, 8 Ves. 463, as well as the mode of valuation. I know of no mode of estimating the value but by the interest charged. I have inquired of all the Masters of this Court, all of whom, except Master Cotton, whose report is excepted to, have certified that they have never brought anything into hotchpot but the purchase money. I have also inquired of the officers of the Court of Chancery in England, and they have written to me that they are not aware of any such case having ever occurred; therefore, on this point, I am of opinion that the Master's report must be varied.

CONSOLIDATED CHAMBER.

SITTINGS IN VACATION.

Reported by P. J. M'KENNA, Esq. Barrister-at-Law.

(Before Mr. Baron RICHARDS.)

Wednesday, Feb. 25.

SHEIL *v.* FARRELL.

Practice—Paying money out of court—Necessity for notice of application.

Where a plaintiff has lodged money in court as security for costs, the Court will not pay it out to the plaintiff unless notice of the motion has been served on the opposite party, although judgment has been allowed to go by default by the defendant.

In this case, *Hobart*, on behalf of the plaintiff, applied to the Court for an order that the sum of 50*l.* which had been lodged as security for costs, should be paid out to the plaintiff. There was no necessity for serving notice of this motion, as the defendant had allowed judgment to go by default, and execution had issued against him on foot of that judgment.

RICHARDS, B. refused to hear the motion, as notice of this application had not been served on the opposite party.

ANONYMOUS.

Practice—Setting aside appearance by unregistered attorney—Notice of motion.

An appearance entered by an attorney who has not registered lodgings, according to the general order is irregular, and will be set aside.

Semble, where an attorney who has not registered states a particular place as his residence, in entering an appearance, a notice may be served at such place, although the inhabitants state he does not reside there, and refuse to take any papers for him.

In this case counsel on behalf of plaintiff moved for liberty to set aside the appearance which had been entered for the defendant, and to enter a parliamentary appearance. The appearance had been entered by an attorney whose address in Dublin had not been registered for this year as directed. He had given an address in the appearance entered by him, but on application at the house, which was a butcher's, the people there said that he did not live there, and that they knew nothing about him. The plaintiff's attorney had sent a clerk there to serve notice of motion, but the servants of the house refused to take any papers for such person.

RICHARDS, B.—You are clearly entitled to carry your motion; my only difficulty is, that notice has not been served. You may serve the notice of this motion at this place where he states his residence to be, no matter whether they take it in or not, and you can then apply for your order on next chamber day.

(Before Mr. Baron GREEN.)

Friday, March 26.

WILLIAMSON *v.* LIVESAY.

Practice—Privilege from arrest—Witness at Petty Sessions—14 & 15 Vict. c. 93.

A witness who attends at Petty Sessions, in obedience to a summons, to give evidence, is privileged from arrest while so attending.

Where a person summoned to attend at a particular hour at Petty Sessions finds, on arriving at that time, that the court-house is closed, and proceeds to the office of the Petty Sessions clerk for the purpose of ascertaining whether the magistrates will sit or not, and is arrested there under a ca. sa. while making such inquiry, the Court will discharge him out of custody.

A judge sitting in this court has, in custody cases, the same power as the Court out of which the writ issues. (14 & 13 *Vict.* c. 93, s. 13.)

In this case *J. S. O'Callaghan* applied on behalf of the defendant, that he might be discharged out custody, having been arrested under a writ of ca. sa. at the suit of the plaintiff, while entitled to privilege as a witness attending at Petty Sessions. The defendant stated in his affidavit, that he had been served with a summons to attend at the hour of twelve o'clock at noon, at the Ballinrobe Petty Sessions, to give evidence there; that he attended in obedience to such summons, and that on arriving at the court-house a few minutes before the hour mentioned in the summons, he had found the court-house closed, and no appearance of any sitting. That he accordingly proceeded to the residence of the magistrate's clerk, who resided at a short distance from the court-house, for the purpose of ascertaining what he should do; whether it was necessary for him to wait, or if he might return home; and that while at the office making such inquiries, he was arrested under a ca. sa. at the suit of the plaintiff.

Jordan, on behalf of the plaintiff, opposed the application. The Act 14 & 15 Vict. c. 93, s. 13, which gives a privilege to witnesses while attending at Petty Sessions, directs the application for the discharge of the person who has been arrested to be made to the Court out of which the writ of ca. sa. issued; "And it shall be lawful for the Court out of which the writ or process shall have issued to order the discharge of any person who shall be so arrested." There was no mention of a judge in chamber, and his lordship, therefore, had not jurisdiction to entertain this application. The defendant was not entitled to privilege when he went away from the court-house to go to the house of the magistrate's clerk: he lost his privilege during that time.

J. S. O'Callaghan in reply.—A judge sitting in chamber has delegated to him, by the Court for which he sits, full power to transact its business. It has been invariably the practice for a judge in chamber to dispose of custody motions.

GREEN, B.—I think the meaning of the Act is, that the application may be made to a judge in chamber. If a person has been improperly arrested, the intention of the Legislature was, that he should be at liberty to apply immediately, and obtain his discharge forthwith if he is entitled to it. If a man happens to be arrested in the beginning of the long vacation, can it be said that he is to lie in prison until the Court sit in the ensuing Term? I think this man acted very properly and naturally. On finding the court-house closed, he went to the person most likely to be able to inform him whether or not the magistrates would sit—to the very officer of the court, and while waiting in his office he was arrested. I consider he was still entitled to privilege, and I shall therefore grant this application.

COURT OF EXCHEQUER.

Reported by W. ST. LEGER BABINGTON, Esq. LL.D. Barrister-at-Law.

HILARY TERM, 1852.

Thursday, Jan. 20.

TENNENT *v.* ROBINSON.

Demurrer—Action by sheriff against purchaser of a chattel interest for not completing his purchase—Pleading.

A declaration in assumpsit alleged by a sheriff for breach of contract in the defendant in not completing the purchase of a chattel interest, sold by the former under a fi. fa. alleged that a writ of fi. fa. having issued at suit of A. B. against C. D. the sheriff seized a chattel interest of C. D. and sold it to the defendant, who was the highest bidder: the conditions of sale being "that the highest bidder should be declared the purchaser, that the purchase money should be paid to one W. O. and that the sheriff should not be accountable either for possession or title," and after alleging that the defendant was the highest bidder, and that there were mutual promises between the plaintiff and defendant, assigned as a breach, that the defendant refused to pay the money and complete the purchase; and in another count it was simply averred that the plaintiff had agreed to sell and the defendant to buy the interest of C. D. assigning the same breach.

Held, on special demurrer, that both counts were good, and disclosed a valid contract, and a sufficient consideration for the defendant's promises.

And, semble, that a sheriff is not bound in such a case to tender a conveyance to the purchaser.

This was an action brought in the name of James Thomson Tennent, esq. late high sheriff of the county Antrim, against John Robinson, for breach of contract in refusing to pay the purchase-money and complete the purchase of a chattel interest sold by him as such sheriff under a writ of fi. fa. The first count set forth the issuing of the writ against one John O'Hara, at the suit of the Earl of Mountcashel, the seizure of O'Hara's interest under the writ, and the setting of it up to auction by the sheriff under the following conditions of sale: "That the highest bidder should be declared the purchaser, and that the purchase-money should be paid to William Orr, esq. on the purchase being declared, and that the sheriff would not be accountable for either possession or title." The declaration then, after alleging that the defendant was the highest bidder, and became the purchaser for the sum of 35*l.* averred mutual promises on the part of the plaintiff and defendant respectively, assigning as a breach, that although the plaintiff was ready to execute a proper assignment upon the purchase-money being paid, the defendant had refused to pay it. The second count omitted the allegation of a writ of fieri facias having issued and the sale under it, and merely averred that the plaintiff had agreed to sell, and the defendant to buy, all the interest of John O'Hara in a certain farm of land for the sum of 35*l.* and that the plaintiff was not to be accountable to the defendant for possession or title; and after alleging that the plaintiff was ready and willing to convey, assigned the same breach as the preceding count.

General demurrer, and also a special demurrer, to these two counts, assigning thirteen causes of demurrer, which sufficiently appear from the arguments of counsel and the judgment of the Court.

McMeehan (*Napier*, Q.C. with him) in support of the demurrers, contended that there was no consideration alleged for the promise of the defendant to pay the purchase-money for the chattel interest which had been set up; that all sheriffs' sales should be for ready money, and that no debt arose from the defendant to the plaintiff; that the sheriff could not enforce payment of the purchase-money, inasmuch as the legal estate was not vested in him by the seizure; and as no conveyance was executed by the sheriff at the time of sale, he could not now sue on the contract, as the party had the power to revest the estate in himself at any time by the payment of the debt and costs to the sheriff; and that the sheriff ought to have tendered a conveyance. It was also contended that the condition that the purchase money should be paid to a stranger to the writ was illegal, and vitiated the entire transaction; and that the sheriff had nothing to do upon the purchaser being declared, and, therefore, there was no consideration for the defendant's promise, and that the second count was bad; that if it was good in law it amounted to this—that one man could sell another's land and sue him for the purchase-money without conveying any estate, or being able to do so.

Harrisson (*Joy*, Q.C. with him), contrà, who was directed by the Court to confine himself to the objections to the second count, argued that a sufficient consideration was alleged for the promise in the second count. True it was, it was an agreement to sell another man's land, but the plaintiff did not pretend it was his own; and the defendant, by his own act, agreed to take it whatever it might be, some benefit might, therefore, result to the defendant, or some detriment to the plaintiff. It is now settled law that a man may enter into a contract to sell goods without having any title to them at the time, although originally it was held otherwise. And Courts of Equity frequently have enforced a decree for a specific performance of a contract for the sale of land where the vendor had not at the time of the contract a good title to the land. In an ordinary declaration for the purchase-money payable on the sale of land, it is not averred that it is the plaintiff's land. (*Wilk* v. *Smith*, 10 M. & W.)

JUDGMENT.

PIGOT, C.B.—As regards the points which have been most pressed in the argument against this declaration, I entertain no doubt whatever that they are not tenable. It was alleged that this being a sale by a sheriff, and the money not having been paid at the time of the sale, the sheriff could not recover it afterwards, and this was argued upon grounds of public policy. It appears to the Court that so to decide would be directly against public policy. In the present case the sheriff appears upon the pleading to have acted precisely as he ought to have done, but he was frustrated in obtaining the money he was to levy by the misconduct of the defendant. If such an action as the present be not maintainable, the result will be, as has been suggested by my brother Pennefather, that there will be a constant succession of false biddings at sheriffs' sales, and a frustration of the objects of the law. Now what are the circumstances alleged in this pleading? They amount to this, that the sheriff undertakes to convey the interest, and the defendant undertakes to pay the purchase-money. It was contended that the sheriff had nothing left to do upon the purchase being declared, and that therefore there was no consideration for the defendant's promise. But that argument is perfectly fallacious; a contract to convey is always implied on a contract for the sale of lands. Then it was insisted that the sheriff should have tendered a conveyance, but the case of *Poole* v. *Hill*, 6 M. & W. is an express authority that it was not his duty, but that of the purchaser to do so. As to the objection that if the debtor had paid the debt and costs to the sheriff, he would have ipso facto regained his farm; it is enough to remark that such a mere possibility cannot interfere with the validity of the contract. In fact, all contracts are liable to be interfered with by the Act of the government, but it surely cannot be contended that, therefore, none could be enforced. Some difficulty appears to me to exist in regard to the way the mutual promises to perform the conditions of the sale are averred. They come after the statement of the contract of the sale by one of the terms of which the defendant was to pay the purchase-money at the time of being declared purchaser. However, irrespective of this, sufficient averments appear on the declaration to entitle the

plaintiff to recover. The second count contains a simple statement of A. B. contracting to sell the estate of C. D. This may be a perfectly legal transaction, and we must not assume that it is otherwise. It is precisely the case of an auctioneer's sale, which would fall within the words of this Court, and the contract stated in it could be carried into execution by an auctioneer. So it is in the case of a sheriff. No illegality, therefore, being shewn, none can be presumed. Therefore the demurrers to both counts must be overruled with costs.

PENNEFATHER and LEFROY, BB. concurred.

· v. SCOTT, BROTHERS.

Practice—Setting aside proceedings where service substituted—Evidence on motion.

Where an order had been made to substitute service on a partner in a firm, which had been dissolved, who resides out of the jurisdiction, by serving a former partner residing within the jurisdiction, such an order is incorrect.

Semble, where service has been so substituted, if the party satisfy the Court that he has never received any information of the proceedings in time to enter a defence, and state facts sufficient to discharge from his liability, and constitute a good defence, the Court will set aside all proceedings subsequent to the declaration.

Where a party sets out part of a letter, he cannot read the remainder of it without having it properly identified, and the handwriting and signature verified.

In this case *J. D. Fitzgerald*, Q.C. (with whom *Pilkington*), applied, on behalf of Thomas Scott, one of the defendants, to set aside the appearance which had been entered, and all subsequent proceedings.

It appeared that Thomas Scott, who had been joined in the action as a defendant, resided out of the jurisdiction, and that an order had been made to substitute service on him by serving his brother, Peter Scott, another alleged partner. The defendant, Thomas Scott, stated in his affidavit that he had been in partnership with his brothers Peter and John for many years; that in 1848 the firm became bankrupt, and was dissolved, and that having obtained his certificate, he went to London, where he had resided ever since as secretary and agent to Baron Goldschmid. That the other brothers, Peter and John, after obtaining their certificates, had, as he believed, entered into an arrangement to carry on the trade of seedsmen, and that John accordingly caused an advertisement to be inserted, in January 1850, in the Belfast papers, informing the public that the same firm, having obtained their certificates, would again receive orders, and soliciting custom in their trade. Thomas then wrote two letters from Brighton, a few days afterwards, to Peter, protesting against this advertisement, refusing to have anything to do with the matter, and stating that he would not consent to have his name used. He further stated that Peter had gone to America, and that those letters were therefore not forthcoming, and that he was in no way interested or concerned in the said business; that he had purchased a house and nursery-grounds at Ballyhagan; that the house and its furniture was his private property, and that he had permitted his sister, a Mrs. Crosby, to reside there, and that the first information of this action was receiving a letter from that lady, informing him that the sheriff's officers had made a seizure under the writ of fi. fa. issued in this cause.

Lowry, contrà.—This is a stale application. This judgment was obtained in 1850. The defendant treated with us for a considerable time, and made offers to settle; the defendant admitted the fact of the advertisement.

Pilkington in reply.—Thomas expressly states that offers to settle and arrange were made without his knowledge or consent. The Court was wrong in substituting service here on Thomas by serving one of the brothers in Belfast, who suppressed where a partnership had been thus dissolved. The Court refuses to substitute service on one of former partners by serving another. (*Nugent* v. *Williams*, 7 Law Rep. N.S.) A passage in a letter from Peter shewed the truth of the statement made by Thomas as to his having no interest in the concern.

Lowry objected that counsel was about reading from a letter which was not identified, and of which they had only set forth passages in their affidavit.

GREEN, B.—I cannot allow you to read this letter now; we have not proved or identified it, and have only set out part of it. If it were set out plaintiff might be able to contradict it.

Pilkington.—We swear positively that we only received information of this action after the execution had been sent into Thomas's house.

GREEN, B.—I think I should give this defendant an opportunity of trying this question as to his liability, and I shall, therefore, make the order, but he must plead forthwith.

HOUSE OF LORDS.

Reported by JAMES PATERSON, Esq. Barrister-at-Law.

Monday, May 17.

INGLIS *v.* THE GREAT NORTHERN RAILWAY COMPANY.

Companies Clauses Act, 8 & 9 Vict. c. 16—Action for calls—Cancellation—Issuing new shares—Evidence—Register of shareholders—Unsigned minute—Adjourned meeting.

It is no plea in bar to an action for calls that the company, after bringing their action, have, under the power of their Acts of Parliament, forfeited and cancelled the shares, and issued new shares in lieu thereof, and by that means have supplied the deficient capital, but in the event of new shares being issued, the Court will stay proceedings on defendant's paying the portion of the debt and costs beyond the value of the new shares.

There is no substantial difference, as far as the shareholder's liability for calls is concerned, between the forfeiture and the cancellation of the shares in respect of which the calls are sued for.

Where a company for convenience keep their register of shareholders in several volumes, it is a sufficient compliance with 8 & 9 Vict. c. 16, s. 9, that the last volume of the series be authenticated with the common seal of the company; and, semble, the last volume need not contain a recapitulation of the contents of the prior volumes.

A meeting of a committee of directors was adjourned, and a minute of the adjourned meeting only was signed by the chairman of both meetings, but subsequent minutes treated both as one meeting, and a witness proved that he was present at both, and that they were one continuous meeting:

Held, 1st, the unsigned minute was admissible in evidence of what took place the first day, and, 2nd, what then took place could also be proved by the witness who was present (sec. 98 of 8 & 9 Vict. c. 16).

The statute 8 & 9 Vict. c. 16, in making a signed minute of meeting to be evidence, does not exclude evidence aliunde.

Semble, where a call has been made by a finance committee of the directors, evidence must be given at the trial in an action for calls, that the finance committee was duly appointed.

This was an appeal from the Court of Session in Scotland, involving a bill of exceptions. In 1847 the respondents, incorporated under 9 & 10 Vict. c. 71, brought an action of debt for calls, due on eight shares, amounting to 32*l.* against the appellant, who resided in Edinburgh. The English Companies Clauses Consolidation Act, sec 164, provides, that if any shareholder reside in Scotland, "it shall be lawful for the company to proceed against him in Scotland, and to sue for and recover the amount of such call, or to declare such share forfeited in such manner as is by the 'Companies Clauses Consolidation (Scotland) Act,' 8 & 9 Vict. c. 17, provided." The defendant pleaded a variety of pleas, which are not material, and this issue was made up and sent to trial—"Whether the defendant (Inglis) is the holder of eight shares of the said Great Northern Railway Company, and as such is indebted and resting owing to the plaintiffs in the sum of 32*l.* being the amount of calls, &c.?" A verdict was given for defendant; but on motion by the plaintiffs for a new trial on the ground of misdirection, the rule was made absolute.

Previously, however, to the second trial, and after the first, the following proceedings took place. The plaintiffs petitioned the Court for leave to amend their declaration, which was granted, and in the new matter they alleged as follows:—That one of their special Acts, 12 & 13 Vict. c. 81, s. 25, enacted, "That in any case in which it shall happen that the market price of shares, which may be forfeited for non-payment of calls, shall be such as to render it impossible for the company to sell the same, so as to realise a sum equal to the arrears of calls due upon the same, it shall be lawful for the company to cancel the same shares, and to issue so many new shares, and of such nominal amount as they may think fit, provided the capital to be represented by such new shares shall not in the whole exceed the capital represented by the unpaid portion of the shares which shall be so cancelled." That the company had, since the trial of the first issue, proceeded to the forfeiture and cancellation of the shares held by the defendant in the mode pointed out by the Companies Clauses (Scotland) Act, s. 29. That the directors, after due notice, had declared the shares forfeited; and a general meeting of shareholders had thereafter resolved, that the forfeiture of the said shares "be and hereby is confirmed, and that they be sold or otherwise disposed of by cancelling, at the discretion of the directors." That, thereafter, by virtue of their special Act, 12 & 13 Vict. c. 81, s. 25, above set forth, the directors resolved, that the said shares "be and are hereby cancelled." That in these circumstances the issue formerly sent to trial was inapplicable, and that instead of the words "whether the defendant *is* the holder," these words should be substituted—"whether the defendant was at the date of making the calls after mentioned the holder," &c. To this new matter the defendant pleaded by way of plea *plus* darrein continuance. That subsequently to the forfeiture and cancellation in the amended declaration mentioned, the plaintiffs had issued in lieu of defendant's shares new preferable shares for 12*l.* 10s. each, two of the latter coming in place of one of the former. That for the 12*l.* 10s. preferable shares so issued by the plaintiffs they had actually received an average price of 11*l.* 12s. 6d. per share. That the plaintiffs had thus gained on each forfeited share as follows:—

One old share, value	£25	0	0
Deposit paid thereon	3	15	0
Difference, being unpaid portion	21	5	0
Amount actually raised in lieu thereof, viz.—two 12*l.* 10s. shares, issued at 11*l.* 12s. 6d.	23	5	0
Surplus per share	£2	0	0

That the two calls sued for were only for 2*l.* 5s. and 2*l.* with interest. That the company having thus cancelled defendant's shares and issued stock, the defendant was thereby released, and no cause of action any longer remained, since the shares no longer existed. The plaintiffs demurred to this plea, and the Court held it bad, and allowed the issue to be amended as prayed for by the plaintiffs. Thereafter defendant applied for a discovery of books and writings in the custody of the plaintiffs, to enable him to give evidence at the approaching trial, of what he alleged in his plea, but the Court dismissed the application, "yet without prejudice to any demand the defendant may make for discovery of the documents referred to, at a later stage of the proceedings."

At the trial of the amended issue, a verdict was given for plaintiffs, and defendant tendered a bill of exceptions involving these points:—1. The first exception was, that the register of the company given in evidence was not in terms of the statute. The Companies Clauses (Scotland) Act, 8 & 9 Vict. c. 17, s. 9, enacts that "the company shall keep a book, to be called the register of shareholders, and in such book shall be fairly and distinctly entered from time to time the names of the several corporations, and the names and addresses of the several persons entitled to shares in the company, distinguishing each share by its number and the amount of the subscriptions paid: and the surnames or corporate names of the said shareholders shall be placed in alphabetical order, and such book shall be authenticated by the common seal of the company affixed thereto, and such authentication shall take place at the first ordinary meeting, or at the next subsequent ordinary meeting of the company." The 29th section enacts,—"That the production of the register of shareholders shall be prima facie evidence of such defendant being a shareholder, and of the number and amount of his shares." It appeared at the trial that the plaintiffs' register was in several volumes, and of these only the last (which was produced) was sealed with the common seal. The only other volume produced was that containing the letter I and defendant's name, and the particulars respecting his shares. 2. The second exception was, that there was no proof of the appointment of the finance committee who made the calls, as the minute of the meeting at which they were appointed was not signed. It appeared that this meeting was held on the 18th of August, that it was adjourned to the next day, August 19, and that only the minute of the latter day was signed by the chairman of both days. A witness at the trial, however, proved being present when the finance committee was appointed, and at all its meetings. The present appeal involved these exceptions, but it was principally directed against the orders of Court, which allowed the first issue to be altered, and against the judgment of the Court on the demurrer, whereby the Court held that it was no defence to an action for calls that the shares had been cancelled, and new shares of equal amount issued and paid for.

Bethell, Q.C. and *Anderson*, Q.C. for the appellant.—The company had only an alternative, not a cumulative remedy. They could forfeit and sue, or forfeit and sell, but not both. We admit the forfeiture did not interfere with the action. (*Great Northern Railway Company* v. *Kennedy*, 4 Exch. 417); but the moment the shares were cancelled and sold, the liability of the original shareholder was at an end, and a new contract was substituted. As to the register, the statute must be strictly construed, because it makes an inroad on the common law of evidence. (*Bain* v. *Whitehaven and Furness Railway Company*, 7 Bell's App. C. 108; *Birkenhead, &c. Railway Company* v. *Brownrigg*, 4 Exch. 426.) As to the unsigned minute, when a statute directs a certain superior quality of evidence to be taken, an inferior quality is inadmissible. (*Id.* 4 Exch. 426.)

Phipson, for respondents.—The Court was either

right in altering the issue, or the old issue was quite sufficient; for all that was necessary, according to the statute, to be proved was, that the defendant *is* a holder of shares, which means "is at the time of the action being brought" (*Belfast, &c. Railway Company* v. *Strange*, 1 Exch. 739; *East Lancashire Railway Company*, v. *Croxton*, 5 Exch. 287.) The remedy is, however, cumulative (*Great Northern Railway Company* v. *Kennedy*, 4 Ex. 417); and it is no defence that the shares have been cancelled and new shares issued. As to the unsigned minute, when a meeting is adjourned the original and the adjourned meeting constitute one, and therefore to sign the minute of the latter day is sufficient (*Reg.* v. *Justices of Suffolk*, 16 L. J. 36, M.C.); but if not, what took place was sufficiently proved by the witness, who swore that he was present. (*Miles* v. *Bough*, 3 Q. B. 845. The statute confers a privilege on the company, and does not say that no other evidence but a signed minute is to be admissible.

Anderson replied.

The LORD CHANCELLOR.—This was an action brought by the Great Northern Railway Company against a holder of a few shares, for two calls, amounting together to 31*l*. The right to bring the action in Scotland, is given by 8 & 9 Vict. c. 16, s. 164, which Act is incorporated in 9 & 10 Vict. c. 71, being the Act establishing this railway company; and although some argument was raised upon the particular wording of the clause, yet I think that it gives to the company all the remedies provided by the Companies Clauses Consolidation (Scotland) Act, 1845. The latter Act, 8 & 9 Vict. c. 17, s. 27, enacts, that in any action or suit to be brought by the company against any shareholder, to recover any money due for any call, it shall be sufficient for the company to aver, that the defendant is the holder of one share or more in the company, and is indebted to the company in the sums claimed; and by sec. 28 it is enacted, that on the trial or hearing of such action or suit, it shall be sufficient to prove, that the defendant, at the time of making such call, was a holder of one share or more in the undertaking, and that such call was in fact made, and such notice thereof given as directed by this or the special Act. Now the new issue adopted the very terms of sec. 28, which by law would equally have applied to the first issue, which was framed under sec. 27; and it would not have been necessary to have altered the first issue if the shares had not been cancelled subsequently to bringing the action. It is quite settled, that the term "is" means "is at the time of calls made." *Belfast and County Down Railway Company* v. *Strange*, 1 Ex. 739, and the statute has received a liberal construction. (*East Lancashire Railway Company* v. *Croxton*, 5 Ex. 287.) The provisions of the Companies Clauses Consolidation Act, which apply to this case, enable the company to enforce the payment of calls by action or suit, and give power to the company to forfeit shares for non-payment of calls, whether the company have sued for the amount of such calls or not. And it has been decided, that the right to declare shares forfeited is not an alternative remedy with the right of action, but that the words of the Act are cumulative (*Great Northern Railway Company* v. *Kennedy*, 4 Ex. 417); and indeed it is not disputed by the appellant, that, if the shares in question had been merely declared to be forfeited, the right of action would have remained. But it was insisted, that the cancellation, superinduced upon the forfeiture, and the issue of new shares, dissolved the contract, and destroyed the right of action. The power to cancel the shares was given to this company by 12 & 13 Vict. c. 84, which enacted, that where the market price of shares, which might be forfeited for non-payment of calls, should be such as to render it impossible for the company to sell the same, so as to realize a sum equal to the arrears of calls due, it should be lawful for the company to cancel the same shares, and to issue so many new shares, and of such nominal amount as they might think fit, provided that the capital to be represented by such new shares should not in the whole exceed the capital represented by the unpaid portion of the shares. After a declaration of forfeiture, the directors ultimately, in September 1850, cancelled the shares in question, and this was long after the institution of the action. Now, unless some solid distinction can be shown, as regards the interest of the shareholder, between forfeiture and cancellation, it appears to me, my lords, that the same rule must prevail as to both. Much argument was raised upon the right to issue new shares, so as to make up the amount of capital in the company, but it does not appear to me that this is an objection, if it be one, which it is competent to the appellant to make. The Companies Clauses Consolidation Act provides in every way for the real interests of the shareholder even after forfeiture; and in *Great Northern Railway Company* v. *Kennedy* (supra), Parke, B. and Alderson, B. were both of opinion, that if the forfeited shares were converted into other shares, the shareholder against whom an action for calls had been brought, would be entitled to the benefit in satisfaction pro tanto; so that, on applying to the Court to stay proceedings on payment of the portion of the debt and costs beyond the value of the new shares, the Court would stay the proceedings accordingly. If, therefore, the forfeiture of shares, and the conversion of them into other shares, where there is no direct power to cancel the original shares and to issue new ones, would give to the original shareholder any benefit to which he might be entitled after payment of the calls and costs, it cannot vary the case, that a direct power is given to the company to cancel shares and issue new ones, for the right of the shareholder to the benefit of the new shares would be precisely the same as in the first case. The power to cancel only arises where, after forfeiture, the arrears of calls cannot be raised by a sale, and therefore the right of action to recover the deficiency remains in the company. This view of the case answers the objection, which was strongly urged at your lordship's bar, that the alteration of the first issue excluded the appellant from shewing that a change of interest had taken place, because that could not go in bar of the action, but the defendant would be entitled to any benefit to be derived from such change, notwithstanding the recovery in the action; and the interlocutors of the Court, I think, have reserved to the appellant the means of enforcing any rights to which he is entitled. At the trial of the second issue, the counsel for the appellant tendered evidence to prove the cancellation of the stock, and the issue of new shares, &c., but that evidence was rejected by the learned Judge who tried the cause, and his rejection of that evidence formed part of the bill of exceptions. This exception, however, was not insisted on in the Court of Session, as the cancellation of the shares, if it had any effect, might receive it in the accounting on that head, of which the plaintiffs admitted the competency, notwithstanding the verdict. The remaining objections are technical ones, raised by the bill of exceptions on the trial of the second issue. The first objection was to the reception in evidence of the register of shareholders. The law enables companies to produce their registers as evidence, but provides that the book should be authenticated by the common seal of the company being affixed thereto. The objection was, that the register was contained in several volumes, and that the last of the series only had the common seal of the company affixed to it. There were several very bulky volumes; they followed each other alphabetically, and consecutively, and manifestly formed parts of the same series; and the last volume contained not only a completion of the register, but (which was not required by the Act of Parliament) at the end of it and before the seal a recapitulation of the contents of the preceding volumes. They were laid upon the table of this House, and every volume was a ponderous one. The contention was, that instead of being inclosed in several bindings for the sake of convenience, they ought to have been bound in one volume, which would have rendered it impossible to make use of them in the course of business. I think, my lords, it would be contrary to the real meaning and spirit of the Act, to put this restricted construction upon it. These volumes did together constitute a book containing a register of the shareholders, to which the common seal of the company was properly affixed. I rather think that if the common seal had been affixed to every volume, the appellant would have considered the register still more objectionable. The next exception to the ruling of the judge was, that the evidence of the appointment of the finance committee, which was necessary, in order to prove the call was not admissible, because a minute of a board of the 18th August, 1846, at which the finance committee was appointed, was not signed. Now, this board was adjourned to the 19th August, and the minute of the adjourned meeting is signed. The secretary to the company swore that it was one continuous meeting and minute, and that the next meeting was on the 1st September, and that the minute of it begins,—"The minutes of the last meeting, held 18th August, read and confirmed," treating the 18th and 19th as one meeting. This is confirmed by the books. At all these meetings Mr. Astell was in the ch[air] minutes of the adjourned meeting of the 19th August, and of 1st September; and on the 27th September, at a meeting, the minute of which was regularly signed by the chairman, all committees were re-appointed. And all these proceedings took place before the first call. The objection was founded upon sec. 101 of the Companies Clauses Consolidation Act, which required entries of minutes to be signed by the chairman of each meeting, and made such entries evidence. But, independently of the evidence furnished by the books of the company, the fact of the due appointment of the finance committee was proved by a witness, and his evidence was admissible evidence, for the Act confers a privilege, but does not exclude other evidence of the fact. It is not necessary to make any further observations on these points, inasmuch as the validity of the minutes, as signed, and the admissibility of the other evidence will be ruled by your Lordships in favour of the respondents, upon the authority of *Miles* v. *Bough*, 3 Q. B. 845. The result is, that all the objections urged by the appellant's counsel at your lordship's bar have failed, and therefore I beg to move that the appeal be dismissed with costs.

Interlocutors affirmed with costs.

Equity Courts.

COURT OF APPEAL IN CHANCERY.

Reported by C. H. KEENE, Esq. of Lincoln's-Inn, Barrister-at-Law.

Monday Nov. 24, 1851.
(Before the LORDS JUSTICES.)
Re BODEN'S ESTATE.

Trustee Act, 1850—*Sec.* 19 *considered—Mortgage—"Re-conveyance."*

A mortgagee in fee died intestate as to the mortgaged premises, but appointed an executor. His heir-at-law could not be found, or was unknown. The mortgage money was still due, and was not intended to be paid off.

On the petition of the executor of the mortgagee, under the 19th sec. of the 13 & 14 *Vict. c.* 60, *it was*

Held, that the Court had jurisdiction upon such a petition, to make the order vesting the mortgaged premises in him, subject to the equity of redemption, and that the Legislature did not mean to confine its authority to the case of a simple "re-conveyance."

This was the petition of the executor of William Boden, a deceased mortgagee in fee, under a mortgage-deed, dated in April, 1842. The petition stated, that though the mortgagee had made a will appointing the petitioner his executor, and which the petitioner had duly proved, he made no devise or bequest of his mortgage or trust estates, that the mortgagee had since died, and that neither he nor those claiming under him had ever been in possession of the mortgaged premises, or in the receipt of the rents and profits thereof, that the mortgagee had no child, but had an only brother, Joseph Boden, who was his heir-at-law. Joseph Boden left England about twenty years ago, and had never since been heard of; and that if such brother were still living, the legal estate in the mortgaged premises was vested in him as the heir-at-law of the mortgagee. The petitioner was desirous of making a transfer of the mortgage, but that the same could not be effected without the aid of the Court. The petition therefore prayed for an order, vesting the premises, subject to the equity of redemption, in the petitioner, his heirs, and assigns, as the person entitled to receive the mortgage money.

The 19th section of the 13 and 14 Vict. c. 60, (the Trustee Act, 1850), enacts "that when any person to whom any lands have been conveyed by way of mortgage, shall have died without having entered into the possession, or into the receipt of the rents and profits thereof, and the money due in respect of such mortgage shall have been paid to a person entitled to receive the same, or such last-mentioned person shall consent to an order for the reconveyance of such lands, then, in any of the following cases, it shall be lawful for the Court of Chancery to make an order vesting such lands in such person or persons, in such manner and for such estate as the said Court shall direct; that is to say,—

"When an heir or devisee of such mortgagee shall be out of the jurisdiction of the Court of Chancery, or cannot be found.

"When an heir or devisee of such mortgagee shall, upon a demand by a person entitled to require a conveyance of such lands, or a duly authorized agent of such last-mentioned person, have stated in writing that he will not convey the same, or shall not convey the same for the space of twenty-eight days next, after a proper deed for conveying such lands shall have been tendered to him by a person entitled as aforesaid, or a duly authorised agent of such last-mentioned person.

"When it shall be uncertain which of several devisees of such mortgagee was the survivor.

When it shall be uncertain as to the survivor of several devisees of such mortgagee, or as to the heir of such mortgagee, whether he be living or dead.

"When such mortgagee shall have died intestate as to such lands, and without an heir, or shall have died, and it shall not be known who is heir or devisee.

"And the order of the said Court of Chancery made in any one of the foregoing cases, shall have the same effect as if the heir or devisee or surviving devisee as the case may be, had duly executed a conveyance or assignment of the lands in the same manner and for the same estate."

E. Webster appeared in support of the petition, and asked for a vesting order under the 19th section of the Trustee Act, 1850. He said the application

was made by way of appeal from the decision of the Vice-Chancellor Turner, who had declined to make the order, on the ground that, as the mortgage-money had not been paid and a reconveyance was not sought, the case did not come under the 19th section of the Act. In so doing the Vice-Chancellor had followed the case of *Meyrick*, 9 Hare, 116, where it was held that the Court had not jurisdiction to make an order vesting the mortgaged estate in the representative of the mortgagee. In the present case the money had not been and was not intended to be paid. A reconveyance was not sought: it did not fall within the provisions of the statute. [Lord Justice KNIGHT BRUCE.—This is certainly not one of the cases enumerated in the section.] In words this case did not fall within that section, yet the words "last mentioned person" might be construed to mean the person who was entitled to the money, and to be sufficient to authorise that person himself to apply to the Court, he being spoken of as the party upon whose consent the order might be made. If the construction put upon the clause by the Vice-Chancellor were the correct one, or that which was to prevail, the present case would be one in which the petitioner was without a remedy. If the money were paid off, the order could be made for vesting the estate in the petitioner as on a reconveyance. What possible difference could it make, that as the money was not to be paid off, but only a transfer to be effected, an order should be made, having the effect of a conveyance of the estate?

Lord Justice KNIGHT BRUCE.—The word made use of in this section is "reconveyance;" to meet such a case it should have been "conveyance." The question before us is, whether the term "reconveyance" has so strict and inflexible a meaning as to prevent us from acting upon the spirit of the Act. Can we not, acting on the spirit of the statute, hold that a conveyance from the heir of the mortgagee to the executor or administrator of the mortgagee of the mortgaged premises may fall within the meaning of the term "reconveyance?" I think we can. Would not a decision in the negative amount to what is called a hæsio in literâ? I cannot attribute to the Legislature an intention to leave a person in such a situation as the petitioner would be left in by a literal construction of the clause. I think that there ought to be, and is a jurisdiction, not exceeding a proper judicial jurisdiction, of putting a liberal construction upon a statute involving such a question as this.

Lord Justice Lord CRANWORTH.—I think I can see upon the face of this clause a ground for holding that the Legislature did not mean to confine our jurisdiction to the case of a simple "reconveyance." The section in question provides that in the cases enumerated, the Court may make an order, "vesting the lands in such person or persons in such manner, and for such estate, as the Court shall direct." But this is not all; for it further goes on to enact, "that such order shall have the same effect as if the heir or devisee, or surviving devisee, as the ---- may be, had duly executed a conveyance or assignment of the lands in the same manner, and for the same estate." Thus providing for the case of a conveyance generally, and not confining it to the simple case of a "reconveyance." I think we may properly direct a reference to be taken to the Master, observing that inquiries meeting all the material contingencies enumerated in the section should be inserted in such reference, so that the title may not hereafter be endangered.

Their LORDSHIPS ultimately directed the reference in the following terms:—"Refer it to the Master to inquire and state to the Court whether William Boden, deceased, in the petition named, was, under any and what deed, mortgagee in fee of the hereditaments in the petition mentioned; and whether he was ever, and when, in possession, or in receipt of the rents and profits of the said mortgaged estate; and whether he died seised in fee of the said estate; and whether he died intestate as to the said estate; and whether he left any, and what person, his heir-at-law; and whether the legal estate in the said mortgaged premises is now vested in any and what person, as the heir-at-law of the said William Boden, or in whom such legal estate is now vested; and whether the heir-at-law, or the person in whom such legal estate is now vested, is out of the jurisdiction of the Court; and whether the heir-at-law, or such person as aforesaid, was ever in possession or in receipt of the rents and profits of the said estate; and whether such heir-at-law, or such person as aforesaid, is living or dead, or whether it is uncertain whether he is living or dead, and whether he can be found.

Jan. 14 *and* 21.

IN LUNACY.

Re PATTINSON.

Lunacy—Trustee Act, 1850—*Jurisdiction of the Lords Justices.*

Whether the Lords Justices, acting in lunacy under the royal sign manual, have jurisdiction to make an order, vesting a trust estate, of which a person of unsound mind, who was heir-at-law of a deceased trustee, was seised, the words of the Trustee Act, 1850, 13 & 14 *Vict. c.* 60, *being "the Lord Chancellor entrusted by virtue of the Queen's sign manual."*

J. V. Prior presented a petition for a vesting order under the Trustee Act, 13 & 14 Vict. c. 60. The heir-at-law of a last surviving trustee, in whom an estate was vested, was of unsound mind, not found so by inquisition.

Lord Justice Lord CRANWORTH.—Without meaning to say that we have no authority to make this order, there is certainly a point well deserving consideration. The statute under which this court is constituted enacts, "Nothing herein contained shall affect any of the powers, duties, or authorities attached to the office of Lord Chancellor, or exercised by the Lord Chancellor as Keeper of the Great Seal, except the powers, authorities, and duties attached are exercised and performed by him acting as a judge in the said Court of Chancery, either by virtue of his ordinary jurisdiction or of any statute, and the ministerial powers and authorities incident thereto respectively, or affect the power, authorities, and duties of the Lord Chancellor, under and by virtue of any appointment under the sign manual of the Crown, as having the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind;" and so on, meaning to say, that we have no authority to make this order; there is certainly a point well deserving consideration. The statute which constitutes this court, 14 & 15 Vict. c. 83, enacts in sec. 13, that "nothing therein contained shall affect any of the powers, duties, or authorities of the Lord Chancellor, under and by virtue of any appointment under the sign manual of the Crown, as having the custody of the persons and estates of lunatics." It is true, we also are now exercising a jurisdiction in lunacy by a warrant under the sign manual, but then the Trustee Act, 1850, like the former Act, 1 Wm. 4, c. 60, only authorizes the Lord Chancellor, empowered by the Queen's sign manual, to do what is here asked. It seems to us that it would be safer to make the application to the Lord Chancellor, who strictly comes within the words of the statute. I repeat, we do not mean to say that we have not the power, but we think the point one well worthy of consideration. Had the statute contained after the words "Lord Chancellor" the words, "or other person or persons authorised as aforesaid," or some such words, the case would have been free from the difficulty we find.

Lord Justice KNIGHT BRUCE.—If that which my learned brother has suggested be the true construction—and I must beg not to be considered as departing from it—we can do no good to the party now applying for relief. Were we to make the order, the property be subsequently offered for sale, and the purchaser refuse to complete, the vendors would fall into the hands of the conveyancers. The Crown appoints its officer or officers, who shall exercise jurisdiction and perform certain functions in lunacy. The warrant which gives to this Court its jurisdiction directs that the Lord Chancellor and the Lords Justices, or the Lord Chancellor alone, or his lordship and either of the Lords Justices, shall adjudicate in matters of this nature. The section of the ---- your attention to this point, but if you like to hazard the difficulties which may hereafter arise when the property comes to be dealt with, we may be disposed to make the order.

J. V. Prior.—After what your lordships have suggested, I should request permission to make the application to the Lord Chancellor.

On a subsequent day the petition was brought before the Lord Chancellor, who made the order, his lordship observing, that, without deciding whether the Lords Justices had or had not the jurisdiction, it was clear that he had, and therefore it was the safer course that he should make the order. The inclination of his opinion was, that the Lords Justices, under their warrant from the Crown, had the same authorities in lunacy as his lordship himself possessed.

ROLLS COURT.

Reported by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

April 15 *and May* 19.

CLARK *v.* TIPPING.

Practice—Bankrupt—Decree—Supplemental bill—Course of proceeding.

In case of the bankruptcy of a sole plaintiff, it is competent to the defendant to move that the assignees may elect within a limited time to file a supplemental bill, or that, in default of their doing so, all further proceedings may be stayed; and the practice of the Court does not require him to file a bill of revivor and proceed with the cause.

In this case the sole plaintiff had become bankrupt, and a question arose, what, under these circumstances, was the course to be pursued.

Selwyn, on the part of the defendant, moved that the assignees of the bankrupt might be ordered to elect within a fortnight to file a supplemental bill, and in default of their doing so, that all further proceedings in the cause might be stayed. It appeared that a decree had been made in the cause. Had there been no decree, the proper application would have been for the dismissal of the bill in case the assignees should not within a limited time file a supplemental bill; but the only application that could be made under the circumstances was, that all further proceedings should be stayed.

Bazalgette, on behalf of the bankrupt, contended that the motion was irregular, and that the practice was not such as that contended for by the defendant. The same course of proceedings is not applicable in both cases before and after decree. In the latter case, the course is for the defendant himself to file a bill of revivor, and so proceed with the cause.

The MASTER of the ROLLS.—In this case the defendant is alleged to be desirous of getting rid of the suit altogether, so far is he from wishing to proceed with it, or adopt the course suggested. Is there no authority on the point?

Bazalgette.—None either way as to the precise point now in question.

Beavan, amicus curiæ, referred to the 63rd order of 8th of May, 1845, as to the course of proceeding on the death of a sole plaintiff.

Bazalgette insisted that the course of proceeding in the case to which that order referred, shewed that no such practice as that contended for on the other side existed.

Selwyn, in reply.—The bankruptcy in this case took place some considerable time ago,—upwards of a year. The bankrupt had no interest in the matter, and he alone opposed the motion. The only ground urged for refusing the motion is, that there is no authority to be found on the subject; but that ought not to prevail. The assignees have had sufficient time to make their election as to the course they will adopt; but though they have been served with notice of this motion, they do not appear. And the course now proposed is obviously the most convenient, and if the defendant proceeds, it must be at the risk of costs.

Monday, April 19.—The MASTER of the ROLLS. —Such an order as is now sought has in my own knowledge often been made by consent. I have, however, been referred by Mr. Birknell to a case of *Whitmore* v. *Osborrow*, 1 Colly. 91, which will, I think, justify the order. That was a case where a decree had been made, and the assignees were put to their election, and in default of their electing within ten days to prosecute the suit in the name of the bankrupt, all further proceedings in the cause were ordered to be stayed until the further order of the Court. I shall make the order accordingly. I think, however, you should give them six months.

Selwyn had no objection to that order being made, and that the assignees should file their supplemental bill within six months, and in default that all further proceedings should be stayed.

Tuesday, April 20.

TRILLEY *v.* KEEFE.

Practice—Bill pro confesso—Service out of jurisdiction—General Orders of May 1845.

The service of an order limiting the time to apply to set aside a decree taken pro confesso on the defendant out of the jurisdiction, is sufficient notice under the 87*th Order.*

In this case a decree had been taken pro confesso against a defendant out of the jurisdiction. An order had been obtained under the 87th Order of May 1845, limiting the time within which the defendant might apply to the Court to set aside the decree. This order had been served on the defendant at the same time as a copy of the decree which was also served; but no formal notice, as provided by the 87th order, was served on the defendant. The time limited by the order having now elapsed,

Battin moved, under the 90th order, that the decree might be made absolute. A doubt had been suggested whether the service of the order limiting the time was a sufficient compliance with the terms of the 87th order.

The MASTER of the ROLLS was of opinion that the service of the order was sufficient notice, and made the order asked.

Saturday, May 1.

BAINBRIGGE *v.* CREAM.

Will, construction of—Vesting of shares—Time of vesting.

A testator devised freeholds and leaseholds to his wife for life, or until she should marry again; and on her death or second marriage, he gave the same to trustees, in trust to sell and divide the proceeds among certain nephews and nieces, or "such of them as should be living at the death of his wife." The wife married again:

Held, that the nephews and nieces living at the

time of the second marriage took vested interests in the proceeds of the sale.

This was a special case, the question involved arising upon the construction of the will of John Cream, bearing date the 15th October, 1815. The testator thereby gave certain freeholds and leaseholds in Cambridge to his wife Mary Ann Cream for life, or until she should marry again; and in case of her death or second marriage, he gave the same to James Bainbrigge and another party, in trust to sell and divide the proceeds of the sale among certain nephews and nieces whom he named, amounting in all to the number of ten, "or such of them as should be living at *the death* of the wife;" omitting the words "second marriage." One of the objects of the testator's bounty died in his lifetime, but all the others are still living, and six of them are adult. The wife married again. Under these circumstances James Bainbrigge, who is the surviving trustee of the will, filed a special case for the opinion of the Court as to the rights of the parties.

Cole, for the plaintiff.

W. W. Cooper, for the other parties.

The cases of *Sturgis* v. *Pearson*, 4 Madd. 210; *Masters* v. *Scales*, 13 Beav. 60; and *Wagstaffe* v. *Crosby*, 2 Coll. 746, were cited.

The MASTER of the ROLLS was of opinion that on the second marriage of the wife the parties interested in the property took vested interests in the surplus proceeds thereof, and he directed the costs of all parties to be paid out of the fund.

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister at Law.

Dec. 10 and 15, 1851; and March 29, 1852.

DURRANT *v.* FRIEND.

Insurance money—Specific legacies—Illegitimate child.

By a will articles were specifically bequeathed, and they, at the same time with the testator, perished at sea.

Held, that the insurance money received in respect of the articles, did not belong to the specific legatees.

A testator gave property to E. F. the interest to be paid to her half-yearly, until her first-born son attained twenty-one, one-half of the principal sum then to be paid to her aforesaid son, the other half to be paid to his mother, &c. At the date of the will E. F. had one illegitimate son, who was maintained by the testator.

Held, that this illegitimate son had no interest in the property.

Daniel Friend, the testator in this cause, by his will, dated the 10th of December, 1847, made a bequest in the following terms:—"I give and bequeath unto my father aforenamed, and my three brothers, George, John, and Stephen Friend, the whole of my wearing apparel, sea clothes, charts, mathematical and musical instruments, to be equally divided, share and share alike. And I give unto my aforenamed adopted daughter, Eliza Friend, my gold watch, gold chain, and pianoforte, with all musical books and pieces belonging thereto." After bequeathing one moiety of the residue of his personal estate, on certain trusts therein mentioned, the testator made the following bequest:—"I give and bequeath the other half unto my adopted daughter, Eliza Friend, the interest and dividends to be paid to her half-yearly, until her first-born son attain the age of twenty-one years; one-half of the said principal sum then to be paid unto her aforesaid son for his own absolute use and benefit; the other half to be paid unto his mother, my adopted daughter aforenamed; but, should his mother die before the said son attain the age of twenty-one years, the aforesaid interest and dividends shall be paid unto the said son for his maintenance and education until he attain the age of twenty-one years, then the whole of the said principal sum to be paid unto him for his sole use and benefit. Should the aforesaid son die before he attain the age of twenty-one years, I bequeath his share or moiety unto his mother for her own absolute use and benefit, and I declare that the same shall not be liable to any debts, control, or engagements of any husband she may hereafter marry, and that her receipt alone shall be a sufficient discharge for the same."

At the time of making his will, the testator was possessed of some wearing apparel, sea clothes, charts, and mathematical and musical instruments and a gold watch and chain, and he afterwards, in February, 1848, insured the same in the Royal Exchange Insurance Company for 200*l*. Subsequently the testator embarked in the ship Canton for China, taking with him all the articles before mentioned. The ship was wrecked on her homeward voyage, and the testator and all persons on board perished. The testator's will was proved by the executors, and they received from the Royal Exchange Insurance Company the 200*l*. for which the articles were insured. The present suit was instituted by the executors against the specific and residuary legatees, and a question was raised as to the right of the testator's father and brothers, George, John, and Stephen Friend, and Eliza Friend, who were the specific legatees of the articles mentioned, to the sum received from the insurance office in respect of those articles. Another question in the suit arose as follows: Eliza Friend had an illegitimate child, who was born in 1844, and had been wholly maintained at the expense of the testator, who advanced money from time to time for that purpose. The question was whether this child took an interest, under the testator's will as the first-born son of Eliza Friend. The cause now came on upon further directions, the Master having, by his report, found the facts before mentioned.

B. L. Chapman appeared for the plaintiffs.

Welford, for the defendants, upon the first question cited *Sillick* v. *Booth*, 1 Y. & C. C. C. 117; *Rook* v. *Warth*, 1 Ves. sen. 160; *Norris* v. *Harrison*, 2 Madd. 468; *Parry* v. *Ashley*, 3 Sim. 97; and *Rogers* v. *Grazebrook*, 12 Sim. 557.

The VICE-CHANCELLOR, as to the second question, said, that it had been suggested that the illegitimate son of Eliza Friend should take, as a person designated, certain benefits given by the will to the first-born son of the legatee. Now, from the language used by the testator, the gift for the first-born son would be strictly applicable to a legitimate son. There were no circumstances in the case to take it out of the general rule, and he must therefore hold that the illegitimate child in this case had no interest in the property. As to the other question, his Honour thought that as the testator and the articles bequeathed perished by the same act, the legatees never had any interest in them. Had the testator perished before them, it might have been different. He would, however, consider the point further.

Monday, March 29.—The VICE-CHANCELLOR said, that the testator in this case, who was a seafaring man, bequeathed chattels to certain persons. He and the chattels perished together. These chattels he had previously insured, and the question was whether the legatees were entitled to the money received from the insurance office. If the testator had died, leaving the goods in existence, the legatees would have had an interest in them, and it would have been quite reasonable that the executors should have held the policy in trust for them. If the chattels had wholly or partially perished in the life-time of the testator, and no money had been received from the office, the testator would have had, at the time of his death, a right of action on the policy, and it was clear that the legatees would not have had any interest in the money to be recovered by means of it. Here, however, the testator and the goods perished together. It was a very difficult thing to say how such a case should be dealt with. He had thought of the case several times, but he was unable to change the opinion he expressed before, which was, that the legatees never had any vested interest under the will to the chattels, and that they were not entitled to the money recovered from the office.

Thursday, March 25.

WALLIS *v.* SAREL.

Vendor and purchaser—Conditions of sale—Interest on purchase-money.

A reversionary interest, subject to a life estate, was put up for sale by order of the Court, under conditions, one of which stipulated that if from any cause whatever the purchase-money should not be paid on the day named, the vendor should pay interest at five per cent. The abstract was not delivered until long after the day fixed for the delivery by the conditions.

Held, that the conditions did not apply, but that the purchaser having had the benefit of the wear of the lives, must pay four per cent. on the purchase money.

Moxon, on behalf of the plaintiff, in this cause, moved that Mr. Charles Henry Daw, the purchaser of the estate and premises comprised in lot six, in the particulars of the estates in question in this cause put up for sale by auction on the 22nd of September, 1849, might be ordered to pay the sum of 950*l*. being the amount of his purchase-money for lot six, together with interest thereon, after the rate of five per cent. per annum, from the 25th of December, 1849. The property purchased by Mr. Daw was described in the particulars of sale as "the reversion in fee (subject to a lease for ninety-nine years, determinable on the deaths of William F. Rogers and Daniel Rogers, aged respectively, fifty-seven and fifty-three years, or thereabouts) of and in a farm and lands called Kernick, in Otterham." The conventionary rent payable to the purchaser was 3*l*. 9*s*. 2*d*.

According to the second of the conditions of sale the vendors undertook, at their own expense, to procure and confirm the Master's report of all purchases, and obtain an order for each purchaser to pay the amount of his or her purchase-money into Court on or before the 25th of December, 1849, and on or before that day each purchaser was to pay into the bank the amount of such purchase-money, and then be let into possession of or be entitled to the receipt of the rents, or an apportioned part of the rents of his or her lot; "but *if, from any cause whatever*, the purchase-moneys should not be so paid in on the 25th of December, 1849, the purchaser was to pay interest thereon at the rate of 5*l*. per cent. per annum from that day to the time of payment." By the third condition the vendor undertook to have an abstract of their title ready for delivery to the purchaser within ten days after the confirmation of the Master's report of the sale. In consequence of the suit having abated, and the title-deeds being in the hands of a solicitor who claimed an equitable lien thereon, the vendors were unable to confirm the Master's report until the 15th of August, 1851, and a complete abstract of title was not delivered until the 30th of September, 1851. It was submitted, on the part of the vendors, that as the purchaser had had the benefit of the wear of the lives since the time of the sale, and had not given the vendors notice that his purchase-money was unproductive, he ought to pay interest according to the conditions of sale. (*Trefusis* v. *Lord Clinton*, 2 Sim. 359; *Morris* v. *Wood*, before Vice-Chancellor Rolfe, in a note to Mr. Dart's book on Vendors and Purchasers, p. 330.)

Nichols, for the purchaser, contended that inasmuch as the delay was with the vendors, the purchaser ought to pay interest only from the time when a good title was shewn. He cited *De Visme* v. *De Visme*, 1 M. & G. 336.

The VICE-CHANCELLOR considered that the condition did not apply, and the case was therefore left to the ordinary rule of the Court. The purchaser having had the benefit of the wear of the lives, he ought to pay interest, but at the rate of 4*l*. per cent. only.

Friday, April 16.

ALCOCK *v.* ALCOCK.

Next friend—Security for costs.

Where the next friend of a married woman, the plaintiff in a suit, went to reside out of the jurisdiction, the Court required security for costs to be given by him or a new next friend to be appointed.

This was a suit by a married woman, by her next friend.

Anderson, on behalf of the plaintiff's husband, who was made a defendant, moved for security for costs by the plaintiff's next friend, or the appointment of another next friend, in consequence of the present next friend having gone to America to reside.

Cole, for the plaintiff, opposed.

The case of *Drinan* v. *Mannix*, 3 D. and W. 154, was referred to.

The VICE-CHANCELLOR did not see any difference between a next friend and a plaintiff in such a case. The next friend must give security for costs, or a new next friend must be appointed, and the proceedings must be stayed in the meantime. The security for costs would be according to the course of the court.

Monday, April 19.

Re HOWARD.

Trustee Act, 1850—*Uses to bar dower.*

Query, whether under the 7th section of the above-mentioned Act, an order can be made to vest the legal estate to uses to bar dower?

This was a petition presented under the Trustee Act, 1850, for the purpose of having the legal estate, which was outstanding in an infant trustee, vested in a purchaser to whom the property had been conveyed to uses to bar dower.

Bigg, for the petition.

The VICE-CHANCELLOR said that he would have no objection to make an order to vest the legal estate in the purchaser in fee, but without further consideration, he would not decide whether or not under the 7th section of the Trustee Act an estate could be vested to uses to bar dower.

Re WILLIAMS.

Trustee Act, 1850—*Vesting order.*

At the suit of a mortgagee in fee, the devisee of the mortgagor being an infant, an order for the sale of the mortgaged property was made. The Court declined to make an order under the Trustee Act vesting the infant's estate in the purchaser, such order being considered unnecessary.

In this case a mortgage in fee had been executed. The mortgagor died, having by his will devised the real estate, the subject of the mortgage, to an infant in tail. A claim for foreclosure was filed by the mortgagee against the infant, and an order being made for a sale, the property was sold. The present petition was presented under the Trustee Act, 1850, for the purpose of having the infant's estate vested in the purchaser.

Eddis, in support of the petition, referred to the

7th section of the Trustee Act, 1850, and the case of *Radcliffe* v. *Eccles*, 1 Keen, 130.

The VICE-CHANCELLOR said he considered that as the mortgagee had the legal estate, and all the equitable interests were provided for by the order for sale which had been made, nothing further was required. The order sought by the petition would rather prejudice than improve the purchaser's title. As there was no necessity for the order, and if granted it might raise a doubt on titles where in similar cases no such order had been obtained, he should dismiss the petition.

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. BENNET, Esq. of Lincoln's-inn, Barrister-at-Law.

March and April 26.

WEBB *v.* WOOLLS.

Will—Construction—Precatory words—Trust.

Where the latter words of a sentence in will go to cut down an absolute gift contained in the first part of the sentence, and are inconsistent with such gift, the Court will, if it can, give effect to the absolute gift:

Where, therefore, a testator said, "all my property of whatever description, whether in possession, reversion, or expectancy, &c. I give unto my dear wife, her executors, administrators, and assigns, upon the fullest trust and confidence reposed in her that she will dispose of the same for the joint benefit of herself and my children."

Held to be an absolute gift to the wife, and no trust thereby created for the children.

This was a case upon a claim, and now came on for argument on further directions and costs, after the usual class inquiries as to the number of children and the state of the accounts of the personal estate of the testator. The will was very short, and in the terms following: "This is the last will and testament of me, Richard Webb, of Langley Marsh, Bucks, miller. All my property, of whatsoever description, whether in possession, reversion, or expectancy, or which I may be possessed of at the time of my death, I give and bequeath the same and every part thereof unto my dear wife, Jane, her executors, administrators, and assigns, to and for her and their own use and benefit, upon the fullest trust and confidence reposed in her that she will dispose of the same for the joint benefit of herself and my children. And I hereby appoint my said wife and my friend Edward Woolls, of Uxbridge, executrix and executor of this my last will and testament, hereby revoking all previous testamentary papers at any time heretofore made by me. Witness my hand and seal this 4th of June, 1836." The principal question raised was whether this was an absolute gift to the wife, or a gift upon trust for herself and the children of the marriage.

Shapter for the plaintiff.

Beaven for the executors.

The cases cited amongst others were:—*Hamley* v. *Gilbert*, Jac. 354; *Hammond* v. *Neamer*, 1 Swans. 35; *Foley* v. *Parry*, 2 Myl. & K. 138; *Brand* v. *Beavan*, 1 Russ. 511; *Cooper* v. *Thornton*, 3 Bro. C. C. 96, 186; *Collier* v. *Collier*, 3 Ves. 33; *Andrews* v. *Partington*, 2 Cox, 223; *Curtis* v. *Ripper*, 5 Madd. 434; *Robinson* v. *Tickell*, 8 Ves. 142; *Conolly* v. *Butcher*, 8 Beav. 347; *Cortobadie* v. *Cortobadie*, 6 Hare, 410; *Cape* v. *Bent*, 3 Hare, 245; *Leach* v. *Leach*, 13 Sim. 304; *Bowden* v. *Laing*, 14 Sim. 113; *Crockett* v. *Crockett*, 1 Hare, 451; on Appeal, 2 Ph. 552; *Raikes* v. *Ward*, 1 Hare, 445; *Wood* v. *Wood*, 1 Myl. & Cr. 401; *Whetherell* v. *Wilson*, 1 Keen, 80.

On the 26th April the Vice-Chancellor pronounced

JUDGMENT.

The VICE-CHANCELLOR said that this was one of a class of cases upon which it was extremely difficult to arrive at the proper construction to be put unto the will of a testator—whether the words used by the testator raised a trust for the children or family of that person. The words themselves were short and distinct. I have not, however, been able to find any case which would precisely govern the present one. [The Vice-Chancellor then read the words of the bequest.] Now, stopping at the words "to and for her and their use and benefit," this would be a clear gift to the wife, and goes to declare that the party to be benefited was the wife, her executors, administrators, or assigns. It would be an express gift of the legal interest, if she should be alive when the property should be realised, and the proceeds would go to her; if dead, to her executors, administrators, or to her assigns. The testator evidently would have intended that the whole benefit should belong to his wife and her representatives; but if there are any other words which should import the meaning that any other party should benefit, the bequest would be altogether contradictory. Now, the words which do follow are these:—"Upon the fullest trust and confidence reposed in her that she will dispose of the same for the joint benefit of herself and my children." Now, the question is, whether the last clause "upon the fullest trust," &c. creates a trust for the benefit of the widow *and* her children, contradicting the express gift to the wife before mentioned. Now, one rule of construction is this, that if there are two clauses or sentences, or branches of a sentence, which would contradict each other, the plain rule is, that you should adopt that construction which would, if possible, make the two clauses agree. Here we have not only two sentences, but two parts of the same sentence contradictory. Now, if I were to put such a construction upon them as would give the benefit to the children *and* wife, it would make the two clauses or branches inconsistent. Now, I am of opinion that the testator never meant by the last clause of the sentence to create such a trust for the benefit of his children which they should be able to enforce against the wife. All he means by the latter clause is, that he reposes in his wife full confidence that she will, but without imposing upon her the obligation to do so. I have looked through all the cases upon the subject, but have not been able to find any case which, in its circumstances, is in all respects similar to the present. The nearest is that one of *Crockett* v. *Crockett*, 1 Hare, and the same case in 5 Hare and 2 Phill. In that case the language of the will was this: he directed "that all and every part of his property should be at the disposal of his most true and lawful wife, Caroline Crockett, for herself and her children, in the event of any unforeseen accident happening to himself." The difference between that case and this is, that there there was *not a gift* "to the wife, her executors, administrators, and assigns, for her and their use and benefit," as in the present case, but simply a direction that the property should be at the disposal of his wife and children. In that case Vice-Chancellor Wigram held that the children took as joint tenants; but on appeal the Lord Chancellor reversed this part of the decree, by declaring that there was no joint tenancy between the widow and children, but he declined to decide what the respective rights of the parties were, saying, that the widow, though not entitled to the property absolutely, had a personal interest in it; and as between herself and her children, was either a trustee of the fund, with a large discretion as to the application of it, or she had a power in favour of the children, subject to a life interest in herself; and it was thus left, without saying which was the right construction. There was then little instruction to be gathered from that case; but even if it had been decided, it would not have governed the present case. Here the testator sets out by declaring that the gift was *to the wife*, for the benefit of herself, her executors, administrators, and assigns. Another case, that of *Woods* v. *Woods*, 1 Myl. & Cr has a little bearing on the present, but the one of *Raikes* v. *Ward*, 1 Hare, is more like the present case: the words there were "I give to my dear wife, Marianne, all my moneys, securities for money, goods, chattels and personal estate whatsoever, to the intent that she may dispose of the same, for the benefit of herself and our children, in such manner as she may deem most advantageous." Now, the difference between that case and this is, that there was no declaration that the gift was for the use and benefit of the wife, &c. but to the *intent* that she might dispose of the same for the benefit of herself and children." In that case Vice-Chancellor Wigram was of opinion that there was a trust, in which the Court would not disturb the widow in the honest exercise of the discretion which the testator had reposed in her. I think this opinion of the Vice-Chancellor a sound one; but it does not govern the case before me. I must here declare that the wife takes the whole benefit of the gift for her own use and benefit; leaving it to be dealt with by her as she shall think fit for the benefit of those pointed out by the testator. There were two other cases of *Cooper* v. *Thornton*, 3 Bro. C. C. before Lord Alvanley; and *Robinson* v. *Tickell*, 8 Ves. 142. [The Vice-Chancellor then stated the facts of the first case, and said.] The second case was before Sir W. Grant, who decided it upon the authority of *Cooper* v. *Thornton*. In these there was no decision *that there was not a trust*; but the property was rightly handed over to the parents to deal with as they should think fit. I mention these cases, not because they govern the present, but the principle confirms that which I think proper to do here. In the case of *Woods* v. *Woods*, 1 Myl. & Cr. the words were very peculiar. After purporting to give to his wife Elizabeth certain property described as his own estate, he gave other estates to his wife and brother, whom he appointed executrix and executor upon trust, to sell, so that every creditor have his money, and if so sold, all overflush to my wife toward her support, and her family, if any there be," &c. On bill filed by the children, a demurrer was filed by the executor, and the Lord Chancellor overruled this demurrer, and said there was *some* interest in the children, such an interest as, at all events, entitled them to have an account. Now, in the present case, being of opinion that the testator, although he mentioned "trust and confidence" in his wife, did not intend that the children should have an adverse interest against their mother, and finding no case that completely governs this, I shall decree that the wife is entitled to have the amount of the fund, after payment of the usual costs, paid to her for her own use and benefit.

Decree accordingly.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

Tuesday, Jan. 13.

DOE *dem.* NEWMAN *v.* RUSHAM.

Voluntary conveyance—Validity against subsequent purchasers. Sale by devisee of the grantor.

A voluntary conveyance is void against a subsequent purchaser for value, under stat. 27 Eliz. c. 4, when the vendor is the same person who executed the voluntary conveyance; but not otherwise; and therefore a purchaser from the devisee of one, who in his lifetime made a voluntary conveyance of the same property, is not within the statute.

Ejectment tried before Martin, B. at the Salisbury Spring Assizes, 1851; and verdict found for the plaintiff. A rule nisi having been obtained to enter it for the defendant,

M. Smith shewed cause against that rule; and *Crowder* and *Barstow* were heard in support of it, on the 28th May, 1851, before Lord Campbell, C.J. Patteson, Coleridge, and Erle, JJ.

The whole matter is very elaborately discussed in the judgment of the Court. *Cur. adv. vult.*

JUDGMENT.

Lord CAMPBELL, C.J.—In this case the facts appear to be as follows.—John Newman, being seised in fee, by deed, on the 3rd July, 1833, covenanted to stand seised to himself for life, remainder to Sarah Newman (his daughter-in-law) for life, remainder to George Newman, his grandson (the lessor of the plaintiff), in fee. On the 16th March, 1841, John Newman made his will, and devised the premises to Sarah Newman for life, and remainder to Thomas Morse (the husband of his granddaughter), in fee. John Newman was buried on the 19th March, 1841. On the 5th of June, 1847, Sarah Newman and Thomas Morse sold and conveyed the premises to the defendant, for 300*l*. Sarah Newman died on the 2nd May, 1849. A verdict was found for the plaintiff, and a rule nisi has been obtained to enter the verdict for the defendant. The deed of John Newman is admitted to be voluntary, and the question is whether the defendant is such a purchaser within the 27 Eliz c. 4, as to be entitled to treat that deed as fraudulent and void. The principle on which voluntary conveyances have been held uniformly to be fraudulent and void, as against subsequent purchasers, appears to be that by selling the property for a valuable consideration, the seller so entirely repudiates the former voluntary conveyance, and shows his intention to sell, as that it shall be taken conclusively against him and the person to whom he conveyed, that such intention existed when he made the conveyance, and that it was made in order to defeat the purchaser. Such deeds have been held fraudulent and void as against such purchasers even where they have had notice of them. *Doe* dem. *Otley* v. *Manning*, 9 East, 59. Where the same person executes the voluntary conveyance, and afterwards sells and conveys the property, the application of the principle is obvious and easy; but where the seller is a different person from him who executed the voluntary conveyance, it is quite otherwise, for the acts of one man cannot shew the mind and intention of another. The question, whether the statute of Elizabeth applies to a purchaser from the heir or devisee of one who has made a voluntary conveyance, is discussed in the last edition of "Sugden on Vendors and Purchasers," p. 972, et seq. and the authorities are there collected. The learned author concludes by observing, "still the rule has never been carried to this extent that father's bonâ fide conveyance of the fee, or of any partial interest, although voluntary, can be set aside by a sale by the devisee or heir-at-law of the father. The rule, properly confined to transactions really fraudulent or fraudulently kept on foot, seems to be open to no solid objection, and it is not likely to be carried further." *Burrel's* case, 6th Rep. 72, is supposed to have decided this point in favour of the purchaser from a person different from him who made the voluntary conveyance. The facts of that case, however, do not warrant any such conclusion. There a grandfather, on the marriage of the father, covenanted to demise the premises in question to the father, and by indenture did afterwards demise them to the father for one thousand years. The father, seven years afterwards, assigned the lease to

his son, then an infant, to the intent that it should not be merged by descent of the reversion, and with a colourable intent that the infant should pay debts. The grandfather died; the father entered and took the profits, and nothing was done by the son under the assignment of the lease. Afterwards the father sold the land in fee to a purchaser for a large sum of money, and it was held that the purchaser should avoid the lease for 1,000 years and the assignment. Now, it is obvious that it was quite sufficient to avoid the assignment of the lease by the father, for as soon as that assignment was out of the way, the lease for 1,000 years would be merged in the inheritance, and so there was nothing on which it was necessary that the statute of Elizabeth should operate, but the voluntary assignment which was made by the same person, who afterwards sold and conveyed the fee to a purchaser. Certainly the report states the first resolution in the case to be, that "it is not necessary that he who sells the land should make the former fraudulent estate or incumbrance; but be the estate, &c. fraudulent (ut supra), whosoever sells (makes) it, the purchaser shall avoid such fraudulent estate," &c. This resolution is entitled to great respect; but as it goes beyond what is required by the facts of the case, we do not consider it to be conclusive, or that we can be bound by it. And, further, the second resolution in *Burrel's* case is quite in accordance with the view we have just taken, for it is there said, "it was resolved, that although the father had nothing in the inheritance of the land at the time of the assignment of his term, but the whole estate of inheritance was then in the grandfather, yet, when the grandfather died, and the father sold the land, his vendee shall avoid the said term by the said Act (the said assignment on the evidence being taken to be fraudulent), for if he had bargained and sold the said term only, the bargainee should avoid the said fraudulent assignment, and by consequence the vendee of the whole fee-simple shall avoid it." Now, if the term only had been sold, it would plainly have been sold by the same person, who made the fraudulent assignment. In the cases of *Richards* v. *Lewis*, and *Doe* v. *Richards* (reported in 15 Jurist, 52, and 20 Law J. 177, C. P.), the Court of C. P. commented upon *Burrel's* case. The first action was detinue for title-deeds; the second for the land itself. The facts were as follows: Mrs. Joseph having a lease for years, in May 1839, by a voluntary conveyance in contemplation of marriage with Mr. Saunders, but without his knowledge, conveyed to trustees for herself for life, with remainder to her son, Rhys Morgan, by a former marriage, and if he should die without leaving issue, to Llewellyn Jenkins absolutely. She afterwards married Mr. Saunders, and in 1837, she and her husband conveyed to Howard, as trustee for themselves and the survivor for life, with remainder to Rhys Morgan absolutely. Rhys Morgan died without issue in 1841, having disposed of the remainder which he considered he had absolutely under the deed of 1837, to the lessor of the plaintiff, who, before the action, took an assignment from Howard, the trustee, of the legal interest. In December 1840, Mrs. Saunders, having survived her husband, by deed of assignment, mortgaged that term to the defendant, concealing from him the previous settlements. In 1842 she died, having bequeathed the term to Llewellyn Jenkins, who, in 1843, conveyed the equity of redemption and all his interest in the term to the defendant. The plaintiff had a verdict in each case. In the action of ejectment the Court held that the deed of 1829 was good, and that Mrs. Saunders, at the time of her marriage, had only a life estate; that her husband could not be considered as a purchaser within the statute of Elizabeth, and that on Mrs. Saunders's death the conveyance by her and her husband in 1837, and her mortgage in 1840, were at an end, and the defendant, by the conveyance from Llewellyn Jenkins, had established his title; therefore a nonsuit was directed. This decision does not touch the resolution in *Burrel's* case. In the action of detinue a new trial was directed, on the ground of surprise as to the question of sufficient search having been made for the deed of 1829. In that case it was urged by the counsel for the defendant that as the deed of 1829 was not proved, the defendant was entitled, for that the deed of 1837 was voluntary only, and was done away with by the subsequent mortgage in 1840, and for this *Burrel's* case was relied on. The Court considered that by the deed of 1837, the husband had divested all the wife's interest, and the case therefore did not turn on *Burrel's* case; but in the course of the argument, Williams, J. said: "Suppose a devise by the person making the voluntary conveyance, could his devisee or heir revoke it by a sale? Where there is no actual fraud, must not the revoking conveyance be made by the same person who made the voluntary conveyance?" The Lord Chief Justice Jervis also, in giving judgment, said, "*Burrel's* case is misunderstood. It does not appear that the Courts at that time held mere voluntariness a badge of fraud; they do not say that every voluntary deed is fraudulent. Lord Coke says, 'I acquainted Popham, C.J. with this resolution, and he allowed well of it, and said it was well done to construe the said Act in suppression of fraud, and (as he told me) it was adjudged before him and his companions, Justices of the King's Bench, that where a man in a secret manner made an estate to the use of his wife for her jointure by fraud and covin to defeat a purchaser to whom he intended to sell the land, that in such case, if the fraud be proved in evidence, or confessed in pleading, the purchaser should avoid such estate.' It is clear from this, that cases of actual fraud were alone in their consideration. It is plain that the deed was proved to be fraudulent, in fact, there, and not that the subsequent execution of a deed for a valuable consideration was deemed to stamp a prior voluntary deed with fraud. There was fraud in fact there, and not merely fraud in law." Williams, J. also, in giving judgment, said, "As to the mortgage, *Burrel's* case, if good law, shews that where there is actual fraud in a conveyance, a subsequent purchase from one not guilty of the fraud is protected, but that case has no application when the fraud is only constructive. I agree with the opinion of Vice-Chancellor Wigram. The consequence of holding otherwise would be, that if a father wished to disinherit an undeserving heir at law, made in his lifetime a conveyance by way of gift to his younger children, the heir upon his death might nevertheless nullify this deed by a sale, and pocket the purchase-money." The opinion alluded to of Vice-Chancellor Wigram, is to be found in *Parker* v. *Carter*, 1 Hare, 400; but it does not appear by the report on what ground the learned Vice-Chancellor so decided. There a sale had been made by a surviving wife of her own lands after a voluntary deed and fine by husband and wife, and it was contended that the statute of Elizabeth applied, and Burrel's case was relied on. Two answers were made—first, that the deed and fine were not voluntary, for that the joint deed by husband and wife was a good consideration for the act of each. Secondly, that the sale was not by the same party. The Vice-Chancellor said that the objection was answered, but did not say on which ground. No other case is reported so far as we have been able to find, in which this point has been determined, one way or the other, except that of *Jones* v. *Whittaker* (to be found in *Longford* v. *Townsends*, Irish Ex. Rep. 14). There William Smith, by a voluntary deed in 1820, conveyed after his death to Barton Smith in fee. Then by another voluntary deed in 1828, he conveyed, after his death, to Richard Smith in fee. Then by a third deed in 1830, he conveyed to the defendant, professedly, for 500*l.* expressed to be paid in money, and 300*l.* in bonds. Richard Smith became bankrupt in 1837, and in 1839 his assignees sold to the plaintiff for valuable consideration. William Smith died in 1840, and the defendant having got into possession, the plaintiff brought his ejectment. The jury found that no money was paid or bonds given by the defendant, and the deed to him in 1830 was really fraudulent, and made colourably to defeat the deed to Richard Smith in 1828. But the defendant contended, that though he had no title himself, the lessor of the plaintiff had none, for he claimed under a voluntary conveyance to Richard Smith, in 1828, which could not defeat the voluntary conveyance to Barton Smith, in 1820. The case was tried before Baron Richards, and the plaintiff had a verdict, and on motion to set it aside, and enter a verdict for the defendant, the Court held that the plaintiff was entitled to recover (a strong authority to rely on in this case), saying, that it was held in *Burrel's* case, and ever since, that a purchaser for value should avoid a prior voluntary conveyance, although made by a different person from the seller to him. The Chief Baron Brady is reported to have stated that the defendant was grantee of a prior deed executed for a voluntary consideration, which is a mistake of fact; though it is not material to the legal point. Baron Richards puts it thus: "The defendant relies on an instrument founded on fraud, not only as under the statute, but as being actually fraudulent. I certainly was of opinion that this instrument was obtained in the year 1830, from a weak old man, and by gross contrivances, for a very unworthy purpose; and so far as the application to set aside this verdict goes, I think it ought to be refused; this observation shews only the weakness of the defendant's own title, but it does not touch the question as to the infirmity of the plaintiff's title, on which the defendant had a right to insist. If there had been no prior deed of 1820 to Barton Smith, and the deed to Richard Smith, though voluntary, had been first in order of time, no doubt it would have prevailed against the defendant's deed of 1830, because that deed was fraudulent in fact; and it would also have prevailed against any even bonâ fide sale and conveyance made in 1839, when Richard Smith's assignees sold for value, because it had been constantly held that if the person to whom a voluntary conveyance is made, sells and conveys for value, that which was in its creation a voluntary conveyance and voidable by a purchaser, becomes good and unavoidable by matter ex post facto, and will be considered as made upon valuable consideration. According to the case of *Prodgers* v. *Langham*, 1 Siderfin, 133. This, however, is not by the operation of the statute of Elizabeth, but rather by excluding that operation." The case of *Jones* v. *Whittaker*, is doubtless an authority for the defendant in this case, but with the most sincere respect for the learned judges by whom it was decided, we cannot consider it as good law. It would go the length of holding that if there be ten voluntary conveyances by the same man to ten different individuals, whichever of them could first contrive to sell the property, should prevail against the others. When a man who has made a voluntary conveyance, afterwards sells to a bonâ fide purchaser, it may well be considered that as the statute avoids the voluntary conveyance, the seller always had the estate in him, and has at the time of the sale that which he can convey to the purchaser. But it does not follow that he has any estate in him which he can convey to any one but a purchaser for value. He clearly has not any such estate. Therefore in the case of *Jones* v. *Whittaker*, William Smith had not any estate in 1828, which he could convey to Richard Smith (Richard not being a purchaser for value), for he had already conveyed away the estate to Barton Smith. So in the present case, John Newman, when he made his will in 1811, had no estate which he could devise to Thomas Morse, for he had already conveyed it to the lessor of the plaintiff; and if Thomas Morse took nothing under the will, how is it possible that by selling to the defendant he could convey anything to him. We presume that it is not supposed that a second grantee without consideration, or a devisee (the testator having before his will conveyed away his interest without consideration), has a power of appointment in favour of a purchaser for value, although no legal interest in the property has ever vested in him. When we consider the consequences which would follow from the doctrine contended for as regards a purchaser from an heir, we may well pause before we assent to it. We may put such a case as the following. A, tenant for life of large estates under his marriage settlement, with remainder to his first son in tail, has also unsettled estates in fee. He has several sons and daughters. He makes a voluntary conveyance of his unsettled estates to himself for life, remainder to his younger children. A. dies; his eldest son succeeds to the large settled estates under the marriage settlement of his father. It is plain that he takes nothing in the others, either as heir or otherwise; but he makes a sale of those others to a bonâ fide purchaser. According to the doctrine contended for, the purchaser shall avoid the father's voluntary deed, and take away from the younger children the estates in which their father had the fee, and had conveyed it to them. The eldest son shall put the purchase-money into his pocket, and his brothers and sisters shall be beggars. This is a monstrous consequence, and yet there is no escaping from it if the doctrine contended for be law. There is, indeed, this difference between the case of a purchaser from an heir and that of a purchaser from a devisee, that in the former case the ancestor has done no act whereby he has shewn any intention to repudiate his voluntary conveyance, whereas in the latter, the testator has done such an act by the devise in his will. But that act of devising does not shew any intention in his mind to sell the property, nor that his devisee shall sell it. It does not shew that he at any time contemplated a sale, and therefore it cannot, by reference to the time of the voluntary conveyance being made, raise the inference that he intended to defraud purchasers. In truth neither heir nor devisee in such a case has any estate in him, and therefore cannot possibly pass any to a purchaser. The case of *Warburton* v. *Loveland*, 2 Dow. & C. 140, in the House of Lords, was much relied on in the decision of *Jones* v. *Whittaker*. That case, however, turned on the Registry Acts, and on the construction to be put on the express enactments contained in them. It was held, that want of registry made all deeds affected by it void as against purchasers, not only from the persons making those deeds, but from those who were entitled to the estates, supposing those deeds not to have been made. Upon reading the opinion of the judges, delivered by Tindal, C.J. in that case it will be found to turn entirely upon the particular Acts of Parliament under consideration, and not to be any authority for the doctrine now contended for under the statute of Elizabeth. Upon the whole, we are all clearly of opinion that a purchaser from the devisee of one who has made a voluntary conveyance in his lifetime is not within the statute, and that this rule to enter a verdict for the defendant must be discharged. We have taken time to consider in this case for several Terms, and have delayed our judgment out of respect for the decision of the Irish Court of Ex. in *Jones* v. *Whittaker*. We feel extremely reluctant to differ from our learned brethren in the Irish Courts, and I take this opportunity of observing (there having been some comments made

on my objecting to an authority being cited from the Irish Courts on a mere point of practice, where we differ entirely from their procedure), that upon such points as this I look on the decisions of the Irish Courts with as much respect, as any decision of any Court in Westminster Hall. *Rule discharged.*

April 27 and May 3.

Sir T. R. GAGE *v.* THE NEWMARKET RAILWAY COMPANY.

Railway—Covenant—Construction—Legality.

Deed by railway company with a landowner, after reciting that the company were about to construct a branch line, and that a Bill was pending in Parliament, and that the landowner had given notice of opposing it, covenanted, that in the event of the Bill passing, the company would, before they should enter upon any part of the landowner's lands, pay him 4,500l. for any portion not exceeding, &c. they should require, and in addition would pay him 7,100l. for damage by severance of the lands. The landowner did not oppose the Bill, and the Act passed:

Held, that the company were not bound to pay the landowner either of the above sums before taking any portion of his land.

Held, also, that it would have been illegal in the company to have covenanted to pay those sums before taking the land, as being a misapplication of the funds of the company.

Covenant.—The declaration, after reciting the passing of the Acts relating to the Newmarket Railway Company, stated that by articles of agreement reciting that it was proposed by the company to construct a branch line of railway, &c. and that the plaintiff had given notice of his intention to oppose the Bill brought into Parliament to enable the company to construct the said branch, the said company covenanted with the plaintiff, that in case the said Bill then before Parliament should pass, the said company would, before entering on the lands of the said plaintiff, pay him 4,500l. purchase-money for any portion of his lands not exceeding forty-three acres which the said company might require; and further, that the said company would pay to the said plaintiff, before they should enter into any part of his lands, 7,100l. for damage arising to his estate by severance thereof, and would settle all demands of the said plaintiff's tenants in consequence.

Averments.—That the Bill did pass, and that plaintiff was ready and willing to receive the said sums of 4,500l. and 7,100l. and that a reasonable time had elapsed for payment thereof.

Breach.—Nonpayment.

One of the pleas which the defendants pleaded was demurred to by the plaintiff; but that becomes immaterial, as the whole whole argument turned upon the validity of the declaration.

Addison, for the plaintiff.

Bramwell, for the defendants.—The point was, whether, upon this covenant, the taking of the land by the defendants was a condition precedent to the payment of the sums of 4,500l. and 7,100l.

Authorities cited:—*Pordage* v. *Cole*, 1 Wm. Saun. 320; *Pilbrow* v. *Pilbrow's Atmospheric Railway Company*, 17 L. J. 166, C. P; *Webb* v. *The Direct London and Portsmouth Railway Company*, 15 Jur. 697, on appeal 16 Jur. 323; *Bland* v. *Crowley*, 6 Ex. 522; *Preston* v. *The Liverpool, Manchester, and Newcastle-on-Tyne Junction Railway Company*, 1 Sim. N. R. 586; 8 Vict. c. 18, ss. 16, 18; *The East Anglian Railway Company* v. *The Eastern Counties Railway Company*, 21 L. J. 23, C. P.; *Stuart* v. *The London and North-western Railway Company.* *Cur. adv. vult.*

JUDGMENT.

Monday, May 3.—Lord CAMPBELL, C.J.—We are of opinion that the defendants are entitled to our judgment. Taking the deed as set out on oyer, we think that there is no breach well assigned upon it. The covenant, there, without saying anything, as the declaration does about reasonable time, is merely in these words: "That in the event of the Bill hereinbefore mentioned being passed in the present session of Parliament, the said company shall, before they shall enter upon any part of the lands of the said Sir Thomas Rokewoode Gage, in the said county of Suffolk, pay the said Sir Thomas Rokewoode Gage, his heirs and assigns, the sum of 4,900l. purchase-money, for any portion of his lands not exceeding forty-three acres, which the said company may, under the powers of their Act, require and take for the purposes of their undertaking; that in addition to the purchase-money as aforesaid, the said company shall pay to the said Sir Thomas Rokewoode Gage, his heirs and assigns, before they shall enter upon any part of his said lands, the sum of 7,100l. as a landlord's compensation for the damage arising to his estate by the severance thereof, in the respect of lands not exceeding forty-three acres to be taken by them." The question we have to determine is, whether the company never having entered upon any part of the plaintiff's lands, he is now entitled to sue for those two sums, or either of them. The 4,900l. is declared to be purchase-money for the land to be required and taken, and the only time of payment mentioned is before the company enter upon the lands; therefore, if no land is required or taken, and the company never enter into any part of the land, there seems great difficulty in saying there has been a breach of covenant in not paying the money; and the 7,100l. is declared to be a compensation for severance of the land taken from the rest of the plaintiff's land, and the same kind of payment is defined; but there has been no severance to be compensated, and the time for payment has not arrived. This deed does not bargain for a sum of money to be paid absolutely by the company to the plaintiff as a consideration for his withdrawing his opposition to the Bill, but provides a peculiar mode of estimating the value of the land to be taken, and the compensation to be paid for severance damage, instead of the modes pointed out by the general Act upon this subject. We, therefore, do not think that the company can be considered as having absolutely covenanted to pay 12,000l. to the plaintiff in a reasonable time after the passing of the Act. If this deed could bear such a construction, we should have thought it so far, ultra vires, and void. Here the railway company are the covenantors, and if the present action lies, the capital paid up by the shareholders must be answerable for damages to be recovered. We consider that this would be a misapplication of the funds of the company which the directors could not lawfully make. All the cases that are relied on by the plaintiff's counsel are, clearly distinguishable from the present, except that of *Webb* v. *The Direct London and Portsmouth Railway Company*, decided by Vice-Chancellor Turner. Notwithstanding our high respect for that learned judge, we cannot concur in the reasons for his decision; and although it has not been expressly overturned, its authority was greatly shaken, when it came before the Lords Justices. We do not think it necessary to give any opinion on the case of *Bland* v. *Crowley*, in which the learned judges of the Court of Ex. were divided, as the deed there discussed varies materially from the present; nor would it be proper to give any opinion on *Stewart* v. *The London and North-Western Railway Company*, as we learn from Lord Cranworth that when it came before the Lords Justices upon appeal, it was sent by that Court to be decided in a court of law. We are happy to think that the question being on the record, it may be brought before a Court of Error. In the meantime there must be judgment for the defendants.

Judgment for the defendants.

Monday, May 10.

COUNTY COURT APPEAL.

COOPER *v.* STEPHENS.

Attorney and client—Negligence of attorney—Insufficient inquiry as to mortgagor having been insolvent.

An attorney was instructed by his client to sue for a debt, but after having written letters demanding payment, and threatening proceedings, advised him to accept from the debtor a mortgage security, which he did. There was some evidence that the attorney had a suspicion that the debtor had been insolvent; but he made no inquiries upon that subject, except from the debtor himself. It afterwards turned out that the debtor had previously petitioned the Insolvent Court, and obtained an order for protection, and that the whole of the debts in his schedule remained unpaid.

Held, that there was evidence to go to the jury of negligence, rendering the attorney liable to an action by the client.

This was an action tried before the judge of the County Court of Kent, and a jury of the said county at Rochester, and the action was brought on a plaint, to which the following particulars of demand were annexed:—

"The plaintiff claims of the defendant the sum of 50l. for damages sustained by him, for that the defendant as the attorney of the plaintiff did not use due and proper care, diligence, and skill, in prosecuting and conducting a certain action of debt at the suit of the said plaintiff, against one William John Wells, for the recovery of the sum of 51l. 2s. 6d. claimed by the said plaintiff, to be due and owing to him from the said William John Wells, for goods sold and delivered by the said plaintiff to him, but instead thereof that he the said defendant took, and induced the said plaintiff to accept a certain mortgage security of the reversionary interest of the said William John Wells in certain lands, tenements, and premises situated in the county of Kent; and further, that the defendant as such attorney for the said plaintiff, did not use due and proper care in ascertaining the title of the said William John Wells to the said lands, tenements, and premises, nor take due and proper care that the same should be a sufficient security for the payment of the said sum of money and interest; and further, the said plaintiff, confiding in the conduct of the defendant as such, his attorney as aforesaid, forbore to sue for, and recover his said debt, against the said William John Wells, upon having a mortgage granted by him upon the said lands, tenements, and premises, as and for a sufficient security in that behalf; and the said defendant then caused to be prepared and executed a certain indenture relating to the supposed estate and interest of the said William John Wells, in the said lands, tenements, and premises, as, and for such sufficient security for the payment of the said 51l. 2s. 6d. and interest as aforesaid. Nevertheless, the said supposed title and estate, and interest of the said William John Wells, in and to the said lands, tenements, and premises, and the said indenture and security, by reason of the negligent and improper conduct of the said defendant in the premises, were not, nor are, nor will be, any sufficient security for the payment to the plaintiff of the said sum of 51l. 2s. 6d. and interest, but that, on the contrary thereof, the said defendant so carelessly and negligently conducted himself in that behalf, that, by reason thereof, the said plaintiff was forced to pay and did pay a further large sum of money in respect thereof, to the damage of the said plaintiff of 50l. and upwards."

At the hearing of the said cause, the following facts were tendered and received in evidence:—That in October 1849. Cooper, the plaintiff, who was a boot and shoe maker, instructed Stephenson, the defendant, as his attorney, to recover the sum of 51l. 2s. 6d. due to him from William John Wells, a shipwright, working in her Majesty's dock-yard, at Chatham, and who was also a boot and shoemaker. That upon these instructions being given, two letters (demanding payment, and threatening proceedings) were written, and sent by the defendant's orders to William John Wells. (The letters were set out in the case.) The plaintiff having been sworn as a witness, stated, that on the evening of the said 16th of October, he went to the defendant's office by appointment, and there met the said William John Wells and the defendant. That the said William John Wells then offered the plaintiff, as a security for the payment of the said debt of 51l. 2s. 6d. with interest thereon, a mortgage of a certain reversionary interest in certain houses and land, to which he, William John Wells, said he was entitled. That the defendant, as the attorney to the plaintiff, advised the plaintiff to accept the said mortgage as a good security for the said debt, and to forbear from prosecuting an action for the recovery thereof. That the plaintiff, in consequence of the advice so given him by the defendant, did forbear from prosecuting an action, and that, on the 30th of the same month of Oct. an indenture of mortgage was executed, which indenture is made between the said William John Wells of the one part, and the plaintiff, of the other part. (The indenture was set out in the case, and contained the usual covenant to pay the debt.) The plaintiff further stated that about two months after the execution of the mortgage, he discovered for the first time that the said William John Wells had petitioned the Court for the relief of insolvent debtors in the year 1843, and obtained an order for his protection, which order was in force at the time of the execution of the mortgage; that the debts due from the insolvent to his creditors amounted to 65l. 16s. 5d.; that there were no assets; and that the whole of the debts remained due, and unpaid at the time of the execution of the said mortgage, and that the insolvent's reversionary interest in the said freehold houses and land was not disclosed to the assignees; that on the discovery of the insolvency, the plaintiff, by the advice of the defendant, who was still acting as his attorney, bought up 60l. 15s. of these debts for the sum of 5l. 10s. leaving 5l. 1s. 5d. due to other creditors, with whom he could not compound, and obtained an assignment of the said debts, amounting to 60l. 15s. with the usual power of attorney to recover and receive them.

William Sainock being sworn as a witness in the said cause, stated that he was clerk to the defendant in October 1849, but has since left his service. That between the 16th and 30th of October, 1849, whilst he was in the defendant's service as clerk, the defendant told him several times that he, the defendant, must write to his agent to make the necessary searches, to see whether any judgments had been entered against the said William John Wells, or whether he had ever been a bankrupt, or taken the benefit of any of the Insolvent Acts; that it was his general duty as the defendant's clerk, to copy into the letter-book the letters which were sent from the defendant's office, and that he had no recollection of ever having seen any letters containing any directions to make such searches; that he was directed by the defendant to go to Chatham Dockyard, where William John Wells worked as a ship carpenter, to inquire if he, Wells, had ever been insolvent; that he took the mortgage deed to the dockyard, and asked William John Wells himself if he had ever been insolvent, and he answered no, and then the deed was executed.

Elizabeth Wells being sworn to give evidence in the said cause, stated that she was the wife of William John Wells, and that in October 1849 the said

William John Wells had household goods, as she believed, of the value of 80*l.* or 100*l.*; that he afterwards left Chatham, and, as she believes, is gone out of the country.

Upon these facts being proved, the counsel for the defendant submitted that the plaintiff ought to receive judgment of nonsuit. The plaintiff's counsel insisted that the case should go to the jury. The learned judge gave judgment of nonsuit against the plaintiff.

The question for the opinion of the Court of Queen's Bench is, whether the learned judge was right in law in nonsuiting the plaintiff, and withdrawing the case from the consideration of the jury.

Petersdorff (*F. J. Smith* with him) for the appellant.—The judge was wrong in withdrawing the case from the jury. If there was any evidence of negligence the question was one of fact for them to determine; and there was evidence. It was the positive duty of the defendant to make due inquiry for the purpose of ascertaining whether Wells had petitioned the Insolvent Court, as is stated in Coventry's Conveyancer's Evidence; and if he neglected the performance of that duty, the question of actual damage is immaterial. (*Marzetti* v. *Williams*, 1 B. & Ad. 415.)

G. C. Addison, contrà.—There was no duty cast upon the defendant to search the Insolvent Court; and a reference to the different Insolvent Acts will shew that any such search would be very expensive, and probably fruitless. Under 5 & 6 Vict. c. 116, s. 1, insolvent traders, whose debts are small, may petition the district Courts of Bankruptcy in the country for protection, and of such cases no returns are required to be made, except to the Lord Chancellor's secretary, under the amending Act (7 & 8 Vict. c. 96, s. 13). Besides, the plaintiff could not be prejudiced by the omission to search at the Bankrupt or Insolvent Court, because no order in bankruptcy would affect the mortgage unless registered pursuant to 1 & 2 Vict. c. 110, s. 19, and 2 & 3 Vict. c. 11, s. 4. At all events, in order to make out such a case of negligence as would render the defendant liable to an action, the plaintiff ought to have given some evidence that it was the practice to search at the Insolvent Court (*Purvis* v. *Landell*, 12 Cl. & F. 98); and no such duty is pointed out in Sugden's Vendors and Purchasers. Besides, the mortgage cannot be treated as altogether worthless. The covenant to pay the debt is a security to pay it, as was said by Maule, J. in *Price* v. *Moulton*, 20 L. J. 101, C.P.

COLERIDGE, J.—It is not necessary for us to lay down any general rule in this case, and the judgment of the Court will therefore ground upon the peculiar facts here stated. The question is, whether there was any evidence to go to the jury of negligence; and there was evidence, I will not say proof, of these facts. That the attorney having been instructed to recover this money, applied for payment and threatened proceedings; but that an offer being made of a mortgage, he advised his client to accept it as a good security. Now, if he knew or suspected, or even guessed that Wells, the debtor, had previously taken the benefit of the Insolvent Act, I think it was a necessary and proper step for him to make inquiry; and there is some evidence that he had a suspicion of that kind, and that he himself thought that it was his duty to make some inquiry, and to give his agents instruction to make the necessary searches; but according to the recollection of the clerk no such inquiry was made, nor were any such instructions ever given: a certain inquiry he did make, namely, of the debtor himself, but of course such an inquiry was futile. The defendant, therefore, thought it his duty to make inquiry; he made an insufficient inquiry, and then the very thing appears actually to have taken place, about which he had felt that some inquiry was necessary. Mr. Addison says, that under Lord Brougham's Act the inquiry might have been instituted without success, but it does not appear that this insolvency was under that statute. At all events any matter of that sort might have been adduced by way of excuse, and in answer to the plaintiff's case; but the course taken by the judge precluded that; because he held that upon the plaintiff's case there was no evidence for the jury.

ERLE, J.—We do not lay down any general rule; we only say, that in some cases, where the attorney has reason to suspect that the party offering the security has been through the Insolvent Court, he ought to institute some reasonable inquiry; and here the defendant has by his own language and conduct settled the question whether he had such suspicion.

Judgment reversed.

Saturday, May 22.

BASTO *v.* GANT Administrator, &c.

Lord Mayor's Court—Foreign Attachment—Special bail—Suit against administrator.

The rule which requires a defendant in the Court of the Lord Mayor of London to put in special bail in order to dissolve a foreign attachment [illegible]*ed by that Court against his goods, applies to a case in which the defendant is sued as executor or administrator, and if the suit is removed by certiorari, a procedendo will issue, unless special bail be put in in the Superior Court.*

Locke moved for a rule to shew cause why an order of Coleridge, J. should not be rescinded, and why common bail put in by the defendant should not be deemed sufficient. The plaintiff had commenced an action of debt against the defendant in the Lord Mayor's Court, and in that action, according to the custom of the city of London, a foreign attachment had issued against the goods of the defendant in the hands of the Royal British Bank. The cause and attachment having been removed into this court by certiorari, an order was made by Coleridge, J. directing a procedendo to issue, unless the defendant should put in *good* bail within four days. Subsequently application was made to Erle, J. at chambers, to rescind that order, on the ground that the usual rule as to putting in special bail did not apply to the case of defendant sued only as executor or administrator. The learned judge, however, refused the application; and the present motion came by way of appeal from that decision. It is admitted that the ordinary rule was to require special bail (*Day* v. *Paupierre*, 18 L. J. 270, Q B.); but the rule does not apply to the case of a defendant sued as administrator. In Mr. Ashley's Book on the "Doctrine and Practice of attachment in the Mayor's Court, London," it is expressly stated that the custom does not authorise the arrest of an executor or administrator, and that the attachment, which is equal to an arrest, may be dissolved by putting in common bail. [ERLE, J.—That is the only book of practice in which such statement is to be found, and I believe it i[illegible]trary to the actual practice of the Lord Mayor's Court. Lord CAMPBELL, C. J.—It is wholly irreconcileable with the supposition that the [illegible] of foreign attachment practically applies at all to the case of a defendant executor, because it would render the process perfectly illusory.] The practice always was to discharge an executor upon common bail, even though the cause was removed from an inferior to a superior Court. (Bac. Abr. Exors. and Administrators, p. 5; *Lumley* v. *Quarry*, Salk. 101; Reg. Gen. Q.B. Hil. T. 1686.)

Lord CAMPBELL, C.J.—I am of opinion that my brother Erle was quite right, and that there should be no rule. There is no question that the general rule was, that executors could not be held to special bail even on removal of a cause from an inferior Court; but the question is, whether there is not an exception to that rule where the custom of foreign attachment prevails; and if it is admitted that attachment will lie at all against an executor, there must be such an exception, because the attachment would be wholly illusory if it could be dissolved on common bail. The authorities cited from Bacon's Abridgment do not advance the argument, because they state the general rule only; but Mr. Locke relies on the passage in Mr. Ashley's book, although he himself, an experienced practitioner of the Court, will not vouch for its accuracy.

COLERIDGE, J. concurred.

ERLE, J.—Without undertaking to answer for the practice of the Lord Mayor's Court, though I fully believe that it is the same in this respect, it is quite clear that by the practice of this Court a suit commenced in the Lord Mayor's Court cannot effectually be removed here without putting in and perfecting special bail. No doubt is thrown upon that rule in any case or book of practice that I can find.

CROMPTON, J.—To take the case out of the practice of this Court, it ought at all events to be clearly made out that the practice is different in the Mayor's Court, and I think that is not made out. The passage in Ashley is not sanctioned by any other authority.

Rule refused.

BUSINESS OF THE WEEK.

TRINITY TERM.

Saturday, May 22

(Lord Campbell, C J. Coleridge, Erle, and Crompton, JJ. took their seats on the bench this morning, and will generally constitute the Court during the Term)

MARSHALL *v.* THELLUSSON and OTHERS.—*Ogle* shewed cause against a rule to enter the verdict for the defendant upon the fourth count. The question was, whether there was any evidence to support the special contract stated in that count. *Channell*, Serjt. and *C. Wood*, contrà.

Rule absolute.

SAME *v.* SAME.—*Channell*, Serjt. and *Wood*, shewed cause against a rule for judgment, non obstante veredicto, upon a plea of set-off to the common counts.—*Ogle*, contra

Cur. adv. vult

REG. *v.* THE LONDON AND NORTH WESTERN RAILWAY COMPANY.—*Addison* moved on behalf of a landowner for a rule nisi for a mandamus to compel the above-named company to make a railway between three and four miles long, forming part of the Oldham branch. The compulsory powers would expire 9th July, 1852 *Rule nisi.*

REG *v.* SILL.—*Wilkins*, Serjt moved for a certiorari to remove an indictment from the Middlesex Sessions.

Rule nisi.

MALLALIEU *v.* THE ANGLO CALIFORNIAN MINING COMPANY.—*Paterson* appeared in support of rule for new trial. No cause being shewn.

Rule absolute on affidavit of service.

CORBETT *v.* HUDSON.—The plaintiff, in person, moved for a rule for a new trial upon several grounds, one being that the Lord Chief Justice had refused to allow him to conduct his case as advocate, and also be examined as a witness. The COURT refused the rule upon the other grounds; but as to that, *Cur. adv. vult.*

BLACKALL *v.* BREMMER.—*Lush* and *Honeyman* shewed cause against a rule for a new trial, on the ground that the verdict was against the evidence. *Francis* contrà.

Rule discharged.

Monday, May 24.

REG. *v.* ARNOLD.—This was a motion for a certiorari to bring up two orders of one of the magistrates of the county of Middlesex, whereby the costs of the maintenance of a pauper lunatic Irishman, having no legal settlement in England, were made payable on the county. *Pashley* moved, and *Bodkin* shewed cause in the first instance.

Cur. adv. vult.

Ex parte POLLARD.—*Huddleston* moved for a certiorari to bring up an order of two justices, appointing Mr. Pollard as overseer, for the purpose of quashing it. The objection was, that Mr. P. was a practising surgeon. (18 Geo. 2, c. 15, s. 2) *Rule nisi.*

REG. *v.* THE JUSTICES OF MIDDLESEX.—*Huddleston* shewed cause against a rule nisi for a mandamus to enter continuances and hear an appeal. *Pashley* and *Bodkin* supported the rule. *Rule discharged.*

KEYSE *v.* POWELL.—Rule nisi for a new trial, on the ground of surprise, and upon affidavits. The case was tried at Monmouth, before Platt, B. and a verdict found for the defendant. It was an action of trespass, q. c. f. to which the defendant pleaded a demise of coal, with leave to work the mine. *Watson* and *Sir T Phillips* showed cause, and *Whateley* and *Gray* supported the rule.

Rule absolute, on payment of costs.

Tuesday, May 25.

PALK *v.* SKINNER.—*Crowder* and *Collier* shewed cause against a rule to enter a verdict for the defendant.

Kinglake, Serjt. and *M. Smith*, contra. *Rule discharged.*

(Will be reported next week)

CORBETT *v.* HUDSON.—Lord CAMPBELL, C J.—The Court think that there ought to be a rule to shew cause upon this question whether the plaintiff has a right to address the jury bef[illegible] being sworn, he intending to be a witness [illegible] his own case. *Rule nisi.*

ALLEN *v.* LAKE.—This was an action for breach of a warranty upon the sale of "Skirving swedes." *Hoggins* moved for a rule to enter the verdict for the defendant upon the second count, and for a new trial upon the first count, on the ground that there was no evidence to prove the contract as laid in the declaration. *Rule refused.*

BARNES *v.* MARSHALL.—*Bovill* moved for a rule to shew cause why a writ of prohibition should not issue to the judge of the County Court of Wilts, held at Swindon, and why the plaintiff should not pay the costs of the application The question was whether, under sec. 60 of 9 & 10 Vict. [illegible] *whole* of the cause of action must arise within the jurisdiction of the County Court. *Buckley* v. *Hann*, 5 Exch Rep. 43; 19 L. J 151, Ex.; and *Wilde* v. *Sheridan*, 19 L. T 126, before Coleridge, J in the Bail Court, were mentioned. *Rule nisi.*

REG. *v.* TIDD PRATT, Esq.—*Willes* moved for a rule for a mandamus commanding the Registrar of Friendly Societies to certify an amended rule of the Kent Mutual Fire Insurance Society. The question turned upon sec. 12, of 9 & 10 Vict c 27; and the question was, whether societies formed before the passing of that Act, the original rules of which had been registered with the clerk of the peace of the county, within which the society's place of business was situate, could now establish a place of business beyond the local limits of that county. The amended rule, which was proposed to be certified, provided that the society should have a place of business in London. Stat. 10 G. 4, c. 56, s. 10, was referred to.

Rule nisi.

MERCH *v.* DAW.—*Slade* and *Kingdon* shewed cause against a rule for a new trial. *Crowder* and *Fitzherbert*, contrà.

Rule discharged by consent, on the damages being reduced to 180l.

BUSINESS OF THE COURT.

Lord CAMPBELL, C.J. mentioned that he considered it desirable, now that there was the opportunity, that motions for rules nisi should be made in the full Court, when the matter would have to be brought before the full Court upon shewing cause.

Wednesday, May 26.

NINER *v.* DIXIE.—*Macauley* moved for a new trial, on the ground of excessive damages, and also on affidavits.

Rule nisi.

VAUGHAN *v.* STEVENS.—Tried before Erle, J. *Case*, for negligence, whereby damage was occasioned to the defendant's house *Crowder* and *Fitzherbert* shewed cause against; and *Kinglake*, Serjt. and *Collier*, supported a rule nisi for a new trial, on the ground of misdirection.

Rule discharged.

REG *v.* AVERY.—To be reported. *Rule discharged.*

LOWE *v.* THE LONDON AND NORTH-WESTERN RAILWAY COMPANY.—*Miller*, Serjt. and *Hayes* shewed cause against a rule nisi to enter a nonsuit, or for a new trial.

Part heard.

COURT OF COMMON BENCH.

Reported by DANIEL THOMAS EVANS and VAUGHAN WILLIAMS, Esqrs. Barristers-at-Law.

Jan. 24 and Feb. 4.

WHITAKER *v.* WISBEY.

Trover—Assignment of goods by prisoner after commission day of Assizes, but before conviction —Estoppel by record.

A prisoner incarcerated on a charge of felony, made an assignment of his goods after the commission day of the Assizes, but before conviction: Held, that, notwithstanding the entire period over which Assizes extend in one place is, by contemplation of law, and for some purposes, one legal day, the particular day on which a conviction took place may, when necessary, be shewn, and that therefore the assignment was valid.

The record of a prisoner's conviction, shewing that he was convicted on a certain day, does not operate as an estoppel, so as to shut out evidence of the actual day on which the conviction took place.

This was an action of trover, brought against the defendant, an auctioneer and agent, for the Crown, for the disposal of felon's goods.

Pleas.—1. Not guilty; 2. Not possessed.

The cause was tried before Cresswell, J. at the Summer Assizes for Huntingdon. It appeared in evidence that George and Thomas Whitaker, the father and brother of the plaintiff, Richard Whitaker, were tried for arson before Erle, J. at Cambridge Spring Assizes 1851, and convicted and sentenced. The commission day of Cambridge Assizes was Wednesday, the 19th of March; the trial of the prisoners commenced on Saturday, the 22nd of March, and terminated on Monday the 24th. By a deed, dated the 17th but not executed till the 20th of March, the prisoner, Thomas Whitaker, assigned his goods to the plaintiff. The corporation of Cambridge claimed the goods for the Crown, as the property of a felon, and employed the defendant to sell them, whereupon the plaintiff brought his action of trover to recover the value of the goods. For the defendant the record of the conviction of Thomas Whitaker was put in evidence, and it was contended that, as in contemplation of law the Assizes are of one day, the record, the caption of which bore date of the commission day, must be taken as conclusive evidence that the conviction took place on the 19th of March, and before the assignment. The jury found for the plaintiff, damages 210*l.*; they also found specially that the deed of assignment was bonâ fide, and for a valuable consideration. Leave was reserved for the defendant to move to enter a verdict on the plea of not possessed, if this Court should be of opinion that the conviction must be taken as dating on the commission day of the Assizes.

A rule nisi in those terms having been obtained on a former day by *Prendergast*, Q.C.

Worlledge and *Burcham* now shewed cause.—At the time when the prisoner, Thomas Whitaker, executed this assignment he was competent to perform such an act, because he was not convicted. [WILLIAMS, J.—The point here is, whether by force of law the conviction dates from the first day of the Assizes.] Yes. By law, so far as felon's goods are concerned, the title of the Crown relates back only to the day of actual conviction. It was certainly the opinion of Hale, C.J. that even after indictment a prisoner can make a good deed. He says: -"The goods of a person convicted of felony are forfeited to the king; but the relation of the forfeiture refers not to the time of the offence committed, but only to the conviction; and therefore an alienation made by the felon bonâ fide and without fraud, between the offence and the conviction, is good, and binds, but if fraudulent, then it is avoidable by the stat. 13 Eliz. c. 5." (1 Hale, 1 C. 361, 365-7.) This point was well considered in *Perkins* v. *Bradley*, 1 Hare, 219. In that case it was held by Vice-Chancellor Wigram, that a felon might dispose of his property for a valuable consideration, between the day when the offence was committed and conviction. Take as an illustration a case where the Assizes extend over a long space of time, as in Yorkshire. The commission opens on Saturday; on Monday, a man bonâ fide sells his goods to an innocent purchaser for valuable consideration; on Tuesday he steals his neighbour's property, is taken at once before the grand jury, who find a true bill against him. Can it in such a case be said that a mere fiction of law is to prevail, and that, therefore, he could not make a good sale of goods on Monday? [MAULE, J. Those fictions must not be stretched to the extreme limit they will go. It seems absurd to say that an act actually done on the 25th, shall be referred back to the 3rd of March.] There are no cases to be found where a conveyance was made after commission day and before conviction. The cases of *Shaw* v. *Brand*, Starkie, 319, and one in Skinner, 357, are, however, instances of conveyances made very recently before the commission day. Then, as to the question of estoppel, there are numerous authorities to the effect that, where matter of estoppel can be pleaded, it must be relied on. (*Macgrath* v. *Hardy*, 4 Bing. N.C. 782.) It is admitted that we cannot traverse the record. It is merely by fiction of law that the whole period of commission of oyer and terminer is to be taken as one day. But this Court will take judicial notice that Assizes may and do continue more than one day. The record of conviction is drawn up by the officer of the Court as of the first day of the Assizes, and for some purposes, but not necessarily for all, the Assizes are treated as of one day. The record may be conclusive as to the fact of conviction, but is not necessarily so as to the date of it. We have no power over the record so as to enable us to enter continuances. If the adjournments from day to day had been entered as they might to have been by the officer of the Court, we should have been in a better position, but we are not to be prejudiced by his default. The duties on the Court as to making proper entries are laid down in Hale, P. C. 24. It is also said in 3 Co. Inst. c. 104, p. 229, on falsifying attainders, "That if the triers find the offender guilty generally, yet the feoffee or lessee, if the offence be alleged in the indictment, before it was done to their prejudice, may falsify in the time but not for the offence." What principle of justice is there which prohibits the alienee of goods from shewing the true day when they were assigned, as well as the true day of conviction? [WILLIAMS, J.—Is that anything more than an authority to this—that the record is an estoppel with respect to those matters which are material and traversable.] According to the argument of the other side, if adjournments are entered the deed is good; if not, it is bad; so that it must depend upon the manner in which the clerk of the Court performs his duty in making up the record, whether this assignment is good or bad. There is authority for this, that parties interested may shew the true time. (4 Co. c. 7; *Huys* v. *Wright*, Yelv. 35; *Johnson* v. *Smith*, 2 Burr. 962.) This last is a case strongly in point. If it was there allowed to shew the true day for the furtherance of justice, why should we not here, for the same purpose, be allowed to shew the actual day of conviction? (*Morris* v. *Pugh*, 3 Burr. 1241.) [MAULE, J. Fictions of law must be consistent with justice.] If the Court were to refuse this a manifest injustice would follow. (*Burnitt* v. *Isaac*, 10 Price, 124; *Thomas* v. *Des Anges*, 2 B. & Ad.; *Sadler* v. *Leigh*, 4 Camp. 195.) It was said by the Court in *Doe* v. *Hersey*, 3 Wils. 274, "By fiction of law the whole term, the whole time of the Assizes, and the whole session of Parliament may be, and sometimes are, considered as one day, yet the matter of fact shall overturn the fiction in order to do justice between the parties." In *Lyttleton* v. *Cross*, 3 B. & Cr 317, it is laid down by Abbott, C.J. "That where it is for the interest of the party pleading to shew that a proceeding did not take place at the precise time when by fiction of law it is supposed to have happened, it is competent for him to do so." (*Butler* and *Baker's* case, 3 Rep. 25.) [WILLIAMS, J.—Is this a question of fiction or relation at all; is not the question whether the record is so drawn as to be an estoppel?] We have shewn that an alienee of lands may shew the true day. [MAULE, J.—The contention is, that the Court will take judicial notice that the legal day of the Assizes contain [illegible]eral ordinary days of twenty-four hours.] Yes, and that we may shew on which of those days the assignment, and on which the conviction took place.

Prendergast and *O'Malley*, in support of the rule.—The point raised in this case has been decided years ago. There was no evidence before the Court below, nor is there anything now, to shew when the prisoner was convicted, except the record of conviction. [MAULE, J.—You say you cannot in such a case prove the time by other evidence than the record. That may be so, but was any other evidence tendered? If not, there is no matter of law, but it is a simple question of fact.] We admit that the plaintiff offered to prove that it was subsequent to the execution of the deed that the prisoner was arraigned for felony. For our case, we put in evidence the formal conviction of the prisoner by producing the record. If the plaintiff could shew by other than the record when the conviction actually took place, then we should have no case; but that cannot be done. There was no other evidence before the jury of the conviction, for the plaintiff could not give parol evidence. The rule is clear, that where a person is convicted in a Court of Record, the only evidence of his conviction is the record itself. The cases cited on the other side will be found, on close examination, not to apply. The record states that the conviction took place on a certain day, and evidence cannot be admitted in contradiction, shewing it took place on another day. (1 Phillips, Ev. 425; *Thomas* v. *Ansley*, 6 Esp. 10; *Pope* v. *Foster*, 4 T. R. 490.) That this rule is carried out to a great extent will appear from reference to 2 Hawkins, 179. In the next place the record shews that the prisoner was tried and convicted on the 19th of March, and that entry forms part of the record. Now it has been held that if a record shews that a trial took place on a certain day it must be taken it was finished on that day. The rule as to one continuous day extends to all Sessions, and even to Parliament itself. (*Walker* v. *Holmes*, 4 T. R. 660; *The Attorney-General* v. *Panter*, 6 Bro. Par. C. 486; *St. Clement Danes* v. *St. Ann's, Holborn*, 2 Salk. 6; 2 Brook's Abr. 40.) Where a record states a thing as having been done on a particular day, and any other matter relating to it is shewn to have taken place after that day, the doctrine of relation applies, and the Court will take it as having been done on the day specified in the record. This is stated in 2 Brook's Abr. 197 (Relation, 13; vide Charter, 25); and this doctrine has been universally acted upon. There is a note in Saunders to the same effect. In *Ludford* v. *Gretton*, Plowd. 491, it is said "that all matters of record in respect of their highness are presumed in themselves to carry absolute truth. And, therefore, none can say that the king's charter was made or delivered at another time than when it bears date, no more than a man may say that a recognizance or statute merchant or staple was acknowledged, or any writ purchased at any other time than when it bears date. For to aver that it was ante-dated, or that it was delivered or acknowledged after the date, tends to the discredit of the Great Seal or of the officer of record." In *Portchester* v. *Petrie*, 3 Doug. 261, it was held by Lord Mansfield, that where it was admitted on the record that two judgments were given on the same day, priority of judgment could not be averred. Every Act of Parliament in which no time is specified for its commencement, is held to take effect from the first day of that session of Parliament wherein it is made. In the next place, matter in pais, though it may have occurred before, will, by relation, be taken to be done on the day. (*Jacobs* v. *Miniconi*, 7 T. R. 31; *Greenway* v. *Fisher*, 7 B. & Cr. 436.) [WILLIAMS, J.—Then you say, that if a shopkeeper in York is convicted on the last day of the Assizes, all the goods he has sold during a fortnight since commission day, and all the money he has received for them, is forfeited to the Crown?] Yes; it is almost an universal practice to make such assignments as these before the commission day. All the cited cases are within the rule laid down by Lord Mansfield, C.J. in *Portchester* v. *Petrie* (suprâ). But the case strictly in point here is that from Hale (suprâ). In law, a record is supposed to be a minute of what takes place from time to time in the court; it is not such a trifling thing as the other side would have the Court believe. If the plaintiff were permitted to give parol evidence of the day when the prisoner was convicted, it would be admitting parol evidence of the indictment itself. The Court should therefore say that the inconvenience which would follow is so great that it cannot be permitted. The old rule goes so far as this, that a mischief shall be preferred to an inconvenience. The general principle that facts shall prevail against fictions of law, is limited to some few cases, and does not affect verdicts and records of Superior Courts generally. (*Jacobs* v. *Miniconi*, suprâ.) Where matters in pais and matters of record are concerned, and the matters in pais dates before that of record, the matter of record shall nevertheless take precedence of the matter [illegible] pais. (*Taylor* v. *Harris*, 3 Bos. & Pul. 549.) When the Court have before them what the law says is the proper evidence of conviction—that is to say, the record, they are precluded from admitting any other evidence. (*Lant* v. *Arnaboldi*, 1 Cr. & Jerv. 97; *Rex* v. *Thurstone*, 1 Lev. 91; *Rex* v. *Carlisle*, 2 B. & Ad. 362.) This last case very strongly illustrates the force of a record as evidence. (*Rex* v. *Shaw*, Russ. & Ryl. 526.) In the cases cited on the other side, there is not a single instance where evidence was admitted to contradict a record. We are contending for a positive and necessary rule of evidence which must be held up, or great inconvenience will be occasioned.

MAULE, J.—This case has been argued by the learned counsel on both sides in a very elaborate and learned manner; every authority bearing upon it has been cited; but I do not myself now entertain, nor have I throughout the arguments entertained, any doubt upon the question. This was an action of trover, to which the defendant pleaded, Not possessed. The plaintiff was the assignee under a deed of the goods of a prisoner. It appears that the commission day of Cambridge Spring Assizes was the 19th of March, that the deed of assignment was executed on the 20th, and that the prisoner who so executed the deed was on the 24th tried and convicted of felony. The defendant said by his plea that the goods were not the goods of the prisoner, because he could not convey them by assignment on the day when the deed transferring the property in them was executed. At the trial at Nisi Prius the jury found, that the deed of assignment was executed bonâ fide, and for a valuable consideration. The record was produced, which shewed the conviction as having taken place on the 19th of March, two days previous to the execution of the deed; and it was insisted that this was conclusive against the plaintiff. No doubt the plaintiff had a good title, unless it was taken away by the record of conviction prior to the assignment. [His lordship read the record]. The caption of the record of conviction states that the Assizes were held on the 19th, but there is no allegation that the trial and conviction took place on that day, so that there is mention of the day when the Assizes were held, but none of the day of conviction. If no further evidence was admissible, it must be taken that the conviction was on the 19th, for, so far as the record goes, the Assizes begin and finish on that day. If the Assizes began and finished on the 19th then, the conviction, as shewn by the record refers only to that day; but, where the Assizes extend over several days, as here, the question is whether you can shew that the conviction did not take place on the 19th, but on the 24th. I apprehend that, consistently with true principles of law and every decided case, you can. As far as the record is concerned, the Assizes may be

regarded as of one day; but that day is a legal day, which may, and often does consist of more than one natural day of twenty-four hours. The legal day may last from the 19th over the 24th, and there is no necessity for entering the adjournments. The Court will itself take judicial notice that the Assizes are continued from day to day. Therefore, when the record alleges that the Assizes were held on the 19th, proof that the trial in point of fact took place on the 24th is no contradiction of the record. The evidence does not shew that the trial did not take place on the 19th in the sense in which that term is used in the record. It is no more inconsistent to shew that the conviction took place on the 24th than it would be if the record should shew on what particular hour of the day a conviction took place. If it material to shew at what particular hour of the 19th the conviction took place, and it certainly might be done, in like manner you may shew on what natural day, being part of the legal day, the conviction occurred. Fictions of law are for the furtherance of justice. The principle that evidence is not admissible to contradict a record is one calculated for the advancement of justice; but the ground upon which I feel bound to decide this case seems fully recognised in *Doe* v. *Hersey*, where it is said, "By fiction of law, the whole term, the whole time of the Assizes, and the whole session of Parliament may be, and sometimes are, considered as one day; yet the matter of fact shall overturn the fiction in order to do justice between the parties." Seizure is said to relate to the time when the writ is put into the hands of the sheriff. Some cases have been relied upon as to the beginning of term; but though for some purposes it is held that all term is one day, still that cannot be held for all purposes, because there are within it various return days and the like, and the Court knows judicially that it consists of several natural days. In bankruptcy, several acts are said to relate back to some previous day. An Act of Parliament (unless the contrary is specified) takes effect from the first day of the session. But those cases do not seem to me applicable to the present. Suppose, as has been suggested in argument, that in places where Assizes last a fortnight or three weeks, a person on bail, say a shopkeeper, is convicted, or that he commits a felony during the Assizes, then, according to the argument used on behalf of the defendant, all goods sold by him between the commission day and the day of the trial would be forfeited. Considering that fictions of law are not to prevail against facts, we must hold the plaintiff entitled to recover, for the jury found that the conveyance was bonâ fide, and for a valuable consideration. It is not necessary, for the reasons given, that we should go with minuteness into the cases cited; we think this rule should be discharged.

WILLIAMS, J.—I am quite of the same opinion. Counsel have brought before the Court every case bearing upon the subject, and the result of this thorough research into the authorities, as contended by the defendant, would be, that the Court is constrained, by an arbitrary rule of law, to say that the conviction, which in point of fact took place on the 24th, was on the 19th of March. I do not think this is so. The conveyance is perfectly good if made before the actual conviction of the person executing it.' It is said we are constrained by a positive rule of law to say that the conviction took place on the day named in the record. If we did so, it would work injustice in many cases other than this; such, for instance, as where bonâ fide purchasers buy goods, after commission day, of a man convicted of felony before the close of the Assizes. The consequences would be so absurd, as to make the soundness of the rule doubtful. I agree with my learned brother in thinking that the Assizes are to be considered as of one legal day containing natural days; and as the Court would be bound to take notice of an hour or fraction of the legal day, so it may take notice that the conviction here took place on one particular natural day within the legal day of the Assizes. *Rule discharged.*

Wednesday, May 26.

(Before JERVIS, C.J. and MAULE, CRESSWELL, and TALFOURD, JJ.)

HOLMES v. THE LONDON AND NORTH-WESTERN RAILWAY COMPANY.

Pleading—Patent.

Where letters patent are granted to different parties for substantially, though not in every particular, the same invention, and the letters patent latest in date contain a proviso that they shall not give any privilege to use or imitate any invention already patented, and that all other persons entitled may continue to use inventions previously patented: a person using the first patented invention cannot, in addition to the pleas of not guilty, and that the invention was not new, plead specially to an action brought for an infringement of the second patented invention, a plea setting out the above proviso, and alleging that the defendant had used the previously patented invention, such a plea amounting to a plea of not guilty.

Webster moved for leave to add a plea to those already pleaded. On the 10th December, 1840, letters patent were granted to a person, under whom the defendants claim, for an invention for making turn-tables for railway engines, &c. On the 28th of January, 1841, letters patent were granted to the plaintiff for a similar invention. The first invention consisting of a combination of A. and B. the second of A. and C., B. and C. being mechanical equivalents; but there being such a difference in detail that the second patent might be sustained. The second letters patent contained a proviso to the effect that they should not be taken to give a privilege to use or imitate any invention already patented, and that all other persons to whom letters patent had been granted, might continue to use the inventions patented. The patentee of the second invention had brought an action against the defendants for an infringement. Two pleas,—not guilty, and that the invention was not new—had been pleaded, and it was now sought to add a plea setting out the proviso, and alleging that the defendant had used the first patented invention.

The COURT refused the rule, on the ground that such a plea would mean that the defendants had used the first invention, and not the second, and therefore amounted to a plea of not guilty.

WADSWORTH v. WEAVER.

Where a party-wall is built partly on the plaintiff's and partly on the defendant's land, and the expenses have been paid by the plaintiff and none by the defendant, the plaintiff cannot maintain an action of trespass against the defendant for letting jambs into the part of the wall within his boundary.

The 16th section of 7 & 8 Vict. c. 84, only vests the wall in the builder of it for the purpose of enabling him to recover his expenses by proceeding under the Act.

This was an action of trespass brought by the plaintiff against the defendant, for letting jambs into a wall which had been built by the plaintiff, as was found by the jury on either side of the boundary line between his own land and the defendant's. It was, in fact, used by the defendant as a wall of his house. The defendant had paid nothing towards the expenses of building it. A verdict had been found for the defendant on the plea of not possessed.

Pearson, now moved, pursuant to leave, for a rule to set aside the verdict and enter it for the plaintiff, on the ground that the 16th section of 7 & 8 Vict. c. 84, vests a party-wall in the builder of it until a proportion of the expenses shall have been paid to him by the adjoining proprietor.

MAULE, J. The vesting clause says the builder of the wall shall have a right to recover his expenses if he proceeds under the Party-wall Act, and gives due notices according to its directions.

JERVIS, C.J.—Yes; for other purposes you are a trespasser. either you are entitled to the wall under the Act, and must proceed under the Act, or you are not entitled to it at all, and can bring no action. *Rule refused.*

BUSINESS OF THE WEEK.

TRINITY TERM.

Saturday, May 22.

WYNCH v. WILLIAMS.—*Byles*, Serjt moved, pursuant to leave, for a rule to shew cause why the verdict which had been entered for the plaintiff should not be set aside and a verdict entered for the defendant The action was for money lent, money paid, and on an account stated. The plaintiff had lent money to a Mrs Jones, after receiving a letter from the defendant, containing words to the effect, that if the plaintiff would lend Mrs. J money, defendant dete d to pay all th ey she should get fr hi The question was, whether the letter was a pr pay absolutely, or conditionally upon Mrs Jones not paying, if the lat r, it would be a guarantee, and the declaration should have been in special assumpsit. *Rule nisi.*

DOE *dem.* HIGGINS and ANOTHER.—*Kempley* moved for to shew cause why judgment should not be signed the defendants *Rule nisi.*

. COOPER. *Reid* moved for a rule to shew cau why judgment should not be entered up as in case of *Rule nisi*

HOLMES v. SPARKES. Action against the sheriff, under 28 Eliz c. 4, for treble damages, to which the sheriff is made liable for taking oney above his poundage. The declaration, which w n debt, also contained a count for money had and re ved, and on an account stated l. 1s were paid into C rt, and there was a plea accordingly to the second count The defendant demurred to the first count, and th on of the Court being against him, judgment was signed for the sum claimed in the declaration, which was 24l odd. *Phipson* had obtained a rule nisi, that it should be referred to the Master, to ascertain the amount really recovered, on the ground that the sum mentioned in the declaration was a nominal sum, and that the sum to which the plaintiff was entitled under th judgment, was less than 20l, so as to give the plaintiff costs n the lower scale. *Willes* now shewed cause; and *Phipson* appeared in support of the rule After a desultory argument, the matter was arranged at the suggestion of the Court.

Monday, May 24.

ALLEN v. MOORE.—*Hawkins* moved to set aside a nonsuit on payment of the costs of the day. *Granted.*

ANONYMOUS.—*Powell* moved for a distringas to compel an appearance. The affidavit was in all respects sufficient, and the Court granted the rule. *Rule granted.*

DALBY v. EAST INDIA COMPANY ASSURANCE SOCIETY.—*Channell*, Serjt. mentioned this case, asking the Court when it would be convenient that the arguments should be resumed. It was arranged that the case should be taken on Wednesday, if that day would suit *Bramwell*, Q.C. *Stands for Wednesday.*

Tuesday, May 25.

JOHNSON v. LANSLEY.—This cause was tried before Jervis, C.J. at the sittings at Guildhall last Term: verdict for the plaintiff. *Phinn* now moved, pursuant to leave reserved, for a rule calling on the plaintiff to shew cause why the verdict should not be entered for the defendant on the third issue. The action was on a bill of exchange by indorsee against indorser. The bill was drawn by defendant upon one William Hunt, accepted by Hunt, and then indorsed by defendant to the plaintiff The defendant by his third plea set out facts which shewed that the bill was given before the passing of 8 & 9 Vict. c. 109, s. 18, in consideration of a gambling debt. [JERVIS, C.J.—The plea was proved, with this exception, that it was not shown that the betting transactions took place before the passing of the Gaming Act.] The question for the Court involves that of variance, as well as whether the plea is good. It resolves itself, in fact, to this; whether this was a transaction within the spirit of 8 & 9 Vict. c. 109, s. 18. The contract between the parties was illegal, and could not be enforced between them. It is submitted, that the partnership subsisting between Johnson and Hunt was illegal; that the money received was received illegally, and does not afford ground of action; and any security given to insure payment of such money is void. [CRESSWELL, J.—There was no wagering between them: the plaintiff and Hunt jointly traded together, and struck a balance. It is clearly money had and received MAULE, J.—You say that where parties having been engaged in gambling transactions, strike a balance, and a negotiable security is given for that balance, it cannot be enforced?] Yes, we must go so far as that. The only case before the Court since the passing of the Act is *Galty* v. *Field*, 9 Q B. 431. We wish to reject the allegation in the plea "*before* the passing of 8 & 9 Vict. c. 109," and to say, "*after* the passing of that Act." [JERVIS, C.J.—You may take a rule; the other side to be able to meet it by entering judgment *non obstante veredicto*. Let the rule be framed accordingly to enter verdict for defendant on third plea, the plaintiff, on shewing cause, to be entitled to contend that the verdict, if it were so entered, would be bad. *Rule nisi.*

WILLIAMS v. BUTLER.—*Reed* prayed the Court to enlarge a rule nisi to compute, granted on last day of Easter Term [JERVIS, C.J.—How can you enlarge a rule due last Term? You must move for a new rule. Have you any materials for new rule?] This was an action on a bill of exchange for 200l. I moved on last day of Easter Term for rule to compute, but the Master made a mistake in drawing up the rule, and service being effected according to the terms of the rule as unproperly drawn up, it has proved insufficient, I therefore now move for a new rule on terms, as regards service on the defendant, as the Court may impose [JERVIS, C.J.—Have fresh affidavit?] No [JERVIS, C.J.—Then it will not do] I ill mention the case again. *Motio withdrawn.*

DOE *dem.* FIELD v MASON.—*Wroth* moved for a rule alling on plaintiff to shew cause why judgment against al ejector should not be set aside, and the costs taxed in this cause as between party and party Judgment was signed against casual ejector on the 19th of July, 1851, and the only notice we received that it was signed aga t the casual ejector, and not the real defendant, was late the 5th of this month. We want this rule, in der to avoid liability to an action for mesne profits, with which we are threatened. [JERVIS, C.J.—You may have a rule to shew cause why the judgment should not be set aside, unless the plaintiff consents to tax costs as between party and party, the defendant undertaking to pay those costs.] *Rule accordingly.*

BISHOP v. FARLEY.—*Honyman* shewed cause against a rule obtained by *Channell*, to add a plea of set-off to the declaration in this action. The case has been before Maule, J at chambers, who refused to allow the plea to be added. This application was clearly made for delay. *Channell*, Serjt —This rule was not sought for purposes of delay. The truth is, that the special pleader mistook what our defence is. We wish to add the plea bonâ fide, and we will accept any terms the Court will impose. The sum of money in dispute is large. We are willing to go to trial during present sittings, and will consent for plaintiff to reply in any way he thinks proper. [JERVIS, C.J.—Let the rule be absolute on payment of costs by the defendant, with costs of amendment, and of this application; the present notice of trial to stand.] *Rule absolute.*

DALBY v EAST INDIA ASSURANCE SOCIETY.—*Channell*, Serjt. asked the Court to order this case for Thursday, as *Bramwell*, Q.C. would be engaged to-morrow *Ordered for Thursday.*

DOE dem. SMITH v. ROE.—Plaintiff in person applied to set aside an order for stay of proceedings in this cause until costs of former trials should be paid. [JERVIS, C.J.—You cannot set aside that order; you ought to have paid the costs of former trials. If you have any remedy at all, it is not in this court.] *Rule refused.*

Wednesday, May 26.

BIRMINGHAM GLASS COMPANY v. GILL.—*Grady* moved for a distringas to compel appearance. *Granted.*

GLENDINNING v. LUMLEY.—*Malcolm* moved for a distringas to compel appearance. *Rule refused.*

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY, and C. J. B. HERTSLET, Esqrs. Barristers-at-Law.

FLORY v. DENNY.

Mortgage of chattels—Deed—A chattel may be mortgaged without a deed.

This was an action of trover for a moveable windmill, tried at Bury at the last Suffolk Assizes, before Serjt. Adams. The defendant had pleaded—1, not guilty; 2, not possessed. A verdict was returned

EXCHEQUER.

for the plaintiff for 153*l*. 5s. with liberty to the defendant to move to enter a nonsuit. It appeared that one Whitmore having constructed the mill in question for one Baker, an agreement was executed between them, which recited that a note of hand had been given by Baker for payment of 350*l*. payable by half-yearly instalments of 25*l*. and interest on the amount of principal due, and it was agreed that in case default should be made in payment of any one or more of the said instalments, that the said John Whitmore should be at liberty to enter upon the mill, and upon the premises where the said mill was standing, and remove the same and the machinery and appurtenances. In October 1851 Baker owed the defendant 600*l*. for which he gave a bond and warrant of attorney, upon which judgment was entered up on the 8th of December, 1851, and on the 9th a fi. fa. was issued, endorsed to levy 608*l*.; the sheriff's officer entered accordingly and seized the mill and all it contained. On the 10th of December, Whitmore claimed the mill and put a man in possession, but on the 31st of December he withdrew his claim, and the sheriff then executed a bargain and sale of all the property to the defendant, who took possession. On the 20th of January, 1852, the defendant received a notice from the plaintiff in the following terms:—"To Mr. Thomas Denny, of Ipswich, Suffolk. Sir,—Take notice that by bill of sale, dated the 20th of December, 1851, G. B. Baker, of, &c. assigned and conveyed to me all that post windmill in the occupation of the said G. B. Baker, situate, &c. together with, all and singular, the going gear, millstones, &c. for just and lawful consideration, and to secure the repayment of 150*l*. and interest, with authority to me to enter, and take, and carry away and dispose of the said property, but with power and permission to the said G. B. Baker in the meantime to use and occupy the same goods, chattels, and effects, and which bill of sale I am ready to show to you upon any reasonable application, &c. Dated this 20th of January, 1852. Signed, Thomas Smith Flory, &c. and witnessed ——." The defendant refusing to deliver up possession, was, on the 3rd of February, served with the following notice:—

"To Mr. Thomas Denny, &c. By virtue of the security I hold from G. B. Baker, I hereby demand possession of the windmill, &c. situate, &c. late in the occupation of the said G. B. Baker, and by him assigned to me, and which I am informed are now in your possession under a bill of sale thereof, unless you are prepared to pay me within three days from the date hereof the principal sum of 150*l*. and let thereon from the 5th day of August last past; and in default, &c. I hereby give you notice that I shall immediately thereafter adopt legal proceedings against you. Dated 3rd of February, 1852. Yours, &c.

(Signed) "THOMAS SMITH FLORY,"

and witnessed.

This action was accordingly brought. The plaintiff's claim was founded on the following documents. A promissory note, dated 5th of August, 1851, for 150*l*. and interest, accompanied with a memorandum of agreement in these terms:—

"Memorandum of agreement made this 5th day of August 1851, between the undersigned Thomas Smith Flory, of, &c. and George Baker, of, &c.—Whereas the said G. Baker hath this day borrowed and received of the said T. S. Flory, the sum of 150*l*. for which he has taken of the said G. Baker a promissory note hereunto annexed, and as additional security for that amount he the said George Baker does by these presents *agree to assign all his right and interest* in a certain windmill standing at Playford, upon land belonging to the Marquis of Bristol, in the occupation of Mr. Manfred Biddell, and by their permission and leave stands there during their pleasure as a chattel upon the said land, and he the said George Baker *does hereby promise to execute a regular assignment* of the said mill, with its going gears and appurtenants to the said Thomas S. Flory, which shall bear date this 5th day of August, 1851, and shall to all intents and purposes be effective, and a valid security in conjunction with the note of hand before mentioned, for the sum therein mentioned. And this agreement shall be effective as to the true intents of the said parties, until a more regular assignment be executed."

"Witness our hands at Playford, on the day and year above mentioned."

(Signed) "GEO. B. BAKER."
"THOMAS SMITH FLORY."

Witness, "WILLIAM BIDDELL."

And there was further a deed of assignment between the parties, executed in pursuance of the above agreement, and dated 20th of December, 1851 (*i. e.* after the seizure), whereby Baker bargained, sold, and assigned to the said T. S. Flory, his executors, administrators, and assigns, all that post windmill, &c. and all his right to the interest and property therein, with a proviso that the assignment should be void on payment on demand by Baker to the plaintiff of the 150*l*. with interest in the meantime at 5*l*. per cent.; the assignment then contained a declaration, that after default in payment of the principal or interest, it should be lawful for the said T. S. Flory, his executors, &c. peaceably and quietly to enter into the said mill, and keep possession thereof, and to sell the same, and to receive the moneys, and give valid discharges for the same, and thereout to retain all costs, charges, and expenses, and in the next place to retain thereout the said sum of 150*l*. and the interest remaining unpaid and subject thereto, to account for the surplus to the said G. B. Baker. And it was thereby further declared that, until default in payment of the principal and interest, it should be lawful for the said G. B. Baker to hold, make use of, and possess, the said goods, chattels, &c. thereby assigned, without any manner of hindrance or disturbance by him, the said T. S. Flory, his executors, &c.; and there was, further, a covenant by the plaintiff, that until default in payment of principal or interest, he would not bring, commence, or institute, any action, suit, or process, against the said G. B. Baker, his executors, &c. for recovery of the said debt, or any part thereof, duly executed and attested, receipt for consideration, endorsed, signed, and attested, together with schedule.

O'Malley now moved, in pursuance of leave reserved, and contended that plaintiff never had such a possession, or right of possession, as would entitle him to maintain trover. This was in fact a mere memorandum of pledge, unaccompanied by delivery. It is at most an agreement to assign, and not an assignment. It was clear that the parties never intended that there should be an absolute conveyance. If this instrument be operative otherwise than by way of contract, is it an absolute assignment on a mortgage? If it be a mortgage, with power of entry on default of payment of the note, payable on demand, then there is no demand formed until after the defendant was in possession. If this be a grant, it is not valid without a deed or delivery; and if a mortgage, it was not available till default was made. If it is an assignment, then it is bad for want of the proper stamp. He cited *Reeves* v. *Capper*, 5 Bing. 136, N.C.; *Bradley* v. *Copley*, 1 C. B. 685; *Sharr* v. *Pilch*, 4 Ex. 478; *Dixon* v. *Yates*, 5 B. & Ad. 340; *Hobbs* v. *Bernard*, Smith's L. C. 16; Viner's Abridg. tit. Pawn; *Howes* v. *Ball*, 7 B. & C.; *Harris* v. *Burch*, 9 M. & W. 591; *Vetch* v. ——, 15 M. & W. *Cur. adv. vult.*

JUDGMENT.

POLLOCK, C.B.—We are of opinion that in this case there should be no rule. The ground of the application was stated to be an interest claimed in a chattel which it was contended could not be created without a deed. There certainly was no deed in this case. We are of opinion that there was a mortgage, and that there may well be a mortgage of a chattel without a deed. This was made clear by the case of *Reeves* v. *Capper*, 5 Bing. 136, N.C. in which the captain of a ship pledged his chronometer, in the possession of the makers, to the defendants, the owners of the ship, in consideration of their advancing him 50*l*. and of allowing him the use of the instrument during the voyage upon which he was about to depart; after the voyage he placed it at the makers, and there pledged it to the plaintiffs, for whom the makers, being ignorant of the pledge to the defendants, agreed to hold it; the money advanced not having been repaid, it was held that the property in the instrument was in the defendants. The Court took time to consider, and Tindal, C.J. delivered the judgment of the Court. The foundation of the decision in that case appears to have been sec. 365, in Lyttleton. There it was laid down that of chattels, "A man cannot plead in any action that an estate was made in fee, or in fee tayl, or for term of life; condition, if he does not vouch a record of this, or shew a writing under seal proving the same condition (home ne poit pleder en ascun action que estate fuit fait en fee ou en fee taile, ou pur terme de vie sur condition s'il ne voucha un record de ces, ou monstra un escript soull seale provant mesme la condition); for it is common learning that a man by plea shall not defeat any estate of freehold by force of any such condition, unless he sheweth the proof of the condition in writing, &c. unless it be in some special cases. But of chattels real as of a lease for years, or the grants of wards made by guardians of chivalrie and such like, a man may plead that such leases or grants were made upon condition, without shewing any writing of the condition. So in the same manner a man may plead gifts and grants of chattels personals, and of contracts, personals," &c. In respect of which the Commentary of Coke is long as to all the other parts, but on the last part of it, as to chattels real, the only commentary of Coke is, "This is apparent." We may take it, therefore, to be considered clear and beyond doubt. That was acted upon in the case I have cited, and therefore there will be no rule.

Rule refused.

EXCHEQUER.

Saturday, May 22.

WHITTAKER *v.* WISBEY.

The Court will not listen to objections merely technical, calculated to involve the parties in unnecessary expense.

In this case *Lush* shewed cause against a rule calling on the defendant to shew cause why the venue should not be changed from Cambridge to Middlesex, and as a preliminary objection he contended that an application of this nature could not be maintained until after issue joined, and it was not stated upon the affidavits upon which this rule had been obtained, that issue had been joined. It could not, in fact, be disputed that issue had been joined.

O'Malley in support.

POLLOCK, C.B.—In these days of legal reform, it may be taken generally, that the Court will set its face against objections calculated to involve the parties in useless and unnecessary expense.

Thursday, May 27.

HOLMES *v.* SIXSMITH.

Evidence—Agreement—Stamp—Fraud.

An agreement was entered into between the plaintiff and another person, containing terms of a horse-race; the defendant was stakeholder of the money bet; one of the horses to run had his legs and face, theretofore white, coloured chesnut, and was otherwise disguised, and had a new name given to it, that the plaintiff should not recognise it to be a horse theretofore well known; the plaintiff lost his bet on the horse-race, and in an action by him against the stakeholder to recover back his money on the ground of the fraud practised:

Held, that he was entitled to do so, and that the agreement was admissible in evidence, as partly shewing the fraud, without being stamped.

This was an action of assumpsit tried before Creswell, J. at Liverpool, and was brought to recover 100*l*. as for money had and received by the defendant for the use of the plaintiff. It appeared that a bet had been made between the plaintiff and another person upon a horse-race, the terms of which were specially set out in a written agreement, and the present defendant was the stakeholder; the race was run, and the plaintiff lost his bet, but it seemed that a fraud had been practised upon him, inasmuch as the horse against which he bet was a horse very well known, yet its white legs and white face had been painted or discoloured, and the horse otherwise so disguised, and fresh and differently named, as entirely to mislead and deceive the plaintiff with respect to it; and he contended, therefore, in consequence of that fraud, he was entitled to recover back his money from the stakeholder. The jury returned a verdict for the plaintiff for the sum claimed. A rule nisi had been obtained to set aside that verdict and enter a nonsuit, on the ground that the agreement as to the terms of the race was inadmissible for want of a stamp.

Knowles, Q.C. *Edward James*, and *T. Jones*, shewed cause against the rule, and contended that *fraud* was the ground upon which the plaintiff's case rested to recover back his money from the defendant, as the stakeholder, and that being so, the agreement which described and falsely named this horse was admissible in evidence, not as a legal and proper agreement, but as a link in the chain to shew the fraud, and how it was practised; for that purpose it required no stamp, and was admissible in evidence without. The authorities referred to were *Coppock* v. *Bower*, 4 M. & W. 361; *Reg.* v. *Gompertz*, 9 Q. B. 824; *Smart* v. *Nokes*, 6 M. & Gr. 911; *Keeble* v. *Payne*, 8 A. & E. 555; *Williams* v. *Gerry*, 10 M. & W. 296; *Enthoven* v. *Hoyle*, 16 Jur. 272.

Wilkins, Serjt. and *John Henderson*, contrà, in support of the rule.—The agreement on its face was good and binding upon both parties; to render it legally and properly admissible in evidence to prove any fact or statement contained therein, it should have been first stamped: why should it be admitted to prove one link in a chain, or received as evidence of fraud, when it was inadmissible legally to shew any agreement at all. The documents in all the cases cited, with only one exception, were upon the face of them nullities, and, therefore, are distinguishable from the present.

POLLOCK, C. B.—We are all of opinion in this case, that the rule should be discharged. I think it really undistinguishable from that of *Reg.* v. *Gompertz*, reported in the 9th Q.B. 824; that was an indictment for conspiracy, and in the course of proving a conspiracy to defraud, carried into effect by prevailing upon the prosecutor to accept bills, a warrant of attorney given to him for the purpose of inducing him to accept,—reciting the acceptance, was held,—may be given in evidence though unstamped; that case was rightly decided, and I quite concur in the considered judgment of the Court, as expressed upon that point. Here the ground of impeachment was—fraud; and there was no doubt, as my brother Wilkins admitted, very gross fraud;

and where the object of the evidence is not to enforce or set up the instrument as a valid instrument, but merely to shew that it was part of a scheme of fraud, and so to use it for a purpose *collateral* to the object apparent upon the face of it, it has been frequently held that a written instrument requiring a stamp, but unstamped, is admissible. If the agreement in this case had to be used as an agreement to uphold the terms of it, no doubt it should have been stamped; yet if not used as an agreement, but merely to identify it with the scheme which it was the plaintiff's case to shew was practised upon him, then I think it was properly admissible. In the same way, if it had to be used for any criminal purposes, such as to prove forgery, &c. it would not require any stamp. It was contended that the rule would be a bad one, and that a party ought not to be allowed to give it in evidence for one particular object or purpose, and not another; nor ought the plaintiff to be allowed to take advantage of his own agreement to the fraud; but he does not, what he says in effect is, that the agreement is not worth a farthing—I was cheated, it was a fraud upon me; this case therefore is governed by the *Queen* v. *Gompertz*, and the rule must be discharged.

ALDERSON, B.—I am of the same opinion—what the plaintiff says in substance is, you have paid over the money when you ought not to have done so; there was a gross fraud practised upon me by some sharpers, and you knowing it, have paid over the money to one of those sharpers, and how be does it is this (The learned judge then stated the circumstances.) In the case of *Coppock* v. *Bower*, the agreement was illegal on the face of it, and here it is by shewing it to be bad by the fraud that was contrived.

PLATT, B.—The rule in this case ought to be discharged. I do not follow the learned counsel for the defendant, when it is argued that if the agreement be good on its face a stamp should be imposed to render it admissible. Suppose two small bills not stamped were to be obtained from the party giving them by way of cheat, and through some scheme of deception practised upon the party sought to be charged, they may be given in evidence to shew how the fraud was practised on him, although the instruments were unstamped. The learned Baron then referred to the several cases cited on behalf of the plaintiff, and said he was of opinion this agreement was admissible for the purpose of shewing partly by it the whole system of fraud, which would establish the plaintiff's case, and for that object the agreement required no stamp.

MARTIN, B.—I am utterly unable to distinguish this case from that of *Reg.* v. *Gompertz*. If that ? did not exist, I own I had not so clear an opinion upon the subject as have been now expressed by the other members of this Court. *Rule discharged.*

BUSINESS OF THE WEEK.

Saturday, May 22.

WALLINGTON v. DALE.

Judgment. Rule absolute for a new trial on payment of costs.

ROTHSCHILD v. SOUTH WESTERN RAILWAY COMPANY.—The Court said that they were of opinion that the verdict should have been directed in favour of the plaintiff; and they would deliver a formal judgment if the proceedings contemplated by the defendants rendered it necessary.

GRIFFIN v. HUMPHREY.

Not to be taken before Michaelmas term.

GRIFFIN v. FOY.—*Cowling* moved for a rule to inspect cash books, and books of account in possession of the defendant, material to form plaintiff's case.

Rule nisi granted.

COCKBURN v. WARING.—*Manisty* moved to discharge an order of Platt, B giving plaintiff permission to vary or amend the declaration herein, for the purpose of taking the case out of the Statute of Limitation. (*Campbell* v. *Smart*, 5 C. B. 197, *Phillips* v. *Lewis*, 1 L. M. & P. 158)

Rule nisi granted.

DAY v. CARR.—*Quain* moved on behalf of the Sheriff of Middlesex, for a rule to shew cause why an attachment should not issue for opposing sheriff's officer in the execution of a fi fa. *Rule nisi granted.*

TAMBISCO v. PACIFICO.—*Jones* moved on behalf of the defendant for a rule to shew cause why the proceedings herein should not be stayed until security should have been given for costs. The plaintiff was a Greek, and usually resident at Athens. (*Oliver* v. *Johnson*, 5 B & Ald 908.) *Rule nisi granted.*

PEREMPTORY PAPER.

HARTLEY v. HADLAND.

To stand over until the case in the new trial paper has been argued.

WHITTAKER v. WISBEY.—*Lush* shewed cause. *O'Malley* in support.

Rule absolute to change the venue to Huntingdon; the plaintiff to pay but not to receive extra costs, if any incurred.

Re EDWARDS JENNINGS, gent. one, &c. *Huggins* and *Fry* shewed cause. *James* in support.

Rule discharged with costs.

GRINHAM v. CARD and ANOTHER.—This was a rule for a prohibition to the Judge of the County Court at Kent. The plaint had been taken out under 13 & 14 Vict. c 115, s. 22, which provides that disputes between members of Friendly Societies and the trustees, shall be settled according to the rules of such society, and questions of equity may be settled by the Judge of the County Court. *Hawkins* showed cause. *Honeyman*, in support, was not called on. The case ultimately went off on the construction of the rules of the society. *Rule absolute.*

NEW TRIAL PAPER.

MICHESON v. NICOL. *Part heard.*

Monday, May 24.

WIGAN v THE LONDON COMMERCIAL EXCHANGE COMPANY.—*Willes* moved for an attachment against certain directors and shareholders of the company, for not producing papers pursuant to an order of Martin, B. which had been made a rule of Court. *Rule nisi granted.*

PEREMPTORY PAPER.

MONTAGU v. KATER.—*Watson* shewed cause. *Bramwell*, in support.

Rule discharged as to the fourth issue; the question relating to the second and third issues to be turned into a special verdict.

ESCRITT v. MASON.

To stand over, and to come on as a motion.

BARON v. ROSCROE.

To stand over, and to come on as a motion.

HORTON v. THE WESTMINSTER IMPROVEMENT COMMISSIONERS

To stand over until the demurrer in this case has been argued.

NORMAN v. MILNER.—*Powell* moved for a distringas. *Granted.*

GREGORY and OTHERS v. TAYLOR and OTHERS.—*Brewer* moved for a distringas. *Granted.*

NEW TRIAL PAPER.

MICHESON v NICOL. *Cur adv vult.*

HADDEN v. LANCASTER. *Rule discharged.*

Tuesday, May 25.

MASTERS v JOHNSON. *Cur. adv. vult.*

HILL v. PHILP *Cur adv. vult.*

COOK v. BATTY.—*Shee*, Serjt moved for a new trial, or to set aside the plaintiff's verdict for 20*l* and enter a nonsuit The plaintiff had been injured by a kick from the defendant's horse, at the Hippodrome at Kensington, and this was an action brought to recover damages by reason thereof.

Rule nisi, unless 20l be accepted in full without costs

DAVIS v COLLINS.—*Prendergast*, Q C moved in this case, tried in Middlesex before Martin, B. to set aside the defendant's verdict, and for a new trial, on the ground of misdirection. *Rule refused.*

Wednesday, May 26.

HILL v PHILP *Judgment Rule discharged.*

SALLENTO v. FIGUES.—Tried before Martin, B. Verdict for the defendant *Temple* moved to set aside the verdict, and for a new trial, on the ground of misdirection.

Rule refused.

TURNER v. DENT.—Tried before Martin, B Verdict for the plaintiff, damages 199*l* This was an action of trover, to which the defendant had pleaded, not possessed The plaintiff claimed certain furniture under a bill of sale which had been left in the hands of a woman named Lockwood, who was put in possession. She had gone away, and the bill of sale could not be found. The question was, whether such evidence of search had been produced at the time as to entitle the plaintiff to give secondary evidence of the deed, and whether the furniture was sufficiently identified *Crowder* moved for a new trial, on the ground of misdirection, and improper reception of evidence.

Rule refused.

HAIGH v SEXTON.—Tried at the Mayor's Court, at Liverpool Verdict for the plaintiff *Pigott* now moved for a new trial, on the ground that the cause had unexpectedly been taken early in the day as an undefended cause.

Rule nisi granted to come on as a motion.

BROWN v. FOX.—*Best* moved for a distringas.

Granted.

WRIGHT v LANE.—*Hall* moved for a distringas.

Granted.

NEW TRIAL PAPER.

SOUTH EASTERN RAILWAY COMPANY v. THE LONDON AND SOUTH WESTERN RAILWAY COMPANY.

Part heard.

Thursday, May 27.

THE SOUTH-EASTERN RAILWAY COMPANY v. THE LONDON AND SOUTH-WESTERN RAILWAY COMPANY.

Cur. adv vult.

COE v PLATT.—Tried at Liverpool, before Mr. Justice Cresswell A rule nisi had been obtained to set aside the defendant's verdict, on the 1st, 2nd, and 6th issues, and to enter a verdict for the plaintiff instead, with 150*l*. damages. The question turning upon the facts of the case in connection with the 7th Vict c. 15, sect 21, entitled "An Act to Amend the Laws relating to Labour in Factories"

Cur. adv. vult.

BAIL COURT.

Reported by T. W SAUNDERS, Esq of the Middle Temple Barrister-at-Law.

Saturday, May 22.

(Before Mr. Justice WIGHTMAN.)

Ex parte STEVENS, *re* AN ATTORNEY.

Rule calling upon an attorney to pay over money, and answer the matters of an affidavit.

Prideaux moved for a rule calling upon an attorney of this Court to shew cause why he should not pay over a sum of money and answer the matters of an affidavit. It appeared that one Geo. Grove being in embarrassed circumstances, applied to the attorney in question for his legal assistance. The attorney suggested that the creditors should be prevailed upon to take a composition upon their debts; and, accordingly, he saw several of them, and it was arranged that Grove should assign all his property for the benefit of his creditors, and that they should receive 2s. 6d. in the pound upon their respective debts. A deed of assignment was accordingly executed, and one of the creditors, a Mr. Stevens, was appointed assignee and trustee under it. The same attorney being continued to get in the assets and pay the creditors, he got in several sums of money, but paid none of the creditors; and some of them who had refused to come in under the deed of assignment having pressed the debtor, the attorney advised him to pass through the County Court as an insolvent debtor, and accordingly he prepared his schedule, and therein he represented that he had paid various creditors under the composition deed the sum of 38*l*. 16s. 6d.; also 18s. 3d. for post-office orders and stamps, and had deducted 10*l*. for the expenses of the insolvent in passing through the Court, whereas, in fact, he had not paid any of the creditors, and had received from the insolvent himself 10*l*. for carrying him through the Court.

Rule nisi.

Monday, May 24.

NASH v. THE COMMISSIONERS OF INLAND REVENUE.

Drawback upon bricks under the 13 & 14 Vict. c. 9, s. 2.—Mandamus to Commissioners of Inland Revenue to pay over amount of drawback.

Broom moved for a rule calling upon the Commissioners of Inland Revenue to show cause why a mandamus should not be directed to them, commanding them to pay over to Mr. Nash a sum of money which he claims of them in respect of certain drawbacks on bricks as provided for by the statute 13 & 14 Vict. c. 9, s. 2. It appeared that Mr. Nash had been for many years a maker of bricks, at Great Grimsby, in Lincolnshire, and had entered into contracts with the Manchester, Sheffield, and Lincolnshire Railway Company, for the supply of bricks for the Great Grimsby Docks. After the passing of the before-mentioned Act, which abolished the duty upon bricks, and provided for a drawback in respect of bricks in the possession of the makers, the excise officers took an account of the bricks on Mr. Nash's premises, upon which such drawback was due, when it was found that a sum of upwards of 700*l*. would be payable to him. This sum, however, was not paid, in consequence of the railway company having preferred a claim to the amount, and after Mr. Nash had in vain negotiated with the company to withdraw their claim, he presented a memorial to the Board of Inland Revenue, but received no satisfactory reply. It was suggested that as the board was wholly indifferent to whom they paid the money so that they paid it to right parties, that notice of this rule should be given also to the railway company, pursuant to the 1 Wm. 1, c. 21, s. 4. *Rule nisi.*

INSOLVENCY COURT.

Reported by DAVID CATO MACRAE, Esq. of the Middle Temple, Barrister-at-Law.

Friday, May 21.

(Before Mr. Commissioner LAW.)

Re ROBERT GEORGE CLABBURN.

Jurisdiction of the Court for Relief of Insolvent Debtors and the County Courts—Re-hearing: Held, that there is no power in the Court for Relief of Insolvent Debtors to order the re-hearing of a case in the County Court, as there was formerly, to order the re-hearing of a case heard before a commissioner on circuit.

Semble, that the County Court may order a re-hearing.

Mr. Commissioner LAW said—An application is made to the Court, to exercise powers for compelling the insolvent to attend before the County Court of Norwich, in order that that Court may re-hear his case. I need not advert to the merits on which the motion founds itself, as I feel that the statute does not enable me to accede to it. It is made on this ground, that, the Act of 1838 having given us the power to enforce the attendance of an adjudicated insolvent for rehearing before a commissioner on circuit, this power can now be exercised with regard to the County Court; that, on the abolition of circuits, in 1847, it must have been the intention of the Legislature that a re-hearing should still be an attainable thing, and that it can only be attained by this Court empowering the County Court, as formerly a commissioner on circuit, to act under sect. 96 of 1 & 2 Vict. c. 110. This same question was discussed before the four commissioners on the 25th of June, 1849, in the case of Thomas Game, when we all agreed that this Court had not the power in question. The whole argument of the learned counsel, Mr. Griffits, to-day is, that as this power of compelling attendance for re-hearing has not been expressly transferred to the County Court, such a power must be still in this Court; and he insists that the 96th section of the Insolvent Act has not been altered or repealed. I say that it has been very seriously altered. It gave jurisdiction for this Court to compel a man to appear before a commissioner on circuit. Such jurisdiction falls to the ground when the tribunal of commissioner on circuit is abolished; and the clause in that Act cannot of itself give jurisdiction to make him come before a tribunal which was unknown when that Act passed. The only question must be this—whether there are words in the Jurisdiction Act of 1847 which may be construed as authorising us now to exercise a similar power, in compelling the party's

attendance before a County Court. I fully agree that the Legislature can never have intended to make a re-hearing impossible. But it may be that those who were employed to frame an expression of the Legislature's intentions failed to do so; and before I commit a man for disobeying my order, I must find in some statute words which authorise me to make the order. It might have happened, that the late Act 10 & 11 Vict. c. 102, contained some general words enabling this Court to fulfil the views of the legislature in regard of the duties transferred to the County Court. If there were any such general words, giving us power for carrying the new scheme into effect, or the same powers in regard to hearings by the County Court which we had in regard of hearings on circuit or by justices, I would favour the most liberal interpretation of such words. But there are none such. The Act is a disabling Act upon the jurisdiction of this Court in reference to circuits; and, for the future, all that is enabling is in this one provision—that, when a country schedule has been filed, "the Court shall make an order referring the petition for hearing to the County Court, and shall transfer the petition and schedule for hearing accordingly." You cannot upon these words build a jurisdiction to inquire afterwards, whether an adjudication of the County Court has been properly or improperly made. You cannot assume a power to appoint a re-hearing by that Court, as to which we have not even the power to appoint a first hearing; and, if that Court should make its own appointment, there is no construction of language by which this Court can assume the power to make the insolvent go before that Court. It is the legal power that is wanting. This Court might be satisfied on the fitness of sending a case to the County Court for re-hearing. But where do we find the power of compelling the insolvent to appear and submit to it? I think, as before, that there are no words in any Act, special or general, which can be construed so as to give us that power. These observations are conclusive against the present application. There was an ulterior question on which I before expressed an opinion; namely, whether the County Court may itself compel a re-hearing. I continue to think that the reference for hearing, which goes from this Court, may and ought to be construed as including a re-hearing when necessary; and, if this is conceded, we are not at a loss for want of general words under which the County Court may fulfil the purpose of the legislature. Those general words are large in themselves, and they include expressly the power of remanding; a term which, though perhaps conceived in its vulgar sense by the framers of the Act, has no statutable meaning, save as incident to a rehearing. The circuits being abolished, the only Act which this Court does towards the hearing of a country case, is to refer it to the County Court for that purpose. This being once done, and the County Court being so invested with this particular jurisdiction, and with the express power of appointing its sittings for the fulfilment of it, which power neither the itinerant nor the local Court had under the prior system, it is no forced construction to say, that "*hearing*" must comprehend *all hearing* which the insolvent law contemplates—adjourned hearing—and, when necessary, re-hearing. The 96th section of the Insolvent Act, which has been appealed to, shews how this must be brought about: and I think the County Court may, under the large words which the new statute uses, claim to bring it about, as well as the discharge on recognisances and other proceedings necessary for hearing, which I pointed out in the matter of game, where this point was spoken of more at large. In those matters, as in this, the new Act has not recapitulated the machinery which that Court must use for accomplishing its duties. There are but one or two dissentients among the County Court Judges on the jurisdiction in recognisances. That jurisdiction is exercised under the general words aided by statutable inference: the County Court Judge is not specially empowered to bring the insolvent before him in that case, more than he is on the occasion of a re-hearing. Thus, while I recognise in the fullest extent that the Legislature cannot have intended to abolish all means of re-hearing, I find in the Act sufficient warranty for thinking that the County Court may appoint and enforce that process; but none for holding that this Court can go beyond the order of reference for hearing.

Equity Courts.

COURT OF APPEAL IN CHANCERY.

Reported by C. H. KEENE, Esq. of Lincoln's-Inn, Barrister-at-Law.

March 30, 31, *and April* 7, 15, *and* 17.

NEWALL *v.* WILSON.

Patent—Injunction.

Where the plaintiff has been successful in proceedings at law and in equity with other persons, and has had exclusive enjoyment for a considerable period, the Court, although some doubt may exist as to the validity of a patent, will grant an injunction in the first instance, previously to putting the party to establish his right by an action at law.

An allegation not denied, that the defendant's circumstances are such as to render it improbable that he would be able to meet the pecuniary demands to which he would be liable if unsuccessful at law, is an additional reason for granting an injunction under such circumstances.

This was an appeal from the order of the Master of the Rolls of the 24th of March last, refusing to grant an interim injunction to restrain the defendant from infringing the plaintiff's patent, under the following circumstances. It appeared that on the 7th of August, 1840, the plaintiff obtained letters patent for the sale, use, and benefit for fourteen years of certain improvements in wire ropes made of untwisted wire, and in machinery for making such ropes. On the 6th of February, 1841, the plaintiff duly enrolled a specification of the said invention, and by a memorandum of disclaimer of the 4th of September, 1850, duly entered with the Clerk of Patents, and duly enrolled with the said specification, disclaimed a part of the invention, which he was doubtful whether it was new or of practical value. Various attempts were made to infringe the patent, and on the 2nd of August, 1841, the plaintiff filed a bill for an injunction against Andrew Smith, who, before the motion came on to be heard, commenced proceedings by scire facias to repeal the letters patent; but the Attorney-General refused to allow the same to be proceeded with. Negotiations for an arbitration then took place, which ended in nothing; but whilst they were going on, Smith desisted from and did not again resume his infringement.

In February, 1844, the plaintiff filed a bill against Rowland Webster and Son, for an injunction to restrain the infringement of the patent; and on a motion being made on the 22nd of May, 1844, before the Vice-Chancellor of England, it was ordered to stand over, with liberty to the plaintiff to bring an action to try the validity of the patent. The action was commenced in June, 1844, and nine pleas were pleaded by Messrs. Rowland Webster and Son, and at the trial the jury found a verdict for the plaintiff on all issues, and the judge duly certified that the validity of the letters patent came in question on such trial. On the 15th January, 1845, Messrs. Rowland Webster and Son obtained a rule for the plaintiffs to shew cause why a nonsuit should not be entered in the said action, and also for a new trial on the ground of misdirection. Cause was afterwards shewn by the plaintiffs, but before judgment was given, Messrs. Rowland Webster and Son submitted to the verdict, and took out a license to work the said patent, for which they have paid to the plaintiff very considerable sums by way of royalty.

On the 16th December, 1850, the plaintiff filed a bill for an injunction against W. Wilkins and C. Weatherly, and on the motion coming on to be heard before the late Lord Langdale on the 24th of January, 1851, the plaintiff having already commenced an action against W. Wilkins and C. Weatherly, the motion was ordered to stand over, they undertaking to keep the usual accounts. W. Wilkins and C. Weatherly put in nine pleas to the action, but a verdict was found for the plaintiff on all the issues, and no question was reserved for the opinion of the Court; and on the 24th of February, 1851, the motion being renewed before the Master of the Rolls, his lordship granted an injunction, which is still subsisting.

On the 30th of July, 1851, the plaintiff filed a bill against Edward Weatherly, who had succeeded W. Wilkins and C. Weatherly in their business, to restrain him from infringing his patent in manufacturing a wire rope for the submarine telegraph between England and France, and on an ex parte application by the plaintiff on the 6th of August, 1851, the Master of the Rolls granted the injunction, and no application was made to dissolve it.

On the 28th of October, 1851, the plaintiff discovered that the defendant had been infringing his patent. A correspondence thereupon ensued, in which the defendant insisted that plaintiff had infringed a patent, which he had taken out, for a species of wire rope. It was charged in the bill, and sworn to by the affidavit of the plaintiff, and was not met by a denial from the defendant, that the defendant was selling the wire rope at prices greatly below the prices which the plaintiff, who had been at great expense in perfecting the said invention, was obliged to charge for the same, and that the plaintiff would sustain irremediable injury, if the said defendant was permitted to carry on the said manufacture; *and that the said defendant was not a person of any capital or property, from whom the plaintiff could recover damages.*

On the 9th of January, 1852, the plaintiff filed this bill, and on a motion being made before his Honour the Master of the Rolls, on the 24th March last, his Honour, refusing to grant an injunction, made an order, that upon the plaintiff undertaking to abide by any damages the Court might thereafter think fit to award, the motion was to stand over, the plaintiff to bring an action to try the validity of the patent, and the defendant also to keep an account.

Bethell, Roupell, and *Cairns,* for the plaintiff, the appellant, insisted, that as the plaintiff had been so often successful both in proceedings at law and in equity, against all persons whom he had discovered infringing his patent, he ought, considering the length of time for which he had enjoyed it, to be held to have established his right to its exclusive use, sufficiently to entitle him to an injunction until the legal right was determined by an action at law. (*Hill* v. *Thompson,* 3 Mer. 622; *Stevens* v. *Keating,* 2 Phil. 333.) That a patent is a contract with the Crown, of which the public is to have the benefit; and when the public has acquiesced for a considerable time in its validity, it ought to be assumed to be good, so far as to obtain protection by injunction. (*Harmer* v. *Plane,* 14 Ves. 130, 132, 133.) The Master of the Rolls did not apprehend or keep in mind this; he thought the matter merely between the parties themselves. The grant of the Crown ought to be preserved inviolate.

Sir *Alexander Cockburn* and *Selwyn,* for the defendant, contended, that if the conditions on which the patent was granted did not exist, it might be treated as a nullity by any of the public. The defendant can shew that there is *no novelty* in the patent, and may treat it accordingly. This he contended was proved by the defendant's affidavits, which shewed that, so far back as 1832, the defendant had made a similar wire rope (a piece of which was produced) for the use of the Haydock Colliery. That so far back as February 1837, there was published in the *Mining Review* a similar mode of making wire rope, the invention of Mr. Albert, in 1835, in use in the Hartz mountains; and afterwards, previous to the plaintiff taking out his patent, Mr. Albert's invention was explained in many periodicals of a similar character. Another objection to the injunction being granted before the trial was, that the plaintiff had made fraudulent misrepresentations with respect to his patent, because, in his bill and affidavit he stated that he was the true and first inventor within this realm, whereas, in his declaration for his patent, he stated that the said invention was partly communicated to him from a foreigner residing abroad. It was not, therefore, a proper case for the Court to interfere by injunction. (*Perry* v. *Truefitt,* 6 Beav. 66; *Pidding* v. *How,* 8 Sim. 477.) The onus lies on the plaintiff of shewing the truth of his statement to the Crown. (Hindmarch, 449, and cases there collected.) The affidavit in *Smith's* case shews that the statement was not made to the Crown per incuriam, for the same statement is made there. [Lord Justice Lord CRANWORTH.—I do not think his statement is unfair.] (*Minter* v. *Wells,* 1 Webster, 132, 142.) The defendant himself has never used the plaintiff's machinery for making the wire, nor has the plaintiff ever done so. (*Collard* v. *Allison,* 4 Myl. & Cr. 487.) The defendant also insisted that the publication of Albert's invention in this country had not been referred to in the trials at law. (*a*)

Lord Justice KNIGHT BRUCE.—The first question is, whether the letters patent, upon which the plaintiff grounds his case, have been shewn to have been bad in law. In my opinion they have not. The utmost extent to which the defendant has succeeded in the case which he has raised as to the validity of the patent, is to shew that some doubt may be entertained. I assume that the defendant has made way so far; beyond that, certainly not. Now the patent is of long standing; it has been a contract with society at large, and has been allowed to exist for many years. Now the question is, whether there has been enjoyment. Beyond all question there has, during a great number of years. The plaintiff's exclusive right has been asserted and submitted to. On the question of the validity he has succeeded at least once, if not more, at law and in equity, in circumstances as to which it is impossible that collusion can be alleged. And if, during the whole time the patent has subsisted in point of fact, the enjoyment and possession cannot be deemed perfectly conclusive, on the result of the evidence, there has been, in my opinion, considering the various proceedings which have taken place, and the conduct of Newall, as well as of various individuals, a sufficiency of enjoyment to bring the case within the principle of *Harmer* v. *Plane* and *Hill* v. *Thompson,* mentioned on the former occasion. On that occasion the argument was not concluded, and

(*a*) At the conclusion of Sir A. Cockburn's argument, it was suggested by the plaintiff's counsel, that if the defendants would enter into an undertaking for immediate trial of the action, and would give unlimited security for such sums as might be awarded to the plaintiff, if successful, the injunction would not be pressed for. The offer was acceded to by the defendant; but on his failing to give the required security, the argument was resumed on a subsequent day by Mr. Selwyn.

the case was broken off under these circumstances. There has been an imputation cast by the evidence of the plaintiff on the defendant's means to answer any pecuniary demand which may be made on him,—a question which is always disagreeable, and often irrelevant. I cannot, however, but consider that in a question whether an injunction should issue against continuing this alleged infringement of the plaintiff's patent, whether the Court has to consider the balance of inconvenience, either with reference to the parties themselves or society at large, it is a circumstance which cannot altogether be considered irrelevant; but it ought not, I agree, to be lightly touched upon. Now that circumstance, among many others, seems to have led, during the argument of the defendant's counsel, to a proposal from the plaintiff's counsel, that if security were given to secure such sums as might ultimately be awarded to the plaintiff, if successful in the question at law, the injunction would not be pressed for. The offer was accepted, and it was distinctly agreed that security should without limit be given, not on property, but that of two substantial persons. The matter stood over. Now it appears the security cannot be given. I do not rely altogether on that circumstance; but it is not to be disregarded. I am of opinion that the plaintiff undertaking to abide by any order respecting damages which the Court may make in the event of his failure at law, the injunction shall go according to the terms of the notice of motion, which I suppose is substantially according to the language of the prayer of the bill, without prejudice to any question; the order providing for a speedy trial.

Lord Justice LORD CRANWORTH.—I take the same view as my learned Brother. It is always a delicate question as to whether you should grant or withhold an injunction; risk is run by granting the injunction, of doing an injury not capable of compensation; but on the other hand, by not granting the injunction, injury to an indefinite extent may be done to the plaintiff. (His Lordship here stated the proceedings of the plaintiff at law and in equity against other parties, which have been before mentioned.) Now, this is exclusive enjoyment; these proceedings were always perfectly successful; the attempts made to shew that it was not exclusive enjoyment wholly fail; and, looking at the specification, I should be slow to think that the enjoyment was not exclusive, because the plaintiff did not proceed by scire facias to repeal the letters patent. I think the Court must take the long enjoyment as primâ facie evidence of the plaintiff's rights, and that the Court ought to interfere by interlocutory injunction until the trial. Without intimating any opinion what may turn out to be his right on the trial at law, I entirely concur as to the order.

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

Tuesday, June 1.

Ex parte GREENSHIELDS, *re* THE LIVERPOOL MARINE ASSURANCE COMPANY.

Joint Stock Companies Winding-up Acts—Contributory—Bankrupt.

A. B. a shareholder in an Insurance Company, became bankrupt on October 30, 1848. The company carried on business until October 1, 1849, when they stopped. The affairs of the company being ordered to be wound up, the Master placed A. B.'s name on the list of contributories, as a shareholder liable to contribute to the losses on and subsequent to October 30, 1848. Upon appeal, the Master's order was discharged.

This was a motion on behalf of Mr. John Greenshields, to reverse the decision of Sir George Rose, made on the 27th of March, 1852, whereby J. Greenshields was included in the list of contributories of the above-named company as a shareholder, and liable to contribute to the losses, if any, sustained by the said company, on and subsequent to the 30th of October, 1848, for 100 shares of 100*l.* each. Mr. Greenshields held 100 shares in this company, and he became bankrupt on the 30th of October, 1848. On the 1st of October, 1849, the company stopped business, and in November 1850 an order for winding up its affairs was made. (16 Law T. 189.) The assignees of Greenshields were, on the 20th of November, 1851, settled on the list of contributories as liable quoad the estate up to the date of the fiat, and they subsequently disclaimed. The following is the Master's certificate:—

"I, the Honourable Sir George Rose, the Master charged with the winding up of the company, hereby certify, that on reading the deed of settlement thereof, and the certificate of conformity of John Greenshields, a bankrupt, and the assignees of his estate and effects having disclaimed all interest in the shares held by the said bankrupt, I have not fixed the said bankrupt with any liability in respect of any debt or demand arising or existent at and previously to his bankruptcy, but have left the same to be tendered as a proof against his estate, and that I have held the said John Greenshields to be personally liable, notwithstanding his certificate, for any demand or call that may have been made or may be made subsequent to the fiat against him, and have included him, or shall include him, in any call accordingly - Dated this 27th day of March, 1852."

J. V. Prior, appeared in support of the motion.—By the company's deed of settlement, dated the 5th of March, 1831, power is given in the 32nd clause for the directors to make calls. The 45th clause enables assignees in bankruptcy, among others, to sell shares under certain restrictions; and the 49th clause also alludes to a sale by assignees. The 73rd and 74th clauses contain provisions for the dissolution and winding up of the concern. The bankruptcy, therefore, so far as the bankrupt himself was concerned, dissolved the partnership that had existed between him and the other shareholders in the company, and the deed provided for placing other persons in his stead. (He cited *The South Staffordshire Railway Company* v. *Burnside*, 5 Exch. 129; *Ex parte Kuper's Assignees*, 3 De G. & Sma. 113.)

Selwyn, for the official manager, contended, that as this was a debt which could not be proved under the bankruptcy (5 Exch. 129), Mr. Greenshields' name must be placed on the list. The provisions made by the deed for the sale of the shares, upon a shareholder becoming bankrupt, proved that the shares did not become extinct by the bankruptcy.

The VICE-CHANCELLOR, without hearing a reply, said that he thought this was a plain case. It seemed to him that the bankruptcy had dissolved the partnership, even though it were a partnership for a fixed term, and it was not possible to put the case higher than that of a partnership for a fixed term. The partnership here seemed to be for an indefinite term, until dissolved under the provisions of the deed of settlement. However, it was his Honour's opinion that the bankruptcy dissolved it, as regarded the bankrupt, upon that event. The bankrupt's rights were, to have the accounts taken, and the affairs wound up, and the results ascertained, whatever they might be. That resulted either in a proof against his estate, or a right in the assignees to receive something from the partnership. His Honour thought that was not varied by the clause in the deed that the assignees might part with the interests of the bankrupt, if they could find anybody willing to take them, who would thereupon become a shareholder. If that was not done, the concern was dissolved as to the bankrupt's interest in it. This being a proveable debt, he did not see what right there was to incur debts after the bankruptcy. Suppose this were the case of an ordinary partnership, and not affected by the Winding-up Act, the same principle would be applicable. Suppose there were six bankers in partnership, and that one became bankrupt, it would be impossible to say that liabilities could be incurred by the bankrupt in respect of the trade, after his bankruptcy, or that a different account could be taken against him after his bankruptcy from that taken against his assignees up to the bankruptcy. It appeared to his Honour to be totally different from the case in the Ex. Reports, which was not a case of an ordinary partnership at all, but of a company existing under an Act of Parliament, the shares in which were shares in certain property, and of a continuing nature, and the principles of an ordinary partnership did not apply, because the shares remained, and if the assignees did not take them, they must have belonged to the bankrupt, and he must have been liable on his covenants in respect of them. His Honour thought, in this case, that the partnership was dissolved by the bankruptcy, and the bankrupt ceased to have any concern in it, except for the purpose of ascertaining what was coming to him.

Master's order to be discharged, the bankrupt and the official manager to have their costs out of the estate.

Ex parte BURTON, *re* THE SEA, FIRE, LIFE ASSURANCE SOCIETY.

Joint-stock Companies Winding-up Acts—Contributory.

A. B. in July 1849, for the purpose of being an agent, took five shares in a projected company, and signed a power of attorney for E. F. to execute the deed of settlement. In the following month A. B. wrote to request that his connection with the company might be put an end to. The directors released him from the agency, but refused to do so as to the shares, though they were willing to allow him to nominate another person to take them. E. F. executed the deed in October. The company being ordered to be wound up, Held, that A. B. was a contributory.

This was a motion to reverse the decision of Master Tinney placing the name of Mr. Charles Burton on the list of contributories in respect of five shares in the above-named company. In July 1849, Mr. Augustus Collingridge, the secretary and one of the directors of the company, called on Mr. Charles Burton, an auctioneer, at his place of business in Monmouth, and urged him to become an agent for the company. Upon Burton's assenting, Collingridge stated that he must hold at least five shares of 20s. each in the company. Burton eventually signed a printed paper in two places: the first signature being to an appointment of Collingridge to execute the company's deed of settlement in his name; and the second, to a request to be appointed agent. On the 17th of August, 1849, Burton being suspicious of the company, wrote to Collingridge a letter desiring to terminate his connection with the undertaking. On the 19th of August, Burton received the following letter from Collingridge:—

"Sea, Fire, Life Assurance Society,
31, Cornhill,
London, Aug. 18, 1849.

"Sir,—I beg to acknowledge the receipt of your letter of the 17th inst. and the directors accept your resignation to act as agent for the district of Monmouth. I have also to remind you that the amount of 5*l.* on your five shares was due on Saturday, the 11th inst. of which notice was given. I am now requested to inform you that the directors require that you pay the same on or before the 25th inst.

"I am, Sir, your obedient servant,
"AUGUSTUS COLLINGRIDGE,
"Managing Director."

Mr. Burton then wrote as follows:—

"Dixton, Aug. 20, 1849.

"Sir,—In answer to yours of the 18th instant, I trust the directors of the Sea Fire Life Assurance Society will not insist upon making me a proprietor of shares, which I certainly should never have thought of applying for, but for the circumstance of being very much urged to take the agency for district of Monmouth. It was merely to comply with the Society's regulations upon becoming an agent to them that I applied for them, and when I requested the favour of being exonerated from the agency, I meant the shares also; and as the directors have been pleased to excuse me the one, I hope they will also the other.

"I remain, sir, yours respectfully,
"CHARLES BURTON."

To this the following letter was sent in reply by Mr. Collingridge:—

"Sea, Fire, Life Assurance Society,
31, Cornhill, London, Aug. 21, 1849.

"Sir,—I have to acknowledge the receipt of your letter of the 20th instant, and am requested by the directors to inform you, that they cannot in duty to the shareholders whom they represent, release you from the shares you subscribed for, but to meet your convenience, the directors will allow you to nominate another party to pay upon the shares.

"I remain, sir, your obedient servant,
"AUGUSTUS COLLINGRIDGE,
"Managing Director."

The deed was not executed by Collingridge until October, and Burton never paid any money in respect of the shares.

Malins in support of the motion, contended that the power of attorney was revoked by Burton, and referred to *The King* v. *Waite*, 11 Price, 518.

Daniel and *Roxburgh* for the official manager, cited *Ex parte Yelland* (ante, p. 30).

Malins in reply.

The VICE-CHANCELLOR said that he thought the Master had come to a right conclusion. Before the 17th of August Burton had done all that was necessary to render him liable as a contributory. He had agreed to take shares by a formal instrument, which contained a power of attorney to Collingridge to execute the deed for him, and upon that shares were allotted to him, but he paid no deposit. Questions might arise whether the power was granted to Collingridge at all to execute the deed, or whether if so granted, it was countermanded. But his Honour thought there was no attempt on the part of Burton to countermand it. In a letter of the 17th of August Burton asked to have the connection put an end to. To this letter he received an answer which discharged him from being an agent, but reminded him that 5*l.* was due on his five shares. The reply to that was, "I trust the directors will not insist," &c. [His Honour read the letter before given.] That was a request to be discharged from the liability under which he had come, and the answer to it was a refusal. In that answer they said, "In order to meet your convenience the directors will allow you to nominate another party to pay upon the shares." Nothing more seemed to have been done. His silence left the matter where it was. It appeared that he was plainly liable.

Motion refused with costs.

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. BENNET, Esq. of Lincoln's-inn, Barrister-at-Law.

Saturday, May 8.

SOLTAU *v.* DE HELD.

Practice—Bill pro confesso—Orders of May 1845.

A defendant who had gone out of the jurisdiction, and upon whom an attachment could not be served, was

Held, to have absconded for the purpose of the suit; and a day appointed upon which the bill would be taken pro confesso against him, unless he then appeared. Notice on the solicitor to be good service.

Tripp (*Malins* with him) moved that, under the circumstances after stated, the bill might be taken pro confesso against the defendant. The bill was for an injunction, which had been granted, as to the ringing of the bells of a Roman Catholic chapel at Clapham, to the nuisance of the plaintiff, an adjoining householder.

Bagshawe, for the defendant, said that Mr. De Held was out of the jurisdiction, and was not likely to come back. But he would suggest that the order should be taken this day week, and some gentleman selected to answer on behalf of the defendant.

Tripp declined to accede to this suggestion.

The VICE-CHANCELLOR said if parties chose to concur in any arrangement, a suggestion might be entertained; but if not the Court could only proceed upon the strict practice.

Tripp then proceeded to move to take the bill pro confesso, upon the affidavits of Mr. Hart, one of the solicitors of the plaintiff, and Mr. Reeves, the officer of the sheriff, who held the attachment against the defendant for not putting in his answer. The bill was filed on the 20th November, 1851. An appearance was entered for the defendant on the 25th, and a demurrer was put in on the 10th of December, and upon argument the demurrer was overruled and an injunction granted. On the 1st January, 1852, the plaintiff's solicitors being anxious to save expense, and put an end to further litigation, wrote to Messrs. Hart, the defendant's solicitors, requesting to know whether such a proposition met with theirapprobation, the injunction having been granted, and the answer put in, and suggesting the termination of the suit upon payment of the costs. To this letter Messrs. Hart replied, that as to that proposition, they had no answer to give; but wished to ask in their turn, whether it was intended or not to permit the defendant to ring one bell. Mr. Hart then wrote, stating Mr. Soltau's surprise at the cavalier manner in which his communication had been treated, and his only reply was that he intended to abide by the injunction. On the 20th of January, notice was given to Messrs. Hart, to put in the answer, and they obtained a month's time from the Master, Sir George Rose, and upon a representation that the defendant was abroad, obtained a further month's time, but on the understanding that no further time should be allowed. On the 13th March no answer having been put in, Mr. Hart again wrote and received an answer, that the defendant was still abroad, and it was desired to communicate with him. The attachment was then issued, but the defendant was not to be found, being absent in Belgium, or some place out of the jurisdiction. The affidavit of Mr. Reeve, the assistant officer of the sheriff, stated that he had attended twice at the defendant's residence, at Clapham, on the 25th of March and 14th April, and was told that the defendant was not there, and would not return for five or six weeks, and they could not tell when he would return. This application was made under the 77th and 78th order of May, 1845. The notice of motion was dated the 23rd of April, 1852, and fourteen clear days had therefore elapsed. It was, therefore, now asked, according to the practice, to take the order now, for some day to be fixed in the next term, when the defendant could appear if he wished, and was not then taken by surprise, and the order being served upon the solicitor, if the defendant was sincere, he might come forward. He cited *Harrison* v. *Stewardson*, 2 Hare, 533.

The VICE-CHANCELLOR said, that no doubt some day must be appointed for taking the bill pro confesso; and he appointed the last cause day in Trinity Term, to *take the bill pro confesso*; and a copy of this order served upon the defendant.

Order accordingly.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs Barristers-at-Law.

April 17 and 20, and May 3.

THE ROCHDALE CANAL COMPANY v. RADCLIFFE.

Canal — Abstraction of water — Prescription — Pleading.

An Act of Parliament empowered a company to make and maintain a canal, and provided that the owners of land within twenty yards might draw from the canal sufficient quantities of water, for the sole purpose of condensing the steam used for working any engine. The public had the right of using the canal on payment of certain tolls, and the waste water of the canal was directed to be conveyed into the canal of the Duke of Bridgewater.

In an action by the company against the owner of lands, and a mill and steam-engine, within twenty yards of the canal, for drawing more water than sufficient to condense the steam, the defendant pleaded a right for twenty years before suit in the occupiers of his lands, mill, and steam-engine, of drawing water from the canal for other and different purposes than of condensing the steam, to wit, for supplying the boilers, generating steam, heating the mill, cleansing the boilers, and supplying a cistern on the roof of an engine-house. The replication traversed the right alleged in the plea.

The evidence was, that the defendant had in fact two mills, one built in 1823, the other in 1829, each having its separate engine, but the mills were connected at one point, and the jury found that they constituted but one mill. There was no proof of any cistern on the roof of an engine. In respect of the mill built in 1823, there had been an enjoyment for twenty years of the water, as of right, for the purposes mentioned in the plea, but the enjoyment in respect of the mill built in 1829, was under twenty years at the time of action brought:

Held, that the issue on the plea was distributive, and that the defendant was entitled to have the verdict entered for him on the issue, except as to so much as related to the supply of the cistern on the roof of the engine-house:

Held also, that the plaintiff should have new assigned as to the supply of the mill built in 1829.

Held also, that the plea was bad in substance, and that the plaintiff was entitled to judgment, non obstante veredicto, on the ground that there could be no easement gained under the circumstances, the Canal Company not being owners of the water in the canal, the public having the right of navigation, and the surplus water belonging to the Duke of Bridgewater.

Case, for abstracting water from the plaintiff's canal.

The 2nd count of the declaration stated, that after the making of the 31 Geo. 3, c. lxxviii. and at the time, when, &c. the plaintiffs were possessed of the said canal and cut, consisting of and being land covered with water; and that the defendant was possessed of certain lands within the distance of twenty yards from the said cut, and of a mill and steam-engine thereon, for the purpose of working the said mill. That the defendant wrongfully drew, abstracted, and diverted from the said cut, by means of divers drains and sluices, divers large quantities of water, the same being more than sufficient to supply the said engine with cold water, for the purpose of condensing the steam used for working the said engine; and wrongfully used and applied divers large quantities of water, drawn as aforesaid from the said cut, to other and different purposes and uses than the condensing the steam used for working the said engine.

The 4th plea.—To the 2nd count. That the defendant was the occupier of four acres of land in Richmond-street, abutting eastwardly on the said cut, and the occupier of a mill upon the said lands, and of a steam-engine and the said mill, the said lands, mill, and steam-engine being the lands, mill, and steam-engine in the 2nd count mentioned; that the said cut had been, and was for fifty years next before this suit, connected with the said lands, mill, and steam-engine, by means of the drains and sluices in the 2nd count mentioned. The plea then alleged a user as of right for twenty years before suit, ... the defendant, and the occupiers for the time being of the said lands, mill, and steam-engine, of drawing from time to time out of the said cut, through and by means of the said sluices and drains, and of using and applying for and to other and different purposes and uses than of condensing the steam used for working the said engine, to wit, for supplying the boilers of the said engine with water, and of generating steam for working the said engine, and of heating the said mill, and of cleansing the said boilers, and of supplying with water a cistern on the roof of an engine-house on the said lands, such quantities of water as were from time to time necessary and required by the said occupiers for the time being of the said lands, mill, and steam-engine. The plea concluded with an averment that the defendant took the water in the 2nd count mentioned in the exercise of the right in the plea mentioned.

Replication.—Traverse of the right as alleged in this plea.

Issue thereon.

At the trial before Williams, J. at the Liverpool Summer Assizes, 1851, it was proved that the defendant had two mills on the lands, the Old Back Mill, abutting eastwardly on the canal, and the New Front Mill, abutting westwardly on Richard-street; that they were connected at one end next to Richard-street, and each mill had a separate engine. The old mill was erected in 1823, and the engine supplied with water from the canal by a drain and pipes, for the purposes mentioned in the plea. The new mill was erected in 1829, and at the time of action brought there had only been about nineteen and a half years' user of the water of the canal for the supply of its engine—the supply being obtained by a prolongation of the drain made for supplying the engine of the old mill. There was no evidence of any cistern on the roof, or top of any engine-house. The jury found that the whole of the works constituted one mill, and that the user of the water had been as of right. But the whole plea not being proved, the user for the two mills not having been for twenty years, and there being no cistern on the roof or top of any engine-house, the verdict, under the direction of the learned judge, was entered for the plaintiffs on this issue.

A rule nisi having been obtained to set aside the verdict, and enter it for the defendant on this issue.

Saturday, April 17.—*Knowles*, *Tomlinson*, and *Cowling* shewed cause, and *W. H. Watson*, *Willes*, and *Spinks* supported the rule.

The points argued were, whether the verdict could be entered distributively under the Reg. Gen. 4, 5, 6, Hil. 4 W. 4.; and whether the plaintiffs ought not to have new assigned in respect of that portion of the mill, consisting of the New Front Mill, in which there had been the use of the water for less than twenty years.

Authorities cited. *Higham* v. *Rabett*, 5 Bing. N. C. 624; *Peter* v. *Daniel*, 5 C.B. 568; *Allan* v. *Gomme*, 11 A. & E. 759; *Bower* v. *Hill*, 2 Bing. N.C. 339, 4 Cok. R. 87; *Giles* v. *Groves*, 12 Q.B. 721.

Cur adv. vult.

JUDGMENT.

Tuesday, April 20.—Lord CAMPBELL, C.J.—We are of opinion in this case, that on the fourth plea to the second count the verdict ought to be entered for the defendant, excepting so far as the plea alleges that the water taken from the canal, without the authority of the Act of Parliament, was used for the purpose of supplying with water the cistern on the roof of the engine-house. The jury have found that the water as actually used was used as of right, but was used for all the purposes alleged in the plea, except for the cistern, and if the use had extended to this we should have thought the verdict on the fourth plea ought to have been entered generally for the defendant, although the defendant was in the occupation of what was called the new mill, which had not been erected twenty years before the cause of action commenced, and he had used the water in an engine erected there. We think that the defendant sufficiently proves the allegation in his plea of the possession of the mill and the steam-engine, mentioned in the second count, and that he sufficiently proves the allegation of the use of the water for the first four purposes, by his having used it for those purposes in the old mill for more than twenty years. If the plaintiffs meant to rely on the unlawful use of the water for the engine erected within twenty years, they ought to have new assigned. On the part of the plaintiffs it is further contended that, as the defendant failed to prove the use of the water for the purpose of the cistern, the verdict ought to be entered against the defendant on the whole plea, because it is said the plea is not proved; but we think, according to the authorities which have been referred to, the issue upon the fourth plea may be applied distributively to the alleged purposes for which the water was used during the period of twenty years, and that part of those purposes being proved, pro tanto the verdict must be entered for the defendant; but, as he admitted that some of the water was taken by him for another purpose than that which he has proved, the verdict will stand for the plaintiffs with nominal damages. This will still leave the question open, whether the plea be good which alleges the use of the water beyond the purposes mentioned in the declaration. Mr. Knowles may take a rule to shew cause why there should not be judgment non obstante veredicto.

Monday, May 3.—*W. H. Watson*, *Willes*, and *Spinks*, shewed cause, and *Knowles* (*Tomlinson* and *Cowling* with him) supported the rule nisi, to enter up judgment on this issue for the plaintiff, non obstante veredicto.

The following sections of the Acts relating to the Rochdale Canal Company were cited and relied upon in the argument.

The 31 Geo. 3, c. lxxviii (an Act for making a Canal from the Calder Navigation to join the Duke of Bridgewater's Canal in Manchester) creates the corporation of the company of proprietors of the Rochdale canal.

Sec. 104 gives all persons liberty with boats, barges, and other vessels to use the canal on payment of the rates granted by the Act, and subject to the regulations of the company.

Sec. 113 gives the owners of lands, within twenty yards from the canal, the right to make a communication between the water therein and any steam-engine, by means of pipes, and constructed to prevent leakage or waste of water, and to draw from

the canal sufficient water to supply the engine with cold water, *for the sole purpose of condensing the steam* for working such engine.

Then the 16 Geo. 3, c. xx (an Act relating to the Rochdale Canal Company), by sec. 23, gives the company the right to enter any building containing any steam-engine in order to examine the pipe used for conveying the water from the canal, and see that the water is not applied to any other purpose than that of condensing the steam of any such engine.

The 39 and 40 Geo. 3, c. 36 (an Act relating to the Rochdale Canal), by sec. 10, enacts that the waste water at the junction of the Rochdale and Ashton Canals shall be discharged into the basin of the Rochdale Canal, and the waste water of both canals shall be conveyed into the Duke of Bridgewater's canal.

Cases cited.—*Parnaby* v. *The Lancaster Canal Company*, 11 A. & E. 223; *The Rochdale Canal Company* v. *King*, 18 L. J. 293, Q.B.; *Wood* v. *Ward*, 3 Ex. 784; *Bright* v. *Walker*, 1 C. M. & R. 211; *James* v. *Plant*, 4 A. & E. 749; *Manning* v. *Wasdale*, 5 A. & E. 758; *Tebbutt* v. *Selby*, 6 A. & E. 786; *Grand Surrey Canal Company* v. *Hall*, 1 M. & G. 392; *Mayor* v. *Chadwick*, 11 A. & E. 571.

Lord CAMPBELL, C.J.—I am of opinion that our judgment ought to be for the plaintiffs. By these Acts of Parliament, this company was established for making a canal for the public benefit, and when the canal was made, all her Majesty's subjects had the right of using the canal on payment of certain tolls. So that in fact the canal really became, as it were, a turnpike-road, and could only be kept in repair by having a necessary quantity of water, and any water beyond that quantity, was appropriated by the Acts to the Duke of Bridgewater. By sec. 113 of 31 Geo. 3, c. lxxviii, there is a special privilege given to the owners of lands within twenty yards from the canal, to take sufficient quantities of water from the canal to supply engines with cold water for the sole purpose of condensing the steam used for working them. And this power is qualified so that there shall be no obstruction to the navigation of the canal. The present action is brought by the company expressly on the ground that the Act of Parliament has been violated by the defendant. The declaration recites the passing of the Act of Parliament, and alleges that the defendant abstracted the water of the canal for other purposes than those of condensing the steam. The 4th plea justifies the taking in respect of a prescriptive right in the occupiers of the defendant's land. So that this plea is to be a justification for violating the Act of Parliament. The right is claimed to ta for supplying the engines, for generating steam, for heating the mill, and for cleansing the boilers, such quantities of water as were from time to time necessary. If this right had been confined to the surplus water of the canal, it would not have been a lawful grant, but it is not so confined. What effect might such a right produce on the canal? Why, it might stop the navigation altogether. It is utterly impossible to contend that there could be such a power in the company to make such a grant, for the water is not their property. If they had executed such a grant, it would have been illegal and void, and their successors would not have been bound by it. It could not have been pleaded in bar to the action, and if so, the supposed right of easement here pleaded, on the presumption of a grant, can as little be pleaded.

COLERIDGE, J.—The foundation of this plea must be a supposed grant from the company to be inferred from the defendant's user; but if these acts of user never could have been legal, the grant cannot be inferred. The company are not owners of the water of the canal, but limited trustees, for the public in the first place, of all the water necessary for the navigation of the canal, and then for the adjoining millowners for certain special u s. They can make no grant to the detriment of the public right, and if there is any surplus water, that belongs to the Duke of Bridgewater.

ERLE, J.—The defendant claims by this plea to impose a servitude on the company by reason of twenty years' user of the water of the canal, for the purposes pleaded. But there can be no easement unless the company are the owners of the water of the canal. They had only a right to the flow of the water of the canal for the purpose of navigation. Any grant of the water by the company would have been contrary to their duty and void, and twenty years' user of the water, does not establish the right here claimed.

Rule absolute to enter the verdict for the plaintiff, non obstante veredicto.

Wednesday, May 26.

REG. v. AVERY.

Municipal corporation—Filling up voting-papers—5 & 6 Wm. 4, c. 76, s. 32.

A voter at a municipal election for town councillors may sign his voting-paper with the initials of his Christian names, and need not write his Christian names at full length.

A street in a parish P. was known as well by the name of The Street as of P. Street:

Held, a sufficient statement of the situation of the property in respect of which the burgess voted as in "The Street."

Quo warranto against the defendant, calling on him to shew by what authority he claimed to be a town councillor of the borough of Barnstaple.

The case was tried at the last Devon Assizes before Erle, J. and it appeared that there were persons who had voted for the defendant, and whose names were put on the voting-papers with initials, instead of full Christian names, as follows:—"W. Davies," "J. S. Clay," "A. B. Ambrose," and "T. Pigler." This form of writing the names was contended to be contrary to the provisions of the Municipal Corporation Act (5 & 6 Wm. 4, c. 76, s. 32). There was another objection to the form in which the residences of some of the voters were described, the Act requiring "the name of the street in which the property is situated," to be upon the voting-paper. The verdict at the trial was taken for the defendant.

A rule nisi was on a former day (April 21) obtained to set aside that verdict, and enter it for the Crown, on the ground that the votes objected to for the above reasons being struck off, the defendant was not duly elected.

Crowder and *Taprell* shewed cause against the rule, and supported the defendant's right to the office. They contended that the use of initials only did not vitiate the votes. The 32nd section of the Act enacts, "That every burgess entitled to vote may do so by delivering a voting paper containing the *Christian names and surnames* of the persons for whom he votes, such paper being signed with the *name* of the burgess voting, and the name of the street in which his property is situate." Where the Legislature intended that the Christian name should be inserted at full length, it enacted in express terms that such should be the case. Here there was no enactment of that sort. It is true that the Act, sec. 15, directs the burgess lists to be made out according to the form in Schedule D, and that in the schedule there are separate columns for the names, with the words "at full length;" but that is merely a directory provision, and cannot affect the 32nd section. There are similar enactments in the Reform Act and in the Registration Act, 6 Vict. c. 18; but it had never yet been held that the insertion of the initials of the voter's name invalidated his right to vote. On the contrary, the provision that if the name was wholly omitted it should form a valid objection, shewed, by implication, that the use of initials was not a conclusive objection. There were several statutes which furnished analogies on this subject. Thus, in the 6 & 7 Wm. 4, c. 14, relating to the publishing of newspapers, the name of the publisher at full length is expressly required. Then, Uniformity of Process Act, 2 & 3 Wm. 4, c. 39, 12, requires the name of every writ to be indorsed with the name and place of abode of the attorney issuing it; but in several cases it has been held that the name of the firm was sufficient. But if the use of the initial was not absolutely correct it was only an imperfect description; and sec. 142 (the interpretation clause) enacts, that no misnomer or inaccurate description of any person in any voting-paper shall hinder the full operation of this Act, provided the description be such as to be commonly understood. The description is sufficient if the party is known by it. The *Hartlepool* case established that proposition. It did so here. It was the form in which the voters ordinarily described themselves. Then, when they came up to vote they might be asked the questions as to their identity mentioned in sec. 34. There could, therefore, be no deception practised, and it that alone against which the Legislature desired to guard.

The *Attorney-General*, *Slade*, and *M. Smith* for the relator.—It is contended that the ordinary signature of the parties was sufficient. But that was not so. The voting list in this very borough shewed the confusion and uncertainty that would follow from such a practice. There are on that list two names, one of William and the other of Walter Fry, both of Lower Maudley-street. Now, suppose that each had described himself as "W. Fry, of Lower Maudley-street," how could one be distinguished from the other? The Municipal Corporation Act required the burgess list to be made up according to the form in the schedule, and the schedule contained the form with the description of the "Christian and surname at full length." The *Hartlepool* case was not an authority for the other side, for there the name was put on the list by the mayor, on the insufficiency of the claim being explained, but no such explanation could be given at the election. The list presented there ought to be correct; the more so as no inquiry but that in which was involved the two questions mentioned in the Act could be made, and on those questions would not give the least information on the subject. The 32nd section said that the paper should be signed by the name of the party voting. That must mean the Christian and surname of such party, and though a contraction of the Christian name might be sufficient, no one could say that an initial letter was a Christian name, for there was no letter capable of being mentioned that might not stand for half-a-dozen different names. If so, then uncertainty was introduced into the description of the voter, and of course personation and all other offences of a like kind could easily follow.

Lord CAMPBELL, C.J.—I must confess that I have not been able from the first to feel any doubt upon this question. The case depends upon the 32nd section of the 5 & 6 Wm. 4, c. 76, which directs the mode in which voting-papers shall be filled up. Among other directions is this one:—"That such papers shall be previously signed with the name of the burgess voting." And what we have to determine is, whether voting-papers, containing surnames in full, but Christian names in initials, by which the persons are well known at Barnstaple, are to be considered as papers signed with the names of the burgesses. We must give to this Act of Parliament the construction which it is natural to put on the words, and the grammatical and the common sense to be ascribed to the words thus employed. The paper is to be signed by the man or some one for him. What is the meaning to be put on such an order? It is that he shall sign the paper in the ordinary manner in which he signs his name. We must take notice of that. Now, we know that in ordinary life names are often signed with initials only for Christian names and with surnames written at full length. A will signed in this way is always allowed to be well signed by the testator. All deeds so executed are well executed, and the rights of families are thus absolutely bound. It is allowed, under the Statutes of Frauds, that the name of the agent will be sufficiently inserted to satisfy the provisions of that statute, if the paper is signed with the Christian name in initials. In all these cases the practice is well known, and it was well known to the Legislature when it passed this Act. For, in some particular instances, the Legislature has required that the names shall be written at full length, and when that is declared to be necessary, the requisition must be complied with. But here nothing of the sort is required. But the Act says, that the paper shall contain the Christian names and surname of the party for whom the voter votes, but it does not make any reference to a model of the form in which the writing of the name shall take place. Various cases have been brought before us, by Mr. Taprell, shewing that it is not always necessary to write the Christian name at full length, with respect to process; notices to justices need not be signed at full length, and there are various other cases in which it is sufficient if the name is written in the usual manner. The Attorney-General properly allowed that a contraction of the Christian name would in some cases be sufficient. Then comes the *Hartlepool* case, which seems to me to be not only in point with the present, but goes the full length of it. The 15th and 17th sections set out the form. Two questions may be put to the voter, viz.: Are you the person whose name is signed A. B. to this voting-paper? and, Are you the person whose name appears as A. B. on the burgess-roll now in force in this borough? And if the person answered falsely, he would be liable to prosecution and punishment for perjury. It seems to me, therefore, that with papers thus prepared, the election may take place with perfect propriety and safety. Great confusion would arise if it were otherwise. I am therefore of opinion that this rule must be discharged.

COLERIDGE, ERLE, and CROMPTON, JJ. concurred.

Another set of objections was then raised to four votes, on the ground that the property in respect of which the voter voted was not properly described. The property was described as in The Street thus:—

Parish.	Name of Voter.	Property.	Street, Lane, &c.
	Cooksley.	House.	The Street.

There is only one main street in the parish of Pilton, which was called as well by the name of "The Street," as "Pilton-street." There were other small streets and lanes. The voters' properties were in the main street.

Slade and *M. Smith* objected that the description of "The Street" might equally apply to the small streets as well as the main one.

CAMPBELL, C.J.—This objection is unarguable. According to the evidence, the description of the street has been strictly complied with, being that by which it is known.

Judgment for the defendants.

Friday, May 28.

Ex parte DEATH, *jure* THE VICE-CHANCELLOR, &c. OF CAMBRIDGE.

Prohibition—University decree—Discommuning.

In 1847, the vice-chancellor and heads of houses of Cambridge University made a regulation that tradesmen with whom under-graduates contracted a debt exceeding 5l. should give notice every quarter to the tutor of the person so indebted, on pain of being discommuned. D. a tradesman, having violated this regulation, was summoned to appear before the vice-chancellor and heads of houses, and presented himself with his attorney; but the vice-chancellor refused to allow the attorney to appear; upon which D. withdrew, but afterwards received a notice that he would be heard alone. At the day appointed he failed to appear, and the vice-chancellor and heads of houses made an order, forbidding under-graduates to deal with D. until a stated time:

Held, that they had a right to make such order for the discipline of the university, and that the proceedings against D. were not in the nature of judicial proceedings.

This was an application for a prohibition to the vice-chancellor and heads of houses of the University of Cambridge, to prohibit them from enforcing an order of the 24th of May instant against Mr. Death.

On the 11th February, 1847, the vice-chancellor and heads of houses of the university made the following regulation:—

"That any tradesman or dealer with whom any person in statu pupillari shall contract a debt exceeding 5l. shall be required to send notice of the amount of the sum at the end of every quarter to the college tutor of the person so indebted, on pain of being punished by being discommuned *or otherwise*, as the vice-chancellor and heads of houses shall think fit."

It appeared that Mr. Death, a livery-stable keeper in Cambridge, being a creditor of an under-graduate for a debt exceeding 5l. had received a summons to attend before the vice-chancellor and heads of houses for an alleged violation of the above regulation. On the day appointed he presented himself with his legal adviser, but the vice-chancellor refused to allow his legal adviser to appear, upon which Mr. Death withdrew. He afterwards received a notice that the vice-chancellor and the heads of houses would hear Mr. Death alone on the 24th of May instant, at the lodge of King's College. On the 24th of May, Mr. Death not appearing, an order or decree was made, forbidding the under-graduates to deal with Mr. Death from the date thereof until the end of next Term (i. e. 16th of December, 1852). Mr. Death alleged that his losses in consequence of this order would amount to 450l.

W. N. Watson, in support of the application, contended, first, that the vice-chancellor and heads of houses had been acting judicially, as appeared by the issuing of the summons, and the tribunal before which Mr. Death was summoned to appear, and that Mr. Death was entitled to appear with the assistance of his solicitor. Secondly, that the regulation of the 11th of February, 1847, was illegal, being made by the vice-chancellor and heads of houses, instead of the senate of the university, which alone had authority to make laws. (*Rex* v. *The Chancellor, &c. of Cambridge*, 6 T. R. 89; *Ex parte Robert Speakman*, 1 Q.B. 965, note *a*.)

Lord CAMPBELL, C. J.—I am of opinion that to grant a prohibition in this case would be to interfere most improperly with the discipline of the university. I most highly approve of the regulation of Feb. 11, 1847, and I have no doubt of the power of the vice-chancellor and the heads of houses to make such regulation, and should be sorry that there was any obstacle to its being enforced. There has been no judicial proceeding here on the part of the vice-chancellor and the heads of houses; they merely lay down a necessary and wholesome regulation that the under-graduates shall not deal with tradesmen and contract debts exceeding 5l. without such tradesman giving notice every quarter to the tutor to whose care such under-graduate is entrusted. And when a tradesman is to be discommuned, it is merely that the under-graduates are cautioned not to deal with such tradesman for having violated this regulation. We take notice of the vice-chancellor's court, but here there was no proceeding in that court. Though there was a summons from the vice-chancellor, it was not from him in his court; it was but a notice to give the applicant the opportunity of saying whether the information the vice-chancellor had received was true or not. To say that a tradesman who was so summoned before such a domestic forum, was at liberty to appear by counsel and attorney, was quite untenable. Then, as to the decree itself, as there has been nothing more done than to discommune the applicant, that is, to caution the under-graduates not to deal with the party, what has been done is within the authority of the vice-chancellor and heads of houses.

COLERIDGE, J.—I cannot see anything like an attempt to encroach on judicial power, which does not exist. The mode in which discommuning operates is by telling the young men not to deal with a particular tradesman. That, when stated by itself, is clearly within the competency of the governing body of a place of education. But it is said, that there has been a judicial proceeding in this case because there has been a summons. We must look to the substance of the proceeding, and it is nothing more than an attempt to enforce a sumptuary regulation with the desire not to proceed so as to injure any one who may have been unjustly informed against. The summons being tantamount to this, "Come, if you please, and explain, before we enforce the regulation against you." If the party has a right to attend, with legal assistance, why has not the pupil? And then, what will become of the discipline of the university?

ERLE, J. concurred.

CROMPTON, J.—If I thought the regulation was as wrong, as I think it wise and useful, I should say that we ought not in this case to interfere. The heads of houses have a right to say that the under-graduates shall not deal with persons with whom they think they ought not to deal. There was no occasion to send a summons at all to the party, but the sending of it does not turn this into a judicial proceeding. *Rule refused.*

REG. *v.* STREET.

Poor-law auditor—Disallowance of overseers' accounts—Litigation as to rates—Duty of summoning vestry.

It is not in itself a valid reason for disallowing in overseers' accounts items of expense incurred in litigation with a railway company, as to the amount at which the company was to be assessed to the poor-rates, that the overseers did not, before incurring those expenses, summon a vestry to consider the propriety of incurring them.

A rule had been obtained, calling upon the auditor of a poor-law union, comprising the parish of Ringwood, in Hampshire, to shew cause why his disallowance of 73l. in the overseers' accounts of the year 1848, which had been removed by certiorari, should not be quashed. The item of 73l. formed part of the costs of defending an appeal by a railway company against a poor-rate; and the reasons assigned by the auditor for disallowing it were two. First, that the overseers ought, prior to incurring any of those expenses to have summoned a vestry, and taken the opinion of the inhabitants as to the propriety of doing so. Secondly, that after the Court of Quarter Sessions had reduced the assessment, subject to a case for the Court of Q. B. the overseers ought, as soon as practicable, to have summoned a vestry, and taken the opinion of the inhabitants upon the propriety of proceeding with the case reserved, and as to the amount at which the company should be assessed.

By the affidavits it appeared that in July 1847, before the overseers whose accounts formed the subject of the present rule came into office, a vestry meeting was held for the purpose of considering the dispute which had then arisen between the railway company and the parish; and at that vestry meeting it was resolved to assess the company at 416l. per mile, making a sum of 2,708l. In December of the same year, application was made by the then overseers to the Poor-law Board for information as to the mode in which they should assess the company; but the Poor-law Board declined to give any information, referring the parish officers to the proper tribunal for deciding those questions. On the 24th of the same month another vestry was summoned; and at that meeting it was resolved, that unless the company would consent to be assessed at 2,000l. the overseers should take proceedings to enforce a rate at that amount. The rates in question made in 1848 by the succeeding officers, were accordingly made upon that amount; and against these rates the company appealed. The Quarter Sessions reduced the rateable value from 2,000l. to 300l. subject to a case for the opinion of the Court of Q. B.; but that case was not proceeded with, it being ultimately agreed between the parties that the rate should stand at 450l. rateable value. After the audit, which was concluded in June 1849, a vestry meeting was called, and the expenses sanctioned.

Collier now shewed cause against the rule to quash the disallowance; and contended that the auditor was right in holding that, after notice of appeal had been given by the company, the overseers ought to have summoned a vestry before they actually entered upon an expensive litigation, the result of which shewed them to have been egregiously wrong in the amount of the assessment. So, afterwards, they ought not to have abandoned the case without taking the opinion of the inhabitants. (*R.* v. *Gwyer*, 2 Ad. & Ell. 216; *R.* v. *Fouch*, 2 Q.B. 308; *R.* v. *The Great Western Railway Company*, 13 Q. B. 327; 18 L. J. 145, M.C.)

Poulden, contrà, was not called upon.

COLERIDGE, J. (*a*)—This question must be determined upon the reasons assigned by the auditor; and the first reason assigned is, that prior to incurring any of those costs, the overseers ought to have called a vestry meeting. He therefore gives no opinion, that what the overseers did was hastily or unadvisedly done; but he raises the simple question whether in all cases the parish officers must go to the vestry to sanction them in defending a rate appeal; and whether if they do not, however prudently they may have acted, they must pay out of their own pockets any costs which can not be obtained from the other side. Now no case has gone that length; and it is obvious that many circumstances may exist to render such a course unnecessary. [His Lordship then stated the facts of this case.] Under these circumstances there is every reason to suppose, that the convening of a vestry would have been a more formal proceeding; and I think, therefore, that the first ground of disallowance entirely fails. As to the second also, it seems to me that there is no ground for complaining of the conduct of the parish officers. They do not blindly continue the litigation after the case has been reserved; but they see what arrangement can be made; and the rate is then raised from 300l. to 450l. I do not think that it can under these circumstances be said that there was any wanton abandonment of the rate, or any necessity for again appealing to the vestry. It is not pretended that they acted hastily, perversely, or malâ fide. The cases cited are quite distinguishable. *R.* v. *Gwyer* was upon a different Act of Parliament; and in *R.* v. *The Great Western Railway*, this Court thought that there was actual misconduct.

CROMPTON, J. concurred. *Rule absolute.*

REG. *v.* THE OVERSEERS OF SALFORD.

Excise—License for sale of beer—Certificate of overseer—Certiorari.

A writ of certiorari will not lie to remove a license for the sale of beer, granted by a collector or supervisor of excise, although granted without requiring production of the overseers' certificate according to section 2 of stat. 3 & 4 Vict. c. 61.

A rule had been obtained calling upon the Board of Inland Revenue to shew cause why a license for the sale of beer, granted by a supervisor or collector of excise, to one Hague, at Salford, should not be quashed, on the ground that it had been granted without requiring production of the overseers' certificate according to section 2 of stat. 3 & 4 Vict. c. 61. The license had been brought up by certiorari.

Sir *F. Thesiger* (Att.-Gen.), (with him Sir *F. Kelly* (Sol.-Gen.), *Watson*, and *Welsby*) now shewed cause; and having objected that the writ of certiorari would not lie in this case, was stopped upon that point.

Pashley and *Hall*, contrà. The overseers have a discretion to grant or refuse the certificate (*Reg.* v. *Kensington*, 12 Q. B. 564); and if the excise officers assume to grant the license without requiring that certificate, they usurp the discretion of the overseers. [CROMPTON, J.—You must shew that the granting of the license is a judicial act.] It is as much so as the making of a county rate, or an order of sessions respecting fees (*Reg.* v. *Coles*, 8 Q.B. Rep. 75); or examinations, recognisances, and other instruments which are removable by certiorari. If there is any discretion to exercise, there is a judicial act to be done, although the jurisdiction may not be contentious. (*R.* v. *Arkwright*, 12 Q. B. Rep. 960.) The Board of Inland Revenue have large judicial powers; and they directed the granting of this license.

COLERIDGE, J.—We are not called upon to determine the extent of the authority given to the overseers. They may have a judicial authority, which is not subjected to revision by the Board of Excise, and I should certainly be sorry to say anything that might tend to the supposition that I was inclined to hold lightly the propriety of some local control in this matter; but the question is, whether this writ of certiorari was properly issued; whether the license is a judicial act, which can properly be brought into this Court by certiorari; and I think it clearly is not. The document itself is neither more nor less strong by reason of anything which the Board of Inland Revenue may have done; because there is an original authority in the collector and supervisor of excise to grant such a license. It is natural that he should apply for and receive instructions in such a case from the board; but the document still proceeds from him. Does he then exercise a judicial authority in granting the license? The license itself may, for want of the performance of a condition precedent, be no license at all; but if so, the party who assumes to act under it may be proceeded against according to the statute, and in that way the question may, after all, come before this Court; about which at present I say nothing. But if we were to hold this a judicial act, removable here by certiorari, it would be opening such a door to

(*a*) Lord Campbell, C. J. and Erle, J. were sitting in the Court for Crown Cases reserved.

similar applications, and assuming such an interference with the acts of inferior officers, as would lead to very dangerous consequences; for if so, hardly anything could be done under parliamentary authority which would not be subject to revision in this court. The cases cited are manifestly distinguishable. The county-rate is made by the Court of Quarter Sessions, acting as a Court, and exercising its judgment as to the necessary amount and other matters. The examinations of witnesses under the statute of Wm. and Mary, and more recent Acts, are also taken by an officer who sits as a judge, though he is conducting only a preliminary inquiry. So the order of the Church Commissioners in *R.* v. *Arkwright*, for stopping footpaths through a churchyard, is clearly judicial, like the order of two justices for stopping footpaths; and even more so, because there is no appeal. But the act of the supervisor of excise in granting a beer license appears to me to be an act of a totally different character.

CROMPTON, J.—Assuming that the Board of Inland Revenue were wrong, and ordered the officer to do an illegal act, and that he exceeded his authority in granting this license, I am of opinion that it was not a judicial proceeding, and therefore ought not to have been removed here by certiorari.

Writ of certiorari quashed, and rule to quash the license discharged.

BUSINESS OF THE WEEK.

Thursday, May 27.

REG. v. THE MANCHESTER AND STOCKPORT RAILWAY COMPANY.—Sir *F. Kelly*, Sol. Gen. moved for a rule for a mandamus, to compel the completion of a line of railway. The compulsory powers would expire in July, 1854; and Parliament had this session rejected a Bill introduced for the purpose of exonerating the Company from the obligation to make this line. *Rule nisi.*

LOWE v. THE LONDON AND NORTH WESTERN RAILWAY COMPANY.—*Macaulay* and *Mellor* were heard in support of the rule. *Rule discharged.*

CROSSTHWAITE v. GARDNER.—*Atherton* and *Couling* shewed cause. *Knowles* and *Addison*, contrà.

Rule absolute.

Friday, May 28.

TALLIS v. TALLIS.—Demurrer to plea. The declaration was attacked, and the plaintiff elected to amend. *H. Hill* (*Bowdeswell* with him) for the plaintiff, and *Bramwell* (*Cole* with him) for the defendant.

CORBETT v. HUDSON.—This was a demurrer to the third count of the declaration. It was an action against the keeper of the Queen's Prison for making a false return to a writ of habeas corpus; and the third count stated that the defendant "falsely and deceitfully returned," &c. without shewing wherein the return was alleged to be false. *W. H. Watson* in support of the demurrer. Plaintiff, in person, contra. The Court gave judgment for the defendant. *Judgment for the defendant.*

MARTYN v. CLUE. *Part heard.*

Saturday, May 29.

REG. v. ST. JAMES, CLERKENWELL.—*Bramwell* and *T. Richards*, in support of the order of sessions. *Bodkin*, contrà, was not called upon. The question was whether, after 26 years' absence, the Court ought, under the circumstances, to have presumed death.

Order of sessions quashed.

REG. v. SAMUEL OWEN.—*Pashley* v. *Tomlinson*, shewed cause against a rule to quash an order of justices, ordering *Owen* to pay the costs of repairing a road, which had been removed by certiorari. *Archbold* and *Welsby*, contra.

Rule discharged.

Monday, May 31.

REG. v. THE EAST INDIA COMPANY.—*Byles*, Serjt. (*Willes* with him) moved on behalf of Sir C. J. Napier for a mandamus to compel the company to pay him certain alleged arrears of pay. *Cur. adv. vult.*

DOE *dem.* TREVANION v. LAMBE.—This was a rule nisi for a new trial, on the ground of the verdict being against the evidence. *Kinglake*, Serjt. *Malins*, *M. Smith*, and *Karslake* appeared to shew cause; and *Crowder*, *Butt*, and *Prideaux* to support the rule. *Part heard.*

Tuesday, June 1.

MARTIN v. CLUE.—Argument continued.

Cur. adv. vult.

HOOKE v. LASLETT.—Case from Chancery upon the construction of a will. The question was, whether a clear beneficial devise to the plaintiff of ten cottages contained in the will, was revoked by a codicil. *Whateley* argued that it was, but the Court was so clearly of opinion that the codicil only affected the trust estates, that *Lush*, contrà, was not heard. *Judgment for the plaintiff.*

MASON v. WILKINSON.—Demurrer to plea. *Watson*, in support of the demurrer; *O'Malley*, contra.

Leave to amend.

WESTON v. WESTON.—General demurrer to declaration. The question was, whether the absolute covenant declared upon, was not rendered an alternative covenant by a subsequent proviso in the deed. *Manisty*, in support of the demurrer; *Edge*, contrà. *Judgment for the plaintiff.*

MACKENZIE v. THE SLIGO AND SHANNON RAILWAY COMPANY.—Demurrer to pleas. *Raymond*, in support of the demurrer. *Wordsworth*, contrà. *Cur. adv. vult.*

Wednesday, June 2.

REG. v. THE YORK AND NORTH MIDLAND RAILWAY COMPANY.—Demurrer to a return to a mandamus to compel the company to complete a portion of the line from York to Beverley. *H. Hill* (*Lush* with him) for the prosecutors; and the *Solicitor-General* (*W. H. Watson* and *Addison* with him) for the railway company.

Cur. adv. vult.

DOE *dem.* TREVANION v. LAMBE.—Argument resumed.

HOWSE v. BARBER.—The Court delivered a written judgment herein, upholding the Master's decision upon the taxation of costs herein, the Master having allowed the plaintiff costs as a witness on his own behalf, including a sum for subsistence during his detention in England awaiting the trial, the plaintiff being a master-mariner.

To be reported.

COURT OF COMMON BENCH.

Reported by DANIEL THOMAS EVANS and VAUGHAN WILLIAMS, Esqrs. Barristers-at-Law.

April 22 and 27, and May 7.

NOVELLO v. SUDLOW.

Copyright, infringement of—Stats. 8 Anne, c. 19, and 5 & 6 Vict. c. 45, ss. 2, 15, and 16.

In case for the infringement of copyright. The plaintiff was proprietor of a musical work, containing, amongst other pieces, a part-song, called "The Wreath;" and the defendant, a member of a musical society, consisting of several hundred persons, who gave concerts, to which strangers were admitted on payment of entrance-money. By direction of the defendant (who formed one of a committee of the society), and without permission of the plaintiff, the above-named song was copied from a monthly number of the plaintiff's [illegible] *amongst the members of the society, and used by them solely for the purposes of the concert. After the concert, the parts so lithographed were collected and retained by the society, and were not used on any other occasion:*

Held, an infringement of the plaintiff's copyright, for which he was entitled to recover by action on the case, although the parts were not alleged to have been printed "for sale or hire."

By stat. 8 Anne, c. 19, "copyright" is expressed to be "the sole right and liberty of printing," &c.: and by stat. 5 & 6 Vict. c. 45, it is defined to mean, "the sole and exclusive liberty of multiplying copies of any subject," &c., thus protecting literary works from unauthorised publication by means other than the press. The 15th section of the last-mentioned Act gives a remedy by action only to cases where the subject matter is multiplied by printing, to cases of importation of such unlawfully printed books for sale or hire, and to the publication, exposure, and possession for sale or hire of such books:

Held, that this section does not, by specifying certain cases to which a remedy by action has been therein prescribed, restrict the right of action for infringement of copyright to those particular cases, so as to negative rights previously existent, or given in the Act, against "the multiplication of copies" otherwise than by printing. Therefore, where defendant had multiplied copies of the plaintiff's work for gratuitous circulation, without his consent, it was held a violation of plaintiff's copyright, for which he was entitled to recover.

This was a special case stated for the opinion of this Court. The action was in case, for the infringement by the defendant of the plaintiff's copyright, in a musical work called "Benedict's Part-Song Book." The special case stated that the plaintiff was the proprietor of the periodical work in question, and that in the month of May, 1850, a part containing a song called "The Wreath," was published, the copyright in which belonged to the plaintiff. The defendant was a member of the Liverpool Philharmonic Society, which society consisted of several hundred persons, who gave concerts. In August 1850 the defendant was one of a committee for the management of a concert, at which the vocal music was performed by a choir consisting of 235 members, who all performed gratuitously; but many of the audience were not members of the society, and were admitted to the concert on payment of sums fixed by the committee. It was resolved by the committee before the concert, that Benedict's part-song, "The Wreath," should form part of the performance; and for the purpose of providing the choir with the vocal music of the song, it was, by the defendant's directions, and without permission of the plaintiff, copied from a monthly number of the plaintiff's work, which belonged to the society, and the respective bass, soprano, tenor, and alto parts, which in the work are printed together, were lithographed separately, and used by the members of the society solely for the purposes of the concert. After the concert the parts so lithographed were collected and retained by the society, and they were never used on any other occasion. Upon hearing of this the plaintiff wrote to the defendant, requiring that the lithographs should be delivered up to him, and that the society should purchase of him an equal number of copies; to which the defendant replied that, as the society had never lithographed the song for sale or hire, he was at a loss to know in what way they had infringed the plaintiff's copyright. The result of the correspondence was the present action.

Phipson, for the plaintiff.—By sec. 2 of 5 & 6 Vict. c. 45, "Copyright," as referred to in that Act, is defined as meaning "the sole and exclusive liberty of printing, or otherwise multiplying copies of any subject to which the said word is therein applied." Bearing this definition in mind, the purpose of the legislature, in framing sec. 15 of that statute will be apprehended. By that section it is enacted, "that if any person shall print or cause to be printed, either for sale or exportation, any book in which there shall be subsisting copyrights, without the consent in writing of the proprietor thereof, or shall import for sale or hire any such book, so having been unlawfully printed, from places beyond the sea, or knowing such to have been so unlawfully printed or imported, shall sell, publish, or expose to sale or hire, or cause to be sold, &c. or shall have in possession, for sale or hire, any such book so unlawfully printed as aforesaid, such offender shall be liable to a special action on the case, at the suit of the proprietor of such copyright." This statute, after clearly defining what copyright is, gives certain rights to the proprietors of copyrights for the protection of their property. In the present case, the copyright to the work in question was in the plaintiff; his right has been invaded by the defendant, and he is entitled to maintain his action by declar- [illegible] section, taken in conjunction with the 2nd. vests in the plaintiff a right of action against whoever multiplies copies of his property. *Miller* v. *Taylor*, 4 Burr. 2403. It must be taken that there is copyright at common law; at all events, there is no case shewing that copyright does not exist at common law. The plaintiff has a right of action irrespective of that arising under the statute. Under sec. 15 the owner of the copyright is the only person entitled to multiply copies. Any person may print copies to give away, and the owner has no remedy under that section. The remedy provided by the Act is thus not co-extensive with the grievances which may arise. Again, take the case of "hiring;" that section gives no power to prevent hiring; a man may hire out for profit any number of copies with impunity, as far as that section goes. This being so, it is clear that some remedy must exist for such wrongs, though it may not be under the statute; the inference then is, that the Legislature never intended to interfere with the pre-existing rights of proprietors of copyright, but left them enforceable as they were before. By the statute, a "written consent" is required for the multiplication of copies. Whatever is meant by the word "hire" in the 16th section, it does not affect multiplication of copies. There is nothing to restrict the general right vested in the plaintiff, because it happens that a remedy has been specified by statute as applicable to some particular cases. Here a general right to multiply copies is in the plaintiff, and in him alone, unless, by his written agreement; the defendant has printed plaintiff's music without such consent, by lithography, and distributed the copies amongst the members of a society who paid money for their privileges. This is an infringement of plaintiff's copyright; if it be not so held, there will be no limit to piracy, and no protection for literary property. (*Beckford* v. *Hood*, 7 T. R. 620; *The North Shields Ferry Company* v. *Barker*, 2 Ex. 136.) [JERVIS, C.J.—A printer pirates a book, and a bookseller sells the pirated copies; the bookseller is made liable by this Act; he is bound to inquire into the printer's title.] This statute does not deal with those who sell innocently; that is, unaware of piracy. Arguing the case in the form least favourable to the plaintiff:—Here the defendant has published Benedict's part-songs (which belong to the plaintiff) by distribution amongst performers; the remedy afforded by statute is not only inadequate, but is inapplicable; it cannot, therefore, be that he has no remedy, he may therefore maintain his rights as before the statute. (*King* v. *Harris*, 4 T. R. 205.) [JERVIS, C.J.—You do not deny that if there is copyright at Common Law the statute restricts it.] It restricts it to the extent of the cases mentioned in the 15th section, and not further. This action is, for the reasons given, clearly maintainable; judgment should therefore be for the plaintiff.

Willes, for the defendant.—None of the inconveniences, which it has been said by the other side would follow, are to be apprehended if the Court should take a view adverse to the plaintiff in this case. The case instanced was that where a sum of money is paid for admission to the society's performance. Societies for private amusement, like literary and scientific societies in the country, admitting strangers on payment of a sum of money, are in a widely different position to this society, which is strictly private: musical parts are here distributed among the members for private use, and that certainly cannot be called a publication. If the argument for the plaintiff is to prevail, it would extend to give an action even in the most trifling case—such, for instance, as the copying out a piece of music for a pupil to play. But the best answer to the plaintiff's case is, that the Legislature have by statute laid down the amount of protection which, as a matter of justice between parties, authors shall enjoy. [JERVIS, C.J.—It certainly is a strange mode of considering the Act, which the preamble

states is for "the better encouragement of literary works," to say it curtails instead of extending the privileges of copyright.] The Court has not to consider here whether there is copyright at common law, for here there is a statute which gives and defines copyright; and it has been decided that where there is a statute which shews what shall be a right, thenceforward parties are bound by its terms, and cannot stand on a common law right. [JERVIS, C.J.—I understood Mr. Phipson to say that where a statute provides a specific remedy for a particular grievance; the party injured must rely on the statutory relief, though a remedy also lies at common law. [TALFOURD, J.—He says that the statute gives copyright to parties for a certain term, and that their right under it is to multiply copies. There must be a remedy co-extensive with the injury.] It is not necessary to consider the question as to copyright at common law; it is with the statute we have to deal. It is admitted that if a right is conferred by the statute, the plaintiff has a remedy by such action as this. But the statute gives no copyright against such a proceeding as the defendant's in this case. By that admission, the case of *Beckford* v. *Hood* is rendered inapplicable. The 16th section should be read in conjunction with the 15th. At any rate, it is more favourable to the defendant, for it deals with multiplying books *for sale*, and not the mere multiplying of *copies*; it affords strong grounds for inferring that the prohibition intended by the Legislature was only directed against multiplying copies for the purpose of gain. [JERVIS, C.J.—No one can doubt what is the history of that section. It is copied from Lord Brougham's Patent Act, which repeated what had already acquired the force of law, by the construction of certain new rules, so that we have now two patent laws.] What the Legislature intended to forbid was simply infringement for the purposes of gain. Taking the 15th and 16th sections together, the Court must arrive at the conclusion, that the cases are therein specified in which alone the Legislature intended to grant a right of action. The copyright now existing is the creature of that statute. [JERVIS, C.J.—Do not take that as a matter of course, for some learned persons may doubt it.] There is admittedly high authority on both sides. One learned writer has leaned two ways, according as he happened to have Lord Camden or Lord Mansfield as a subject for biography. If they please, people have a right to prevent the emanations of their genius from being disseminated at all. The whole difficulty arises from the fact that men will publish their ideas. [WILLIAMS, J. referred to *Boosey* v. *Jeffreys*, 17 Law T. 110.] It is not clear that the opinions expressed in *Miller* v. *Taylor*, and *Boosey* v. *Jeffreys*, are applicable in the present case. Whatever may be the plaintiff's right at common law, it is hard to see how, by merely noting a tune on lines a person can acquire copyright at all. A man has as great a right to hear the musical notes of another man as to hear the notes of a nightingale, without paying for them. Has any man a right to prevent another from repeating his poems or his tunes? Noble thoughts and sentiments originate in savage countries, where there exists no method of fixing and perpetuating them by writing. Could persons in those countries be prevented from repeating, and in that way disseminating them? But whether there exists a copyright at common law or otherwise, is not material; the Legislature, by passing an Act, abolished any common law right, and made express provisions for all rights which it intended should be perpetuated. We must look to the Act, and there is nothing in it favourable to the plaintiff's claim in this action except what is weakly inferential. If such rights as the plaintiff asserts here, do exist, the Legislature has given no means of enforcing them, and the defendant is therefore entitled to judgment.

Phipson in reply. *Cur. adv. vult.*

JUDGMENT.

Friday, May 7.—The COURT now delivered judgment.—In this case the plaintiff, by the declaration, alleged that he was proprietor of the copyright in a book, being a musical composition, and that whilst such copyright was subsisting, the defendant, without his consent, wrongfully printed a lithograph, and published divers copies of the same work, contrary to the form of the statute, whereby the sale of the book was injured, and he, as proprietor of the copyright, sustained damage. The defendant pleaded not guilty. The parties, by consent, stated a case, in which the sufficiency of the declaration and the effect of the facts agreed on are presented for our decision. The effect of the statement is that the defendant, a member of the Philharmonic Society, desirous to perform the music in question at a concert, consisting of its members and persons admitted for money, caused portions of the plaintiff's work to be lithographed for the use of the members, to the number of 235, and who were, without the consent of the proprietor of the copyright, supplied with lithograph parts of the composition to a corresponding extent, with the defendant's sanction. The question arising on the declaration, which alleges the printing and publishing, without alleging that the printing and publishing was for sale or hire, and upon the facts, is, whether the publication of the copies of the work in which the plaintiff had a subsisting copyright, not being for sale or hire, gave a right of action? The case was argued before us on both sides, with an abstinence from a consideration of the question left undecided by the case of *Miller* v *Taylor*, whether at common law authors have a copyright in their works. The learned counsel on both sides agreed in considering the case as dependent upon the construction to be applied to the statute 5 & 6 Vict. c. 45, whereby the previous Acts relating to literary copyright are repealed, and the term they had defined is extended; and the view which we take of this case enables us to adopt the position taken by the parties, and to decide it on the construction of that statute. The interpretation clause of that Act, which precedes its other provisions, enacts that the word "copyright" should be construed to mean the sole and exclusive liberty of printing or otherwise multiplying copies of any subject, to which that word is therein applied The third section defines the duration of such copyright. Several subsequent sections treat such copyright as property, and sec. 25 enacts, "that it shall be deemed personal property transmissible by bequest, and, in case of intestacy be subject to the law of distribution." It was conceded in the argument, and admits of no doubt, that if the statute, thus vesting a peculiar property, had contained no provision for the redress of its infringement, the ordinary rule, by which the common law gives an action on the case for the violation of rights conferred by statute, would apply, and would render the multiplication of copies by lithograph, without the consent of the proprietor, the subject of such an action as that before us. But it was contended that the statute 5 & 6 Vict. 45, by giving, in sec. 15, a remedy by action in cases which do not involve the subject of complaint, operates as a limitation of the right before conferred, and this prevents the ordinary rule from attaching. It was not denied, that according to the doctrine in *Beckford* v. *Hood*, 7 T. R. 620, if the statute had, like the 8th Anne, c. 19, given penalties for infringement of copyright, even in the same clause which defined the right, the party aggrieved would not be thereby deprived of the remedy by action, which the common law would attach to his right. But it was argued, that as by the clause in question the remedy is given by action, such remedy must be taken to be co-extensive with the right. By the 15th clause it is enacted, "that if any person shall print or cause to be printed, either for sale or exportation, any book in which there shall be subsisting copyright, without the consent in writing of the proprietor thereof, or shall import for sale or hire any such books, so having been unlawfully printed in parts beyond the seas, or knowing such book to have been so unlawfully printed or imported, shall sell, publish, or expose for sale or hire, or cause to be sold, published, or exposed to sale or hire, or shall have in his possession for sale or hire any such book so unlawfully printed or imported, without such written consent as aforesaid, such offender shall be liable to a special action on the case, at the suit of the proprietor of such copyright." In answer to the argument that this clause purports to apply the remedy by action to all cases of infringement, it was argued for the plaintiff that its object might be especially to provide in cases of infringement by printing or publishing for sale or hire, that a written consent should be necessary for the justification of such acts by a stranger to the copyright; and the peculiarity of the expression, "special action on the case," and the description of the party against whom the remedy is given as "an offender," are referred to as indicating the intention, or, at least, the spirit of the Legislature. The language, however, of the clause is not new; it is adopted from the corresponding section of the 54 Geo. 3, c. 156, s. 34, which it follows, except that instead of repeating the words, "without the consent in writing," to each condition of infringement, it uses the words, "so unlawfully printed," &c. which were perhaps incorrectly adopted to avoid repetition. Whether the words so substituted have the effect of implying the necessity of written consent, or whether the last words, "without such written consent, as aforesaid," apply to all the antecedents, are questions only incidentally raised, as affording argument or illustration of the matter in discussion, and which we do not feel it necessary to decide. A more important consideration arises from the difference between the description of the exclusive copyright conferred on authors by the statutes 8 Anne, c. 19, and 54 Geo. 3, c. 156, and that defined by the 5 & 6 Vict. c. 45. By the statute of Anne, such right is expressed to be "the sole right and liberty of printing;" whereas by the interpretation clause of the 5 & 6 Vict. c. 45, it is expressly defined to mean the sole and exclusive liberty of printing, *or otherwise multiplying copies*, of any subject to which the word is therein applied, thus protecting literary works from unauthorized publication by other means than the press. Now, the 15th section applies this remedy by action only to cases where the subject matter is multiplied by printing; and therefore, if this clause is regarded as a restriction of the remedy it gives to the cases which it enumerates, to the exclusion of the common law consequences of remedy for wrong, it must be construed as destroying the effect of the words, "otherwise multiplying" which point in the most distinct manner to modes of infringement not before rendered illegal. We cannot think that such a restriction could be in the purpose of the Legislature, which would have been directly accomplished by omitting to introduce the words "otherwise multiplying," and therefore we conclude that it is impossible to gather from the 15th section that clear intention to limit a right expressly given, which is necessary to the argument for the defendant. It may also be observed that the following section 16, when requiring the defendant to give notice of his objection to the author's clause, "in any action for printing any such book for sale, hire, or exportation," implies that an action will lie for printing for hire, to which the special action on the case, given by the 15th clause, is not in terms applied, and thus fortifies the conjecture that the 15th section was not intended, by enumerating certain cases of infringement, to take away the common law remedy in all others. It is, however, enough for us to determine that we cannot collect from this or any other clauses of the Acts, an intention of the Legislature to restrict the right which in express terms it gave. It is admitted that the plaintiff preserves the right; the act of the defendant in multiplying copies of his work without his consent for extensive, though gratuitous circulation, is a violation of the right; the remedy by action on the case therefore attaches, on principles which are not disputed, and the plaintiff is consequently entitled to our judgment.

Judgment for the Plaintiff.

Saturday, May 29.

(Before JERVIS, C.J.)

ANONYMOUS.

A distringas to compel appearance will not be granted for an indirect purpose.

Honyman moved for a distringas to compel appearance on an affidavit shewing that attempts had been made to serve the defendant at 2, Shooter's-court, Throgmorton-street, that being defendant's office, not residence. [JERVIS, C.J.—It should be at defendant's residence, if possible.] Yes; one Butler, a clerk of defendant's, had called and paid 10*l.* on account, and this is sworn in the affidavit, but unfortunately it is not stated when this was done, and it might, therefore, have been beforehand. But an application had been made before Williams, J. at chambers to stay proceedings on payment of the balance after the payment of the 10*l.* by Butler. [JERVIS, C.J.—It appears, then, that the defendant knows all about it; is that a case for a distringas?] The defendant now offers to come in and pay two guineas only for costs, being the amount indorsed on the writ. We want the costs of the attempts to serve. A letter has been received from defendant's attorney saying he is ready to receive process.

JERVIS, C.J.—You are perverting defendant's offer made for the purpose of saving costs into completing your materials for a distringas. If you are entitled to the costs of the attempts to serve, you must get them in a direct way, after appearance. It would be a perversion of the statute for me to grant a distringas.

BUSINESS OF THE WEEK.

Thursday, May 27.

DALBY v. THE INDIA AND LONDON LIFE ASSURANCE COMPANY.—This was an action between two insurance companies. One Wright had insured the life of the late Duke of Cambridge in the Anchor Insurance Company for 1,000*l.* The Anchor Insurance Company then effected a cross policy on the same life with the defendants; subsequently Wright surrendered his policy to the Anchor Company for an annuity. Upon the death of the Duke of Cambridge the defendants refused to pay the claim made upon them by the Anchor Company, on the ground that when Wright had surrendered his policy, and purchased the annuity, they had no longer an interest in the life of the Duke. An action was brought, and a verdict was found for the plaintiff, leave being reserved to the defendants to move for a rule for a nonsuit, or to enter the verdict for the defendants. The case had been already once argued, and was set down to be re-argued this day. The question of law was, whether, to support a declaration on a life policy, it was necessary that there should be a continuing interest down to the time of the action brought, according to the decision in *Godsall* and *Boldero*. *Bramwell*, Q.C. was part heard in support of the verdict, when the Court intimated that inasmuch as they were asked to overrule *Godsall* and *Boldero*, the case had better be taken at once to the Ex. Ch. CRESSWELL, J. consenting to settle the bill of exceptions, if counsel should be unable to agree upon it.

Rule enlarged, with concurrence of both parties, for the purpose of a bill of exceptions being agreed upon.

GLENDINNING v. LUMLEY.—*Distringas to compel appearance.*

BARTHOLOMEW v. BROOKFIELD.— ——— moved for

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judgment as in case of a nonsuit. This being the day after the rule was due, the Court said it was too soon.

Friday, May 28.

EDWARDS v. CHAMPION.—This was a case sent down from the Court of Chancery for the opinion of this Court. *Lee*, Q.C. appeared for plaintiff, and *Wills* for defendant. It was prayed by *Lee* that inasmuch as the case did not state the facts sufficiently so as to raise the points intended to be settled by the judgment of the Court, the case might be allowed to stand over, in order that it might be taken back to the Court of Chancery and there amended. *Stands over.*

BODEN v. WRIGHT.—*Willes*.—This is a demurrer to a plea to a declaration on a bill of exchange, which states that except as to 10*l*. there was no value or consideration for the making of the bill. The denial of consideration contained in the plea is confined to this, that "before and at the time of accepting the said bill, there was no value or consideration, &c., it does not shew that there was no value received for the bill at a subsequent time. The plea is bad for this reason, both on special and general demurrer. It is consistent with this plea that defendant had received full value from the drawer. *Cowling*, in support of the plea,—It is not necessary by the general rules of pleading, to state negatives. You cannot under the new rules plead generally "no consideration," for those rules compel the defendant to plead all the facts, shewing that no consideration was given for the bill. Those facts must be pleaded affirmatively, and not negatively. By the 2nd and 3rd of the new rules, everything the defendant desires to plead must be pleaded affirmatively, such as infancy, coverture, and the like. The plea states that the bill was accepted on certain terms, and it is hard to see what more it could say, or what more can be required. (MAULE, J.—The true spirit of the new rule is that the defendant must shew how there was no consideration. JERVIS, C.J.—What the defendant should have done is to say that there never was any consideration for the defendant's acceptance. MAULE, J.—I never knew a plea of want of consideration which did not contain a general allegation that there was no consideration other than that therein named; here "no consideration" is, indeed, alleged, but it is not alleged sufficiently.) There is an illustrative case on the point, *Easton* v. *Pledall*, 1 Cr. M. & R. 198. The question here is, how far do the new rules require the defendant to be particular? (*Mills* v. *Oddy*, 2 Cr. M. & R. 103.) (MAULE, J.—The case is very clear. There must be judgment for the plaintiff. I pray to amend on the usual terms of payment of costs. JERVIS, C.J.—Let there be judgment for the plaintiff, with leave to amend in four days on payment of costs. Defendant to take short notice of trial.

Judgment for plaintiff.

FRIAR v. ROE.—This was an action on a promissory note, and the declaration contained a count on an account stated. The defendant pleaded several special pleas to the count on the note, and to the account stated he pleaded the Statute of Limitations. The case came before the Court on a special verdict. *Wise* for the plaintiff. The note had been given in 1840, but did not become due till 1845, and for the plaintiff it was contended that the note was evidence of an account stated in 1840, though right of action did not arise till 1845; and that this barred the operation of the Statute of Limitations, which defendant had pleaded (*Willersh* v. *The Countess Dowager of Carlisle*, 1 H. Bl. 631; *Wheatley* v. *Williams*, 1 M. & W. 533; *Williams* v. *Moore*, 11 M. & W. 265.) Parties may agree at any time on an amount due, but not then payable, it is debitum in presenti solvitur in futuro. (*Irving* v. *Beach*, 3 M. & W. 90; *Clayton* v. *Gosling*, 5 B. & Cr. 360, (*Cundy* v. *Peril*, 7 M. & W. 191, *Watkins* v. *Wake*, 7 M. & W. 188, *Rhodes* v. *Gent*, 5 B. & Ald. 245, Chitty on Bills, 582, *Story* v. *Atkins*, 2 Strange, 719.) *J. Brown* for the defendant. The only case bearing in favour of plaintiff is that of *Rhodes* v. *Gent*, which contains the dictum of a single judge, which is favourable to plaintiff. The learned counsel proceeded to distinguish the cases cited, and to offer other authorities, but the point was not decided. *Brown* having urged that the special verdict as drawn did not state the facts sufficiently to raise the point for the opinion of the Court, he stood on his strict rights, and called on the Court to award

JERVIS, C.J.—In this case there must be a venire de novo; it was the duty of the jury to find on the facts necessary to raise the point, there being no finding on the facts in either of the two issues left for our consideration, the case must be commenced over again. *Venire de novo.*

ANONYMOUS.—*J. Brown* moved for a distringas to compel an appearance. *Granted.*

BELL, P.O. v. RAWLINGS.—*Keane* moved for a distringas to compel an appearance. *Granted.*

Saturday, May 29.

(Before JERVIS, C.J., MAULE and CRESSWELL, JJ. being in the Court of Criminal Appeal, and TALFOURD, J. being engaged at Nisi Prius.)

COUSENS v. GRAHAM.—— moved for a rule to shew cause why a nonsuit should not be set aside. The action was brought by an attorney against another attorney for agency charges. The plaintiff had sent in his bills unsigned to the defendant in a signed letter. The under-sheriff nonsuited him. The rule was asked on the ground that the plaintiff had refused to be nonsuited, and that the sending a bill unsigned in a signed letter was a compliance with the statute. JERVIS, C.J. referred counsel to a case reported 7 C.B. 742, and granted a *Rule nisi.*

FREEMAN v. TRAINAR.—*Phinn* moved for a rule to show cause why judgment should not be entered up as of Michaelmas Term last. The plaintiff had died after an award upon a reference had been given in his favour. The application was on the part of the executrix. *Rule nisi.*

FULHAM v. LUCAS.—*R. A. Fisher* moved for a distringas to compel appearance. *Granted.*

Monday, May 31.

Re STEVENSON, One, &c.—*Prentice* moved the Court on behalf of one Dr. Stevenson for a rule calling upon Stevenson, an attorney of this court, to shew cause why he should not deliver his bill of costs, and give credit therein for various sums paid him on account of the applicant. *Rule nisi.*

Re COBBETT.—Mrs. Cobbett again moved the Court for a writ of habeas corpus to bring her husband, with view to his discharge. The ground stated was, that prisoner was detained after the writ of rebellion against the prisoner had expired, and that the keeper of the Queen's Prison had made false returns to the Queen's writ. *Writ refused.*

GREGORY v. THE DUKE OF BRUNSWICK.—On this case being called *Atherton*, Q.C. asked the Court to let it stand for Wednesday. *Stands for Wednesday.*

BROWN v. COOPER.—*Barnard* shewed cause against a rule obtained by *Reed* for judgment as in case of nonsuit. As it was entirely a question of the amount an attorney is entitled to, plaintiff wished not to go to trial, but refer the matter to the Master to find what sum is due.—JERVIS, C.J.—Why was that not proposed before? You must give peremptory undertaking to try at the sittings after term in London.

Rule discharged on peremptory undertaking.

Ex parte MARY ANN SCOTT.—*Byles*, Serjt. applied to the Court on the part of Mary Ann Scott, that she may be allowed to transfer property, which came to her in her own right and for her separate use, without the concurrence of her husband. The application is under the Fines and Recoveries Act. It appears by the affidavit that the parties were married in 1828, that in 1830 the husband went to Canada, leaving his wife in England. He was accompanied by one James Rushworth. The husband, on his arrival in America, wrote to his wife, stating that he was going into the interior of the country, and since that time she has never heard from him. Three years afterwards the wife wrote to Rushworth, who in reply informed her that since her husband had gone up the country he had never heard of him. But since then a man named Bull informed the wife that he knew her husband, that he was living in Canada, had married again, and had said he would never return to England. JERVIS, C.J.—That will do, brother. *Leave granted.*

JOHNSON v. LANSLEY.—This was an action on bill of exchange. *Channell* shewed cause against rule obtained by *Phinn* to enter the verdict for the defendant, on the ground that the bill was given for money won by gambling on horse-racing. Rule discharged.

To be reported.

Re EDWARDS (Assignees of Parker, a bankrupt) v. THE GREAT WESTERN RAILWAY COMPANY.—*J. Brown* moved for a rule to shew cause why the Master should not be directed to review his taxation in this matter, he having only allowed a sum of 100*l*. out of 1,000*l*. claimed for costs of notice of trial. The rule was refused.

To be reported.

DIBBEN v. SNELL.—*Wharton* moved for a distringas to compel an appearance. *Granted.*

Tuesday, June 1.

DOE d. ROBERTON v. GARDINER.—This was a special case, in which the Court were to draw any inferences that a jury might. It appeared that in 1805 William Roberton, and Mary his wife, demised some premises in Manchester to one J. Heath, through whom the defendant claims "to hold from the 25th December last for ever," at a rent of 120*l*. per annum. At that time they were seised in fee of one moiety of the premises in question, and for their joint lives and the life of the survivor of them in the other, with remainder to the lessor of the plaintiff and his sister, now dead. W. Roberton died in 1812, Mary Roberton in 1843. Rent under the deed had ever since been paid. In 1850 notice to quit was given to the defendant, and an action of ejectment brought to recover one moiety, on the ground that the deed was a mere lease in the ordinary form, with the exception of its attempting to demise the premises for ever; and that rent having been paid ever since, it had been since Mary's death a tenancy from year to year, and that profits of the land had been received, so as to prevent the Statute of Limitations running according to secs. 3 and 35 of stat. 3 & 4 Wm. 4, c. 27. On the other side it was contended, that the effect of the deed was to convey the fee of the land, on the one hand, and to create a perpetual rent-charge, on the other; and that the annual payment had been since made, not as profits of the land, but as a rent-charge, and that therefore the statute was a bar to the action; and the Court were asked, on the part of the defendant, to presume an order to support the deed as a feofment, a livery of seisin; or that the premises were in the occupation of tenants, so as to support the deed as a grant.

Cowling for the lessor of the plaintiff, and *Tomlinson* for the defendant. *Cur. adv. vult.*

HOBBY v. BUDD.—*Keane* moved for a rule to shew cause why a peremptory undertaking to try should not be enlarged until an inspection of documents should be had. *Rule nisi.*

WORMS v. RIDER.—On motion of *Windsor*, rule nisi for rule to serve notice to compute by sticking of notice in the office of the court.

Wednesday, June 2.

SOLOMON v. HOWARD.—*Henderson* moved for a rule calling on the plaintiff to shew cause why the trial of this cause should not be postponed till the return of defendant from China. JERVIS, C.J.—There will be no rule in this case. It any hardship will result to the plaintiff he must bear it, he brought it on himself by leaving the country, he had to choose between two positions, he thought it more to his interest to go abroad than remain and defend the case, he must, therefore, withdraw his plea or take the consequence. *Rule refused.*

STYLES v. BUSWELL.—*Field* moved for a rule calling the judge of the County Court of Leicestershire, held at Lutterworth, and one Styles, to shew cause why a writ of prohibition should not issue in this case, on the ground that the judge had taken upon himself to adjudicate on a question where title to an incorporeal hereditament was in dispute, and consequently one in which he had no jurisdiction. *Rule nisi.*

GREGORY v. THE DUKE OF BRUNSWICK.—This was a rule calling upon the plaintiff to shew cause why the record in this case should not be amended by inserting the judgment of the Court of Exchequer Chamber; and why the defendant should not pay the costs incurred subsequently to that judgment. It appeared that the case having been carried to the Court of Exchequer Chamber, that Court, in the absence of the parties, gave judgment "for the plaintiff on the demurrer, with the costs of the demurrer, and for the defendant on the issues;" but one of the counsel for the defendant, by mistake, endorsed his brief, "Judgment for the defendant, with all the costs;" and it was so entered on the record; upon which the plaintiff's attorney, without making further inquiry, carried the case to the House of Lords, where the matter was again argued, and the real judgment given below affirmed. When the rule was moved for some days ago, the Court referred it to the Master to inquire and report when the attorneys for the respective parties first knew of the mistake, and the Master now reported that the plaintiff's attorney did not know of it until after the writ of error had been sued out in the House of Lords, and but a few days before it was argued there, and that the defendant's attorney knew of it before the plaintiff's attorney, but only a few days previous. *Mansty* contended that upon this report the defendant ought to pay all the costs that had been unnecessarily incurred since the judgment in the Exchequer Chamber. *Atherton*, Q.C. having been heard *contra*, JERVIS, C.J.—This rule must be absolute, and the defendant must pay all the costs, including the costs of this application. *Rule absolute.*

CLEMENT v. GWYNNE.—*Hunt* shewed cause against rule for judgment as in case of nonsuit obtained by *Cross*. It was arranged that the rule should be discharged in a peremptory undertaking, to try at the first sittings before the Secondary of London. *Rule discharged.*

Thursday, June 3.

EDWARDS and OTHERS v. THE GREAT WESTERN RAILWAY COMPANY.—*Channell*, Serjt. moved for a rule to shew cause why the Master should not review his taxation. 300*l*. had been allowed for costs of notice of trial; first, no notice of trial was necessary; secondly, 300*l*. is exorbitant. *Rule nisi.*

JERVIS v. ——.—*Shee*, Serjt. applied to the Court to postpone this case, the demurrer book being imperfect. *Stands over until Tuesday.*

STEADMAN v. CHAPPELL.

Rule nisi to discharge plaintiff's rule for a new trial.

CANNON v. PENNINGTON.—*Speak* moved for a rule to shew cause why the Master should not tax the costs of issues in fact found in favour of the plaintiff at Carlisle, and of a demurrer also found in his favour. It was an action of formedon, and costs were claimed under 4 & 5 Ann, c. 16, ss. 4 and 5, and under 3 & 4 Wm. 4, c. 42, s. 34. (*Dulwich* v. *Page*, 2 T. R. 391, *Calendar* v. *Howard*, 20 L. J. 66, C.P., and *Partridge* v. *Gardiner*, in the Ex. Ch. were referred to. *Rule nisi.*

Re SUSANNAH FLETCHER.—*Crouch* applied for leave to S. Fletcher to convey property without the concurrence of her husband, who had gone abroad in 1840, and had not been since heard of. *Granted.*

ANDERSON v. HEYWOOD.—*Boril* moved for a rule to shew cause why the defendant should not be paid the costs of a mandamus. An order had been made for a commission to examine witnesses in India, which being objected to, application was made to the Court for a mandamus, which was granted. The facts were proved in our favour, and they were necessary to be proved, the plaintiffs refusing to admit them. [JERVIS, C.J.—*Bridges* v. *Fisher*, 1 Bing. N.C. is against you.] That case is distinguishable, and does not lay down a general rule. *Rule nisi.*

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY, and C. J. B. HERTSLET, Esqrs. Barristers-at-Law.

Tuesday, May 4.

MEGGESON v. LADY GLAMIS.

SELLS v. BOWES.

Landlord and tenant—Tithe.

The landlady of an estate being lessee of the tithes thereof, agreed by her agent to demise that estate subsequent to the 6 & 7 Wm. 4, c. 71 (the Tithe Commutation Act), to a tenant at a certain rent, tithe free. There was no deed executed; and the rent being in arrear a distress was levied for the whole, including the sum which would have been payable in respect of the tithe-rent charge: Held, she was entitled to do so, under the terms of the agreement, notwithstanding there was no letting of the tithes to the tenant by deed, as the 6 & 7 Wm. 4, c. 71, s. 80, provides that any tenant who shall hold his lands under an agreement that the same shall be holden by him free of tithes, and who shall pay any such rent-charge shall be allowed the same in account with his landlord.

This was an action of replevin, tried before Parke, B. at Chelmsford. A distress had been levied for rent.

Pleas, non tenuit and riens in arrear.

It appeared that in 1846 there was a negociation for letting Woodhall Farm, the property of Lady Glamis, to the plaintiff, at a corn rent of 400*l*. per annum, tithe-free, under a formal lease; but objections having been made by him to the proposed draft, no lease was executed, and the defendant was let into possession, and so remained under a parol letting at 400*l*. a-year, tithe-free. After paying his rent for some little time, during which no demand of tithe was ever made on account of Lady Glamis, who was lessee of the tithes of the parish under the Dean and Chapter of St. Paul's for three lives, renewable for ever, the plaintiff fell into arrear to the extent of 1,045*l*. and a distress was put in for that amount of rent in arrear on the farm in question, when the goods were replevied, and this action brought. Under these circumstances, Parke, B. was of opinion that there had been not only a demise of land, but of the tithe also, and that as the latter could not be demised except by deed, there could not be any power in the landlord to distrain for it, and he accordingly directed a verdict for the plaintiff

for 4*l.* 4*s.* reserving leave to the defendant to move to enter a verdict for him for the rent, and also for the value of the goods, and a rule having been obtained to that effect,

Chambers, Q.C. *Willes*, and *Lush*, shewed cause. The question is, whether or not there was a demise of the tithe as well as the land, if so there was no deed, and the letting of tithes could not be otherwise than by deed, and a deed was requisite; there is no difference in this respect, since the Tithe Commutation Act, it was necessary before, so it is now. Suppose these parties had insisted upon having their rights according to the terms of their agreement, properly and legally carried out, and applied to the Court of Chancery to compel it, that Court would have directed an actual demise by deed to be executed to carry out the agreement; or suppose Lady Glamis had sold the tithes, it would have been necessary for the tenant to have had a deed demising the tithes to have properly protected himself. (*Gardiner* v. *Williamson*, 2 B. & Adol. 336.)

James, Q.C. and *Rodwell*, in support of the rule. —The Tithe Commutation Act, 6 & 7 Wm. 4, c. 71, s. 80, makes a great difference; the landlord is bound now to pay the tithe-rent charge, unless there be an express agreement to the contrary. See Woodfall's Landlord and Tenant (6th edit.), 566, 567; the words "tithe-free," in the agreement, might be rejected as surplusage. The plaintiff gets nothing by the insertion of these words in his agreement, more than the law gave him without them.

Cur. adv. vult.

JUDGMENT.

Saturday, May 8.—PARKE, B. delivered judgment. This was a case tried before me at Hertford. It appeared upon the trial that there had been an agreement between Lady Glamis's agent and M Meggeson, to demise the lands tithe free on certain terms: 100*l.* for the first year, and for the second and subsequent years of the term, which was to be twenty-one years, varying according to the average price of corn. There were other stipulations in this agreement for a lease, not finally assented to by Mr. Meggeson, so that the lease was never prepared. Mr. Meggeson entered and occupied, and there was sufficient evidence of his agreeing to pay a rent of 400*l.* a year, and the agent swore that all these lands were meant to be demised tithe-free. Lady Glamis being the lessee of the Dean and Chapter of Westminster, having a lease for lives of the tithes, and the land also in this case belonging to her, it was sworn by the agent that the understanding was with Mr. Meggeson that he was to pay 400*l.* a year, the lands being tithe-free. At the trial I reserved the question, but it struck me at that time, considering only the situation of the tithes before the passing of the late Act, that if there was a demise by the owner of the tithes for the time being of lands tithe-free (they being separate inheritances), it really meant an agreement on his part to demise both the tithes and the lands at the joint rent of 400*l.* a year - there being no demise in this case by deed, the tithe did not pass, and consequently it could not be said the lands were holden at any certain rent. Whether that would have been the consequence if the Tithe Commutation Act had not passed, is a matter, I believe, on which the Court is not agreed, and upon which it is unnecessary to say anything. But the effect of the Tithe Commutation Act appears to relieve all difficulty in this case. The Tithe Commutation Act passed before this agreement with Mr. Meggeson, and I should say there was ample evidence of his agreeing to hold at the rent of 400*l.* a year, not upon the terms of a rent varying according to the price of corn. A distress was made, and the goods of the plaintiff, Mr. Sells, were in one case distrained, and he contested the legality of the distress; and in another case there was a replevin by Mr. Meggeson, to which there was an avowry on the part of Lady Glamis at a holding of 400*l.* a year. The only question is, whether this demise being subsequent to the Tithe Commutation Act, calculated at 400*l.* a year, the intention being that the tenant should not pay a tithe-rent, the tithe having ceased to exist in point of law, whether that was a misdescription, or whether the defendant did hold the lands at 400*l.* a year. Mr. Rodwell has referred us to the 80th section of the Tithe Commutation Act, which appears to us to solve any difficulty in the case. The parties must be presumed after that to have contracted, as the 80th section says they are to be presumed to contract; and, that 80th section provides, if there be any agreement for a lease of lands made subsequent to such commutation, any tenant who shall pay any such rent-charge shall be allowed the same in account with the landlord; and it provides sufficiently for this case, for as Lady Glamis was the owner of the tithes, and it was meant that the tenant should pay 400*l.* a year for the land, and not pay tithes, if she afterwards chose to distrain for this tithe-rent, she would be compelled to allow that in the account, and the tenant would occupy the land at 340*l.* a year, the rent-charge being 60*l.* It appears to us that the parties are to be taken to have contracted with regard to the 80th section; that the contract was a contract for 400*l.* a year; and if Lady Glamis chose afterwards, with the understanding that she should not enforce it (whether any action would lie against her for enforcing it or not is not a matter in quesion)—but if she did choose to enforce it, then Mr. Meggeson would have had his relief against her; and therefore we think that in this case there was sufficient evidence, notwithstanding that Lady Glamis was the owner of the rent-charge substituted for the tithes, that, as between him and Lady Glamis, he was to occupy at 400*l.* a year. Consequently the verdict ought to be entered, pursuant to leave reserved by me, for the defendant in both the cases. The rule will therefore be made absolute.

Rule absolute.

Saturday, May 29.

THE PRUDENTIAL ASSOCIATION *v.* CURZON.

Bond Stamp.

This was an action upon a bond for 300*l.* and had a 3*l.* stamp impressed on it. A policy of insurance had been effected to secure the same amount, the annual premium payable thereon being 23*l.* which if the obligor did not regularly pay, the obligees had power to do so. The cause was tried before Parke, B. in Middlesex on the 25th May instant, when it was objected for the defendant, that the stamp was insufficient, as the bond required a stamp as for an unlimited sum, or it wanted two stamps, one in respect of the principal money thereby secured, and the other for the premiums payable upon the policy. The plaintiffs were nonsuited, with liberty to move to set aside that nonsuit, and enter a verdict for the amount sought to be recovered.

Jos. Brown now moved accordingly, and contended the 3*l.* stamp was sufficient; he referred to the condition of the bond by which the amount to be recovered was limited. (The Stamp Act, title "Bond," 9th division, and the 5th division of the directions; *Dearden* v. *Binns*, 1 Man. & Ry. 130; *Annandale* v. *Pattison*, 9 B. & C. 919.) *Rule nisi.*

THOYTS, Assignee, &c. *v.* HOBBS.

Insolvent Debtors' Amendment Act (7 & 8 *Vict. c.* 96) *Construction - Voluntary preference fraudulent against assignee.*

A person in insolvent circumstances assigned the whole of his goods except about 10*l. worth, by bill of sale to the defendant, one of his creditors, for a debt then due, and the goods were conveyed away by night, &c. More than three months afterwards he filed his petition in the Insolvent Court, and the plaintiff was appointed his assignee, who brought this action to recover from the defendant the value of such goods:*

Held, that the plaintiff was not entitled to recover, as the bill of sale was made prior to three months before the filing of the petition, and there was no evidence to shew that the insolvent had at the time he gave the bill of sale, any view or intention of then petitioning the Court for protection from process.

This was an action for money had and received, tried before Mr. Justice Wightman at Reading, when the plaintiff obtained a verdict for 100*l.* The plaintiff was assignee of one Goddard, an insolvent, and the defendant was a person to whom Goddard had conveyed his goods more than three months previous to his insolvency. It appeared that about the 30th April, 1850, Goddard was indebted to his landlord in a considerable sum for rent, and to other creditors also for various debts; he was, in fact, in insolvent circumstances, and on going to the defendant, to whom he was then also indebted, and stating his situation, a bill of sale in the most general form was immediately prepared of all his goods, so as to leave not 10*l.* worth of property upon his farm, excepting the growing crops; the whole of his goods was at once conveyed away and by night to the defendant. In June 1851 Goddard was summoned to the County Court for nonpayment of a sum of money previously ordered to be paid, and committed for nonpayment. He then on the 30th June, 1851, signed his petition, and filed it on the 15th July. on the 13th August he came up for hearing; and the question was, whether the conveyance of the goods by the bill of sale to Hobbs was or was not a voluntary preference, fraudulent, and void, as against his assignee the present plaintiff, under the Insolvent Debtors Amendment Act. (7 & 8 Vict. c. 96, s. 19.) The jury having found it was, a rule nisi had been obtained to set aside the verdict, on the ground that there was no evidence to go to the jury, and also for misdirection.

Alexander, Q.C. (*Griffits* with him), showed cause.—By the 7 & 8 Vict. c. 96, s. 19, it is enacted, "That if the petitioner shall, before or after the filing of his petition, in contemplation of his becoming insolvent, or being in insolvent circumstances, voluntarily convey, assign, transfer, charge, deliver, or make over, any estate security, real or personal, for money, bond, bill, note, money, goods, or effects whatsoever, to any creditor or creditors, or to any person or persons, in trust for, or to or for the use, benefit, or advantage of any creditor or creditors, or to any person who is or may be liable as surety for such petitioner, every such conveyance, assignment, transfer, charge, delivery, and making over, shall be deemed fraudulent and void, as against any assignee or assignees of the estate and effects of such petitioner, appointed under the provisions of the said recited Act, and of this Act, or of either of them; provided always, that no such conveyance, assignment, transfer, charge, delivery, or making over, shall be so deemed fraudulent and void if made at any time prior to three months before the filing of the petition; and not with the view or intention by the party so conveying, assigning, transferring, charging, delivering, or making over, of petitioning the Court for protection from process." It is admitted this does not come within the first part of the proviso of that section, because the bill of sale was prior to three months before the filing of the petition; but it was certainly with the intention by Goddard of petitioning the Court for protection from process—the evidence shewing that he was then insolvent, and there being no other course by which he could get relief. The question, at all events, was one for the jury; the same as it was held to be so in respect of a contemplated bankruptcy (*Aldred* v. *Constable*, 4 Q.B. 674); and there was evidence here from the circumstances stated to go to the Jury. [MARTIN, B. mentioned *Morgan* v. *Brundrett*, 5 B. & Adol. 289.] As to the misdirection, the learned judge at the trial had this section of the Act of Parliament before him when summing up, and the questions he left to the jury were reduced to writing, and were these—1st. Was the bill of sale voluntary? The jury answered, Yes. 2nd. Was the bill of sale by Goddard with the view or intention of petitioning the Insolvent Court for protection from process at any time when he might apprehend proceedings would be, or were, taken against him? The jury answered, Yes. There was no misdirection of the jury therefore at the trial, and the verdict ought to stand. *Gibson* v. *Boult*, 3 Scott, 229, was also cited.

Keating, Q.C. (*Pigott* with him), contrà, not called upon.

POLLOCK, C.B.—I am of opinion that this rule ought to be made absolute, as the question in reference to the meaning of the proviso of the 19th section of the 7 & 8 Vict. c. 96, was not correctly left to the jury: that proviso is, that no such conveyance, assignment, transfer, charge, delivery, or making over, shall be so deemed fraudulent and void, if made at any time prior to three months before the filing of the petition; and not with the view or intention by the party so conveying, assigning, transferring, charging, delivering, or making over, of petitioning the Court for protection from process. The conveyance or assignment in this case was more than three months before the filing of the petition, and there was no evidence given to shew that the bill of sale was made with the view or intention by Goddard of petitioning the Court for protection from process. In order to render it void in reference to that proviso, he must have had at the time a then present intention of petitioning the Court, or distinctly expecting to do so by some distinct pressure, and not with a view from any expectant pressure; a person may be poor, and have numerous creditors, and yet have no intention to petition the Court for protection from process. The true point seems to me not to have been correctly put to the jury, and I think the rule should be absolute.

PLATT, B.—I am of the same opinion. The question turns upon the construction of the 19th section of the Act of Parliament referred to the Insolvent Debtors Amendment Act [the learned Judge read the proviso at the end of that section]. It is said that Goddard, at the time he made the assignment of his goods to the defendant, must necessarily have contemplated petitioning the Court for protection from process, he being then in insolvent circumstances, and it is to be left to the jury in the same way it heretofore has been with respect to supposed similar questions as to intended bankruptcies; but then a person could not have been made bankrupt, as he can now, by his mere voluntary acts on his own petition. Here the act is to be his own, and right and liability appear to me in the argument to be confounded. I see no ground for supposing the learned judge's direction to be correct, or that there was any evidence to prove that Goddard had at the time the bill of sale was given any view or intention whatever of petitioning the Court for protection; that evidence was indispensable to the plaintiff's case, and to hold otherwise would be abandoning the object of the Act of Parliament. All the notes furnished in reference to the learned judge's summing up appear to agree, and that direction seems to me to be incorrect.

MARTIN, B.—I am also of the same opinion. The question is, whether Goddard's bill of sale is good; and I own that as against the plaintiff I think it is. The way in which the goods were removed seems to me to have been for the purpose of preventing the landlord's taking them for rent, and not with any view or intention at all of petitioning the Court for

protection. A debtor has a right, if he pleases, to transfer his property to any particular creditor, unless he does it contrary to the terms of some Act of Parliament. This Act (the 7 & 8 Vict. c. 96) is not the Insolvent Act, but is for a particular purpose; it begins by reciting, that it is expedient to amend the 5 & 6 Vict. c. 116, the Insolvent Debtors Act; and by the 19th section provision is made as to any voluntary conveyance or preference being deemed fraudulent and void as against assignees under certain circumstances, such as an assignment within three months o the filing of the petition, or if at the time of the conveyance there was then any intention of petitioning the Court. It is for those seeking to set aside such conveyance to shew that intention, and prove it affirmatively; and it seems to me in this case that there was not a particle of evidence to go to the jury to shew that he contemplated then petitioning the Court for protection from process. I think too all these Acts should be construed strictly, and this rule therefore ought to be made absolute. *Rule absolute.*

JOLLY *v.* HANCOCK and ANOTHER.

Vendor and Purchaser.

Fines and Recoveries Act, 3 & 4 Wm. 4, c. 74—Acknowledgment of deed by a married woman—Certificate with affidavit to be filed.

An objection was taken to a title by a purchaser, that the certificate and affidavit of the due acknowledgment of deed to pass the interest of a married woman, had not been duly filed of record with the proper officer according to the provisions of the 3 & 4 Wm. 4, c. 74. He brought an action to recover back his deposit because the title was defective in that respect:

Held, that he was entitled to do so, and that the title was defective without the due filing of those documents.

This was an action tried at Stafford before Wightman, J. The plaintiff obtained the verdict, with leave to enter the same for the defendants or to reduce the damages. The action was brought by the purchaser against the vendor to recover back the deposit paid on entering into the agreement for the purchase, on the ground that a title had not been made out. A rule nisi having beer obtained by the defendants,

Keating, Q.C. and *Whitmore* shewed cause.

The only point in this case is, whether the acknowledgment of a deed by a married woman, made perfect in every respect, excepting the subsequent enrolment of it in the Court of C. P. is sufficient, and whether without such enrolment a purchaser is bound to accept a title under it. The plaintiff submits he is not. The question entirely depends upon the construction to be put upon the 3 & 4 Wm. 4, c. 74, the Fines and Recoveries Act. Secs. 77, 81, 86, 87, and 88, are the most important in reference to it; the 77th provides that a married woman, with her husband's concurrence, may dispose of lands, &c. as a feme sole, in manner there described; the 81th states that when a married woman shall acknowledge a deed, the person taking the acknowledgment is to sign a memorandum and a certificate of the taking of such acknowledgment to the effect there mentioned; the 85th requires that certificate, with an affidavit verifying it, to be lodged with an Officer of the Court of C. P. who is to cause the same to be filed of record in that Court; and the 86th, that when the certificate of the acknowledgment of a deed by a married woman shall be so filed of record as aforesaid, the deed so acknowledged shall, so far as regards the disposition, release, surrender, or extinguishment, thereby made by any married woman, whose acknowledgment shall be so certified concerning any lands or money comprised in such deed, take effect from the time of its being acknowledged, and the subsequent filing of such certificate as aforesaid shall have relation to such acknowledgment. The Report of the Real Property Commissioners was referred to, also Hayes on Conveyancing, 672.

Alexander, Q. C. and *Pigott* contrà, contended that the interest of the married woman being conveyed and disposed of according to the Act, the title was good, as her interest had passed, notwithstanding the documents required had not been filed of record. It was also contended that notwithstanding this acknowledgment might not have been perfected, yet still the title was good even without that. [This latter point was objected to by the plaintiff's counsel, the only question being, as they contended, upon the effect of the nonfiling the certificate, &c. and such point only appearing upon the notes furnished by Wightman J. the Court, so decided.]

POLLOCK, C. B.—I am of opinion that this rule should be discharged; the several sections of the 3 & 4 Wm 4, c. 74, make it essential that this document should be not only acknowledged, but the proper certificate and affidavit should be duly filed of record in the Court of C. P.; and, on filing the same, the deed by relation is to take effect from the time of its acknowledgment; the officer with whom they are lodged is to make an index of the same, and to deliver out copies of such certificates so filed, which is to be received as evidence of the acknowledgment of the deed to which such certificate shall refer. It is impossible, as it seems to me, after reading the whole of these clauses to arrive at any different conclusion; that appears to be the clear intention expressed by the Act, and the object of the Legislature. This is the first case that has been, I believe, decided upon the subject, and the Court thought that, under the circumstances, it would be right to grant a rule nisi, that the matter might be discussed and then determined. We are all now of opinion that to make the title perfect these documents should be filed of record, according to the provisions of the Act of Parliament; this rule, therefore, must be discharged.

PLATT and MARTIN, BB. delivered similar judgments. *Rule discharged.*

Monday, May 31.

Re an Appeal between THE GOVERNORS OF THE BEDFORD GENERAL INFIRMARY, Appellants; and THE COMMISSIONERS OF THE BEDFORD IMPROVEMENT, Respondents. (*a*)

Rate—Public building—Frontage on footpath and highway.

The 43 Geo. 3, c. 128, s. 59, imposes a rate of a shilling on all halls, gaols, chapels, meeting-houses, schools, alms-houses, and other public buildings, for every yard running measure of the length in front.

Held, that a general infirmary was a public building liable to be rated under the above section, and that it was liable to be rated for the frontage abutting on a footway as well as for that abutting on the highway.

This was a special case from the quarter sessions, stated for the opinion of the Court under the provisions of a recent Act (12 & 13 Vict. c. 45). It was an appeal against an assessment for the improvement of the town of Bedford. The questions raised were, whether the Bedford Infirmary was a "public building" within the meaning of the Bedford Improvement Act, and therefore rateable; and also whether, if rateable, the commissioners had adopted the correct mode of rating.

Worlledge, on behalf of the commissioners, contended that the building in question did fall within the Act, which rendered liable all halls, chapels, schools, meeting-houses, almshouses, and all other public buildings, and embraced existing and all future erections. As to the mode of rating, he contended that the principle on which the rate was to be assessed was settled last Term (*The Justices of Bedford*, Appellants, *v. The Commissioners of Bedford Improvement*, Respondents, 19 Law T. Rep. 112), and that the building in question was rateable under the Act for the whole length of its frontage, whether it extended along a footpath or way, or along a turnpike or carriage road.

Pearse, for the trustees of the infirmary, submitted that the Act should be limited to buildings ejusdem generis, and that this building did not come within that rule. As to the mode of rating, he denied the liability to be rated for the frontage along the footpath, and confined the liability to the frontage extending along the turnpike road to the width of the entrance gates, the building in question standing within a large enclosed area. He cited *Casher* v. *Holmes*, 2 B. & Adol. 592; *Blanford* v. *Morrison*, 15 Q. B. 724.

POLLOCK, C. B.—We are all agreed that this infirmary is a public building within the Act, and I am of opinion that the rate must be assessed for so much of this property as abuts on the Ampthill-road, and so much as leads up to the pasture grounds. [A plan, which was to be taken as a part of the case, was marked by the respective counsel.] If this is not a public building, what is it? It is an infirmary supported by annual subscriptions and donations, and I think clearly comes within that denomination. Well, then, the question is, how is it to be rated? The Act makes no distinction between a public highway and a footpath, and I therefore think that the portion of this property subject to the rate is to the extent I have before stated, and I think when you are to apply the expression in the Act to a church-yard, which, although having no entrance to the highway, would still be liable, the whole of the area of these premises abutting on the Ampthill-road, and so far as the pasture is liable to be rated, whether occupied by the actual building or used as a yard or garden.

(*a*) These commissioners receive their powers under the Act 43 Geo. 3, c. 128 (local and per.), the 59th section of which provides "That the sum of 1s. and no more, shall yearly be rated and assessed upon all halls, gaols, chapels, meeting-houses, schools, alms-houses (except the alms-houses founded by Christie Skinner, deceased), and other public buildings, churchyards, chapel-yards, and meeting-house yards within the said town, for every yard running measure of the length in front of such halls, gaols, chapels, meeting-houses, schools, alms-houses, and other public buildings, churchyards, chapel-yards, and meeting-house-yards," &c.

ALDERSON, B.—I am of the same opinion. I think a public building means a building not used for private purposes, and this I think is clearly a public building. We decided last term that for the purpose of being rated the four sides of a building abutting severally on four different streets are fronts of that building, and applying that principal to this case I think there is no difficulty in determining that the appellants are liable to this rate.

PLATT and MARTIN, BB. concurred.

Judgment for the respondents accordingly, but, as they had rated the hospital for a part of its front along private property, as well as the turnpike and footpath, in respect of which there was certainly no liability, the judgment to be without costs.

Re an Appeal between THE GUARDIANS OF THE POOR OF THE BEDFORD UNION, Appellants; and THE COMMISSIONERS OF THE BEDFORD IMPROVEMENT, Respondents.

The 13 Geo. 3, c. 98, exempted the Bedford House of Industry from all parochial and Parliamentary taxes, other than those at the time of the passing of that Act imposed: the 43 Geo. 3, c. 128, subjected all public buildings to a rate for the improvement of the town:

Held, that the latter enactment had the effect of repealing the former so far as related to the rate in question.

This case also came before the Court on a special case, and, in addition to the two points mentioned in the first case, it involved a third question, viz. whether, as by the 19th section of the "Bedford House of Industry Act," 43 Geo. 3, c. 98, the building in question was declared to be exempt from all parochial and Parliamentary taxes other than those at that date imposed on it, it could be made liable to be rated under the Improvement Act, which passed subsequently.

Worlledge, for the respondents, contended that the latter Act must prevail.

Pearse, for the appellants, was called on, and contended that the two Acts were not inconsistent. He cited *Williams* v. *Pritchard*, 4 T. R. 2; *Palmer* v. *Earith*, 14 M. & W. 428.

At the close of the argument,

The COURT gave judgment in favour of the commissioners, that the guardians were liable to be rated for the Kimbolton-road frontage: rate to be amended by striking out the south side, with the like exception as to costs.

Judgment for the respondents accordingly.

Tuesday, June 1.

TAMBISCO *v.* PACIFICO.

Security for costs—Foreigner.

This Court will not compel a plaintiff who is a foreigner to give security for costs, where he is at the time actually in this country, and makes an affidavit, stating that he intends to remain here until judgment in the action.

An application had been made in this case to a learned judge at chambers, to compel the plaintiff, who was a foreigner, his permanent residence being abroad, but who had come to this country for the purpose only of bringing this action, to give the defendant security for costs. No order was made, and a rule nisi having been obtained for that purpose.

Willes shewed cause, and contended that, although the authorities may be said to be somewhat conflicting, yet the better opinion was that the plaintiff, under circumstances like the present, should not be obliged to give security for costs; indeed, he had stated in his affidavit that he was a foreigner and stranger, and it was impossible he could give security; that he had come to this country for the express purpose of bringing this action, and intended to remain here until judgment was given. The cases shew that a foreigner in this country, though his permanent residence be abroad, yet if his visit here be anything more than of a merely temporary nature, he will not be compelled to give this security. (*Ciraguo* v. *Hassan*, 6 Taunt. 20; *Anon.* 8 Taunt. 737; *Anon.* 3 Moore, 78; and *Dowling* v. *Harman*, 6 M & W. 131.) The only case the other way appeared to be *Oliva* v. *Johnson*, 5 B. and Ald. 908.

T. Jones, contrà. The plaintiff states that he intends to remain in this country until judgment: no doubt; and then, if judgment is against him, he will immediately return to Athens. He says he is here only for the purpose of this action, which is a good reason for the defendant to ask for security. *Oliva* v. *Johnson*, 5 B. and Ald. 908; *Gurney* v. *Key*, 3 Dowl. 559; and *Naylor* v. *Joseph*, 10 Moore, 552, are strong authorities for the defendant. The cases are conflicting upon the subject, and that being so, the reasonable rule to be adopted is that the plaintiff should give security. [MARTIN, B.—*Oliva* v. *Johnson* was determined on the last day of Term.]

POLLOCK, C.B.—I think this rule should be discharged; the point has been decided already by this Court, in the case of *Dowling* v. *Harman* (reported in the 6th M. & W. 131). The Court there determined not to grant such an application as this, where

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the plaintiff, though a foreigner, and usually resident abroad, is at the time actually in this country. That rule seems so reasonable, and the contrary proposition so unreasonable, that it would be matter of surprise if it were otherwise, for then every foreigner who came to this country to enforce his rights, and could not give security, would necessarily be shut out from remedy. The plaintiff states that he came from Athens to this country entirely for the purpose of bringing and trying this action, and shall remain here until judgment is obtained. I think, therefore, the case of *Dowling* v. *Harman* governs the present; that case appears to be in accordance with most of the other cases upon the same subject, and is the one by which we are bound.

ALDERSON, B.—I am of the same opinion. It is requisite for a plaintiff to state in his affidavit that he is actually resident in this country, to prevent a stay of the proceedings until security for costs be given; and, looking at the plaintiff's affidavit in this case (not as if there were a special demurrer to it), it would seem to be sufficient; the statement of the fact that he is *resident* here is the criterion, and he says he is resident in this country.

PLATT, B.—I thought that the rule in this court was uniform upon this subject—namely, that the Court will not grant a stay of proceedings until security for costs be given, where the plaintiff, although a foreigner, usually resident abroad, is at the time actually resident in this country; the plaintiff in this case states in his affidavit that he is resident here, that he came over for the purpose of the action, and intends to remain until judgment; that seems to be sufficient.

MARTIN, B.—I am of the same opinion. Baron Parke lays down the rule very clearly in 6 M. & W.; if there had been a difference in the general practice in the Q.B. I think he would have then recollected it.

Rule discharged.

BUSINESS OF THE WEEK.

Friday, May 28.

KIRKPATRICK v. KIRK. *Referred to the Master*

Re GEORGE JAMES HEALD, Gent. one, &c. *ex parte* LEVER.

Rule absolute to deliver up the bill of costs mentioned in the Master's report, and to pay the costs mentioned in the former rule; this rule without costs. Attachment to lay in the office for a limited period.

ESCRIT v. MASON.—*O'Malley* (*Sewell* with him) shewed cause. *Bramwell* (*Sykes* with him), contra.

Rule discharged

BATTEN v. WOOD.—Tried before Parke, B. on the 25th inst. in the absence of the defendant. Verdict for the plaintiff for 21*l* 18s. 6d. *Hawkins* moved for a new trial.

Granted, on defendant's bringing into court the amount of the verdict, and paying the costs of the last trial, and taking notice of trial for the third sittings in this Term.

NEW TRIAL PAPER.

EVANS v. ATTWOOD. *Rule enlarged.*

SAUNDERS v. DAVIES.—*Bacon* shewed cause. *Grove* an *Bowen* in support.

Rule absolute for a new trial without the payment of

M'KINNON and ANOTHER v PENSON.—*Benson, Honyman*, and *Bowen* shewed cause.

The Court said they would intimate on another day whether they should require to hear Knowles in support.

Monday, May 31.

SPECIAL PAPER.

STAFF v. MORRISON —This case, which stood over that the plaintiff might determine whether he would amend, being called on, it was intimated to the Court on behalf of the plaintiff that he would amend.

PADWICK v. KNIGHT. *To stand over.*

ALLCARD v. WESSON. *Cur. adv. vult.*

BRITTAIN v. BRETHERTON.—Demurrer to plea.

Defendant to amend on usual terms.

HORTON v. THE WESTMINSTER IMPROVEMENT COMMISSIONERS. *Part heard.*

Tuesday, June 1.

JACOBS v MILES.—*M. Smith* moved for rule calling upon the next friend, by whom the plaintiff had sued, to show cause why he should not pay certain costs to which he had become liable. *Rule nisi.*

SYLVESTER v. COLQHOUN.—Tried at Derby, before Jervis, C.J. A rule nisi had been obtained to set aside the plaintiff's verdict, as being against the evidence, and for a new trial *Rule absolute.*

WARD v. WARD.—Tried at Derby, before Jervis, C.J. A rule nisi had been obtained to set aside the plaintiff's verdict on the second plea, and to enter a verdict thereon for the defendant; the question was, whether a party having been entitled to a right of way, had lost that right by non-user. The Court, without hearing arguments, made the *Rule absolute.*

ROSKRUDGE v. CADDY.—Tried before Erle J. in Cornwall.

To stand over, in order to obtain the learned judge's further report and decision as to the facts which occurred at the trial.

FREGARD v. BARNS and BARTON.—Tried before Talfourd, J. at Salisbury.

To stand over, for the same reason as the last case.

DOE *dem.* BENHAM v. BENHAM.—Tried at Winchester, before Erle, J. A rule had been obtained to set aside the plaintiff's verdict, and enter it for the defendant. The question turned entirely upon the construction to be put upon a peculiarly worded will. [The COURT said the learned judge at the trial had, in their opinion, put the correct construction upon it, that the trustees took the fee, and for the purpose of carrying out the objects and apparent intention of the testator, it was necessary they should do so; therefore the rule must be discharged.]

Rule discharged.

BAIL COURT.

Wednesday, June 2.

ROTHSCHILD v. THE ROYAL MAIL STEAM NAVIGATION COMPANY. *Judgment in favour of the plaintiff.*

ALLCARD v. WESSON. *Judgment for the plaintiff.*

HORTON v. THE WESTMINSTER IMPROVEMENT COMMISSIONERS.—Demurrer to Pleas.

Judgment for the plaintiff.

GUARDIANS OF THE POOR OF ROMFORD UNION v. THE BRITISH GUARANTEE ASSOCIATION.

To stand over till Monday for the defendants to determine whether they would amend, otherwise judgment for the plaintiff. Defendants to take short notice of trial.

BROWN v. NORTH. *Part heard.*

BAIL COURT.

Reported by T. W. SAUNDERS, Esq. of the Middle Temple, Barrister-at-Law.

Thursday, May 27.

(Before Mr. Justice WIGHTMAN.)

REG. (on the prosecution of William Major and Others) v. THOMAS MAJOR.

Indictment—Certiorari—Costs.

The defendant was indicted for perjury, and he removed the indictment by certiorari, entering into the usual recognizance for costs. Upon the trial he was found guilty and afterwards sentenced. The prosecutors were parties who would have been injured if the perjury had been successful, which it was not:

Held, that notwithstanding the perjury had failed in its object, the prosecutors were entitled to their costs under the 5 & 6 Wm. & M. c. 11, s. 3, as "parties grieved or injured" within the meaning of that section.

In this case the defendant had been prosecuted and found guilty of perjury under the following circumstances:—A will under which the prosecutors were interested was the subject of a suit in Chancery, and was referred to one of the Masters for certain purposes; a state of facts was brought before such Master, alleging that the defendant was indebted to the estate in a certain sum of money; the defendant opposed such state of facts, and one of the affidavits filed by him in support of his opposition became the subject of the present indictment for perjury in the Central Criminal Court, which, however, was removed by the defendant into this court, and upon his trial he was found guilty, and sentenced to a term of imprisonment; subsequently the attorney for the prosecution delivered his bill of costs against the defendant for the prosecution of such indictment, together with an appointment to tax the same before the Master of the Crown Office. Upon the taxation, the defendant appeared and objected to such taxation, upon the ground that the prosecutors were not directly injured by the act which was the subject of the indictment, the perjury having failed in its object, and that he was not, therefore, liable to the payment of their costs. Upon this the Master postponed his taxation, that the question might be raised in this court.

Willes now, therefore, moved for a rule calling upon the prosecutors to shew cause why the side-bar rule for the taxation of costs should not be set aside; and he contended that as the perjury of the defendant was defeated before any injury was effected by it, the prosecutors were not entitled to their costs under the 5 & 6 W. & M. c. 11, s. 3, which enacts that "if the defendant prosecuting such writ of certiorari be convicted of the offence for which he was indicted, then the said Court of King's Bench shall give reasonable costs, if he be the *party grieved or injured*," &c.; that the object contemplated by the perjury was not effected, and that the case came therefore within the ruling in *R.* v. *Ingleton*, 1 Wils. 139, cited in 1 Burn's Jus. 577, where it was held that the Act does not apply to persons merely *intended* to be grieved, but only to those who have suffered actual injury. In that case, the defendant was indicted for *attempting* to set fire to the house of one Easton, and the indictment also charged that he solicited Mason, one of the prosecutors, to assist him; and upon Mason and one Glenton informing the mayor of this, they were both bound over to prosecute. The indictment was removed by certiorari by the defendant, and he was convicted; and upon its being afterwards urged that the defendant was obliged to pay the prosecutor's costs, the Court said, "This case is not within the Act, for the Act extends only to officers and persons really injured, which neither Glenton nor Mason are, for there was no damage done to the house, but only intended to be done, nor are either of them officers."

WIGHTMAN, J.—I do not think that case applies. Suppose a rule to shew cause in a suit were obtained in this Court, upon a false affidavit, but that, notwithstanding the Court should reject the affidavit, there should be other circumstances which should induce the Court to make the rule absolute, and the party should be indicted for perjury, would that not be within the Act, because the perjury had not been successful? Unless a perjury *is* successful, no one can be injured; and if that be the test, this Act would not apply to any case of unsuccessful perjury, which is certainly a startling proposition.

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Willes.—It may be so; still the Act gives costs only to *the party grieved or injured.* The case cited is strong upon the point.

WIGHTMAN, J.—In that case the act was not completed; it was a mere intent and a solicitation, and nothing was really done. Such a case as the present is a very common one, and yet it has never before been questioned. In my opinion, it is sufficient if the act is completed, and may have caused a damage. Here the false swearing obliges the prosecutors to take steps to defeat its object. I think that, supposing the perjury had been ultimately successful, any particular party would have been injured thereby, such party is within the meaning of the Act. *Rule refused.*

Tuesday, June 1.

(Before Mr. Justice WIGHTMAN.)

REG. v. JOHN JAMES, CHARLES STADEN, and JOHN BROOM.

Certiorari to remove an indictment.

The Court refused to grant a certiorari to remove an indictment when found at the ensuing assizes, as by so doing it could not be tried at such assizes:

Semble, that where an indictment is to be tried at the assizes, the Court will not listen to any suggestion of prejudice on the part of the jury.

In this case the three defendants had been committed by certain justices at Brighton to take their trial at the last assizes for Sussex, upon a charge of conspiring to cheat the prosecutor at cards. They were subsequently admitted to bail. No bill was, however, preferred at such assizes, in consequence of the absence of the prosecutor, but it was believed that one might be preferred at the ensuing assizes.

Parry now moved for a certiorari to remove such indictment when found into this court, that it may be tried upon the civil side of the assizes, and he grounded his application upon an affidavit which alleged that the prosecution was got up for corrupt purposes; that the defendants were anxious to have the assistance of Queen's Counsel; that important questions of law were likely to arise; and that as they feared a petty jury would be prejudiced against them, they were desirous of being tried by a special jury.

WIGHTMAN, J. thought that he ought to refuse the rule, particularly as by granting it (as the indictment was not yet found) the effect would be to postpone the trial of the indictment over the next assizes; and also as he could not suppose that where a jury are selected from the whole county it would be prejudiced against the defendants.

Writ refused.

Wednesday, June 2.

(Before Mr. Justice WIGHTMAN.)

REG. v. THE JUSTICES OF SURREY, *re* THE INHABITANTS OF ABINGER.

Indictment for non-repair of a highway—Costs of prosecutor—Order for indictment.

The parish surveyors were summoned for not repairing a road; when upon their disputing their liability the justices made an order under sec. 95 of the 5 & 6 Wm. 4, c. 50, for an indictment against the inhabitants. To this indictment the defendants pleaded the liability of the occupier of a certain farm to repair the road ratione tenuræ, and upon the trial the jury found for the defendants. Upon this the prosecutor applied to the Sessions for an order for his costs, which was refused.

Upon an application to this Court for a mandamus to the justices to make an order for the costs of the prosecution, it appeared that one of the justices who made the order for the indictment was the landlord of the farm, the tenant of which was found by the verdict liable to repair the road, and hence, that he was an interested party; and so the order for the indictment was void.

It did not appear, however, that upon the application to the justices at special sessions anything was said about the liability of the tenant of the farm to repair; nor did it appear that there was any collusion whatever between the justice who was the landlord of the farm, and the prosecutor:

Held, that in making the order for the indictment the justices were acting ministerially, and that the interest of the justice was not such as rendered the order void, and that the section as to costs being imperative if the proceedings were regular, the prosecutor was entitled to his costs.

In this case *Pitt Taylor* had in Easter Term obtained a rule calling upon the justices of Surrey to shew cause why a mandamus should not issue, commanding them to direct the costs of the prosecutor in this case to be paid to him, as directed by sec. 95 of the 5 & 6 Wm. 4, c. 50.

The rule was obtained upon the following statement of facts.

Application having been made to justices, under sec. 94 of the above Act, for an order for the repair of a highway, the surveyor appeared and disputed the duty and obligation of the parish to repair, whereupon the justices, pursuant to sec. 95, directed a bill of indictment to be presented at the next

Quarter Sessions for Surrey against the inhabitants of the parish, which was accordingly done. To this indictment the parish pleaded the liability of another party to repair, namely, the occupier of a farm called "Abraham's Farm," ratione tenuræ. At the trial, which was at a sessions subsequent to the finding of the bill, the jury found for the defendants, and hereupon the prosecutor applied for his costs under sec. 95, which enacts, that "the costs of such prosecution shall be directed by the judge of assize before whom the said indictment is tried, or by the justices at such quarter sessions, to be paid out of the rate made and levied in pursuance of this Act, in the parish in which such highway shall be situate," &c. The Sessions, however, refused to give the prosecutor his costs. Upon moving for the rule nisi, it was contended that the Sessions were wrong, for that the section is *imperative*, and gives the Sessions no discretion upon the subject, the prosecutor being entitled in any event to the costs of the prosecution; and *Reg.* v. *Yorkhill*, 9 C. & P. 218; and *Reg.* v. *Pembridge*, 3 Q. B. 903, were cited.

Upon shewing cause, an affidavit was used, which disclosed that one of the three justices who made the order for preferring the indictment, was a Mr. Lee Steere, who was the landlord of the farm called "Abraham's Farm," which was then occupied by his tenant, and which by the verdict of the jury was found to be liable to repair the road; and that Mr. Steere took an active part at the trial in assisting the counsel for the prosecution, though he did not sit as a justice, or take any part whatever upon the trial in his character of a justice. It did not appear that at the hearing before the petty sessions, when the order for the indictment was made, that any mention whatever was made of the liability of the occupier of Abraham's Farm to repair, or that anything transpired upon the subject until plea pleaded.

Pashley, Q.C. and *B. Robinson*, shewed cause (8th May), and they contended that as Mr. Lee Steere was one of the justices who signed the order for the prosecution, and he became an interested party, that the order was invalid, and that consequently the trial and all proceedings upon it were void. (*R.* v. *Martin*, 2 Q. B. 1037; *R.* v. *The Cheltenham Commissioners*, 1 Q.B. 467; and *R.* v. *The Justices of Hertfordshire*, 6 Q. B. 753.) [WIGHTMAN, J.—The justice, in making the order decides nothing; he merely puts the law into operation.] It is final as to the proceedings to be taken. Also the statute directs that the bill of indictment is to be preferred at the *next* general quarter sessions, and the costs of the prosecution are to be directed by the justices at *such* quarter sessions; and in the present case the indictment was *not* tried at the *next* sessions, but at the sessions after, when they had no jurisdiction. (*R.* v. *Belton*, 11 Q.B. 379.) [WIGHTMAN, J. — You must go the length of saying that the entire proceedings were void. If you can make out that the prosecutor and Mr. Steere were acting in collusion with each other, there would be great force in your argument that the proceedings were void, but there is no evidence of that.] The justices at sessions have a discretion to inquire as to whether or not the original order was good. (*R.* v. *Chedworth*, 9 C. & P. 28; *R.* v. *Heanor*, 6 Q.B. 745.)

Pitt Taylor and *Sumner*, in support of the rule, argued, that it was imperative upon the Sessions, to make the order for costs, as decided by the cases of *R.* v. *Yorkhill*, 9 C. & P. 218; and *R.* v. *Pembridge*, 3 Q. B. 903; that in the cases of *R.* v. *Chedworth*, 9 C. & P. 28, and *R.* v. *Heanor*, 6 Q. B. 745, in which it was held that the prosecutor was not entitled to costs, the finding of the jury negatived the road being a highway at all. [WIGHTMAN, J.—The question is simply, whether or not the order for the indictment is good; for if it be, the Sessions were bound to grant the costs.] The order itself discloses no interest, nor did any appear at the time the order was made; it only arises in consequence of the plea pleaded by the defendants. The surveyor merely denied the liability of the parish in general terms, without throwing the liability upon any other party. [WIGHTMAN, J.—Is it not a question of fact, whether or not, at the time of the making of the order, Mr. Steere was interested? He may have well known that the parish was not liable to repair, and that he was.] At the trial he took no part in the proceedings as a justice, and it was at that time that the question *of fact* was decided. But making the order was not a *judicial* act, but merely a *ministerial* one, for the justices were *bound* to make the order on the liability of the parish being disputed. *Ex parte Stanton*, 21 L. J. 7, Bktcy. as to what is a judicial and what a ministerial act. [WIGHTMAN, J.—That is the real question; because, if this is merely a ministerial Act, it would not be void.] The Quarter Sessions had no jurisdiction to inquire as to whether or not the original order was bad, and there is no evidence to shew that Mr. Steere believed he was interested.

[The point as to the *next* Sessions was abandoned.]

Cur. adv. vult.

WIGHTMAN, J. now gave judgment as follows:—This was an application to make a rule absolute for a mandamus to the justices of Surrey to allow the costs of the prosecutor of an indictment, against the inhabitants of the parish of Abinger for non-repair of a highway. The indictment had been preferred by the prosecutor, Richard Gates, at the Quarter Sessions, by the order of three justices at a special sessions of the highways under the 94th and 95th sections of the 5 & 6 Wm. 4, c. 50. The parish pleaded that John Chapman was liable to repair the highway as occupier of a farm called Abraham's Farm, ratione tenuræ, and upon the trial a verdict was found for the parish. The prosecutor applied for his costs under the 95th section, which were refused on the ground that one of the three magistrates who made the order for preferring the indictment was himself the landlord of Abraham's Farm, and so interested in the matter in respect of which he made the order. There was no doubt that Mr. Lee Steere, one of the justices who made the order, was the landlord of Abraham's Farm; and it appeared by the affidavit, that at the trial of the indictment he sat by the counsel for the prosecution and assisted him: and there can be no doubt but that when the parish sought to excuse themselves from the repair of the highway by alleging the liability of the tenant of Abraham's Farm, Mr. Lee Steere was interested in the result, as it would deteriorate the value of the farm if it was charged with the repair of the highway. The question, however, is not whether he was interested in the question raised by the plea, but whether he had such an interest at the time the order was made as would disqualify him from acting, or if he had any interest, it was such as could have influenced either his own conduct, or have enabled him to influence the conduct of the other magistrates who acted with him. There does not appear upon the affidavits any sufficient ground for imputing collusion between Gates, the prosecutor, and Mr. Steere previous to or at the time of obtaining the order. Gates, indeed, appears to have been a bonâ fide prosecutor, and to have cared little who was liable to repair, provided the road was made good. It appeared that he had complained to a previous tenant of Abraham's Farm a few months before going before the justices, of the road being out of repair, and said that he would have it repaired; and that, upon the tenant's saying that the parish had done no repairs to the road, but that he, the tenant, had done them during the tenancy (which was seventeen years), Gates said that he should indict the road and find out to whom it did belong; that the tenant did some repairs to the road after this in the presence of Gates himself, but the road still remaining out of repair, he summoned the surveyor of the parish, under 94th section of the Act, to appear before the justices at the special sessions for the highways. The surveyors of the parish accordingly attended at the special sessions, which were holden before three justices, of whom one was Mr. Lee Steere, and no question was made but that the way was a highway, and that it was out of repair. But the surveyor alleged that the parish were not bound to repair the road, but did not state or suggest who ought to do so, or that any other person or persons was or were liable to repair it. The three magistrates, including Mr. Steere, then made the order for preferring an indictment against the parish. The first and most important question is, could the magistrates have done otherwise as the case appeared before them, than make the order? The statute in the 94th and 95th sections provides that if a highway is out of repair, and information on oath is given to a justice, he may issue a summons to the surveyor of the parish, or other person chargeable with the repairs to appear before the justices at a special sessions for the highways, and if upon the hearing of the summons, the obligation to repair is denied by the surveyor on behalf of the inhabitants, or by any other party charged therewith, it is lawful for the justices, and they are thereby required to direct an indictment against the inhabitants of the parish, or the party to be named in such order, and the costs of such prosecution shall be directed by the justices at the Quarter Sessions, if the indictment is tried before them, to be paid out out of the rate made in pursuance of the Act in the parish in which the highway is situate. The parish is, in every case, primâ facie liable to the repair of the highways within it, and though Gates might have been told that the tenant of Abraham's Farm usually repaired the highway in question, he would be well warranted in summoning the persons primâ facie liable, namely, the parish, by means of the surveyors, and leaving them to discharge the parish if they could, by showing a liability in some other person. But it was not suggested on the part of the parish, that the tenant of Abraham's Farm, or any other person than the parish was liable. It was not made a question whether the parish or somebody else was liable, and as the statute is in terms imperative, I do not see how the justices could do otherwise than make the order, nor how any interest that Mr. Steere might have in the question that the parish *afterwards* raised, could influence or affect the making of the order. As the case stood at the time the order was made, I am at some loss to discover such an interest in Mr. Steere as would make the order bad because he joined in it. If the affidavit shewed that the summons was taken out, and the indictment preferred at his instigation, and that Gates was not a real prosecutor, but colluding with Steere, the case would assume a very different character; but Gates appears, as far as I can judge from the affidavits, to have been a bonâ fide prosecutor, and it would certainly be hard upon him to lose his costs, because the order which the magistrates could not refuse as the case stood, was signed by one who had an interest in the question which was subsequently raised, but which was not raised when the order was made. If it had been suggested to the justice, that the tenant of Abraham's Farm was liable, and the question had been whether he or the parish should be indicted, and Mr. Steere had joined in an order to indict the parish, I should certainly have thought the order void on that ground. But no such suggestion was made, and the justices could only order the indictment against the parish. The question is not whether the parish or Mr. Steere shall pay the costs, as he cannot be liable to pay them in any view of the case, but whether Gates shall lose them, because Steere, over whom he had no control, joined in making the order. I certainly concur in the decisions that if any part be taken in a judicial act by a person who is interested in it, such act is void; but it seems to me that, in making the order in question, the magistrates were not called upon to exercise any judgment; and that, as the case was presented to them, they could only make the same order whether Mr. Steere was landlord of Abraham's Farm or not, and that that circumstance was not material, and could have no influence in making the order. It appears to me, upon the whole, that the order is not void, for the reasons I have mentioned; and that as no collusion is shewn between Gates and Steere in obtaining the order, and as Gates appears to have been a bonâ fide prosecutor, he ought to have had his costs, it being imperative upon the Court of Quarter Sessions to grant them, unless the order or the conduct of the prosecutor can be impeached. I am the more disposed to make the rule absolute, as I do not conclude the parties by doing so, though I should if I refused it. A return may be made to the mandamus, if the parish or the magistrates are dissatisfied with my opinion, or wish to add further facts, which may alter the view which I have taken of the case. The rule, therefore, will be absolute.

Rule absolute.

Friday, May 28.

(Before Mr. Justice WIGHTMAN.)

REG. v. THE JUSTICES OF KENT, *ex parte* WAGHORNE.

Certiorari to bring up a conviction that it may be quashed for want of jurisdiction.

Horne moved for a certiorari to bring up a conviction made against the applicant, Waghorne, by two justices of the county of Kent, in order that it might be quashed. It appeared that the conviction was made under 3 & 4 Vict. c. 61, s. 6, the offence being the making use of a false certificate in order to obtain a license to keep a beer-house. The objection to the conviction was that the justices had acted without jurisdiction, the offence being committed by an application to the justices in petty sessions at Maidstone, within which petty sessional division the house was situate, and it was sworn that the justices of Maidstone had exclusive jurisdiction over all offences within their jurisdiction, and not mere local jurisdiction. The county justices had acted as if they had concurrent jurisdiction in Maidstone, which they had not. He cited and referred to 7 & 8 Geo. 4, c 53, s. 6; 4 & 5 Wm. 4, c. 85; and 3 & 4 Vict. c. 61, s. 6.

Rule nisi.

BUSINESS OF THE WEEK.

Thursday, May 27.

SWAN v. MERRY.—*Barstow* moved to set aside the judgment of outlawry herein. *Rule nisi.*

Monday, May 31.

Ex parte HAYLOCK.—In this case Mr. Haylock had been charged before certain justices of the Isle of Ely, with having written upon the pavement certain defamatory words referring to a Mr. Watt, and he was thereupon ordered to enter into recognisances to keep the peace, or be committed for a certain term; and as he did not enter into such recognisances, he was committed accordingly. He then obtained a writ of habeas corpus, and on its return, he was ordered by this Court to be discharged. (See *Ex parte John Haylock*, 19 Law T. Rep. 125.) The order having also been returned by certiorari, it now became necessary, pursuant to the 11 & 12 Vict. c 44, s. 2, before any ulterior steps can be taken on behalf of Mr. Haylock, that such order should be quashed. *Prentice* now moved accordingly. *Rule nisi.*

REG. v. THE INHABITANTS OF ALDBOROUGH.—*Burton* moved, on the part of the defendants, for a certiorari, to remove into this court an indictment found against them at the Quarter Sessions for the East Riding of Yorkshire, for the nonrepair of a highway. *Writ granted.*

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. KEENE, Esq. of Lincoln's-inn, Barrister-at-Law.

Tuesday, May 4.
IN CHANCERY.
CHARD *v.* CHARD.

Solicitor and client—Change of solicitor—Purchase of a suit by one solicitor from another—Practice—A suit ought not to be the subject of a purchase.

The Court discountenances the practice of one solicitor, either in person or by agent, acting for more than one party to a suit.

Can solicitors to whom the conduct of a suit has been transferred, claim the costs when they have not been entered upon the record?

This was an appeal from a decision of the Vice-Chancellor, Knight Bruce, who dismissed the petition, but without costs.

Bacon and *Willcock* were for the appellant.

Rolt and *Bickner* for the respondents.

The facts of the case, so far as they are necessary for the purposes of the present report, appear in the

JUDGMENT.

The LORD CHANCELLOR.—This is a case of a very unusual nature. An administration suit was instituted by a Mrs. Chard (the petitioner), who employed as her solicitor a Mr. Lord, who was also concerned as solicitor for some of the defendants. Mrs. Chard entered into an agreement with this gentleman, under the terms of which she was to make to him periodical payments for certain expenses; the remainder of the costs were to be paid at the conclusion of the proceedings, and he was to deliver to her, from time to time, taxed bills of costs. Mr. Lord accordingly commenced and conducted the suit until the end of Hilary Term, 1843: at that time, feeling incompetent to go on, very probably for want of funds, he entered into a negociation with Messrs. Blake and Tamplin, which led to an agreement, under which Mr. Lord agreed to transfer the suit to these gentlemen for 50*l*.; in fact, they bought all the interest that might arise to Mr. Lord from the further prosecution of the suit for 50*l*. From February 1843 to December 1844, these gentlemen did the whole of the work relating to the suit, but the change of solicitors upon the record was not made until the latter date. Mr. Lord did not communicate to Mrs. Chard that he had so transferred the suit, and he was considered and treated by her as if he were still the solicitor. We find Mrs. Chard advancing money to him down to December 1844. The suit was bought by Messrs. Blake and Tamplin from February 1843—that is not disputed; but Mrs. Chard went on advancing Lord money for costs precisely in the same way as she had been accustomed to; he received all the costs as if he had done all the labour, and he received them without the knowledge of Messrs. Blake and Tamplin. These gentlemen were substituted as the plaintiff's solicitors by an order dated in February 1843, but Mr. Lord continued on the record as solicitor for some of the defendants down to December 1844. Now without saying whether under such a state of circumstances, solicitors, who had not been solicitors on the record, could claim costs, even assuming that they had actually performed all the work—yet I do hold that Messrs. Blake and Tamplin are bound to allow Mrs. Chard for these payments. They must be presumed to have known of their having been made to Mr. Lord: independently of the question which I have suggested, I think, according to their own shewing, and on their own agreement, they must be considered as acting for Mr. Lord; and this view is borne out by the evidence which is now before the Court. The effect of the agreement between Messrs. Blake and Tamplin and Mr. Lord was to place the former in the shoes of the latter, and bound by all the equities affecting him. They say there was a mistake as to the terms under which they purchased the suit, and that they had acted on the ground that Mr. Lord was the solicitor concerned for all parties; he represented himself to have been so, when, in point of fact, he was not: whatever the real facts were, I cannot permit them to say that that which they took under this agreement was not properly obtained. They were bound to inquire, and I cannot allow them to plead ignorance of the relationship subsisting between Mr. Lord and their client. From the time of the agreement they did all the work as her regular attorneys, and by the agreement which they had made, they must be considered as representing Mr. Lord; he transferred the suit to them. Then it has been attempted to be shewn that these gentlemen are not entitled to the costs, although it has been clearly shewn that they did the work. Now if Mr. Lord was entitled to the costs from Mrs. Chard, Messrs. Blake and Tamplin were entitled to receive them from Mr. Lord, because, as I have already said, they bought them of Mr. Lord. Now I must say the Court does not and will not countenance one solicitor acting for all parties, and I fear there is a very general practice, but one not at all to be approved of, for a solicitor who is concerned for several parties, to represent some of them by one of his clerks, who may have been admitted an attorney. This course I consider reprehensible, and one that ought to meet with the censure of this Court. The costs of the suit which was instituted by Mrs. Chard have been made a source of traffic. A suit ought not to be bought; it is not a thing to be bought and sold; but as Messrs. Blake and Tamplin have bought it, I hold them to be bound by all the equities which existed between Mr. Lord and Mrs. Chard. I hold them bound by every thing which took place prior to Hilary Term 1843, between Mr. Lord and Mrs. Chard. They were bound to inquire, and I cannot allow them to say they were ignorant of the relationship that existed between those persons. Messrs. Blake and Tamplin, in buying this suit, were entitled to take all the benefits arising from the purchase, and those benefits they must take cum onere. The order that I shall make will be, that the costs of the suit be paid to Messrs. Blake and Tamplin, they repaying to Mrs. Chard any sums paid by her to Mr. Lord previously to the order of December, 1844, appointing those gentlemen her solicitors. I shall follow the order of the Vice-Chancellor, by refusing to make any order on this petition as to costs.

IN CHANCERY.
Re HERTFORD CHARITIES.

Costs of the appearance of trustees on a petition to which there was no opposition disallowed.

This was a petition for the confirmation of the Master's report for the appointment of new trustees of the charity, which consisted of three particular subjects.

Giffard appeared in support of the petition, which was presented under Sir Samuel Romilly's and the Municipal Corporation Acts, and asked, under particular circumstances, for payment of the costs out of pocket only out of the surplus funds arising from a sum of Consols standing to the credit of one of the subjects. There were no other available funds. The costs of a former petition had been paid out of that fund.

The LORD CHANCELLOR.—On such a point I decline to follow the authority of my predecessors. The other subjects of the charity have an interest in the appointment of the trustees. These subjects are of value. They must bear their proportion of the costs.

Walker appeared for certain of the trustees, and asked for his costs, and stated that according to the modern practice he was entitled to receive them. He had been served.

The LORD CHANCELLOR.—Whatever the practice may be, in this case I cannot allow them. I do not admit it to be as stated, but were it so, I should break through the rule. Had there been any difficulty of construction, or other extraordinary circumstance, it might have been right for you to have appeared; but where there is no opposition to the confirmation of the report, and no necessity for an appearance on the part of the trustees, I cannot allow the charities to be put to the expense of a useless proceeding.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

Thursday, Feb. 26.
(Before Lord TRURO, L.C.)
SEAGRAVE *v.* POPE.

Building society—Construction of rules—Terms of redemption.

A. B. the owner of shares in a benefit building society, constituted under the Act 6 & 7 Wm. 4, c. 32, received from the society 541l. as an advance on his shares, and gave the society a mortgage on leasehold property. A question being subsequently raised as to the terms on which A. B. was entitled to redeem:

Held, on a redemption bill filed by A. B. that the mortgage was a security to the society not only for the sum actually advanced, and interest, but also for all payments to which, according to the rules of the society, A. B. would be liable during the entire period calculated for the duration of the society.

This was an appeal from the decision of the Vice-Chancellor Knight Bruce, who held that the plaintiff, Mr. Fleming, who had contracted to sell the mortgaged property to the plaintiff Seagrave, was entitled to redeem according to the terms of the deed of security and the rules of the society, on payment of the money advanced at the time his notice expired, with interest at 4*l*. per cent. from that time; and that in ascertaining the balance due he was entitled to credit for subscription moneys, but not for redemption moneys, and should be debited with such of the latter as were not paid at the expiration of the notice, but not with any monthly payment after the end of the month. The rules of the society, the security, and material facts of the case are very fully reported, 14 Law T. 524.

Bacon and *Hardy*, for the respondents, cited 6 & 7 Wm. 4, c. 32; *Mosley* v. *Baker*, 6 Hare, 87; S. C. on Appeal, 18 L. J. Ch. 457; 13 Jur. 817.

Russell, *Rolt*, and *Terrell*, for the appellant, cited *Sampson* v. *Pattison*, 1 Hare, 533.

Bacon, in reply.

The LORD CHANCELLOR.—This is a complicated case, arising out of a question connected with a building society, the subscribers of which were to pay a certain monthly sum for a period of years, till the aggregate sums paid by all the subscribers would allow each of the subscribers to receive 100*l*. But as it was obvious that the payment of these monthly sums would amount to a considerable sum before each subscriber was paid his 100*l*. it was provided that when the 100*l*. was raised, or such a sum as the directors might think suitable, then a certain number of shares should be put up to auction, leaving it to each subscriber to make an offer for receiving his share in anticipation, by discounting the 100*l*. as it were; that is to say, by saying how much less than 100*l*. he would take in present payment, rather than wait till the prescribed period for his 100*l*. in full. Now, the mortgagor had become, at one of those auctions, the bidder for a considerable number of shares, and he gave for them certainly a large discount. Now, as the subscribers were only entitled to receive their 100*l*. when the payments they made had produced the sum of 100*l*. it became necessary that the society should have some security that that those who received their 100*l*. or so much of their 100*l*. as they chose to accept, in order to get it by anticipation, would continue still to pay up their quotas. There are many arrangements in the rules of the society for this purpose, many of them complicated and difficult, but I think they are all capable of being reconciled with each other, and with the object in view. In the present case the plaintiff gave security by executing the mortgage on his property, which is the subject of the present suit. The society said that the mortgage was given to them as security that he would continue his payments till he had paid up the sum he had originally contracted to pay—100*l*. But the mortgagor said no. According to the articles of the society he had received a certain sum of money in respect of a certain number of shares, and the security he had given was only a security for the repayment of the sum he had received and interest; and therefore he now claimed to have his property redeemed. The decision of the Court below was in support of that view. Unfortunately I have come to quite a different conclusion. I am satisfied that the security is a security to the society that he would continue to make the payments which he ought to do, and which he would have done if the society had continued on the simple plan on which it was first founded—that nobody should receive anything till all had paid up their 100*l*. and therefore that the plaintiff is not entitled to redeem the property on such terms as he had pleaded. The judgment, therefore, which I shall hand over to the registrar, is to repel this attempt to redeem, and to declare that the party is not entitled to redeem it in the way proposed by the bill. I have taken full notes of the case, and I will give a fuller judgment afterwards if the parties desire it.(a)

COURT OF APPEAL IN CHANCERY.

Reported by C. H. KEENE, Esq. of Lincoln's-Inn, Barrister-at-Law.

IN CHANCERY.
ATTORNEY-GENERAL *v.* MURDOCK.
Nov. 11, 12, 15, 17, 18, 22, *and* 24, 1851, *and* *Jan.* 23 *and* 24, 1852.

Charity—Dissenters—English Presbyterians—Congregation in connection with the Established Church of Scotland—Qualification of Minister—Distinction between a trust for the use of Protestant Dissenters generally, and for the use of an existing congregation of Protestant Dissenters belonging to a particular minister—Motion to stay execution of decree.

Information and bill seeking a declaration that a meeting-house and premises at Berwick, which, in 1734, were described as a meeting-house for a congregation of Protestant Dissenters, were subject to trusts for the appropriation of the same as a place of public religious worship on the model of the Church of Scotland, and on as strict connection with the same as practicable, and that no person was qualified for or competent to exercise the office of minister or pastor of the meeting-house without being a licentiate and a recognised minister of the Church of Scotland, and in full connection therewith; that the minister or pastor of such meeting-house might be restrained from

(a) A fuller judgment will, it is believed, be handed over by his Lordship to the parties.

occupying and using the pulpit, and from preaching in, and in any manner officiating; and that certain of the trustees who had concurred with him might be restrained from allowing the use of the pulpit to any person not being such licentiate and recognised minister, and from being used otherwise than as a place of public religious worship on the model and in the strict connection aforesaid. No trusts of the meeting-house had been declared by any deed, but it appeared from usage, that the trusts were created for the use of a congregation of Protestant Presbyterian Dissenters, to be in as strict connection as practicable with the Established Church of Scotland. The present was the thirteenth minister of the congregation using and claiming to be the owners of the Meeting-house, and at the time of his election as minister, was a licentiate and ordained minister of the Established Church of Scotland. He subsequently seceded from the Established Church of Scotland, and adhered to the Free Church:

Held, affirming the decision of the Vice-Chancellor, that by such adhesion he became disqualified for the ministry of the Church of Scotland, and incapable of being minister or pastor of the Meeting-house.

Where a trust is created for religious worship, and it cannot be discovered from the deed creating the trust what was the nature of the religious worship intended by it, it must be implied from the usage of the congregation.

It is competent for a congregation acting unanimously, and with the concurrence of the trustees (if any) to introduce into their system and constitution new regulations; regulations not in contravention of any deed of trust or foundation, not subversive of the original system or constitution, and not opposed in principle to it.

Semble, that the unanimous votes of an entire congregation and their trustees could not convert a Trinitarian into a Socinian foundation, a Protestant into a Popish, or a Presbyterian into an Episcopalian Institution.

If, in a particular chapel, the doctrine preached has immemorially been uniformly consistent, and the maintenance of that doctrine formed an essential part of the object for which the chapel was founded, in such a chapel the Court will not permit a doctrine, which would be in contravention of those objects, to be preached.

Where a course of practice has long prevailed on any particular subject, the inference that it has been a just and legal course is consistent with law and reason; and if the right of a Scotch ordained minister to be minister of a particular meeting-house were to be questioned, on the ground that the original foundation was for English ordained ministers only, the fact that Scotch ministers had always been appointed would be most important, probably conclusive on the subject.

The Court will not stay the execution of a decree, pending an appeal to the House of Lords, unless it can be satisfactorily proved that its being issued will create irreparable injury.

This was an appeal from a decision of the late Vice-Chancellor Sir James Wigram. The questions involved in it were analogous to those raised in the cases of *The Attorney-General* v. *Welsh* and *The Attorney-General* v. *Munro*, and as far as the term "Protestant Dissenters" was concerned, *The Attorney-General* v. *Shore*.

The suit was instituted by information, and bill filed in the year 1846, at the relation of the plaintiffs, who were four of the surviving trustees of the Low Meeting-house at Berwick-upon-Tweed against the Rev. Alexander Murdock, the officiating minister, and the other surviving trustees of the meeting-house, and prayed a declaration that the premises comprised in an indenture of the 22nd of May, 1719, and the chapel called the Low Meeting-house, were subject to trusts for the appropriation of the same as a church or place of public religious worship on the model of the church of Scotland, and in as strict connection therewith as was practicable; that no minister or other person was qualified for, or competent to exercise the office of minister or pastor of the Low Meeting-house, not being a licentiate and recognised minister of the Church of Scotland, and in full connection therewith; that the defendant, Murdock, might be restrained by injunction from occupying or using the pulpit of the Low Meeting-house, and preaching or teaching in any manner therein, and from officiating as minister or pastor thereof, and, if necessary, might be removed by decree from his office of minister or pastor; that the defendants (Wilson, Smith, and Thompson) might be restrained by injunction from allowing the use of the pulpit to any person, and permitting any person to preach or teach as minister, not being a licentiate and recognised minister of the Church of Scotland; and from allowing the premises to be used in any other manner than as a place of public religious worship on the model of the Church of Scotland: that all necessary directions might be given for the election and appointment of a minister; and a declaration that the stated to have co-operated and concurred with the defendant Murdock, in his alleged dissent from the Church of Scotland and adherence to the Free Church, and to have insisted on his being retained as minister) had been guilty of breach of trust, and, if necessary, that they and the remaining defendants might be removed; and that new trustees might be appointed. A motion for an injunction, according to the prayer of the original bill, came on to be heard on the 31st July, 1846, when his Honour, Vice-Chancellor Wigram, made an order, "restraining the defendant, Murdock, from teaching or preaching otherwise than in conformity with the doctrines, discipline, and practice of the Established Church of Scotland."

It appeared that the defendant Murdock was elected minister or pastor of the Low Meeting-house in the year 1836, and was the thirteenth minister who had held that office since that congregation was first formed, of which the congregation then using and claiming to be the owners of the Low Meeting-house were the successors. At the time of his election to be minister, Murdock was a licentiate of and an ordained minister of the Established Church of Scotland; but it was alleged had since adhered to that body which (in consequence of the decision in the *Auchterarder* case) seceded from the Established Church of Scotland, and constituted what was then and now called the Free Church; and that Murdock, having then adhered to the Free Church party, had become disqualified for and was incompetent to exercise the office of minister or pastor of the aforesaid Low Meeting-house.

The first instrument under which the meeting house appeared to have been acquired by the predecessors of the present congregation was an indenture of feoffment of the 27th of September, 1717, whereby John Simpson enfeoffed John Douglas and his heirs with a burgage or tenement, barn, and garden therein described; John Douglas by lease and release, dated the 21st and 22nd of May, 1719, conveyed the premises to Stow and five others and their heirs. Stow and the three other surviving releasees in 1731 by lease and release conveyed the premises then described as "all that burgage or tenement, and garden thereto belonging, on part whereof there has been lately erected a house, now used as a meeting-house for a congregation of Protestant Dissenters," to Sibbitt and Temple and their heirs. Sibbitt and Temple, later in the year 1734, conveyed the premises by the same description to Stow and seven others, their heirs and assigns. In 1766, by indenture of lease and release made between Stow, apparently the surviving releasee named in the preceding deed, of the one part, Hodgson and several others, described as members and contributors to the support of the pastor of and belonging to the meeting-house, and John Gardner, of the other part, reciting the deeds of August 1734, and that the premises by right of survivorship were then legally vested in Stow, it was witnessed that Stow did thereby declare that the premises were so conveyed upon trust only, and to and for the people or congregation of Protestant Dissenters then known by the name of the congregation or people belonging to the Rev. Master John Turner, and to and for no other use, intent, or purpose whatsoever; and Stow thereby conveyed the same to Hodgson and the other parties of the second part, upon trust for the people or congregation then lately belonging to the said John Turner, and whereof John Gardner was then pastor or minister, and in trust and confidence that the trustees to whom the Low Meeting-house was thereby conveyed should permit the same to be used, occupied, and enjoyed as and for a meeting-house or place for the assembly of a particular church or congregation for the worship or service of God by the society or congregation of Protestant Dissenters known by the name of the congregation lately belonging to the said John Turner, and whereof the said John Gardner was then the pastor or minister, and for the use or convenience of all such others as should thereafter come into and join the said society and attend the worship of God in the said place, and should contribute and pay towards the support of the minister for the time being of the said congregation, and towards keeping the said meeting-house in repair. In this deed was contained a power of appointing new trustees, and the persons so to be appointed trustees were to be "such sober and religious persons, being Protestant Dissenters of good credit and reputation, and also members of the said meeting-house, and contributors towards the support of the pastor thereof for the time being, as were most likely to defend, perform, and promote the trusts thereinbefore expressed." The subsequent deeds, down to those of October 1835, under which the plaintiff and defendants became trustees, referred to the deed of January 1766, as expressing the trusts of the property.

Proceedings were instituted against Mr. Murdock before the presbytery of Dumfries, and in August 1845 sentence was pronounced by that presbytery, declaring that Mr. Murdock had by his own act ceased to be a licentiate of the Church of Scotland as by law established, and that he was thenceforth by law disqualified not only from receiving any presentation or appointment to a parochial or other spiritual charge in the said church of Scotland, but also from retaining the status of the minister of the said church in any place whatsoever, unless reproved by the competent ecclesiastical judicatory. Mr. Murdock had protested against the jurisdiction of the presbytery of Dumfries, and he adduced evidence in the cause for the purpose of shewing that it was not binding upon him, or that he was not thereby disqualified for the ministerial office in the Church of Scotland. The cause came on to be heard before the Vice-Chancellor Wigram on the 29th of June, 1849, and the nine following days, and on the 7th of November following his Honour Sir James Wigram, assuming that the trusts of the Low Meeting-house were declared by deed, as was the case in *The Attorney-General* v. *Welsh*, and in *The Attorney-General* v. *Munro*, and that Murdock had seceded from the Established Church of Scotland, and adhered to the Free Church, and that the act of the generally assembly of the 2nd of June applied to Murdock upon those hypotheses, decided that the case of *The Attorney-General* v. *Munro* was a direct authority entitling the plaintiffs to the relief they sought. That although it was not proved that Murdock had signed any deed of demission or other formal act by which he had in terms seceded from the Established Church of Scotland, yet his Honour considered that no such express act was necessary. The act of the general assembly of the 2nd of June, 1845, decided, that adherence to the resolution of the synod held at Berwick on the 16th of April, 1844, was alone sufficient to dissolve the connection between those adhering members and the Established Church of Scotland; and that as the act of the assembly treated the adherence itself as a repudiation of that connection, and as Mr. Murdock had so acted as to have brought himself within the scope of the act of the general assembly, his Honour decided that he was disqualified from being a minister of such Low Meeting-house, and that there was nothing to distinguish the present case from *The Attorney-General* v. *Munro*, either upon the question of removing the trustees, or upon the question of costs. From this decision the defendant Murdock and the trustees concurring with him appealed.

The *Solicitor-General*, *Little*, and *T. Deere Salmon* were for the relators and plaintiffs.

Rolt, *Malins*, and *Selwyn* for the defendants (the appellants).

Lewin for such of the defendants as agreed with the relators.

The cases of *The Attorney-General* v. *Murdock*, Hare, 445; *Milligan* v. *Mitchell*, 1 My. and K. 446; S.C. 3 My. & Cr. 72; *Broom* v. *Summers*, 11 Si. 353; *The Attorney-General* v. *Pearson*, 3 Mer. 409; *The Attorney-General* v. *Munro*, 2 De G. S. 122; *The Attorney-General* v. *Welsh*, 4 Hare, 572; *The Attorney-General* v. *Parker*, 3 Atk. 576; *Craigdallie* v. *Aikman*, 1 Dowl. P.C. 1; S.C. 2 Bligh, 529; *Lady Hewley's* case (*The Attorney-General* v. *Shore*), 11 Sim. 592; and S.C. 9 Cl. & Fin. 355; *Auchterarder's* case, 6 Cl. & Fin. 646, and see also Robertson's Report, 2 vols.; *The Attorney-General* v. *Drummond*, 1 D. & War. 353, and S.C. affirmed by the House of Lords, 14 Jur. 177; *Buchanan* v. *Rucker*, 1 Campbell's N.P. Cases, 63; S.C. 9 East, 192; *Ferguson* v. *Mahon*, 11 A. & E. 179; and Statutes 1 W. & M. c. 18; 10 Ann, c. 12; 7 & 8 Vict. c. 45; 6 & 7 Vict. c. 61; as also the following books:—Cooke's Law of the Church of Scotland; Calamy's Lives of the Ejected Ministers, p. 500; Calamy's Life of Baxter, vol. 1, 447; vol. 2, p. 805; 3 Hallam's Constitutional History, 234; Calamy's Life and Times; Scobell's Collections; Dr. Doddridge's Diary; Johnstone's History of Berwick; and Hill's Practice of the Church of Scotland, were cited during the argument.

The *Solicitor-General* replied.

JUDGMENT. (a)

Friday, Jan. 23.—Lord Justice KNIGHT BRUCE.—The controversy in this suit, caused by information and bill, concerns the trusts, upon which a small landed property at Berwick-upon-Tweed, on part of which stands a building called the Low Meeting-house, now Hide-hill Chapel, is held. It is, and has for many years, been a place of worship for Protestant Dissenters, that is, as the relators and plaintiffs say, for Protestant Dissenters of a particular class and description, not Protestant Dissenters generally—a limitation of the term which the appellants, who are three of the defendants, do not concede or admit. But that it has always been and ought to be continued to be used as a place of worship for Protestant Dissenters in some sense, and that of this place of

(a) This judgment of the Lords Justices is very much condensed. To insert it at length would occupy too much space. Its delivery occupied two hours and a half.

worship and its connection there ought to be a settled minister, having the right, while duly retaining that office, and willing and able for the purpose, to perform its functions, are propositions common to the disputants, and to be taken for granted; as likewise is the proposition that the term *Protestant Dissenters* must in the cause be understood as a term used in England concerning the congregation of a place of worship situate in England. The main, or perhaps substantially the sole question, is as to the fitness and qualification for the particular ministerial office that has been mentioned, of the appellant, Mr. Murdock, and as to the fitness of the two other appellants, who are two of the trustees of the property, for the purposes to which it is applicable to continue in the trusteeship. But there is substantially no difference between the cases of the appellants, for if Mr. Murdock ought not to continue to be the minister, it seems to me plain enough that, entertaining the same views, and associated and acting together as to every thing material in this litigation, the three ought alike to be removed or retire; and if Mr. Murdock ought to be allowed to continue as the minister, there is no case against either of the other appellants. The principal or sole contention of the relators and plaintiffs (the principal respondents in this appeal) may be stated thus:—They may be considered as insisting, first, that it is absolutely necessary to a due administration of the trusts by which the property is bound, that the minister on the foundation should be, when appointed, and should, while it is minister, continue to be, in communion with the Established Church of Scotland; should when appointed, be, or have been, a licentiate of the Established Church of Scotland; and should, while the minister on the foundation, be and continue a minister of the Established Church of Scotland. They insist, in the second place, that Mr. Murdock with whom the other appellants make common cause, though when he became the minister on the foundation, and for some years afterwards, he had those qualifications, did subsequently, and before the institution of the suit, avow and pursue opinions and a line of conduct disqualifying him as a minister of the Established Church of Scotland, and ceased not only to be a minister of that church, but also to be in communion with her. Each of these propositions is combated by the appellants, who insist that Mr. Murdock is a peaceable and fit person to be and continue the minister upon this foundation; that he was so when first elected and placed on it, and that he has ever since continued to be so. Such is the main or sole issue, or such the main or sole issues before us for determination; and that determination must depend (for the controversy, if not merely of fact, is more of fact than of law) on the evidence, the admissible evidence before the Court, especially as it has been stated by the counsel on each side that they believe the cause, as it stands, to contain all the evidence capable of being usefully brought forward. His lordship thought it more convenient to deal with the second proposition of the relators first, and having read the two earliest entries from the kirk session records, shewing the manner in which Mr. Murdock's election or appointment took place, and also some minutes from the books of proceedings of the presbytery of Kelso, said, these documents lead to the inference that it was in the character of a person in communion and connection with the Established Church of Scotland,—in the character of a person qualified by doctrine, opinions, and conduct to be one of her ministers,—that Mr. Murdock was elected to be the minister upon this foundation, and that he became so in the character of an actual minister of the Established Church of Scotland. He seems to have continued in the same communion until the schism and disruption to which I must now refer, and I may state that by the words "the Established Church of Scotland," I mean that church in a Presbyterian state, and by the words "Presbyterianism," or "Presbyterian," their sense with me is to be taken as Trinitarian, and not Socinian. In the year 1843 a great secession from the Established Church of Scotland took place, an occasion on which the general assembly of that church formed and promulgated the enactment of May 1843, and which will be found stated at length in the case of *The Attorney-General* v. *Munro*, 2 De Gex and S. 180. Of this enactment Mr. Murdock disapproved. He attended and participated in the meeting or assembly of the synod of the Presbyterian Church in England, or called the synod of the Presbyterian Church in England, which took place in Hyde-hill Chapel itself in April 1844, and concurred in certain overtures and resolutions [certain passages of which his lordship read]. Soon after these proceedings the general assembly of the Established Church of Scotland enacted first, the Act of the 27th of May, 1844, and then that of the 2nd of June, 1845, both of which are set forth in the report of *The Attorney-General* v. *Munro*. In the evidence, whether documentary or parol evidence, there is not anything that I have been able to discover leading or tending to a conclusion different as concerning this part of the case from that to which, in my opinion, the documents and circumstances I have stated tend and lead—a conclusion, namely, against the appellants. It must necessarily, I think, on the materials before the Court, be taken that before and at the time of the institution of this suit Mr. Murdock had ceased to be and no longer was a minister of the Established Church of Scotland; had ceased to be and no longer was qualified to be a minister of that church; had ceased to be and no longer was in communion with her. But then comes to be considered the proposition of the materiality of that state of things, the proposition affirmed by the relators and plaintiffs and denied by the appellants, that by ceasing to be a minister of the Established Church of Scotland, by ceasing to be in connection with that church, by ceasing to be in communion with her, Mr. Murdock became disqualified and unfit to continue or be the minister upon the foundation in question. This point, depending on the evidence in the suit, considered with a due regard to the nature of the pleadings, is certainly, I think, not concluded by the deeds of 1717, 1719, 1734, and 1766, or any one or more of them, or any later deed; for I am clearly of opinion that neither the appellants' contention nor the respondents' contention is inconsistent with the language of either of those instruments. The litigants on each side say that the congregation in question is a congregation of Protestant Dissenters, and has always been so, and they assert, therefore, that Master John Turner's congregation was a congregation of Protestant Dissenters; the appellants and respondents differ, it may be, as to the meaning of the term, but that difference does not necessarily involve, does not necessarily imply, a contradiction of the deeds on either side. The affirmation or the denial that the minister on this foundation must needs be in connection or communion with the Established Church of Scotland, or must needs be a minister of that church, may well be maintained by persons submitting to be bound by every word of each of the deeds. [His lordship here thought it right to refer to some portions of the doctrines stated by Lord Eldon, in the case of *Attorney-General* v. *Pearson*; and such portions as his lordship read will be found in 3 Mer. 400, 409, 411, and 412.] It is to be observed that, subject to the question whether Erastianism, or analogous to Erastian views, is an opinion belonging to religious belief or religious doctrine, the dispute before us is not one that concerns religious belief or religious doctrines, or except as to the qualification of the pastor or minister, the form or manner of conducting Divine worship. But it cannot, I think, be considered that the manner of conducting Divine worship is not at all touched by the question, to what church in point of discipline the minister belongs, or the question whether, through his own conduct and proceedings, he has ceased to be a member of that church, of which, when chosen, he professed, and must by the electors have been thought, to be a member. Nor, if the manner of conducting Divine worship is not so touched, does it seem to me that Lord Eldon's doctrine is inapplicable to the mere qualification of the minister in other respects than those points of opinion on which the plaintiffs and defendants here are agreed. Now, it appears to me to be a just inference from the pleading and evidence, and to be a fact established, that the congregation in question was, at the time of its original formation, in the latter half of the seventeenth century, and has thenceforth to the present day continually been in theory, opinion, views, and profession, Presbyterian. It appears to me proved also that during fifty years at least next before the election of Mr. Murdock, and during sixty years at least next before the commencement of this suit, the uniform course, usage, and practice of the congregation in question and its trustees, support, I do not say conclusively establish, the contention of the relators and plaintiffs in this respect. It must, upon the evidence, be taken that during that period more than five pastors or ministers have been chosen and appointed, each one of them who preceded Mr. Murdock was, when chosen, a licentiate of the Established Church of Scotland, or an ordained minister of that church,—was, when first settled in the office, an ordained and recognised minister of that church, and so continued while in connection with this foundation; and there is not, I think, the least reason to believe that either was an Episcopalian or not a Protestant Dissenter, or not in theory, not in opinion, not in profession, or not, so far as possible, in practice, a Presbyterian. The question then appears to be whether it was originally, or had before the election of Mr. Murdock become in an effectual manner, a private law or governing and binding regulation of this congregation, that its minister or pastor at all times should be in communion with the Established Church of Scotland, should be or have been a licentiate of the Established Church of Scotland, and should be a minister of that church. It appears to me to be competent to a congregation of Dissenters acting unanimously, and with the concurrence, where they have trustees, of those trustees, to introduce effectually into their system and constitution new regulations from time to time, regulations at least not in contravention of any deed of trust or foundation, not subversive of the original system or constitution, not opposed in principle to it; but whether the unanimous votes of an entire congregation, and their trustees could be of such force as to convert a Trinitarian into a Socinian foundation, a Protestant into a Popish, a Presbyterian into an Episcopalian institution, is not a point before us. The congregation and foundation to which this suit relates were originally, or have ever been, Presbyterian. Nor is anything said by the information and bill, or done by the decree, not consistent with Presbyterianism, or not within Presbyterian limits. My opinion is, that before the year 1720, or before the year 1767, it was not necessary that the pastor or minister of this congregation should be or have been a licentiate of the Established Church of Scotland, should be a minister of the Established Church of Scotland, or should be in a state of communion with that church; it was competent to the entire congregation for the time being acting unanimously and with the concurrence of their trustee or trustees, to resolve and agree effectually (I am not saying irrevocably) that every future minister or pastor should be a person in communion with the Established Church of Scotland, should be or have been a licentiate of the Established Church of Scotland, and should be a minister of that church; such a resolution, such an agreement, was not nor would be to extend or change, though it was or might be to restrict, the class from which the minister or pastor of the congregation was to be chosen. Nor could such a restriction be in the unquestionable circumstances of the case considered absurd or unnecessarily mischievous, necessarily inexpedient, or necessarily unprincipled. I think it to be a just and correct inference from the whole of the admissible evidence that, long before the vacancy caused by the death of Mr. Murdock's immediate predecessor, it was determined by the congregation, and approved by the trustees, that the minister for the time being on the foundation, should always be or have been a licentiate of the Established Church of Scotland, should always be an ordained minister of the Established Church of Scotland, and should therefore necessarily be a person in full communion with that church. The effect which a continued and unbroken usage during a considerable number of consecutive years has in this country on rights of property, or questions concerning property in various instances, is well known, and the present is a controversy about property. Whether it is affected by the statute of the 3 & 4 Wm. 4, c. 27, or by the principle on which the case of *Lord Cholmondeley* v. *Lord Clinton* was decided by Sir Thos. Plumer in the House of Lords, or *Stocker* v. *Berny*, *The Mayor of Hull* v. *Horner*, *Beckford* v. *Wade*, *Gibson* v. *Clarke*, *Chalmer* v. *Bradley*, *Doe* v. *Cooke*, *Doe* v. *Lawley*, *Doe* v. *Barnard*, or any other case belonging to either of the same classes, was decided, I do not express an opinion further than I have done; but certainly I view the observations of Lord Eldon in *The Attorney-General* v. *Pearson*, as not without bearing on the present cause. It has been suggested that the proximity of Berwick to Scotland, and the legal state and social condition in which, as to religion, during the latter half of the seventeenth century, and the whole of the eighteenth, Scotland and England respectively from time to time were, ought to be considered sufficient to account for the constant practice during the sixty years next preceding the suit of having as ministers or pastors upon this foundation, such persons as during that period were so, on the appellants' theory, as distinguished from that of the relators and plaintiffs: to this view I find myself unable to accede. It may be true, if we suppose the case of an office requiring to be filled by a man of learning, which, during sixty consecutive years and more has been uniformly filled by a graduate, for example, of the University of Oxford. It might be unsafe, therefore, to hold that only a graduate of Oxford could be appointed; and other such examples or cases might easily be suggested. But the circumstances of the particular occasion or instance must always be attended to. Long practice or usage as to one subject may be of more or less force, than long practice or usage as to another. The person having judicially to decide on the fact, on the weight of circumstantial evidence, on the inference to be drawn from a series of events, must form the best estimate he can judicially of the mass of materials before him, and all its particulars, and come to a conclusion accordingly. Upon the whole, the pleadings and evidence now before this Court leave me in no state of uncertainty what are the trusts to which the property in dispute is subject, and so far as the disqualification of Mr. Murdock is concerned, leave me in no state of doubt whether a breach of trust has been committed by the appellants. On this my deliberate view of the pleadings and of the evidence, I feel bound to declare the office of minister or pastor vacant, and to affirm the Vice-Chancellor's decree.

Lord Justice Lord CRANWORTH.—The principal question in this case is one of fact rather than of

law. What were the purposes for which the founders of the Low Meeting-house in 1719 subscribed their money? For as the rights of the parties are not touched by the statute 7 & 8 Vict. c. 45, the meeting-house must, according to my view of the case, continue to be used for the same purposes at the present day. Where the trusts on which a chapel has been founded, have at or about the time of the foundation been declared in writing, there is not in general much difficulty in carrying them into execution. But where no such writing exists, where the Court is left to find out from mere subsequent usage what were the original purposes of the foundation, what was the doctrine which the founders considered essential to be preached, what the discipline which they considered essential to be followed, the task often becomes one of great difficulty. There will, indeed, in general be some prominent and leading points as to which no doubt will exist. If in a particular chapel the doctrine preached has, as far back as living memory can go, been uniformly consistent with what has been called orthodox dissent: that is to say, has been based on the doctrine, amongst others, of the Trinity, there can be no difficulty, in coming to the conclusion, as a matter of fact, that the maintenance of that doctrine formed an essential part of the objects for which the chapel was founded; that to preach Socinianism or modern Unitarianism would be in contravention of those objects, and so a use of the chapel which this Court would not permit. This would, I think, be a legitimate and reasonable inference independent of the consideration that the Toleration Act did not extend to those who denied the doctrine of the Trinity. The inference from usage is, from the important nature of its subject-matter, irresistible, that what has been uniformly done constitutes an essential part of the original purposes of the foundation. There are many cases in which it is hard to say, whether what has been uniformly done, has been so done because it constituted part of the original objects of the founders, or merely because it has been thought from time to time the most convenient mode of carrying those objects into effect. I confess that some grave difficulties of this nature have presented themselves to my mind in considering what ought to be taken as the purposes for which this chapel was founded, and consequently as to what are the trusts on which the building is now held by the trustees. The nature of these difficulties I shall best explain by considering the precise terms of the material parts of the decree which was made in the Court below. The decree begins by declaring that the property comprised in the indenture of the 22nd day of May, 1719, and the chapel are subject to the trusts as to such meeting-house, for the appropriation of the same as a church or place of public religious worship, on the model of the Established Church of Scotland, and as to the residue of the said property for the benefit of the congregation of the said meeting-house. Now to this part of the decree I entirely accede, understanding as I do the words "on the model of the Established Church of Scotland," to mean only "in the same mode in which worship is conducted by that church." The property was aptly and sufficiently described, in the deed of 1731, as a house then used as a meeting-house for the congregation of Protestant Dissenters. The only reason for describing it at all was to identify the property intended to be conveyed. For that purpose the description adopted was quite sufficient, and it was neither necessary nor probable that such a deed should contain any statement as to the nature of the doctrine preached, or the discipline followed within the walls of the building conveyed. And with respect to the suggestion that at the time of the foundation of the chapel Protestant Dissenters were generally inclined to overlook the differences among themselves, and to consider it a sufficient bond of union that they were opposed to the Established Church, I adopt the view taken by the Vice-Chancellor Wigram. However those principles might have prevailed in the case of a mere charitable gift in a trust, for instance, to distribute money among indigent Dissenting ministers, or indigent Dissenting poor, it never could have prevailed in the case of persons founding a chapel. In such a case the inference is almost irresistible that the founders must have contemplated the erection of a building, in which they would intend that principles of religious belief should be expounded, and religious practice be enforced, in the mode considered by them most consistent with true and genuine Christianity, and to which they had themselves been accustomed. I consider it therefore perfectly clear that the object of the foundation was the erection of a building, in which religious services should be conducted according to some definite form of worship. The question then is, according to what form? This also appears to me to be free from all doubt, according to the Presbyterian form. All the evidence shews that this has been the mode in which the worship has been conducted, as far back as there are any means of inquiry; and I am perfectly satisfied that this has been the case from the very date of the foundation, and long before that date by the congregation by whom the chapel was built. I entertain no doubt but that the worship has always been conducted in conformity with "the Directory for the Public Worship of God," by which the mode of worship in the Church of Scotland now is, and ever since the year 1690 has been, regulated. I am satisfied, further, that the conducting the services according to that mode must have been the main, if not the only object of the founders. On such a point I cannot suppose them to have been indifferent; and therefore I think the declaration in the decree which appropriates the chapel in question as a church or place of religious worship, "on the model of the Established Church of Scotland," is perfectly right, assuming that these latter words mean no more than according to the Directory for Public Worship used in the Established Church of Scotland. But the decree, after making the declaration, goes on to declare that "no minister or other person is qualified for, or is competent to exercise the office of minister or pastor of the Low Meeting-house, without being a licentiate and recognised minister of the Established Church of Scotland, and in full connection therewith." To this declaration I confess I cannot accede. I do not think that the evidence justifies it. It imposes, as I think, a restriction on the future choice of ministers, for which I can discover no warrant. In order to sustain this part of the decree, the relators must make out first, that in fact all the ministers of the Low Meeting-house have, since its foundation, been licentiates and recognised ministers of the Church of Scotland (making due allowance for any occasional deviations from this general practice which can fairly be attributed to accident or oversight); and, secondly, that this connection with the Church of Scotland was one of the objects of the founders, to permit a departure from which would be a breach of trust. The evidence does not satisfy me that Mr. Smith, who became minister of the Low Meeting-house in 1797, and the six ministers who have from time to time succeeded him, were all ordained to this particular congregation by some Scotch Presbytery. But let it be assumed for the purposes, of argument that they were; then arises the question, whether the connection of all the ministers with the Scotch Church is to be deemed an essential part of the objects originally contemplated by the founders, or is to be attributed to accident or some other cause. I think that even if all the ministers could be shewn to have been licensed by the Church of Scotland, still it will not be reasonable to infer, that it was in the contemplation of the founders, that this connection must always and under all circumstances continue. I come to this conclusion, having considered the history of Presbyterianism as connected both with England and Scotland, and the condition in which the founders of the meeting-house and those who have since from time to time formed its congregation, have stood with reference to their religious wants. When I speak of the history of Presbyterianism, I confine myself to that which may be collected without liability to error, from the law, or what for a time had the force of law in this country, and from the laws of Scotland. Looking at the question merely in the abstract, and without reference to the circumstances of this particular congregation, I think it was very unlikely that a congregation of Presbyterian Dissenters in England founding a meeting-house in 1719, when possibly there were some who might recollect the Presbyterian form of worship as having been the established religion of their own country, and when the traditions as to the ascendancy of that mode of worship in this country must have been strong in the minds of all, should intend to make it an essential point that their minister should, under all the circumstances, be a minister ordained by the Church of Scotland; and, if this be a reasonable conclusion, I think it derives great additional weight, when we look to the particular circumstances under which the congregation of Master John Turner existed; and I think that the history of this congregation makes it particularly unlikely that the founders of the chapel could ever have contemplated what this decree declares to be essential, namely, that the minister of the chapel must be a licentiate and minister of the Church of Scotland. Is there, then, anything in the subsequent history of the foundation which ought reasonably to lead to the inference which is the foundation of this declaration in the decree? The circumstance relied on is one always entitled to great weight, namely, long continued usage, that is, the fact that all the ministers since 1719 have been Scotch licentiates and ministers. I have already stated that, in my opinion, it is made out that, since the year 1780, or thereabouts, all the ministers of the meeting-house have been either Scotch licentiates or ministers ordained by a Scotch Presbytery; and I shall assume, for the present, that this has been so for the whole period. But what then? The question still arises, to which I have already adverted, — How and why has it happened that this uniform selection of Scotch licentiates and ministers has prevailed? Is this a matter in which we reasonably infer from the usage that what has so been uniformly done was part of the trust, as we certainly may reasonably infer that the celebration of Divine [illegible]vice according to the Presbyterian model was part of such trust? Where a course of practice has long prevailed on any particular subject the inference that it has been a just and legal course is consistent with law and reason; and, therefore, if any one were now to attempt to call in question the right of a Scotch ordained minister to be minister of the Low Meeting-house, on the ground that the original foundation was for English ordained ministers only, the fact that Scotch ministers had always been appointed would be most important, probably conclusive, on the subject. The extreme improbability that for above a century such a practice, if illegal or contrary to the trust, should have been allowed to exist, would well nigh countervail any evidence which could be brought to shew that it was contrary to the original intention of the founders. But that is not here the point in dispute. No one questions the right of a Scotch ordained minister to become the minister of this chapel, if he be duly chosen. The question is not whether he *may*, but whether he *must*, be a Scotch licentiate or minister, and on this latter question the usage, though certainly not to be disregarded, as affording no evidence on the point, is yet to be compared with the other circumstances and to be weighed against them. The usage may have prevailed, because it was the *only* usage consistent with the trust, it may have prevailed because it was the *most convenient* usage, and I think the latter is the more reasonable inference from the facts of the case. The earlier ministers might have been, and probably were licensed or ordained by the Church of Scotland, but neither as to Turner nor those who preceded him, nor as to Gardner, is there any evidence satisfactorily shewing that they were such Scotch licentiates or ministers. The point is not perhaps very material as to those who preceded Turner, but as to him, it is most important, for if he were not a licentiate and recognised minister of the Church of Scotland, it is very difficult, indeed, to suppose that those who built the chapel during his ministry, and for him, could have intended to impose such a qualification on all future ministers. It may, however, be said, that as there is not any proof that Turner was not a Scotch licentiate and minister, it may fairly be assumed that he was so by reasoning backwards from more modern times, that for more than half a century all the ministers have been Scotch licentiates; therefore, in the absence of proof to the contrary, it is fair to infer that all have been so ever since the foundation. This may, in some cases, be a legitimate mode of reasoning; but it is entitled to little weight when the more modern usage can be explained on grounds inapplicable to the earlier period. Now, in my opinion, the near neighbourhood of Berwick to Scotland, and the constant friendly intercourse between them, together with the probable difficulties which the congregation of the Low Meeting-house might experience in obtaining proper ministers from England, may well explain the reason why, in fact, they have always been obtained, for a long time back from Scotland. But the matter does not rest on any general reasoning of this kind. There are circumstances in evidence which seem to me strongly to illustrate the view which I take of this part of the case, and to shew that the choice of Scotch ministers, for the last half-century has arisen from other causes than the positive obligations of the trust. The question is, not what would now be the best means of securing a succession of strict Presbyterian ministers, but what were the conditions and restrictions contemplated by the founders. Perhaps, if they could in 1719 have foreseen what would happen a hundred or a hundred and twenty years later, they might have framed a trust conformable to the declaration in this decree; perhaps they might not; but this is mere matter of speculation, in which we have no right to indulge. The question is not what declaration of trust might have been expedient, but what trusts can be inferred as having actually been in the contemplation of the founders. I do not think that any such restriction confining the ministers of the Low Meeting-house to licentiates of the Church of Scotland, as is required by this decree, can be so inferred. For the reasons, therefore, which I have endeavoured to explain in detail, I am of opinion that the decree, so far as it declares that no person is qualified to be a minister or pastor of the Low Meeting-house without being a licentiate and recognised minister of the Established Church of Scotland, and in full connection therewith, is erroneous, not being warranted by the evidence. I think it is [illegible]cient that he be a Presbyterian minister regularly ordained to the congregation, according to the Presbyterian mode of ordination as preached in England, Scotland, and Ireland. It now becomes my duty to state that so far as the case of the defendant Murdock is concerned, I am clearly of opinion that the decree is right in declaring that he has ceased to be qualified to exercise the office of minister of the Low

Meeting-house, and so in giving the necessary directions for preventing him from using, and the trustees from permitting him to use the chapel. The grounds on which I come to this conclusion are very short and simple. Mr. Murdock's ordination was, in fact, a Scotch ordination. He was ordained by the Presbytery of Kelso. That ordination was certainly sufficient to qualify him to hold the office of minister of the Low Meeting-house; but it was necessary not only that he should be in the first instance duly ordained to the chapel, but further, that such ordination should remain in force so long as he should continue in the post of minister. It is an essential part of the Presbyterian system, that none but a regularly ordained minister or licentiate, should preach or perform divine service. This is the rule laid down in the Acts regulating Presbyterian church government both in England and in Scotland. Now it appears to me perfectly clear, on the evidence, that Mr. Murdock has absolutely ceased to be an ordained minister of the Church of Scotland; in fact, by his answer he repudiates all connection with that Church. Even, if he had not done so, I am satisfied, as a matter of fact on the evidence, that Mr. Murdock, being a member of the synod, held at Berwick on the 16th of April, 1844, did adhere to the resolutions, then and there adopted; and that being so, he was brought within the express terms of the Act of general assembly, of 2nd June, 1845, which enacts and declares that all members of the synod, who so adhered, are no longer members of or in communion with the Established Church of Scotland. The effect of that enactment was, not directly to remove Mr. Murdock from his situation as minister of the Low Meeting-house: neither the general assembly nor any Scotch Court could effect his civil rights in this country, but it certainly was within the competence of the general assembly to deprive him of his status as an ordained minister of the Scotch Church, and that has been effectually done. He is no longer an ordained minister of that Church, and if not of that Church, then of no other Presbyterian church whatever, and, therefore, not now capable of being minister or pastor of the Low Meeting-house; on this part of the case I have nothing further to add. The result of my judgment being, that the decree is wrong in declaring that the minister of the Low Meeting-house must be a licentiate and recognised minister of the Established Church of Scotland, and in full connection therewith, it necessarily follows that, in my judgment, the directions consequent on that declaration are also wrong. The decree will, of course, be affirmed, and the appeal dismissed with costs.

Saturday, Jan. 24.—*Rolt*, on behalf of Mr. Murdock and the defendant trustees, against whom the decree had been made, moved, the leave of the Court having been previously obtained, that the execution of the decree of the Vice-Chancellor might be suspended, pending an appeal intended to be presented to the House of Lords, and urged that if the decree of the Court were put in execution, the congregation of the Low Meeting-house would be dispersed, and the appellants thereby sustain irreparable injury; and that although the appeal to the House of Lords might be successful, the parties could not then be placed in their original position; and cited the cases of *Smith* v. *Grazebrook*, 3 Mac. & Gor. 6; *Wallum* v. *Ingilby*, 1 Myl & K. 61; *Attorney-General* v. *Richards*, L. C. 31st July, 1844; *Garcia* v. *Ricardo*, 1 Phillips, 498; *Wood* v. *Milner*, 1 J. & W. 636.

Lord Justice Lord CRANWORTH.—I do not see how the appellants will sustain the irreparable injury which has been suggested; and although speaking for myself alone, I might have been disposed to grant this motion, yet as two judges to one have agreed that the appellants are wrong, I do not see why it is more reasonable that those who up to this time have been decreed to be in the right, should forego what they are entitled to, than that those who are found to be wrong should have possession of that which at present they are declared not to be entitled to hold. If the House of Lords should decide that the decree below was wrong, and that the confirmation of it was wrong also, the appellants will be entitled to repossess the chapel as before. I do not see that the rights of those in whose favour a decree has been twice pronounced should be delayed. As to the dispersion of the congregation, the Court cannot listen to that.

Lord Justice KNIGHT BRUCE.—The effect of the decree as it stands, whether it be erroneous or correct, is to establish or to restore that state of things which for more than fifty years before the commencement of this litigation existed, quietly and undisturbed; and as every judge before whom this case has been heard is of opinion that the minister should be displaced, I think that the application is altogether groundless, and must be refused.(a)

(a) We are given to understand that there will not be an appeal to the House of Lords in this case.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. HENRY COOKE, Esq. Barrister-at-Law.

March 1 *and* 2.

WALKER *v.* TIPPING.

Will—Construction—Annuity.

A testator gave to his grand-nephews and nieces as follows:—To A. 300l. to be laid out in an annuity for life; to B. 300l. to be paid to him at twenty-one; to C. 300l. to be sunk in an annuity for his life; to D. 300l. at twenty-three years of age; to E. 300l. annuity for life; to F. 300l.; to G. 300l. annuity for life; and to H. 300l. to be sunk in an annuity for her life; and he also gave his gardener 10l. annuity for life:

Held, that the just rule of construction that words are not to be added to or transposed in a will if, as they stand, they are susceptible of a reasonable construction, and therefore that the words "annuity for life" passed not mere gross sums of 300l. to be enjoyed in the shape of annuities, but life annuities of 300l. a-year each.

The testator in this case, B. Walker, by his will dated in 1843, bequeathed to the nephews and nieces of his sister, namely:—to A. B. 1,000l.; to D. 300l.; to E. F. 300l.; to G. H. 1,000l.; to J. K. 300l. (and so on in different amounts); he then proceeded—"I give and bequeath to my grand-nephews and nieces as follows, viz.: to Mary Puckles, 300l. to be laid out in an annuity for her life; to F. Walker, 300l. to be paid to him at twenty-one; to Alfred Walker, 300l. to be sunk in an annuity for his life; to William Walker 300l. at twenty-three years of age; to Joseph Walker, 300l. annuity for life; to Hannah Roberts, 300l.; to Martha Roberts, 300l. annuity for life; to Martha Walker, 300l. to be sunk in an annuity for her life; and I bequeath to John Feather, my gardener, 10l. annuity for life." After the testator's death a question was raised whether the testator meant to give Joseph Walker and Martha Roberts mere sums of 300l. to be laid out in annuities for their lives, or 300l. a-year for life each, which they claimed.

Rolt and *Bagshawe*, for the plaintiffs, the two legatees.—There would be no doubt whatever on this will if there were no other gifts than these two; and the fact of other gifts, whether similar or different, being given in different words, cannot affect the construction. The testator uses the word "sunk" when he intends that the sum named should be the whole amount to be sunk. The ages at which the various bequests are to take effect vary in different cases; there is, therefore, but little force to be attributed to the similarity of the sums named in the different bequests. These gifts to Joseph Walker and Martha Roberts are precisely in the same words which the testator uses in the bequest to John Feather, where it is incredible he should have intended the 10l. to be a gross sum invested as an annuity. *Wordsworth* v. *Wood*, 4 Myl. & Cr. 641, was cited and remarked on.

Walker and *Tillotson* for the executors.—The several gifts of 300l. were all intended to be the same. There is not a single hint through the will of any intention to make so great a difference in the amount of the benefits he gives to a class of persons, who all stand in the same degree of relationship to the testator. Where necessary, this Court will change the order of the words used, with a view to make out a consistent intention, and if need be, will supply a word evidently omitted by mistake. Here the testator makes annuity gifts, then bequeaths gross sums; and when again resuming annuity gifts, omits the word "sunk," which he had before used when dealing with annuity benefits; and if that word were supplied the construction and intention would alike be reasonable. In Viner's Abridgment, Devise D, 81, it is laid down thus:—"A bill for a legacy testator devises 550 (omitting pounds) to his daughter Mary; and he also devises 550l. to his daughter Barbary. The defendant insists that the devise of 550 to the plaintiff is void for uncertainty, not saying 550 what. [COWPER, C.—The subsequent devise to the other daughter makes this extremely clear that the testator meant 550l.; and it is as certain and good as if the word 'pounds' had been expressed.]" In the present case add the word "sunk," in the same way as Lord Cowper added the word "pounds," and the meaning is plain and consistent.

Rolt, in reply.—However you may refer to other parts of a will to elicit an intention, you cannot resort to them to create an ambiguity. Where there is an ambiguity you may go to other parts to explain it. To say that there is a uniformity of scheme in this will is a mistake, for the gifts to the nephews and nieces of the testator's sister range from 1,000l. to 300l.; and when the gifts are to the persons whom he describes as his grand-nephews and nieces, the sums are directed to be paid at different ages, and in different ways; one at twenty-one, another at twenty-three, some in gross sums, others in annuities to be purchased with certain sums, and in the instances of the plaintiffs of annuities of particular amounts.

Tuesday, March 2.—The VICE-CHANCELLOR.—The first question which arises on this will is, what is the natural import of the words the testator has used, taking the clause by itself. There are only two modes in which these words can be read: they either amount to a gift of a principal sum of 300l. to be enjoyment by way of an annuity; or else it is a gift of 300l. per annum. The first construction cannot be got at without the addition of some words to direct the conversion of this, if a capital sum, into an annuity. The second construction is plain enough on the face of it. Can we then, or rather must we, turn to the rest of the will and see whether this clause seems to agree with the remainder of the will, before we give effect to it? Now the rule I take to be, that no addition to, or transposition of the words of a gift can be made, if they are susceptible of a reasonable construction as they stand. The second construction, as I have mentioned, is clear and simple, and therefore, on the words of that clause, this is a gift of 300l. per annum. But then it was said that the context shews the intention of the testator to have been different. I have therefore to consider first whether the Court can resort to the context under such circumstances; and secondly, whether the context if admissible does clearly shew any contrary intention to the plain meaning of this gift, taken by itself. Now in *Mellish* v. *Mellish*, 4 Ves. 45, Lord Alvanley says, at p. 48,—"The question is, can I see sufficient to enable me to declare that demonstrably and incontrovertibly the name of 'Ann' has crept in by mere mistake? I really believe it was so, but I dare not as a judge take upon myself to say this word cannot be reconciled with the rest of the will; and I have always understood that where there is a mistake or an omission, all the Court has to do is to see whether it is possible to reconcile that part with the rest, and whether it is perfectly clear upon the whole scope of the will that the intention cannot stand with the alleged mistake or omission." And then again, p. 50,—"The rule is that wherever there is a clear mistake, or a clear omission, recourse is to be had to the general scope of the will, and the general intention to be collected from it; but the first thing to be proved is, that there is a mistake. I do not find enough to convince me that there is a mistake; and wherever it comes to be a doubt, the safest way is to adhere to the words." I adopt the rule thus laid down by Lord Alvanley in every point. I think the Court must be satisfied that something more was intended before it will go to the context to do away with what would be the clear meaning of a gift standing alone. But in the next place, if I resort to the context I find nothing there to guide me with certainty to the conclusion that the testator had a different intention from what appears from the words of the gift. The different gifts in the will are differently expressed; and difference of expression seems to imply difference of intention. As to the argument attempted to be drawn from the relation between the parties, it is impossible that the Court can decide the rights of parties under a will upon the ground of the connection between them. Precisely the same reasoning applies to the gift to Martha Roberts.

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

Saturday, May 22.

SMITHSON *v.* WHARTON.

Practice—Infant defendant abroad at the time of filing the bill, afterwards coming within the jurisdiction.

Prendergast, on behalf of an infant defendant in this cause, who was out of the jurisdiction when the bill was filed, moved for the appointment of a guardian, the infant having now come within the jurisdiction, and that thereupon this defendant might be at liberty to attend before the Master under the decree made in the cause on the 9th of November, 1850, and to adopt, with the approbation of the Master, the proceedings in the cause.

The VICE-CHANCELLOR said that he thought there should be two orders. He would, therefore, make the common order for the assignment of a guardian, and a separate order for a reference to the Master to inquire whether it would be for the benefit of the infant to adopt the proceedings which had been taken in the cause, and if so, then that the infant should be at liberty to adopt them and to attend the future proceedings.

Ex parte MARKWELL, *re* THE METROPOLITAN RAILWAYS JUNCTION COMPANY.

Joint-Stock Companies' Winding-up Acts—Member of provisional committee—Contributory.

*A. B. in September 1845, upon the application of the local solicitor and agent of a proposed rail-

way company, agreed to become a member of the provisional committee, upon condition that he was to be free from liability. The business of the company was transacted by a committee of management, and A. B. did not attend any meeting. In October 1845, A. B. applied for 200 shares, and although there was no evidence of an allotment to him having been made, two letters of A. B. requesting time for payment of calls were produced. The Master placed A. B.'s name in the list of contributories, and on appeal it was Held, that the case was within the authority of Upfill's *case, and that A. B. was properly placed on the list.*

This was a motion on behalf of Mr. James Markwell, that the order of Master Brougham, dated the 19th day of March, 1852, whereby he ordered that James Markwell should be placed on the list of contributories as a contributory, might be discharged.

The Metropolitan Railways Junction Company was projected in 1845. Mr. Markwell being possessed of land in the neighbourhood of Billericay, near which the line of railway would pass, was, in September 1845, applied to by Mr. Woodard, a solicitor and local agent for the company, who advised him to have something to do with the railway, adding that he thought if he (Markwell) became a patron of the line, with four or five others he had in his list of clients, it would be of great service to Markwell. Upon this Markwell gave Mr. Woodard his consent to be put upon the provisional committee as a patron of the line, and upon condition that he should be free from liability. Mr. Woodard, in his evidence, stated that he was authorised to make this stipulation with Mr. Markwell by the solicitors and the secretary of the company, and several other gentlemen present at the company's office on the 19th of September. Mr. Markwell never attended any meeting of the provisional committee, and the business connected with the scheme was transacted by the committee of management. On the 8th of October, 1845, Mr. Markwell sent an application for 200 shares, but although there was no evidence of any shares having been allotted to him, the following letters addressed to Mr. Humphreys, the company's solicitor, by Mr. Markwell, were produced:—

"Long's Hotel, October 22, 1845.

"Dear Sir,—The pay-day of the Metropolitans coming so soon after the allotment frightened all my acquaintances and myself; also sorry that they remained at par. It would have been judicious to have postponed the pay-day, as the panic in all the new projections alarms every body. My wife, in addition to having been told, saw my name in the papers, and it has caused great uneasiness in that quarter. I must entreat you, therefore, to get that withdrawn, that domestic difference may cease. With regard to the payment of the deposit, the affair came so sharp, that I was not by any means prepared, having all my ready cash out. I hope, however, that the company will see the necessity of postponing the day of payment, like the London and Exeter, which have postponed theirs for a week. I only came to town to-day from the country.—I am, dear Sir, yours obediently, "J. Markwell."

"Long's Hotel, October 25, 1845.

"My dear Sir,—I am extremely obliged to you for your indulgence. There are two reasons for my delay in paying on the Metropolitans. The one is, in consequence of this panic, which will soon subside. I have upwards of 3,500*l.* worth of scrip, and it has locked me up, like a great many more. The other is, the awful state of the market generally. So if the indulgence could be extended, it would be all the better. This settling day is frightful. I am obliged to go into the west of England, but shall be back in eight or nine days.—I am, Sir, your very obliged, "J. Markwell."

Daniel and *Roxburgh*, in support of the motion, contended that the case was distinguishable from *Upfill's* case, the committee of management not being the same as the provisional committee. The condition upon which Markwell's consent to be placed on the committee had been given would prevent his liability as a contributory. (*Ex parte Roberts*, 3 De G. and Sma. 205; 2 Mac. & Gord. 192.) Besides these circumstances, there was no evidence of any number of shares having been allotted. (*Ex parte Carmichael*, 17 Sim. 163.)

Bacon and *Selwyn*, for the official manager, said that the case was within the authority of *Upfill's* case, and that the conditional agreement was not entered into by any one who had authority to bind the company.

Daniel, in reply, referred to *Morris* v. *Cooper*, H. L. and *Norris* v. *Bright*, H. L.

The Vice-Chancellor said, he thought *Upfill's* case decided the present case. That was an authority binding on this Court, and whatever might be said of the reasoning in that case, his Honour did not think that there was any difficulty in applying the case to another in which the circumstances were similar. *Upfill's* case decided that a member of the provisional committee, who accepted shares allotted to him, was a contributory. Here a gentleman was clearly a member of the provisional committee, and he accepted shares. There was a letter from him which was evidence of that. It appeared to his Honour that there was no doubt of there being an allotment and acceptance of shares, but it was for him to shew of what that allotment consisted. Mr. Markwell said that there was a special agreement between himself and the governing body, by which it was stipulated that he was to be under no liability. The evidence of that agreement was loose, and there might be doubts raised as to the authority of those who entered into it to bind the company. But, passing by that, what was the nature of the agreement itself? This gentleman appeared to have had no intention originally of taking shares at all, but he stipulated that, by becoming a member of the provisional committee, he was not to be subject to any liability—he was to be merely a patron of the scheme. If he had remained merely a member of the provisional committee, he would have been under no liability; but at a subsequent period he agreed to take shares, and he then entered into an entirely different relation, which brought upon him the liability which was considered to attach in *Upfill's* case. If he had repeated the stipulation that he was to be under no liability, the question would have been the same as that which was raised in *Roberts's* case, and the Court would then have had to consider how that case would bear upon this. It appeared then to his Honour, that when Markwell took shares he entered into a new relation with the company, and did not then stipulate that he should be free from liability, and therefore the case was within the authority of *Upfill's* case.

Motion refused with costs.

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. Bennet, Esq. of Lincoln's-inn, Barrister-at-Law.

Monday, May 31.

Marshall v. Scott.

Practice—Short cause.

If, when a cause is set down as a short cause, the counsel for either party certifies in person to the Court that the hearing will take considerable time, the Court will order it to be placed back in the general paper.

This was a cause which had been set down in the paper and came on to be heard as a short cause. The question in dispute between the parties to the suit was, as to the proper terms and covenants to be inserted in a lease. This had been referred in the usual way to the Master, who, after considerable litigation before him, had settled and approved the draft of the lease, and the only thing to be done in the cause was to confirm the Master's report as to this lease, and other consequential directions; as also the question by whom the costs of the suit were to be paid.

Stuart and *Shebbeare* stated these facts in a few words.

Malins (with him *Erskine*) offered, if the plaintiff would consent to pay his own costs of the suit, to let the cause be heard as a short cause; otherwise, as the question by whom the costs should be paid, and the quantum of costs which had been incurred by each party in the Master's office was open to considerable difficulty, and would necessarily take some time in explaining to the Court the course which had been pursued by each party in the Master's office, it could not be heard as a short cause. The terms of the lease had been adopted from states of facts brought in by both parties. This offer being declined,

Stuart, with much earnestness, contended that the plaintiff had a right to the cause being heard as a short cause; for, if not, in every cause where an unreasonable offer was made and not agreed to, the Court was at the mercy of any party who should assert that the cause could be intentionally prevented from being heard as a short cause, which it really was, to the great delay of a plaintiff.

The Vice-Chancellor said he would not allow any cause to be heard as a short cause in which counsel should state to him on his credit that it was absolutely to the interests of his client to enter at length into a discussion which should shew to the Court that the cause was not in fact a short cause.

Ordered to be placed back in the general paper of causes.

May 27 and 31.

Longstaff v. Rennison.

Legacy, or debt.

A sum of 350l. had been secured by a promissory note made by a testatrix to A. and B. and on the same day as the date of this promissory note she executed her will, in which she ordered and directed, "that the debt of 350l. which I owe to A. and B. and for the security of the payment of which I have given them my promissory note, and all other my just debts, funeral and testamentary expenses, shall be paid by my executors hereinafter mentioned;" and the residue of her estate she gave to be "applied towards establishing a school in connection with a Baptist chapel at S." The promissory note had been handed over to A. and B. with an intimation to them by the solicitor of the testatrix, that the said promissory note was for the use of the Baptist chapel in S. aforesaid: Held, that the sum secured by the promissory note was a legacy to A. and B. for such purposes as they could by law apply it.

This cause came on for further directions and costs on the Master's general report; and a question arose whether, under the circumstances after stated, a sum of 350*l.* was a debt due by the testatrix to the defendants Carrick and Sample, or whether it was a legacy of that amount payable to them, and upon which of course legacy duty was payable. The special circumstances found by the Master were as follow:—Margaret Clay, by her will, of the 28th March, 1844, bequeathed partly in the words following,—"I order and direct particularly the debt of 350*l.* and interest, which I owe to the Rev. John Donald Carrick and the Rev. George Sample, and for the security of the payment of which I have given them my promissory note, payable to them or their order on demand, and all other my just debts, and funeral and testamentary expenses, to be paid by my executors hereafter mentioned;" and after giving instructions as to her funeral, and bequeathing various pecuniary legacies, she declared that "as to all the rest, residue, and remainder of her trust estate, moneys, chattels, and premises, after payment of the before-mentioned legacies, debts, funeral and testamentary expenses, and the expenses of proving and carrying into execution the trusts of that her will, and all expenses incident thereto respectively, she willed, bequeathed, and directed her said trustees, and the survivor, and the heirs, executors, administrators, and assigns of such survivor, to pay and apply the same towards establishing a school in connection with the Baptist chapel of North Shields for the time being, and to pay the same over to the treasurer for the time being of such school then or thereafter to be built, whose receipt should be a good and sufficient discharge for the same to her said trustees;" and the said testatrix appointed the said defendants, John Rennison and Matthew Popplewell, executors of her said will. The said defendant George Sample died since the institution of the suit, and the promissory note in the testatrix's will mentioned bore date the 28th day of March, 1844, and was delivered to the defendant John Donald Carrick in or about the month of July, 1844, by the hands of the said defendant John Rennison, who received the same from the hands of Joseph Laing, the then attorney of the said testatrix, Margaret Clay; and the testatrix freely and voluntarily made and signed the promissory note, and there was no debt due from the testatrix to the defendant John Donald Carrick and the defendant George Sample, or either of them, at the time of her making and signing the note; and the said promissory note was not drawn by the said defendants John Donald Carrick and George Sample, nor under the instructions or at the request of them, or either of them, nor did they, or either of them, ever apply to call upon or speak to the said testatrix with the view or for the purpose of obtaining the said promissory note from her, or of inducing her to make or sign the same. No agreement or understanding was ever made or come to between the said testatrix, the defendant John Donald Carrick, or the defendant George Sample, or either of them, as to the mode in which the proceeds of the said note should be applied: nor did the defendant John Donald Carrick and the defendant George Sample, or either of them, do any act, or make, or in the lifetime of the said testatrix, receive any communication to or from the said testatrix, or any other person, from which any charitable or other trust as to the said promissory note could be implied, and that about twelve months previous to the decease of the testatrix she informed the defendant John Rennison that she had made a promissory note for 350*l.* payable to the defendant John Donald Carrick and the defendant George Sample, and that she had given the promissory note to Joseph Laing, who was then acting as her attorney; and the said testatrix then authorised the defendant John Rennison to obtain the said promissory note from the said Joseph Laing, and deliver the same to the defendants John Donald Carrick and George Sample; that the testatrix also, at or about the same time mentioned to the defendant John Rennison that she wished the defendants John Donald Carrick and George Sample to apply the amount of the promissory note to and for the use of the Baptist chapel in Stevenson-street, in the borough of Tynemouth, in the county of Northumberland, and that she had no doubt but that they would apply the money rightly, as she had every confidence in them. That, in July 1844, the defendant John Rennison received the said promissory note from the said Joseph

Laing, and within a day or two after the defendant John Rennison had so received the same, the said defendant John Rennison gave the said note to the said defendant John Donald Carrick, one of the payees of the said note, as before mentioned; and that the said defendant John Rennison did not at that time, nor at any other time in the lifetime of the said testatrix, inform the defendants, John Donald Carrick and George Sample, or either of them, what were the wishes of the testatrix as to the application of the said sum of 350*l.*; but the defendant John Rennison, told the defendant John Donald Carrick, and subsequently the defendant George Sample, that he was desired by the said testatrix to give them the note, but no explanation of the reasons for making the said gift was given to them or either of them by the defendant John Rennison in the lifetime of the testatrix. That Joseph Laing was now deceased, and that the said testatrix did not at any time desire the defendant John Rennison either to inform or not to inform the defendants John Donald Carrick and George Sample, or either of them, that it was her intention that they, the defendants John Donald Carrick and George Sample, should not sue in her lifetime upon the said promissory note for 350*l.*; and that at or about the time when the said defendant John Rennison obtained the promissory note from Joseph Laing and delivered the same to the defendants John Donald Carrick and George Sample, the testatrix mentioned to the defendant John Rennison, that the purpose to which she wished the defendants John Donald Carrick and George Sample to apply the money in tended to be secured by the said promissory note, was for the use of the Baptist chapel in Stevenson-street, aforesaid, she desired the said defendant John Rennison not to inform the said John Donald Carrick and George Sample of such her wishes with respect to the application of the money until after her decease. That the testatrix never at any time made any allusion to the application of the said money for the purpose of establishing or supporting a school in connection with the Baptist chapel or otherwise, and that the aforesaid particulars respecting the wishes of the said testatrix, as to the use to be made of the said 350*l.* were in fact communicated by the defendant John Rennison to the defendants John Donald Carrick and George Sample, some time after the decease of the said testatrix. On these facts the Master had found that the sum of 350*l.* secured by the said promissory note to the testatrix was a legacy charged on the mixed fund arising from the testatrix's estate.

The cause now came on for further directions.

Kenyon Parker and *H. Clarke*, for the plaintiffs.

W. Lee, for the defendant Rennison.

Smythe, for other defendants.

James, for the Attorney-General.

The authorities and cases cited were:—Godolphin on Legacies, 271; *Briggs* v. *Penny*, 3 M'N. & G. 77; *Pritchard* v. *Ardouin*, 3 Russ. 456; *Mather* v. *Scott*, 2 Keen, 172; *True* v. *The Corporation of Gloucester*, 14 Beav. 173; *The Attorney-General* v. *Williams*, 2 Cox, 387; 4 Bro. C. C. 526; *The Attorney General* v. *Stepney*, 10 Ves. 22; Fonb. Eq. 335; *Tate* v. *Hilbert*, 2 Ves. 211; *Schloss* v. *Stiebel*, 6 Sim. 1; *Rishton* v. *Cobb*, 5 My. & Cr. 145; *Giles* v. *Giles*, 1 Keen, 685; *Kennett* v. *Abbott*, 4 Ves. 802; *Chabot* v. *Beech*, 4 Ves. 555.

JUDGMENT.

The VICE-CHANCELLOR said that he had been anxious to see whether in this case he could not save the parties the expense and delay of a reference to a Court of Law to try the legal question, and that he thought he could now do so. The point was a simple one. The testatrix the same day on which she made her will also signed a promissory note for 350*l.* [His Honour here stated the before-mentioned facts of the case.] Now, the note was made without any consideration, and voluntarily. She did not, on that day deliver it to the payees, but to her solicitor, who subsequently delivered it to the parties before mentioned. On the same day as the date of the note the testatrix made her will, by which she treated this 350*l.* as a debt, and so recognises it, and directs this and all other her debts to be paid by her executors. The Master has reported the special circumstances, and submitting the facts to the Court, reports it as a legacy. The question is, whether it is to be considered as a legacy or a debt. He (the Vice-Chancellor) considered that upon the authorities cited, it was very questionable whether it would be considered as a legal debt; but whether so or not a Court of Law was the proper tribunal for the decision of that question. But considering that if not valid as a debt it clearly was a legacy, and the parties assenting to his decision without the reference to a Court of Law, he should decide, as the Master had reported, that the amount of the note must be considered as a legacy. If a debt, it would not be liable to legacy duty; that being declared to be a legacy, it would be so liable, the parties taking it as a legacy payable with the duty, and not to take it in preference to the debts. He should, therefore, confirm the Master's report, and allow the parties to take it as a legacy, subject to the trusts declared by the will of the testatrix. The effect of his deciding it in this short form would be to leave either party to take the opinion of a Superior Court if they wished it, without having the question incumbered with recitals.

Order accordingly.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

Monday, Feb. 9.

SHEPHERD *v.* THE MARQUIS OF LONDONDERRY.

Tithes—rent-charge in lieu of—Distress—Stat. 6 & 7 Wm. 4, c. 71, ss. 45, 71, pendency of suit touching the right to any tithes—Jurisdiction of Tithe Commissioners to make award.

A suit between two rival claimants to the ownership of tithes admitted to be payable to somebody is not "a suit touching the right to any tithes" within the meaning of sec. 15 of 6 & 7 Wm. 4, c. 71.

The tithes of the parish of St. G. belonged to a lay impropriator, and upon proceedings being taken for the purpose of commutation, it was objected by the owner of certain lands, which, under an Act of Parliament with the usual clauses, had been allotted to him in respect of burgage tenements, of the tithe of which he was the owner, that a suit in equity was pending "touching the right to the tithes," and therefore that the jurisdiction of the Tithe Commissioners to make an award, was, by the 6 & 7 Wm. 4, c. 71, s. 45, taken away until he should have determined the matters in difference. The suit was in fact between the lay rector, who claimed the tithes of the allotments, and the owner thereof, who claimed to be owner of the tithes as well as the land. The Tithe Commissioner overruled the objection, and made his award:

Held, that the 45th section did not apply to such a case; that the award therefore was valid, and would support an avowry to replevin brought for distraining for the amount of the rent-charge assessed on the lands allotted in respect of the burgage tenements.

This was an action of replevin, to which the defendant avowed as impropriate rector of the parish of St. G. entitled to rent-charge instead of tithes, under an award of the Tithe Commissioners for England and Wales. The plaintiff pleaded in denial of the rent-charge, and at the trial, which took place before Williams, J. contended that, as there had been at the time of the making of the award a suit in Chancery, of which the commissioners had notice, and as they had been called on to decide it, and had not done so, the award had been made without jurisdiction. In *Re The Crosby-upon-Eden Tithe Commutation*, 18 L. J. 258, Q.B. was cited, and secs. 24, 45, and 50 of the 6 & 7 Wm. 4, c. 71. The bill and answer were read, and it appeared that there were some burgage tenements in the parish, to the owner of which a former impropriator had conveyed the tithes, so that the owner of the land and the owner of the tithes had become the same person; allotments had been made under an Act of Parliament in respect of these burgage tenements; and it was contended that these allotments followed the nature of the burgage tenements, and were free from tithes, that is, that the tithes belonged to the owner, and not to the impropriator. The rent-charge distrained for was in respect of the land allotted to the owner of the burgage tenement. The learned judge before whom the case was tried, Williams, J., overruled the objection, and a verdict was found for the defendant, with leave to the plaintiff to move to set it aside and enter one for himself. Against the rule cause was shewn (Feb. 3) by

Watson and *T. Jones*.

Knowles and *Atherton*, contrà.

The arguments are sufficiently stated in the following judgments.

Authorities cited: *Re The Crosby-upon-Eden Tithe Commutation*, 18 L. J. 258, Q.B.; *R.* v. *The Tithe Commissioners*, 15 Q. B. 620 (Clapham Tithe Commutation); *Girdlestone* v. *Stanley*, 3 Y. & C. 421; *Wetherell* v. *Weighell*, 3 Y. & C. 243; *Knight* v. *The Marquis of Waterford*, 11 C. & F. 653; 6 & 7 Wm. 4, c. 71, ss. 24, 44, 45, 50, and 71; 5 & 6 Vict. c. 54, s. 9. *Cur. adv. vult.*

JUDGMENT.

PATTESON, J.—This was an action of replevin, with an avowry for a rent-charge under the Tithe Commutation Act. The Marquis of Londonderry was the impropriator of the tithes of the parish of St. Giles, and there had been a commutation, under the statute 6 & 7 Wm. 4, c. 71, and he had distrained for the rent-charge. Then there was also an award made, and it was said there was a suit in Chancery pending; notice was given to the assistant commissioner that a suit was pending, but he seems to have disregarded it, and made no inquiry, as it was said, as to whether the marquis was rector, although he did determine that the land was not exempt. Then it appeared that there were some burgage tenements in the parish, and those burgage tenements had been, I may say, exempt from the payment of tithes. It was in this way,—the former impropriator had conveyed the tithes to the owner of the burgage tenements, so that the owner of the land and the owner of the tithes was the same person; and these premises in respect of which the distress was made for the rent-charge, were allotments made in respect of those burgage tenements. The Act of Parliament under which the allotment had been made contained the usual clause that the allotment should follow the nature of the land in respect of which it was allotted; and therefore it was said, that the tithe of the allotment would belong to the owner of the land just as much as the tithe of the burgage tenement in respect of which the allotment was made. That is purely a question of title. It was argued, and very strongly, that under the 45th section of the Tithe Commutation Act, where there is a suit pending "touching the right to any tithes, or if there shall be any question as to the existence of any modus or composition real, or prescriptive or customary payment, or any claim of exemption from or non-liability under any circumstances to the payment of any tithes, or touching the boundary of any lands, or if any difference shall arise whereby the making of any such award by the commissioners or assistant-commissioner shall be hindered, it shall be lawful for the commissioners or assistant-commissioner to appoint a time and place in or near the parish for hearing and determining the same, and the decision of the commissioners or assistant-commissioner shall be final and conclusive on all persons subject to the provisions thereinafter contained." And clearly the substance of the argument, as it seemed to me when the matter was discussed before us, was what was the meaning of the words "suit pending touching the right to any tithe?" If it means touching the right to any tithe not including the title of the person who claims them to have tithes at all, as against some other person who claims them, then no doubt this would be a matter which the commissioners might have determined, and which might have hindered their making their award, and so there might be an objection to the award raised. But if, on the other hand, "touching the right to any tithe," is to be coupled with other words in this section, and particularly to be coupled with the words "whereby the making of the award of the commissioners shall be hindered," then it appears quite clear that a question of title between one person and another, rival claimants (if I may so call them), would not be such a suit as would hinder the making of the award by the commissioners, because it is clear the commissioners would have no right to determine such a question between A. and B. That is laid down by the decisions of this Court in *Reg.* v. *The Tithe Commissioners*, 15 Q. B. 620; and *Re Crosby-upon-Eden Commutation*. And we must take that to be clearly the opinion of this Court, that the law has laid down that the tithe commissioner has no power to determine a pure question of law between rival claimants to tithe, which is admitted to be due in some shape or other to one or the other; but that all he can do is to determine the question of right to tithe; that is to say, whether the tithe is payable in kind, or whether there is any exemption from it altogether, or whether there is any modus,—a question between an alleged tithe owner and an alleged tithe payer, not between rival tithe owners. I think that is the right construction of the Act of Parliament. All the cases that have been decided lead to that conclusion. Indeed, I do not very well see that it is possible to say we can consider the words of the 45th section, "touching the right to any tithe," in the sense of a dispute between A. and B. rival claimants, without really and truly overturning the decision in the 15th Q.B. It was said that was not conclusive upon this occasion, because it was not a case where there was any suit pending, but was a case where there was only a difference. It is said that it is true that where there is only a difference, and no suit pending, that must be a difference by which the making of the award was hindered; and it was conceded if that was a difference between A. and B. as to which of them was entitled to the tithe, that it would not be such a difference as would hinder the making of the award. But, it was urged, that the words in the earlier part of the section, "suit pending touching the right to any tithe," must have a different construction; and although the nature of the difference was precisely the same, yet the circumstance of a suit being pending would give the commissioners jurisdiction to determine it. I do not think we need enter into the question whether the commissioners would have a right to determine the suit, supposing it was a suit between a tithe owner and a tithe payer, or

whether it must be determined in the Court in which the suit is pending or not. We did not expressly determine that point. I think we guarded ourselves from doing so in the case already alluded to. (*Re Crosby-upon-Eden Commutation.*) We guarded ourselves against being concluded by any opinion to that effect, nor is it at all necessary here for us to determine it; because, as far as I see, it appears to me that the 45th section really must be taken altogether, and that the circumstance of a suit being pending does not alter the nature of the difference which exists, and that the words "whereby the making of any such award shall be hindered," must be applied to the whole of it; and if so, this was a case which the tithe commissioner could not determine. If he could not determine it, it was a case which did not hinder the making of his award, because he might make his award, determining, as he did, that the land was liable to pay tithe to somebody: he would fix the rent-charge, and it would be payable to the person entitled to it. Now, I should have thought the 45th section almost sufficient to establish that point: but there may be a doubt whether the Legislature did not mean something different at the beginning of the clause; whether, taking the 45th section by itself, they meant to attach the words "whereby the making of the award should be hindered" to "a suit pending" or not. When, however, we look to the 71st section, then I think the matter is perfectly clear, because the 71st section reserves all the rights of the parties, and says that persons who have a claim to tithes shall have the same claim to the rent-charge which is fixed by the commissioners in lieu of tithes. There is, therefore, the same power for any person who says "I am the tithe owner," as against another person who says "I am the tithe owner" likewise, to raise that question after the tithe is commuted into a rent-charge as there was before, and no injury or mischief is done to anybody. Taking all the language of the Act and the cases that have been before us into consideration, I think that Mr. Knowles was pressing the cases that he cited further than they would fairly and legitimately bear. It is very true, that neither of the cases which were cited makes against him, but neither are they authorities for him; but the principle of those cases is against him altogether, because they go to shew that the tithe commissioner cannot meddle with anything unless he has power to determine that very thing. I think, taking the 45th section and the 71st section, and the Act altogether, it is quite clear he had not the power to determine this question, which is a pure question of title between the Marquis of Londonderry and the owner of the land quâ tithe owner, assuming him to be the owner of the tithe as well as the land. It was a pure question of that sort, and not a question as to whether the land itself was liable to pay tithe to somebody. Therefore it seems to me the avowry is correct, and that this rule, which has been obtained to set aside the verdict, must be discharged

COLERIDGE, J.—I am of the same opinion. My brother Patteson has gone so fully through the facts and the law that I shall add very little, and, as regards the facts, I shall rely upon the statement he has made. Now, the law turns upon the construction of the few words of the 45th section of the Tithe Commutation Act. Mr. Knowles's contention in the first instance, as I understood it, was, that the words "pending any suit touching the right to any tithes," included only the right of any one of two or more persons to certain tithes, the existence of which in some shape was undisputed; that is, where the land was titheable either in kind or by modus, or commutation in some way; and that it did not mean a suit touching the right of any person whatever to tithe from the land, raising a question, therefore, of the titheability of the land. Now, taking it in that narrow point of view, if it meant that,—there would be this remarkable unreasonableness—I should say almost absurdity—in the framing of the section, that you would have a provision in the same section for questions and differences, short of suits, which involve that same legal point which is supposed to be excluded when there is a suit; and thus there would be no provision at all for the suit involving the question of titheability; and yet there can be no doubt whatever that a suit pending the right to tithes understood in that latter meaning most clearly would have hindered the tithe commissioner making his award, would be a thing above all others that would impede him, because until he had ascertained the titheable matters in the parish, of course the object and the whole purpose of what he was about could not have been carried into effect. That seems to me a very strong answer to that narrow point of view for which Mr. Knowles first contended; but if he meant to say, or if the learned counsel who was with him meant to say, "any suit pending touching the right to any tithes," might include both questions, that is, the right both of one or more claimants, or the liability of the land to tithe at all, then the consequence is this, that you include the question of title, which does not prevent the tithe commissioner from making his award, because his award may perfectly well be made as to the total gross commutation without reference at all to the rival claimants of any particular part of it; and further than that, you include a suit which, according to the decisions of this Court (which, of course, we are not prepared at present to overrule), has no effect in preventing the award being made. That is an unnecessary thing. And further than that, if you hold that point of view it is impossible to give full effect to the 71st section, on which my brother Patteson relies, and which he pointed out as strong to shew that that cannot be taken to be meant. There seems to me to be another argument which has no yet been mentioned against that mode of construing it. This is a very strong section of an Act of Parliament; it takes a great many questions of a most difficult nature away from the tribunal that was best fitted for the decision of such questions, and carries them (as I think was observed in one of the cases) before a tithe commissioner, no doubt a perfectly respectable and learned man, it may be presumed, in the law; yet it carries them before him to be decided without any of the assistance that a properly constituted court would have. Now, I think you ought not to extend beyond its mere purpose the construction of a section that is so very strong in its nature, and you do extend it beyond its very necessary purpose if you take it to apply to any suit which does not prevent the tithe commissioner from making his award. And there is another observation that seems to me to favour also this limited mode of construction, which is this,—that according to the old rule you should look at the context and see what the other things relating to it are. Now, all the other things that are specified are such as would prevent the tithe commissioner from making his award. Therefore, I think that is another ground for inferring that nothing more was intended to be provided for by this section than such suits, such questions, and such differences as prevented him proceeding to make his award. This, which is merely a contention between the two parties which shall have the titheable matter which is admitted to belong to some one or another, is one that does not prevent him making his award, and therefore I think it cannot be taken to be within the true meaning of the Act of Parliament.

WIGHTMAN, J.—The question in this case was, whether the commissioner could make a valid award during the pendency of a suit in equity touching the right to tithes? Now, it was contended that there was such a suit in equity, that it came within the 45th section of the Act of Parliament, and that until that suit had been determined no valid award could be made. The question then really is this, whether the suit which was existing was a suit contemplated by the 45th section of the Act, because if it was there is no doubt that not only the suit which is mentioned there, but the differences that are mentioned in that section, must all be determined by the commissioner, and all come within his jurisdiction to determine before the award is made. Now, I confess I was very much struck with a comparison of three of the sections of the Act of Parliament, namely the 45th, the 21st, and the 50th. The 45th says, "that if any suit shall be pending touching the right to any tithes, or there shall be any question as to the existence of a modus or composition, or touching the situation or boundary of the land, or if any difference shall arise whereby the making of the award of the commissioners shall be hindered, then it shall be lawful for the commissioner to determine the same." The 50th section then says, "that as soon as all such suits and differences shall have been decided, then the commissioner shall frame the draft of an award, which draft shall contain all the particulars hereinbefore required to be inserted in any parochial agreement, or any schedule thereto." By the 21st section the parochial agreement and schedule are, amongst other matters, to "set forth all the lands of the said parish which are subject to the payment of any kind of tithes, and also the true or estimated quantity in statute measure of land subject to tithes within the parish which shall be then cultivated as arable, meadow, or pasture land, or as wood land, common land, or howsoever otherwise; and shall also set forth whether any modus or composition real, or prescriptive or customary payment, shall be payable, instead of all or any of the tithes of the said parish, and which lands or tithes respectively covered thereby; and shall also set forth which of the said tithes, moduses, compositions, or payments, are payable to the tithe-owner, or if there is more than one tithe-owner, to each of the several tithe-owners in the said parish, distinguishing in what right every such tithe-owner is entitled to such tithes." Now, if the question had depended solely upon those three sections in the Act of Parliament, the terms "any suit touching the right to tithes" being very general, I should certainly have gravely doubted whether this was not a case in which the commissioner could not make a valid award until such a suit had been determined. Now, the suit when it comes to be examined, the question being whether it is a suit within the meaning of the 45th section—whether it be a suit touching the right to any tithes—on examination turns out to be a suit not in respect of the payment of tithes at all, or a question whether there be a modus or a composition, or whether any tithes are payable; but it is in effect a suit between two rival tithe owners, not doubting that tithes are payable for the lands in question, but the question to be decided in a Court of Equity being to whom of two rival claimants they are to be paid. Now if such a suit as that were to be within the 45th section, it would be directly inconsistent with the provisions of the 71st section, and therefore it seems to me, that looking at the 71st section it is perfectly clear that the Legislature never intended that a suit between two rival tithe owners should be one of those included within the 45th section, and which the commissioner is to determine before the making of the award. As I said before, it would be entirely inconsistent with the provisions of the 71st section, the first part of which is in these terms: "That any person having any interest in or claim to any tithes, or to any charge or incumbrance upon any tithes before the passing of this Act, shall have the same right to or claim upon the rent-charge for which the same shall be commuted, as he had to or upon the tithes, and shall be entitled to have the like remedies for recovering the same as if his right or claim to or upon the rent-charge had accrued after the commutation." It would be merely futile if this suit is only touching a claim between two rival tithe-owners which shall have it, if the commissioner were to make any decision upon the subject, because it would not at all bind the rival claimant, who might under the 71st section institute suits to determine their respective rights; and everything would be in the same situation as if the commutation occurred long after the decision of the commissioner. It seems to me, therefore, that taking the 71st section in connection with the other sections, it is quite clear that a "suit touching the right to any tithes" would not apply to a case where the suit is between the claims of two rival tithe owners which shall have it. Upon that ground the plea seems to me to be bad, and the rule will be discharged.

ERLE, J.—I concur in this judgment, for the reasons that have been so fully given, and I have nothing to add. *Rule discharged.*

Thursday, May 27.

CROSSTHWAITE, Administrator, *v.* GARDNER.

Pleading—Count by administrator on debt due to intestate—Evidence.

A. entered into a special contract to do certain work for B. for a sum specified. When part of the work was done A. died, and the work was finished by C. at B.'s request. In an action by C. as administrator of A. against B. to recover a proportionate part of the specified sum:

Held, that the above facts would not support a count alleging that the defendant was indebted to the intestate in his lifetime for work done by him, and that the money was payable on request.

Debt by administrator for work and labour done by the intestate. The count alleged that in the lifetime of the intestate the defendant was indebted to him for work and labour done by the intestate, in a sum of money payable on request.

Plea—The general issue.

At the trial it was proved that Mr. Barrow, the intestate, in his lifetime, entered into a contract with the defendant to do certain work for a sum of 15*l*. Barrow died in March 1851, there remaining at that time work undone to the value of about 30*l*. The plaintiff completed the work on his own account by agreement with the defendant, and afterwards took out letters of administration. The present action was brought by the plaintiff in his representative capacity to recover a proportionate part of the sum of 415*l*. for the work done by Barrow before his death. It was objected that the plaintiff could not recover upon the count as framed; but the learned judge directed a verdict for the plaintiff, giving the defendant leave to move. A rule was accordingly obtained to enter a nonsuit, against which

Atherton and *Cowling* shewed cause. The circumstance of death is immaterial, because by consent of the defendant the special contract was rescinded; and the effect of that rescission is, that the work was done upon a quantum meruit, and if so there was a debt from the defendant to the intestate in his lifetime for the work which he had done. [Lord CAMPBELL, C. J.—The difficulty is that the special contract subsisted down to the time of Barrow's death.] When the special contract is rescinded, it is nihil ab initio. The defendant might have insisted upon Barrow's representatives completing the contract; but he agreed that it should be rescinded, and so Barrow might have sued for the value of the work done by him as soon as it was done. The Statute of Limitations would run from the moment when the last work was done; at that

moment a debt accrued to the intestate, and so the count is well framed.

Knowles and *Addison* contrà. Upon this count the administrator can only recover in respect of a cause of action complete in the lifetime of the intestate; and upon the facts, it is clear that no cause of action was complete in Barrow's lifetime. (*Cowper* v. *Godmond*, 9 Bing. 748; *Churchill* v. *Bertrand*, 3 Q. B. 568.)

Lord CAMPBELL, C. J.—I am sorry that this objection should prevail, but we must see whether this count is proved. It alleges that in the life-time of the intestate the defendant was indebted to him for work and labour done by the intestate, and for which the defendant was liable to pay him on request. Now that is to be proved; and I am of opinion that the special agreement to do the work for 415*l.* which was to be paid when the work was completed, does not prove it, because the work was not completed in the life-time of Barrow. The evidence indeed shews that the special contract was rescinded after his death; but does that shew that the defendant was indebted to Barrow during his life-time? I think not; because during his life-time the special contract was in full force. The rescission of the contract amounted to a fresh agreement that the work already done should be paid for on a quantum valebat; but that was after Barrow's death. The only way of putting the case for the plaintiff is to consider the special contract altogether annulled by the rescission, so that the case stood as if there never had been any special agreement; but if that were so, this inconvenient consequence would follow, that a plea which was bad when pleaded, might be made good by a rescinding of the contract subsequent to the commencement of the action. So the Statute of Limitations would, I think, begin to run from the date of the fresh agreement; because otherwise it must be said that the cause of action had accrued when it had not accrued, and that although the plaintiff could not sue during the interval between the time when the work was done, and the time when the contract was rescinded, yet the statute would run against him during that interval, and he would be deprived of a portion of the six years. I cannot, therefore, think that the rescinding is to be treated as an utter annihilation of the contract from the beginning; and if not, then the count is not proved. I do not think there would have been any difficulty in framing a count to meet these facts.

COLERIDGE, ERLE, and CROMPTON, JJ. concurred. *Rule absolute.*

Thursday, June 3.

TIMMINS and WIFE *v.* GIBBONS, P.O.

Money had and received—Deposit with banker—Bank notes—Guarantee of solvency of maker—Failure of consideration.

A. deposited with a banker notes of a country bank: and received a memorandum acknowledging the receipt of so much money, "for which we are accountable," the bank agreeing to pay interest, and the depositor to give fourteen days' notice before withdrawal. Before the banker could present the country bank-notes for payment the country bank had failed; of which the banker immediately gave notice to A.:

Held, that A. could not recover the amount in an action for money lent, or money had and received, as the consideration for the banker's promise had wholly failed.

Assumpsit for 65*l.* money lent, and money had and received. Plea, non-assumpsit.

At the trial, which took place before Wightman, J. at Stafford, it was proved that the female plaintiff, before her marriage, on the 26th June, last year, deposited at the Dudley branch of the Birmingham Banking Company 15*l.* in Bank of England notes, and 65*l.* in notes of the Stourbridge Bank. Upon this deposit the Banking Company gave a receipt acknowledging the receipt of 80*l.* "for which we are accountable," to be repaid, with interest, upon the depositor giving fourteen days' notice of withdrawal. The latter notes were payable either at Stourbridge, or at Glyn's, in London; and were sent to London by the same night's post. On the 27th they were presented at Glyn's, and refused, the Stourbridge Bank having stopped payment that morning, but having continued its payments the whole of the 26th. On the 28th notice of the failure of the Stourbridge Bank was given to the female plaintiff, and the notes tendered to her, but refused. After giving fourteen days' notice, the female plaintiff applied to the Dudley Bank for 80*l.* but they declined to pay more than the 15*l.* which had been deposited in the Bank of England notes. The learned judge thought that the consideration for the promise had wholly failed, and that the defendant, who was the public officer of the Birmingham Bank, was entitled to a verdict upon [illegible]l issue, it being admitted that there was [illegible] on their part. Last Term a rule was [illegible]l to enter a verdict for the plaintiff. Against which,

Alexander and *Chance* shewed cause.—This rule was obtained upon the authority of some dicta in *Camidge* v. *Allenby*, 6 B. & C. 373; but the case itself has no application to the present; because there the defendant was guilty of laches; and even assuming that in that case the transaction might be regarded as a sale of the notes, the present transaction cannot be so treated. But it is difficult to reconcile those dicta with subsequent cases. (*Turner* v. *Stones*, 1 D. & L. 122; and *Rogers* v. *Langford*, 1 Cr. & M. 637; *Henderson* v. *Appleton*, Add. to Chitt. on Bills, p. 658, 7th edit.)

Keating and *Gray*, contrà.—The principle enunciated by the judges in *Camidge* v. *Allenby*, is, that if notes are received as cash, the person who receives them takes the risk; there is no warranty that the notes are worth what they purport to be worth, though there is a warranty that they are what they purport to be. [Lord CAMPBELL, C.J.—If there is a sale of the notes, then caveat emptor; but does this transaction amount to a sale?] Yes; because there was nothing said to limit the liability of the person who received the notes; and they were not received in payment of an antecedent debt. The banker received them as part of the ordinary currency of the country; and he would have performed his contract if he had paid the amount of the notes without returning the same notes. It is, in truth, a ready money transaction; and the distinction has been constantly maintained between such a transaction and payment of an antecedent debt. (Buller's Nisi Prius, 277; *The Bank of England* v. *Newman*, 1 Ld. Raym. 442; *Ward* v. *Evans*, 2 Ld. Raym. 928.) The special terms upon which this money was deposited shew that the banking company received the notes as money.

Lord CAMPBELL, C.J.—I am of opinion that this action cannot be maintained either upon the count for money lent, or that for money had and received. At the time of the deposit both parties believed that these notes were valuable securities, but they turned out to be of no value; and no laches is attributable to the Dudley Bank. The transaction, therefore, is the same as if the Stourbridge Bank had failed long before the deposit of the notes; and can it then be said that a deposit of securities which turn out to be of no value will support a count for money lent or money had and received, there having been a total failure of consideration. No doubt, where the transaction can be resolved into a sale of a negociable instrument, the person who receives it must stand the risk; caveat emptor; but it is impossible to consider this deposit as in any respect resembling a purchase of the notes. They were received as being of value, but they were of none. Now, Mr. Keating and Mr. Gray lay it down as a general rule, that where bank-notes are paid and received, they are always taken at the risk of the receiver, if they are what they purport to be, excepting in the case of payment for an antecedent debt; but many cases were put in the course of the argument which would break in upon that rule. For example, if I ask a friend to give me change for a bank-note, and he does so, there is no antecedent debt; but if the bank-note turns out to be of no value, the loss must, in such case, fall, I apprehend, upon him who has received the change by way of accommodation. And, indeed, I see great difficulty in drawing the distinction which has been adverted to between the case of payment at the time for goods sold and payment on the following day. There must always be a moment previous to the payment, during which the buyer would be indebted to the seller: but it is not necessary for us now to give any decided opinion upon this subject; for this case may be decided upon the grounds already stated, in perfect accordance with the cases of *Camidge* v. *Allenby*, and *Turner* v. *Stones*.

COLERIDGE and WIGHTMAN, JJ. concurred. *Rule discharged.*

Friday, June 4.

WILKINSON *v.* THE ANGLO-CALIFORNIAN GOLD MINING COMPANY.

Joint-stock companies—Deed of settlement—Certificate of proprietorship—7 & 8 Vict. c. 110, s. 51.

A holder of shares in a joint-stock company formed under the 7 & 8 Vict. c. 110, who has not signed the deed of settlement, is not entitled to demand and have delivered to him by the company a certificate of proprietorship in conformity with sec. 51 of 7 & 8 Vict. c. 110.

The declaration stated that the defendants were a joint-stock company completely registered under the 7 & 8 Vict. c. 110, and formed by a deed of settlement dated the 16th August, 1851. That the said deed of settlement contained, amongst others, a provision that the capital should be 50,000*l.* in 100,000 shares of 10*s.* each, the 10*s.* for each share to be paid-up within twenty-one days after complete registration; and one, numbered 179, that notwithstanding the dates of the respective execution of these presents by the parties hereto, the contract intended to be effectuated by these presents shall be held to have commenced as and from the day first above written; and that the share or shares of every such subscriber for any part of the capital of the company, who shall not execute these presents within three months from the date hereof, shall be forfeited if the board of directors shall think fit, and the amount paid upon such share or shares shall become the property of the company. That the plaintiff was a subscriber for twenty shares, such shares to be received by the plaintiff as soon as the defendants were completely registered as such company, and had paid up the full amount of 10*s.* per share upon the said twenty shares, and had duly executed the said deed of settlement, except as to the before-mentioned provision, numbered 179. That the plaintiff became and was entitled, by virtue of the 7 & 8 Vict. c. 110, to have made out by the defendants a certificate of the proprietorship of each of the before-mentioned shares, and delivered to him, the plaintiff, on demand.

Averment of demand of such certificate by the plaintiff.

Breach, refusal by the defendants to make and deliver the certificate.

Plea.—That the company was within the operation of the 7 & 8 Vict. c. 110, and that the plaintiff had not executed the deed of settlement.

Demurrer thereto.

Paterson, in support of the demurrer, relied upon two points, first, that it was not necessary for the plaintiff to execute the deed of settlement; and, secondly, that it was only necessary for him to execute such a deed as the company were authorised by the 7 & 8 Vict. c. 110, to frame. The meaning of the word shareholder in the Act, as expounded by the interpretation clause, sec. 3, is only to be adopted where such meaning is not excluded by the Act. The enactment in sec. 3, that a shareholder is a person entitled to a share in the company and who has executed the deed of settlement, is not applicable to sec. 26, which provides that no shareholder shall be entitled to receive any dividends or profits until he shall have executed the deed of settlement. Then sec. 51 enacts, that on demand of the holder of any share, the company shall cause a certificate of the proprietorship of such share to be delivered to such shareholder. The penalty for not executing the deed is imposed by sec. 26, and there is no provision in sec. 51 requiring the shareholder to execute the deed before he shall be entitled to a certificate of proprietorship.

Willes, contrà.—The averment in the declaration, that the plaintiff has executed the deed, except as to one clause, is idle, for if the individual shareholders have the power of excepting to any particular clauses of the deed of settlement, how could any joint-stock company be carried on? The interpretation clause, sec. 3, makes a distinction between a subscriber and a shareholder, and the plaintiff comes within the class of subscribers, and not that of shareholders. Sec. 26 enacts, that the shareholder, until he shall have executed the deed of settlement, shall not be entitled to the remedies or powers given by the Act, and one of those powers is the right to demand a certificate of proprietorship. Such certificate can only be wanted as evidence that he is a shareholder, and to enable the plaintiff to take his shares into the market and sell them. It is just and reasonable that a shareholder should execute the deed of settlement before obtaining the certificate under sec. 51, and there is nothing in the section or subject-matter thereof to exclude the definition of the word shareholder in the interpretation clause. The plaintiff, therefore, is not entitled to have such certificate until he has executed the deed of settlement.

Lord CAMPBELL, C.J.—I am of opinion that the defendants are entitled to our judgment. The question depends upon the construction of sec. 51. Looking at that, without the interpretation clause, I should say that the plaintiff was entitled to our judgment; but then we have the interpretation clause, and parliament, in its omnipotence, may impose any meaning on terms it pleases. Sec. 3 says, that the following words are intended to have the meanings hereby assigned to them, so far as such meanings are not excluded by the context or by the nature of the subject matter; and among others the word shareholder is to mean any person entitled to a share in a company, and who has executed the deed of settlement, or a deed referring to it. There is no repugnancy in giving that meaning to the words holder of any share, in sec. 51, for it may very well mean that no shareholder shall be entitled to a certificate of proprietorship until he shall have executed the deed of settlement. The plaintiff is the holder of shares, but has not executed the deed of settlement, therefore he is not entitled to the certificate. In sec. 26 there would be repugnancy in giving the meaning in the interpretation clause to the word shareholder, and, therefore, that is not to be adopted.

COLERIDGE, J.—In order to have the certificate of proprietorship, the plaintiff must bring himself within sec. 51. It was contended for a little while, that the words therein, "the holder of any

share," were not equivalent to the expression, shareholder, but it cannot be contended that they do not mean the same thing. If the meaning of the word, shareholder, then, in the interpretation clause, is not excluded by sec. 51, the plaintiff must be a person who has executed the deed of settlement before he can demand a certificate of proprietorship. This construction meets the justice of the case.

ERLE, J.—We are to see on what title the right to a certificate of proprietorship is given; it is on that of being a shareholder, and turning to the definition of that term in sec. 3, it means a person entitled to a share, and who has executed the deed of settlement. An inchoate shareholder is termed a subscriber in sec. 3, and he becomes a shareholder when he has done all that is requisite by the preliminary stages. To claim a certificate before executing the deed of settlement would be to thwart the intention of the Act, and to allow parties to have a false semblance of proprietorship.

CROMPTON, J.—I am entirely of the same opinion. I confine myself to the ss. 3 and 51.

Judgment for the defendants.

Saturday, June 5.

REG. v. THE EAST LONDON WATERWORKS COMPANY.

Paving rate—Liability of Waterworks Company in respect of mains and pipes.

Paving Commissioners were authorised by their Act of Parliament to rate all persons inhabiting, holding, occupying, possessing, or enjoying any land, house, shop, warehouse, &c. or other tenement or hereditament:

Held, that a water company was rateable in respect of its pipes as occupiers of land under that enactment, although the same Act of Parliament gave to the Paving Commissioners some control as to the position of the pipes, and contained many special provisions respecting water-pipes eo nomine, as well as some provisions respecting the rates, which could only apply to such premises as are the ordinary subjects of tenancy; and although premises were to be rated in different proportions, according to their situation and the degree of benefit derived from the operations of the Paving Commissioners.

Upon appeal against a rate made by the Paving Commissioners of Bethnal-green, a special case was stated. The appellants were an incorporated company, established by an Act of Parliament for the purpose of supplying parts of the eastern part of the metropolis with water. By an Act of Incorporation of the said company (the 47 Geo. 3, sess. 2, c. lxxii.), amongst other powers and privileges conferred on the said company, they are, by sec. 32, empowered for effectuating the purposes of the Act, to dig and break up the soil and pavement of any of the roads, highways, footways, streets, and public places of certain parishes and places therein mentioned, including the parish of St. Mary's, Whitechapel; and to sink and lay pipes, trunks, and other conveniences for the purposes aforesaid; and to put stop-cocks or plugs or branches from such pipes, trunks, and other conveniences, in such places and in such manner as shall be necessary for the purposes aforesaid, and do all such acts as they (the said company) should from time to time think necessary and convenient for completing, amending, repairing, improving, and using the works authorised by the Act. The respondents are the commissioners acting under and in pursuance of Acts of Parliament of the 11 Geo. 3, c. xii. and 57 Geo. 3, c. 29. By the 11 Geo. 3, c. xii. the commissioners are empowered to pave the streets and ways of the districts, and, in certain cases, to make, alter, and remove sewers, drains, and grates, and to cause the streets and ways to be watered, and to perform certain other matters in the said Act specified. The 36th section of the said Act of 11 Geo. 3, c. 12, is as follows:—"And for defraying the charges and expenses attending the execution of the several powers by this Act granted, be it further enacted, that from and after the passing of this Act, a rate or assessment, over and above all rates and assessments now payable, shall once in every year, or oftener if it shall be thought needful by the said Commissioners, &c. be made, laid, and assessed by the said commissioners, &c. upon all and every person or persons who shall inhabit, hold, occupy, possess, or enjoy any land, house, shop, warehouse, cellar, vault, or other tenement or hereditaments, within any of the said streets, squares, &c. so as such rate or assessment, rates or assessments do not in any one year exceed in the whole the sum of 1s. 2d. in the pound of the yearly rents or yearly value of such of the said lands, houses, shops, &c. respectively, as shall be situate in any of the said streets, squares, &c. the greater part or parts of which said streets, squares, &c. shall be actually begun to be paved, &c. and not exceeding 9d. in the pound of the yearly value of such of the said lands, houses, &c. as shall be situated in any of the said streets, squares, &c. which shall be actually begun to be new paved, the footway whereof shall be constructed with new or flat stones, and the carriageways thereof with the old stones which shall be taken up in the same or any other of the streets, &c.; and not exceeding 6d. in the pound of the yearly value of such of the said lands, houses, &c. as shall be situate in any of the said streets, squares, &c. which shall only be repaired by virtue of this Act." By the 24th section of the 57 Geo. 3, c. 29, it is enacted, that all rates or assessments made and signed from and after the passing of this Act, for or in respect of or towards the paving or repairing the pavements of the streets or public places in any parochial or other district, &c. by virtue of any local Act or Acts of Parliament or by virtue of this Act, shall be laid upon all and every person or persons who do and shall inhabit, hold, occupy, be in possession of, or enjoy any messuages, tenements, lands, grounds, coachhouses, stables, cellars, vaults, houses, shops, warehouses, or other buildings or hereditaments situate or being within any of the streets or places within the said district, &c. The respondents have paved and repaired the streets, ways, and public places of the said district, and otherwise acted in the execution of the several powers by the said Act of the 11 Geo. 3, c. xii. granted; and the district of the said commissioners is within the jurisdiction of the said Act of the 57 Geo. 3, c. 29. The appellants are the owners, and possessed of certain main and branch pipes, with the cocks and plugs belonging thereto, running underground through the streets, squares, lanes, courts, alleys, ways, and other public passages in various parts of the district embraced by the said Act of Parliament of the 11 Geo. 3, c. xii. and within the limits of the jurisdiction of the respondents as such commissioners, and which parts of the said district have been paved and repaired, and over which the said commissioners have otherwise exercised the powers of the last-mentioned Act, for the purpose of conveying water, and through which main and branch pipes water is conveyed by the appellants to the inhabitants of such district and others. The plugs and stop-cocks inserted in various parts of the said pipes are inclosed in smaller pipes, the extremities of which last mentioned pipes terminate in iron boxes, which rise to and form part of the surface of the said streets. The appellants have been possessed of their mains and pipes, &c. for upwards of thirty years, and until the year 1851 were never assessed to a paving-rate or any rate whatever for the said district under the said Acts of the 11 Geo. 3, c. 12, and 57 Geo. 3, c. 29, or either of them; but the said company have from time to time been assessed to, and have paid the rates, for the relief of the poor and for the maintenance of the police, and the rate for lighting and cleansing the streets and other public places, in the parish of St. Mary, Whitechapel, and the rate for repairing the church of the said parish, which rates have been from time to time assessed, by virtue of a statute passed in the 46th year of the reign of his Majesty King Geo. 3, for the maintenance of the poor within the parish of St. Mary, Whitechapel, &c. the 53rd section (the Rating clause) of which was set out in the case. If the Court shall be of opinion that the appellants are, under the circumstances aforesaid, liable to be rated in respect of the said mains, pipes, &c. or any of them, or of the lands, ground, or space which they or any of them occupy, the said rate is to be confirmed; but if the Court shall be of the contrary opinion, then the said rate shall be quashed or amended by striking out the assessment on the appellants.

Pashley (*Aspland* with him), for the respondents. The words of the 11 Geo. 3, c. xii. s. 36, are precisely the same as the words of the statute of Elizabeth; and by many decisions it has been settled that water and gas companies are rateable to the relief of the poor in respect of their pipes as occupiers of land. (*R.* v. *The Corporation of Bath*, 14 East, 609; *R.* v. *The Rochdale Waterworks Company*, 1 M. & S. 634; *R.* v. *The Brighton Gas Company*, 5 B. & C. 466; *R.* v. *Foleshill*, 2 Ad. & E. 593.) In the cases, in which they have been held not rateable, the decision has proceeded upon the ground that the word "*land*" was not found in the particular statute. (*R.* v. *The Manchester and Salford Waterworks*, 1 B. & C. 630.)

Bovill, contrà.—The case of *The Chelsea Water Works Company* v. *Bowley*, 20 L. J. 520, Q. B. establishes the principle that the Water Company in respect of their pipes, enjoy an easement only, and are not occupiers of land, tenements, or hereditaments. [Lord CAMPBELL, C. J.—That decision proceeded upon the peculiar provisions of the Land-tax Acts, affecting the relation of landlord and tenant.] So there are numerous provisions in the 11 Geo. 3, c. 12, which shew that the Legislature did not intend to include water-pipes under the general word "land" in the rating clause. The preamble recites that the Act is for the benefit of the inhabitants and persons passing through the streets, so that the water company are not included amongst the persons benefited; and there is a series of provisions respecting the repair and position of the water-pipes, in all of which water-pipes are described eo nomine. (Secs. 14—19.) There are also special provisions as to the rating of meeting houses, void spaces of ground, empty houses, and other matters; some of which appear to apply to all that was intended to be rateable, and yet would not apply to water-pipes, of which in truth there is no occupier. (Secs. 42, 43, 44.) In the General Act (57 G. 3), there are similar clauses, giving a control to the Paving Commissioners with respect to the pipes, and imposing various charges upon the Water Company. (He referred to ss. 10, 12, 15, and 52 of the General Act; to *R.* v. *East London Waterworks Company*, 21 L. J. 49, M.C.; *Crease* v. *Sawle*, 2 Q. B. 862; and *The Constables of Chorlton* v. *Walker*, 10 Mee. & W. 755.) [ERLE, J.—The Act of Parliament seems to contemplate a different degree of rateability, according to the state of the pavement; so much in the pound for the paved streets, less for the partially paved, still less for the unpaved; but the pipes pervade the whole district, and as to them the precise state of the surface seems indifferent. Still I suppose the calculation must be made for the purpose of rating of the number of feet of pipes under the unpaved streets, the number under the partially paved, and the number under the completely paved.] That enactment alone makes it clear that the Legislature only intended to give the power of rating the ordinary subjects of tenancy, as land, houses, shops, warehouses, and the like, in the popular understanding of those words.

Pashley in reply.

Lord CAMPBELL, C.J.—I am of opinion that this property is liable to be rated under s. 36 of 11 Geo. 3, c. xii. which authorises a rate to be laid upon every "occupier of land and houses." Those are the very words of the stat. 43 Eliz. and by a long series of decisions, beginning with the *Bath* case and including the *Brighton* case, and others to the same effect, it is settled that such pipes are rateable to the relief of the poor as land. Now that being so, I can see no reason why the same construction should not be put upon the same words in this Act of Parliament. In *R.* v. *The Manchester and Salford Waterworks Company*, the pipes were held not rateable, but solely on the ground that the word *land* was not to be found in that statute; and that the other general words were to be considered as referring to matters ejusdem generis with those previously enumerated. So the late case between Mile-end Old Town and this very company proceeded upon the same ground. Mr. Bovill, however, places great reliance upon the case of *The Chelsea Waterworks Company* v. *Bowley*; but that proceeded entirely upon the peculiar provisions of the Land Tax Acts, and the Court cautiously guarded itself against being supposed to interfere at all with the decisions upon the statute of Elizabeth. All that was there said was, that the occupation of land by pipes may be the exercise of an easement only, or it may be the enjoyment of an interest in the land, and that in that case the company did not appear to have such an interest in the land as was liable to the land tax. But the land here is used by the company for their pipes; and I see nothing in the Act to shew that such property was not intended to be rateable. There can be no doubt that the company do derive benefit from the operations of the Paving Commissioners, and though the situation of the pipes may be altered by the Commissioners, they are lawfully placed where they now are in the occupation of the water company; and I think, therefore, that the rate is well imposed.

COLERIDGE, J.—I am of the same opinion; and I do not at all proceed upon the ground that the plugs appear to occupy some portion of the surface. I regard the case as if the surface and the subsoil were completely divided for the purpose of occupation and rating; and so regarding it, I think that the words of the rating clauses are quite large enough to include this description of property, and it has been so held in a variety of cases.

ERLE, J. concurred.

CROMPTON, J.—The only doubt I have felt was created by the conclusion of sec. 36, making a different amount payable according to the state of the pavement; but I think that that provision is not enough to control the ordinary construction of the other words.

Rule discharged.

Monday, June 7.

REG. v. THE REGISTRAR OF FRIENDLY SOCIETIES.

Friendly Society—Place of meeting—10 Geo. 4, c. 56, s. 10—9 & 10 Vict. c. 27, s. 12.

A Friendly Society cannot, since the 9 & 10 Vict. c. 27, s. 12, hold its place of meeting, or alter the same to any other county than that in which it was established for the purpose of its business.

This was a rule nisi, calling upon the Registrar of Friendly Societies to shew cause why a mandamus should not issue commanding him to certify an amended rule of the Kent Mutual Insurance Society to be conformable to law, and in compliance with the 10 Geo. 4, c. 56, and 4 & 5 Wm. 4, c. 40, or to

point out in what respect the rule was defective. Under those Acts the society was bound to have its place of business within the county in which its rules were enrolled with the clerk of the peace, but a recent statute, the 9 & 10 Vict. c. 27, s. 12, having repealed the provision which required the rules to be enrolled with the clerk of the peace, and required the rules in future to be transferred to the Registrar of Friendly Societies, the society claimed a right to have a place of business out of the county. They had accordingly altered their rules, and removed their place of business from Rochester to Old Jewry, in the city of London; but the registrar, acting under the advice of the then Attorney-General (Sir A. E. Cockburn), had refused to certify the rule so amended.

The *Attorney-General*, the *Solicitor-General*, and *B. Andrews*, now shewed cause against the rule.—The question depends on the effect of the 12th section of the 9 & 10 Vict. c. 27 upon the 10 Geo. 4, c. 56. The 3rd section of the 10 Geo. 4, c. 56, that the transcript of all rules of friendly so- . shall be transmitted to, and enrolled by, the ____ of the peace of the county in which the society is intended to be established. By the 10th section, the rules of every society formed under the Act were to specify the place or places at which it was intended the society should hold its meetings; provided that such society should have power to alter their place of meeting when necessary, on giving notice of the alteration to the clerk of the peace, and provided that such place of meeting should be within the county in which the rules of the society were enrolled. By the 12th section of the recent Act for the regulation of friendly societies, the 9 & 10 Vict. c. 27, it was enacted that so much of the 10 Geo. 4 as required the transcript of the rules to be deposited with the clerk of the peace should be repealed, and that all transcripts of such rules as by the statute of Geo. 4 were deposited with the clerk of the peace, should be returned to the Registrar of Friendly Societies. It was contended that as this section repealed the enactment contained in the 10 Geo. 4, and the rules were no longer required to be enrolled within the county, it also repealed the proviso which required the place of business to be within the county. But, from an examination of the general provisions of the 10 Geo. 4, c. 56, ss. 11, 26, 27, it is plain that these societies were intended to be of a local nature, and it would be in the highest degree inconvenient, and it could hardly be the intention of the Legislature, that a society established in a distant county should have its only place of business in the city of London.

Willes in support of the rule.—It is true, that by the 10 Geo. 4, c. 56, these societies were intended to be of a local nature, but the 9 & 10 Vict. c. 27, introduced a new state of things, and the control and jurisdiction over them were vested in a central officer, the Registrar of Friendly Societies. Sec. 12 of that Act substitutes the registrar for the clerk of the peace of the county with regard to the custody and enrolment of the rules; and all the consequences flowing from the custody of the rules by the clerk of the peace are thereby repealed; and among them, sec. 10 of 10 Geo. 4, c. 56, which required notice of the intended change of place of meeting to be given to the clerk of the peace of the county in which the rules are enrolled.

Lord CAMPBELL, C.J.—I am of opinion that the rule ought to be discharged. The Registrar of Friendly Societies acted quite rightly in refusing to certify this alteration of the rules. It is allowed that under the 10 Geo. 4, c. 56, the society could not make this rule, there being restrictions therein to prevent that being done. Reliance was therefore placed on the 9 & 10 Vict. c. 27. But this statute does not expressly repeal the proviso annexed to the 10th section of the 10 Geo. 4; and I am of opinion that it is not impliedly repealed, but may stand with the enactment contained in the recent statute. There is no contrariety in these restrictions remaining in force after all that is expressly repealed by the statute of Victoria being repealed. If there was any doubt about the matter, the inconvenience which would result from a different construction would be entitled to great weight in showing what the intention of the Legislature was.

COLERIDGE, J.—Nothing is more clear than that these societies were intended to be local. For one particular purpose, viz. with regard to the place of meeting, there is good reason why they should be locally confined. The general meetings should be held in the county where the members reside. To say that the spirit of the 9 & 10 Vict. c. 27, is to centralise the places of meeting, and that they should all be brought to the place where the Registrar of Friendly Societies resides, that is in the county of Middlesex, is to say that no such meetings shall take place for any useful purpose, for it is quite obvious that no such meeting could be fairly held. The 10 Geo. 4, c. 56, s. 10, enacts that the place of meeting may be altered upon giving notice to the clerk of the peace of the county within which such society shall be held, provided that the place at which such society intend to hold their meetings shall be situate within the county in which the rules of the society are enrolled. Turn, then, to the repealing enactment 9 & 10 Vict. c. 27, s. 12, "so much of the 10 Geo. 4, c. 56. as requires that a transcript of the rules shall be deposited with the clerk of the peace of any county, and a certificate thereof returned to the society, and that the same shall be laid before and allowed and confirmed by the justices, shall be repealed," &c. The repeal is confined to taking away the jurisdiction of the magistrates as to the allowance and confirmation of the rules, and the enacting part is that the rules shall be deposited with the registrar. There is not one word said about the place of meeting, and there is nothing to destroy the enactment requiring it to be in the county where the society is held.

Erle, J. was absent from Court during this case.

CROMPTON, J.—The 10 Geo. 4, c. 56, s. 10, gave power to these societies to hold their meetings and to alter their places of meeting provided they were held within the county in which the rules of the societies were enrolled. It would be a strong thing to say that their meetings might be held anywhere in England, but if the Legislature has said so, it must be so. The enacting part of sec. 12 of 9 & 10 Vict. c. 27, provides a new custody for the rules of these societies, i. e. in the Registrar of Friendly Societies' office, and then proceeds to say that the effect shall be the same, and that all the provisions of the 10 Geo. 4, c. 56, shall apply to them as if they had been confirmed by the justices and filed with the rolls of the sessions of the peace. Then what is that effect with regard to the place of meeting? why, that it may be altered, provided the alteration be to a place in the county where the society is held.

Rule discharged.

Ex parte THE REV. F. ROSE.

Prohibition—The Church Discipline Act.

Proceedings were instituted under the Church Discipline Act, 3 & 4 Vict. c. 86, s. 3, and the commissioners reported to the bishop that there was a primâ facie ground for instituting further proceedings (sec. 5); but the party inculpated consented to the bishop pronouncing sentence without further proceedings, and the bishop accordingly pronounced sentence of deprivation for three years with a condition annexed, that at the end of that period the party should produce to the bishop a certificate to be approved of by the bishop, of three beneficed clergymen, of his having conducted himself well during the suspension. At the end of the three years the party produced such a certificate, but the bishop declined to receive it on the ground of one of the clergymen, who signed it, being incompetent to judge of the party's conduct during the time:

Held, that the above sentence of the bishop was legal, and that there was no ground for a prohibition to restrain the bishop from carrying out the sentence.

Sir A. E. Cockburn (with whom was *Couch*) applied for a rule, calling upon the Bishop of Oxford to shew cause why a prohibition should not issue prohibiting him from further carrying into effect a sentence of suspension pronounced upon the Rev. Francis Rose, D.D. rector of Woughton, and also rector of Little Woolston, in the county of Buckingham. Some years ago a charge of adultery was made against Dr. Rose. The Bishop of Oxford appointed a commission, under the Church Discipline Act, to inquire whether there was a primâ facie case against him. The commissioners reported to the bishop that there was a primâ facie case, and on that report being made, Dr. Rose was advised to submit himself at once to the judgment of the bishop. Sec. 6 of the Church Discipline Act (3 & 4 Vict. c. 86) enacts that in all cases "where proceedings shall have been commenced under this Act against any such clerk, it shall be lawful for the bishop of any diocese within which such clerk may hold any preferment, with the consent of such clerk, and of the party complaining, if any, first obtained in writing, to pronounce, without any further proceedings, such sentence as the said bishop shall think fit, not exceeding the sentence which might be pronounced in due course of law, and all such sentences shall be good and effectual in law as if pronounced after a hearing, according to the provisions of this Act." Dr. Rose having consented to submit himself to the judgment of his bishop, the latter at once proceeded, under the above section, to pronounce sentence. The bishop's sentence was, that Dr. Rose should be suspended from his office for the period of three years, and that upon the expiration of the three years he should produce a certificate of three beneficed clergymen in his vicinity of his good behaviour during the term of his suspension, the said certificate to be approved by the bishop before the suspension should be taken off. On the expiration of the three years, Dr. Rose produced to the bishop a certificate signed by three beneficed clergymen in his neighbourhood, stating that he had been of good behaviour, as required; but the bishop declared that he was not satisfied with the certificate, inasmuch as it was signed by a clergyman who, from his age and infirmities, was an incompetent judge. Dr. Rose was thus placed in very great difficulty. The sentence of suspension required that the certificate of good behaviour should be signed by three clergymen; but as the bishop had expressed himself dissatisfied with that which had been sent in, it was quite impossible for Dr. Rose to comply with the requirement, as the other beneficed clergymen in the neighbourhood had not been resident in the neighbourhood so long as three years. The Court would have to consider how far it was consistent with the law that in passing sentence the bishop should be at liberty to attach a condition which might have the effect of entailing upon the party an indefinite suspension.

COLERIDGE, J.—The bishop might have deprived the party altogether. The Church Discipline Act enabled the bishop to pronounce such sentence as he might think fit, "not exceeding the sentence which might be pronounced in due course of law."

Sir A. E. Cockburn.—If the bishop pronounced sentence of suspension, he must proceed according to the rules which applied in such cases. In the case of *Watson* v. *Thorp*, 1 Philli. Eccl. Rep. one of the objections made to the sentence of suspension was, that the certificate should be approved by the judge. In that case the Court appeared to have doubted whether that condition of the sentence could be sustained; but as the certificate, if improperly refused, would have been a ground for appeal, the Court confirmed the sentence upon the other grounds. In the present case, however, Dr. Rose had no appeal. The party was completely at the mercy of the bishop, who was able to convert a sentence of temporary suspension into one of virtual deprivation.

Lord CAMPBELL, C.J. said that in *O'Connell's* case, 11 Cl. & Fin. 155, the objection to the securities was that they were to continue in force for three years after they had been approved. That might have amounted to imprisonment for life. It was within the power of the ordinary to pass sentence of deprivation, but he had passed only a mild sentence of suspension for three years, with a reasonable condition that the suspension should not be taken off till he had produced a certificate satisfactory to the bishop, signed by three beneficed clergymen in the neighbourhood that he had been of good behaviour for three years.

Sir A. E. Cockburn then contended that a sentence of suspension should be definite, like a punishment, and that the bishop had no greater power than a judge of the Ecclesiastical Court.

Lord CAMPBELL, C.J.—I am of opinion that there is no ground for this prohibition. There was a proceeding against this applicant for adultery, and the commissioners had reported to the bishop that there was a primâ facie case for instituting further proceedings. Instead of insisting on further inquiry, he submitted at once to receive the sentence of the bishop, and in effect pleaded guilty before the forum of the bishop, under the Church Discipline Act. The sentence then passed was a judicial sentence, and it did not exceed that which might have been passed on the applicant in a proceeding according to the ordinary course of law; on the contrary, a sentence of deprivation might have been passed. The condition annexed to it was most reasonable, and, but for the locus pœnitentiæ involved in that c[illegible] tion, a more severe punishment would, no d[illegible] have been inflicted. It seems to me that such power as this condition implies ought to belong to the bishop, and there is no authority to shew that it does not.

COLERIDGE, J.—Suspension may be of several kinds; it may be for a limited time, or it may be unqualified in its duration. If it is a suspension for ever, it takes the name of deprivation; they are ejusdem generis. Here the applicant has been suspended for a limited period, with a most reasonable condition added, that the bishop should be informed by a certificate how he had conducted himself during the time of suspension. As to the bishop taking it for granted at the end of the time of his suspension that during that time he had conducted himself well, it is improper to expect the bishop to assume anything of the kind, and yet if the applicant has not done so, he is unfit to resume his duties in the parish. The added condition seems to me most reasonable, and when the applicant submitted himself to this particular jurisdiction, he was bound to know that he was taking his case out of the rules of the general law.

ERLE, J.—The only question is, whether it is shewn by the affidavits that the Court below has exceeded its jurisdiction. As there can be no doubt that for the offence here charged the bishop might have pronounced a sentence of deprivation, I cannot say that the sentence he did pronounce at all exceeded his jurisdiction.

CROMPTON, J.—This is a suspension which may be indefinitely prolonged by the non-performance of a condition; but even then it will only amount to deprivation, which sentence the bishop had the power to pronounce.

Rule refused.

BUSINESS OF THE WEEK.

Thursday, June 3.

REG. v. THE BIRKENHEAD DOCK TRUSTEES.—Lord Campbell, C.J. delivered the judgment of the Court, affirming the rate. *Judgment for the respondents.*

COOKE v. GILHAM.—This was an action on an attorney's bill, tried before Wightman, J. in the Bail Court. Upon a plea that no signed bill had been delivered pursuant to the statute, the verdict had been entered for the defendant. *Keating* now moved, by leave of the learned judge, to enter it for the plaintiff. The question was, whether a bill was sufficient which showed that the business had been done in one of the Superior Courts, but not in which of them; and whether a bill containing some unexceptionable items was good as to those items, though it might not give sufficient information as to the rest. (*Ivimey* v *Marks*, 16 M. & W. 843; *Anderson* v *Boynton*, 19 L J. 42, Q.P.; *Keene* v. *Ward*, 13 Q B 515; 19 L J 46, Q.B.; and *Hugh* v. *Clifford*, 1 Ry. & Moo. were referred to. *Rule nisi.*

REG. v. THE VICAR AND CHURCHWARDENS OF HAMMERSMITH.—*Pashley* moved for a rule for a mandamus to compel the Vicar and Churchwardens of Hammersmith to call a vestry meeting to determine the application of certain funds, which had arisen from the sale of waste lands in the parish to the Great Western Railway Company. By the Acts of Parliament the money was to be applied to such general purposes as the vestry should direct. A vestry meeting had been held, and several propositions made; but, by the course taken by the chairman, it was now alleged that the inhabitants had been prevented from voting at all upon one amendment which was moved. *Rule nisi.*

Re GROVE.—*Collier* moved to strike an attorney off the roll, at his own request, in order that he might be called to the Bar. *Application granted.*

HALL v. THORNTON.—This was an action by the executor of the indorsee against the maker of a promissory note; tried before Wightman, J. in the Bail Court, when a verdict was found for the plaintiff. *Unthank* moved for a new trial, on the ground of misdirection. In answer to a plea of the Statute of Limitations the plaintiff proved payment of interest by an agent of defendant within six years; but the defendant swore that that agent had received from him both principal and interest, to be paid to the testator. That being so he had no authority to pay the interest only; and the unauthorised payment was no evidence of a new promise by the defendant. (*Landsell* v. *Bonsor*, 2 Bing. N. C 241.) By the COURT.—He was not the less authorised to pay the interest because he was authorised also to pay the principal; and he did pay the interest quâ interest *Rule refused.*

Ex parte RICHARD ASHTON.—*Archbold* moved for a rule for a certiorari to bring up a conviction, whereby the applicant was convicted of an offence against his license to sell ale, in "suffering an unlawful game called dominoes to be played in his house;" whereas dominoes is not an unlawful game. 33 Hen. 8, c. 9, s. 17, and 8 & 9 Vict. c. 109, were referred to. *Rule nisi.*

REG. v. SAVILLE.—*Collier* showed cause against a rule calling on the prosecutor of this criminal information to shew cause why he should not pay the costs of the defendant, who had been acquitted. By the practice of the Court the defendant is not entitled to more than 20*l* the amount of the recognisance, and that is always obtained by a side-bar rule. *M. Smith*, contrà.—The practice may limit the amount to 20*l*; but the statute does not. It entitles the defendant to his costs generally. *R* v. *Woodfall*, 2 Stra. 1131; and *R.* v. *Filewood*, 2 T. R. 145, were mentioned. *Rule discharged on payment of 20l.*

REG. v. THE INHABITANTS OF HILLINGDON.—*Gray* showed cause against a rule for a mandamus to the defendants to meet in vestry, and elect a surveyor of highways for the remainder of the present year. At the usual vestry meeting held for that purpose, a contest had taken place between two candidates, which was decided first in [illegible] poll of the whole parish, which the chairman refused, on the ground that the election was at an end. *Pashley*, contrà. *R.* v. *Lambeth*, 8 Ad. & El 358; *Stoughton* v *Reynolds*, 2 Stra. 1045; *R.* v. *The Archdeacon of Chester*, 1 Ad. & El. 342; *Campbell* v. *Maund*, 5 Ad. & El 865, were referred to. The Court thought the election perfectly valid, there having been a tacit agreement that it should be decided by a poll of the inhabitants then present in vestry. *Rule discharged with costs.*

REG. v. THE GREAT WESTERN RAILWAY COMPANY.—*Prideaux* moved for a rule for a mandamus to complete a railway from Bradford to Bathhampton. *Rule nisi.*

DOE *dem.* —— v. ROE.—*T. Chitty* moved for judgment against the casual ejector. The tenant was bankrupt, and the messenger in possession of the premises fo. the assignees. The declaration had been served upon the messenger and assignees (*Doe dem Baring* v *Roe*, 6 Dowl. 456, *Doe dem. Chadwick* v. *Roe*, 9 Dowl. 192) *Rule absolute.*

REG. v. THE INSOLVENT DEBTORS COURT.—*Griffiths* moved for a mandamus to the Insolvent Court, to rehear the case of an insolvent, which had been heard by a County Court judge. The County Court judges had no authority to grant a rehearing; and the question was whether the Insolvent Court had. (1 & 2 Vict. c. 110, s 96; 10 & 11 Vict. c. 102, s. 10; *Re Clabburn*, 19 Law T. 160; *Re Wilcox*, 13 Q. B. Rep. 666.) *Cur. adv. vult.*

REG. v. WHITEHOUSE.—Indictment for conspiracy tried before Wightman, J at Stafford. *A. W Hoggins* shewed cause against a rule for a new trial. *Allen*, Serjt. contrà. *Rule absolute; costs to abide event.*

Friday, June 4

REG. v ST. PANCRAS, MIDDLESEX.—The *Attorney-General* moved for a mandamus to the guardians of the poor to permit Mr. Eaton to act as master of the workhouse *Rule nisi.*

KERNOTT v. PETTIS. *Part heard.*

DOE *dem.* WINSTONE v SALISBURY.—Special case *Gray*, for lessor of plaintiff, and Sir *T. Phillips* for defendant. *Judgment for lessor of the plaintiff.*

Re REEVES.—*Hawkins* moved to make the rule absolute no cause shewn on the terms of the Master's report. *Rule absolute.*

DOE *dem.* HUTCHINGS v. KEAR.—*Gray* moved for a writ of possession herein. *Rule nisi.*

Saturday, June 5.

Ex parte SIR CHARLES NAPIER v. THE EAST-INDIA COMPANY. *Rule refused.*

Re ————.—*Coleridge* moved for a certiorari to remove the depositions taken against the applicant upon a charge of misdemeanour to be preferred against him at the next Cornwall sessions. *Rule nisi.*

Re ————.—*Hawkins* moved for a rule calling upon an attorney to deliver up a deed of conveyance to the purchaser of the property; but, as the relation of attorney and client did not subsist between them,—and it appeared that the deed was in the possession of the attorney as attorney for other parties, *Rule refused.*

REG. v. THE NORTH AND SOUTH SHIELDS FERRY COMPANY.—Question as to the rateability of the company in respect of their landing-places and tolls. *Pashley* and *Otter* in support of the rate. *Temple* and *Heath*, contrà. *Cur. adv. vult.*

REG. v. GRAHAM.—The question raised by this case was, whether the official assignee of a bankrupt tenant was properly rated to the relief of the poor of a parish in Norwich; but as the case found that though the messenger of the Court of Bankruptcy had taken possession of the goods which were upon the premises, the bankrupt and his family continued in the occupation of the premises themselves, the case was not arguable *Pashley* appeared in support of the rate. *Palmer*, contra. *Judgment for the appellant.*

Re ————.—*Prideaux* moved for a rule calling upon an attorney to pay over money, and to answer the matters of an affidavit. *Rule nisi.*

Monday, June 7.

REG. v. THE JUSTICES OF MAIDSTONE.—*Wordsworth* shewed cause. The Court, without calling on *Bramwell* in support of the rule, made it absolute. *Rule absolute.*

REG. v. HILLS.—*Bramwell* for defendant, and *Bovill* for the prosecution. *Judgment and fine of 1s.*

REG. v. THE COMMISSIONERS OF SEWERS.—*Dowdeswell* moved for a mandamus. *Rule nisi.*

Tuesday, June 8

KERNOTT v PITTIS.—Argument resumed. *Millward* in support of the replication. *Willes* in reply *Cur. adv vult*

THE EARL OF LINDSAY v. THE GREAT NORTHERN RAILWAY COMPANY.—This was a special case from Chancery, raising the question whether a covenant to convey more than twenty acres of land could be implied from the terms of a contract between the plaintiff and defendants. *Bramwell* for the plaintiff. *Phipson* for the company. The Court thought that it would be clearly contrary to the intention of the parties as expressed in the instrument to hold that any such covenant was implied in any of the terms used. *Judgment for the plaintiff.*

GOODWIN v CREWER.—Assumpsit by indorsee against acceptor of a bill of exchange. Plea—p. d c. That Thorne, the indorser, had paid to the plaintiff and the plaintiff had received the full amount of principal and interest in full satisfaction and discharge of the bill and all that was due and payable on account and in respect thereof. Demurrer thereto *T. Jones* in support of the demurrer. *Montagu Smith*, contrà. *Jones* v. *Broadhurst*, 9 C. B. 173, 192; *Randall* v. *Moon*, 19 Law T. 92; *Beaumont* v *Greethead*, 2 C B. 494; *Thame* v. *Boast*, 12 Q.B. 808, were cited By the COURT.—This plea is bad in form because it does not answer the damages sustained by the plaintiff, and which he is entitled to recover in this action beyond the amount of principal and interest, as the pleas did in *Thame* v. *Boast* and *Jones* v. *Broadhurst*. *Judgment for plaintiff.*

Wednesday, June 9.

REG. v. THE LANCASHIRE AND YORKSHIRE RAILWAY COMPANY.—Demurrer to a return to a mandamus. Th[illegible] eported. *Judgment for the defendants.*

COURT OF COMMON BENCH.

Reported by DANIEL THOMAS EVANS and VAUGHAN WILLIAMS, Esqrs. Barristers-at-Law.

April 20 and 21.

ADDISON v. THE MAYOR, ALDERMEN, AND BURGESSES OF PRESTON.

Municipal corporation—Debt for salary of Judge and Assessor—Payment out of borough fund—5 & 6 Wm. 4, c. 76, ss. 92, 118.

By section 92 of the Municipal Corporations Act 5 & 6 Wm. 4, c. 76, it is enacted "that after the election of the treasurer in any borough, the rents and profits of all hereditaments and the interest of all moneys belonging to the corporation shall be paid to the treasurer, and be by him carried to the account of the 'borough fund,' which fund shall be applied towards payment of the salary of the mayor, &c. and of the respective salaries of the town clerk and treasurer, and of every other officer whom the council shall appoint:"

Held, that a "Judge and Assessor" appointed by the council with a fixed salary could not maintain an action of debt against the corporation for such salary.

This was an action of debt brought by the plaintiff to recover salary as Recorder of Preston. The declaration stated that the defendants were indebted to the plaintiff in 52*l.* 10*s.* for one year's service and attendance in holding a Court of Record, which by charter or custom was and ought to be holden in and for the borough of Preston, as the necessary officer other than the recorder (to wit, the judge and assessor), upon the appointment of the council of the

said borough, such appointment being made according to 5 & 6 Wm. 4, c. 76, and for the salary, therefore due and of right payable, and in 52*l.* 10*s.* for work and labour, attendances, &c. The defendants pleaded Never Indebted. In order to raise the question for the decision of the Court, the parties agreed to state a special case under 3 & 4 Wm. 4, c. 42, s. 25. The case stated that up to the passing of 5 & 6 Wm. 4, c. 76, the mayor, recorder, and aldermen of Preston were by charter justices of the peace for the borough, and that a separate Court of Quarter Sessions was held in and for the said borough. The mayor was elected annually. The recorder was elected by the common council. There was in the borough, by charter, a Court of Record for the trial of civil actions, regularly held, and not regulated by any local Act. Of this Court the mayor and two or more aldermen were, by charter, the judges. The plaintiff was elected recorder in 1832, and has continued to be so called to the present time. He was, when elected, a barrister of more than five years' standing. Up to and at the time of the said Act he acted as assessor of the said Court, which was always held before the judges designated by the charter. No formal appointment as assessor was made. On the 1st of January, 1836, the members of the new council, under the 5 & 6 Wm. 4, c. 76, elected a mayor, and appointed the plaintiff as judge and assessor of the said Court during his good behaviour. The said Court has been regularly held over since, and the plaintiff has acted as judge and assessor, and has always been of good behaviour. Nothing was done respecting the plaintiff's salary until the 1st of January, 1838, when a resolution was passed by the council, "that the salary of the judge and assessor be fixed at the yearly sum of fifty guineas, to commence from the 1st of January, 1836, the date of his appointment." On the 1st of January, 1850, the council passed a resolution altering the salary of the judge and assessor from fifty guineas to ten guineas. The plaintiff refused to accept the reduced salary; and no sum having been paid for his service for the year ending the 1st of January, 1851, he brought this action.

J. Henderson and *Hon. G. Denman* for the plaintiff.—There is in this case a clear right of the plaintiff to receive, and an obligation on the defendants to pay the sum claimed in this action for duties performed for the defendants. The principle is affirmed in a dictum of Holt, J. (6 Mod. 27), cited in *Hopkins* v. *The Mayor of Swansea*, 4 M. & W. 621 (affirmed on Error, 8 M. & W. 901), "Wherever a statute enacts anything, or prohibits anything for the advantage of any person, that person shall have remedy to recover the advantage given him, or to have satisfaction for the injury done him contrary to law by the same statute." In the present case a statute imposes a duty on a corporation to appoint an officer by whose services they benefit, and there is consequently upon them an obligation to pay. On that proposition of law is based the plaintiff's case. That case is distinguishable from *Bogg* v. *Pearse*, 2 L. M. & P. 21; 20 L.J. 99, C.P. on which the other side will rely. But in that case there was no statutory obligation on the defendant to pay street-keepers and the like officers; so that one branch, and that a most material one, of the proposition here relied on, was wholly wanting. Here the plaintiff has a statutory right to maintain this action. Besides this, the liability of commissioners of paving and that of a municipal corporation stands on different grounds. In *Hopkins* v. *The Mayor of Swansea*, if it had been tenable the same objection as that made here would apply. As to the appointment of the plaintiff, the case states that no formal appointment was made before the passing of 5 & 6 Wm. 4, c. 76, but it is found that he acted as assessor previous to that time; no appointment was necessary; there was a ratification of plaintiff's authority as assessor by the corporation in their permitting him to act, and by payment of salary, and that is sufficient. (*Reg.* v. *Grimshaw*, 10 Q.B. 747.) [JERVIS, C.J.—The decision there went only to this, that so far as regarded the exercise of jurisdiction, the Court would not treat an office as vacant where a coroner had been recognised by the council, and had performed the duties of his office for many years.] The case cited is decisive as to appointment: the office has been full, the plaintiff being assessor. [WILLIAMS, J.—Before the Municipal Corporations Act the mayor was judge, and the plaintiff sat as his assessor.] Yes; and being assessor before that Act, it becomes material to consider what change in his position that statute has effected. He relies upon that Act (5 & 6 Wm. 4, c. 76), the 118th section of which, "that in every borough in which, by charter or custom, there is or ought to be holden a Court of Record, for the trial of civil actions, not regulated by the provisions of any local Act of Parliament, or in which, at the time of the passing of this Act, a barrister of five years standing shall not act as judge or assessor; the recorder, or in the absence of the recorder, or in case there shall not be a recorder, such officer of the borough as by the charter constituting such Court,

or by custom, shall be the judge, shall continue to be and act as such judge, and the council of such borough, *in every case*, whether such Court be regulated by the provisions of a local Act of Parliament, or otherwise, shall have power for that purpose to appoint the necessary officer other than the recorder, before whom such Court is to be holden; and every such judge or assessor, other than the mayor, shall hold his office during good behaviour." Here the plaintiff comes within the first part of the section. There being no new recorder appointed for Preston, under the Municipal Corporation Act, it became the duty of the council to appoint the "necessary officer;" and this they did by the appointment of 1st January, 1836, when, in fact, the plaintiff became appointed judge, holding during good behaviour. They also, under sec. 58, fixed a salary for him from that date. [Cresswell, J.—Could the mayor sue for his salary?] Yes; the proposition must be extended so far as that. [Cresswell, J.—Then he would be suing himself.] He is a separate officer. By sec. 92 the obligation of the corporation to pay, and the right of plaintiff to receive, is indicated. By that section it is provided that the rents and profits of all hereditaments, and the proceeds of all moneys, &c. belonging to the corporation, or to any member or officer thereof in his corporate capacity, and every fine and penalty for any offence against the Act shall be paid to the treasurer and carried by him to the account of the "borough fund," which fund is to be applied towards the payment of the salary of the mayor, &c. "and of the respective salaries of the town clerk and treasurer, and of every other officer whom the council shall appoint." Here then there is a recognition by statute of the right of plaintiff to receive, and of the obligation on the corporation to pay his salary. [Jervis, C.—Suppose there were no funds?] Then the action would be profitless, for there can be no ca. sa. against a corporation. [Jervis, C.J.—He must be paid out of a particular fund.] That is no objection to the right of plaintiff to maintain this action. As to the obligation to pay, this is exactly what has been settled in *Hopkins* v. *The Mayor of Swansea*. [Williams, J.—In that case there was an averment that the treasurer had received and was in possession of funds from a particular source for payment of the moneys claimed.] That averment was there necessary, because the money was only to be so applied when there was a surplus. It was the duty of the treasurer to pay; in fact, the treasurer's is the hand that pays, and it can hardly be contended that the corporation is not liable because it is the treasurer who pays. The 92nd section clearly imposes a duty on the treasurer to pay; and it is not to be upheld that, because the corporation have no power to raise funds by mortgaging or conveying their property, this action, which is for salary, cannot be maintained against them. But it has been said, that if the corporation have power to fix, they have also power to reduce the salary. It would be contrary to public policy that a corporation, when once it has fixed, should have power to reduce salaries. [Jervis, C.J.—A like question was considered in the Queen's Bench: it arose respecting the county constabulary. The question was, whether, where an officer had been once appointed with a salary, the office to be held during good behaviour, his salary could be reduced?] Here the salary was fixed by the parties themselves at a particular sum, and there exists no power to alter it. Suppose it was a mere case of master and servant; clearly the master could not of his own act, and without consent, diminish the servant's wages; and it would be a most arbitrary and unjust thing that the salary of a judicial officer such as the plaintiff should be dependent on the will of a corporation, to be reduced at pleasure.

Byles, Serjt. (*Segar* with him). The proper mode of trying the question here raised is not by an action of debt; for, in order to ground an action of debt against the corporation, there must be either a positive contract, or there must be a statutory liability on the corporation in their corporate capacity to pay the salary. There is clearly no contract; it follows, then, that to make the corporation liable, the statute must prescribe a remedy against them in their capacity as a corporation upon a particular fund—a remedy in personam, and not in rem. The right of the plaintiff, as it appears by section 92, is to be paid out of the borough fund. Here it does not appear that there is a borough fund; and, so far as that section is concerned, the corporation might have to raise such a fund by a borough rate. This being so, how can the plaintiff substantiate his right to have his salary paid out of the corporation property? If it be held he is so entitled, he might have an elegit against the property of the corporation. It was held, in *Jones* v. *The Mayor, &c. of Carmarthen*, 8 M. & W. 605, that the town clerk of a borough could not maintain an action of debt against the corporation, for duties performed, under the Municipal Corporations Act, his right being limited to the borough fund, and from that alone he is to be paid. That case is directly in point. The proper mode in which the plaintiff ought to proceed to enforce his claim, if such he has, is pointed out in a recent case decided in this Court (*Bogg* v. *Pearse*, ubi suprà). There is this material difference between the case cited in argument for the plaintiff (*Hopkins* v. *The Mayor, &c. of Swansea*), and the present case, that there the corporation had the money in their hands, and were bound to pay it over by the statute. The corporation had a clear and indefeasible right to reduce the plaintiff's salary at their pleasure; and as to the appointment of plaintiff on 1st of January, 1836, it was void. (6 & 7 Wm. 4, c. 105, s. 9.)

J. Henderson, in reply, referred to Comyn's Dig. (A.) 9, and insisted that *Hopkins* v. *The Mayor of Swansea* was a case directly in point as applied to the present. With respect to *Jones* v. *The Mayor of Carmarthen*, he distinguished that case, and shewed its inapplicability upon the ground that the services performed by the town-clerk in that case were not properly the subject of remuneration, and therefore the plaintiff could not recover for them. As to the language of Lord Abinger, with reference to the position that payment be made out of the borough fund, if made at all, it was merely an obiter dictum, and not a well-considered remark. He referred to *Tilson* v. *The Warwick Gas Company*, 4 B. & C. 962; and to *Carden* v. *The General Cemetery Company*, 5 Bing. N.C. 253.

Jervis, C.J.—I am of opinion that the defendants in this case are entitled to judgment. With the strong view I entertain on the first point, I think it is not necessary to hear counsel further, or to enter upon consideration of the second and third points. As to the principles on which the first point are to be determined, there seems to be no real difference between the arguments on both sides. This is an action of debt, and it is admitted it cannot be maintained by reason of any contract, express or implied, subsisting between the parties. It is, however, said on the one hand, and admitted on the other, that an action will lie if the rule of law which is laid down is applicable to the case, that in order to maintain an action there must be a legal right to receive on the one hand, and a legal liability in the corporation personally so described on the other to pay; and if those two, right and liability, co-exist in this case, it is contended on the one hand and not disputed on the other that an action of debt will lie. And I think for the purpose of this case, we may assume that that proposition is well collected from the authorities, and could be supported if it were necessary to contest it on this occasion. It is not upon the rule itself, but upon the application of the rule, that this case depends. There may, and taking it for granted that the second and third points are in favour of the plaintiff, there possibly does exist on his part a legal right to receive his salary; but the second proposition on which the action of debt depends is in my opinion, wanting in this case; namely, legal liability on the part of the corporation, as corporators, to pay out of their corporate property, not out of a specific fund, but out of all their property, the debt which the plaintiff contends they are liable to pay. I think this action must be viewed as one brought to recover the debt specifically from any of the property of which the defendants as corporators have the administration; and that we must take it that he asserts by his declaration that he has a right to have his debt paid out of all the property of the corporation which could be made available for the payment of debts, and that if the plaintiff is right, the defendants would have a right, or would be bound to pay the debt or salary out of their corporate property as distinguished from the borough fund. Now, my opinion is, that, upon the true construction of the Act of Parliament, although on the one hand we may assume that the officer has a right to receive his salary, on the other hand, at the same time when the legislature is creating a power in the corporation to fix a salary, it points out a particular and definite fund out of which that particular salary is to come, and the particular officer by whom that payment is to be made; and that when the legislature says that the assessor, amongst other persons (which I assume to be the case, for the purpose of the argument), is to be paid out of the borough fund, and the officer, with knowledge of that provision, takes the appointment so created, that he has no right to say—"I will divert the corporate funds from their original intention or purpose; and because you will not pay out of the borough rate or borough fund, I will not resort to my prerogative remedy to compel you to raise the fund, and so pay my salary out of the fund defined by the Act, but I will sue you personally, so as to enable you by collusion, or in invitum to compel you to waste the corporate property, out of which it was not intended by the Act that you should pay that particular sum." I think, therefore, when they took upon themselves by the Act the right to nominate the salary or pay it to the officer, they took it with the obligation to pay out of a particular fund, to be administered by a particular officer; and although this would give to the plaintiff a right to receive the amount, and so give him part of the remedy, it does not cast upon the defendants the personal liability to pay out of their corporate property the particular debt; and, therefore, that the second requisite, without which it is admitted the action will not lie, is wanting in this case. Therefore, our judgment should be for the defendants.

Cresswell, J.—I am entirely of the same opinion. Assuming, for the purpose of this discussion, that Mr. Addison was well appointed the assessor of this court, and that afterwards the salary was well granted, and that the attempt to reduce that salary by subsequent order was not according to law, still I think he can have no action of debt against the corporation to recover this money. As my lord has pointed out, the statute shews that, when appointed and when he had a salary, it was to be paid out of the borough fund. The mode of administering that fund is pointed out by the statute. The salary in question is appointed to be paid out of that fund; his right to have it is a right to have it out of that fund; and it is not a debt attaching upon the corporation. I think, therefore, that the action of debt against the corporation cannot be maintained.

Williams, J.—I am also of the same opinion. I give no opinion as to any point which has arisen in this case, except as to the question whether an action of debt would lie to enforce the payment of the amount of the plaintiff's salary; assuming that he is a salaried officer, properly appointed under the Municipal Corporation Act. I am of opinion that no such action can be maintained. The plaintiff, in this case, has no general right to payment out of the corporation property, as he had in the case of *Hopkins* v. *The Mayor of Swansea*; he has no right to payment of his salary here except out of the borough fund; and if that fund is incapable, by want of assets, of paying the salary, he must, by some means or other, procure that it shall become capable by means of a rate before he can get his salary. I think that in that state of things there is no foundation for an action of debt against the corporation. Therefore, this action must fail.

Talfourd, J. concurred.

Judgment for the defendants.

Tuesday, June 8.

Foster v. Crabb.

Pleading—Special traverse.

The matter of inducement and the traverse must each be a sufficient answer in themselves.

The replication need only answer what is set up in the plea, where the plea is in confession and avoidance.

In an action of detinue brought by one of two persons jointly entitled to the possession of a deed, the defendant pleaded that the deed was delivered to him by the other, and that he held it by his authority. To which there was a special traverse that it was delivered to him by the other person, it being stated in the inducement that it was delivered to him by one G. on behalf of the plaintiff, and that defendant held it on behalf of the plaintiff:

Held, on special demurrer, that the replication was good.

This was an action of detinue, brought to recover possession of an annuity deed, in which the plaintiff and one Swindall were interested. The plea set out the deed, and then went on to allege that Swindall had possession of the deed, and delivered it to the defendant, and that defendant detained it by the authority of Swindall. To this there was a replication denying that Swindall had obtained possession of the deed before the plaintiff, which was demurred to, and upon that there had been a decision in favour of the defendant. There was then a new replication in the form of a special traverse, stating in the inducement that before the defendant had possession of the deed, one Green had possession of it on behalf of the plaintiff, and on behalf of the plaintiff delivered it to the defendant, who holds it on behalf of the plaintiff and by the plaintiff's authority, and then traversing specially the allegation in the plea that Swindall delivered the deed to the defendant. To this there was a demurrer, which now came on for argument.

J. Brown, in support of the demurrer.—The replication does not answer the whole plea, which, after alleging the delivery of the deed by Swindall to the defendant, goes on to say that the defendant detains the deed by the authority of Swindall, which last allegation is not answered; and if Swindall authorised the defendant to keep the deed, it is the same thing as if Swindall kept it himself, and is an answer to the declaration. By our demurrer we only admit what is material in the replication; that is, in this instance, that Swindall did not deliver the deed to the defendant; and the Court cannot assume how the defendant got possession of the deed. He may have got it by trover, and have been subsequently authorised by Swindall to detain it. The effect of a special traverse is explained in Stephens on Pleading, p. 175. [Maule, J.—The matter upon which the question of law arises is set

out by way of inducement; and the question is, whether the matter so set out is sufficient, taken as true. You might have traversed any of the facts alleged in the inducement.] But whether that be so or not, the traverse is of something immaterial, and that is sufficient on special demurrer. It is insufficient by itself; for the defendant might have found the deed, and have been subsequently authorised by Swindall to keep it. But the inducement is insufficient, for it alleges that the defendant holds the deed by the authority of the plaintiff, and it does not shew any demand on the part of the plaintiff.

Grey, contrà.—The real question is, whether it is material from whom the defendant got the deed. I submit that it is, and decides the action. The plea alleges, 1st, that Swindall got the deed into his possession. 2ndly, that he delivered it to the defendant. 3rdly, that defendant detains it by the authority of Swindall. If that is so, the plea is a good answer. If the second of the above propositions be struck out, it is not sufficient, for the two other allegations are connected by means of the second, and they must be all taken together, for if the second were struck out the plea would then allege that Swindall had possession of the deed, and that defendant detains it by his authority, which would be consistent with the plaintiff's case, because, supposing Swindall had once possession of the deed, and plaintiff had somehow obtained it, and had then delivered it to defendant to keep for him, upon defendant's refusal to redeliver it, the plaintiff would have a right of action against him. That state of things is consistent with the plea, that proposition being struck out, for Swindall may afterwards have authorised the defendant to keep it for him. The traverse, therefore, is sufficient in itself. [JERVIS, C.J.—On special demurrer you must shew both the inducement and the traverse to be good]. The inducement is sufficient. The plea is one in confession and avoidance, and admits the plaintiff's title as shewn in the declaration, unless the plea is an answer, but the replication is an answer to the plea, and it is not necessary in the replication to shew a complete title, because that is admitted before by the mode of pleading, unless displaced by the plea. The introductory matter is an argumentative expansion of the traverse, and it is therefore only necessary in this inducement to state facts inconsistent with the allegation in the plea traversed; and we allege that Green delivered the deed to the defendant, and that defendant holds it by plaintiff's authority, and that is inconsistent with his holding it by Swindall's authority. The inducement must be taken in reference to the manner in which the defendant got the deed, and it means that he got it in the way stated, and in no other, and so is sufficient.

J. Brown, in reply.—The inducement must be sufficient in itself. (Stephens on Pleading, 183; Com. Dig. Pleading, G. 20.) The inducement here alleges that the defendant holds by the plaintiff's authority, without saying down to the time of the action brought. [MAULE, J.—If the replication is an answer to the plea, that is sufficient.] Then the traverse is insufficient by itself. Suppose it was found that the alleged bailment was negatived, then the record would shew that the defendant held the deed by the authority of Swindall, but it would not appear how he got it. The plea sets up an answer to the declaration; and the replication, in one state of circumstances, is an answer to the plea, in another (e. g. if defendant got the deed by trover) it is not. But the plea is good in itself, and therefore the replication must be good in all circumstances.

JERVIS, C.J.—I am of opinion that the plaintiff is entitled to the judgment of the Court. The object of a special traverse is correctly stated in Stephens. The plaintiff may by it present a traverse on which issue in fact may be taken, and he may expand it in the inducement, so as to raise an issue in law. But they must both be sufficient. The defendant here might have taken an issue in fact on the special traverse, or he might have demurred generally, or he might have traversed the inducement. On all the points the plaintiff is entitled to our judgment. As to the traverse, strike out the allegation in the plea traversed, then the plea would be bad; for, being a plea in confession and avoidance, if the matter of it is not supported, the declaration remains good. The meaning of the plea of the defendant is, "I displace your right as alleged in the declaration, because Swindall delivered the deed to me." The plaintiff answers, in the replication, "Not so; I delivered it to you." And that is material, because a subsequent direction by Swindall to the plaintiff to keep it would not do. As to there being no allegation of a demand of redelivery, that is not pointed out in the grounds of demurrer. As to the technical objection, that the inducement says the defendant holds the deed by the authority of the plaintiff, without limiting it by saying down to the time of the action brought, the allegation is that Green delivered it to the defendant, and the defendant held it and holds it by the authority of the plaintiff; and that must be taken to mean, not that the defendant now holds it by plaintiff's authority, but that he obtained it by that authority.

The rest of the Court concurred.

BUSINESS OF THE WEEK.

Saturday, June 5.

WALSH v. LEONARD.—Rule nisi to set aside a distringas for outlawry on entering appearance. *Collier* obtained a rule to strike an attorney (Grove) off the roll at his own request.

DOE *dem.* EDWARDS AND WIFE v. - —.—*Lucas* shewed cause against a rule which had been obtained by *Grove* for judgment, as in case of a nonsuit. The assizes in Glamorganshire are held alternately at Swansea and Cardiff, and the witnesses in this case reside in the neighbourhood of Cardiff, which is about forty miles from Swansea, and the costs of a trial at Swansea would have been much greater than at Cardiff, where the next assizes are held

Rule discharged on a peremptory undertaking to try.

TRIP v. JONES —*Joyce* shewed cause against a rule for judgment, as in case of a nonsuit. The venue in the declaration was incorrectly stated, but correct in the notice of trial.

Rule discharged on peremptory undertaking to try.

DALBY v. INDIAN AND LONDON ASSURANCE COMPANY.—*Bramwell*, Q C mentioned that if this case went to the Ex. Ch on a Bill of Exceptions, as arranged last week, the best that could happen to him, would be a venire de novo and he therefore wished to be off the arrangement.

To be mentioned again.

LEROUX v. BROWN.—This was an action brought against the defendant for a year's wages At the trial it was proved that the contract sued upon was, that the defendant should pay the plaintiff certain wages for a year's service, to commence on a day subsequent to the contract, and that this contract was made at Calais, in France The declaration alleged the contract to be made "at Calais, in France, to wit, at Westminster." *Hawkins* now moved to set aside a verdict found for the plaintiff, on the ground that the contract was void, being within the Statute of Frauds: for though the contract may have been made abroad, it is sought to enforce it here, and the 4th section of the statute says, "that *no action shall be brought* upon any agreement that is not to be performed within the space of one year from the making thereof, unless in writing, and signed," &c

Rule nisi.

Monday, June 7.

FISHER v. BELL —JERVIS, C J.—There is a case, brother Channell, which has a material bearing on the question raised in this case, now standing for argument in the Q B; it would be convenient, therefore, to defer our judgment till after the consideration of that case. We will give judgment herein on Monday, the 21st instant

Stands over.

METEYARD v. SCANNAR —*Gray* moved for leave to sign judgment in this case on a sci. fa. Eight days have expired since the return. *Leave granted.*

WILLIAMS v. BUTLER.—*Reed* moved for a rule calling on defendant to shew cause why service of a rule to complete should not be deemed sufficient if rule be left at Delahay-street, Westminster, and at a certain place in Ireland.

Rule granted

FISHER v. BELL - JERVIS, C.J. again referred to this case, stating to *Channell*, Serjt. that the Court had been informed by *Bramwell* that the same point has been considered by the Lords Justices on appeal.

Tuesday, June 8.

SHOULBRIDGE v. CLARK. *Part heard*

DALTON v. - RAILWAY COMPANY --*Bovil* moved for an interpleader and stay of proceedings. The action was brought for dividends on shares. The plaintiff had been a shareholder in the company, but a transfer from her to one Esplin had been received by the company through a stock-broker, and Esplin also threatens to bring an action. [JERVIS, C J.— You may take a rule] But I ask, also, for a stay of proceedings [JERVIS, C J.—Have you given notice?] No. [JERVIS, C J —Then you cannot have it]

STEADMAN v. CHAPEL —*Huddlestone* moved for an enlargement of the rule in this case, and that it might be served by fixing it up in the court. *Granted.*

Wednesday, June 9.

SHOULBRIDGE v. CLARK —The arguments in this case were resumed and concluded. *To be reported.*

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY, and C. J. B. HERTSLET, Esqrs. Barristers-at-Law.

Friday, April 30.

DWYER v. COLLINS.

Evidence—Notice to produce—When it may be given during the trial—Attorney—Privileged communication.

A defendant was required to prove upon the trial the identity of the bill of exchange declared on; he had given no notice to produce it, but asked the plaintiff's attorney whether he had the bill then in court with him. The attorney upon being compelled by the judge to answer that question, said he had it in court. he was then required by the defendant to produce it, but he declined to do so. A notice to produce was then served; the bill not being produced, secondary evidence was thereupon given of its contents:

Held, that secondary evidence of it was admissible: and that the attorney for the plaintiff had been properly obliged to answer whether or not he had the bill in his possession in court at the trial.

The privilege of an attorney does not extend to matters of fact which he knows by other means than confidential communication with his client, although if he had not been employed as an attorney he would not have known them.

This was an action by an indorsee against the acceptor of a bill of exchange. *Plea* that the bill was given for a gaming debt. The cause was tried before the Lord Chief Baron, and the defendant obtained the verdict. The defendant proved that he never accepted any bill for the drawer, except to realise bets, but being required to prove the identical bill sued on was the one so given, called upon the plaintiff to produce it, which he declined to do, no previous notice to produce having been given. The plaintiff's attorney, on being asked whether he had the bill with him, declined to answer, on the ground of its being a breach of professional confidence, the learned judge having decided he must answer, he admitted that the bill was in his possession, and in court. The bill was then called for, and a notice to produce it then served. The bill was not produced, and the learned judge thereupon admitted secondary evidence of its contents. A rule nisi had been obtained to set aside the defendant's verdict, on the ground that no notice to produce having been previously given, secondary evidence of the bill was improperly admitted, and also that the attorney's knowledge as to the bill which he had been obliged to disclose, was privileged.

Hawkins shewed cause.

Udall, in support of the rule (called upon by the Court), cited *Goodered* v. *Armour*, 3 Q.B. 956; *Lawrence* v. *Clark*, 14 M. & W. 250; *Cook* v. *Hearn*, 1 Mood. & Rob. 201; *Rowe* v. *Harvey*, 4 Bur. 2484; *Doe dem. Whartley* v. *Gray*, 1 Stark. 284; *Bate* v. *Kinsy*, 1 C. M. & R. 38 1; Phillips on Evidence, 6th edit. 125; Roscoe, p. 7. (7th edit.) lays it down as clear, so does Starkie on Evidence; *Sturge* v. *Buchanan*, 10 A. & E. 598. *Cur. adv. vult.*

Saturday, May 8.—PARKE, B. delivered judgment.—This case was argued a short time ago in this court. The plaintiff sued the defendant on a bill of exchange; the defendant pleaded one plea only, that the bill was given for a gaming debt. On the trial before the Lord Chief Baron, the defendant gave evidence of the gaming, and swore that that was the only bill he ever gave to the drawer; that the bill endorsed to the plaintiff was by way of payment of the debt then incurred, and the defendant's counsel being called upon to prove the identical bill declared on was that which was given on the occasion, called for the bill, which the plaintiff's counsel declined to produce. He then asked the plaintiff's attorney, who was present in court, whether he had the bill with him? The plaintiff's counsel objected that such a question need not be answered, because it would be a breach of professional confidence to do so. The Lord Chief Baron, after consulting some of the other judges of this court at that time sitting in the Exchequer Chamber, decided that the question must be answered. The attorney admitted that the bill was in his possession and in court, and the defendant's counsel called for its production, which was refused. He then offered to give secondary evidence of the bill, to which it was objected by the plaintiff's counsel, that there ought to have been a previous notice to produce. The Lord Chief Baron, after consulting the same judges, ruled that it was competent for the defendant's counsel to do so: the evidence was given, and the verdict passed for the defendant. Mr. Humphrey obtained a rule nisi for a new trial, which the Court granted, as we thought the subject fit to be more fully considered, and decided, notwithstanding the opinion we had given to the Lord Chief Baron, and on which he had acted. The case was very fully argued at the Bar, and we had all the authorities consulted. We are of opinion that the rule ought to be discharged. We do not propose to decide whether the defendant's evidence in this case, that no other bill was given to the drawer who indorsed it to the plaintiff than the one for this gaming debt, superseded the necessity of further proof, nor to consider the question whether the pleadings themselves gave, as usual, notice that the bill must be the subject of inquiry, so that though in an action of trover for a written instrument which is described in it, where a notice to produce is unnecessary, it having been decided by the Court of Q. B. in *Read* v. *Gamble*, 7 A. & E. 597 (note); *Goodered* v. *Armour*, 3 Q. B. 956, followed by this Court in the case of *Lawrence* v. *Clark*, 14 M. & W. 250, that in a case like the present the pleadings do not give constructive notice, we wish to decide this case on the more general ground, the principal subject of argument at the bar. There are, therefore, two questions to be considered: first, whether the plaintiff's attorney was protected from answering the simple question as to the bill being in his possession and in court; secondly, whether upon his refusal it was then competent for the defendant to give secondary evidence of its contents, no previous notice to produce having been given. We are of opinion that the ruling of the Lord Chief Baron was right on both questions. The relation of attorney and client prevents the former from disclosing any communication made to him in the ordinary course of his employment, and on the faith of the confidence which the client reposes in his legal adviser. But that privilege does not extend to matters of fact

which the attorney knows by any other means than confidential communication with his client, though if he had not been employed as an attorney he probably would not have known them. Thus he may prove his client's swearing to the truth of an answer in Chancery, and his handwriting by seeing it to documents prepared by him, or in which he has seen in the course of his employment the name of his employer, and in the same way he may prove the fact, the particular document is then in his possession and in court, for this is not a fact professionally communicated to him, though of course he could not be compelled to disclose the contents of any document which is professionally entrusted to him, and which he is acquainted with only by virtue of professional confidence. That the privilege of an attorney does not extend to protect him from answering whether the document is then in court was decided by Abbott, C.J. at Nisi Prius, *Broad* v. *Pitt*, Mod. & Mal. 235; and *Eicke* v. *Nokes*, in the same book, 303. Lord Tenterden permitted a clerk of the defendant's attorney to be asked whether a copy of a bill had not been given to him by the defendant. The Court of Q. B. decided in the case of *Coates* v. *Birch*, 2 Q.B. 252, that an attorney might be asked whether he had in his possession at the trial and in court a warrant, though he said he had no document that he had not received from his client in the course of his professional communication. These authorities are quite satisfactory to us, for it is obvious the answer to the question betrays no secret directly or indirectly communicated to him in professional confidence. On the other hand, there are some authorities cited against the admissibility of this question. The first is *Cook* v. *Hearn*, 1 Mood. & Rob. 201, in which it is said that Patteson, J. refused to permit a question to be put with respect to a rule of Court, because no notice to produce had been given, and he also decided that the notice to produce then was too late. The report goes on to say, that the course adopted was approved of by Taunton, J. and myself, in the following Term. It is very doubtful from the report whether the question was disallowed by Patteson, J. and so far as I am concerned, I think there must be a mistake either of my own or the reporter, as it is at variance with the opinion I have always had upon the subject, and made a note to that effect the first time that I saw this in the printed book, and on referring to my own manuscript in Michaelmas Term 1832 of the motion for a new trial, I find no trace of such a circumstance. The rule was moved for on the ground that it appeared there was a written agreement or lease, on the cross-examination of the plaintiff's witnesses, which was not produced, and a rule nisi was granted suggesting a stet processus. This case is by no means a sufficient authority, and no other was cited which is in point; nor are we aware of any. This objection, therefore, cannot prevail. The next question is whether the bill, being admitted to be in court, parol evidence was admissible on its nonproduction by the attorney on demand, or whether previous notice to produce was necessary. On principle the answer must depend on this, why the notice to produce is required. If it be to give to the opponent notice that such a document would be used by the party to the cause, so that the opponent may be enabled to prepare evidence to explain or confirm it, then no doubt a notice at the trial, although the document be in court, is too late; but if it be merely to enable the party to have the document in court to produce it if he likes, and if he does not, to enable his opponent to give parol evidence; but if it be merely to exclude the argument that the opponent has not taken all reasonable means to procure the original, which he must do before he can be permitted to make use of secondary evidence, then the demand of production at the trial is sufficient. We are not able to find a trace of the reasons suggested upon the part of the plaintiff until that mentioned by Mr. Starkie in his book on Evidence; and there is no authority referred to in the notes which support such a position. If this be the principle on which notice to produce is required, the measure of the reasonable length of notice could not be the time necessary to procure the document, a comparatively simple inquiry, but the time necessary to procure evidence to explain or support it, a very complicated inquiry, depending on the nature of the plaintiff's case, the document itself and its bearing on the case; and in practice such matters have never been inquired into, but only the time with reference to the custody of the document and the place where it is, whether it was in the custody of the attorney or client, and the residence or convenience of the parties to whom notice has been given, and the like. We think the plaintiff's alleged principle is not the true one, on which the notice to produce is required, but that it is merely to give sufficient opportunity to the opposite party to produce it if he pleases, and thereby to secure the best evidence of its contents; and the request to produce it immediately is quite sufficient for that purpose, if the document be in court. There is no case in support of the plaintiff's position, when properly looked at, except that of *Cook* v. *Hearn*, above referred to, which we think, for the reasons given before, quite insufficient, though a case is said to have been quoted by the late Lord Abinger, when at the Bar, mentioned in the report of *Doe* v. *Grey*, reported in 1 Starkie, 284, but not reported elsewhere, in which Lord Kenyon is said to have told an attorney that he need not produce an instrument which had a subscribing witness, unless he had notice in time to enable him to produce the attesting witness. There is probably a mistake in this, as the party requiring the document would have been bound, if it were produced, to call the subscribing witness, unless in the excepted cases, where the party producing it claims title under it. This case cannot be relied on. In *Doe* v. *Grey* itself it did not appear that the attorney had received the notice to produce, which the night before was served upon the wife, or that he had the case itself in court, nor does that fact appear in either of the cases of *Read* v. *Gamble* or *Lawrence* v. *Clark*, before referred to. The expression that the counsel refused to produce is not necessarily equivalent to the fact of the document being actually in court at the time of refusal; and it does not appear from any part of the report that the document was actually in court. For these reasons, we are of opinion the course pursued by the Lord Chief Baron was perfectly right, and fortunately for the ends of justice it is so, for it certainly would have been a considerable scandal upon the law if, when the document itself was in court actually in the hands of the party whom the gaming was proved, and no other bill of exchange was proved to have been given that the defendant should fail because he had not given notice to produce, the day before the trial. It really would have been a scandal to the law. It is impossible to say that there would be any justice in such a case in requiring any previous notice to produce. *Rule discharged.*

Jan. 20 *and* 22 *and May* 22.

WALLINGTON *v.* DALE.

Patent — 5 & 6 *Wm.* 4, *c.* 83; 7 & 8 *Vict. c.* 69, *ss.* 5 & 6.

A patentee may disclaim as to a part after he has assigned his patent.

This was a patent case. A rule had been obtained calling on the plaintiff to shew cause why a verdict should not be entered for the defendant on the ground that there was no specification, and why the judgment should not be arrested on the ground of the insufficiency of the declaration, or why a new trial should not be had on the ground of misdirection, that the verdict was against evidence, and on affidavits.

The *Attorney-General* (*Webster* and *Fletcher* with him) shewed cause.

Sir *Fitzroy Kelly* (*Crowder*, *Crompton*, and *Hindmarsh* with him) in support of the rule.

Cur. ad. vult.

The facts of the case appear in the judgment.

POLLOCK, C.B.—This was a motion for a new trial or to enter the verdict for the defendant on the third issue, or to arrest the judgment. The grounds for so much of the motion as referred to a new trial were first, that the verdict was against the evidence; secondly, that the learned judge misdirected the jury; thirdly, on the ground of the affidavits which strongly supported the testimony of a witness named John Cox for the defendant, to whom, as they swear, the jury would not give credit, and whose evidence, if believed, undoubtedly entitled the defendants to a verdict, and so the learned judge at the trial directed. It was an action for the infringement of a patent for the manufacture of gelatine. The cause was tried in London at the sittings after last Trinity Term, when the verdict passed for the plaintiff on all the issues. The motion now to be disposed of before us was made in Michaelmas Term, and was argued on the 20th and the 22nd of January last. As to the verdict being against the evidence, my learned brother Alderson, who tried the cause, was not dissatisfied with the finding of the jury, which finding was objected to chiefly on two grounds. First, that there had not been an infringement of the patent; secondly, that the jury ought to have believed the witness John Cox, according to whose testimony the plaintiff's method had been published and used in Scotland long before the patent was granted. It appears to us, without entering minutely into the merits of the patent in detail, that the plaintiff's process, substantially, apart from Cox's evidence, was new and different from any other disclosed in the various specifications or processes given in evidence, including Cox's, and that proved as used shews it was indisputably useful; and we think it was entirely a question for the jury whether the shreds or cuttings used by the defendant, certainly not so small as those used by the plaintiff, were an infringement of the patent, and we are not disposed, nor is my brother Alderson, to find fault with the verdict of the jury on this head. With respect to the witness Cox, considering the nature of his own patents, and all the evidence which he gave, and that he never produced such an article as the plaintiff's, we are not surprised that the jury did not put sufficient confidence in his testimony to find upon it a verdict for the defendant. There will, therefore, be no rule on the ground of the verdict being against the evidence. We think also the ground of misdirection fails, as we are of opinion the case was properly left to the jury by my learned brother Alderson. With respect to the motion to enter the verdict for the defendant on the third issue, on the point which was reserved at the trial, we are of opinion that the verdict was right. It was contended by the learned counsel for the defendant that the form of the issue made it necessary for the plaintiff to prove, not only a sufficient and good specification, on the face of it, of the process, but also of the apparatus; and though the declaration might, perhaps, have been so framed as to require proof of the specification or of the process only for which the patent after the disclaimer must be considered as having been granted, concerning this we think that there is a specification of an apparatus, and a sufficient one, namely, the use of the plane, and although a patent for such apparatus would be bad, perhaps, for want of novelty, no question of novelty arises upon this plea; and we therefore think the objection is fully answered in point of fact, and that the specification contained an apparatus as well as a process. On the point of arresting the judgment, the ground of which was, that the disclaimer was entered, not by the plaintiff, but by the patentee after he had assigned all interest, we think our judgment must be for the plaintiff. The record itself discloses that the original patentee entered the disclaimer after he had assigned his interest, and it was contended before us on the part of the defendant, that the patentee had no power to do so. The power to disclaim any part of the title or of the specification of a patent is given by the 5 & 6 Wm. 4, c. 83, s. 1, and it may be done by leave of the Attorney-General or Solicitor-General. Some doubt might have been entertained whether the plaintiff, after assigning his interest, could enter a disclaimer; but we think the statute 7 & 8 Vict. c. 69, ss. 5 & 6, have put an end to such doubt by enacting, expressly, that no objection shall be made in any proceeding whatsoever on the ground that the parties making such disclaimer or memorandum of such alteration had not sufficient authority in that behalf. We are of opinion that it was not competent to the defendant to take such an objection, and this ground for a new trial also fails. There is one other point remaining to be disposed of, that is the ground for a new trial on the affidavits filed by the defendants. At the trial the witness Cox was called to prove that he had publicly expressed and disclosed the invention claimed by the plaintiff, he being apparently a witness in a respectable situation of life, and if what he stated was true, the verdict, as already observed, ought to have been for the defendant. The result of the affidavit is this, that the evidence of Mr. Cox, doubted by the jury, was really true, and that if the whole case as now presented by the affidavits were before a jury, it would be believed, and had it been before the jury it would have been believed by them. We might, perhaps, be disposed to think, that if the case now before us related to a matter on which the verdict and judgment would be final and conclusive, then there is some ground for asking for a new trial on payment of costs. But the present proceedings will not be final and conclusive; it is still open to those who desire to discuss the validity of this patent to do so by scire facias, in which proceeding all those persons who have made affidavits in support of the testimony of Cox may be examined as witnesses; and if the jury should believe that Cox and these persons who have made affidavits speak the truth, then it will be their duty to find in the proceeding by scire facias on behalf of the Crown. But with respect to the present question, it may be observed that the matter did not come upon the defendant by surprise. The defendant made such preparations for this specific issue as he thought would be sufficient; at the trial it turned out, in the opinion of the jury, it was not sufficient, and we think, therefore, we ought not to grant a new trial in this case, but to leave the defendant to proceed by scire facias if he should be so advised. The rule, therefore, must be discharged, and our judgment must be for the plaintiff. *Rule discharged.*

January 31 *and June* 3.

HUNT *v.* HEWITT.

Inspection of documents—14 & 15 *Vict. c.* 99, *s.* 6—*Practice.*

To obtain an inspection of documents under the New Law of Evidence Act, the affidavit must shew, first, that a suit is pending, and what is the nature of that suit, and the question to be tried in it, and that the applicant has just grounds to maintain or defend it; and, secondly, the affidavit must state, with sufficient distinctness, the reason of the application, and the nature of the documents required to be inspected, in

order that it may appear to the Court or Judge that the documents are asked to enable the party to support his own case, and not to find a flaw in the case of his opponent: and also that the opponent may admit or deny the possession of the document.

This was a rule under the 6th section of the 14 & 15 Vict. c. 99, calling on the plaintiff to shew cause why the defendant should not be at liberty to see the day-book or journal of the plaintiff, and take a copy of it, so far as related to this action; and why an order of Platt, B. should not be amended. The action was by an architect for a certain commission on a building contract for surveying and superintending the building of certain houses, &c. and the order of the learned baron was, that the defendant should be at liberty to inspect certain plans, but he refused to make an order as to the books. It appeared on the affidavits that the plaintiff and defendant were never in direct communication with each other, but that the work had been done in consequence of orders given to the plaintiff by an attorney, who swore that credit had been given to him, the attorney, and that it was important for the defence to inspect the plaintiff's books to enable him to prepare his pleas.

Lush shewed cause.—This is one of those fishing applications which the Court will not encourage. The affidavit merely amounts to this: "I believe there are entries in your books which will probably make for my defence, utmost it amou[...] defendant that [...] pledge his credit, and the attorney does not swear that he did not do so. He referred to Storey's Equity Jurisprudence, sec. 325. The plaintiff's answer is, that the work was done by him on the defendant's property; that he was employed by the attorney as the agent of his uncle, the present defendant, and from time to time reported to the attorney the progress of the work. He further swears he keeps a diary, but no other day-book or journal; that there are entries in it of work done for the defendant and for other people, and that there would be great difficulty in separating the items, and that its production will furnish no evidence in support of the defendant's case; he also swears that he never gave credit to the attorney. The object of the application is to try to find out some evidence that credit was given to some one else, and not to the defendant.

Honyman in support. — In equity it is competent for the plaintiff to state anything in a bill of discovery, but the applications to the Courts of Common Law under this statute must be on oath, and it is impossible that it can be sworn what the contents of this book are, the defendant never having seen it. The affidavit states that this book would shew that the work was not done as alleged. [ALDERSON, B.—In the case of *Bolton* v. *The Corporation of Liverpool*, 1 Myl. & K. 88; 3 Sim. 467. The rule laid down by the Lord Chancellor was this: "A party has a right to the production of deeds sustaining his right affirmatively; but not of those which are not immediately connected with the support of his own title, and which form part of his adversary's. He cannot call for those which, instead of supporting his title, defeat it by entitling his adversary. Those under which both claim he may have, or those under which he alone claims. Thus an heir-at-law cannot in that character call for the general inspection of [...] in the possession of the devisee."] These documents cannot be evidence for the plaintiff. The defendant states three things: first, that the work was not done; secondly, that the credit was not given to him, the defendant, but to the attorney; and, thirdly, that the charges are excessive. [ALDERSON, B.—It is doubtful whether this affidavit goes far enough. The defendant says "he has reason to suspect that there are certain entries in this book;" in fact, he wants to see if the plaintiff has made any mistake by accidental entries.] If a defendant in equity will not deny that he has the books or documents sought to be discovered in his possession, he cannot excuse their production by saying that they do not relate to the disputed matter. (He referred to Mr. Pollock's book on this section of the New Evidence Act, and *Attorney-General* v. *Corporation of London*, 12 Beav. 8; 13 Jur. 374; 14 Jur. 205; and *Smith* v. *Duke of Beaufort*, 1 Hare, 520, there cited. [ALDERSON, B.—If you were to say that on the production of this book it would appear that the plaintiff gave credit to some one else than the defendant, I think that would do. [PARKE, B.—The plaintiff does not say that there are no charges relating to this claim in this diary.] The excessive amount of the charge is not attempted to be denied. *Cur. adv. vult.*

JUDGMENT.

POLLOCK, C.B.—In this case an application was made to the Court to compel the plaintiff to allow the defendant an inspection of a day-book or journal kept by the plaintiff. An application had previously been made of a more extensive nature to my brother Platt at Chambers. That was a summons to inspect all documents in the custody or under the control of the plaintiff relating to the action, particularly the day-book or journal, and any other books containing an entry of business done for the defendant's nephew or for several other persons named, and also all plans in his (the plaintiff's) possession or custody of any house, drains, roads, carcases, or other portions of the defendant's estate in respect of the alleged surveying and superintending, the erection and foundation of which, the action is brought. This summons was supported by an affidavit laying no sufficient ground for inspection of all the documents. Platt, B. made an order to inspect the plans only. An application was then made to the Court on an amended affidavit for an inspection of the day-book and journal, and a rule nisi granted. It was heard before us in the course of Hilary Term, and we took time to consider, not so much on account of any difficulty in the present case as on account of the importance of the practice under the 14 & 15 Vict. c. 99, sec. 6, upon which it is extremely desirable to lay down some rules. The section is in these words:—"Whenever any action or other legal proceeding shall henceforth be pending in any of the Superior Courts of Common Law at Westminster or Dublin, or the Court of Common Pleas for the County Palatine of Lancaster, or the Court of Pleas for the County of Durham, such Court and each of the judges thereof may respectively, on application made [...] to such action or other legal proceeding, and, if necessary, to take examined copies of the same, or to procure the same to be duly stamped, in all cases in which, previous to the passing of this Act, a discovery might have been obtained by filing a bill, or by any other proceedings in a Court of Equity, at the instance of the party so making application as aforesaid to the said Court or judge." It seems to us to be clear, from the words of the section, that the Legislature never intended to give the Courts of Common Law powers to compel the discovery by a bill or analogous proceeding; the only power given is to allow not a discovery but an inspection by one litigant party, of documents in the custody or under the control of the opposite litigant party, with certain restrictions or limitations. First, there must be a "suit or other proceedings pending;" secondly, the documents must relate to "such action, suit, or other proceedings;" and, thirdly, the cases in which inspection is to be granted must be such as those where inspection could be obtained by filing a bill for a discovery, or by other proceedings in a Court of Equity, at the instance of the same party. All that is stated on the subject of discovery is by way of limitation or description of the subject of inspection. We think this question has been put on the right footing by Mr. Charles Pollock, in his treatise on Discovery, pp. 9 and 10; and there is a decision of Mr. Justice Erle, in *Galsworthy* v. *Norman*, 21 L. J. 70, after consulting the other judges of the Queen's Bench, that the Courts of Law have no power of compelling a discovery; and this Court, on one or two occasions, has intimated its opinion to the same effect in *Pepper* v. *Chambers*, Michaelmas Term, 1851, and Hilary Term 1852, 18 Law T. 109, 210. In order to accomplish the object of obtaining such inspec-[...] a bill of discovery, or any analogous mode of proceeding in Courts of Common Law, the old mode of obtaining inspection of documents in the hands of the opposite party must be adapted to it. It has been usual for the Courts, in the exercise of their equitable jurisdiction, to grant such inspections, first, as a substitute for oyer, which at Common Law applied to some instruments only; by usage the power of inspection was, with certain conditions, extended to all. Secondly, upon the equitable principle, that a cestui que trust had a right to oblige his trustee to give an inspection; the Courts of Law always compelled it, where they could consider the opposite party as holding the documents under an express, or implied trust, for the applicant. In the former case an affidavit, generally speaking, was unnecessary; in the latter it was required, unless the facts were admitted in the statement of the applicant's attorney, —a course usually adopted at Chambers, to save expense. The old mode of obtaining inspection ought to be adopted under the new Act of Parliament, with such alterations as the nature of the case requires. Under the recent Act of Parliament, where an inspection is litigated, an affidavit will no doubt be necessary as to all the disputed facts; and if all are disputed, the affidavit ought to state a sufficient case in all respects to entitle the applicant to inspect, as would have been necessary to obtain an inspection, which the Court had before, and still has the power to grant at Common Law. The affidavit, therefore, ought not only to shew that an action or other proceedings is pending, but also to state not a mere suggestion, but circumstances sufficient to satisfy the Court or judge that there are in the possession, or under the control, of the opposite party, certain documents; and that those relate to "such action," or other legal proceedings, a primâ facie case calling for an answer, must at least be stated in this respect, as it must in the old proceeding, to obtain inspection of documents held by a trustee. Further, the affidavit must shew that the applicant would, by a bill of discovery or other proceedings, be able to obtain a discovery and inspection of those documents. Under the last head we must follow the rules established in Courts of Equity, within which every plaintiff must bring himself, in order to obtain an inspection by bill of discovery; and therefore, if the facts be disputed, the affidavit ought to state all that a plaintiff in equity must state, in order to entitle himself to a discovery and inspection. Whatever difference there may be with respect to some points in the Law of Discovery, for instance, as to the mode of pleading in equity, to raise the objection on the part of the defendant, the general principles laid down are free from doubt, and are fully explained in the able treatises of Sir James Wigram, Mr. Hare, and the little work published by Mr. Charles Pollock. The right of a plaintiff in equity is limited, first, to a discovery confined to a question in the cause; secondly, to such material documents as relate to the proof of the plaintiff's case on the trial; and does not extend to the discovery of the [...] shew first what is the nature of the suit, and of the question to be tried in it; and it seems, also, that he should depose in his affidavit to his having just ground to maintain or defend it. Secondly, the affidavit ought to state with sufficient distinctness the reason of the application and the nature of the documents, in order that it may appear to the Court or judge that the documents are asked in order to enable the party applying to support his case, not to find a flaw in the case of the opponent; and also that the opponent may admit or deny the possession of them. To this affidavit the opponent may answer by swearing he has no such documents, or that they relate exclusively to his own case, or that he is for any sufficient reason privileged from producing them, or he may submit to shew parts, covering the remainder, on affidavit that the part concealed does not in any way relate to the plaintiff's case. The same course would be pursued in equity. Although the recent Act of Parliament has not given the Courts of Law the direct power of compelling the discovery of documents, and in that respect they are not so effective as Courts of Equity, they have in truth nearly as great power given by the section in question, for it will rarely happen, when documents material to the issues are really in the hands of the opposite party, that there would not be sufficient circumstances known to the applicant to constitute a primâ facie case for him, and to justify the interference of the Court or a judge, if no answer is given to them by affidavit. The new measure will therefore, in practice, be nearly as effective as if the power of compelling a discovery were expressly given to the Common Law Courts. It remains to apply these observations to the affidavit in question. It does state the question and ground of defence, namely, that the work was never done; that, if done, it was charged at too high a rate; and further, that it was done on the credit of another, not the defendant. The defendant's case is therefore of a negative character; he does not seek to know the evidence by which the plaintiff supports his case, for the journal or day-books would not be evidence for the plaintiff. The defendant, in support of such a case, has a right to a discovery on the principle of the case of *Smith* v. *The Duke of Beaufort*, 1 Hare, 507; 1 Phil. 209; but so far as relates to the discovery of the journal as evidence in support of the defendant's case, that the credit was given to another, the affidavit is defective, as it does not deny that the deponent was authorised to bind the defendant by his contract, and if he was, it is wholly immaterial whether credit was given to him in the plaintiff's journal or day-book; but the book must be inspected to see if there be any entry, and if any, what price is therein charged as the value of the works. The rule will therefore be absolute.

Rule absolute.

Thursday, June 3.

FREGARD *v.* BARNS and BARTON.

Parish constable—County constable.

When a warrant is directed to a parish constable only, it should be executed by him, and not by a police constable of the county.

This was an action of trespass for false imprisonment, tried before Talfourd, J. in Wiltshire; the plaintiff was nonsuited, but the damages were assessed by the jury at 15*l.* in case the Court should be of opinion the nonsuit was wrong, leave was given to the plaintiff to move to set aside that nonsuit and enter a verdict in his favour for the 15*l.* if the Court

EXCHEQUER.

should be of opinion the plaintiff was so entitled. The plaintiff had been accused by the defendant, Barns, of an indictable offence, and the warrant for the plaintiff's apprehension was directed only "To the Constable of Dauncey, in the said county." There was a parish constable of Dauncey regularly appointed, but this warrant, instead of being executed by him, was handed over to the defendant, Barton who was a police constable of the county, who had, it was contended, no authority to execute the warrant, and the arrest made by him was therefore improper. A rule nisi having been obtained to set aside the nonsuit (see *antè*, p. 67), and enter the verdict for the plaintiff,

Crowder, Q.C. and *Hodges* for the defendant Barns, shewed cause, and contended that the arrest was proper, and that Barton had power to execute the warrant under the 2 & 3 Vict. c. 93, s. 8, the Act by which he was appointed, and that the form of action was wrong, the action should have been in *case* not *trespass*. (*West* v. *Smallwood*, 3 M. & W. 418; *Brown* v. *Chapman*, 6 C. B. 365; 1 Dow. & Ry. 103; *Barber* v. *Rawlinson*, 1 C. & M. 330.)

Slade, Q.C. for the defendant Barton, the constable.—The warrant was a sufficient protection for Barton under the 2 & 3 Vict. c. 93, s. 8. If not, then, as the action was not brought for more than six months after the alleged trespass, it is prohibited by the 24 Geo. 2, c. 44, s. 8. (*Parton* v. *Williams*, 3 B. & Ald. 330; *Cox* v. *Reid*, 13 Law T. 158 1 Chitty's Stat. 650.)

Kinglake, Serjt. (*F. Edwards* with him), for the plaintiff. [The Court intimated that the form of action in trespass was correct.] He then referred to *Rex* v. *Weir*, 1 B. & C. 288; 5 Geo. 4, c. 18 s. 6; 11 & 12 Vict. c. 42, s. 10; 5 & 6 Vict. c. 109 s. 15 (the Parish Constable Act); 2 & 3 Vict. c. 93 s. 8 (the County Constabulary Act); 24 Geo. 2 c. 44, s. 8; and the 3 & 4 Vict. c. 88, s. 27. (He was then stopped.)

ALDERSON, B.—You have satisfied us that the parties should have followed the direction of the warrant, and that the parish constable of Dauncey was the person who should have executed it; you will, perhaps, consent that the verdict should stand as against the defendant Barns, but not as to the constable Barton?

PLATT and MARTIN, BB. expressed similar opinions. *Consented to accordingly.*

Saturday, June 5.

PORCH *v.* CRESWELL.

Profert—Oyer—Excuse for profert.

In an action upon a mortgage-deed, the plaintiff excused himself in the declaration from making profert of the deed by alleging that the deed was in the possession of the defendant:

Held, that defendant might plead that the deed was not in his possession, with and in addition to pleas in bar (i. e.) non est factum, payment, and cancellation.

Covenant upon a mortgage-deed. The declaration contained an excuse for making profert by alleging that the deed was in the defendant's possession. The plaintiff wished to traverse that statement, besides pleading at the same time non est factum, payment, and that the mortgage-deed had been cancelled; a rule nisi having been obtained for that purpose,

Milward shewed cause.—This plea proposed to be added, denying the excuse given in the declaration for making profert—that the deed is in the defendant's possession—is new; it is a plea in the nature of a plea in suspension or abatement, and cannot be pleaded with other pleas in bar of the action generally. The plaintiff was obliged either to make profert, or an excuse for profert, otherwise the declaration would have been demurrable. [MARTIN, B.—And unless the defendant is allowed to traverse that averment, you go on in your action afterwards, inferring conclusively that the deed is in the defendant's possession. ALDERSON, B.—Is there any authority shewing that such a plea as this can be pleaded with other pleas, which are pleas in bar?] Not any, except a case relied on by the other side in 1 Espin. 337.

Willes, contrà.—The defendant ought to be permitted to traverse such an averment in the declaration as this upon principle, but there is also authority for it. The statute of Anne has no bearing upon the present case. He then referred to the following authorities, as shewing that such a plea might be allowed:—Comyn's Dig. title "Pleader," O 1; *Read* v. *Brookman*, 3 T. R. 151; particularly Ashhurst's judgment there; *Smith* v. *Woodward*, 4 East, 585; and *Beckford* v. *Jackson*, 1 Esp. 337; there the plaintiff declared on a deed, and to avoid profert alleged that it was lost by time and accident. The defendant pleaded similar pleas together without objection:—1st. Non est factum. 2nd. That the deed was not lost or mislaid; and upon both of which pleas issues were joined. In 3 Chitty on Pleading, p. 175, a precedent is given, and, as a further plea to the action [He was then stopped].

POLLOCK, C.B.—Under such circumstances, we think this plea may be pleaded with the others, as proposed. *Rule absolute.*

See also *Fisher* v. *Ford*, 12 A. & E. 654, and *Todd* v. *Emley*, 11 M. & W. 1.

Thursday, May 27.

COE *v.* PLATT.

Factory Act (7 Vict. c. 15, ss. 21 and 73)—Construction of—Machinery to be guarded and not cleansed while in motion.

The Factory Act (7 Vict. c. 15, s. 21), enacts that every fly-wheel directly connected with a steam-engine or water-wheel, or other mechanical power, whether in the engine-house or not, and every part of the steam-engine and water-wheel, and every hoist near to which children or young people are liable to pass or be employed, and all parts of the mill gearing in a factory shall be securely fenced, and every wheel race not otherwise secured, shall be fenced close to the edge of the wheel race, and the said protection of each part shall not be removed while the parts required to be fenced are in motion by the action of the steam-engine, water-wheel, or other mechanical power for any manufacturing process:

Held, that the mill gearing in each separate room is separate and distinct from the mill gearing in any other room, and requires fencing only while some manufacturing process is going on in that room, and it is in motion for that purpose.

This was an action tried at Liverpool, before Cresswell, J. and was brought to recover damages for an injury sustained by the plaintiff at the factory of the defendant, in consequence, as the declaration charged, of an omission to fence a portion of the mill gearing. A verdict was returned for the defendant on the 1st, 2nd, and 6th issues, and a rule nisi granted to set aside that verdict, and to enter it for the plaintiff, with 150*l.* damages. The question depended upon the construction to be given to the 7 Vict. c. 15 (the Factory Act), entitled "An Act to amend the Laws relating to Labour in Factories."

Knowles, Q.C. *H. Hill*, Q.C. and *J. Henderson*, shewed cause.

Wilkins, Serjt. and *Atherton*, Q.C. in support of the rule. *Cur. adv. vult.*

Thursday, June 3.—ALDERSON, B. delivered judgment.—We are of opinion that this rule ought to be discharged. There is no question here as to negligence; at common law the defendants have taken all those precautions which, but for the special provisions of the statute as to fencing the mill gearing, would be required from cautious men. But no doubt this vertical shaft was in motion, and was not fenced at the time the accident happened, the fact being, that the fence was down during the time repairs were going on, and the shaft was being prepared to be put into gear in order that the machine might be set to work again for the purpose of resuming the manufacturing process in the room where the plaintiff was at the time. The arrangement of the machinery in this factory was this. The original moving process was conveyed along the lower floor of the factory by a horizontal shaft, which communicated motion by its own revolution to certain machinery there used for the first process in manufacturing cotton. This same horizontal shaft communicated also motion to one or more vertical shafts, each passing through the upper floors in succession, and being used a part of it in each floor for turning machinery there situate. Each of these vertical shafts was so placed as to be turned whenever the horizontal shaft revolved, and none of them could be stopped so long as the horizontal shaft continued in motion. At the time of this accident one of these shafts, having a portion of it passing through the floor where the plaintiff was, required some adaptation of the machinery usually worked on that floor, and was under repair for that purpose. It was not at the time employed in communicating motion to any machinery usually working and communicating directly with it, situate either on that or any other floor, above or below. In fact, all the machinery actually moving at the time of the accident was moved either by the horizontal shaft alone, or by it and the other vertical shafts in the factory; it would have all of it continued in exactly the same motion if this particular vertical shaft had been wholly removed, or had never existed at all. The question is, whether under these circumstances the Act imperatively required the defendant to keep the fence round this vertical shaft at this time and under these circumstances. The question depends on the 21st section of the Factory Act considered in connection with the 73rd section—the interpretation clause. The 21st section says, "And be it enacted, that every fly-wheel directly connected with a steam-engine or water-wheel, or other mechanical power, whether in the engine-house or not, and every part of the steam-engine and water-wheel, and every hoist or teagle near to which children or young people are liable to pass or be employed, and all parts of the mill gearing in a factory, shall be securely fenced, and every wheel race not otherwise secured shall be fenced close to the edge of the wheel race; and the said protection of each part shall not be removed while the parts required to be fenced are in motion by the action of the steam-engine, water-wheel, or other mechanical power for any manufacturing process." Now I cannot help thinking that the probable intention of the Legislature in this clause was to give full protection to children and young persons who were engaged in attending to their duties on the machine put in motion by the mill gearing in the rooms or floors where such manufacturing process was going on, and that the protection was to be confined to the times when such process was going on there; for there seems to be no reason to give protection by fencing when no one was in the usual course of his or her ordinary duties likely to be there at all; and this would be accomplished by our holding that the mill gearing in each separate room is separate and distinct from the mill gearing in any other room, and requires fencing only while some manufacturing process is going on in that room, and it is in motion for that purpose. This is, I think, the proper construction of the 21st section. But undoubtedly it may be plausibly argued that the whole of each vertical shaft is not one mill gearing, and that if it is turning machinery in another room it is in motion for a manufacturing process; and if this were the case here it might be fit to have a further argument before we decided otherwise. This case also might be put as one of some difficulty. Suppose the injury arose from the defective fencing off of this horizontal shaft at the time when by its own proper revolution it was not turning any machinery in the ground-floor immediately connected therewith, but was immediately connected with machinery turned on the other floor by the vertical shafts connected with the horizontal shaft, and turned by it—it might then, perhaps, be said, that the horizontal shaft was in motion for a manufacturing process, and that the fencing it off was imperfectly required by the Act. But this case is clear of both these difficulties. Here the injury is received from the vertical shaft in motion, but at a time when by its motion it turns no machinery immediately connected with it, either in the room where it was, or in any other room, and connected, if at all, only immediately with the machinery on the ground-floor by means of the horizontal shaft, but not turning that machinery by means of its connection with the original moving power, but itself turned by the horizontal shaft which alone communicates with that original moving power. In truth, this vertical shaft was turning (actively of itself) nothing at all used for any manufacturing process; it did not therefore require at that time to be fenced. The defendants have not been neglectful at common law, nor have they omitted anything required of them to do at law, that is to say, they have not committed the offence; the rule, therefore, must be discharged. *Rule discharged.*

BUSINESS OF THE WEEK.

Thursday, June 3.

EVANS *v.* PARRY.—*Crowder*, Q.C. moved to stay further proceedings until after an action of ejectment had been tried, and to enlarge the peremptory undertaking until the last day of next Michaelmas Term. *Rule nisi.*

Ex parte STEVENSON.—*Prentice* moved for a rule to compel an attorney to deliver his bill of costs on Dr. Stevenson, and to give credit for all sums of money received by the attorney on account of Dr Stevenson; the money was received upwards of six years ago, and was more than sufficient to pay the bill, so that the attorney now said he had no bill, and by these means, with the aid of the Statute of Limitations, was endeavouring to prevent Dr Stevenson recovering the money so received for him by the attorney, an officer of the Court. *Rule nisi.*

GLYNN *v.* ROBERTS.—*Brandt* moved for a new trial, on the ground that the damages were too small, and the verdict against evidence. *Rule refused.*

BRADSTREET *v.* HAMMOND.—This was an action of replevin, tried at Norwich, before Lord Campbell, C.J. and a rule nisi had been obtained to set aside the verdict for the defendants, on the suggestion contained in the second plea, and to enter a verdict for the plaintiff for four guineas. *Byles*, Serjt. and *O'Malley* shewed cause. *Palmer* and *Worlledge*, contrà. *Rule absolute.*

SAME *v.* SAME.—A cross rule had been obtained to set aside the plaintiff's verdict on the first and second issues, and for a new trial.

Arranged that a bill of exceptions should be tendered to the ruling of the Chief Justice at the trial, and the points argued in a Court of Error.

PERRY *v.* DOIDGE.—Tried before Erle, J. at Exeter.—An action for slander. Plea, not guilty. Verdict for plaintiff. A rule nisi had been obtained for a new trial, on the ground that the slanderous expressions used were privileged communications. *Crowder*, Q.C. appeared to shew cause, the Court called upon *Kinglake*, Serjt. in support of the rule. *Rule discharged.*

Friday, June 4.

Re JONES'S TRUST.—*Hoggins* moved for a rule calling on an attorney of this Court, to shew cause why he should not pay over 43*l.* and 37*l.* to the plaintiff.

Rule nisi granted.

DOE *dem.* PHILLIPS *v.* ROE.—*Skinner* moved for a rule to shew cause why the service of a declaration in ejectment should not be deemed good service. *Refused.*

EXCHEQUER.

NEW TRIAL PAPER.

JACKSON v. CHICHESTER.—Scire facias on a judgment tried at Liverpool before Cresswell, J. Verdict for the plaintiff. This was a rule to enter a verdict for the defendant. The defendant pleaded a discharge under the Irish Insolvent Debtors Act, and the learned judge at the trial thought the identity of the plaintiff and his debts in the schedule of the defendant was not made out, but reserved leave for this rule. *Mellish* shewed cause. *Watson* in support. *Rule discharged.*

FOQUET v. MOORE.—This was a rule for a new trial on two points reserved. *Crowder* (*Barston* with him) shewed cause. *Kinglake*, Serjt. (*C. Saunders* with him) in support *Rule absolute.*

PONTING v. WATSON.—Tried before Talfourd, J. at the Somerset Assizes. Verdict for plaintiff for 20*l*. This was a rule for a new trial. The action was for libel and malicious prosecution. The question was whether malice was established, and whether the law was not put in motion by the magistrates, and not by the defendants. *Butt* shewed cause. *Slade* contrà.

Verdict for plaintiff for 5l. on 1st count, and stet processus on the 2nd and 3rd counts

DOE *dem.* JONES v. HUGHES. — *Welsby* shewed cause *Bearan* in support. *Rule discharged*

PEARSON v. BECK. *Part heard.*

PHILLIPS v. POUND.—*Hawkins* moved for a rule calling on the plaintiff to shew cause why the defendant should not be discharged out of custody, and why he, the plaintiff, should not pay the costs of this application. *Rule nisi granted.*

—— v. ——.—*Joyce* moved to strike an attorney off the rolls on his own application. *Granted.*

Saturday, June 5.

GILMER v. THE LONDON AND NORTH-WESTERN RAILWAY COMPANY —*Hall* moved for a rule compelling the defendants to give inspection of certain documents, the affidavit being insufficient. *Rule refused.*

MATTERELL v. DRAKE.—*Bramwell* moved to enlarge the time for making the award. Both parties lived at Exeter, and it was an action by one attorney against another. The cause came on to be tried on the 20th November last before Martin, B. when it was thereupon agreed to be referred, but on the following day some different arrangement appeared to have been agreed to, which could not be carried out. *Rule nisi.*

———— v. ————.—*W. M. Cooke* moved to set aside an appearance entered according to the statute by the plaintiff for the defendant, on the ground of a defect in the jurat of the affidavit filed of the service of the writ. The appearance was entered on the 1st of June. *Rule nisi.*

Monday, June 7.

BLUCK v. GOMPERTZ. *Judgment for the plaintiff.*

WYMAN v. ARGENT.—*Wilkins*, Serjt. moved for a new trial. *Rule nisi granted.*

The Court said there would probably be no arrears for sittings after term, but they would sit on Saturday fortnight, the 26th inst. to deliver judgments.

SPECIAL PAPER.

BROWN v. NORTH. *Cur. adv. vult.*

PADWICK v. KNIGHT.—Demurrer to pleas. *M. Smith* in support of demurrer. *Kinglake*, Serjt. contrà *Judgment for the plaintiff.*

THOMPSON v. EASTWOOD. *Leave to amend.*

HAWKIN v. BENNETT. *Part heard.*

Tuesday, June 8.

REG. v. THORNTON.—This was a proceeding on the part of the Crown to enforce estreat of recognisances against two sureties by a principal and two sureties, on an indictment for not paying certain costs on the hearing of an appeal as to the stopping up a road; the appellant, not being successful, was ordered by the Court of Quarter Sessions for the county of Westmorland to pay costs, which not being paid, he was indicted · the principal had been discharged, the sureties had pleaded setting out the proceedings; the Crown here new assigned, and to this there was a demurrer, the effect of which would be, if the demurrer was successful, to discharge the sureties from responsibility. On the petition of the principal (the defendant) and his sureties, the Court stayed the proceedings on the recognisance as regarded the defendant (the principal) on account of his poverty, but without prejudice to the liability of his sureties (reported fully, 4 Ex. 820). *Pashley*, Q C (*Hennikar* with him) in support of the demurrer, for the sureties, referred to the 5 & 6 Wm & Mary, c. 11, ss. 2 & 3, and contended that the sureties had in all respects complied with the condition of the recognisance, which was in the terms prescribed by that Act: it says, "that the said recognisance shall not be discharged till the costs so taxed shall be paid." That cannot apply to the sureties who never became bound to pay costs. (Several other points were taken, such as, that the Court below had no authority to grant costs, that the recognisance did not appear to be taken by a person having competent jurisdiction, &c. but the Court overruled them.) *The Attorney-General* (Sir *F. Thesiger*), contrà, referred to 8 T. R. 409, and 13 East, 4 (he was then stopped). MARTIN, B. dissentiente.

Judgment for the Crown.

THOMPSON v. EASTWOOD. *Cur. adv. vult.*

DOE *dem.* JOHNSON v. JOHNSON. *Cur. adv. vult*

SWATMAN v. AMBLER. *Cur. adv. vult*

BIDDLES v. CAUDLE.—*Lush* moved that the plaintiff be compelled to carry in the rule, enter satisfaction thereon, and refund 47*l*. 10s. 3d.; and as the plaintiff was an attorney, that he pay the costs of this application for his conduct. *Rule nisi.*

REG. v JOHN SMITH.—*Gray* moved to discharge the defendant out of custody. He had presented his petition and obtained his protection from the Birmingham District Court of Bankruptcy; he was subsequently taken into custody upon an attachment for non-payment of certain costs on the ground, it was supposed, that an attachment was not process within the meaning of the Act of Parliament. *Rule nisi.*

Wednesday, June 9.

GRIFFITH v FRY —*Mellish* shewed cause against a rule nisi obtained to compel the opposite party to grant an inspection of their books and ledgers, and also certain letters that had been written The defendants were brokers and agents for the plaintiff for the sale of tea. There were accounts between the parties amounting to upwards of 70,000*l*.; a set-off exceeding that amount, and then a further account delivered of about 40,000*l*. They extended over a period from the year 1843 to the present time; and necessarily were very complicated. The affidavit did not disclose, according to the judgment of this Court, in *Hunt* v. *Hewitt*, sufficient to justify at all events an inspection of the letters. *Cowling*, contrà.—The affidavit states that these letters are material and necessary, as the deponent is advised and believes. ALDERSON, B.—That is insufficient, it is like an application for a distringas to compel an appearance; there the party swears he believes in all the cases that the defendant keeps out of the way to avoid service; but that is not enough, he must shew us sufficient reasons for the Court to believe he is doing so; in an application for an inspection of documents in the possession of an opponent, he must shew us sufficient reason to believe those documents are material and necessary to his case.

Rule absolute as to such part of the books and ledgers as relate to the matters of the suit. As to the letters, rule refused.

MARTIN v. BREARY.—*Bramwell* moved for a new trial on the ground of the verdict being perverse. The action was upon a note for 50*l*. tried before Baron Platt, entered on the 4th June The learned Baron, who tried the cause, said, the verdict was certainly perverse. *Rule nisi.*

HORTON v. THE WESTMINSTER IMPROVEMENT COMMISSIONERS.—*Garth* moved for a rule to compel the defendants to pay the plaintiff 18*l*. odd; he cited *Pugh* v. *Carr*, 5 M. & W. *Rule nisi.*

PEARSON v. BECK.—Tried at Chester before Williams, J. Arguments concluded. *Cur. adv. vult.*

BAIL COURT.

Reported by T. W. SAUNDERS, Esq of the Middle Temple, Barrister-at-Law.

Monday, June 7.

(Before Mr. Justice WIGHTMAN.)

WATSON v. HUMPHREYS.

Writ of trial—Irregularity—Laches.

In an action of debt two issues were joined, and the plaintiff obtained an order to try before the sheriff, but in both the order and the writ of trial, the direction was to try the "issue" instead of "issues." At the trial, the defendant attended and pointed out the irregularity, but on the plaintiff electing to go on, he protested against the proceedings and retired. Hereupon the cause was tried in the defendant's absence, and the plaintiff obtained a verdict. Upon a motion subsequently to set aside the order, writ of trial, and all subsequent proceedings:

Held, that the application was too late, for that as the defendant knew of the error as soon as he was served with the order, he should have taken advantage of it before the plaintiff had taken the expensive step of proceeding to trial.

This was an action of debt, to which the defendant pleaded two pleas, and two issues were thereupon joined. Subsequently, the plaintiff's attorney took out a summons for leave to try before the sheriff, and an order was made, the defendant's attorney not appearing to oppose. The order, however, which was dated and served on the 10th of May last, was drawn up by mistake to try the "issue" instead of "issues," and the writ of trial was in the same form. Notice of trial was given for the 3rd of June inst.; and on the case coming on, it was objected, on the part of the defendant, that the undersheriff had no jurisdiction to try the issues joined, the order and writ of trial directing him only to try the issue. Upon this the plaintiff applied to the undersheriff to amend, which he declined to do, having no powers for the purpose, but he expressed his readiness to proceed with the cause if the plaintiff desired; and the plaintiff electing to go on, the defendant protested against the proceeding, and retired. Hereupon the plaintiff proved his case, and obtained a verdict.

Joyce now moved, on the part of the defendant, for a rule, calling upon the plaintiff to shew cause why the judge's order, the writ of trial, and all subsequent proceedings, should not be set aside with costs; and he contended that, as there were two issues raised, and the order and writ of trial were for the trial of only one issue, the proceedings were irregular, and that the irregularity was not waived by the appearance of the defendant at the trial, as he only appeared to protest, and took no part in the trial itself. (*Dennett* v. *Hardy*, 2 Dowl. & L. 484; *Towers* v. *Turner*, 15 L. J. 249, C.P.) [WIGHTMAN, J.—This is merely an irregularity in form. I think you are too late; if you had gone before a Judge at Chambers, it would have been remedied; you knew of the irregularity as soon as you are served with the judge's order, and yet you allow the plaintiff to go on and take a very expensive step, and then, for the first time, when he is ready to try his cause, you raise the objection.] He need not have tried his cause. It is an error upon the record.

WIGHTMAN, J.—Then you can have your writ of error: when you knew of the irregularity, you should have taken advantage of it at once, and then the plaintiff could have got it amended. *Rule refused.*

BAIL COURT.

Tuesday, June 8.

(Before Mr. Justice WIGHTMAN).

Ex parte THE PARISH OFFICERS OF SOUTH MIMS.

Watching and Lighting Act (3 & 4 *Wm.* 4, *c.* 90)—*Rate—Validity of a public meeting of the ratepayers presided over by a party who is not a ratepayer.*

Petersdorff moved for a rule calling upon William Phillimore and Charles Cotterell, esqrs. two justices of Middlesex, to shew cause why they should not make an order to enforce a rate made under the 3 & 4 Wm. 4, c. 90, for lighting that part of the parish of South Mims which is situate within the town of Barnet.

It appeared that at a meeting of the ratepayers, convened pursuant to the provisions of the Watching and Lighting Act (3 & 4 Wm. 4, c. 90), the clergyman of the parish, who was not a ratepayer, took the chair, and at such meeting such proceedings were adopted as were necessary to give validity to the Act and the proceedings thereunder, amongst others, the collecting of a rate. Certain of the ratepayers, however, refusing to pay the rate, they were summoned before two justices, to shew cause why they refused; and then they set up as a defence, that the rate was void, inasmuch as the original meeting was a nullity, in being presided over by a person who was not a ratepayer. The justices thinking that this was a valid objection, refused to make any order. It was now contended, first, that the meeting was not void, for the reason alleged; 2nd, that the parties not having appealed against the rate as they may have done, could not now set up an objection to the rate itself, however they might on the ground of individual liability. *Rule nisi.*

Wednesday, June 9.

(Before Mr Justice WIGHTMAN.)

Ex parte THE EXETER ROAD TRUSTEES.

Railway company—Repair of highway—Mandamus.

A railway company, in pursuance of their Act, caused a county bridge to be pulled down, whereby the county were absolved from the duty of repairing the road approaches thereto. The company having rebuilt the bridge, entered into an agreement with the trustees of the road to repair such road approaches to the new bridge. The road being out of repair, and the company neglecting to repair it, a mandamus was applied for to compel them to do the necessary repairs:

Held, that a mandamus would not, under the circumstances, lie against the company.

Collier moved for a rule calling upon the Exeter and Crediton Railway Company to shew cause why a mandamus should not issue commanding them to repair a portion of a certain road, which is now in so defective a state as to be dangerous to the public.

The following were the facts:—At the time of the railway company obtaining their Act, there was over a certain stream a county bridge, and consequently the county were bound to keep the roads approaching such bridge in repair to the extent of 300 feet on each side. For the purposes of their Act, the company required this bridge to be pulled down, which was accordingly done, and the company erected another, whereby the liability of the county to repair the road approaches ceased. The company, however, entered into an agreement with the trustees of the road (which was a turnpike one), that they (the company) would for the future repair such portions of the road. The road being now out of repair, the trustees decline to repair it on account of the agreement with the company, and the latter themselves have wholly neglected to repair it. By sec. 58 of the 8 Vict. c. 20 (Railway Clauses Consolidation), it is enacted that "if in the course of making the railway the company shall use or interfere with any road, they shall from time to time make good all damage done by them to such road," &c. It did not appear that the company had in any way interfered with the road in question, except by erecting the new bridge.

WIGHTMAN, J.—The parties who are legally liable to the public are those who should be proceeded against. Independently of their agreement with the trustees, the company cannot be called upon to repair.

Collier.—This proceeding will be a convenient method for trying the liability of the company to repair. By erecting the bridge they have interfered with the road. There are difficulties in proceeding against any other parties.

WIGHTMAN, J.—I do not think that a sufficient case has been made out for a mandamus. The interference of the company appears at first to be this,—that without interfering with the road, they have taken down the bridge, which dispenses with the obligation of the county to repair the road. This is not such an interference, as it appears to me, as comes within the section. It resolves itself, therefore, into this,—the county not being liable to repair, the parish or the trustees may be, but not the company, except they have entered into some agreement,

and so may be ultimately liable, but certainly not so as to be the subject of a mandamus.

Rule refused.

BUSINESS OF THE WEEK.

Monday, June 7.

Ex parte MARY SMITH.—*Prentice* moved for a rule calling upon the judge of the Sheriff's Court of London to shew cause why a mandamus should not issue, commanding him to hear an interpleader summons under the 9 & 10 Vict. c. 95. In this case judgment had been recovered in the Sheriff's Court against one Eliza Smith, and execution issued against her goods, and certain goods were thereupon seized to which the present applicant laid claim. Upon this the high bailiff took out an interpleader summons, which was returnable on the 26th of May. On the 21st of that month the claimant gave a particular of her claim. The rule requires that such notice should be given five *clear* days before the return of the summons. On the case coming on it was objected that the claimant had not given five *clear* days' notice. The claimant explained the reason of her mistake, and requested the judge to adjourn the case that she might give better notice. But, on the case of *Ex parte Tanner*, 19 L. J. 318, Q.B. being cited, the judge held that he was bound by that case, and dismissed the summons. It was now contended that the case of *Ex parte Tanner* was not in point upon the subject, and that, in fact, the judge may have exercised a discretion and have adjourned the hearing, and that as he did not exercise his discretion, but thought himself bound by the case cited, the mandamus ought to go. *Rule nisi.*

Ex parte WILLIAM STOREY.—*Pashley*, Q.C. moved for a rule for a writ of prohibition, to be directed to the judge of the Consistorial Court of the Bishop of London, commanding him to proceed no further in a suit instituted by Elizabeth Storey for the restoration of conjugal rights.

Rule refused.

Ex parte FORD et UX.—*Fortescue* moved for a rule for a mandamus to be directed to the lord of the manor of Howden, Yorkshire, commanding him to admit the applicants to certain copyhold property. *Rule nisi.*

CLEMENCE *v.* PARKER.—*Joyce* shewed cause against a rule for judgment as in the case of a nonsuit. *Edgar*, contrà.

Rule discharged upon a peremptory undertaking to try at the sittings after Term.

Tuesday, June 8.

Ex parte THURMAN.—*Hoggins*, Q.C. moved for a rule calling upon an attorney to deliver over certain deeds, or pay a sum of money. *Rule nisi.*

DUNN *v.* COUTTS.—The plaintiff, in person, moved that the proceedings to strike the special jury herein should be set aside for irregularity. *Rule refused.*

HODGE *v.* COMMERELL.—*Barstow* moved, on the part of the defendant, for a rule for a commission to examine witnesses at Nice. *Rule nisi.*

Wednesday, June 9.

BURR *v.* ROBERTS, and ROBERTS *v.* KEMP.—*Clark* shewed cause against a rule for an attachment for not paying money pursuant to an award. *Cook*, contrà.

Rule discharged.

Re JAMES DRIVER UPTON.—*Pigott* moved for a writ of habeas corpus to bring up the above party (a child three years of age), that he may be delivered over to the care of his legal guardians.

Writ granted, returnable at chambers.

Thursday, June 10.

(Before Mr. Justice WIGHTMAN.)

Ex parte WILLIAM SEYMOUR BLACKSTONE, Esq. M.P.—*James*, Q.C. moved for a rule calling upon Thomas Duffield, esq. to shew cause why a criminal information should not be filed against him for certain defamatory language uttered by him, reflecting upon the character of Mr. Blackstone at a meeting of justices on the 28th ult.

Rule nisi.

AYLWARD *v.* BATES and OTHERS.—In this case, which was tried before the Under-sheriff, a rule was obtained by the defendant to enter a nonsuit. *Lush* appeared for the plaintiff, and admitted that he could not resist the rule. *Hawkins* in support. *Rule absolute.*

CROWN CASES RESERVED.

Reported by A. BITTLESTON, Esq. of the Inner Temple, Barrister-at-Law.

Saturday, April 24.

REG. *v.* GREENWOOD.

Misdemeanor—Uttering counterfeit coin—Absent participator a principal.

If two persons are engaged in the common purpose of uttering counterfeit coin, and in pursuance of that purpose one, in the absence of the other, puts off some pieces of the counterfeit coin, both may be convicted as principals, an absent participator in misdemeanor being a principal,

Rex *v.* Else, *R. & R.* 142; *and* Reg. *v.* Page, 1 *Russ. on Cr.* 82, *overruled.*

The following case was reserved by Talfourd, J.

The prisoner, William Greenwood, and one Johnson, were tried before me at the last assizes for the city of Exeter for a misdemeanor, in knowingly uttering a counterfeit shilling.

The evidence proved that the uttering charged in the indictment was effected by the prisoner Johnson in the absence of Greenwood; but that both prisoners were together before the uttering—each offering counterfeit shillings of the same description with that uttered by Johnson—that they both brought food purchased with the proceeds of such utterings, to a common lodging, and that Greenwood was taken on the same evening with a counterfeit shilling of the same mould in his possession, and with eight good sixpences and five fourpenny pieces, which left no doubt of their joint engagement in a common purpose of uttering base shillings, and sharing in the proceeds.

As to Johnson, the case was without doubt; and as to Greenwood, I directed the jury that if they thought he was engaged in the evening in question with Johnson in the common purpose of uttering counterfeit shillings, having one stock of such coin for their mutual benefit, and if in pursuance of such purpose Johnson uttered the shilling, they ought to find Greenwood guilty, subject to the question of law which arose on the facts, as to the necessity of the actual presence of Greenwood, or so near neighbourhood to amount to association in the very act, was necessary to support the charge. The jury found both prisoners guilty, and I sentenced both to six months' imprisonment and hard labour; but in deference to the authority of the case of *Rex v. Else*, Russ. & R. C. C. 143, and the opinion of Mr. Justice Coleridge, in *Reg. v. Page*, 1 Russ. on Crimes, 82, I reserved the question whether Greenwood was properly convicted, for the judgment of the Court of Criminal Appeal. The prisoner was undefended; but though in the absence of authority I should have thought it clear that, in a case of misdemeanor, an absent participator is a principal, and thought it right to reserve the question, which is, whether Greenwood was properly convicted.

The case was not argued by counsel.

POLLOCK, C. B.—We are all of opinion that Greenwood was properly convicted. There was unquestionably evidence of his being a participator in the offence; and in the case of a misdemeanor, an absent participator is a principal.

PARKE, B.—It is quite right that both the prisoners should be convicted upon this indictment. In misdemeanor all persons who are accessory before the fact may be indicted and treated as principals, though they should be absent at the time when the offence is actually committed. My brother Talfourd reserved this case in deference to the opinion of my brother Coleridge, in *Reg. v. Page*, and to the authority of the decision in *Rex v. Else*; but the observations of Mr. Greaves upon those cases are entitled, I think, to great weight; and it seems that the decision in *Rex v. Else* arose from the Judges not adverting to the distinction between misdemeanor and felony. The cases referred to of *R. v. Soares*, R. & R. 25, and *R. v. Davis*, Ib. 13, were cases of felonious forgery.

ERLE, TALFOURD, and CROMPTON, JJ. concurred.

Conviction affirmed.

BANKRUPTCY.

HULL DISTRICT COURT OF BANKRUPTCY.

Wednesday, Dec. 17.

(Before Mr. Commissioner AYRTON.)

Re ASHTON.

Reputed ownership.

Goods sent on sale and return, not actually delivered at the bankrupt's shop at the time of the bankruptcy, are not in the reputed ownership of the bankrupt.

Messrs. Apperley sent certain pieces of cloth to the bankrupt on sale or return, accompanied by a letter and invoice, which letter and invoice were received by the bankrupt before the adjudication; the cloths did not arrive at the station at Hull till after the adjudication. The messenger seized the cloths at the railway station at Hull, whereon Messrs. Apperley applied to the commissioner to order the cloth to be delivered up to them, which was resisted by the assignees, on the ground that the delivery at the railway was delivery to the bankrupt, and the cloths were consequently in the reputed ownership of the bankrupt. The commissioner took time to consider of his judgment, which was now delivered.

Mr. Commissioner AYRTON.—The statutory enactment now in force is to be found in the 125th section of the Bankrupt Act of 1849, which enacts, that if any bankrupt, at the time he becomes bankrupt, shall, by the consent and permission of the true owner thereof, have in his possession, order, or disposition, any goods or chattels whereby he was reputed owner, or whereof he had taken upon him the sale, order, or disposition as owner, then the Court shall have power to order the same to be sold and so on. It is to be noticed that the statute of James I. used the word "and"—"in his possession, order, and disposition;" whereas section 125, uses the word "or"—"in his possession, order, or disposition,"—which considerably enlarges the operation of the law of reputed ownership. In the present case, the goods in question were not within that portion of the clause which speaks of the bankrupt as being the "reputed owner," for no one ever saw the goods in his possession; nor had he "taken upon him the sale, order, or disposition as owner." All that remains to consider is, whether he had, at the time he became bankrupt, these goods in his possession, or in his order, or at his disposition. Messrs. Apperley contend that these goods were not, in fact, ever delivered to the bankrupt or to his agents, the carriers, the railway company. It has not been clearly ascertained on what days the goods arrived at and left Birmingham, to which place Messrs. Apperley paid the carriage, and from which place the bankrupt was to pay the carriage. But I intend to decide this question on the broad ground of whether these goods, sent on sale and return, and not accepted by the bankrupt, are within the law of reputed ownership. Upon looking the reported cases, I find three decisions appl to the particular question of goods sent on sa return. The first case is *Neale v. Ball*, 2 East, 117 (1801). There, bags of wool were sent on sale or return, on the 19th of February, and kept by the bankrupt till the 5th of March, when finding himself insolvent, he, for that reason, returned the wools; which were held by Lord Kenyon to be in the reputed ownership, his Lordship observing, "The jury were told by me that if the goods were not delivered to and accepted by the bankrupt, there was an end of the question, and the property remained in the hands of the consignors; but, if otherwise, the bankrupt had no power to rescind the contract when he returned them." The next case is *Livesay v. Hood*, Camp. N. P. 83 (1809). The marginal note there is, that goods in the hands of a retail dealer on sale or return are in the reputed ownership. The facts are, however, of too peculiar a nature to establish so general a proposition. Livesay, a wholesale hosier, agreed to furnish Almond, a retail hosier, with goods on sale or return. Almond was constantly to have a stock of hosiery from Livesay, to the value of 100*l*. which he was to sell, and the parties were to come to an account monthly. Almond became bankrupt, the assignees seized goods supplied under this agreement worth 61*l*. Livesay brought an action to recover the goods, but was nonsuited, Mr. Justice Lawrence saying, "This is a case within the statute. Under this agreement the bankrupt was to sell the goods, not as a factor, but as a principal. They appeared to the world as his property; and this reputed ownership was calculated to give him a delusive credit, which it was the object of the statute to prevent." The third and last case is that of *Gibson v. Bray*, 8 Taunt. 76 (1817). Shawls and laces were sent, by Morgan of London, to Markham of Sunderland, accompanied by a letter, hoping that some of the articles would be approved of, and desiring to have those articles which were not approved of returned as soon as possible. On the evening of the day of the arrival of the goods at Sunderland, the effects of Markham were seized under a fi. fa.; and, on the following morning, the sheriff shut up the shop, which was not ever re-opened. An action was brought for these goods by Morgan, against the assignees of Markham, who had become bankrupt. At the trial before Chief Justice Gibbs (1 Holt, N. P. Cases, 556), his Lordship directed a verdict for the plaintiff, on the ground that the goods were in the reputed ownership; afterwards however, a new trial was moved for, and ordered (8 Taunt. 76), the Court being of opinion that the goods were not in the order and disposition of the bankrupt. Mr. Justice Dallas said, "The bankrupt had not had a reasonable time wherein to judge what he would or would not take." Mr. Justice Park said, "We impugn not the cases of *Neale v. Ball*, and *Livesay v. Hood*. Markham had never any opportunity of exercising the discretion delegated to him, as to the selection of what goods he should keep, or what he should return...... There is no pretence for saying that a delusive credit could be raised. In *Neale v. Ball*, the bankrupt kept the goods from the 19th of February to the 4th or 5th of March; in *Livesay v. Hood*, the goods had been in possession of the bankrupt for nearly a month." And Mr. Justice Burrough observes, "The key to this case lies in the postscript to the letter, — 'shall be very much obliged to have them returned, what is not approved, as speedily as you can.' It is quite plain that Markham was to have a reasonable time to choose, whether he would have all the goods, or a part of them only; he had not a reasonable time in which to exercise his power of choice, nor did he exercise any power over these goods." The case of *Gibson v. Bray* is quite a precedent to govern the present. I may use almost the very words of Mr. Justice Burrough. The key to this case is, that the bankrupt was to be allowed a reasonable time to choose whether he would take all the cloth, or select only a portion, or reject the whole; he never had any opportunity of exercising this power, and he never accepted the whole nor any part of the cloth; he never did exercise any sort of control over the cloth, and there is no pretence for saying that any delusive credit was raised. I am therefore of opinion that the cloth in question was not in the reputed ownership of the bankrupt, and must be delivered up to Messrs. Apperley.

INSOLVENCY COURT.

Reported by DAVID CATO MACRAE, Esq. of the Middle Temple, Barrister-at-Law.

(Before the Chief Commissioner REYNOLDS.)

Wednesday, June 9.

PROTECTION CASE.

Re HELLEN BOYD.

Plaintiff in custody for costs in an action for assault.

A plaintiff in an action for assault indebted for the costs applying for relief under the Protection Acts will have no day named for his final order.

Semble, that in the absence of any evidence as to the merits of the case, the day will be named after a short delay.

This petitioner came up for his first examination, and was opposed by *Dowse* for a creditor to whom he was indebted for the costs in an action for an assault. The learned counsel submitted that where an unsuccessful plaintiff in an action for an assault was indebted for the costs of the proceeding, the Court had no power to make a final order. That would be apparent by a reference to the 4th section of the 5 & 6 Vict. c. 116, re-enacted by the 24th section of the 7 & 8 Vict. c. 96, which recited that "if the debts of the petitioner, or any of them, were contracted by reason of any judgment in any proceeding for breach of the revenue laws, or in any action for breach of promise of marriage, seduction, crim. con. libel, slander, assault, &c. the commissioner shall not be authorised in any such case to name any day for making such final order, or to renew such interim order." He relied upon those words, "*if the debts of the petitioner, or any of them, were contracted by reason of any judgment in any action for slander.*" The defendant, the opposing creditor, had a judgment here to the amount of his costs. Then the Court was not to name a day for the final order. That was not the first time that a case of this sort had been presented to the Court. There was a case reported (*Re James Miller*, 1 Cox & Macrae, 35) upon this point. There the insolvent had been a plaintiff in an action for slander, and failing, he petitioned to be relieved from the debt arising from the costs. In this case insolvent was a petitioner to be relieved from a debt arising from the costs in an action brought by her for an assault, and in which she was unsuccessful. In the case reported, the commissioners had decided they had no power to name a day, and as this was a case precisely similar, he submitted that there was no power to name a day.

Sargood, for the insolvent, submitted that to lay down a principle that no plaintiff should be protected who brought an action, however just, was monstrous.

The CHIEF COMMISSIONER said, the only question was, whether it was within the language of the statute.

Sargood submitted, that it was the duty of the Court not only to read, but to construe it according to principles of justice, and principles of intelligence. It was the duty of a judge to decide what was the spirit and intention of the Act; he was quite sure the Court must hear the merits.

The CHIEF COMMISSIONER.—I think not; I am bound by the words of the Act, which the legislature has framed, and the Court is to administer.

Sargood said that as the objection was merely technical, might the petitioner come up at the next sitting of the Court?

The CHIEF COMMISSIONER.—I think that would be making a farce of the Act.

Sargood hoped there would be the shortest possible delay, if the merits were not gone into now so as to enable the Court to decide according to the justice of the case.

Dowse said, it was not necessary to go into the merits, as the Court had already decided it had no power to name a day.

The CHIEF COMMISSIONER.—Then the petitioner may apply on Monday next under the 28th sec.

Ecclesiastical Courts.

PREROGATIVE COURT.

Reported by Dr. WADDILOVE, of Doctors' Commons.

Tuesday, April 20.

CRANE *v.* REBELLO.

Administration, with the will annexed, of an insolvent estate refused to a creditor, granted to the residuary legatee.

This was a question as to the right of administration with the will annexed (the sole executor and the universal legatee in trust having renounced). The two parties claiming the administration were the son of the deceased, who was, as alleged, the universal legatee named in the will, and Mr. Rebello, a creditor of the deceased. A decree had issued at the instance of Mr. Rebello, calling on Mr. Crane, the other party in the suit, to shew cause why letters of administration, with the will annexed, should not be granted to Mr. Rebello as a creditor of the deceased. An appearance was given on behalf of Mr. Crane, when Mr. Rebello prayed to be heard on his act on petition, which in substance alleged that the estate of the deceased was hopelessly insolvent; that it was indebted to Mr. Rebello to the amount of 821*l.* 15s. for goods sold and delivered to the deceased in his trade (which was that of a wine merchant), and that divers of the creditors of the deceased, seven of whom were mentioned by name, and whose debts amounted together to the sum of 2,413*l.* 10s. were anxious, and had consented, so far as by law they might or could, that letters of administration, with the will annexed, of the estate and effects of the deceased, should be granted to Mr. Rebello, rather than to Mr. Crane, for the general benefit of the estate of the deceased; that none of the creditors held any security for their debts, and that their only chance of recovering their debts, or any portion of them, depended upon the diligence, care, and skill with which the estate of the deceased might be administered. The act further stated that Mr. Crane was wholly unfit and incompetent to administer the estate, that he was not in any business or employment, and that he had never exercised any such continuously. That he had been for many years wholly supported by an allowance of 2*l.* per week from the deceased. That he was, and long had been, addicted to habits of excessive intoxication; and that he had, in consequence thereof, suffered from attacks of delirium tremens, and that during the last year he had been subject to various insane delusions, and had often been insane, and of an unsound mind, and had been placed under the restraint of servants or keepers, by medical advice. That he would have been placed in a lunatic asylum at some time during the last year, but that did not take place by reason of the illness and death of his father, the deceased. The act also denied that Mr. Crane was the universal legatee named in the will, but merely a legatee, his sons being substituted as residuary legatees; and it further alleged, that the amount of the beneficial interest which Mr. Crane took under the will was left by the terms thereof entirely to the absolute discretion of the executor named therein, and that such beneficial interest was so restricted by the deceased's particular devise and directions, as he expressly declared in consequence of the incompetency and habits of intoxication of Mr. Crane. This act on petition was partly met by an answer on the part of Mr. Crane, denying his incompetency for business at any time, by reason of any mental ailment whatever, although excited at times when under the influence of spirits, but to the immoderate use of which he was not addicted in any either very unusual or remarkable degree, denying also the averments as to his insanity, and his contemplated or intended confinement in a lunatic asylum, and as to his otherwise being put under any custody or restraint.

Sir J. D. Harding, Q.A. appeared on behalf of Mr. Rebello.

Addams for Mr. Crane.

JUDGMENT.

Sir JOHN DODSON.—It is the general rule that administration should be granted according to the interest, and that in cases, whether within or without the Statute of Distributions, the Court should entrust the management of the estate to those who have the greatest interest in it. Hence, where there is a will without the appointment of an executor, or where an executor refuses to act, the grant of administration, with the will annexed, is given to the residuary legatee, not the next of kin of the testator. This is the established practice of these Courts which has been approved of, and sanctioned by other Courts. With respect to creditors, it has been held that they have but an interior interest; that they cannot deny an interest, or oppose a will (*Dabbs* v. *Chisman*, 1 Phill. Eccl. R. 159; *Elme* v. *Da Costa*, ibid. 173); and administration is only granted to them on failure of a superior interest; they are therefore postponed to residuary legatees next of kin and legatees, and the solvency or insolvency of the estate cannot affect the question of right particularly in the case of a residuary legatee, who is the testator's choice. (*Atkinson* v. *Barnard*, 2 Phill. Eccl. R. 316.) That is not a solitary case. In the case of *Graham* v. *McLean*, 2 Curt. 659, Sir Herbert Jenner Fust held, "That administration could not be granted to a creditor when there was a party ready to administer who had a prior title;" but here the party seeking the administration in preference to the creditor is next of kin as well as residuary legatee; he combines in himself the two characters, and it would be contrary to law, as well as the practice of these Courts, to refuse administration with the will annexed to such a person. It was so held in *Linthwaite* v. *Galloway*, 2 Lee, 414; and the averment that there is no residue will not alter the rule. (*Thomas* v. *Butler*, 1 Vent. 217.) It has, however, been said in argument that a next of kin seldom seeks administration of an insolvent estate for an honest purpose; that observation is to be found in the judgment in the case of *Wilby* v. *West and Smith*, 3 Phill. Eccl. R. 382, as having originally proceeded from Lord Mansfield, and whether I may be disposed to coincide in those expressions or not, the circumstances of that case do not resemble these: in that case the guardian of the next of kin had renounced, and what the Court did was to refuse to allow her to retract her renunciation. The case itself when examined goes to shew that if she had not renounced, the grant would have been made to her as guardian to the residuary legatees in preference to the creditor. The conclusion, then, to which I must come, is, that Mr. Crane is entitled to this administration, unless sufficient grounds exist to disentitle him to it. Such grounds are said to exist by reason of Mr. Rebello being the more fit person as more conversant with matters of business, and that the other creditors are of that opinion. Where parties are all in consimili casu, attention might be given to an opinion of that kind so as to induce the Court to select an administrator, but here I have no such discretion. Another objection urged is, that Mr. Crane is subject to delirium tremens; but it is not alleged that he is non compos, nor is it proved that he is incompetent to manage this estate; on the contrary, affidavits brought in by him prove the contrary. I shall, therefore, decree the administration to Mr. Crane, he being by law entitled to it as the son and residuary legatee, in consequence of the renunciation of the executor and residuary legatee in trust, and I must condemn Mr. Rebello in the costs.

Irish Reports.

COURT OF QUEEN'S BENCH.

Reported by P. J. M'KENNA, Esq. Barrister-at-Law.

DAWSON, Executrix, *v.* NASH.

Tuesday, April 20.

Pleading—Statute of Limitations—Writ of summons—13 Vict. c. 18, Ir.; 2 Wm. 4, & 2 Vict. c. 110, Eng.; 10 Car. 1, sess. 2, c. 6, s. 15, Ir.; 21 Jac. 1, c. 16, s. 4, Eng.

To a plea of the Statute of Limitations, the plaintiff replied that her testator had, within six years from the accruing of said cause of action, and in respect thereof, sued out against defendant, a writ of summons, and had afterwards died within four calendar months from the date thereof.

That the plaintiff within a reasonable time, namely, a year after the death of her testator, sued out against the defendant the writ of summons on the present action, to which the defendant appeared, and the plaintiff thereupon declared against her. To this replication the defendant rejoined the non-service of the writ sued out by the plaintiff's testator.

Held, on demurrer, that the rejoinder was bad, and that inasmuch as the prior writ, although not served, was in force at the time of testator's death, and as the plaintiff, within a reasonable time after the death of her testator, had sued out the writ on which the present declaration was filed, that the replication disclosing these facts was sufficient to bring the case within the equity of the excepted cases of the Statute of Limitations, and was a sufficient answer to the plea, and that the rejoinder, tendering an immaterial issue, viz. the service of the writ, was bad.

Semble, the mere fact of a person dying within the six years, will not be sufficient to enable his personal representative, after the six years have expired, to sue and take the case out of the operation of the statute, although the personal representative institute such suit within a reasonable time after the death of the testator or intestate, unless the deceased person had, before his death, and within the six years, instituted proceedings.

Assumpsit on a bill of exchange by the executrix of the drawer (the Rev. J. Dawson) against the acceptor. The defendant pleaded actio non. Replication as above. Demurrer and joinder. Grounds of demurrer that the said rejoinder neither confessed and avoided, nor traversed and denied the replication, but tendered an immaterial issue.

Shekleton (with him *Robinson*), for the demurrer, cited 2 Arch. Prac. 8 Ed. 1072; 1 Todd's Prac. 9 Ed. 28; Buller, N. P. 149; *Braithwaite* v. *Lord Mountford*, 2 Cr. 8; Mees. 408; *Alston* v. *Underhill*, 1 Cr. 8; Mee. 493; *Lord Middleton* v. *Forbes*, Durnford's Note to Willes, 259.

Lawless, contrà.—*Kinsey* v. *Heyward*, 1 Lord Raymond, 432; *Brown* v. *Babington*, 2 Lord Raymond, 880; *Atwood* v. *Burr*, 7 Mod. 3; *Karver* v. *James*, Willes, 255; *Willcox* v. *Higgins*, 2 Str. 907; *Townsend* v. *Deacon*, 3 Ex. 706; Rhodes, 6 M. & W. 351; *Doe* v. *Jones*, 4 T. R. 300; *Hodsden* v. *Harridge*, 2 Wms. Saund. 631; Lilly's Entries, 122.

Robinson, in reply.

Saturday, April 24.—LEFROY, C.J. now delivered the judgment of the Court, after stating the pleadings. Dawson died in February, and in the month of August following the plaintiff as his executrix sued out the writ in the present case, on the which this declaration and subsequent pleadings were filed. To the replication a rejoinder was filed, alleging that the first writ in that replication mentioned, never was served on defendant, and that the appearance never was entered to the writ. The demurrer admits the facts stated in the replication, but alleges that they are immaterial. The question therefore is, whether the suing out of the writ when the party dies without having served it, and when his personal representatives, within a reasonable time, issue a new writ, constitutes a good replication, or, in other words, sufficient to take the case out of the Statute of Limitations. The testator died on the day after that on which the writ was issued, and consequently within four months during which the writ was available. We may collect what the law is generally from the form of pleading. Now, the form of the plea here is, that the cause of action did not accrue within six years from commencing the said action. What, then, is the commencement contemplated by the plea? It evidently refers to a pending suit, that is the very suit in which the plea is filed. The law, however, in some instances allows the issuing of a writ at an antecedent period to be available to a party for taking the case out of the Statute of Limitations, if connected with the writ upon which the declaration has been filed. It does more; it allows, in some instances, the suing out of a substantive writ, other than that upon which the action is depending, to take the case out of the statute. In the first case, the writ must be shewn to be connected with the proceedings pending, and this is done by continuances; but the law allows a case to be taken out of the statute by a substantive writ in particular cases, although not connected with the proceedings going on when the first writ became unproductive in consequence of an arrest of judgment, outlawry, or reversal of judgment on a writ of error. In all these cases the law directs that the party shall have a fresh writ. There is, however, a fourth case, within the equity of the fifteenth section, when a testator or intestate, having issued a writ before the statute attaches, dies; in that case his representative is entitled to issue a new writ, provided he do so within a reasonable time, and thus take the case out of the statute, and a year has been generally held the period constituting a reasonable time. The rejoinder in this case admits the death of the plaintiff's testator pending the writ of summons sued out by him in his lifetime, and within the four months during which it was in force, but alleges that the writ never was served, nor any appearance entered upon it. The question then is, will this state of facts be sufficient to take such a case out of the statute? It was argued on the part of the plaintiff, that the mere death of the party within the six years will enable his representative to recommence the action after that period had expired, upon the authority of a paragraph in Buller's Nisi Prius, 159, and of the case of *Karver* v. *James*, Willes, 255. That case does not warrant in any degree the deduction drawn from it by the counsel for the plaintiff. When the statute once begins to run, it can only be stopped by these means, and in those cases I have mentioned. The question then really in this case is, whether, under these circumstances, we have a state of facts sufficient to take this case out of the statute. I cannot find any case under the like form of process where it was held necessary that the process which has been sued out should have been served and an appearance entered. It has been said that a process in the pocket of a party cannot be sufficient to evade the effects of the statute, and several cases have been cited to prove that position. But these were cases where the first writ had been sued out a great length of time before the second, and where it was tried to connect the two writs by continuances; but in more cases, where it has been said you cannot have continuances without having the writ returned, it was so held in order to prevent a person with a pocket writ being able, after the expiration of several years from the death of his testator, to come and enter continuances, and thus to keep a debt alive contrary to the real intention of the Legislature when passing this Act of 10 Car. 1. The allowing a person, however, within a reasonable time to proceed on a fresh substantive writ, as if it [illegible] the original writ sued out by the deceased, does not in the least conflict with the real objects of the statute or these cases. A writ neither served and returned, if a fresh writ be sued out within a reasonable time, may properly be held as coming within the equity of the cases excepted in the statute. In this case there was no necessity for continuances, as the writ now has a statutable continuance for four months from the issuing, by virtue of the Act, during which time the party dies, and his representative comes in within twelve months and institutes this present. Indeed, there would appear to be no necessity for service of this writ as there could be no continuance on it, and in those cases I have referred to it was held that appearances should be entered merely for the purpose of having continuances. For these reasons we are of opinion that the demurrer to the rejoinder must be allowed and judgment given for the plaintiff.

Equity Courts.

LORD CHANCELLOR'S COURT.

(Before Lord ST. LEONARD'S, L.C.)

Reported by C. H. KEENE, Esq. of Lincoln's-inn, Barrister-at-Law.

IN CHANCERY.

April 15 *and* 21.

Re THE OXFORD AND WORCESTER EXTENSION AND CHESTER JUNCTION RAILWAY COMPANY, *ex parte* SHARP and JAMES.

Company—Winding-up Acts—Contributories provisional committee—Managing committee.

S. and J. were members of the provisional committee, and also of the managing committee of a railway company directed to be wound up under the Joint Stock Companies Winding-up Acts. By a resolution of the company 250 shares were to be offered to each member of the provisional committee, with a request that he would state on or before a day named, whether he would take that or any less number, and 250 shares in addition were to be offered to each member of the committee of management. By another resolution letters of allotment of 100 *shares only were to be sent out with a communication that that number was part only of the* 250 *offered to the committee of management, and that it was the intention of the company to adhere to their original intention of apportioning to each member of the provisional committee the* 250 *shares if upon the completion of their arrangements they could do so. By another resolution the committee of allotment were to make an allotment according to a scheme under which S. and J. would have the same number of shares* (500) *each. By a minute made at a meeting of the managing committee, signed by the chairman, but not entered on the minutes of the company's books, it was reported that the committee had completed the allotment of shares according to the scheme. The names of J. and S. appeared in the books of the company as allottees for* 100 *shares each. The company subsequently resolved that the directors should be requested to execute the parliamentary contract and subscribers' agreement in respect of the* 100 *shares allotted to them, and that the further prosecution of the company should be postponed. J. and S. paid the deposit, and signed the parliamentary contract and subscribers' agreement in respect of the* 100 *shares. No further allotment took place, nor did it appear that either J. or S. ever signified their intention to take a larger number of shares than those upon which they had so paid the deposit. On the winding up of the company, it was*

Held (*reversing the decision of the Master*), *that J. and S. were contributories in respect only of the* 100 *shares.*

In cases arising under the Winding-up Act, the Lord Chancellor suggested that counsel should agree upon a state of facts to be submitted to the Court; that such state of facts should be perused, and, if found to be correct, signed by the counsel for the different parties.

The case of Hutton *v.* Upfill *does not establish, as a general rule, that, because a man agrees to become a provisional committee-man, and accepts shares without doing any other act, or incurring any other liability, he is to be a contributory.*

This was an appeal taken by leave directly from the master (Rose), who, under the Winding-up Acts had placed the names of Henry Self Sharp and John James on the list of contributories of the company, in respect of 400 shares each, in addition to 100 shares each, to which they had been before adjudged liable, and to which they admitted their liability.

The facts were these: In the month of September, 1845, the committee of management passed the following resolution:—

"That 250 shares be offered to each member of the provisional committee, and that the secretary be desired to write to that effect to each member of the committee, and request him to state, on or before Wednesday next, the 24th inst. whether or not he will take that or any less number, and that 250 in addition be offered to each member of the committee of management."

The petitioners were members of the provisional committee and members also of the committee of management. The petitioner James first attended the meetings of the committee of management on the 23rd of September, 1845, and the petitioner Sharp on the 3rd of October following.

On the 30th of September, James being present, it was resolved, "That the secretary do send letters of allotment to the provisional committee for 100 only for the present, accompanying the letter with an intimation that that number is part of the 250 offered to them by the committee of management, and that it was their intention to reserve the remainder, and it was also resolved that twenty shares should be the qualification of a director."

This second resolution was the occasion of some complaints by some of the provisional committee that they had not received their 250 shares as promised.

On the 7th October, James being present, it was resolved, with reference to the last resolution, "That the secretary do accompany the letter of allotment with a communication to the effect that if when the committee of management shall have finally completed their arrangements they shall find themselves in a position to adhere to their original intention of apportioning to each member of the provisional committee 250 shares they will be happy to make up that number."

At a meeting of the committee of management on the 10th of October (James being present) the secretary having reported, "that he had summoned both the finance and allotment committee for Wednesday, the 8th inst. but in consequence of there not being a quorum of either committee present, no business had been transacted," the following resolution was carried:—"Resolved, that the committee of allotment be requested to make the allotment in accordance with the accompanying scheme, and that the capital of the company be reduced to 100,000 shares in accordance therewith."

The following is a copy of the scheme alluded to: (*a*)

Original number of shares		112,000
To be reduced		12,000
Leaving for capital		100,090
Of these to be issued—		
107 Provisional committee, less		
16 Managing committee, being		
91 at 100 each	9,100	
To the public	30,900	
Mr. Jackson and friends	5,000	
Shares 45,000 at 2*l* 2s.		£94,500
Deduct estimated expense, engineer, law clerks, &c.		10,000
Balance of funds		£84,500
Reserve.	Shares.	
Sixteen managing committee, 500 each	8,000	
Provisional committee, 150	13,650	
Promoters	3,000	
	24,650	
Above specified	45,000	
Reserved	30,350	
	100,000	
Directors of the above 8,000 shares . . . . Provisional committee 13,650	17,650 to be paid for previously to meeting of Parliament	37,065
		£121,565"

To this resolution were affixed the name of the chairman and two of the committee.

It was requested that three of the committee of management should certify to the committee of allotment that that scheme of allotment had been adopted by the board by signing it; accordingly the word "carried" is written on the paper with the initials of Peter Morrison (chairman), John James, and J. J. Jerdin,—three members of the committee being necessary to form a quorum.

This scheme was not entered in the minutes of the company's books, but was on a separate piece of paper.

The following is a copy of the letter of allotment:—

"Not transferable.

"Sir,—The committee of management having at your request allotted to you shares of 20*l*. each in this undertaking, I am directed to request that you will pay the deposit of 2*l*. 2s. per share thereon, amounting to *l*. to the account of the company with any of the undermentioned banks, on or before Friday, the 24th day of October inst. otherwise this allotment will be cancelled, and the shares disposed of to other applicants.

"This letter must be produced at the time of payment of the deposits, and the scrip certificates will be delivered in exchange for the banker's receipt, upon your attending with the same at this office, and executing the parliamentary contract and subscribers' agreement.

"I am, sir, your obedient servant,

"To Mr. ."

On the 21st of October a meeting of the committee of management was held, at which both Sharp and James were present, when the secretary reported

(*a*) The calculations in the original were incorrect.

that the committee of allotment had completed the allotment of the shares, and in so doing had carried out the views of the managing committee. veyed to them at the last meeting. All the share allotted by the allotment committee were entered in a book by the secretary, called the allotment-book, and the entry contained the names and addresses of the applicants for shares, and the number of shares allotted, arranged alphabetically.

The names of Sharp and James appeared as allottees for 100 shares each.

On the 9th of December a committee of management was held, James being present, when it was resolved that the directors should be requested, without delay to execute the parliamentary contract and subscribers' agreement in respect of the 100 shares allotted to them; and it was also on the same day resolved that, under the depressed state of the money-market, and the consequent defalcation in the payment of deposits, the further prosecution of the company should be postponed.

Sharp signed the deed in the month of November, 1845, for the 100 shares allotted to him, and paid 200 guineas thereon. James subsequently signed the deed for the 100 shares allotted to him, and paid a deposit of 100 guineas only thereon, as the committee of management were at the time returning one guinea per share to all those allottees who had paid the deposit of 2*l.* 2*s.* per share. Upon payment of the deposit and signing the deeds of the company, scrip certificates were issued. The following is a copy of the scrip certificate

"Oxford and Worcester Extension and Chester Junction Railway, with Branches to Shrewsbury and Northwich. Capital, 250,000*l.* in shares of 20*l.* each. Deposit, 2*l.* 2*s.* per share. Scrip certificate for ten shares, Nos. to , on which the deposit of two guineas per share has been paid. The holder of this certificate having signed the parliamentary contract and subscribers' agreement under the date hereof, and having agreed to pay all future calls, is the proprietor of ten shares in the above undertaking. } Two members of the committee.

Sec.

"Worcester and Chester Railway,
1, Coleman-st. buildings, Moorgate-st. , 1845."

The projected railway was subsequently directed to be wound up under the Act.

The Master ordered the names of the appellants to be placed on the list of contributories in respect of 500 shares. From that order the petitioners appealed, and as the Vice-Chancellor Knight Bruce in *Ex parte Morrison*, in the matter of the same railway, 16 Law T. 431, had decided a similar question, by permission of Lord Truro they were allowed to bring the present case at once before the Court of Appeal.

Daniel and *T. H. Terrell*, were for the appellants.

Cairns for the official manager.

The following cases were cited: —*Ex parte Davis's Executors*, 15 Law T. 541; *Re Oxford and Worcester Extension and Chester Junction Railway Company, ex parte Morrison*, 16 Law T. 431, *Re Oxford and Worcester, &c. Railway Company, ex parte Barber*, 20 L. J. 146; *Upfill's* case, 2 Ho. of Lords cases, 675.

In the course of the argument the Lord Chancellor complained of the manner in which this case had been presented; it was almost impossible, said his lordship, to ascertain what were the real facts. He suggested that counsel in such cases should agree upon a given state of facts to be submitted to the Court; that this should be perused by counsel, and signed by them, if found to be sufficiently correct: such a course would enable the Court to have possession of the facts of the case without being obliged to sift through all the documents in order to see what the facts really were.

His Lordship took time to consider the question and look into *Upfill's* case and other authorities. Having looked through the minute-book and other papers, on

Wednesday, April 21.—The LORD CHANCELLOR delivered the following judgment:—This case came before the Court in such a state as to render it very difficult for me to deal with it: no statement of the facts of the case is to be found; and I have had to go through the minute-book and many other papers in order to ascertain for myself what the facts really were. This is the last case that I will hear in such a shape. The Court has a right to expect that all the facts are clearly and accurately stated, and ought not to be left to find them out in the best way it can. The Court has been put to a great deal of unnecessary trouble in collecting the materials on which it has to found its judgment. Cheap and speedy justice is desirable, but it cannot be attained unless the Court knows the facts upon which it is called to decide. One great inconvenience to which in the present case, the Court has been subjected has arisen from facts having been stated which were found not to exist. Now, as far as I can understand this case, the question is not whether the appellants are liable in respect of the 100 shares each for which they executed the parliamentary contract and subscribers' agreement, but whether they are liable for 400 shares in addition, which it is said were agreed to be allotted to them; these gentlemen were not members of the allotment committee, but members only of the provisional and managing committees. Now it appears that at an early meeting it was resolved that 250 shares should be offered to each of the members of the provisional committee, and 250 in addition to each member of the managing committee. It appears also that there was a great application for shares in the company, and it was resolved at a meeting early in October 1845, at which neither Mr. James nor Mr. Sharp was present, that the secretary should send a letter of allotment of 100 shares only to each provisional committee-man, with an intimation that they were part only of the 250 which were offered, and that it was desirable to reserve the remainder for the present. It was therefore proposed to limit the number of shares originally ordered for the present, and it is apparent that there was a wish on the part of the managing committee to reserve the right of allotting or not allotting the remainder. At first it was optional to the parties to accept—there was no compulsion to accept. The resolution was, that "250 shares be offered to each member," &c. It is quite clear, therefore, that there was an option tendered to these parties. Then, by the resolution of the 30th of September, the secretary was directed "to send letters of allotment to the provisional committee for 100 only for the present." This letter was to be accompanied "with an intimation that that number was part of the 250 offered, and that it was their intention to reserve the remainder." Then, by the resolution which was passed at the meeting of the 7th of October, it appears "that if, when the committee of management shall have finally completed their arrangements, they shall find themselves in a position to adhere to their original intention of apportioning to each member of the provisional committee 250 shares they will be happy to make up that number." Then you come to that meeting of the 10th of October, at which it was resolved "that the committee of allotment be requested to make the allotment in accordance with the accompanying scheme." Now, then, what is said to be the scheme referred and sworn to by Mr. Dutton. Now, this scheme, which has been held to be binding, in another case, on a managing committeeman, is to this effect. It is proposed that the number of shares, 112,000, be reduced 12,000, leaving for capital 100,000. There are some calculations which are not accurate; but it shews that 1,000 shares were to be reserved for the directors. The deposits for Parliament were to be 121,000*l.* and a fraction. These facts appear in the minute-book; and from that book, and the various other papers which I have taken the trouble to examine, I have been enabled to collect them. Now, so far as this relates to the scheme, it is impossible, I think, to say that there is an absolute and binding contract on the parties to take these shares, because, first of all, the resolution is, that the committee of allotment is only "requested" to make the allotment in accordance with that scheme. The scheme is mentioned only the minute-book; but the original I have had before me. It appears to have been a scheme of device only, and not to have been carried out. For example, it was proposed, among other things, that 30,900 shares should be set apart for the public; but the public were wise,—they took only a small portion of that number. Then 5,000 were set apart for Mr. Jackson and his friends; but they were wiser still,—they took none. The sixteen managing directors were to have 8,000 shares between them: now, I do not find that the allotment of the 500 shares was ever made to the members of the provisional and managing committees, although they are assumed actually to belong to them, and the whole of them are left on hand unclaimed. On the 21st of October, the secretary states that the committee of allotment had completed the allotment. I do not find any further allotment to these gentlemen, neither I find that these gentlemen ever signified their intention to take the larger or any other number of shares than those upon which they paid a deposit, if they had been allotted. I would have thought it almost impossible that what has been termed the scheme should have been considered a binding contract, it was a mere proposal, which does not appear to have been acted on. I do not find any letters of allotment to have been sent out, nor are any reported to have been so sent: I find nothing but the secretary's statement. As soon as matters began to assume a disagreeable aspect, a meeting of the managing committee was convened; at that meeting, at which Mr Sharp and Mr. James were both present, and which was held on the 9th of December, 1845, it was resolved that the directors should be requested to execute the parliamentary contract and subscribers' agreement in respect of 100 shares each. The result of that was, that Mr. Sharp and Mr. James executed the deeds for the 100 shares actually allotted to them by that first letter to which I have referred. Now, there is no proof of any further allotment except in that statement in the report of the secretary, "that the committee had allotted;" and there being no proof of any actual allotment of any further shares having taken place, the case appears to me to be of this sort,—that there being a scheme for the division of all the shares in the company, many of them being reserved for individuals, members of the public who had an interest in the concern, and the public generally, there had been an offer to the provisional committee and the managing committee of a certain number of shares each: I do not find anywhere an acceptance of those shares, and in that respect this case is entirely distinct from the other cases which were cited during the argument. There is no acceptance any where of any of these shares, but there is a letter from the secretary qualifying the first, and that, as far as I can discover, is never withdrawn: "that for the present 100 shares be offered," and that it was "desirable to reserve the rest." Well, so things seem to have gone on (as far as the evidence goes), without any shares being paid on, although great expense was incurred, and money borrowed in order to meet the obligations incurred. Then there was something like a crash, and the parties think it right to come here and ascertain the liability of the company generally. The parliamentary contract is executed with a view of the company going to parliament: in this they fail. They do execute the parliamentary contract, and a joint deed is also executed by them; and they call the shareholders together and offer them the number of shares set opposite their names. Now, coming to these gentlemen, 100 shares were all that were actually directed (according to the evidence) to be offered to them: there is no acceptance except by the execution of this deed. To the extent of 100 shares they were liable. They have paid their liability in respect of those shares, and it is insisted that they are liable to the 400 shares in addition. There is a case arising out of the same transaction with another gentleman, a Mr. Morrison, which is reported 20 L.J. 296, before the Vice-Chancellor Knight Bruce, and in that case it was decided, that under similar circumstances each member of the managing committee was liable for the whole of the shares so reserved for them, and the present case has been brought before me, with a view of indirectly reviewing that decision. Now, the decision in that case appears to have proceeded on *Upfill's* case, and without giving any opinion on that case, I think that the circumstances upon which I have to decide are materially different. There there was not only an offer but an acceptance of shares; here there was no offer in reality, and no acceptance beyond the 100 shares which are admitted to have been accepted. The House of Lords held in *Upfill's* case, that two letters, the one containing the offer, and the other containing the acceptance of shares, constituted a contract, which was binding on the party accepting, and that therefore a provisional committee-man accepting shares was liable as a contributory; but, besides that circumstance there is on the face of the report a strong reason, independently of the others, why Mr. Upfill should have been made a contributory, independently of any question of liability; it appears there that the managing committee received authority, by the prospectus under which they were all acting, to carry on the concern, and to incur all necessary expenses before the Act of Parliament was obtained. Well, but has the being a party to that no weight with it? The man who makes himself a party to that transaction must contribute of course to the expenses, as the expenses are incurred according to his own dealing under that contract; being a provisional committeeman, he must be taken to have known what was the constitution of and what was proceeding in the company; and the man who has made himself a party to sanction such an expenditure, and who knew the terms on which the company in *Upfill's* case was proceeding, could not under the circumstances, which are mentioned in the report of that case be heard to say that he was not liable for the expenditure he had so sanctioned, under a contract, as a provisional committee-man. [His Lordship here read a part of the report of *Upfill's* case, and having repeated his view of the position of Mr. Upfill said,]—Independently of the position of that gentleman as a receiver of shares and provisional committeeman, there were circumstances which, if that case were examined, would be found rendered him additionally liable as a contributory: that case did not establish the fact that because a man agrees to be a provisional committeeman, and has accepted shares without any other act done or liability incurred (except those two circumstances), he is to be a contributory. But in this case I am of opinion that each of these gentlemen having had only 100 shares offered to him out of those 500 which were within the scope of the scheme—(which I do not consider a concluded transaction, because I do not see any intention of its ever having been carried into execution)—and which 100 shares he accepted, and for which he executed the subscrip-

tion deed and parliamentary contract, his liability must be limited to those 100 shares only—and I shall order the names of the appellants to be struck off the list as to all the shares except the 100. I shall make no order as to the costs of this appeal.

Appeal allowed.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

IN LUNACY.

Friday, April 30.

Re JOHN ROSE SWINDELL.

Committee of lunatic—Liability of committee for arrears of rent.

A committee of a lunatic let a house, &c. belonging to the lunatic, to a person who had shortly before been made bankrupt, but had obtained his certificate, and who, both previously and subsequently to the bankruptcy, acted as solicitor to the committee, both in the lunacy and in his own private affairs; the committee having suffered the solicitor to remain some years in the house before he took any steps to obtain payment of the rent, or to eject the tenant:

Held, that there had been wilful neglect and default on the part of the committee, and that his administrator was bound to make good the loss occasioned thereby.

The question which arose in this matter was whether the administrator of Edward Ordish, a deceased committee of the estate of the lunatic, John Rose Swindell, should be charged with a sum of 345*l.* 4s. 2d. which it was alleged he had lost by wilful default, in letting a mansion-house, &c. belonging to the lunatic, to a gentleman of the name of Bryan Thomas Balguy, who had acted as solicitor both to himself personally and in the lunacy. The Master in Lunacy, by his report, dated the 20th of December, 1850, made in pursuance of an order of Lord Chancellor Truro, found that such sum was not lost by the wilful default of the committee, and that, consequently, his administrator ought not to be charged with it.

The following facts appear on the Master's report. John Rose Swindell was, on the 21st day of February, 1828, found to be a lunatic, and on the 3rd July, 1828, the custody of his person, and the care and management of his estate, were granted to Thomas Pearsall, who continued as such committee until his death, on the 21st of November, 1838. Mr. Balguy, who was a solicitor of the town of Derby, and for many years held the office of town-clerk, and other offices under the corporation of that town, was the solicitor acting for Thomas Pearsall in the matter of this lunacy. In the month of February 1838, Mr. Balguy being in pecuniary difficulties, and his affairs embarrassed, a fiat in bankruptcy was issued against him, upon which he was made a bankrupt, but in the month of May, in the same year, he obtained his certificate, and, notwithstanding his bankruptcy, the corporation of Derby retained him in all the offices which he held previous to his bankruptcy, namely, the offices of town-clerk, clerk of the peace, coroner's clerk of the Court of Requests, and solicitor to the corporation, from which office he derived a considerable income independent of his private practice; and Thomas Pearsall, up to the time of his death on 21st of November, 1838, continued Mr. Balguy as his attorney. On the death of Thomas Pearsall, Edward Ordish presented a petition in this matter, and retained Mr. Balguy as his solicitor, and an order was made on such petition dated the 6th day of December, 1838, whereby it was referred to the Master to approve of a new committee of the lunatic, with liberty to the said Edward Ordish to propose himself as such committee; and pending the said order a Mr. and Mrs. Keen also presented a petition in this matter, for liberty to go in and propose themselves as committees of the lunatic; and the said last-mentioned petition led to much litigation, and after considerable discussion was at length, on or about the 2nd of March, 1839, dismissed by the then Lord Chancellor, and, on the 12th day of March, 1839, an order confirming the Master's report, which approved of the said Edward Ordish as committee, was made in this matter. Upon the appointment of the said Edward Ordish as committee, he continued to employ Mr. Balguy as the solicitor in the said lunacy, and also employed him as his own private solicitor, and continued so to employ him until the month of October 1842. Shortly after the appointment of the said Edward Ordish as committee, namely in the month of October 1839, the mansion-house and premises called Borrowash House, part of the estate of the lunatic, became untenanted, and from the situation of the said house, and from the circumstance of its being a large mansion, it was difficult to find a suitable tenant. Whereupon Mr. Balguy proposed to the said Edward Ordish to take the said mansion-house and premises from Michaelmas 1839 as yearly tenant, at the rent of 132*l.* being the rent which the previous tenant had paid; and the said Edward Ordish agreed to let him the said premises, of which he entered into possession accordingly. It appears that, besides the bill of costs, for which the said Edward Ordish was liable to Mr. Balguy for procuring his appointment as committee (and which was subsequently taxed at the sum of 98*l.* 3s.), Mr. Balguy had other claims for costs against the said Edward Ordish, not only in respect of his business done in the said lunacy, but in respect of his own private affairs; and the said Edward Ordish paid to Mr. Balguy, on account thereof, from time to time, between the month of May 1839, and July 1842, both inclusive, various sums of money, but no bills were delivered to the said Edward Ordish by Mr. Balguy down to the month of October 1842, about which time the said Edward Ordish, finding reason to be dissatisfied with the conduct of Mr. Balguy, dismissed him as his solicitor, and obtained an order, dated the 11th of February, 1843, for the delivery and taxation of his bills of costs. Whereupon Mr. Balguy delivered to the said Edward Ordish his bills of costs both in the said lunacy and in the said Edward Ordish's own private affairs, amounting in the whole to the sum of 1,050*l.* 16s. 2d.; and after considerable difficulty, the taxation of the said bill was only completed in the year 1845; and upon such taxation the said bills were reduced to the sum of 601*l.* 14s; and upon an account being taken of the sums of money actually received by Mr. Balguy, on account of the said Edward Ordish, it was ascertained that Mr. Balguy had been overpaid by the said Edward Ordish, and was indebted to him in the sum of 130*l.* 11s. 5d. which said sum the said Edward Ordish was unable to recover; and of the said sum of 601*l.* 14s. the amount of the said taxed costs of Mr. Balguy, only a portion thereof was in respect of his costs for business done in the matter of the lunacy. Upon an inspection of the accounts passed by the said Edward Ordish, as such committee as aforesaid, the only sum allowed to the said Edward Ordish in respect of Mr. Balguy's bill of costs for business transacted in the matter of the lunacy, was a sum of 256*l.* 6s. 4d. which sum was part of the sum of 111*l.* 18s. costs charged in the account of the said Edward Ordish, passed in the year 1845 (the remainder of such sum of 411*l.* 18s. being in respect of bills of costs of Mr. Francis Jessopp, who acted as solicitor for the said Edward Ordish after the discharge of Mr. Balguy), and was allowed in the said account of the said Edward Ordish, in pursuance of orders in this matter dated respectively the 3rd day of November, 1842, the 4th day of November, 1843, the sum of 98*l.* 3s. 6d. as the amount of Mr. Balguy's taxed costs in procuring the appointment of the said Edward Ordish as committee, had not been charged by the said Edward Ordish against the estate of the said lunatic in any of the accounts passed by him as committee, but an order had been made for the payment of the said sum of 98*l.* 3s. 6d. The tenancy of Mr. Balguy of the said mansion-house and premises, called Borrowash-house, continued from the month of October 1839, until Michaelmas-day 1843, when it was determined by notice to quit having been given him on behalf of the said Edward Ordish; but Mr. Balguy paid no rent down to the period when he was so discharged as solicitor, in the month of October 1842, though two several sums of 100*l.* and 79*l.* were subsequently recovered from him. It appears that the said Edward Ordish, who was formerly a yeoman, had become of unsound mind, and no explanation could be satisfactorily obtained from him as to the measures which he took for the purpose of obtaining payment of such rent, but John Pearsall Ordish, who is one of the sons of the said Edward Ordish, deposed by his affidavit, sworn on the 23rd of April, 1850, that he was intimately acquainted with the transactions of his said father in the affairs of the said lunacy, and that for several years previously to the affliction of his said father he assisted in the management of the business connected therewith; and that the said Mr. Balguy pretended to his said father that the sums which were due to him in respect of the bills of costs against the said Edward Ordish would be amply sufficient to cover such arrears of rent, and that for a considerable time he put off his said father with such excuses, and that he did not believe that the said arrears of rent could have been realised by any diligence on the part of the said Edward Ordish. Mr. Balguy also by his affidavit, sworn on the 4th of July, 1851, deposed, amongst other things, that during the time of his occupying the house at Borrowash, as well as after his removal therefrom, the said Edward Ordish and Sarah his wife on his behalf, when they called upon him, Mr. Balguy, at Derby, on business which they were in the habit of doing generally once, and frequently twice, in the week, . . continually pressing him for a settlement of the rent, but that he did not pay the same, stating to them as his reason, that the estate of the said John Rose Swindell was indebted to him in a much larger amount than the rent due from him; and which he believed then to be the case, and still believed would have proved to be so had it not been that his books were destroyed by a fire, which took place in the town-hall of Derby, in the month of October 1841. Mr. Balguy further deposed by his affidavit, sworn on the 1st day of November, 1850 (amongst other things), that he had his offices in the said town-hall, at Derby, upon the occasion of the said fire, and that his books, papers, and documents of every description were utterly destroyed, and that one of the boxes in his said office contained all his papers, drafts, vouchers, and other materials for his bills against the said committee, and was included in the destruction, and that he was thus deprived of the means of making out his bill of costs otherwise than from memory and from his agent's bill of costs, and that afterwards, when called upon to make out his bill of costs against the said committee, from the circumstance of his papers composing the materials being destroyed, he was obliged to make them out from memory, rendered imperfect from having kept a regular diary of his attendances and business done for the said committee, and, when submitted to the Master for taxation, the same bills were reduced several hundred pounds,—the sum allowed being, according to his, the said Mr. Balguy's recollection, somewhere about the sum of 600*l.* —and that the loss of his papers in this business, by the destruction of the said town-hall, by depriving him of the means of making out fair and reasonable and unobjectionable bills of costs against the said committee, was a great advantage to the estate of the said lunatic, and a gain to it of several hundred pounds; and that Mr. Henry Power,—the opposing solicitor as to the removal of the committee of the said lunatic, and also Mr. William Blow Collis, the solicitor of the next of kin of the said lunatic, on learning the sums allowed to him, the said Bryan Thomas Balguy, on taxation, expressed to him their astonishment at the amount, and declared it to be a very inadequate remuneration for the trouble and expenses incurred by him in various suits and transactions in which he was professionally concerned for the said Edward Ordish as such committee. Between the years 1839 and 1842, both inclusive, the said Edward Ordish having in the month of November 1842 dismissed the said Mr. Balguy as his solicitor, instructed Messrs. Jessopp, whom he then employed as his solicitors in the place of Mr. Balguy, to use their best exertions to recover the rent, and to give Mr. Balguy notice to quit the said premises and the steps thereupon taken by the said Francis Jessopp for the purpose of recovering the rent from the said Mr. Balguy are set forth in the affidavit of the said Francis Jessopp, sworn in this matter on the 8th day of April, 1851, in which (amongst other things) he deposes that he was applied to by the said Edward Ordish respecting the arrears of rent due from Mr. Balguy, and requested by him to enforce payment thereof, whereupon he immediately caused a distress to be levied on the goods of Mr. Balguy, but in consequence of their being greatly insufficient to satisfy the said arrears, and upon the assurances of Mr. Balguy that he would speedily make arrangements for payment, it was thought most prudent not further to enforce the said distress at that time; and after many ineffectual attempts to obtain payment of the said rent, in the month of March 1843 Mr. Balguy gave a warrant of attorney for securing payment in the month of September then following, of the sum of 395*l.* being the amount of rent then in arrear; that the said Mr. Balguy, as the said Francis Jessopp believed, quitted the said house and premises at Michaelmas, 1843; that the said Edward Ordish was then about to enforce his judgment against the goods of the said Mr. Balguy for the said arrears of rent, but as his goods were of little value, and he having proposed to pay the sum of 100*l.* which was more than the value of the said goods, forthwith, and to pay the rest of the said debt by instalments of 100*l.* a-year, he, the said Francis Jessopp, considered that it would be better to accept such terms than run the risk of losing the whole of the said arrears by forcing Mr. Balguy to extremities; and he the said Francis Jessopp so advised the said Edward Ordish, who accordingly agreed to the proposition of Mr. Balguy; and that the said Mr. Balguy afterwards paid the said sum of 100*l.* on account of the said arrears, and a further sum of 79*l.* was also received in respect of the said arrears, by the sale of a rick of hay and other goods of Mr. Balguy; and that he, the said Francis Jessopp, did not believe that the said arrears of rent, which he had been informed, and believed to be then due, could have been realized by any diligence on the part of the said Edward Ordish. The said judgment which had been entered up against the said Mr. Balguy, upon his warrant of attorney, as security for the said arrears of rent, was still in force; and the said Edward Ordish, on passing his annual accounts before the Master, which he had done from time to time since the year 1845, through his solicitors, called the attention of the Master to the said arrears of rent due by the said Mr. Balguy, but with a knowledge of some of the circumstances before mentioned with respect to Mr. Balguy, he acquiesced in the course adopted by the said Edward Ordish, in delay-

ing to put in execution the judgment against the said Mr. Balguy. The said Edward Ordish died on the 24th of August, 1851; and letters of administration were granted to the said John Pearsall Ordish on the 17th day of March, 1852.

The case now came on before their Lordships.

Swanston and *Smythe*, for the administrator of Edward Ordish, contended that the Master's report was right, and that the rent not being lost by the wilful default of Edward Ordish, his estate ought not to be charged with it.

Rolt and *J. V. Prior*, for the representatives of the lunatic, John Rose Swindell, contra, but they were willing to allow 98*l.* costs paid by Edward Ordish.

Lord Justice Lord CRANWORTH.—This is a very distressing case; but we feel very much the justice of the observations made by Lord Truro. The case is very objectionable. This committee chooses to employ as his solicitor a gentleman who had been but a few months before a bankrupt, and had re-established himself. The first act done after that is, that he lets this house to his own solicitor, a very objectionable proceeding, at a rent of 132*l.* per annum. The solicitor continues tenant for four years, and never pays a sixpence of rent. Being the solicitor to the committee up to nearly the fourth year of his tenancy—or rather to the end of the third year—about the third year he is dismissed, and continues tenant for a year afterwards. The question is, whether, there having been no rent received except a certain sum on account, that was not lost through the fault of the committee in not enforcing its payment. The only excuse is, that there were accruing costs, which is put into his mouth by the solicitor himself, putting that as a sort of set-off against the payment of rent. Eventually there are no costs, except 98*l.* which they are willing to allow to be deducted, and the whole of this rent, except two sums of 100*l.* and 79*l.* is lost. No other conclusion can be arrived at, because the committee has been wanting in that vigilance which the Court is bound to require from one holding that fiduciary situation. I am extremely grieved that such is the result at which I am bound to arrive; but, considering how important it is to watch the conduct of persons undertaking to watch over those who, by the visitation of God, are incapable of taking care of themselves, there is no other conclusion to be arrived at but to charge the committee with the whole amount, 395*l.* giving credit for 179*l.* adding another year's rent, and deducting from it 98*l.*

Lord Justice KNIGHT BRUCE concurred.

ROLLS COURT.

Reported by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

March 31 *and April* 1, 2, 19, *and* 20.

SHORTRIDGE *v.* BOSANQUET.

Joint-Stock Banking Company — Shareholder — Contributory—Transfer of shares—Collusion—Action of sci. fa.—Return of share list—Stamp Office—Erasure—New entry—Consent to trans-

deed establishing a Joint-Stock Banking Company provided that a shareholder might, upon obtaining the consent of the board of directors, three being a quorum, transfer his shares in the manner thereby pointed out, that a certificate specifying the shares, should be given by the Board, and a receipt of the holder for the same as therein mentioned, and thereupon the proposed shareholder or purchaser should be entitled to have his name entered in the share register book as the holder of those shares: that the directors alone should have power to make any entry, erasure, or alteration in the share register book: that after the entry of the name of a purchaser in the share register book, the former owner, &c. should cease to be a share holder, and be discharged from the covenant, &c. of the deed; that every entry, erasure, or alteration made in the same register-book should, as between the company and the last holder, be conclusive and binding on such last shareholder: that the share register book should, as between the company and the shareholder, be conclusive evidence as to a party being a shareholder: and that the share register book should be open to the inspection of no one without the permission of the board.

A shareholder applied to have a transfer, and had regularly taken the necessary formal steps, and the purchaser's name was entered in the share register book, and the usual return was made to the Stamp Office, in which the shareholder was stated to have ceased to be a shareholder. Subsequently the bank suspended payments, and in order to make the shareholder responsible, the company made an entry in the share register book, to the effect that the transfer was invalid because it had not been made with the consent of the board duly constituted, but only by three directors individually, and so returned it to the Stamp Office, but it appeared that transfers were usually made without such consent. In an action of sci. fa. by a creditor of the bank against the shareholder, he was held to be liable, on the ground that as he appeared on the share register book, that was conclusive. The shareholder then filed his bill for relief in equity:

Held, that though the shareholder was liable at law, yet in equity he must be considered to have ceased to be a shareholder, and therefore not to be a contributory.

That application for transfer being made, and the certificate having been obtained, and the receipt given in the usual way, and signed by three directors, the shareholder was under no obligation to see that the transfer was sanctioned by the board in the formal manner required by the deed.

That the clause authorising the directors to make entries, erasures, or alterations, did not justify them in putting on the list a name which had been taken off in the ordinary way, and thereby affect the liability of the shareholder at their will and pleasure.

That the action of sci. fa. by the creditor was in fact the action of the bank, brought at the instance of the bank, and for its own objects and purposes.

That, therefore, a perpetual injunction must be granted against the creditor to restrain that and every action against the shareholder, and the bank must also be compelled to remove the entry the share register book, and be restrained from putting the name on it again: and the shareholder to have his costs from the bank, and also the creditor's costs, to be paid by him in the first instance.

This was a suit instituted by the plaintiff, Richard Shortridge, against Henry Bosanquet, as the public officer of the London and Westminster Bank, and against Joseph Mather, as the public officer of the Newcastle, Shields, and Sunderland Union Joint-Stock Banking Company, George Pringle Thew, John Millar Chapman, and others, to compel the latter bank to erase from their books the name of the plaintiff as a shareholder or partner, and to restrain both banks from commencing or prosecuting any action at law against the plaintiff as a shareholder in the Union Bank after the month of August 1847, and for an account between the two banks, and an indemnity to the plaintiff as against all creditors of the Union Bank. The facts of the case sufficiently appear in the judgment.

R. Palmer, *Elmsley*, and *Bates*, for the plaintiff, cited *Taylor* v. *Hughes*, 2 J. & L. 24; *Ex parte Walters*, 3 De G. & Sm. 149; *Maguire's case*, 3 De G. & Sm. 35; *Cheltenham and Great Western Union Railway Company* v. *Daniel*, 2 Rail. C. 728; 2 Q. B. R 281; *Sheffield, Ashton-under-Lyne, and Manchester Railway Company* v. *Woodcock*, 2 Rail. Ca. 522; *Fernyhough* v. *Leader*, 4 Rail. Ca. 373; *Lewis* v. *Billing*, 4 Rail. C. 414, 448; *Cutts* v. *Riddle*, 1 De G. & Sm. 256; *White's* case, 3 De G. & Sm. 157; *Court* v. *Harris*, T. & R. 523; *Ex parte Bagge, re The Northern Coal Mining Company*, 15 Jur. 199; *Burnes* v. *Pennell*, 13 Jur. 897.

Rolt Campbell, and *Hetherington*, for the London and Westminster Bank, cited *Morgan's* case, *re The Vale of Neath Brewery*, 1 Man. & G. 225; *Hall's* case, 1 Man. & G. 307; *Ex parte Lawes* v. *The Vale of Neath Brewery*, not reported (Lord St. Leonard's, 17th March, 1852); *Cheltenham and Great Western Union Railway Company* v. *Daniel*, 2 Rail. Ca. 728; *Hennessey's* case, 2 Man. & G. 208; *Davidson's* case, 3 De G. & Sm. 35; *Ness* v. *Angus*, 4 Hare, 38.

Roupell, *Lloyd*, and *Stevens*, for the Union Bank.

Tuesday, April 20*th*.—The MASTER of the ROLLS.—I have had occasion to consider this case from the great length of time that it has lasted, and as I entertain no doubt that the plaintiff is entitled to a decree, I will state the grounds on which I consider that he is entitled to the decree which I am going to give. The suit is one of this nature. It is a suit instituted by the plaintiff praying a declaration, or in effect a declaration that he is no longer a shareholder in the company, and for an injunction to restrain execution being levied against him in respect of an action brought by the London and Westminster Banking Company, alleging, that in fact there is collusion between the Union Banking Company and the London and Westminster Bank, and that the action is, in fact, the action of the Union Bank; and that being no longer a shareholder of the Union Bank, he is not liable in respect of that action. Now, there are two questions in this case: one—and the first and main question—is, whether the plaintiff is a shareholder of the Union Bank as between himself and the Union Banking Company itself; and if it shall be settled that he is, then there is no other question in the case—the whole of the question is determined against him, and in favour of the defendants. But if it shall be determined that he is not, then the second question arises—against the London and Westminster Bank, whether in that case the action is bona fide the action of the London and Westminster Bank, and they ought to be permitted to enforce execution upon it, or whether it is in fact the action of the Union Bank, and they ought to be prevented from recovering upon it. Now, the facts upon the first point of this case are to this effect. The Banking Company was established in the year 1836, and the plaintiff was an original shareholder in the company. In addition to that he purchased a considerable number of other shares, and in the month of May, 1847, he was the owner of 620 shares. The bank seem to have paid 10 per cent. dividend on all occasions up to the month of May, 1847. Having 620 shares up to that time, this gentleman (the plaintiff) thought proper to get rid of his shares, and to sell them every one. I will consider in a later part of the observations I have to make, whether anything could be raised upon a question of fraudulent disposal of the same, by reason of his knowing that the bank was in a failing situation. At present I will assume that no such case appears, and that no such case can be made, but that these were bona fide sales. He sells all the shares that he has in the banking company; 200 of them he sells to a gentleman of the name of Thew. In respect of 100 of these shares, the sale takes place, and the transfer takes place in the books of the bank previously to the general meeting, and the declaring of a dividend, which takes place, I think, on the 27th of July, 1847. With respect to another 100 of these shares, fifty I think were sold on the 6th of July, fifty on the 13th. I am not quite sure about the dates of those; but at all events the transfer of these shares did not take place till the month of August, 1847, subsequent to the general meeting. The shares sold to Mr. Miller were forty shares, which were sold on the 20th of July, 1847, and the transfer in the books took place in the month of August, 1847, subsequent to the general meeting. Now the relief is sought in respect of these 240 shares. No question is raised with respect to the remaining shares which this gentleman possessed; the remainder of the 620 shares which he disposed of, no question is made respecting them. Mr. Thew, or his agent, applied to the public officer to know if the transfer was permitted, and received a certificate of his being an owner in respect of those shares, and so did Mr. Miller; and it is proved that the transfers of these shares from the plaintiff to Mr. Thew and Mr. Miller were made in the books of the bank. The shares were sold in both cases to Mr. Thew, and Mr. Miller, with the dividend of July; that is to say, the purchaser was entitled to receive the dividend whether it were paid to Mr. Shortridge, the plaintiff, or whether it were not. In fact, with regard to 100 of the shares, it was paid to Mr. Thew; with respect to the remaining 140 it was paid to Mr. Shortridge, and paid over by him to the purchasers. Many of these facts I am stating appear from passages read from the answer; and it appears also that Mr. Thew, though he was a shareholder in other respects, yet attended the public meeting in respect of all his shares in the concern, and Mr. Miller, who had no other shares, attended the public meeting in respect of the shares he had so bought. This took place in the month of August 1847. A report was made in July 1847, speaking of the favourable state of the concerns of the bank, and recommending a dividend of 10 per cent. After this a return was made to the Stamp Office, I think, on the 6th of October—in the early part of October 1847, in which it was stated that the plaintiff had ceased to be a shareholder of the Union Bank; and on the 21st of October 1847 the bank suspended its payments. Upon this state of the case, several steps were taken for the purpose of arranging the affairs of the bank, by the persons unquestionably remaining the directors and shareholders of the company; and in December 1847, and in January 1848, various communications took place between the Union Banking Company and the London and Westminster Bank, which I shall have occasion to refer to presently more particularly, in a later stage of the observations I am about to make. On the 8th January, 1848, the Union Bank informed the plaintiff that they intended to contest the validity of the transfer of the shares to Mr. Thew and Mr. Miller, and in answer to that, he writes a letter of remonstrance, stating that if they had disputed the transfer at the time, he should, under the provisions of the clauses of the deed, have required the directors to purchase at the price which was then the last market price, which he was entitled to do. The Union Bank, notwithstanding, on the 14th, I think, of that month, make an entry in the book, in which they declare that, in fact, the entries made of the shares from the plaintiff to Thew and Miller, were void entries, in consequence of not having received the consent of a board of directors; and they send a return to the Stamp Office, in which they insert the name of the plaintiff as a shareholder in the concern. Then the London and Westminster Bank bring an action on the sci. fa. against the plaintiff,

to recover in the action against him; and it is clearly and decisively settled in the action at law, that the plaintiff is liable to the London and Westminster Bank; and if the plaintiff is entitled to recover against the Union Bank or against the London and Westminster Bank, it must be by reason of some equity flowing out of the contract which he has entered into, and not by reason of any legal rights he may have, which have been determined in the action at law. Before I proceed to consider the whole of the case, I shall first consider this question—how the matter would stand if the books were now before me exactly as they were on the 8th of January, 1848; and having considered that, I shall then consider whether the subsequent alteration of the books will alter or vary the equity between the parties. And therefore, in the first place, I assume, in the observations I am about to make, that the books remain unaltered, and that the name of the plaintiff appears no longer as a shareholder in the concern, but that these shares are transferred to Mr. Thew, and that also the last return to the Stamp Office omits his name as the holder of the shares. I shall afterwards consider whether what has since taken place makes any difference in that respect. In that state of the case, it is obvious, if it is considered on that assumption, that the burthen of proof lies exactly the other way in the cause to what it does in the action. In the action in the case of *Bosanquet* v. *Shortridge*, the case was this:—It was a creditor of the concern suing a shareholder; and he produced the books of the bank to shew that the shareholder's name was in the books of the bank, and to shew that he was in the last return to the Stamp Office, under the Banking Act, returned as a shareholder in the concern. That was all that was necessary for him to do. It therefore threw the burthen of proof on the defendant Mr. Shortridge to prove that he was not a shareholder in the Union Bank, and accordingly what he attempted to do was to shew that the transfers which had been made were valid and legal transfers; and the Court was of opinion that those transfers not having been made with the consent of the board of directors, as required by the deed, were not valid and legal transfers so as to discharge him from being a shareholder: and it is to be observed that in that case which I have read two or three times, it was a fact found by the special verdict that the transfers had been made without any such consent of any such board, and Mr. Baron Rolfe in giving judgment, expressly states that that is an admitted fact between the parties. Well, in the assumed case that I was taking, the case is this:—The plaintiff's name does not appear in the books—the plaintiff's name is returned as not being a member in the list to the Stamp Office, and therefore the burthen of proof lies upon the Union Bank. I am throwing entirely out of consideration now any question of the London and Westminster Bank. The burthen of proof lies upon the Union Bank to shew that, notwithstanding his name not appearing as a shareholder in the books,—not appearing in the list sent to the Stamp Office,—that notwithstanding all that, he is still a shareholder, and therefore the burthen of proof lies on them to establish that fact. Well, then, I will consider how far either the evidence establishes it, or whether in fact they are at liberty, by reason of the contract which they have entered into, to give any evidence for the purpose of shewing that that fact is not so. Now on that part of the case it becomes very material to look at the provisions of the deed. The provisions of the deed on this part of the subject are certainly of very considerable importance, and I will refer shortly to some of the provisions which I think it material to point out. By the 83rd section the board of directors are to cause to be delivered to every person executing these presents, and to every person approved by the board as fit to be a shareholder in the company, at the expense of such persons, certificates specifying the number of shares which he holds. Well, these are the certificates which were delivered to Mr. Thew and Mr. Miller, at their request. Then the board of directors are, by the 84th clause, to keep the name and place of residence of every person for the time being entitled to be registered, in a book called the share register book, and they alone are to have power to make any entry, erasure, or alteration, in the share register book. Therefore they are to keep the book, and it is only to be kept by their direction, and under their orders. Well, then, the 144th, 145th, and the 148th sections, which I will refer to presently, are very material for the purpose of shewing how a person may obtain a certificate from the directors, certifying their consent to the shares numbered being transferred to certain other persons; but the 144th section states that no person shall become or be registered as a shareholder, without the consent of the board of directors. Therefore the books are not only to be kept under the direction of the board of directors, but no person shall become, or be registered therein, except by the order of the board of directors. Well, the shareholders themselves cannot, by another section, ascertain anything respecting the mode in which it is kept. They have no means of ascertaining it by actual inspection of the books. The only means they have of ascertaining it is, that they may require the board of directors to give them a certificate; but if they have a certificate signed by three persons, under the 83rd section, of their holding a certain number of shares, that is all, in fact, they can do to ascertain that the name has been duly registered on the register; but they get their certificate, which shews that a person has been so registered. Then by 158th section, which is exceedingly material, it is stated that the share register book shall, as between the company and every person claiming to be a shareholder in, respecting of any shares, be conclusive evidence on behalf of the company to shew, whether he or she is a shareholder in the company, in respect of such shares. This, no doubt, is one of the reasons why this course has been adopted. A person enters into a contract for the purpose of ascertaining—not being able to ascertain by actual inspection—whether his name is put there, by obtaining a certificate, and having a clause which states that the share register book shall be conclusive evidence of the truth, of whether a person is a shareholder or no. I am still on the assumption which I made of the state of the register book. Then the book, on the assumption upon which I now proceed, expressly states that Mr. Thew is the shareholder, in respect of these 200 shares; but the 158th section expressly states, this is to be conclusive between him and the company; and Mr. Thew is conclusively, therefore, as between him and the company, the shareholder in respect of these 200 shares which the company now say have never been transferred from the plaintiff. But is that the contract, which has been entered into between them? Is it possible that the shareholder can tell whether the board of directors have actually complied with all the provisions of the deed in their mode of keeping the share register book. This is not a clause that the share register book, provided it be kept in the manner and under the directions hereinbefore contained, shall be conclusive evidence between them; but it is an express statement that this share register book shall be conclusive evidence in respect of any shares on behalf of the company, to shew whether he is or not a shareholder in the company. Then that is conclusive evidence that Mr. Thew is at this moment, no alteration in the entry being made, a shareholder in the company. It is conclusive evidence that Mr. Miller is a shareholder in the company. But, then, can I allow the board of directors now to come forward, and say, "all the entries in that book were entirely fictitious; we kept them in a most irregular and improper manner; and although we may be very much to blame, and you may have an action or suit against us, yet the company who confided their interest to us are not liable, and we cannot be bound by an entry, which we or some unauthorized person has made in the share register-book." The answer which the plaintiff makes is, "you should have told me that that was the contract; that I was to be liable for any irregularity in the mode of keeping the books; but the contract I made was, that this book was to be conclusive evidence between us. I ascertained that the name had been entered in the book, and I received, or the person to whom I transferred the shares received, a certificate from the transfer clerk, that the transfer clerk had duly made the entry accordingly." Then that is conclusive evidence, and the plaintiff may well say, "I should never have entered into the contract, if that were not to be conclusive evidence, because I should, in case you had not consented to these shares being transferred, have proceeded on the other clause in the deed, which was for my protection, and enabled me, in any manner I thought fit, to get rid of the shares." The case, therefore, as it appears to me, makes it improper that the directors, or the board of directors—the company—can now be allowed to give evidence that those entries were not valid, and that this clause is to be wholly disregarded. It was suggested that the plaintiff might have adopted this course. Why did he not apply for the certificate under sect. 144, because that would have shewn the consent? But assuming that he had applied in the first place, it is to be observed, on the construction of that clause, that after Mr. Thew had received the certificate, that the transfer had been made, and that he was the shareholder in respect of those shares, the plaintiff could not have applied for them, because, as I read that section, it is only a person who is desirous to transfer—who is still a shareholder—who can apply for and obtain that certificate; and, therefore, when once the other party—the transferee—has obtained the certificate, they might properly have refused, and said, "You have nothing to do with the certificate." The certificate, when given, is to be deposited with the company. But how would he have been advanced, supposing he had applied for and obtained the certificate? The answer would have been, "It is true the certificate was given, but not by the board of directors; it was given by three directors, but they did not meet as a board, and the certificate does not advance you more than the 83rd section, which directs the certificate of transfer to be given by a board of directors; though you have entered into a contract which enables you to see that these things are done, if we dispense with them, we may make use of them just as we please for our own advantage." The only check on that is, that the share register book is to be conclusive evidence between the parties, and that that book bound the parties who made the entries therein, and that they shall not be permitted to say, "That is how I read that section; we, the board of directors, have not kept the book in the way we ought to have kept it, but we have allowed unauthorized persons to make entries therein by the simple individual authority of the different directors, and not by the authority of the board." I am of opinion, therefore, that on that part of the case, if it stood there alone,—the books being unaltered, and the book being produced in court without any alteration being made therein, and the name of Mr. Thew appearing as the holder of these shares, and not the name of the plaintiff; and the name of Mr. Miller appearing therein, and not the name of the plaintiff; and also the return from the Stamp Office appearing, not putting in the name of the plaintiff as a shareholder,—that they could not in that state of the case have said to the plaintiff, you are a shareholder and you are liable to make contribution as to these shares. Now I come to the next consideration. The books being produced do not so appear, but they appear with a special entry made therein that the transfer made to Mr. Thew was an invalid transfer, by reason of not having had the consent of the board of directors; and the same with respect to Mr. Miller. When was this entry made? It was made after a letter by Mr. Woods to the plaintiff, saying, "We contest the validity of this transfer,—we are going to contest it,—we are going to say that that shall not be allowed,—in fact, we are going to say this:—You are now a shareholder of the company;" and the plaintiff says, "I am not; I take issue upon that point." Then there is the lis mota, and after that the defendants alter the books for the purpose of introducing his name again in the books; and send a return to the Stamp Office with his name as a shareholder. But is that to benefit them? Is it probable that a banking company can in that point of view determine the question at issue between the plaintiff and them by their own act, because the cause was at issue between them the moment they wrote that letter to the plaintiff, or, in fact, the moment they determined to contest the transfer of the shares, for I do not think it very material if the alteration had been made with the view of asserting the fact of the plaintiff being a shareholder, even if it had taken place immediately before that letter. At what stage of the case are they to be allowed to do it? If they are to do it, then may they do it after they have put in their answer, after they have had consultation with counsel, after the case has been in the paper, after the cause has been heard, and before the appeal. I can see no period of time, if they might do it then, at which they might not do it up to the very time when the cause is heard, or between the actual decree and the next hearing. If they may do it, it is only saying they may alter the books for the purpose of suiting their own individual case, at their own individual pleasure. It is possible, undoubtedly, they may have the power to do that, and that that may be the contract entered into between the parties, but then I should require very strict proof that that is the contract between the parties. I called Mr. Lloyd's and Mr. Stevens's attention to that; and I must say that I must express my obligations to counsel for the great assistance which I have received in the discussion of this case; and the arguments on the part of the two banks have really cleared my mind very much as to the various points which have been made, and I do not think that it could have been more ably argued; but I put to Mr. Lloyd and Mr. Stevens, where is the authority for this alteration by the board of directors. Mr. Lloyd and Mr. Stevens both gave the same answer. They said, an express and distinct authority to make the alteration does not appear except from the 85th section, which states that the board of directors shall alone have power to make any entry, erasure, or alteration; which merely means, as was admitted, I think very properly, at the bar, that all the entries, erasures, and alterations to be made in the books must be made by the board of directors, and by no other person; and the section, which I think is the 156th, which states that every entry, erasure, or other alteration, which, upon the taking, purchase, or acquisition of any shares shall have been made, shall be conclusive on the last shareholder. Well, but it is clear that that confines the entry, erasure, and alteration, to the occasion of the taking, purchase, or acquisition of any shares, and that it is not intended by that clause to give the board of directors a power of transferring shares from one person to another, as they may think fit, at their own will and pleasure. It would require,

therefore, a very strong and distinct clause in the contract to be pointed out, empowering the board of directors to make such an alteration as this in the books of the bank, in the book containing the share-list, and was urged, I think, with propriety and truth, by Mr. Stevens, that it was incidental to their power, as directors, to make alterations for the purpose of preventing errors; that, for instance, supposing a person had been entered under a wrong name, such as Walter instead of William, or the like, they would have power to set that right, and I think that would be incidental to their office as a board of directors; but that does not extend to say that they may vary the rights between parties. Observe what the alteration in this book amounts to. Mr. Thew is the shareholder in the share register. The board of directors say, "We will make Mr. Shortridge the shareholder with respect to these shares." But can they put Mr. Thew or Mr. Shortridge in the same position they were in before there was a contract entered into for them, and before one had paid a large sum of money for them Assume that Mr. Thew says, "I insist on being a shareholder of the bank: I think it likely to be profitable, and I wish to receive the dividends." It is obvious that the fact that the bank is in a failing condition, and is not likely to pay dividends, cannot alter the question; but if they have the power to make these alterations they might, from their own will and pleasure, or from any motive they thought fit, not having made the entry in the first place according to the directions and the mode pointed out by the deed of settlement, afterwards alter it as they thought fit, for any motive whatever, in favour of any other person; and it is settled, as it appears t[illegible] by a variety of cases, that Mr Thew could not, in respect of this matter, have resisted the fact of being a contributory. He had, in fact, paid for the shares he had applied for, and got the certificate of being the holder of the shares; he had received the dividend on all the shares—on half of them direct from the company, and on the other half through Mr. Shortridge, the vendor; and Mr. Miller had received in the same mode as the latter, part of the shares and the dividends also; and both of them had acted at public meetings as being the owners of these shares. If it were the case of making a contributory under the Winding-up Act, could either Mr. Thew or Mr. Miller contend that they had not acquiesced in this, and had not thereby become contributories to this company? and if so, and Mr. Shortridge can be made a contributory also, you have double contributories with respect to the same shares. Nothing that I shall say—at least nothing that I mean to say—will in the slightest degree affect the validity of the case of *Bosanquet* v. *Shortridge*, which I consider to be perfectly good law; and nothing that I say will in the slightest degree affect *Morgan's* case in *Re the Vale of Neath Brewery*, which I also consider to be perfectly good law. It is a perfectly different question whether the contract entered into between the plaintiff and the company, is not such as at the time when this contract arose between them—that is, at the end of 1847—he had not ceased as between him and the company to be a shareholder of the company, and whether they by any act of theirs can make him a shareholder of the company subsequently to that period. I am of opinion that they cannot. I do not minutely examine the evidence with respect to several observations which have been made upon that part of the case; I rather put it upon the construction of the contract they have entered into, because, in my opinion, this is a case that must be tried by the contract, and the equities arising out of the contract which has been entered into between the plaintiff and the Union Bank. The conclusion which I come to on the first question is, that the plaintiff is not a shareholder of the company, and that the fact of their having put his name in it does not make him so; and, therefore, with respect to that I am prepared to make a declaration to that effect. Then comes the next question—but that really seems to me to require very little indeed to be said about it, for that this was the action of the Union Bank is manifest. The letters are conclusive upon the subject. It is a proposal by Mr. Watson, on behalf of the Union Bank, to Mr. Roy, on behalf of the London and Westminster Bank, to bring the action; and he says he will send him a list of their names. Now if I use the word "collusion," I do not at all use it in an invidious sense by any means whatever. It was a mode of endeavouring to enforce and establish the liability of the plaintiff to the Union Bank; but it was done at the request and at the instance of the Union Bank; and there was no concealment about it, and there was no concealment in their answer, or in the documents they have brought forward. They have come forward quite openly, to state exactly what the transactions were between them. The whole of the proceeding is a proceeding in which the London and Westminster Bank act by the desire of the Union Bank. They send them a list, - the London and Westminster Bank send to ask them whether they can usefully do it,—the fact being that at that time the name of Mr. Shortridge does not appear in the return to the Stamp Office. That is suggested by Mr. Roy; and that, in fact, disposes of an observation which I think Mr. Stevens made to me, that neither the share register book nor the Stamp Office return were at all necessary to enable the London and Westminster Bank to recover in the action; and that all that would have been necessary would have been to shew that Mr. Shortridge was an original shareholder in the concern. But I think there is this answer to that observation, that if the share register book had been unaltered by the Union Bank, and if the return to the Stamp Office had been what it was in October 1847, those being given in evidence would have rebutted the presumption to arise from the circumstance of Mr. Shortridge being the original owner; and we would have therefore thrown the burthen of proof on the persons contesting those entries to have shewn that Mr. Shortridge was to be considered to be a shareholder. But to return to the question, whether this was not the action of the Union Bank. It is throughout stated in every respect that it is their action; and there is only one single point in which it is contested. They say the money was paid to the London and Westminster Bank, and not to the Union Bank; that the Union Bank applied to receive the money to be recovered in this action, and that the London and Westminster Bank declined; and therefore you must try it by this test, that it is the action of the parties who recover the money. The money went to pay a debt of the Union Bank; and in what respect does it differ if it was paid to the Union Bank direct, or if it was paid to the creditor of the Union Bank, and thereby pro tanto discharged the liability of the Union Bank? It was, in fact, exactly i[illegible] ame way as an action instituted by the London and Westminster Bank, indemnified against all consequences and against all costs by the Union Bank, for the purpose of trying this question. The Union Bank got great advantages, no doubt, because they tried the question as if they stood in the place of a creditor; but, in my opinion, in this Court they cannot do so, but that they are parties bound by the equities upon which I have already expressed my opinion. The result is, that I entertain no doubt whatever but that this was, from the beginning to the end, the action of the Union Banking Company, brought by the London and Westminster Bank, at their desire, for their purposes, and in order to effect their object. The result is, that there must be a perpetual injunction to restrain the levying execution upon this judgment obtained at law; that Mr. Shortridge must pay the London and Westminster Bank their costs of the suit, and add them to his own costs, and have them over again against the Union Banking Company; and that the rest of the decree must be to the effect I have stated. A declaration that on the 28th of March, 1847, he ceased to be a shareholder of the Union Banking company, and let the Union Banking company be perpetually enjoined from placing or continuing the plaintiff's name on their share register, or returning his name to the Stamp Office, in respect of the shares in the bill mentioned, and from continuing his name in such return to them.

Some discussion then followed as to the costs of the action at law, and as to the question of a fraudulent purpose in Mr. Shortridge in selling his shares and getting rid of his liability; but the Court refused to give any direction as to the costs of the action at law, leaving the London and Westminster Bank to recover their costs under their indemnity; and as to the question of fraud in the sales, by Mr. Shortridge, the Court was of opinion that the allegation of fraud was not distinctly put in issue; and even if it had, there was no evidence to support it, or any thing to shew that the plaintiff knew, or had the means of knowing, that the concerns of the company were not in such a condition as to verify the truth of the report made by the directors at the general meeting on the 27th of july.

VICE-CHANCELLOR PARKER'S COURT.

Reported by Geo. S. Allnutt, Esq. of the Middle Temple, Barrister-at-Law.

Wednesday, Feb. 25.

Elvy v. Norwood.

Mortgagor and mortgagee—Arrears of interest.

A. B. in 1830, mortgaged land in fee and covenanted fo payment of principal and interest. A. B. died intestate, and his heir filed a bill to redeem. Held, that although the land was only charged with six years' arrears of interest the heir was, under the covenant, liable to twenty years' arrears, and that the mortgagee might, as against the heir, tack the liability upon the covenant.

This was a suit by the two sons and co-heirs, according to the custom of gavelkind, of the mortgagor, for the redemption of certain hereditaments in the county of Kent. By indentures of lease and release dated the 22nd and 23rd days of February, 1830, W. Elvy, in consideration of 100*l.* conveyed unto and to the use of the defendant, W. Norwood, and his heirs, the hereditaments in question, upon certain trusts in the indenture of release mentioned for securing the repayment of the said sum of 100*l.* and interest thereon at 5*l.* per cent. per annum, and upon trust to sell the same premises in case of default in such payments as therein mentioned; and the said indenture of release contained the usual covenant by W. Elvy for himself, his heirs, executors, and administrators, with the defendant, his heirs, executors, administrators, and assigns, for payment of the said principal money and interest. No part of the principal or interest was paid to the defendant. W. Elvy, the mortgagor, died in the year 1832 intestate, leaving a widow and two sons, who were his co-heirs according to the custom of gavelkind.

On the 25th of May, 1850, the present suit was instituted by the two sons, and a question arose as to the amount of interest to which the defendant was entitled.

Bird, for the plaintiffs, contended that only six years' arrears of interest could be recovered, and referred to the 3 & 4 Wm. 4, c. 27, s. 42, and the 3 & 4 Wm. 4, c. 42, s. 3. He also cited *Hughes* v. *Kelly*, 3 Dru. & War. 182; *Du Vigier* v. *Lee*, 2 Hare, 326; and *Hunter* v. *Nockolds*, 1 Mac. & G. 640.

Speed, for the defendant, referred to *Henry* v. *Smith*, 2 Dru. & War. 381; *Harrisson* v. *Duignan*, 2 Dru. & War. 295.

Bird, in reply.

The Vice-Chancellor said, that he did not think this case was decided by either of the cases which had been referred to. It was a mortgage which had been executed in February 1830, for the security of a principal sum and interest, with a covenant therein for payment of the interest. The mortgagor was since dead, and the present plaintiffs were his co-heirs, seeking to redeem that security. There was a long arrear of interest unpaid, and the question was as to the amount of interest which the plaintiffs were bound to pay; whether the arrears to be paid were to be limited to six years, or were to go beyond that period. Upon the construction of the 3 & 4 Wm. 4, c. 27, it had been decided that, as regarded the land, there was only a right to recover the arrears for six years. On the other hand, there was the other statute, 3 & 4 Wm. 4, c. 42, which left the personal liability on the covenant open for twenty years. The covenant in this case was one in which the heirs of the mortgagor were bound, and the present plaintiffs were his co-heirs, and were consequently bound by his covenant to the extent of the assets descended to them. The case, therefore, stood thus: as regarded the land, there was a mortgage security for only six years' arrears of interest, and the heirs, who were the persons interested in the land, were liable, by means of the covenant, to pay twenty years' arrears. Suppose that, instead of the covenant, the heir had been liable on a bond given by the mortgagor; by the settled course of this Court, the heir could not redeem the mortgage of his ancestor without submitting to pay all his obligation to the arrears secured by a specialty of the ancestor in which the heir was bound. So in the case of a collateral mortgage debt for which the ancestor had given a covenant, on the ancient authorities the mortgagee would have had a right to tack the special obligation against the heir. Beyond all doubt he could not tack a mere covenant against the ancestor, but having a covenant in which the heirs were bound he was right in tacking it against the heir. In deciding that the plaintiffs could not redeem, unless upon the terms of paying twenty years' arrears of interest, his Honor said that he was not deciding anything contrary to the cases of *Hughes* v. *Kelly* and *Hunter* v. *Nockolds*. Having here a covenant of this nature, and this being a suit to redeem the land, which was another security for the same debt, he considered that the Court had a right to tack these securities, and that, by so doing, the Court was acting in accordance with the view taken in *Du Vigier* v. *Lee*.

Monday, April 26.

Ware v. Polhill.

Land-tax—Rent-charge.

Decree that A. B. was entitled to an annuity to be charged on and issuing out of real estate, to the amount of the land-tax redeemed thereon, and that C. D. should execute proper deeds for securing the same:

Held to be a legal charge upon the estate.

In the suit of *Ware* v. *Polhill*, 11 Ves. 257, an order on further directions was made on the 17th of July, 1805, whereby it was declared that the plaintiff in that suit, as administratrix of N. Polhill, an infant, was entitled, as part of the deceased's personal estate, to four several annuities or rent-charges to be charged on and issuing out of the several estates, to the amount of the land-tax respectively redeemed thereon, the said annuities to be redeemable by any person or persons having or being entitled beneficially to any estate or interest

in succession, reversion, or expectancy, under the will of the testator in the cause; and the Master was directed to settle proper deeds for securing the annuities, which were to be executed by the tenant for life, and, upon his attaining twenty-one, by the tenant intail of the estates. Indentures of lease and release were, under this decree, executed by the tenants for life and in tail, but no recovery was suffered, and in 1828, upon the death of the tenant in tail, the legal charge upon the land ceased. The present suit was instituted by the administrator de bonis non of N. [illegible] Polhill [illegible] mainder [illegible] for the [illegible] decree against him, and obtaining an effectual security for the annuities upon the estates.

Glasse and *Ware* appeared for the plaintiff.

Willcock and *Bird* for the defendant, contended that the decree did not bind the land, and cited *Fox* v. *Crane*, 2 Vern. 306; *Lloyd* v. *Johnes*, 9 Ves. 55; *Giffard* v. *Hart*, 1 Sch. & Lef. 409; and *Cockburn* v. *Thompson*, 16 Ves. 321.

The VICE-CHANCELLOR said, that if the trustees who redeemed the land-tax had complied with the terms of the Act (38 Geo. 3, c. 60), there would under the Act have been a legal charge upon the estates; and Lord Eldon said (11 Ves. 283) that he would give the plaintiff a similar charge as nearly as he could. That could only be done by directing a proper conveyance. This was not properly carried into effect, and the rent-charge expired in 1828. But the land still remained bound by the effect of the decree. The defendant must pay the costs of the present suit, but the plaintiff must bear the expense of the necessary conveyance.

April 24 and *May* 1.

Re HORNER'S ESTATE.

5 & 6 *Wm.* 4, *c.* 69 —*Real estate.*

Stock in which purchase-money for land taken under the above Act was invested:

Held, to be real and not personal estate.

John Horner, by his will, devised certain real estate to Maria Horner, his daughter, for life, with remainder to other persons, and an ultimate remainder to the right heirs of Maria Horner. The testator died shortly after the date of his will. In 1839, under the provisions of the 5 & 6 Wm. 4, c. 69, part of the land devised was taken by the guardians of the West Ham Poor-law Union, and the purchase-money (800*l.*) was paid into the Court of Ex. This sum was afterwards, upon the petition of Maria Horner, the tenant for life, invested in the purchase of 880*l.* Three and a Quarter per Cent. Reduced Annuities, and it was ordered that the dividends thereon should be paid to Maria Horner during her life. In January 1852 Maria Horner died, having previously made her will. The present petition was presented by the heir-at-law of Maria Horner, and one of the questions raised was whether the 880*l.* stock was to be considered as real or personal estate.

Bristowe appeared for the petitioner, and contended that the stock was to be treated as real estate. He referred to the 1st and 2nd sections of the 5 & 6 Wm. 4, c. 69, and asked, upon the authority of the latter section, that the guardians of the union should pay the costs of the present petition.

Prendergast, for the executors of Maria Horner's will, referred to *Ex parte Flamank*, 1 Sim. N.S. 260, as an authority that the stock was personal estate.

The VICE-CHANCELLOR considered that the stock was money subject to be invested in the purchase of lands, and must be treated as real and not as personal estate. As to the costs, the Act gave the costs of one purchase, payment, or application; that had already been done when the money was invested, and therefore the costs of the present application must come out of the fund.

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. BENNET, Esq. of Lincoln's-inn, Barrister-at-Law.

June 2 *and* 3.

Re THE WINDING-UP ACTS and THE WOLVERHAMPTON, CHESTER, AND BIRKENHEAD RAILWAY COMPANY.

STOCK'S CASE.

Winding-up Acts—Contributory.

The rule established in Upfill's case (2 House of Lords cases, 674, and S. C. 15 Law T. 449), not to be extended.

Where, therefore, a person applied for shares, had signed a written assent to act as a provisional committeeman, had paid a deposit, and a sum of money in addition by way of contribution to the expenses, but had not accepted shares:

Held, not to be a contributory, and his name ordered to be taken off the list of contributories.

This came on by way of appeal from the decision of the Master (Brougham), who had placed the names of the legal personal representatives of the late Joseph Stock, esq. on the list of contributories to this company.

The name of the late Mr. Stocks was originally placed on the list of contributories by the Master, on the ground that he had signed a consent to act and take shares in the company, but on appeal the Vice-Chancellor ordered the name to be taken off the list "without prejudice to any application that might be made to the Master to restore his name, on further evidence than that originally before the said Master, and the Master was to be at liberty to [illegible] or rather his personal representatives, he having died in the interim, upon the list of contributories. The evidence before the Master was as follows:—1. A written consent signed by Mr. Stocks, dated the 1st of November, 1845, whereby he agreed "to be a provisional committeeman of the proposed company, and to take one or more share or shares in the proposed undertaking, upon such share or shares being allotted him." 2. A letter from the solicitor of the company to the provisional committeemen, accompanied by a letter of allotment of shares, as follows:—

Wolverhampton, Chester, and Birkenhead Junction Railway Company, 40, Upper Temple-street, Birmingham, Nov. 20, 1845.

Dear Sir,—By desire of the managing committee of the Wolverhampton, Chester, and Birkenhead Junction Railway Company, I beg to inform you for your satisfaction that the surveys are now completed, and will be lodged on or before the 30th November in the proper places, before going to Parliament. I have also the pleasure to state that arrangements have been made by the acting committee which render it more than probable that one of the competing lines will be withdrawn, leaving the field open to this company. Under these circumstances the acting committee request that each member of the provisional committee should at once take up the accompanying allotment of twenty-five shares, which the acting committee have already done. The remaining seventy-five shares allowed to the committee may be taken up at any time previous to the 12th January next. As the different provincial banks appointed by the company, with the exception of the Midland Banking Company in this town, have closed their accounts, you are requested to transmit a cheque to the said Midland Banking Company within six days from this date. —I am, &c."

Annexed to this letter was the letter of allotment, in the following words:—

"Wolverhampton, Chester, and Birkenhead Junction Railway Company (provisionally registered pursuant to 7 & 8 Vict. c. 110). Capital, 1,000,000*l.* in 50,000*l.* shares of 20*l.* each. Deposit, 2*l.* 2s. per share. Allotment No. —, 25 shares. Deposit, 52*l.* 10s."

"Birmingham, 20th Nov. 1845.

"Sir,—I am directed to inform you that the committee of management have, in compliance with your application, allotted to you twenty-five shares in this undertaking, and that the deposit of 2*l.* 2s. per share, amounting to the sum of 52*l.* 10s. must be paid to one of the undermentioned bankers, who upon receipt thereof will sign the voucher at the foot of the letter. This letter, with the banker's receipt, must be exchanged for scrip certificates, which will be granted upon your executing the subscribers' agreement and parliamentary contract, without which no person will be recognised as a subscriber or be entitled to any interest in the undertaking.—I am, &c."

Then followed a list of bankers, with a form of receipt. 3. An affidavit made by Mr. Smith, the company's solicitor, on the 19th November, 1851, to prove that on the 20th November, 1845, he, in accordance with a resolution of the acting committee, dated the 19th November, sent to the several persons, including the late Mr. Stocks, the letter and letter of allotment above set forth. 4. A resolution passed by the acting committee on the 26th December, 1845, of which the following is a copy:—"That a letter be written to the gentlemen acting as provisional committeemen, requiring them to pay 52*l.* 10s. being the amount of the deposit on twenty-five shares, by the 7th January, 1846." 5. A letter dated the 5th January, 1846, from the secretary to the provisional committeemen, as follows:—

"Wolverhampton, &c. Railway Company, January 5, 1846.

"Sir,—I am directed by the committee of management to inform you, that after mature deliberation they have come to the determination to suspend operations for the present, and to return to the shareholders the amount of their deposits, deducting a rateable proportion for expenses. The managing committee have also resolved that each member of the provisional committee be called upon to pay to the credit of the company, with the Birmingham and Midland Banking Company, on or before the 17th inst. the sum of 52*l.* 10s. in order that the engagements of the company may be met in an honourable manner. Of course you are aware that each member of the provisional committee is liable to the full extent of his property for the whole of the debts contracted by the company; and it is to avoid the possibility of any extreme measures being resorted to that this call is made, and the managing committee feel assured that you will see the necessity of responding to it immediately.—I am, &c.

"E. EDWARDS, Secretary."

6. A letter, dated the 21st January, 1846, also [illegible] structed me to call your attention to their previous request to pay the sum of 52*l.* 10s. being the deposit upon twenty-five shares. The committee have many claims upon them which they are unable to discharge without a fair contribution by the members of the provisional committee; and as legal proceedings will certainly immediately be taken for the recovery of the debts due, the acting committee have determined to allow the creditors to proceed, so as to make every member of the provisional direction pay equally with themselves. Unless the amount now claimed be paid on or before Tuesday, the 27th inst., you must incur the undivided responsibility of the several demands which, if once made against you, will not be interfered with by the executive of this company.—I am, &c.

"E. EDWARDS, Secretary."

8. A letter sent by the secretary as above, with a copy of a resolution passed that day:—

"February 19, 1846.

"Sir,—Annexed is a copy of the proceedings of this day. I should respectfully urge upon you the propriety of responding at once to the call made in Resolution No. 3. The accounts of the company may be inspected at this office by yourself, or any person you may depute.

"I have the honour, &c. &c."

(Copy resolution.)

At a meeting of the provisional committee of the Wolverhampton, Chester, and Birkenhead Junction Railway, convened by circular, and held at Dee's Royal Hotel, Birmingham, February 19, 1846, it was unanimously resolved—1. That all the acts and deeds of the managing committee be confirmed and adopted by this meeting. 2. That the sum of 12s. per share be retained from each share taken up, and that the balance of 30s. per share be returned to the shareholders at as early a period as possible. 3. That a call be now made upon each member of the provisional committee for an additional sum of 52*l.* 10s. making a gross sum of 105*l.* and that, on payment of the sum of 105*l.* or of the additional sum of 52*l.* 10s. as the case may be, to the Birmingham and Midland Bank, at Birmingham, on or before the 26th inst. the parties so contributing shall be protected from the claims of creditors. (Resolutions 4, 5, and 6 are not material to be here repeated.) 7. That a record of this day's proceedings be transmitted to each member of the provisional committee."

9. The payment of the additional sum of 52*l.* 10s. was proved to have been made by the late Mr. Stocks on the 11th of March, 1846. 10. A letter to the provisional committeemen from the secretary, with a copy of a report and resolutions as follow:—

"Wolverhampton, &c. Railway Company, July 10, 1846.

"Sir,—On the other side I send you a copy of the report and resolutions passed at the meeting to-day, accompanied by a statement of accounts, by which you will perceive that a large sum of money is still owing both to creditors and allottees. The members of the committee attending the meeting are exceedingly anxious to free the provisional committee and themselves from the liabilities and annoyances to which they are in common exposed, and they therefore respectfully request that the further subscription agreed to in the 2nd resolution be paid on or before the day mentioned to the Birmingham and Midland Bank at Birmingham. The accounts, books, and papers are at all times open for inspection, either by yourself or any person you may authorise for that purpose.

"I am, &c. "E. EDWARDS, Secretary."

"Wolverhampton, &c. &c. Railway Company.

"At a meeting of the provisional committee, convened by circular, and held at the office, No. 108, New-street, Birmingham, July 10, 1846, the following report was read:—'The acting committee regret to state that the neglect of many of the provisional committee to meet the call made upon them in February last, has entailed considerable loss upon the company, inasmuch as those creditors who, in the expectation of early payment, had consented to large reductions from their respective accounts, afterwards repudiated these agreements and brought actions for the full amount, thereby not only depriving the company of the discount agreed upon, but entailing additional expense in legal proceedings. If those of the committee who have not paid had promptly contributed the 105*l.* called for, it would have been sufficient to have discharged all the de-

mands upon the company; but as many of those are abroad, and others are in a state of comparative poverty, the executive cannot now hold out the hope that a sufficient sum can be procured from them to meet the remaining liabilities. The shareholders, acting under the authority given by the recent decisions in law, have threatened legal proceedings for the recovery of their deposits in full, and there is reason to suppose they will act upon their threats. Under these circumstances, the managing committee thought it advisable to call the provisional committee together, with a view to the adoption of such measures as may be thought expedient. They are of opinion that if a sum of money could be raised at once, to pay off the shareholders, the committee would, in many cases, be able to make terms which would be very advantageous to the company.' The following resolutions were then unanimously agreed to:—1st. That all the acts, deeds, and accounts of the managing committee be approved, confirmed, and adopted. 2nd. That a call be made upon each member of the provisional committee for a contribution of 60*l.* in addition to the 105*l.* already called for; and that a full statement of account be sent to each member with the circular announcing this resolution. 3rd. That the call be payable on or before Saturday, August 1, 1846.

11. It was also proved that the late Mr. Stock paid the additional sum of 60*l.* (making, with the previous payments, 165*l.*) on the 5th August, 1846. Mr. Stocks never attended any of the meetings of the provisional committee, nor did he act in any way in the matters of the company.

Under the circumstances above stated and proved the Master again decided that Mr. Stocks was a contributory, and placed the names of the administratrix and the administrators of that gentleman on the list of contributories. They now moved to have their names expunged from that list.

Follett and *Smythe* appeared in support of the application.

C. P. Cooper and *Roxburgh* opposed the motion on behalf of the official manager. The only question was, whether there was an implied acceptance of shares. There was no doubt that Mr. Stocks was a provisional committeeman, and having actually taken up and paid for shares, there could be no doubt as to his liability. The decisions were conflicting, but the principle laid down was, that shares taken up by a provisional committeeman was a sufficient fact to constitute liability. In *Dale's* case, 16 Jur. 207, that principle was particularly recognised. Upon the facts as they appeared it was distinctly shewn that the payment of 52*l.* 10*s.* was made in respect of twenty-five shares, and there was therefore in this case all the necessary elements. Added to these facts, there was the signature of the parliamentary contract and subscribers' agreement. Mr. Stocks paid, in fact, no less than three calls without any observation as to the purpose for which he paid it, and therefore leaving it quite open to be assumed, as it must be, that he had so paid those three sums in respect of shares allotted to him.

The cases cited were:—*Cottle's* case, 2 McN. & G. 185; 14 Jur. 703; 2 Ho. of Lords Cases; 15 Law T. 471; *Carmichael's* case, 17 Sim. 163; S.C. 16 Law T. 189; *Roberts's* case, 2 McN. & G. 192; *Sickell's* case, 1 Sim. N.S. 187; *Barber's* case, 15 Jur. 51; *Besley's* case, 3 McN. & G. 287; *Britain's* case, 1 Sim. N.S. 281; *Carrick's* case, 1 Sim. N.S. 505; *Tanner's* case, 16 Jur. 214; *Mainwaring's* case, 16 Jur. 263, 292.

JUDGMENT.

The VICE-CHANCELLOR said, the real question was whether the first payment of the deposit of the 52*l.* 10*s.* in respect of the twenty-five shares was an acceptance of those twenty-five shares. Now, it had been contended before him that the consent to act as the provisional committeeman, and the letter of allotment, irrespective of the payment of the deposit, was sufficient to charge the party so agreeing to act as provisional committeeman. But he could not go that length, as it would carry the decision in *Upfill's* case much beyond the limit within which the rule therein laid down ought to be confined. In *Upfill's* case, there was an actual allotment and actual acceptance of the allotment of the shares. Rightly or wrongly, the House of Lords held Upfill to be liable. But if he (the Vice-Chancellor) were to determine that this previous consent to act as provisional committeeman, followed by a letter of allotment were sufficient, he should be extending the principle of *Upfill's* case. Another reason was, the committee in the present case might have been bound to take 5,000 shares, or any indefinite number. But there was no allotment here, in the strict sense of the term. (He referred to the document of the 20th November, 1845.) This does not say that they have allotted, &c.; but they "*request* that each member should at once take up the accompanying allotment of twenty-five shares, which the *acting* committee have already done." This is communicated in a way very convenient: the secretary sends a form of allotment, as upon an application. This is not very irregular; but there was no harm in it. There was, therefore, no allotment. A second ground had been argued, viz. that the letter of Nov. 20, 1845, followed by the payment of the 52*l.* 10*s.* the deposit amount to an allotment and an acceptance of shares. But upon that he (the Vice-Chancellor) had come to a clear conclusion that it was not an acceptance of the shares. The letter did not purport that Mr. Stock was under an obligation to take these shares, nor does he pay the deposit or do any act of acceptance within the six days (the 7th January) limited by the letter; in fact he did not pay the 52*l.* 10*s.* till the 24th January, until after the letter of the 5th January, whereby he had been informed that the intended company had "suspended all further operations." Now, what was the position of Mr. Stocks on this 5th January, 1846. In the interval he had done nothing—nothing to lead to a conjecture that he meant to take up the shares—he was then informed the thing was abandoned, and the subsequent resolution was not that each member should be bound to accept twenty-five shares, but he was called upon "in order that the engagements of the company may be met in an honourable manner," the reason being that "of course he was aware that each member of the provisional committee is liable to the full extent of his property for the whole of the debts contracted by the company," &c. No answer was sent by Mr. Stocks to that letter of the 5th January. Now, as to that of the 21st January, Mr. Stocks had been informed that the project was at an end, and clearly up to this point he had not accepted any shares. It is not to be supposed that when he was told the company was at an end he agreed to accept shares, but the company insisting that he should pay a sum of 52*l.* 10*s.* which was a similar amount as the deposit, Mr. Stocks might have imagined that as a matter of justice, or as a matter of prudence, it would be advisable to pay the same as others had done; but can I say that he was then for the first time taking up twenty-five shares in this abandoned company? What he meant to do was to pay in honour or under a notion of justice. All this is still stronger as to the other payments made by Mr. Stocks; they were merely contributions towards satisfying what he was told were the demands against the abandoned undertaking. He (the Vice-Chancellor) was of opinion, therefore, that there was not sufficient ground to put the names of the representatives of Mr. Stocks upon the list of contributories.

Order to expunge the names accordingly.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

Thursday, May 27.

LOWE *v.* THE LONDON AND NORTH-WESTERN RAILWAY COMPANY.

Corporation—Railway Company—Assumpsit for use and occupation.

Assumpsit for use and occupation may be maintained against an incorporated railway company which has actually occupied the plaintiff's land by his permission, for unless it is proved by negative evidence that there was no contract made or signed by the directors according to sec. 90 of 8 Vict. c. 16, the Court will presume that there was such a contract.

Assumpsit for use and occupation, tried before Jervis, C.J. at Derby, when a verdict was found for the plaintiff. The principal question of fact at the trial was, whether the piece of land in question, which was situate by the side of the Rugby and Stamford Railway, in the parish of Morcott, in the county of Rutland, and had been taken for temporary use during the construction of the line, had been so taken by the contractor, or by the railway company. The cause had been tried three times. On the first trial the plaintiff was nonsuited; on the second the plaintiff obtained a verdict, but the case was sent down to a third trial in order that new matter might be submitted to the jury. During last term a rule nisi was obtained to enter a nonsuit on the ground that the action of assumpsit could not be maintained, or for a new trial, on the ground that the verdict was against the evidence. The learned judge reported that he was dissatisfied with the verdict; and the jury had included in the damages rent accruing since the action was commenced.

Wednesday, May 26. — *Miller*, Serjt. and *G. Hayes*, shewed cause.—This rule was obtained on two grounds: first, that use and occupation will not lie against this company for the occupation of the land, because there was no contract under seal, and, secondly, because the verdict was against the evidence. 1. Though the general rule is, that a corporation can only contract under seal, yet it may render itself liable without such contract both at common law and by 11 Geo. 2, c. 19, s. 14, on an implied obligation resulting, in this case, from the occupation of the land by the permission of the plaintiff. Here the law raises the legal obligation to pay for the enjoyment of the land. [Lord CAMPBELL, C.J.—Where the law raises the promise, it cannot be under seal.] In the *Dean and Chapter of Rochester* v. *Pierce*, 1 Camp. 466, it was held that an action for use and occupation might be maintained by a corporation aggregate, although there was no demise by deed; and the case of the corporation suing is stronger than that of being sued, for the occupation of the defendant was by *the permission* of the corporation plaintiffs, which was presumed, although there was no deed. And in *Finlay* v. *The Bristol and Exeter Railway Company*, 21 L.J. 117, Parke, B. expressed an opinion that use and occupation would lie against a corporation who had occupied. Besides, by the 8 Vict. c. 20, s. 32, railway companies are empowered to enter on lands adjoining a railway for certain purposes without any previous payment, tender, or deposit. A great number of cases were cited in support of the above argument, but which are collected in the recent case of *Finlay* v. *The Bristol and Exeter Railway Company*, 21 L.J. 117, Ex.

Thursday, May 27.—*Macaulay* and *Mellor*, in support of the rule.—1. This action cannot be maintained. The general principle, that corporations can only contract under seal, cannot be disputed; but it is subject to certain exceptions, which are well explained in *Church* v. *The Imperial Gas Company*, 6 Ad. & Ell. 861, and the *Mayor of Ludlow* v. *Charlton*, 6 Mee. & W. 822, and are there placed upon the ground of convenience, amounting almost to necessity. There are, indeed, some cases in which corporations have been permitted to sue in assumpsit for use and occupation (*The Dean and Chapter of Rochester* v. *Pierce*, 1 Camp. 466; *The Mayor of Stafford* v. *Till*, 4 Bing. 75); but in the case of *The Fishmongers' Company* v. *Robertson*, 5 Man. & G. 192, those cases are put upon a ground which will not apply to a similar action against a corporation, because it is said that the corporation, by suing upon the contract, would estop themselves by an admission on record that the contract was duly entered into on their part, so as to be obligatory upon themselves. [Lord CAMPBELL, C.J.—But if the corporation have actually occupied with the permission of the plaintiff, does not the law imply a promise to pay a reasonable compensation for that occupation?] The law only implies that promise by presuming a contract to pay; and no contract to pay, except under seal, can be presumed against a corporation. It is the incapacity of the corporation to contract by parole that creates the distinction; and the rule, though apparently technical, is founded upon very substantial reasons, as Rolfe, B. points out in *The Mayor of Ludlow* v. *Charlton*. It is clear that this question is not determined by the fact that the contract is executed, and that the corporation have received the benefit of the consideration; because, in the recent case of *Lamprell* v. *The Billericay Union*, 3 Exch. Rep. 283, the plaintiff failed to recover for work done by him, and accepted by the defendants on the very ground that there was no contract under seal; and there the Court refer to the case of *Sanders* v. *The St. Neots Union*, 8 Q.B. 810, as well as to *Paine* v. *The Strand Union*, Ib. 338, and *Arnold* v. *The Mayor of Poole*, 4 Man. & G. 860. [COLERIDGE, J.—But if it depended upon the capacity to contract, corporations could not sue for use and occupation any more than they would be liable to be sued. Lord CAMPBELL, C.J.—In *Finlay* v. *The Bristol and Exeter Railway Company*, 21 L.J. Ex. 117, Parke, B. expressed a clear opinion that assumpsit for use and occupation would lie against a corporation who had actually occupied.] In that case the corporation were held not to have actually occupied, and the judgment was in their favour on that ground; and all that is really said there is that a corporation may be liable for what they have actually occupied. [Lord CAMPBELL, C.J.—*Hall* v. *The Mayor of Swansea*, 5 Q.B. 526, is in accordance with that opinion.] That case was decided on the ground that it fell within the exception of cases of necessity, and that the corporation was there made liable for a wrongful act, and it was likened to *Yarborough* v. *The Bank of England*, 16 East. 6. [CROMPTON, J.—But no contract under seal was necessary in this case; because, by the Companies Clauses Act three directors might make a binding parole contract on behalf of the company; and why should we not presume that everything was regularly done?] It is not quite clear that three directors could make a contract of this description—that is, a contract for the temporary occupation of land; but the presumption of such a contract cannot be made in this case; because it was proved at the trial that whatever contract was made was made by an agent of the company by word of mouth. [Lord CAMPBELL, C.J.—Was any negative evidence given?] Only by shewing how the contract was made, not by calling the secretary or any of the directors to shew that in fact no contract was signed by them. In *Cope* v. *The Thames Haven*

Dock and Railway Company, 3 Exch. 841, the plaintiff was held not entitled to recover for his work and labour, on the ground that the contract was not under seal, and not executed with the formalities required by the clause in the special Act, enabling three directors to sign contracts on behalf of the company. They also referred to *Diggle* v. *The London and Blackwall Railway Company*, 5 Ex. Rep. 442; and to the *Copperminer's Company* v. *Fox*, 20 Law J. Q.B. 174. 2. Upon the facts the verdict was really perverse.

Lord CAMPBELL, C.J.—My opinion is, that this rule ought to be discharged. First, as to the question of law, it is contended that this action for use and occupation cannot be maintained against these defendants, they being a corporation aggregate. Now in arguing this question we must assume that the company did occupy and enjoy, with the permission of the plaintiff, the land in question; and according to decided cases a corporation may, as plaintiffs, maintain an action for use and occupation where the defendant has enjoyed the land with their permission. (*The Dean and Chapter of Rochester* v. *Pierce*; and *The Mayor of Stafford* v. *Till*.) But then is not the right reciprocal? The same objection may be started equally whether the corporation sues or is sued; but the question does not rest upon the reason of the thing, because in *Hall* v. *The Mayor of Swansea*, this Court held that an action for money had and received would be against a corporation, where a promise to pay was implied by law. It is said that Lord Denman put that as a case of necessity; but it was not otherwise a case of necessity unless the duty of the corporation to pay its debts was to be regarded as a species of moral necessity, and if so, the same necessity exists here. Then we ought also to pay great respect to the clear opinion expressed by my brother Parke in *Finlay* v. *The Bristol and Exeter Railway Company*, that the action for use and occupation may be maintained against a corporation where the corporation has actually used and enjoyed the land, although it was held that it would not lie, where there was no such actual occupation. But in the present case we are greatly relieved from any difficulty which might otherwise have been felt by finding that according to the Companies Clauses Consolidation Act the directors have power by parole to enter into such a contract as this for the occupation of land necessary for the purpose of the undertaking. As they had this power, and as they have occupied and enjoyed the land, why should we, for the sake of defeating the justice of the case, suppose that no parole contract by the directors was entered into. No negative evidence was given to shew that no such parole contract was made; it may have been made; and I think that it ought to be presumed from the fact of enjoyment. Therefore the technical objection fails; and, upon the merits of the case, I think we should not be justified in disturbing the verdict after three previous trials, unless it stood wholly unsupported by any evidence in the cause; otherwise we should be making the verdict that of the judges, and not that of the jury. Now, I cannot say that there was no evidence to sustain the verdict; and therefore I think that it ought to stand, the plaintiff remitting the excess.

COLERIDGE, ERLE, and CROMPTON, JJ. concurred.

Rule discharged, the plaintiff consenting to reduce the damages to 162l.

Wednesday, June 2.

HOWES *v.* BARBER.

Taxation of costs—Expenses of party as witness.

If a plaintiff, a seafaring man, is necessarily detained in England for the purpose of being examined as a witness on his own behalf, the Master, upon taxation, may in his discretion allow the plaintiff subsistence money, as he would in the case of another witness.

A rule had been obtained to review the Master's taxation herein. The plaintiff was a master mariner; who brought this action for wages, and from the service of the writ had been detained on shore, in order that he might be called as a witness on his own behalf at the trial. The plaintiff's employment to bring home the defendant's ship took place at Valparaiso; and it was sworn that if the plaintiff could not have been called it would have been necessary to send out a commission there. The Master had, under these circumstances, allowed the plaintiff 40l. as subsistence money from the issuing of the writ; and the question was, whether that allowance was right.

Saturday, May 8.—*Lush* shewed cause. There is no real distinction between the personal expenses of the plaintiff occasioned by the necessity for his appearance as a witness at the trial and those of any other witness. They are a part of the costs and charges by him expended in and about the suit. (*McAlpine* v. *Poles*, 1 Cr. & M. 795.)

Unthank, contrà.—The difference is this: that the plaintiff or defendant is attending to his own business; and has no more right to be paid for his trouble than he would for the trouble of conducting his own case throughout without the aid of attorney or counsel. *Cur. adv. vult.*

JUDGMENT.

Lord CAMPBELL, C.J.—In this case a question arose whether costs were to be allowed to a plaintiff, who was a witness for himself, in respect of being a witness. We are of opinion that the Master's taxation of costs in this case was proper. No doubt the practice of allowing costs to a successful party in respect of having been a witness for himself may lead to inconvenient consequences; but we do not think we can lay down a rule that such costs can never be allowed. A party is now, by law, permitted to be a witness; he may be a material and necessary witness, and his attendance may not only obtain justice for himself, but may lessen the expense which would otherwise fall upon the opposite party, by obviating the necessity of requiring the attendance of other witnesses, or the issuing of a commission to examine witnesses abroad, and the full payment must, therefore, be thrown on the wrong-doer. Again, if an undefended action is brought, and the evidence of the party suing is necessary, he is not indemnified, but his own expenses as a witness are not allowed. Here the plaintiff, the captain of a ship, had a demand against the owner for wages, and this he could only make out by his own evidence, or by sending out a commission to a distant country. Remaining in England for the purpose of being examined at the trial, the Master has made him the like allowance for maintenance, from the service of the writ till the day of the trial, which would be made to a third person as a witness under similar circumstances. *Berry* v. *Pratt*, 1 B. & C. 276, and other decisions, shew that to a third person so remaining in this country as a witness such an allowance would be proper; and the Legislature having been pleased to permit parties to be examined on their own behalf, we cannot say the expense of the successful party should not fall on the party who, by resisting a legal demand or making an unlawful one, has caused that necessity; and in the analogous case of an indictment removed by certiorari, if the prosecutor be a material witness, and has been examined, it has been usual to allow his expenses, though not by way of making compensation for loss of time. We must trust to the intelligence and the vigilance of the taxing officers to detect and to frustrate attempts that may be made to swell costs unnecessarily, under the pretext that the party is one of the material and necessary witnesses. The simple fact of parties being examined as witnesses must by no means be considered as sufficient to establish a claim for expenses as witnesses, and if it appear that their attendance be unnecessary, and the statements they give in evidence irrelevant to the conduct of the cause, their claim ought to be rejected. In the present case, the plaintiff seems to have acted with perfect good faith, and to have been necessarily detained in England that he might be a witness; therefore this rule, that the Master should review his taxation, must be discharged.

Knowles.—Does your lordship say anything as to the costs of the rule?

Lord CAMPBELL, C.J.—No. *Rule discharged.*

Monday, June 7.

REG. *v.* LILLS.

Certiorari—Indictment—Central Criminal Court—Middlesex Sessions.

By the central Criminal Court Act, 4 & 5 Wm. 4, c. 36, s. 16, an indictment may be removed into that Court from any Sessions within the jurisdiction of that Court by certiorari, or other process, by application to this Court:

Held, that this Court might make an order for the removal of an indictment for false pretences into the Central Criminal Court found at the Middlesex Sessions, although by the 7 & 8 Geo. 4, c. 29, s. 53, the certiorari was taken in cases of false pretences.

Doyle moved for a certiorari to remove an indictment for false pretences found against the defendant at the Middlesex Sessions. Two previous indictments had been removed, and the affidavits in this case were the same, and shewed that the indictment was founded upon the same facts as the other two.

Metcalfe, who appeared to shew cause in the first instance, suggested to the Court that by 7 & 8 Geo. 4, c. 29, s. 53, the certiorari was taken away in this case.

Doyle.—It is proposed now to remove the indictment into the Central Criminal Court, by the 4 & 5 Wm. 4, c. 36, s. 16 (the Central Criminal Court Act), which empowers the Court of Q. B. or any judge thereof, or any commissioner of oyer and terminer and gaol delivery under this Act, being a judge of any of the Superior Courts of Westminster, or any judge of the Court of Bankruptcy, or the Recorder of London, to issue any writ or writs of certiorari or other process to the justices of London, Westminster, Southwark, Middlesex, Essex, Kent, Surrey, or either of them, commanding them to certify and return into the Central Criminal Court indictments found before them, &c. And the indictment may then be removed from the Central Criminal Court into this Court, by a second writ of certiorari. (*Reg.* v. *O'Brien*, 19 L. J. 121, M C.)

Metcalfe.—The 4 & 5 Wm. 4, c. 36, s. 16, is general in its terms, and cannot overrule the express enactment of the 7 & 8 Geo. 4, c. 29, s. 53, that no such indictment shall be removed by certiorari. There is no express repeal of the latter statute, and if it was intended by the 4 & 5 Wm. 4, c. 36, s. 16, to repeal it, there would probably have been some words to that effect. And in the absence of such words, it is submitted that the operation of the 7 & 8 Geo. 4, c. 29, s. 53, taking away the certiorari, is left unaffected. Then assuming the power to remove, as suggested, this Court would never lend itself to a palpable and avowed evasion of a statute. Will the Court do indirectly that which a statute says shall not be done directly?

Doyle in reply.

Lord CAMPBELL, C.J.—Knowing what we do of the case, we should certainly wish that this indictment should follow the others. But there are difficulties suggested,—that the statute takes away the certiorari in indictments for false pretences, and that the Central Criminal Court Act does not override that enactment. No doubt the general rule is, that an express enactment like that in the 7 & 8 Geo. 4, c. 29, s. 53, shall not be overruled by a general enactment like that of the Central Criminal Court Act, without words shewing an intention to repeal or override it; but it seems to us that the Central Criminal Courts Act does not speak of a writ of certiorari strictly so called, but only of an order in the nature of such writ. By granting such order, therefore, we shall not be infringing the former Act; but we can go no further. We shall order the indictment to be removed to the Central Criminal Court, but we certainly shall not lend ourselves to evade an Act of Parliament, and therefore we give no countenance to any further step for bringing the indictment into this court.

COLERIDGE, J.—I also think that the Central Criminal Court Act speaks of an order, and not of the writ of certiorari, and that we may grant such an order to remove the indictment into the Central Criminal Court, but that is all that we can do.

ERLE and CROMPTON, JJ. concurred.

Order to remove to the Central Criminal Court.

Thursday, June 10.

REG. *v.* SCAIFE.

Practice—Writ of procedendo—Jurisdiction of judge at chambers.

Any judge of the Superior Courts of Common Law sitting at Chambers in vacation, has jurisdiction to grant a writ of procedendo, to send back an indictment removed by certiorari into the Q. B. from sessions.

This was an indictment for felony, which had been removed by certiorari into this Court, from the Hull Quarter Sessions. One trial had taken place at the York Assizes, and a new trial had been ordered; but after last Hilary Term the Lord Chief Baron at Chambers, upon the application of the prosecutors, without summons, granted a writ of procedendo; by virtue of which the record was carried back to the Hull Quarter Sessions, where the prisoners had been since convicted and sentenced.

Dearsley now moved for a rule to set aside the writ of procedendo, on the ground,—First, That the Lord Chief Baron had no jurisdiction to issue it. Secondly, That under the circumstances it ought not to have been issued. Upon the first point he cited Inst. 73; 1 Burr. 488; 4 Burr. 2456; stat. 6 Hen. 8, c. 6; 2 Chitt. Archb. 1432, and cases there collected; stats. 1 Wm. 4, c. 70, s. 4; 1 & 2 Vict. c. 45, s. 1.

Lord CAMPBELL, C.J.—I am of opinion that there is no ground for this application. It is admitted that there is for this purpose no distinction between a judge of this Court and a judge of any other of the Superior Courts of Common Law; and under the stat. 1 Vict. it is clear that a single judge of this Court sitting at Chambers, would have authority to issue a writ of procedendo; because it is according to the practice of this Court, as certified to us by the Masters, that a single judge should exercise that power; and in the stat. of Henry 8 there is nothing which requires that the application should be made exclusively to the full Court. The jurisdiction then being unquestionable, no ground has been laid for saying that it has not been properly exercised. It is said that the writ ought not to have been issued without a previous summons; but that is always a matter for the discretion of the judge.

COLERIDGE, ERLE, and CROMPTON, JJ. concurred. *Rule refused.*

Friday, June 11.

REG. *v.* LEGGATT.

Habeas corpus—Marital control of wife.

The *Attorney-General* (*Needham* with him) appeared to shew cause against a rule for a writ of

habeas corpus to issue to H. B. Leggatt, to require him to bring up the body of his mother to this court. The application was made on the part of Mr. Sandilands, the husband of the lady. There is a preliminary objection to this application. A habeas corpus is issued on the assumption that the party is improperly restrained, that something like imprisonment has taken place, and that the party is improperly detained against her will. It has been decided that no habeas corpus can be granted to bring up the body of a wife separated from her husband, and living apart from him of her own free will. In the case of *Reg.* v. *Wiseman*, 2 Sm. Rep. 617, which was a case of that kind, the Court decided that, in order to sustain the application, the affidavits must shew that the wife was detained against her will. The husband said that if he had the opportunity of conversing with his wife, he could induce her to return and live with him; but the Court held that that was not sufficient. In the present case it was shewn that the wife had separated herself from her husband and was living apart from him of her own free will and consent, and that she was freely residing in the house of her son, against whom this application was made. There was no case whatever where the writ had been granted, except where there was some restraint on the liberty of the wife. Whatever might be the other circumstances under which she had left him, this Court would not interfere to compel her to .. turn if she was not under any restraint. [Lord CAMPBELL, C.J.—At the time this case was moved the case of *Cochrane*, 8 Dowl. 630, was mentioned, and we were under the impression that it was an authority for doing what we are now asked to do.] That case, if it applied at all, was an authority against the husband. There the husband had by stratagem obtained possession of the person of his wife, and she being under his roof, an application was made for a habeas corpus; but the Court held that having possession of her person, he was entitled to restrain her liberty in a fair and proper manner till she consented to return to her conjugal duties, and the Court thought that in that case she was not improperly restrained. That case was entirely different from the present. Here she had left the husband's house voluntarily, and was of her own free will living in the house of her son. [Lord CAMPBELL.—Suppose she was brought up here by habeas corpus, we could only ask her what she wished to do, and leave her to pursue her own inclination.] Certainly that must be the course, and here the affidavit of the lady shewed most distinctly that the whole proceeding had been taken by her brother and her son with her consent and at her desire, in order to protect her against what she deemed the tyranny of her husband.

The *Solicitor-General* (*Raymond* with him) in support of the rule said, they were bound to say that there was no suggestion that the lady remained away from her husband under any restraint, or that any coercion was employed against her, so far as the affidavits could be relied on, and that she was acting of her own free will. But the question was, whether this Court would not issue a habeas corpus that she should, at all events, be brought before the Court in order that the Court might be satisfied that she was in truth acting with that entire free will which the affidavits intimated. He might admit, too, that he did not know any direct authority for the Court's interference where it was clear that there was no restraint. But he contended that the question of free will or restraint did not here arise. No such answer could be made where a father sought a writ to obtain custody of the person of his child. [Lord CAMPBELL, C.J.—There is a great difference between the two cases; between the case of an adult married woman, and a child of tender age. The latter could not give a consent.] The question here was, whether in the eye of the law a wife could be said to have a will of her own. There was *Mead's* case, 1 Burr. 542, which favoured his argument; and therefore he contended that the Court would have the lady brought up, in order to be assured that no restraint or improper influence had been exercised over her in order to make her swear this affidavit. But for the purpose of obtaining satisfaction on this point, he admitted that, as the affidavits now stood, this Court would decline to interfere, and would leave the matter for discussion in the Ecclesiastical Court.

Lord CAMPBELL, C.J.—The Court granted this rule with great reluctance. It was granted against the impression of every member of the Court; but we were strongly pressed with what was s[illegible] be a precedent; and as we have the great[illegible] in dealing with the invaluable wri[illegible] corpus, we thought it right to let the matter be discussed. The matter has now been discussed, and we think that the rule for the habeas corpus ought not to have been granted. The writ of habeas corpus is to be granted where a person has been improperly deprived of his liberty, in order that he may be restored to it. From the most ancient times, long before the Habeas Corpus Act of Charles II. it was well known in the Common Law that every person deprived of his liberty might be brought before the Court, and the reason of his being so deprived of it might be inquired into. But that was on the supposition that the party had been deprived of his liberty. Here it appears that the wife was living with her own free consent with her son. She is not under any restraint. Whether her husband, under such circumstances, has any remedy to recover possession of the custody of his wife, is not a question for us now to decide—it is a question altogether alieni fori. We have no jurisdiction in such a subject. It is only where a person has been improperly deprived of liberty that that person may by this Court be restored to it. If this writ could go, and the lady could be produced in court, she would be at liberty to return to her son and to live under his protection, and we could make no order on her to return to her husband. The constitution of this country has pointed out the proper tribunal where such a subject may be treated of and determined, and where it may be decided whether or not she has good cause for the separation, a matter on which we give no opinion. That question can be decided in the Ecclesiastical Court, and if that Court gives judgment against her, she must return and live with her husband; but here it is clear that we cannot impose such a restraint upon her. Reference has been made to the case of an infant; but that is totally different, for a father has a right to the custody of his child; and where there is no ground to impeach his title, this Court will order the child to be restored to him, if it is of tender years. But this Court has no power to order a wife to be restored to her husband; and this writ will, therefore, be wholly nugatory. We have no power to grant what has been applied for; and this rule, which ought not to have been granted, must be discharged.

COLERIDGE, J.—I am of the same opinion. I had no doubt on the argument, except on that point which the Solicitor-General raised, whether we should take as true the statement made in the affidavit, or should have the lady here, to be satisfied by her affirming those statements by her own mouth. If that question had been suggested by anything that appeared in the affidavits, if it had been suggested that she was under any restraint, that would have been a proper course to pursue; but as not merely her own affidavit asserts her perfect freedom from restraint; but as all the circumstances of the .. confirm the statement, we should be but directing a useless proceeding, if we ordered her to come up here.

ERLE and CROMPTON, JJ. concurred.

Rule discharged, with costs.

Saturday, June 12.

DOE *dem.* HOWSON *v.* ROE.

Ejectment — Writ of possession returnable immediately.

Stat. 3 & 4 Wm. 4, c. 67, s. 2 applies to the writ of possession in ejectment as well as to other writs of execution, and it may therefore be made returnable immediately after the execution thereof.

A rule had been obtained, calling upon the lessor of the plaintiff to shew cause why the writ of possession herein should not be set aside, and restitution made of the lands taken under it.

This action was brought in the early part of 1849, judgment obtained, and a writ of possession issued soon afterwards, but not executed till April 1852. The above rule was obtained on the ground that the writ had been made returnable immediately after the execution thereof, and also upon facts to which it is unnecessary to advert.

Bramwell and *Brewer* shewed cause.—The stat. 3 & 4 Wm. 4, c. 67, s. 2, applies in terms to all writs of execution; and the preamble to that section will also include the action of ejectment; but it is said that that Act and 2 Wm. 4, c. 39, are confined to writs in personal actions. There is, however, no ground for that contention. *Lewis* v. *Holmes*, 10 Q. B. 896, has no application to this case, though it was cited when this case was before a judge at chambers.

Petersdorff, contrà.—The general words of s. 2 are controlled by the language used in other parts of these statutes, which shew that they apply to personal actions only.

Lord CAMPBELL, C.J.—I think that there was no irregularity here. Sec. 2 of 3 & 4 Wm. 4, c. 67, has in the enacting part words large enough to embrace ejectments, because it in terms applies to "all writs of execution;" but can [illegible] passed in the second Year of the Reign, for Uniformity of Process in Personal Actions;" but then, under such a title there may well be a clause applying to the action of ejectment, and the preamble to sec. 2 is clearly sufficient to embrace that action. There seems, therefore, no ground for limiting the general words of sec. 2; and convenience certainly requires that all writs of execution should be included in it. We are informed that it is usual to make writs of fi. fa. for costs in ejectment returnable immediately; and if those writs may be made so returnable, so may the writ of habere facias possessionem.

COLERIDGE, ERLE, and CROMPTON, JJ. concurred. *Rule discharged with costs.*

BOSTOCK *v.* THE NORTH STAFFORDSHIRE RAILWAY COMPANY.

Costs—Discharge of jury—Consent of counsel.

If a judge, in consequence of the consent of counsel discharges a jury, who are unable to agree, earlier than he would without such consent, the party who succeeds upon the second trial is not on that account entitled to the costs of the first.

This was a rule to review the taxation of costs. The cause had been tried twice. Upon the first trial the jury, after remaining in deliberation one hour and twenty minutes, announced that they could not agree; whereupon the judge at first refused to discharge them, but afterwards did so by the consent of counsel on both sides. Upon the second trial the plaintiff obtained a verdict; and the Master had taxed the plaintiff his costs of both trials.

Welsby now shewed cause.—If the judge discharges the jury of his own authority, neither party has costs (*Seeley* v. *Powers*, 3 Dowl. 372; *Brown* v. *Clarke*, 12 M. & W. 25); but here it was done by consent of counsel. It was the same as if there had been no trial, and the case made a remanet; or as if a juror had been withdrawn. (*Harrison* v. *Bennett*, 1 Cr. & M. 203.)

Honeyman, contrà, was not heard.

Lord CAMPBELL, C.J.—If the judge, of his own authority, discharges the jury, there are no costs; and it would be highly inconvenient to make a distinction because the counsel do not require the jury to be kept together until the health of some of them should be in danger. If the counsel so consent, the judge still discharges the jury of his own authority; and the distinction suggested cannot be supported.

COLERIDGE, J. concurred.

ERLE, J.—I think it would be very pernicious to introduce any such distinction; but if the matter were res integra, I should be at a loss to know why in both cases, all the costs should not fall upon the losing party. *Rule absolute.*

BUSINESS OF THE WEEK.

Thursday, June 10.

JON[illegible] EVANS.—Trespass q. c. f. Plea, alle[illegible] right of way on foot and with horses and carriages. [illegible] and *Beavan* shewed cause against a rule for a new trial. *Lush*, *M. Lloyd*, and *Coxon* in support of the rule. The principal question was, whether the verdict should be entered distributively, according to Reg. Gen. H.T. 4 W. 4, the right of way on foot being admitted, but the right with carriages and cattle negatived by the verdict of the jury; but inasmuch as none of the trespasses proved would be justified by a mere right of footway, it was held clear that the rule did not apply; but at the suggestion of the Court the verdict was entered distributively upon the plea of not guilty—that is, as to the trespassing with carriages, guilty; as to trespassing on foot, not guilty. *Rule discharged.*

Re An Arbitration between the SHEFFIELD, &c. and GOOLE RAILWAY COMPANY *v.* SPENCER.—*Phipson* moved to set aside the award of the arbitrator, on the ground that he had improperly received evidence from one of the parties after the case was finally closed, and also that the award was uncertain, and did not dispose of all the matters referred. *Rule nisi.*

Re ——.—*Barstow* moved for a rule calling upon three attorneys to deliver up certain shares in a gas company, according to their undertaking. *Rule nisi.*

BETTS *v.* BETTS.—Case for the infringement of a patent. *J. Brown* moved for leave to amend the notice of objections herein. *Rule nisi.*

ROBINSON *v.* JONES.—This was an action founded upon s. 26 of stat. 8 & 9 Vict. c. 126, by the clerk to the visitors of the North Wales Lunatic Asylum, against the treasurer of the county of Merioneth, for payment of a sum of 28*l.* pursuant to the order of the committee. At the trial before Williams, J. at Chester, a verdict was found for the plaintiff, damages, 28*l.* It appeared, that upon the order of the committee of visitors there had been supplied to the North Wales Lunatic Asylum some new capstan pumps, which were required for the more convenient supply of water throughout that establishment; and that 28*l.* was the proportion payable by the county of Merioneth, and for payment of which an order had been made upon the defendant. It was objected that the committee had exceeded their authority in making the order, because the new capstan pumps were not "ordinary repairs" within the meaning of s. 26; and upon that objection a rule was obtained to reduce the damages to 40*s.* *Welsby* shewed cause. *E. Beavan*, contra. The COURT thought it too clear for argument that these were not "ordinary repairs." *Rule absolute.*

REG. *v.* LLOYD.—Mandamus commanding the justices of Merionethshire to make a county rate in order to pay a [illegible] pay to the treasurer of the asylu[illegible] Return (inter alia), that the justices had not made any rate for the purposes in the writ mentioned, and that a rate now made would be retrospective. Demurrer thereto. *Welsby* in support of the demurrer. *Willes* abandoned the return; but [illegible] it commanded the justices to make a rate, which they might in their discretion think unnecessary for the purpose of raising the money; and that the writ ought to have simply commanded the justices or the treasurer to pay the

QUEEN'S BENCH.

money. (He referred to ss. 33 & 34 of 8 & 9 Vict. c. 126; and *R.* v. *Ledgard*, 1 Q. B. Rep. 616.) Per curiam. There is nothing in the objection. *Judgment for the Crown.*

R. v. LLOYD.—The writ of mandamus mentioned in the last case, averred an agreement between four counties of North Wales to unite for the purpose of providing a common lunatic asylum, which agreement was traversed by the return; and issue being joined, the case went down for trial before Williams, J. at Chester, when a verdict was found for the Crown. At the trial the prosecutors offered in evidence an agreement in the form contained in schedule A. to stat. 8 & 9 Vict. c. 126, stamped with a 2s. 6d. stamp; it was objected that the stamp was insufficient, as the agreement contained more than 1,080 words; in answer to which it was said that the agreement required no stamp, because it was the mere adoption of a former agreement. It appeared that the other three counties of the union had entered into the statutory agreement two years before the time, when the county of Merioneth joined the union; and that original statutory agreement was stamped with a 1*l.* 15s. stamp. The Merioneth justices signed a separate paper instead of signing the original agreement: but it was contended no fresh stamp was necessary. *Welsby* and *Coxon* shewed cause against a rule for a new trial, which had been obtained on the ground of the misreception of evidence. They referred to *Peate* v. *Dicken*, 1 Cr M & R. 422. *Willes* and *Bearan* contrà. By the COURT.—In the case cited the two papers formed one agreement. Here the Merioneth justices were not parties to the original agreement; and the agreement produced at the trial was a new and separate agreement, requiring therefore a fresh stamp. *Rule absolute for new trial on payment of costs.*

BATEMAN v. BLUCK. *Part heard.*

Friday, June 11.

GLYNN v. WILSON and GLYNN v. ELLIOTT.—The *Solicitor-General* and *Willes* shewed cause against, and *Bramwell* and *Prentice* supported a rule nisi for inspection of documents. *Cur. adv. vult.*

REG. v. THE NEWPORT, ABERGAVENNY, AND HEREFORD RAILWAY COMPANY.—*Bramwell*, Sir *J. Phillips*, and *H. James* shewed cause against, and *Alexander* and *Whitmore* supported a rule nisi for a mandamus. *Rule discharged.*

REG. v. THE MANCHESTER AND SOUTHPORT RAILWAY COMPANY.—*Wilkins*, Serjt. and *Tomlinson* shewed cause, and the *Solicitor-General* and *Henderson* appeared to support a rule nisi for a mandamus. *Rule absolute.*

HOTTOCK v. THE NORTH STAFFORDSHIRE RAILWAY COMPANY.—*Bramwell* moved to review the taxation. *Rule nisi.*

BARNES v. MARSHALL.—To be reported.

Saturday, June 12.

REG. v. THE BOARD OF INLAND REVENUE.—*Phipson*, on behalf of the Manchester, Sheffield, and Lincolnshire Railway, shewed cause against a rule for a mandamus to the Board of Inland Revenue to pay to one Nash 700*l.* as the drawback on bricks, of which he claimed to be "maker" and "owner," within 13 Vict c. 9, s 2. *Broom*, contrà. The *Attorney-General*, *Watson*, and *Welsby*, appeared for the board.

Rule discharged, and rule made upon the Board to pay the railway company.

REG. v. THE VICAR, &c. OF HAMMERSMITH.—*C. Clark* and *Hance*, shewed cause against a rule for a mandamus to the vicar and churchwardens of Hammersmith, to summon a vestry to determine the application of certain funds arising from the sale of a part of Wormwood Scrubs to the Great Western Railway Company. The answer was, that a meeting had been held, at which ample opportunity was afforded to every parishioner to offer any proposition which he might think fit, and that the vestry, after two days' poll upon two propositions submitted to it, had decided the matter. *Pashley*, *Keane*, and *Lush*, contrà.—No opportunity was afforded at the proper time for moving a second amendment, i.e. after the poll had been taken upon the first, and a scrutiny of the poll was refused. (*Faulkner* v. *Elger*, 4 B. & C. 449.) By the COURT.—The sense of the vestry was fairly taken, and full opportunity given to bring forward every proposition. The poll was taken upon the only two which were proposed or thought of until after the decision of the vestry was announced; and a scrutiny by the presiding officer is not demandable as a matter of right.

Rule discharged with costs.

AMOTT v. HOLDEN.—The Court gave judgment in this case, the learned judges delivering their judgments seriatim, in consequence of a difference of opinion.

Rule discharged.

KENNET AND AVON CANAL COMPANY v. WITHERINGTON.—The judges for the same reason delivered seperate judgments in this case also. *Judgment for the plaintiffs.*

REG. v. ST. PANCRAS.—Sir *A. Cockburn* on behalf of the parish. *Keane* for the Poor-Law Board.

Rule absolute by consent.

REG. v. THE SOUTH WALES RAILWAY COMPANY.—The *Solicitor-General*, *Phipson*, and *Karslake* appeared to shew cause against a rule for a mandamus to complete a railway. The *Attorney-General*, *Watson*, and *Kingdon* contrà.

Rule enlarged to the fifth day of next Term; and if then made absolute, to stand as a rule of this Term.

REG. v. THE COMMISSIONERS OF THE LAND TAX.—The *Attorney-General*, *Solicitor-General*, and *Phinn* appeared to shew cause against a rule for a mandamus to the defendants to make an equal assessment. *Watson* and *Hall* contrà. *Rule absolute.*

BETTS v. BETTS. *Referred to arbitration.*

REG. v. THE ECCLESIASTICAL COMMISSIONERS.—Sir *A. Cockburn* moved for a rule for a mandamus to compel the defendants to hear and determine the claim of the vicar that they should make additional provision for the cure of souls in the vicarage of Elloughton, in the East Riding of Yorkshire, out of a sum of 9,800*l.* received by them from the sale of a reversionary interest in lands belonging to the vicarage. The commissioners had declined to consider the present wants of the parish in consequence of a general resolution adopted by them not to recognise local claims in such a case until the period arrived at which the purchase-money put out at interest would amount to a sum equal to the value of the fee-simple at the time of the sale. Stat. 3 & 4 Vict. c. 113, s. 67. *Rule nisi.*

REG. v. THE SADLERS' COMPANY.—The *Attorney-General* moved for a rule to restore a Mr. Dimsdale to the office of one of the assistants of the company, from which he had been removed on account of his bankruptcy. (*R.* v. *Liverpool*, 2 Burr. 723.) *Rule nisi.*

Re TYRWHITT.—*Phipson* moved for a rule for a mandamus to the judge of the County Court of Essex to proceed with the hearing of an insolvent's petition at his next court. *Rule refused.*

POCOCK v. PICKERING.—*Bramwell* and *Hall* shewed cause against a rule to rescind an order of the Lord Chief Baron setting aside a warrant of attorney and all subsequent proceedings. *H. C. Robinson* and *Lush*, contra.

Cur. adv. vult.

COMMON BENCH.

Tuesday, June 15.

COUNTY COURT APPEALS.

(Before WIGHTMAN and CROMPTON, JJ.)

KIRBY v. WILLIAMSON.—This was an appeal from the County Court of Durham in an action for money paid by the attorney of a proposed mortgagor against his client to recover a sum paid by him to the attorney of the proposed mortgagee for his professional services in connection with the negotiation for a mortgage, which had gone off. The plaintiff relied upon evidence of usage: and the case stated that it was proved to be the usual course for the mortgagee's attorney, under such circumstances, to charge the attorney who set him in motion; but the learned judge held, that the defendant could not be liable for money paid, whatever the usage was, and declined to leave any question to the jury. *Lush*, for the appellant. *Milward*, for the respondent. (*Strace* v. *Whittington*, 2 B. & C. 11; *Pratt* v. *Vizard*, 5 B. & Ad. 808, *Hallett* v. *Chamberlayne*, 12 Law T. 272; *Newton* v. *Chambers*, 1 D. & L. 869; *Bayliffe* v. *Butterworth*, 1 Ex 425, *Bayley* v. *Wilkins*, 7 C B. 886.) By the COURT.—This certainly was not a pure question of law, and the judge ought to have left it to the jury. *Lush* applied for costs. (*Stancliffe* v. *Clarke*, 21 L. J. 129, 135, Ex.) By the COURT.—The general rule that the successful party gets his costs is not inflexible; and we think he ought not to have them in this case.

Judgment reversed without costs, and new trial ordered.

SHILLIBEER v. SINCLAIR.—This was an appeal from the County Court of Middlesex in an action for taking the plaintiff's goods for arrears of assessed taxes. The question was, whether certain carriages of the plaintiff were liable to a duty of 6*l.* or of 3*l.*; but the plaintiff had given no notice of action, to which he was entitled. *Joyce*, for the appellant. *Motteram*, for the respondent.

Appeal dismissed with costs.

COURT OF COMMON BENCH.

Reported by DANIEL THOMAS EVANS and VAUGHAN WILLIAMS, Esqrs. Barristers-at-Law.

Tuesday, June 8.

SHOULBRIDGE v. CLARK.

Custom—Presumption—Vicars choral.

Where it is proved that it has been the practice for a long series of years for the vicars choral of a cathedral during their year of probation to be excluded from a share in some of the emoluments of their office, and it can be gathered from the documents in existence that some person had the power of regulating the manner in which the vicars choral were to be maintained, it will be presumed that some regulation was made, out of which the practice originated.

In this case a verdict had been taken for the plaintiff, subject to the opinion of this Court, upon a special case. The question raised was, whether a vicar choral of St. Paul's Cathedral was entitled, during his year of probation, to share in a sum of 1,100*l.* paid by a lessee on the renewal of a lease for a term of years theretofore customarily granted, of an estate at Steeple Bumstead, in Essex, by the dean and chapter and vicars choral of the said cathedral of St. Paul's, London. During the plaintiff's year of probation, the lease of a farm at Steeple Bumstead fell in, and was renewed, on payment of the usual fine, which was divided among the other five vicars. The plaintiff now claimed one-sixth of the 1,100*l.* the amount of the fine, the defendant being one of the vicars choral, and the pittansary, an officer appointed by the vicars, and whose duty it was to receive the money and pay it over to the persons entitled. The emoluments of the vicars choral were derived from annual rents and fines on renewal. In addition to the main question in the cause, it was also contended at the trial, that even if this should be decided against the defendant, still he would only be answerable for that part of the plaintiff's share which he had received for himself, that is, one-fifth of one-sixth of 1,100*l.* It appeared from the entries in the books that from the year 1660 to 1755 the leases had been granted by the vicars choral, including the probationers, although some doubt was attempted to be thrown upon this arising out of its not clearly appearing whether in the dates the old or new style had been used. Since the year 1750 the probationers had not joined in the leases or shared in the fines. Many of the books and documents had been burnt in the fire of London, and it appeared that for some time the vicars choral had lived in houses set apart for them rent free, but that afterwards these premises were let on lease to other parties, and the vicars received the rents. It also appeared that in some old documents that mention was made of the bishop having power to regulate the maintenance and stipends of the vicars choral.

Manning, Serjt. (with whom was *Sumner*) argued on the part of the plaintiff that the custom of excluding the vicars choral during their year of probation from all participation in the profits arising from fines on the renewal of leases was bad, and not supported by the evidence, it having only existed since 1750; and that in the face of the evidence which shewed that prior to that time the probationers joined in the leases (it being presumed that those who joined in the leases would share in the fines; and there being some evidence that they did), the fact of their being excluded for the last 100 years was not sufficient to support a custom in variance with what appeared to have been the practice before. The probationers were entitled to the fines, for the vicars choral, including the probationers, at one time lived in some of the houses, and it was only upon their being burnt down that the premises were leased. The probationers were entitled to and did receive their share of the rents of the premises, and fines are not distinguishable from rent, being part of the annual profits. (*Taylor and Horn*, 1 Burrow, 121.)

Sir *A. Cockburn* contrà.—There are three questions to be disposed of,—1st, Does the custom in question exist; 2ndly, Is it good; 3rdly, If these points are decided in favour of the plaintiff, is he entitled to recover. Since the year 1756 it must be admitted that the probationers have not shared in the fines. Up to that time, partly from the loss of documents and partly from their obscurity, everything is in doubt, and we contend that the uninterrupted course of practice which has existed since must be taken to throw light upon the practice which existed before, and which by itself is ambiguous. The probationer is not to be admitted full vicar choral unless, during his year of probation, he is found habilis. There might, therefore, be very good ground for not giving the probationers during that year a full share in the emoluments of the office. We find that the probationers had a sufficiency for their support, independently of the fines, sharing in the common table and other smaller emoluments, it being borne in mind that in former times the fines were the principal profits in ecclesiastical leases. The two first points must, therefore, be decided in favour of the defendant. As to the third, the practice is for Mr. Hudson, the chapter's clerk, to receive the amount of the fines and hand it over, not to the pittansary, but to the person who acts for the vicars choral, for the purpose of its being distributed. It therefore never comes to the defendant, and he cannot, under any circumstances, be liable for the whole amount claimed.

Manning, Serjt. was heard in reply.

The COURT were of opinion, looking at some of the old documents, that those to whom the regulating of the vicars choral was intrusted were empowered to made provisions as to how and in what proportions they should be paid. No document had been found shewing that any regulation had been made, but it appearing in the special case that a course of practice had existed for at least 100 years, according to which the vicars choral, during their year of probation, were excluded from the number of those who executed the leases or shared in the fines, they ought to infer from that that some such regulation had been made, and that, although no document shewing that such regulation had been made could now be found, that the practice had originated in such a regulation; that there was nothing unreasonable in such a practice, the probationers being maintained in competence during their year of trial; and that therefore, upon the two first grounds, it being unnecessary to consider the third, the defendant was entitled to their judgment.

Saturday, June 12.

Re SCALES and WIFE.

Completion of fines under 5 & 6 Wm. 4, c. 82. s. 3. The Court will not now direct the officer of the court to complete a fine, unless the state of the property and the consent of parties be shewn.

—— moved that the officer of the court should be directed to complete a fine. The fine in question had passed the King's Silver Office in 1832, but had not been entered and enrolled in consequence of the deed being lost. It had now been found, and the Court was asked to direct the officer to enrol it according to 5 & 6 Wm. 4, c. 82, s. 3, which directs that where proceedings have been commenced prior to the Act abolishing fines and recoveries, they should be completed by the officer of the Court of C. P. [JERVIS, C.J.—Have you any authority to shew that the officer has been directed to do what you ask so long after?] I can find none.

JERVIS, C.J.—The difficulty is, that if we were to grant a rule it would be absolute, there being no one to shew cause. There may have been dealings with the property since, and as the fine would operate from the date of it, you ought to shew the state of the property and the consent of the parties who would be barred.

Rule refused, with leave to move again.

LOTT v. BOOTH.

Where there is a pretended sale of goods between two persons, but a secret understanding between them that what appears on the instrument is not

to operate as a sale, and the pretended vendee afterwards gets possession of the goods for another purpose, that is not a delivery in pursuance of the contract, and the property does not pass. A being indebted, receives an advance of money from B. on the security of her goods. To prevent the goods being seized by the landlord, A. signs a paper, which on the face of it is a sale to B. The goods are afterwards delivered to him to keep for A. B. sells them:

Held, that he is liable to A. for their value in an action of trover.

The plaintiff was a young lady, who had taken a house, and furnished it for the purpose of keeping a school. She afterwards fell into ill health, and becoming indebted for her rent, received an advance of money from the defendant, a furniture-broker, to whom she executed an instrument purporting to be a sale of her furniture; and another memorandum was signed, which purported to be a hiring of the furniture by her from the defendant at 3s. per week. It appeared in the evidence, that at the time of this transaction the plaintiff was an infant, and that she had not, since attaining her majority, done anything to ratify the contract; and also that the pretended sale was executed for the purpose of protecting the goods against any subsequent claim on the part of the landlord, and that the 3s. per week was to be paid, not for the use of the furniture, but as interest for the money. The plaintiff afterwards gave up the house in which the furniture was, and took lodgings, that she might look out for another house, and all her furniture, including what was set down in the schedule attached to the pretended memorandum of sale, was delivered to the defendant to keep for her. He thereupon sold it without giving the plaintiff any notice of his intending to do so. She brought an action of trover against him, in which she recovered a verdict for 102*l.* 4s. 3d. the value of all the goods less the amount advanced by the broker with interest. A rule nisi had been obtained by Hawkins to reduce the verdict by 80*l.* the value of the goods contained in the schedule.

Byles, Serjt. now shewed cause; and after stating the facts, contended that the verdict was supported by the evidence, and that the jury having found that no real sale was intended, and that there was a secret understanding between the parties to that effect, no property in the goods passed to the defendant, and that he was liable in an action of trover. [JERVIS, C.J.—We granted the rule on the ground that there might have been a misdirection, if the learned judges had directed the jury that the contract was void in consequence of the plaintiff being at the time an infant, inasmuch as the plaintiff might have had an authority from her by reason of something that happened afterwards. What you now state as found by the jury would make it no sale as between adults.]

The COURT then called on *Raymond*, who contended that the question was, whether there being a sale and delivery, with a secret understanding the property really passed, and that if it did the plaintiff's remedy, if any, would not be by an action of trover. And that assuming that the property passed, the contract by the infant was not void but voidable, and that nothing had been done to avoid it.

The COURT were of opinion that the finding of the jury did not warrant the raising of the point on which the rule had been granted. That the delivery of the goods to the defendant was not in pursuance of the sale, whether a good contract or not, but for another purpose, namely, that the plaintiff might afterwards get them back, and that, therefore, the property did not pass.

Rule discharged.

DALTON *v.* THE MIDLAND RAILWAY COMPANY.

Interpleader—Forged transfer of shares.

Where a company has registered what is alleged to be a forged transfer of shares, and an action is brought against it by the original shareholder for dividends, and another is threatened by the alleged transferee, the Court will not grant an interpleader.

Wandsworth shewed cause against a rule nisi, which had been obtained by Bovil for an interpleader. The plaintiff had been duly registered a shareholder; some time afterwards a transfer of the same shares had been registered, and this transfer was alleged to have been forged. The company asked that the two claimants of the dividends on the shares should try the question between themselves. It was contended that the Act only applied to cases of mere shareholders, and not where the party seeking the interpleader is in one event liable on a contract, and therefore interested. (*James* v. *Prichard*, 7 M. & W. 216; and *Palauni* v. *Campbel*, 12 M. & W. 277; and *Turner* v. *The Corporation of* 13 M. & W. 171, were cited.)

Gray appeared for the other claimant.

Bovil was heard in support of the rule.

MAULE, J.—If the transfer is not forged, the company has a defence to the action; if it is, it has been negligently registered, and the company is answerable, not having employed a proper secretary.

CRESSWELL, J.—The dock company cases are not in favour of the defendants, for there the dispute does not arise out of the act of the company; here it does.

Rule discharged, with costs.

EDWARDS and ANOTHER, Assignees, *v.* THE GREAT WESTERN RAILWAY COMPANY.

Costs—Preparing notice of trial—A plaintiff is not to be allowed the costs of acquiring the information required for giving notice of trial, that being, in fact, the getting up of the plaintiff's case.

The Master had allowed 300*l.* as costs for the notice of trial, that is to say, 100*l.* for preparing the notice, 170*l.* for a fair copy, and 30*l.* for paper, printing, &c.

Channell, Serjt. had obtained a rule calling on the Master to review his taxation, 1st, on the ground that the notice was unnecessarily long; and, 2ndly on the ground that in the 100*l.* costs had been given for what was, in fact, the getting up of the plaintiff's case.

J. Brown shewed cause, 1st, the notice is not longer than was necessary; if it had been shorter, it would have been objected to as insufficient. (The Court expressed themselves as satisfied upon that point.) As to the 2nd point, it had cost the plaintiff much more than 300*l.* to give this notice of trial, and he ought to be allowed for the labour necessary to be gone through in preparing it. Costs ought to be looked upon as a kind of damages, and an indemnity to the plaintiff.

Channell, Serjt. in support of the rule.

JERVIS, C.J.—I lay it down as a principle that nothing is to be allowed for obtaining the information communicated in the notice of trial.

Rule absolute to review the taxation as to the 100l.

BUSINESS OF THE WEEK.

Thursday, June 10.

LEVERSON *v.* JOSEPH.—On the motion of *Brewer*, distringas to compel appearance granted. *Rule absolute.*

HENRY and OTHERS *v.* WESTRUP.—No cause shewn *Wells* moved for judgment against a casual ejector.

Rule absolute.

The Court rose at fifty minutes past ten.

Friday, June 11.

ANONYMOUS.—*Windsor* moved for a rule absolute to compute; the affixing the rule on defendant's last residence to be taken as sufficient service. *Granted.*

—— *v.* MILLS.—*Bowen* moved on amended affidavits for distringas to compel an appearance. Search was made yesterday. *Rule granted.*

ANONYMOUS.—*Needham* moved for a distringas to compel an appearance. The calls and appointments required had been duly made. *Rule granted.*

LOTT *v.* BOOTH.—*Edwin James*, Q.C. moved herein for a rule calling on the plaintiff to shew cause why the damages in this case should not be reduced by 80*l.* The COURT referred to Williams, J. who tried the cause, and ultimately granted a *Rule nisi.*

WINCH *v.* WILLIAMS.—*Birnie* shewed cause against a rule obtained by Byles, Serjt. why the verdict for the plaintiff should not be set aside and a verdict entered for the defendant, or why a nonsuit should not be entered. He took a preliminary objection, that the addition of a deponent's address was not made to his name in the affidavit on which the rule was moved. (The case will be duly reported.) *Rule discharged.*

DOE *dem.* FIELD *v.* MASON.—*Hawkins* shewed cause against a rule obtained by *Wroth*, why judgment against the casual ejector, and execution signed thereon, should not be set aside, and the costs taxed in this cause as between party and party. He objected that there was in this case no affidavit by Mason the defendant, that he never had knowledge of judgment having been signed in this cause. All that there was to satisfy the Court on that point was an affidavit of an attorney's clerk, who swore that he believed that the defendant never had notice that judgment was signed. [JERVIS, C.J.—The fact is, you want to have two actions instead of one: you commenced a second action for mesne profits, and the object of the rule was to deprive the plaintiff of that.] The affidavit of plaintiff negatives a desire to have two actions instead of one. The action for mesne profits was not begun merely for the sake of costs, as has been alleged, but for the value of the premises during the term wherein the defendant held over. [JERVIS, C.J.—The defendant is willing to pay the costs, and that ought to be sufficient. Let the Master inquire into and decide the question of costs, and whether the action for mesne profits is unnecessary. Let the matter be referred generally to the Master.

Referred to the Master.

COZENS *v.* GRAHAM.—*Hawkins*, for the defendant, shewed cause against a rule obtained by *Quain* to set aside a nonsuit, and for a new trial. It was an action for debt upon an attorney's bill, to which the defendant pleaded No signed bill delivered. The cause was tried before the Under-Sheriff of Middlesex. There was an objection that the plaintiff was nonsuited, as appeared by a note of the Sheriff, "by misapprehension and against his will." This, however, was waived, and the case argued on the point whether the letters which passed between plaintiff and defendant were sufficient evidence that a signed bill had been delivered so as to satisfy the statute. The case will be duly reported.

Rule absolute, to enter verdict for 2l. 3s. 8d. No costs to be allowed which would not have been paid if a new trial were granted.

Saturday, June 12.

CANNON *v.* REMINGTON.—*Hill*, Q.C. and *Unthank*, shewed cause against a rule which had been obtained by *Spinks* for a review of the taxation of costs. *Spinks* and *Willes* were heard in support of the rule.

Cur. adv. vult. to be reported.

DOE *dem.* ROBERTON and OTHERS *v.* GARDINER.—Jervis, C.J. delivered the judgment of the Court in favour of the lessor of the plaintiffs. *Clark* moved for judgment against the casual ejector. There had been a service on the servant, and the son of the defendant had afterwards said that the defendant had had it. *Rule to show cause.*

MINCHENER *v.* MARTIN.—*Byles*, Serjt. shewed cause, and stated that there was a technical omission in the affidavits on which the rule had been obtained.

Rule discharged, with costs.

WILLIAMS *v.* BUTLER. *Rule to compute made absolute.*

STEADMAN *v.* CHAPPELL.—No cause being shewn, *Powell* moved to make *Rule absolute.*

ANDERSON and ANOTHER *v.* HEYWOOD and ANOTHER.—*Bramwell* shewed cause against a rule obtained by *Bovill* for the payment by the plaintiffs of the costs of a mandamus to examine witnesses in India. It appeared that the defendants had asked the plaintiffs to admit what they wished to prove by means of the mandamus. This the plaintiffs had refused to do, and the defendants came to the Court for a mandamus, which was issued, but did not prove what they wished to be admitted. It appeared that the defendants might have ascertained this, by sending out a letter to India, in time for the trial.

Rule discharged.

HAINES *v.* PAYNE.—*Duncombe* moved for a rule *nisi* for a new trial, on the ground that the case had been called on during the temporary absence of the counsel and attorney. The case had been called on in the inconvenient court appropriated to the trial of causes at Nisi Prius in this court, at the top of the tower. The attorney had gone into Westminster-hall to look after his witnesses, and the counsel had left the court for not more than ten minutes to speak to the attorney respecting the cause. If the court had been fit for the purpose to which it was applied, this would not have happened, as there would have been room for witnesses either in court or close at hand. The Court expressed their strong disapprobation of the present Nisi Prius court, and granted a

Rule nisi, with stay of proceedings.

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY, and C. J. B. HERTSLET, Esqrs. Barristers-at-Law.

Monday, April 26.

CANNAN and ANOTHER, Assignees, *v.* THE SOUTH-EASTERN RAILWAY COMPANY.

Trover by assignees—Notice of act of bankruptcy. A party previous to his bankruptcy deposited a quantity of timber on the wharf of defendants to be kept by them for him and redelivered on the payment of the wharfage; subsequently, on the 7th Feb. 1848, a fiat in bankruptcy issued against him; on the 9th Feb. 1848, an official assignee was appointed; 13th Feb. 1849, the adjudication was published in the Gazette: and on the 23rd Feb. 1849, the creditor's assignee was appointed; between Sept. 1848 and Jan. 1849 the defendants, at the request of the bankrupt, delivered the timber to a purchaser thereof from the bankrupt, without notice of fiat, adjudication, or act of bankruptcy to the defendants:

Held, that they were not liable in an action of trover by the assignees for the value of the timber, but were protected by the 6 Geo. 4, c. 16, s. 84; also, that the issuing of a fiat in bankruptcy is not ipso facto notice to all the world of its issuing, nor on the same footing as was the old commission in bankruptcy.

This was a special case stated for the opinion of this Court; it was argued on the 11th June, 1851, but the Court, entertaining some doubt upon a point in the case not argued, it was this day again discussed. It appeared that a fiat in bankruptcy issued against one John Nash on the 7th Feb. 1848; on the 9th Feb. 1848, Cannan was appointed official assignee; on the 13th Feb. 1849, the adjudication was published in the *Gazette*; and on the 23rd Feb. 1849, the creditors' assignee was appointed. The bankrupt Nash, before the date of the fiat and before the act of bankruptcy, deposited with the defendants, who were owners of a wharf, a quantity of timber to be kept at the wharf by them, and delivered on payment of the wharfage; after the fiat, the bankrupt, without the knowledge of the official assignee, sold the timber, and between Sept. 1848 and Jan. 1849, it was delivered by the defendants to the purchasers at the request of the bankrupt without any notice to the defendants of the fiat, adjudication, or act of bankruptcy. The acts of conversion complained of were the delivery of the timber after the appointment of the official assignee, the property being then vested in him, and before the appointment of the creditors' or trade assignee, and the question for the opinion of the Court was whether the plaintiffs were entitled to recover the value of the timber from the defendants.

Willes appeared for the plaintiffs.

Hoggins, Q.C. for the defendants.

Cur. adv. vult.

Friday, May 7.—PARKE, B. delivered judgment.—This was an action of trover, brought to recover the value of a quantity of timber deposited with the defendants. The declaration alleged that the plaintiffs were possessed of the timber as assignees of John Nash, a bankrupt. The pleas were, Not guilty, and Not possessed. The facts were, by consent, stated for the opinion of the Court on a special case, and were as follow:—The

defendants were owners of a wharf, and the bankrupt, before the date of the fiat, which it must be understood was before the act of bankruptcy, deposited the timber with them to be kept at the wharf, and delivered on payment of the wharfage; on the 7th of February, 1848, a fiat in bankruptcy duly issued against Nash, and he was duly adjudged a bankrupt, and the plaintiff Cannan appointed official assignee. On the 13th of February, 1849, the adjudication was, for the first time, notified in the *Gazette*, and the other plaintiffs were afterwards appointed trade assignees. After the issuing of the fiat, the bankrupt, without the consent or knowledge of the official assignee, sold the timber, and between the 11th of September, 1848, and the 15th of January, 1849, it was delivered by the defendants to the purchasers on a delivery order given by the bankrupt to them. The defendants had no notice of the fiat or adjudication, nor, as it must be understood, of the act of bankruptcy. The question for the opinion of the Court was, whether the plaintiffs were entitled to recover the value of the timber from the defendants. For the plaintiffs it was argued that by the operation of the bankrupt laws in force at the time when these transactions took place, the property in the timber vested in all the assignees by relation from the time of the act of bankruptcy, and that the delivery by the defendant to the purchaser from the bankrupt was a conversion of the property. The cases of *Cooper* v. *Chitty*, 1 Bur. 20; *Maggs* v. *Howell*, 9 Bing. 471; *Garland* v. *Carlisle*, 9 M. & W. 152, and 4 Bing. N.C. 7, were cited, which conclusively shew that from the time of the act of bankruptcy the goods of the bankrupt cease to be his, and become the property of his assignees, who may maintain an action of trover against the sheriff who issues a writ of fieri facias against the bankrupt, subject, of course, to the various limitations created by the enactments of the various statutes on this subject. Three points were made for the defendants: first, that they were protected by the 84th section of the Bankrupt Act, the 6 Geo. 4, c. 16; secondly, that the delivery of the timber was in conformity with the contract on which it was deposited with them, and without notice of any change in the property of or title to the timber, and was not a conversion; and they were excused from any action by reason of such delivery; thirdly, that there was a variance between the declaration and the facts stated, for that the official assignee alone was possessed of the timber at the time of the conversion (that is, the delivery to the purchaser), and that the averment that all the assignees were then possessed was not made out, and the defendants were entitled to the judgment of the Court on the issue on the plea of Not possessed. There is no doubt whatever of the truth of the position advanced on behalf of the plaintiff. As a general proposition, the title of the assignees to goods has relation back to the act of bankruptcy, and, notwithstanding the great extent to which the application of this rule has been cut down, and restricted by modern enactments, it still remains a fundamental rule and principle of the bankrupt laws. (Note to *Cooper* v. *Chitty*, Smith's Leading Cases, 236; and *Kynaston* v. *Crouch*, 14 M. & W. 266.) But we think the defendants are protected by the operation of the 84th section of the Bankrupt Act, 6 Geo. 4, c. 16, which section enacts that no person or body corporate, or public company, having in his or their possession or custody any money, goods, wares, or merchandises or effects belonging to any bankrupt, shall be endangered by reason of the payment or delivery thereof to the bankrupt or his order (not stating before the date of the commission), provided he or they had not at the time of the delivery notice of the act of bankruptcy committed. It was argued that the operation of this section was restricted to delivery before the issuing of the commission (that is now the fiat), until which time the goods might more properly be said to belong to the bankrupt. But we do not think that this is the proper construction of the section. In truth, the goods might in some sense be said to belong to the bankrupt up to the time of the appointment of the assignees. But in our opinion the words "goods belonging to the bankrupt" mean goods which belonged to the bankrupt at the time they are deposited in the possession or custody of the person or body corporate or public company delivering them, and would have continued to be his property unless an act of bankruptcy had occurred. That section was meant by the Legislature to protect wharfingers, warehousemen, or dock companies, and other parties whose trade it is to hold possession of other men's property for their convenience, which is the character the defendants filled in the present transaction. It was argued on behalf of the plaintiff that their view was proved to be correct, by reason of the preceding section of the statute. This is an error. The 84th section is a perfectly independent section, and has nothing whatever to do with the preceding one. It is taken from and intended to be a substitute for the 56 Geo. 3, c. 151, which consists of two sections, and in substance contains what is contained in the 84th section of the 6 Geo. 4, c. 6, which consolidated all the existing bankrupt laws; and it seems to be perfectly clear that the 56 Geo. 3, c. 137, which was to extend a provision of the 1 Jas. 1, c. 15, s. 4, namely, that no debtor of a bankrupt should be endangered by the payment of his debt to the bankrupt (which must be understood to mean before he has become bankrupt), was meant to protect the wharfinger or dock company who delivered the goods to or the order of a person from whom they were received before they had knowledge that such person had become bankrupt. We are, therefore, of opinion that the defendants are protected by the operation of the 84th section. But it was contended, for the plaintiffs, that the issuing of the fiat was ipso facto notice to all the world of its issuing. If it had been a commission, it would have been such notice, according to the case of *Collett* v. *De Gols* and *Ward*, Cases tempore Talbot, 65; and after such a notice there might be a difficulty in saying the defendant would be excused under the 84th section. But we think that a fiat is not on the same footing as the old commission of bankruptcy was. At the time when this bankruptcy took place the statute 1 & 2 Wm. 4, c. 56, was in force; and by the 12th section, in lieu of a commission, a fiat issued under the hands of the Chancellor or Master of the Rolls, or other judge or Master of the Court of Chancery which was afterwards entered of record in the Court of Bankruptcy. In our opinion, that was not a proceeding of the same public notoriety—certainly not until it was entered of record—as the issuing of the commission under the Great Seal, and does not itself operate as a notice; and we certainly think unless compelled by authority, we ought to hold notice of an act to be knowledge of it brought home to the mind of the person to be affected by it. This being our opinion, it is unnecessary to consider the other two points raised on behalf of the defendants. The judgment of the Court, in pursuance of the authority given to us by the special case, is, that a

Nolle prosequi be entered.

June 3 and 4.

FOQUET *v.* MOORE.

Lease—Surrender—Parol agreement.

To an action for rent the defendant pleaded an agreement for a lease, and, in the meantime, a right to occupy from year to year, but there was no averment that such agreement was in writing nor was it so proved at the trial:

Held, that the plea was bad, and that a parol agreement could not operate as a surrender of the lease by operation of law.

Debt for rent.—The first count of the declaration alleged a demise by the plaintiff to the defendant for seven years from 6th April, 1845, at a rent of 60*l*. Breach. — Non-payment of 45*l*. for three quarters' rent to January 1852. The second count alleged that defendant being tenant to the said plaintiff, applied to plaintiff to make certain alterations, which plaintiff consented to do at his own expense, in consideration the defendant would pay an additional rent of 15*l*. Breach.—Non-payment of 11*l*. 5*s*. for three quarters' additional rent to same date. There were also counts for work and labour done, and materials provided, and for goods sold and delivered, and for money paid, and on an account stated. The defendant pleaded, first, to the first count of the declaration, non est factum; second, to the first count, that after making the said indenture, and whilst the same was in full force and effect, and before the said sum of 45*l*. became due, &c. it was agreed between the plaintiff and defendant that the plaintiff should, at his own cost and charges, make certain alterations in the said premises, and that in consideration thereof he, the defendant, should give up and relinquish to the plaintiff all his, the defendant's, estate, right, title, and interest whatsoever under the said indenture, and of and in the residue then to come and unexpired of the said term, and should accept a fresh lease at a certain increased rent, to wit, 75*l*. for the four first years, and 80*l*. for the residue of the said term; and until the lease should be tendered to the defendant, he, defendant, should hold the said message and premises as tenant from year to year at the rent of 75*l*. a year for four years, and at 80*l*. for the residue of the tenancy. That the plaintiff did execute the repairs, and that the defendant in pursuance of the said agreement gave up to the plaintiff his estate, and entered upon the premises under the agreement. And that by means of the said premises the defendant was tenant from year to year, and that his title under the lease was surrendered.

Third plea to the second and third counts—Never indebted.

Replication to the first and last plea joining issue; to the second plea—De injuriâ.

The cause was tried at the Wilts Spring Assizes, before Talfourd, J. when, in support of the second plea, the facts stated were proved, but no agreement in writing was produced. A verdict passed for the defendant, with leave reserved to move to set aside the same and enter the verdict for the plaintiff on two grounds: 1st, That the agreement pleaded by the defendant was not a surrender by operation of law; and, 2nd, That the agreement proved at the trial was not the same as that pleaded. A rule to shew cause having been obtained accordingly,

Crowder (*Barstow* with him) shewed cause, and contended that the plea was a good plea, and was sufficiently proved at the trial; that the lease was put an end to by the acceptance of the tenancy from year to year; and that the plea was sufficient to establish a surrender by operation of law—a subsequent demise differing from the lease destroys the former demurrer. [PARKE, B.—You have stated that he became a tenant, not by a demise, but by an agreement; but you must prove that agreement in writing, otherwise if a man allowed his tenant 10 per cent. off his rent, it might be contended that that was sufficient to constitute a fresh demise at a smaller rent, and was to operate to put an end to the lease.] *Hamilton* v. *Stead*, 3 B. & C. 478; 2 Taylor on Evidence, 675; *Lyon* v. *Read*, 13 M. & W. 285; were cited.

Kinglake, Serjt. (*C. Saunders* with him), were not called on.

POLLOCK, C.B.—We are all of opinion that the rule in this case ought to be made absolute. The rule was obtained to enter a verdict for the plaintiff for 56*l*. 5*s*. or for a verdict non obstante veredicto. We think judgment should be for the plaintiff, as the plea in question does not present a legal answer to the claim. The plea set out an agreement for a lease for seven years, and in the meantime a right to occupy from year to year, but there is no averment that such agreement was in writing, which it clearly must be to be legal under the Statute of Frauds, and it must so have been proved at the trial. If the plea were to be taken as proved by the fact of proving a parol agreement, I am not prepared to say that it would not be good after verdict, but as no writing was produced, we think the plea was not made out. It would be most dangerous to permit leases to be got rid of by a constructive tenancy from year to year by such parol agreements as this, for which no written evidence exists. There must, therefore, be a verdict entered for the plaintiff for 56*l*. 5*s*. It appears to me that there is no pretence for entering the verdict merely non obstante veredicto.

PARKE, B.—I am of the same opinion. I have heard no answer to my proposition that the defendant must shew to the Court and jury the facts alleged in his plea, in order to constitute a surrender by operation of law. The plea states an agreement that the plaintiff should do certain repairs, in consideration whereof the defendant should relinquish the then existing and should accept a fresh lease for seven years, and that in the meantime he should hold as tenant from year to year. That the plaintiff did execute the repairs, and that the defendant, in pursuance of the said agreement, gave up to the said plaintiff his estate and entered upon the premises under the agreement, concluding that by means of the said premises, the defendant was tenant from year to year, and that his title under the lease was surrendered. That agreement, therefore, must be proved, and it must be proved by writing, according to the Statute of Frauds. But there was no writing produced. The sole question is, whether the plea was proved, and it certainly has not been proved. The plea might have been demurred to, for not alleging the agreement to be in writing, but it might be good after verdict, and the agreement alleged might be taken to be proved. But here there was no such proof. There ought, therefore, to be a verdict entered for the plaintiff.

ALDERSON, B. concurred.

MARTIN, B.—I am of the same opinion. I think that this plea was not proved at the trial. At first I was impressed with a notion that Mr. Barstow's argument, that the objection was on the face of the plea, and that the plea as proved, was correct. But, on consideration, I think differently. I am of opinion clearly that the tenancy from year to year is a tenancy created by the agreement, and that the agreement is of the essence of the plea, and must have been proved by a writing, according to the provisions of the Statute of Frauds. Therefore I think that the plea is not proved, and I am also clearly of opinion that the plea itself is bad. For these reasons a verdict ought to be entered for the plaintiff for 56*l*. 5*s*.

Rule absolute accordingly.

Monday, June 7.

PHILLIPS *v.* POUND.

Privilege from arrest.

Where an attorney's clerk was arrested on a ca. sa. whilst going from the Master's office to Judge's Chambers for the purpose of making an application having reference to a pending suit:

Held, that he was properly arrested. The privilege from arrest, eundo et redeundo, does not extend to the clerk of an attorney.

Hannen shewed cause against a rule to discharge

the defendant out of the custody of the Sheriff of Middlesex, he having been arrested on a ca. sa. at the suit of the plaintiff. The defendant, who was an attorney's clerk at the time the arrest was affected, was on his way from the Master's office in the Temple to Judge's chambers, in Clifford's-Inn, for the purpose of applying for an order having reference to a suit then pending. This rule had been obtained on the ground that under such circumstances his person was privileged from arrest In answer to the affidavit on which the rule had been obtained, it was shewn that the defendant had been twice before arrested, and that he had on each occasion claimed his privilege on the production of writs of subpœna in different actions, and it was contended that this application, if granted, would injuriously extend the cases on which parties attending courts had been allowed the exemption from civil process. He cited *Newton* v. *Constable*, 2 Q B. 157.

Hawkins, in support of the rule, referred to a case in Chancery where a learned Vice-Chancellor had held the privilege extended to a parliamentary agent while attending on a committee of the House of Lords. He cited also *Meekins* v. *Smith*, 1 Hy. Bla. 636.

By the COURT. — The defendant was properly arrested, and the rule must be discharged. The privilege now claimed was one for an attorney's clerk while attending chambers, but no such privilege existed. The benefit of exemption from arrest in civil process had always been confined to parties filling characters in which they were necessarily called upon to attend courts of justice - such as counsel or attorney engaged in a cause, or witnesses under subpœna, and had never been extended to an attorney's clerk going to the chambers of a judge to do business which might be done at any other time and by any other person. If this rule were to be made absolute, a barrister's clerk would be privileged also while he was taking his master's bag down to Westminster-hall and on his return to chambers. This was absurd; and as for some attorneys' clerks, if this application were to prevail, they would enjoy a perpetual privilege, for they might be said to be always either at the judge's chambers, or going thither or returning thence. *Rule discharged.*

BENHAM, P.O. *v.* THE UNITED GUARANTEE AND LIFE ASSURANCE COMPANY.

Where in an action on a guarantee policy to the question "In what capacity do you intend to employ A. B. and when and how often will his accounts be examined and closed, and what salary do you intend to give him?" the plaintiff answered that "the accounts would be examined every fortnight," and in the policy it was recited that these questions having been answered, and such answers being believed to be true, they formed the basis of the contract

Held, that such answers did not amount to a warranty, and were not intended to be more than a declaration of the course intended to be pursued, and that if bonâ fide made the plaintiff was entitled to recover on the policy, although the loss was mainly occasioned by his neglect to examine the accounts.

This was an action on a policy for 200*l.* effected by the plaintiff on behalf of the Marylebone Literary Institution with the defendants, as surety to that amount for the honesty and good conduct of R. Weir as secretary of the institution. The defendants paid 11*l.* 8s. 11d. into court, and as to the residue (188*l.* 11s. 1d.), they pleaded in substance that when the policy was proposed certain questions were submitted by them to the Institution respecting the risk, and among them, this—"In what capacity do you intend to employ A. B. and when and how often will his accounts be examined and closed, and what salary do you intend to give him?" To this question the Institution answered in writing that "A. B. would be employed in the capacity of secretary, and that the Finance Committee would examine the secretary's accounts every fortnight." In the policy which was effected it was recited that such questions having been answered, and such answers being believed to be true, they formed the basis of the contract. The plea then alleged that as to the said residue, the loss was occasioned by the neglect and default of the institution itself, inasmuch as the accounts of the secretary were not examined for a long time, and so he was allowed to become in arrear. To this plea the plaintiff demurred.

Bovill now appeared in support of the demurrer, and contended that the plea was no answer to the action, as the answers to the several questions did not amount to a warranty, but were mere representations, which, unless fraudulently false, did not affect the liability of the defendants, even though they might not have been carried out, as was the case. (He cited *Shaw* v. *Roberts*, 6 A. & E. 75.)

Lush was called on to support the plea, and contended that the case cited differed from this; the answers having been introduced into the body of the policy, became a warranty of the facts and representations therein set forth. This is a similar case to a marine policy, where the shipowner allows a statement to be inserted in the policy that the ship would sail with a convoy or a specified crew; and it has been held that in such cases the underwriters were exempt from liability if the ship sailed without convoy, or with a less complement of men than that set forth. (*De Hahn* v. *Hartley*, 1 T. R. 343.) If these answers had not been introduced into the policy, it was true that they would not amount to a warranty; but having been so introduced, they assumed the character of a warranty, and the plaintiff could not recover if the mode of examination proposed was neglected. The defendants have executed many policies in this form under the bonâ fide belief that the law was as was now contended for, and it was very desirable that a deliberate judgment should be pronounced on the point as a guide for the future, it being obvious that if a man's accounts were properly examined every fortnight, the risk would be lessened, and the premium reduced in proportion.

POLLOCK, C.B.- I am of opinion that this plea is no answer to the claim of the plaintiff under this policy. Looking at all the circumstances of this case the answers to the questions only indicate the probable course to be adopted by the employers of the party whose honesty was the subject of insurance, and if they were meant to be treated as a direct warranty, the observance of which was to be a condition to the validity of the policy, the company could very easily so state it in the policy. The nature of the question so put, and the other questions associated with it, are enough to shew that it was not expected by the office, nor intended by the institution, to be more than a declaration of the course intended to be pursued, and if it was bonâ fide made, the plaintiff was entitled to recover.

ALDERSON and PLATT, BB. concurred.

MARTIN, B.- I am of the same opinion. The difference between a warranty and a representation is pointed out in Wms. Saund. 200, c. n. c. I think this was a mere representation. If the representation was false the defendants have their remedy. The Court will not construe a contract so as to defeat it, but will leave the parties to their cross action.

Judgment for the plaintiff.

PADWICK *v.* KNIGHT and OTHERS.

Prescription—Custom—Profit à prendre—Repairing highways—Surveyors.

The right to take soil from the close of another, for the purpose of repairing highways, by the surveyors of such highways, cannot exist by custom. Per Martin, B. Quære, whether there might be such a right by prescription in the inhabitants of a parish.

Trespass quare clausum fregit. The declaration alleged a trespass, by breaking and entering a close of the plaintiff's, called Beach Common, situate in the parish of Hayling, in the county of Southampton, and by digging up and carrying away sand, gravel, and soil there being. The second plea alleged that all persons whose office and duty it was to repair the highways in the parish of Hayling had, and that the defendants, as the surveyors of the highways within the parish of Hayling, for the full period of thirty years, before, &c. had the right of entering the plaintiff's close, and of raising and digging up, and carrying away the sand, gravel, and soil for the purpose of repairing the highways within the said parish of Hayling. The third plea alleged the prescription to be sixty years, and the fourth alleged the custom to be from time immemorial.

To these pleas the plaintiff demurred.

M. Smith, in support of the demurrer.- The prescriptive right alleged in the pleas cannot be claimed either by the inhabitants or by the surveyor of highways. They are not a corporation, and, therefore, cannot acquire the right themselves. The stat. 2 & 3 Wm. 4, c. 71, s. 1, did not intend to give a new head of prescription, but extends only to claims cognisable at the common law. This is no prescription; if anything it is a custom, and a bad custom. A prescription by the common law can only be in a man and his ancestors, or in a corporation, which has succession. (Co. Litt 113, b.) These surveyors are mere statutable officers. As a claim by custom, this is a claim of a profit à prendre, and to support it it ought to be laid in the inhabitants, but they cannot enjoy by custom such a right in another man's soil. (*Clewitt* v. *Tregonning*, 3 A. & E. 554.) But even if they could, they can only claim it by prescription. A right of this sort cannot subsist by custom. (*Gateward's* case, 6 Rep. 59, b; *Grimstead* v. *Marlowe*, 4 T. R. 717; *Mellor* v. *Spakeman*, 1 Saund. 57; *Rogers* v. *Brenton*, 10 Q.B. 26.) These pleas are framed under 2 & 3 Wm. 4, c. 71, s. 5, but that enactment was not intended to apply to a right of this description; it only provides for a case where a party claims an estate in fee, and in that case alone is it applicable.

Kinglake, Serjt. and *R. Clarke*, contrà. — The construction of the 2 & 3 Wm. 4, c. 71, contended for is not the correct construction; that Act extends the rights which could be enjoyed by common law in the lands of another. (He read the first section of the Act.) [ALDERSON, B.—The preamble shews that it was not intended to establish a fresh prescription.] But the enacting part goes beyond it and is not to be controlled by the preamble, and the question depends on the proper construction of the enacting part. He cited *Salkeld* v. *Johnson*, 1 Hare, 196; 6 Jur. 210; and contended that although that case was decided on another Act (2 & 3 Wm. 4, c. 100), yet the same argument was applicable. This is a right such as might be enjoyed by common law. The cases cited on the other side for the purpose of shewing that a custom in the inhabitants of a parish to take the soil of a close is bad, are distinguishable; in those cases the alleged custom was for their individual use, but this is for a public benefit; this is a custom in all persons whose duty and office it is to repair the roads, to take a part of the soil or waste between high and low water-mark, to make and repair the roads of the parish. The parishes are liable to repair, because they are the portion of the public on whom the law has cast the obligation, and the custom for the surveyor to make the repairs may well exist. (*Mayor and County of Lyme Regis* v. *Taylor*, 3 Lev. 160; *Blundell* v. *Caterall*, 5 B. & Ald. 268; *Pearson* v. *Smith*, 9 A. & E. 106; Com. Dig. tit. Prescription, A.)

By the COURT. The pleas are bad. No such right as that claimed can exist by custom.

MARTIN, B.—I concur with the rest of the Court, but I am not so clear but that there might be a prescription in the inhabitants of a parish to take soil from the close of another for the repair of roads repairable by them.

Judgment for the plaintiff.

BUSINESS OF THE WEEK.

Thursday, June 10.

HANKIN *v.* BENNETT. *Cur. adv. vult.*

WARD *v.* BROOMHEAD. *Rule enlarged.*

HAIGH *v.* SEATON.—*Blackburn* shewed cause. *Pigott* in support.

Rule absolute for a new trial on payment of costs, and bringing the amount in dispute into court within ten days.

PONTING *v.* WATSON —*Slade* applied to the Court, in consequence of the refusal of his client to accede to the arrangement made when this case was last before the Court. *Butt*, on the other side.

Rule discharged Plaintiff to enter a nolle prosequi on the second and third counts of the declaration.

ROSKINGE *v.* CADDY. — *Collier* and *Maynard* shewed cause. *Kinglake*, Serjt. and *M. Smith*, contrà.

Rule absolute.

BARROW *v.* ROSCROW —*Wilkins*, Serjt. and *Lush* shewed cause. *Atherton* and *Wheeler*, contrà. *Rule discharged.*

Friday, June 11

PARKER *v.* PLATT and ANOTHER —This was an action of trespass, to which defendants pleaded, whereby title came in question, so that the County Court could not have original jurisdiction; but as the interest in dispute was very trifling, it was agreed between the parties that it should be tried in the County Court, it was tried by a jury in the County Court, and a verdict given for the plaintiff. *Unthank* now moved that the defendants be compelled to perform their undertaking, or carry their agreement into

Saturday, June 12.

SWAINE *v.* COLTON.—*Hawkins* shewed cause against a rule for judgment as in case of a nonsuit.

Rule discharged on peremptory undertaking.

POULTON *v.* COOPER —Assumpsit for not performing an award, and paying over a sum of money pursuant thereto. Tried before Parke, B. at Guildhall. *James* now moved for a rule for a new trial, on the ground of misdirection, and on affidavits. *Robson* v. *Raymond*, 1 B. & Adol. 723, was cited. *Rule nisi granted.*

EVANS *v.* PARRY -SAME *v.* SAME --SAME *v.* AITWOOD.—JONES *v.* EVANS —This was a rule to shew cause why the peremptory undertaking should not be enlarged till the Spring Assizes, 1853, and why proceedings should not be stayed till Hilary Term in that year. *Lush* and *Davison* shewed cause. *Crowder* and *Benson*, contrà, were not called on. *Rule absolute.*

WHYMAN *v.* ARGENT. — Tried in Middlesex, before Parke, B. on the 2nd instant. *James* and *Hawkins* now shewed cause against a rule for a new trial, obtained on the ground that the verdict was against the weight of evidence *Lush* in support.

Rule absolute for new trial. Costs to abide the event.

Re H ALLEN, deceased.- *Willes* moved to make a rule absolute for the executors of the deceased to account on affidavit of service of rule nisi. *Rule absolute.*

KEMP *v.* EWAN.—*Atherton*, on behalf of the plaintiff, moved for a rule ordering the Master to review his taxation of costs. *Rule refused.*

WALTON *v.* DAVIS. *Enlarged.*

HORTON *v.* THE WESTMINSTER IMPROVEMENT COMMISSIONERS.—*Bramwell* and *Honyman* shewed cause against a rule calling on the defendants to shew cause why they should not pay 18*l.* 12s. 6d. the amount of the Master's allocatur under two orders. *Garth* in support.

Rule absolute.

TURRELL *v.* DRAKE.—*Watson* (*Barstow* with him) shewed cause against a rule calling on the defendant to shew cause why the time for making an award should not be enlarged, or why the plaintiff should not be at liberty to sign judgment and issue execution, or why a new trial should not be had. *Bramwell*, contrà.

Rule absolute for a new trial, on payment of costs.

PEARCE *v.* GARDNER. *Enlarged.*

THE MUTUAL PRUDENTIAL INVESTMENT ASSOCIATION *v.* CURZON. *Cur. adv. vult.*

The Right Hon. Benjamin Disraeli this day attended in court, and was duly sworn in as her Majesty's Chancellor of the Exchequer.

effect, or that the plaintiff may be at liberty to sign judgment on the allocatur. The defendant's attorney cannot consent, because, as he states, he is not now the attorney for the defendants. *Rule nisi.*

DAY *v.* CARR.—*Lush* shewed cause against a rule obtained for an attachment against one T. W. Thomas, for rescuing goods seized by the sheriff, under a writ of fi. fa. for 182*l.* odd, issued against the defendant Carr. The affidavits in support of the motion were defective, and did not shew that the goods alleged to be rescued were the goods of the defendant, and seized by the sheriff. (He was then stopped.) *Quain*, contrà (called upon). *Rule discharged.*

HILL *v.* PHILP.—*Chandler* moved for a rule that the Master review his taxation herein, double costs having been allowed under the 8 & 9 Vict. c. 100, s. 105. *Rule nisi.*

NORTON *v.* WELLS.—*Jos. Addison* shewed cause against a rule obtained for payment of a sum of money pursuant to an award, and the Master's allocatur. He contended that this rule, as drawn up, did not give him the requisite number of days' time to appear to shew cause against it, according to the practice of this Court. (See *Arthur* v. *Marshall*, 2 D. & L. 376.) By the COURT—The Court have power to order a return of a rule like this when they please; the report of that case is wrong. (See it corrected in the report belonging to the Court.) There were other objections to the award, and he submitted the party should be left to bring an action, and not have summary redress. *Rule absolute.*

BUTLER *v.* ALDON.—A person, in his lifetime, had, it was alleged, made an arrangement with the plaintiff that the plaintiff should bury him after his decease, in the same manner, by furnishing necessaries for his funeral, as the plaintiff had for that person's brother; a time was agreed for payment, and a sum of money to be put away for the purpose; the person subsequently died intestate, leaving about 500*l* he having before his death made a settlement of some 8,000*l.*; 50*l.* was found in an envelope in one of his drawers. The plaintiff furnished all things necessary for the funeral, and charged 53*l.* 1s. The defendant obtained administration, and the plaintiff sued him for the amount in his own right, not as administrator; the cause came on for trial before Platt, B. when a verdict was given for the defendant; a rule nisi was obtained to set it aside, and enter it for the plaintiff for the amount claimed. *Willes* and *Phinn* shewed cause, and referred to *Corner* v. *Shew*, 3 M. & W. 350; *Price* v. *Wilson*, and *Green* v. *Salmon*. *Robinson*, contrà. There was no contract proved to have been made by the plaintiff with the intestate in his lifetime, the defendant was liable personally. The COURT said that the question as to whether there was a contract or not, must be submitted to the jury, and, therefore, a new trial must be had. *Rule for a new trial.*

COOK *v* BATTY.—This was an action against the defendant, in consequence of one of his horses at the Hippodrome, at Kensington, having kicked and injured the plaintiff's son; a verdict was returned for the plaintiff The cause was tried before Martin, B. and a rule nisi having been obtained to enter a nonsuit, or for a new trial. *James*, Q C. and *Wordsworth* shewed cause. *Shee*, Serjt. and *Hodgson*, contrà, in support of the rule. The COURT said the learned Baron who tried the cause thought the injury was a mere accident, but a new trial may be had on payment of costs. *Rule absolute accordingly.*

BAIL COURT.

Reported by T. W. SAUNDERS, Esq. of the Middle Temple, Barrister-at-Law.

Saturday, June 12.

(Before Mr. Justice WIGHTMAN.)

Ex parte THOMAS CULLIMORE, *re* W. G. GRAY, gent. One, &c.

Affidavits—Sworn before the attorney in the case.

Affidavits sworn before an attorney (a commissioner) in the country, who is at the time retained to obtain a rule founded upon those affidavits are bad.

An attorney in the country, who was retained on behalf of a client to obtain a rule calling upon an attorney to pay over money and answer the matters of certain affidavits, was the commissioner before whom four of those affidavits were sworn:

Held, that for this reason, they could not be read.

This was a rule calling upon an attorney to pay over a sum of money, and also to answer the matters of certain affidavits. The rule nisi was obtained upon reading certain affidavits, four of which were sworn in the country before an attorney (a commissioner) who was the attorney for the applicant in this matter actually engaged in obtaining and supporting the rule.

Maynard shewed cause, and took a preliminary objection that as the four before-mentioned affidavits were sworn before the attorney who, at the time, was engaged in obtaining this rule, they could not be received, citing 2 Arch. Prac. 1456, and the rules and cases cited therein.

Prideaux, contrà, contended that the rules in question applied only to cases where the attorney was the attorney on the record, and not to a case like the present, which was only a motion, and where there was no record. (*Reed* v. *Cooper*, 5 Taunt. 89; 5 Dowl. 409.)

WIGHTMAN, J. (after conferring with Master Bunce) said, that the Master reported that the practice was against the reception of such affidavits, and that he felt himself bound by such practice, and that he must, therefore, exclude those affidavits, though he did so, under the circumstances, with very great reluctance.

Maynard then shewed cause upon the merits.

It was ultimately arranged that the case should, upon certain terms, be referred to the Master, who was to be at liberty to look at the four affidavits above mentioned. *Rule accordingly.*

CLARK and ANOTHER *v.* THE GUARDIANS OF THE CUCKFIELD UNION.

Corporation—When liable upon a contract not under seal.

The general rule of law, that a corporation aggregate cannot contract except by deed under seal, admits of an exception in cases where the making of a certain description of contracts is necessarily incidental to the purposes for which the corporation was created; and the result of the cases upon the question is, that whenever a corporation is created for particular purposes, which involve the necessity for frequently entering into contracts for goods or works essentially necessary for carrying the purposes for which the corporation is created into execution, a demand in respect of such goods or works which have actually been supplied to, and accepted by, the corporation, and of which they have had the full benefit, may be enforced by action of assumpsit, and the corporation will be liable, though the contract was by parol only, and not by deed.

The plaintiffs, who were ironmongers, brought an action against the guardians of a poor-law union for the price of certain water-closets, supplied to the union workhouse upon the order of the guardians. There was no contract under seal; and at the trial it was objected that for this reason the guardians were not liable:

Held, however, upon the principles above laid down, that the action was maintainable.

In this case the plaintiffs, who were ironmongers, brought an action against the defendants, who were guardians of the Cuckfield Union, Sussex, for the price of certain patent water-closets supplied to the above union upon the defendants' order, and for work and labour. At the trial before the sheriff of Middlesex, it was objected, on the part of the defendants, that as they were a corporation, and the contract was not under seal, the action could not be maintained. The case, however, was left to the jury, with leave to move to enter a nonsuit, and a verdict was returned for the plaintiffs for 12*l.* 15s. 10d.

Hance moved accordingly, and cited *Lamprell* v. *The Billericay Union*, 3 Exch. 283, and *Diggle* v. *The London and Blackwall Railway Company*, 19 L. J. 308, Ex.; 5 Exch. 442; and having obtained a rule nisi,

Welsby and *Pigott* shewed cause (in Easter Term, 1851), and they contended that this was not such a contract as was required to be under the seal of the corporation; that the general rule upon the subject is open to exceptions as where the matter is of an every-day nature, or incidental to the nature of the corporation. (They cited *Payne* v. *The Guardians of the Strand Union*, 8 Q. B. 326; 5 & 6 Wm. 4, c. 69, s. 7; *Sanders* v. *St. Neots Union*, 8 Q. B. 810; *Church* v. *Imperial Gas Light Company*, 6 A. & E. 486; *Diggle* v. *The London and Blackwall Railway Company*, 19 L. J. 308, Ex.; 5 Exch. 442; *Lamprell* v. *The Billericay Union*, 3 Exch. 283; 4 & 5 Wm. 4, c. 76; *The Governor and Company of the Copper Miners* v. *Fox*, 16 Law T. 160; *De Grave* v. *The Mayor of Monmouth*, 4 C. & P. 111.)

Hance, in support of the rule, argued that the distinction to be drawn is between *trading* and *non-trading* corporations; that if this contract is good because it is incidental to the nature of the corporation, a contract not under seal might be good to build a union workhouse, at an expense of 10,000*l.* (He cited *The Mayor of Ludlow* v. *Charlton*, 6 M. & W. 815, 821; *Lamprell* v. *The Guardians of the Billericay Union*, suprà; *Sanders* v. *St. Neot's Union*, suprà; *Diggle* v. *The London and Blackwall Railway Company*, suprà.) *Cur. adv. vult.*

His Lordship to-day delivered the following

JUDGMENT.

WIGHTMAN, J.—I have deferred giving judgment in this case, which was argued before me some time ago, in the hope that the action, which was for the sum of 12*l.* 15s. only, would have been settled, the importance of the question raised being out of all proportion to the amount in difference between the parties. The action was in debt for goods sold, and for work and labour, and upon the trial before the under-sheriff, the sum demanded being under 20*l.* the plaintiff had a verdict for 12*l.* 15s. with liberty reserved for the defendant to move for a nonsuit, on the ground that there was no contract by the defendants under seal. The demand arose in respect of water-closets, for a new description of which the plaintiffs had obtained a patent, and which were put up by them at the union workhouse, by the direction and with the approbation of the defendants, at a meeting of the board, which, it was not disputed, was regularly constructed. There were several questions that arose in the course of the cause as to the liability of the defendants, which was disputed upon other grounds; but they were all disposed of, except that which now remains for consideration,—whether, assuming the supply of the articles to have been such as was proper and useful for the workhouse, and that the defendants ordered them, at the meeting of the board, to be furnished by the plaintiffs, and afterwards approved and kept them, and that if they had not been a corporation they would have been liable to pay for them, yet, that as the guardians of the poor are a corporation, and sued as such, they are not liable, unless they contracted under seal with the plaintiffs? The injustice of allowing the defendants to have the benefit of the work done by the plaintiffs without paying for it, makes it the more necessary to inquire strictly whether the general rule of law applies to this case, or whether it falls within any exception which may enable the plaintiffs to recover. It is no doubt a rule of law that a corporation aggregate can only contract under seal; so much inconvenience, however, arises from the strict application of the rule, that it was in very early times relaxed with respect to small matters of frequent and ordinary occurrence; the instances are mentioned in Bac. Ab. tit. Corporations, E.; Com. Dig. Franchises, T, 12, 13. This relaxation of the rule has been gradually extended, and it may now be considered that the general rule that a corporation aggregate cannot contract except by deed, admits of an exception in cases where the making of a certain description of contracts is necessarily incidental to the purposes for which the corporation was created. In most of the earlier of the modern cases the corporations have been plaintiffs, but these cases were decided upon grounds which would be equally applicable had the actions had been against them. In the case of *The City of London Gas Light and Coke Companies* v. *Nicholls*, 2 Car. & P. 365, Best L. C. J. held that indebitatus assumpsit might be maintained by the company for gas supplied—observing that it was quite absurd to say that there was any necessity for a contract by deed in such a case." The case of *The Mayor of Stafford* v. *Till*, 4 Bingh. 75, and the judgment of the Court in the subsequent case of *The East London Waterworks Companies* v. *Bailey*, in the same volume, p. 287, are direct authorities that corporations may be parties to contracts not under seal. In the latter case the Lord Chief Justice Best took a distinction between executory and executed contracts, which has not, however, been recognised in subsequent cases, considering that if the contract were executed the law would imply a promise, and no deed was necessary, as was decided in the case of *The Mayor of Stafford* v. *Till*. The power of a corporation for a particular purpose, to maintain an action of assumpsit for breach of an executory contract connected with the purpose for which the corporation was constituted, was elaborately argued and deliberately determined in the case of *Church* v. *The Imperial Gas Light and Coke Company* (in error), 6 A. & E. 846. In that case the company had brought an action against Church, upon an executory contract by them to supply gas, which the defendant (Church) refused to accept. In giving the judgment of the Court Lord Denman assumes that it is established that a corporation may sue or be sued in assumpsit upon executed contracts of a certain kind, amongst which are included such as relate to the supply of articles essential to the purposes for which it is created, and he then considers that there is no sound distinction to be taken in respect of such contracts between those that are executed and those that are executory. In repudiating this distinction, the Court of Q. B. differed from the judgment of the Court of C. P. in the case of *The East London Waterworks* v. *Bailey*, but in other respects they agreed in that decision. The case of *Beverley* v. *The Lincoln Gas Light and Coke Company*, decided about the same time, and reported in 6 A. & E. 829, is more directly in point, as the action in that case was indebitus assumpsit for goods sold and delivered *against* the company. The action was for the price of gas meters supplied by the plaintiff to the company under a parol contract. All the previous cases were considered by the Court of Q. B. in an elaborate judgment for the plaintiff, in which it was decided that the action was maintainable, and the company liable, though there was no contract by deed. In *The Mayor of Ludlow* v. *Charlton*, 6 M. & W. 815, decided subsequently to the cases of *Beverley* v. *The Lincoln Gas Company*, and *Church* v. *The Imperial Gas Compan* the Court of Ex. held that a municipal corporation cannot contract to pay money out of the corporation funds for improvements in the borough, except under seal, on the ground that such a contract was not within any of the exceptions to the general rule, nor of ordinary occurrence, or directly necessary for the purposes for which the corporation was instituted. Upon the same ground, the Court of Q. B. held, in the subsequent case of *Paine* v. *The Strand Union*, 8 Q.B. 326, that the plaintiff, who brought an action of assumpsit for work and labour against the guardians of the poor of the Strand Union, to recover a demand for making a plan of one of the

parishes in the union by direction of the board of guardians, but without any contract under seal, was not entitled to enforce such demand, as the making the plan of a particular parish was not necessary for the guardians of the union generally, nor incident to the purposes for which they were incorporated. But in the subsequent case of *Sanders v. The Guardians of St. Neot's Union*, 8 Q.B. 810, the Court held that an action of assumpsit for goods sold and work and labour was maintainable in respect of the demand by the plaintiff for iron grates, supplied to the workhouse by the direction of the guardians, and erected there under a verbal order; and in giving judgment Lord Denman observed, that the defendants would not be permitted to take the objection that there was no contract under seal, if the work, when done, was adopted by them for purposes connected with the corporation. In the late case of *The Governors and Company of Copper Miners v. Fox and Others*, 20 L.J. 174, Q.B. it was held that the company could not maintain an action on an executory parol contract relating to the furnishing of iron rails, on the ground that the contract was not incidental or ancillary to carrying on the business of copper miners, and did not fall within any of the exceptions to the general rule, that a corporation can only bind itself by deed. In giving judgment, Lord Campbell observes, that "had the subject-matter of the contract been copper, or if it had been shewn in any way to have been incidental or auxiliary to carrying on the business of copper miners, the contract would have been binding, though not under seal, for where a trading company is created by charter, whilst acting within the scope of the charter it may enter into the commercial contracts usual in such a business in the usual manner." The result of the cases to which I have referred appears to be, that whenever a corporation is created for particular purposes, which involve the necessity for frequently entering into contracts for goods or works essentially necessary for carrying the purposes for which the corporation is created into execution, a demand in respect of such goods or works which have actually been supplied to and accepted by the corporation, and of which they have had the full benefit, may be enforced by action of assumpsit, and the corporation will be liable though the contract was by parol only, and not by deed. There is, however, a case decided by the Court of Ex. upon deliberate consideration given, which I find it very difficult to reconcile with many of the authorities to which I have referred, and with what I have stated to be the result of the cases. I allude to the case of *Lamprell v. The Billericay Union*, 3 Ex. 283. That was an action of covenant against the guardians of the union to recover the price to be paid according to the deed for work done under a specification in building a workhouse and for extra work. The deed provided that no extra work should be allowed for unless done by direction in writing of certain surveyors named in the deed. Much extra work was done under the direction of and adopted by the defendants and their surveyor, but no written directions were given, and the extra work could not be recovered under the deed. The defendants had made many payments on account generally in the progress of the work, and the plaintiff proposed to appropriate those payments to the discharge of his claim for extra work, and it was upon the appropriation of payment that the question arose. The Court considered that to entitle the plaintiff to appropriate the payment he must shew that there were two debts, one under the deed and the other under a parol contract, for payment for the extra work, to be implied from its being done with their assent, and they having adopted and taken the benefit of it. But the Court held that no such contract could be implied in this case, as the defendants were a corporation, and incapable of making such a contract as that for the extra work by parol. The Court in that case considered that, notwithstanding the nature of the corporation and the purposes for which it existed, it was incapable of contracting otherwise than by deed, even for such purposes as those in question, which were absolutely necessary for carrying into effect the objects of the corporation. The ground upon which a seal is required to authenticate the acts of corporations is stated in the case of *The Mayor of Ludlow v. Charlton*, 6 M. & W. 823. It is required as indicating the concurrence of the whole body corporate: "The seal is the only authentic evidence of what the corporation had done or agreed to do. The resolution of a meeting, however numerously attended, is not the act of the whole body. Every member knows he is bound by what is under the corporate seal." This, no doubt, is strictly applicable to municipal corporations and others of a similar character, but not so clearly to such a corporation as the guardians of a union. By the 4 & 5 Wm. 4, c. 76, s. 38, guardians of a union have the government of the workhouse; and there is a general provision that no acts of the guardians shall be valid, except at a board where three are present. By the 5 & 6 Wm. 4, c. 69, s. 7, for the more easy execution of that Act, and of the laws relating to the poor, the guardians of the poor of every union are made a corporation, and may use a common seal. There is, however, no alteration in the law as to the power of the guardians at a board of less than three. A board of three guardians only would have power both before and after the guardians were made a corporation, to do all such acts as the whole body might do, and before they were a corporation might make all such contracts by parol, as were necessary for the purposes of exercising the powers given to them by the statutes; but after they were made a corporation for the more easy execution of the law relating to the poor, it would seem from that case that they can do no act except the most trivial, nor make any contract except under seal. The case of *Lamprell v. The Billericay Union* was followed by two others in the same Court; that of *Diggle v. The London and Blackwall Railway Company*, 19 L. J. Ex. 308; and *Homersham v. The Wolverhampton Waterworks Company*, 20 L. J. Ex. 193. In *Diggle v. The London and Blackwall Railway Company* it was held, that indebitus assumpsit for work and labour and materials could not be maintained against a railway company upon a parol contract, though the demand was in respect of taking up old rails and substituting new ones. In that case there was neither a contract under the seal of the company, nor signed by three directors, as required by the Railway Act. *Homersham v. The Wolverhampton Waterworks Company* was a case very similar to the last. The demand was for extra work under an implied contract, there being no express contract entered into by three directors, as required by the 8 & 9 Vict. c. 16, s. 97. These three cases, and especially that of *Lamprell v. The Billericay Union* are undoubtedly adverse to the claim of the plaintiff in the present case, and I find it difficult to draw any substantial distinction between them upon the point in question. I may, however, observe, that the Court, in *Lamprell v. The Billericay Union*, refer to the cases of *The Mayor of Ludlow v. Charlton*; *Arnold v. The Mayor of Poole*, 4 M. & Gr.; and *Paine v. The Strand Union*, as the authorities upon which they rely for the principle of their decision, without adverting to that which seems, according to other authorities, an important and distinguishing circumstance in those cases, that in none of them was the subject-matter of the contract necessary or essential to the very purposes for which the corporation was created, nor is the peculiarity of the constitution of such a corporation as the guardians of a union, the object of its creation, and the powers of a quorum, at a board meeting adverted to. It may be further remarked, that the case of *Arnold v. The Mayor of Poole* appears to be an authority against the decision in *Lamprell v. The Billericay Union*, upon the point of appropriation of payments. The reason for which a seal was required to authenticate the acts of a corporation seems hardly to exist in much force in respect to the guardians of a poor-law union, who, by the statute by which they were originally constituted, act by resolutions at a board composed of not less than three. In the present case there is sufficient evidence that the work was ordered at a board of the guardians regularly constituted, that it was performed and adopted, and nothing remained but to pay for it; but the alleged contract under which it was done, though entered into by the proper authority, was verbal only. I greatly regret the present state of the law upon a subject so important. It would, perhaps, have been better, and have avoided the uncertainty which now exists, if the old rule had never been relaxed; but being as it is, the question is, whether the demand in question comes within any of the recognised exceptions to the general rule. I am disposed to think it does, and that whenever the purposes for which a corporation is created render it necessary that work should be done or goods supplied to carry such purposes into effect, as in the case of the guardians of a poor-law union, and orders are given at a board regularly constituted and having general authority to make contracts for work or goods necessary for the purposes for which the corporation was created, and the work is done or goods supplied and accepted by the corporation, and the whole consideration for payment executed, the corporation cannot keep the goods or the benefit and refuse to pay on the ground that though the members of the corporation who ordered the goods or work were competent to make a contract and bind the rest, the formality of a deed, or of affixing the seal, is wanting, and therefore no action lies, as we are not competent to make a parol contract, and therefore avail ourselves of our own disability. I come to this conclusion, though not without much doubt from the authorities in some respects being contradictory, as warranted by the cases of *Sanders v. The Guardians of St. Neots*, *Beverley v. The Lincoln Gas Light and Coke Company*, *Church v. The Imperial Gas Light and Coke Company*, and others of the cases to which I have adverted, by the peculiar constitution and purposes of such a corporation or the board of guardians, and by the apparent justice of the case. I therefore think the rule ought to be discharged.

Rule discharged.

BUSINESS OF THE WEEK.

Friday, June 11.

(Before Mr. Justice WIGHTMAN.)

Ex parte SLEE.—*James*, Q.C. moved for a rule calling upon a Mr. Sowler to shew cause why a criminal information should not be filed against him for certain defamatory assertions contained in a letter written by him, reflecting on the character of Mr. Slee. WIGHTMAN, J. refused the rule, as he considered that as the party slandered was not a public functionary, the matter was more fit for an action than a criminal information. *Rule refused.*

Pearse moved for a rule for a mandamus, to be directed to the trustees of a turnpike-road, requiring them to pay over a certain sum of money. *Rule nisi.*

Ex parte HAYLOCK.—*Wells* shewed cause against a rule to quash the order herein. *Prentice*, contrà. *Cur. adv. vult.*

Re THE NORTH STAFFORDSHIRE RAILWAY COMPANY.—*Whately*, Q.C. moved for a certiorari to bring up an order of Sessions, that the same may be quashed, on the ground that one of the justices making it was interested. *Rule nisi.*

Ex parte MARY SMITH.—*Prentice* moved to make absolute the rule herein for a mandamus, no cause being shewn. (See 19 Law T. Rep 191) *Rule absolute.*

GUENBERGER *v.* PONSFORD. — *Warren*, Q.C. shewed cause against a rule for a commission to examine witnesses at Munich. *Hayes*, contrà. *Rule absolute.*

REG. *v.* TYRWHITT.—*Pashley*, Q.C. moved for a rule for a mandamus, commanding Mr. Tyrwhitt, one of the Metropolitan police magistrates, to issue his distress warrant for the payment of a sum of money. *Rule nisi.*

Re JAMES DRIVER UPTON.—*Hawkins* applied for further time to make a return to the habeas corpus herein. *Pigott*, contrà. *Enlarged till Monday week, at chambers.*

REG. *v.* THE BIRMINGHAM AND OXFORD JUNCTION RAILWAY COMPANY and THE BIRMINGHAM, DUDLEY, AND WOLVERHAMPTON RAILWAY COMPANY.—*Macaulay*, Q.C. (*Field* with him) moved for a mandamus commanding the above amalgamated companies to make a tunnel in a certain part of the town of Birmingham. *Rule nisi.*

Nisi Prius.

COURT OF QUEEN'S BENCH.

Reported by W. J. METCALFE, Esq. of the Inner Temple, Barrister-at-Law.

SITTINGS AT WESTMINSTER AFTER EASTER TERM.

Monday, May 10.

(Before Lord CAMPBELL, C.J.)

EDGE *v.* HILLARY, Bart.

Right to begin.

Assumpsit for goods sold and on an account stated. Pleas, except as to 171l. 7s. 6d. non assumpsit; as to that sum, acceptance of a bill then remaining due. The particulars claimed only 171l. 7s. 6d.: Held, that the defendant was entitled to begin.

The action was in assumpsit for goods sold and delivered, and upon an account stated. The pleas were, first, except as to 171l. 7s. 6d. parcel, &c. non assumpsit; 2ndly, as to 171l. 7s. 6d. that the plaintiff had received a bill of exchange, drawn by the defendant on, and accepted by, one John Kempe, payable at three months, which period had not elapsed before the commencement of the suit, on account of the said sum of 171l. 7s. 6d. The plaintiff joined issue on the first plea, and traversed the averments in the second. The particulars of demand claimed 171l. 7s. 6d.

Bramwell, Q.C, for the defendant, claimed the right to begin.

Hoggins, Q.C. contended that the plaintiff was entitled to begin, the affirmative of the issue upon the first plea being upon him.

Lord CAMPBELL, C.J.—I think the defendant is entitled to begin. The plaintiff claims only 171l. 7s. 6d. by his particulars of demand, and therefore the second plea of the defendant would, if proved, be substantially an answer to the whole action. The burden of proof of that plea being upon the defendant, he must begin.

Hoggins, Q.C. and *Rogers* for the plaintiff.

Bramwell, Q.C. and *Aspland* for the defendant.

SITTINGS IN LONDON AFTER EASTER TERM.

Saturday, May 15.

(Before Lord CAMPBELL, C.J.)

COBBETT *v.* HUDSON.

Plaintiff—Advocate—Witness.

A plaintiff who conducts his own cause cannot also be a witness.

The action was in case against the defendant, as keeper of the Queen's Prison, for a false return to writ of habeas corpus.

The plaintiff appeared in person and conducted his own case. While opening it,

Lord CAMPBELL, C.J. asked him whether he proposed to avail himself of the new Act and to offer himself as a witness? If he did, it would give rise to a very important question, whether a party could act as advocate and also as witness in his own cause. He did not know whether the point had yet been decided or raised.

Prentice, amicus curiæ, said, that in Miss Hoare's

case the Court of Ex. had refused to allow her to act as counsel and witness also.

Lord CAMPBELL, C.J. I shall rule in accordance with that decision. To permit a party to address a jury and to excite the feelings of his hearers by commenting upon the evidence to be given, and then to give that evidence himself, would lead to the most inconvenient consequences and would pollute the stream of justice. There is no necessity for such a proceeding in the present case, for the plaintiff is suing in formâ pauperis, and I am sure that the gentleman who certified for him to enable him to appear, would appear and conduct the case for him as zealously as if he had the richest man in England for his client.

Mr. Cobbett said, that after that ruling he would not offer himself as a witness, but would tender a bill of exceptions that the point might be argued.

Lord CAMPBELL, C.J.--The plaintiff may have his choice to be advocate or witness, but he cannot be both. *Verdict for the defendant.*

Plaintiff in person.

Watson, Q.C. and *Unthank*, for the defendant.

COURT OF EXCHEQUER.

Monday, May 10.

SITTINGS AT NISI PRIUS.

(Before MARTIN, B.)

CARR *v.* KIRKWRIGHT.

Insolvent Act 1 & 2 *Vict. c.* 110—*Discharge under Plea of Proof.*

A. being indebted to B. and C. in two sums amounting to 80l. gave them a promissory note for 80l. Shortly afterwards he took the benefit of the Insolvent Act 1 & 2 Vict. c. 110, but his schedule did not set forth the note so given, though the original debt to B. & C. was inserted.

Held, on action by the indorsee of the note and a plea of discharge under the Insolvent Act, that the defendant was not discharged from the note, as it was not specified in the schedule.

Debt on a promissory note for 80*l.* drawn by the defendant in favour of J. Daniels.

Plea—that the defendant was discharged from the said note by the Insolvent Act, 1 & 2 Vict. c. 110.

Willes, for the plaintiff, having proved his case,

Knights, for the defendant, proved that the defendant, being indebted to two brothers named Daniels, in New Brunswick, gave one of them a promissory note for both the debts, and left the colony for England, where he shortly after took the benefit of the Insolvent Act 1 & 2 Vict. c. 110. In pursuance of the 75th section the defendant made a schedule of his debts, in which he inserted the original debts due to the Daniels, in New Brunswick, but without making any reference to the note so given for them both as above mentioned, or to the plaintiff, who was unknown to the defendant. Under these circumstances,

MARTIN, B. was of opinion that the plea was not proved. The defendant, in order to be exempt from further liability, ought to have inserted the note in his schedule, and to have stated his ignorance of the present holder. As it is, the defendant is only discharged from the debts which were the original consideration for the note, but not from the note itse . The verdict ought therefore to be for the plaintiff, but with leave to move to enter a verdict for the defendant on this point.

Verdict for the plaintiff, 81*l.* 4s. 4d.

BRYANT *v.* SHORT and ELDREDGE.

Attorney and client--*Privileged communication*—*Joint liability of two defendants.*

It is not competent to ask a plaintiff on cross examination whether he did not tell his attorney that his drunkenness would be set up by the defendant in answer to the action.

In an action in the case against A. and B. the declaration alleged that A. and B. were jointly possessed of a house, and that the cellar door trap being improperly left open, the plaintiff fell through. It appeared in proof that A. was the tenant of a beer-house, and that B. was employed by the landlord to repair it, and that during the repairs the plaintiff fell through the cellar door:

Held, that there was no joint cause of action against A. and B. and that the plaintiff must elect one of them.

Case.—The declaration stated that both the defendants were possessed of a certain beer-house, and that they so negligently conducted themselves in that behalf as to leave open the trap-door of a cellar of the front thereof, so that the plaintiff fell through the said trap-door into the said cellar, and in so doing received divers injuries.

Plea.—Not guilty.

Prideaux, with him *Saunders*, for the plaintiff, proved by the evidence of the plaintiff, that the defendant Short having recently taken the lease of the beer-house named in the declaration, the brewers had employed the defendant Eldridge to repair it, and that the plaintiff returning home one night passed the house, fell through the trap-door into the cellar, which was not protected by any hoarding, or sufficiently lighted or watched, and so received the injuries in respect of which this action was brought.

Hawkins, in cross-examination of the plaintiff, put this question to him: "Did you not say to Mr. Hart, your attorney, that drunkenness would be set up as a defence to the action?"

MARTIN, B.—You cannot put that question to the plaintiff. It is the very sort of an inquiry which the rule of professional confidence is meant to exclude.

Hawkins submitted that the object of the question not being to elicit any facts communicated by the plaintiff to his attorney on the progress of his case, it was open to him to put it.

MARTIN, B.—I am of opinion that you cannot put any question to the plaintiff relating to what he communicated to his attorney. Everything which passes between a client and his attorney, relating to his case, ought to be free from inquiry.

Evidence rejected.

At the close of the plaintiff's case, which consisted of the above facts,

MARTIN, B, said he did not see what evidence there was of a joint duty and liability of two defendants. He was of opinion that the learned counsel for the plaintiff must elect one of the two defendants against whom to proceed.

Prideaux submitted that he was at liberty to press for a verdict against both defendants on this evidence; the declaration contained an allegation that the two defendants were jointly possessed of the house, and as that allegation was not traversed the law implied a joint duty so to use the house as not to expose the public to risk and danger.

MARTIN, B.—The allegation of the joint possession has nothing to do with the question. The evidence shows that Short was the tenant of the house, and the defendant Eldridge was employed to do the repairs, and they could not both be liable on this declaration. The plaintiff must, therefore, elect one of the two.

Prideaux contended that he had a right to go against both the defendants, and would decline to elect.

MARTIN, B.—Then I shall direct the jury that it is their duty to find a verdict for both the defendants.

Prideaux.—Then, my lord, I elect to go against Eldridge.

Hawkins then addressed the jury, and called evidence to show that the plaintiff was drunk on the night in question; that the cellar was properly lighted, watched, and hoarded; and that the plaintiff fell in through his own neglect of the caution given to him.

Ultimately the jury found a

Verdict for the defendants.

Equity Courts.

LORD CHANCELLOR'S COURT.

(Before Lord ST. LEONARD'S, L.C.)

Reported by C. H. KEENE, Esq. of Lincoln's-inn, Barrister-at-Law.

Wednesday, May 5.

IN LUNACY.

Trustee Act—*Practice*—*Special case.*

This was a petition for a vesting order under the Trustee Act, 1850.

The real estate of a married woman was vested in trustees, in trust for the married woman during the joint lives of herself and her husband, for her separate use, with remainder, in case she survived her husband, to her absolutely; but in case she died in his lifetime, to such uses as she should by will appoint. No trusts were declared in default of appointment. The married woman executed a mortgage of her real estate by deed, enrolled under the Fines and Recoveries Act.

One of the trustees had become lunatic.

Toller, on behalf of the married woman, appeared in support of a petition, praying for an order to vest the legal estate in the mortgagee.

The LORD CHANCELLOR refused to make the order, but gave leave to state a case under Sir George Turner's Act. His lordship directed the petition to stand over, and to come on with the special case, which his lordship would hear.

Saturday, May 8.

Re The OUNDLE UNION BREWERY COMPANY,

Ex parte CROXTON.

Joint-Stock Companies Winding-up Acts — Contributory — Partnership — Liability of retiring partner where the stipulations of the deed of settlement are inconsistent.

C. was the holder of shares in a joint-stock company, and sold them to A. By one of the clauses of the deed of settlement no member (as between himself and the partnership) was to be liable for any debts, calls, or demands upon the company after he should have ceased to be a member, "save only and except for and in respect of any sum or sums which he shall or may be liable to pay by reason of any forfeiture, penalty, or misconduct;" and by another, after transfer, the former or last proprietor thereof was to be "for ever acquitted and discharged of and from all covenants, agreements, regulations, obligations, and liabilities whatsoever," in respect of the shares transferred, "save only in respect of any penalty, forfeiture, or liability which shall have been previously incurred by him, her, or them in regard thereto." The sale to A. took place two years prior to the order for winding up the company:

Held (deciding that the saving as to liability in the one clause referred to the personal liability of the members, and that such saving in the other referred to the same personal liability), reversing the order of the Master, and affirming the decision of the Vice-Chancellor, that C. was not a contributory.

The Court has no power to give the costs of an appeal against the official manager, if such appeal be brought upon the suggestion and with the sanction of the Master.

This was an appeal by the official manager from an order of the Vice-Chancellor Knight Bruce, removing the name of Mr. Croxton from the list of contributories to the above company. The facts were these:—Mr. Croxton, who was an original proprietor of twenty-five years, and who in the year 1836 had executed the deed of settlement, sold and duly transferred his shares to a purchaser. Two years after the sale, the company was wound up, and the Master, in settling the list of contributories, put the name of Mr. Croxton upon it in respect of these shares up to the date of transfer (10th Oct. 1842), and the name of the purchaser from that date. The question was, whether, upon the construction of the deed of settlement, the seller remained liable for any of the liabilities of the company antecedent to the transfer of his shares.

The clauses of the deed of settlement upon which this case depended will be found in the report of this case before the Vice-Chancellor, 17 Law T. Rep. 1.

Roxburgh (in the absence of *Bacon*) opened the appellant's case, and at its conclusion, without hearing *Rolt* and *Hislop Clarke*, who were for the company,

The LORD CHANCELLOR delivered the following judgment.—This point is, I think, open to no dispute. The first question is, what is the intention of the deed of settlement? It was this—that if a man sells his shares, the party buying is to stand in his place. From the time of the purchase he is entitled to take all the benefit, and he must bear all the burthen. In fact, the buyer is to stand in the shoes of the seller. Now, the 13th section of the deed declares "that no member of the company shall in any case or event (as between himself and the other members thereof) be answerable or liable for or in respect of any debts, calls, or demand upon the said company after he shall have ceased to be a member of or to have a share or interest in the capital stock of the said company in his own right or by representation, save only and except for and in respect of any sum or sums which he shall or may be liable to pay by reason of any forfeiture, penalty, or misconduct, under some clause or provision therein contained." By this section the seller, from the time of selling, is clearly exempt from all the future debts of the company; but if he has incurred any personal liabilities, "by reason of any forfeiture, penalty, or misconduct," he is not to be released from that—the debts and liabilities to which he is to remain liable are limited to those which are to arise from the several circumstances which are enumerated in that section. Then comes the 17th section, which declares that "no shareholder of or in the capital stock of the said company shall retire from or cease to be a member of or a co-partner in the same without such consent of other the proprietors or partners therein, and such approval of the person or persons, if any, who shall be or be intended to succeed him therein, as is required by these presents in relation thereto." From this, no person can be released from his liability by retiring from the partnership, nor can another person taken into the partnership be liable in his stead, without the consent of the partners to the retirement of the one, and the admission of the other. The 34th section then goes on to say, "that from and immediately after any such transfer or assignment as last aforesaid shall be made of any share or shares, the former or last proprietor thereof shall thenceforth be for ever acquitted and discharged of and from all covenants, agreements, regulations, obligations and liabilities, whatsoever, under or by virtue of these presents, for or in respect of the share or shares which shall have been by him so assigned or transferred, save only in respect of any penalties, forfeitures, or liability which should have

been previously incurred by him in regard thereto. Upon this section there would have been no difficulty, but for the introduction of the words "and liabilities whatsoever, save only in respect of any penalty, forfeiture, or liability." From the first part of this clause, it is apparent that a transferror was to be exonerated from "all liabilities whatsoever," but that could never have been intended to be its meaning; for we find a subsequent exception from exoneration. Now that exception cannot be construed to mean the very same thing from which he had been previously released, and thereby re-create the liability. I consider that that part of the 34th section which exonerates a transferor from all liability, "save only in respect of any penalty, forfeiture, or liability," must be read with and held to have reference to the concluding words of the 13th section. They certainly have the same meaning; both sections refer to the liabilities from which a transferror is already released. The liabilities to which he is to remain subject are spoken of in the same sense, and in the first of those sections to which I have referred, the particular nature of the liability is expressly alluded to, and I consider that the concluding words of the latter clause must be governed by those in the latter part of the former section. The only other part of the deed which is relied upon is sec. 36. That section declares "that every person who shall hereafter purchase any share or shares in the capital of the company, and who, previously to such purchase, shall have executed these presents, or a deed of covenant prepared by the direction of the board of directors, by which he shall covenant to abide by the regulations of the company, and who, at the time of such purchase, shall be a proprietor of the company to all purposes, in respect of the shares then held by him in the capital thereof, shall, as to the share or shares so purchased, be considered from the time of such purchase a proprietor to all purposes in respect of the same shares, and shall not be required to execute such deed of covenant as aforesaid, and shall hold the shares so purchased on the same terms and conditions in every respect as the original holder of the same share or shares would have held the same if he had continued a proprietor of the company in respect thereof." Now it is said that by this clause the liability of the purchaser is limited to the time of purchase. He could not be liable except from that time, and, therefore, the clause properly points out that period as the time from which he is to be liable. The clause merely points out the time at which he is t be liable; but the extent of that liability is not to be calculated from that time. After the date of the transfer, the purchaser becomes liable not only in respect of liabilities to be hereafter incurred, but he becomes liable in the place of the original shareholder, in the same manner as the original shareholder would have been liable had he continued the owner of the shares. I am of opinion that Mr. Croxton is not liable, and that the purchaser must be considered as holding the shares with all the liabilities to which they would have been subject in the hands of the original owner.

Roxburgh asked that the costs of the official manager might come out of the estate, the appeal having been brought upon the suggestion and with the sanction of the Master.

The LORD CHANCELLOR.—Under the Act, I fear I can make no order on the official manager as to costs.

Appeal dismissed. Costs of both parties to come out of the estate.

Monday, May 31.
NOWLAN *v.* WALSH.
Practice—Enrolment of decrees.

James Russell applied for leave to enrol a decree, his Lordship having directed that all decrees, which had not been enrolled for a particular period, should not be enrolled without the leave of the Court.

The LORD CHANCELLOR.—I will make the order, but I do not consider that this application is necessary. I made the order in question merely to prevent parties from hanging back for years, and then proceeding to enrol their decrees without notice to the other side; but I did not intend to entail upon parties the necessity of coming to the court for liberty to enrol.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

(Before the LORDS JUSTICES.)
Tuesday, June 1.
HUGHES *v.* MORRIS.
Contract for sale of ship—Registry Act—Specific performance—Public policy.

According to the proper construction to be put upon the 34th sections of 8 & 9 Vict. c. 89, a Court of Equity will not enforce specific performance of a contract for the purchase of a ship, although such contract does not affect to make a transfer of the ship, but is merely executory.

Query—Whether an action may not now be maintained at law on such a contract, although it would have been void under the old Registry Acts, 26 Geo. 3, c. 60, and 34 Geo. 3, c. 68.

This was an appeal from the decision of Vice-Chancellor Sir George Turner, under the following circumstances. The bill in this case was filed for the specific performance of an agreement for the sale of forty 64ths of the ship *Virtue*, formerly the property of William Williams and Joseph Sawtell, trading under the firm of Phillips and Co.; who, in the month of July 1844, became bankrupts. Joseph Morris and Philip Carrol were elected to be creditors' assignees, and Roger Kynaston was appointed to be official assignee under the fiat against them; and in the month of June 1845, Carrol was removed from being assignee. The creditors' assignees appointed W. T. H. Phelps to be solicitor under the fiat. Upon the 18th May, 1846, he served a notice upon the plaintiff, who was owner of the twenty-four other 64ths, in which he described himself as solicitor to Morris and Kynaston, assignees of the estate, and claimed title for the assignees to the forty 64ths in question. In the month of August 1846, Roger Kynaston ceased to be official assignee under the fiat, and A. J. Acraman, a defendant in the suit, was appointed official assignee in his place. In the month of March 1847, Phelps prepared and issued a hand-bill, announcing the intended sale by auction of the forty 64ths of the ship upon the 8th of April, 1847; and this hand-bill *purported that the sale was to be by order of the assignees*, and in the bill referred to Acraman, who was described in it as official assignee, for further particulars, and copies of the hand-bill were sent to Acraman. In pursuance of the announcement contained in the hand-bill, the forty 64ths of the ship were put up to sale by public auction under conditions of sale in which they are described as belonging to the assignees. The third and sixth of the conditions were these, that the purchaser should pay to the auctioneer immediately after the sale a deposit at or after the rate of 10 per cent. upon the amount of his purchase-money, and sign an agreement for the payment of the remainder to the solicitor of the vendor at his office in Newport upon the 30th April, or earlier if the purchaser was prepared, when the purchase was to be completed by the possession of the vessel being given up to the purchaser, and the sixth condition was that upon the payment of the remainder of the purchase-money, together with all other charges and dock dues, the purchaser should have a bill of sale from the assignees of the interest of the forty 64ths in the schooner, together with the ship's stores, sails, and appurtenances inserted in the schedule prepared, and that the vendor should not be obliged to produce any documents other than except the certificate of registry and the bill of sale from E. Phillips to the assignees of the bankrupts. The plaintiff, through the medium of Mr. Edwards, became purchaser of the forty 64ths at the auction for the sum of 375*l.* and thereupon Phelps and Edwards signed the following memorandum of agreement. Between W. T. H. Phelps, agent of the vendors of the one part, and H. Edwards of the other part: 'The said H. Edwards hath this day become purchaser of the share in the premises comprised in the annexed particulars, subject to the conditions of sale also annexed, for the price of 375*l.* and has paid unto W. T. H. Phelps, the vendors' solicitor, the sum of 37*l.* 10*s.* as a deposit of 10*l.* per cent. upon the purchase-money in part payment, and the said H. Edwards agrees to pay the remainder of the purchase-money at the time of payment mentioned in the said conditions, and upon payment thereof the vendors will execute to H. Edwards a transfer or bill of sale of such shares according to the said conditions." The deposit was, in fact, paid, as it appears upon the evidence, to the auctioneer and not to Phelps, as stated in the memorandum, upon the 28th April, 1847. Phelps, as solicitor of the vendor, wrote a letter to the plaintiff, reminding him that the transaction was to be completed upon the 30th of April, and upon the 29th of April the plaintiff paid the sum of 210*l.* to Phelps further on account of the purchase-money, and upon the 10th May, 1847, he paid him a further sum of 50*l.* The residue of the purchase-money, however, was not paid, and the bill of sale was not executed. Upon the 3rd July, 1847, Mr. Acraman, who was the official assignee under the commission, under the fiat wrote to Phelps to ascertain the name of the purchaser of the share of the vessel, and the answer to that by Phelps, on the 8th July, was, that the purchaser of the share of the vessel was Captain J. Hughes; that he was at present at sea; that he had deposited 300*l.*; and that upon his return he would complete his purchase. Upon the receipt of that letter, announcing that 300*l.* had been deposited, Mr. Acraman appeared to have written on the 12th to Phelps, when he stated that 300*l.* was deposited by the purchaser On the 13th July, 1847, Phelps answered that letter, and stated that this money not having been paid into the account of the assignees, could not be remitted until the return of the purchaser, when the whole matter would be settled together, and the bill of sale executed. Several subsequent applications appear to have been made by Acraman to Phelps for the payment of this sum of 300*l.* but no result followed from it, and it appeared, that Phelps was in difficulties, and ultimately, in October 1848, he was removed from the solicitorship. In this state of circumstances, upon the 13th of September, 1849, the defendant, the assignee, arrested the ship in the Admiralty Court. The plaintiff then offered to pay the balance of the purchase-money, and made a tender of that balance; the defendant refused to accept the tender, and therefore this bill was filed for specific performance, for an injunction, and for damages which had been incurred by the detention of the ship by the proceedings taken by the assignees in the Admiralty Court. Upon the 4th December, 1849, an injunction was granted by the Vice-Chancellor of England on the terms of the money being paid into court.

On the case coming on to be heard before Vice-Chancellor Turner, two points were taken by the defendant, in opposition to the decree sought for by the plaintiff: First, that the purchaser was not justified in paying the purchase-money to Phelps, as, according to the Bankrupt Act, he was bound to pay it to the official assignee, for whom Phelps could not be considered as an agent; that according to the condition of sale, the payment of the purchase-money and the execution of the bill of sale were to be contemporaneous acts, and that the purchaser was not justified in paying the purchase-money to Phelps without obtaining the bill of sale, which the official assignee would not have executed, without receiving the purchase-money. The second point raised by the defendants was, that the Court of Equity, could not without acting in violation of the Ship Registry Act (8 & 9 Vict. c. 89) enforce performance of the contract. With regard to the first point, his Honour said that had the purchaser acted strictly according to the conditions of the sale by paying the balance of the purchase-money, and requiring the bill of sale to be executed, no question would have arisen, and that as he had created the mischief which had arisen by deviating from the conditions of sale, his Honour could not, at the suit of the purchaser, decree specific performance, upon the payment of the balance of the purchase-money. His Honour also being of opinion that the official assignee had not recognised the receipt of the purchase-money by Phelps, and upon these grounds the bill was dismissed with costs. With regard to the second point his Honour said that he thought it would be improper in him to give any opinion upon it, as he found that in *Davenport* v. *Whitmore*, 2 My. & Cr. 177, where the plaintiff's claim was founded upon an alleged equitable title in a ship by contract, Lord Langdale allowed the demurrer to the bill, and upon an appeal Lord Cottenham, though he overruled Lord Langdale's decision upon another point, declined to give any decision upon the general point.

When the case came on to be heard before the Lords Justices, counsel were desired in the first instance, to confine their arguments to the second point, on which, if their lordships took an adverse view to the plaintiff (which was the case), it would be unnecessary to consider the first point, upon which the decision of the Vice-Chancellor rested.

This point turned upon the construction of the 34th section of the last Registry Act (8 & 9 Vict. c. 89), which enacts, "That when and so often as the property in any ship or vessel, or any part thereof, belonging to any of her Majesty's subjects, shall, after registry thereof, be sold to any other or others of her Majesty's subjects, the same shall be transferred by bill of sale, or other instrument, in writing, containing a recital of the certificate of registry of such ship or vessel, or the principal contents thereof, otherwise such transfer shall not be valid or effectual for any purpose whatever, *either in law or in equity*. Provided always, that no bill of sale shall be deemed void by reason of any error in such recital, or by the recital of any former certificate of registry, instead of the existing certificate, provided the identity of the ship or vessel intended in the recital be effectually proved thereby."

Sir *W. Page Wood* and *W. Collins*, for the plaintiffs, who appealed, contended that the language of the 34th section of 8 & 9 Vict. c. 89, which is the same as that made use of in 3 & 4 Wm. 4, c. 55, and 6 Geo. 4, c. 110, was very different from that made use of in the old Acts, 26 Geo. 3, c. 60, and 34 Geo. 3, c. 68, under which it had been decided that a Court of Equity could not decree specific performance of an agreement for the purchase of a ship; that such an agreement as that in the present case ought, under the law as altered, to be enforced, as the provisions of 8 & 9 Vict. c. 89, were not intended to apply to *executory* contracts, as was the case in 26 Geo. 3, c. 60, and 34 Geo. 3, c. 68. [Lord Justice KNIGHT BRUCE.—Public policy requires that the late Act of Parliament should be construed so as to carry into effect the intention of the Legislature. In *Davenport* v. *Whitmore*, 2 My. & Cr. 177, the Lord

Chancellor gave effect to the contract, as to the freight, yet refused to do so as to the ship itself.] Lord Tenterden, in his "Treatise on Shipping," clearly thought that the distinction between the language of the modern and the old Acts was intentional and material. (Abbot on Shipping, 50, 5th ed.; *Langton* v. *Horton*, 5 Beav. 9.) [Lord Justice Knight Bruce.—I suppose you do not contend that you can register this contract; what in effect the bill seeks is to compel the defendants to sign such an instrument as the custom-house will register.] Precisely so. (*Brewster* v. *Clarke*, 2 Mer. 75; *Mestaer* v. *Gillespie*, 11 Ves. 629, 636; *Batterby* v. *Smyth*, 3 Madd. 110; *Follett* v. *Delany*, 2 De G. & S. 235; *Whitfield* v. *Parfitt*, 17 Law T. Rep. 161; *Thompson* v. *Leake*, 1 Madd. 39.) It was contended, also, that an agreement for the sale of a ship might be enforced upon the same principle as contracts for annuities, where the provisions of the Annuity Act had not been complied with. (*Ex parte Wright*, 1 Rose, 308; *Pritchard* v. *Ovey*, 1 J. & W. 396.) [Lord Justice Knight Bruce.—I am not satisfied that *Pritchard* v. *Ovey* came within the Annuity Act; but if it did, I am not satisfied that it was rightly decided.] At all events, a decision which would have the effect of laying down a rule that a contract to purchase ships, which are continually being sold by auction, could not be enforced in equity, would be a great surprise upon the commercial world, and would be detrimental to the shipping interest.

Rolt and *Lewis*, for the defendants, were not called upon by the Court.

Lord Justice Knight Bruce.—The question before us, as to this part of the case, turns upon the construction of the 34th section of the 8 & 9 Vict. c. 89, assisted, more or less, by the residue of the Act. It is a section which differs, in its phraseology at least, from the law upon the same part of the subject as it had at some time before existed. And it has been plausibly contended that that difference ought to have a material effect upon the construction of the language used in this section. It certainly is not to be disregarded, and it is a fair subject of observation; but, still, if the language used in the statute in force is language plain, and necessarily attended with a plain effect, according to the principles of law, it must be expounded according to that interpretation and upon those principles. It is plain that the Legislature considered itself as providing for that which was a matter of public policy,—of general interest, in this provision, and with a view to the general interest, and with a view of supporting and affecting the public policy with regard to this particular subject, it required that when and so often as the property in any ship or vessel, or any part thereof belonging to any of her Majesty's subjects, shall after registry thereof be sold to any other or others of her Majesty's subjects, the same shall be transferred by bill of sale, or other instrument in writing, containing a recital of the certificate of registry of such ship or vessel, or the principal contents thereof, otherwise such transfer shall not be valid or effectual for any purpose whatever, either in law or in equity; provided always that no bill of sale shall be deemed void by reason of any error in such recital, or by the recital of any former certificate of registry, instead of the existing certificate, provided the identity of the ship or vessel intended in the recital be effectually proved thereby. Now, this is the case of part of a vessel, belonging to some or one of the Queen's subjects, and it has been registered, and it has been sold to another of the Queen's subjects, in this sense, that it has been contracted to be sold by an agreement in writing, one of the provisions of which is that the purchaser shall be at the risk of the vessel and stores, from the time of the knocking down of the hammer, which is the time either simultaneous, in effect, with the signature of the contract, or previously to it. Any provision, therefore, which should make the property (being the risk of the vessel and stores on the one side, and the profit upon the other), at all different, or as from a different time, would be to change the contract. Now, this contract does not, to any extent, or in any sense, either accurate or inaccurate, recite the certificate of registry. It is said that this is of no importance, because this is not a bill of sale, and although it is an instrument in writing, yet it does not effect a transfer. It appears to me that that is immaterial with regard to the equitable principles, which are here called into action. What the Legislature had in view was not merely, as I apprehend, the passing or not passing of what we call the legal estate, but it had in view substantially this, that whenever property in a vessel was to be changed under certain circumstances, it was to be changed in a particular way. Now, whether it was a sale, or a contract for a sale, can make no difference. A contract for a sale is, in the view of a Court of Equity, a sale: whether an actual transfer is made is of no importance, if an actual transfer is agreed to be made, because that which is agreed to be done is in the view of a Court of Equity, for many and most purposes, held to be done. If the argument were to prevail, that that which this Act directs with respect to a sale or transfer should not extend to a contract for sale or a contract to transfer, we should, in effect, as it seems to me, be repealing the provision of this Act of Parliament, because the legal title might remain unchanged upon the registry, and the equitable interest might be continually the subject of transmission, made from hand to hand and from person to person, in a manner utterly disregarding the provisions of the Act of Parliament, and I must say that in my opinion upon a question such as this, affecting public policy and the general interest, it would be in fact to repeal the Act of Parliament. A Court of Equity is bound to follow the law where the public interest is concerned, and where provisions are given for such a purpose it must give effect to them. The case appears to me to stand exactly upon the same footing, or even stronger, against the plaintiff than the case would be of a parol contract for the sale of land without part performance. A parol contract for the sale of land, though all the money be paid, without part performance (for the payment of the money is no part performance), cannot be carried into effect if the person sued choose to avail himself of a defence; and this, as I have already said, appears to me to stand upon a principle at least as unfavourable to the plaintiff as a case of this description, because in suing upon a contract in an action, or in equity, in my opinion, the Legislature has forbidden this or any other Court to recognise it; an opinion certainly at variance with that which a very eminent common lawyer and a most distinguished Common Law judge, either has published, or permitted to be published, in a most valuable work; and it may possibly be at variance with one decision of a learned judge, the late Master of the Rolls, upon this subject, from whom also another decision has proceeded plainly in contradiction of any such opinion. Upon the whole, I am of opinion that a Court of Equity is bound to follow the law in this respect, and to declare here that there is no contract which can be recognised. How the case would be if there had been a fraud, it is not necessary to say. Fraud is as much out of the question, as in the simple case, under the Statute of Frauds, where performance is resisted, although all the money has been paid There is no fraud in the sense in which the Court is held to use the term, with reference to subjects of this description. It appears to me that relief cannot be given, and that the plaintiff must be left to such remedy by action as he may think fit, as far as the parties to this record are concerned. There may be a person off the record liable to be seriously affected by what has come under the view of the Court in this case, but at present I would rather not say any more upon that particular topic.

Lord Justice Lord Cranworth.—I am of the same opinion. I had the opportunity last night of considering the matter more fully, and I was confirmed in the opinion I had when the matter was first mentioned, and which, until doubts were ingeniously raised, I confess I never was aware that the subject was involved in any doubt; and I thought it had been perfectly clear that under the present statute, as under the old statute, there could be no transfer in equity that was not a transfer in law of the ship. The only question is this, whether the law has been altered since the year 1816, when Lord Eldon decided the case of *Brewster* v. *Clarke*, 2 Mer. 75, because there Lord Eldon distinctly decided that there can be no bill for specific performance for the transfer of a ship upon a contract of sale. That was the necessary result of that decision. Has it been altered in any way so as to alter the principle—so as to affect the principle upon which that decision went? The suggested alteration is, that whereas originally the Legislature had said no transfer shall be valid that is not in a particular mode, a few years after the original statute it was said doubts had been entertained whether it extended to contracts; and then it was enacted that contracts and agreements for sale were also void. That was the state of the law when *Brewster* v. *Clarke* was decided. But, then, it is said, since that case was decided, namely, first, by the statute of 6 Geo. 4, c. 110, when the navigation laws were consolidated; and subsequently by those of 3 & 4 Wm. 4, c. 55, when they were again consolidated; and ultimately by the Act of the 8 & 9 Vict. c. 89, when they were lastly consolidated, that the provision as to agreements has been omitted. That is so; and Lord Tenterden undoubtedly says—having no doubt in his eye several decisions at law that had taken place during the time that he was Chief Justice, shortly before the passing of the first Consolidation Act of Geo. 4,—he says that alteration makes a difference, for that now contracts are not prohibited,—not in terms. I am not clear that he may not be quite right in that. It may be, that now an action may be maintained upon a contract for a sale of a ship, which would have been void before, under the laws as they were before they were consolidated in the reign of Geo. 4. That may be so, but what we have to consider is, what is the effect of the recent enactment upon equitable consideration with regard to ships? I confess it seems to me that it leaves the matter exactly where it was before, because what is said here is, "so often as the property in any ship shall be sold." The language altogether in this statute is very informal, "property in a ship to be sold;" the proper expression would be, "the ship sold," that so often as any property in any ship or vessel, or any part thereof belonging to any of her Majesty's subjects shall be sold, the same shall be transferred by bill of sale," "containing such and such particulars, otherwise such transfer shall not be valid for any purpose whatsoever." What is said is, that a contract although not valid to transfer the property, may make the party the owner in equity. That would be to get rid of the whole policy of the statute, which is (whether a sound policy or not we need not inquire), but the object is, that there should be the means of seeing conclusively, by tracing from the original grand bill of sale, as it is called, from owner to owner, the ownership for all time. But if this doctrine be right that is contended for, there never need any thing appear in any document, from the very first sale, because it may well be a sale in equity (which would be just as good), and handed from party to party, and I do not see why the whole policy of the statute may not be got rid of entirely and effectually, even supposing there be an alteration in the law by the omission in the statute, which is merely an alteration with respect to a right of action and not an alteration that can affect the question of equity. I would observe, moreover, that the notion of a bill for a specific performance of the sale of a ship is a doctrine that rather stands on its own footing. It is a sale of a chattel; and I am not clear (if Lord Tenterden is right) that the remedy by action at law does not give complete relief. But I do not, however, rest upon that; it has a great deal pressed upon my mind; but, supposing I am wrong in that, still the effect of the present statute is the same in effect as the old statute, and prevents any transfer in equity either by contract or otherwise.

The Lord Justice Knight Bruce.—The respondent will take the deposit, and no other costs. It will be understood that it is to be without prejudice to an action.

ROLLS COURT.

Reported by J. Macaulay, Esq. of the Inner Temple, Barrister-at-Law.

Feb. 14 and 21, and March 31.

Holliday v. Overton.

Will, construction—Appointment—Equitable estate—Fee simple—Words of limitation.

Certain real and personal property belonging to D. was upon her marriage conveyed and assigned to trustees "in trust to pay the income thereof to D. for life, and after her decease to stand possessed thereof upon trust for such persons and purposes and in such manner as D. in and by her last will and testament, or instrument testamentary or in the nature of a will, in writing, to be signed and published by her in the presence of three or more credible witnesses, upon testamentary considerations only, during the intended coverture, should direct or appoint;"

Held, that the power was limited as to the time of its being exercised to the coverture of D. the words "during her intended coverture" qualifying all the preceding words of the clause, and that, therefore, an appointment after the determination of the coverture by the death of the husband was unauthorised by the power, and invalid.

The property was, in default of appointment, limited in trust for the children of D. equally to be divided between them as tenants in common, and not as joint tenants.

Held, that, for want of words of limitation, the children, in default of appointment, only took life estates in the property.

This was a claim filed by three of the children of Mrs. Mary Drayton, to establish the validity of an appointment made by her in their favour of certain property over which she had a general power of disposition. Mrs. Mary Drayton had, by her first husband, Mr. Heathcote, six children, of whom the plaintiffs, Mary Henry Holliday, widow, Julia Henry Oukama, widow, and Laura Henry Heathcote, were three, and, on the second marriage of Mrs. Drayton, a settlement was executed, bearing date the 23rd of September, 1835, whereby certain real estates, the property of Mrs. Drayton, then Mrs. Heathcote, and certain personal property also belonging to her, were respectively conveyed and assigned to Thomas Ventom, his heirs, executors, administrators, and assigns, upon trust, after the solemnization of the then intended marriage, to pay the rents, issues, and property of the said real estate, and the interest, income, and annual payments of the said personal estate," to the said Mary

Drayton (then Mary Heathcote) during her natural life, for her separate use and benefit, without power of anticipation, from and after the decease of the said Mary Drayton; then to stand seised and possessed of the said premises, in trust to and for such person or persons, and to and for such trusts, interests, ends, and purposes, and in such manner respecting the same, and of all and every part thereof, as the said Mary Drayton, in and by her last will and testament, or instrument testamentary, or in the nature of a will, in writing, to be signed and published by her in the presence of three or more credible witnesses, upon testamentary considerations only, during the intended coverture, should direct or appoint; and for want, and in default of such last-mentioned direction or appointment, or as to so much and such part of the said premises whereof no complete direction or appointment should have been made, in trust for the children of the said Mary Drayton equally to be divided between them, share and share alike, as tenants in common, and not as joint tenants." William Overton was afterwards duly appointed a trustee in conjunction with Thomas Ventom. Mrs. Drayton, in pursuance of her power of appointment, duly executed a will or testamentary instrument in the life-time of her husband, Mr. Drayton, bearing date the 24th day of January, 1832, and she also duly executed a codicil thereto, dated the 11th of April, 1843. The will and codicil remained unrevoked and uncancelled at and after the death of Mr. Drayton; and Mrs. Drayton thereby gave, devised, bequeathed, and appointed all and every of her estate and effects real and personal, and of what nature or kind soever, unto and for the use of her daughters, the plaintiffs, and her daughter, the defendant, Sabina Henry Wenman, their respective heirs, executors, and assigns, as tenants in common. After the decease of Mr. Drayton, however, Mrs. Drayton having been advised that in consequence of the husband of the plaintiff, Julia Henry Oukama, being one of the attesting witnesses to the will of the 24th of January, 1832, the said Julia Henry Oukama could not derive any benefit from it, she destroyed the will and codicil so executed by her in her husband's lifetime, and duly executed another will, bearing date the 13th of November, 1845, and thereby, after revoking all wills and testamentary dispositions theretofore made by her in exercise of the power reserved to her by the said indenture of settlement, and of all other powers and authorities enabling her on that behalf, gave, devised, bequeathed, and appointed all the said trust estates and premises unto and among the said plaintiffs, and the said defendant, Sabina Henry Wenman, in the same manner as she had done by her former will and codicil, except that on consideration of her daughter, Mary Henry Holliday, having had the sum of 500*l.* left her by the late brother of Mrs. Drayton, she stated that it was her wish and desire that the said plaintiff, Mary Henry Holliday, should receive 500*l.* less than her three sisters. The testatrix thereby also nominated the said William Overton and Thomas Haywood executors of her will. Mrs. Drayton died on the 16th May, 1848, and on the 6th November following her executors proved her will of 1845 in the Prerogative Court of Canterbury. After the death of Mrs. Drayton, Thomas Ventom and William Overton, the trustees of the marriage settlement of the 23rd September, 1835, disputed the title of the plaintiffs and the defendant, Sabina Henry Wenman, to the trust property of which they were the appointees, on the ground that Mrs. Drayton had no power under the clause in the marriage settlement creating the power to appoint the trust property by a will executed by her after the death of her husband, Mr. Drayton, and that the appointment was invalid and the property was divisable among all the children of Mrs. Drayton as in default of appointment. The plaintiffs accordingly filed a claim to establish the validity of the appointment and praying a declaration by the Court that the will or testamentary appointment of the 13th November, 1845, was a valid execution of the power of appointment given to Mrs. Drayton in and by the indenture of settlement of the 23rd September, 1835, and that the plaintiffs and defendant, Sabina Henry Wenman, or she and her husband in her right, might be declared to be entitled in equity to the trust estate, moneys, funds, and premises comprised in and conveyed and assigned by the indenture of settlement, and to the rents and profits, interest, dividends, and annual proceeds thereof, accrued due since the death of the testatrix, Mrs. Drayton.

Lloyd and *Speed*, for the plaintiffs, contended that the power could be exercised after the determination of the coverture. Mrs. Drayton, at the time of making the settlement in question, was a widow with children by her first husband, and the property settled belonged to herself. The object of the settlement, therefore, was merely to protect herself against the marital right of her second husband, and after the coverture was determined she was at liberty to do as she pleased. There was no reference, moreover, in the recitals to the time during which the appointment was to be made; and as to the testamentary considerations spoken of, they meant considerations of pure bounty; Mrs. Drayton was not to give a bond nor execute any contract for sale. (*Onions* v. *Tyrer*, 1 P. W. 343, 345, was referred to.)

R. Palmer and *Sheffield*, for the defendants Mr. and Mrs. Wenman, insisted that for the proper construction of the clause creating the power it was necessary to divide it into two branches, one before and the other after the word "or," that is, the first "or." It would thus be found that the power contemplated two modes of appointment, first by will and the second by instrument testamentary, or in the nature of a will in writing to be signed, &c. And in support of that view of the case they contended that a will executed by a married woman during coverture is not properly a will, but it is a testamentary instrument; and, besides, the form prescribed as to the signing and publication in the presence of three witnesses had reference to the testamentary instrument, for the law required the will to be attested by three witnesses.

The MASTER of the ROLLS had no doubt whatever as to the proper construction. It would be contrary to all principle to make a distinction between the two modes of appointment. The words "during the coverture" were intended to apply to the whole clause, and not merely to the latter branch of it, to which it appeared to his Honour, it would be inconsistent with all the rules of construction to restrict it; and he could not, from any consideration of inconvenience that might result from the larger construction, so restrict it. He entertained not the least doubt that the appointment in 1845, made, or purporting to be made, in exercise of the power, was wholly invalid, and there must be a declaration that there was no valid execution of the power, and an inquiry must be directed as to the receipt of the rents.

Saturday, Feb. 21.—The appointment having been held void, the cause now came on again to be heard on the question as to who were the parties entitled in default of appointment.

Lloyd and *Speed*, for the plaintiffs, contended that, as the clause in the settlement giving the property to the children of Mrs. Drayton in default of appointment contained no words of limitation, they took only a life-interest therein, and that, subject to that life-interest, the fee-simple in the real estates and the absolute interest in the personalty were vested in Mrs. Drayton, and would therefore pass to the plaintiffs and defendants, Wenman and wife, under the gift to them contained in her will.

Amphlett, for Ann Heathcote, the widow and executrix of Henry Spencer Heathcote (Mrs. Drayton's only son) and for Alfred Spencer Heathcote, his heir-at-law, contended that the clause in question gave a fee and not merely a life estate. A use in fee might have been raised before the Statute of Uses without words of limitation, but after the passing of that statute the common law rule was held to apply to uses, and therefore the words here would have conferred a fee. But however that may be, where there is a contract between parties for a valuable consideration, and the intention is that a fee should pass, the Court will give effect to the contract. The intention is apparent from the recital to pass the whole fee, and the children of the first marriage are within the consideration of the settlement on the second marriage. The limitations may be defective, and if the estates were legal, it might be necessary to rectify them; but this is a mere declaration of trust. He cited *Shelley's* case, 1 Rep. 100; *Moore* v. *Cleghorn*, 10 Beav. 423; *Challenger* v. *Shepherd*, 8 T. R. 597; *Newstead* v. *Searles*, 1 Atk. 264; *Knight* v. *Selby*, 3 Scott, N.R. 409; Shep. Touch. 521, 522.

Lloyd, in reply, contended, that the distinction taken between legal and equitable estates was not well founded; and as to the intention of the parties, that was merely a ground (if such intention appeared) for applying to the Court to have the settlement rectified. Then, as to the rights of the children under the deed of settlement, they were not parties to it, and did not come within the marriage consideration; and though the father is under an obligation to provide for his children, the mother is not, and a meritorious consideration is not sufficient to support their claim on the footing of contract. [The MASTER of the ROLLS referred to *Johnson* v. *Legard*, T. & R. 281.]

Tuesday, March 30.—The MASTER of the ROLLS.—In this case I reserved my judgment on one point only. The question originally raised by the claim was whether the power given to the wife was one which could be executed by her when not under coverture; and I am of opinion that the words of the deed limited the service of the power to the period of coverture. But in the course of the argument it appeared that the gift over in default of appointment was in these words, namely, "in trust for the children of Mary Heathcote, equally to be divided between them, share and share alike, as tenants in common and not as joint tenants," and not containing any words of inheritance; and which, therefore, according to the ordinary rule of construction in such cases, would have restricted the interest taken by the children to life interests. The claim stood over for the purpose of Mr. Amphlett considering whether any distinction could be found in the circumstances of this case to alter or prevent the application of the general rule, and accordingly several arguments and authorities were adduced for this purpose; but after an attentive consideration of them I am of opinion that they do not affect this case. It was first endeavoured to bring this case within the rule which applies to executing instrument, on the ground that this was a contract to convey the fee, and that the children were purchasers within the contract. There is, however, nothing executory in the frame of this instrument; it is to all intents a deed executed, and which does not require any further or additional instrument to give it validity or force. It was further contended, that upon the true construction of this instrument the children must be considered as purchasers, and that, being purchasers, this gives a construction to the declaration of trust, which will vest the fee in those children, without the necessity of employing any words of inheritance for this purpose; and Sheppard's Touchstone, and a passage in *Shelley's* case, 1 Rep. 100, are cited to establish this position. The passage in Sheppard's Touchstone, 521, 522, is to the effect, that in the case of a purchaser for valuable consideration, and a declaration of the use to the purchaser, omitting the word "heir" would not deprive him of the fee. The passage in 1 Rep. 100, is to the same effect. It refers to a case where the words of the instrument are governed by the interest of the parties for the purpose of shewing that a use before the stat. 27 Hen. 8 was merely regarded as a trust. It is to this effect—"That a man shall not have a fee-simple by a feoffment or grant without these words, 'his heirs,' and yet the law is plain, that if a man had, before stat. 27 Hen. 8, bargained and sold his land for money without these words 'his heirs,' the bargainee hath a fee-simple, and the reason is because, by the common law, nothing passeth from the bargainor but a use, which is guided by the interest of the parties, which was to convey the land wholly to the bargainee; and forasmuch as the law intends that the bargainee paid the very value of the land, therefore, in equity and according to the meaning of the parties, the bargainee had the fee-simple without these words, 'his heirs,' as it is held in;" and then he refers to several cases in the year-book to establish that proposition. Undoubtedly, if these children mentioned in the settlement could be considered as purchasers within the meaning of the words employed in these passages, some arguments might be founded upon these authorities; but, in truth, the observation that the children are purchasers within the meaning of the settlement does not advance the argument a single step. They are not purchasers of the fee-simple or of any estate of inheritance, under any contract; though they may be purchasers within the consideration of the marriage contract, they are purchasers only of such interest as the settlement gives them, which brings it back to the former question, namely, what the interest is which is given them by that settlement; and this is a mere question of intention. The case of *Newstead* v. *Searles*, 1 Atk. 264, to which I was also referred, does not advance the case beyond what I have already stated. It is there attempted to control the effect of the limitations contained in the deed by force of the recital contained in the earlier part of the deed; but even if this were admissible, it would not advance the argument, for in this recital, there is, in my opinion, nothing leading to the conclusion that the children were to take the fee; on the contrary, the recital is simply for the purpose of making a provision for the children upon the trusts after mentioned. The words of the recital are these,—"And after her decease, for the further purpose of making of the reversion"—there is some error in the copying of the deed,—"for making of the reversion and principal thereof, a provision for the children of her former marriage, subject, nevertheless, to the power of appointment on the part of the said Mary Heathcote, by will or testamentary instrument to be executed in manner hereinafter provided, upon such trusts and with, under, and subject to such powers, provisoes, and declarations as hereinafter contained;" that is to say, the recital is for the purpose of making a provision for the children by a reversion or principal. It is then limited upon the trusts, and, according to the provisions and declarations contained in the subsequent part of the instrument. This obviously leaves the trusts, declarations, powers, and provisions to be construed according to such import as the Court shall consider to be the true import to be applied to these words when you look at the limitations themselves. The cases of *Challenger* v. *Shepherd*, 3 T.R. 597; *Knight* v. *Selby*, 3 Scott, N.R. 409; and *Moore* v. *Cleghorn*, 12 Jur. 591; were all cases of wills, where, upon the true construction of

the words of the will, the Court held that the fee passed to the devisee, although the word "heirs" was omitted. But the rules applicable to the construction of wills or of executory instruments are not, in truth, applicable to the present case, which is the simple case of a deed executed, where I am bound by the strict rules which are applicable to a case of that description; and I must therefore hold that the children only take life estates in the property under these limitations in default of the due execution of the power. I am very much disposed to believe that it is a stop in making the settlement.

[N.B.—This decision has since been affirmed by the Lords Justices on appeal.]

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. HENRY COOKE, Esq. Barrister-at-Law.

March 12, 16, *and* 27.

JONES *v.* MAGGS.

Bequest—Accumulation portion—Thellusson Act.

A sum of money was bequeathed to trustees to accumulate the same at compound interest until a child of A. B. should attain the age of twenty-one years, and then to divide the accumulated fund among all the children of A. B. who should be then living, and if but one, the whole to be paid to that one. The residue was given to A.B. A. B. had one child living at the date of the will and at the death of the testatrix, which died under twenty-one. A. B. filed a claim for the payment to him of the dividends on the sum, and the accumulation of such dividends beyond twenty-one years from the death of the testatrix:

Held, that the sum of money bequeathed was not a portion within the meaning of the statute 39 & 40 Geo. 3, c. 98; and that a portion means a sum of money secured to a child out of property, the income of which is given to its parent, and that a gift to a parent of a residue does not make a previous gift to his child out of the general personal estate a portion within the meaning of the Act:

Held also, that the parent was entitled to a decree according to the claim.

This was a claim raising a question under the Thellusson Act, 39 & 40 Geo. 3, c. 98. Ann Jones by her will, dated in August, 1826, bequeathed certain specific legacies, and then proceeded thus: "And I give, devise, and bequeath unto Ambrose Eyles and Charles Maggs, and the survivor of them, his executors and administrators, all the residue of my estate and effects whatsoever, upon trust, to invest in the 4*l.* per cent. Consolidated Annuities, the sum of 200*l.* sterling, and to receive and invest the dividends arising therefrom, from time to time, in the same stock, to form an accumulating fund, until a child of my brother, Thomas Potter Jones, shall attain the age of twenty-one years; and on such event taking place, upon trust to divide the said stock, with its accumulations, in equal shares, between all the children of my said brother who shall then be living; and if only one child of my said brother shall then be living, upon trust to pay the same unto such only child. And as to the residue of my estate and effects, after investing the 200*l.* sterling in the 4*l.* per cent. Consolidated Annuities, upon trust, after paying my debts, funeral expenses, and the expenses of proving this my will, to pay the same to my said brother, to whom I give the same, as soon as conveniently may be after my decease; and I appoint the said Ambrose Eyles and Charles Maggs executors of this my will." Ann Jones died in October following, and her will was proved by the executors in November in the same year. The 200*l.* was invested in December, in the names of the executors, in the purchase of 203*l.* 6s. 1d. New 4*l.* per Cents. Mr. Eyles died in 1841. Mr. Thomas Potter Jones, the testatrix's brother, had one child born in 1825, and which died in 1827, and he never had any other child up to the time of filing the claim in 1852. This claim was for payment of all the dividends on the sum of 200*l.* beyond those which accrued within twenty-one years from the death of the testatrix. By the 1st section of the Thellusson Act, it is enacted that "no person shall by deed or will settle any real or personal property so that the rents or interest shall be wholly or partially accumulated for any longer term than the life of the settlor, or the term of twenty-one years from the death of the settlor, or the minority of any person living at the time of the decease of the settlor, or during the minority of any person who, if of full age, would under the deed or will be entitled to the rents or interest directed to be accumulated; and in every case where accumulations shall be directed contrary to these provisions, such directions shall be void, and the rents or interest directed to be accumulated shall, so long as the same shall be directed to be accumulated contrary to the provisions of this Act, go and be received by the person who would have been entitled thereto if such accumulations had not been directed." For the plaintiff the above section was relied on; and it was contended that the words of the statute, "during the minority," &c. must be taken to mean some person in existence when the deed or will creating the trust for accumulation came into operation, that is in this case at the time of the death of the testatrix. In support of this point, the cases of *Longdon* v. *Simpson*, 12 Ves. 295; and *Haley* v. *Barmister*, 4 Madd. 275, were cited. It was also argued that no period could be allowed between the death of the testatrix and the birth of the person on whose minority the accumulations were to depend, the life of such person being intended to be then existing. (*Ellis* v. *Maxwell*, 3 Beav. 587.) On behalf of the defendant, the surviving executor of the testatrix's will, it was contended that the case came within the exception contained in the 2nd section of the statute, which exempted for its operation "all provisions for raising portions for any child or children of any grantor, settlor, or devisor; or any child or children of any person taking any interest under such conveyance, settlement, or devise," for that the plaintiff took an interest under Mrs. Jones's will, and moreover the 200*l.* was taken out of the residue. The cases of *Shaw* v. *Rhodes*, 1 Myl. & Cr. 159; *Eyre* v. *Marsden*, 2 Keen, 573; *O'Niell* v. *Lucas*, id. ib. 313; *Holland* v. *Prior*, 1 Myl. and Keen, 237; *Elborne* v. *Good*, 14 Sim. 165; *Corporation of Bridgnorth* v. *Collins*, 15 ib. 538; *Holford* v. *Stains*, 16 ib. 488; *Beech* v. *Lord St. Vincent*, 19 L. J. Rep. (N.S.) Chanc. 131; *Wilson* v. *Wilson*, 1 Sim. (N.S.) 288; and *Bourne* v. *Buckton*, 2 id. ib. 91 were cited and commented on.

E. F. Smith, for the plaintiff.

Karslake, for the defendant.

Saturday, March 27.—The VICE-CHANCELLOR.—This will directs the accumulations of the dividends "until a child of my brother, Thomas Potter Jones, shall attain the age of twenty-one years;" and there is no doubt but that the accumulation is condemned by the 1st section of the Act, unless it be saved by the 2nd section, the only part of which applicable to the present case are the words "provisions for raising portions for the children of any person taking any interest under the devise, gift, or settlement." The question then is, whether this sum here given of 200*l.* and the dividends and accumulations, be or be not a portion. I see no reason for putting a strained construction on the word "portion," as used in the Act, 39 & 40 Geo. 3, c. 98; it would be contrary to the policy of the Act to do so. Is this provision, then, a provision for raising portions within the fair meaning of the Act? I do not conceive that it is. Portions for children are sums of money secured to them out of property, out of the income of which a provision is made for the parents; and although gifts have been held protected, as being portions within the meaning of this exception, in some cases, where the parents took no interest in the subject-matter of the gift, still this will only be where there is some settlement on the parent, and where the nature of the gift or of the context shews that the gift ought to be so held to be within the exception, and this was so in the cases cited of *Bourne* v. *Buckton*, and *Eyre* v. *Marsden*. Here the whole fund is given to the children; and there is nothing in the gift itself to impress the character of a portion on this legacy. It was said that the context shewed it to be a portion, because it was raiseable and payable out of the residue, and that the residue was given to the parent. It is payable out of the residue, but in this sense only, viz. that it is a deduction from the residue; but it is not payable out of the residue specifically, but out of the general personal estate. If such a construction were to be put upon a gift of this description,—if every gift to a child of a person who took anything under a residuary bequest were to be held a portion within this exception, nothing would be easier than to evade the Act, by giving legacies to the children of residuary legatees, and then bequeath the residue to the parent, and direct the children's legacies to be accumulated. But I do not think this is the right construction. The case of *Beech* v. *Lord St. Vincent*, which was quoted, does not seem to be in point; and I must declare the plaintiff entitled, as residuary legatee, to the dividends which have accrued due subsequent to the period of twenty-one years from the decease of the testatrix.

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

Monday, April 19.

HYDER *v.* COLEMAN.

Unnecessary statements in petition—Costs.

Where in an unopposed petition unnecessary statements were introduced, the Court directed the Taxing Master on taxing the costs, to have reference to such statements.

In this cause a petition, which was unopposed, was presented for the purpose of having certain property sold by the Master by private contract.

Steere appeared for the petitioners.

The VICE-CHANCELLOR said that the petition contained several statements immaterial to the prayer of the petition. He should, therefore, insert in the order a direction to the Taxing Master that in taxing the costs, he should have reference to the statements contained in the petition, and allow costs for such of the statements only as were required for the object of the petition.

Wednesday, April 28.

REECE *v.* TAYLOR.

1 & 2 *Vict. c.* 110, *s.* 14—*Charge of stock.*

B. a judgment creditor of A. obtained a judge's order charging a sum of stock standing in a suit to A.'s annuity account. B. filed a claim against A. but at the hearing A. did not appear. To make the annuity fund available, it was

Held, that a petition in the suit was necessary, and the Court directed that the claim should stand over and come on with the petition, but considered it unnecessary to serve A. with the petition.

This was a claim filed by Reece against the defendant Taylor for the purpose of making available a judge's order obtained under the 14th section of the 1 & 2 Vict. c. 110, charging a sum of stock in Court standing to Taylor's account as follows. Under the will of a testator whose estate was being administered under the direction of the Court, Taylor was entitled to an annuity, and to meet this a sum of stock was carried to an account in the cause entitled as Taylor's annuity account. From the time of filing the claim the defendant, Taylor, had been out of the jurisdiction, but he was duly served with process. The claim coming on to be heard,

Pole appeared for the plaintiff.

The defendant did not appear.

The VICE-CHANCELLOR made the order.

Pole said that as it would be necessary to present a petition in the administration suit, in order to render the annuity fund available, it might be necessary to serve Taylor with the petition.

The VICE-CHANCELLOR said that such a petition must be presented, but it would be merely a matter of form, and Mr. Taylor need not be served with it. It would be better that the claim should stand over, so that the claim and petition should come on together and one order be made upon both.

Saturday, May 8.

HARTLAND *v.* DANCOCKS.

Practice.

Course of proceeding where issue directed at the hearing was abandoned by the defendants.

At the hearing of this case, which was that of a claim for foreclosure, an issue was directed upon a question of notice. Afterwards the defendants abandoned the issue, and

Torriano now applied to the Court to have the claim restored to the paper.

The VICE-CHANCELLOR said that he considered the proper course was that the plaintiff should give notice of motion that the issue should be taken pro confesso. On this motion coming on, an order would be made, the effect of which would be that the trial of the issue would be dispensed with, and the claim would be in the same situation as if the issue had been tried and found in favour of the plaintiff.

Wednesday, May 26.

MARTIN *v.* PYCROFT.

Specific performance—Statute of Frauds.

A. by writing agreed to grant a lease to B. and by parol it was agreed that B. should pay 200l. premium. B. filed a claim for specific performance, offering to pay the 200l.; but the Court holding that, consistently with the Statute of Frauds, specific performance could not be decreed, dismissed the claim without costs.

This was a claim for the specific performance of an agreement, dated the 1st of August, 1849, and which was in the following terms:—"The said James Pycroft, J. W. Pycroft, and Joseph Pycroft severally agree with the said William Martin at any time hereafter at his request, costs, and charges, by a good and sufficient deed to demise and lease the messuage or tenement known by the name of 'The Ship Alehouse,' together with the messuage or tenement adjoining thereto, formerly used as a coffee-house, both situated in Chichester Rents aforesaid, with the appurtenances thereto belonging (as the same are now in the occupation of the said William Martin, for the term of twenty-one years wanting two days), from the expiration of the said lease under which the said William Martin now holds the same, viz. from the 27th of September, 1852, at the yearly rent of 70*l.* payable quarterly, and under and subject to such and the same covenants, clauses, and agreements as are contained in the lease under which the said William Martin now holds the said premises."

The claim stated a lease of the publichouse by

Mrs. Pycroft to Mr. Calvert for a term which would expire on the 29th of September, 1852; a lease dated the 6th of April, 1832, whereby, in consideration of 200*l.* Mr. Calvert demised the publichouse to Martin, the plaintiff, for a term expiring on the 27th of September, 1852, at a rent of 70*l.* and whereby Martin, covenanted to lay out 200*l.* in repairs, that Mrs. Pycroft's interest became vested in the defendants, who entered into the before-mentioned agreement with the plaintiff; and "that it was agreed between the parties that 200*l.* should be paid by W. Martin as a premium in consideration for the lease;" it was then prayed that, on the payment of 200*l.* by Martin by way of premium, which payment he was ready and willing and offered to make, a lease might be granted to him according to the terms of the agreement.

Daniel and *Dauney* appeared for the plaintiff.

Malins and *W. R. Ellis*, for the defendants, objected that the plaintiff was precluded by the Statute of Frauds from obtaining the specific performance of this written agreement with a parol addition.

The VICE-CHANCELLOR could not see how this objection upon the Statute of Frauds could be met. The agreement was for a lease "under and subject to such and the same covenants, clauses, and agreements as are contained in the lease under which the plaintiff now holds." These words appeared to prescribe the terms upon which the property was to be held after the lease was granted, and were not applicable to the consideration to be paid before. The premium of 200*l.* was not a "covenant," a "clause," or an "agreement" to be contained in the lease. There was then a written agreement for a lease without a premium. But the plaintiff said that it was always the intention of the parties that a premium should be paid, and he offered to pay the same sum as that which he had paid to Mr. Calvert. If the plaintiff had refused to perform the agreement, the defendants could not have compelled him to take a lease and pay a premium of 200*l.* A material part of the agreement had been omitted from the written agreement, and his Honour did not see how, consistently with the Statute of Frauds, the Court could decree a specific performance.

Claim dismissed, without costs.

Saturday, May 22.

Re THE OXFORD AND WORCESTER EXTENSION AND CHESTER JUNCTION RAILWAY COMPANY.

Joint-stock Companies Winding-up Act—Discharge of order for call, some of the contributories having, upon appeal, been struck off the list.

Daniel, on behalf of Mr. Sharp and Mr. James, renewed a motion to discharge the Master's order, dated the 10th July, 1851, for a call upon the contributories. The motion was made on the 26th of January last, but was ordered to stand over until the result of an appeal upon a question relating to the company, then about to be heard before the Lord Chancellor, was known. The Lord Chancellor having delivered his judgment upon that appeal (see 19 Law T. Rep. 193), the motion was now renewed.

Cairns, for the official manager, did not oppose the cancellation of the call. The matter must go back to the Master for a fresh calculation, as the principle of the Lord Chancellor's decision would strike off the whole of class 6 of the contributories. He would propose that it should go back to the Master with a declaration.

The VICE-CHANCELLOR said he did not see any necessity for a declaration: the thing would speak for itself. Upon reading the Lord Chancellor's order, let the present order be discharged, without prejudice to any application of the official manager to the Master.

Daniel asked for costs; but

The VICE-CHANCELLOR considered that he had not sufficient before him to decide upon giving costs.

Monday, May 31.

PERRY *v.* WALKER.

Practice—Proceedings in the Master's office.

The Court will not make a peremptory order that the Master shall proceed with a particular reference de die in diem, but his course of proceeding must be left to the Master's discretion.

Russell and *W. R. Ellis*, on behalf of the plaintiff in this case, moved that the Master should be directed to proceed de die in diem, in the accounts which had been directed to be taken by him. The decree bore date on the 28th of April, 1842, but in consequence of the changes of Masters, the death of the defendant, and other circumstances, no report had yet been made, and the decree was still being prosecuted before the Master.

The VICE-CHANCELLOR (without hearing *Bacon* and *Wright*, who appeared for the defendant) said that the Court must regret very much the time that had been spent in this reference; but his Honour thought the course of proceeding in the Master's office must be in the Master's discretion. The order was, that the Master should be at liberty to proceed de die in diem according to his discretion. In *Purcell* v. *Macnamara*, 11 Ves. 362, Lord Eldon considered the matter, and said when the order was made that the Master should be at liberty to proceed de die in diem, "the Master is not to conceive the order to be imperative upon him. He has complete discretion to avail himself of it or not, as the circumstances passing before him call upon him in the exercise of a sound discretion." It was impossible for the Court to know what inconvenience might be occasioned to the other suitors, if such an order were made peremptory on the Master to proceed de die in diem. As the motion was against the practice of the Court, it must be refused with costs. His Honour added, that he could not make the order, and he did not believe that any such order was ever made upon a Master to proceed de die in diem.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

May 31 and June 5.

REG. *v.* THE EAST-INDIA COMPANY, *ex parte* GENERAL SIR C. NAPIER.

Mandamus—Military pay—Prize money.

By royal warrant, prize booty taken in the Scinde campaign in 1843 was granted to the East-India Company, to be distributed among the officers and soldiers. The prize money was distributed in two divisions. Subsequently, an order was issued by the Indian government, stating that certain charges debitable to the Scinde prize money had not been deducted from the second dividend, and ordering the amount of those charges to be deducted from the pay of the officers, which was accordingly done:

Held, that as a mandamus would not lie to enforce the pay from the company, so neither would it for the payment of such deductions, even presuming them to have been improper.

Byles, Serjt. (*Willes* with him) moved for a rule calling upon the East-India Company to shew cause why a mandamus should not issue commanding them to pay to General Sir Charles Napier the sum of 20,198 rupees (2,019*l.* 17*s.* 6*d.*). It appeared that in 1843 Sir Charles Napier was appointed Commander-in-Chief of Her Majesty's and the East-India Company's forces in Scinde, and that the campaign terminated in the annexation of the territory of Scinde to the British dominions. A large booty was taken in that campaign, consisting of gold and silver bars, jewels, ornamented arms, and other articles of great value, amounting in the whole to between 4,000,000 and 5,000,000 rupees. The Crown, by a Royal warrant dated the 11th of November, 1845, granted that sum to the East-India Company, in trust, to be distributed among the officers and soldiers who served in the campaign. Sir C. Napier returned to England before the distribution of the money took place; but he again returned to India in the year ... At that time he held four different appointments: 1, that of Commander-in-Chief of the Queen's troops in India; 2, that of Commander-in-Chief of the Company's troops in India; 3, the local rank of general in India, to which no pay was attached; and, 4, that of Extraordinary Member of Council. To this latter office, when held by the Commander-in-Chief, no pay was attached. The only pay, therefore, which General Sir Charles Napier was entitled to was that attached to the office of Commander-in-Chief, amounting to 11,300 Company's rupees a-month. It was provided by the 33 Geo. 3, c. 52, s. 128, that the expenses of the Queen's troops in India should be repaid by the East-India Company. Sir Charles Napier arrived in India in the month of May, 1849, and soon after his arrival, the prize money in question was distributed in two dividends. The first dividend was paid in the year 1848, and no question arose respecting that payment. In the month of July, 1849, the Indian Government ordered the payment of a second dividend, and this was accordingly paid to the officers and soldiers who had served in Scinde. But in the month of April in the following year it appeared that an order was issued by the Indian Government stating that certain charges debitable to the Scinde prize money had not been deducted from the second dividend, and ordering the amount of those charges to be deducted from the pay of the officers. In May, 1850, the pay of all the officers was stopped, and they received nothing; and the pay for a large portion of the month of June was also stopped. Sir Charles Napier then addressed a protest to the Indian Government against this deduction, the consequence of which was, that the deductions which had been made from his salary were paid to him in the month of July, 1850; but in the following months of October and November the East-India Company deducted the same amounts from Sir Charles Napier's salary as Commander-in-Chief for those months. The amount so deducted amounted, as it was stated, to 20,198 rupees, or 2,019*l.* 17*s.* 6*d.* In the protest presented by Sir Charles Napier to the Indian Government in the month of May, 1850, he objected to the deductions on the following grounds:—

1. That her Majesty had given him a certain share of the Scinde prize money, and the Governor-General in Council could not legally deduct any portion from the sum without a detailed and specific account being given of such deductions. 2. That the Governor-General in Council published in his orders that certain sums, with certain deductions, were to be paid to the captors of the prize booty according to her Majesty's warrant; that the said sums were paid accordingly, and were received by the parties, in perfect confidence in the correctness of the calculations made by the Government. 3. That the present unjust surcharge created great astonishment, and shewed that no confidence could be placed in any calculations of the Indian Government. 4. Protesting against the pay of the officers being retrenched upon the vague assertion that "certain charges" had been omitted five years before, and calling upon the Indian Government to state what those charges were, and by whose neglect they had been omitted, before making such demands. 5. That a number of the Queen's officers were in Europe, and some of the Company's officers had since died, and all of these would of course refuse to refund a single farthing; they were beyond this arbitrary exercise of power by the Indian Government, and therefore a portion only of the captors suffered by these "certain charges" brought forward seven years after the booty was taken. 6. The retrenchment of pay was as unjust in detail as it was in principle and the concealment of items; it made a portion pay for the whole; it could not take from the two European regiments gone to England, and it did not venture to commit such an act of injustice on the Sepoys; therefore the officers in the power of the Government were to pay for the whole, because some Government subordinates made a mistake. 7. That such conduct deprived the officers of all security for prize money or pay; and saying that certain unknown omissions were made by certain unknown accountants, and therefore the Government retrenched their pay, shewed a strange contrast with the exact details and vouchers so imperiously and so properly exacted from individuals in their accounts with the Indian Government.

That was the protest which General Sir Charles Napier made to the Indian Government; but, as the East-India Company in England had overruled it, and ordered the pay to be deducted, this was done accordingly in the months of October and November 1850. In the following year (1851) General Sir Charles Napier arrived in England, and made an application to the East-India Company on the same subject, intimating, at the same time, that he had a legal right, and if his claim was not attended to he should take the opinion of a court of law upon the subject. The company refused to accede to the claim, and, therefore, the present application was made. Sir Charles Napier stated that he was induced to make this application, not so much on his own account, as for the sake of those other officers who were not in a position to maintain their rights. The sum in dispute was 2,000*l.* but that was only a small portion of the prize money (about 68,000*l.*) which had been awarded to Sir Charles Napier.

Three points will have to be considered:—1. Whether the company had any right to recover back any portion of this prize money after it had been distributed and paid over? 2. If the company had the right, could they stop it out of the officers' pay? 3. If they could not, was there any other remedy for recovery, except by mandamus, and would that writ lie? [Lord CAMPBELL.—The main question is, whether the writ will lie.] The 3 & 4 Vict. c. 37, s. 35, precludes the company from making any deductions from the pay of the officers: "No paymaster or other person shall receive any fees or make any deductions whatsoever out of the pay or allowances of any officer or soldier (without his consent be obtained thereto), other than the usual deduction, or such other necessary deduction as shall from time to time be required to be made, according to the regulations of the service." The last clause refers to the case where soldiers' accoutrements are deficient, and allows small deductions to be made from time to time on that account, according to the regulations of the service. But with that exception it is enacted, "that every paymaster or other officer, having received any officer's or soldier's pay and allowances, who shall unlawfully detain for the space of one month the same, or refuse to pay the same when it shall become due, according to the several rates established by the regulations of the service, shall upon proof thereof before a court-martial be discharged from his employment, and shall forfeit 800 company's rupees, and be liable to such other punishment as shall by the court-martial be awarded," &c. Sir Charles Napier was the Commander-in-Chief of her Majesty's forces and of the company's forces in India, and his pay in such capacity was pay within the meaning of the Act. The company had no right to stop anything from the pay of an officer, even in respect of a legal demand. It has been decided in the case of *Gibson* v. *The East-India Company*, 5 Bing. N. C. 262, that an action would not lie for recovery of pay. If an action would lie, it must be upon contract; but the company being a corporation, could not contract except under its common seal. In the case referred

to, the action was for a retiring pension in the nature of half-pay. The demand here is for pay which the company were ordered by the Act to pay. It is a contract of imperfect obligation. [Lord CAMPBELL, C.J.—How can this Court compel the performance of a duty of imperfect obligation?] The 128th section of the 33 Geo. 3, c. 52, in effect provides that the expenses of the troops in India should be paid by the company, and that the money so to be paid should be paid by the company. The Act said, "You shall pay my troops, and that without any deductions." This entitles Sir Charles Napier to the interference of this Court in a case where the company refuses to discharge a duty imposed upon them by the Act. The following cases were cited: *Gidley* v. *Lord Palmerston*, 3 B. & B. 275; *R.* v. *The Lords Commissioners of the Treasury*, 4 A. & E. 286; *Same* v. *Same*, 4 A. & E. 976; *Ex parte Ricketts*, 4 A. & E. 999; and *R.* v. *The Lords of the Treasury* (in *Re the Queen Dowager's Annuity*), 20 L.J. 305, Q.B. *Cur. adv. vult.*

JUDGMENT.

Saturday, June 5.—Lord CAMPBELL, C.J.—This was a motion for a rule to shew cause why a mandamus should not be issued, directed to the East-India Company, commanding them to pay to General Sir Charles Napier the sum of 20,198 rupees, which he alleges is the amount of an improper deduction from his pay as Commander-in-Chief of her Majesty's forces, and as commander of the forces of the East-India Company, in the months of October and November, 1850, which is due from the company as arrears of such pay. The first question to be considered is, whether, if it is payable and is retained without any reason being assigned, there is any jurisdiction in this Court to order a mandamus for the arrears to be paid by the East-India Company? If there be not, we cannot entertain the question whether the East-India Company were justified in making the deduction. The appellant must make out that there is a legal obligation on the East-India Company to pay him the sum demanded, and that he has no remedy to recover it by action at law. The latter point becomes immaterial only when the former is established, for the existence of a legal right and obligation is the foundation of every writ of mandamus. But it seems to us that the attempt to shew that there was any obligation on the East-India Company which the law would enforce to pay any sum of money to Sir Charles Napier, either as commander of the Queen's forces, or as commander of the native troops, has failed. The legal obligation, which is the proper substratum of a mandamus, can only arise from common law or from contracts. Of course the obligation here contended for cannot arise from the common law, and is not rested on a contract. We have, therefore, to see whether there be any enactment of the Legislature by which it can be supported. It was not contended that an officer in the Queen's army at home could apply to us for a mandamus on the ground that his pay had been improperly detained, and the application is entirely founded on certain statutes respecting the East-India Company as governors of the dominions belonging to the Crown in India. I will examine these statutes in their chronological order. The first statute relied on is the 33 Geo. 3, c. 52, for continuing in the East-India Company the possession of the British territories in India, and for establishing other regulations for the government of the said territory. By sec. 128 of that statute it is enacted, "that all sums issued by the said paymaster-general of his majesty's forces for and on account of his majesty's forces serving in India, or for raising and supplying recruits for the same, shall be repaid by the said company, and that the actual expenses only which, since the 24th day of December, 1792, have been or which hereafter shall be incurred for the support and maintenance of the said troops shall be borne and defrayed by the said company." But this is an arrangement between the East-India Company and the British Government, and establishes no privity between the company and any officer of the company. Then comes the 53 Geo. 3, c. 155, by which, in common language, the charter of the East-India Company was renewed, and which enacts by sec. 55 that the revenues of the company shall be applied first to defray all the charges and expenses of the "raising and maintaining the forces as well European as native, military, artillery, and marine, on the establishments in the East Indies." Still this appropriates no part of these revenues in particular to the Commander-in-Chief of the forces. The next statute we have is the Indian Mutiny Act (the 4 Geo. 4, c. 81). This enumerates a great number of offices of which military men may be deprived by court-martial in the East Indies, and by secs. 43 and 44 enacts "that no paymaster shall receive any fees or make any deductions out of the pay or allowances which shall be due to any officer or soldier in the company's army other than the usual deductions; and if any officer or paymaster shall unlawfully detain or withhold for the space of one month the pay and allowances of any officer or officers after such pay and allowances shall be by him or them received, then upon proof thereof, before a court-martial, every such paymaster or officer so offending shall be discharged from his employment, and shall forfeit to the informer, upon conviction before the said Court, eight hundred Sicca rupees, and be liable to such further punishment as shall by the court-martial be awarded: Provided always, that it shall and may be lawful for the Governor-general in Council, or the Governor in Council, at the said presidencies respectively, to give orders for withholding the pay of any officer, non-commissioned officer, or soldier, for any period during which such officer, non-commissioned officer, or soldier, shall be absent without leave." But as yet no amount of pay is assigned to the Commander-in-Chief or any officer, and no directions are given to the Governor to issue any order for pay or allowances, and no time is mentioned for any pay or allowances which become due. We were then referred to the 3 & 4 Wm. 4, c. 85, under which India is now governed, and will continue to be governed, until the 30th of April, 1854. By sec. 79 of that statute it is enacted "that the return to Europe of any Governor-General or Commander-in-Chief shall be deemed a resignation of his office, and that the salary and other allowances of any such Governor-General or other officer respectively shall cease from the day of such resignation." This certainly supposes the Commander-in-Chief is entitled to *some* pay or allowance from his retirement and resignation, but is entirely silent as to what shall be the amount, or by whom or when paid. Nor is the applicant's case at all advanced by the statutes 7 Wm. 4 and 1 Vict. c. 47, on which reliance was placed. This Act provides that the prohibition of the payment of salaries to officers in the service of the East-India Company their absence from duty shall not extend to during sickness, and says the directors shall have power to order the refunding of any part of the salary or allowance received by any officer or servant of the company, if it shall appear that the permission to such officer to quit the presidency was granted or obtained, and that the sum so to be refunded shall be a debt due and recoverable by the company; but without giving any officer any right which he had not before possessed. Chief reliance was, however, placed on the 3 & 4 Vict. c. 37, s. 35, which was asserted to be a statutable recognition of the right of the Commander-in-Chief to be paid his salary by the company without any deduction. But that statute, when examined, turns out merely to be a new edition of the Indian Mutiny Act, and sec. 35 is no more than an addition or consolidation of secs. 42 & 43 of the 4 Geo. 4, c. 81, and therefore merely renders the paymaster liable to be tried by a court-martial for receiving fees or making improper deductions, or retaining in his hands any pay or allowances for more than a month after the receipt thereof. The statutory obligation upon the company to pay the salary is in no degree established. Sir Charles Napier in his affidavit says, that the pay of the forces serving in India has been and is payable and paid by the said company, and that during the filling of the said offices the proper pay and salary of this deponent as Commander-in-Chief, under his said commissions from her Majesty and the East-India Company, was the sum of 14,305 rupees per calendar month, which is equivalent to 1,480*l.* 11*s.* sterling, and was payable monthly, on or about the third day of each month, for the next preceding month, according to the usual practice of this deponent with the East-India Company. He thus relies merely on facts which may amount to an honourable, but it does not amount to a legal obligation. We will now examine the authorities quoted by the learned counsel who made the motion. He began with the case of *Gibson* v. *The East-India Company*, in which the Court of C. P. held that the retiring pension of a military officer does not on his bankruptcy pass to his assignees. But this was cited with a view (as we thought at the time) to shew that no action will lie for the arrears in question at the suit of Sir Charles Napier against the East-India Company, and it is no argument to shew a legal obligation. Chief Justice Tindal there says, "It is clear that no action could be supported against any one to recover the arrears of half-pay granted by the Crown, at least, unless the money has been specifically appropriated by the Government, and placed in the hands of the paymaster or agent to the account of the particular officer. And there is no ground upon general principle to hold that an action could be maintained against any one, unless under the same circumstances in the present case." "If a retiring pension, which is given for former services, can be recovered by action, why should not the pay and allowances for actual services be equally so during their continuance? And yet how frequently is it not only expedient, but absolutely necessary, that military pay should be suspended and kept in arrear beyond the day when it becomes due, and until the service in respect of which it is earned has been entirely completed? Not to mention the expense and inconvenience which must arise if a suit might be instituted by each individual officer, and the prejudice which such litigation would necessarily occasion to the military service." "The grant in question, therefore, appears to us to range itself under that class of obligations which is described by jurists as imperfect obligations,—obligations which want the 'vinculum juris,' although binding in moral equity and conscience; and to be a grant which the East-India Company, as governors, are bound, in foro conscientiæ, to make good, but of which the performance is to be sought for by petition, memorial or remonstrance, not by action in a court of law." These observations seem to us to be equally applicable to the full salary of a commander-in-chief as to the half-pay of a lieutenant-colonel, not only to an action, but to a proceeding in a court of law for a mandamus. We have been also referred to the case of *Reg.* v. *The East-India Company*, 4 B. & Ad. 532, where a mandamus was actually granted, ordering them to transmit to India a despatch in the political department, as altered by the Board of Control. But this was under an Act of Parliament, the 33 Geo. 3, c. 52, s. 12, which expressly imposed on the directors a legal obligation to do so. Reliance is then placed on the case of *Reg.* v. *The Lords of the Treasury*, in which this Court granted a mandamus to the Lords of the Treasury to pay to Mr. Carmichael Smyth the arrears of a pension granted by the Crown, for services performed. But it has been rightly stated that this decision went entirely on the ground that the Lords of the Treasury had admitted that they had in their hands the sum of money in question, and that they had appropriated it to his use. The last case cited was that of *Reg.* v. *The Lords of the Treasury, re The Queen Dowager's Annuity*, which is to be found in 20 L. J. 305, in which this Court intimated an opinion that if the arrears of the annuity claimed had been due, a mandamus would have been the proper remedy to recover it. But the ground was, that in fact the right existed, and was a legal right, and there was no mode of enforcing it except by a mandamus, for the annuity was charged on the consolidated fund, and the stat. 4 & 5, Wm. 4, c. 15, s. 13, enacted that the payment of such an annuity can only be obtained by the warrant of the Lords of the Treasury, and imposed on them the duty of granting a warrant, when the payment of the annuity became due. Thus, upon a full examination of the statutes, and decisions relied upon, it is quite manifest that the distinguished officer, who now seeks redress by a writ of mandamus, has mistaken his course, and therefore the rule to shew cause, for which he has applied, cannot be granted. *Rule refused.*

Thursday, June 3.

REG. v. THE TRUSTEES OF BIRKENHEAD DOCKS.

Poor-rate—Liability of dock trustees—Public purposes—Surplus funds.

Trustees, who occupy land for public purposes only, are nevertheless rateable to the relief of the poor, unless they occupy under some Act of Parliament, which either expressly or impliedly prohibits the application of any portion of their funds to the payment of poor rates. Where, therefore, a corporate body created by Act of Parliament was in occupation of land, used as docks, with power to take dues, &c. which they might lower or raise from time to time, as they thought fit, below a certain amount, and their Act of Parliament provided that all sums received by them should be applied to the costs and expenses of keeping the docks in repair, paying officers, and otherwise carrying the Act into execution, and also to the payment of the principal and interest of money borrowed, under such regulations as they should from time to time think fit:

Held, that this did not amount to a prohibition against the payment of rates; and that the trustees were not exempt.

This was a case stated after notice of appeal by the trustees of the Birkenhead Docks against a rate for the relief of the poor made by the overseers of Birkenhead.

The trustees are the owners and occupiers of land converted into docks under the provisions of several Acts of Parliament—viz. 7 & 8 Vict. c. lxxix; 8 Vict. c. iv.; and 11 & 12 Vict. c. cxliv.

By the first of those Acts commissioners were appointed for the construction and management of the docks and basins. By s. 39 they might borrow money on mortgage of the tolls and property vested in them; by s. 55 the soil of the shore was vested in them; and by s. 57 they were empowered to purchase lands to be conveyed to them in fee for the purposes of the Act. By s. 153 they were authorised to take certain dues and levy rates not exceeding a specified amount. By s. 225 they had power to alter the rates from time to time at their discretion within the limited amount; and s. 227 required that all sums received by the commissioners should be applied to the expenses of keeping the docks in repair, paying officers, and otherwise carrying the Act into execution, and also to the payment of principal

and interest of money borrowed, under such conditions and regulations as the commissioners should think fit.

By stat. 8 Vict. c. iv. further powers for raising money were conferred; and by the 11 & 12 Vict. c. cxliv. the property in the docks was transferred from the old commissioners to a new corporation, thereby created for the purpose of completing the works, &c. which new corporation consisted of a certain number of the mortgagees of the tolls under the previous Acts. The only question was, whether the trustees were rateable in respect of the dock property.

Saturday, May 1.—*Archbold*, for the respondents.—The docks are clearly rateable property, and the appellants are found to be the occupiers.

Pashley, contrà, was then called upon.—This case falls within *R.* v. *Liverpool*, 7 B. & C. 61, where the Liverpool Docks were held not rateable.

Archbold then resumed his argument. *R.* v. *Liverpool* is distinguishable from this case; because there was in the Act of Parliament, upon which that decision turned, a clause obliging the commissioners to lower their dues as soon as their debt was paid off, so that they should not exceed the amount necessary to keep the docks in repair; and the Court held that that was tantamount to a prohibition against the application of the dues to the payment of rates. In the Birkenhead Dock Acts there is no such clause. (He referred to secs. 39, 55, 57, 125, 153, 216, 225, 227, of 7 & 8 Vict. c. lxxix.; 8 Vict. c. iv.; and 11 & 12 Vict. c. cxliv.) There is no clause requiring them to diminish the amount of their rates. In fact, the present trustees are mortgagees in possession, and they are raising money for the payment of their own debt and that of the other mortgagees. The appellants come within the very words of the stat. 43 Eliz. for they are the actual occupiers of the land.

Pashley, contrà.—There is nothing in the statute 11 & 12 Vict. c. cxliv. to shew that these trustees are mortgagees in possession. That Act transfers the powers of the commissioners to a new corporation; but the reason is not explained. The corporate body is kept perfectly distinct from the body of mortgagees. Then, how is this distinguishable from *R.* v. *Liverpool*, 7 B. & C. 61,—the principle of which has been frequently recognised in other cases? It is said that there is no express provision requiring the trustees to reduce their rates; but ss. 225 and 227, taken together, do in effect prohibit them from keeping up the rates beyond the amount absolutely necessary for the purposes of the Act. The whole of their funds must be applied to the purposes of the Act, which are of a public nature; and they are bound, therefore, as the occasion arises, to lower the rates, so as to prevent any surplus. The purposes are certainly public; because the works benefit the whole community generally, and the town of Birkenhead in particular. (He cited *R.* v. *The Mayor of Liverpool*, 9 Ad. & Ell. 435; and *R.* v. *Badcock*, 6 Q. B. Rep. 784.)

Archbold, in reply. The trustees are invested with the option of reducing the rates or not, as they please. If they chose not to reduce them, neither this Court nor a Court of Equity could compel them to do so. (*R.* v. *St. Giles, York*, 3 B. & Ad. 573.)

Cur. adv. vult.

JUDGMENT.

Lord CAMPBELL, C.J. now delivered the judgment of the Court.(a)—We are of opinion that the rate in question is valid. The appellants are primâ facie liable to it under 43 of Elizabeth, c. 2, s. 1, which enacts that every occupier of land, houses, &c. shall be rated to the relief of the poor. They are seised in fee, and are actually in possession of the Birkenhead Docks, from which they receive a large revenue. Their exemption from rateability would operate as a great hardship upon the ratepayers within the township. This property before it was applied to the construction of the docks was rateable, and rated to the relief of the poor, and from it being applied to this great commercial speculation, the number of destitute persons within the township must be considerably increased. Still we are only to consider what the law upon the subject is, and we are bound to pronounce in favour of the exemption, if it has been conferred by any subsequent statute. The appellants do not, and could not rely upon the mere circumstance of their being trustees, and so not entitled to any personal advantage from the property vested in them. They contend that the dues to which they are entitled are appropriated to public purposes, and therefore they are exempt from rateability according to the decision of this Court in *Rex.* v. *The Inhabitants of Liverpool*, 7 B. & C. 61. Where no one can be found who may be considered the occupier of lands and houses, the stat. of Eliz. does not extend to them; but where there are occupiers of lands and houses within the meaning of that statute the exemption must rest on some subsequent enactment of the Legislature. We observe that this doctrine was admitted to be acted on in *R.* v. *The Commissioners of Salter's Load Sluice*, 4 T. R. 730, from the marginal note of which the exemption on this ground of public purposes takes its origin. The question argued at the bar, and to be considered as decided there, was, whether the Legislature by the local Act intended impliedly to exempt tolls from rateability? I find that Lord Kenyon, in delivering the judgment of the Court, uses some expressions about there being no occupier, because the commissioners were merely trustees, but the decision rested only on the clause in the local Act, which directed the tolls to be applied and disposed of for the several uses and purposes of the said Act, and to no other use or purpose whatever. The question was, whether this amounted to a prohibition from applying the tolls to the payment of poor-rates, and the Court adopts this construction instead of holding the meaning of the words to be, that the clear produce of the tolls, after deducting the expense of collecting them, and all the charges to which the property was liable, such as poor-rates, was to be applied to those purposes. We think that the decision in the Liverpool case can only be supported by similar reasoning. There the local Act directed that the rates and dues received for the use of the dock should be applied to paying off the debt incurred in making it and to keeping it in repair, and that these purposes having been effected the rates should be lowered for the benefit of those using the docks. Lord Tenterden would not adopt that construction of the statute, that this charge is a deduction from the fund so to be applied; but still he proceeded on the special statutable right, saying the statute under which the dock rates in question are levied, does not contain an express direction that the tolls shall be applied to the purposes specified and no other, but it directs that certain burthens shall be discharged, and that then the rates shall be lowered; and therefore that any application of those rates to other purposes not specified would be a direct violation of the statute. It follows that if we recognise this case, we must look to see whether by the local Acts respecting the Birkenhead Docks the Legislature has conferred the exemption or not. By the 7 & 8 Vict. c. lxxix. s. 153, the commissioners who occupy the property are empowered to levy certain rates, upon trust; and by section 225, to lower, to alter, and again to raise the rates, at their discretion, provided they do not exceed a specified amount. By sec. 227, all sums received from dues, or from the sale of land, or from other rates are to be applied to the costs and expenses of keeping the docks in repair, and paying the officers and servants employed in them by the commissioners and others carrying the Act into execution, and paying the interest and repaying the principal of any sum of money which shall be borrowed by the commissioners, under such regulations and conditions as the commissioners may from time to time think fit. We are of opinion that these enactments are not affected by any evidence of an intention on the part of the Legislature to exempt the Birkenhead Docks from liability to contribute to the relief of the poor. Assuming that the purposes enumerated in sec. 227 were public purposes (but about which there may be considerable difficulty) the obligation to lower the tolls, so much relied upon in the Liverpool case, is entirely wanting. There is nothing amounting to a prohibition against the payment of other charges than those specified; and we can find nothing to shew that the commissioners may not pay poor-rates along with other charges before the net amount of the funds is ascertained, which may be applied to the purposes of the rate. There has been no statement, and there has been no suggestion that the rates, at the scale to which they may be lawfully raised, would not, after the payments are discharged, be sufficient for all these purposes. We therefore consider that the present case is distinguishable from those relied on, and that the property of the appellants not being expressly or impliedly exempted by the Legislature, ought to bear its share of the public burdens with other lands and houses in the township. It is unnecessary to examine whether the case of *Rex* v. *Liverpool* is affected by *Rex* v. *Badcock*, 6 Q.B. 787; or *Reg.* v. *Longwood*, 13 Q.B. 116; and *Reg.* v. *Harrowgate*, 20 L.J. 25, M.C. or any more subsequent decisions. We have now only to give judgment for the respondents.

Rate affirmed.

(a) Lord Campbell, C.J. Wightman and Crompton, JJ.

Wednesday, June 9.

REG. v. THE INHABITANTS OF DENTON.

Highway—Statute—Repeal.

An indictment framed under 59 Geo. 3, c. xxii. s. 4, which enacted that in any indictment against, &c. for not repairing any highway, it should be sufficient to allege generally that such township ought to repair and amend, &c. without setting forth any custom or prescription, &c. was preferred and found by the grand jury. Before the trial, the 59 Geo. 3, c. xxii. was repealed by the 14 & 15 Vict. c. x. relating to the same highways, but the provision allowing the general pleading was not re-enacted. At the trial, the verdict was found for the prosecutor:

Held, that inasmuch as the counts of the indictment were bad at common law, and the 59 Geo. 3, c. xxii. was repealed, the judgment upon them must now be arrested.

The defendants were indicted for the non-repair of a highway within their township. The indictment contained four counts, the first two upon the common law liability to repair, and the third and fourth were framed upon the 59 Geo. 4, c. xxii. s. 4.

Third Count.—That there hath been and still is in the township of Denton, in the parish of Manchester, in the county of Lancaster, a certain common and public Queen's highway, to wit, the Stockport and Ashton turnpike road, leading, &c. used by and for all the liege subjects, &c. with their horses, coaches, carts, and carriages, to go, return, &c. and that a certain part thereof, situate in Denton, aforesaid (describing it particularly), on the said day, &c. and thence continually afterwards, until the taking of this inquisition, at the township of Denton aforesaid, was, and yet is, very ruinous, &c. for want of due reparation and amendment of the same, so that the liege subjects, &c. in, through, by, and over the said last-mentioned part of the said Queen's highway, from the said day hitherto could not, nor yet can, go, return, pass, ride, and labour as they were wont and ought to do, &c. That the said highway is not a highway, in respect whereof certain proceedings mentioned in the 59 Geo. 3, c. xxii. entituled, "An Act for providing that the several Highways within the Parish of Manchester, in the County Palatine of Lancaster, shall be repaired by the Inhabitants of the respective Townships within which the same are situate," or any of the said proceedings, have been had, or in respect whereof certain verdicts in the said Acts of Parliament mentioned, or any of them, have been given, or in respect whereof any verdict had, before the passing of the said Act of Parliament, been obtained against the inhabitants of the parish of Manchester aforesaid at large. That the inhabitants of the township of Denton aforesaid ought to repair and amend the said part of the said highway so being in decay, when and so often as it shall be necessary.

The fourth count of the indictment differed from the third only in the omission of the averment that the highway was not one of those mentioned in the 59 Geo. 3, c. xxii. in respect whereof the proceedings set out had been taken.

On the trial of the prosecution at the last Liverpool Assizes, it was proved that the road was out of repair, and that it had been repaired for more than fifty years, not by the inhabitants of Denton, but by the neighbouring township of Haughton. The only question left to the jury was, whether the road in question was in the township of Denton or Haughton, and the jury found that it was in Denton.

The 59 Geo. 3, c. xxii. in

Sec. 1 recited, "That the parish of Manchester consisted of twenty-nine townships; that with the exception of two of them (Denton not being one) they had always had separate surveyors of highways, and that there were none for the parish at large; that repairs of all highways, with certain exceptions, were performed by the inhabitants of the townships in which they are respectively situate; and then, after the recital of proceedings against several of the townships, proceeded to enact that the inhabitants of the parish of Manchester should not be liable to the repairs of any highways in respect of which the recited indictments had been preferred, and verdicts obtained; nor of any other highways in respect of which verdicts had been given against the parish at large, if any such there should be."

Sec. 4 enacted, "That in any indictment, &c. against the inhabitants of any of the said townships for not repairing any highway within such township, it shall be sufficient to allege generally that the inhabitants of such township ought to repair and amend such highway, without setting forth any custom or prescription for that purpose, or referring to the authority of this Act."

After the indictment was preferred and found, but before plea pleaded, the 59 Geo. 3, c. xxii. was repealed by the 14 & 15 Vict. c. x. "An Act for Relief to the several Townships in the Parish of Manchester from the Repair of Highways not situate within such Townships respectively."

A rule nisi was obtained in Easter Term for a new trial, on the ground of the verdict being against the evidence, or to arrest the judgment on the third and fourth counts of the indictment.

Atherton and *J. A. Russell* shewed cause.—It is admitted that there was not sufficient evidence to support the first and second counts, which were framed on the common law liability, and the only question will be, whether the third and fourth counts are good. The argument is confined to the arrest of judgment, as that was the only point on which the Court decided. The third and fourth counts are framed on the 59 Geo. 3, cap. xxii. s. 4; but it is urged on the other side that that Act being repealed by the 14 & 15 Vict. cap. x. the counts are now bad,

and that judgment must be arrested thereon. The only effect of the repeal is, that the form of charging the offence is changed, the liability to repair the road remains the same. The form of the indictment being different to that now required, does not prevent the Court giving judgment upon it, the mode of procedure remains the same. (*R.* v. *Mawgan*, 8 A. & E. 496; *Surtees* v. *Ellison*, 9 B. & C. 750; *Hitchcock* v. *Way*, 6 A. & E. 943; *Moon* v. *Durden*, 2 Ex. 22; *R.* v. *M'Kenzie*, Rus. & Ry. 429.)

Knowles, in support of the rule, elected to abandon that part of the rule that related to the new trial, and was not called upon to argue the point, as to arresting the judgment on the third and fourth counts.

Lord CAMPBELL, C.J.—I am of opinion that judgment must be arrested upon these counts. It is admitted that they would be bad but for the repealed statute, and that judgment could not be pronounced upon them. The prosecutor must be supposed to be asking the Court now to pronounce judgment upon them, and that we are called upon to do something not yet done. The general rule is, that a repealed statute cannot be acted upon after it is repealed, but all that was done under it before the repeal remains valid. This Court acted upon that principle in *Rex* v. *Mawgan*, which cannot be distinguished from the present case. It is said that in that case, the Court was called upon to take a step in the nature of procedure, and that the substance of the offence was affected, but that here the form only of charging the offence and not the substance is affected by the repeal. It is impossible to make that distinction, and the effect of the repeal must be the same in both cases. Indeed, the mode of prosecuting the indictment is a procedure. So that as the law now exists, these counts are bad, and we cannot pronounce judgment upon them. We are not giving a retrospective operation to the statute, but giving effect to it only from the time it passed.

COLERIDGE, J.—It was stated two or three times [illegible] wrongly conducted, and the repealed statute has not specially saved bygone transactions. What has been perfected under the statute is not to be disturbed, but if we want the assistance of an Act of Parliament at any particular time, the Act must then be in operation. This was expressed by Lord Tenterden, C. J. in *Surtees* v. *Ellison*. "It has long been established that when an Act of Parliament is repealed, it must be considered (except as to transactions past and closed), as if it had never existed. That is the general rule, and we must not destroy that by indulging in conjectures as to the intention of the Legislature." *R.* v. *McKenzie* is to the same effect.

ERLE, J.—The rule of law gives the meaning to the repeal of a statute, as to further operation, and says, that it shall be as if the Act repealed never existed except as to bygone transactions. To act upon it after its repeal would be to contravene the meaning of the word repeal. As to giving judgment on the substance, and disregarding the form of the charge, that ground fails, because the liability was created by the 3rd section of the repealed statute; and if the form of the indictment had been expressly enacted therein, it would have been argued that the ground of the charge now failed.

CROMPTON, J. concurred.

Rule absolute to arrest the judgment on the third and fourth counts.

Friday, June 11.

BARNES *v.* MARSHALL.

County Court—Prohibition—Cause of action.

The plaintiff, by a written contract, undertook to carry for defendant, by canal to London, timber lying in a field a little distance from the plaintiff's wharf. When the defendant's horses were on the spot the timber was hauled by them to the plaintiff's wharf, at other times the plaintiff provided a team for hauling the timber to the wharf, and made an extra charge to that for the carriage to London. The plaintiff sued out a plaint in S. County Court: the place of delivery of the timber was not within its district, neither did the defendant dwell within it:

Held, that there was no distinct cause of action in respect of the hauling the timber to the wharf; and that the cause of action arising only on the delivery of the timber in London, the case was not within the jurisdiction of the S. County Court.

This was a rule nisi for a prohibition to the judge of the County Court of Swindon to restrain him from proceeding in a certain plaint, whereby the plaintiff claimed to recover from the defendant 50*l.* for carrying timber from Swindon to London by canal.

It appeared that the plaintiff was a carrier by canal, having a wharf at Swindon, and that the defendant resided in Surrey; that the timber was lying in field a short distance from the wharf, and w... removed to the wharf at intervals, sometimes by the defendant's horses, when they happened to be on the spot, and at other times the plaintiff would find a team, and make an additional charge for so doing beyond the rate (stipulated for by written contract) at which he had engaged to carry the timber to London.

The plaint shewed on its face that there were two items for hauling timber to the wharf in the amount sought to be recovered.

Hodges shewed cause.—The cause of action in this plaint arose within the district of the Swindon County Court, and consequently the summons might issue from it under sec. 60 of 9 & 10 Vict. c. 95. The plaintiff was entitled to claim the amount of the carriage as soon as the timber was delivered to him to be carried. (*Pickford* v. *The Grand Junction Railway Company*, 8 M. & W. 372; *Wyld* v. *Pickford*, 8 M. & W. 443.) [By the COURT.—But the plaintiff was not entitled to sue for the carriage before the goods were conveyed.] Secondly, as to the two items for hauling timber to the wharf, there was a distinct contract, and the cause of action in respect of them arose clearly in the Swindon district. (*Harwood* v. *Lester*, 3 B. & P. 617.)

Bovill, in support of the rule.—The words "cause of action" in sec. 60 mean the whole cause of action. (*Buckley* v. *Hann*, 5 Ex. 43; *Wilde* v. *Sheridan*, 19 Law T. 126; *Grimbley* v. *Aykroyd*, 1 Ex. 479.) As to there being a distinct cause of action in respect of the two items, that is not so, for it is denied that there was any distinct contract.

ERLE, J.—I am of opinion that this rule should be made absolute. As to the part of the cause of action for carrying the timber to London from the wharf at Swindon, the plaintiff clearly has no demand for which he can sue until he has carried the timber to its destination. Then, as to the two items for hauling the timber to the wharf, they do not constitute a distinct cause of action; for if the [illegible] of action as to the charge for carrying the timber to London arises where the delivery was. It is a very different proposition to say that the plaintiff need not have taken the timber until he had received the carriage. Then, as to the two items for hauling, it is not made out that there was a distinct contract in respect of them. It never could have been intended that the plaintiff should be paid for the work without conveying and delivering the timber in London.

Rule absolute.

SITTINGS AFTER TERM.

Friday, June 18.

BISHOP, Surviving Executor, &c. *v.* CURTIS.

Conviction—Property of felon passing to the Crown—Bequest—Chose in action.

A testator bequeathed a promissory note to C. not to be sued upon or made available until he became of age. But before then C. was convicted of felony:

Held, that C. did not acquire any legal interest in the note so as to enable him to sue upon it, and that the Crown, by the conviction, only took C.'s equitable interest in the note, and that the conviction was no defence to an action by the trustees upon it, as they were legally entitled to it, although they would only be trustees of the proceeds for the Crown.

Assumpsit by the surviving executor of E. Curtis, deceased, upon a promissory note for 1,000*l.* made by the defendant (the son of the testator) payable to the said E. Curtis on demand.

Plea.—That the said E. Curtis, by his will, bequeathed to Charles Curtis the said promissory note not to be demanded or made available until the said Charles Curtis became twenty-one, &c. That the executors assented to the said bequest of the said note, whereby the said C. Curtis then became entitled to the said note and the money due thereon. The plea then averred a conviction of C. Curtis at the Central Criminal Court for stealing in the dwelling-house of E. Curtis, his master and employer, money and a bank-note; by reason of which said felony, and by force of the said judgment, the said C. Curtis forfeited to our Lady the Queen the said promissory note, and the money due thereon, and all interest therein, and causes of action in respect thereof.

The plaintiff replied to this plea, and the defendant demurred to the replication; but as the plaintiff's counsel abandoned the replication and objected to the plea, it is unnecessary to state the pleadings more fully.

Maxwell, in support of the plea.—1. The Promissory note was vested by the bequest in Charles Curtis by the 1 Vict. c. 26, s. 3 (the Wills Act), which enables a testator to bequeath all personal estate which he may be entitled to, either at law or in equity, and which, if not so bequeathed, would devolve upon his executor. [Lord CAMPBELL, C.J.—The Wills Act does not affect the nature of the personalty to pass by will.] By sec. 1, personal estate is defined to include choses in action; and on the assent of the executors to the bequest, C. Curtis was entitled to sue upon the note. 2. This note passed to the Crown on the conviction of C. Curtis for felony, for the Crown, by virtue of its prerogative, takes every species of right belonging to the felon. (*Bullock* v. *Dodds*, 2 B. & Ald. 258; Hawk. P. C. b. 2, c. 49, s. 9; Bracton, lib. 3, c. 14, s. 12.)

Lord CAMPBELL, C.J.—I think this plea is clearly bad. The first question is, whether the legal interest in this promissory note vested in Charles Curtis, and for that proposition the Wills Act was relied on. It was admitted that before that Act such a bequest would not have vested the legal interest in him, and it is clear to me that the Wills Act had no such operation as to a bequest of personal property, and that it only affected the mode by which such a bequest was to be carried into operation; in other words, the mode in which a will as to personalty might be made. As to real estate, a change was introduced as to what might be devised, but there is nothing to indicate any intention to enable a testator to give to a legatee a right to sue in respect of a chose in action. Before the conviction, then, the legal interest in this promissory note was vested in the executors, and not in Charles Curtis, and the conviction does not take the legal interest out of the executors and vest it in the Crown. The executors became thereby trustees for the Crown as to the interest which Charles Curtis had; but, as he had not the legal interest, the conviction did not vest the legal interest in the Crown, though the executors, when they recover the money, will be trustees of it on behalf of the Crown.

COLERIDGE, J.—The Wills Act does not change the equitable interest under this bequest into a legal interest. Supposing Charles Curtis to have sued upon this note, he must have done so in the name of the executors.

ERLE and CROMPTON, JJ. concurred.

Judgment for the plaintiff.

MARDELL *v.* THELLUSSON and OTHERS, Executors.

Set-off—Mutual debts—Executor.

In an action brought against an executor for a debt which became due during the lifetime of the testator, the defendant may set off a debt due to him as executor for money had and received by the plaintiff since the testator's death.

Assumpsit against the executors of Wm. Theobalds, for work and labour and money paid in the lifetime of the testator, and on an account stated with the executors.

The defendants pleaded a set-off of a debt due to them as executors for money had and received by the plaintiff since the death of the testator, and on an account stated with the executors. A verdict having been found for the defendants upon that plea, a rule was afterwards obtained for judgment non obstante veredicto.

Saturday, May 22.—*Channell*, Serjt. and *C. Wood* shewed cause. The plea is good. The plaintiff sues the defendants as executors; and they may therefore set off a debt due from him to them in that capacity. If the defendant was suing for money had and received since the testator's death, the plaintiff certainly could not set-off a debt due to him from the testator, because in that case the defendant would be suing in his own right; and if the creditor were allowed to make the set off it would interfere with the distribution of the assets by the executor. The same reason does not apply here. (They referred to Williams's Executors, 1333; *Shipman* v. *Thompson*, Willes, 103; *Hutchinson* v. *Sturges*, ib. 264; *Schofield* v. *Corbett*, 6 Nev. & Man. 527; *Blakesley* v. *Smallwood*, 8 Q.B. 538.)

Ogle, contra.—The right of setting off mutual debts depends wholly upon the statute 2 Geo. 2, c. 22, and this is not a mutual debt. The defendant shews that it is not, by admitting that if he were suing for money had and received since the testator's death, the plaintiff could not set off the debt due from the testator. *Cur. adv. vult.*

JUDGMENT.

Lord CAMPBELL, C.J.—Upon a rule for judgment non obstante veredicto, the question is raised whether a debt due to the defendant as executor for money had and received after the death of the testator can be set off against a debt due from the defendant as executor, having become due from the testator before his death? The statute 2 Geo. 2, c. 22, gives the right of set-off where there are mutual debts between the plaintiff and defendant. The debts above mentioned are comprised in these words, "they being mutual and due in the same right between the plaintiff and the defendant." Although the thirteenth clause, authorising, in case of a suit by or against an executor, a set-off of the debt due from the testator, does not apply, we think that that clause was intended to restrict the operation of that which preceded it. This construction was adopted in *Blakesley* v. *Smallwood*, executor, in

8 Q. B. 538, where the set-off of a debt from the plaintiff to the testator was allowed against a count on an account stated by the executor with the plaintiff. Against this view the plaintiff contended that such a set-off had been held illegal in *Shipman* v. *Thompson*, Willes, 103, and the cases referred to in the notes to that case. But, upon examination, the authorities do not appear to support the position contended for. In *Shipman* v. *Thompson* the plaintiff sued for money due to the testator received by the defendant after his death, and the defendant attempted to set off a debt from the testator before his death, so that the question appears the same, the parties being reversed. But the plaintiff in that case sued in his own right, and not as executor. This he had the option of doing in respect of money received after the death; and as he was suing in his own right, a debt due from the testator was not a mutual debt within either clause of the statute. In respect of such a debt, an executor may sue in either capacity, and by so suing in his own right, and so preventing a set-off, he prevents the creditors from interfering with his distribution of assets; while, on the other hand, if the party sued as executor for a debt due before the death, is allowed to deal with the debt accruing after the death as due to him as executor, the same mischief is avoided. The plaintiff, while wrongfully withholding assets in his hands ought not to be allowed to take from the assets a further amount in payment of his debt, and force the executor to the risk and waste of another action for the assets so wrongfully withheld, and so he may set them off in the first action. Therefore the rule will be discharged. *Rule discharged.*

ERRATUM.—In the judgment in *Howes* v. *Barber*, ante, p. 201, col. 2, for the sentence beginning "Again, if an undefended action," read the following: "Again, if an unfounded action is brought, and the evidence of the party improperly sued is necessary, he is not indemnified unless his own expenses as a witness are allowed."

BUSINESS OF THE WEEK.

Saturday, June 12.

REG. v. LORD AND STEWARD OF THE MANOR OF THO PE HALL, SUFFOLK.—*O'Malley* moved for a mandamus on behalf of Mr George Row to compel the steward to accept and enrol a bargain and sale, and take a surrender from him. Upon the death of William Row, George Row (who had the power of purchasing certain copyholds held of this manor) was admitted under the trusts of the will, and paid a full price. He has lately exercised the power given him by his father by purchasing the property, upon which he took a release and bargain and sale from his co-executors. This deed the steward refused to accept and enrol, unless upon payment of a second fine. *Rule nisi.*

Friday, June 18.

The Court delivered written judgments in the following cases, to be reported in due time.—

STEWART v. THE ANGLO-CALIFORNIAN GOLD MINING COMPANY. *Judgment for defendants on the third plea*

GLYN v. WILSON and GLYN v. ELLIOT. *Rule absolute.*

REG. v. THE INHABITANTS OF THE COUNTY OF SOUTHAMPTON.—SAME v. SAME.—SAME v. SAME.
Judgment for the Crown in two of the cases, for the defendants in the third.

MARDELL v. THELLUSSON. *Rule discharged*

MACKENZIE v. THE SLIGO AND SHANNON RAILWAY COMPANY. *Judgment for the plaintiff*

REG. v. THE JUSTICES OF MIDDLESEX. *Order quashed*

REG. v. THE COMMISSIONERS OF THE INSOLVENT DEBTORS COURT. *Rule refused.*

MARTYN v. CLUE. *Judgment for the plaintiff.*

POCOCK v. WILKINSON.—ERLE, J. dissentiente. *Rule discharged.*

KERNOT v. PITTIS. *Judgment for defendant.*

REG. v. LONGWOOD COMMISSIONERS. *Rate to stand for 1851*

BATEMAN v. BLUCK.—*Garth* was heard in support of the rule. *Rule discharged.*

LORD CANNING v. RAPER. *Cur. adv. vult.*

STOKEHILL v. PETTINGELL and WIFE.—*W. S. Cross*, in support of bill of exceptions. *P. Thompson*, contra. *Judgment affirmed.*

COURT OF COMMON BENCH.

Reported by DANIEL THOMAS EVANS and VAUGHAN WILLIAMS, Esqrs. Barristers-at-Law.

SITTINGS AFTER TRINITY TERM.

COUNTY COURT APPEAL.

(Before MAULE and CRESSWELL, JJ.)

Tuesday, June 22.

TEMPLEMAN, App.; HAYDON, Resp.

County Court—Negligent driving—Running down—Duty of judge.

The defendant driving his cart down a hill, the horse, which was usually quiet, suddenly commenced kicking, and proceeded at a furious pace down the hill, the shafts broke, and the horse and cart came into collision with the plaintiff's gig, and injured it. The plaintiff brought his plaint in the County Court, and the judge, being of opinion that the breaking of the shafts shewed a defect in the cart, which raised a presumption of negligence in the owner, gave judgment for the plaintiff:

Held, on appeal, that the decision was right.

In an action for negligent driving, the evidence for the plaintiff did not establish that charge, but it appeared by evidence given for the defendant that the shafts of defendant's cart broke, and a collision between the vehicles of the plaintiff and defendant immediately took place:

Held, that the judge was not limited to the consideration of the plaintiff's evidence alone, having respect to the nature of the action, but might look at the whole evidence of both sides before him, and give judgment upon that.

This was an appeal from the County Court of Somersetshire. The action, which was tried between the above parties in the above court on the 28th of April last, when a verdict was returned in favour of the plaintiff for 16*l.* 1s. 10d. The following is a copy of the claim:—"This action is brought to recover the sum of 40*l.* damages done to a horse and gig, the property of the plaintiff, on the 6th of December, 1848, by reason of the negligent driving of a horse and cart, the property of the defendant, whereby the same came into collision with the plaintiff's horse and gig, in the parish of Crewkerne, in the county of Somerset." The plaintiff proved that on the 6th of December, 1848, he was driving in his gig from Crewkerne to West Chinnock, and had come to a place called Red-gate, having just passed a lane on his left hand, immediately beyond which, on the same side of the road, was a large heap of stones, against the bank. Facing the plaintiff, was a hill called "Broad-shard-hill," descending which, and about 100 yards from him, he saw the defendant's horse and cart coming towards him at a very fast rate, the horse kicking violently. The plaintiff attempted to turn back, but in doing so got his horse and gig across the road, leaving, however, sufficient room for the horse and cart to pass on the proper side; he then jumped out of his gig, and went behind it to take care of himself; while in this position, the defendant's horse and cart came into collision with the plaintiff's horse, and inflicted the injury for which the action was brought. The collision took place within a minute and a half from the time the plaintiff first saw the horse coming. It was contended on the part of the defendant, that the plaintiff ought to be nonsuited, as he had not proved any specific negligence or facts from which negligence might be presumed. The judge, however, overruled the objection. On the part of the defendant three witnesses were called, the driver of the horse and cart, a woman who was riding in the cart with him, and a third witness named Perry, who was riding his horse close behind the cart, and witnessed the accident from beginning to end. It was proved that the cart contained the driver, the woman, and four dead pigs; that the driver had reins, but no stick or whip, and drove very slowly and steadily: that about 100 yards from the place of collision the horse began to kick very violently; that after kicking for some little time, both shafts of the cart broke off, the cart tilted up, and the driver and the contents of the cart were thrown out into the road, where he received a blow which rendered him insensible; that up to the time of his being thrown out he had the control of the horse, which was walking, though kicking violently; that after he was thrown out, the horse started off at a faster pace in the middle of the road towards the plaintiff, the cart was still attached to the horse by the traces; that the horse made a rush to pass on the side where the heap of stones was, and in their opinion there was not sufficient room for him to pass with the cart on his proper side of the road. It was also proved that, up to the time of the accident, the horse had been perfectly quiet, free from vice, and steady in harness, and was properly harnessed in the cart on the defendant's premises on the morning of the accident. The judge found a verdict for the plaintiff, being of opinion that the breaking of the shafts, even under the circumstances stated by the defendant's witnesses, shewed a defect in the cart which raised a presumption of negligence in the owner, and that presumption was not satisfactorily rebutted. But he reduced the claim of the plaintiff, on the ground that although he could not avoid some accident, he had subjected himself to greater damage by his own act.

The question for the opinion of the Court was, whether, upon this evidence, the plaintiff ought not to have been nonsuited, or a verdict found for the defendant instead of the plaintiff.

Phipson for the appellant.—The question here is, whether the judge, upon the whole of the evidence before him in this case, came to a right conclusion when he gave a verdict for the plaintiff. Here the judge has not only to decide upon the law, but stands in the place of a jury and decides upon the facts. The action is for negligent driving, and it is submitted there was no evidence of such negligence in the plaintiff. The plaintiff's case did not disclose the breaking of the shafts; that appeared in the evidence for the defendant. All that the plaintiff shewed was, that he saw the defendant's horse and cart approaching him at a fast rate, the horse kicking, and that collision followed. [CRESSWELL, J.—The question must be considered, not upon plaintiff's evidence alone, but upon the whole evidence.] Taking it in that way, it is submitted that the judge came to a wrong conclusion when he gave judgment for the plaintiff. What he really decided was, that the fact of the breaking of the shafts shewed a defect in the cart, and so raised a presumption of negligence in the defendant. [MAULE, J.—We are not entitled to take into consideration the steps by which the judge arrived at his conclusion, be that conclusion right or wrong.] There being no evidence of negligent driving, and the action having been brought for negligence of that nature, the judge should have nonsuited the plaintiff; for he could not properly give a judgment against the defendant on the ground that though there was no evidence before him of negligent driving, there was evidence of negligence in the unsound condition of the cart. Assuming that the judge had a right to look to the whole evidence, the judgment possibly might not be impeachable. The judge, however, tries both facts and law, and there is consequently no means of ascertaining on what grounds he has decided, whether on the facts or the law, or on both together. [MAULE, J.—It would be most mischievous if that were otherwise. The policy of the County Courts Acts is to avoid technicalities and nice limitations of the law, and to enable the judge to give judgment on the entire merits—on the substantial justice of the case before him. He has to draw his own conclusion upon both facts and law. He has not to direct a jury, but to direct himself: he comes himself to a conclusion, and in the present case he has explained what actually passed in his mind, and the grounds for his decision.] All duties which were on the defendant, both with regard to the plaintiff and the general public, were complied with. He was driving an habitually quiet horse, which, for some unaccountable reason, began to kick, and this occasioned the injury. Suppose, for argument's sake, that a wasp settled on the horse's neck and stung him, or that a boy threw a stone and frightened him so that he became unmanageable, and this collision was the result. The judge says, I do not care whether it was a wasp, or a boy with a stone, I consider the facts are sufficient to shew some negligence in the defendant, and shall therefore put the question to the jury;—surely that would be a misdirection, and the Court above would not sustain him. That would be in reality just this case. There was no evidence before the judge of furious driving, and that being so, as the action was for that, he was not justified in saying there was negligence in the defendant with respect to his cart.

MAULE, J.—My brother Williams and myself are both strongly of opinion (and if we had here another puisne judge we think he would be of like mind), that it is evidence of negligence not to drive an infirm vehicle with the care such a vehicle required in order to obviate accident. It seems to me that we cannot reverse the judgment. There was no more evidence of negligence in this case than in that where sparks from a railway train set fire to corn stacks. *Aldridge* v. *Great Western Railway*, 2 Railway Cas. 852. If the horse had not kicked, the shafts could not have broken. [*Kingdon*, interposing.—The case does not shew that the shafts broke in consequence of the kicking of the horse.] No; but it is an irresistible conclusion that the one thing resulted from the other. There was here no evidence for a jury of negligent driving, nor of any defect in the cart. But the judge took on himself to say that there was a presumption of negligence, though on the evidence no legitimate presumption can properly be said to arise. This appeal should therefore be confirmed.

Kingdon, for the respondent, was not called on.

MAULE, J.—Entertaining so clear an opinion in this case, we do not think it necessary to hear counsel for the respondent. This case comes before us under the 14th section of the County Courts Extension Act, 13 & 14 Vict. c. 61, which gives to any party in any cause in a County Court, who shall be dissatisfied with the determination or direction of such Court in point of law power to appeal to two or more puisne judges of a Superior Court. In this case a number of facts have been stated, and the judge's conclusion on them was, that the plaintiff ought to recover a certain sum of money. Now, if from the whole of the facts before him the judge could legitimately come to the conclusion to which he did, he might properly do so, and his judgment is not reviewable here. Where parties leave law and facts to the decision of a judge, he alone has to determine upon those mixed matters; and the Court above, having no means or power to separate them, cannot review his judgment. But in this case, considering every thing, I am far from saying that the judge's decision was erroneous. Negligence is want of care applicable to the particular occasion, and I think a fair presumption of it arose here. I hold, therefore, that this appeal must be dismissed with costs.

CRESSWELL, J.—I am entirely of the same opinion, and concur fully in all that my brother

Maule has said. The judge here has stated the reasons which led him to the conclusion he arrived at, and the judgment which followed it. The question is, whether the plaintiff, on the evidence, ought to have been nonsuited, or a verdict entered for the defendant? I think the judgment was right, and that the plaintiff should not be nonsuited on the facts before the Court below. Whether or not the judgment should have been for the defendant, I have no means of saying; that was a question for the judge of the County Court, and not for us.

Appeal dismissed with costs.

COURT OF EXCHEQUER.

Reported by Frederick Bailey, and C. J. B. Hertslet, Esqrs. Barristers-at-Law.

Monday, May 31, 1852.

Horton *v.* The Westminster Improvement Commissioners.

Where a Board of Commissioners, authorised by Act of Parliament, to raise money for certain purposes, gave a bond in pursuance of the Act, it was

Held, that it is not sufficient for them to plead to an action on such bond that they did not borrow the money for the purposes of the Act, and that certain third parties were entitled to receive from them certain bonds, and that the plaintiff and certain others conspired and combined to obtain this bond, and by fraud practised on the said third parties did cause them to procure the said defendants to make and deliver the said bond to the plaintiffs.

Debt.—The declaration stated that the defendants, by their bond sealed with their common seal, acknowledged that they, by virtue of the Westminster Improvement Act, 1845, and the Westminster Improvement Act 1847, were bound to Thomas Pooley in the sum of 10,000*l.* subject to a condition thereunder written, whereby, after reciting to the effect following, to wit, that by virtue of the said Acts, the defendants were authorised to borrow any sum of money for the purposes of the said Acts, and to secure the same by their bonds; and that the defendants, in pursuance of the said Acts, had borrowed of the said Thomas Pooley the sum of 5,000*l.* for enabling them to carry the said Acts into execution; the condition of the said bond was declared to be that if the defendants or their successors should, on the 3rd of June, 1854, pay to the said Thomas Pooley, his executors, &c. the sum of 4,000*l.* with interest at 5*l.* per cent. then the bond should be void, otherwise to remain in full force; and to the condition was annexed a proviso that it should be lawful for the defendants, their successors or assigns, giving three months' notice to the said Thomas Pooley of their intention so to do, to pay off the principal sum. It was then averred that the bond was duly transferred from Thomas Pooley to the plaintiff. *Breach.*—That although 125*l.* was due for interest which was duly demanded by the plaintiff, yet the same had not been paid, contrary to the form of the bond, by reason whereof the bond had become forfeited.

7th Plea.—The defendants say that they did not, in pursuance of the said Acts of Parliament in the said declaration mentioned, or of the Westminster Improvement Act 1850, borrow of the said Thomas Pooley the said sum of 5,000*l.* or any part thereof, for enabling them to carry the purposes of the said Acts, or any or either of them into execution, nor was the same lent or advanced by the said Thomas Pooley or any other person, for those purposes; and they further say that the said writing obligatory was not made by the said defendants for securing the payment of any sum of money borrowed or taken up by the defendants for the purposes of and under the powers and provisions of the said Acts, or of the said Westminster Improvement Act 1850, or of any or either of them; and the defendants were not, by virtue of the said Acts, or any or either of them, directed, authorised, or empowered to make the said writing obligatory, nor was the same made by them under or by virtue, or in pursuance of the said Acts, or any or either of them, and the same was made contrary to the provisions of those Acts, of which said several premises the said Thos. Pooley, before and at the time of the making of the said writing obligatory had notice. And the defendants further say that the plaintiff, before and at the time of the making of the said deed, and when the said writing obligatory was transferred to him, and when he first became the transferee of the same, had notice of the premises aforesaid. Verification.

8th Plea.—And the defendants say that before the making of the said writing obligatory, to wit, on the 22nd day of May, in the year of our Lord 1851, one Catherine Morrison and one William Mackenzie were, subject to certain terms and conditions, entitled to receive from the defendants certain bonds, to be thereafter issued and made and sealed by the defendants under their common seal, and to be conditioned respectively for the payment by the defendants or their successors to the obligees to be named in such bonds at the end of three years from the dates of such bonds of divers sums of money, amounting in the whole to a large sum of money, to wit, 20,000*l.* with interest on such sums, respectively payable half-yearly. And the defendants further say that the said Thomas Pooley and one Alexander Gopsell Pooley, and divers other persons whose names are to the defendants unknown, afterwards, and before the making of the said writing obligatory in the declaration mentioned, and of the making of the said bonds which the said Catherine Morrison and William Mackenzie are so entitled to as aforesaid, or any or either of them, to wit, on the 22nd day of May, in the year of our Lord 1851, did conspire, combine, confederate, and agree together to obtain and acquire to the use of the said Thos. Pooley the said bond to which the said Catherine Morrison and Wm. Mackenzie were so entitled as aforesaid, and of the moneys to be payable thereby, and to cheat and defraud the said Catherine Morrison and Wm. Mackenzie thereof. And for that purpose they, the said Thomas Pooley and Alexander Gopsell Pooley, did, in pursuance of the said conspiracy, afterwards, and before the making of the said writing obligatory and of the said bonds, or any or either of them, to wit, on the day and year last aforesaid, by fraud and covin, then made and practised by them upon the said Catherine Morrison and Wm. Mackenzie, induce and persuade, and cause and procure, the said Catherine Morrison and Wm. Mackenzie to contract and agree with the said Thomas Pooley, amongst other things, that the said Thomas Pooley should have, and that the said Catherine Morrison and Wm. Mackenzie should cause to be delivered to the said Thomas Pooley, the said bonds of the said defendants, to which the said Catherine Morrison and Wm. Mackenzie were so entitled as aforesaid. And the defendants further say that the said T. Pooley and A. G. Pooley, in further pursuance of the said conspiracy, and by means of the said fraud and covin, and before the said Catherine Morrison and Wm. Mackenzie, and the defendants, or any or either of them, had discovered the same, or had any notice or knowledge thereof, did afterwards, to wit, on the 3rd day of June, A.D. 1851, cause and procure the said Catherine Morrison and Wm. Mackenzie to request, and direct the defendants to make and deliver, and cause and procure them to make and deliver the said bonds to which the said C. Morrison and Wm. Mackenzie were so entitled as aforesaid, and amongst others the said writing obligatory in the declaration mentioned, and to make and deliver the same to the said Thomas Pooley as the obligee thereof in the lieu and stead of the said Catherine Morrison and William Mackenzie, as the obligees thereof. And the defendants further say, that the said Thomas Pooley and Alexander G. Pooley in further pursuance of the said conspiracy, and by means of the said fraud and covin, did afterwards, to wit, on the day and year last aforesaid, cause and procure the defendants, to make and deliver, and they did make and deliver the said writing obligatory in the said declaration mentioned, as, and for, and being one of the said bonds to which the said Catherine Morrison and William Mackenzie were so entitled as aforesaid; and the defendants say, that they so made and delivered the same as and for one of the said bonds to which the said Catherine Morrison and William Mackenzie were so entitled as aforesaid; and the said Thomas Pooley took and received the same as and for one of such bonds; and they further say, that they never did at any time borrow of the said Thomas Pooley, nor did he lend to them the said sum of 5,000*l.* or any part thereof, as in the condition of the said writing obligatory is recited. And the defendants further say, that the plaintiff before, and at the time of the said transfer of the said writing obligatory had notice of the premises. And the defendants further say, that the said Catherine Morrison and William Mackenzie afterwards, and before the commencement of this suit, to wit, on the 1st day of January, A.D. 1852, gave the defendants notice, and required them not to pay, and forbade them, and still forbid them paying the said moneys by the said writing obligatory so payable as aforesaid. Verification.

To these pleas the plaintiff demurred. Joinder in demurrer.

Willes (with him *Garth*) in support of the demurrer.—These commissioners receive these powers under certain Acts of Parliament, viz. 8 & 9 Vict. c. 178; 10 & 11 Vict. c. 131; and 13 & 14 Vict. c. 102, and the several sections authorising the borrowing of money shew that the 7th plea is bad. The 37th sec. of the first-named Act provides, "that it shall be lawful for the commissioners from time to time to borrow at interest any sum of money which they may judge necessary for the purposes of this Act." It is not denied by this plea that the money was advanced; it only says it was not advanced for the purposes of this Act; but persons lending their money have no opportunity of inquiring into the necessity of borrowing, or if the money so borrowed is used for the purposes of the Act. *Fairtitle* v. *Gilbert*, 2 T. R. 169, will be relied on by the defendants; but there are more recent decisions than that case. He referred to *Doe dem. Walton* v. *Penfold*; *Doe dem. Levy* v. *Horne*, 3 Q. B. 757; *Reg.* v. *White*, 4 Q. B. 101; and Taylor on Evidence, remarks on those cases, p. 82. The 8th plea is in substance, that Morrison and Mackenzie were entitled to the bonds made to Pooley, and that the defendants had notice from Morrison and Mackenzie not to pay, but there was no fraud alleged as against the plaintiff. The section already referred to gave the commissioners power to grant bonds for securing money borrowed, and Pooley must be taken as the nominee of Morrison and Mackenzie. Pooley is an equitable trustee for Morrison and Mackenzie. This is a bond given in fulfilment of a duty under which the defendants were bound to give Morrison and Mackenzie bonds, and they could not now obtain from the defendants other bonds. It is the same as if in an action against a trustee the defendant was to plead that his cestui que trust had forbidden him to pay. To make fraud an answer to the action, it must have been practised on the person promising; but in an action between A. and B., B. cannot plead the fraud of C. (He cited *Campbell* v. *Fleming*, 1 A. & E. 40.) It is not competent for a third person to set up fraud. (*Gorgis* v. *Mieville*, 3 B. & C. 45.)

Bramwell (with him *Honyman*) in support of the pleas. First, as to the 8th plea. It is admitted that the plaintiff was acquainted with the fraud of the Pooleys before he got the bond. They are guilty of a conspiracy, and here is a direct intention of fraud on the defendants, sufficient to avoid the contract. The bond was never handed over to Morrison and Mackenzie; if it had been, trover would lie by them to recover it back. But trover will not lie in this case. If the plaintiffs were cognisant of the fraud on Morrison and Mackenzie, and partly instrumental in it, that is a sufficient answer. (*Pidcock* v. *Bishop*, 3 B. & C. 605; *Jackson* v. *Duchane*, 3 T. R. 551; "Ex dolo malo non oritur actio," Broom's Maxims, 571; *Fivaz* v. *Nicholls*, 2 C. B. 501; *Holman* v. *Johnson*, Cowp. 341; *Wright* v. *Tallis*, 1 C. B. 893; *Cannan* v. *Bryce*, 2 B. & Ald. 179; *Hardman* v. *Wilcock*, 9 Bing. 382.) It is contended, then, that by this contract entered into with Pooley, the plaintiff no more acquired a property or right to sue than he would have done in a chattel fraudulently obtained. Even if the assignment were no fraud against the defendants, still the plaintiff cannot recover. If there be fraud in the plaintiff, that is sufficient to deprive him of his right. And this plea actually alleges a fraud on the defendants by the plaintiff. Then, as to the 7th plea, the question of estoppel does not in this case arise, if by the powers of the Act under which they receive their authority, the commissioners had no power to do this act. (*East Anglian Railway Company* v. *Eastern Counties Railway Company*, 21 L.J. 23.) In the case of *Gage* v. *The Newmarket Railway Company*, which is not reported, the company agreed to pay for certain land whether they took it or not, and the Court of Q. B. held that the contract was illegal and ultra vires, and a similar case was decided yesterday in the Court of Error. These defendants were merely trustees, and not associated for the purpose of profit. (He referred to ss. 3, 45, 110, and 112, of the Act.) If railways, then, must keep within the strict letter of their authority, surely these trustees must; whenever there is a limited authority granted to persons, they cannot by their own Act extend it. (*Doe dem. Chandler* v. *Ford*, 3 A. & E. 629; *Paxton* v. *Popham*, 9 East, 408.) There never can be an estoppel to prevent a person setting up an illegal act, and one beyond the authority granted. It is then said that even if that be so, it is not properly pleaded; but I contend that it is, and that this plea is a sufficient answer. (He went through the plea.) [Martin, B.—The plea does not say that Pooley, at the time of lending the money, knew that it was not to be used for the purposes of the Act, but for other and illegal purposes.] It says that Pooley had notice of the several premises previously alleged. The Act is an authority to be strictly pursued. If I lend these commissioners 10,000*l.* and then say, "Make out a bond to A. B. not as a trustee for me, but absolutely," these commissioners have no power to do so. (*Gas Light and Coke Company* v. *Turner*, 5 Bing. N. C. 666.)

Willes, in reply.—The 8th plea does not aver fraud on the commissioners. The averment is, that the commissioners were induced to make out a bond to Pooley in consequence of a fraud practised on Morrison and Mackenzie, the order so to make out the bond was genuine; and the other side feel this difficulty, that if this plea can be maintained they have a good defence against both parties. Against Morrison and Mackenzie, because they made out the bond to Pooley by their direction; and against Pooley on the ground of the alleged fraud by the

Pooleys on Morrison and Mackenzie. They never attempt to say that they could not plead payment to Pooley as against Morrison and Mackenzie. (*Carey v. Kearsley*, 4 Esp. 139; *Taylor v. Cohen*, 4 Esp. 397; *Smith v. Cuff*, 6 M. & S.; *McKinnell v. Robinson*, 3 M. & W. 434.) Pooley has become a trustee in equity for Morrison and Mackenzie, and the commissioners may file a bill of interpleader. Then as to the seventh plea, it is contended by the defendants that this bond cannot be a valid bond. In the case of *Hill v. The Proprietors of the Manchester and Salford Waterworks*, 2 B. & Adol. 544, it was held that an obligor who had been sued on a bond reciting a certain consideration is estopped from pleading that the consideration was different, unless he could make it appear by his plea that the real transaction was fraudulent and unlawful; and that where a company, authorised by Act of Parliament to raise money for certain purposes, had given a bond purporting to be for a sum borrowed and advanced conformably to the Act, it is not sufficient for them to plead in an action to such bond that it was executed colourably, and that the money was not in fact borrowed or lent for the purposes of the statute, as the obligee well knew; the pleas not disclosing any fraud or injury done to the shareholders of the company. (*Doe dem. Jones*, 5 Ex. 16.)

ALDERSON, B.—There is nothing on the face of it to shew that this transaction was illegal.

PLATT, B.—The Act says that the money that ought to be borrowed is such money as the commissioners *judged* to be proper. Their judgment may be erroneous and yet they may borrow; the real issue, therefore, is not raised. They might judge it necessary to borrow money not authorised by the Act.

POLLOCK, C.B.—We are all of opinion that there should be judgment for the plaintiff. Neither of the pleas demurred to presents a legal answer to the claim. The bond was properly executed and transferred. One plea says the bond was obtained by fraud, the other says we had no power to do that which we have done, and therefore we are not bound. These are two distinct defences. The commissioners may have borrowed money, thinking it necessary, and that is quite sufficient to make the transaction valid. I think the defendants cannot set up this defence, that the bond was obtained by the fraud of the Pooleys. The contract on its face is good, and the commissioners are bound by their bond to some one. It is said not to the plaintiff, because an arrangement was made by the Pooleys, by which the defendants were induced to give the bond to the wrong parties; but at all events it was by the authority of the right parties, Morrison and Mackenzie, and the remedy is in a Court of Equity.

ALDERSON, B.—I am of the same opinion. I think the defendants cannot set up the jus tertii right of Morrison and Mackenzie: that would make it an authority voidable in equity, or make Pooley a trustee for Morrison and Mackenzie for money to be received; but the defendants have nothing to do with that.

PLATT, B.—I think the 7th plea is bad on general demurrer, as being too general. It does not deny that the money was such as was authorised to be raised by the Act, and it is nowhere shewn that the money was borrowed for wrong purposes. The commissioners were to raise such money as they judged necessary: they judged it necessary to raise that for which the bond was given. As to the 8th plea, the setting up of a jus tertii cannot make the bond bad as between these parties. The bond was a good bond at the time of execution. Well, then, it is said that it was obtained by fraud from Morrison and Mackenzie; but what have the defendants to do with that? Morrison and Mackenzie have their remedy in a Court of Equity, but such a defence cannot be recognised in a Court of Law. Both pleas are bad.

MARTIN, B.—I am of the same opinion. This was a deed given by the commissioners under seal, and it is therefore to be taken as a well-considered act; and to make out a defence, they should shew clear and sufficient grounds, and they should not put their seal to documents of this nature without consideration. It has been said that the doctrine of estoppel does not apply to this case; but I do not think so. It is true there is an exception when there is illegality. The plea is substantially the same, although not precisely as in the case of *Hall v. The Manchester and Salford Water-works*; and I think that all that is said there is good law. As to the 8th plea, it carefully avoids, alleging that the fraud was practised on the defendants themselves, and no authority has been cited to shew that such a defence can be set up. *Judgment for the plaintiff.*

BANKRUPTCY.

COURT OF BANKRUPTCY, LONDON, reported by JOHN A. FONBLANQUE, Esq. Barrister-at-Law.
COURT OF BANKRUPTCY, DUBLIN, reported by J. LEVY, Esq. Barrister-at-Law.

Saturday, May 15.
(Before Mr. Commissioner FANE.)
Re TAYLOR, *ex parte* RICHARDS.

Written memorandum when sufficient to entitle equitable mortgagee to costs of sale, &c.

This was a petition by Thomas Richards, the executor and sole residuary legatee of William Richards, for the sale of certain leasehold premises at Kennington, Surrey, belonging to the bankrupt, the lease of which had been deposited with the petitioner's testator, as security for a loan of money in the year 1812. The petition prayed that the costs of the petition and sale, &c. should be paid out of the proceeds.

Bagley (counsel) for petitioner.—The only question is, whether the petitioner is entitled to costs, and that depends upon the question whether the mortgage is evidenced by writing. It is admitted that there was no writing at the time the lease was deposited by the bankrupt with the testator William Richards, but in March 1851, the present petitioner, who then stood in the place of William Richards, entered into an arrangement for the settlement of certain partnership disputes with the bankrupt Taylor, upon which a memorandum of agreement was drawn up and signed by the authorised agent of Taylor, and by the petitioner, which memorandum contained these words: "Mr. Richards to give up the lease of the houses at Kennington upon payment of 200*l.* and interest from this date, 25th March, 1851." From this memorandum, it was clearly to be inferred that the petitioner held the lease in question as security for 200*l.* and interest, the precise amount which the petitioner now claimed to be entitled to upon the footing of his mortgage. That the memorandum was long subsequent to the deposit of the lease did not affect the petitioner's right to costs. (*Ex parte Reynolds, re Moore*, 1 Deac. and Chit. 279.)

Linklater (solicitor for the assignees).—The petitioner is not entitled to costs, for the only written memorandum produced, that of the 25th March, 1851, is consistent with the petitioner not holding the lease as equitable mortgagee, but in a different character. Besides, it appears from the preceding parts of the memorandum, that it was made in contemplation of some arrangement by deed which was never executed.

Mr. Commissioner FANE.—It may be clearly inferred from the memorandum, signed by an authorised agent of the bankrupt, Taylor, before his bankruptcy, that the petitioner held the lease in question, under circumstances which induced Taylor to believe that he could not demand the lease without payment of 200*l.* and interest. The sum specified in the memorandum is precisely that now claimed by the petitioner as equitable mortgagee. It is impossible to say there is no written evidence that the lease was deposited as security for money, and I think the evidence is sufficient to entitle the petitioner to his costs. *Order as prayed for.*

INSOLVENCY COURT.

Reported by DAVID CATO MACRAE, Esq. of the Middle Temple, Barrister-at-Law.

Tuesday, May 11.
(Before the CHIEF COMMISSIONER.)
Re JAMES WALKER.

Trial order before judgment signed in an action on the case in which damages are obtained, a nullity. A final order is no protection from imprisonment for damages obtained in an action on the case, although a verdict has been obtained, unless the costs are taxed and judgment signed before the final order is granted.

This insolvent came up to be admitted to bail, on tendering sureties for his appearance at the hearing. He had previously petitioned the Court under the Protection Act, on the 17th December last, and obtained a final order on the 30th January. He then petitioned, mainly to be protected in respect of liability of 97*l.* 9*s.* to his opposing creditor, Mr. Bevan; the mode of incurring which is explained by the following extract from the schedule:—"This creditor's claim has arisen in consequence of a verdict which he has obtained against me in her Majesty's Court of C. P. in an action on the case, and which action was brought against me to recover the sum of 30*l.* which this creditor had paid to me in the month of May, 1851, for the good-will and fixtures of my business, which I then previously had carried on at 5, Albert-place, Marlborough-road, Chelsea, the said creditor having been, subsequently to the sale of my said business to him, turned out of the said business premises under an action of ejectment which was brought against my father-in-law, the lessee of the said premises, for a breach of the covenants contained in the lease of the said premises committed to him." "I filed a petition for protection on the 17th December last, and obtained my final order on the 30th January last, and included this debt in my then schedule, and was opposed in respect thereof. Subsequently to my discharge, this creditor taxed costs in the action, and has now taken me in execution for damages and costs. I caused an application to be made to the Court of C. P. for my discharge, but the Court, holding that the debt did not accrue till the costs were taxed, discharged my application with costs." Being thus in custody for this debt, the insolvent applied under the 1 & 2 Vict. c. 110, and now applied to be admitted to bail, which application was granted. The insolvent was subsequently discharged.

CROWN CASES RESERVED.

Reported by A. BITTLESTON, Esq. of the Inner Temple, Barrister-at-Law.

...day,
REG. *v.* JOHN SMITH.

Larceny—Fraud—Procuring prosecutor's signature to a stamped receipt—Property—Possession.

A. pretending that he was about to pay B. a sum of money which was due to him, produced a receipt stamp, and placed it before B. who wrote thereon, at A.'s request, a receipt for the amount. A. then took up the paper and carried it away, but never paid the money.

Held, that B. never had such a property in, or possession of, the stamped paper, as to render the taking by A. a larceny.

CASE.

At the Epiphany Quarter Sessions held by adjournment at Swansea, in the county of Glamorgan, on the 9th of January, 1852, the prisoner, John Smith, was indicted for having on the 3rd of December, 1851, one piece of paper, stamped with a certain stamp, denoting the payment of a duty to our Sovereign Lady the Queen, of 6*d.* of the property, &c. of Thomas Henderson, feloniously stolen, &c.

The prosecutor, Thomas Henderson, had been timekeeper and general clerk to Isaac Powell, a railway contractor, whose employment he left in November 1851. The prosecutor applied frequently and without success, to Powell, for payment of wages due to him, and on the 3rd of December, 1851, prosecutor went to a public house, where he saw Powell and the prisoner, who was a gauger (or foreman) in the employ of Powell. Prosecutor asked Powell if he was going to settle with him? Powell answered yes: and that he would send the prisoner up to his house, to his (Powell's) wife for the money. Powell then left the house and prisoner followed him. In about two minutes prisoner returned and beckoned the prosecutor to come to him into the public house. Prosecutor went there—they were alone, and made up between them the balance of wages due to prosecutor, which they fixed at 4*l.* 11*s.* 1½*d.* Prisoner then took out of his pocket a sixpenny stamp and put it on the table, prosecutor took the stamp and pulled it towards himself, and asked the prisoner whether he (prosecutor) should write a receipt for the full sum, 10*l.* 16*s.* or for the balance. Prisoner said, for the balance. Whilst prosecutor was writing, he observed prisoner pull out a fist-full of silver, and turn it over in his hand. When prosecutor had written out the receipt, prisoner took it up and went out of the room. Prosecutor followed him, and said, "Smith, you have not given me the money." Prisoner said "It is all right." Prosecutor repeatedly asked prisoner for the money, but in vain. On the evening of the same day prosecutor met Powell and the prisoner together, and asked Powell if he had given prisoner any money for him. Powell said, "No; but my wife has." Prosecutor said he had not had the money. "Well," answered Powell, "he (the prisoner) would not have the receipt if you (the prosecutor) had not had the money." The chairman told the jury, after much doubt, that if they believed the evidence, the stamped receipt was the property and was in the possession of the prosecutor at and after the time of his writing the receipt, and that if they believed the prosecutor's statement, and should be of opinion that the prisoner took the receipt out of such possession with a fraudulent intent, they might convict him of larceny. The jury returned a verdict of Guilty, and the prisoner was sentenced to imprisonment for four calendar months, with hard labour.

The counsel for the prisoner raised the following objections:—1st. That there was not such a property and possession in the prosecutor as to support the charge laid in the indictment. 2nd. That there was no evidence of a felonious taking. The chairman reserved the case for the consideration of the judges, and begged their opinion thereon.

Terry for the prosecution.—As to the second

question stated in the case, it was clearly a question for the jury whether the taking was felonious, and they have found that it was. As to the first, there is more difficulty; but no doubt a stamped receipt may be the subject of larceny, and is properly described as a piece of paper stamped with a certain stamp denoting the payment of a duty to the Queen, as in this case. (*Reg.* v. *Rodway*, 9 Car. & P. 781.) In the present case it is submitted that as soon as the prosecutor had filled up the receipt and made it a valid discharge upon the face of it, the property and the possession passed to him; and the prisoner had no longer any right to it until the money was paid. The possession was transferred to him until that condition was complied with.

PARKE, B.—This is very like the case of *Rex* v. *Hart*, 6 Car. & P. 106. There, as Mr. Justice Littledale observes, "the prisoner took the stamped papers from his pocket and the prosecutor never had them except for the purpose of writing on them; they were never out of the prisoner's sight." So here, the receipt was never handed over to the prosecutor except for the purpose of his writing on it in the prisoner's presence. The prisoner bought the stamped paper, and it was to continue his property. He retained the controul of it throughout the transaction, and the prosecutor could not maintain trespass for the seizure of it.

POLLOCK, C.B.—The prisoner was guilty certainly of very fraudulent conduct; but the stamped paper was his own property at first and continued to be so throughout. It was handed to him merely that he might write his name upon it and return it; he might as the money was not paid, have struck out his name before he returned it; but he had no right to keep the stamped paper.

PARKE, B.—It is quite clear that there was no intention to give it to the prosecutor to keep even for a moment after he had written his name upon it. There is, of course, no doubt that if a man bails his goods to another, he may steal them out of the hands of the bailee.

ERLE, J.—This is *res judicata*, and the decision is in accordance with principle.

TALFOURD and CROMPTON, JJ. concurred.

Conviction reversed.

Saturday, May 29.

REG. v. MITCHELL and OTHERS.

Robbery—Assault with intent—Punishment.

Where, upon an indictment for robbery against three persons, they are convicted under Lord Campbell's Act of an assault with intent to rob, and the jury find that the assault was committed by the three prisoners together, they are liable to transportation under secs. 3 & 10 of 1 Vict. c. 87, and the punishment is not limited to imprisonment under secs. 6 & 10 of that statute.

CASE.

These prisoners were tried before Alderson, B. at the last Liverpool Assizes, on an indictment stating that they, in and upon Thomas Tatern, together feloniously did make an assault and him in bodily fear and danger of his life then and there together, feloniously did put, and certain money of the said Thomas Tatern, from his person and against his will, then and there together feloniously did steal.

At the trial, in consequence of the absence of the prosecutor, the actual robbery could not be proved, as no money could be shewn to have been taken from his person. But the three prisoners were convicted on the clearest evidence of the offence of feloniously assaulting the prosecutor with intent to rob him, and the jury expressly found also, on my asking them the question, that this felonious assault was committed by the three prisoners together. The case was one in which, in my judgment, it was right to sentence the prisoners to transportation; but as to the two men, a question arose whether it was competent for me, in point of law, to pass such a sentence. There was a previous conviction of felony proved against the woman, which removed all difficulty in her case.

By Lord Campbell's Act, 14 & 15 Vict. c. 100, s. 11, it is enacted, "that in all indictments for robbery, if it shall appear to the jury upon the evidence that the defendant did not commit the crime of robbery, but that he did commit an assault with intent to rob, the defendant shall or by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is guilty of an assault with intent to rob, and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for feloniously assaulting with intent to rob." But there is this difficulty, that there are several clauses of the 7 Wm. 4, and 1 Vict. c. 87, imposing different punishments in cases of assault with intent to rob. By the 6th and 10th secs. of that Act the extreme punishment for the simple offence of a felonious assault with intent to rob does not exceed three years' imprisonment with hard labour. By the 3rd and 10th secs. of that Act, where the felonious assault with intent to rob is committed by any person together with one or more other person or persons, the punishment may extend as far as transportation for life, and the lowest punishment is that of imprisonment with hard labour, for three years. I wish therefore to ask the judges the following questions: 1st. Is Lord Campbell's Act to be construed literally? And if so, whether the punishment must not be under the 6th and 10th sections, confined to three years' imprisonment, with hard labour. Or, 2ndly, is the true meaning of Lord Campbell's Act, that in any indictment for robbery, if the robbery be simple, there is included also a simple felonious assault with intent to rob, and if the robbery be aggravated, felonious assault with intent to rob, and then whether, inasmuch as the jury have here found such an aggravated assault, the punishment may not be, under the 3rd and 10th sections, extended as far as transportation for life. That the inconvenience, if any, may be avoided in future, I thought it advisable to direct a return of the old form of indictment, which, as I was assured by the clerk of assize, formerly contained an exp. . averment of an assault with an intent to rob. But this had been, in consequence of the recent alteration in the law, discontinued; and so the difficulty arose. I reserved the judgment till the next assizes, and request the assistance of the judges on the case.

The case was not argued by counsel.

Lord CAMPBELL, C.J.—I think that the second meaning suggested by the learned judge is the true meaning, and that when the robbery charged is of an aggravated description, the assault with intent to rob may be punished with transportation as an aggravated assault. If the indictment was for simple robbery, it could not include such an assault as would justify that punishment.

ALDERSON, B. and M[AULE], CRESSWELL, and ERLE, JJ. concurred.

Judgment affirmed.

HOUSE OF LORDS.

Reported by J. PATERSON, Esq. Barrister-at-Law

Friday, June 11.

MACPHERSON v. MACPHERSON.

Will—Construction—Investing in fund—First year's interest—Tenant for life.

A. by his will, directed his executors to set apart a portion of his personal estate to secure certain annuities, then to consolidate into one fund his whole fortune and moveables, and lay out that fund in purchasing lands, to be limited as specified in a certain deed of entail, and that the principal of the above annuities, as they respectively fell, should be applied in the same way. At A.'s death, the bulk of his personal estate was standing in Bank Annuities, and a convenient investment in land was not made till five years' afterwards.

Held, the money so directed to be invested was impressed with the character of realty from the moment of testator's death, and that the tenant for life was entitled to receive the interest of the same, from the period of testator's death, though uninvested in the land as directed.

Where a testator directs his estate to be converted and laid out in a particular investment, without any special direction, to accumulate or add interest to capital, the tenant for life is entitled to the interest actually accruing from the moment of testator's death, though the investment directed has not been made, but,

Semble, after a year has expired, and the fund still uninvested, in a question between the tenant for life and the person entitled in remainder, a Court of Equity will take into account the difference between the interest actually accruing and what would have accrued if the proposed investment had been actually made.

Stott v. Hollingworth, 3 *Madd.* 161, *is overruled.* Sitwell v. Bernard, 6 *Ves.* 520, *is exceptional*: La Terrière v. Bulmer, 2 *Sim.* 18, *did not go far enough; and* Dimes v. Scott, 1 *Russ.* 207, *is doubtful.*

This was an appeal from the Court of Session in Scotland. The plaintiff, Miss Anne Macpherson, filed her bill for an account in the Court of Session against the executors of Sir John Macpherson, who was one of the executors of the testator, James Macpherson, senior, who died in 1796. The testator, who was a Scotchman domiciled in England, left property to a large amount both in England and Scotland; and his will, dated 7th June, 1793, was to the following effect:—"I, James Macpherson, of Fludyer-street, Westminster, &c. do hereby make my latter will and testament, revoking all former wills and testaments whatsoever that I may have made, having settled my lands in Scotland upon a series of heirs by a bond or deed of entail, I dispose of all the property I may die possessed of, as follows: I leave an annuity of 100*l*. &c. (then follow bequests of several annuities). I desire, that out of the first and readiest of my money and effects the above annuities be secured in the public funds, and that, as they respectively fall, the principal shall be added to the residue of my fortune, and be disposed of as I[ereaf]ter directed by the executors of this my will, for the benefit of the heirs appointed by the above-mentioned bond or deed of entail. I leave to my following friends the sums specified after their respective names, as a mark of my esteem (then follow bequests to several friends). I request and direct the executors of my will, hereafter mentioned, to consolidate into one fund the whole of my fortune and moveables, which fund they are to lay out in purchasing lands in Scotland, to be entailed upon the series of heirs specified in the bond and deed of entail already mentioned, according to the strict forms of the laws of Scotland. The principal of the annuities specified on the first page of this will, as they respectively fall, shall be applied to the purchase of lands in Scotland, to be entailed as already directed. I hereby nominate and appoint the executors of this my latter will and testament, to wit, Sir John Macpherson, baronet (and others)." In a Scotch deed of entail, previously executed, the testator had appointed James Macpherson, junior, his son to be the first tenant in tail. After the testator's death in 1796, the executors, who duly proved the will, found a sum exceeding 30,000*l*. of personal estate, which was standing invested in bank annuities. Out of this fund they afterwards in 1801 purchased an estate in Scotland, to be limited to the persons specified in the Scotch deed. As the will, however, did not provide any specific term, from which the right of James Macpherson, jun. the first tenant in tail, to the interest or proceeds of the money to be laid out on land, was to commence, the executors paid over to him the whole interest of the stock accruing during the first year after the testator's death. It was for this sum, amounting to 1,055*l*. 18s. 1d. that the plaintiff, Miss Anne Macpherson, who at the death of James M. jun. without issue in 1833, became the second tenant in tail of the Scotch estates, now called for an account from the representatives of Sir John Macpherson, one of the executors of the testator. The defendants, in their answer, alleged that the deceased, Sir J. M. had paid over the sum in question, being the proceeds of the first year's interest, to James M. jun. as by law the executors were bound to do. The Court of Session, considering that the domicil of the testator was English, before ordering the account, directed the opinion of English counsel to be taken, as to whether, according to the law of England, the tenant for life was entitled to receive the sum in dispute. Counsel accordingly (Pemberton Leigh, esq.), in 1812, stated that the law of England was somewhat unsettled, the last authority being then *Taylor* v. *Clark*, 1 Hare, 161, but that he was inclined to the opinion "that the interest of the first beneficiary would be held not to commence till the end of one year from the death of the testator." The Court of Session ultimately decreed accordingly, that the executors were not entitled to pay to James M. jun. the first year's free annual proceeds of the personal estate, and declared the defendants liable to pay that amount. From this decree the defendants now appealed to the House of Lords.

Stuart, Q.C. and *Anderson*, Q.C. for appellant.

The *Solicitor-General* and *Rolt*, Q.C. for respondents.

It was assumed in the argument that the law of England was the same as that of Scotland on the point in dispute, though the law of Scotland was more settled, owing to circumstances similar to the present having already occurred there. The English authorities are so fully referred to in the judgment, that we merely cite them here: *Sitwell* v. *Bernard*, 6 Ves. 520; *Amphlett* v. *Parke*, 1 Sim. 275; *Angerstein* v. *Martin*, 1 T. & Russ. 232; *Hewitt* v. *Morris*, ibid. 241; *Douglas* v. *Congreve*, 1 Keen, 410; *Dimes* v. *Scott*, 1 Russ. 207; *Taylor* v. *Clark*, 1 Hare, 161; *Wrey* v. *Smith*, 14 Sim. 202; *Sparling* v. *Parker*, 9 Beav. 524; *Stott* v. *Hollingworth*, 3 Madd. 161; *La Terrière* v. *Bulmer*, 2 Sim. 18; *Caldecott* v. *Caldecott*, 1 Y. & Coll. 312; *Gibson* v. *Bott*, 7 Ves. 89. Scotch cases:—Stair's Trustees, 1 Wils. & Sh. 72; 2 Wils. & Sh. 614; Howat's Trustees, 16 Sh. & Dun. 622; Campbell's Trustees, 14 Sh. & Dun. 770, 16 Sh. & Dun. 1251.

JUDGMENT.

The LORD CHANCELLOR.—My lords, this is a very important point of law, and I must say for myself, I have for a good many years thought it a concluded point; but it seems not to be so; and therefore it will be necessary now to consider what the construction of the authorities is, and what the law is in this respect. The point turns on the will of Mr. Macpherson, and on a very few words of that will. He first of all had executed a disentailing deed of his Scotch estates, under which James Macpherson was the first taker, and he then goes on in these words. "I request and direct the executors of my will hereafter mentioned to consolidate into one fund the whole of my fortune and moveables, which fund they are to lay out in purchasing lands in Scotland, to be entailed upon the series of heirs specified in the bond and deed of entail already mentioned, according to the strict forms of the law of Scotland:" and immediately after that, this passage follo[ws]: "The principal of the annuities specified on the first page of this will, as they respec-

tively fall, shall be applied to the purchase of lands in Scotland, to be entailed as already directed." Then, my lords, if you refer to the passage to which the testator is referring, you find this provision: "That out of the first and readiest of my money and effects the above annuities be secured in the public funds; and that as they respectively fall, the principal shall be added to the residue of my fortune, and be disposed of as after directed by the executors of this, my will, for the benefit of the heirs appointed by the above-mentioned bond or deed of entail." Now, my lords, independently of authority, let us look at what ought to guide courts. They are not bound by authority in the construction of a will of this sort; and, indeed, in the construction of any will the great object of courts of justice must be within settled rules of law, to give effect to the intention of the testator. Now, what was the intention of the testator? Clearly, as far as it could be effected by law, to place his personal property upon the same ground as the real estate. Did he mean the measure of enjoyment of the one to be equal to the measure of enjoyment of the other? Did he intend them to go together, or did he intend them at any time to be separate? Had he in his contemplation any rule or any intention, which, although he has not directed it, would compel his executors to take the interest for any given portion of time of the whole of his large personal property and turn that into capital, and make that and that only capital to be added to the capital he already possessed? He has not said so, it is not attempted to be contended that this gift directs the investment of interest, the accumulation of interest for the purposes of investment, on the contrary, after the first year it has been held, that the institute, the person entitled, had all the profits of both the personalty to be invested and the real estate as it stood, and taking it in that view, there cannot be, I think, the possibility of a doubt, that that meets the intention of the testator, who tells you, as plainly as language can describe it, his meaning,—"I mean my personal property at my death to be considered as real property, and to go with my Scotch estates, and with the additions and accumulations of my Scotch estates to the heir of entail according to the deeds I have executed." Suppose the heir has left at interest the whole of his property, could there be any doubt that he would take the new additional property in the same way as he disposed of the whole. Is it disputed, that if the executor had the next hour met with a convenient and proper estate and bought it, the heir would not have been entitled? Clearly he would, and therefore when we come to consider, independently of intention, the rule of law, it will be seen whether there is something which will prevent that which I apprehend is the real and clear intention of the testator. Now this may be spelling of words, but the truth is, when one is about to affect an intention which is said to be so obscure that the Court is said to imply something, you are entitled to spell words; but there is something to be gathered from the words which follow: "The principal of the annuities specified on the first page shall be applied to the purchase of lands." An annuitant would thus clearly be entitled at the death of the testator. Suppose that annuitant had died in three months, are you to accumulate that annuity for the remaining nine months? You could not do it; the words exclude it. It says, "the principal," therefore you would not take that which is not principal; if you look at the direction as to the payment of annuitants generally, you will find the samething—it is the principal that is to be applied, and it is not necessary to press this, because it is admitted that the true construction of the clause is to give capital only to be invested. Look, my lords, at what would be the consequence: here we are now at this very moment arguing in respect of a fund which has never, except by imagination or intendment of law, changed its character. What remains is still personal estate, and yet we are asked, contrary to all the rules of equity guiding us on this subject, we are asked to consider that at this moment, as if nothing was accomplished. Now, the rule on which the Court proceeds is, that this property was impressed by the will itself with a character of real estate, and being impressed with that character, it became real estate at the moment of his death, in my apprehension, and must be treated as such. The question remains, my lords, are you bound by the authorities to decide against this view, and in favour of the decision of the Court below? I apprehend you are bound to do no such thing. The cases admit of a very easy regulation. *Sitwell* v. *Barnard* was exactly, in effect, like *Lord Stair's* case in Scotland: in each case there was a direction for investing the interest; if, therefore, there be a direction to invest the interest, the direction must be obeyed; but, see what Lord Eldon did in *Sitwell* v. *Barnard*. He doubted himself, at a later time, whether he had not taken a greater liberty with that will, in putting on it the construction he did, than he ought; but what did he do? There was a direction in *Sitwell* v. *Barnard* that the interest and dividends of the fund should be accumulated, and that the accumulated fund should be laid out; when, therefore, Lord Eldon took this view of the accumulation which he could not strike out of the will, for he had no power to do so, when he decided that that accumulation should by construction terminate at the end of the first year, what did he do? He arrived at one of the most violent conclusions at which it is possible for a judicial mind to arrive; but for what object? To let property and enjoyment go hand in hand; he saw an intention not to exclude, although the words did exclude the persons to take successively, from each having in his own lifetime the full measure of enjoyment which every other owner has, and therefore he did put a violent construction on that will, not from any fanciful rule to give a twelvemonth, but because he must give some effect to the words; and then, looking to the analogy of the common case of administration, he saw that to be a reasonable time within which that trust should be executed. Now your lordships are asked on that foundation to decide here that there must be a twelvemonth given, within which there is to be no enjoyment of the tenant for life, that is, because, in a case where there was a direction for accumulation generally, and the Court restrained that in favour of enjoyment, in favour of the gift taking effect as early as might be, so that the tenants for life should be put on an equal footing, you are asked to apply that to this case in order to introduce what you do not find on the face of the will, a direction to accumulate for a whole year from the death of the testator—why not three months? There is no strict or proper analogy between getting in an estate to pay legacies and debts and the case before you of investing a large sum of money in the purchase of real estate in Scotland. He was forced to allow that accumulation to go on at the expense of the tenant for life, and he strained the law to meet the justice of the case; but your lordships are asked to strain the rule of law in order to do injustice, to do precisely the opposite of that which Lord Eldon strained the rules of law to effect. It is perfectly manifest that if this case had come before Lord Eldon, he would without hesitation have decided that the tenant for life was entitled as from the death of the testator. Now *Sitwell* v. *Bernard*, as I well know, was for a long time misunderstood. Lord Eldon himself complained of it, that it had been misunderstood—somehow or other it was generally supposed that Lord Eldon had laid down some general rule. No other case ever came before him in which he did not take very great pains to explain to the Bar that what he had decided was what I have stated, and he always took care to disclaim any intention of laying down a general rule applicable to the case before your lordships. Then came that case before Sir J. Leach, *Stott* v. *Hollingsworth*. It is not possible to say, with all the respect one feels for that learned judge, but that he miscarried in that case. Having been counsel there, I have reason to know there was an appeal against it, and it was compromised. Lord Eldon himself said as to that case, in the later case of *Angerstein* v. *Martin*, that if that case had been brought before him, he should have required elaborate argument before he came to that conclusion. The whole of the suit was nothing about the gift of a residue to persons for life, with gifts over, and the whole of the estate was actually converted, a great part of the property was actually in a state in which they were capable of receiving the income, and the other part had been converted long before the year. Sir J. Leach thought fit to deny the tenant for life that to which he was entitled. Your lordships may safely be advised that that is not the law. Then came *Angerstein* v. *Martin* and *Hewitt* v. *Morris*. Now as far as they go, they are not exactly this case; but as far as they go, they are both clearly authorities in this case. In each case Lord Eldon gave the tenant for life the fund as from the death, whereas if the rule is to prevail which has been contended for at your lordships' bar, they would not have been entitled, but there ought to have been a time allowed; there should have been a period. Clearly they do not adopt the rule which is contended for at your lordships' bar, and it is not worth while again to read to you the passages; but Lord Eldon does shew the clearest opinion, that the true view in these cases is to give the interest or the rents to the tenant for life, as from the death. He observes in *Hewitt* v. *Morris*, speaking of *Angerstein* v. *Martin*, what could I have done, if there had been a purchase in February—the testator having died in January, meaning to say, if there had been a purchase in February, the tenant for life must have taken the receipts. He was arguing evidently in his own mind, "how can I refuse to this tenant for life from the death of the testator the interest of the fund, if being converted three or four weeks after the death he would have been entitled to the property?" And he observes, what is very important, in *Hewitt* v. *Morris*, and *Angerstein* v. *Martin*. He says, "I understand observations have been made that this (*Sitwell* v. *Bernard*) is an exceptional case. My answer to that is, that it has nothing to do with the general law." That is the real truth of the case; it is a case that stands by itself, and is not governed by the general law under which it has been attempted to bring the case. Then, my lords, how stand subsequent authorities? I agree as to the case before Sir Antony Hart (*La Terrière* v. *Bulmer*), but without going into any examination of that, he went two-thirds on the way, and then stopped a little short on his road; but he certainly did not give the unconverted part, and there is no reported case that follows that. In the case of *Douglas* v. *Congreve*, before Lord Langdale, his lordship went through all the authorities, and he clearly followed what I have stated to be the opinion of Lord Eldon, in *Angerstein* v. *Martin*, and *Hewitt* v. *Morris*; and it is singular enough, that Sir A. Hart, in the case before him, professed to follow *Hewitt* v. *Morris*. So that, although he did not go to the extent to which he ought to have gone, in my opinion, according to *Hewitt* v. *Morris*, yet he approved of the authority. So that it is not a decision in opposition to what has been decided, but it is a decision by a judge not following out a rule laid down by a former judge, but miscarrying in carrying it to the extent to which he ought to have gone. Now, as to the case before Lord Langdale, it was said in argument at the bar about that case, that Lord Langdale introduced the difficulty, that there was no contest or controversy until he introduced it. Now, my lords, it is not just to say so, because, in consequence of the decision in *Sitwell* v. *Bernard*, and *Stott* v. *Hollingsworth*, there was a considerable misunderstanding, and Lord Langdale makes this observation: "It is embarrassing to find the rule in cases of this nature so little settled. Lord Eldon seems to have considered the tenant for life entitled to the whole interest for the first year; Sir J. Leach thought him entitled to no part of such interest; Lord Lyndhurst thought him entitled to such a sum by way of interest, as would have accrued as dividends upon so much Three per Cents. as the residue would have purchased at the end of the year; and Sir A. Hart thought him entitled to the interest from the death of that part of the residue which, at the testator's death, was invested in the securities pointed out by his will. But that the interest on such part of the residue as was not so invested was to be added to the capital." Then he makes this observation, which applies to the case before your lordships: "In a case where there is no direction to accumulate, and, therefore, no direction to add interest to capital, it appears to me more likely to have been the intention of the testator, that until the lapse of such convenient time as may be allowed to the executor to make the conversion directed by the will, the tenant for life should enjoy the interest actually accrued; and if it should be held, as in *Dimes* v. *Scott*, that the conversion ought to be made in a year, I think that no inconvenience can follow from allowing the tenant for life the interest of the residue making interest, as it stood at the time of the testator's death, until the end of one year, or so much of that year as shall elapse before the conversion of the residue according to the direction of the will." That is clearly a dictum in favour of the rule as I am submitting it to your lordships. Lord Lyndhurst, in *Dimes* v. *Scott*, came to the same conclusion. I readily admit he came to that conclusion at the end of an argument on another point, and therefore I do not give to it all the weight to which his decisions are so justly entitled; but he must have considered this to be the rule, and he acted on it. In the case before Vice-Chancellor Wigram, his Honour went into a considerable comment on the cases; he was a little embarrassed with it, but he admitted the rule. Therefore, my lords, I have no difficulty on the rule of law upon the authorities, as I think it is now settled. The difficulty which has arisen in the late cases is of a different nature: it is not a difficulty whether the tenant for life is entitled at the death of the testator or not: that is not the difficulty, and I have long considered that a perfectly settled question; but the difficulty is this, in what manner he is to have the benefit of that rule as between himself and the person entitled in remainder. In a case like this before your lordships it is a case of Three per Cents., and therefore he would clearly take the interest without making any call on the capital, according to the rules of equity; but where, as in the case of *Angerstein* v. *Martin*, it was Russia stock bearing a large interest, there a difficulty may arise, and there are other cases of the same sort. Lord Eldon gave to the tenant for life even that. Judges have since supposed that his attention was not drawn to it. I do not think his attention was called to it, that is, the difficulty was not then suggested, if you do give to the tenant for life the first year's income, yet give it him in that way which will be consistent with the rules of the Court in dealing with a tenant for life in remainder. I think Lord Eldon's attention was not called to that,

but subsequent decisions have taken a fair course in that respect, and there will be no difficulty in dealing with a case of that sort when it arises. In this case we are relieved from all such difficulty, and therefore, without going further into a point which I have myself for many years considered to be decided, viz. the rule in question, I submit to your lordships that, so far as this point was decided against the appellants in the Court below, that interlocutor must be reversed, and it must be declared that that sum, the first year's dividends, was properly paid in the way it was; therefore the representatives of Sir J. Macpherson are not liable in respect of that.

Lord Brougham.—My lords, I quite agree. I have had no doubt from the beginning that the Court below had miscarried; and without going into the argument upon which my noble and learned friend has already addressed your lordships at great, though by no means unnecessary length, without going into that argument, I wish to profess my opinion to be entirely the same with his on that subject. With respect to his comments on the different cases, of course it is unnecessary that I should follow him in those comments. I agree with my noble and learned friend in the conclusion at which he has arrived, and in his comments also on the cases. With respect to *Stott* v. *Hollingsworth*, before Sir J. Leach, I take it to be quite clear that that can no longer be law. As to *La Terrière* v. *Bulmer*, before Sir A. Hart, so far as that goes, I also am inclined to differ from that. I think that *Douglas* v. *Congreve*, before Lord Langdale, and *Taylor* v. *Clarke*, before Vice-Chancellor Wigram, take a right view of the law. *Dimes* v. *Scott*, before Lord Lyndhurst, may be subject to some doubts, I mean with respect to the manner in which that case was decided, which really was not argued before my noble and learned friend who decided it; therefore I say nothing on that case, leaving the subject for that and other reasons. On the whole, my lords, I am quite satisfied that we do well in reversing the judgment of the Court below on this point of the construction, and in declaring our opinion that that is the law, both here and in Scotland.

Interlocutor reversed.

Equity Courts.

LORD CHANCELLOR'S COURT.

(Before Lord St. Leonards, L.C.)

Reported by C. H. Keene, Esq. of Lincoln's-inn, Barrister-at-Law.

May 31 *and June* 1.

Re St. George's Steam-packet Company, *ex parte* Hamers' Devisees.

Joint-Stock Company—Winding-up Act—Contributory—3 & 4 *Wm.* 4, *c.* 101.

H. the holder of shares in a joint-stock company, by his will devised his real estate to A. and appointed B. his executor, who for many years received dividends on the shares. At the death of H. there were no debts existing on the part of the company. Debts subsequently accrued, and on the winding up of the company, B.'s name was put on the list of contributories; but, on his representing that the personal estate of his testator had been duly administered, the Master put A.'s name, as the devisee of H. on the list:

Held, affirming the decision of the Master, but overruling that of the Vice-Chancellor, that, under stat. 3 & 4 *Wm.* 4, *c.* 104, *A. as devisee, was liable.*

By the statute 3 & 4 *Wm.* 4, *c.* 104, *debts of every description are charged on the real estate of a testator: consequently, a future debt, arising out of a previous obligation, is a debt within its provisions.*

This was an appeal from a decision of the Vice-Chancellor Knight Bruce, reported 17 Law T. Rep. 24.

Bacon, Rolt, and *J. V. Prior*, appeared for the official manager (the appellant), and cited *Birmingham* v. *Burke*, 2 I. & Lat. 699; *Morse* v. *Tucker*, 3 Hare, 79; *St. George's Steam-packet Company, ex parte Doyle*, 2 Hal. & Tw. 229.

Bethell, Malins, and *Hamilton Humphreys*, for the respondents, cited *Wilson* v. *Knubley*, 7 East, 128; *Farley* v. *Bryant*, 3 Ad. & El. 839; *The South Staffordshire Railway Company* v. *Burnside*, 20 L. J. 120, Ex.

Bacon replied.

The Lord Chancellor.—This is a case in which, after several years, an attempt is made to charge the real estate of a shareholder in this company (the estate having been devised by him) with the liability which the company has incurred long after his death. The shareholder entered into a deed of covenant (which I shall more particularly refer to hereafter) for carrying on, in common with others, this joint-stock company for ninety-nine years, and at the time of his death it seems that there were no debts existing, and that a debt afterwards accrued. Therefore, at the time when the devise of the real estate, which was not charged by the will, took effect, there was, in point of fact, no debt actually incurred. The question is, whether the real estate is now chargeable, some twelve years after the death of the testator. If it be so, the court must submit to it, no doubt; but it is a very inconvenient disposition of property by the Legislature, to render real estate liable, at a considerable distance of time, for transactions over which the devisee himself had no control. The shares, by the deed of partnership, belong to the executors, as representatives of the testator. It has been very forcibly argued,—very well argued,—that under the deed the proprietorship vests in the executor in a case like this; but, the contrary has been decided, and I have no intention to interfere with that decision; I think it is right, although it is a case of considerable nicety. Therefore, it having been decided that the executors, continuing to receive the dividend in the quality of representatives,—which was this case,—do not become proprietors: I may put that out of the question. Then, the deed itself must be looked at, to see what obligations it created. It is a deed by which the parties covenant, and, being under seal, it is a specialty, that they will carry on this trade without benefit of survivorship for ninety-nine years. That covenant I have already said is a specialty, but it does not bind the heir, because the heir is not mentioned; but, being a contract, it does bind the personal estate beyond all question, and goes to the whole extent of the personal estate; and the devisees who took the estates not charged by the will with debts, and who had no control, properly speaking, over the personal estate, might probably have compelled the executor to come to some account, which would have put an end to the liability of the real estate. I give no opinion how that is to be effected,—it is a matter of difficulty; but the devisee made no attempt of that sort in any way, and he remained, I have no doubt, perfectly secure in the belief that no attack would have been made on this property; and a very hard case it is, no doubt, if that liability should be established. Now, the deed not creating anything but a specialty debt, not binding the heir, it is quite clear in the first place, that unless the Act of Parliament provides for this case, no relief can be granted against the holder of the real estate. The Act of William and Mary has been referred to; but that does not bear upon this case, because, although the word "debts" was used, it was used in a limited sense; it was used with reference to an action of debt. In *Wilson* v. *Knubley* it was, by a somewhat strict construction, held, that where a debt would not lie, properly speaking, the Act did not operate to bind the devisee; and in the case of *Farley* v. *Bryant*, which has been here referred to, that doctrine was carried a little further no doubt; but still both those decisions depended upon that particular Act of Parliament, which contained those words of restriction, —a very limited Act, but it was an Act brought in to remedy the defect; no doubt it did not extend to this case, because it only extended to cases still where heirs were bound, and did not intend to go beyond that: it was intended to remedy the particular mischief which it did remedy effectually. Then at last we come to the 3 & 4 Wm. 4, 101, and the question is, whether this case falls within that? I am not surprised at the difficulty which occurs, because I think that the Act is ambiguously framed, and it is not easy to come to a very satisfactory conclusion upon its operation; but it recites, "that it is expedient that the payment of the debts of all persons should be secured more effectually." Then it enacts, "that when any person shall die, seised of or entitled to any estate or interest, &c. which he shall not by his last will have charged with or devised subject to the payment of his debts, the same shall be assets to be administered in Courts of Equity, for the payment of the just debts of such persons, as well debts due on simple contract as on specialty; and that the heir or heirs-at-law, customary heir or heirs, devisee or devisees, of such debtor, shall be liable to all the same suits in equity at the suit of any of the creditors of such debtor, whether creditors by simple contract or by specialty, as the heir or heirs-at-law, devisee or devisees, of any person or persons who died seised of freehold estates, was or were, before the passing of this Act, liable to in respect of such freehold estates, at the suit of creditors by specialty, in which the heirs were bound." Stopping there, undoubtedly there is a difficulty; because, although first the enactment is, "that where a man shall not by his last will have charged or devised his estates, subject to the payment of his debts, the same shall be assets, to be administered in Courts of Equity for the payment of the just debts of such persons, as well debts due on simple contract as on specialty;" yet it afterwards refers to the remedy, as it would be "against the heir or heirs, or devisee or devisees, if they had been bound." I think the true construction of the Act, taken altogether, is to charge debts of every description on the real estates of the testator; and the difficulty which was raised in the argument in regard to this, was the case in which it was a specialty, and not a simple contract debt, and the heirs were not bound, and, therefore, did not fall within this provision. I think this is clearly answered by the proviso in the Act, which has not been stated: "Provided always, that in the administration of assets by Courts of Equity, under and by virtue of this Act, all creditors by specialty in which the heirs are bound, shall be paid the full amount of the debts due to them before any of the creditors, by simple contract or by specialty, in which the heirs are not bound, shall be paid any part of their demands." The Act of Parliament, therefore, provides expressly for the payment of money by way of a certain priority of specialty debts, where the heirs are not bound. Now this is a case in which it is a specialty debt, and the heirs are not bound; yet under the colour of the provisions of this Act of Parliament it is plain, taking the whole Act together, by its provisions, though no doubt singularly framed, yet on the true construction I apprehend it includes all debts, and such a debt as the present. Now there is another way of construing the Act, which is to me very satisfactory. The Act is not to extend to any case in which there is a special devise subject to the payment of debts. What did the Act of Parliament therefore mean? What was the intention of the Act of Parliament? What was the want which it meant to supply? It meant to supply the want of the charge by the will of debts upon the real estate,—debts generally, not in the confined and restricted sense in which we find it in the Act of Parliament of William and Mary, or in the later Acts, but generally, "any debts, as well by simple contract as by specialty." It appears to me, therefore, that it is settled (not considering my own authority, but another authority not appealed from), that where there is a general charge of debts, that includes not only present debts but future debts arising out of a similar obligation. Then if this Act of Parliament meant to do what I am clearly of opinion it did mean in effect to do, and if it was sufficient to carry that intention into execution, that is, to make a charge here where the testator had neglected himself to make the charge by his will, then this case falls within the authorities to which I have referred; consequently, a future debt, arising out of the previous obligation, is a debt within the provisions of this Act of Parliament. It appears to me, I must say, with great deference to the other learned authorities, that this is a charge which would be a debt provided for under the provisions of this Act of Parliament. Well, if that be so, then, primâ facie, the estate will be liable, and the only point arises on the subsequent conduct and the provisions of the deed. Now, the deed has provided that the party shall become a proprietor, although he shall not have the benefit until he has done some act, such as receiving dividends. Here he was permitted to receive dividends; but the same thing occurred in the case already decided, which I have referred to, and from which I do not intend to depart, in which the executor did not become a proprietor or entitled in his own right, but continued to be entitled as representative. In the books, which I have looked through carefully, the executor never receives a payment, except in the character of representative. I think that is clear from the books; therefore there is no personal liability. Now, I do not see how, therefore, I can restrain the company as between themselves, from enforcing the liability of the real estate as against the devisee. I do not see how it is possible. They have not done any act which would prevent their coming against any property which was liable to the engagement of the company as between themselves. I am not speaking of creditors; I am speaking as between themselves. They have performed the obligation with the assistance of the Act of Parliament. The obligation of the deed binds the man's real and personal estate, which would have ceased if the executor had sold, and a new purchaser had been introduced. No such transaction took place, therefore the estate remained; in point of fact, the share remained the share and property of the testator, and his real and personal property, by the Act of Parliament, and by the force of the deed, jointly, did become and so remain liable to the obligation. Then, what are the acts which are to discharge this? If what was argued could have been made out, that the acts which have taken place have substituted the executors proprietors, that would have been something which would have carried the point to the proper extent, and then the executor, becoming himself a proprietor in his own right, the estate might have been discharged; but that operation has not taken place. Then the property still remains the property and estate of the testator, and all his property is liable. I see nothing, therefore, in the consequence, I may say, of the company not having made any motion against the real estate, which it was necessary for them to do were the personal estate insufficient to answer the obligation, which can in any manner affect their right to go against the real estate. I dismiss the cases of the bank-

ruptcy, because I think they have no bearing upon the case. Then it is said you cannot attack the real estate. First, you cannot attack the devisee ... is not the contention. Beyond all doubt, ... in this respect as a representative. The executor could not be charged personally, the devisee could not be charged personally; but he must be charged ... the character of a devisee. Then, it ... that being in the place of a suit for administration, you cannot come against this party, except in the course of administration; therefore you must shew that the personal estate has been exhausted, before you can come against the real estate. Those are questions which I have not to decide. This gentleman is put, in respect of the real estate, as a contributory to the losses of this company. As between himself and his copartners, he will have a right to say the personal estate shall go first. That will not prevent his liability, if the personal estate should be exhausted. He will have a right to say that the personal estate shall go first—he will have a right to say, if that personal estate is exhausted, the real estate in his hand is not to be liable; consequently he is put, and must be put and remain on, as a contributory in respect of the real estate. Those are points which will arise hereafter as to the extent of the obligation. It is with very sincere regret that I differ from the learned judge of the Court below, and I cannot differ from him without great doubts whether I am deciding rightly or wrongly. I am of opinion that the liability does remain, and therefore I must declare that this gentleman must be put upon the list as a contributory.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

(Before the LORDS JUSTICES.)

Tuesday, April 20.

THE ATTORNEY-GENERAL *v.* THE GOVERNORS OF HARROW SCHOOL.

Exhibition from public school to universities—Proper duration of when not mentioned by donor.

A testator left stock, producing 100l. a year, for an exhibition, towards the maintenance and support of a scholar going from a public school to the universities, but did not mention for what period he was to hold it.

Held, reversing the decision of the Court below, affirming the Master's report, that four and not six years was a proper period.

The testator in this cause, Mr. Richard Gregory, made his will, dated the 22nd of October, 1838, and also a codicil, dated on the same day. The codicil was partly as follows:—"Whereas, out of regard to the memory of my first wife, Isabella Gregory, and to the said free grammar-school of John Lyon, in the said town of Harrow-on-the-Hill, and for the promotion of science and literature, I am further desirous, with the concurrence of the governors of the possessions, revenues, and goods of the said school, to found a Harrow exhibition, to be call 'The Isabella Gregory Exhibition,' for the benefit of the members of the said school who shall become students at either of the universities of Cambridge or Oxford." The testator then directed for this purpose that his executors should transfer sufficient Three per Cent. Consols into the names of the governors of the school to produce from dividends 100l. a year, and to apply the same in or towards the maintenance and support of such one of the scholars of Harrow School who should from time to time be selected under the regulations contained in the second schedule to the codicil, during such period as such scholar should be a member of either of the universities of Cambridge or Oxford, under the regulations and restrictions contained in such second schedule. That schedule contained, among others, the sixth regulation, in the following words, but having a blank for the number of years.—"6th. That the first and each successive exhibitioner shall be entitled to the said annual dividends so long as he shall be and continue a resident member of either of the universities of Cambridge or Oxford, either as an undergraduate or bachelor, for the term of — — complete years, to be computed from the date at which the first half-yearly dividend payable to such exhibitioner after his appointment shall become due at the Bank of England," &c.

On the 13th of April, 1840, Mr. H. M. Wilkins was elected Isabella Gregory Exhibitioner, and received 300l. in the whole in three successive years. In June 1843 Mr. F. W. Smythe was elected to the exhibition, but Mr. H. M. Wilkins claiming to be entitled to it for a longer period than three years, an information was filed by the Attorney-General at the relation of Mr. H. M. Wilkins, praying a declaration as to what was the period for which the exhibition was to be held. On a reference being made to the Master, Sir Giffin Wilson, on the 25th of November, 1845, reported that six years was a proper period, and on the 9th of March, 1847, Vice-Chancellor Sir James Wigram overruled exceptions taken to the Master's report.

The governors now appealed from his Honour's decision, praying that the period of four years might be fixed for the duration of the exhibition.

Bethell and *Toller* appeared in support of the appeal, and read a letter from Dr. Butler, Dean of Peterborough, formerly head master of Harrow School, whose son, H. M. Butler, was the present exhibitioner, addressed to the solicitor of the governors of the school, in which he expressed his approbation of the steps the governors were about to take to restrict the tenure of the scholarship to from six to four years, giving his consent as far as he legally could, that his son, who was then a minor, should give immediate effect to the decision of the Court in case the term for the tenure of the scholarship should be restricted in the manner proposed. It was also submitted to the Court that four years would be preferable to three years, as the latter would not cover the period of residence at the university, and to six years, as the exhibition would be more frequently an object of competition, so as to benefit the school by stimulating the exertions of the scholars, and would be co-extensive with their necessary residence at the university.

James, for the Attorney-General, offered no opposition.

Lord Justice Lord CRANWORTH was of opinion that the term, as fixed by the Master for filling up the blank in the schedule to the codicil was too long. He agreed with the opinion intimated by Sir James Wigram that a shorter period would be the most beneficial arrangement for the school and the scholars; that it was by no means desirable to hold out inducements to men to reside at the university after the completion of their education. In the court below, it seemed to be considered that the shorter term of three years could not be adopted, because Mr. Gregory himself contemplated the exhibition being held by a bachelor. There was, however, nothing stringent in that objection, and if it appeared to his lordship that it would be more for the advantage of the school itself, as of the scholars, that a term of four years should be adopted, and the Court, so far as he ... concerned, would sanction that course.

Lord Justice KNIGHT BRUCE concurred.

Monday, April 26.

SIMS *v.* HITTING.

Claim—Appeal from the whole decree—Right to begin.

The right to open on an appeal from a decree made on a claim, is to be governed by the same rules as when the appeal is from a decree where the suit is commenced by a bill. A plaintiff, therefore, on an appeal from the whole decree by the defendant, has a right to open the appeal.

In this case a decree having been made on a claim in favour of the plaintiff, in the court below, and the defendant having appealed from the whole decree, the question arose which side had a right to open the appeal.

Roundell Palmer and *Sandys*, for the plaintiff, insisted on their right to begin.

Bethell and *Tripp*, for the defendants, contended that by the 29th of the orders of April, 1850, it is said, "that any order made in pursuance of these orders may be discharged, altered, varied, or set aside on motion," and that, therefore, the appellant ought to begin, as if he were moving to discharge the order of the Court below.

Lord Justice Lord CRANWORTH. I think the better rule will be to abide by the analogy to a decree pronounced in a suit by bill, and to treat this appeal, and all appeals on claims in that manner. The appeal being against the whole decree, the plaintiff will begin. I do not think that by the word "motion" in the orders, there was any intention to give any collateral advantage as to opening and reply in the case of an appeal.

Lord Justice KNIGHT BRUCE concurred.

IN LUNACY.

Friday, May 28.

Re ANNE HEWSON.

Lunatic—Husband and wife—Allowance to husband out of wife's separate income, according to arrangement acted upon—Allowance to a relative of lunatic.

A husband having entered into an arrangement with his wife, who had a separate income of her own, that she was to pay for the expenses of their household establishment out of her separate income:

Held, that the husband's representatives, in accounting for the wife's separate income, which was received by the husband after his wife had become of unsound mind, ought to be allowed to deduct a sum for the expenses of the household establishment, according to the arrangement; allowance also was made for a sum advanced by husband to a nephew of his wife, whom she had brought up, according to the promise of the wife before she became of unsound mind.

The lunatic in this case, who was the widow of Mr. T. A. Hewson, a medical man, was entitled to a very considerable income arising from property settled to her separate use. There had been an arrangement between Mr. and Mrs. Hewson (not reduced to writing), that all the expenses of their establishment in London, except the expenses attending the carriages and horses, should be paid out of the income of the separate property of Mrs. Hewson. This arrangement was acted upon from the year 1823 until the 3rd of April, 1845, when Mrs. Hewson became of unsound mind. From that time until the time of his death, Mr. Hewson received the income of his wife's separate property. A suit having been instituted to administer Mr. Hewson's estate, upon Mrs. Hewson's committee claiming the income of her separate property received by her husband, his representatives insisted upon their right to set off against that demand, the money expended by Mr. Hewson in keeping up their establishment, pursuant to the arrangement before mentioned. The representatives of Mr. Hewson also claimed to be allowed a sum of 250l. under the following circumstances. Mrs. Hewson, being the aunt of Mr. W. Parkins, with whom she had been in constant habits of intimacy since his boyhood, and prior to her lunacy had been at the expense of placing and keeping him at school; had paid for his apprenticeship and maintenance; had given him to understand that she would provide for his advancement in life; and at her request he had (previously to the month of April 1845) left a situation in a wholesale house of business upon the faith of a promise made to him by Mrs. Hewson, to give him the sum of 500l. to enable him to start in business, but she was prevented by her lunacy intervening from completely fulfilling her said promise, although she had given to him 50l. in part performance of it. Mr. Parkins having communicated his aunt's intention to Mr. Hewson, he thereupon presented him with a cheque for 250l. which was entered in the banking book of Mrs. Hewson (who had a separate account with a banker) on the 6th of December, 1846.

Stuart, *Malins*, *Bacon*, *Shapter*, *F. Wood*, *Bolton*, and *Young*, appeared for the several parties.

Their LORDSHIPS considered the evidence adduced sufficient to prove the existence of the arrangement, and that the expenses of the establishment came to about 550l. a year. They thought, therefore, that would be the proper sum to allow the representatives of the husband for every year from the lunacy of the wife until his death.

As to the second claim their lordships thought that having regard to the moral obligation of Mrs. Hewson to fulfil her promise to her nephew, and the reasonable probability that she would have done so had she remained of sound mind, allowed the representatives of the husband the 250l. The result therefore would be that after deducting from the separate income of the wife received by the husband, the above-mentioned sums allowed to them, the husband's estate will have to pay the balance to the credit of the lunacy. In order, however, to save the parties unnecessary expense, their lordships requested that the matter of the present petition should be mentioned to them on a subsequent day, when an order could be drawn up in the lunacy and in the cause.

Saturday, May 22.

Ex parte YELLAND, *re* THE PORT OF LONDON SHIP OWNERS' LOAN AND ASSURANCE COMPANY, and *re* THE JOINT-STOCK COMPANIES WINDING-UP ACTS.

Joint-Stock Companies Winding-up Acts—Contributory.

A. B. applied for shares in a completely registered company, two shares were allotted to him, on which he paid the deposit, and his name was returned to the Registry Office as a shareholder; but he never executed the deed of settlement. The deed of settlement provided, that immediately upon the execution of the deed of settlement, the person executing the same, being a person duly entitled by original subscription, or by transfer, should be forthwith entered on the register of shareholders, and duly returned to the Joint-Stock Registry Office, under the provisions of the Registration Act, should thenceforth, but not before, assume the liabilities and privileges of a shareholder. On the company being wound up:

Held, that the allottee was properly placed on the list of contributories.

This was a motion on behalf of Robert Easton Yelland, by way of appeal from the decision of Vice-Chancellor Parker, who refused to strike the name of the said Robert Easton Yelland out of the list of contributories of the second class, where it had been placed by the decision of Master Tinney.

The material facts of the case are stated, 19 Law T. Rep. 30.

Willcock and *Terrell*, in support of the appeal, cited *Ex parte Hall*, 1 Mac. & G. 307.

Roxburgh and *Morris*, for the official manager, were not called upon.

Lord Justice Lord CRANWORTH.—I entertain no doubt upon the question, whether Mr. Yelland's name has been properly placed upon the list of contributories. The Act of Parliament said that the word "contributory" should include every member of a company, and also every other person liable to contribute to the payment of any of the debts, liabilities, or losses thereof, whether as heir, devisee, executor or administrator of a former member of the same, deceased or otherwise howsoever. Although the Court is always reluctant, in these cases of contributories, to hold a man liable to a debt to which he is not liable at law, yet this is always with the qualification that such person had not, by having contracted to become a member of the company, incurred all the liabilities of an actual member. Now, in the case before the Court, Mr. Yelland has applied for shares, and having received an allotment accordingly, has paid a deposit on such allotment, and has afterwards assented to a communication acknowledging the receipt of such deposit by the company. Under these circumstances, Mr. Yelland must be held to have contracted, and to be clearly bound to become a member of the company. He is therefore liable, in that character, to contribute to the debts and liabilities of the company, and consequently his name has been properly placed on the list.

Lord Justice KNIGHT BRUCE concurred.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. HENRY COOKE, Esq. Barrister-at-Law.

March 25 and 26, and April 1.

THE DUKE OF NORFOLK *v.* TENNANT.

Special Act of Parliament, Lands Clauses Consolidation Act—Compensation—Injunction.

A. was empowered by a special Act of Parliament to erect a new market. In this Act the Lands Clauses Act was incorporated. B. the owner of premises, claimed compensation against A. for narrowing the streets, for obstructing the thoroughfare, and for interfering with the light and air. He gave notice of his claim, and then gave notice of proceeding to arbitration. A. filed his bill for an injunction, which set forth, as was the fact, that there had been a treaty for compensation for narrowing the street, and for obstructing the thoroughfares, but not as to the light and air, and the Court being of opinion that the nature of the compensation treated for was clear, granted an injunction, restraining proceedings under the notice, but left B. at liberty to give any other notice respecting the 3rd branch of his complaint.

The Bill in this case was filed by the Duke of Norfolk against the defendant, Tennant and others, the owners of a brewery, called the Exchange Brewery, at Sheffield, to restrain them from proceeding, under certain notices he had given, under the compensation clauses of the Lands Clauses Consolidation Act. The Duke was empowered by a special Act (10 & 11 Vict. c. 45), in which the Lands Clauses Consolidation Act was incorporated, to remove the old market at Sheffield, and to erect a new market; and the Act contained the usual powers of stopping up thoroughfares during the progress of the works, diverting the ways, &c. The brewery entrance opened into a street called Castlefolds, which street was of the proper width for carts and other vehicles, and separated the brewery from the market-place. During the works the Castlefolds was blocked up, and ultimately the same was permanently narrowed by the formation of the new market-place. Upon this Messrs. Tennant and Co. gave to the Duke two notices of their intention to proceed by arbitration for the recovery of compensation under the 68th and other sections of the Lands Clauses Consolidation Act,—firstly, for a more than necessary obstruction of the thoroughfare through Castlefolds; secondly, for the permanent contraction of the road; and, thirdly, for the obstruction of the light and air, by reason of the new market buildings being raised much higher than the former buildings. The first notice was dated 29th January, 1852, which set forth the title of Messrs. Tennant and Co. and that their premises were injuriously affected by the height of the new buildings, and by their being brought nearer to the brewery, and the narrowing the Castlefolds, and impeding the circulation of the air from south to west, and also by the temporary and unwarranted obstruction of the Castlefolds. For these three particular items a claim was made respectively for 800*l.* 14,000*l.* and 200*l.* This notice was served on the Duke of Norfolk and his agents. The second notice, dated 27th of February following, was served in the same way, and it stated that Mr. John Monk had been appointed the arbitrator on behalf of Messrs. Tennant and Co. and that under the Lands Clauses Consolidation Act that gentleman would assess the damage, if the Duke did not within sixteen days nominate an arbitrator on his behalf. Before the expiration of the fourteen days, the Duke filed his bill against Messrs. Tennant and Co. praying an injunction to restrain all proceedings under these notices, which set forth, and the same was supported by affidavit, that the brewery in question had been granted by demise from the Earl of Bridgewater, dated 1826, for ninety-nine years; that in 1843 an underlease had been granted for fourteen years, at a rent of 200*l.* per annum. The defendants were now possessed of this underlease. The reversion in the lease of ninety-nine years, after the determination of the underlease, was now in the Duke of Norfolk, to whom the 200*l.* rent was payable. Shortly after the commencement of the works, on the 21st August, 1850, the defendants objected to the progress of the new buildings; and on the 17th September an interview took place between the architect of the plaintiff and the defendant's solicitor, which was followed by others, in the course of which it was proposed that a certain sum should be paid for compensation, and that a receipt should be given in the following form:—"20th Oct. 1850. Received the sum of £ as compensation for the damage, &c. by the erection, execution, or formation of the works now in progress, or other the works to be done in execution of the Sheffield Market Act." The defendant refused to confirm this agreement, but an agreement was ultimately entered into that the defendant was to retain a half year's rent, and also to have a small portion of an adjoining court-yard, which were expressed to be received by the defendant "in full compensation for any damage to the brewery premises, or to me, as the tenant under the indenture of 1843, by reason of the proceedings under the Act, 10 & 11 Vict. c. 45, rendering it necessary to stop up Exchange-street, running along the side of the brewery, and also by reason of the said new market, when built, projecting so far as to contract the street to 12 feet 1 inch." It was stated the name "Exchange-street" was used by mistake for "Castlefolds;" that this receipt was on the 12th of November, 1850, left for engrossment with the solicitor of the plaintiff, who engrossed it, and sent it to the defendant's solicitor for the signature of the defendant; and at the same time a stamped receipt for two quarter's rent, less income-tax, was sent, and that the defendant took possession of the piece of land mentioned as being included in the compensation.

Sir *W. P. Wood* and *Ellison* moved for the injunction, stating that although the case arose under the same clauses of the Lands Clauses Act as the cases of the *London and North-Western Railway* v. *Smith*, 1 Mac. & Gor. 217, *The East and West India Docks Railway Company* v. *Gattke*, 3 Mac & Gor. 155; and *The Sutton Harbour Improvement Company* v. *Hitchins*, 16 Jur. 70, still the circumstances materially differed, as the party here seeking damages had already received his stipulated compensation. This stipulated compensation they contended reached to all the damage which the defendant might suffer; but if not, it clearly reached to some of the matters mentioned in the notices under which he was attempting to proceed; and if it were unjust that the defendant should proceed for part of the matters in these notices, he could not proceed under these notices at all.

The VICE-CHANCELLOR.—Can I interfere to a limited extent only on this motion?

Rolt and *Speed*, for the defendants, in the first place, contended that the Court had no jurisdiction at all in this matter; that a jury or an arbitrator could find a partial satisfaction or a limited damage, just as well as they could find a complete satisfaction, or no damage at all; and this was the ground for refusing the injunction in *Gattke's* case, and the case of the *Sutton Harbour Company*. Secondly, that there was no conclusive agreement for compensation ever entered into; the whole thing was no more than a treaty; and, thirdly, that if there were a conclusive agreement, it only extended to two heads, and that on the third (viz.), the obstruction of light and air, which was much the most important, the defendants had compensation to receive, which they wished to have assessed in the way pointed out by the statute. At any rate, all the Court could do was to restrain from proceeding on two of the matters mentioned in the notices.

Sir *W. P. Wood* in reply.—The other side seek to confine the case to the single point that the defendant has a legal remedy given him by the statute. But even this we deny; for this proceeding, which he calls a legal remedy, is to assess damages for matters in respect of which he has already agreed to receive, and received, compensation: therefore nothing remains to be assessed or compensated.

The VICE-CHANCELLOR.—Your difficulty is this, that your case on the face of your bill is, that compensation has been made. You admit, therefore, that damage has been done: that these lands have been injuriously affected. Therefore, you do not come within the ground of *Smith's* case, which is, that it was doubtful whether any damage had occurred: but say that it has been compensated. They say only partially compensated, assuming that a conclusive agreement has been made at all. The question is, whether a jury can entertain the question of partial satisfaction, and find that so much damage has not been satisfied. Is there any jurisdiction in the jury to entertain the question of satisfaction? [You can plead it in an action in the award.] The result of that would be, that whatever a portion of the damage has been satisfied, the parties must come into equity.

Sir *W. P. Wood*.—There is no reported case of partial satisfaction. If we appoint an arbitrator we admit the jurisdiction, and therefore could not plead the complete satisfaction which we allege to have been made. After the terms of sec. 25, how could we ever allege there was no jurisdiction in the arbitrator? The frame of the Bill is perfectly correct. The case made out is, that the defendant having entered into an agreement to accept satisfaction, keeps back from the full performance of his side, and does not put us in such a position as that we can safely go before a jury.

The VICE-CHANCELLOR.—Have you any allegation in the bill that the agreement was that the receipts should be exchanged?

Sir *W. P. Wood*.—Not expressly; but the defendant, having received his part, is bound not to agitate those claims which he agreed to waive.

Thursday, April 1.—The VICE-CHANCELLOR.—The question for my decision in this case is, whether, under the circumstances, the injunction ought to be granted, or whether the Court is bound to refuse its aid. The case stated by the bill is in substance this: that the defendant agreed to accept a plot of ground and two quarters' rent due from him to the plaintiff, in satisfaction of the injury which he has sustained by the street having been obstructed and narrowed, and as to the obstruction of the light and air; and that the defendant has stood by and permitted the building to be erected to its present height without raising any objection. After carefully considering the affidavits on both sides, I am of opinion that, subject to questions which were raised on the argument on the part of the defendant as to the jurisdiction of the Court on the frame of the pleadings, there is a sufficient case for the injunction. The questions which were raised by the defendant as to the frame of the pleadings, and the jurisdiction of the Court were, that the bill alleged that the defendant had received compensation for the injury occasioned by the street having been obstructed and narrowed, and that this allegation brought the case directly within the principle of *Gattke's* case. But although this bill is not in this respect so aptly framed as it might have been, I think upon the whole the fair meaning of it is, not that the agreement has been completed and carried out, and the satisfaction perfected, but that the defendant has received consideration for an agreement which he refuses to perfect; thus opening the case for specific performance. And although the bill does not pray that relief, I think the facts are sufficiently stated for a decree to be founded upon them; and the case being thus opened upon the pleadings, I am of opinion that *Gattke's* case does not affect the present question. That case has overruled *The London and North-Western Railway* v. *Smith*, and has settled, on most satisfactory grounds, that this Court ought not to interfere by injunction to restrain parties who insist that their property has been injuriously affected within the meaning of the 68th clause of the Lands Clauses Consolidation Act, from prosecuting their claims according to the provisions of the Act, upon the mere ground that the Act has not provided the means of determining the preliminary question, whether the property has been injuriously affected or not; but it has settled no more. Whether the same rule would apply to a case in which there are several grounds of claim, some of which have been satisfied, remains yet to be determined; and not having had the benefit of a full argument upon that point, I shall not determine it. At all events, the case does not touch the question of the interference of this Court where there is an original equity affecting the claim. The case decides that where there is no original equity affecting the claim, the statute does not create such an equity; but where there is such an original equity affecting the claim, the statute does not, in my opinion, take it away. Being of opinion that the plaintiff in this case has sufficient grounds for contending that some at least of the claims of the defendant are affected by contract entered into before the claims were advanced, I think that this injunction must be granted. It was urged by the defendant that it ought to be so limited as to extend only to the claim for obstructing and narrowing the street, but having regard to the provisions of the Act as to costs, I think it cannot be so limited. The defendant, if he thinks it right to prosecute the claim as to obstruction of light and air

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before the equity of the present bill is determined, must give a fresh notice for the purpose. But in the meantime I must grant the injunction; although by granting it I do not mean that it will prevent the defendants from giving such other notices of claims for compensation as they think proper or may be advised. The injunction is expressly limited to restrain the defendants from taking up any proceeding under "the said notices," that is, under the notices of the 29th of January and the 27th of February, 1852.

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

April 16, 20, and 21.

THE GREAT WESTERN RAILWAY COMPANY *v.* THE OXFORD, WORCESTER, AND WOLVERHAMPTON RAILWAY COMPANY and OTHERS.

Construction of railways—Broad and narrow gauge.

By their Act of Parliament, a railway company were to make a broad-gauge railway from Wolvercot (Great Western, a broad-gauge line) to Wolverhampton (North-Western, a narrow-gauge line), with additional narrow-gauge rails from Abbotswood, an intermediate place, to Wolverhampton. The company commenced at Wolverhampton, and constructed a single narrow-gauge line from that place to a place some distance south of Abbotswood, but, by the addition of a rail, this line could be readily converted into a mixed gauge. Upon a motion by the Great Western Railway Company for an injunction, it was

Held, that the company were entitled to proceed with the construction of their railway in this manner, and also to make a mixed gauge line from Abbotswood to Wolvercot.

Semble, that the line from Wolvercot to Wolverhampton could not be opened until the broad-gauge line through the whole distance was completed; though parts of the line might be opened in the narrow-gauge only.

This was a motion by the Great Western Railway Company, that the Oxford, Worcester, and Wolverhampton Railway Company, George Rushout, and others, and the servants and agents of the Oxford, Worcester, and Wolverhampton Railway Company might be restrained from taking, or causing to be taken, any step, or doing, or causing to be done, any act, matter, or thing, and, in particular, from expending, or causing, or permitting to be expended, the moneys or funds of the Oxford, Worcester, and Wolverhampton Railway Company, or any part thereof, or any moneys borrowed, or to be borrowed by, or on the credit of, the said last-mentioned company, or in any way pledging, or using the credit of the said last-mentioned company, in or towards, or for the purpose of constructing their said line of railway, in the first instance, otherwise than on the broad-gauge throughout its entire length, and so as to enable the same to be worked continuously with the said Great Western Railway, together with additional rails to the north of Abbotswood and side lines, pursuant to the provisions of the Acts of Parliament in the bill in this suit mentioned, and, in particular, that the said company and persons, and the servants and agents of the said last-mentioned company might be, in like manner, restrained under any circumstances from laying rails on the narrow gauge on the line between Abbotswood and Evesham, in the said bill also mentioned, or any part thereof, or any part of the line to the south of Abbotswood aforesaid, and that the said last-mentioned company and persons, and the servants and agents of the said last-mentioned company, might also be restrained as to that part of the line of the said Oxford, Worcester, and Wolverhampton Railway Company which lay to the north of Abbotswood aforesaid, from laying rails on the narrow gauge unless and until they should have laid rails throughout the entire length of the said railway on the broad gauge, and that the said last-mentioned company and persons, and the servants and agents of the said last-mentioned company, might also in like manner be restrained from opening or using any part of the said Oxford, Worcester, and Wolverhampton Railway, except the loop line in the said bill also mentioned, unless and until they should, as aforesaid, have laid and opened the said Oxford, Worcester, and Wolverhampton Railway throughout its entire length on the broad gauge, and also that the said last-mentioned company and persons, and the servants and agents of the said last-mentioned company, might in like manner be restrained from constructing or using any of the works of the said Oxford, Worcester, and Wolverhampton Railway or laying down or using the rails thereof, or any of them, otherwise than in conformity with the Oxford, Worcester, and Wolverhampton Railway Act, 1845, and the several other Acts under which the said Oxford, Worcester, and Wolverhampton Railway was constituted, and, the true spirit thereof.

By sec. 28 of the Oxford, Worcester, and Wolverhampton Railway Act, 1845, after reciting that plans and sections of the intended railway and branch railway, shewing the line and levels thereof, &c. had been deposited with the clerks of the peace of certain counties, it is enacted that, subject to the provisions therein and in the "Company's Clauses Consolidation Act," 1845; the "Lands Clauses Consolidation Act," 1845; and the "Railways Clauses Consolidation Act," 1845, it should be lawful for the Oxford, Worcester, and Wolverhampton Company to make and maintain the said railway and branch railways in the line and upon the lands delineated upon the said plans, and described in the said books of reference.

By sec. 38, it is enacted, that the said railway, branch railways, and works, should be constructed and completed in all respects to the satisfaction of the engineer for the time being to the Great Western Railway Company, and that the said railway should be formed of such gauge, and according to such mode of construction, as would admit of the same being worked continuously with the Great Western Railway. By sec. 44, after reciting that the railway, by that Act, authorised to be made, was intended to be connected with the Birmingham and Gloucester Railway at Abbotswood, and with the Grand Junction Railway near Wolverhampton; and that the branch railway to Stoke Prior, thereby authorised, was also intended to be connected with the said Birmingham and Gloucester Railway, and that it was expedient that on the line of the said branch railway, and on the line to King's Wynford, thereby also authorised, as well as on the main line between the said Birmingham and Gloucester and Grand Junction Railways, additional rails should be laid down so as to adapt the said lines as well to the gauge of the said Birmingham and Gloucester and Grand Junction Railways as to the gauge of the Great Western Railway, for the purpose of admitting the free and uninterrupted passage of carriages, waggons, and trucks passing from or to the said Birmingham and Gloucester and Grand Junction Railway, it is enacted, that the said company thereby incorporated should, and they were thereby required, to lay down and maintain upon the whole extent of the railway thereby authorised between the point of junction thereof with the said Birmingham and Gloucester at Abbotswood, and the point of junction thereof with the said Grand Junction Railway, near Wolverhampton, as well as on the said branch railways thereby authorised, to King's Wynford and Stoke Prior aforesaid, such additional rails adapted to the gauge of the said Birmingham and Gloucester and Grand Junction Railways respectively, as might be requisite for allowing the free and uninterrupted passage as aforesaid of carriages, waggons, and trucks passing to or from the said Birmingham and Gloucester and the said Grand Junction Railways respectively, or from the last mentioned railway to the said Birmingham and Gloucester Railway, or passing from one portion of the said Birmingham and Gloucester Railway to another portion thereof, or to or from any intermediate place between the said two railways to the one or the other of them, and such additional rails should be laid down, maintained, and used to the satisfaction and approval of the Board of Trade, and all necessary facilities and accommodations should be afforded by the company thereby incorporated, or their lessees, for the convenient use thereof; and it should be lawful for the said Board, at any time, on complaint made by any company or person interested in the question, that such additional rails had not been laid, or that such facilities or accommodations were not afforded, to order and direct the said company thereby incorporated, or their lessees aforesaid, to adopt such regulations as they might see fit to require with reference to the laying down of such additional rails, or to the use of the said additional rails and other conveniences aforesaid, and for the purpose of securing such free and uninterrupted passage thereon as aforesaid. By sec. 45 it is enacted, that wherever the railway thereby authorised, or any of the branches thereof, should join or communicate with any existing railway or railways already authorised by Parliament, and which should have been constructed of a different gauge from the said first mentioned railway, the company thereby incorporated, or their lessees, should find and provide, at all times, at their own expense, and free of charge for the use thereof to all persons or companies using the said first-mentioned railway or branch railways respectively, such machinery and apparatus as might be necessary for readily transferring the goods, coal, or merchandise brought from, or intended to pass on, such other railway to or from the said railway thereby authorised, or any of the branches thereof, and such machinery and apparatus should be of such description, and so constructed as to admit in the most convenient and readiest manner of the transfer of such goods or merchandise, or of the carriages in which the same were conveyed from or to the railway thereby authorised, or the branches thereof to or from such other railway as aforesaid, and on complaint made by any company or person of the insufficiency of any such machinery or apparatus for the purpose aforesaid, the Board of Trade might appoint an engineer to inspect the same, and order the adoption of other apparatus for the purpose. By sec. 128 a lease for years, and by sec. 129 a sale and transfer of the said railway and works to the Great Western Company were authorized. Sec. 130 empowered the two companies to enter into contracts for effecting the aforesaid purposes, or for otherwise working or using the said railways, or any part thereof, and provided that any contract made before the passing of the Act for all or any of the purposes aforesaid by the provisional committee of the company thereby incorporated, and the directors of the said Great Western Company with the sanction of any general meeting of the last-mentioned company, should be as valid and binding in every respect, as if made subsequently to the passing of the Act, and in conformity with the provisions thereof. By the sec. 131, after reciting that the Great Western Company were willing to undertake, in case of need, the due completion of the said railway and branches, it is enacted, that in the event of the Oxford, Worcester, and Wolverhampton Company failing to complete the same within the time thereby limited, it should be lawful for the Great Western Company, after giving a month's notice, to enter upon and construct the railway, and to exercise all or any of the powers of the Oxford, Worcester, and Wolverhampton Company with relation thereto, and if at any time the Oxford, Worcester, and Wolverhampton Company should, in the opinion of the Board of Trade, fail to proceed with the construction of the railway therein mentioned, the Great Western Company should, on being required so to do by the said board, enter upon the said railway, and should complete the same as aforesaid, and in such event it should not be lawful for the Oxford, Worcester, and Wolverhampton Company, or the directors thereof, at any time after such entry, unless with the special consent of the said board of trade, to declare, make, or pay any interest or dividend. By sec. 132 the Great Western Railway Company were, from the passing of the Act, subjected as to revision of rates to the 7 & 8 Vict. c. 85. By sec. 133 the Birmingham and Gloucester Railway Company were authorized to use that portion of the line lying between Abbotswood and Stoke Prior at the rent and upon the terms contained in the 134th and 135th sections. From the evidence it appeared that the Oxford, Worcester, and Wolverhampton Company had laid down a single line of narrow-gauge rails on the northern portion of their railway, not only from Wolverhampton to Abbotswood, but also further south from Abbotswood to Evesham—that the earth and timber works, however, were of such construction, as would admit of the broad-gauge rails being added, so as to make the railway a mixed gauge line throughout with double rails on the part north of Abbotswood, and a single line south of that point, and that it was the intention of the Oxford, Worcester, and Wolverhampton Company, if their funds should be sufficient, to make a double line of mixed guage throughout. A difficult tunnel south of Evesham delayed the completion of the works then. From the evidence on the part of the Great Western Company it was shewn that they did not know the state of the works until the 24th of February last, when (see *Great Western Railway* v. *Rushout*, infra) the Great Western Company were again admitted to the councils of the Oxford, Worcester, and Wolverhampton Company, and the proceedings of the general purposes committee; but on the other hand it was proved that Brunel had been the engineer of both companies up to March 1851. In that month he wrote to the directors of the Oxford, Worcester, and Wolverhampton Company, requesting, that if he were retained in their service as engineer, his position might be carefully restricted to the duties of that office, and might not be in any degree confidential.

Bethell and *G. L. Russell*, in support of the motion.

Rolt, *Malins*, and *Jessel*, for the defendants.

Bethell, in reply.

The following cases were cited:—*Breman* v. *Rufford*, 1 Sim. N.S. 550; *Graham* v. *The Birkenhead Railway Company*, 2 Mac. & Gord. 146; *Cohen* v. *Wilkinson*, 1 Mac. & Gord. 481; *Irving* v. *Bancroft* (V.C. Shadwell, not reported); *Hodgson* v. *Earl Powis*, 12 Beav. 392.

The VICE-CHANCELLOR said that he did not think that the plaintiffs had made out a case for the injunction they sought. The question seemed to him to turn entirely upon the construction and effect of the original Act of Parliament incorporating this company and directing the line to be made. Now that Act of Parliament authorised the railway to be made from Wolvercot, which was near Oxford, to Wolverhampton, crossing the line of the Birmingham and Bristol Railway at a place called Abbotswood, and proceeding to Wolverhampton. When completed, it would leave the broad-gauge line, which it joined at Wolvercot, to cross a narrow-gauge line at Abbotswood, and to fall into the narrow gauge—the

line of the Grand Junction—at Wolverhampton. The question was, what were the principles of the construction of this railway as regarded the question of the gauge of it? Now that depended upon the effect of two clauses of this Act of Parliament. The 38th clause provided that the railway should be formed of such gauge and according to such mode of construction as would admit of being worked continuously with the Great Western Railway; and the 44th clause required the railway, which had been directed to be made, so as to be capable of being worked continuously with the Great Western, to have laid down such additional rails between Abbotswood and the station at Wolverhampton as would enable it to be worked in conjunction with the narrow-gauge railway. Now the company admitted, and it appeared to his Honour that they could not do otherwise, their obligation to lay down the broad-gauge line throughout from Wolvercot to Wolverhampton, and in addition to that, to lay down a narrow-gauge line from Abbotswood to Wolverhampton; and several questions had arisen as to their obligations and powers with respect to any thing beyond that. The first question was, they being bound to lay down the broad gauge, were they at liberty also to lay down the narrow-gauge line throughout? And it appeared to him that they were. The Act of Parliament which prescribed that the railway should be formed of such gauge and according to such mode of construction as would admit of being worked continuously with the Great Western, did not seem to him to prohibit its being laid down so as to be adapted to another mode of working as well, if it suited the interest of the railway company to do so. That view of the case appeared to his Honour to be entirely in accordance with Lord Cranworth's judgment in the case of *Beman* v. *Rufford*. Then the next question was, were they bound to lay down a double line throughout? and his Honour did not think that they were. Engineering questions might arise as to whether it was advisable to lay down a double line; but there was nothing in the Act of Parliament to restrain them from laying down a single line if they thought fit. Then were they at liberty to lay it down upon a mixed gauge if they thought fit? His Honour considered that they were. He saw nothing to prevent their line being a line capable of being worked continuously with the broad-gauge line, adapted so as to be able to be traversed by carriages to be run upon a narrow-gauge line; so that it appeared to him that if, when the railway was completed, there was a single line of railway the whole distance from Wolverhampton to Wolvercot, admitting of being worked continuously with the Great Western, and with additional rails between Abbotswood and the Grand Junction, capable of being worked by a broad-gauge line with those additional rails, the company were not bound to do more. They had power to construct it upon a narrow-gauge between Abbotswood and Wolvercot, and it appeared to his Honour that that would be a railway made in accordance with the provisions of this Act of Parliament. Now it was the intention of the company, as sworn by Mr. Parsons, to make the railway in that way, with this additional single line of rails south of Abbotswood, and a double line of rails between Abbotswood and Wolverhampton. What was it that they were doing? They were beginning at the north end and working to the south. They had purchased land, and their works were in a more or less forward state of advancement, all with a view to make a mixed-gauge line in the way his Honour pointed out, and therefore it appeared to him, all with a view to make the railway in a manner in accordance with the Act of Parliament. No rails had been laid down yet south of Evesham. Several points had been raised. It had been said there was no good faith in this intention, and also that there was an intention to abandon making the line south of Evesham. He saw no evidence whatever of that; on the contrary, so far as he could judge from the affidavits, and from what had been done, he thought there was an intention to complete the railway south of Evesham in the way pointed out. Something had been urged, not very material, as to expense, they being obliged by the Act to do one thing, if they were going to do something beyond that; and if it could be shewn they had not the means for doing both, it might be a very strong reason for saying they should be restrained from doing anything except what the Act enjoined. As to expense, the evidence stood thus:—Mr. Barlow, on his information and belief, stated that the funds would be insufficient to make the line according to what he considered to be the obligation to make it by the Act of Parliament; that was, as his Honour understood it, a double-gauge line with a variety of branches, some of which had been abandoned; on the other hand, Mr. Thomas and Mr. Parsons, who swore, in the only way they could swear, to their information and belief, stated that the funds would be sufficient to do what was intended. The only thing that was brought in to throw additional light upon that was a paper which appeared to have been communicated by Mr. Parsons to the company, or to the solicitor of the company, at the time of the negotiation; the object of which was, that the Great Western Railway Company should support or assist this company in carrying out the line. That paper shewed, according to Mr. Brunel's estimate (which, it was to be observed, was for making a double-broad-gauge line throughout, taking a margin of 50,000*l.* to cover its contingencies), a sum of 3,250,000*l.* would be required. It appeared from the statement that had been agreed to, that the company had already got the means of raising 3,133,000*l.* and it was stated they had the means of raising more, making 3,200,000*l.* It was to be observed, that it was to be expended, not in making a double broad-gauge line, but in making a single mixed-gauge line; and therefore it was impossible, upon this evidence, to come to any conclusion that Mr. Parsons and Mr. Thomas were incorrect when they made the statement they did in respect of their information and belief as to the mode of making the railway, or means of making it. No doubt, so far as the works had gone, the narrow-gauge works were more advanced than the broad-gauge works; but there was no harm in that. The object of the broad gauge was, that the railway, when completed, should be of such a gauge and such mode of construction as should admit of its being worked continuously with the Great Western. If it was bonâ fide made down to Wolvercot, and when it was completed and open at Wolvercot, there was a line then capable of being worked continuously with the Great Western, his Honour considered that the obligation imposed upon them by the Act of Parliament would have been performed; but it was not so if when it was open at Wolvercot it was open as a narrow-gauge line made in compliance with the 38th clause, it would not be in accordance with the Act of Parliament, and the law would furnish ample means to the Great Western Railway Company in that case of getting redress. Now a railway of course could not be completed and opened all at once, part must be completed before the rest, and the company must judge what part they would complete before they did the rest. If they had done part of the whole which was not illegal, his Honour saw no reason whatever for interfering upon the grounds he was asked to interfere by granting any part of this injunction in respect to this part. The line was adapted obviously to the narrow gauge at the place where it was made, because the broad-gauge line would be useless there until there was some communication between this line and the broad gauge line. With respect to the injunction that he was asked to grant, the first of several objects was to restrain the company from making their railway in the first instance otherwise than upon the broad-gauge throughout its entire length, with additional rails between Abbotswood and Wolverhampton. There was no ground for that. For the reasons his Honour had stated it appeared to him that the company had a perfect right to go on as they were doing, making the railway also in a lawful way pari passu. Then the motion sought an injunction forbidding their laying down the narrow gauge south of Abbotswood. For the reason stated he thought that part of the application must fail. Then as to that part of the line north of Abbotswood, his Honour was asked to restrain them from laying the rails upon a narrow gauge till they had laid rails throughout upon the broad gauge. That must follow what he had just said, because, à fortiori, they had power to lay down the narrow-gauge concurrently with the broad gauge between Abbotswood and Wolverhampton. Then it was asked to restrain the opening of the railway, and if that was to be done it could only be done upon the ground that it was illegal, and as to that his Honour did not think it so for the reasons he had stated. With respect to the costs of the application it would be better to say nothing about them. The course of the Court provided for the costs of these motions in a way that was most just. Where nothing was said about costs, if the suit failed, the party moving must pay the costs; and if the suit succeeded then the order for taxation of the costs provided a better way than any special order would do.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

LOWNDES *v.* THE EARL OF STAMFORD.

Salary—Apportionment—Pleading—Condition.

Where the defendant covenanted with the plaintiff to pay him 1,800l. per year by half yearly payments, so long as the plaintiff should hold the offices of auditor and superintending manager of defendant's estates; and, in case the defendant should revoke the appointment without just cause, to pay the plaintiff from and after such revocation, 1,000l. yearly, by half-yearly payments; and the defendant revoked the appointment without just cause, in the middle of one of the half-years:

Held, that the plaintiff was not entitled to recover upon the covenant, a proportionate part of the half-year's payment under the 4 & 5 Wm. 4, c. 22, s. 2.

The indenture contained a clause, that in case the defendant should revoke the appointment without adequate and just cause, the adequacy and justice of such cause to be ascertained as thereinafter mentioned, the said defendant should, during the joint lives of the defendant and plaintiff, pay to plaintiff 1,000l. annually. The defendant having revoked the appointment of plaintiff without adequate or just cause, as averred in the declaration:

Held, that it was not necessary, in a count for non-payment of a half-year's annuity, for the plaintiff to shew that he had obtained, or that there was any determination in the mode described as to the adequacy or justice of the cause of revocation.

Covenant.—The first count of the declaration stated, that by an indenture of the 2nd of January, 1849, the defendant appointed the plaintiff to be auditor and superintending manager of all his estates, &c.; such appointment being considered as taking effect from the 7th of January, 1848. That the defendant would, so long as the plaintiff should hold the said offices, pay him the annual salary of 1,800*l.* by equal half-yearly payments, on the 7th of July and the 7th of January in every year; and in case the defendant should revoke the said appointment without adequate and just cause, then, from and after such revocation, would, during the remainder of the joint lives of himself and the plaintiff, pay to the plaintiff a clear annual sum of 1,000*l.* by equal half-yearly payments. General averments of performance by plaintiff, and of his continuing to hold the office; that 900*l.* for the period between the 7th of January, 1850, and the 7th of July, 1850, during which the said plaintiff held the said offices, became due.

Breach.—Non-payment thereof.

Second count.—That the said indenture, in the first count, was so made as in the said first count mentioned. That although the plaintiff from the time of the making thereof, continued to hold the said offices of auditor, &c. until, to wit, &c. which elapsed between the 7th of January and the 7th of July, 1850, on which day the defendant, without adequate and just cause, revoked the said appointment of the plaintiff; and although, after such revocation, to wit, on the 7th of July, 1850 (the same day being such one of the said half-yearly days of payment as first happened after such last-mentioned revocation), a large sum of money, to wit, 500*l.* being the first payment of the said clear annual sum of 1,000*l.* became due from the defendant to the plaintiff by virtue of the said covenant, and although the defendant has hitherto ceased to pay, and has not paid to the plaintiff the said salary of 1,000*l.* or any part thereof; and although the defendant has not hitherto obtained, nor has there been any determination by the said Lieutenant Colonel W. or any other referee or umpire that the said defendant had, or that there was adequate and just cause of or for such revocation. Breach non-payment of the said last-mentioned sum.

Plea to first count.—After setting ou tthe deed on oyer, that before the 7th July, 1850, to wit, on the 27th May, 1850, the defendant revoked the appointment of the plaintiff, and the plaintiff ceased to hold the said offices; without this, that the plaintiff held the said offices during the whole period of time between the 7th January and 7th July, 1850, modo et formâ.

In the deed as set out upon oyer, there was the following condition:—"That, in case said W. L. Lowndes shall cease to perform the duties of the offices, to which he is hereby appointed by reason of his becoming incapable of performing such duties from permanent illness or infirmity, or in case the said earl shall revoke the appointment hereby made without adequate and just cause, the adequacy and justice of such cause to be determined as hereinafter mentioned, or in case said W. L. Lowndes shall resign the offices, to which he is hereby appointed, upon adequate and just cause, the adequacy and justice of such cause to be ascertained, as hereinafter mentioned, then and in any such case, from and after such becoming incapable, revocation, or resignation, as the case may be, the said earl shall, during the remainder of the joint lives of the said earl and W. L. Lowndes, pay to said W. L. Lowndes and his assignees a clear annual sum of 1,000*l.* by equal half-yearly payments, on the half-yearly days hereinbefore mentioned, the first of such half-yearly payments to be made on such of the half-yearly days, as shall first happen after such becoming incapable, revocation, or resignation, that the adequacy and justice of the cause of any revocation by the earl, of the appointment hereby made by him, and the justice and adequacy of the cause for the resignation by said W. L. Lowndes of the offices to which he is hereby appointed

shall be determined by John Wildman of Brook-street, Grosvenor-square, esq. a lieut. colonel in her Majesty's army, if living, and able and willing to determine the matter in question, and in case he shall be dead, or unable or unwilling to determine the matter in question, same shall be determined by two referees, one to be named by said Earl, and the other by said W. L. Lowndes, or if such two referees differ, by an umpire to be named by such two referees, before they proceed upon the business referred to them; and in case either party refuse or omit to appoint a referee, or shall appoint a referee who refuses or omits to join in appointing an umpire, the referee named by the other party shall be entitled to make an award which shall be binding."

To the second count, the defendant demurred specially.

To the plea to the first count, the plaintiff demurred.

Friday, April 30. — The *Attorney-General*, (*Garth* with him), for the plaintiff; and *J. A. Russell* for the defendant. Authorities cited: 4 & 5 W. 4, c. 22, s. 2; *Thompson* v. *Charnock*, 8 Taun. 139; *Kill* v. *Hollister*, 1 Wils. 129; *Goldstein* v. *Foss*, 2 C. & P. 252; *Gourlay* v. *Duke of Somerset*, 19 Ves. 430; *Countess of Plymouth* v. *Throgmorton*, 1 Salk. 65, 781; *Thurnell* v. *Balbirnie*, 2 M. & W. 786; *Clayton* v. *Kynaston*, 2 Salk. 573; *Worsley* v. *Wood*, 6 T. R. 710. *Cur. adv. vult.*

JUDGMENT.

Thursday, May 6.—Lord CAMPBELL, C.J.—We think that on the demurrer to the plea to the first count, there ought to be judgment for the defendant. The plea averring that the defendant revoked the appointment of the plaintiff before the 7th day of July, 1850, when the half year's salary sued for is alleged to have become due, concludes with a special traverse of the allegation that the plaintiff held the office of auditor during the whole half-year down to the said 7th day of July. The plaintiff's counsel admitting that he could only seek to recover a portion of this half-year's salary, and that at common law it could not be apportioned, rests this claim entirely on the statute 4 & 5 W. c. 22, s. 2. The language employed by the Legislature is very general, but we do not think that it was meant to apply to a payment like this under a contract between employer and employed for services performed, where the payment entirely ceases upon the determination of the claimant's right to receive it. The statute contains an enumeration of "the estates, funds, offices, or benefices, for or in respect of which the rents or other payment shall be issued or derived." The deed contains the expression, "the office of auditor and superintendent manager" to which the plaintiff was appointed. But looking to the context, it appears to us that these are not offices within the meaning of the enactment, not being of a public nature, and no rent or payment issuing or being derived from or in respect of them. The dismissal from an employment, created by contract, can hardly be called a determination of the interest of the person employed. The time fixed by the statute when the apportionment is made recoverable, is when the entire of which such apportionment shall form part, shall become due and payable. This contemplates a case where the party who has to pay will have to pay for the whole period to some one, and not a case where the payment entirely ceases with the determination of the interest of the person receiving the apportionment, and where the entire portion, of which this forms a part, never does become due and payable. We are, therefore, of opinion, that the half-yearly payment in question remains unapportionable as at common law. On the demurrer to the second count of the declaration, our judgment will be for the plaintiff. The allegations in this count appear to us sufficient to shew, that after the revocation he was entitled to the sum of 1,000*l.* a-year payable half-yearly. We think that the deed makes no attempt to oust the court of jurisdiction, and that the numerous cases cited upon this subject are wholly inapplicable. We have to peruse the deed executed by these parties and to see what was the real contract between them. If the defendant had power to dismiss the plaintiff on the statement that he had adequate and just cause, throwing upon the plaintiff, by the dismissal, the burthen of appealing to Col. Wildman, the second count of the declaration will be bad, but we think the defendant had no power of dismissal without giving the right to the allowance of 1,000*l.* a year until he had previously ascertained by the judgment of Col. Wildman, or of two referees, one named by each party, or one referee named by himself, that he had adequate and just cause to revoke the appointment. The obtaining of this judgment was a condition precedent to the reserved power of revocation, and the payment of 1,000*l.* a-year was to become due if there was a revocation without adequate and just cause so previously shewn. It appears by the deed that the plaintiff was a practising barrister, and in consideration of this lucrative appointment he covenanted to give up his practice so far as was inconsistent with the duties he undertook as auditor, and to give up practice altogether at the request of the defendant. It was of great importance to him that he should not be capriciously dismissed from his auditorship. Again, the defendant placed the plaintiff in a situation of great confidence, and very inconvenient consequences might follow to the defendant if the plaintiff, from caprice, or wishing to enter into some still more profitable employment, should, without adequate and just cause, resign the auditorship. Both parties had entire confidence in Col. Wildman; the agreement between them was, until his judgment had been obtained, that there was adequate and just cause for removal or resignation; that one party should not be at liberty to remove nor the other to resign; the defendant covenanting, if he removed him without such judgment, he should pay the plaintiff 1,000*l.* a-year during their joint lives. If such was the agreement, the demurrer to the second count cannot hold, for the plaintiff was not bound to shew that he had obtained, or that there was any determination in the mode described as to the adequacy or justice of the cause of revocation, or that it had been determined that the revocation was without adequate or just cause. Nor was it necessary to aver that a reasonable time had elapsed for the defendant or for the plaintiff to have obtained such judgment, or to allege any grounds for the plaintiff not having obtained it. The revocation having taken place without previous determination in the prescribed form of the existence of adequate and just cause the annuity of 1,000*l.* became payable, and the arrears claimed are recoverable. Now as to the cases referred to. The decision of the Court of Ex. in *Thurnell* v. *Balbirnie*, was on a contract of a totally different nature, the defendant having agreed to purchase goods from the plaintiff, the price of which was to be fixed by two individuals named; and it was very properly held that the defendant would not be liable for the price of the goods until they had been valued by both valuers pursuant to the agreement, at least without an averment that the defendant prevented the valuing. *Worsley* v. *Wood*, proves if there be a condition precedent to be performed by the plaintiff before he has a right of action the declaration must aver the performance of the condition. The very same doctrine is likewise to be found in *Clayton* v. *Kynaston*, respecting a proviso which goes by way of defeasance of a covenant, but it has no tendency to shew upon the construction of this deed that if the defendant revoked the appointment without adequate and just cause previously determined in the manner described, he would not be liable for the payment sought to be recovered on the second count. Therefore our judgment is for the plaintiff.

Tuesday, May 25.

PALK *v.* SHINNER.

Prescription Act—Right of way—User for twenty years—Computation of time—Exclusion of period during which servient tenement out on lease.

Upon a traverse of the right of way in an action for obstruction, the plaintiff proved enjoyment for twenty years, but during certain portions of the twenty years the servient tenement was held under leases for years exceeding three years. The user, however, commenced antecedently to the granting of any of the leases, and no proceedings were taken by the reversioner within three years after the determination of such terms, to resist the plaintiff's claim.

Held, that there was evidence for the jury of the right claimed; that section 8 of stat. 2 & 3 Wm. 4, c. 71, applies only to cases where an enjoyment for forty years is relied upon as giving an absolute and indefeasible right, and not to cases where twenty years' user only is set up, and that if section 8 could be applied to the latter case at all, the condition imposed by that section, of resistance within three years after the determination of the term, would be applicable also, and consequently, that there was no ground for excluding from the computation of twenty years the periods during which the servient tenement was out on lease.

This was an action on the case, for disturbance of a right of way claimed for the occupiers of a particular farm over the defendant's close.

Plea, traversing the right of way.

Upon the trial before Erle, J. at the last assizes for Exeter, user of the way for more than twenty years was proved and found by the jury; but during that period the land of the defendant, over which the right of way was claimed, had been leased to tenants for terms exceeding three years. Two leases were proved; the first for seven or fourteen years, from Michaelmas 1831; the second, a lease for eight years, from Lady-day 1838. The enjoyment of the way commenced at a period anterior to 1831; and after the determination of the second lease no steps were taken by the defendant to resist the claim, until shortly before the present action was commenced, viz. Sept. 1851.

The learned judge asked the jury whether there had been an enjoyment as of right for twenty years; and upon their finding a verdict was entered for the plaintiff; but leave was reserved to the defendant to move to enter it for him, if the period during which the land was leased ought to be excluded from the computation of the twenty years. A rule was accordingly obtained last Term, and now

Crowder and *Collier* shewed cause.—This case turns upon the Prescription Act, 2 & 3 Wm. 4, c. 71. By sec. 2 it is provided that no claim to any way, which shall have been actually enjoyed without interruption for the full period of twenty years, shall be defeated by shewing only that such way was first enjoyed at any time prior to such period of twenty years; and by the same section, where the way has been enjoyed for the full period of forty years, the right thereto shall be deemed absolute and indefeasible. Now the plaintiff has brought himself within the earlier part of that section by proving twenty years' uninterrupted enjoyment; but the defendant relies on ss. 7 and 8 of the statute. Sec. 7 provides that the period during which any person otherwise capable of resisting the claim shall be under disability or "tenant for life," &c. "shall be excluded in the computation of the periods hereinbefore mentioned, except only in cases where the right is hereby declared to be absolute and indefeasible." Under that section *Bright* v. *Walker*, 1 Cr. M. & R. 211, was decided; but in that section no mention is made of a lease for years only. Sec. 8, however, does enact, that when the land over which the way is enjoyed, is held under any term of life, or any term of years exceeding three years from the granting thereof, the time of the enjoyment of the way during the continuance of such term shall be "excluded in the computation of the said period of forty years, in case the claim shall, within three years next after the end or sooner determination of such term, be resisted by any person entitled to any reversion expectant on the determination thereof." There are two answers, therefore, in this case to the point made by the defendant. First, sec. 8, which alone speaks of a term of years, applies only to the computation of the period of forty years,—that is, to those cases only in which an absolute and indefeasible right is claimed. Secondly, even if it did apply at all to the computation of the period of twenty years, there is a condition attached to it which has not been performed in this case—that the reversioner should, within three years from the determination of the lease, resist the claim. (Gale on Easements, 114.)

Kinglake, Serjt. and *Montagu Smith*, contrà.—*Bright* v. *Walker* substantially decides that sec. 8 applies to the computation of the period of twenty years as well as to the computation of the period of forty years. [Lord CAMPBELL, C.J.—Sec. 7 clearly applied to that case, because the enjoyment was for twenty years only, and the period excluded was a term of life.] The judgment proceeded upon sec. 8; for Baron Parke says, in delivering the written judgment of the Court, "it is quite clear that no right is gained against the bishop; whatever construction is put upon the 7th section, it admits of no doubt under the 8th;" and then, after reading the 8th section, the learned judge added: "It is quite certain that an enjoyment of forty years instead of twenty, under the circumstances of this case, would have given no title against the bishop, as he might dispute the right at any time within three years after the expiration of the lease; and if the lease for life be excluded from the longer period, as against the bishop, it certainly must from the shorter." [CROMPTON, J.—I do not myself perceive exactly the force of that reason.] If it be not so, this extraordinary consequence will follow, that a user of twenty years may confer a right when a forty years' user would not. Assuming, then, that the period of enjoyment during the continuance of a lease for years is to be excluded at all in the computation of the twenty years, then, according to *Wright* v. *Williams*, 1 M. & W. 77, 100, it is to be excluded *absolutely* from that period, though it would be excluded *conditionally* only from the period of forty years. Secondly, assuming that the defendant does not bring the case so strictly within sec. 8 of the statute, that he could plead it in reply to a plea setting up the enjoyment for twenty years, according to *Pye* v. *Mumford*, 11 Q.B. Rep. 666; *Clayton* v. *Corby*, 2 Q.B. 813; *Beasley* v. *Clarke*, 2 Bing. N.C. 705; *Tickle* v. *Brown*, 4 Ad. & Ell. 369; still he is entitled to exclude the period during the continuance of the leases; because, even before the statute, the jury would not have been directed to find a right of way against the owner of the fee, upon evidence shewing a succession of leases during which the acquiescence of the owner would not be voluntary.

Lord CAMPBELL, C. J.—I am of opinion that the plaintiff is entitled to the judgment of the Court. I think that there was evidence to go to the jury of the right claimed by the plaintiff under sec. 2 of the statute. I do not say that such evidence necessarily proves that right; but that it will justify the jury in finding the right; and as they have so found, the

plaintiff is entitled to the verdict, unless this case can be brought within sec. 8 of the statute; and I think it cannot. If an absolute right was claimed, under an enjoyment of forty years, then sec. 8 would apply; and the period during which the servient tenement was held under a term of years exceeding three, would be necessarily excluded in the computation of that period of forty years; but in this case, twenty years' enjoyment only is set up, and therefore I think that period is not to be excluded. Sec. 7 excludes the period of a tenancy for life, from the periods thereinbefore mentioned, except in the cases where the right is thereby declared to be absolute. The period of forty years, therefore, is excepted from the operation of sec. 7; and then in sec. 8 it is "the said period of forty years," in the computation of which the lease for years is to be excluded. The express mention of the period of forty years in sec. 8, and of the shorter periods in sec. 7, excludes the notion that sec. 8 can apply to the computation of those shorter periods. Great reliance is placed upon the judgment in *Bright* v. *Walker*; but that case fell precisely within the terms of sec. 7; and that appears to have been the ratio decidendi. But in this case, even if sec. 8. did apply to the computation of twenty years, there is another answer to the defendant's objection; because the lease for years is only to be excluded in case the claim shall within three years next after the determination of the term be resisted by the reversioner; and that condition has not been complied with. The last lease expired in 1846; and after that there was entire acquiescence by the defendant until just before the action was brought in September 1851.

COLERIDGE, J. concurred.

ERLE, J.—I see no ground for the argument of the defendant, except the passage cited from *Bright* v. *Walker*; but that was the case of a tenant for life. The grand principle there laid down is, that the user must be a user against the owner of the fee; and the learned Judge seems to argue in this way:—He says, it is clear that the user for forty years under sec. 8, would not have bound the bishop, because he could have come in during the three years after the expiration of the term; and as forty years would have given no title, neither will twenty: if the lease for life be excluded from the longer, it certainly must from the shorter period also. But all that is quite consistent with the Court holding that the period was expressly excluded under sec. 7. Sec. 7 being perfectly clear by itself, I am at a loss to know why it was made clearer by reference to sec. 8. But it is certain that the learned Judge had it not in his mind to declare that sec. 8 applied to the computation of the period of twenty years as well as to the computation of the period of forty years.(a)

Rule discharged.

(a) CROMPTON, J. had left the court.

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY and C. J. B. HERTSLET, Esqrs. Barristers-at-Law.

April 27 and June 2.

DE ROTHSCHILD *v.* THE ROYAL MAIL STEAM-PACKET COMPANY.

Bills of lading—Robbers—Dangers of the road.

The defendants undertook to convey from Chagres to London, and to deliver to the plaintiff certain boxes of gold dust, loss occasioned by the "Queen's enemies, &c. ROBBERS, *&c.* DANGERS OF THE SEA, ROADS, AND RIVERS, OF WHATEVER NATURE OR KIND SOEVER, EXCEPTED." *One of the boxes was stolen from a railway-truck between Southampton and London:*

Held, that where, as in this case, the property was pilfered, or taken by stealth, the defendants were liable for the loss, although they would not have been so liable had it been taken by a VIS MAJOR, *which they could not resist: the word "*ROBBERS*" meaning persons thieving with violence; and that the exception, "*DANGERS OF THE ROADS,*" meant marine roads, in which vessels lie at anchor, or dangers caused by the overturning of carriages in ruts or precipitous places.*

The declaration contained two counts. The first count alleged that the plaintiff, on the 1st of April, 1851, caused to be delivered to the defendants for shipment on board one of their ships in parts beyond the seas, to wit off Chagres, in South America, eleven boxes of gold dust, of the value of 40,000*l.* to be carried and conveyed by the defendants, with liberty to tranship on board any of their ships to be delivered within a reasonable time in that behalf at the Bank of England, in the city of London (the act of God, the Queen's enemies, pirates, *robbers*, fire, accidents from machinery, boilers, and steam, *dangers of* the sea, *roads*, and rivers, *of whatever nature or kind soever, excepted*), unto the plaintiff or his assigns, he or they paying freight for the same at the rate of 1¾ per cent.; and the defendants then accepted and received the same accordingly, for the purpose and upon the terms aforesaid. Then followed an allegation of the acceptance of the goods and promise to pay the freight, and that a reasonable time for the carriage and delivery of the goods had elapsed, and they, the defendants, were not prevented by the act of God, the Queen's enemies, pirates, robbers, fire, accidents from machinery, boilers, and steam, dangers of the sea, roads, and rivers, or by any or either of the risks so excepted as aforesaid; and though the defendants have carried, conveyed, and delivered ten boxes, yet they have not carried, conveyed, and delivered the residue, to wit, one box of gold dust, of the value of 3,000*l.* The second count was in trover.

The defendants pleaded, first, not guilty; second, that they were prevented from delivering the said box of gold dust by robbers; third, that they were prevented from delivering it by dangers of the roads.

The cause was tried at Guildhall on the 20th of December, 1851, before Pollock, C.B. and a special jury, when the jury found that the defendants had been guilty of negligence in conveying this gold dust; but a verdict was entered for the defendants on the second and third pleas, subject to certain points reserved, viz.:—First, Was there a loss by robbery within the meaning of the terms used in the bill of lading? and, secondly, Was there a loss by the perils of the roads within such meaning?

The then *Attorney-General* (Sir *A. Cockburn*) having moved to enter a verdict for the plaintiff accordingly,

Sir *F. Thesiger* (*Crowder* and *Needham* with him) shewed cause.—This case clearly comes within the exceptions contained in the bill of lading, and the defendants are therefore excused from delivering. The word "robbers" is sufficient to cover this loss. It has been used to denote thieves in the English statutes 7 Geo. 2, c. 15; 1 Vict. c. 87, s. 2; *Sutton* v. *Mitchell*, 1 T. R. 18; Smith's Mercantile Law, 275. Then as to the exception "dangers of the road," the expression is not to be found in usual bills of lading; and the reasons for introducing it here was, that the carriage was partly by land and partly by water; and the dangers by sea and rivers being provided for, this was intended to apply expressly to land roads. (Doctor and Student, 2 Dia, c. 38; *Pickering* v. *Baillay*, 2 Rolle's Abridg. 248; 2 Style's Rep. 132; *Barton* v. *Walliford*, Comber. 56.) If the word "robbers" is confined to robbers with violence, then the expression "dangers of the roads" applies. (*Thomlinson* v. *Brittlebank*, 4 B. & Adol. 630; *Rex* v. *Moore*, 1 Leach, CC. 335; *Rex* v. *Mason*, Russ. & R. 119, were also cited.)

Sir *A. Cockburn*, in support, cited Com. Dig. tit. "Merchant," E. 9; Arnold on Insurance, 817; Abbott on Shipping, c. 5, p. 315; Jones on Bailments, 43, to shew the legal meaning attached to the word "robbery" as distinguished from "theft." [He was stopped by the Court.]

Cur. adv. vult.

JUDGMENT.

POLLOCK, C.B.—In this case the plaintiff sought to recover from the defendants the value of a box of gold dust, part of eleven received by them from Panama, to be carried to the Bank of England. The defendants carried the goods from Panama across the Isthmus by land, shipped at Chagres, and brought them by steam-vessels to Southampton, and thence carried them by the London and South-Western Railway to London. The bill of lading was given for them at Panama, acknowledging the receipt of eleven packages, said to contain 7,000 and odd ounces of gold dust, to be carried to the Bank of England, "the act of God, the Queen's enemies, robbers, fire, accidents from machinery, boilers, steam, dangers of the sea, roads, and rivers, of whatsoever nature or kind, excepted." All the packages arrived safely at Southampton, and were placed on the railroad to be carried to London; but one of them was stolen secretly from the railroad truck before their arrival here, and the jury found that the defendants were guilty of negligence in the conveyance of them to London, which caused the loss. The defendants pleaded the exceptions in the bill of lading in two different pleas; one stating that the loss was occasioned by robbers, the other by dangers of the road. At the trial, both pleas were found for the defendants, but with a reservation of liberty to enter a verdict on both for the plaintiffs. A rule nisi having been granted, the case on behalf of the defendants was elaborately and fully argued during the last Term. Sir Alexander Cockburn was heard in part for the plaintiff. Being satisfied that the plaintiff is entitled to recover, we do not think it necessary to hear any further arguments upon the subjects. The question is, whether the theft committed on the South-Western railroad was, first, an "act of robbers;" secondly, was it a "danger of the roads," within the true meaning of the bill of lading? And we are of opinion that it was neither one nor the other. It was argued for the plaintiff, that the word "robbers" ought not to be construed in the technical sense given to the word "rob" by the English law writers, and by some of the English statutes—the 1 Vict. c. 87, s. 2, for instance, where it means a felonious taking from the person, or in the presence of another, of money or goods against his will, by force, and putting him in fear; for it was not likely that a robbery in that sense would occur, as the packages were not in the personal presence of the defendants or their servants, and still less were they upon their persons. Other statutes were cited where the meaning is much more comprehensive and includes the taking without force. And, besides, in construing such instruments it is contended that the ordinary meaning of the words used must be followed. We think that position is correct, but we must also look at the circumstances under which the contract is made, and the peculiar subject to which it applies; and taking these into consideration, we cannot doubt that the meaning of the contract was, that the defendants were not to be liable for the loss of the gold dust in instances where it was taken by force by the vis major, which they, the defendants, could not resist; but that they were to be liable for it where it was pilfered from them or taken by stealth. It is very unreasonable to suppose that the shippers of a very precious article, of which a large value is comprised in a very small space, which is capable of being easily abstracted by any person employed in carrying it, meant to exempt the persons to whom they gave the custody and care of it from all responsibility by theft committed by their crew or others against whom, presumably, they could guard by the exercise of reasonable care; but it is likely that they should agree to exempt them where the goods were taken by a force which they could not resist. The nature of the transaction shews clearly, therefore, that the word "robbers" means not "thieves," but robbers by force, to whom the term is more usually applied, although in common parlance it is often applied to every description of theft. It is explained also by the word with which it is associated—"pirates," who certainly take by force, and not by stealth. We have no doubt, therefore, in this bill of lading, that this is the proper meaning of the word "robbers;" and this being so, the loss in this case was not by robbers; and the issue raised by the plea, in which the loss was so stated, ought to be found for the plaintiffs. We do not feel any difficulty as to the meaning of the term "dangers of the roads." We think the word "roads" may be explained by the context to mean marine roads, in which vessels lie at anchor; or supposing it to be roads on land, the dangers of the roads are those which are immediately caused by the roads; as the overturning of carriages in ruts and precipitous places. The losses by robbers are already provided for under the general term "robbers." The same reason which induces us to believe the parties did not mean the defendants should be exempted by pilfering by thieves where loss by robbers is excepted, leads us to the conclusion that they did not intend they should be protected from loss by thieves in passing along the roads. Our judgment will therefore be for the plaintiff.

Rule absolute.

May 21 and June 5.

MICHESON *v.* NICOLL.

Charter-party—Freight on goods stowed in cabin.

The charterer of a vessel is entitled to stow as many goods as the vessel can reasonably carry in her hold and other parts usually appropriated to cargo; and if a larger quantity is shipped, so as to occupy the cabin, the shipowner is entitled to charge freight for the excess at the current freight of the day at the place of shipment.

Debt, for 336*l.* 17s. 1d. freight of cotton from Bombay to London. *Pleas*, except as to 156*l.* 18s. numquam indebitatus; as to 156*l.* 18s. payment into court.

This cause was tried before Martin, B. at the sittings at Guildhall after Michaelmas Term last, when the verdict was found for the plaintiff. A rule for a new trial was subsequently obtained, on the ground of alleged misdirection. There were two objections insisted upon; first, that the defendant was not liable to the demand at all; secondly, that the action was brought too soon. The circumstances were these:—The defendant chartered a ship from the plaintiff to bring home a cargo of merchandise from Bombay, at the rate of 3*l.* 10s. per ton. The charter was made by the defendant, not for the purpose of bringing home any cargo of his own, but on the speculation of making a profit by the charter, by reason of his obtaining an increased rate of freight, and was a perfectly lawful and legitimate mercantile speculation. The ship was at Bombay, the cargo was put on board by the agents of the defendants, sufficient as the jury found to fill the carrying part of the vessel. The captain of the ship then proposed to fill the cabin, and to bring cargo to England in it. There was contradictory evidence between the captain and one of the defendant's agents as to what took place on this subject; the captain deposed, that the agents agreed with him to pay freight after the rate of 7*l.* per ton for their goods; the agent deposed that this was not so, and that the rate of freight was to be arranged in England. The cabin was filled with goods; they were the pro-

perty of the defendant's agents, and were consigned to him for sale as their factor; the bill of lading was annexed to the bill of exchange drawn by the agents upon the defendant, which bill of exchange was sold to the East-India Company, with the bill of lading annexed, as security for its due payment, which is a well-known mode of dealing with such bills; the ship arrived safely in England on the 3rd of October, 1847, and the goods were put in a warehouse under stop for freight. After arrival, the plaintiff demanded payment after the rate of 7*l.* per ton, which the defendant refused to pay, insisting he was entitled to fill the cabin as well as any other part of the ship, at the rate of 3*l.* 10*s.* per ton, he himself having charged his agents in his account with the freight after the rate of 7*l.* for these goods, and allowed them commission for procuring the freight for him at the rate of 7*l.* per ton. The dispute continuing, this action was brought, and the defendant paid money into court, paying for the cabin goods at the rate of 3*l.* 10*s.* per ton. At the trial there was a question whether the goods could not have been brought home in the cargo part of the ship. The jury found this against the defendant, and no complaint was now made of this finding. At the trial it was also contended, the agent had no authority to make a contract for the defendant to bring home their goods under the only authority which they possessed, namely, a letter from the defendant. Martin, B. was of this opinion, and he told the jury that if the agents at Bombay, although they had no authority from the defendant, nevertheless, acting as if they had put the goods into the cabin, and the defendant, on the arrival of the ship in England, took to these goods so brought home in the ship and received the freight which he was entitled to; that he was bound to pay the plaintiff the rate of freight current at that time from Bombay to England, and therefore the plaintiff was not confined to the charter freight of 3*l.* 10*s.* per ton.

Crowder shewed cause against the rule for a new trial.

Bramwell and *Willes*, in support.

Cur. adv. vult.

JUDGMENT.

POLLOCK, C.B. after fully going through the facts of the case.—In this case we are of opinion that the direction of my brother Martin was perfectly right. The defendant was not entitled, under the charter, to fill up the cabin at all; but he insisted on taking, and did take, the benefit of it, and actually got paid 7*l.* per ton in respect of the freight of goods carried home in it. It is true he insisted that he had a right to have the benefit of the cabin at 3*l.* 10*s.* per ton; but in that he was in the wrong. He had no such right. The plaintiff insisted he was entitled to have freight 7*l.* per ton, which, he alleged, the authorised agent for the defendant at Bombay contracted to pay; but he also was in error in this; because we think the agents at Bombay were not authorised to make the contract, even if they did make it, as to which there was contradictory evidence. What is then the legal consequence? Why, that the defendant must pay, in respect of the benefit obtained by him, the fair value of such benefit; or, in other words, the current rate of freight at the time of the lading on board at Bombay. It is what the jury have found him to be liable to under the direction of the judge. The second objection was, that the action was brought too soon. This arose upon a piece of evidence given by the plaintiff as follows:—The bill of lading was pledged to the East-India Company, and after the action was brought, the bill of exchange having been paid, the defendant obtained possession of the bill of lading from the East-India Company, and the goods were transferred to him, namely, at the dock warehouse; and it was insisted, until he got possession of the goods he was not liable, and that at all events there was misdirection to the jury as to this point, that the possession of the goods which the defendant then obtained was actual possession for the purposes of sale, as factor for his Bombay agent; but the possession or taking to the goods, which rendered him liable to the freight, was the taking to the goods, as the cargo brought home for him in the cabin of the ship for the purpose of obtaining the freight, it was wholly irrespective of the actual possession obtained after the action brought. This was the taking to the goods relied upon by the learned judge, and we think the jury acted under no misapprehension on the subject, but understood perfectly the question presented to them. The rule, therefore, will be discharged, and judgment will be for the plaintiff.

Rule discharged.

May 31 *and June* 2.

ALLCARD *v.* WESSON.

Bankruptcy—Arrangement with creditors—Certificate of conformity—Discharge—12 & 13 Vict. c. 106, s. 221.

It is a condition precedent to the power of a commissioner in bankruptcy to grant a certificate of conformity under the arrangement clauses of the 12 & 13 *Vict. c.* 106, *that the resolution and agreement should have been carried into effect, and that the creditors of the petitioning trader should have been satisfied.*

Declaration on a bill of exchange by the indorsee of one John Plews, the drawer, against the acceptor. The defendant pleaded puis darrein continuance; that the defendant had obtained a certificate of conformity from a commissioner in bankruptcy. The plea alleged that the defendant was a trader; that after the accruing of the said debt, and before the commencement of the action, he presented a petition to the Court of Bankruptcy; that a day was appointed for the private sitting; that prior to that day fourteen days' notice was given in writing to every one whom the defendant knew to be a creditor, and, amongst others, to John Plews, he being the drawer of the said bill; and that the defendant did not know, nor did the Court of Bankruptcy know, nor did the assignee know, that the said John Plews had indorsed the bill, or that any other than he was entitled in respect thereof. It then alleged a proposal made at such sitting for payment of a composition on the defendant's debts of 7*s.* 6*d.* in the pound, and the appointment of a day for confirming such proposal; and that between the first and second sitting, the defendant received an intimation from the plaintiff's attorney that the bill had been indorsed to the plaintiff, and that a demand of payment was then made. The plea then averred that after the first, and before the second sitting, a notice was served at the plaintiff's residence of such second sitting; that at the second sitting, six-sevenths in number and value of the creditors whose debts amounted to 10*l.* and upwards, agreed to the proposal, and that a certificate of conformity was granted to the defendant, in accordance with the Act (12 & 13 Vict. c. 106). To this plea the plaintiff demurred specially.

Hawkins, in support of the demurrer.—The plea is bad. The question is, what is the effect of the certificate pleaded, and what the 221st section of the 12 & 13 Vict. c. 106, requires the debtor to do. First, it requires that notice should be given to every creditor; but this plea only alleges that notice was given to those whom he knew to be creditors (*Reeves* v. *Lambert*, 4 B. & C. 211); and notice after the first sitting is not enough. Secondly, the certificate is only to be granted when the petition has been carried into effect, and the creditors have been satisfied. These form conditions precedent to the power of the commissioners, and there is no allegation that they were done. He also cited *Levy* v. *Horne*, 5 Ex. 257. The plea alleges that fourteen days' notice was given to Plews; but no notice to the holder of the bill, pursuant to the 213th section is alleged. No excuse will avoid the necessity; but even if it would, no sufficient excuse is here stated. This plea is evasive; it does not appear that the resolution alleged has been carried into effect, or that the creditors have been satisfied, according to the 221st section, and until the preliminaries have been complied with, the commissioner has no power to grant his certificate. (*Wagner* v. *Imbrie*, 20 L. J. 116, Ex.; 2 L. M. & P. 510.)

[ALDERSON, B. referred to the 225th section, which enacts that no deed of arrangement shall be effectual upon a creditor who has not signed, until after the expiration of three months from the notice of suspension and of the proposed deed.]

Watson and *Pearson*, contra, referred to sections 12, 198, 199, 202, 203, 204, 205, 207, 211, and 216 of the Act, for the purpose of showing that the certificate was conclusive and binding on all creditors, with the exception of the cases specifically mentioned, and was evidence that all the preliminary steps had been taken. They contended that this was an adjudication by a competent tribunal, and could not be impeached; and cited *Thomas* v. *Hudson*, 14 M. & W. 353; 16 M. & W. 885.

Hawkins was not called on to reply.

Cur. adv. vult.

JUDGMENT.

POLLOCK, C.B.—This was a plea puis darrein continuance, to which plea there was a demurrer. We are of opinion that the plea is bad. The declaration was on a bill of exchange; the plea puis darrein continuance was of the defendant's discharge under the 226th section of the 12 & 13 Vict. c. 106. It was objected that the discharge was not available. It was contended that it ought to have shewn that the terms of the Act of Parliament were complied with, and we are all of that opinion. It was pointed out by Mr. Hawkins that a creditor was certainly not satisfied. The 221st section is this, "that so soon as the said resolution or agreement shall have been carried into effect, and all the creditors of such petitioning trader shall have been satisfied according to the tenor thereof, the Court shall give to such petitioner a certificate under the hand and seal of the commissioner, setting forth the filing of the petition," and so on; and then it says that the "certificate shall thenceforth operate to all intents and purposes as fully as if the same were a certificate of conformity under a bankruptcy." We are of opinion that the plea should have averred that the resolution and agreement had been carried fully into effect, and that the creditors had been satisfied; and in the absence of those averments we think the plea is bad. I own personally, I must say, I think there is a great deal in what was pointed out by my brother Alderson in the course of the argument, that this was an arrangement between the parties themselves, although under the control of the Court, and hardly can be considered to extend to cases of creditors to whom no notice at all was given, for I observe in the case of an arrangement by deed, it is expressly provided that the effect of the arrangement should only prevail in respect to those persons who had had notice. But the principal point on which the decision of the Court goes, is that the plea itself is bad for want of those averments which I have pointed out. There will, therefore, be judgment for the plaintiff on the demurrer to the plea.

ALDERSON, B.—I own I think it does not extend at all events beyond those creditors who had notice. It is very arguable whether it applies at all, even to those who had notice, unless all had notice.

PLATT, B.—It seems very clear from the 216th section, that it can affect no creditor who has not had notice, because, where a resolution has been entered into according to the former section, the 216th section, which is, "such resolution and agreement shall thenceforth be binding and of full force as against all persons who are creditors at the date of his petition, and who had notice of the several meetings," it is quite clear no other persons are bound by that agreement.

MARTIN, B.—I am also very clearly of opinion that the plea is bad on general demurrer. I think it is defective in not containing an averment that the resolution or agreement had been carried into effect, and the creditors satisfied according to the tenor of the agreement. The 221st section expressly enacts that, until that shall be done, the commissioners shall not grant a certificate. I apprehend that it is impossible the commissioners can, by any act of theirs, supersede the plain enactment of the Act of Parliament, where the object of the certificate being to bar a man's debt in a matter in which he has taken no part, and over which he has no control of any sort or kind. It seems that the case cited by Mr. Watson, which was an action against a public officer, who acted in strict obedience to the direction of a Court of Record, may be upheld on that ground; but I apprehend it is no authority that a man is to be deprived of his debt by the act of a commissioner of bankruptcy, which is not in conformity with the power given to him by the Act of Parliament, and no general doctrine arising from the authority of a Court of Record can confer on the certificate of a commissioner of bankruptcy any such effect. My opinion is, the plea is bad in substance for want of the averment. With respect to the other point of notice, I own I am not so clear. I am rather inclined to be of opinion, that in the event of a bill of exchange being in the hands of a person whom the applicant was unable to discover, the certificate would rather tend to bar him; and it seems to me that, looking at all the sections of the Act of Parliament relating to the subject, and beginning at the 211th, it was supposed that some time would be occupied in carrying out this matter, and some time would occur before the creditors were satisfied according to the tenor and effect of the agreement, so that, in all probability, all the creditors of a man would learn such a proceeding was going on; and then, in the event of the debtor having omitted any person improperly from his petition, the 223rd section rendered him liable to be at once made a bankrupt. I would rather be inclined to be of opinion that, down to the period when all the creditors whose names were mentioned in the petition were satisfied, those creditors who had not notice had a right to come in and get the benefit of it, and they had a right to arrest the debtor in pursuance of a case which was decided in this court; but after the certificate was once granted, it would operate as an ordinary certificate. It is not necessary to give any positive opinion upon that. I am very clearly of opinion that, by reason of the want of an averment of satisfaction according to the tenor of the agreement, this plea is bad in substance.

Judgment for the plaintiff.

EXCHEQUER CHAMBER.

Reported by JOHN THOMPSON, Esq. of the Inner Temple, Barrister-at-Law.

Nov. 28 *and* 29 1851.

ERROR FROM THE COURT OF COMMON PLEAS.

(Before ALDERSON, B. PATTESON, J. COLERIDGE, J. WIGHTMAN, J. ERLE, J. PLATT, B. and MARTIN, B.)

ROBINSON and WIFE *v.* THE MARQUIS OF BRISTOL.

Quare impedit—Advowson—Union of churches—Conveyance.

A declaration in quare impedit alleged that H. was seised of a moiety of the advowson of the church of B. with D. and A. as in gross by itself, as of fee and right, and was entitled to present to the same every alternate turn, the other moiety of the said advowson then belonging to the Earl of B. as in gross by itself as of fee and of right.

It appeared that anciently B. with D. was a parish and rectory, and A. a separate parish and vicarage; that Lord Hervey was seised as of fee of the advowson of the rectory of B. with D. and that G. was seised as of fee in gross of the advowson of the vicarage of A. and that in 1718 the bishop, with the consent of the respective patrons of B. with D. and of A. made an act of union by which the vicarage and church of A. was united and annexed to the rectory of B. with D. and therein decreed that the said united churches should be held and reputed as one benefice only, and that one fit person, at the alternate presentation of the said patrons, should at all times thereafter possess the same.

In 1760 a descendant of G. conveyed to H. in fee all that the perpetual advowson or alternate right of presentation of and to the vicarage of the parish church of A. and all other the advowsons, tenements, and hereditaments, and parts and shares of advowsons, &c. of him the said G. situate and being in A.

Held, that by the Act of Union a new presentative benefice was created, separate and distinct from the former benefices of the rectory of B. with D. and of the vicarage of A.; and that the patronage of the new presentative benefice was given according as provided in the Act of Union itself to the owners of the former advowsons in turn, which advowsons for that purpose remained unchanged, and with their conveyance carried the patronage of the alternate right to present to the whole newly created benefice. And therefore that G. being the owner in fee in gross of the advowson to the vicarage of A. was seised of a moiety of the church of B. with D. and A. (the united churches), as in gross by itself as of fee and of right.

Held, also, that the deed of 1760 conveying the vicarage of A. to H. was equivalent to a conveyance of a moiety of the advowson of the new presentative benefice as in gross by itself as of fee, and that therefore the title of H. was well described in the declaration.

Quare impedit.—The declaration stated that Samuel Hazlewood was seised of a moiety of the advowson of the church of Brauncewell, with Dunsby and Anwick, as in gross, and by itself, as of fee and right, and was entitled to present to the same every alternate turn, namely, one turn in every two turns; the other moiety of the said advowson, and the other of the said two turns belonging to Frederick William Earl of Bristol, as in gross by itself, as fee and right. It then stated that Samuel Hazlewood being so seised thereof presented to the said church, then vacant, Robert Denny Spooner, as clerk, who on such presentation was admitted and inducted into the same in the time of Peace, tempore George 3, and things so standing, the church afterwards became vacant by the resignation of Robert Denny Spooner, whereby it belonged to the Earl of Bristol, in his proper turn, to present, whereupon he presented the said Samuel Hazlewood as his clerk, who on this last-mentioned presentation was admitted and inducted in time of Peace, tempore George 4. The declaration then averred that Samuel Hazlewood being so seised of the moiety of the said advowson, as above mentioned, afterwards died so seised; and that after his death the said moiety of the said advowson descended to Jane Mary, the wife of Harrison Robinson, as his only sister and heiress; whereby the said Harrison Robinson and Jane Mary, his wife, became seised of the moiety of the said advowson. It then stated that on this vacancy by Samuel Hazlewood's death it belonged to Harrison Robinson, and Jane Mary his wife, in right of the said Jane Mary to present, and then concluded by averring disturbance of their right by the defendants, the Marquis of Bristol, Lord Charles Hervey, and the Bishop of Lincoln.

Plea of the Bishop.—That he only claimed his right as ordinary.

Plea of Lord Charles Hervey.—Denial that he hindered the plaintiffs from presenting.

Plea of the Marquis of Bristol.—That Samuel Hazlewood was not seised of a moiety of the said advowson of the church of Brauncewell with Dunsby and Anwick, in manner and form as plaintiffs have alleged.

Special verdict.—The special verdict finds that before and at the time of the making of a certain act of union, Brauncewell with Dunsby, was a parish and rectory, and that Anwick was a parish and vicarage (the rectory thereof having been before appropriated, and the vicarage endowed according to law.) Then it finds that before and at the time of sealing and delivering the deed hereinafter mentioned, Robert Gardiner was seised as of fee in gross of the advowson of the vicarage of Anwick, and John Lord Hervey, afterwards the Earl of Bristol) was seised of fee of the rectory of Brauncewell with Dunsby. It then finds a deed reciting as above, and that Robert Gardiner and Lord Hervey desired that the cure of both might be supplied by one clerk in future, and providing that Robert Gardiner should grant every alternate turn the presentation to Anwick to Lord Hervey, and should receive from Lord Hervey every alternate presentation of Brauncewell with Dunsby, so that each party might alternately have the right in future of the presentation to both at one time.

The special verdict then finds that from the time of the execution of this deed (20th March, 2 Anne), until the making the act of union, both parties continued seised as before, and the deed was acted on, and that Henry Craske (clerk) the presentee of Lord Bristol, was at the time of the act of union the incumbent of both livings.

It then set out the act of union, dated the 26th of April, 1718, by which the Bishop of Lincoln, the ordinary, on the petition of the Earl of Bristol, and Robert Gardiner, and Henry Craske, the incumbent, united the two churches for the future. That act of union was as follows, namely:—

"Edmund, by Divine permission, Bishop of Lincoln, to our beloved in Christ, Henry Craske (clerk), Master of Arts, rector of the parish church of Brauncewell, and also vicar of the parish church of Anwick, respectively, in the county of Lincoln, and of our diocese and jurisdiction of the alternate patronage, as, it is said, of the Right Honourable John, Earl of Bristol, and Robert Gardiner, gentleman, and to all others whomsoever, in any manner, having, or who shall have an interest in this behalf,—health and grace. Whereas (as we are informed) the profits, rents, revenues, tithes, and emoluments of the rectory of the said parish church of Brauncewell (which parish hath only three families), not amounting to the annual value of 28*l.* of lawful money of Great Britain, are so small and slender, that they are not sufficient for the proper maintenance of the minister, according to the decency of the clerical order; whereas, also, the perpetual vicarage of the parish church of Anwick, aforesaid (which parish hath about twenty families), is only two or three miles distant from the said rectory of Brauncewell (no river or stream lying between), the fruits of which vicarage also not amounting to the annual value of 25*l.* are not sufficient for the proper maintenance of the vicar there; whereas, moreover, the said benefices have been accustomed for many years past to be served by one minister, for which reason, and because the parish of Brauncewell consists of so small a number of inhabitants, the church of Anwick aforesaid may be conveniently served by the rector aforesaid, and for the causes aforesaid, and the better support of one minister, the union and consolidation of the said benefices is thought convenient and necessary; and reciting, further, the petition and assent of the Earl of Bristol and Robert Gardner, the alternate patrons, and of the incumbent: and that the bishop had found that the suggestions evidently contained the truth, and that the petition was agreeable to reason and the causes for making the union were just, lawful, and sufficient, all and singular the matters which are required by law in this behalf concerning."

The act of union then provides:—"We desiring to consult and look to the interest and advantage, as well of the minister as of the church (as is meet), and considering the poorness of the said benefices, and moved by your entreaties in this behalf, do, by and with the consent of all who are interested in this matter, as far as lies in our power, and the law and statutes of the kingdom allow for us and our successors, Bishops of Lincoln, by these presents consolidate, unite, and annex the said vicarage and parish church of Anwick, with its members and appurtenances to the aforesaid rectory and parish church of Brauncewell, and we do by these presents commit the cure of the souls of the parishioners of the church of Anwick to the new rector of the said parish and church of Brauncewell. And we will and decree by these presents that the said united church shall, from this time, be hereafter held and reputed as one benefice only; and that one fit person, at the alternate presentation of the said Right Honourable John Earl of Bristol and Robert Gardiner, their heirs and assigns, to be canonically instituted in the same by the diocesan of the place for the time being, shall at all times hereafter possess the same, so that it shall be lawful for you, the aforesaid Henry Craske and your successors whomsoever, under the name of rector of Brauncewell-with-Anwick, to take and obtain possession of both parish churches, and so obtained and united together, as aforesaid, to continue and retain as one church and one benefice, and the fruits, rents, and revenues of the same, so united, with their appurtenances, you may and can freely and lawfully convert, dispose of, and apply to your own use and advantage, and so may your successors."

After this act of union no separate presentments were made; and on the cession of Henry Craske, Robert Gardiner (clerk), on the presentation of the widow of the said Robert Gardiner, named in the act of union, and claiming under him, was presented to the united benefice the 27th June, 1730. On the next vacancy, the 3rd of September, 1760, William Tonge, clerk, was instituted to the united benefice on the presentation of the Earl of Bristol.

The special verdict then finds, that after this last presentment, by lease and release, dated 23rd December, 1760, Robert Gardiner and Susannah, his wife—the said Robert Gardiner being heir to the said Robert Gardiner, party to the act of union—conveyed to Samuel Hazlewood, in fee inter alia, the manor and moiety of the rectory of Anwick, and perpetual advowson, nomination, donation, or alternate right of presentation and disposition of and to the vicarage of Anwick, and the glebe lands belonging thereto. And this deed also included all other advowsons or parts of advowsons in Anwick.

The special verdict then finds that the title of Samuel Hazlewood to the moiety of the advowson of the church of Brauncewell with Dunsby and Anwick, was derived through this conveyance only, if at all. The special verdict then states that on the 23rd of March, 1769, John Andrews, clerk, was instituted on the presentment of Jane Hazlewood and Richard Moore, patrons, deriving title under Robert Gardiner, mentioned in the act of union. That on the next vacancy the Bishop of Lincoln collated George Matthews, on the lapse of the Earl of Bristol to present. And that on the next vacancy Robert Henry O. Spooner, clerk, was, on the 4th of June, instituted on the presentation of Samuel Hazlewood in the declaration mentioned, claiming title under the said Robert Gardiner; and that on the next vacancy, the 16th of June, 1826, Samuel Hazlewood was presented on Spooner's resignation, by the Marquis of Bristol, the present defendant, and that on the 18th of March, 1846, Samuel Hazlewood died.

These are all the material facts contained in the special verdict.

The case was argued in the Court below in Trinity Term, 1851, when the Court of C. P. pronounced judgment for the defendants. (20 L.J. 208, C.P.)

Upon this judgment the plaintiffs brought a writ of error, which now came on for argument.

Peacock (*Hayes* with him) for the plaintiffs in error. 1. What is the effect of the act of union? Its effect was to unite the two churches, and to give the parties the alternate right of presentation to the advowson of the united church. [PATTESON, J.—The act of union made no change in the advowson. The presentation is not in right of the advowson of the united churches, but in right of the rectory of Brauncewell, or of the vicarage of Anwick. The only authority I can find to support any change in the nature of the churches united is the dictum of Treby, C.J. in *Harman* v. *Renew*, 1 Salk. 165.] By the act of union a new church was created, for although the parishes remain the same, the parson is now the rector of Brauncewell-cum-Anwick, and not rector of Brauncewell and vicar of Anwick. The vicarage of Anwick is merged in the rectory of Brauncewell. [ALDERSON, B.—You contend that each living remains the same as before, but that the right to present to the two is united. PATTESON, J.—If one person was the patron of both livings then by the act of union the two by possibility might coalesce, but when they are in different persons I cannot understand how they can be united.] In *Coppledick* v. *Tansey*, Hutton, 31, which was quare impedit for interrupting the plaintiff in presenting to the church of Ulceby, there was a plea that there was no such church called Ulceby, which was traversed and found for the defendant, "for there was an union of the church of Fordington to Ulceby, and it was called Ulceby-cum-Fordington; and it was said that institution and presentments were to Ulceby, and Ulceby was the greater, and Fordington was the lesser church and united, and therein had lost its name. It was agreed that it being known by the one or by the other name had been sufficient to have found for the plaintiff." In this case the bishop would not present to the vicarage of Anwick or the rectory of Brauncewell, but to the united churches of Brauncewell-cum-Anwick. The question resolves itself into this, since the act of union could the owners of the two advowsons still appoint different persons to the two livings? It is submitted that they could not, and that by the act of union the two livings became one church and one benefice, and consequently but one advowson. As is said in *Reynoldson* v. *Blake*, 1 Ld. Ray. 196, the writ of right ought to be de medietate advocationis. [ALDERSON, B.—It is singular to call that a moiety which each patron exercises in virtue of a distinct right.] And in *Hartley* v. *Cooke*, 9 Bing. 736, Tindal, C.J. quotes the judgment of Powell, J. in *Reynoldson* v. *Blake*,—"The advowson is but the right of presenting an incumbent to the church or benefice. If there is after the union but one church

and one benefice (as is proved before) there can be but one advowson; and that is of the church to which the union is made;" and this, he says, "agrees with the canon law, from which the doctrine of unions was borrowed." In the case of co-parceners each presents to the whole, but each has a right only to a moiety of the advowson. Upon this point the following authorities were also cited — 4 Burn's Eccl. L. tit. Union; Anon. 3 Dyer, 259 a.; *Austyn* v. *Twyne*, Cro. Eliz. 500, *Reg.* v. *Page*, Cro. Eliz. 719; Com Dig *Advowson*, C. 1; Gibson's Codex, 962. Secondly. Even supposing the effect of the act of union to be not to create a new advowson, still it is admitted upon the pleadings that there was such an advowson and such a church, and that Hazlewood and the Earl of Bristol were each seised of a moiety thereof, and that the defendants interrupted the plaintiffs in the presentation. The plea only traverses the seisin of Hazlewood in a moiety of the advowson, and admits that the Marquis of Bristol as averred in the declaration presented Hazlewood to the said church, who was admitted, instituted, and inducted. Then can the Marquis now be allowed to contend that there was no such advowson, and no such church? Upon these pleadings the parties have agreed that there was such a church, and the only question is whether the plaintiffs have a right to present to it. If there was no such church how could the defendants impede the plaintiffs? Thirdly, As to the effect of the deed of 1760; was it sufficient to convey to Hazlewood the interest of Gardiner in the right to the alternate presentation to the united church? It is admitted that the advowson of the vicarage of Anwick did not then exist. What was the intention of the parties to the deed? The words are, "all that the perpetual advowson, nomination, donation, or *alternate right of presentation* to the vicarage of the parish church of Anwick aforesaid;" "and all other the manors or lordships, *advowsons*, impropriations, tenements, hereditaments, and parts and shares of manors or lordships, advowsons, impropriations, tenements, hereditaments, whatsoever of them the said R. Gardiner and S. his wife, situate, and being in Anwick aforesaid." [PATTESON, J.—If the advowson to the vicarage is not gone, the deed is sufficient to convey that.] It is said, by the Court below, that this new church is not in Anwick, and that the conveyance is limited to advowsons situate in Anwick. An advowson, however, is an incorporeal hereditament, and not situate in a parish, 3 Dyer, 323 a. There was nothing upon which the deed of 1760 could operate, except the alternate right to present to the united church of Braunceweell-cum-Anwick. And it is submitted that the words of the deed are sufficiently comprehensive to convey that. (The other points argued are omitted as the judgment of the Court did not turn upon them.)

Cowling (*Scotland* with him), for the defendants in error.—First, was the effect of the act of union to destroy the ancient church or rectory, and, in the language of Treby, C.J. to produce "a new creature, a new church, a new patronage, a novum aliquod tertium?" It is submitted that it was not, and that the old advowson remained as before the act of union. The two parishes were not united for all ecclesiastical purposes, but the two churches remained distinct. There is no mention of any new advowson in any deed between the parties. The deed of 1703 was not intended to create a plurality of livings in the same incumbent; if it had been, it would have been illegal by the common law, for no man could hold two livings without being liable to ecclesiastical punishment, unless under a dispensation. (3 Burn's Eccles. L. 118, "Pluralities." *Alston* v. *Atlay*, 7 A. & E. 289.) The object of that deed was, that instead of each patron presenting to the vacancy of his respective living, there should be the alternate of right of each to present to both livings conjointly, at the same time no doubt the deed was executed with the ulterior view of obtaining a dispensation from the bishop. The act of union provides for the consolidation of the said benefices, and speaks of the united churches (in the plural), and is silent as to any alteration in the advowsons. If this was the most complete union, still the two advowsons would remain in their respective patrons, and the tertium quid never could arise. There is nothing to divest each patron of his seisin. (The following authorities were next referred to: Lynwood's Provincialis, lib. 3, tit. 3, p. 189; Godolphin's Repertorium, 170, 7th edit.) Then, again, the mere verbal assent of the patrons to the Act of Union by the bishop is sufficient to authorise it, as was decided in *Austyn* v. *Twyne*. But an advowson can only pass by deed (Com Dig. "Advowson," C. 1), being a temporal, and not a spiritual inheritance. Now, can the nature of the two distinct advowsons be changed by the act of union? Secondly, as to the pleadings. The plea has traversed the material averment; viz. that Hazlewood was seised of a moiety of the advowson of the church, and that involves all the main facts that depend upon the seisin of Hazlewood. The defendants could not have traversed all the averments collectively, and it is not to be taken that all the averments *not traversed* are admitted. Thirdly, as to the effect of the deed of 1760. Assuming that a new advowson was created by the act of union, it was not conveyed by the deed of 1760. Parke, B. so ruled at the trial, and that ruling was upheld by the Court below. This was a special verdict, and there is no finding of any intention of the parties to the deed of 1760 to pass the alternate right of preservation to both livings. The question is, what is the effect of the deed taken *per se*? Braunceweell is the representative church, and the proper name appears to be the advowson of the church of Braunceweell with Dunsby and Anwick. Then what apt words are there in the deed of 1760, to convey the alternative right to the presentation to this church? The deed of 1760 speaks of the vicarage of the parish church of Anwick; but after the act of union there could be no presentation to the vicarage of such church. There is a necessary strictness requisite in a conveyance in the description of the parcels. In *Anon.* Cro. Eliz. 163, it was held that the advowson shall not pass by a grant of the vicarage. (Shep Touch. Grant, 247. 248, cap. 12; *Stukeley* v. *Butler*, Hob. 168, 171; *Dowtie's* case, 3 Co. R. 25.) If, then, the deed of 1760 was not sufficient to convey the right to present alternately to the new advowson, the declaration is bad.

Cur. adv. vult.

JUDGMENT.

Tuesday, May 11.—ALDERSON, B. now delivered the judgment of the Court; and after stating the pleadings and facts as above, proceeded. The question is, whether on these facts the issue raised as to the seisin of Samuel Hazlewood of the moiety of the advowson of the united churches of Braunceweell with Dunsby and Anwick is made out. The Court of C. P. in their judgment, have held that this is not made out by the plaintiffs on the ground that if the effect of the union be to create a new advowson in moieties between the patrons of the two churches, there is no conveyance of this moiety of the advowson of the united church to Samuel Hazlewood by the deed of 1760; but we think that this view of the case cannot be supported. The nature of an union of two churches at common law is thus stated in Gibson's Codex, 920.—"By the union of two churches no change is made in the advowsons; that is, not only all rights are reserved to the patron or patrons as before, but the nature of the advowsons continues the same, as if one be appendant and the other in gross, and that which is appendant is made the presentative church, and the patron of the church in gross hath the first turn, yet shall not the whole advowson be in gross, but it shall remain appendant for his turn, who was patron of the advowson appendant, and in gross for his turn, who was patron of the advowson in gross." This, we think, clearly means, not that the advowson of the presentative church has two distinct characters, but that the right of presentation shall go as to one turn with the conveyance of the advowson in gross, and as to the other turn with the conveyance of that property to which the advowson appendant was appendant. But according to the dicta of the judges in *Reynoldson* v. *Blake*, it seems to be established that the advowson of the presentative church is quiddam tertium, and belongs in moities to the patrons of the two blended churches. For Powell, J. so lays it down; and Treby, C.J. (without any apparent dissent from Neville, J. though in some points they both differed from Powell, J.) agreed with him in his opinion as to the rights of patrons of united churches. These rights Powell, J. says are several, and therefore the writ of right of advowson ought to be de medietate advocationis, and their possessions also are several, so that one may usurp upon the other and drive him to his quare impedit, and each of them, if he be disturbed, may have his quare impedit against a stranger, and that though there is but one right of advowson. And he says afterwards each patron has the whole advowson in his turn, but the writ of right must be according to the right, or, as he says before, for a moiety of the advowson. And Treby, C.J. says,—"The church united is a new thing, a novum aliquid tertium, composed of both the ancient churches." All this we think can well stand together by our holding that the law is in truth, that by virtue of the act of union a new presentative benefice is created, wholly separate and distinct from the former benefices, and that the patronage of the new presentative benefice is given according as it is provided in the act of union itself, to the owners of the former advowsons in turn, which advowsons, however, for this purpose remain unchanged in all their qualities and are to be conveyed as before, and with their conveyance carry the patronage of the respective turns to the whole newly created presentative benefice. Now, this being, as we think it is, the law on this subject, we have to apply it to the facts here found by the special verdict. Here the two old advowsons are those of the rectory of Braunceweell with Dunsby, and the vicarage of Anwick. The two churches are united by an act of union of the 26th of April, 1718. And the vicarage of Anwick, the advowson of which belonged in fee in gross to Robert Gardiner, was consolidated, united, and annexed to the rectory of Braunceweell, and both were in future to be made one church and one benefice only, at the alternate presentation of Lord Hervey and Robert Gardiner, by the name of Braunceweell and Anwick. Now, in the first place, it appears, from the special verdict, that this church of Braunceweell with Anwick is the same as that called in this declaration, the church of Braunceweell with Dunsby and Anwick, and, according to what we have before seen to be the true effect of an union like this, the advowson of this newly-created church is given to the two patrons in moities. The advowson of the vicarage of Anwick belonged, in fee, to Robert Gardiner, in gross, at the time of the act of union. Therefore, according to the authority of Powell, J. and Treby, C.J. the whole advowson at the time of the vacancy (the turn being that of Robert Gardiner) would be in gross also, and Robert Gardiner would have, according to the same authority, a moiety only. Consequently, in describing his title on such an occasion, it would be right in a declaration in quare impedit brought by him, to say that Robert Gardiner was seised of a moiety of the advowson of the church of Braunceweell with Dunsby and Anwick, as in gross by itself, as of fee and right. This is the description of it in the declaration. But, instead of Robert Gardiner, we have here Samuel Hazlewood's name introduced. We must then see whether we can shew that this property thus properly described has been conveyed from Robert Gardiner to Samuel Hazlewood. Now, this brings us to the other branch of the law previously, as we think established, that the right to this alternate presentation is inseparably annexed to the advowson of the old vicarage, which for this purpose remains, and is transmissible as before. Now, we think this is clearly made out by the conveyance of the 23rd of December, 1760, by which Robert Gardiner's representatives, who had the advowson of the vicarage of Anwick, in gross by itself as of fee and right, have expressly conveyed that vicarage to Samuel Hazlewood in like manner. And we think this is exactly equivalent to a conveyance expressly of a moiety of the advowson of the new presentative benefice as in in gross by itself as of fee to Samuel Hazlewood. After this conveyance, the title was in Samuel Hazlewood, as it is described in this part of the declaration, on which alone the Marquis of Bristol has thought fit to take an issue. We think, therefore, that the plaintiffs have proved the issue on which this question turns, and that the Court of C. P. was wrong in deciding that they had not done so. And this makes it unnecessary for us to consider and determine the various other nice questions discussed in the able arguments of Mr. Peacock and Mr. Cowling before us.

Judgment for the plaintiffs.

Nisi Prius.

Reported by J. B. DASENT, Esq. Barrister-at-Law.

Thursday, April 22.

SITTINGS AT NISI PRIUS AT GUILDHALL.

(Before Mr. Baron PLATT.)

ESCRIT *v.* MASON.

Promissory note payable on demand—Stamp—Mistake in almanacs

All promissory notes and bills drawn payable on demand are subject to a 5s stamp, and not to one for 3s. 6d. as erroneously stated in some pocket-books.

Assumpsit on a promissory note for 50l. payable on demand, and a count for 50l. lent and advanced.

Pleas—1. *Non-assumpsit*. 2. *A denial of the note.*

O'Malley, Q.C. (*Sewell* with him), for the plaintiff, stated the facts of the case, which are not material for the present purpose, and then, alluding to the supposed defence, said, that it was possible, when he should tender the note in evidence, that the learned counsel for the defendant might object to it for want of a sufficient stamp. If that course should be taken, he was free to confess that he should be unable to use the note, for it was improperly stamped; the stamp affixed being one for 3s. 6d. whereas the stamp required by law on bills and notes "payable on demand" was one for 5s. It would appear that the parties drawing this note had fallen into this error from referring to some pocket-book or almanac, containing, as those works usually did, a "list of bill and receipt stamps," and where it would be found to be stated that 3s. 6d. was the proper stamp for bills or notes at a longer date than two months. Now a note or bill payable on demand might or might not have more than two months to run; but it had been assumed, no doubt, that it fell within the class of notes having more than sixty days to run, and so it was made on a 3s. 6d. stamp. But the Stamp Act expressly imposed a 5s. stamp on all bills or notes payable on demand; and he

would therefore beg to caution the jury and the public from falling into similar mistakes. The plaintiff was then called to prove the consideration for the note, and at the close of the evidence the note in question was tendered.

Bramwell, Q.C. (with him *Sykes*), for the defendant, objected to it, as improperly stamped.

PLATT, B. having referred to the Stamp Act, said, that it was quite clear the stamp was insufficient for the reason stated, and the note could not be read.

Evidence rejected.

Eventually the jury returned a verdict for the plaintiff on the count for money lent for 54*l*. 17s. 6d.

NOTE.—On the subject of stamps the reader is referred to the following authorities leaning on this point:—*Ex parte Robinson*, 1 D. & C. 275; *Cheetham* v. *Butler*, 5 B. & Ad. 837; *Dixon* v. *Chambers*, 1 C. M. & R. 845.

COURT OF EXCHEQUER.

Monday, Feb 2.

(Before Sir F. POLLOCK, C.B.)

COBBETT *v.* SLOMAN.

Commission of rebellion—Habeas Corpus Act—Penalties.

A commission of rebellion is a civil proceeding, and the penalties under the Habeas Corpus Act, 31 Car. 2, c. 2, s. 9, do not attach on the removal of a prisoner in custody under such commission, without fresh warrant.

Debt for 300*l*. The first count of the declaration alleged that on 8th June, 1840, the plaintiff was in custody of defendant as an officer under a commission of rebellion, at a certain prison, to wit, a lock-up house in Cursitor-street, for a certain criminal matter, to wit a contempt of the Court of Ex. and defendant, while plaintiff was so in his custody, at the place aforesaid, wrongfully and contrary to the statute, removed the plaintiff from the said prison into the custody of a certain other officer, to wit, Samuel Burrett, the keeper of the debtors' prison for London and Middlesex, without a writ of Habeas Corpus or any other legal writ, nor was plaintiff delivered to a constable, or any other inferior, officer to be carried to a common gaol, nor was he sent by order of any judge or justice to a common workhouse or house of correction, nor was he then removed from one prison to another within the same county, in order to his trial or discharge in due course of law; nor was there any sudden fire, or infection, or any other necessity for the said removal, contrary to the statute in such case made and provided; whereby and by force of the statute the defendant forfeited and became liable to pay the defendant 100*l*.; the said removal being the defendant's first offence in that behalf. The second count was for another penalty of 200*l*. for a second offence alleged to have been committed by the defendant in the removal of of the plaintiff from the debtors' prison on the 11th of June, 1840, to Westminster Hall, under the like circumstances as in the first count mentioned.

Pleas.—1. The general issue by statute. 2. That the supposed causes of action in the said declaration mentioned did not accrue within two years next before the commencement.

Replication, to the first plea similiters; to the second, plaintiff was in prison when cause of action accrued, and hath been in prison from thence until the commencement of this suit. To this there was a demurrer and judgment for the defendant, on the ground of the insufficiency of the declaration.

The plaintiff in person proved that a writ of a rebellion having issued out of the Court of Ex. in 1840, for a contempt of Court of Chancery in not paying certain costs in a cause of *Oldfield* v. *Cobbett*, in which writ the defendant and one Doncaster were named as commissioners. He was taken into custody by Doncaster on the 8th June, 1840, and carried to the lock-up house of the defendant Sloman, in Cursitor-street. Thence he was taken, without further warrant, to the Coldbath-fields prison, and afterwards again removed, on the 11th June, to Westminster Hall. These, he contended, were two acts of removal without due authority, which subjected the defendant to a penalty of 100*l*. for the first offence and 200*l*. for the second, under stat. 31 Car. 2, c. 2, s. 9, as in his view a writ of rebellion was a criminal proceeding, and no prisoner could be removed from one place of confinement to another without due warrant.

O'Malley, Q.C. for the defendant, was stopped by POLLOCK, C.B.—There is no necessity to waste any further time in this case, which is now ripe for my decision. This is an action for penalties under the Habeas Corpus Act, and it is grounded on the fallacy that because the proceeding under which the plaintiff was taken is called a writ or commission of rebellion, he was therefore a "person committed to prison, or in any custody whatever, for any criminal or supposed criminal matters," which is the language of the 9th section of the Act in question. Now, it was quite a mistake to suppose that a commission of rebellion was a criminal proceeding. It was a civil proceeding altogether, being merely a commitment for contempt,—that contempt consisting of the refusal of the said defendant to pay certain costs under a decree in Chancery. This had been so decided by the Court of Ex. after a solemn argument, and under those circumstances the duty of the jury in point of law would be to find a verdict for the defendant, and in thus directing the jury he (Pollock, C.B.) knew that it was open to the plaintiff to question that ruling by tendering a bill of exceptions under which he might take the opinion of a Court of Error.

The jury found for the defendant, whereupon Mr. Cobbett tendered a bill of exceptions.

Verdict for the defendant.

HOUSE OF LORDS.

Reported by W. H. BENNET, Esq. of Lincoln's-inn, Barrister-at-Law.

June 15, 16, and 18.

(Present, The LORD CHANCELLOR, Earl of DARTMOUTH, Viscount MELVILLE, and other Peers.)

CURSON *v.* BELWORTHY.

Setting aside contract—Undervalue.

Inadequacy of price alone is not sufficient to set aside a contract or deed.

Where, therefore, in a suit instituted to set aside a contract for the purchase of an estate, although great inadequacy of price was proved, yet, as the allegations of misrepresentation and fraud were not sufficiently established, the House refused to disturb the judgment of the Court of Chancery dismissing the complainant's bill in that Court, and dismissed the appeal.

The appellant sued in formâ pauperis. The suit was originally instituted before the late Vice-Chancellor of England, for the purpose of setting aside a contract, bearing date the 24th of September, 1840, for the purchase by the respondent from the appellant of an estate called "Ham," near South Tawnton, in Devonshire, and the subsequent conveyance of that estate to the respondent on the 10th of October following, on the ground that the purchase of the estate had been obtained from the appellant by the respondent by misrepresentation, and at an under-value, at a period when the former was in considerable pecuniary distress, as well as being ignorant of his rights.

John Curson, the paternal grandfather of the appellant, died in the latter part of the year 1817, and by his will, dated the 13th June, in that year, devised the estate of Ham, consisting of a farm of about nine acres of land, with an unlimited right of common over a place called Itton-moor, consisting of upwards of 360 acres. The estate was subject to a mortgage for 120*l*. advanced upon it, bearing interest at 5*l*. per cent. per annum, to his son John Curson, the appellant's father, in tail male. John Curson, the father, died on the 19th of September, 1840, and left the appellant his eldest son and heir in tail. The appellant was represented as being an uneducated person of weak capacity, and unable to read, and ha. been for many years dependent for the subsistence of himself, his wife, and several children, on his wages as a labourer, at the rate of about 16d. a-day. The respondent had, from a period anterior to the year 1838, occupied a good farm in the neighbourhood. Ham is adjacent and peculiarly valuable as an addition to the respondent's farm, and to other farms having rights of common over Itton-moor. In the years 1838 and 1840 the property called Ham was of the value of upwards of 530*l*. after due allowance for its deficient state of repair. On this point the appellant examined five witnesses—William Wreford, who estimated its value at twenty-eight years' purchase as 520*l*.; John Heard, who had rented the right of common of that estate at 5*l*. a-year, and estimated the value of the property at thirty-two years' purchase, as 660*l*.; Thomas Prickman, who estimated its value at twenty-five years' purchase, as 500*l*.; Philip Cann, who, in 1836, offered to purchase the property at the price of 600*l*. which offer was refused by the appellant's father, and who, in 1840 (the appellant's father then proposing to sell it), again offered 500*l*. for it; John Dennis Vanstone, who had, after the year 1830, rented the said right of common for three years, at 5*l*. a-year, and had, in the year 1840, offered to rent the property at 18*l*. a-year, and estimated its value at 500*l*. giving an average of about 526*l*. as its clear value. The respondent examined four witnesses as to the value of the property; namely, John Hooper, who, on the assumption that the right of common was limited to pasture for so much cattle as were levant and couchant on the estate, estimated its value at twenty-eight years' purchase as 222*l*.; William Brock, who said that the right of common was not so limited, and estimated its value at twenty-eight years' purchase as 241*l*. 14s.; Andrew Snell, who did not know what were such rights of common, and estimated its value at twenty-five years' purchase as 236*l*. 5s.; Thomas Powlesland, who estimated its value at 230*l*. giving an average of about 232*l*. 10s. as its clear value. It was upon this state of things contended for the appellants, that the value of the estate must be taken to have been 348*l*. 5s. at least, and deducting therefrom 120*l*. the amount of the mortgage, the equity of redemption was, in the years 1838 and 1840, after making full allowance for want of repair, of the value of 264*l*. 5s. at the least; or that if the witnesses for the appellant were entitled to the greater amount of credit, then that the value of the equity of redemption was 410*l*. The question which now therefore arose was, whether this sale of that equity of redemption in the year 1840 for the sum of 40*l*. procured by the respondent could be sustained. In the year 1838 the appellant and others were under the conviction that he had a saleable interest in the property expectant on his father's death, and in that month, being in pecuniary distress, he entered into a negotiation for the sale of his interest to the respondent for 40*l*. and pending that negotiation the latter advanced several small sums amounting to 14*l*. On the 5th of May following the parties went to the office of the respondent's solicitors, where he executed a document purporting to be a contract for the sale of his interest in the property in question, upon which he received a further 3*l*. from the respondent, out of which sum he paid the solicitors 1*l*. 7s. for preparing the instrument. The appellant had no assistance from any friend or legal adviser in the transaction. The respondent subsequently made further advances, making with those already made, 21*l*. On the 19th of September, 1840, the father of the appellant died, whereupon the latter became tenant in tail male in possession of the estate, and the morning following that upon which the funeral had taken place he went to complete the contract for the sale of the property to the respondent, and after some conversation on the subject of the mother of the appellant having a right of dower, on the 24th of September the latter executed a contract of sale for 160*l*. and on the 10th of October he executed a conveyance of the property to the respondent. The appellant was then informed that the respondent had paid 126*l*. to the mortgagee for principal and interest. Eventually the appellant filed his bill in the Court of Chancery to have the conveyance set aside, upon the ground that that instrument had been obtained from him by fraudulent representations. The matter came on for hearing before the late Vice-Chancellor of England, by whom the bill was dismissed, with costs, on the 14th of March, 1844. The appellant then presented a petition for rehearing against this decree to the late Lord Chancellor Cottenham. The petition was heard on the 11th and 15th of July, 1846, and on the 8th of November, 1847, his lordship affirmed the decree of the Vice Chancellor.

The present was an appeal from that decision, praying that it might be reversed for the following reasons:—"For that the appellant was induced to proceed with the sale of the estate in September and October, 1840, by the impression existing in his mind that he was bound to sell it to the respondent by an agreement made with him in the year 1838. For that the respondent, by his representations and acts, deterred the friends of the appellant from interferring to prevent the sale. That the said contract and conveyance were obtained at a price grossly inadequate to the value of the estate. That the appellant was, at the time of such contract, under the influence of the respondent. That the appellant was, at the time of such contract, insufficiently acquainted with his rights and the value of the estate. That the appellant was in pecuniary distress, and not of sufficient capacity of mind to deal on equal terms with the respondent in such a transaction; and lastly, that in preparing and conducting the said contract and conveyance, the solicitors were, in truth, the solicitors only of the respondent, and the appellant had not the due protection of any friend or independent legal adviser."

Bethell, Q.C. and *Willcock*, Q.C. were heard at considerable length for the appellant.

Shapter, for the respondent.

Willcock, in reply.

JUDGMENT.

Friday, June 18.—The LORD CHANCELLOR (St. Leonard's) moved the judgment of the House in the following words:—This case of *Curson* v. *Belworthy* comes before your lordships on an appeal from the decision of my Lord Cottenham, confirming the decision of the Vice-Chancellor of England. The plaintiff in the cause endeavoured to impeach a conveyance which he had made of a small cottage and about two acres of land, to which he was entitled, upon the ground of fraud and misconduct on the part of the purchaser. By the Vice-Chancellor of England the bill was dismissed with costs; and on that decision being appealed from, the decree of the Vice-Chancellor was affirmed. The case now comes before your lordships, of course, upon the merits, but principally upon two allegations, one of which is, that the Lord Chancellor misapprehended the allegations and statements in the case; and the other (which springs out of it), that he misapprehended

the nature of the allegation in regard to the manner in which the plaintiff (the seller) was misled; that the Lord Chancellor supposed the plaintiff to have alleged, that in point of fact he had executed a contract, when he had only executed a bond; whereas (his ground of argument) the true view of the case, and that which was alleged by the appellant, was, not that he had executed a contract, but that he had executed a security, which he thought bound him to sell the estate to the defendant. I believe that is a correct representation of the way in which it was put at your lordships' bar. Now there was a great deal, no doubt, in this case to invite the appellant to attempt to set aside the sale. The estate, a very small property belonging to a very poor family, was originally entailed upon the father of the appellant. That property had been mortgaged by the father for 100*l.* and at the time when the conveyance was ultimately executed by the son, 25*l.* had been added to the 100*l.* for arrears of interest. The son, in his father's lifetime, in 1838, had taken advice, it seems, upon his own rights, and he believed that he himself had a right to dispose of the estate, that as his father had not barred the entail he thought his father was tenant for life only of the estate, and that he therefore could dispose of the estate in his father's lifetime. The case is differently stated in the bill, but according to the statement in the answer, and according to the probabilities arising from the evidence of the attorneys, and of the documents in the case, he offered his interest in the estate, in his father's lifetime, to Belworthy, the ultimate purchaser, for 40*l.* Belworthy seems to have gone to an attorney, a gentleman of the name of Medland, and to have asked him whether this man, the appellant, could not dispose of the property: and Curson, the appellant, went with him. A conversation ensued upon the subject, and Belworthy was told by Mr. Medland that the appellant had not any interest in the property. He happened to have a copy of the will by him; and he saw that the father was tenant in tail, and that, although the son might succeed to the estate, yet that the property was in the disposition of the father, who could dispose of it against the son, and against all his issue. He told him, therefore, that he had not a saleable interest. That resulted, according to the representation of the defendant, the purchaser, and according to the documents which were executed, in a loan from Belworthy, who ultimately became the purchaser, to Curson the son, living the father, which loan was to amount altogether to 20*l.* forthwith, and they went then together to the attorney, when a common printed money bond was filled up to secure 20*l.* with interest at a short date. There the transaction rested. It is perfectly clear from the evidence that no communication took place, either between the man who advanced the money and his own attorney, or between the man to whom the money was advanced (that is, Curson, the appellant) and Belworthy, until the death of the father in 1840. I think he died on the 19th of September in that year. He was buried very shortly afterwards—on the 22nd, I think—and then transactions took place which I must presently go into more circumstantially. Now, on the 22nd of September, the funeral of the father took place, and Belworthy, the purchaser, was one of the bearers, as he describes himself at the funeral. It is alleged that a conversation arose after the funeral in regard to this property. It is very differently stated in the bill and in the answer, but the consequence was, that on the next day, the 23rd of September, the purchaser and the seller resorted again to Mr. Medland, and there a contract was drawn up by Mr. Medland and his partner—a clear and explicit contract—without any reference to the previous contract whatever, and that contract was executed for the sale of the property, for the sum of 160*l.* which of course was to be clear of the mortgage, which was to be paid off, and the purchaser was to pay all expenses of every sort, as well those which fell upon the purchaser, as those which ought ordinarily, without any stipulation to the contrary, to fall on the vendor. Now, it is sworn distinctly that, both upon the first occasion and upon this occasion, the contract was read over to Curson, and the attorney swears that he was perfectly competent to understand it. He is represented by his own witnesses as a man of weak mind I think that that is not borne out by the evidence, and by the circumstances of the case, and it is certainly contradicted, as far as the testimony of the attorney goes; and it is contradicted also by the testimony of the other persons, who speak to his general conduct, and to his capacity in matters of business. There the matter rested till the 24th of September, when the contract was executed. The conveyance was to have been executed on the 3rd of October, but it was put off until the 10th; and then Curson and his wife go, and Belworthy himself also goes again, to the attorney. The conveyance is then read over in the presence of Curson, and in the presence of Belworthy. A discussion arose with reference to a claim of dower, and there being a claim on the part of Belworthy for interest of the money which he had advanced by way of loan, Curson's wife said that, as there was no claim of dower existing, Belworthy had made a better bargain than he expected; and, therefore, she appealed to him not to charge interest. Belworthy at first declined, but at length agreed to accede to the request, and, accordingly, interest was not charged, and the contract was completed by the execution of the conveyance. Now, looking at it in that way, it is as simple a transaction as ever took place; and now the question for your lordships to consider is, what weight is to be attached to the evidence which is brought forward to support the charge which is made by the appellant in his bill, that the transaction was a fraudulent one? There were a great many circumstances here naturally calculated, as I have already said, to induce the appellant to challenge this conveyance. The appellant himself was a labourer, receiving some eight or nine shillings a week. He was an uneducated man; he could neither read nor write, and he had a wife and family to support out of his small earnings. He is represented as a man of ordinary natural capacity, and although that capacity had not been improved by education, he seems, according to the evidence for the respondent, to have understood what he was about. Then it is also represented that he had no attorney. One of the attorneys says he conceived that he was acting for both parties in the transaction. That, I think, has been made out. I think the attorney for the purchaser acted for both parties, without being directly and immediately consulted and confided in by the seller. Then in addition to that there is a very singular circumstance, which no man who reads this evidence can, I think, fail to observe,—that the estate was sold considerably under its value; not at such an under-value as shocks the conscience, as has been said in times long past, so that the moment you hear it stated you start, and say "This cannot have been a fair transaction," but at such an under-value as would, with other circumstances, be sufficient to induce the Court to set aside the contract if there was actual fraud proved. Now, I should have thought that the true way of bringing this case forward ordinarily would have been this: that the contract was entered into improvidently, according to the doctrine laid down by Lord Kenyon in *Evans* v. *Blood*, in 2 Brown's P. Cas. 632. In that case the property was sold at a price greatly below its real value, and under circumstances in which the seller seemed to be in great haste to get rid of the burthen of the inheritance which had been suddenly cast upon him; and looking at all the circumstances of the case, I am not prepared to say that it might not have borne that construction. But the case has been put differently. It has been brought forward as a case of absolute fraud on the part of the purchaser; and that fraud is alleged in the clearest terms in the bill, which prays that the conveyance may be set aside for fraud; and the evidence in support of that case consists of statements which are made with a view to shew that there was a fraudulent intention. Now, my lords, the whole of the case, as I understand it, is this; that with reference to the selling transaction, it was represented to Curson, and he was induced to believe that he had bound himself by a contract. I have told your lordships that that was not the true construction of it, and that he was induced to believe that the instrument of security which he had executed, bound him, when he became possessed of the estate, to sell it to Mr. Belworthy. Now, in order to make out this case, the allegation in the bill, as I read it, appears to me to result in this,—that what turns out to be a bond was alleged to be a contract under seal. There is no proof whatever of that allegation. Belworthy denies it in his answer, and it is discredited by all that appears in the evidence. There cannot be any question that the loan was made upon the supposition that the property would probably come to this man, because nobody can suppose that Belworthy would have advanced 20*l.* to a labourer receiving from eight to ten shillings a week, if he had not looked to the probability of his succeeding at his father's death to this property. Morally speaking, I cannot doubt that in advancing that money he had in view the probability of the appellant ultimately becoming possessed of this property, and that the connection which it formed between him and Curson might lead to that result which he desired. But, as I have already observed, Curson was left alone by Belworthy, from the very day that the bond was executed in 1838, until the death of the father, in the autumn of 1840. There was no attempt to keep up an influence over him, but he was left alone with his friends to deal as he pleased with the property. Now, the bill having laid this foundation, and turned the bond into a contract, everything is referred to a contract in the bill; and it being then pressed as a case in which Curson believed himself bound by a contract, and Belworthy being represented throughout the bill as urging on Curson to sell, he goes to the attorney, and the contract is executed, which he believes to be simply in furtherance of his obligation to sell the estate. Every word of it was read over to him. The contract is perfectly plain and intelligible; it is exceedingly well drawn, it is thoroughly explicit, there is no ambiguity in it, whoever runs may read, it was read over to him, and he heard every syllable of it. Then the bill goes on to allege that the conveyance was executed in pursuance of that contract, that contract being alleged to have sprung from, and to have been founded upon, the original contract, which was supposed to exist, but which never did exist in fact. Then there is an allegation in the bill of certain admissions made on the part of Belworthy. It is not very likely that he should have made such admissions, but the admissions are so alleged, and, in point of fact, are so proved by the three brothers of the appellant, as to lead to the conclusion that they did not follow, but that they preceded any agreement. I am not talking of the contract signed, but it appears that the supposed admissions preceded, and did not follow, any agreement after the death of the father to sell the estate. Now the fact was really this, according to the statement in the answer, and certainly according to every probability of the case, that Curson, having gone over to Belworthy on the 23rd of September, a conversation then took place between them. It is sworn in the answer, though I do not take that as evidence, that Curson began the conversation about Ham, and the result was, that there was a verbal agreement entered into at that very meeting, on the 23rd, to sell the estate to Belworthy, which agreement was carried into effect on the 24th, by all the parties meeting the attorneys and entering into a regular contract. Now, nobody would suppose that they would have gone to Crediton to an attorney to execute a contract on the 24th, unless there had been some previous treaty. That previous treaty must have taken place on the 23rd. They all went over to Crediton, to the attorney's, and waited a considerable time while the contract was being prepared; the contract was then read over to them, and was regularly executed. The treaty between the parties must have preceded that, of course. Now the conversations which are sworn to as having occurred after that communication between the parties, in which Curson had agreed to sell to Belworthy, are perfectly consistent with the whole case, as it appears to me; because Belworthy was then speaking to the witnesses with reference to a purchase which he had actually made; and the expression made use of by Curson himself, which is proved by his own witnesses, strongly corroborates that view; because, on his brother remonstrating with him, he says, "it is sold, or as good as sold,"—a remarkable expression, which one understands when used by a person in that condition of life. If these conversations took place before the verbal agreement, it would have been an act of folly on the part of Belworthy, of which no man can suppose he would be guilty; because, against all truth and against everything that appears in the case, he would have been declaring that he had bought the property, when in fact he had not bought it at all. Well, my lords, the bill further puts the case on an untrue ground; it puts it upon the ground of an attempt by Belworthy, for which there is not the slightest foundation, to represent the bond as a contract which bound this man. It is curious enough, as was observed by the Vice-Chancellor of England, with reference to what is sworn as to the attempt to impress on the different parties what was the operation of the bond, that no man ventures to swear that that impression was conveyed to his mind. Now, my lords, this is a very remarkable case as regards the evidence. The purchaser himself was a small farmer, but of sufficient substance to enable him to buy this property. He was present at this cottager's funeral. After the funeral the parties adjourned to a public-house, and there conversations arose with reference to this property, and afterwards, on the 23rd of September, several of them went to Ham itself, the place in question, and there other conversations occurred. Now, one thing which has struck my mind very forcibly in this case is, that Curson himself, the appellant at your Lordships' bar, was surrounded by his family. He had three brothers,—Andrew, Thomas, and John,—all assisting him with their advice, and all in point of fact endeavouring to persuade him not to sell this property. That you can very easily understand. One can readily suppose that, small as this property was, they looked with great apprehension and alarm at the entail being cut off. The brothers, therefore, were persuading him not to sell the property, and out of the advice they gave arose a conversation. There was a man named Vanstone, who is said to have been connected in some way with the solicitor, and to have taken a considerable part in these proceedings; and he himself, it is said, wanted to rent this estate, and assisted in imposing on the appellant. Now, this man, the appellant, who was a labourer, was a married man, and his wife seems to have been an active and vigilant woman; perfectly competent to understand business; as when the conveyance was executed she went with her husband to

the attorney's. She interfered, and insisted on a reduction of the interest from the purchase-money. It became a matter of contest. The purchaser gave way at last, and then she made an observation, which shewed that they were aware it was a bargain, for she said to the purchaser, "You have got a better bargain than you thought for;" and therefore she asked that something might be struck off, which ultimately was done. Now, when your lordships consider that this man had the assent of his three brothers, all of whom were most anxious, as the evidence shews, that he should not complete this purchase,—when you consider that he had the assent of his wife, a shrewd and vigilant woman, —it is perfectly clear that there is no evidence to establish the charge made in the bill. The man was left alone for a couple of years, and during all that time this estate no doubt formed a constant subject of conversation in his family. Even after his father's death he was vigilant; for it is in evidence that in point of fact Curson went to the mortgagee, and before he entered into the contract for the sale of the estate, he said to Mr. Medland, "What shall we do if the mortgagee will not take his money?" Upon which the attorney said, "I shall have no objection to advance the money;" so that Curson was going about with a view to facilitate the completion of the transaction. I can well account for Curson's conduct by the circumstances in which he was unhappily placed. He had this small property devolve upon him. He owed 20*l.* to Mr. Belworthy; and he uses it as a badge of fraud that no interest on that 20*l.* had been demanded from him by Belworthy; and he draws an inference from that, that the money which he had already received was given to him as part of the purchase-money. It appears to me that there is not the slighest foundation for that. No man, I think, can doubt, who understands the nature of these transactions, that the money was advanced upon the probability of the estate coming to Curson; and there is no doubt in my mind that it was so advanced to him, not from a mere regard to this man, or from a desire to assist him, but in the hope that it might lead thereafter to Belworthy's coming into possession of the estate. In those circumstances, it is not at all surprising that the interest should not have been demanded; indeed, I should have been surprised if it had been demanded. How could Belworthy have expected to get interest even on 20*l.* from a man whose weekly income did not exceed eight or nine shillings, and who had a wife and family to support. The intention, no doubt, was to have it paid out of the estate ultimately, if it should come to this man in his lifetime. I think that is shewn by what took place at the attorney's office; for when the subject was first mooted, the attorneys were asked, whether Curson could make a title; and upon being told that he could not, Belworthy refused to purchase at that time. This man might have died in his father's lifetime, and the father might have barred the estate tail. Upon the whole case, my Lords, my opinion is, that there is no evidence to make out the allegation in the bill. If we look at the earlier transactions, as they stand upon the instruments, nothing could be more correct. The bond is in the common form. It is filled up in the regular way, and witnessed. It was read over to the man who executed it. With a full knowledge of what he was doing, he received the money which was secured by the bond, and he never affected to deny the debt, but allowed it to remain unquestioned. Then the contract which was entered into was also read over to him. It begins by reciting that he has now contracted to sell,—not that he had contracted in 1838 to sell the property,—but it is a present contract to sell the property. The family were talking of this contract, as is apparent from conversations which are detailed in the evidence. This man could not neglect a day's work, and go over to the attorney's, and enter into this contract, without its being the subject of conversation among his own family and neighbours; but not a word of objection is raised, and sixteen days afterwards the contract is carried out by the execution of the conveyance. The appellant is a pauper. The case is one certainly of hardship; for this estate has been obtained for an under-value by a man of superior capacity and of higher position than himself, who may be considered, therefore, as having obtained an advantage, by securing to himself this property from a man who was a pauper, but at the same time it appears to me that the appellant has failed to make out the allegations in his bill, and therefore I should advise your lordships to dismiss this appeal.

Appeal dismissed.

THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Reported by JAMES PATERSON, Esq. Barrister-at-Law.

(Present JERVIS, C.J. POLLOCK, C.B. PEMBERTON LEIGH, Esq. and Sir E. RYAN.)

The "BOLD BUCCLEUGH."

Saturday, April 24.

HARMER *v.* BELL and OTHERS.

Ship—Collision—Maritime lien—Proceeding in rem—Foreign attachment—Lis alibi pendens.

A Scotch steamer ran down an English barque lying in the Humber, and kept out of the jurisdiction of the Court of Admiralty. The owners of the steamer were then sued in Scotland, and the steamer was arrested there, but released on bail, and then sold without notice of this unsatisfied claim. The Scotch suit still pending, she re-appeared in England, when she was immediately arrested under an Admiralty warrant, and an action for damage entered in the Admiralty Court here, the cause of action being the same, though instructions were immediately sent to abandon the Scotch suit. The owner of the steamer appeared under protest to this Admiralty action, pleading lis alibi pendens and purchase without notice:

Held—1. The plea of lis alibi pendens was bad, as the suit in Scotland was substantially a proceeding in personam, while the present was in rem; 2. The ship was liable, into whose hands soever she had come.

When a vessel at sea causes damage, an inchoate lien emerges, and when the amount of the damage is judicially ascertained by a proceeding in rem, the lien relates back to the period when it first attached, and takes priority, to the extent of the then value of the vessel, of all other liens, and travels with the vessel wherever she goes or into whose hands soever she passes: but this lien arising out of damage is not indelible, but may be lost by negligence or delay, where the rights of third parties are compromised.

A foreign attachment like that which prevails in London, Scotland, &c. is intended solely to compel an appearance; whereas a proceeding in rem in the Admiralty Court for wages, salvage, collision, or bottomry, goes against the ship in the first instance.

A maritime lien and a proceeding in rem are correlative: wherever a proceeding in rem is competent, a lien exists, and vice versâ.

This was an appeal from the High Court of Admiralty of England. The *Bold Buccleugh* was a steamer, which belonged to the Edinburgh and Dundee Steam-packet Company, the partners of which company all resided in Scotland; and she traded between the ports of Leith, in Scotland, and Kingston-upon-Hull, in Yorksh[ire]. On the night of the 11th December, 1848, as the barque *William* was lying at anchor in the river Humber, it was run down and totally destroyed by the *Bold Buccleugh*, then on her voyage to Leith. On the 19th December an action for damage was entered in the Court of Admiralty here on behalf of the respondents, Bell and others, the owners of the *William*, who resided in England; and a warrant was forwarded to Hull to arrest the steamer, but she had left before the arrival of the warrant, which, consequently, could not be executed. The owners of the *Bold Buccleugh* were applied to, to give bail to this action entered in the Admiralty Court, but declined to do so. Thereafter the *Bold Buccleugh* kept out of the way, and ceased to ply to Hull, or to come within the jurisdiction of the Court. The owners of the *William* being thus unable to obtain redress, resorted to the Court of Session, which is the Court of Admiralty in Scotland, and on 30th January, 1849, commenced a suit against the above owners of the steamer, and she was forthwith arrested in Leith Harbour, but on bail being given she was released. While this Scotch suit was pending, the owners of the *Bold Buccleugh*, on 26th June, 1849, by a bill of sale, absolutely sold her to Harmer, the appellant, for 4,800*l.* and they did not apprise him that there were any unsatisfied claims arising out of damage to the *William*. In the end of August following, the *Bold Buccleugh* reappeared on her old track, between Leith and Hull, upon which the owners of the *William*, without discontinuing the Scotch suit, entered on 27th August, 1849, an action in the Admiralty Court here in the sum of 2,600*l.* and on her coming to Hull she was arrested by virtue of a fresh warrant under seal of that Court. The appellant, her owner, then entered appearance under protest, and gave bail to the action. On the act of protest being brought in, affidavits were produced by Harmer, that he had no notice of the unsatisfied claim when he purchased the steamer. The owners of the *William* also produced an affidavit of their attorney in Scotland, which shewed that, subsequent to the present action being brought, they had offered to abandon the Scotch suit, and that, though this was opposed by Harmer, who applied to be made a party, yet in respect of this abandonment the suit was at length finally dismissed by the Court of Session, on 6th December, 1849. The contents of the protest now insisted in before the Judge of the Admiralty were— 1. That at the time of the arrest there was lis alibi pendens. 2. The steamer had been sold prior to the arrest, and it was unjust that the innocent purchaser should suffer. Both points of the protest were overruled, and Harmer and his bail were condemned in costs. (See 3 W. Rob. 220.) Against this order or decree Harmer now appealed.

Anderson, Q.C. and Dr. *Haggard*, for appellant.— Liens are created by bottomry, mortgage, salvage, and wages, but it has never yet been decided, that liens arise out of damage. If there was a lien, we admit it would be vigorous enough to give jurisdiction. Liens are not favourites of the law, and the silence or absence of authority is primâ facie hostile to the assumption, that damage founds a lien. If then there was no lien here, the arrest was in the nature of an attachment. Now a foreign attachment exists in London and Scotland, and its sole object is to compel an appearance. The proceeding in rem in the Admiralty was precisely the same— we seize the ship, and if the owners do not come forward, we sell it: but if they do come forward, we deal with them exclusively. If then there was no lien, how can this undefined claim of damage travel with the ship wherever she goes? Can a ship which at some former period of her history may have caused a collision, and may have subsequently passed through the hands of twenty different owners —can she be arrested in whatever part of the world she may be for this early misfeasance? If so, the rights of third parties, including innocent purchasers, would be inextricable. The present rather resembles the case of cattle damage feasant being sold. There the proceeding is also in rem, but then it must be taken at the time. There being then no lien on the ship for the damage, what was the effect of the release of the ship in Scotland? The release was a mere modus procedendi. The object of the arrest being not to make available any lien, for such did not exist, but merely to get a fund to satisfy the damage, the release merely discharged the process of the Court and left the ship in statu quo as before the arrest. The Scotch suit being therefore for the same cause of action, and the proceeding being the same substantially, lis alibi pendens was a good plea to this action, and the purchaser, having had no notice, cannot have his ship now arrested and made liable. The following authorities were cited during the argument:—*Ned Elwin*, 1 Dodson, 50; *John Dunn*, 1 W. Rob. 161; *The Aline*, Id. 111; *The Hope*, Id. 154; *re Alexander*, Id. 288; *The Volant*, Id. 383; *The Druid*, Id. 391; *The Fortitudo*, 2 Dodson.

Dr. *Addams*, contrà. *Cur. adv. vult.*

JERVIS, C.J. now delivered the judgment of the Court.—There were two questions in this case. First, the effect of the pendency of another proceeding in Scotland for the same cause. Secondly, the liability of the vessel by a proceeding in rem after a bonâ fide sale without notice. It is manifest that these two defences are of a totally different nature, the first being a declinatory plea, properly the subject of a protest: and the second an absolute bar. Generally it is inconvenient to depart from the settled rules of procedure, and to raise such questions differing in degree by the same defence; but as the Court below did not object to this course, we merely notice it to observe, that we do not approve of such a proceeding, and pass on to deliver our opinions upon the two points raised. Upon the first point, we have not, from the commencement of the discussion, entertained any doubt, but we desired the second question to be re-argued, because it was of great general importance, and because we were unable to find any authorities bearing directly upon it, and some of the cases to which we were referred were apparently conflicting with each other. The course which was taken upon the second argument makes it convenient to dispose of the second question in the first instance. It is admitted that the Court of Admiralty has jurisdiction in a case of collision by a proceeding in rem against the ship itself; but it is said that the arrest of the vessel is only a means of compelling the appearance of the owners, that the damage confers no lien upon the ship, and that the owners having appeared, the question is to be determined according to the interests of the party litigant, without reference to the original liability of the vessel causing the wrong. For these propositions, dicta have been referred to which are entitled to great respect, but which, upon consideration, will be found not to support the propositions for which they were cited. In the *Johan Frederic*, W. Rob. 37, Dr. Lushington is reported to have said, that proceedings in rem in the Court of Admiralty were analogous to those by foreign attachment in the courts of the city of London. For the purpose for which that allusion was made, viz. the liability of the property of foreigners to be arrested by process out of the Court of Admiralty and the courts of the city of London,

the two proceedings may be analogous, but in other respects they are altogether different. The foreign attachment is founded upon a plaint against the principal debtor, and must be returned nihil before any step can be taken against the garnishee; the proceeding in rem, whether for wages, salvage, collision, or on bottomry, goes against the ship in the first instance. In the former case the proceedings are in personam, in the latter they are in rem. The attachment, like a common law distringas, is merely for the purpose of compelling an appearance, and if the defendant appears within a year and a day, even after judgment and execution against the garnishee, and puts in bail, the attachment is abandoned. If the owners do not appear to the warrant arresting the ship, the proceedings go on without reference to their default, and the decree is confined exclusively to the vessel. Many other distinctions will be found upon reference to the notes to *Treobell's* case, 1 Wms. Saund. 67, n. 1. It is not correct, therefore, to say, that the proceeding in rem is in all respects analogous to the proceeding by foreign attachment, and that the former is merely to compel an appearance because the latter is undoubtedly for that purpose only. In all proceedings in rem, whatever be the foundation of the jurisdiction, the warrant is the same, and the proceedings are conducted in the same form, and there is no reason for saying that a different rule is to prevail where the foundation of the jurisdiction is a collision, from that which is admitted to be the practice when the suit is instituted for salvage, or the recovery of wages against the ship. But it is further said, that the damage confers no lien upon the ship, and a dictum of Dr. Lushington in the case of the *Volant*, 1 W. Rob. 387, is cited as an authority for this proposition. By reference to a contemporaneous report of the same case (1 Notes of Cases, 508), it seems doubtful, whether the learned judge did use the expression attributed to him by Dr. W. Robinson. If he did, the expression is certainly inaccurate, and being a dictum merely, not necessary for the decision of that case, cannot be taken as a binding authority. A maritime lien does not include or require possession. The word is used in maritime law not in the strict legal sense in which we understand it in courts of common law, in which case there could be no lien where there was no possession, actual or constructive, but to express, as if by analogy, the nature of claims which neither presuppose nor originate in possession. This was well understood in the civil law, by which there might be a pledge with possession, and a hypothecation without possession, and by which in either case the right travelled with the thing into whosesoever possession it came. Having its origin in this rule of the civil law, a maritime lien is well defined by Lord Tenterden to mean a claim or privilege upon a thing to be carried into effect by legal process, and Mr. Justice Story (1 Sum. Rep. 78) explains that process to be a proceeding in rem, and adds that wherever a lien or claim is given upon the thing, then the Admiralty enforces it by a proceeding in rem, and indeed is the only Court competent to enforce it. A maritime lien is the foundation of the proceeding in rem, a process to make perfect a right inchoate from the moment the lien attaches, and whilst it must be admitted that where such a lien exists a proceeding in rem may be had, it will be found to be equally true that in all cases where a proceeding in rem is the proper course there a maritime lien exists, which gives a privilege or claim upon the thing to be carried into effect by legal process. This claim or thing travels with the thing into whosesoever possession it may come. It is inchoate from the moment the claim or privilege attaches, and when carried into effect by legal process by a proceeding in rem, relates back to the period when it first attached. This simple rule, which, in our opinion, must govern this case, and which is deduced from the civil law, cannot be better illustrated than by reference to the circumstances of "The Aline," referred to in the argument, and decided in conformity with this rule, though apparently upon other grounds. In that case there was a bottomry bond before and after the collision, and the Court held that the claimant for damage in a proceeding in rem must be preferred to the first bondholder, but was not entitled against the second bondholder to the increased value of the vessel, by reason of repairs effected at his cost. The interest of the first bondholder taking effect from the period when his lien attached, he was, so to speak, a part owner in interest at the date of the collision, and the ship in which he and others were interested was liable to its value at that date for the injury done with reference to his claim. So by the collision the interest of the claimant attached, and dating from that event, the ship in which he was interested having been repaired, was put in bottomry by the master, acting for all parties, and he would be bound by that transaction. This rule, which is simple and intelligible, is, in our opinion, applicable to all cases. It is not necessary to say that the lien is indelible, and may not be lost by negligence or delay, where the rights of third parties may be thereby compromised, but where reasonable diligence is used, and the proceedings are had in good faith, the lien may be enforced into whosesoever possession the thing may come. The remaining point may be disposed of in a few words. The pleadings shew that the proceedings in Scotland were commenced by process against the persons of the defendants, and that the seizure of the vessel was collateral to that proceeding for the mere purpose of securing the debt. We have already explained that, in our judgment, a proceeding in rem differs from this, the one being in personam, the other in rem; and it follows that the two suits, being in their nature different, the pendency of the one cannot be pleaded in suspension of the other. For these reasons, we are of opinion that the judgment of the Court below must be affirmed with costs.

Equity Courts.

LORD CHANCELLOR'S COURT.

(Before Lord St. Leonards, L.C.)

Reported by C. H. Keene, Esq. of Lincoln's-inn, Barrister-at-Law.

Tuesday, June 1.

Re North of England Joint-Stock Banking Company, *ex parte* Crossfield.

Joint stock company—Winding-up Acts—Power of Master to review his decision—Contributory—Executor—Costs.

A. the holder of shares in a joint-stock company died in 1838, appointing H. and C. his executors. In March 1849, the Master on the winding up of the company, placed the name of H. on the list of contributories as personally liable in respect of those shares. In February 1851 he struck out the name of H. and instead thereof substituted the names of H. and C. as the executors of A.

Held, affirming the decision of the Vice-Chancellor, that it was competent to the Master under the Joint Stock Companies Amendment Act, 1849, to review his decision in that respect.

A. being the holder of shares in a joint-stock company, by her will bequeathed them to her son (H.) and daughter, and appointed H. and C. her executors. A. died in 1838, and her will was proved by both executors, who thereupon wound up her estate, except with reference to these shares. In 1840 the probate was entered in the books of the company, pursuant to the directions in the company's deed, and which thereupon gave H. and C. a right to deal with the shares.

In the dividend lists of 1815 and 1816, H.'s name appeared as executor, but the warrants were made out in favour of H. simply. From the death of A. to the year 1848 H. received the dividends on the shares, and had various communications with the managers of the company in respect of them. In the greater part of these communications H. called himself, and was called executor of A., but in some of them no allusion was made to his representative character. C. never had anything to do with the management, and in no way interfered with the shares. On the winding up of the company in 1848 it was

Held, affirming the decision of the Court below, that H. and C. were properly placed on the list of contributories as executors of A.

In a case where there was a great deal of merit, but no law, the Court refused to follow the general rule as to costs, on the dismissal of a petition of appeal.

This was an appeal from a decision of the Vice-Chancellor Knight Bruce. The facts of the case were reported at length on the original hearing (17 Law T. Rep. 47).

Russell, Daniel, and *Randell* appeared for the appellant, and cited *The North of England Banking Company, ex parte Doyle,* 2 Hall & Twells, 221; and *Best's* case, 16 Law T. 340.

Bacon and *J. V. Prior,* for the company.

Russell, in reply.

The Lord Chancellor.—I very much regret being compelled to decide this case against Mr. Crossfield. It is a very hard case; he has been guilty of no misconduct of any sort or kind, and he is visited at a distance of some years with a considerable infliction that ought not to fall on him; but I am afraid the rule of law is too strong for me. The first point which is made against his liability is upon the Act of 1849, and it is insisted that the power there given to the Master is not retrospective, and that at all events I must decide whether it be altogether retrospective and cannot be prospective—it cannot be both. Now from the view that has been taken at the bar, I entirely dissent. I think the words are clearly retrospective; but then I think the words very naturally, and easily bend to the clear intention of the Legislature, and would be prospectively applicable to a then future event. A past event has already taken place to which the words will apply. A past event will by and by take place, and a future event to which the words will clearly apply. I cannot think there is any doubt upon the retrospective operation of the words grammatically considered. Now it is clear what the intent of the Act was: there had been a great number of cases in which the Master, according to the recent decisions of the Court, had miscarried, and, according to the decision of the higher authorities, it was not possible to review those cases: they, who had a right and were bound to decide whether the construction of the Master was right or wrong, did, according to their view, decide that the conclusion to which the Master had arrived was wrong, and required correction, and that it could only be corrected under the Act of Parliament. It is said that the 17th section of the Winding-up Amendment Act 1849, is entirely inconsistent with this construction, but it does not appear to me to be so; that section gives a power to the Master, and that power therefore being given to an officer of this court, it was no doubt considered that it might be entrusted to him with greater latitude than could be given to a co-contributor, and as by the former Act of 1848 that power was given in this very case, for example, where one party had been included and another excluded by the Master, so that there could be no longer a power to vary that order, still the Act of Parliament of 1849, even in the case of a contributor, went so far as to say, that the contributor might still bring a co-contributor before the Court, although he had been included or excluded under the old Act in respect of any shares which had not been brought for adjudication in the former instance. It appears to me therefore, I confess, that there is no doubt about the legal right between the gentlemen here. But then the next question is, whether I can hold that the acts which have taken place between the company and Mr. Hall, one of the executors, varies the right of the company, or of the official manager as representing it. Now, the shares in question belonged to Ann Hall, and they are entered regularly in the books of the company in her name, and she by her will gave them to her daughter and son. Richard Hall was one of the legatees, and he, with Mr. Crossfield, were joint executors. Mr. Crossfield does not appear to have taken an active interest; he says he wound up all the executorship affairs years ago, except with reference to these thirty shares, and that he considered he had nothing further to do in regard to those shares. Now, as regards the winding up: the winding up is all very well as between the co-executor and the legatees, but it had not the slightest bearing against persons who were entitled to come in as creditors against the assets; unfortunately, Mr. Crossfield was in the predicament which too often happens to a man proving and acting as executor, but trusting (as he ought not to have done for his own sake) to the acts of his co-executor, for which he might be made and clearly is liable, and yet not looking after his co-executor, or seeing how he executed his duties. Now, Mr. Crossfield, on the death of the testator, having proved the will, became liable, as I have said, in all respects; and he subsequently acted. When the probate was carried into the office of the company, there is a very proper entry still under the original name of Ann Hall—"Probate, &c. of Ann Hall's will, exhibited here 9th March, 1815; Richard Hall her son, and James Crossfield, executors: dated 9th December, 1839;" and with that entry is a memorandum where Mr. Crossfield lives. That, therefore, is a compliance with the direction in the Act of Parliament, and gave them a right as executors to deal with the shares according to the provisions of the deed. Now, one great point which has been made, and the leading point on the part of the appellant, is this, that by section 30 of the deed constituting the company, no executor would be entitled to receive the profits of the share of his testator until he should have become a member, but that those profits should be kept in suspense accumulating; and then it was said, first, that a great damage had accrued to Mr. Crossfield because the money had not been in such deposit; for had it been so (as it ought to have been), it would have gone to answer in a great measure the liability (if any) of that gentleman; and, secondly, that it shewed that Mr. Richard Hall had been accepted as a member of the company, and that they were bound by that acceptance. In the first place, I have held, and am prepared to hold again, that directors may do acts binding upon the whole body, by which they waive certain formalities which they ought to have executed in regard to the transfer of shares. (*Ex parte Straffon's Executors,* 19 Law T. Rep. 78.) But in this case a privilege has been conceded to one of two executors: one executor may act—one executor is entitled to receive, and therefore there is a privilege and a benefit to both of the executors. If Mr. Crossfield had chosen to have availed himself of it, it enured to both. It might be considered, therefore, to have been received by both; and it was a benefit, and not a burden. But Mr. Crossfield could have got no benefit, if the money had been there, because the latter part of the clause, which has not been adverted

to, declares that the money shall "remain in suspense, and shall not be paid till the transfer thereo shall be completed, and the new holder thereof shal claim the same, and every transfer shall carry with i the profits and interest and share of capital," and sc on; the consequence of which is, that if it had bee accumulated, as is here directed, it would no have been unfortunately a fund in hand for th benefit of Mr. Crossfield, but it would have been fund really in suspense—nominally ready, not fo him, but for the person who bought the share, and as the shares are worth nothing but waste paper, and, of course, wholly unsaleable, they would not bring any benefit, but would impose a great burden; that money, if it had remained in suspense, never could have been a benefit to Mr. Crossfield, or any body else; so that it cannot be said that Mr. Crossfield sustained any loss, but might have had a benefit. Then the question is, can this admission on the part of the directors be held to be an admission of Richard Hall in his own proper person as a member and owner of this property? Now, the will does not give him any right so to make himself owner of the property. I do not see myself any very clear direction in the deed of what is to be done in the case of several executors; whether you are to take those early clauses, and say the first is entitled to be a member—which, I think, is doubtful—or whether you must not resort to those other clauses—which I apprehend, is the true construction—and say that they must all be members, and that no other course is left for them. However, without deciding that, am I to consider this Act so relied on, as an admission of this gentleman, supposing he could be admitted? Clearly I cannot consider it so, because every Act I have before me shews a direct contrary dealing with that gentleman. He never asked to be a member in the proper character of a member. When he sold the fifteen shares, the notice he gave was as executor. When he wrote those letters, not in every one, but in two out of three, he speaks of the shares as those of Ann Hall. In all the documents I have before me there is not one in which he is introduced as a member. In every single instance the credit is given for the dividends to the executor; and although that is discharged on the opposite side by the payment to him, yet of course it must be in that character in respect of which, on the opposite side, the credit is given to him. I must say I never saw a case in which there was less foundation for the argument that the dealings between the parties had altered the right that existed between them. I have looked with the greatest care and anxiety to see if I could find anything of the sort, for I have been anxious to relieve Mr. Crossfield if I could, but there is nothing of the sort in any part of the dealings or any one of the documents. Well, then, the clause referred to by Mr. Prior at the end of the deed shews these parties, who must be considered as shareholders, cannot have been taken by surprise in this respect, for there is an actual independent covenant binding their real and personal representatives by the shareholders, that they shall continue liable in respect of any shares that form part of their assets. Why was that introduced? Because the executors, quâ executors, not becoming members and not having sold, would not themselves be responsible personally, as has been decided in the cases that have been referred to, and properly decided, and as I have since decided, and therefore they must be assumed to have been perfectly aware, as members, that until they sold and other persons came in their place, there would be no personal responsibility. The original shareholders entered into covenants that their real and personal assets should be considered liable for all the conditions under the deed which would attach to any shareholder whilst the shares remained the assets of the particular shareholder. This is a case, unfortunately, with a good deal of merit, but without any law. It is too clear to entertain any doubt about it, and therefore I am under the necessity of affirming the decision of the Vice-Chancellor. But this really is so hard a case that I shall not do what I consider myself bound to do in most cases where a party has no merits, and chooses to try an experiment in which he cannot succeed; in such a case I should feel bound to dismiss the appeal with costs, but this is an appeal that I shall not dismiss with costs. I think it is a hard case on Mr. Crossfield, and I am not surprised at the attempt made to relieve him from such an unmerited hardship.

Bacon.—The costs will come out of the estate?

The LORD CHANCELLOR.—Yes, I suppose there is no help for that.

***Re* ATKINSON'S TRUST ESTATE, AND 10 & 11 VICT. c. 96.**

Wednesday, June 9.

Insolvency—Provisional assignee—Purchase for value of an equitable fund.

The rule requiring notice to complete an equitable assignment applies between the provisional assignee of an insolvent and a subsequent assignee for value.

In this case, which was an appeal from a decision of the Vice-Chancellor Knight Bruce, and which is reported 17 Law T. 282, the Lord Chancellor affirmed the decision of the Court below, observing that he had always considered it settled that the provisional assignee took whatever the insolvent had; he took that which the insolvent had to give, and he took it subject to all the equities to which the insolvent was liable: he took as the representative of the insolvent. The Act directed the insolvent to execute an assignment of all his estates and effects; that assignment when executed would have as high an effect as an assignment for value, but no higher. His lordship was not aware of any positive rule of law, which gave to a subsequent purchaser who had given notice to a trustee priority over a prior purchaser who had failed to do so, but it was the rule of that Court, and from which he (the Lord Chancellor) should not depart. The question which he had to decide was this, had the purchaser done all that he could? He (the Lord Chancellor) thought that he had. The mere circumstance of a prior purchaser having got the legal estate vested in him could not prevent the application of the rule. The present case, said his lordship, ought to teach assignees to be more diligent in making inquiries as to the property of insolvents. If proper inquiries were made, as in the present case, among the families and friends of insolvents, interests of this kind could not be overlooked or concealed. The point raised in this appeal was a settled one, and its correctness had never been doubted.

Follett and *Osborne* appeared for the appellant, and cited the following cases:—*Smith* v. *Smith*, 2 Cr. & Mees. 231; *Mens* v. *Bell*, 1 H. 73; *Collett* v. *De Gols*, Tor. 65; *Ex parte Knott*, 11 Ves. 609; *Ryall* v. *Rowles*, 1 Ves. sen. 371; *Dearle* v. *Hall*, 3 Russ. 1; *Warburton* v. *Loveland*, 1 Dow. & Clark, 97.

R. Palmer and *Schomberg* appeared for the respondents, but were not called on.

Appeal dismissed with costs.

Saturday, June 12.

***Re* FAWCETT'S Patent.**

Practice—Conflicting claims—Reference to law officers of the Crown.

Where there are conflicting claims as to the issue of a patent, although the caveat may not have been entered at any of the preliminary proceedings, a reference to the law officers of the Crown the usual practice.

A caveat may be lodged at any stage of the proceedings.

This was an application for the sealing of a patent, notwithstanding a caveat had been lodged by parties bonâ fide opposing its grant.

The facts were shortly these. In August 1851, Mr. Fawcett presented his petition for a patent for a new mode of manufacturing carpets. On the 14th it was referred to the Attorney-General. No opposition was then offered, but, from some unavoidable delay, the necessary steps could not at once be taken to pass the patent. Mr. Fawcett being desirous of exhibiting his invention at the Great Exhibition, obtained the temporary protection afforded by the Act of Parliament passed for that purpose. On the 20th of September, the invention was exhibited, and on the 23rd, a caveat was entered against the sealing of the letters patent by Messrs. James Humphries and Sons. On the 4th of October Fawcett's patent was left for the great seal, but, in consequence of the above caveat, the great seal was not affixed. The then Solicitor-General (Sir W. Page Wood), after having heard both parties, certificated that the invention claimed by the Messrs. Humphries and Sons was in direct conflict with that of Mr. Fawcett, and that they ought not to have a patent. He further certificated that there might be a question whether the invention of the Messrs. Humphries and Sons was not an improvement, but it involved Mr. Fawcett's idea and scheme as a basis. Numerous affidavits were filed on both sides; those on the part of the petitioner to shew that he was the original inventor, and those on the part of the respondents that he was not, and that the invention was not new. Before these objections and the [illegible] vent the great seal being affixed to the petitioner's patent, and the petition stood over, in order to bring Mr. Beech before the Court, so that the questions raised on both caveats might be disposed of cotemporaneously.

After *Daniel* had entered into a statement of the facts and merits of the case,

Campbell, who, with *Webster*, of the Common Law Bar, appeared on behalf of the respondents, Humphries and Co., submitted that this was not a question which should be gone into on the merits by the Lord Chancellor, but that it should be referred back to the law officers of the Crown.

The LORD CHANCELLOR.—The objection should have been taken on the opening of the case, but I will hear any authorities you may have, if they bear on the point of practice.

Campbell argued that under the old practice, where there were two claimants for an invention before the law officers of the Crown, and they could not agree, the custom was not to grant any patent at all. Assuming that no caveat had been lodged before the Attorney-General, it was competent for parties to enter one at any of the later stages, and that, if no caveat had been entered at any of the preliminary stages, one might still be entered for the first time before the Lord Chancellor, and every objection might be offered to the patent at the last moment. He submitted that the jurisdiction of the Lord Chancellor was not an appellate one from the decision of the law officers of the Crown,—for those officers did not report to the holder of the Great Seal, but to the Secretary of State for the Home Department. The jurisdiction of the Lord Chancellor was in the nature of an original one. The only case in which the Lord Chancellor had entered into the merits of a patent was in *Ex parte Fox*, 1 Ves. & B. 67, before Lord Eldon; but a much more convenient course had been adopted by his successors, and by whom the practice had been settled. In the case of Alcock's patent, which was before Lord Brougham in 1832, there was an application to discharge a caveat then for the first time entered, on the ground that the parties had not opposed in the preliminary stages; his lordship held that the caveat having been entered before his lordship, was not too late, and referred the matter back to the Attorney-General to inquire and report whether the patent ought to issue or not. In 1834, in Danghell's patent, his lordship (Brougham) followed the same course; and Lord Cottenham, in the cases of *Joyce*, *Cutler*, and *Stansfield*, adopted the practice of sending the parties back to the law officers, in order that they might inquire into the merits and report. (Vide 4 M. & C. 510; Webster on Patents, 418, 134, 101, 173.)

Webster followed on the same side.

Selwyn, for Beech, rested his opposition on the same grounds.

Daniel, with him *Woodhouse*, in reply, said that the question on the merits had been fully gone into by the late Solicitor-General, and read his certificate. A reference was required for the purposes of delay only, and which delay would deprive the petitioner of the benefit of temporary protection which he had acquired for his invention by its registration.

The LORD CHANCELLOR said that this was a matter in which he had had considerable practice some years ago, when one of the law officers of the Crown, and he was convinced that it would be impossible for the Chancellor to undertake the duty of going into the merits of a question like the present, which would require a very careful examination of of models, the hearing of affidavits, and the evidence of persons conversant with these matters, and a discrimination of rights which could not be carried on in open court. Such matters must, if at all, be investigated at chambers, a course quite inconsistent with the functions of the Court. Was there any reason why the ordinary business of the Court should be interrupted by such investigations? It was true that Lord Eldon had done so in the case of *Ex parte Fox*, but that had not been the general practice of the Court, and a more inconvenient practice he could not conceive. That was the only precedent that was to be found, and one which his lordship was not disposed to follow, because he thought it would produce the greatest inconvenience and much delay. The petitioner's case appeared to be, primâ facie, a favourable one; and if he (the Lord Chancellor) had reason to think that the attempt to stop the petitioner's patent was fraudulent, he (the Lord Chancellor) would not hesitate to interpose at once, and hear the case privately, but it did not appear that the claim put forth by the other party was unfounded, as statements had been made which shewed that the opposition was bonâ fide. He thought that the four cases cited by Campbell had settled the practice on satisfactory grounds; that it would not only be an inconvenient but a mischievous thing to depart from it. He knew well to what it would lead; parties would delay entering caveats until the last moment, in order to compel the Chancellor to hear their cases. As the opposition appeared to be bonâ fide, and as there appeared to be a great deal to be cleared up, he should send this matter back to the law officers of the Crown, but with a direction that the inquiry should be prosecuted without delay; and in order that Mr. Fawcett might not suffer any loss, or be deprived of any advantage from the registration of his patent, in the event of his having reason to think that the matter was improperly retarded, his lordship gave him leave to apply.

Re THE WILL OF NORTON, deceased.

Appointment of new trustees to be made "with the consent of the Lord Chancellor."

The Court disclaiming the liability, made the order with a declaration that it was not to be drawn into a precedent.

This was a petition for the appointment of new trustees in the place of one who was desirous of being discharged, and of another who had died. The will containing the power to appoint such new trustees directed "that such appointment should be made with the consent, however, of the then Lord Chancellor of Great Britain, but not otherwise."

Messiter for the petition.

The LORD CHANCELLOR at first refused to entertain the application, but subsequently made an order in the following terms:—"His lordship, disclaiming the liability which the words "with the consent, however, of the then Lord Chancellor of Great Britain, but not otherwise," contained in the will of the testator William Francis Norton, seek to throw upon the Lord Chancellor for the time being; but being willing to relieve the petitioners, &c. from the difficulty in which they are placed, as appears from the statement in the said petition, doth in this case (which is not to be drawn into a precedent) think fit to consent that A. and B. &c. be appointed trustees under the will of the said testator in substitution for C. D. (who is desirous of being discharged from the trusts of the said will), and of E. F. deceased, and it is ordered that the said C. D. be at liberty, under the power for that purpose contained in the said will, to appoint the said A. and B. to be such trustees accordingly, and to vest in them (when appointed such new trustees) the trust estate now vested in the said C. D. under the said will, and that such appointment shall be effected in manner following (that is to say). That the said C. D. be at liberty to appoint the said A. to be a trustee of the will of the said testator jointly with himself, and in substitution for the said E. F. deceased, and that on such appointment being made, the said C. D. be at liberty to retire from the trusts of the said will upon his appointing the said B. to be a trustee thereof, jointly with the said A. and in substitution of himself, the said C. D.; and his lordship doth order that the same A. and B. be at liberty, out of the trust funds which shall come to their hands as such trustees when appointed, to pay to the said C. D. his costs of this application and consequent thereon, and also his costs of the appointment of such trustees; such costs to be taxed," &c.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

(Before the LORDS JUSTICES.)

May 26 and 31.

PRICE *v.* MACAULAY.

Specific performance—Vendor and purchaser—Tenure—Misrepresentation—Waiver of objections—Condition of sale.

A. at a sale by auction purchased two lots, six and seven, both of which were described in the posting bills as "valuable freehold estate." Part of lot seven was described "as a reservoir and waterworks," &c. which, exclusive of land and buildings, yielded a yearly rental of 60l. By the third condition of sale all objections relative to the title were to be taken within a month from the delivery of the abstract or be considered as waived.

By the sixth condition any misstatement of the quality or tenure, outgoings, or other particulars of the premises was to be the subject of compensation.

The abstracts were delivered on the 30th of June, 1851. A. at first repudiated the contract, but ultimately, on the 7th of October, 1851, wrote to the vendor's solicitors saying that he did not any longer attempt to repudiate the sales.

It turned out that the property comprised in both lots was of copyhold tenure, but nearly if not quite equal in value to freeholds, and that the representation as to the tenure was not made with any wilful design of enhancing the value of the property.

As to lot seven it turned out, although it did not appear upon the abstract, that the pipes conveying the water from the reservoir to the houses, from which the rental of 60l. was derived, passed by permission, according to an arrangement determinable on a short notice, through the lands of two other persons, to whom 5s. and 10s. were paid each year for such permission. Two claims having been filed, specific performance was decreed as to both lots by the Court below, with compensation for the difference of the tenure, but allowing the plaintiff the same costs only as would have been allowed him had both claims been embodied in one.

Held, under the circumstances, that the decision of the Court below as to lot six ought to be affirmed.

Held, also, as to lot seven, reversing the decision of the Court below, that the claim ought to be dismissed on the ground of misrepresentation in the description of the property, in a matter unconnected with the title, and which, therefore, was not waived by the defendant not taking objections within the time mentioned in the conditions of sale.

Where a representation calculated to induce a belief in the value of property not warranted by the circumstances is made by a person, the inaccuracy of which might have been known to him, it will be considered as a fraud in equity, disentitling him to specific performance.

Semble, a purchaser, knowing the real state of facts would have no right to complain, but a vendor would have to shew his knowledge very clearly.

This was an appeal from the decision of Vice-Chancellor Parker, whereby, on two claims having been filed, he decreed specific performance of two contracts for the purchase of two lots (six and seven) at a sale, under the following circumstances:—

On the 26th of March, 1851, some property at Halifax was put up to sale by auction, by Messrs. Rudd and Kenny, as solicitors for the vendor, which was thus described in the advertisements, and also in the posting bills distributed in the room where the auction was conducted,—"Valuable *freehold* estate in Northowram, near the town of Halifax, to be sold by auction, by Mr. Carr, at the White Lion Hotel in Halifax, on Wednesday, the 26th day of March, 1851, at six o'clock in the afternoon, in the following or such other lots as may be agreed upon at the time of sale, and subject to conditions, &c. Lot 6. All those four valuable closes or parcels of land adjoining to lots 2 and 3, known by the several names:—The Little Jug, 1a. 3r. 2p.; The Square Field, 2a. 2r. 37p.; The Far Square Field, 2a. 2r. 21p.; The Well Jug, 1a. 2r. 12p.; total, 8a. 3r. 10p. Lot 7. All that substantial messuage or dwelling-house adjoining lot 6, now in the occupation of Mr. Joseph Thompson, with the garden and three closes of land adjoining, known by the several names and containing the several quantities following:—The Cobbler Common, 2a. 3r. 34p.; The Cowroyd, with the sites of buildings, &c. 1a. 0r. 37p.; The Lower Cowroyd, 1a. 2r. 20p.; total, 5a. 3r. 21p. *together with the reservoir and waterworks, and valuable supply of water contained in this lot, which, exclusive of the land and buildings, now yields a yearly rental of about 60l.* The above estate is situate immediately out of the limits of the borough of Halifax, and presents favourable sites for dwelling-houses and other buildings, is well *roaded*, abundantly supplied with fine water, contains beds of good brick and fine clay, and valuable seams of coal. *A plan of the premises, as divided into lots, may be seen upon application at the offices of* Messrs. Mallinson and Healey, architects and land surveyors, situate in Union-street, Halifax; and further particulars may be had at the offices of Messrs. Rudd and Kenny." The defendant, F. E. Macaulay, attended at the sale, and bid for lot 6, which was knocked down to him at 700l., and for lot 7, which was knocked down to him, at 1,310l. and the auctioneer, Mr. Carr, thereupon signed two memoranda in writing, indorsed upon two copies of the conditions of sale, to the effect that, as agent for both parties, he declared that the lots above mentioned were respectively sold by John Price to F. E. Macaulay. By the third of the conditions referred to, it is provided that the purchaser should be entitled to an *abstract of title deduced* for the last forty years, to be prepared and delivered at the expense of the vendor on or before the 30th day of June then next, any abstract of title deduced from an earlier date should not be required, except at the expense of the purchaser, who should, *within one month from the time of such delivery,* give or leave notice in writing at the office of Messrs. Rudd and Kenny, the vendor's solicitors, *of all objections relative to the title, and every objection or requisition of which notice should not be so given or left as aforesaid should be considered as waived,* and the title should be deemed as against the purchaser, to be approved and accepted, except as to any objection or requisition as to which notice should have been given, or left in manner as aforesaid. By the sixth condition, any misstatement of the quality, *tenure, outgoings, or other particulars* of the premises was to be the subject of compensation. By the seventh of the said conditions, it is provided that the purchaser should bear the expense of comparing the abstract with the title deeds, and other muniments of title, of preparing his conveyance and surrender or assurance, and any covenant which may be required for production of deeds from the vendor and all other necessary parties, of getting the same duly executed by them respectively, of all statutory declarations, official, attested, or other copies of, or extracts from, any matters of record, deeds, wills, registers, or other documents which may be required for verifying the abstract or otherwise, and of deducing the title to, getting in the conveyance and assignment or surrender of all outstanding, or other legal estates, if any there be.

On the 30th June, 1851, Messrs. Rudd and Kenny sent the abstracts to the defendant, with a letter, which is in the following terms. "Herewith we send you abstracts of title to the two lots purchased by you on the 26th March last. We also send you copies of conditions of sale and purchase contracts." On the 4th July following, the defendant returned the abstracts with the following answer, repudiating the contracts upon grounds which he totally failed in supporting:—"Sir, I return you herewith the abstracts, &c. left at my office on Monday last, during my absence from home. I have entered into no contract or agreement with Mr. Price, nor authorised any other party to do so for me." The abstracts were immediately sent back to Mr. Price, and a correspondence then ensued, the result of which was that the defendant asked that the matter might stand over for a short time, which request was acceded to. And afterwards, on the 7th of October, 1851, the defendant wrote to Messrs. Rudd and Kenny the following letter:—"In pursuance of my letter to you of the 30th ult. I now beg to inform you that I do not attempt to *repudiate the sales*. I am not, however, prepared to complete them at present, but I trust that on your Mr. Rudd's return from London an arrangement may be made that will be satisfactory to all parties. I have not yet looked at the abstracts, but I take it for granted that a good title can and will be made out." The hereditaments comprised in lots 6 and 7, *as it appeared by the abstract,* were not of freehold but of copyhold tenure, holden of the manor of Wakefield, in the county of York; but it was proved by the evidence that the suits and services in respect of all the copyhold hereditaments holden of that manor are compounded for, and the rents, fines, and heriots payable in respect thereof are fixed and certain, and are merely nominal, and the mines and minerals, timber and other trees in and growing upon the said hereditaments belonging to the copyhold tenants of the said hereditaments, and all the copyhold hereditaments holden of the said manor, are considered and treated by the owners thereof as equal in value to freehold hereditaments. As to lot 7, it turned out that the reservoir and waterworks, which were stated in the advertisements and posting bills to yield, exclusive of the land and building, a yearly rental of about 60l. supplied certain houses with water by means of pipes, part of which passed through the lands of two neighbouring proprietors, Mr. Haigh and Mr. Barraclough, to whom annual rents of 5s. and 10s. were respectively paid, for permission, that the pipes should pass through their lands, which permission, it appeared, might be withdrawn on a very short notice. The fact of the pipes passing through the lands of those gentlemen, or of those payments being made to them, did not appear on the abstracts, or on the plan referred to by the advertisements and posting-bills, and was not known to the defendant at the time he wrote the letter of the 7th October, 1851. Further correspondence ensued, the plaintiff's solicitors urging the immediate completion of the contracts, and on the 15th December, 1851, the defendant wrote to them a letter of that date, which is partly as follows. "Lot 7, notwithstanding your note of the 10th instant, I am still convinced that the water rent is considerably less than the sum advertised by you, namely, 60l. per annum, and consequently, that I am entitled to compensation, to be settled in the manner stated in the sixth condition of sale. But if I am charged with being the purchaser, surely I am entitled to, and claim to have delivered to me a full list of the tenants of the water, with the amount which each tenant pays, *and an account of his outgoings. I understand* a payment is made to Mr. Thomas Barraclough. Pray, what is that for? It strikes me the first thing for the vendor to do is to furnish an abstract of his title to the water and waterworks, which up to this date he has neglected to do, and until I receive it, it will be impossible for me to lay the abstract already received before counsel to advise thereon."

One objection raised against the specific performance as to both lots, was that the land was represented in the posting bills, &c. as freehold, whereas it was of copyhold tenure.

Another objection against decreeing specific performance as to lot 7, was the suppression of the fact that the reservoir was supplied with water by pipes which passed through the lands of other persons, and that rents were payable to those persons, and the misrepresentation that 60l. was the rental derived from the reservoir and waterworks alone, whereas it was derived from the reservoir waterworks and the permission for the pipes to pass through the lands of Mr. Haigh and Mr. Barraclough.

For the plaintiff it was contended, and, in effect, proved, that the difference in value between the copyholds sold and lands of freehold tenure was slight, if any; and that by the 6th condition, compensation might be awarded to the defendant for the difference in the value of the tenure. It appeared from the

evidence that the description of the land as of freehold tenure was the result of mistake on the part of the vendor's solicitors and agents.

For the plaintiff it was also contended that the defendant was a solicitor, and acted in such capacity for him relative to the property in question, and that he was aware of the tenure being copyhold, and also that the pipes passed through the lands of Haigh and Barraclough; this, however, was not considered as proved. That he had, moreover, waived all right to take such objections. Upon the two claims coming on to be heard before Vice-Chancellor Parker, on 3rd March, 1852, his Honour (amongst other things) declared that the agreements as to lot 6 and 7, mentioned in the claims, ought to be specifically performed, and referred it to the Master (in case the parties differed) to settle the amount of compensation to be made to the defendant in respect of the property comprised in the said agreements being held on copyhold instead of freehold tenure. And the Master was to take an account of the rents and profits of the said messuages, lands, and hereditaments comprised in the said agreements received by the said plaintiff or any person for him on or subsequent to the 29th of September, 1851; and that what the Master should settle as the amount of compensation, and what should be coming from the plaintiff on the said account of rents and profits, should be deducted from the sums of 700*l*. and 1,310*l*. making together 2,010*l*. the amount of the purchase-moneys, and that the Master was to compute interest at five per cent. from the 29th of September, 1851, on the balance of the purchase-money, after deducting such compensation as aforesaid, and upon the defendant paying to the plaintiff what should be remaining due to him for such balance of purchase-money and interest after such deduction as aforesaid, that the plaintiff should surrender or cause to be surrendered the messuages, &c. comprised in the said agreements to the defendant, &c.; and that the defendant should pay to the plaintiff his costs of these suits; and it was referred to the Taxing Master to tax such costs, but in taxing the same the Taxing Master was to allow to the plaintiff no greater amount of costs than he would have allowed if the plaintiff had embodied both claims in one claim, and filed only one claim against the defendant instead of two, &c. &c. From this decree the defendant now appealed.

Willcock and *Welch*, for the plaintiff, the spondent, contended—1st, as to lot 6 that the copyholds were equal in value to freeholds, and that as they were not by fraud represented to be such, the plaintiff was entitled to specific performance according to the 6th condition. Moreover, that the defendant had precluded himself from taking objections by not having taken them within a month according to the 3rd condition, and that he had in fact waived all objections by his letter of the 7th Oct. 1851. 2nd, as to lot 7, that there had been no misrepresentation as to the reservoir, &c. [Lord Justice KNIGHT BRUCE.—You allege that that property yields 60*l*. a year, whereas it was that and another thing, that is, the permission to lay down pipes through another person's land, which jointly produced that sum. The plaintiff paid 5s. to one and 10s. to another proprietor through whose land the pipes, which conveyed the water from the reservoir to houses which paid the 60*l*. passed, what excuse can be suggested for not stating that?] It was from a mistake that such statement was not made; but even supposing that it was not made, the defendant is bound, as he must have had notice from his employment for the plaintiff professionally, and there was also sufficient in the abstract to put him upon inquiries, which would have given him notice. [Lord Justice KNIGHT BRUCE.—Suppose a stranger had come to the sale, and bid for lot 7; what excuse would you allege? A vendor is bound to be plain and distinct in his representations; if he leave anything obscure and ambiguous it will be at his own peril. There are abundance of cases at law and in equity to that effect.] *Trower* v. *Newcombe*, 3 Mer. 704.

...hell and *G. L. Russell* for the defendant.

...ord Justice KNIGHT BRUCE.—The case divides itself into two branches: one as to lot 6, the other as to lot 7. With regard to lot 6, the only point is as to the tenure, and from the evidence there appears strong reason to be satisfied that the difference in value between copyholds in this manor and freeholds is very slight indeed. Perhaps, however, that would not be material for the plaintiff if we had been of opinion that there was anything wilful and designing in the representations substantially made by the advertisements and posting bills, that the whole was freehold. By wilful, I mean with a view to enhance the value. This was the part of the case which struck me as of great importance; and it is with great pleasure that I found myself able to exempt Messrs. Rudd and Kenny, and Mallinson from all wrong intentions, and probably it would not be too much to extend the same construction to the plaintiff. The difference is so slight in point of value, the right to the timber and minerals being in the copyholder, there is hardly a motive for the misstatement. But whether motive or not, if we had thought it made with wrong intention, it would have had considerable influence with us, notwithstanding the subsequent conduct of the defendant; but considering what the abstract stated, and the length of time the defendant had the abstract when he wrote the letter of the 7th of October, we are of opinion with the decree as to lot 6, and think it has dealt favourably to the defendant by allowing compensation for the difference of the tenure of the land. But we both think, perhaps not exactly on the same ground, but not much differing from one another, that the case is very different with regard to lot 7. That lot is described as all that, &c. [his lordship here read the description of lot 7 from the posting-bill], and there is this statement added, "together with the reservoir and waterworks, and valuable supply of water contained in this lot, which, exclusive of the land and buildings, now yields a yearly rental of about 60*l*." &c. The truth of the case being (which must have been known to the plaintiff personally, whether known to the agents or not), that the rent represented as being 60*l*. per year, was a rental obtained from certain hou... which were supplied with water from a reservoir, but the houses did not immediately adjoin the property. Between them and the reservoir lay lands of two other proprietors, and the water only arrived at the houses by means of pipes passing through the intervening lands of Mr. Haigh and Mr. Barraclough. It is not in proof that there was any title to the lands through which the pipes pass, the plaintiff was merely a permissive tenant from year to year, and this easement was essential to the enjoyment, and for it the plaintiff paid 5s. to the one, and 10s. to the other proprietor. The advertisement and posting bills have not a word about this, but represent the rental of 60*l*. as incident to the property, or part of the property. That, in my opinion, was a most serious and important misrepresentation concerning the property, calculated to induce an erroneous notion as to its nature and value. Here, again, I acquit the legal and other agents, concerned of any wrong intention, and it is not necessary to impute any wrong intention to the plaintiff. But, as Sir William Grant says, in *Burrowes* v. *Lock*, 10 Ves. 176, "The plaintiff cannot dive into the secret recesses of his heart, so as to say whether he did or did not recollect the fact; and it is no excuse to say he did not recollect it. At least it is gross negligence for a person to take upon himself to aver positively and distinctly that he is entitled to the whole of a fund, without giving himself the trouble to recollect whether the fact was so or not,—without thinking upon the subject." Now here, in my view is an important fact untruly represented, the inaccuracy of which might have been known to the person making it; a representation calculated to induce a belief in the value not warranted by the nature and circumstances of the property. Without imputing wrong intentions to any one, it is such a representation as in this Court must be considered a fraud, as much as in *Lysney* v. *Selby*, Ld. Raymd. 1118; and *Dobell* v. *Stevens*, 3 B. & C. 623. But supposing the defendant had actually known what the real state and condition of the subject were, it may be that he would not be entitled to complain, but in order to enable a vendor to avail himself of that defence in such a case he must shew very clearly the defendant's knowledge of the real state of things, for no person who has made a representation can complain that he is believed in what he has said. Now the purchaser had been connected with the profession of the law, and professionally concerned for the vendor, and it is possible he might have become acquainted with the real state of the case, but the evidence falls far short of this, that at the time of the purchase the defendant was aware of the exact state of things. It is then said, that subsequently he had notice; that, however, is not sufficient: in a case of misrepresentation, he must be shewn clearly to have had information of the real state of the facts from communications to him made. Now, here there is no evidence that he knew the real state of this property, after the purchase, when the correspondence was proceeding by which he became bound to perform the contract, independently of extraneous matter vitiating it. It is said that the abstract afforded that information but it was only to part; it did not shew a title to the easement. It is probable that it ought to have produced suspicion in the mind of a careful man; but that is not enough; the vendor ought to have stated to him that the water by means of the pipes, except by permission of others, could not reach the houses, and that permission might be withdrawn. If as to this point of notice the case goes so high as suspicion (of which I am not sure), it is not carried high enough, in my judgment. It is said that by the third condition objections to the title were to be communicated within a given time on pain of being barred from sustaining them. In the first place, however, it is at least doubtful whether the condition applies where there has been wilful misrepresentation, a point on which I refer to *Stewart* v. *Alliston*, 1 Mer. 26. But in the next place, it is a misapprehension to call this a question of title. This representation is not introduced into the contract, the auctioneer did not copy it, the contract ended with the quantities, this is a representation ultra the contract signed. It is such as was made in *Lysney* v. *Selby*, Ld. Raym. 1118; and *Dobell* v. *Stevens*, 3 B. & C. 623, as far from the title as anything can be, a misrepresentation vitiating the contract unless the Court be satisfied that there has been a waiver after a clear notice of the fact. My opinion is, with the greatest deference to the Vice-Chancellor, that the claim as to Lot 7, ought to have been dismissed. But as some facts not clearly made out here before inquiry were not stated to the Vice-Chancellor, I differ from him with less diffidence. The order, therefore, as to Lot 6 is to stand; as to Lot 7, to be dismissed, with costs.

Lord Justice Lord CRANWORTH.—I come to the same conclusion. But I had, during the argument, considerable doubt. Lot 7 is described as, &c. [his lordship here read the description of Lot 7]. If the contract signed had been a contract for land, together with a reservoir and a supply of water, I should have thought that what the vendor was bound to do was to make out a title to land and a reservoir of water and waterworks, which reservoir and waterworks yield a yearly rent of 60*l*. and that the question whether he made out that would have been a question of title. When I say works, I mean he would have had to shew that he was entitled to the whole of the waterworks. And then having delivered the abstract, and the defendant not having objected to the title within the limited time, the doubt I had was, whether the condition of sale did not exclude him from taking the objection, but I think, on further consideration, the doubt was unfounded. For this reason: the plaintiff having supplied a good title to the piece of land, there was nothing, on the point of title to which the defendant could take objection. The objection he takes is quite of a different nature: he says it was represented that the reservoir, &c. yielded a yearly rental of 60*l*. but it was connected with another person's land, or an easement over it, which produces that sum. There is a misrepresentation therefore, and the question of title, and the condition as to limitation of time for taking objection to the title, do not apply to the case. A vendor seeking specific performance ought to be optimæ fidei, whether he misleads intentionally or not is unimportant. As to this lot, therefore, the plaintiff is not entitled to specific performance.

ROLLS COURT.

Reported by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

Tuesday, May 4.

MAXWELL v. MAXWELL.

Heir—Trustee—Scotland—Heritable bond—Will, what passed under—Election.

A testator domiciled in England devised and bequeathed all his real and personal estate whatsoever and wheresoever to certain trustees, their heirs, &c. upon trust for his wife for life, and after her decease for all his children, their heirs, &c. as tenants in common. The will, though a good English will, was insufficient according to the Scotch law to pass a heritable bond in Scotland, to which the testator was entitled:

Held, that the heir was not a trustee of the heritable bond for the executors of the testator, and that he was not bound to elect between the heritable bond and the benefits to which he was entitled under the will, but took both.

This was a special case for the opinion of the Court as to the construction of a will bearing date the 27th of February, 1837, and duly made in the English form, and by a person domiciled in England, but who possessed valuable heritable bond in Scotland; and the question whether such a will, which, though valid as an English will, yet being in general terms, and insufficient to pass heritable bond in Scotland, would nevertheless have the effect of putting the heir to his election between the bond and the benefits he was entitled to under the will. It appeared that the testator was possessed of both real and personal estate in England, and of a heritable bond in Scotland, and was domiciled in this country; and by his will, duly made in the English form, and dated as above, gave, devised, and bequeathed to trustees, their heirs, executors, administrators, and assigns all his real and personal estate whatsoever and wheresoever upon trust for his wife for life, and at her decease upon trust for all his children, their heirs, executors, administrators, and assigns, share and share alike, as tenants in common. This will was executed by the testator when on his death-bed, and on that account, as well as because it did not contain the proper words of disposing, or the form of attestation required by the Scotch law, it was insufficient to pass the heritable

bond, which of course passed to the eldest son and heir-at-law of the testator; and the question was, whether he could take it, as well as the benefits given him by the will in common with the other children, or should be put to his election. The case was brought before the Court by the heir claiming the bond.

Anderson and *Fleming*, for the heir, contended that he was not put to his election. The case of estates tail and copyholds, which under the old law were not properly subjects of devise, is very different from that of a heritable bond, which would pass under a will if the proper formalities were observed in its form and attestation; the testator's intention to pass the bond at all events is clearly shewn by the general words of devise. And in *Brodie* v. *Barry*, 2 Ves. 127, where there was a general devise, the heir was put to his election. [The MASTER of the ROLLS.—In *Brodie* v. *Barry* there was specific mention of lands in Scotland.] No specific property was mentioned: the words were, "all my freehold, leasehold, and copyhold estates in England, Scotland, and elsewhere." If the words "England and Scotland" were omitted, that case would be similar to the present. They cited *Allen* v. *Anderson*, 5 Hare, 162; *Ker* v. *Wauchope*, 1 Bligh, 1; *Cunningham* v. *Gainer*, 1 Bligh, 27, n.; *Gibson* v. *Macbain*, 1 Mor. 600; *Bennett* v. *Bennett's Trustees*, 7 Shaw & Dun. 817; *Johnson* v. *Telford*, 1 Russ. & M. 241; *Churchman* v. *Ireland*, 1 Russ. & M. 250; *Rich* v. *Cockell*, 9 Ves. 369; *London* v. *London*, Hugh, Dec. 23; *Trotter* v. *Trotter*, W. & Shaw, 407; *Dundas* v. *Dundas*, 2 Dow. & Cl. 349; *Campbell* v. *Munro*, 15 Dunl. B. & Mur. 310; *Dummer* v. *Pitcher*, 2 Myl. & K. 262; Rop. Leg. 1582.

R. Palmer and *Bagshawe*, contra, contended that the case was governed by that of *Allen* v. *Anderson*, 5 Hare, 162.

The MASTER of the ROLLS thought the case was concluded by that of *Allen* v. *Anderson*. The question was, whether the words of the will were sufficient to raise a case of election against the heir-at-law. In *Allen* v. *Anderson*, Vice-Chancellor Wigram said that the point appeared to him to be governed by authority, and he felt himself bound by it; and though he (the Master of the Rolls) did not feel quite satisfied with the grounds of the Vice-Chancellor's decision, he thought it better to follow settled authorities than to act upon his own notions of what would have been a more expedient course. The Vice-Chancellor appears to have thought that where any act was to be done besides the mere execution of the will to give to its dispositions as in the case of copyholds under the old law, estates tail, or joint property, it was necessary in order to raise a case of election that the testator should refer to the property as distinctly as if it were the estate of a stranger, and that a Scotch heritable bond fell under the same rule. In this view of the case, however, the Vice-Chancellor has been shewn in the course of the argument not to have been altogether correct, for it appeared that no such act is necessary in the case of a heritable bond; and possibly a distinction ought to be made on that account between this case and that before his Honour. At the same time he (the Master of the Rolls) thought the facts before him were so similar to those of the case before the Vice-Chancellor that he could not distinguish this case from that of *Allen* v. *Anderson*, which distinctly laid down the doctrine that a general devise would not put the heir to his election in respect of a heritable bond. He was also of opinion that *Johnson* v. *Telford* was strictly in point. In that case it was said that some of the uses expressed in the will could not be applied to Scotch property, but he (the Master of the Rolls) could see no distinction in that respect between the uses .. that .... and in the present. He decided this case without any reference to some of the older authorities, in which an opinion was expressed with which he did not agree, that different words were necessary to raise a case of election in the case of an heir from that of any other person. He would also remark that one ground of his decision, by analogy to tl cases on the execution of powers, was that there were other lands in England on which the words of the will could operate. If it was desired to take the case to a higher court the case might be amended s. as to bring out more clearly the state of the Scotch law on the subject. Costs to come out of the estate.

March 17 *and* 18.

WHIELDON *v.* SPODE.

Will—Construction of—Charge of debts—Legacies on real estate—Exoneration of personal estate.

E. B. by her will gave all her real and personal estate to trustees on trust to pay her debts in the first place, and then such legacies as she should give by any codicil thereto. The testatrix by a codicil devised the T. estate to her sister for life, and after her decease directed it to be sold for payment of legacies, and she thereby made various bequests, amounting to a very large sum. The personal estate proved insufficient to pay the debts and legacies:

Held, that the object of the direction to sell at the death of testatrix's sister was merely to exempt her life estate from payment of the legacies: that the reversion after the life estate only was thereby made an auxiliary fund for payment of legacies; but that the personal estate was the primary fund, and was not exonerated.

The question in this case arose between the next of kin and the heir-at-law of Elizabeth Bree, the testatrix in the cause, as to their respective rights under the terms of the will and codicil of the testatrix. The will bore date the 7th of May, 1840, and contained the following clause.—"As to all my freehold, copyhold, and other real property, and all my personal estate of every kind and description, and whether in possession, remainder, or expectancy, and wheresoever the same may be, over which I have any appointing or disposing power, I give, devise, appoint, and bequeath the same, and every part thereof unto and to the use of the said George Whieldon, Robert Gordon, and William Harrison, their heirs, executors, administrators, and assigns, according to the nature and quality of the same estates and property respectively upon trust thereout in the first place to pay and discharge all my just debts and funeral and testamentary expenses; and in the next place to pay all and every the legacies, which I shall or may bequeath by any codicil or codicils to this my will, or any memorandum or writing, which I may hereafter add to or endorse on this my will. And, as to all the rest, residue, and remainder of my said real and personal estate and property hereinbefore by me appointed, devised, and bequeathed, and which shall remain after satisfying the trusts and purposes aforesaid, I appoint, give, devise, and bequeath the same unto and to the use of the said George Whieldon, Robert Gordon, and William Harrison in equal shares, as tenants in common, and to their respective heirs, executors, administrators, and assigns, for their absolute benefit." And the testatrix thereby appointed the said George Whieldon, Robert Gordon, and William Harrison executors of her will. The testatrix afterwards made two codicils to her will both dated the 31st August, 1841, by one of which she merely republished her will under the Wills Act; but by the other she gave various legacies, amounting in the whole to upwards of 55,000*l.* and made a devise in these terms: "To my dear sister, Mary Birch, I give and devise the Tradeswill estate for her life; at her death to be sold for the payment of legacies." And she also thereby devised the Ash estate to two of the sons of the said George Whieldon. William Harrison died in the lifetime of the testatrix, and his residuary gift therefore elapsed. In March, 1845, the testatrix died, leaving George Whieldon, Robert Gordon, and Mary Birch her surviving. Mary Birch and Josias Spode were the next of kin of the testatrix, the latter of whom was also her heir-at-law. A suit having been instituted for administering the trusts of the will and codicils, a decree was made therein on the 27th of June, 1846, directing a reference to the Master and the usual accounts and inquiries. The Master, by his report, found that the personal estate amounted to about 48,000*l.*; that the real estate consisted of the Tradeswill estate, devised to Mary Birch for life, and of the value of 13,000*l.*; the Ash estate, also devised, of the value of 88,000*l.*; and a third estate, called the Stoke estate, valued at 11,000*l.* The personal estate being insufficient to pay the debts and legacies, a decree was made in the cause, on further directions, on the 25th March, 1850, ordering the Stoke estate to be sold, and the produce paid into Court. Mary Birch, the tenant for life of the Tradeswill estate, having died since the date of that decree, the cause now came on again upon further directions, and a question was raised as between the heir-at-law and next of kin of the testatrix, in respect of the gift to William Harrison, which had lapsed by reason of his death in the testatrix's lifetime, whether the Tradeswill estate was or not, by the codicil, made the primary fund for payment of the legacies, to the exoneration of the personal estate.

Roupell and *Evans* for the executors.

Lloyd and *V. S. Lean*, for the heir-at-law, contended that the next of kin must shew that there was an express exemption of the personal estate before the legacies could be thrown on the real estate. It was not enough merely to shew that the real estate was charged; and to see whether the personal estate is exonerated you must look at the whole will to ascertain the intention of the testator. The testatrix here makes three persons her executors, and then before the disposition of the real and personal estate, she says all that coming to them as executors, they are to apply that on the trusts of the will, and then she gives all her property to them. This circumstance, generally speaking, as Lord Eldon has observed in *Bootle* v. *Blundell*, 19 Ves. 527, affords an argument against the intention to exempt the personal estate. Besides the testatrix has not anywhere exempted the personalty, but has put realty and personalty on an equal footing; and this being so the rule of law is unaltered, and the personalty is the primary fund. Then as to the particular estate in question, the Tradeswill Estate, there is no direction to sell and create a mixed fund, but merely a declaration that the estate shall be sold, which amounts merely to a repetition of an obligation which is laid on it by the will. There is no exoneration of the personalty. All that is done by the codicil is to give a life estate to Mary Birch, and after that the testatrix in effect directs that the estate shall go as mentioned in the will. (They cited *Boughton* v. *James*, 1 H. L. Cas. 406, reviewing on this point, S. C. 1 Colly. 26; *Davies* v. *Ashford*, 15 Sim. 42; *Peterson* v. *Scott*, 14 Jur. 284; *Roberts* v. *Walker*, 1 Russ. & M. 752; *Lord Inchiquin* v. *French*, 1 Cox, 1; 1 Ambl. 33; *Watson* v. *Prickwood*, 9 Ves. 417; *Rhodes* v. *Rudge*, 15 Sim. 79; *Walker* v. *Hardwick*, 1 Myl. & K. 396.)

R. Palmer and *G. L. Russell*, for the next of kin, admitted that on the will alone there was no ground for contending that the personal estate was exempted; but they insisted that the codicil took the Tradeswill Estate out of the general charge contained in the will, and made it after the death of Mary Birch, the primary fund for payment of the legacies given by the codicil, and that the legacies so given were postponed till after the death of the tenant for life. They referred to 2 Jarm. Wills, 592.

The MASTER of the ROLLS.—I am of opinion that in this case the personal estate is not exonerated from the charge of legacies. On the will there is no doubt; the only question is on the codicil. To exonerate the personal estate you must shew a clear intention to that effect. By the will the testatrix subjects one to the payment of her debts, and one to the payment of her legacies, to be given by any codicil to her will, and gave all her real and personal estate to her executors. The legacies given by her codicil amounted in the whole to 52,500*l.* while the personal estate was somewhere about 48,000*l.* The personal estate, therefore, was not sufficient for the payment of her debts and legacies, and she must therefore have known that the provision she had made for the various objects of her bounty would not be satisfied out of her personal estate, and that therefore it was necessary to make the real estate contribute to the deficiency. Now, the testatrix prefaces the codicil by a devise to Mary Birch for life, and at her death the estate so given to her for her life is to be sold for the payment of legacies. The object of the testatrix was, in my opinion, to exempt the life estate of Mary Birch from the payment of legacies. This was necessary to secure to Mary Birch the full enjoyment of the estate for life, as under the will it was liable to the legacies; and therefore the testatrix says, that at Mary Birch's death it is to be sold, and not before. It would, moreover, be a strange construction to hold that the legacies are postponed till the death of Mary Birch, for, according to that construction, some of the legatees might never take at all, though they survived the testatrix. That would not, in my opinion, be a fair construction. On the whole, I think that the whole scope and object of the codicil was simply to exempt the life estate of Mary Birch from the payment of legacies, and that the intention of the testatrix was to make all the real estate, with the exception of Mary Birch's life estate, an auxiliary fund for payment of legacies.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. HENRY COOKE, Esq. Barrister-at-Law.

Thursday, April 15.

FLINT *v.* WOODIN.

Vender and purchaser—Specific performance—Auctioneer vendor—Puffing.

A vendor who was auctioneer sold an estate, but did not disclose that he was owner. the purchaser had before the sale intimated he would bid a certain price: the property was knocked down at that sum; the particulars of sale stated the property to be let on lease, containing a covenant to keep in repair. The vendor could not shew in whom this lease was vested. The purchaser refused to complete, on the ground of no person being shewn who could be proceeded against for breach of the covenant to repair; that the vendor had an unfair advantage over him, and that the sale was not conducted bonâ fide, but the Court decreed a specific performance with costs.

This was a claim for the the specific performance of an agreement for the purchase of copyhold property. The claim was filed by Mr. George Flint against Mr. J. S. Woodin, and it stated that on the 12th of August, 1851, three copyhold houses, 16, 17, and 18, Hamilton-row, Bagnigge Wells-road, forming lot 5 of a certain printed particular, were put up by him for sale by auction, when Mr. Woodin attended, and was the highest bidder for, and was declared the purchaser at 700*l.* and that by an agreement with Mr. Flint, dated the same day, Mr.

Woodin declared himself the purchaser at that price, and h[illegible] it 140*l.* and agreed to pay the remainder and compl[illegible] his purchase in accordance with the conditions of sale; that he, Mr. Flint, had made several applications to Mr. Woodin to complete, but he had not done so. The said George Flint therefore claimed to be entitled to specific performance of the said agreement and to have his costs of the suit, and for that purpose to have all proper directions given, and he thereby offered specifically to perform the same or his part. The claim was supported by the affidavit of the plaintiff and his clerk, and of the plaintiff's solicitor and the clerk of the latter. In the particulars of sale the property was described as "a desirable copyhold estate, consisting of three houses," &c. "with early reversion to a considerably improved rent," and to the description was added, "This desirable estate is let upon lease, containing all the usual covenants to keep in repair, &c. at a ground-rent of 18*l.* per annum, for a term which will expire at Christmas, 1852, when seventy guineas per annum may readily be had." The abstracts were duly delivered, and some objections were taken and requisitions made, but the only one necessary to be mentioned was one calling on the vendor to shew who was the lessee or assignee of the lease referred to, in the note at the foot of the particulars of sale, as the houses offering to be out of repair, the purchaser wished to know against whom he could go on the covenants to repair.

The defendant's affidavit was in all material parts as follow:—I called on George Flint on the 7th of August, 1851, and in course of conversation he directed my attention to the particulars and conditions of sale, and he recommended me to purchase the same premises; and I therefore looked at the particulars, and consulted him as to the price at which the property would probably be sold, and I inquired whether he thought it would be sold at about 700*l.*; to which he replied that it possibly might, but that he did not think it would be sold at less. He then recommended the property to me in very strong terms, and advised me to purchase, and said that I should find it cheap at the above price; and in answer to my inquiry for the reason why the vendors wished to sell, he said that the property was situated in a part of the town distant from where their other property lay, and that he understood to be their only reason for parting with it." But, relying on such representations, he allowed the sale, and bought at 700*l.*; that Flint acted as auctioneer, and there was little competition, and Flint offered to get the necessary conveyances to the deponent for 5*l.* which was declined; that deponent's solicitors informed him, on the 27th of September, 1851, that the title was not in a satisfactory state, and that there was no sufficient evidence of the existence of any subsisting lease, and at that time deponent was first informed that Flint was owner of the estate. That the deponent did not see the premises until the end of October 1851, and then only the outside; and that in the following month he was informed by a surveyor that the repairs would cost 200*l.* The affidavit stated that Flint concealed the fact of being the owner, and that deponent was thrown off his guard, and relied more implicitly on his statement than he would have done had he known that Flint was the owner; that he considered and treated Flint as auctioneer only, and not suspecting he was the owner, and considering his representations as only those of an agent, he took his advice in that character, and did not make such inquiries as he would have done as to the state and condition of the property had he suspected Flint to be the owner. The affidavit then stated the deponent's belief that the auction was not conducted bonâ fide, but that some of the biddings were not real; that the plaintiff is unable to prove that the biddings were bonâ fide; that the action was conducted by the plaintiff with the unfair advantage of an understanding from the conversation of the 7th of August, that the defendant was willing to bid up to 700*l.* and that other biddings were arranged accordingly, and that deponent immediately after the sale told the plaintiff that the deponent would not have bid another 10*l.* beyond the 700*l.* Part of the affidavit of one of the firm of the defendant's solicitors was to the effect that on the 13th of March, 1852, the defendant expressed his willingness to complete, if he could be advised that a good title could be made, and that a letter was that day written to the plaintiff's solicitor offering to have a resale, each party bearing half the loss, if any; but if a gain were made the whole to belong to the plaintiff, or that the plaintiff should allow a deduction of 5*l.* per cent. off the purchase-money. The plaintiff filed an affidavit in reply, in which he denied that he recommended the property to the defendant; and he swore that he told the defendant that it was uncertain what the property would fetch, and he told the defendant that the reason for the property being sold was that the proprietor had no other property, which was the fact, in the same neighbourhood. He also swore that there were thirty persons at the sale, and there was a very fair competition, and were at least four bonâ fide bidders including the defendant; that he did not offer to get the conveyance done for 5*l.* but said his solicitor would probably not charge much above 5*l.* for it. That it is not unusual for auctioneers to sell their own property, and that at the sale only one person was employed to bid to prevent a sale below the value, the reserved bidding being 695*l.* and that there were twenty-five biddings at the sale. He denied that the defendant told him he would give, or was disposed to give, 700*l.* and he then swore that he believed the property to be worth 800*l.* and that he would not have sold it for less than 700*l.* by private contract, and that he believed the rental to be nearly 70*l.* a year.

Sir *W. P. Wood* and *Boyle*, for the plaintiff, contended that the defendant was not entitled to the production of evidence as to the devolution of the title to the lease. The occupiers had paid the rent, and more than the amount stated, and that was sufficient. There was nothing to shew that the plaintiff made any fraudulent misrepresentation as to the existence of a lease, and every presumption was the other way. Then it was said the auctioneer was also the owner; why not? Might not a man sell his own property by auction? Assuredly he might. But then the defendant, by his affidavit, said his first conversation with Mr. Flint made that gentleman aware that he would bid 700*l.* Leaving out of view, for the sake of the argument, the denial of this in Mr. Flint's affidavit in reply, suppose it had been so, would not Mr. Flint have the same right to the bidding as if he had been not the owner but only the auctioneer? And if he had been only the auctioneer and not the owner, it is obvious it would have been his duty to the vendor to obtain the 700*l.* at least, and to take care that the sale was not for less. The affidavit in reply as to *mala fides* in the employment of a puffer was plain and satisfactory, and no sufficient reason had been shewn to the Court for the refusal of a decree for specific performance, with costs.

W. T. S. Daniel and *Smale* for the defendant.—The particulars of sale convey to the defendant the notion that the lease on which the houses are held is a repairing lease, and unless the plaintiff can shew in whom it is vested, so as to enable the defendant to enforce the covenant for the repairs, he is not in a condition to enforce the specific performance of the agreement. The auctioneer being himself the vendor, has given him an unfair advantage over the defendant, as by means of that he has found out that the sum which was to be offered was 700*l.* and so the biddings could be regulated. The defendant was thrown off his guard by the recommendation of the plaintiff that the property would be cheap at 700*l.* and therefore he did not, until long after the sale, look at it; but when he did so, he found it dilapidated, and his own surveyor reported that the repairs would cost 200*l.* The plaintiff is bound to produce evidence in support of his allegation in the particulars of sale as to the existence of the lease, and he has not so done, and the abstract delivered not shewing that never was a complete abstract. *Hobson* v. *Bell*, 2 Beav. 17; *Blacklowe* v. *Laws*, 2 Hare, 40; *Symonds* v. *James*, 1 Y. & C. C. C. 487. The auctioneer is considered as a mere stakeholder; and if he be more, that is, the vendor himself, he ought to disclose it. Here, Mr. Flint took the money at a time that the defendant believed him to be a mere stakeholder, and moreover, he had obtained before-hand the knowledge of the fact of the defendant's willingness to bid 700*l.* The following cases, among others, were also cited and relied on:—*Robertson* v. *Skelton*, 12 Beav. 363; *De Visme* v. *De Visme*, 1 Mac. & Gor. 336; and *Clive* v. *Beaumont*, 1 De G. & Sm. 397.

Sir *W. P. Wood*, in reply, observed that although it was said the defendant did not originally know that Mr. Flint was owner as well as auctioneer, still he proceeded with the matter at a time, subsequently to that at which, by his own affidavit, he knew the fact. If that was a valid ground of objection, which it was not, the defendant should have refused to go on from the time he knew of it. Nothing had been shewn to bar the plaintiff of the relief he sought, and he therefore asked the Court for the decree he sought by his claim.

The VICE-CHANCELLOR.—This is a claim for specific performance. Three objections are made on the part of the purchaser: 1st. That, in truth, there is no person to answer for the covenants in the lease; 2ndly. That the auctioneer himself filled the character of the vendor; and, 3rdly. That there was a puffer employed at the sale. As to the first question, when this property was put up for sale, it was described as property "which is held subject to a lease;" it is not the sale of a leasehold interest, but, the reversion is, what is sold. The property is sold as being "a substantially-built brick house, of copyhold tenure," and it is said, at the first, "this desirable estate is sold subject to a lease containing all the usual covenants to keep in repair, at a ground-rent of 18*l.* per annum, for a term that will expire at Christmas, 1852." I agree to this position, that if, in truth, a vendor knowing that there is no person who could be liable upon the covenants in the lease, puts up the property to sale as being let upon a "lease containing all the usual covenants to repair," that that might be well considered as a false representation on the part of the vendor; for representations that the lease contains all the usual covenants to repair are calculated to lead a purchaser to believe that they will all be performed. If the vendor knew at the time that the performance of the covenants cannot be enforced, that would go far to induce the Court to hold that it was a ground for refusing specific performance of the agreement. But that is a case to be made out by the evidence. How do the facts of this case stand? There is a counterpart of the lease granted in 1799; the rent under that has been received; there are two persons now in possession of two of the houses, constituting the property demised by the landlord, and paying the rent. I could not possibly hold that that could be considered as anything like a fraudulent representation, which would preclude the Court from decreeing specific performance of the agreement. The purchaser might have made inquiry, if he had thought it necessary to do so, or had considered it a material ingredient in the question of the price he was to pay for it. The second objection is, that the auctioneer, in this case, filled the character also of vendor. It is said, as the ground of that objection, that the auctioneer is the agent of the purchaser, when the purchase is made. It is quite true that, for some purposes, the auctioneer is the agent for the purchaser, but he is not for all purposes. The auctioneer, as it seems to me, may properly hold the character of owner, and that no objection can be well founded on that ground. But, if any objection could be founded upon that, the facts of this case displace the objection; for what took place here, was the sale taking place on the 12th of August, the abstract was delivered on the 21st, which gave notice to the purchaser's solicitors, that the auctioneer was himself the vendor of the property. It does not rest there, because, in September ensuing, distinct notice comes to the purchaser himself, that the auctioneer is the vendor. In that state of circumstances, if the purchaser meant to insist upon that objection, it was his duty at once to raise it; and not having done so, I think that objection, if any, must be considered as having been waived. I consider that a purchaser, knowing of an objection of this description to be raised upon the contract, which will affect the validity of the contract, cannot lie by, and then, afterwards, attempt to avail himself of it. The instant a party knows that there is an objection, which affects the contract, it is his duty immediately to insist upon that objection, if he means to rely upon it. He cannot treat the contract, as subsisting, at one time, and at a subsequent period say there was no contract. The last objection is, that there was a puffer employed at the sale. I was very much struck at an early period of the argument with the consideration of the question, whether the fact of there being a person bidding through the last long series of biddings, antecedent to the final close, might not affect the case. I was rather struck at the time with the view that the Master of the Rolls took of the question in the case of *Smith* v. *Clarke*, 12 Vesey, 483, where he says that a bidder cannot be employed to "screw up the price, or take advantage of the ignorance of the bidders." We must look at the question, whether this person was employed for the purpose of "screwing up the price." I cannot draw the inference that he was employed for such a purpose, from the fact of his having bid against a bonâ fide bidder through a long series of biddings. For it is not to be expected that when a person is employed to bid for property up to a certain sum, say 700*l.* he should at once proceed to bid 695*l.* he would rather bid gradually up to 695*l.*; and if, after that, no bonâ fide bidder offers against him, that fact alone should not lead to the conclusion that the party is employed to "screw up the price," or to take advantage of the ignorance of the bidder. Then it rests upon this,—Mr. Smale says, the reserved bidding was fixed, with a knowledge that this would be a sum of 700*l.* for the houses, and that it was fraudulent to force it up to that by a person who was not a bonâ fide bidder. Looking at the affidavit of the defendant, I find no more than this, that the plaintiff went for the purpose of receiving rent from him, the auctioneer, who was himself the vendor of the property, and he then inquired what he, the auctioneer, thought it would be sold for? whether it would be sold at about 700*l.*? To which Flint, the auctioneer and vendor, replied, that he thought it possibly might, but he did not think it would be sold at less than that sum. Then Flint recommended him in strong terms and advised him to purchase it, and said he would find it c[illegible]. This was on the 7th of August. The sale does [illegible] take place until the 12th, and from that time till the sale, this gentleman does not go to look at the property, or make further inquiry, but he relies on the

representation so made. Now there was no objection at that time; he merely makes the inquiry, will it sell for 700*l.*? Is it a fraud, when the vendor and auctioneer, when a party comes to him and makes an inquiry whether it will be sold for 700*l.* chooses to fix the reserved bidding at that sum? I think not. It was open to the vendor to make inquiries. I think upon these grounds, I cannot refuse to make a decree for specific performance of the contract; and though I have had some doubt on the point of costs, I think I cannot do justice unless I give costs against the purchaser. Decree specific performance, and as the question of title has been submitted to the Court, and the Court being of opinion that there is no valid objection to the title, there must be a decree for specific performance, with costs, and a reference to the master to settle the conveyance.

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

Jan. 15 *and Feb.* 9.

TAYLOR *v.* FROBISHER.

Will—Construction—"Vested"—Remoteness.

By will a sum of 1,000*l. charged on real estate was given to trustees upon trust to invest and to pay the interest to A. B. for life, and after her decease to pay, apply, and dispose of the principal sum and interest unto, between, or amongst all and every the child and children of A. B. in equal shares, or if but one such child the whole to such only child, to be a vested interest or vested interests on their respectively attaining the age of thirty years; and if any child or children of A. B. should die under thirty without lawful issue, the share or shares of him, her, or them so dying, as well original as accruing, should go to the survivors or survivor, and become vested at such ages or times as the original share or shares; and in case all the children die under thirty without issue, the same was given over. A. B. had two children, C. D. who died in her lifetime unmarried, and under thirty years of age, and E. F. who survived her and attained the age of thirty:*

Held, that E. F. and the executor of C. D. were entitled to the fund, as the children of A. B. took a vested interest under the will, the executory bequest on the death of any under thirty without issue being void for remoteness.

By a marriage settlement made on the marriage of Thomas Taylor and Ann Frobisher, and dated the 12th of February, 1810, W. Blanchard, for himself and his wife Mary, covenanted to surrender, and the said Mary Blanchard appointed, certain copyhold hereditaments of the manor of Fishlake, in the county of York, to the use of A. Thorpe and J. Gray, in fee, according to the custom of the said manor, upon trust, to pay the rents and profits thereof to Mary Blanchard for her separate use for life, and after her decease, in case the said Ann Taylor, or any child or children of her should be then living, upon trust to raise 1,000*l.* as therein mentioned, and subject thereto to stand seised of the said copyhold premises, in trust for such person or persons, for such estate or estates, intents, and purposes, and in such manner and form as the said Mary Blanchard, whether covert or sole, and during and notwithstanding her coverture, by any deed or deeds, writing or writings, with or without power of revocation, by her signed and sealed as therein mentioned, or by her last will and testament in writing, or any codicil or codicils thereto, should from time to time direct or appoint, and in default of and subject to such appointment, in trust for the heirs, executors, administrators, and assigns of the said Mary Blanchard. By her will, dated the 23rd of March, 1833, expressed to be intended as an execution of the said power, Mary Blanchard devised and appointed unto her son, Thomas Frobisher, his heirs and assigns, the copyhold hereditaments therein described, and situate at Fishlake aforesaid, subject nevertheless to and charged and chargeable with the payment of the sum of 1,000*l.* to be paid unto Jonathan Gray, William Husband, and James Barber, their executors, administrators, and assigns, upon the trusts thereinafter declared concerning the same. The testatrix then declared that her said trustees should permit the said sum of 1,000*l.* to remain chargeable on the said premises until the same should be required for the purpose of the trusts thereinafter declared concerning the same, and should in the meantime receive of the said Thos. Frobisher, his heirs or assigns, interest thereupon after the rate of 4*l.* per cent. per annum, by equal half-yearly payments; but, nevertheless, in case her said son should be desirous of paying the same, the said trustees should receive the same, and invest the said sum at interest in their names as therein mentioned, until the said trust moneys should be payable or transferable as thereinafter mentioned. The will then proceeded as follows: "And upon further trust to pay the interest, dividends, and annual proceeds of the said sum of 1,000*l.* whether remaining on the security of the said estate, or invested as aforesaid, to my daughter Ann Taylor, and her assigns, for the term of her natural life, and from and after her decease upon trust to pay, apply, and dispose of the said principal sum of 1,000*l.* and all interest due thereon, unto, between, or amongst all and every the child and children of my said daughter, in equal shares, or if there shall be but one such child, then the whole to such only child, to be a vested interest, or vested interests, on their respectively attaining the age of thirty years, and if any child or children of my said daughter should die under the age of thirty without lawful issue, the share or shares of him, her, or them so dying, as well original as accruing, by survivorship, shall go to the survivors or survivor in equal shares, if more than one, and become vested at such ages or times as his, her, or their original share or shares. And upon this further trust that they my said trustees do and shall, after the decease of my said daughter, and until the share or respective shares of such child or children as aforesaid shall become vested and payable by and out of the interest, dividends, and annual proceeds of the said sum of 1,000*l.* pay and apply to and for the maintenance and education of the ..... child or children respectively, such yearly sum or sums of money as to them my said trustees shall seem meet, not exceeding the interest of the expectant share of such child or children respectively in the said principal sum of 1,000*l.* And I hereby direct and declare that in case all the children of my said daughter shall die under the age of thirty years and without lawful issue the said Jonathan Gray, William Husband, and James Barber, their executors, administrators, and assigns, shall stand possessed of the said principal sum of 1,000*l.* upon trust to pay or transfer the same unto said Thomas Frobisher, his executors, administrators, and assigns." By a codicil to her will dated the 12th Feb. 1833, Mary Blanchard, after reciting that part of the copyhold property had been enfranchised, and was become freehold, declared that the description thereof as copyhold in her will should not affect the devise thereof. Mary Blanchard died on the 12th Feb. 1835, leaving Thomas Frobisher and Ann Taylor her only children, and on the 23 Feb. 1850, the will and codicil of the testatrix were proved in the proper Ecclesiastical Court by the said Thomas Frobisher. Ann Taylor died on the 20th Nov. 1841, leaving Thomas J. Taylor, her only child her surviving, but having had issue one other son named Benjamin Frobisher Taylor, who died without having been married on the 5th April, 1839, aged twenty-seven, having by his will dated the 2nd Jan. 1836, appointed Richard Tollington and John Loseley executors thereof; and Richard Tollington having renounced probate, the will was proved by John Loseley alone on the 29th July, 1839. Thomas J. Taylor attained the age of thirty years on the 8th Oct. 1849. James Barber was the only surviving trustee of the sum of 1,000*l.* appointed by the will of Mary Blanchard. Thomas Frobisher paid to Ann Taylor during her lifetime interest in respect of the said 1,000*l.* and subsequently to her decease and up to the 12th of Feb. 1850, he paid interest in respect thereof to the said Thomas J. Taylor, but the whole of the principal still remained unpaid. Thomas J. Taylor concurred with the other parties claiming an interest in the said sum of 1,000*l.* in submitting these facts to the Court by way of special case. The questions thereby submitted for the opinion of the Court were, whether the bequest or appointment contained in the will of Mary Blanchard of the sum of 1,000*l.* after the decease of Mary Taylor unto and amongst all and every the child or children of the said Ann Taylor, and charged upon the estates in the said will mentioned, was or was not a valid bequest, and if valid, who was or were the person or persons then entitled under such bequests.

Russell and *Younge* for T. J. Taylor.

Bazalgette for the executor of the will of Benjamin F. Taylor.

Malins and *C. Barber* for the other defendants.

Russell in reply.

The following cases were cited:—*Bland* v. *Williams*, 3 My. & K. 411; *Davies* v. *Fisher*, 5 Bea. 201; *Berkeley* v. *Swinburne*, 16 Sim. 275; *Harrison* v. *Grimwood*, 12 Bea. 192; *Saunders* v. *Vautier*, Cr. & Ph 240; *Glanvill* v. *Glanvill*, 2 Mer. 38; *Greet* v. *Greet*, 5 Bea. 123; *Russell* v. *Buchanan*, 7 Sim. 628; 2 Cr. & M. 561; and *Bull* v. *Pritchard*, 1 Russ. 213; 5 Hare, 567.

Monday, Feb. 9.—The VICE CHANCELLOR said, the question in this case depended on the meaning which, upon consideration of this will, was to be attached to the word "vested," as used by the testatrix. It was scarcely necessary to say that in construing this will the Court placed out of sight the circumstance that if one construction were adopted, the disposition in favour of the children of Ann Taylor would be void for remoteness; while, if the other were taken, it would be in a great measure supported. The Court in such cases, in the first instance, ascertained what were the provisions of the instrument and whether they were opposed to the ordinary rules of construction; and then to what extent they were in accordance with the rules of law. In this will the testatrix used the word "vested," not in its ordinary sense, but in the sense of not being subject to be divested, so as to be defeasible. It was only in this way that her intention could have been carried into effect in the form which was in her contemplation. The word "vested," though it had a technical or strictly legal meaning, especially when applied to various interests in real estate, was in effect used in different senses. In *Barnes* v. *Allen*, 1 Bro. C. C. 181, Lord Thurlow said:—"Contingent and executory interests may be as completely vested as if they were in possession;" obviously there using the word "vested" in the sense of "transmissible." In *Berkeley* v. *Swinburne*, 16 Sim. 275, where the testator directed the shares to be vested interests in sons at twenty-one and in daughters at twenty-one or marriage, the Lords Commissioners construed the word to mean "indefeasible," and held that the shares vested before the ages of twenty-one or marriage, on the death of the tenant for life, subject to be divested on their deaths under that age, and in the case of daughters without having been married. In *Glanvill* v. *Glanvill*, 2 Mer. 38, Sir W. Grant construed the "vested," in its ordinary sense, observing, however, that there was no evidence from any part of the will that the testator did not affix to the word its precise legal meaning. In the present case the testatrix, after the death of Ann Taylor, directed the trustees to pay, apply, and dispose of the said principal sum of 1,000*l.* and all interest due thereon, unto, between, or amongst all and every the child and children in equal shares, or if there shall be but one such child, the whole to such only child, to be a vested interest or vested interests on their respectively attaining the age of thirty years; and if any child or children of Ann Taylor should die under the age of thirty, without lawful issue, the share or shares of the child or children so dying should go to the survivors or survivor. In this disposition, as well as in what followed it, the testatrix contemplated that each child before attaining the age of thirty years, was in some sense at least to be entitled to a share of the fund which she designated as the share of such child. If any child died under thirty, without issue, then the share of such child was to go to the others; if any child died under the age of thirty years, leaving issue, the share of such child was not to go to the others, but the original gift remained unaffected. The conclusion appeared to be irresistible, that the testatrix intended the child so dying with issue to retain his share as an interest transmissible to his representatives. His Honour considered that it did so by force of the original gift. It was impossible to suppose that the words implied an intention that while the share of a child dying and leaving no issue was to go to the others, a share of a child dying leaving issue was not to go to the others, but to go to those who were to take in default of appointment. So, when the testatrix, in the ultimate disposition of the fund gave it to Thomas Frobisher, in the event of all the children of Ann Taylor dying under the age of thirty years, and without issue, she must have meant that to be the only event in which, under the previous dispositions, the fund was to be undisposed of; but in the event of an only child dying and leaving issue, the fund was not to go over to Thomas Frobisher, because such deceased child took an absolute interest in the fund. The object of the testatrix was to make a complete disposition of the fund, and in such a case the Court always endeavoured to construe the will so as to prevent a failure of the interest of any party named therein. He considered that here the meaning was, that all the children of Ann Taylor were to take vested interests in the fund, subject to be divested by their deaths under thirty without issue, and that when they attained thirty they were to take respectively indefeasible interests in their shares. This construction, which made all the will consistent, was in accordance with what was said by Sir John Leach in his judgment in the case of *Bland* v. *Williams*, 3 My. & K. 411. He there said, "Whether in a gift of this nature the time of vesting is postponed, or only the time of payment, depends altogether upon the whole context of the will. If the gift over is simply upon the death under twenty-four, then the gift could not vest before that age. In this case the gift is not simply upon the death under twenty-four, but upon the death under twenty-four without leaving issue. If upon a death under twenty-four, at whatever age issue was left, then the gift over is not to take place. It is in effect, therefore, a vested interest with an executory devise over in case of death under twenty-four without leaving issue. All the cases upon the subject, except the one before Lord Gifford are reconcileable with this distinction." If the case before Lord Gifford were referred to, it would be found to form no exception to the rule, as stated by

Sir John Leach. In that case (*Bull* v. *Pritchard*) the gift was not to any children, except such as should attain the age of twenty-three years. Such a gift in favour of children was of the same nature as that in *Glanvill* v. *Glanvill*; and in the latter case Sir William Grant's decision would probably have been different if the gift over had been in the event of the death of children under age without leaving issue. The case of *Russell* v. *Buchanan*, had been referred to, but there was nothing in the will in that case to shew that the word "vested" was to be taken in any other than its ordinary sense, the clause being similar to that adverted to in *Glanvill* v. *Glanvill*, and *Bland* v. *Williams*, for the destruction of the contingent remainders in that case by an event subsequent to the testator's death, could not affect the construction of the will. In the present case the direction as to maintenance did not throw much light upon the intention of the testatrix either way, neither did the discretionary power to the trustees. She appeared to have considered the fund as entirely disposed of by the previous disposition. For the reasons he had stated his Honour's opinion on the case was, that the bequest or appointment in the will of Mrs. Blanchard of 1,000*l.* after the decease of Ann Taylor unto and amongst all and every her child and children was a valid bequest, and that the gift over of the shares of any child or children who should die under the age of thirty without issue was void for remoteness, and the consequence was that Thomas J. Taylor and the executor of Benjamin Frobisher Taylor were the persons who were entitled under the clause in question. The costs of this special case must come out of the fund.

Tuesday, April 27.
WILSON v. BENNETT.
Will—Construction—Power of sale—Heir of surviving trustee.

In this case, which is fully reported 17 Law T. Rep. 240, Newman Hyde, the testator, had given his real and personal, copyhold and leasehold estates to three trustees, their heirs, executors, and administrators, upon certain trusts; and he also empowered his said trustees, and the survivors and survivor of them, his heirs, executors, or administrators, to sell all or any part of his said property. The survivor of the three trustees appointed two executors of his will, and devised to them and their heirs his trust estates. These executors contracted to sell part of the copyhold property to Richard Bennett, who objected to their power to sell. The Vice-Chancellor Knight Bruce (April 1, 1851) held that the title was too doubtful to force upon the purchaser. It having afterwards been discovered that Samuel Wilson, one of the executors, was also heir-at-law to the surviving trustee, the special case was amended by stating that fact, and was now again brought before the Court.

Malins and *Hamilton Humphreys* appeared for the plaintiff.

Russell and *Hardy* for the purchaser.

Osborne for the other defendants.

The following cases were cited:—*Cole* v. *Wade*, 16 Ves. 27; *Bradford* v. *Belfield*, 2 Sim. 264; *Cooke* v. *Crawford*, 13 Sim. 91; *Titley* v. *Wolstenholme*, 7 Bea. 425; and *Miller* v. *Priddon* (see 18 Law T. Rep. 323).

The VICE-CHANCELLOR said that the case of *Cooke* v. *Crawford* had often been misunderstood: it was not an authority that a trustee might not devise trust estates, but that if a trustee had an estate and also a power he might devise the estate, although he might not devise the power. The present title was too doubtful to compel a purchaser to accept it. The power was intended to be exercised by the persons who had the estate, and now the estate and the power were severed. The persons who entered into the contract had not the power to sell, and the contract could not be enforced.

April 28 and 29.
WARWICK v. HAWKINS.
Will—Construction—Separate use of married woman.

A testator by his will gave to A. B. a married woman, an annuity for her separate use, and by a codicil he gave to A. B. "in addition to the legacy mentioned in his will, the sum of 300l. to be paid to her free of legacy duty." The annuity was the only legacy given to A. B. by the will:

Held, that the 300l. was given to A. B. for her separate use.

William Bayley, by his will, dated the 4th of July, 1846, gave several annuities to the women therein named, and among others gave and bequeathed to Ann Warwick, the wife of William Warwick, one annuity, or clear yearly sum of 100*l.* for and during her natural life free of legacy duty, and the testator afterwards directed that the several annuities given by that his will should commence from the day of his death, and should be paid to the several persons to whom they were respectively given half-yearly for their sole and separate use and benefit, independently and exclusively of any husband or husbands with or to whom they were then, or thereafter might happen to be, married, and not to be in any way subject to the debts, control, or engagements, of any such husband or husbands; and the testator directed that the receipts of the said several annuitants respectively, notwithstanding their coverture, should be good and effectual discharges to the person or persons paying the same. By a codicil dated the 5th of November, 1850, the testator, after stating it to be his wish that Ann Warwick should live in his house, desired his executors to pay to her "in addition to the legacy mentioned in his will, the sum of 300*l.* to be paid to her free of legacy duty, and immediately after his death." No other legacy than the annuity had been given to Mrs. Warwick by the will. By a second codicil dated the 3rd of Dec. 1850, he bequeathed as follows:—"As Mrs. Warwick is intended by me to continue in this house after my death, I hereby, by this codicil, bequeath to her all the furniture belonging to me at my death, except the linen and plate, which I have disposed of by my will. I desire, also, that Mrs. Warwick shall have whatever money may be in this house belonging to me for her own use and purposes after my death." The testator died on the 30th of November, 1851, and the will and codicils were duly proved by the executors. The present claim was filed by Mrs. Warwick against the executors claiming to have the legacy of 300*l.* with interest, paid to her for her separate use, or, in case the Court should not consider she was entitled to it for her separate use, then to have the same settled upon her and her issue.

Glasse and *Faber*, for the plaintiff, referred to *Day* v. *Croft*, 4 Bea. 561.

Malins and *Dauney*, for the executors, only desired to have a declaration by the Court upon the construction of the will. The plaintiff's husband was out of the jurisdiction, and the executors were willing to act as the Court should direct.

Thursday, April 29.—The VICE-CHANCELLOR said, that upon the authorities he thought there could be no doubt that this sum of 300*l.* was given by the first codicil to Mrs. Warwick for her separate use, and there must be a declaration accordingly. His Honour considered that the plaintiff had better not ask any declaration as to the furniture. As assets were admitted, the costs must be paid out of the estate.

Thursday, April 29.
WESTBY v. WESTBY.
WESTBY v. WESTBY.
Practice—Charging order—Fund in Court.

Under a sequestration against A. B. for contempt sums had been paid into Court and invested. A. B. had been ordered to pay certain costs to the plaintiffs, which, as A. B. was out of the jurisdiction, they had been unable to obtain. Upon a petition by the plaintiffs, the Court charged the sum standing to the sequestration account, with the amount of these costs.

This was a petition by the infant plaintiff in the second suit above mentioned. By an order dated the 11th of February, 1848, a petition presented by the defendant Mary Westby, was dismissed with costs, to be paid by her. The present petitioner's costs on that petition were taxed, and a writ of fi. fa. was, in May 1851, issued for the amount; but Mrs. Westby was out of the jurisdiction, in France. Under a sequestration issued in the second suit against Mrs. Westby, for contempt in not producing certain deeds, the sum of 99*l.* 16*s.* and other sums were paid into the bank, to the credit of that cause, the sequestration account; and by an order afterwards obtained, these sums were invested in stock. The present petition was presented for the purpose of having an order nisi, charging the stock standing to the sequestration account, with the amount of such taxed costs.

Schomberg, in support of the petition, referred to 1 & 2 Vict. c. 110, ss. 15 and 18; 3 & 4 Vict. c. 82; and cited, *Stanley* v. *Bond*, 7 Bea. 386.

The VICE-CHANCELLOR said that the petitioners might take a similar order to that made in *Stanley* v. *Bond*.

Schomberg asked, that as the order was to be an order nisi, his Honour would fix a time for shewing cause.

The VICE-CHANCELLOR said that they might take a month.

Saturday, May 29.
Re COKE'S TRUST.
Trustee.
As a general rule the Court will not appoint the tenant for life a trustee.

The petition in this case prayed, among other things, that the husband of one of the tenants for life of the trust fund might be appointed a trustee.

De Gex appeared in support of the petition.

The VICE-CHANCELLOR said, that as a general rule the Court would not appoint a tenant for life of a fund a trustee. The petition must stand over, and the parties must endeavour to find some other person to act as trustee.

Saturday, June 5.
WESTON v. FILER.
Trustee Act, 1850.

Real estate was devised to trustees upon trust for A. B. for her life, and afterwards for her children equally, and if A. B. died without leaving a child, for the testator's right heirs. In a suit, part of the real estate was sold, and the purchase-money was paid into court, and the trustees being dead, the two children of A. B. who were infants, petitioned under the above Act that the estate might be vested in the purchaser, or that a proper person might be appointed to convey:

Held, that the petitioners were not constructive trustees, and the Court dismissed the petition.

John Jacob by his will devised, subject to the payment of his debts, all his real and personal estate to trustees for Maria Williams for her life, and after her decease for Eliza Weston for her life, and, after the decease of the survivor of them, for all and every the child and children of E. Weston, their executors, administrators, and assigns, equally to be divided between them as tenants in common; and if E. Weston died without leaving a child or children, for the testator's own right heirs. By a decree made in this suit, part of the testator's real estate was directed to be sold, for the purpose of raising a fund for the payment of costs to which the estate had become liable. The sale was effected, and the report of the purchase was confirmed, and the purchase money was paid into court. The trustees of Jacob's will were dead, and the present petition was presented under the Trustee Act by Mrs. Weston's two children, who were infants, praying a declaration by the Court that they, and the unborn children of Mrs. Weston, on their coming of age, would become trustees of the estate, and that their estates might be vested in the purchasers, or that H. W. Weston, or some other proper person, might be appointed to convey to the purchasers.

Malins and *Bilton*, in support of the petition, referred to the 29th and 30th sections of the Trustee Act, 1850, and contended that the petitioners were constructive trustees.

The VICE-CHANCELLOR declined to make the order, observing that he did not consider the sections referred to were applicable to the case, or that the infants were constructive trustees.

DRAKE v. WHITMORE.
Mortgage—Power of sale.

Where the Court directed money to be raised by mortgage, an application that a power of sale should be inserted in the mortgage was refused.

The parties beneficially interested under the will in this case were directed by the Court to raise money by mortgage of devised real estates, in order to pay certain charges, the Master having found that it would be more beneficial to raise the money by mortgage than by sale.

Glasse asked that the mortgage should contain a power of sale.

Faber appeared for some of the parties.

The VICE-CHANCELLOR said that he did not consider that he could delegate such a power to a mortgagee, and declined to permit a power of sale to be inserted.

June 3 and 9.
ENTHOVEN v. COBB.
Production of documents—Privileged communications.

A. and B. alleged to have a common cause of action against C. brought separate actions against him, which were still pending. A. obtained counsel's opinion upon his rights, and gave a copy of the case and opinion to B. C. filed a bill of discovery against B. and B. by his answer, admitted the possession of this copy among other documents. Upon a motion by C. for the production of the documents admitted by B. to be in his possession, it was

Held, that this copy of case and opinion was privileged.

This was a motion for the production of documents admitted by the answer of the defendant to be in his possession, and a question arose as to the production of a case and opinion under the following circumstances. Nine bonds of the Copper Miners' Company were in 1845 placed by the plaintiff with Messrs. Cunliffe, the bankers, and seven of these were afterwards handed to the Misses Hoyle, and the other two to the defendants Cobb. By the plaintiff it was contended that there was an actual transfer of the bonds, but by the Misses Hoyle and the Cobbs it was alleged that the bonds were deposited by way of security for the amounts of the bonds advanced by them. Actions were subsequently brought by the Misses Hoyle, and also by Messrs. Cobb, against the plaintiff, for the amounts of principal and interest alleged to

be due to them respectively (see 15 Law T. 137, as to the *Misses Hoyle's* action). The Misses Hoyle having taken counsel's opinion as to their rights, a copy of the case and opinion was given to the defendants Cobb, and in their answer to the present bill, which was filed for the purpose of discovery, this copy appeared among the documents in their possession, but they claimed a right to withhold it on the ground of its being privileged.

Wigram and *Rawlinson*, in support of the motion, cited *Desborough* v. *Rawlins*, 3 Myl. & Cr. 515; *Greenough* v. *Gaskell*, 1 Myl. & Keen, 98; *Whitbread* v. *Gurney*, 1 Younge, 541; *Goodall* v. *Little*, 1 Sim. N. S. 155; and *Glyn* v. *Caulfield*, 3 Mac. & G. 163.

Malins and *Karslake*, for the defendants, were not called upon.

The VICE-CHANCELLOR said he did not think the plaintiff was entitled to see the case or opinion. As he understood the facts, it appeared that nine bonds were deposited with Messrs. Cunliffe, seven of which being in respect of a separate transaction, passed into the hands of the Misses Hoyle, and the other two into the hands of Messrs. Cobb, the present defendants. The question in litigation had arisen between the plaintiff and Misses Hoyle and Messrs. Cunliffe; the main point being what was the nature of the transactions between the plaintiff and Messrs. Cunliffe in the first instance. There was an action still pending between the plaintiffs and Misses Hoyle, with respect to the seven bonds, and another action was also pending between the plaintiff and the defendants Cobb relating to the other two. It appeared that the Misses Hoyle, with a view to assert their right in their defence to the action, submitted a case with respect to the seven bonds through their own solicitor to counsel, and obtained an opinion upon it. This case and opinion were privileged as between the plaintiff and the Misses Hoyle beyond all doubt. Then Misses Hoyle's solicitor gave a copy of that case and opinion to the present defendants Cobb, their cases, as it must be assumed and as was alleged by the answer, being alike. These were privileged and confidential communications: privileged as between the plaintiff and the Misses Hoyle, and ought not to be produced to the plaintiff. His Honour decided this on the ground of the interest of the defendants Cobb in these matters. But the proceedings of Misses Hoyle being still pending, he thought there was a great deal of importance in the view of it, that Misses Hoyle's interest was not represented here, and that, therefore, these confidential communications with their solicitor, with a view to their defence to the action, should not be produced without giving them an opportunity of objecting to it. This was, in fact, a communication between the present defendants and their legal adviser, the Misses Hoyle having lent it to them to enable the defendants' solicitor to understand their common case. He thought that the cases cited did not apply to the present. There must be the common order for production of all documents excepting these.

MAJOR v. MORITY.

Claim—Parties.

Some of a class who might be intended under a particular construction of a will, permitted to represent the class in a claim for administration.

Under the will of the testator in this claim, a question arose as to the meaning of the word "issue." The claim was filed for the administration of the estate, and

G. L. Russell now asked for leave to amend the claim by adding as parties some of the class who might be interested under the term "issue." The children and grandchildren who might be included in the term were very numerous, and it was not known where they all were.

The VICE-CHANCELLOR gave the leave, observing that it was not desirable to bring before the Court all the parties, when it was probable that some of them would be brought only to be informed that they had no interest.

Thursday, June 10.

Ex parte RECTOR OF LEA.

Railway company.

Upon the petition of A. B. rector of L. a reference was directed to the Master as to a proposed investment in land of purchase-moneys paid into court by a railway company for lands belonging to the rectory, and A. B. died before the report: it was

Held, that the Master might, with the new rector's consent, proceed with the reference without a supplemental order.

By an order, dated the 11th of June, 1851, made upon the petition of the Rev. D. C. Legard, the rector of Lea, a reference to the Master was directed to inquire as to the propriety of a purchase of land proposed to be made with money which had been paid into court by the Great Northern Railway Company on account of lands belonging to the Rector of Lea, and taken by them. Mr. Legard died before the Master had made his report, whereupon the Master declined to proceed with the reference.

Nalder now applied for a supplemental order.

The VICE-CHANCELLOR said that he considered the Master could proceed upon the reference directed by the order of the 11th of June, 1851, without any supplemental order; that was assuming that the present rector was a consenting party, but if there were any difficulty the registrar might draw up a supplemental order.

Thursday, June 24.

Re RICHARDS'S ESTATE.

Trustee Act 1850.

Service of notice of proceedings for the appointment of new trustees on the parties beneficially interested.

The testator in this case had by his will given to trustees the residue of his property, which was divisible into six parts, to one of which parts the seven children of a [illegible] of the testator were entitled. It being necessary to appoint new trustees, four of the seven children had, under the 38th section of the Trustee Act 1850, obtained the Master's certificate, and a motion was now made for an order appointing the trustees in accordance with the certificate.

W. H. Harrison appeared in support of the application.

The VICE-CHANCELLOR inquired whether any of the other parties interested in the property had been served with notice of these proceedings.

W. H. Harrison replied that they were very numerous, and it would be impossible to serve them all. The Master had considered himself entitled to proceed under the 37th section of the Act.

The VICE-CHANCELLOR said that that section spoke of persons beneficially interested. Primâ facie all the parties interested should receive notice, but if that were impracticable, a case should be made for proceeding as to particular parties without notice. In the present case his Honour did not consider the parties were sufficiently represented by these applicants, who were entitled only to four-sevenths of one-sixth of the property, and he must, therefore, refer it back to the Master to review his certificate.

Saturday, June 26.

Re LEVETT'S TRUSTS.

Trustees Relief Act (10 & 11 *Vict. c.* 96).

Petition under this Act should state in terms the money.

This was a petition under the 10 & 11 Vict. c. 96, for the payment to the tenant for life of the income of a fund paid into court by trustees under the Act.

Renshaw appeared in support of the petition.

Dawney for the trustees.

The VICE-CHANCELLOR, upon making the order, observed, that as the affidavit made by trustees upon paying money into court under this Act, was the declaration of trust upon which the Court acted, petitions ought to set forth in terms the necessary parts of the affidavit. This had not been done in the present case, and the absence of such a statement occasioned much inconvenience.

Tuesday, July 6.

Ex parte HALL, *re* THE DIRECT EXETER, PLYMOUTH, AND DEVONPORT RAILWAY COMPANY.

Joint-Stock Companies Winding-up Acts—Costs.

Where the costs of an application to the Court were not disposed of at the time when the order was made, the application for them should be made to the Master in the first instance.

This was an application to the Court on behalf of Dr. Wm. Hall (whose case is reported in 3 De G. & Sma. 214, and 15 Law T. 109) that the costs incurred by him of or in relation to, or in consequence of an application made to the Court on his behalf on the 2nd of May, 1850, and the costs incurred by him in appearing before the Master and the costs of this application might be paid to him by the official manager. The case had been considered to come within the principle of other cases since decided, and consequently Dr. Hall's name was struck off the list of contributories.

Karslake appeared in support of the motion.

Roxburgh, for the official manager, contended that the costs were in the discretion of the Master, and he referred to the 103rd section of the Winding-up Act of 1848, and the 12th section of the Act of 1849, and that in fact an application had been made to the Master and refused. If, therefore, any application were to be made to the Court it should be by way of appeal.

Karslake, in reply, said, that the application which had been made to the Master, referred only to the costs before him.

The VICE-CHANCELLOR said, that from the sections which had been cited, it appeared to be quite plain that Dr. Hall must go before the Master in the first instance, and then, if he were dissatisfied with his decision, he must appeal. If he had already been there, he must bring the matter before the Court by way of appeal, but if he had not he must apply to the Master.

Roxburgh asked for the costs of this application.

The VICE-CHANCELLOR said, that if they were insisted upon, he must give them.

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. BENNET, Esq. of Lincoln's-inn, Barrister-at-Law.

Saturday, March 6.

SEYMOUR v. VERNON.

Receiver—Fire insurance.

By the decree in the cause it had been declared that L. B. H. was tenant in tail in possession of certain real estates in the pleadings mentioned. A receiver of these estates had been appointed by the Court, with a direction to pay certain fire insurances on the mansion-house, stables, and other buildings, and he had also been directed to pay the surplus monies arising from the rents, &c. to the account of L. B. H. A portion of the buildings having been burnt down:

Held, that the tenant in tail was entitled to the monies arising from the insurance on them.

This was a petition presented by Louis B. Harcourt, an infant, by his guardian, praying that certain monies which had been received from an insurance office might be paid to his account in the cause. The suit had been instituted for the administration of the trusts of the will of Lord Harcourt, and, by an order made in April 1819, it was ordered that the receiver of the real estates in the cause, formerly the property of Lord Harcourt, should pay all rates, taxes, insurances, and the other necessary outgoings in respect of the mansion-house, &c. at St. Leonard's-hill, devised by Lord Harcourt's will. Wm. B. Harcourt, the first tenant in tail in possession under the will, who had died in 1817, had effected insurances on the mansion-house, stables, and other buildings at St. Leonard's-hill, in a large sum of money, in his own name. After his death, the insurances had been kept up, and the premiums duly paid, by the trustees under the will, and after the appointment of the receiver by the receiver under the above order. In the month of February 1850, the stables were burnt down, and the insurance money, amounting to 800*l.* was paid by the insurance office to the representatives of Wm. B. Harcourt. This sum of money was subsequently paid into court, it having been determined that the stables were unnecessary and inexpedient that they should be rebuilt. By the decree subsequently made on the hearing of the cause, it was decreed that certain estates of Lord Harcourt, including those at St. Leonard's-hill, had become, and then were vested in the petitioner L. B. Harcourt, as tenant in tail male in possession, and the receiver was directed to pay the balances from time to time in his hands to an account to be entitled "The Account of the Infant Defendant L. B. Harcourt."

Leach, in support of the petition.

Selwyn, for the party entitled in remainder, contended that the effect of the order of the Court was that the insurances were for the general benefit of all parties, and the money received under the insurance ought to be considered as part of the estate, and the premiums borne by each tenant in tail in succession.

Messiter, for parties in the same interest, cited *Norris* v. *Harrison*, 2 Madd. Rep. 268.

Leach, in reply, said the testator himself had not directed any insurance on the premises. That the effecting the insurance was a mere temporary arrangement, and done to save harmless the tenant for life. The amount of the premiums being paid out of the annual surplus rents, he was entitled to the benefit of them. (*Re C. J. Skingley, a Lunatic*, 15 Jur. 958.)

The VICE-CHANCELLOR, referring to that part of the order of the Court which had directed the receiver to pay out of the balances from time to time in his hands the annual premiums of the insurances, said he thought this had been done for the benefit of the parties who, in the result of the decision in the cause, should prove to be interested, and the outgoings should be borne accordingly. The result of that decision having been that the infant petitioner had become tenant in tail, the fair construction was, that he was the party for whose benefit these insurances had been effected.

Order according to the prayer of the petition.

Thursday, June 10.

HOOD v. BRIDPORT.

Tenant in remainder—Repairs.

A reference is usual to ascertain if repairs to be done are for the benefit of an infant party to the cause.

This was a petition presented by the next friend of an infant plaintiff, praying for a reference to approve of a sum of money being laid out towards the repairs of certain buildings on the real estate of

which he (the petitioner) was tenant in tail ex- nt on the death of his mother, the tenant for he being willing to contribute her share to- those repairs. The money proposed to be l had arisen from the surplus rents of other --, of which the petitioner was tenant in ..ssion.

Lewin, in support of the petition.

Prior appeared for the guardians of the infant, who had been served with a copy of the petition, and relied on *Ware v. Polhill*, 11 Ves. 257, as shewing that the Court never converted the property of an infant so as to change the nature of it as between him and the representative, who was not to be prejudiced in any way by any Act done by the Court. In the present case the property was not only intended to be converted, but could never be got back, and the money, if the infant died before he came into possession, would go to other parties, and not to his representative.

Lewin, in reply, said the Master was the proper person to inquire whether in fact the proposed outlay in repairs was for the benefit of the infant or not. The Court was in the daily habit of applying personal estate towards repairs. He relied on a case, *Ward v. Ward*, in which a similar order to that now asked for had been made by Vice-Chancellor Parker in November last.

The VICE-CHANCELLOR said he thought the order for the usual reference ought to be made. The Master could consider whether the proposed expenditure was or not for the benefit of the infant, and if it was, to state the amount which ought to be contributed. *Order accordingly.*

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

Tuesday, May 18.

REG. v. THE INHABITANTS OF THE COUNTY OF SOUTHAMPTON.

Bridges—Indictment for non-repair—Local Act affecting the Isle of Wight.

The Isle of Wight is a division of Hampshire, having no separate commission of the peace. It was always assessed to the general county rate, but the public bridges in the island were not repaired out of that rate. Before the passing of a local Act (53 Geo. 3, c. 92), those bridges, if not repairable ratione tenuræ, were repaired either by the parishes in which they were situate, or by rates in the nature of county rates made at the county sessions upon all the parishes in the island. In 1774 an arrangement was made at the county sessions, whereby the proportion of the county rate to be paid by the island was settled, subject to a deduction of the amount paid by the island for the repair of bridges, &c. the island agreeing to maintain the bridges. By the local Act (passed in 1813) it was enacted that all the bridges within certain parishes specified, which had previously been accustomed to be repaired by any parishes, tythings, &c. were to be afterwards repaired in the same manner and by such ways and means as other bridges, usually called county bridges, within the same had been accustomed to be repaired.

Upon an indictment against the county at large for the non-repair of a county bridge, situate in the Isle of Wight, which, previously to the Act of 1813 had been repaired by the parish in which it was situate,

Held, that as the Act removed the liability of the parish, it fell upon the county at large, and not upon the island only, the arrangement of 1774 not affecting the legal liability of the county or island.

This was one of three indictments for the non-repair of three bridges in the Isle of Wight; tried by consent at the last assizes for the county of Somerset, when a verdict of guilty was taken, subject to the opinion of this Court upon special cases, stating the facts applicable to each indictment. The principal facts, however, were the same in each case, and were thus stated:—Before the year 1842, all the public bridges in the Isle of Wight, not repairable by tenure, had been maintained and repaired, either by the inhabitants of certain tythings, parishes, and places in which they were situate, or by rates in the nature of county rates levied on the inhabitants of all the parishes and places in the island under the arrangement hereafter mentioned. From the year 1774 until 1842, the practice was for the justices of the Isle of Wight division to apply to the Quarter Sessions of the county of Hants for "a rate in the nature of a county rate," and thereupon an order of sessions and rate was made on every parish in the island, purporting to be "for repair of the bridges and Bridewell in the island, and for other purposes to which such rate was by law applicable within the island." Before 1774 entries in the order books and books of assessment of the general county rate shew that rates were at various times made on the several places and parishes in the Isle of Wight; but the sums levied thereon were not uniform. (Numerous entries found in the existing county records down to 1774, shewing the practice before that year, were inserted in the case.) The last entry was as follows:—"1774,—Assessment made on the Isle of Wight according to the arrangement hereinafter mentioned,—3d. rate, at 235*l.*; 1½d. rate, at 117*l.* 10s."

These contributions were parts of the general county rates, and applied indiscriminately with the contributions of the main land. No instance is known before 1842 of the application of the general county rate to the repair of an island bridge, but the county justices of the Isle of Wight division were used to expend the island rate in the nature of a county rate, made in the manner above specified, on the objects for which it had been directed to be applied by the County Quarter Sessions, i. e. island bridges and bridewell, and this was the usage and practice when the Local Act above referred to passed. Until very recently there has always been a House of Correction, or Bridewell, for the Isle of Wight, in Newport. There is not, nor ever was, mission of the peace for the island, which is a division of the county of Southampton.

In 1772, the Isle of Wight having been assessed in common with the other parts of the county, appeals against such assessment were entered, which were continued to 1774, when an arrangement was made by consent of the General Quarter Sessions; the terms of which are embodied in the following order:—

1774. Easter Sessions. Brook, Brigton, &c. v. County Rate. } The appeal of the several parishes of Brook, Brigton, &c. against the county rates received and respited at the last sessions, coming now again before this Court, in order to put an end to the present disputes subsisting between the inhabitants of the several parishes in the Isle of Wight and the inhabitants of the county at large, and to prevent disputes in future concerning the proportion the inhabitants of the said island are and ought to pay to the county rates, it is hereby agreed by Mr. Missing and Mr. Kirby, of counsel, on part of the county, and Mr. Grose and Mr. Rashleigh of counsel for the said appellants, that whenever a rate of 3d. in the pound shall be made on the county at large, the proportion to be paid by the Isle of Wight, for such rate shall be 270*l.* and accordingly that the rate made at the last Michaelmas Sessions of 1½d. in the pound, and now appealed to, shall be 135*l.* and that the like proportions shall be observed in assessing the said island, be the general rate upon the county more or less than 3d. in the pound, deducting, however, out of such proportion, such sum and sums of money as the Isle of Wight ought to have paid to the bridges and house of correction, had they been liable, calculating the annual average value thereof from the treasurer's accounts for the last fifteen years, the said island hereby being adjudged and declared not to be liable or subject to pay to the county bridge rate or to the house of correction, and it is hereby agreed that two persons shall be appointed (one by each party) to inspect the treasurer's accounts and ascertain such average, and make such deduction, and after such deduction so made, the sum remaining of the proportion of 270*l.* is from henceforth to be the proportion of the Isle of Wight when the whole rate upon the county is at 3d. in the pound, the Isle of Wight agreeing to erect and maintain from time to time houses of correction and bridges within the said island at their own and sole expense, &c.; and this Court doth hereby order and direct that the said agreement shall be, and the same is hereby an order or rule of Court.

The magistrates acting for the division of the Isle of Wight, did by and out of the local rate levied exclusively on parishes in the Isle of Wight by Order of Sessions, and made in the form above stated, from time to time repair such public bridges in the Isle as were of the nature of county bridges, and so far as regards the general county rate, the proportions settled by Order of Sessions in 1774, and subsequently, in 1819, were alone contributed by the Isle of Wight down to 1842, such proportions exceeding the 5*l.* There never was any indictment against the county for not repairing bridges in the Isle of Wight previous to 1842, nor any indictment against the inhabitants of the Isle for such non-repair.

In 1813, a local Act (53 Geo. 3, c. 92, made public, and to be judicially noticed) was passed for consolidating the management of all roads and highways in the Isle of Wight, and appointing commissioners for that purpose, in which Act is contained the following clause (sec. 67): "And be it further enacted, that all bridges, drains, and sewers within the said parishes and places aforesaid, which have, previous to the passing of this Act, been accustomed to be repaired by any parishes, tythings, divisions, or townships, shall from and after the 11th day of October, 1813, be for ever repaired and kept in repair in such and the same ways and means as other bridges, drains, and sewers usually called county bridges within the said island, have been and are accustomed to be repaired. And that from and after the said 11th of October, such particular parishes, tythings, divisions, and townships shall be discharged from the exclusive burden of keeping and maintaining such bridges, drains, and sewers in repair.

Sec. 81 of the same Act enables the commissioners under that Act to build and repair, and keep in repair any bridge or bridges, or any part of the roads in the island, and across any river, stream, ditches, or drains therein, or contiguous thereto, making recompense to the owners and occupiers of lands for damage done to them.

In 1842, the county again proposed to assess the Isle of Wight in common with the rest of the county, according to a fresh valuation made under 55 Geo. 3. c. 51, and 56 Geo. 3. c. 49, and without reference to the old proportions, and in consequence of the opinions of counsel then given, such assessment was made, and has since continued, and has been from time to time paid; and the Isle of Wight has ever since been included in the general assessment, and no separate island rate has been made at the quarter sessions, but applications have been made from time to time by the island justices to the justices of the general quarter sessions at Winchester, to repair bridges and bridewells in the Isle of Wight when the repairs became necessary. Doubts being raised as to the liability of the county to repair such bridges, and as to the validity and legal effect of the order of 1774, this indictment was preferred, and the verdict thereon taken by mutual consent for the purpose of settling the above doubts.

One of the three indictments was for the non-repair of a bridge, called Black-bridge, situate in the tything of Niton, in the Isle of Wight; and which had always, before the passing of the local Act in 1813, been repaired by that tything. The present bridge was erected in 1840, instead of an ancient public bridge of the same name; but in the erection of it the island justices did not comply with the directions of the 43 Geo. 3, c. 49. A second was for the non-repair of a certain public stone and brick building, called Sandown-bridge, in the parish of Brading, in the Isle of Wight. The bridge mentioned in that indictment was a stone and brick bridge used by the public, and erected in the year 1814, under the circumstances hereinafter mentioned, instead of an ancient bridge of stone called by the same name, situate in the tything of Sandown, in the same parish of Brading, across the same stream of water, which bridge always before and at the passing of the local Act 53 Geo. 3, c. 92, hereafter mentioned, had been used to be repaired by the tything of Sandown. The present bridge was built in the year of our Lord 1814, since the passing of the local Act above mentioned. The old one was of stone, and narrow dimensions, sufficient only for one carriage or waggon to pass at a time, and stood in a different position, rather lower down the stream. This bridge had two arches, and was generally used for carriages only when there was a great depth of water; at other times carriages used to pass through the stream.

This bridge being out of repair, the justices for the island division caused the present new bridge to be built of stone and brick, of greater width than the old one, and sufficient to enable two carriages to pass each other. It consists of one arch only, and the road has been raised at each end, so that all carriages now regularly pass over it at all times. The expense of the new bridge was defrayed out of a local rate, ordered by the Quarter Sessions of the county, in the manner hereinbefore described, and levied on the inhabitants of the island. In the erection of the bridge, the justices of the island division employed a local surveyor, but did not comply with any of the directions of the statute 43 Geo. 3, c. 49. Before 1842 the new bridge was usually repaired by order of the justices of the island division, from the local rate ordered and levied as aforesaid. The commissioners of highways, under the above-named local Act, have always repaired the road over the bridge, and 100 yards at each end, down to the year 1842.

The third indictment charged the nonrepair of a bridge called Tinker's-bridge; but as upon the facts stated with reference to the structure of that bridge the Court thought it could not be considered a county bridge at all, it is unnecessary to give the particulars of that case. The bridges were admitted to be out of repair; but the question submitted to the Court in each case was whether the county of Southampton was liable to repair the bridge.

Saturday, May 1.—The case was argued by *Crowder* (*Barstow* with him) for the Crown; *Kinglake*, Serjt. (*Smirke* with him) for the defendants, before Lord Campbell, C.J. Wightman, Erle, and Crompton, JJ.

The nature of the principal question appears sufficiently from the judgment of the Court; but in

the case of Sandown-bridge a distinction was taken on the ground that the new bridge was in a different position and more commodious than the old. The Court, however, intimated at the time that substantially it was the same bridge, and to be so regarded. (*R.* v. *Lancashire*, 2 B. & Ad. 813; *R.* v. *Devon*, 5 B. & Ad. 383; *R.* v. *West Riding*, 5 Burr. 2594; *R.* v. *New Sarum*, 7 Q.B. 941, were referred to.) *Cur. adv. vult.*

JUDGMENT.

Lord CAMPBELL, C.J.—In this case an indictment was preferred against the inhabitants of the county of Southampton for the non-repair of a public bridge, called "Black-bridge," situate in the Isle of Wight, and the question for our consideration is, whether the county of Southampton is liable to repair this bridge, or, indeed, any bridge in the island; or whether the inhabitants of the island are exclusively bound to repair this and other public bridges within the island. The Isle of Wight is within, and a division of, the county of Southampton. There is no separate commission of the peace for the island, and, primâ facie, the county generally will be liable to repair the public bridges within it. It appears, however, before the passing of the 53 Geo. 3, c. 92, all the public bridges in the island, not repairable by tenure, were repaired either by the inhabitants of the several tythings, parishes, and places in which they were situated, or by rates in the nature of county rates levied on the inhabitants of all the tythings, parishes, and places in the island. The island was always assessed to the county rate, but before 1812 the public bridges in the island were never repaired out of the general county rate; but a rate, in the nature of a county rate, was ordered at the Quarter Sessions of the county, to be made on every parish in the island, for the repair of the bridges and the bridewell, and for other purposes to which such rate would be applicable by law within the island. In 1774, an arrangement was made at the Quarter Sessions of the county as to the proportion of the county rate to be paid by the island, from which proportion it was agreed that the amount which th island ought to pay for bridges and the house of correction should be deducted, the island agreeing to maintain the bridges and the house of correction in the island; and this agreement, which was merely conventional, was acted upon when the stat. 53 Geo. 3, c. 92 was passed. That was an Act for amending the roads and highways in the Isle of Wight. By the 67th section all the bridges, drains, and sewers within the parishes and places specified in the Act (the bridge in question being one of them), which had, previous to the passing of the Act, been accustomed to be repaired by any parishes, tythings, divisions, or townships, were to be repaired after the 11th of October next in the same manner, and by such ways and means as other bridges, usually called county bridges, within the same, had been accustomed to be repaired. The bridge in question had always been before the passing of the Act repaired by the tything of Niton. The future repair of the bridge being, by the 67th section of the Act, declared to be by the same means, and in the same manner as other county bridges of the island, we are of opinion that the county generally is liable to the repair, and that there is nothing in the statute, nor is there any legal ground upon which the county can claim to be exempt. The statute has taken away the liability of the tything of Niton, which had previously always repaired the bridge, and has made it repairable by such ways and means as the other bridges in the island. The county bridges in the island were repaired out of a rate in the nature of a county rate made at a quarter sessions of the county upon the parishes in the island. Such a rate, however, could be but conventional, as the sessions would have no authority to make such a rate in the nature of a county rate upon parishes in the island; nor would this conventional mode of dividing the proportion of a legal obligation alter the right of the public, when the liability to the performance of it became a legal question. No indictment could be maintained for non-repair against the inhabitants of the island, which, though a division of the county of Southampton, is not a district chargeable as such with any liability known to the law, and the statute has expressly removed the obligation from the parishes, tithings, and places, which had formerly repaired. The county can be discharged of the general legal liability thrown upon it to repair the general county bridges within it, only by shewing that some other person or persons are liable. As the county of Southampton has failed in establishing such legal liability in others, we are of opinion that there should in this case be judgment for the crown. There were two other cases against the county for the non-repair of two other bridges in the island—Sandown-bridge and Tinker's-bridge. The case of Sandown-bridge turned upon the same question as that on which we have just expressed our opinion. Some minor points were made in it which were in effect disposed of during the argument. Our judgment, therefore, in this, as well as in that of the Black-bridge, will be for the Crown. In the case of Tinker's-bridge, we were of opinion, at the time of the argument, and still are of opinion, that, upon the facts stated, it was not such a bridge as the county could be bound to repair, or a county bridge; and in that case our judgment will be for the defendant. In fact, we may consider it like a plank across a ditch in a highway.

Judgment accordingly.

April 23 *and June* 12.

THE COMPANY OF PROPRIETORS OF THE KENNET AND AVON CANAL *v.* WITHERINGTON.

Company—As to continuance of powers conferred by Act of Parliament.

An Act of Parliament authorised a company to make a river navigable, and to maintain and preserve the same, and to erect weirs and dams in the river, and on the lands adjoining, and from time to time to alter and amend the same, first making compensation to the owners of the lands made use of, as the commissioners should direct. The commissioners had power to settle the compensation, with the aid of a jury, in certain cases, and they were appointed by the Act, with a power to nominate successors:

By a subsequent section, compensation was directed to be given for consequential damage arising from raising the water to a prejudicial height, cleansing, repairing the river, &c. the amount to be settled by the commissioners and jury:

The commissioners were allowed to die off without nominating their successors:

Held (Lord CAMPBELL, C.J. *dissentiente*), *that the power of ascertaining the amount to be paid for consequential damage arising to a mill-owner, from the enlargement of a dam, being lost by the deaths of the commissioners, did not deprive the company of their right to make such enlargement for the purposes of the navigation of the river.*

Trespass for cutting and breaking certain piles, stakes, and hurdles, forming part of a dam of the plaintiffs in the river Kennett. *Plea*, justifying the removal of part of the dam in question, on the ground that it was an enlargement of a dam formerly erected, and that such enlargement obstructed the water formerly allowed to be passed by the dam, which water the plaintiff claimed a right to in respect of his mill. *Replication*, that the dam was enlarged by the plaintiffs for the purpose of maintaining the navigation of the Kennett, under the powers of the Act of Parliament. (1 Geo. 1, st. 2, c. 21.) *Rejoinder*, that all the commissioners nominated in the said Act of Parliament for the purpose of settling compensation for damages, and all the commissioners who had been subsequently nominated under the Act were dead, and that no commissioners were in existence when the dam was enlarged. *Demurrer* to this rejoinder.

Phipson (*Keating* with him) in support of the demurrer, and

Whateley (*Gray* with him) contrà.

The argument rested on the construction of the above Act of Parliament mentioned in the pleadings, and the material sections are set out in the judgments.

Cases cited:—*Boulton* v. *Crowther*, 2 B. & C. 703; *Glover* v. *The North Staffordshire Railway Company*, 20 L. J. 376, Q.B.; *Ballard* v. *Way*, 1 M. & W. 520, *Holland's* case, 4 Co. Rep.; Bac. Abr. Stat. F.; *Lobley* v. *Lister*, 7 A. & E. 124; *Cane* v. *Chapman*, 5 A. & E. 647; *Thicknesse* v. *The Lancaster Canal Company*, 4 M. & W. 472. *Cur. adv. vult.*

JUDGMENT.

Saturday, June 12.—The judges differing in opinion, now delivered their judgments.

CROMPTON, J.—After stating the pleadings as above, the learned judge proceeded.—The plaintiffs having demurred to the rejoinder, the question arose whether the powers under which the plaintiffs acted had been lost or destroyed by the death of all the commissioners named in the Act, or subsequently appointed, and by reason of no commissioners under the Act being in existence at the time of making the works mentioned in the replication. By the first section, powers are given to seven persons named in the Act, their heirs, assigns, and nominees, to make the river Kennett navigable, and from time to time to continue and maintain the same, and to dig and cut through the banks of the river, and to erect in the river, and on the lands adjoining, or near to the same, weirs, pens, dams, &c. and from time to time to alter and amend the same, and to do all matters and things which they should think necessary for the making and maintaining the said river Kennett navigable, or for the improvement and preservation thereof, the said undertakers, their nominees and assigns, first giving satisfaction to the owners or proprietors of such lands, weirs, mills, tenements, or hereditaments respectively as shall be digged, cut, or removed, or otherwise made use of for the carrying on or effecting the said navigation, or for maintaining or managing the same, as the commissioners shall direct and appoint, in case the said undertakers, their heirs, assigns, and nominees, shall not before-hand have agreed with the proprietors of such weirs, mills, lands, tenements, and hereditaments, respectively concerning the same. By the second section the commissioners are appointed to mediate between the undertakers and the owners and occupiers of such lands, weirs, mills, tenements, and hereditaments, as shall be intended to be made use of, and to settle and determine the satisfaction to the parties for such portion of their lands as shall be cut, digged, removed, or made use of, with power to mediate by a jury before the commissioners, and the undertakers, on payment and not before, were authorised to remove, dig, cut, or use the land. According to these clauses, satisfaction to the owners in the manner prescribed was made a condition precedent to the digging, taking, and using the land of the adjoining owners; and the non-existence of the commissioners precludes the assessing compensation by the commissioners in the mode prescribed, and no power of this description could be exercised after the commissioners had ceased to exist except in the case of agreement between the undertakers and the owners. This provision for antecedent satisfaction was properly applicable to taking and injuring land, the compensation for which could be settled or determined before-hand, but it was not applicable to cases of consequential damage, and accordingly the Act of Parliament does not include such cases in the provision for compensation to which I have referred. The provision for compensation in the first and second sections only includes direct compensation for direct trespass on the land which it specifies. It was proper, therefore, to make other provisions for compensation for consequential damage, and this was attempted to be done by the 18th section of the Act. By that ion, "if any person or persons, at any time after the said river is made navigable, shall happen to sustain any damage or injury in his, or her, or their meadow, grounds, lands," and so forth, "by the said undertakers, their heirs, or assigns, or nominees raising the water to a prejudicial height or turning the steam, or by not sufficiently making up or repairing the banks of the said river, or cleansing the same, or by their taking away, wasting, or diverting the water from the said meadows, mills, water-engines, or wharfs," in such case a power is given to the commissioners by inquisition and jury to assess and settle the damage or satisfaction, and then means are provided by allowing them to take tolls to recover that satisfaction. The making satisfaction for damages of this description could not be made a condition precedent to the doing the act which might cause the damage, and, accordingly, in this section provision is made for subsequently ascertaining, settling, and recovering such damages. The damage sustained by the mill-owner in the present case was of this latter class, and, according to the intention of the framer of the Act, he ought, after the act done and the mischief sustained, to have had his compensation assessed for the damage the exercise of the powers had occasioned. The question is, whether, by reason of the mode of assessing the amount of such damage being lost, the plaintiffs have lost the power expressly given them by the first section, the exercise of which is not made to depend upon the prior satisfaction. It was argued before us that the Legislature must be taken as impliedly enacting powers, the exercise of which must be injurious to the mill-owners, which the Legislature would not have given without a compensation clause, which should not cease on the cesser of the powers of compelling compensation. It could not be said the making satisfaction was a condition precedent to the exercise of this power. But it was said the power was coexistent with the commission under the Act, and the existence of the means of obtaining compensation was a condition precedent to the exercise of the power. It appears to me, if I were to yield to this argument it would be rather making an Act of Parliament than construing one. The 1st section gives what may be called two classes of powers; one is to be exercised only on the condition precedent being complied with; the Act is silent as to any prior condition with respect to the other. It is true, in all probability the Legislature thought they had sufficiently provided for compensation to the millowners. If they had foreseen what has happened, they would not have left the millowners without compensation, but their care probably would have been to give compensation in a more secure way, and not to have taken away the power. Can we properly imply a condition which is to take away the powers expressly given by statute, because the Legislature have failed in making sufficient provision for compensation to the party injured by the exercise of those powers? And when I find express power is given by the Act, clearly sufficient for the purposes used, I cannot say this power has ceased by implying a condition which the Legislature has never contemplated, from the circumstances which they had not in their contemplation, and which, if they had contemplated, they would in my opinion have

guarded against, not in the way now suggested, by taking away the powers, but by giving some other mode of making compensation. If I may make any implication of what I may call the intention of the Legislature, I should think that it was a less straining to imply that they considered in such a case reasonable compensation should be recoverable, than to imply that the powers were to cease. The Legislature did intend that compensation should be made, though they failed in the mode of carrying it out, and they never contemplated that the powers necessary for the existence of the navigation should cease. It must be remembered that the non-existence of the commission had not happened through the default of the plaintiffs or of the undertakers whom they represent. The commissioners were a distinct body, and it is through their negligence in not filling up the vacancies in their body according to the directions of the Act that the mischief has occurred. It would be equally hard upon the plaintiffs to have the navigation injured for want of powers necessary for its maintenance and preservation as it is upon the defendant to have sustained injury to his mill. Finding that the Legislature has expressly given the powers in question, and that they do not take them away by any express words in the event which has happened, I do not think I can imply that the powers are to cease because the Legislature has not provided a specific mode for recovering compensation. If they had given no compensation for damages those powers would have been good, but the case appears to me to be the same where compensation follows the power given to be exercised before the compensation is to be inquired into. I have assumed, for the purposes of my judgment that no mode of compensation exists in the case, and that the law is in favour of the existence of the powers. I do not wish to be considered as saying there is no mode of obtaining satisfaction. There seems various objections to the modes adverted to in the argument as the possible modes of obtaining compensation. I am by no means certain some mode may not exist, but it is not necessary to decide this point, as I think the powers do not cease, even if all power of obtaining satisfaction shall be gone. I think, therefore, that the rejoinder contains no sufficient answer to the replication, and that the plaintiffs are entitled to our judgment.

Erle, J.—I agree in the judgment of my brother Crompton. The question in substance appears to me to be whether the rights given by the statute to the canal company to raise a weir for the necessary purposes of the canal is taken away in the event that the right given to the owner of a mill by the same statute to recover compensation for consequential damage to his will through the commissioners is lost because there are no commissioners? I think this question must be answered in the negative. The right of the canal company is given unconditionally; and at the time it is exercised it is contingent whether there will be any damage to be compensated for or not. If one of the two parties is to lose his right, the canal company have the priority in the order of exercising the right, and the owner of the mill can shew no reason why his right should be preferred to the rights of the canal company, which are both public and private. Further, it seems to me to be ground for holding that an action would lie against the company for not making compensation, because when the right to raise the weir was created, the duty of compensating in case of damage was imposed, although a special tribunal for awarding such compensation was created with a special remedy by a receiver of tolls; yet, as a right to such compensation exists at Common Law, and the Common Law right was rather restricted by the statute then created by it, the special remedy may be concurrent with an action at Common Law, or the Common Law remedy may be revived in failure of the special remedy. Whether this be correct or not, the plaintiff seems to me to be entitled to our judgment, for the reasons before given.

Wightman, J.—The case, as it appears upon the pleadings, having been stated by my brother Crompton, it is unnecessary for me to repeat it. It being admitted that the compensating power given by the Act of Parliament is gone, the question for our consideration is, whether the power of the company to make such alterations in their dams and other works as may be necessary for maintaining the navigation is gone also, if such alterations are detrimental to the rights of others acquired subsequently to the constructing of the original dams or works. The dam was originally constructed, and the alterations made under the powers given by the 1st sec. of 1st Geo. 1, c. 24. By that section the company were empowered to make over, or in the river Kennett, such dams and other works as they might think fit, and from time to time to alter the same, and to do all such things as they might think necessary for maintaining the river navigable, or for the improvement or preservation thereof, first giving satisfaction to the owners or proprietors of such lands, weirs, mills, tenements, and hereditaments as should be damaged, cut, or removed, or otherwise made use of for carrying on the navigation as the commissioners therein after named should direct, in case the parties should not agree. Under this clause the defendant would not be entitled to compensation, even if the commission were still in existence, as the condition of "first making satisfaction" applies only to the actual taking or using the lands, &c. of others, and not the consequential damage arising to persons whose lands may be injuriously affected by the acts of the company, though they are not taken or used by them. But by the 18th sec. of 1 Geo. 1, c. 24, it is enacted, "If any person shall happen to sustain any damage or injury in his, her, or their meadow grounds, lands, tenements, hereditaments, mills, weirs, water-engines, or wharfs, by the said undertakers, their heirs, assigns, or nominees, raising the water to a prejudicial height, or turning the stream, or by not sufficiently making up or repairing the banks of the said river, or cleansing the same, or by their taking away, wasting, or diverting the water from the said meadow, mills, water-engines or wharfs," the commissioners are required to assess the damages by a jury. This clause for compensation is a substantive and independent clause, but not by way of condition either precedent or subsequent to the powers given to the company by the first section of the Act. The Act contains a provision for supplying vacancies in the commission by other commissioners to be named by those who remain; but it has happened that all the original commissioners have died without exercising the power, and in consequence no proceeding for compensation can now be taken under the Act. It appears to me, however, that the neglect of the commissioners to appoint successors, which is not imputable to any default on the part of the company, does not affect the rights of the latter to do whatever they are empowered to do by the first section. It was no doubt intended by the legislature that compensation should be given in such a case as that in question; but the statute is so framed that the compensation clause cannot be carried into effect. This may be a hardship on those whose lands or mills are injuriously affected by the works of the company, but it would be equally hard upon the company if their navigation was entirely stopped upon that account. I am, therefore, of opinion that as those enabling powers given by the first section are not, by the Act, made subject to the compensating powers contained in the eighteenth section, or dependent upon them, the company might lawfully do what they have done, and the defendant was not justified in pulling down part of the dam; and that the powers given by the first section to the company did not cease, because another power given by another independent section to recover compensation in case injury was done in exercise of the powers given by the first section, had expired; *Lobley* v. *Lister*, 7 A. & E. 129, is a decision in the plaintiffs' favour, shewing that an authority given by statute to do acts injurious to the property of another, giving satisfaction for the damage done, is not made void by failure of the means of obtaining satisfaction pointed out by statute. Whether the defendant may or may not be entitled to compensation independently of the provision of the statute, it is not necessary now to consider, as however that may be, it appears to me that the defendant was not justified in pulling down part of dam which the plaintiff had erected under the authority of the Act of Parliament. I therefore think that the plaintiffs are entitled to our judgment.

Lord Campbell, C J.—In this case, unfortunately, I differ from my learned brothers, but as after great deliberation, I strongly entertain a contrary opinion, it is my duty to declare it. The defendant has a clear answer to the trespass complained of, and is entitled to our judgment, unless the plaintiffs had a right under the 1 Geo. 1. stat. 2. c. 24, to raise a dam across the River Kennett, and thereby to cut off the supply of water which it is admitted had immemorially flowed for the driving of his mill. If the board of commissioners appointed, and directed to be continued by the second and third sections of the statute, had been duly continued, so that the defendant might have had compensation for the loss occasioned to him by the raising of the dam, they would have had a right to raise it, as they have done, for the necessary, reasonable, and beneficial use of the navigation by boats, barges, lighters, and other vessels. But the question is, whether they could exercise their power to the detriment of the defendant, after all the commissioners named in the statute were dead, and no successors to them had been, or could be appointed. I think that this power was not absolutely perpetual, but dependent on the condition of the board of commissioners being duly continued, so that compensation might be given for the very serious loss which the exercise of it might occasion. By the first section of the statute two classes of powers are conferred on the owners of the navigation; one to be exercised upon the soil of others, and another class to authorise acts whereby consequential damage might arise to the proprietors on the banks of the river. The granting of compensation through the instrumentality of the commissioners was expressly made a condition precedent to the exercise of the first class of powers, the said undertakers, their heirs, and assigns, first giving satisfaction to the owners or proprietors of such lands, weirs, mills, tenements, or hereditaments respectively as shall be digged, cut, or removed, or otherwise made use of for the carrying on or effecting the said navigation." It is quite clear, therefore, that these powers can no longer be compulsorily exercised. As the consequential damage arising from the exercise of this second class of powers, in some cases could not be foreseen, as the amount of it could hardly be adjusted and estimated by anticipation, no previous satisfaction is provided for; but section 18 enacts,—"If any person shall sustain any damage in his mill by the owners of the navigation taking away or diverting the water from the said mill, or any similar injury, the commissioners shall, by a jury empanelled as therein is directed, assess such damage and appoint a receiver of the tolls, who shall, from the tolls received, pay the amount of compensation assessed to the party aggrieved. Although this compensation is to come after the act has been done which causes the damage, can it be supposed that the Legislature intended to confer the power of doing such an act after all possibility of obtaining compensation for it had ceased, and has ceased, as I think, through the default of the owners of the navigation? They had an interest and a duty to keep up the board of commissioners, and there can be no doubt, as it seems to me, that on their application this Court would have granted a mandamus under sec. 3 of the statute for the appointment of new commissioners. Supposing the clause conferring this extraordinary power over the property and rights of others had begun with a preamble in these words:—"Whereas there is provision hereinafter made by the appointment of commissioners whose continuance the owners of the navigation may obtain for making compensation to those who may suffer from the exercise of such powers," it could not have been contended that these powers might have been exercised after the owners of the navigation who were to exercise them had suffered the board of commissioners to become irrecoverably extinct. May not the Legislature in the first enactment be supposed to have had in contemplation all the enactments that were to follow, and may not the exercise of the extraordinary powers conferred, be fairly considered as made conditional on the owners of the navigation preserving the means of making compensation. We must not suppose that Parliament has enacted what would be most arbitrary and iniquitous, if the language employed by them will bear a construction consistent with reason and justice. And looking to the whole of the statute I think the meaning of it may fairly be taken to be, that these extraordinary powers which it confers, to seize or to injure the property of others were only to be exercised, while the owners of the navigation took care that compensation might be obtained in the manner prescribed. The defendant's mill could no longer be taken from him without his consent for the purposes of the navigation, because that comes under the first class of powers, and why should it be supposed that the company have now the power of diverting the whole of the water which ought to flow to his mill, whereby his mill may be rendered useless and he himself may be ruined? The extreme improbability of such legislation being admitted, an attempt was made to argue that the defendant may obtain compensation, although not by means of the commissioners, but on the supposition that the act of raising the dam whereby all the water is diverted from the defendant's mill was lawful. No satisfactory mode has been pointed out in which compensation can be obtained. It is quite clear that the common action on the case for wrongfully diverting the water, would not lie; for this supposes a conjunction of injury and loss, and here would be an instance of damnum absque injuria. But it has been suggested that the Legislature must have meant compensation should be granted, and that an action of assumpsit might be supported on an implied promise to make the compensation, or in tort for the breach of duty in not making compensation. But while the statute, by the 18th section, provides compensation in a manner that can no longer be put in use, and anxiously gives an effectual remedy for obtaining payment for the sum assessed, it nowhere else mentions compensation for such a loss as the present; all the powers created by the 1st section, while they exist, are absolute, except as to awarding compensation through the medium of the commissioners, and if these powers now exist, they are altogether absolute. How, then, can there be any implied promise to make compensation? And how is any such duty imposed? The plaintiff's counsel relies on the case of *Lobley v. Lister*, in which this Court intimated an opinion that an action might be maintained for compensation by the owner of a house and land, after they had been taken under the authority of an Act of Parliament, although trespass would not lie for taking them without having

previously made or tendered compensation. But there, the Act authorised the road trustees to enter upon and take the lands and pull down certain houses, making or tendering satisfaction to the owners of all lands and houses so taken for any loss or damage they might sustain thereby. Thus a duty was imposed on the trustees, after taking the land and houses, to make compensation for such loss and damage; and although, for the breach of this duty, they were not considered trespassers *ab initio*, yet the law would furnish an easy remedy. In the present case the statute contemplates no compensation except by applic[illegible] to these commissioners, and as there [illegible] longer any commissioners, if the act of raising the dam was lawful, no compensation can be obtained for the loss (of course I mean in my opinion) which the defendant has thereby suffered. The framers of the statute very possibly did not foresee the extinction of the commissioners, but I think the intention of the Legislature must be considered to have been that upon the extinction of the commissioners, the extraordinary powers conferred upon the owners of the navigation over the property and rights of others ceased. No hardship will arise from the conclusion that thenceforth all parties interested were to continue in the enjoyment of the property, and rights which then belonged to them, with a power of voluntarily entering into any new arrangement for valuable consideration. The act of raising the dam might improve the navigation, and raise the profits of the shareholders, but it would be strange if such a power existed, without any compensation being given to the defendant, whose mill thereby becomes a useless mass of stones, timber, and iron. It seems to me that the company acted unlawfully when they raised that dam, and cut off the supply of water from the defendant's mill, and that he might have brought an action against them for doing so, and that in this action he has a good defence for the alleged trespass he committed in removing the obstruction, which they had unlawfully caused to the enjoyment of his rights. But, as my brothers are of a contrary opinion, there must be judgment for the plaintiffs.

Judgment for the plaintiffs.

BANKRUPTCY.

COURT OF BANKRUPTCY, LONDON, reported by JOHN A. FONBLANQUE, Esq. Barrister-at-Law.
COURT OF BANKRUPTCY, DUBLIN, reported by J. LEVY, Esq. Barrister-at-Law.

Wednesday, May 19.
(Before Mr. Commissioner FONBLANQUE.)
ANON.

Under sec. 211 an order for protection to a fixed day, instead of "until further order," is irregular but not void, and it may be amended.

Where there has been an assignment of all an insolvent's property previous to a petition for arrangement, upon a petition for adjudication founded on the assignment being filed, the Court will enlarge the time for opening that petition, until it can be decided whether the arrangement can be effected or not.

An insolvent had assigned all his property for the benefit of his creditors; he subsequently petitioned for protection under the arrangement, sections 211, et seq.

An order was made upon the petition, giving him protection until a fixed day, instead of "until further order," as required by the statute.

A petition for adjudication had been filed founded upon the previous assignment as an act of bankruptcy.

This was an application that the order for protection might be set aside, in order that the petition for adjudication might be proceeded with.

Linklater (solicitor), in support of the application. The order for protection is void as not being in the terms required by the statute. (*Ex parte Bowers*, 18 Law T. Rep. 203.) The insolvent having assigned all his property previous to his petition for arrangement cannot fulfil the conditions of the statute, by making the affidavit that he has 200*l*. ready to produce. The title of the assignees under the petition for adjudication will date from the assignment, which is a valid act of bankruptcy; it therefore will supersede the petition for arrangement.

Lawrance (solicitor) contra.—There appears to have been fraud in *Ex parte Bowers*. There the petitioning creditor's debt was subsequent to the petition for arrangement, and could not be affected by it, more than a debt incurred pending a bankruptcy is barred by the certificate. The words in the statute "necessarily include a fixed period." The irregularity is not material, and may be amended. The petition for adjudication cannot be sustained against the protection. (Fonb. 48.) The distribution of assets under the arrangement must be as complete as it would be under a bankruptcy. The Court will not entertain concurrent proceedings for the same purpose.

Mr. Commissioner FONBLANQUE.—It does not appear that in *Ex parte Bowers* the Court above held that the order was void, although it was declared irregular. The power to make the order to a fixed period seems to be contained in the words of the statute "until further order." Such an order is certainly convenient, for an order made in the precise terms of the stat. "until further order" might give protection for ever; for if creditors should omit to apply for "a further order," it would not be the insolvent's interest to do so. The arrangement will give the creditors as full remedies as they would have in bankruptcy, but under a milder form; and it should be shewn that there is some necessity for the more stringent remedy. The order for protection may be amended, so as to comply with the statute: but let the petition for adjudication remain on the file, and the time for opening be enlarged, in order that the Court may be satisfied that the insolvent has not entirely denuded himself of all his property by the assignment, and that he has 200*l*. assets ready to produce.

INSOLVENCY COURT.

Reported by DAVID CATO MACRAE, Esq. of the Middle Temple, Barrister-at-Law.

Wednesday, June 30.
Re JOHN HIGGS.

Judgment summons at the date of the petition—Jurisdiction of Court for Relief of Insolvent Debtors upon committal of an insolvent by County Court for non-payment of a debt, from which he has been discharged by an adjudication under the 1 & 2 Vict. c. 110:

Held, that the Court has no power to order the discharge of an insolvent so committed.

Mr. Commissioner LAW.—I regret extremely that the law does not empower me to order the discharge of a man who, having obtained his liberty under the 1 & 2 Vict. c. 110, is wrongfully imprisoned by a County Court, in defiance of the adjudication. When a man having his privilege against arrest, by an order under the protection statutes is so committed, this Court can order his discharge, but the provision of the 1 & 2 Vict. c. 110, is this:—"The Court shall issue warrants of discharge pursuant to the adjudication, as to any detainers lodged before the debtor shall be out of custody. But if, having gained his liberty, he shall afterwards be taken by reason of any debt, or sum of money, to which the adjudication applies, he must apply to a judge of the court from which the process has issued, and such judge is required to release him, on proof that the cause of the detainer is within the scope of the adjudication, unless it was made without due notice to the plaintiff. The judge can also, in his discretion, order the plaintiff to pay costs to the defendant." In this case, it appears by documents from the Clerkenwell County Court, that in January 1848, Mr. Henry Beverley Wakeling, an attorney, recovered 5*l* 12*s*. 10*d*. with 1*l*. 6*s*. 5*d*. costs, against this John Higgs, who was ordered to pay the same by monthly instalments. He did not pay it, and was afterwards committed to Coldbath-fields prison on a judgment summons. The precise date does not appear, but in the recent summons there is an extra charge of 3*l*. 8*s* 1*d*. for that proceeding. On the 20th of November, 1850, Higgs being in execution for a large amount, petitioned under 1 & 2 Vict. and a vesting order was made; he was duly heard, notice being regularly given to Mr. Wakeling as to other creditors. Adjudication was made, and he was discharged on the 10th of February, 1851. On the 23rd of June, 1852, Mr. Wakeling brings the defendant before the Clerkenwell Court by a judgment summons founded on the judgment recovered in 1848, and he is committed for thirty days. It would be idle, in this instance, for this man to seek his liberty from the Court which has deprived him of it; because it appears from his affidavit that he exhibited to the judge of that Court the order of adjudication, and an office copy of the entry of Mr. Wakeling's debt in the schedule. I have shewn that the statute does not enable me to act, and the mischief can only be remedied by going before a judge of a Superior Court on habeas corpus.

JUDGES' CHAMBERS.

Wednesday, July 7.
(Before COLEMAN, J.)
DOE dem. KING v. HOLMES.

Inspection of documents—14 & 15 Vict. c. 99.

This was a summons taken out by the lessor of the plaintiff calling on the defendant to shew cause why the lessor of the plaintiff should not be at liberty to inspect and take an examined copy of the marriage-settlement of a party under whom the lessor of the plaintiff claimed to be entitled.

Hemings, for the defendant, objected that the lessor of the plaintiff was not a "litigant" within the meaning of sec. 6 of the Evidence Act, inasmuch as he had not joined in the consent rule, and until the lessor of the plaintiff does so, that he is not a party to the cause, so as to be made liable to pay costs, &c. The learned judge, however, thought that the lessor of the plaintiff was a "litigant" within the meaning of the 6th section of the Evidence Act, but added that the plaintiff's attorney must undertake to join in the consent rule. The summons was eventually dismissed on the merits, and the judge indorsed on the summons (to be embodied in an order), an undertaking on the part of the attorney of the lessor of the plaintiff that he would join in the consent rule. This was done to enable the defendant to obtain his costs.

Ecclesiastical Courts.

PREROGATIVE COURT.

Reported by Dr. WADDILOVE, of Doctors' Commons.

Tuesday, July 6.
In the Goods of MARY BROWN.
Will -Signature—15 & 16 Vict. c. 24.

A motion for probate of a will had been made on the 4th of December, 1851, but rejected on the ground of its not having been signed within one of the provisions of the 9th sec. of 1 Vict. c. 26, viz. at the "foot or end." No administration as if the deceased were consequently legally dead intestate had been taken.

The 1st sec. of the Wills Act Amendment Act (15 & 16 Vict. c. 24) had removed all doubt as to the validity of the will with reference to the position of the signature to it, and the 2nd sec. of that Act provided that "its provisions should extend to every will already made, where administration or probate had not already been granted or ordered by a Court of competent jurisdiction, in consequence of the defective execution of such will." The will itself was dated 1st May, 1850; it was all in the handwriting of the deceased; it was contained in six pages of paper concluding nearly at the end of the sixth page, where was the signature of the deceased, which also appeared at the bottom of each page. None of these signatures, however, as appeared from the affidavits of the attesting witnesses, were made in their presence, but all of them were affixed previous to their subscribing the will. The deceased afterwards signed in their presence, a formal attestation clause having first been written, but there not having been sufficient room at the bottom of the sixth page, where the will ended, to contain the attestation clause, that clause was written on the top of the seventh page, thereby leaving a blank space at the end of the will. After the attestation clause followed the signature of the deceased, and those of the attesting witnesses. This last signature alone was made in the presence of the attesting witnesses. The former motion for probate of the will had therefore been rejected, the Court having been of opinion that the signature was not at the "foot or end" of the will

Spinks now renewed the motion for probate, as the will was clearly valid under the 15 & 16 Vict. c. 26, and since the rejection of the motion for probate did not amount to a decree against the paper, which might still be propounded and pronounced a valid instrument.

Sir JOHN DODSON.—The original motion might, I think, in this case have been granted. The will, however, under the circumstances stated by counsel, comes within the provisions of the late Act introduced by Lord St. Leonard's, and I shall decree probate of it.

Irish Reports.

CONSOLIDATED CHAMBER.

Reported by P. J. M'KENNA, Esq. Barrister-at-Law.

Thursday, Feb. 12.
(Before Mr. Justice MOORE.)
BAKER v. STEVENS.

Practice—Judgment entered on irregular Parliamentary appearance—Setting aside.

A judgment entered up on a Parliamentary appearance, where an appearance has been regularly entered by the defendant, is irregular, and will be set aside, but such irregularity may be waived by defendant's delay and acquiescence.

Where, however, the judgment has thus gone by default for an untaxed bill of costs, the Court will order those costs to be taxed, and allow plaintiff to issue execution for the taxed costs only.

Martley, Q.C. on behalf of defendant, moved to set aside the parliamentary appearance, and all subsequent proceedings. In this case the defendant's attorney had entered an appearance in the office in the regular manner, and had only learned by accident that a judgment had been entered up against his client on a parliamentary appearance. This parliamentary appearance is, therefore, clearly irregular, and that, as well as the declaration and judgment, must be set aside.

Edward Johnstone, contrà.—This was an oversight of plaintiff's attorney. These proceedings are merely irregular, and not void; they may, therefore, be cured by defendant's conduct and acquiescence. The defendant here did not come in as on first discovering this irregularity. There has been a correspondence between plaintiff and defendant about this very judgment, and an attempt on defendant's part to enter into some arrangement and get time.

Martley, Q.C. replied.

MOORE, J.—I must refuse this motion with costs. —The defendant did not come in as soon as he discovered this irregular judgment and ask relief. He seeks to make terms and get time for the payment of this money, and when he cannot succeed, he comes here to ask to set aside this judgment, which he has not hitherto complained of. However, as this judgment has been recovered for an untaxed bill of costs, I shall order that the costs be taxed within a fortnight, when plaintiff may issue execution for the amount of the costs so taxed.

COURT OF CHANCERY.

Reported by J. J. BLACKHAM, Esq. Barrister-at-law.

Jan. 2 and Feb. 26.

QUINN *v.* QUINN.

Personal representative—Lodgment of assets in bank—Trust.

Where an administratrix lodged money in a bank, with the intent of preserving it for the benefit of her children:

Held, that a trust was fastened upon it for the benefit of the children, and that she could not recover the possession of the money.

The rule in this case stated that Owen Quinn, of Newry, died intestate, leaving three infant children. The testator, at the time of his death, was possessed of a sum of 182*l.* 16s. 9d. Shortly after his death, the defendant and the plaintiff, by the advice of a solicitor whom they consulted, lodged the money in a bank, in the names of themselves and of a third party, and this was done with the full concurrence of the plaintiff, who was the wife of the intestate, for the purpose of securing the money for the benefit of the three children. The plaintiff subsequently took out administration to her husband, and in that character required the respondents to join in a receipt to the bank for the purpose of withdrawing the money. This being refused, on the ground that the money would be misspent, and that there was a trust created for the children, this bill was brought to compel the signature of the receipt.

Andrews, Q.C. (with him *O'Reardon*), for the plaintiff. An act done before administration may be validated by subsequent administration. (*Montford*, v. *Gibson*, 4 East, 441; *Whitehall* v. *Squire*, 1 Salk. 295; Carth, 101; *Stewart* v. *Edmonds*, Wil. Ex. 334, note *a*; *Parsons* v. *Mayesden*, 1 Free. 152; *Hornby* v. *Glenn*, 1 Ad. & E. 49; 3 N. & M. 837; *Bacon* v. *Simpson*, 3 Mee. & W. 87, per Parke, B.; *Welchman* v. *Sturges*, 13 Q.B. 552.)

Christian, Q.C. and *Rossmorn* for the defendant. —The effect of the appropriation of money in this manner is to create a trust. (*Cochrane* v. *O'Brien*, 2 Jon. & L. 380; 8 Ir. Eq. Rep. 241; *Wheatley* v. *Purr*, 1 Keen, 551; *Coulter's* case, 5 Rep. 30, b; *Graysbrook* v. *Fox*, Plow. 382; *Parker* v. *Kell*, 1 Lord Raym. 661.) The cases most like to this are those where the party doing the act subsequently takes out administration. (*Whitehall* v. *Squire*, 1 Salk. 275; 3 Mod. 276; *Lyons* v. *Muldany*, Hayes, 530.) A parol trust is good. (*M'Fadden* v. *Jenkyns*, 1 Phil. 153; *Ex parte Rye*, 18 Ves. 140; *Foster* v. *Bates*, 12 M. & W. 226; *Thorpe* v. *Statewood*, 12 L. J. Rep. (N.S.) 241, C.P.

Monday, Jan. 19.—The case having stood over that the minors might be made parties, the case was now again argued.

Johns for the minors.

The LORD CHANCELLOR.—In this case I have no difficulty as to the destination of the money. It is admitted the chief purpose for which the money is required is for the maintenance of the children of the plaintiff. There is no allegation that it is required for the purpose of administration, nor is it alleged that there are any debts; I am of opinion that, independently of the lodgment at the bank in the names of the defendants and of Mrs. Quinn, she is a trustee for her children. Mrs. Quinn has dispossessed herself of her legal title, and if any of these children had filed a bill for the purpose, the money should be brought into court. The defendants acted quite correctly in urging her, the defendant, to settle the money for the benefit of the children. In pursuance of the suggestion of the solicitors, whom the parties consulted, they deposited the money in the bank in the name of the lady and of two other persons; under these circumstances I have no doubt but that the money was lodged in trust for the children; if this had been her own money, she could by a similar proceeding have fastened a trust upon it for the benefit of her children. I have no difficulty in saying that the money was deposited upon trust, and must be brought into court and invested, the interest to be paid to the defendant from time to time as long as the children are to be maintained, with power to all parties to apply.

HOUSE OF LORDS.

Reported by W. H. BENNET, Esq. of Lincoln's-inn, Barrister-at-Law.

June 21, 22, and 28.

(Present, The LORD CHANCELLOR, Lords BROUGHAM, TRURO, CAMPBELL, CRANWORTH, DEVON, SYDNEY, BEVERLEY, and other Peers. The judges present were Justices COLERIDGE, WIGHTMAN, COMPTON, ERLE, MAULE, CRESSWELL, V. WILLIAMS and TALFOURD. Barons PARKE, ALDERSON, MARTIN, and PLATT.)

HUTTON *v.* BRIGHT.

BRIGHT *v.* HUTTON.

Winding-up Acts—Liability of a contributory—Jurisdiction—Upfill's case.

The House of Lords, sitting to hear appeals, is a court of justice; and it is inherent in the nature of every court of justice to correct any error into which it may have fallen.

A person who had been a provisional committeeman, who had had shares allotted to him, who had accepted these shares and paid the deposits thereon:

Held, not to be liable to contribute anything towards the expenses of the quasi company, beyond the amount of the deposit he had already paid, on the ground that no action at law would lie against such a person by the managing committee of such quasi company for contribution towards the moneys expended by them in such concern.

On these appeals being called on, on the first of the days above mentioned, a preliminary objection was taken to their being heard, on the ground that the House of Lords had not jurisdiction to hear them in the absence of the party who had obtained the order of the Court of Chancery directing the winding up of the association, but it was replied by the Lord Chancellor, with the assent of the other peers, that it might be assumed the House had jurisdiction, and therefore directed two points to be argued; the first as to whether an association similar to the present came within the scope of the several Winding-up Acts; and, secondly, as to the extent of liability which a contributory had incurred by accepting shares allotted to him and paying the deposit thereon.

The present report relates to the second question. The one as to the construction put by the judges on the Winding-up Acts, we shall give in a subsequent number.

In the year 1845 a company was provisionally registered pursuant to the statute 7 & 8 Vict. c. 110, intituled, "An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies," by the name and style of "The Direct Birmingham, Oxford, Reading, and Brighton Railway Company," but it was necessary that an Act of Parliament should be obtained to authorise its formation, and to carry into effect its objects. The capital of the proposed company was to be 2,000,000*l.* divided into 80,000 shares of 25*l.* each. Upon the allotment of each share it was proposed that a deposit of 2*l.* 12s. 6d. should be paid. A prospectus, registered 25th September, 1845, was printed, published, and circulated among the public by the promoters of the company, containing the names of divers persons (and amongst others that of the respondent), as constituting the provisional committee of the company. On the 8th October, 1845, a meeting of gentlemen was held at the office of the company, in Moorgate-street, at which a provisional committee and a committee of management were appointed, and resolutions passed to the following effect—viz. that the prospectus issued as that of the provisional committee, then read, should be approved and adopted, and that until an Act of Parliament should be obtained the affairs of the company should be under the control of the managing directors, to whom power was given to allot the shares, and to apply the funds of the company in payment of all the expenses incurred in its formation and in the preparation of the plans and sections to be submitted to Parliament. The respondent was not present at the meeting of the 8th October, 1845, and had no notice whatever thereof. On or about the 14th October, 1845, the respondent received from Mr. Rayner, the secretary of the proposed company, a circular letter, dated the 10th October, informing him that 100 shares had been appropriated to each member of the provisional committee. On the 14th October, 1845, the respondent wrote to the secretary a letter in reply to the circular, stating that he was willing to take the 100 shares placed at his disposal as a member of the provisional committee. On or about the 18th of October, 1845, the secretary sent to the respondent the letter of allotment. The respondent paid the sum of 262*l.* 10s. as the deposit on 100 shares allotted to him by the letter of allotment; no part of that sum has been returned to the respondent, nor has he paid any further sum on account of the company. Of the 80,000 of which the company was to consist, only 67,630 were even allotted, the deposits were paid on 4,295 only, no Act of Parliament was ever applied for to invest the company with the powers necessary to accomplish its object, and the undertaking was wholly abandoned. The several persons who were appointed the managing committee accepted and took upon themselves the office and duties thereof, and expenses to a large amount were incurred by them in and about the formation of the company; the respondent never directly authorised the incurring of any such expenses, nor was he ever present at any meeting of the company, nor did he in any manner whatever become a party to any contract under which any of such expenses were incurred. On the 21st of December, 1849, an order was made by his Honour the late Vice-Chancellor of England for the dissolution and winding-up of the company, under the provisions of the Joint-stock Companies Winding-up Acts, 1848 and 1849; and the matter was referred to Master Brougham, who appointed Mr. Hutton official manager of the company; and Mr. Bright was afterwards declared to be a contributory, as from the 14th of October, when he united in his own person the characters of provisional assignee and allottee, to the 30th of November. On the 13th of June, 1851, the Master ordered a call of 10*l.* per share upon each of the contributories, in order to pay the expenses of the company. Mr. Bright, on the 3rd of July, 1851, moved the Court of Chancery against the call, but Vice-Chancellor Lord Cranworth did not think fit to make any order thereon, and gave judgment to that effect on the same day, for the purpose of enabling the parties to come at once by appeal to this house. Mr. Bright appealed against that order —first, because he contended that previously to the passing of the Joint-stock Companies' Winding-up Acts he was not liable at law or in equity to pay any part of the expenses of the company; and secondly, because the Joint-stock Companies' Winding-up Acts have not the effect of making any contributory to the company liable for any part of the expenses incurred on its behalf for which he was not previously liable. Mr. Hutton, the official manager, also appealed against the order so far as it restricted Mr. Bright's liability within a given time—namely, from the date of his acceptance of shares (he being at the time a provisional committeeman) to the date at which the affairs of the company were ordered to be wound up.

C. Purton Cooper, Q.C. (with whom was *Morris*), for Mr. Bright, contended that but for the authority of *Upfill's* case (2 House of Lords, 674) no legal liability could be fixed on Mr. Bright. That case declared that when a man united in his own person the character of provisional committeeman and allottee of shares, he became liable. The Winding-up Acts and the Company's Registration Act, however, had not expressly made him liable as a contributory, and there was no principle of common law creating any such liability. In such a case each claim ought to be the subject of separate discussion, and no rule could be laid down as embracing every case, for every case must depend on the particular contract in it. Here was no such contract, and if a rule was to be applied, it was impossible to fix any limits to its application.

Bethell, Q.C. (with whom was *Roxburgh*), for the official manager, contended that it was necessary to lay down a general rule, and that no better rule than that which had been stated in *Upfill's* case could be adopted. If there was to be any liability, then the question was, whether that liability was to be individual and positive, or was to be calculated upon the ratio of the number of shares taken by the individual to the number of shares in the concern. The Master's decision was the right one. Every one person who formed part of an association like this must be taken to have given authority to the managing committee to do what was necessary to constitute the company. They were one and all joint contributors; and when they had done that which distinctly shewed (as being provisional committeemen and accepting shares did), that they were associated to form a company, they must be taken to be liable to contribute to the expenses of doing what they desired.

Cooper, in reply.

The LORD CHANCELLOR said that he proposed to state the facts of the case with regard to a supposed individual, whom he would call A. and then to put this question to the judges,—"Do the facts above stated afford sufficient evidence at law to warrant (in an action against A.) a verdict that A. is liable to contribute to expenses incurred beyond the amount of his deposit?"

The judges requested to retire in order to consider it.

In about an hour the judges returned, and

Mr. Baron PARKE delivered their opinion. Having stated the facts of the case, he said it was the

unanimous opinion of the judges who had heard the argument that, but for the decision of this House in *Upfill's* case, the evidence stated in the question would not have warranted the verdict in respect of claims for work done as an engineer, or in the endeavour to obtain an Act of Parliament for the association. The judges considered that *Upfill's* case had decided two points. The first related to the nature of the evidence to be given before a jury as conclusive proof of a claim under the circumstances described; the other was a question of fact, that, under the particular circumstances there set forth, *Upfill* had given authority to incur the expenses. On the former the judges considered the authority of the decision as binding upon them, being, as it was, a decision of this House, and so they answered the question now put to them in the affirmative; but they desired to add that, except for the authority of that decision, they should all have been of a contrary opinion.

The judgment of the House was moved by the Lord Chancellor in the following words:—

The LORD CHANCELLOR.—My lords, in this case, in which you have just heard the opinion of the learned judges, a question of great importance remains to be decided. It is, whether, under the facts stated, Mr. Bright was, or was not, liable to pay as a contributory: he paid his deposit. With regard to that, no question was asked of the judges. The question was as to further liability. He was a provisional committeeman, and he had had shares allotted to him, and those shares he accepted and paid a deposit upon, but he did no further act. Now, I understand, my lords, the judges to be of opinion that, independently of *Upfill's* case, there was no liability arising out of those facts which would have made Mr. Bright liable to a creditor for business managed, carried on, or ordered by the managing committee for the completion of the undertaking, until it became a regular company. My lords, *Upfill's* case may be considered, as the Judges have considered it, as a mixed case of law and fact; therefore it may not be so difficult for your lordships to deal with it as it otherwise might be. At the same time I should venture to state to your lordships as my opinion, that although you are bound by your own decisions, as much as any Court would be bound, so that you could not reverse your own decision in a particular case, yet you are not bound by any rule of law which you could lay down, if, upon a subsequent occasion you find reason to differ from that rule; that is, like every court of justice, and I regard this as a court of justice, it is inherent in the nature of every court of justice, that it should have liberty to correct any error, into which it may have fallen. In regard to the point decided in *Upfill's* case, I must state to your lordships, in the presence of the learned judge, that I believe there is scarcely one judge before whom this question has originally come (and there is no Court and hardly any judge before whom this question has not from time to time come), which judge has not, and which Court has not, differed from itself in regard to the points decided. There was so much of novelty in the establishment of this provisional committee; there was so little of law to direct the opinions of lawyers upon it; and there was such a leaning in favour of a quasi partnership and an implied responsibility, that I am sure your lordships will not be surprised, if in *Upfill's* case, as in many others I could quote, there may have been a departure from that which is now considered to be the settled rule. I believe the general opinion now is, that the answer which has been given by the learned judges is that which your lordships will follow, that, considering their opinion to be that Mr. Bright in this case would not be liable to an action, your lordships would follow that rule, and leaving *Upfill's* case, as depending upon a matter both of fact and law, just where you found it, you will decide this case upon the questions submitted to the learned judges, and upon that opinion give your judgment. I should therefore propose to your lordships, without going further into detail, after the opinion delivered, that your lordships should dismiss the appeal of the official manager, requiring Bright to pay a larger sum than he has been hitherto charged with, and reverse the order of the Court below, which holds him to be liable to contribute to that call of 10*l*. The consequence of reversing the one and dismissing the other would be, that Mr. Bright would be held from this time not to be liable to any contribution in this company, beyond the deposit which he actually paid.

Lord BROUGHAM.—When I advised your lordships in *Upfill's* case, I had the concurrence of a very high authority, the late noble and learned Lord Cottenham, who not only went entirely with me in the advice that I tendered to your lordships, and which you were pleased to accept in that case, but went a great deal further, as I stated at the time, that I gave the judgment in *Upfill's* case. I either read or had in my hand a letter from Lord Cottenham on the subject, in which he certainly went a good deal further than I was disposed to go, in admitting the liability of a party in similar circumstances. I therefore felt no hesitation whatever in the conclusion which I arrived at myself in *Upfill's* case, and which I advised your lordships to adopt. Whether I should have altered that opinion now had I considered the question open, it would indeed be superfluous at present for me to say. The learned judges to whom the question has been submitted have given a unanimous and, I believe I may say an unhesitating opinion, that this question, which they say is partly a question of law and partly of fact, but which, in my opinion, is a great deal more a question of fact than it is a question of law—they have given their opinion upon that, to the extent that the evidence of a man being a provisional committeeman, and his having shares allotted to him by his own consent—indeed, at his request—would not be sufficient to warrant a verdict in an action of law brought against him for money expended by the managing committee in that concern. The learned judges have given this opinion. It is not for me to say whether I agree with them or not. It would be superfluous in me to say I agree with them, it would be unbecoming in me to say that I differ from them; it is enough for me to say that I entirely approve of the course recommended, under the circumstances, by my noble and learned friend on the woolsack, namely, the affirmance of one appeal, and the reversal of the other.

Lord CAMPBELL.—My lords, I rejoice very much that this matter of the liabilities of contributories is now put upon what, I think, is a right footing. I never could understand why it was considered a pure question of law, why provisional committeemen or allottees of shares, persons who stood in both capacities, were to be liable as contributories or not. The law does not know what the meaning of a provisional committeeman is. Yet we have had these liabilities talked of as if they were as well known to the law as "tenants for life" or "tenants in tail." I consider this as a matter of contract. A person can only become liable as a contributory in respect of the contract he has entered into, or in respect of a liability which he has incurred by taking a particular character. The question of contract will depend upon the facts of the case, not merely on his being a provisional committeeman, and then it will only be a question of law. Whether there is evidence to submit to the jury to consider whether a contract has been proved, is matter of fact, and to be decided as matter of fact. Now I say that I entirely concur with the opinion delivered by her Majesty's judges, and I think that in this case the evidence is not sufficient to fix the liability of Bright, and that if it had been laid before a jury, the judge ought to have nonsuited. A difficulty arises here from *Upfill's* case; and, if I considered that that was expressly in point, I must say, with the most sincere respect for the opinion of my noble and learned friend on the woolsack, I should hesitate in advising your lordships to decide against it. Because, according to the impression upon my mind, a decision of this High Court, in point of law, is conclusive upon the House as well as upon all inferior tribunals. I consider it the constitutional mode in which the law is declared, and that after such a judgment has been pronounced it can only be altered by an Act of the Legislature. My humble opinion is, that this House cannot decide a thing as law to-day, and decide differently the same thing as law to-morrow; because that would leave the inferior tribunals in uncertainty, and the rights of the Queen's subjects in a state of uncertainty. And after there has been a solemn judgment of this house, laying down any position as law. I apprehend that that is binding upon the rights and liabilities of the Queen's subjects, until it is altered by an Act of Commons, Lords, and the Sovereign on the Throne. That is my present impression. I state, that with great deference after a different opinion has been expressed by my noble and learned friend, I do not think that I am precluded from concurring in the motion that has been made in this case; because I do not consider *Upfill's* case as laying down any abstract point of law. It was an appeal from a Court of Equity. Your lordships sat as a Court of Equity to decide it. You took into view the facts and the law, and I consider what was laid down by my noble and learned friend, with the concurrence of that illustrious judge, Lord Cottenham, when he talked of the liability of the committee man, that was stating his opinion upon fact and not his opinion upon an abstract point of law. I do not think that *Upfill's* case prevents me from concurring in the motion of my noble and learned friend, and therefore, in that motion I entirely concur.

Lord CRANWORTH.—The question now before your lordships is, in fact, an appeal from an order made by myself. But I believe, as I stated in the course of the argument, that although the order was made by myself, it was made rather by consent and at the suggestion of, or rather at the instance of, the learned counsel, that I should affirm simply what the Master had done in order that the question might be brought by way of appeal to your lordship's house. I did so, but I believe upon that occasion, certainly if not upon that, upon a great many similar occasions in cases which were argued before me when Vice-Chancellor, I expressed my very strong doubt whether *Upfill's* case could have been rightly considered, or rather, rightly interpreted by the profession; or if so interpreted, whether it was a decision which could be acted upon. Because what was thought was, that *Upfill's* case had decided, as matter of law, that persons under certain circumstances were liable in point of fact to certain claims that were made upon them. Now it did not appear to me that it was possible that that could have been the intention of the house; that this house could have intended to decide that a combination of circumstances rendered a person liable in point of fact; it was, however, so interpreted, and having been so interpreted, I acted upon it. I rejoice that the matter has been brought before the House, because I cannot help thinking that the opinion that has now been delivered unanimously by the judges, in so very clear and distinct terms, will go far to settle doubts that have created enormous expense and anxiety beyond measure in the winding up of these several abortive companies. I concur with my noble and learned friend, I do not think that we need treat this case as necessarily at variance with *Upfill's* case, because *Upfill's* case was a mixed decision of law and fact. I confess that, treating it as a question of fact, the conclusion to which your lordships arrived was not, I believe, that to which I should have arrived, if I had then had the honour of a seat in your lordships' House. That was not so. I was certainly not a member of the House, and the decision came to was in a case which was an appeal both from law and fact. Your lordships decided that *Upfill* was properly put upon the list of contributories. I confess I think that that was an erroneous decision in point of fact. But treating it either in the one way or the other, the opinion now delivered by the judges seems to me to set us free to do that which is just between these parties. They are of opinion distinctly that but for that decision there was nothing here that could leave it for a jury to say whether Mr. Bright was or was not responsible. If he was not responsible, if the matter had been brought before a jury, he was clearly not responsible here. I think it necessary to advert to one of the arguments addressed from the Bar, namely, that although not responsible at law, he might be in equity. I know of no such possible distinction—he was liable, if at all, by virtue of a contract. If there was a contract, he was liable at law—if there was no contract he was not liable at law or in equity. The decision of the judges leads clearly to the inference that he was not liable at law, therefore if he was not liable at law, the result will be, as my noble and learned friend on the woolsack has moved, that one appeal would be dismissed, namely, that which sought to render him liable to a greater extent than he was liable below. The other appeal, on the other hand, of the party that complained of an order that was made making him liable, will be reversed, and the order reversed.

The appeal of the official manager dismissed.

Equity Courts.

LORD CHANCELLOR'S COURT.

(Before Lord ST. LEONARDS, L.C.)

Reported by C. H. KEENE, Esq. of Lincoln's-inn, Barrister-at-Law.

May 8, 25, *and* 31, *and June* 1.

Re NORTH OF ENGLAND BANKING COMPANY, *ex parte* HOLME.

Winding up—Joint stock company—Contributory—Transferror of shares—False accounts.

Under a joint-stock company's deed of settlement a transferror of shares was from the date of transfer to be released from any subsequent liability, but he was to remain liable for the proportion of the losses sustained by the company up to the date of the transfer; such losses were to be ascertained from the accounts of the company, which were to be exhibited to the shareholders at the half-yearly meetings, and the balance sheets were to be binding and conclusive on all the shareholders. H. a holder of shares in the company, transferred them to A. in January 1847. From the balance-sheets of the accounts up to the close of the years 1845 and 1846, it appeared that considerable profits had accrued to the company during those years. In the month of March 1847, the bank suspended payment, and the company was subsequently ordered to be wound up. The balance-sheets did not contain correct statements of the affairs of the company, and by an affidavit of the principal clerk who prepared such balance-sheets, it appeared that instead of profits, losses had actually accrued to the company.

The Master refused to put H. on the list as a con-

tributory in respect of losses up to the date of transfer:

Held, on appeal by the official manager (affirming the decision of the Vice-Chancellor), that H. was rightly excluded.

This was an appeal motion by the official manager of the company, seeking to reverse a decision of the late Vice-Chancellor Knight Bruce, and to place the name of Mr. Holme on the list of contributories to the losses of the company in respect of certain shares which were formerly held by that gentleman, but which he had since transferred.

The facts of this case were reported at length on the original hearing. (17 Law T. Rep. 14.) They, as also the particular clauses in the deed of settlement, which have reference to the transfer of shares, and the transferror's consequent liability, are referred to in the Lord Chancellor's judgment.

Bethell, Bacon, and *J. V. Prior*, for the appellant, contended that the words of the 26th clause clearly made the holder of shares liable for all losses up to the time of his transfer as surety for the transferee in the event of his inability to pay. It was admitted that serious losses had been incurred previously to the date of the transfer, and the only question was, whether the fraudulent representations of the directors was a protection or not. Mr. Holme relied on the statement of the accounts as they appeared in the balance-sheets; but the evidence of Mr. Hedley, the principal clerk, proved that these balance-sheets were inaccurate, and that they did not represent the true state of the company's affairs at the time they were issued. They contended also, that the directors were the agents of the shareholders, and that Mr. Holme, as well as the other persons interested in the company, joined in concealing the true state of the affairs from the public; of what the true state was they had ample opportunities of ascertaining, and it was not possible for Mr. Holme to take any benefits as arising from the accounts as set forth in the balance-sheets in the false statements of which he had acquiesced—those balance-sheets could not affect the mutuality of contract which existed between Mr. Holme and the other partners, or divest him of his liability to contribute to the losses up to the period when he ceased to be a holder.

R. Palmer, Willcock, and *Bates* supported the order of the Court below, and urged that a loss must be actually proved to have existed at the time of the transfer in order to justify the interference of the Court. As far as the evidence went the very reverse was the fact, as, by the balance-sheets, which were the only source from which the amount of profit and loss could be ascertained, there was, in every instance, a visible amount of profit. In order to prove the liability of Mr. Holme, it was necessary to shew the particular time that the bad debts of the company became losses. So long as any part of the nominal capital of the company remained unpaid there could be no actual losses, because until the capital was exhausted there could be no losses within the meaning of the 26th section, for losses meant liability to pay beyond the capital. The particular time at which the liability accrued could not be ascertained; on bills being dishonoured, they were from time to time renewed, until they became useless, and it was not until they could be renewed no longer that the shareholders found out the exact position of the affairs of the company. On the faith of the accounts, as they appeared in the balance-sheets, many of the shareholders had parted with their interest before they had incurred any liability. From 1835 to 1846 upwards of 1,200 transfers had been made, and was it possible to measure the extent of loss which was to be borne by each of those transferring parties?

Bethell, in reply, cited *Ex parte Dodgson*, 3 De G. & S. 85; *Ex parte Hawthorn*, 1 M. & G. 49; *Ex parte Barnard*, V. C. Parker, May 16.

JUDGMENT.

Tuesday, June 1.—The LORD CHANCELLOR.—This is the case of a joint stock company, and the question is, whether a person who has transferred his shares upwards of three years before the stopping of the company can now, on its winding up, be put upon the list as a contributory according to the Act of Parliament. In all these concerns, in which, of course, there are a great many floating balances and open accounts—or even if the concern is of a different nature, where there are any speculations — it is scarcely possible from time to time at any given moment to ascertain what the actual loss is, and therefore, generally speaking, when a man comes in as a purchaser of an interest in any of these concerns, he takes it just as he finds it, he takes it with a loss whatever it may be, and with whatever benefit may hereafter turn out; otherwise if a man who was selling a share with losses up to the time were to be liable, you would (unless you had some provision to meet that exact case) have, in every case, to take an account of what the actual extent of loss was at the time that particular individual sold. This, after the event, would be almost impossible. In this case there have been between 1,200 and 1,300 transfers. If the contention at the Bar on the part of the appellant is right, there must be on every one of these transfers an account taken to ascertain what was the amount of loss. There have been losses almost from the very commencement of the company at the particular time each individual making the transfer sold his shares. It would be a thing almost impossible to take such an account. I think this is quite clear, that on a question of this nature you cannot say the loss was incurred, as was attempted to be argued when the debt was incurred, that is, when the loan or advance was made. It is impossible to say that, although in the result the debt proves a desperate one: that is no reason why it should be considered as a loss at the time that particular debt was contracted. Then the question is, what is the exact moment? This company went on in a way that was sure to lead to ruin, having mere securities upon paper, and when they found that the debtor could not pay, they renewed their bills: well, those bills were useless, except for a fictitious credit, but that was the course they pursued. It is impossible for any man to say when the particular loss in many of these transactions did accrue, because that loss, as a mere matter of fact, would depend upon the particular period at which each debtor was insolvent, and that would lead to an inquiry that no man living could carry out. That is obviated in most cases by the circumstance, that, having regard to the impossibility of ascertaining anything about the real state of the concern, a man buys his share just as it stands, and then no question arises as to future calls. If the capital has not been all called up, he may have the benefit, or he may come into the concern at the time that it is absolutely insolvent; for that there is no help. But this deed has a particular provision, that the man selling shall be absolved from future liability, but that he shall be still liable for losses already incurred. Now that introduces the question which is now before me. After giving certain directions authorising transfers, clause 26 declares that whenever any share is transferred, the man who makes the transfer shall be "relieved from all subsequent claims, demands, and obligations in respect of the same shares, and from all future observance and performance of the covenants," and so on in the deed of settlement. If it had stopped there those future liabilities would have extended to all prior obligations then existing, and ascertained insolvent transactions, because if there were bills running, and the men were insolvent, there would have been engagements actually entered into. But then come the words "Provided nevertheless, that nothing in this article contained shall extend or be construed to extend to relieve the previous holder of shares so forfeited or transferred as aforesaid from his proportion of the losses (if any) sustained by the company up to the period of his ceasing to be such holder." Now if the ascertainment of those losses is provided for by the deed of settlement, then that clause may be a sensible one, because in that case the party buying would know the state of the concern; the party selling would know to what he was still liable; and the company would have, what is contended the true construction, the continuing liability of the outgoing partner in respect of the losses referred to; and it is contended on both sides, upon which I give no opinion, that the purchaser is liable to the whole extent of the liability of any partner, that is, as well to future as to past transactions, and that this clause only deems the transferror, that is, the seller of the shares, liable to past losses, as a surety only for the purchaser of the shares. Now I have been very much pressed in argument what the meaning of this expression is: "The losses (if any) sustained by the company up to the period of his ceasing to be such holder." It was argued very strongly and very well, that that could not apply to anything, except what was a loss beyond the whole capital, and whilst any portion of the capital remained uncalled up, there could be no loss within the meaning of that proviso, for that the loss which had enured at any given moment before the capital was called up, affected the purchaser, and no doubt every one knows it affects the market value of the property. The state of the concern may not be accurately known. The shares fluctuate, and why? Because the concern is considered either to be going down or going up; the shares, therefore, fluctuate, and accordingly, become either reduced in price, or they become advanced to a premium. I do not think it necessary to decide that question. I am not now called upon to decide it: it is one of great difficulty: but the question which now calls for decision is, whether there was any ascertained loss within this clause for which Mr. Holme was still liable? Now that, I think, depends upon the true construction of this deed. The case of *Ex parte Hawthorn*, which was quoted for the guidance of the Court, has no bearing upon this case; that case turned entirely upon the party going out being still liable to creditors under the General Acts. "Three years had not elapsed, he was therefore clearly liable in respect of past losses to creditors, and consequently he was properly placed as a contributory on the list under the Winding-up Acts." That case did not decide to what extent he was liable, or for what he was liable, but merely that he was a contributory, and was liable as such; I think that case was rightly decided, but I do not think it has any bearing upon this. This deed provides first, that the directors shall keep proper books of account, and that they shall enter in those books "fair, explicit, and true entries of all receipts, payments, transactions, and dealings, by or on behalf of the company, and of all profits, gains, and losses arising therefrom, and also an account of all dealings," and so on; "and shall make, or cause to be made out, a full, true, and explicit statement and balance-sheet, exhibiting the debts and credits of the company, and the amount and nature of the capital and property thereof, and the then fair value of the same, estimated by the directors as nearly as may be, and to the best of their judgment, and the amount of the company's negociable securities then in circulation, and the profits and losses of the company, and all other matters and things requisite for fully, truly, and explicitly manifesting the state of the affairs of the company." Now this clause admits of no doubt: there is no necessity to strain the words to give to them their natural interpretation; nothing can be better framed, and nothing can be more plain; they are to keep a true account of their transactions, both of gains and losses arising from carrying on the concern, and they are to exhibit them and to estimate their actual value. If the directors had done their duty in this respect, no question could have arisen, because under section 26, the liability continues for past losses to the person transferring; that is beyond all question: the deed says so, and nobody can mistake it. But the deed also says the loss shall be shewn upon the face of the account, and if the directors had done their duty, which they entirely neglected, it would then have appeared what the actual losses were, and no difficulty would have arisen. Now in another section, which embodies the section which I have just read, there is this further direction, "At every half-yearly general meeting the directors shall exhibit to the shareholders assembled such a balance-sheet as they are required to prepare by the 69th article." There is no doubt that this is cumulative; besides giving such a balance-sheet as is directed by the 69th article, they are directed to do this; to furnish such a statement of the probable amount of the losses to be apprehended from the subsisting accounts and engagements of or with the company, and generally of the state and progress of the affairs of the company up to the 30th day of June and the 31st day of December, immediately preceding such meeting as the directors shall deem expedient for the interest of the company to be made public. Therefore there is an additional duty here thrown on them, and it is a duty which is discretionary. These sections taken together are imperative. The directors were to make out accounts shewing the actual loss, and those accounts were to contain a true statement of the value of the concern: by this section, which although it comes before the other, refers to the later one, into which it is embodied, the directors are to make such a statement of the probable losses, and of the state of the concern, as they may deem necessary and proper to be publicly known. Well, that was really a precaution. The directors were not only to state the thing as it actually existed, but to state what the probable effect of pending transactions might be on the concern—they were to have such a discretion as would not throw on the public unnecessarily a statement of probabilities which might never come to pass. Then come these words, which I believe were not read on either side. "And every such balance-sheet shall be binding and conclusive on all the shareholders, their executors, administrators, and assigns, unless some error shall be discovered therein respectively before the next half-yearly general meeting, and in that case such error only shall be rectified." By this clause, therefore, I consider the balance-sheet, as rendered by the directors, on whom the duties devolved, was actually binding on all the partners in this concern, unless errors were produced. Now the partners entering into this concern certainly chose to have as little power over it as it was possible for men to have, and they have chosen implicitly to trust in their directors, for by the 16th section it is expressly provided, "that no shareholder, not being a director or an auditor, his executors," and so on—the largest words to include every one claiming under him, that none of them "shall be entitled or allowed under any pretence whatsoever, to inspect or have in equity a discovery of all or any of the books, accounts, documents, or writings, of the company, except such as may be produced for his inspection at any meeting of the company, and except the deed of settlement." So that except what was produced at the general meeting, no shareholder had, by the express terms of the deed of partnership, the power

to call for, nor could he inspect the documents. The shareholders therefore must take the accounts just as they find them Now it is said, that in point of fact Mr. Holme knew, and that the shareholders generally knew, that these accounts, which I should call fraudulent accounts—fraudulent in the sense of being made up contrary to the truth were made to represent profits with the capital continuing, when, in point of fact, the profits were none, the losses heavily outweighed them by several hundred thousand pounds, and the accounts were, in the view I take of such matters, what I should term fraudulent accounts, and it is said the partners were aware of it. I think that tells against the party who makes use of that argument, because if all the partners were aware that those were not true accounts, but chose to go on deceiving themselves and the public, they cannot afterwards say that those accounts are not afterwards to be binding between themselves in transactions which have been founded on those accounts. now it is sworn, and not denied, that during the whole time this company was carried on, in no one instance has any transferror of shares been called upon to contribute for past losses, although those losses had been to an enormous amount; nor upon the occasion of any one transfer —and no transfer took place without the consent of the directors—was an account taken to ascertain what the actual losses were, therefore all the partners chose to deal with the accounts as they were furnished, and dealing with those accounts they were necessarily bound by them as between themselves. There are some clauses of great particularity in this deed, particularly clause 15, which makes the share of a shareholder "liable to any debt which he owes to the partnership,"—the result of dealings between himself and the partnership—but there is an express proviso "that such charge or lien upon the share of shareholder shall be wholly discharged upon the transfer thereof by him, with the consent in that behalf prescribed in the 22nd article" in this deed, so that after he transferred his interest that liability was given up by the company in favour of the purchaser. Now it is material to consider how the transfers were to be carried into effect; in the first place, the company guarded, as they generally do, against any shareholder escaping from the company by making a transfer while any calls remained unpaid, and therefore by clause 21, it is provided "That no shareholder shall be allowed to vote at any meeting of the company, or to exercise any other right or privilege under or by virtue of the deed of settlement, until the amount of every call which shall have been made in respect of his shares, together with interest thereon as aforesaid, shall have been fully paid and satisfied." Then comes the 22nd clause; and that clause is of very great importance in this respect. It directs what I do not remember ever to have seen before—"That once in every half-year the directors shall set a value upon the shares, and such value shall for the purposes of these presents be deemed the true and actual value thereof for the time being." Now if it stopped there no man could sell a share until a value had been put upon it by the directors, and that value was declared by the deed to be "the true and actual value thereof for the time being." How can it therefore be said that if it fixes a value of 3*l*. on the shares in question that that was not the actual value for the time being? Now "actual value" there must mean actual value with reference to the actual state of the concern. I think we may take it for granted that nobody knew it properly but the directors; they had the means of knowledge; it was their duty to put a value on it. They must have put the value according to what they considered to be the actual state of the concern. For one very good reason, to which I shall presently allude, the directors were bound to purchase at that value, and therefore in the execution of their duty, what they ought to have done would have been fairly to value them, and at the price they valued them they were bound to purchase, and the value put on the shares must be with reference to the whole state of the concern at the time the sale was effected. Then it goes on, "that it shall be lawful for the shareholders, with the consent of the directors, to sell;" and then comes the clause that "for the purpose of obtaining such consent the holder of the shares proposed to be transferred shall give notice to the directors," and so on of the proposed purchase. Then there is a proviso "that before any shares shall be sold the same shall be first offered to the directors, on behalf of the company, at the lowest price the holder thereof shall agree to take for the same; provided also, in case the directors shall refuse their consent to any transfer of shares, they shall, on the request of the holder thereof, be obliged to purchase the same out of the funds, and on behalf of the company, at the value thereof for the time being set upon them as aforesaid." The directors are therefore to value, and unless they consent to a sale, purchase at the value which they themselves fix. There can be no transfer, therefore, without the consent of the directors, or they themselves become the purchasers at the value. Suppose they had become the purchasers at the value in this case, and that must be supposed in every case, because they would have them forced upon them if they had not consented to the sale; can anybody say that any obligation remained then in that state of the account of the company? The purchase would have been then by the directors, the directors representing the company. The directors made out the balance-sheets, could the purchasers, having set a value on those shares on the 1st of January, and bought the shares at that value under the compulsory power of this deed, turn round on the seller and say, "We call upon you now to make good losses to the amount of 100,000*l*. which had accrued at that time, but which we never mentioned to you before?" Of course they could not, and if they could not it is clear by a very easy course of reasoning, that an indifferent purchaser could not, because an indifferent purchaser stands only in the place in which the directors would have stood if they had purchased. Then comes the clause which I said was here, that "no shares shall be transferred after the time appointed for payment of any instalment called for by the directors until the amount of such instalment in respect of the same shares, with interest as aforesaid, shall have been paid." The object of that being to allow no man to escape until he had paid up all the existing obligations. Then they have the whole power of regulating the transfer of shares, and there are other clauses to which I think I need not call attention. Then the real question upon the whole of this deed is, whether this gentleman is liable upon the accounts which have been made out, and which in no one instance shew any loss which has not been provided for; speaking of the early one as well as the later ones, no one account shews any loss upon the face of the accounts which were made out by the directors, and produced at the general meetings, and acted upon, and approved of, and received by those meetings. No one account shews any loss, and therefore I am to inquire where I am to find any evidence of the loss to which this gentleman is liable when he sold his shares under section 26? I can nowhere find any such loss. There are accounts sworn to no doubt by Mr. Hedley. It was Mr. Hedley who kept those accounts. What he says may undoubtedly be perfectly true. I do not disbelieve him. I do not discredit him, but his evidence has no weight; from time to time he assisted most improperly in preparing those accounts, and at those meetings, no doubt, there was a great body of persons for whom he was bound to act faithfully and honestly, but he now comes forward and tells the Court that from the first moment he knew the growing insolvent state of this company, and always assisted in concealing it, but that act of concealment leads to the impossibility of charging this gentleman, because at this moment there is not a particle of evidence before me to shew that there was at the time when Mr. Holme sold these shares any loss sustained upon which I can possibly act. Of course, if there was a loss, the deed would undoubtedly bind him to that loss—that is clear, and admits of no doubt; but I can find no such loss, and I am of opinion that under the provisions of the deed the losses for which it was intended an outgoing shareholder should continue liable, were intended to appear on the balance-sheet so as to lead to no possible difficulty. If the directions of the deed had been observed, there would have been no difficulty; I should then only have had to open the particular account at the time of the transfer; I should have seen what the amount of the loss was, and have bound this gentleman by the amount of that loss. I look into the balance-sheets, and see a prosperous state of affairs on the very face of them,—no loss, but gains and profits divided; therefore I am clearly of opinion that this gentleman is not liable in respect of any loss, for none is shewn to me; and looking at the dealings, I am of opinion none can be shewn; and therefore, without any reservation of any sort or kind, I think he is not a contributory, and I dismiss this appeal with costs.

Appeal dismissed, with costs.

ROLLS COURT.

Reported by J. Macaulay, Esq. of the Inner Temple, Barrister-at-Law.

April 17 and May 26.

Kelk *v.* Archer.

Archer *v.* Kelk.

Practice—Administration—One decree in two suits—Claim—Carriage of decree—Priority—Tenant for life—Residuary legatee.

The tenant for life of the real and personal estate of a testator, who was also executrix of the will, with a power of appointing part of the personal estate, filed a claim for the administration of the real and personal estate. The residuary devisee and legatee subsequently filed a claim for administration of both estates. The first claim was first set down for hearing, but both having come on to be heard together:

Held, that one decree should be made in both suits; but that the residuary devisee and legatee should have the carriage of it, as having the greatest interest, though the tenant for life had priority both in filing the claim and setting it down for hearing.

In this case two claims were filed for the administration of the real and personal estate of one Timothy Barrow. The first was filed by the executrix of the testator's will, who was also tenant for life of the real and personal estate, and had a power thereby given to her of appointing 300*l*. part of the personal estate. Subsequently the residuary devisee and legatee entitled in remainder to the real and personal estate under the will filed a second claim for the administration thereof. The claim by the executrix was not only the first filed, but was also the first set down for hearing; but both claims came on to be heard together. It was admitted that one decree ought to be made in both suits; but the plaintiffs each claimed the carriage and prosecution of it—the executrix as having priority both in filing and setting down, and the remainder-man as having a greater interest in the due administration of the estate, and keeping down unnecessary costs and expenses.

H. C. Jones, for the plaintiff in the first suit and the defendant in the second.

Field, for the defendant in the first and the plaintiff in the second suit.

The Master of the Rolls declined, however, to give any particular direction with reference to the carriage of the decree, stating that it must be drawn up according to the ordinary practice; and he directed the registrar to ascertain what the practice was.

The parties having gone into the registrar's office, the registrar, acting upon the authority of *Miller* v. *Powell*, decided by Vice-Chancellor Knight Bruce, on the 14th July, 1849, but not reported, drew up the minutes staying proceedings in the first suit, and making the order for administration in the second; but he gave the plaintiff in the first suit her costs thereof to be paid out of the estate.

Wednesday, May 26.—*H. C. Jones* brought the matter before the Court again, and contended that the minutes, as drawn up by the registrar, were not authorised by the decree or directions of the Court at the hearing.

The Master of the Rolls, after some conversation with the registrar, observed:—Mr. Bedwell's account of what took place at the hearing agrees exactly with what you, Mr. Jones, have just stated to me, and I now fully remember the circumstances of the case. I declined to give any direction as to who should have the carriage or prosecution of the decree, and I desired Mr. Bedwell to inquire and ascertain the practice in the registrar's office. Mr. Bedwell informs me that the practice now is, that where there are two suits for administration, one by the executor, and the other by the residuary legatee, and the two suits came on to be heard together, the proceedings in the suit by the executor are stayed; and he has shewn me a decree made by Lord Justice Knight Bruce when Vice-Chancellor, in which that course was taken. I think it right to follow this practice, which seems to me a wholesome one, inasmuch as the residuary legatee has the greatest interest in duly carrying on the suit in such a manner as to cause no unnecessary expense. I think, therefore, that the minutes ought to stand as drawn up by Mr. Bedwell.

Saturday, June 5.

Dawson *v.* Browne.

Will, construction of—Gift to parties and other children.

A testatrix gave "all the residue of her property to be equally divided between her nieces J. D. and M. D. and confirmed the legacies thereinbefore mentioned to be given to J. D. and M. D. and their children without comprehending their husbands, unless the said J. D. and M. D. or either of them should die without issue:"

Held, that this amounted to a gift to J. D. and M. D. equally for life for their separate use, and after their deaths, to their children; and if no children, then to J. D. and M. D. absolutely.

This was a claim raising a question on the construction of a will. The testatrix, by her will, after making certain bequests, &c. thus proceeded:—"I give all the rest, residue, and remainder of my property, of what nature or kind soever, to be equally divided between my nieces, Jane Dawson and Mary Dawson, and I confirm my said legacies hereinbefore mentioned, to be given to my nieces, Jane Dawson and Mary Dawson, and their children, without comprehending their husbands, unless they, my said last-mentioned nieces, or either of them should die without issue." The question was as to the proper construction of this will.

C. P. Cooper and *Nichols* contended that the nieces took absolute interests. They cited *Wild's*

case, 6 Co. 16; *Stokes* v. *Heron*, 12 Cl. and Fin. 161; and 2 Dr. and War. 107.

Southgate, contrà, was not heard.

The MASTER of the ROLLS.—I am of opinion that the only way to give effect to these words is to give the residue between the nieces equally, for their separate use for life, and after their deaths, to their children; and if no children, then to the nieces absolutely.

VINCENT *v.* WATTS and OTHERS.

Practice—Defendants coming within the jurisdiction—Decree, benefit of without answer.

Defendants coming within the jurisdiction after decree moved, without notice to the other defendants, to have the same benefit of the decree as if they had put in an answer. The motion was granted.

L. Webb, in this case, moved, on behalf of two of the defendants, that they having come within the jurisdiction, and submitting to be bound by the decree made in the cause, may have the like benefit of the decree as if they had put in their answer. He cited *White* v. *Hall*, 1 Russ. & M. 332. It appeared that no notice of motion had been served on the other defendants.

G. L. Russell, appeared on the part of the plaintiffs, and consented to the motion.

The MASTER of the ROLLS made the order.

Friday, June 11.

Re FIELD'S Trust.

Practice—Trustee Indemnity Act—Payment into court under—Costs, by what fund to be borne.

Trust-money had been paid into court under the Trustee Indemnity Act, and the tenant for life thereof presented a petition for payment of the dividends:

Held, that the costs of the petition ought to be paid out of the corpus, and not out of the income of the fund.

In this case a fund had been paid into court under the Trustee Indemnity Act, and a petition was now presented by the tenant for life for an order for payment. The question was, whether the costs of this petition ought to be paid out of the corpus or the income of the fund.

C. P. Phillips, in support of the petition, cited *Re Ross*, 15 Jur. 211.

W. W. Cooper, for the remainderman, contended that the costs of a proceeding for the sole benefit of the tenant for life, ought to be paid out of his share in the fund.

The MASTER of the ROLLS considered the case cited in point, and ordered payment out of the capital. (See *Re Cawthorne*, 12 Beav. 56; *Re Lorimer*, 12 Beav. 521.)

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

IN LUNACY.

Tuesday, March 30.

Ex parte RICHARDS, *re* RICHARDS.

Inquisition of lunacy—Leave to attend at.

An infant, interested under a settlement, executed by the alleged lunatic ten years back, allowed to attend by counsel at the inquisition, the object of which was to carry back the lunacy for thirty-five years, an undertaking being given to abide by any order the Court might make as to the costs so far as they might be incurred by attendance at the inquisition.

This was a petition presented by an infant by his next friend praying for leave to attend the execution of a commission de lunatico inquirendo, alleging a lunacy of thirty-five years, issued against his cousin. The infant, it appeared, was, subject to the life interest of the alleged lunatic, entitled to a life interest in certain property under a settlement executed by the alleged lunatic on the 14th January, 1842.

The petition alleged that the petitioner had no notice of the issuing of the commission under which the inquisition was to be held, on the 1st of April then instant, except accidentally three days before making this application; and that the petitioner found that great injury would result to him, unless he were allowed to be represented at that inquisition.

Sir *W. Page Wood* and *Locock Webb*, for the petitioner, cited *Re Nesbitt*, 2 Ph. 245, where a similar order to the one now asked for was made.

Karslake, in opposition to the petition, contended that as according to the very terms of the petition the leave to attend, was asked for, not for the benefit of the lunatic, but because the petitioner feared "that great injury would result to the petitioner if the execution of the commission was not attended on his behalf," the application ought to be refused. (*Ex parte Snook, re Watts*, 1 Ph. 512.)

Lord Justice KNIGHT BRUCE.—Speaking for myself alone I should have been disposed, without the authorities cited in support of the petition, to grant the prayer. My impression is, that as counsel, I have been engaged to attend the execution of an inquisition for the sole purpose of seeing that the lunacy was not carried back beyond a certain date, my clients being no further interested than in that fact. Here the purpose for which the attendance is sought is plain. If the petitioners will undertake to abide by any order the Court may make as to costs—not only their own costs, but the costs so far as they may be increased by the attendance at the inquisition,—I am disposed to give leave to the infant, by his next friend, to attend. I do not say I should not have acted upon the reasons given in the petition, but the fact that the lunacy is said to have existed for thirty-five years, is quite sufficient for me.

Lord Justice Lord CRANWORTH concurred; whereupon the undertaking being given, the order was made accordingly.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. HENRY COOKE, Esq. Barrister-at-Law.

Monday, March 1.

EWINGTON *v.* FENN.

Will—Construction—"Respective"—"Respectively."

A fund was bequeathed to trustees in trust for the testatrix's two daughters for their lives, and at the decease of them respectively upon trusts for their children, and after the decease and failure of issue of her said daughters, the trustees were to continue the payments to any husband her daughters might respectively leave for their lives, and after the decease of the respective husbands the fund to be in trust for A. and B. absolutely. One of the daughters died without leaving any husband or issue in the lifetime of the other:

Held, that her share went over to A. and B. in equal shares, and did not survive to the other daughter for her life.

The testatrix by her will, dated in 1815, devised and bequeathed her real and personal estate to her two nephews upon trust for sale and absolute conversion into money, and for investment in their names in stock; and she directed that her trustees should pay the dividends to her two daughters for their lives, and at the decease of them respectively in trust to apply the dividends of the share of the one so dying to the maintenance of her children. And she declared that if either of her said two daughters should attempt to sell they should forfeit all claim on her estate, and in that case she gave to her two nephews all the dividends which the daughters would have been entitled to. The will then proceeded thus: "And after the decease and failure of issue of my said daughters, my said trustees shall continue the payments to any husband that my said daughters may respectively have during the life of such husband, and after the decease of the respective husbands of my said daughters, I give and bequeath the whole of the said trust estate, and all interest therein, to my said nephews, for their absolute use and benefit."

The testatrix died soon after the date of her will. One of the daughters, Mrs. Wheeler, died without leaving any husband or issue, but having been married. One of the nephews was then dead. The surviving daughter, Mrs. Phillips, claimed the whole fund. On the other hand, the surviving nephew and the personal representative of the other claimed a transfer of the capital of Mrs. Wheeler's share. Upon this the executrix of the testatrix filed the claim, to have the question decided.

For the surviving daughter, Mrs. Phillips, it was argued that she was entitled to the whole absolutely, or, if not so, at least for life, for that the words "respective" and "respectively" were not sufficient, used as they were within the will, to prevent cross remainders, whether for life or in tail. (*Malcolm* v. *Martin*, 3 B.C.C. 49; *Green* v. *Stephens*, 12 Ves. 72; 17 Ibid. 419; *Ashley* v. *Ashley*, 6 Sim. 358; *Pierce* v. *Edmeads*, 2 Y. & C 246; and 2 Jarman on Wills, 165, and the cases there collected.)

Greene, Shapter, Terrell, Bevir, and *Karslake*, for the several parties.

The VICE-CHANCELLOR.—This claim does not seek to deal with, or in any manner affect, the real estate of the testatrix. On the construction of the will I am inclined to think that the nephews take on the death of Mrs. Wheeler, according to the intention which appears on the whole will. It is impossible to argue from the cases which have been cited, because here the fund appears to be divided into two parts, dealt with by the same clause. Thus, on the decease of one of the daughters, leaving issue, the testatrix directs the dividends of the share of the one so dying to be applied towards the maintenance of her children,—implying that the testatrix intended two separate interests in her two daughters; and then the will proceeds to direct that on the children of the daughter so dying attaining twenty-one, the fund in which their parent was interested shall be divided among them. There, again, the testatrix is evidently dealing with two funds. And so in case either daughter should attempt to sell, although the words are not quite so forcible. The forfeiture would only operate upon the interest of the daughter attempting to sell. Then comes the clause upon which the present claim is filed, namely, that the trustees, after the death or failure of issue, "are to continue the payments to any husband that my said daughters may respectively leave during the life of such husband, and after the decease of the respective husbands of my said daughters, I give and bequeath the whole of the said trust estate, and all interest therein, to my said nephews, for their absolute use and benefit." There, again, the testatrix contemplates a distinct gift on the decease of either daughter without issue, but leaving a husband; to that husband of the interest of that fund which the daughter took. There certainly does occur the word "whole" in the gift to the nephews; but it is clear what this means, because it is given at the decease of the respective husbands, and this ulterior bequest to the nephews clearly shews the intent, which, indeed, I think is the only meaning consistent with every clause of the will. Therefore, I must now declare that the two nephews, or their personal representatives, are entitled from the decease of Mrs. Wheeler, each to one-half of the moiety in which she had a life interest.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

Saturday, June 12.

AMOTT *v.* HOLDEN.

Annuity bond—Action against surety—Statute of Limitations—Bankruptcy.

In an action by the grantee of an annuity upon a joint and several bond, conditioned for the payment of the annuity, but executed by the defendant only as a surety for the grantor, the bankruptcy and certificate of the defendant are no bar, although the bond was forfeited before the bankruptcy, and although, by the terms of the bond, the principal and surety were co-equally bound:

So held by Lord Campbell, C.J. and Erle, J.: Wightman, J. dissentiente.

In an action on a money bond alleging a single breach, if the Statute of Limitations is pleaded, and issue taken thereon, the plaintiff is entitled to a verdict on that issue if he proves a breach within the twenty years, although there may have been an earlier breach beyond the twenty years.

This was an action of debt on a money bond, conditioned for the payment of an annuity. The declaration alleged a single breach by non-payment. The defendant pleaded,—1st, The Statute of Limitations; 2nd, The bankruptcy of the defendant after forfeiture of the bond.

The condition of the bond recited an agreement between the plaintiff and one Mather, for the sale of an annuity of 20*l.* to be paid yearly during the joint and several lives of the plaintiff, his wife, and the survivor of them; that Mather had requested Holden, the defendant, to join in the above bond for securing the payment of the annuity, and that he had at such request joined in the bond as surety for Mather, but the condition itself was for payment by Mather and the defendant co-equally; not that in case of default by Mather, then the defendant should pay. It was proved at the trial, that the instalments of the annuity were never paid on the day; but for several years they were paid after the day. Several breaches had consequently occurred more than twenty years before the action was brought, and also before the bankruptcy of defendant; but the plaintiff also proved breaches by non-payment of several instalments within the twenty years. A verdict having been found for the plaintiff on both pleas, a rule was obtained to set aside that verdict and enter it for the defendant.

Thursday, May 6.—*M. Chambers, Bramwell*, and *T. Chitty* shewed cause. 1. As to the plea of bankruptcy, although it may be perfectly true that as soon as one instalment of the annuity was in arrear the penalty was forfeited, yet the cases establish that the penalty was not a debt proveable under the bankruptcy of the surety. The value of the debt cannot be estimated, because it depends upon the solvency or insolvency of the grantor of the annuity, the principal. (*The Overseers of St. Martin's* v. *Warren*, 1 B. & Ald. 491; *Vanderheyden* v. *De Paiba*, 3 Wils. 270; *Thompson* v. *Thompson*, 2 Bing. N.C. 168.) In *The Skinners' Company* v. *Jones*, 3 Bing. N.C. 481, the form of the bond was different. 2. As to the Statute of Limitations, it is enough that

the plaintiffs shew a breach within twenty years. The obligee is not bound to sue upon the first breach; he may waive the first, and sue upon any subsequent breach, and then the cause of action arises when that breach is committed. (*Sanders* v. *Coward*, 13 M. & W. 18; *Tuckey* v. *Hawkins*, 4 C. B. 655; *Blair* v. *Ormond*, 20 L. J. 444, Q. B.)

Knowles, *Henderson*, and *Milward* contrà. 1. As to the bankruptcy, if the debt cannot be valued, it cannot be proved; but that is not so in this case; because here, as far as the plaintiff is concerned the defendant and the grantor stand precisely in the same position. The grantee had a right of action against both or either at his option; and the Commissioners therefore could not deprive him of his right to prove against either. In *Thompson* v. *Thompson*, the case was different. They also referred to *Thompson* v. *Whatley*, 20 L. J. 86, Q.B.; *Perkins* v. *Kempsland*, 2 Bl. 1106; *Addison* v. *Gibson* 10 Q. B. 106; *Caldwell* v. *Becke*, 2 Ex. Rep. 318; *Wyllie* v. *Wilkes*, 2 Doug. 519; *Winter* v. *Mouseley*, 2 B. & Ald. 802; *Re Willis*, 4 Ex. 530; Arch. Bankruptcy, 106; *Ex parte Thompson*, 2 Deac. & Chit. 126; and stat. 6 Geo. 4, c. 16, ss. 54, 55.

2. With regard to the Statute of Limitations, as this record is framed, the plea means that the bond was forfeited more than twenty years ago; and that is shewn by evidence of a breach committed at that time. If the plaintiff meant to rely upon some subsequent breach waiving the earlier breaches, he should have new assigned.

Lord CAMPBELL, C.J.—With regard to the plea of the Statute of Limitations we entertain no doubt. Mr. Knowles is obliged to admit, after the cases of *Sanders* v. *Coward*, and *Blair* v. *Ormond*, that where a bond is conditioned for the performance of acts to be done successively in a series of years, though there may be a breach and forfeiture by not doing the first act, still a new cause of action arises with each fresh omission to do the act required at the proper time; and if it were not so, the principal might be discharged from paying the annuity, though he had gone on paying for twenty years, each time one day too late; but reliance is placed on the form of this record; and it appears to me that upon the issue taken upon the plea to this declaration, the plaintiff has entitled himself to a verdict by proving a breach of the condition within twenty years. That must be presumed to be the cause of action stated in the declaration; and I think that no new assignment was necessary. *Tuckey* v. *Hawkins* is in point. Upon the other point we will take time to consider.

WIGHTMAN and ERLE, JJ. concurred in the opinion that the rule ought to be discharged so far as it applied to the plea of the Statute of Limitations. As to the plea of bankruptcy,

Cur. adv. vult.

JUDGMENT.

ERLE, J.—This is a question raised whether the grantee of an annuity secured by a joint and several bond of the grantor, and the surety can, under the bankruptcy of the surety, prove for the value of the annuity. In 1821 an annuity of 20*l.* payable half-yearly, was granted by Mather and the defendant Holden. They joined in a bond, which recited this grant and the defendant's consent to become surety, and was conditioned to be void, if either the grantor or the surety should pay at the proper days the annuity. The annuity was paid by Mather half-yearly, but never at the proper day, so that the bond had become forfeited before the bankruptcy. Holden had become bankrupt in 1836. It has not been stated, nor is it material to inquire, whether there was any arrear at the time of the bankruptcy, because the annuity was afterwards paid from time to time by Mather down to 1848. The present action is brought for the arrears left unpaid after that time The law is clear that the liability of a surety for the grantor of an annuity is not a debt payable upon a contingency, provable under the bankruptcy of the surety by virtue of sec. 164 of the Bankruptcy Law Consolidation Act, the 12 & 13 Vict. c. 106; *Ex parte Thompson*, 2 Deac. & Ch. 126, and *Thompson* v. *Thompson*, 2 Bing. New Cas. 168, are express on the point, the impossibility of calculating the solvency of grantors of annuities being there relied upon. I have also referred to the elaborate and able judgments of Mr. Merivale, Mr. Fonblanque, and Mr. Holroyd, upon the question of proving upon an indemnity bond, in *Ex parte Marshall*, 1 Montague & Ayrton, p. 2, in support of the same view. It is there shewn that the power of proving for future contingent debts is created by the statute, and has been gradually introduced by successive provisions, which are now embodied in sections from 173 to 177 of the Consolidation Act. If the whole of those are taken together it would appear that certain debts payable on a contingency are specifically provided for, in the sections preceding the general enactment, and among those so specifically provided for there are annuities in respect of which, upon the bankruptcy of the grantor, proof must be made in the required form before resort can be had to the surety, whose liability is deferred; and as no provision is made for proof on the bankruptcy of the surety, the grantor being solvent, it may be presumed both from the silence of the Legislature and the nature of the liability that no power for such proof was intended to be given. But though this might be true where a surety contracted expressly to pay on default of the grantor, the defendant contended that the form of the present bond created a simultaneous instead of a successive liability, and that the grantee might have treated either obligor at his option as the grantor, and so might have proved against the defendant Holden as grantor of the annuity. I am, however, of opinion that this ground cannot be maintained. The bond shews that the annuity had been already granted, and the relation of grantor and grantee created. The bond is an instrument beyond the grant, with the additional security of the defendant; the two are jointly bound, but the one is described as grantor and the other as surety. Whatever might be the effect of the present form of the bond in respect of pleading, in bankruptcy, where the true substance is ascertained without pleading, the present form creates the same liability as the form in *Thompson's* case. If the grantor pays, the surety is free, if he makes default the surety is liable. It would have been inconvenient to allow a plaintiff to prove against a surety in 1836, the entire value of his annuity, which has been paid by the principal for twelve years after, and may be paid in full by him; and the plaintiff could not allege or prove that the defendant had granted the annuity. Where the defendant was surety for a grantor, and had joined the grantor in a bond to secure an annuity on which judgment had been entered up before default, and afterwards the grantor made default, it was held that the grantee could not prove for the annuity under the bankruptcy of the surety, and that though there was a judgment to secure the annuity, the plaintiff was not the annuity creditor of the surety. (*Johnson* v. *Compton*, 4 Sim. Rep. 37.) So also where a grantor and a surety covenanted jointly and severally for the payment of an annuity, it was held that the grantee could not prove under the bankruptcy of the surety, the absolute covenant in one part of the deed was controlled by the other part shewing that the covenantee stood in the relation of surety. (See *Ex parte Marks*, 3 M. & Ayr. 521.) The defendants further contended that as the bond had been forfeited by omission to pay at the day, that the penalty had become a legal debt, and so the plaintiff might have proved for the whole of the annuity with the amount of the bond, according to *Ex parte Thistlewood*, 19 Ves. 245; *Perkins* v. *Kempland*, 2 Black, 1106; and other cases cited in *Ex parte Marks*, 3 M. & Ayr. 530. But, as there observed by the chief judge, those were all cases of bankrupt grantors, and there is no instance to be found of a grantee having ever been admitted to prove the value of the annuity against the estate of the bankrupt surety, even upon a bond forfeited. I would further observe, that it would be contrary to the system of bankruptcy to allow proof for a penalty in all cases of bonds for the payment of premiums, when there has been a nominal breach, but nothing due, and to make the assignee liable indefinitely to a claim for a dividend, in case of a future breach. It would have been unjust to the creditors of Holden, in 1836, to have retained the dividend for the penalty of the bond on which a dividend from time to time might have been paid, proportionate to the instalment or part of the instalment, left in arrear by Mather, and inconvenient to the assignees to require the accounts to be unsettled during the lives for which the annuity was granted. I am therefore of opinion that the plaintiff could not have proved for the penalty of the bond under the bankruptcy of Holden, so that the defence under the plea of bankruptcy fails and judgment ought to be for the plaintiff.

WIGHTMAN, J.—I feel very great distrust of the opinion I have formed on this case, in consequence of its differing from those of my Lord Chief Justice and my brother Erle; but such as it is I have not formed it without deliberate consideration. This was an action of debt on a joint and several bond by the defendant and one Mather. The declaration stated the obligatory part of the bond merely, and did not shew the condition; the defendant pleaded the plea of bankruptcy which was found for him, and the question is whether, at the time of the bankruptcy, the obligor of the bond could be admitted a creditor, and had a provable debt under the commission as an annuity creditor under the 54th section of the 6 Geo. 4, c. 16, the statute in force at the time of the bankruptcy? The condition of the bond recited that Mather had agreed with the plaintiff for the sale to him of an annuity of 20*l.* for the joint and several lives of himself and wife and the survivor, for the sum of 120*l.* and that Mather had requested the defendant to join in and execute the bond which he had consented to do for the securing the due and regular payment of the annuity; and that Amott the grantee had paid 150*l.* the purchase-money, to Mather. It was then conditioned, for the bond being void, if either Mather or the defendant paid the annuity half-yearly upon the specified days. It does not appear that there was any other grant of or security for the annuity than the bond, which appears to have been executed in the year 1828. The defendant became bankrupt in 1836, and at that time the bond had been forfeited by the omission to pay the annuity exactly at the specific days; but there were very trifling or no arrears, and it appeared that the annuity was paid by Mather down to the year 1848, and no attempt was made by the plaintiff to be admitted to prove under the commission against the defendant as an annuity creditor under the Act 6 Geo. 4, c. 16, s. 54. It was contended for the plaintiff, that the defendant's bankruptcy and certificate was no bar to the action, as he could not have come in as an annuity creditor under the fiat, the defendant being surety merely, and he cited several cases in which it had been decided that the contingent liability of the surety could not be the subject of proof under a commission against him. This was hardly disputed; but it was alleged, on the other side, that the defendant was not the surety but the principal, that his liability was not collateral but direct, and the grantee of the annuity had precisely the same legal rights against him upon the bond as he had against Mather. In the cases of *Thompson* v. *Thompson*, 2 Bing. New Cases, 168; *Ex parte Thompson*, 2 Deacon and Chitty, 126; and *Johnson* v. *Compton*, 4 Simons, 37, the bankrupts were all sureties in the strict legal sense, and their liability only collateral by the terms of the instrument by which they were bound, upon default made by their principals, and not until then; and it was said that those cases were upon that ground clearly distinguishable from the present. The question then is whether the defendant is in contemplation of law a principal or a surety? If he is a principal the grantee of the annuity might have come in as an annuity creditor under the commission against his estate, as he might if the commission had been against Mather, when it is admitted he might prove. There is no other grant of an annuity or security for it than the bond itself. The recital shews that Mather had agreed to grant the annuity and had received the consideration money, and had requested Holden to join him in a bond for securing the payment of the annuity, which he accordingly does in terms which make him as much a principal, and bind him as directly as they do Mather. If the bond be the instrument by which the annuity is granted, and there is none other, Holden is as much the grantor as Mather, and as directly liable to pay, although the original agreement for the grant was by Mather, and he only had the benefit of the consideration. The bond is both by Mather and Holden, conditioned to be void if either of them should pay the annuity within the specified time. In *Guy* v. *Newson*, 2 C. & M. 140, it was held a covenant by a defendant with two others, to pay, or that some or one of them would pay a sum of money to the plaintiffs by instalments on future dates was held to be an absolute, and not a collateral covenant by the defendant, though it appeared the defendant had no interest in the consideration, and had entered into the covenant for the benefit of the other covenantors, and to secure the payment of the money owing by them, and that the discharge of the defendant under the Insolvent Debtors Act (7 Geo. 4, c. 57, s. 46, was a bar to the action, which it would not have been had he been a surety only. In *Baxter* v *Nicholls*, 4 Taunt. 90, the bankruptcy and certificate of one of several joint covenantors for payment of an annuity, was held to discharge him, though it appeared that he was only surety, the covenant for payment being absolute and not collateral. The authority of this case is recognised by the Court in *Brown* v. *Lee*, 6 B. & C. 689, and *Ex parte Marks*, 3 M. & Ayr. 521; but is distinguished from this. In the present case the defendant was in one sense a surety, as he entered into the bond at the request of Mather, jointly with him, to secure the payment of the annuity which Mather had agreed to grant, and for which he alone received the purchase-money; but in law the defendant bound himself absolutely and not collaterally, and as between him and the grantee he is, as it seems to me, on the authority of the case to which I have referred, the principal as much as the grantor of the annuity. One of the leading cases upon the point, and in many of its circumstances nearly resembling the present, is that of *Ex parte Marks and Another*, 3 M. & Ayr. 521. It appeared in that case, that by an indenture reciting that one Courdet had agreed with one Galloway for the sale to him of an annuity of 100*l.* it was witnessed, that in consideration of 1,000*l.* paid to Courdet, he, Courdet, granted an annuity of 100*l.* a year to Galloway, and Courdet, and Colnaghi jointly, and severally covenanted with Galloway that they, or one of them, should pay the annuity at the time specified in the deed. If the deed had stopped there, and there had been no qualification of the covenant, the case on the bankruptcy of Colnaghi, would have exactly resembled

the present, and it would appear from the judgment of the Court, that the grantee of the annuity would have been entitled to prove as an annuity creditor under the 54th section of the 6 Geo. 4 against the estate of Colnaghi, though the latter only entered into the covenant to secure the payment without any benefit to himself. The deed, however, contains a proviso at the end of the covenant, that in case Courdet made default in the payment of the annuity, Galloway would give a notice in writing, and demand payment of Colnaghi twenty-one days before adopting any measure to compel performance of the covenant by Colnaghi. The Court held, that this proviso controlled and limited the covenant, and made it a conditional and collateral instead of an absolute covenant, and in effect a covenant of a surety only, and upon that ground decided that the grantee of the annuity was not entitled to prove under the commission against Colnaghi. The case of *Ex parte Marshall*, 1 Mont. & Ayr. does not appear to me to apply to the present case; the bond in that case was not forfeited at the time of the bankruptcy, and therefore could not be proved. I have been wholly unable to discover any case in which such an obligation as that into which the present defendant entered has been held to make him a surety, his engagement being that of a principal, binding himself to the performance of the acts by himself and another, and covenanting at a request from that other to secure a payment originally contracted for by him. In all the cases cited for the plaintiff, the bankrupt was a surety in the legal sense, and collaterally liable only; and those cases, therefore, are clearly distinguishable from this. In point of law, Holden, the defendant, was directly liable to the other; and if the grantee would have been an annuity creditor, by virtue of the bond having been forfeited, under a commision against Mather, I think he would have been entitled to come in as an annuity creditor under the commission against Holden, and the certificate would bar. I may remark, that if Mather had become a bankrupt, Holden would not have been entitled to any benefit given to sureties for the payment of annuities by the 56th section of the Act of Parliament, which applies only to persons who may be collateral sureties for the payment of annuities, which Holden is not, as he is not collaterally but directly liable; he is not, therefore, a surety within the meaning of the Act. Other points were taken on the argument of the case, particularly one as to the Statute of Limitations, which the Court entertain no doubt upon, and they decided against the defendant on these points at the time they were taken, and it is unnecessary now to advert to them. In my opinion, therefore, the rule for a new trial should be made absolute.

Lord CAMPBELL, C.J.—In this case I entirely agree with the opinion expressed by my brother Erle. Relying upon the reasons and authorities which he has adduced, I have very little to add. The defendant admits that the value of this annuity could not have been proved under the bankruptcy, unless by virtue of some special enactment of the Legislature, and that the 54th section of the 6 Geo. 4, c. 16, is the only one of which he can avail himself. It is further admitted that this does not apply to the case of a surety, and that if the defendant is to be regarded as a surety for Mather, he is still liable. With the most sincere deference for the opinion of my brother Wightman, I have not been able to bring myself to entertain any doubt that in this transaction the defendant is to be regarded as a surety. A surety is a person who makes himself liable for the debt of another, and he is still a surety though he may be called on for payment at the same moment as the principal. If he has no interest in the transaction, except as surety, and this is fully known to the creditor who accepts him in the relation of surety, his contract with the creditor must be attended with all the incidents of suretyship. Here it is stated in the condition of the bond that Mather was the sole grantor of the annuity; that Mather had received 150*l*. for his own benefit, and that the defendant had been requested to join in the bond, which he had consented to do, for securing the due and regular payment of the annuity. I confess I do not see how he was less a surety by the form of the condition which says the bond shall be void if either Mather or the defendant paid the annuity half-yearly at the time specified. What would have been the effect if the language had been if either the grantor or his surety pay the annuity? After the recital that Mather was the grantor and Holden the surety, these two names indicated grantor and surety, and there is nothing to turn the surety into principal. If upon the face of a written document two appear as joint debtors, and there is nothing to indicate that one of them is only surety, the rights of the creditor cannot be affected by any part of the transaction between them to which he is a stranger. But the obligee of this bond knew well that the defendant was only surety, and that he had received no part of the consideration for the grant of the annuity that he was compelled to pay, although at the very day when the annuity became payable there would have been an action against Mather, as the principal debtor, to recover the amount. If, upon the defendant's bankruptcy, Mather being still solvent, the grantee of the annuity had offered to prove, would not the truth of the transaction have been taken from the recitals in the conditions of the bond, and as against Holden, the creditor, had proof been admitted, could it in justice have been for more than the contingency of Mather becoming insolvent during the lives of the obligee and his wife? In the course of the argument the counsel for the defendant were asked, but could not tell, on what principle the proof was to take place, or what was to be done as to the amount, which depends upon the time at which the contingency of the insolvency of the grantor, or the value of the annuity for the joint lives of the grantees, was to be estimated, or what remedy the assignees of the surety would have had against Mather, the solvent principal. It cannot be questioned here that as between Mather and the defendant the relation of principal and surety subsisted, and all the reasons seem to me to apply which induced the Court to hold, in *Thompson* v. *Thompson*, and various other cases, to the same effect, that however great hardship it may be upon the surety that he should remain liable after he has surrendered all his effects upon the bankruptcy, the Legislature has provided no relief for him; and it has confined the discharge of the bankrupt to debts and liabilities which may be proved, and for which a dividend may be obtained under the bankruptcy, and no machinery has yet provided for proof under the bankruptcy of a surety for a solvent principal. I regret exceedingly that the question is not upon the record, so that the defendant might have had an opportunity of taking the opinion of a Court of Error upon it; but we can only direct that the verdict on the plea of bankruptcy shall stand for the plaintiff. Having before unanimously expressed our opinion that the plaintiff is entitled to retain the verdict on the plea of the Statute of Limitations, the rule obtained by Mr. Knowles must be discharged. *Rule discharged.*

May 24 and June 18.

REG. v. JUSTICES OF MIDDLESEX.

Poor—Lunatic—Expenses of maintenance.

The expense of an Irish pauper lunatic who has no known settlement, but who, for five years previously had resided in parish C. in W. union, is cast by the 12 & 13 Vict. c. 103, s. 5, upon the union, and not the county.

This was a motion for a certiorari to remove into this Court two orders made by T. J. Arnold, esq. a magistrate of one of the police courts within the Metropolitan Police District, for the purpose of quashing the same for the insufficiency thereof.

An order was first obtained for the removal of the pauper to the Middlesex County Lunatic Asylum, at Hanwell, but that being full, he was conveyed to the Kent County Lunatic Asylum, at the charge of the common fund of the Whitechapel union.

The other material facts appeared on the face of the orders.

The first order of the magistrate directed to the guardians of the poor of the Whitechapel union, in Middlesex, and to H. E. the clerk of the peace for the said county, recited a complaint that Luke Cone, a poor person chargeable to the common fund of the Whitechapel union, was then legally confined in the Kent County Lunatic Asylum, at the cost and expense of the common fund of the said union, and that the said pauper lunatic was not legally settled in any parish in the said union, and had not acquired a settlement in any parish or place in England, and that he, the said L. C. such lunatic, was an Irishman, and while resident in the parish of Christchurch, in the W. union, became chargeable to the said parish for one day, but was afterwards made chargeable to the common fund of the Whitechapel union, by reason of his having resided for five years previously in the said parish, and was sent to the said asylum from the said W. union on the 28th day of May, 1851, and hath ever since been confined in the said asylum; and that at the time when he was so sent to the said asylum, he had resided in the parish of Christchurch for five years and upwards, and would, if not lunatic, have been exempt from removal out of the said parish, if he had been chargeable thereto, by reason of the 9 & 10 Vict. c. 66, if such statute be applicable to the case of an Irishman residing in a parish in England, and who has not gained any English settlement. The order then proceeded: "Now therefore I, the said magistrate, upon the evidence, &c. do adjudge the premises aforesaid to be severally true, and do also adjudge the said Luke Cone to be chargeable to the said county of Middlesex," &c. By another order of the 3rd February, 1852, the treasurer of the county of Middlesex was directed to pay to the treasurer of the Whitechapel union, 2*l*. 12*s*. 6*d*. the expenses of the examination of the said lunatic, and his conveyance to the said asylum, and also 17*l*. 19*s*. 5*d*. for moneys paid by the said guardians for lodging, &c. incurred within twelve calendar months previous to the date of the order; and also to pay weekly to the treasurer of the said asylum 10*s*. 5*d*. the sum agreed to be charged.

Pashley, in support of the motion.—By the 8 & 9 Vict. c. 117, an Irish pauper chargeable to any parish may be removed to Ireland. And sec. 7 of that statute enacts that the 4 & 5 Wm. 4, c. 76, "for the amendment and better administration of the laws relating to the poor in England and Wales," and all Acts to amend and extend the same, and the 8 & 9 Vict. c. 117, shall be construed as one Act. Then the 9 & 10 Vict. c. 66, "An Act to amend the Laws relating to the Removal of the Poor," provides that no person shall be removed from any parish in which such person shall have resided for five years next before the application for the warrant of removal. The 10 & 11 Vict. c. 110, next provides that the expenditure incurred by any parish forming part of a union, for the relief, &c. of any person who, within one year before the 9 & 10 Vict. c. 66, had been in receipt of relief from any other parish, and who was exempted from removal by the 9 & 10 Vict. c. 66, should, so long as such person should continue to be so exempted, be charged to the common fund of such union. A question might have been raised, whether the last-mentioned provision was applicable to the case of a pauper lunatic, but that is made quite clear by the 12 & 13 Vict. c. 103, s. 3, which enacts that "the expenses of obtaining any order for the removal and maintenance of a lunatic pauper removed thereby to any asylum, and who, if not a lunatic, would have been exempt from removal by the 9 & 10 Vict. c. 66, shall be borne by the common fund of the union, comprising the parish wherein such pauper lunatic was resident at the time when so removed to such asylum, notwithstanding the order for the payment thereof shall have been made upon the overseers of such parish." The following authorities were then cited:—*Reg.* v. *Wigton*, 4 New Sess. Cas. 476, and *Reg.* v. *Sutton*, ibid. 684.

Bodkin shewed cause in the first instance.—The question is whether an Irish pauper is irremovable in the same way as an English pauper. The pauper in this case has no known settlement in England. The 8 & 9 Vict. c. 126, "An Act to amend the Laws for the Provision and Regulation of Lunatic Asylums for Counties and Boroughs, and for the Maintenance and Care of Pauper Lunatics in England," by sec. 59, provides "that if any pauper lunatic shall not be settled in the parish by which he shall be sent to any asylum, and it cannot be ascertained in what parish he is settled, such pauper lunatic may be adjudged chargeable to the county in which he is found." There is no allusion in the 9 & 10 Vict. c. 66, to those persons who have no known settlement, and it has been held that a pauper lunatic may be removed, that being an exception to the general enactment of 9 & 10 Vict. c. 66. The 10 & 11 Vict. c. 110, still left untouched the case of a lunatic pauper, who had resided for five years in a parish, and whose settlement was not known. But it is said that the 12 & 13 Vict. c. 103, which was intended to release the county and to make the common fund of the union liable, includes the case of lunatic paupers. There is, however, no allusion in it to that class of persons who have no known settlement; and sec. 3 enacts that the chargeability of any person to the common fund of a union shall have the same effect, and be attended with the same consequences as the chargeability of any poor person to a parish under the statutes for the removal of pauper lunatics to asylums; so that the union may proceed under these Acts in the same way as the parish might have done.

Pashley, in reply. The construction contended for by the other side is, that the 5th section of 12 & 13 Vict. c. 103, is to be read as if the words "who has a settlement in England" were introduced into it. But there is no reason for that argument. Sec. 3 was passed for the purpose of enabling the overseers to take proceedings in the same way as the parish could have done previously. The 9 & 10 Vict. c. 66, can only exempt from removal a person who has a place of settlement to which he would otherwise have been removable. An Irishman may be removed. The concluding words of sec. 5, of 12 & 13 Vict. c. 103, "notwithstanding the order of payment thereof shall have been made upon the overseers of such parish, or the parish of the settlement, or upon the treasurer or guardians of the Union in which either parish shall be comprised," have reference to expenses incurred since the 25th day of March mentioned in the beginning of the section. *Cur. adv. vult.*

JUDGMENT.

Friday, June 18.—Lord CAMPBELL, C.J.—In this case the question was raised whether the expense of maintaining a pauper lunatic, who had been sent from the union after five years' residence, and who is without a settlement in England, being Irish, is to be borne by the union or the county; and we are of opinion that it is cast upon the former, by the 12 & 13 Vict. c. 103, s. 5, enacting that the costs of an

order for removal and the maintenance in the case of a lunatic pauper so removed shall be borne by the union. This is admitted to be the case where the lunatic pauper has a settlement; and if full effect is given to the words, they will also apply to a lunatic pauper without a settlement. In the first case, they transfer the burthen from the parish of settlement to the union, within which the five years' inhabitancy took place, upon the principle that such inhabitancy has every property of a settlement, and we see no reason why the Legislature should not have intended to make a transfer from th county to the union in the latter case, as it uses w ds wide enough so to operate as a reason for the transfer of the liability.

Orders quashed.

COURT OF COMMON BENCH.

Reported by DANIEL THOMAS EVANS and R. VAUGHAN WILLIAMS, Esqrs. Barristers-at-Law.

May 1 and 3.

AUSTIN and ANOTHER *v.* THE MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY COMPANY.

Effect of ticket restraining the liability of railway companies as common carriers.

Plaintiff sends horses by railway, and signs a ticket issued by the company in this form:—

"Manchester, Sheffield, and Lincolnshire Railway, Lincolnshire Division. Ticket for horses, cattle, sheep, pigs, dogs, and live stock of every description. Date, February 22, 1849. No. 28.

From New Holland to London, E. C. R.

3 trucks horses, at 7l. 10s.—22l. 10s. 0d.

"This ticket is issued subject to the owner's undertaking to bear all the risk of injury by conveyance and other contingencies, and the owner is required to see to the efficiency of the carriage before he allows his horses or live stock to be placed therein, the charge being for the use of the railway carriages and locomotive power only, the company will not be responsible for any alleged defects in their carriages or trucks unless complaint be made at the time of booking, or before the same leave the station, nor for any damages, however caused, to horses, cattle, or live stock of any description travelling upon their railway or in their vehicles.

'I have examined the carriages and am satisfied with their sufficiency and safety.

(Signed) Austin, { Owner, or on the owner's behalf."

During the journey the axle of one of the carriages, in consequence of the company's servants omitting to grease the wheels, breaks, and one of the horses is killed:

Held, that the special contract expressed in the words of the ticket relieved the company from all liability, even where the jury found the loss to have been occasioned by the gross negligence of their servants.

On 22nd February, 1849, the plaintiffs having booked a number of horses at the New Holland station of the defendants' railway, for conveyance to London, and paid the fare demanded, signed a ticket, as set out in the head-note. On the journey, the men sent with the horses discovered that the wheels of the carriages were smoking, and made many complaints to the servants of the company of their omitting to grease the wheels, and even attempted to grease them themselves, but were prevented from doing so. Soon after passing the Whittlesea station the wheel of the carriage in which was a valuable mare came off, and the mare's back was broken. She was afterwards put to death, and her skin sold. The case was tried at Guildhall, before Jervis, C.J. and a special jury, and a verdict was found for the plaintiffs, damages 60l.

The declaration was in case, and alleged that the defendants were the owners of a railway, and of certain carriages and trucks used by them for the conveyance of passengers and horses, &c. along their line from New Holland to Shoreditch station, for hire, and exercised and carried on the business of common carriers for hire, according to the usual and known course of business as carried on by them and others, and that it was the duty of defendants to cause due and proper care to be taken, and proper and reasonably sufficient provision to be made from time to time during the journey, in order to guard and provide against friction of the wheels and axles of the trucks and carriages, &c. and that the persons employing them had no power or control over the management of the trucks or carriages for the purpose of guarding against friction, &c. and were not permitted so to guard, &c. and that without certain reasonable and proper provisions being taken against friction, &c. the passengers, horses, &c. could not be safely carried, and that the plaintiffs, whilst the defendants were such carriers, &c. delivered to the defendants, at the New Holland station, divers horses to be carried and conveyed for hire and reward to the Shoreditch station, according to the usual and known course of business so practised and observed as aforesaid, except so far as the same was altered or qualified by the terms of a certain note or ticket, and that in and by the said note or ticket it was expressed that (ticket set out); and that the defendants received from the plaintiffs the said horses, to be carried, &c. according to the course of business then practised and observed, except as varied or qualified as aforesaid, and that although, &c. and the plaintiffs saw to the efficiency of the trucks and carriages before they left the station, yet (first breach) the defendants did not, nor would, during the said journey cause due and proper care, or proper or reasonably sufficient provision to be taken or made in order to provide against the friction of the wheels, &c. but grossly and culpably neglected and omitted so to do, by reason whereof one of the axles of, &c. and the wheel connected therewith, became heated, &c. and the carriage became dangerous and unfit for the proper carriage and conveyance of the said horses, of all which the defendants then had notice, and were requested to cause to be made proper provisions, &c. or else to convey the horses in some other carriage, &c. which the defendants refused to do; and that (2nd breach) afterwards the defendants continued to carry, &c. until, by and through the gross and culpable negligence, and grossly improper conduct of the defendants, the axletree broke and the mare was killed, &c. and that the said injury was occasioned by the gross negligence and misconduct of the defendants, and not by any insufficiency or defects existing in the said truck or carriage when the same left the station, nor by any injury or risk of injury by conveyance or other contingencies. Second count in trover.

1st Plea—Not guilty. 2nd, That the said alleged injury in the said first count mentioned was an injury occasioned by conveyance and other contingencies, within the true intent, meaning, and effect of the said note or ticket, and not by the negligence or misconduct of the defendants in that behalf. 3rd, That the said damages and injury were occasioned and caused by the insufficiency of and defects existing in the said truck or carriage at the time when the said horse, &c. were placed therein.

At the trial the jury found that the injury had been occasioned by the gross negligence of the company's servants, and returned a verdict for the plaintiffs.

Macaulay, Q.C. *Rea*, and *West* shewed cause against a rule nisi which had been obtained on a previous day by *Watson*, Q.C. for a new trial or arrest of judgment. There is some obligation imposed upon the company by this agreement, and part of that obligation is, that they should grease the wheels. The words "danger however caused" will not protect them from liability in consequence of gross negligence in that particular. The ticket is only a part of the contract. The duty of taking ordinary care is one which is imposed upon them as carriers, and is one which the law will import into the contract as expressed. The decided before the Carriers' Act shew that as the law then stood, the carrier could not relieve himself by notice from liability for negligence. (*Garnet* v. *Wilson*, 5 B. & Ald. 53; *Smith* v. *Horn*, Moore, 18, Q.B.; *Beck* v. *Evan*, 16 East, 247; *Lyon* v. *Wells*, 5 East, 427.) The effect of which cases fully appears from the discussion of them in *Wild* v. *Pickford*, 8 M. & W. 443; and *Hinton* v. *Dibbin*, 2 Q.B. 646. The cases in the Q.B. *Shaw* v. *York and North Midland Railway Company*, 13 Q.B. 347; and *Austin* v. *Manchester, Sheffield, and Lincolnshire Railway Company*, 20 L.J. 410, Q.B. were decided on the pleadings. *Chippendale* v. *Lancashire and Yorkshire Railway Company*, 21 L.J. 22, Q.B differs from this, and does not bind this Court. You cannot undertake to do a thing, and then say, but if I do not, I will not be liable. The proviso will be repugnant and inoperative. (*Furnivall* v. *Coombes*, 5 M. & G. 736.) So the company here, in agreeing to carry, agree to carry with ordinary care, and cannot say afterwards, "But if we do not carry with ordinary care, and an accident happens, we will not be liable." There is plenty for the proviso to operate upon, as pure accidents, and it must be confined to these. Story on Bailments, and 1 Smith's L.C. 102, were also cited.

Watson, Q.C. and *Hawkins*, in support of the rule. The question is, what is the meaning of the parties to the contract? It is a special contract, by which it is perfectly lawful for the company to stipulate that they will not be liable for any damage, even though it may have been caused by the negligence of their servants. Ninety-nine out of every hundred railway accidents arise out of the negligence of the company's servants. The number of servants is very great, and the utmost care in selecting them will not prevent some cases of negligence. It is against liability in these cases which the company in this agreement seeks to provide. And there is no hardship to the public. The railway companies will take all the care they can, for their own sakes, to prevent accidents. And it is to the probability of their doing this that parties who send goods by them trust. They undertake to provide carriages and locomotive power, and that is all. The parties must trust to their taking proper care. [CRESSWELL, J.—Do you contend that you are protected by the first or latter part of the notice?] I do not think we want the latter, but, if so, "damages, however caused," is wide enough to include everything.

Saturday, May 8.—The judgment of the Court was delivered by

CRESSWELL, J.—After stating the effect of the declaration, his lordship continued: The only material plea was that of the general issue. At the trial, the jury found that due care had not been taken, and returned a verdict for the plaintiffs. We are of opinion that the rule for arrest of judgment must be made absolute. The plaintiffs, in their declaration, are obliged to aver that the horses were delivered on the usual terms, except as qualified by the contract. At one time the Courts were disposed to hold, that carriers could not limit their liability, but now their right to do so is well established. (See Story on Bailments.) The charge in the declaration is gross and culpable negligence, and if the terms of the contract were not sufficient to exempt the defendants from this, judgment could not be arrested. The epithets, however, of *gross and culpable*, cannot alter the character of the conduct imputed, nor exaggerate it into a misfeasance. At all events, whatever may be the nature of the conduct here charged, we think it is covered by the terms of the contract, and this appearing on the face of the declaration, no cause of action is disclosed, and consequently judgment must be arrested.

[NOTE. By this decision and that of the Court of Ex. dissentiente, Platt, B. in *Carr* v. *The Lancashire, &c. Railway Company*, 19 Law T. Rep. 124, supporting the cases in Q.B. the question as to the power of carriers to limit their liability, is settled in favour of the carriers; and the cases prior to the Carriers' Act, when, as yet, a simple notice was as binding on the public as a special agreement (that Act leaving special agreements as it found them, and merely declaring notices not to be binding), in which it was held that carriers could not, by a notice, relieve themselves from responsibility in cases of negligence, are overruled.]

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY and C. J. B. HERTSLET, Esqrs. Barristers-at-Law.

Saturday, June 12.

HORTON *v.* THE WESTMINSTER IMPROVEMENT COMMISSIONERS.

Judge's order for change of venue on payment of costs, whether conditional or obligatory.

Where an order is made for changing the venue on payment of costs, and other terms are included in it, it does not of necessity follow that the payment of costs is conditional to the change of venue, it may appear by the facts of the case that such payment is obligatory.

Distinguished from Pugh *v.* Kerr, 5 *M. & W.* 164.

In this case a rule had been obtained, calling on the defendants to shew cause why they should not pay to the plaintiffs certain costs in the action pursuant to an order made by Pollock, C.B. on the 18th of March last, and also the costs of this application.

It appeared that the venue in the action was originally laid in Surrey, that notice of trial was given for the Spring Assizes, the commission day being the 22nd March. On the 17th March, a summons was taken out by the defendants to change the venue, upon which an order dated the 18th was made by Pollock, C.B. in the following terms:—"Venue to be changed to Middlesex on payment of costs to be taxed; plaintiff to be at liberty to demur generally to any of the pleas, and time for inspection under former order to be extended for ten days."

This order was drawn up by the defendants and served on the 19th March, the plaintiff having threatened that if they did not do so, he would take out a summons to compel them. The costs were taxed by the plaintiff on the 25th, defendants attending the taxation under protest. The plaintiff then delivered his demurrer books with the venue Middlesex inserted in the margin, and the defendants delivered their demurrer books in the same form.

Bramwell, Q.C. (*Honyman* with him), now shewed cause. This was a mere conditional order, which the defendant has a right to waive the benefit of, if he do not choose to comply with the condition. In *Fricker* v. *Eastman*, 11 East, 319, a judge's order that upon payment of costs by a certain day all proceedings should be stayed, was held to be only conditional on the defendant, and that he might abandon it. They also cited *Rose* v. *Fenn*, 2 Dowl. P.C. 182; *Price* v. *Philcox*, 7 Dowl. 559; *Pugh* v. *Kerr*, 5 M. & W. 164; *Field* v. *Sawyer*, 5 C.B. 71.

Garth, in support.—If the defendants can be shewn, by their subsequent conduct, to have adopted this order, they are bound by it. In the case of *Pugh* v. *Kerr*, Parke, B. said—"What are ordinarily words of condition may be made words of contract and obligation." And further on in his judgment—

"The words used in this rule no doubt ordinarily import a condition only; but if I were satisfied that it was meant here that the venue was immediately to be changed I should have thought they were a matter of contract, and that their grammatical construction should be limited." Having regard to the facts of this case, and the circumstances under which this order was made, and the further terms introduced into it, the payment of costs must be considered as a matter of contract and obligation, and not simply conditional.

POLLOCK, C.B.—I am of opinion that the terms of this order prove it to have been absolute—which is sufficient to distinguish this case from those which have been referred to; and the proximity of the commission day for Surrey, at the time the order was made, is an additional reason in favour of this view.

PARKE, B.—I am of the same opinion. I quite agree with the principle laid down in the several cases cited by Mr. Bramwell; but in the present instance the case has arisen which I pointed out in *Pugh* v. *Kerr*, that in an order of this nature what are usually words of condition may be made words of contract and obligation; and that where it is intended that the venue should be immediately changed, they become words of contract. This, in my opinion, is the fair construction of the order now before the Court, and this rule for the payment of the costs should, therefore, be made absolute.

ALDERSON and PLATT, BB. concurred.

Rule absolute.

May 7 and June 26.

HICKIE and ANOTHER *v.* SALAMO.

County Court—Costs—9 & 10 Vict. c. 95, ss. 128, 129; 13 & 14 Vict. c. 61, s. 17.

In an action by two plaintiffs, where one of them resides within and the other beyond twenty miles of the defendant, the Superior Courts have concurrent jurisdiction with the County Courts.

In this case the plaintiffs having brought this action in the Superior Court, obtained a verdict for 8*l*. 12s. 8d.

J. Gray now moved for a rule calling on the defendant to shew cause why the plaintiff should not, notwithstanding the amount of the verdict, recover his costs. It appeared that one of the plaintiffs resided at a distance greater and the other at a distance less than twenty miles from the defendant, and the question was whether such a case came within the concurrent jurisdiction clause of the County Courts Act (9 & 10 Vict. c. 95, s. 128).

Petersdorff shewed cause in the first instance, and contended that this case was not within the 128th section, and that the onus was on the plaintiff to establish his right; the Act had taken away the apparent right to costs, and shewn the burden of establishing such right in the plaintiff by the 129th section of the Act, and, looking to the interpretation clause, it could not be said that they dwelt more than twenty miles from the defendant. As in any case they dwelt as much within as beyond that distance. He also referred to the cases in which it has been held, that when one plaintiff resides within the jurisdiction, the Court will not require security for costs.

J. Gray, contrà, cited *Parry* v. *Davis and Ux.* 1 L. M. & P. 379; *Doyle* v. *Lawrence*, 2 L. M. & P. 368. *Cur. adv. vult.*

JUDGMENT.

PLATT, B.—The plaintiffs having recovered in this Court a verdict for a sum recoverable in a County Court, moved for costs, on the ground that one of the plaintiffs lived at a distance greater, and the other at a distance less, than twenty miles from the defendant. On shewing cause, counsel for the defendant objected that the plaintiffs did not bring themselves within the predicament prescribed by the 9 & 10 Vict. c. 95, s. 128, for if they were considered as constituting one plaintiff, then, according to the interpretation clause (142), as being two plaintiffs, it could not be predicated of them that they dwelt more than a distance of twenty miles from the defendant, as in either case they dwelt as much within as beyond the distance; that this might be a casus omissus, but unless they came within the language of the 128th section, the Court have no jurisdiction to grant costs. By the 9 & 10 Vict. c. 95, s. 128, it is enacted that "All actions which before the passing of that Act might have been brought in one of her Majesty's Superior Courts of Record, where the plaintiff dwelt more than twenty miles from the defendant might be brought and defended in any such Superior Court at the election of the party as if this Act had not been passed." Under this Act the defendant in practice applied to the Court under the 129th section in order to deprive the plaintiff of his costs; and it was upon an affidavit stating, amongst other things, that he and the plaintiff dwelt within the prescribed distance from each other. This practice was changed by the 17th section of the 13 & 14 Vict. c. 61, which deprived the plaintiff of his costs if the cause of action should be within the jurisdiction of the County Court, unless the judge who tried the cause should certify under the 12th section, or the plaintiff should, in pursuance of the 15th section of the Act, make it appear to the satisfaction of the Court in which such action was brought, or to the satisfaction of a judge at chambers on a summons, that the said action was brought for a cause of action, in which concurrent jurisdiction is given to the Superior Courts by the 128th section of the 9 & 10 Vict. c. 95, in which case the Court in which the action is brought, or a judge at chambers, may by rule or order direct the plaintiff shall recover his costs. Under the 17th section 13 & 14 Vict. c. 61, therefore, the plaintiff was applying to obtain his costs; but surely the facts which would enable him to resist successfully the defendant's application to deprive him of his costs under the 9 & 10 Vict. c. 95, would, under the 13 & 14 Vict. c. 61, suffice to establish his right to recover them. The cases in which that right is to attach are not changed, they are still those in which concurrent jurisdiction is given to the Superior Courts by the 128th section, 9 & 10 Vict. c. 95. The same state of facts, therefore, that would have entitled the plaintiff to his costs before the passing of the 13 & 14 Vict. c. 61, would, providing he satisfied the Court or a judge of their existence, equally entitle him to costs now. (*Parry* v. *Davis and Wife*, 1 L. M. & P. 379.) There the affidavit on the part of the defendant omitted to state that more than one of them resided within twenty miles of the plaintiff, and Lord Cranworth, then Baron Rolfe, held, that as the 128th sec. of the 9 & 10 Vict. c. 95, gave to the Superior Courts a concurrent jurisdiction, the plaintiff was entitled to his costs. In *Doyle* v. *Lawrence*, in the second vol. of the same reports, 368, the Court of C. B. adopted Lord Cranworth's decision, and held that the residence of one of the defendants more than twenty miles from the plaintiff made the case one of concurrent jurisdiction within the section. The same principle applies to a plurality of plaintiffs. We therefore think that as one of the plaintiffs in this case resided more than twenty miles from the defendant, the jurisdiction was concurrent, and the plaintiffs are entitled to the costs. The rule must be absolute.

Rule absolute.

June 12 and 26.

THE PRUDENTIAL MUTUAL ASSURANCE COMPANY *v.* CURZON.

Bond—Policy of insurance—Stamp—13 & 14 Vict. c. 97, s. 14.

A bond conditioned that if A. should pay to B. 300l. in manner provided, and the interest and premiums due on certain policies of assurance effected as a collateral security, that then the bond should be void. It further contained a proviso that in case of default in payment of the interest, or omission to pay the premiums regularly, the bond should become forfeited, and the principal sum of 300l. should be forthwith recoverable:

Held (Parke, B. dissentiente), well stamped as a bond "exceeding 200l. and not exceeding 300l.

This was an action upon a bond, dated 12th October, 1849, for securing the sum of 300*l*. The condition of the bond was, that if the defendant should pay or cause to be paid to the plaintiffs the sum of 300*l*. in manner therein provided, and the interest and premiums due on certain policies of assurance effected as a collateral security, then the bond should become void; there was also a proviso that in case of default in payment of the interest, or omission to pay the premiums regularly, the bond should become forfeited, and the principal sum of 300*l*. should be forthwith recoverable. The bond was impressed with a 3*l*. stamp. The cause was tried before Parke, B. in Middlesex, on the 25th of May, when it was objected, on the part of the defendant, that the stamp was insufficient, the bond requiring a stamp for an unlimited sum, or requiring two stamps, one in respect of the principal sum thereby secured, and the other for the premiums payable on the policy. The plaintiffs were thereupon nonsuited, liberty being reserved to them to move to set aside the nonsuit, and enter a verdict for the amount sought to be recovered.

Jos. Brown having obtained a rule accordingly (May 29),

Spinks now shewed cause.—In this case the plaintiffs seek to recover a sum of 323*l*. 14s. 7d. being 300*l*. plus one year's premium; that alone is sufficient to shew that the sum secured by the bond is more than the amount covered by this stamp. [POLLOCK, C.B.—I doubt whether the premium is recoverable; the premium for the first year is paid in advance, and if the premiums are not regularly kept up, then the defendant is at once liable to be sued for the whole amount.] This is a provision introduced for the benefit of the plaintiffs, and there is an annual sum of 23*l*. 14s. 7d. payable in addition to the 300*l*. [PARKE, B.—In my view certainly this bond secures more than 300*l*. I think the bond secures the principal, the interest, and the annual premiums.] The case of *Annandale* v. *Pattison*, 9 B. & C. 919, relied on by the other side, does not apply; there there was only an implied undertaking annexed to the original liability. In the case of *Dearden* v. *Binns*, 1 Man. & Ry. 130, also cited when this rule was obtained, it does not appear what the collateral matter secured was. I rely on the language of the bond itself, which is, that it is sufficient to enable the plaintiffs to recover 223*l*. 14s. 7d. In the breach assigned it is set out that the defendant did not pay 23*l*. 14s. 7d. and on his default to pay the premium, 323*l*. 14s. 7d. become due.

Jos. Brown, in support of the rule, said, that since the trial the plaintiffs had, under the 14th section of the 13 & 14 Vict. c. 97, laid the bond before the Commissioners of Inland Revenue, by whom it had been stamped, shewing that the right amount of duty had been paid. [POLLOCK, C.B.—I do not think you can make any use of that. How do we know anything of this? How do we know even that this is the bond in question? We can only look to the record.] Then we ought to have an opportunity of pleading this puis darrein continuance. [PARKE, B.—We are only now considering whether the bond produced before me at the trial was properly stamped.] The Act says that, whether right or wrong, this stamp, by way of certificate from the commissioners, shall be binding. [PARKE, B.—That is clearly only prospective. ALDERSON, B.—The Act clearly means that when the suit is commenced before the instrument has received this additional stamp, that if it is so stamped before the trial it shall be sufficient.] Then as to the construction of the bond and the Stamp Act. This bond is substantially given to secure 300*l*. only, the policy of insurance is a mere collateral security. The words of the Act are, "bond in England and personal bond in Scotland, given as a security for the payment of any definitive and certain sum of money." "Exceeding 200*l*. and not exceeding 300*l*.—3*l*." That is precisely the present case. [PARKE, B.—The difficulty I feel is, whether the plaintiff would not be entitled to recover 300*l*. plus the interest and premiums in arrear. ALDERSON, B.—These premiums can never become debts when the policy of insurance is avoided. There is nothing due to the company but the principal sum and interest.] Just so; the policy is merely a collateral security, and the bond is therefore well stamped. *Cur. adv. vult.*

JUDGMENT.

ALDERSON, B.—This was a motion for entering the verdict for the plaintiffs, Parke, B. who tried the case, having at the trial nonsuited the plaintiffs, with liberty reserved to the plaintiffs to move to enter the verdict. The question arises simply on this,—whether or not there was a sufficient stamp upon a bond, the subject of the plaintiff's claim. The bond was stamped with a sufficient stamp for the amount of 300*l*. The learned judge at the trial was of opinion, and I believe at present retains his conviction, that the stamp was not sufficient, inasmuch as the bond, as he thought, secured not merely the sum of 300*l*. but an unlimited amount of premiums which were to be paid, it being a bond given for the purpose, as would appear, of securing the payment of the premiums on certain policies of insurance, besides the principal-money advanced. But the majority of the Court, the Lord Chief Baron, myself, and my brother Platt, are of opinion that the stamp is sufficient. The condition of the bond is, if the person who is bound shall well and truly pay, or cause to be paid, to the present plaintiffs the sum of 300*l*. which has been lent to him out of the funds of the association (and in order to secure the repayment of which the policies of insurance were effected as a collateral security) in certain amounts, in certain sums of 100*l*.; and if he shall pay the interest and premiums due on the policies of insurance, then the bond is to become void; but there is a proviso, if there be any default in the payment of interest, or omission to pay the premiums regularly, the bond shall become forfeited, and the 300*l*. shall be forthwith recovered. We think this is not a bond for the payment of the premiums, but only for the payment of 300*l*. the 300*l*. being demandable as soon as there is a deficiency in the payment of interest or premiums; but when it becomes forfeited by the omission to do that, all that can be recovered under it is the amount of the 300*l*. and not anything else. That is the view the majority of the Court take. It is perfectly clear the stamp is a very good stamp now, for it has passed through the Stamp Office, and has been stamped with one security stamp, they having examined into it, and seen that a 300*l*. stamp is quite sufficient. We entertain no doubt about the thing, and the verdict should be entered for the plaintiffs, the amount of the stamp being, in the judgment of the majority of the Court, quite sufficient.

PLATT, B.—We should not differ from my brother Parke, whose experience as a lawyer has great weight, without giving some reason for that differing, and for that reason it is I wish to add a few words to what has been said by my learned brother Alderson. Now the bond in question was stamped for 300*l*.

The words of the Stamp Act are these: "A bond given as security for payment of any definite sum of money." It then goes on to state the sums for which each particular stamp is to be. Well, and what is this bond? 300*l.* are borrowed, and interest is payable on that sum. The bond is to secure payment of that; but, for the purpose of having a collateral security, the condition goes on to stipulate that an insurance shall be effected with the company for that purpose, and in the event of the death of the borrower, that the company may have a fund, out of which the money is to be paid. How is that taking more than 300*l.*? Now let us consider what this is. Here is a bond for 300*l.* payable by annual instalments in three instalments. The bond is dated the 12th of October, 1849, and the three instalments by which the 300*l.* are to be repaid are, respectively, 100*l.* on the 12th of October, 1850; 100*l.* on the same day in 1851, and 100*l.* on the same day in 1852; and upon default of any one of the payments, the bond may be put in suit; upon default, also, to pay the premiums of insurance, the bond may be put in suit. Now, suppose the party was to die, the premium does not go into their pockets in addition to the interest. There is a burthen assumed by the company and which is bought by the premiums; so if the party was to die in the first year, the account would stand thus:—the interest is payable beforehand by the bond, 15*l.* are paid at the beginning, and 23*l.* 14s. 7d.; that is in the whole 38*l.* 14s. 7d.; and if the borrower was to die within a year the company would have to pay 299*l.* and secure the loss of 261*l.* That would be the result of the whole transaction: at the end of the second year they would secure a loss of 223*l.*; and at the end of the third, they would secure a loss of 185*l.* How can this be said to secure any more money than the interest? It seems that when one considers the premiums fairly and properly as being the purchase of an interest or obligation on the part of the company, which may be kept up after the loan has been repaid, you cannot consider that any additional sum is secured by the bond.

ALDERSON, B.—The premium is always paid in advance, and therefore the insurance fails if the premium is not paid: it is always for the future year, not for the past, and it is optional to keep it up.

Rule absolute.

EXCHEQUER CHAMBER.

Reported by JOHN THOMPSON, Esq. of the Inner Temple, Barrister-at-Law.

Monday, June 11.

ERROR FROM THE COURT OF QUEEN'S BENCH.

(Before JERVIS, C.J. PARKE, B. ALDERSON, B. MAULE, J. CRESSWELL, J. PLATT, B. TALFOURD, J. and MARTIN, B.)

TETLEY and ANOTHER *v.* TAYLOR.

Bankrupt—Deed of arrangement—12 & 13 *Vict. c.* 106, *ss.* 224, 225.

A deed of arrangement between a trader and his creditors, executed by six-sevenths in number and value of creditors whose debts amount to 10*l. and upwards, is not binding under the Bankrupt Law Consolidation Act* (12 & 13 *Vict. c.* 106, *s.* 224) *upon creditors not parties to the deed, unless the deed provides for the distribution of the whole of the trader's estate amongst his creditors.*

Tetley *v.* Taylor, 21 *L.J.* 2, *Q.B. overruled.*

Drew *v.* Collins, 17 *Law T.* 158; 20 *L.J.* 369, *Ex. affirmed.*

Debt for goods sold and delivered, and on an account stated.

Second plea.—As to 43*l.* 11s. 10d. parcel, &c. that at the time of making the indenture hereinafter mentioned, the defendant was a trader liable to become bankrupt under the bankrupt laws, and was indebted to the parties of the third part to the said indenture, and to divers other persons, and was and would be unable to pay the same in full; that the defendant suspended payment, and by a certain indenture made after the passing and coming into operation of the Bankrupt Law Consolidation Act, 1849, to wit, on, &c. (profert), and which said indenture was made between the defendant, of the first part, V. J. and P. of the second part, and the several persons whose names and seals were thereunto subscribed and set as hereinafter mentioned (being creditors of the defendant, or the authorised agents of such creditors), of the third part. After reciting, among other things, that the defendant was justly and truly indebted unto his said several creditors (parties to the said indenture of the third part) in the several sums of money set opposite to their respective names; and being unable to pay the same in full, he, the defendant, had proposed to pay unto each and every of such creditors a composition after the rate of 7s. 6d. in the pound, upon and in full satisfaction of their respective debts by three equal instalments, &c. &c. to which arrangement and proposal the said creditors, parties thereto, had consented and agreed; it was witnessed that, in consideration, &c. they, the said creditors of the defendant, executing the said indenture, did, &c. covenant, promise, and agree to and with the defendant, among other things, that they should and would accept the aforesaid composition, or sum of 7s. 6d. in the pound, in full satisfaction and discharge of the said several debts and sums of money due and owing to them by the defendant, as specified in a certain schedule to the said indenture; and also that they should, and would, at any time, or times, from and after full payment and satisfaction of the said composition, or sum of 7s. 6d. in the pound, at the request, costs, and charges of the defendant, his executors or administrators, make, do, and execute unto him, the defendant, his executors or administrators, any other act, deed, matter, or thing for the more effectually releasing him, the defendant, or his said executors or administrators, from the said debts and sums of money due and owing from the defendant to the same creditors respectively, as the said defendant, his executors, or administrators, or his or their counsel in the law should lawfully and reasonably advise or devise and require. The plea then set out the covenant not to sue, except for the composition, and the covenant by the defendant and V. J. and P. to pay the composition in the manner agreed upon. The plea then averred that the indenture was sealed by the defendant and divers, to wit, fifty of the creditors of the defendant, and was and is a deed of arrangement within the meaning of the said Act, and that the said creditors, by whom and on behalf of whom the said deed was so signed and executed as aforesaid, were more than six-sevenths, to wit, nine-tenths in number and value of the creditors of the defendant, within the meaning of the said Act, whose debts amounted to the sum of 10*l.* and upwards, accounting every creditor as a creditor in value in respect of such amount only as upon an account fairly stated, after allowing the value of mortgaged property and other such available securities or liens from the defendant, appeared to be the balance due to him, and that the said creditors by whom and on behalf of whom the said deed was so signed as aforesaid thereby assented to the said deed, and to be bound thereby. That the plaintiffs were creditors of the defendant at the time of the making of the deed in respect of the debt, in the introductory part of the plea mentioned, within the meaning of the said Act, and that the amount thereof did not accrue to the plaintiffs in respect of the said composition; that the plaintiffs had notice from the defendant of his, the defendant's, suspension of payment, and of the said deed of arrangement, and were then requested by the defendant to sign and execute the said deed; that three calendar months from such notice had expired before suit. Averment of performance of the deed by the defendant, and the parties thereto of the second part; that by reason of the premises, and by force of the statute aforesaid, the said deed (the same having been at all times from the making and entering into the same, and being still in force) became, and was, and is, as obligatory on the plaintiffs as if they had duly signed and executed the same, and by reason of the premises, the defendant before and at the time of suit became and was released and discharged from the said causes of action in the introductory part of the plea mentioned. Verification. Special demurrer to the plea.

The demurrer was argued in the Court of Q. B. in Michaelmas Term, 1851, when that Court pronounced judgment for the defendant. (21 L. J. 2, Q. B.)

Upon that judgment the plaintiffs brought a writ of error, which now came on for argument.

Willes, for the plaintiffs. The question is, whether a deed of arrangement, signed by six-sevenths of the 10*l.* creditors, which does not provide for the distribution of the whole or any part of the trader's estate among his creditors, but which simply provides for the discharge of the trader's debts upon the payment of a composition, is sufficient to bind the dissentient creditors, and all creditors under 10*l.* If the meaning of the 12th & 13th Vict. c. 106, s. 224, had been that put upon it by the Court of Q. B. it might have been expected to find some provisions in the Act for a consultation and general meeting of the creditors above 10*l.* before such an arrangement could be come to. The construction of the Court of Q. B. would enable the trader to procure the execution of such a deed by a kind of fraud, by going about among his favourable creditors first and leaving the hostile ones to the last, and it also excludes those creditors below 10*l.* from any voice in the matter. Sec. 224 provides for a case in which there is no meeting among the creditors, and yet it may be that one creditor may know that the trader has means which the others are ignorant of, and the debt due to another may have been fraudulently contracted, and there might be other circumstances, which, if known to the creditors, would induce them not to sign the deed. Surely, then, the Legislature must have contemplated in sec. 224, that the deed of arrangement, would provide for the distribution of the whole of the trader's estate among his creditors, for they have almost a natural right to have the property of their debtors applied in payment of their debts. There is no precedent for absolving a trader from his debts without giving up his property, or without the consent of all his creditors. The provisions of the 12th & 13th Vict. c. 106, applicable to this case, are class 34, being secs. 224 to 229 inclusive. Sec. 224 enacts, that every deed of arrangement between a trader and his creditors, signed by six-sevenths in number and value of creditors of 10*l.* and upwards, touching such trader's liabilities and his release therefrom, and the distribution, &c. and mode of winding up his estate, shall be as obligatory in all respects upon the creditors who have not signed such deed as if they had done so. And by sec. 229, if any creditor shall be desirous to shew that the administration of the estate of such trader has not been conducted in conformity with such deed of arrangement, he may apply to the Court, who are empowered to direct inquiry, and make such order thereon as the Court shall think just. In order to make the present deed valid, sec. 229 must be excluded, and then no superintending control is left in the Court at all over the estate. Sec. 228 enacts that creditors shall have the same rights as to set off, mutual credit, lien, and priority, and joint and separate assets shall be distributed in like manner, as in bankruptcy. The last clause of this section shews that a distribution of the trader's estate was contemplated, and the whole class of sections is consistent with a quasi bankruptcy of the trader out of Court. Sec. 228 also shews the propriety of giving creditors power to appeal to the Court; but if there is not to be any distribution of the estate, there can be no appeal to the Court, and then how can a creditor get the benefit of a case of mutual credit? Every person who is entitled to prove under a bankruptcy is a creditor within the meaning of the provisions as to arrangements by deed, and the effect given to a valid deed is to discharge the trader from all such debts as he would be discharged from in an ordinary bankruptcy. In *Ex parte Serle*, 16 Law T. 374, Mr. Commissioner Evans ruled that a deed of arrangement under sec. 224 must be consistent with the general scope of the statute, and not contain provisions that would lead to any other administration of assets than that which has always been provided for by the statutes relating to bankrupts. There is also an express decision of the Court of Ex. conflicting with that of the Court of Q. B. and in which the Ex. held that the deed of arrangement was not binding upon creditors who had not signed it unless provision was made for the distribution of the whole of the trader's estate amongst his creditors. (*Drew* v. *Collins*, 20 L. J. 369, Ex.)

Phipson, for the defendant. It is submitted that the judgment of the Court of Q.B. is correct, and must be affirmed. The policy of the provisions in question is to facilitate arrangements bonâ fide entered into between a trader and his creditors, so as to avoid a bankruptcy, and the wasting of the funds in the proceedings in the Court of Bankruptcy. To prevent this policy being defeated by a few dissentient creditors, sec. 224 gives six-sevenths of the creditors power to bind the whole, it being presumed that an arrangement agreed to by six-sevenths would not be an improvident one. A deed of arrangement is not invalid because the secs. 228 and 229 cannot be applied to it. If there was to be a distribution of the whole estate, there must be a trustee and an inspector appointed, and yet the provisions do not allude to any such persons. As to the hardship of the deed binding dissentient creditors, sec. 225 requires notice to be given to creditors, and enacts that the deed shall not be obligatory upon any dissentient creditor until after the expiration of three months from such notice, so that they have three months, at least, within which they may adopt steps either for recovering their debts or securing the distribution of the estate under the Court by proceedings in bankruptcy. The creditors do not necessarily get the distribution of the whole of the trader's estate in cases where the arrangement is made under the control of the Court, under the provisions in class 33 of the Act. And under sec. 230, nine-tenths of the creditors, at a meeting called for the purpose, may annul the adjudication of bankruptcy, and accept a composition. Hence many of the objections made to this deed of arrangement are also equally applicable to the above cases, but they are clearly untenable as regards them. And with respect to secs. 228 and 229, they were only intended to apply in cases where the deed provided for the distribution of the estate; but in this case they are inapplicable, because six-sevenths of the requisite creditors have agreed to the arrangement, without any provision for such distribution.

JERVIS, C.J.—I am of opinion that the judgment of the Court of Q. B. in this case must be reversed. The question turns principally on the 224th and subsequent sections, to the 230th; and though the construction of the 224th is aided by the preceding and subsequent sections, the question mainly depends upon the 224th section. It is not to be presumed that in an Act relating to bankrupts we should

find a series of clauses taking away the distribution of the estate and assets of a debtor; and if such an intention had been contemplated, we should expect to find strong words to that effect; but the most that can be said in support of such a view upon sec. 224 is, that the words are doubtful. The clauses in question begin with the title, "of arrangements by deed." Arrangement is a new word, introduced into the Bankruptcy Act, and would at first sight appear to be something different from "composition." But we cannot be guided by its natural meaning, "setting in order," for that is applicable as well to a composition as to the distribution of the trader's estate among his creditors. The words of sec. 224 are, that every deed of arrangement signed by six-sevenths, &c. "touching such trader's liabilities and his release therefrom, and the distribution, inspection, conduct, management, and mode of winding up of his estate." Stopping there, it would seem that the deed of arrangement must be applicable both to his release from his liabilities, and the distribution, &c. of his estate; but the clause proceeds, "or all or any of such matters, or any matters having reference thereto." Now it is highly improbable, even on these words, that the Legislature intended that the six-sevenths of the creditors should have the power of binding the others to the arrangement, without securing the distribution of the trader's estate. But reading on, "shall (subject to the conditions hereafter mentioned) be as effectual and obligatory in all respects upon all the creditors who shall not have signed such deed, as if they had signed the same." As I read the section, the creditors are to have the security of the trader's estate, and the words "subject to the conditions hereafter mentioned" seem to me to engraft on sec. 224 what we find in the subsequent sections of the same series. Sec. 228 provides for cases of set-off, mutual credit, lien, and priority; but if the deed of arrangement provides only for a composition, no effect will be given to that section. A creditor cannot avail himself of a lien under such a deed, nor can a servant obtain a priority for his wages. So, also, with reference to the power, to apply to the Court under sec. 229, there is nothing in this deed for the Court to act upon. If, however, the meaning of sec. 224 were doubtful, it would require strong words to take away the rights of the creditor to the distribution of his debtor's estate. I am of opinion, therefore, that no such deed of arrangement is good that does not apply as well to the distribution of the trader's estate as to his liabilities and release therefrom.

PARKE, B.—I am of the same opinion. The true construction of sec. 224 appears to me to be that it applies only to cases where there is some arrangement as to the entire estate of the trader for the payment of his debts. The term "arrangement by deed" is ambiguous; and this is the first time that it has been introduced into the Bankrupt Act. I think that, were the question doubtful, it would require very strong words to shew that the Legislature intended to deprive a creditor of his right to the distribution of the debtor's estate, on being paid part only of his demand. The object of such arrangements appears to me to be that the trader's estate should be distributed by consent of the parties, and not that creditors should be satisfied on payment of part instead of the whole of their debts. In the case of compositions after bankruptcy by sec. 230 there are to be two meetings, and notice thereof to the creditors, and the concurrence of nine-tenths in number and value of the creditors, is requisite. And in the case of arrangements under the control of the Court by sec. 216, three-fifths in number and value have power to accept a resolution for payment of a composition which shall be binding upon all the creditors. But in both those cases the proceedings are by meetings of creditors, and subject to the control of the Court. Here there is no disclosure of the whole of the trader's estate, and I cannot think that it was intended that the rights of parties should be bound by receiving part of their debts instead of the whole. I concur with the Chief Justice in thinking that there are not words enough to shew that the Legislature intended to deprive a creditor of his rights to the distribution of his debtor's estate for the payment of his debt, and that the sole object of the provisions was that the estate might be administered at less expense, the mode of administration being subject to the control of the Court under sec. 229.

ALDERSON, B.—I am of the same opinion. All that the Legislature intended to do, in my opinion, was to permit six-sevenths in number and value of the creditors to release the trader from his liabilities, and to distribute the whole of his estate subject to the Bankrupt Laws.

The rest of the Court concurring.

Judgment reversed.

ERROR FROM THE COURT OF COMMON BENCH.

Reported by T. D. EVANS, Esq. and R. V. WILLIAMS, Esq. Barristers-at-Law.

GREAT NORTHERN RAILWAY COMPANY v. HARRISON AND OTHERS.

June 16 and 17.

Covenant implied—Condition precedent—Pleading—Averment of readiness and willingness.

An indenture between the plaintiffs and the defendants below (a railway company), after reciting that the defendants were desirous of being supplied with 350,000 railway sleepers, and that the plaintiffs were willing to supply them, according to the terms of a specification and tender, contained a covenant by the plaintiffs that they would supply the sleepers within the time specified, "as and when, and in such quantities and in such manner" as the engineer of the company, by order in writing, "from time to time, or at any time within the period limited by the specification," should require. The specification stated that the number of sleepers required was 350,000; that one-half would have to be delivered in 1847, and the remainder by Midsummer 1848. The deed also contained provisoes that the engineer might vary the times of delivery; that the company should retain 2,000l. in their hands as security for the performance of the contract, and should pay it over within two months after all the sleepers had been delivered; and that the contract might be terminated upon default by the plaintiffs, or on their bankruptcy or insolvency:

Held, first, that a covenant was implied on the part of the company to take the whole number of the sleepers:

Secondly, that an order by the engineer to deliver was a condition precedent to delivery by the plaintiffs below:

Thirdly, that there was a duty in the company to cause the engineer to give such order within the period mentioned in the specification;

Fourthly, that the engineer, regard being had to the discretion reposed in him as to varying the time of delivery of the sleepers, and other parts of the contract, must be considered as an arbitrator between the parties; but, that as related to his duty to give the order of delivery of the sleepers, he was a mere agent of the company.

Held, also, that in a declaration upon such a deed, an averment of readiness and willingness to deliver the sleepers was unnecessary, and if pleaded would therefore be idle matter; the first duty being on the company to give the plaintiffs below an order to deliver.

Error from the judgment of the Court of C. P. given for the plaintiffs below on demurrer to certain pleas by the defendants, and on judgment non obstante veredicto for plaintiffs on the third plea. The pleadings and the deed, so far as they are material, are here set out.

Covenant.—The declararation recited an indenture of the 20th of February, 1847, between the Great Northern Railway Company (the defendants below), on the one part, and the plaintiffs below, as "contractors," on the other, as follows:—"That whereas the said company are desirous of being supplied with 350,000 sleepers, of Dantzic or Memel timber, the particular size and description whereof are set forth in the specification annexed, and in certain drawings therein referred to; and whereas in the same specification are also set forth the several times within which and the port at which the said sleepers will be required to be delivered; and whereas the plaintiffs are willing to supply the said company with the said 350,000 sleepers upon the terms mentioned in the said specification and in the tender of the plaintiffs, a copy of which is hereunder written, and to enter into the several covenants and agreements hereinafter contained;" and then proceeded—"Now this indenture witnesseth, that in consideration of the covenants and agreements hereinafter contained on the part of the said company to be observed and performed, they, the plaintiffs, do hereby jointly and severally covenant and contract with the Great Northern Railway Company in manner following:—that is to say, that they, the said contractors, shall and will, within the times and at the pace mentioned in the said specification, as, and when, and in such quantities and in such manner as Joseph Cubitt, esquire, or John Miller, esquire, or other the principal engineer or one of the principal engineers for the time being of the said company, shall, by order or requisition in writing under his hand from time to time, or at any time within the period limited in and by such specification, direct or require, furnish and supply the said company with 350,000 sleepers of Dantzic or Memel timber: that such sleepers shall be of such description, quality, manufacture, and size, and of such form and construction as are mentioned in the said specification, and to be equal in all respects to the specimens deposited with the said Joseph Cubitt: that in case any of the principal engineers of the company shall, at any time before the complete execution of this contract by the delivery of the whole of 350,000 sleepers, be desirous of altering the size, form, or construction of, or of changing or varying the times of delivery of any of the said sleepers which shall not then have been delivered, he shall be at liberty so to do; and in such case a proportionate alteration in price shall be made, either by increasing or diminishing the price hereinafter agreed to be paid for such sleepers supplied by the contractors; and the engineer by whom such alteration shall be required, shall settle whether any, and, if any, what alteration in price shall be made: provided always, that care shall be taken that the contractors shall derive the same proportionate amount of profit as they would have had if no such alteration had been required." The engineers were then empowered to reject and require the removal of any unsound or defective sleepers supplied by the plaintiffs, and to order the plaintiffs to replace them by proper sleepers, or to replace them at the costs of the plaintiffs, with such a number as would make up the full number thereinbefore agreed to be supplied; and the company were empowered to deduct the price of new sleepers, and the costs and damages incurred by the refusal of the plaintiffs to remove or replace the defective sleepers, out of any moneys which should be then due, or thereafter become due to the plaintiffs.

There was then a stipulation for determining the contract by the company in case of default by the plaintiffs; and the deed then proceeded:—

"The said company do hereby covenant that they, the said company, will pay to the said contractors, for the said sleepers hereinbefore contracted to be supplied, the price of 4s. 3d. per sleeper, at the time and in manner hereinafter mentioned,—viz. that when one of the engineers of the company shall have certified that a cargo of sleepers, to the amount mentioned in his certificate, has been delivered, and that the sum stated in the certificate is due, the company shall forthwith pay the said sum, with any deductions authorised to be made as before mentioned; and that the contractors shall be entitled to receive from the company, within one month from the delivery of each cargo, the amount of the moneys payable in respect thereof: provided always, that no sum of money shall be claimed or received by the contractors on account of the sleepers so applied until sleepers above the value of 2,000l. shall have been delivered to, and certified to have been received by, the company; and that as soon as sleepers to the amount of 2,000l. shall have been so delivered and certified, such sum of 2,000l. shall not be paid to the contractors, but retained by the company, and the excess only of the value of sleepers supplied above 2,000l. be from time to time paid to the contractors, it being the intention that the payment on account shall alway fall short of, and be less by 2,000l. than the sum actually due, to the end that the company may alway have in hand 2,000l. for the purpose of securing the due performance of the contract. And it is further agreed that within two calendar months after the whole of the 350,000 sleepers hereinbefore agreed to be supplied shall have been supplied, and a certificate thereof signed by the engineer, the said sum of 2,000l. or so much as may remain due, shall be paid over to the said contractors," &c. The declaration then set out the specification, which, besides describing the size, form, and mode of cutting the sleepers, contained the following clauses:—"The number of sleepers required under this specification is 350,000; one-half will have to be delivered in 1847, and the remainder by Midsummer 1848. The port at which the deliveries will have to be made is Goole." "The deliveries are to be made either by stacking the sleepers upon a wharf, or properly loading them into a boat, or barge, or other vessel, as may be directed by the resident engineer." "Payments will be made monthly within one month of the date of the engineer's certificate of the delivery of such cargo, after sleepers to the amount of 2,000l. shall have been delivered and certified, which sum of 2,000l. shall remain in the hands of the company as a guarantee for the due performance of the contract on the part of the contractors."

Bovill (*Raymond* with him) for the plaintiffs in error.—It is needless to trouble the Court by arguing that the pleas demurred to were good; but we contend that the plea on which we obtained the verdict of the jury was good. This was a contract between a contractor to supply sleepers and a railway company; and the only breach is that the engineer of the company did not give orders as to the delivery of the sleepers within the specified time. The deed, as set forth in the declaration, recites that the company were desirous of being supplied with 350,000 sleepers; but the contract does not contain anything to shew that the company were willing or had agreed to take the 350,000 sleepers. The first part of the deed consists entirely of Harrison's covenants. No doubt the Courts have held that covenants shall be construed as extending to both parties where the word "agreed" has been used therein. This Court has no doubt said that that word can only apply to *two* parties. But what we are here considering

is, whether this is or is not our language. We say it is Harrison's, and not ours. Stress was placed upon the use of that word in *Elderton* v. *Emmens*, 4 C. B. 479, as importing the language of both parties; but here that word is not employed. It is upon a covenant, which is Harrison's, that an endeavour is now made to shew that it is a covenant of the company. [Parke, B.—No doubt the plaintiffs are bound to deliver 350,000 sleepers, and the question is as to the mutual obligation of the defendants to take them.] The covenant is by the plaintiffs to supply sleepers "as and when, and in such quantities, and in such manner, as Joseph Cubitt, or John Miller, or other principal engineer, shall, by order or requisition in writing, from time to time, or at any time within the period limited by the specification, require;" and it is not a covenant to supply absolutely without requirement of the defendants. The clause says, the engineer may alter the time for delivery; how, then, can it be contended that the company are bound that he shall give orders for delivery within the time mentioned in the specification? The plaintiffs were not entitled to a farthing until after receiving a certificate from the engineer. Every thing was left to the discretion of the engineer, and his certificate was a condition precedent to the contractor's right to recover, and the obligation on the company to pay. (*Morgan* v. *Bernie*, 9 Bing. 672; *Milner* v. *Field*, 5 Ex. 829.) The cases shew that where, in such a contract, the certificate is held by fraud, there is no remedy at law, the party must seek relief in equity. (*MacIntosh* v. *The Great Western Railway Company*, 2 Mac. & Gord. 74.) There is an express covenant as to what the engineer shall do; he is to examine the sleepers, but there is no engagement that he shall certify; and there must be no implication that he was to certify or do anything more than the contract has expressed. "Expressum facit cessare tacitum." There is no contract on the part of the company that they will take all the sleepers, nor that the engineer shall certify. By what is expressed the defendants have shewn into what contracts alone they intended to enter; all they have undertaken from beginning to end is to pay the money for the sleepers when the certificate shall have been given by the engineer. Both parties have left every thing in his discretion except a covenant by the company that he shall examine the sleepers. This being so the Court must not inquire what is reasonable; it must not *make covenants* for the parties, but be bound by what, on the face of the contract, the parties have themselves expressed. If the Court should hold that there is here an implied covenant that the engineer shall certify, they will altogether remove the necessary protection from railway companies and parties engaged in building, they intending by their contracts not to pay until their surveyor certifies. As to implied covenants reference may be had to Com. Dig. "Covenant" A, 3. It is there said:—"If a lessee covenants to repair, provided that the lessor finds timber, this is not a covenant by the lessor to find it, if there be not the word 'agreed.' If B. covenants to pay 100*l.* to A. and he covenants on receipt to give an acquittance, and to make an obligation, &c. it is not any covenant that he will receive and give an acquittance." (2 Danvers, 231; *Wolveridge* v. *Steward*, 1 Cr. & M. 644.) The plaintiffs have here to make out that a covenant by them with the company is a covenant by the company with them. As to mutual obligation there are many cases, of which, taking them in the order of date, the following are material:—*Lees* v. *Whitcombe*, 5 Bing. 34; *Williamson* v. *Taylor*, 5 Q. B. 175; *Aspdin* v. *Austin*, 5 Q. B. 671; *Dunn* v. *Sayles*, 5 Q. B. 685. If you are to extend covenants by implication, where is it to stop? Every judge will apply a different measure of implication. The general principle is well laid down in *Aspdin* v. *Austin*, and on that defendants rely. [Parke, B.—It must appear, either by express word or obvious implication, that the company are bound to take the 350,000 sleepers.] Another case in which this point was much discussed is now before the House of Lords. (*Elderton* v. *Emmens*, 4 C. B. 479, S. C. in Error, 6 C. B. 160.) [Erle, J.—The Court held in some of those cases that there was covenant to pay, though not one to provide work. In *Elderton* v. *Emmens*, the Court said that the word "employ" did not mean "find with legal business."] Next, as to that part of the record which depends upon the third plea. The declaration is bad, because it does not allege readiness and willingness to deliver a notice thereof to the defendants. The case of *Hannuic* v. *Goldner*, 11 M. & W. 842, is an authority that such averment was necessary, and if that be so, then notice was also requisite. (*Grainger* v. *Dacre*, 12 M. & W. 131; *Doogood* v. *Rose*, 9 C. B. 132.)

Parke, B.—The first step is on the defendants, to give notice to deliver; there is no obligation on the plaintiffs below to do anything until the defendants have given that notice; therefore, such an allegation in the declaration is unnecessary, it would be mere idle matter. All the Court are of this opinion.

Thursday, June 17.—*Willes* (*Bramwell*, Q.C. with him) resumed the argument.

Bovill, in reply.

Parke, B.—I am of opinion that the judgment of the Court of C. P. is correct, and must be affirmed, and in this opinion, and in the reasons of it, I believe we all concur. The authorities which have been cited shew that in order to constitute a binding contract it is not necessary that any particular form of words should be used. We must collect the intention of the parties to a deed from all the parts of it. Accordingly, looking at this instrument and the other documents imported into it, we are to consider, first, whether the company undertake to take the 350,000 sleepers; and, secondly, whether they undertake that the engineers should require the delivery of them before the termination of the period mentioned, namely, Midsummer 1848. There is more doubt about the second question than the first. About the first indeed there is no doubt. The recital in the deed only incorporates what is expressly so incorporated, that is to say, only so much of the specification and tender as it purports to incorporate. I think from it, and them there is ample evidence of a contract on the part of the company to take the 350,000 sleepers. The terms of the recital, "desirous of being supplied," are relied upon by Mr. Bovill, but looking at the terms of the specification we think this is a contract to require that quantity. In the specification we find set out, first, the times when the sleepers should be delivered: "one-half will have to be delivered in 1847, and the remainder by Midsummer, 1848," and from the cases we are of opinion that that means that they contract to require the delivery of them at such times. Then follows the clause as to the requirement by the engineer. That is a covenant to supply, provided there is a requirement in writing by the engineer. Then the proviso as to alteration; and then come two clauses which prove to demonstration that the company understood they were contracting to require the delivery of the whole number within the time. The one gives a power to the company to terminate the contract. That clearly shews there was a contract, and that could only be, on the part of the contractors, to deliver, and on the part of the company to take, the whole amount, or such as the engineer should direct. Mr. Bovill says that the engineer was arbitrator between both, and not an agent of the company. But whether he were so or not, for some purposes this stipulation taken in connection with the general contract to take the whole amount shews that he was to act in that respect as agent for the company. I cannot conceive, looking at this contract, that the engineer was to be the person to finally determine whether the contractors should supply the sleepers or not. It speaks for itself. All this shews a contract; and that contract is to take the whole number within the time as the engineer should direct. That is strengthened by the other provision as to the 2,000*l.* In that, both parties specify that there is a time when that sum would be due, and that would only be when the whole number should have been supplied. That could not be open for ever. It must be within the times mentioned. I think, therefore, it is abundantly clear that the defendants have agreed to take 350,000 sleepers. Secondly. Has the company agreed to give orders for the delivery of the sleepers within the time? I think, the engineer being in this respect the agent of the company for the reasons above given, the clause in question, namely, "that the contractors shall and will, as, when, and in such quantities, and in such manner, as the engineer for the time being of the said company shall, by order in writing, under his hand, from time to time, or at any time within the period limited in and by the specification, direct or require, furnish the sleepers," imports that the company will give the necessary orders before the time limited in the specification, *i. e.* Midsummer 1848. Then comes the provision as to varying the time, and this is the only point on which we ever had any doubt. We have now come to the conclusion that it only authorises an extension of the times of delivery within the period limited. Midsummer 1848 is the last moment, and the contract cannot be completed unless by that time, and the power of extending the time of delivery is to some time before then. The engineer might give an order varying the time of delivery from that mentioned in the specification, and has a further right to vary the order so given, upon condition of a difference in price being paid, as a compensation to the contractors for any loss occasioned by such variation. But all those orders must be given within the time. Could it be supposed that it was intended that the company should have the power of extending the time for two years, during which the contractors would be out of their capital, and lose the benefit of it, and so be at a loss? The breach, therefore, is properly assigned, and the judgment must be affirmed on this point, as well as on that of entering a judgment non obstante veredicto.

Judgment affirmed.

HOUSE OF LORDS.

Reported by W. H. Bennet, Esq. of Lincoln's-inn, Barrister-at-Law.

June 18 and 22.

(Present, the Lord Chancellor, Lords Brougham, Truro, Devon, Pomfret, and other Peers.)

Mangles v. Dixon and Others.

Equitable mortgage—Chose in action.

An assignee of a chose in action takes it subject to all the then subsisting equities against it in the hands of the assignor.

An agreement between a merchant and a shipowner for a partnership in a particular voyage of a ship belonging to the latter was carried into effect by three instruments,—one, a charter party, by which about one-half of the freight at a certain sum per ton per month was made payable by the merchant to the shipowner by monthly instalments during the voyage, and the rest on the return of the ship, the second, a memorandum of agreement which provided that the parties should be liable for the expenses and interested in the profits of the voyage in equal moieties; and the third, a guarantee after mentioned. While the ship was at sea, the shipowner deposited the charter party with his bankers, as a security for a balance then due on his account, with an order endorsed thereon, addressed to the merchant to pay the freight thereafter to become due to the bankers. Notice of the deposit, and of the endorsement, was some time afterwards given to the merchant, who accordingly paid the subsequent instalments as they fell due to the bankers, without informing them of the agreement: but upon the return of the ship, the shipowner having in the meantime become bankrupt, and the voyage having turned out a losing one, the merchant refused to make any further payment, on the ground that by virtue of the agreement, which was then for the first time brought to the knowledge of the bankers, he was liable only for half the freight made payable by the charter party.

Held (reversing the decision of the Lord Chancellor Cottenham below), that the bankers, whose title was equitable only, had not acquired any better or more extensive right in respect of the charter party against the plaintiffs than the assignors thereof would have had if the second document (the agreement) and the bankruptcy had not taken place, and that the freight must be treated as an item in the account prayed, within the influence, and under the provisions, of the agreement of the 24th April, 1845.

By a charter-party, dated the 23rd of April, 1845, and made between Messrs. Boyd, shipowners, and Messrs. Mangles and company, merchants, the ship *Fifeshire* was chartered by the latter for six calendar months from the time of her being ready to sail, and for such further time as the charterers should think proper, not exceeding eighteen months in the whole, at the rate of 16s. per ton per calendar month, such freight to be paid as follows:—100*l.* at the expiration of four months from the time of sailing; a further sum of 600*l.* at the expiration of the next two months; a further sum of 150*l.* at the expiration of the next two months, and a like sum of 150*l.* at the expiration of every succeeding month until the termination of the voyage; and the remainder on the unloading and delivery of the cargo at some port in the United Kingdom.

On the 24th April, the day following the date of the charter-party, the following memorandum of agreement was signed by Messrs. Mangles and Co. and George John Ashton, a clerk of Messrs. Boyd:—

"Memorandum.—That Messrs. Mangles and Co. having, by a charter-party dated the 23rd instant, hired the ship *Fifeshire* for the term and at the freight therein mentioned: It is hereby agreed between them and Mr. G. J. Ashton, that the trading which shall be carried on, and all cargo and produce which shall be sent on board of the said ship in pursuance of the said charter-party, and all benefit and advantage which shall be derived therefrom, shall be for and on the joint account and risk of the said Messrs. Mangles and Co. of the one part, and the said G. J. Ashton on the other part, in equal proportions; and that, after payment or deduction of the freight, and all incidental expenses, the property or loss which shall arise shall be borne and received or paid by the said parties in equal moieties."

Contemporaneously with that agreement, Messrs. Boyd gave to Messrs. Mangles and Co. their guarantee for the payment of the share of all such expenses or loss, if any, as might be sustained in the course of the adventure, for which G. J. Ashton should, by virtue of the said agreement, become liable. The ship sailed in the following month of May. In that month Messrs. Boyd obtained from their bankers, Messrs. Dixon and Co. an advance of 12,000*l.* upon their banking account; and there being, on the 1st December following, a balance of 11,000*l.* and interest remaining due in respect of

that advance, Messrs. Boyd deposited the charter-party with Messrs. Dixon and Co. as a security for the same, with an order written in the margin, and addressed to Messrs. Mangles and Co. in these words:—"Messrs. Mangles and Co.—Please to pay the amount of what is due from this date to Messrs. Dixon and Co. or their order.—J. BOYD and Co. 1st December, 1845."

On the 11th of March, 1846, Dixon and Co. sent to Mangles and Co. a notice in writing, apprising them of the deposit, and of the order with which it was accompanied, and requiring them to pay to them, Dixon and Co. "all moneys which may now be due, or may hereafter become due, by virtue of the said charter-party, as and when the same may become payable."

On the 12th May, 1846, the solicitor of Messrs. Dixon and Co. called at the counting-house of Messrs. Mangles and Co. and demanded payment of the 150*l*. which had become due under the charter-party on the 1st of that month; but, not finding them within, he called again on the 12th, when their clerk told him that none of the parties were at the office, but that they had instructed him to say that they doubted whether they could safely make any further payment under the charter-party, in consequence of the known insolvency of Messrs. Boyd; adding, however, that they would consult their attorney upon the subject, if Messrs. Dixon and Co. would send them a demand in writing. The solicitors of Dixon and Co. accordingly, on the 16th of May, 1846, sent a written demand, and, on the 20th, Dixon and Co. received from Mangles and Co. bank notes for 150*l*. with a letter stating it to be the amount then due on account of the charter-party. A few days after, on the 25th of May, a fiat in bankruptcy was issued against Boyd; notwithstanding which, on the 9th of July following, Mangles and Co. without any further application being made to them, paid to Dixon and Co. the sum of 300*l*. being the amount of the two monthly payments of 150*l*. which became due on the 1st of June and 1st of July.

On the 17th of August, 1846, the ship returned from her voyage, and Dixon and Co. thereupon claimed payment from Mangles and Co. of the sum of 3,717*l*. as the balance of freight then remaining due under the charter-party. That demand, however was resisted by Mangles and Co. on the ground that the agreement of the 24th of April, with which Dixon and Co. were then, for the first time, made acquainted, though nominally an agreement with Ashton, was in reality an agreement with Messrs. Boyd, Ashton's name being used in it merely as their trustee; and that, after debiting the Boyds with one half of the expenses of the voyage, including in those expenses the line of the ship, the balance due to them in respect of the joint adventure would not exceed 1,379*l*. which sum Mangles and Co. offered to pay Dixon and Co. Dixon and Co. however, refused that offer, and brought an action on the charter-party in the names of Messrs. Boyd, upon which Mangles and Co. filed the bill in this suit against the partners in the firm of Dixon and Co. and against the Messrs. Boyd and the assignees under their bankruptcy, insisting that Dixon and Co. were bound, as well as the Boyds, by the agreement of the 24th April, 1845, and praying an injunction, and that the accounts between the parties might be taken on the footing of that agreement.

The bill alleged that the three documents above set forth of the 23rd and 24th April, 1845, were all executed on the 24th April, and were intended to constitute but one transaction, viz. a partnership between Mangles and Co. and the Boyds in the voyage, and that the mode of carrying that intention into effect had been left entirely to the shipbrokers employed by the respective parties, who had determined upon that which was adopted as the most proper and convenient one for carrying out such an agreement, where one of the parties to it was the owner of the ship. The bill further alleged that the instalments made payable by the charter-party were fixed with reference to that agreement, and on the calculation that by means thereof about one half of the whole freight made payable by the charter-party, would be paid by Mangles and Co. before the termination of the voyage.

This account of the transaction was confirmed by the evidence of both ship-brokers, and also by that of Ashton; but none of these witnesses gave any explanation of the circumstance of Ashton's name being used in the memorandum of the 24th April, instead of that of the Boyds, except Ashton himself, who said it was done by the advice of the solicitor of the broker employed by the Boyds, and under the impression that there might otherwise have been a difficulty in bringing an action on the charter party.

Dixon and Co. by their answer, did not suggest that Ashton's name had been used with any fraudulent purpose of concealment, but rested their claim to the balance due under the charter-party, upon the fact of their having had no notice or knowledge of the alleged agreement until after the bankruptcy of the Boyds.

On the hearing of the cause, Vice-Chancellor KNIGHT BRUCE, being of opinion that Dixon and Co. as the assignee of the charter-party, could stand in no better position than the Boyds, their assignees, and that the latter were bound by the agreement entered into by Ashton, as their trustee, made a decree restraining the action at law, and directing that an account should be taken upon the footing of the charter-party and memorandum of agreement. On appeal to the Lord Chancellor (Cottenham), he, on the 20th November, 1849, reversed his Honour's decree, and, instead thereof, ordered that appellant's bill should stand dismissed as against the bankers (Dixon and Co.) with costs.

From the decision of the Lord Chancellor, the plaintiffs now appealed to this House.

Rolt, Q.C. and *John Bailey*, Q.C. (with whom was *Josiah W. Smith*) contended that the Messrs. Boyds were entitled in equity to recover against the appellants only the balance which might be due on the footing of the agreement; that the respondents, as assignees of Messrs. Boyd, were bound by the equities by which they (Messrs. Boyd) were affected, and that the circumstances of the case were not such that the respondents could be considered as having acquired any better or more extensive right in respect of the charter-party against the appellants than the said Messrs. Boyd would have had if the assignment of the 1st of December, 1845, had not been made, and the bankruptcy had not taken place; and also that under the decree pronounced below the appellants had been obliged to pay double the amount of freight which the appellants agreed to pay to the firm of Boyd and Co. under whom the respondents claimed.

C. P. Cooper, Q.C. and *W. T. S. Daniel*, Q.C. for the respondents, contended that upon the pleadings and evidence in the cause, the appellants had failed to establish their right to any relief, which by their bill they sought to obtain, and that the bill, therefore, had been properly dismissed against them.

Rolt in reply.

The principal cases cited were:—*Troughton* v. *Gitley*, Amb. 630; *Steed* v. *Whitaker*, Barnard, 220; *Huning* v. *Ferrers*, Gilb. 85; *Rawson* v. *Samuel*, Cr. & Ph. 161; *Boyd* v. *Mangles*, 3 Exch. Rep. 387; Sugd. Vend. and Pur. edit. 1822, 698; *Joyce* v. *Molines*, 2 Jones & Lat. 326; *Hill* v. *Allen*, 1 Ves. sen. 122.

At the conclusion of the argument the LORD CHANCELLOR (St. Leonard's) said that the question in the case was of such vast importance in a mercantile point of view, that he should move that the further consideration of the matter be postponed. On the 22nd of June he moved the judgment of the House in the following terms:—

The LORD CHANCELLOR.—My lords, this case is not so important with respect to the amount of property involved in it, as it is with regard to the principle of equity which your lordships are called upon to decide. There have been divided opinions in the Court below, and your lordships are now called upon, finally, to decide what is the true construction of the different instruments which have been executed, and what is the rule of law properly applicable to it. My lords, there are two important subjects to be considered; first, what is the real construction of the different instruments, as between the parties to those instruments; and, secondly, what is the construction and the operation of those instruments, as between the charterers and the bankers, to whom the owners had mortgaged, or rather made an equitable assignment of the charter party. I propose to consider, my lords, first, the operation of the instruments as between the parties to them, without any reference to the difficulties which have been introduced by the assignment of the charter-party to the bankers. Now, my lords, the agreement is clearly proved, and I shall feel it my duty, under the peculiar circumstances of this case, a statement of which has been made at your lordships' bar, as the facts of the case were not properly apprehended in the Court below, to refer your lordships, more than I am in the habit of doing, to the documents, to prove what the real agreement was. The transaction was of this nature: Messrs. Mangles were desirous of chartering a vessel in search of guano; Messrs. Boyd were shipowners, and importers of guano upon a large scale, and otherwise acting as merchants, and they had a vessel called the *Fifeshire*, which they were ready to let upon freight, to search for and bring back guano; that vessel happened to be of too much tonnage for the proposed charterers, Messrs. Mangles, and therefore it was suggested, on the part of Messrs. [illegible] that they, the Messrs. Boyd themselves, might [illegible]alf and risk half of the venture; in that way Messrs. Mangles would have, indirectly, the precise quantity of tonnage which they required. The agreement, which was entered into upon that basis, was carried into effect through the instrumentality of the brokers on each side. Now, my lords, this difficulty naturally occurred to the brokers, and had been suggested, indeed, by one of the solicitors to one of the parties, that, as the owners of the vessel, Messrs. Boyd, were themselves to be co-charterers, a difficulty would arise, unless the documents assumed a particular shape,—that is, that it was very difficult to draw a contract which would give a right to Messrs. Boyd to recover whatever portion of the freight was to be paid by Messrs. Mangles, whilst they themselves, the Messrs. Boyd, appeared upon the face of the instrument as the owners of the very vessel which was to earn the freight. The plan that was adopted was this,—but first I must say that the witnesses clearly proved that the precise agreement between the parties was this: that each party should bear the expense; 16s. a ton was the price fixed for the freight; and, accordingly, the clear agreement, without the slightest doubt, was, that each party, the owners and the charterers, properly so called, should bear 8s. of that freight, and in that way the 16s. were to be paid, and then the risk of the venture, whether it turned out profitable or the contrary, whether it was either a total gain or a total loss, was to be borne between them just as the fact happened. Now, my lords, the way in which that was carried into execution I find no fault with. It was difficult to know how to make a good charter-party with the conflicting character of the Messrs. Boyd; and what they wanted was this, whilst they intended to carry the real agreement into execution, and there is no doubt about that, they wanted also to insure to Messrs. Boyd, as they ought to have insured to Messrs. Boyd, the power of recovering that portion of the freight during the voyage which Messrs. Mangles were to pay. The plan they hit upon was this,—there was a pure simple charter-party between Messrs. Boyd on the one hand, and Messrs. Mangles on the other, by which Messrs. Boyd lent, in fact, their vessel on freight to Messrs. Mangles to go in search of guano, and the money was to be paid, the freight at 16s. a ton, according to certain arrangements. Bills were to be given at different dates,—one upon the sailing of the ship, another at another time, and so on till a certain number of months had elapsed, and then a monthly payment in cash was to be made of 150*l*. every month for the freight, that is, to be paid by the freighters, by Messrs. Mangles, upon the face of this instrument; and then when the venture was closed, when the result was known, and the ship came home, a bill at ninety days date, which is a very material circumstance, was to be given by Messrs. Mangles to Messrs. Boyd, for whatever might be the balance due for freight upon the venture, or it was to be paid in cash equal to a bill, that is to say, there was of course to be a discount equal to the term of ninety days, which was the period the bill would have had to run. Now the first circumstance that would strike any one, conversant with matters of business, on reading this charter-party, is, that the sums which were to be paid for freight, were, as nearly in round numbers as could be, just half of the 16s. a ton; shewing, therefore, upon the face of the charter-party itself the intention of the parties to carry into effect the real agreement of the parties, that during the voyage, at all events, beyond all doubt or question, Messrs. Mangles were not to pay more than their half of the freight, which they had agreed to pay according to the stipulation. Now, my lords, one important thing to ascertain is this, with a view to the second question by-and-bye, was there any fraud intended—was there any fraud carried into execution—was there any secrecy intended in regard to this transaction? Clearly and indisputably not. It was a simple mode of carrying into effect the agreement of the parties; and, conversant as I am with the forms of conveyance, I do not myself know how it would have been easy to have carried their intention into effect in a better way. Now, my lords, the plan was this: that after that charter-party had been executed, by which, no doubt, upon the face of it, Messrs. Mangles were the sole charterers, and Messrs. Boyd were the owners, letting their ship at freight. A clerk of Messrs. Boyd's, of the name of Ashton, was put forward as if he were the person who was to undertake half the risk and half the venture; he accordingly executed an agreement which was dated the next day. But all the agreements, I must observe, were executed on the same day—the 24th, the charter-party was dated the 23rd, and two other documents which I am bound to mention (the one I have just mentioned and another) were dated the 24th, but they were all executed on the same day and at the same time. Now Ashton was put forward as if he was the third party, really dealing with Messrs. Mangles, and he engaged that he would stand half the risk, and he stipulated to be entitled to half the profit of the venture. Now there is no doubt that that stipulation included tonnage, because the tonnage was to be paid, at all events, in account to Messrs. Boyd. But we shall presently see how it was to be paid. And then by another document, which I will call No. 3, Messrs. Boyd entered into a guarantee with Messrs. Mangles, that Ashton should perform his part of the engagement. Now, my lords, all this was a mere contrivance, a mere piece of machinery,

to carry into effect that which they would have done directly, but for the difficulty which had been interposed by the fact, that Messrs. Boyd were both owners of the vessel and adventurers in it for a voyage of speculation. In that mode it is admitted distinctly by the answer of Messrs. Boyd and clearly proved, that Ashton was merely the nominee; in fact, Ashton was Messrs. Boyd. And in this case your lordships are now sitting as a Court of Equity, and in this Court therefore, as a Court of Equity, it admits of no doubt that Ashton represented, and, in point of fact, was for all the purposes of this cause, the firm of Messrs. Boyd. He represented the character of the firm of Messrs. Boyd. Now, my lords, under the circumstances, and I adverted to the other point before, was there anything secret in this transaction? Decidedly not; for, in the first place, it was known openly to the brokers of both parties, and carried into execution by the brokers of both parties just in the way they thought proper, and was manifestly communicated to the clerks. And we have these two remarkable circumstances, that Messrs. Boyd having, before the ship sailed, furnished certain materials and implements for the purpose of loading the vessel with guano, having furnished certain instruments which cost some hundred and odd pounds, they, in consequence of the agreement that the expenses should be borne equally, made out an account by which one moiety of the aggregate of those charges was charged to Messrs. Mangles and paid by Messrs. Mangles. Now that was seen at once necessarily by the clerks in Messrs. Boyd's house, and they must have known perfectly, as Ashton, who was their own clerk, did perfectly know, and as their brokers did perfectly know, and everybody, in point of fact, that had anything to do with it, was perfectly acquainted with the real nature of the transaction.

Now, there is a still more remarkable circumstance. Ashton, a clerk of this firm, had a brother who was resident at the Cape, and who was there the agent of Messrs. Boyd. Now, my Lords, in August, of the same year, when nobody knew where the vessel was, or whether it was Messrs. Boyd's, or whether the venture was successful or otherwise, Messrs. Boyd write to Ashton, at the Cape, their own agent, and state to him that they have got the *Fifeshire* on her voyage for guano, and another vessel, the *Jane*, also on her voyage for guano, and that they have taken half the risk in both these vessels. So that this was not a solitary transaction. So far from desiring to make it a secret transaction, they communicate to their agent at the Cape, amongst other matters of business, without the slightest intimation that it was to be a secret matter, that they had half a venture in both the *Fifeshire* and the *Jane*, both of which were in search of guano. In short, they were very great importers, as appears from that letter, of guano, and it was in the natural course of their business, if circumstances called for it, that they should, if they could, let their vessel, and join in the venture. Now, Ashton, their clerk, has proved this: he had a conversation with Messrs. Boyd after Messrs. Boyd had agreed to take half this venture, and he asked them what induced them to do so, upon that Messrs. Boyd said, "Our inducement is this, we shall get 8s. a ton from the charterers,—Messrs. Mangles,—and that will pay the ship's expenses, so that we cannot do any great harm, and if the venture turns out fortunately, we shall have a large sum of money probably as a return of the voyage, but at all events the ship's expenses are covered with the 8s. per ton. Now, my lords, this is proved so very clearly, that I do not know that it is necessary to trouble you upon it, although I said I would have got all the passage here, but it is hardly necessary to trouble you with it. I have read them with much attention, and I believe I have represented them pretty accurately. But the agreements prove beyond all doubt, that which is admitted by Messrs. Boyd themselves, and which has never been disputed, that all three agreements make one transaction. It is admitted by them in their answer in most distinct terms. I am considering the effect of these instruments as against themselves. They admit, in many words, that the three instruments were all one transaction, they do not attempt to deny it. Now, my lords, the evidence of the witnesses whom I have stated proves exactly what I have stated to your lordships; but the evidence of Ashton it may be worth while, perhaps, to read, as proving more particularly what the real matter is. Ashton says, in page 106,—"The mode which the said shipbrokers adopted, as to their arrangements with each other, was as follows; namely, the charter-party was to express the full amount of freight, and the said defendants John and James Boyd's half of the venture was to be represented by myself, and that I should enter into an agreement with the complainants to take half the risk of such charter on their the said last-named defendant's account. The said defendants the said Messrs. Boyd indemnifying the complainants by guaranteeing my fulfilment of such agreement." He is unable to state particularly what his reasons were, but he believed that it was to enable each party to retain his right against the other, or to render it a legal contract. For the purpose of carrying out such aforesaid agreement a charter-party was prepared dated the 23rd of April, 1845, and executed by the complainants and the defendants John and James Boyd, and two several agreements bearing date respectively the 24th of April, 1845, and which agreements and said charter-party were executed at the same time, and all which said three instruments were said to be identical with each other. That is not an accurate expression, but one understands what he means. He means that which the Messrs. Boyd admit in their answer, that there was only one agreement. Then he states exactly that this was to be a joint risk between them, and the other brokers state in the clearest terms that the freight was to be 16s. and that the instalments were fixed upon the principle of the joint trading of the ship, and that the charter-party was signed by the Messrs. Mangles upon the representation that the owners of the ship would charter half of the ship. Now Mr. Sunbery states, for example, in page 100, like the other brokers, that the amount of the aforesaid instalments were fixed upon the principle that there was a joint interest in the aforesaid cargo and the charter, each bearing a moiety of the profit or loss. What the real agreement, therefore, was, admits of no doubt, and I have explained the grounds now upon which the particular machinery is to depend. I state to your lordships, without the slightest hesitation, that there is no trace in any part of those voluminous proceedings of any intention to have a secret arrangement, or if any, the slightest desire to keep the arrangement secret. My lords, it will be seen that the ship sailed on the 1st of August, 1845; but we will stop for a moment to consider how this was to operate, and I think nothing can be more clear and plain. Messrs. Boyd were the owners, and they were the half charterers, and Messrs. Mangles were half-charterers also, and filled only that character. They were to pay by express stipulation, and they were liable to be sued at law for the recovery of their moiety of the freight. What was that? 8s. a ton a month. The sums stipulated to be paid by them during the voyage by instalments were all, as I have said, measured by that amount, being as nearly as possible half of the whole. Now, how was the other half to be borne? Why, by the other co-charterers. And who were they? Why, they were the owners. What was the consequence? That they received the money every month. They had it in hand, and if they had to receive, they had also first to pay. They had to pay as charterers, and to receive as owners. In that way, therefore, the whole of 16s. a ton was actually paid to the owners during the whole of the voyage, and up to the moment the ship arrived at her destination in London, every shilling of it was paid. I deny, my lords, that there was a single shilling unpaid, so far as those two sums as nearly as possible represented the whole amount of the two halves, as they were intended to be not quite half each, but whatever small balance there might be being excluded, the whole freight was regularly paid either by moneys down, or by retaining them, which was equal to moneys down, so as to satisfy the whole 16s. a ton during the voyage. Now, this case has been tried at law, action having been brought, it was tried in the Court of Exchequer, and there the Lord Chief Baron and Mr Baron Parke undoubtedly, having the documents before them, gave an opinion that the true construction of the agreement was, that the freight was to be paid for the whole, whatever might be the balance of accounts owing by Messrs. Mangles. So that at the conclusion of the voyage they were bound to give a bill for the remaining half of that freight, which I say was provided for regularly by the retainer during the voyage, and could not import No. 2 and No. 3 as part of the original agreement. Now, my lords, the case at law assumes a very singular aspect, and I must say that, as shewing the danger of mixing law and equity together, this being a chose in action, as it is called, that is, the charter-party not being assigned to them. I will assume for a moment the assignment to Messrs. Dixon, the bankers, the action was brought in truth by Messrs. Dixon, the bankers, but necessarily in the name of Messrs. Boyd, because it was not assignable at law, but as they had the assignment in equity, they were entitled to use the names of the parties legally entitled in the action. Well, the judges admit that action, not simply as an action of the owners of the vessel for the freight, but they admit the action of the owners in the character of trustees for the bankers, and they advert to the equitable title of the bankers in regard to their decision. Now, in that way, in point of fact, they administer as it were an equity, for they advert to the equity, and yet they do not carry out the equity. The learned judges say, both of them, that the very construction that they put upon the instrument was put upon the instrument by Messrs. Mangles themselves; for that after the equitable assignment to Messrs. Dixon, the bankers, they, the Messrs. Mangles, made the monthly payments to the bankers, but how could they refrain from doing so? It was part of the contract. It was intended that Messrs. Mangles should pay the 16s. a ton regularly by monthly instalments, after the first payment; during the voyage they could not relieve themselves from that liability. Whatever might be the result of the account, it was intended that the freight should be paid pending the voyage, and up to the close of the voyage, in the way I have stated. Then what construction was there? There was no other construction on those payments than an obedience to the actual terms of the contract, and the real intention of the agreement. It is impossible, therefore, to draw that inference, it appears to me, with great submission to the learned judges, which they did draw; I think it was in perfect obedience to the contract, and according to the terms of the contract, and the forms of it, and according to the real agreement. Now, my lords, just let us see for a moment what the rights of the parties were upon the real merits of the case, and according to the truth and good conscience; the ground of equity being according to the truth and honour of the case, and good conscience according to the rule of the Court. Now, what is the nature of the real transaction? You shall pay. We will pay between us 16s. a ton during the voyage; that will cover the ship's expenses: we will bear the other half ourselves. It appears to be a joint account when the voyage is ended, and then there is to be a bill at ninety days. It would not require ninety days (we shall see it could not) to sell the cargo, and, therefore, that distant day was in point of fact named evidently in order to enable the parties to wind up their accounts. And the reason why, upon the face of the charter-party, the charterers were made liable to give a bill at the end of that voyage was manifestly and simply this, because it otherwise would have been inconsistent with the principle of the charter-party. You could not carry it out as a legal instrument on the face of it, unless you carried it out wholly; because if they had not made the residue in the form (and it was but form, according to my view of the matter), if they had not carried it out to the whole extent, they would have disclosed the very thing which they did not want to shew, namely, that there was no legal right in Messrs. Boyd to bring an action for the 8s. a ton pending the voyage. Now, my lords, for a moment, to return again to the other point, What was the real transaction between the parties? Each is to pay; and in this respect I look upon Messrs. Boyd as having two perfectly distinct characters. Messrs. Boyd, as co-charterers, were to pay 8s. and Messrs. Mangles, as co-charterers, were to pay the other 8s. and that was all to be paid regularly up to the time the ship had ended her voyage. Then they gave a bill at the distant date for the sake of this form. But what is the substance? Why, that you, at the end of the voyage, shall partake of the profit, if there be any, and you shall bear also the loss, if there be a loss. And what is first to be deducted? The words are singular,—"To be paid or deducted." What is to be deducted? The freight. It was intended in the account undoubtedly that Messrs. Boyd should have 16s. a ton a month for freight. There is no question about that, and that was to be an item in the account. Now let us see what actually did take place, and see what the supposed equity is. For I am still speaking between Messrs. Boyd and Messrs. Mangles. See now what the supposed equity is. On the 17th or 18th of August, 1846, the ship arrived. There is a little doubt about the date, one states one day and another the other. On the 5th of September, 1846, the final freight became payable, and at that time a bill at ninety days ought to have been given, or cash, and it is singular that Messrs. Dixon demanded cash, which they had no right to do; then they do not allow the other party, Messrs. Mangles, the right, which they clearly had, either to give a ninety days' bill, or to pay in cash, according to the charter-party. Now, on the 21st of September, in the same year, the cargo was sold, and on the 10th of November, in the same year, the accounts were made out by Messrs. Mangles, and the balance, after allowing for the freight properly, was tendered to persons who then represented Messrs. Boyd. Now, suppose it had been tendered before the six months, how can it be contended upon the result of these accounts that Messrs. Boyd could have recovered a single shilling of the extra 8s. a ton during the voyage from Messrs. Mangles, the agreement being, that they should bear the charge equally; and during the voyage pay equally the freight, and that the freight should be brought into the account at the end of that voyage, and that they should then bear the profit or loss? Why, my lords, the bill for ninety days would not have become due until the 7th of December, and on the 10th of November every account is made out, the transaction was closed, and the balance of the money was ready to be paid to the party entitled to it. Then what would be said of the equity of this country, if a man, having the result of the account in his hand, ready to pay over, is

to be told in point of form, he is first of all to pay that which he never contracted to pay, which the

fact, they had received by retainer during the voyage and up to the moment when the voyage closed; and then we are to be told that it is equitable that the supposed charterers should pay the whole in order afterwards to have the right to demand the whole back again. My lord, some cases were cited of cross demands. This is not a case, in my apprehension, either of a cross demand or of a set off; it is neither one nor the other. It depends upon the true meaning of the agreement for that, the freight never became due in equity from the Messrs. Mangles, because the agreement was that they never were really to pay it. The consequence of which is, that it is a proper subject to be set off in the account, and the full benefit is to be given to the parties. I think I never saw anything much clearer in my mind than as between Messrs. Mangles and Messrs. Boyd that Messrs. Mangles were not liable to pay the extra freight. The freight had already been received during the voyage, and therefore there was a clear equity as between those parties. Now, my lords, that closes the transaction as regards these parties. And then the case assumed a very different shape, and a very important one, and involves certainly the consideration of one of the most important points of equity and law that I am aware of, and it is singular that it should be reserved for decision at this time. The case in that respect is this: Messrs. Dixon, who were the bankers of Messrs. Boyd, had, at an early period, namely, the 29th of May, 1845, advanced 12,000*l.* to Messrs. Boyd upon their promissory note. Now that was entirely independent of any transaction of the charter-party, it had nothing whatever to do with it; it was not advanced, as it seems to have been understood by the Lord Chancellor in the Court below, that it might have been advanced on the joint account of the charterers, there is no pretence for any such notion in any part of these proceedings. I have read every word of them, and sought in vain for any trace of it, and could not find it. They admit, on the other hand, that the advance was not upon the security of the charter-party, and they admit what, by and by, will be important, that they advanced no further sum after they got the assignment of the charter-party, and that they never originally looked to the charter-party as their security. I have got the passages here where they admit, in the most distinct terms, that they did not advance the money, nor do Messrs. Boyd so allege it. Now, they remain for some time upon the security of the promissory note, but they became a little alarmed apparently, for there was 11,000*l.* still due to them upon that account, and I suppose they called for a security; the result of it was, that the Messrs. Boyd gave them the charter-party, and we must take it gave to them No. 1, the charter-party alone; and in the margin of that instrument this was written: "Messrs. Mangles, Price, and Price. Please pay the amount of what is due. Boyd and Company, 1st December, 1845." Now that, it will not be disputed, is a mere direction to pay the amount of what was due, without stating any particulars. It does not state, "Please to pay the 16s. a ton stipulated by the charter-party; they do not state that; it states, "Please to pay what is due;" and that will not be disputed to be a good equitable assignment; it uses those terms; in short, the expression is one that there is no doubt about. Now, they remain upwards of five months upon that security, without giving any notice to Messrs. Mangles that they had taken that assignment; and yet we all know that that notice was exceedingly essential to their own safety in many respects, but they were so satisfied with the dealing between themselves and the Boyds, that they remained upon that security without giving any notice for upwards of five months, and then, on the 14th of March, 1846, they do give notice; but they do not give notice quite in the terms of the indorsement which I have read, for they introduce words rather more copious than the words which I have referred to, and which are the words used in the assignment to them. Now they first of all remain five months without any security whatever, and then they take a security for the balance. They then remain between three or four months without security and notice,—they make no communication with Messrs. Mangles, they ask no questions of Messrs. Mangles of any sort or kind, and very shortly after that, that is, some two months after, the Messrs. Boyd become insolvent. Then the question is, what are the rights of the Dixons under these circumstances? Without going into any dealings beyond the actual notice, and just to stop at this moment when the actual notice was given, what are the rights of these parties? Now if there be one rule which is more perfectly established in a Court of Equity, it is, that whoever takes an assignment of a chose in action, which this charter-party was, that is, not an assignment at law, although it is in equity, he takes it subject to all the equities of the person who made the assignment. That admits of no doubt. Therefore it is not to be

the notice was given, during all these months the bankers took precisely the same interest, and were subject to the same liabilities,—namely, to No. 2 and No. 3, just the same as Messrs. Boyd themselves, and for this purpose, of course, the notice is not used, it has nothing to do with it. If they had notice it only introduces a new head of equity, which is, that they are bound by the notice which they have, for equity will not permit a man to shut his eyes to a fact of which he has been informed, and therefore if he has notice, he is bound by the knowledge he has thus acquired. But the rule to which I refer is, that there is no notice. And although we may suppose Messrs. Dixon, the bankers, to be utterly unacquainted and uninformed of either No. 2 and No. 3, they were bound by Nos. 1, 2, and 3, as forming one agreement precisely to the same extent as Messrs. Boyd themselves were bound at the time of the execution of the agreement. Then they do not ask any question of Messrs. Mangles, when they do give the notice,—they ask no question when they take the security,—it was not for the money then advanced, it was for money already advanced, and in their notice, they intimate that, for they say, "for valuable consideration paid." It was therefore, as they state it truly, for a past consideration, and this security was taken, as many such securities are daily taken, in the City of London, no doubt; at the time, they thought it prudent to make themselves as secure as they could, and they took the best security which their debtor had to offer; but they took it with all the liabilities, and your lordships must fix them in point of law, as being cognisant of their liabilities, under the rule which I have drawn to your lordship's attention. Then to stop here for a moment, the important question is this, when the notice was given to which I have alluded, was it incumbent upon Messrs. Mangles to write back to Messrs. Dixon and to tell them that there was, besides the charter-party, documents Nos. 1, 2, and 3? Now, in the first place, who is to inquire and to take the trouble in these cases,—who ought to do that? Why, the person who ought to do it is, undoubtedly, he who is fixed with the liability. Messrs. Dixon were fixed with the liability,—if they desired to remove that liability, they ought to have made due inquiry, and, therefore, primâ facie at least, the loss ought to fall upon him who has not thought proper to inquire. He has no right to speculate whether he shall obtain an answer or not which will disclose circumstances which he is not required to know, and if there is to be a loss, the loss ought to fall upon him who being subject to the liability, and having to to remove that liability if he can remove it, ought to inquire, and he did not inquire. Now, my lords, I must take care and guard myself upon this important point. If that notice of the bankers had shewn that they had been deceived—that they were advancing money upon a ground which they misunderstood—and that the charterers, Messrs. Mangles, had stood by knowing and seeing that circumstance, and had been silent, I agree that the case would be altogether different, and that it would be incumbent then upon the Messrs. Mangles to have disclosed the real circumstances of the case to Messrs. Dixon; and if they did not do so, that they would be just as much bound as it is now contended they ought to be bound. Now let us see how the case stands in that respect. The dealing, remember, was between Messrs. Boyd and Messrs. Dixon, without any intervention in any manner, directly or indirectly, or any inquiry of Messrs. Mangles. What was there to induce Messrs. Mangles, when they received that notice, to suppose that Messrs. Boyd had been committing a fraud upon Messrs. Dixon, their own bankers? What was there to induce them to suppose that? Pay what is due. They say they perfectly intend to pay what is due. Why were they to suppose that No. 2 and No. 3 had not been communicated to Messrs. Dixon, who put trust and credit in the statement of Messrs. Boyd? Why Messrs. Dixon advance this sum of 12,000*l.* upon Messrs. Boyd's mere promissory note, and they remain content with it for months. They then take an assignment; they do not communicate that assignment even to Messrs. Mangles for two or three months afterwards; then they give the notice; and then they say, "We have told you of this transaction, now you shall be liable to every thing which we have neglected for our own security. We have neglected to inquire; we have dealt behind your back with Messrs. Boyd; we, the bankers, have dealt with Messrs. Boyd, our own customer, without your intervention; they have incurred a great debt with us, and we have taken an assignment of this which is not assignable except in equity, and imposed all the liability upon us,—we have never communicated that fact to you to inform you,—we have never made inquiry whether you have any dealings between you,—and then when we give you notice, we throw upon you at once the whole liability, and desire you to indemnify us for our own negligence, our own want of care and caution, which, duly exercised, would have prevented this." Now certainly that is a new point. I admit the books do not establish the point, but I think the principle is perfectly clear, that where there is no fact, nothing to lead the party who is receiving the notice to see that the party who gives the notice has been deceived, and is certain to sustain a loss by that delay,—I conceive no equity will require the party who receives the notice to be impertinently almost interfering between two parties who have dealt behind his back, and who have never made any communication to him or ever seen him on that subject. Messrs. Mangles must have begun by supposing that Messrs. Boyd had cheated Messrs. Dixon; and they must have had the hardihood to say, "We are afraid that Messrs. Boyd have been committing a fraud upon you, for we do not see that you mention No. 2 and No. 3, therefore we are forced to tell you of it." Suppose that Messrs. Boyd had, as the probability was, really stated the facts, it would have been a very disagreeable answer, I imagine, to have been received by Messrs. Mangles to that communication. Your lordships were asked by the learned counsel at the bar who appeared for Messrs. Mangles, and, upon the subject of character, it was put as a very fair question, whether, after the turn this case had taken, the House would say that there was anything fraudulent in the transaction as between Messrs. Mangles and Messrs. Dixon. And as against Messrs. Dixon, I cannot help stating to your lordships that my clear impression is, that there is no trace of any such fraud, or of any intention on the part of Messrs. Mangles. Now another view of it is this—it did not at all follow that upon the result of the transaction, there would not be enough to pay Messrs. Dixon. That depended upon the success or failure of an adventure, of which nobody knew anything. Nobody knew what had taken place. The adventure did not turn out successful: they went to certain islands for guano; they did not find it; then they had to go to the Cape, and find other places to search for the guano, and get the guano from other places. It turned out therefore, clearly, but no one could tell that, and there is no doubt, as between Messrs. Boyd on the one hand, and their own bankers, Messrs. Dixon, on the other, that Messrs. Dixon would have been entitled to the whole extent of the freight, to the benefit of the voyage,—that, as between Messrs. Boyd and Messrs. Dixon, Messrs. Dixon would have been entitled to the whole 16s. a ton during the whole voyage. Now, the authorities upon this subject, as to liability, may be worth just referring to as going beyond your lordships' rule, shewing that if a man does take an assignment of a chose in action, he must take his chance as to the exact state in which the party stands. The case of *Cator* v. *Burke*, 1 Bro. C. C. 434, very strongly illustrates that. There the defendants, the Burkes, had entered into a bond of 500*l.* to the other defendant, Hargrave, for securing 250*l.* and Hargrave had given to them a counter bond. Hargrave then deposited the first bond with a man of the name of Cator, and Cator filed his bill in order to prevent the parties at law from setting up their counter bond. Now, nothing could appear more fraudulent upon the face of it than a bond and a counter bond, because there you do enable the party to deal with the bond when you know you have a defence in your hand,—namely, a counter bond to set up as a defence to the legal obligation. Cator had no notice. The Lords Commissioners held that there was no equity, and Lord Thurlow, on the re-hearing, decided that it was not satisfactory. But he decided it upon this ground,—it came on before Lord Thurlow upon a re-hearing, when his lordship was of opinion that a special purpose appearing for the bond to Hargrave, and that it was not to give a general credit, the plaintiff was not entitled to the remedy prayed, and, therefore, affirmed the Lords Commissioners' order of dismission. I understand that decision to amount to this, that there being no general claim, but there being a special purpose, which was provided for by the counter bond, the man who took the original bond was not entitled to have any remedy against the counter bond, though he knew nothing at all of it. That is certainly the strongest case that can be upon this subject. There is a case of *Turton* v. *Benson*, in the 1st P. Wms. 496. The case itself was one where a man, upon the marriage of his daughter, had advanced a sum of money, and then he took a bond, which equity always holds is void, from the son-in-law, to return part of the marriage portion. The result was that the bond was deposited with Sir Theodore as an additional security. Mr. Benson died. Sir Theodore's demands were afterwards paid; then the administratrix assigned the bond for the general creditors of the deceased. "Now the Master of the Rolls declared that the creditors of Benson could not be in a better condition than Benson himself, and as to Sir Theodore Janssen, it was to be considered he had no legal title to this bond, but only an equitable assignment; and there-

fore having a security which was not good in Equity, he could not be in a better condition than Benson himself was; that, supposing a man should assign over a satisfied bond, as a security for a just debt, the assignee could not set up this bond in equity, which, being satisfied before, could receive no new force from the assignment. That it was incumbent on any one who took an assignment of a bond to be informed by the obligor concerning the quantum due upon such bond, which, if he neglected to do, it was his own fault, and he should not take advantage of his own laches." There are other passages to the same effect as it came before the Lord Chancellor. That shews clearly what has never been disputed, that, whatever may be the state of the account, although a single shilling is not wholly satisfied, the man who takes an assignment of that bond, must take it just as he finds it, and he cannot insist on the legal obligation which remains,—the liability at law remains just as good at law; there is no obligation in equity. The man who took the assignment ought to have inquired. Then there is the case of *Matthews* v. *Wallwyn*, 4th Vesey; and also the same doctrine in 9th Vesey, which is still stronger. That is where a man takes an instrument of a mortgage, and transfers it over, there he gets a legal estate. Yet even in that case, it is not sufficient to take it without communication with, and the concurrence of the mortgagor, for whatever be the state of the account, although he gets a transfer of the legal estate, he is bound by the state of the account, and he cannot recover a shilling beyond what is actually due, although there is no indorsement upon the mortgage deed, and although he has no notice of a single shilling of the money having been paid over. The rule, therefore, is very simple. The only question is, whether there was any liability on those parties to give notice. Now, my lords, the only question that remains to be considered is the conduct of the parties after the notice. The notice spoke, as I told your lordships, of past consideration. It is admitted, as I have stated, by Messrs. Boyd, and by the bankers, that they made no advance upon the charter-party,—they admit that they made no advance after the assignment of the charter-party,—they admit that they made no inquiry, and then the question is, whether the mere payment by Messrs. Mangles can or not affect their right now to have the account taken. Now, my lords, it appears to me, for the grounds and reasons I have already stated, that no question could arise from that transaction, because, as I have already pointed out to your lordships, they were under an absolute legal liability, — not simply a legal liability between them, but an equitable liability. It was not merely a charter-party by which they were bound at law, but it was a true and real agreement in equity that they should pay, pending the voyage, that monthly payment of 150*l*. And as in equity the charter was assignable, the assignee becomes in equity entitled to that 150*l*. Therefore it was an act done in obedience to the charter-party, and in obedience to the liability to pay what sum was due from this date, for those are the words used in the grant of the assignment, and therefore they were merely performing properly, legally, and equitably, their part of the agreement. The due performance of the agreement never can be considered as the ground for fixing parties with a liability to something beyond that by which they were bound; therefore that cannot be held. Now, my lords, it was stated that in the Court below the judgment was postponed for, I think, a year, and it may have been accidental, that it escaped the noble and learned lord, of whom as a judge it is impossible for a man not to speak here or elsewhere without great admiration, both of the pains which he took, the ability which he displayed, and the knowledge that he possessed; therefore it is that with great reluctance that any successor of his, or any lawyer in this or in any other place, can differ with that noble and learned lord without feeling very great doubt whether he himself has arrived at a just conclusion. But that noble and learned lord certainly had an impression against Messrs. Mangles, which does not appear to me to have been warranted by the facts of the case. He supposed the transaction to have been secret. I have shewn to your lordships that the very contrary was the case. He seemed to find fault with the decree of the Court below, because there had not been an inquiry as to whether the 12,000*l*. was advanced for the joint adventure; there was no pretence for such an inquiry, because the bankers themselves say they neither advanced it in regard to that adventure, nor did they advance anything after the assignment. They state it on their oaths, and it is admitted in express terms, and there is no doubt about it. He seems to have supposed that Messrs. Mangles might have received notice of the assignment before the actual notice was served. Upon what ground I am perfectly unaware. There is no trace of any such thing in these pleadings, and therefore there was an impression in that noble and learned lord's mind at the time that there had been something irregular on their part. Now, my lords, I have paid very great attention to this case, which I am bound to do, differing as I do from the decision of the Lord Chancellor, believing the true rule in equity to be that which I have stated. The only ground on which I understand the decision was rested was this, that where a man, having an interest in property, stands by and sees another man dealing with that as owner, with another person who is ignorant of the want of title in the person with whom he is dealing, equity will bind the man who stands by. Now, nobody denies that proposition. Nothing can be more perfectly settled than that. But before I say a word upon that, I will refer to a case which the Lord Chancellor in this case referred to, of *The Duke of Beaufort*, in which the Duke's agent, with a power to act, had instructions not to act except under certain circumstances; the agent exercised the authority without disclosing those particular circumstances, and it was held that the principal was bound. But how does that apply to this case? The agent was there in the place of the principal; the circumstance which he had been intrusted with was not disclosed; he was, therefore an agent with full authority, and nothing could be more dangerous to the dealings of mankind than to hold that a man was not bound by the act of his agent having full authority, because the agent had secret and private instructions not to exercise his power except in a particular case. I cannot see, my lords, how that bears upon this case. But the other would bear upon the case. The rule, which I fully admit, would bear upon the case if the facts were identical. But what facts are there to bring this case within that rule. I can see no facts. There was no standing by here on the part of Messrs. Mangles when they saw Messrs. Boyd dealing with Messrs. Dixon, the bankers; the dealing was behind their backs, without communication with them, five or six months before they ever knew that the transaction had taken place. What fraud was there, therefore, what standing by was there? When the assignment was executed was there any standing by then? They were wholly unaware that there had been an instrument of a security until some two or three months afterwards; on there being the danger no doubt of the impending insolvency of the Messrs. Boyd, the Messrs. Dixon gave notice. But what standing by was there? Let any man point out what damage accrued to the Messrs. Dixon in consequence of the acts of Messrs. Mangles. The Messrs. Dixon may have been very much damaged by the acts of Messrs. Boyd, but Messrs. Boyd were the persons with whom they were dealing, and behind the backs and without the knowledge and concurrence in any manner of the Messrs. Mangles. The result, therefore, is that there was no standing by; they simply did not do what I think they were not called upon to enter into, namely, make a communication of the circumstances which they had no reason to suppose had not been honestly disclosed by Messrs. Boyd to their own bankers, the bankers being perfectly content with the dealing between themselves and the Messrs. Boyd. There cannot be a doubt whatever that Messrs. Dixon cannot at the last moment turn round upon Messrs. Mangles and say, "When you received notice of this, you did not tell us that there were No. 2 and No. 3, which we did not know." They could have no reason to suppose that those papers had not been communicated. My lords, in the result of the case, after the most anxious consideration of it, I have certainly come to a very clear opinion that there is no equity on the part of Messrs. Dixon as against Messrs. Mangles. Therefore the appeal must be allowed, and the case will fall back upon the decree of the Vice-Chancellor. And if there is anything in that decree which requires modification, I shall be quite ready now to hear anything which may be suggested in regard to that decree. That seems to me to meet the justice of the case; that is, I propose to your lordships to reverse the decree of the Lord Chancellor, and that the decree of the Vice-Chancellor should be upheld. Reversing the decree will leave the case as it stood when it left the Vice-Chancellor's Court.

Appeal allowed.

Equity Courts.

LORD CHANCELLOR'S COURT.

(Before Lord St. Leonards, L.C.)

Reported by C. H. Keene, Esq. of Lincoln's-inn, Barrister-at-Law.

May 22 and 26.

LUMLEY *v.* WAGNER.(a)

In a contract containing a positive agreement to do something, accompanied by a negative agreement not to do any other thing, the Court will restrain breach of the negative agreement, although it may not be able to enforce specific performance of the positive agreement.

The power which the Court has of preventing an act being done will not be exercised unless it can be exercised properly and beneficially.

The cases of Martin v. Nutkin, Barrett v. Blagrave, Robinson v. Byron, Collins v. Plumb, Morris v. Colman, Kemble v. Kean, Kimberley v. Jennings, Rolfe v. Rolfe, Clarke v. Price, Hills v. Croll, and Dietrichsen v. Cabburn, considered.

This was a motion, by way of appeal, to dissolve an injunction granted by his Honour the Vice-Chancellor Parker.

The facts of this case will be found at length supra, p. 127.

Bethell, Malins, and *Martindale* appeared in support of the appeal.

Bacon and *H. Clarke* appeared in support of the injunction.

The following cases were cited during the argument:—*Martin* v. *Nutkin*, 2 P. Wms. 266; *Jervais* v. *Edwards*, 2 Dr. & W. 80; *Barrett* v. *Blagrave*, 5 Ves. 555; *Collins* v. *Plumb*, 16 Ves. 454; *Morris* v. *Colman*, 18 Ves. 437; *Clarke* v. *Price*, 2 J. Wilson's C.C. 157; *Robinson* v. *Byron*, 1 B.C.C. 588; *Swallow* v. *Wallingford*, 12 Jur. 403; *Kemble* v. *Kean*, 6 Si. 333; *Kimberley* v. *Jennings*, 6 Si. 340; *Dietrichsen* v. *Cabburn*, 2 Phil. 52; *Hills* v. *Croll*, 2 Ph. 60; *Escott* v. *The North Staffordshire Railway Company*, 2 M. & G. 112; *Baldwin* v. *The Society for Diffusion of Useful Knowledge*, 9 Si. 393; *Hooper* v. *Brodrick*, 11 Si. 47; *Rolfe* v. *Rolfe*, 15 Si. 88; *Stocken* v. *Brocklebank*, 3 M. & G. 250; *Whittaker* v. *Howe*, 3 Bea. 382, 395; *French* v. *Macale*, 2 D. & W. 269; *Cholmondeley* v. *Clinton*, 19 Ves. 261; *Smith* v. *Fromont*, 3 Swanst. 330.

Bethell, in reply.

The LORD CHANCELLOR.—This case arises out of a very simple contract, and without considering the difficulties which have been raised by the conduct of the parties, and independently of the question of law, the contract simply was, that this young lady should sing at the Queen's theatre for a certain number of nights, and that she should not sing elsewhere (for that is the true construction) during that period: nothing, therefore, can be more simple than the case on which I have to decide. As I understand the point which is taken, it is this,—that there is no case in which this Court ought to grant an injunction except those either connected with specific performance, or those where, if the injunction is to compel a party to forbear from doing an act, that injunction will execute the whole of the agreement, or the whole that remains to be performed; and, without going into other cases of injunction, I understand that to be the precise question. The point, therefore, first is, how that stands on principle; and the next, how it stands on authority. Before I consider it on principle, I will refer to some of the cases which have been cited by the defendant, the appellant, in support of the argument. The first case was that of *Martin* v. *Nutkin*. Now, that was a case in which the Court did issue an injunction, restraining an act from being done which could in no respect be considered as a case in which the Court could have granted any specific performance; but then that case falls within the second of the line of cases which the appellant admits are proper cases for the interference of the Court, because there the ringing of the bell had been agreed to be suspended by the churchwarden who represented the parish in consideration of moneys paid by Dr. Martin and his wife in the erection of a cupola and clock, and so on; a price in effect stipulated for by the parish in consideration of their relinquishing the great enjoyment of constantly hearing the church bell ringing at five o'clock every morning at certain periods of the year. The parish accepted the benefit, but rejected what they considered the obligation. Lord Macclesfield first granted the injunction, and the Lords Commissioners, on the hearing of the cause, made that injunction good for the lives of Dr. Martin and his wife. Now that therefore, however it may be explained, and falling, as it clearly does, within the second line of cases, is a case in which the Court did grant an injunction, prohibiting a man, or a clerk, or a parish, which is still more difficult, from doing an act in respect of which this Court could never have interfered by way of specific performance. Now, the next case which was cited was that of *Barrett* v. *Blagrave*. There a lease had originally been granted to the proprietor of Vauxhall of an adjoining public-house, with a stipulation that the tenant of that house should do no act which would damage the custom and the business of Vauxhall itself. After a considerable lapse of years the proprietors of Vauxhall filed a bill for an injunction, asserting that the then tenant of the house was breaking that stipulation, and Lord Rosslyn granted the injunction. Now, it was stated by Mr. Bethell, in arguing on that case, how remarkable the words of Lord Rosslyn were; for he said—"This is a case of

(a) It having been arranged that the point of law involved in this case, without entering into the merits, should be submitted to the Lord Chancellor, his lordship consented to hear it; and on that understanding gave it precedence over the other matters already on his lordship's list.

specific performance," and therefore the learned counsel said,—"This falls under the cases of specific performance." Now, when the case came before Lord Eldon, he dissolved the injunction, but upon a different ground. He said there had been so much acquiescence for so many years in the way that this public-house, or whatever it was called, had been carried on, that he could not interfere; but he also treated it as a case of specific performance. As far as the words go, therefore, the observations of those two eminent judges would seem to justify the argument which has been addressed to me. But how is it in point of substance? In effect it is a specific performance; because, a prohibition preventing a man from doing an act, does as effectually compel him to perform his agreement as an order for him to perform an act which he had agreed to do: the man had agreed that he would not open his house for purposes of entertainment, so as to damage Vauxhall. The Court said he shall not do so. That is a performance of the agreement in substance, for the man cannot do the act which he has agreed not to do. Therefore the term "specific performance" is aptly applied in such a case, but not in the sense in which it is now addressed to me on the first general head. It is no objection to the exercise of this jurisdiction, that the remedy is at law. The case of *Robinson* v. *Byron*, which has since been so often commented upon by subsequent judges, is a clear illustration of that point. In the case of the head of water, over which Lord Byron was abusing his right, the remedy was at law; but this Court (although there was an action depending) felt no difficulty in restraining Lord Byron, by injunction, from abusing the right of the head of water which he had. There are cases, such as that of *Collins* v. *Plumb*, in which the power of the Court, —which it was there admitted the Court had,—of preventing an act being done, will not be exercised, where it cannot be exercised properly and beneficially. In that case the negative covenant, not to sell water to the prejudice of the water-works, was not enforced by Lord Eldon, not because he had any doubt about the jurisdiction of the Court (for upon that he had no doubt), but because it was impossible to measure the damage which might be sustained by the different parties, and because, from the nature of it, the judges could not properly interfere. No one could tell every time the water was supplied whether it was or not to the damage of the water-works; and, whether right or wrong, that learned judge meant in no respect to break in on the general rule, whatever that general rule might turn out to be, but he merely refused to exercise the jurisdiction, on very sufficient grounds. Now, I took the liberty of calling attention at an early stage of the argument, to those familiar cases of attorneys' clerks, and surgeons' and apothecaries' apprentices, and the like, which are hourly arising in this court. On what principle do they proceed? I am told to-day that they are decided upon this principle—that they arise out of benefits received and out of concluded contracts, and that therefore the prohibition finishes everything and brings it within the second category. Now I do not apprehend that the jurisdiction of the Court depends upon that. Take the familiar case of a tenant, which is the exact case. It is said that springs out of the relation of landlord and tenant; but as that relationship is fixed by contract, consummated by contract, and determined by contract, what is there to differ that case from any other? There is no doubt that if there were a contract to grant a lease it would be specifically performed, and it will be executed even with a negative covenant, I may call it, not to do a particular act: the moment you are called upon to perform that covenant in this court by inhibition, you have to deal with that covenant alone; and I do not think any case ever occurred in this court, in that relationship, in which there were not many stipulations,—affirmative stipulations to be performed—in the very contract out of which the Court gives effect to the particular contract, and gives effect to it by inhibition. You will find affirmative covenants on the part of a tenant, and affirmative covenants on the part of a landlord, not one of which this Court will attempt to execute, but will leave it entirely to law to measure the damages and to give damages if it should think fit and it be right to do so; but if there be a negative covenant that the tenant, for example, will not cut timber trees or lop them, or any other given act of forbearance, the Court does not ask how much remains to be performed under the lease, or who has got to perform half a dozen covenants, and who twenty, but the Court acts on the negative covenant, and gives effect to that negative covenant; that is, specifically executes it, by prohibiting the man from doing an act which he is not entitled to do. Now those are cases, therefore, which appear to me to go in direct contradiction of the principles and rules which have been so elaborately and so well pressed upon me. In the case of an attorney's clerk, suppose the covenants were measured one by the other, as in this case: There, because the covenant does not arise until the man's servitude is ended, the point is raised at the Bar: you cannot apply for the injunction, and the injunction is not required, until the service is ended. It is not until the service has been performed, that the covenant which the clerk, or the assistant, or the pupil, whichever he may be, has entered into, comes into operation, by which he binds himself not to carry on business within certain limits of the place where he has been instructed, so as to be enabled by that means to take away the business of his master. I believe that is the only reason why you find in those cases there is nothing remaining to be done but to grant the injunction. Now this is a mixed case; it is a mixed case of this nature, not of acts to be done by the opposite parties; not that Mr. Lumley is to do one act and the young lady is to do another, which may, and has, in some cases, introduced a very important difference; but it is an act to be done by the lady alone, and an act of forbearance by the lady alone, not to break in on that act of forbearance which she has agreed to execute; the one is auxiliary to the other, the one is equal to the other; they are concurrent; one covers the other; they are co-equal; they are co-existent; they operate together; they are one in assistance of the other; they are not in opposition, there is no correlative right; there is no option. "I will sing for you during three months at your theatre, and during that time I will not sing for anybody else." It is in effect one contract. In all sound construction this Court cannot interfere; in all sound construction, and in all judicial construction, and according to the true spirit and essence and meaning of men's acts and agreements, to perform for three months at one theatre, must necessarily exclude the right to perform at the same time at another. The measure of performance is meted out according to the lady's capacity and physical power of singing, and the very correspondence and the whole of the contract shews that she was to do all that her physical power would enable her in the exertion of her vocal abilities to aid the theatre to which she intended to attach herself; and therefore if she had attempted,—if there had been no such stipulation—to perform at another theatre, she would have broken the spirit and true meaning of the contract as much as she has done by the contract into which she has already entered. Then as regards this being a mixed case; a mixed case of the sort that I have pointed out (and we shall see presently such cases in which there is one act to be done by the one party and another act to be done by the other), let us see for a moment what is the principle of the jurisdiction of this Court. The Court where it has jurisdiction, as in cases of specific performance, operates to bind men's consciences, as far as they can be bound, by a true and literal performance of their agreements; I have always thought that you may attribute a great deal of the right and fair dealing which exists between Englishmen to the exercise of that power in this Court; men are not suffered by the law of this country to depart from their contracts at their pleasure, and to leave the party with whom they have broken their contract to the mere chance of what a jury may give in point of damages; but this Court enforces, where it can, a literal performance, and it is that literal performance which is here called a specific performance, which I believe has tended to that good faith which exists, perhaps to so great a degree in this country, and certainly to a much greater degree than in many others. The jurisdiction, therefore, is a wholesome one; and although it is not to be extended, yet a judge would desert his duty who did not act up to that which his predecessors have handed down as the rule by which such wholesome jurisdiction is to be exercised. Now what mischief can be done by exercising that jurisdiction in this case? It is objected, that if I refuse this application I exclude this lady from performing at Covent-garden, whilst I cannot compel her to perform at the Queen's Theatre. I have not the means of compelling her to perform; I cannot force her to do so; it is a jurisdiction which the Court does not possess, and it is very proper that it should not possess it. But what cause of complaint has she, if I compel her to abstain from doing an act which in effect will compel her to do that which she ought to do? I exercise the jurisdiction wholly within the power of the Court; I touch no subject over which I have not jurisdiction; I go to the whole extent of the jurisdiction; I leave nothing unaccomplished by my order which it is in the power of this Court to accomplish; I leave nothing to the future. I am of opinion that this is a proper case for interfering; and in doing so I leave nothing unsatisfied: I leave nothing uncovered by the judgment which I shall pronounce. It is not, therefore, a case in which, by making an order on this particular covenant, I leave something not covered by it, because, as the one does cover the other, it is undeniable that if I restrain this young lady from singing at Covent-garden she cannot do so, and that the natural effect of that will be (although that is not the object which the Court has, because the Court cannot indirectly do a thing), the performance of the act which she is bound to do. Of this she has no right to complain. I deprive her of no right: I take away from her no remedy. She has no remedy at law. The remedy is not a remedy by her, but a remedy by Mr. Lumley against her. Because I have granted an injunction restraining her from doing an act which she was bound not to do, will be no answer to an action by Mr. Lumley against her, if she does not perform the act which she is bound to perform. It will be no answer at all; she would be amenable to this Court, and would no doubt be committed to prison if she did the act in breach of the injunction. Of what, then, has she to complain? My injunction will have this effect. It will prevent her from doing the act; it will, in the event of an action being brought against her, prevent any such amount of vindictive damages being given as a jury might probably be inclined to give, if she had carried her talents, and exercised them, at the other and rival theatre. It appears to me, therefore, that in the exercise of this particular jurisdiction, I shall do nothing contrary to the settled rule of the Court, but that I shall do simply that which the Court has power to do,—namely, to carry into effect, as far as I am enabled, the whole power of the Court on one subject, and that subject bearing—I say frequently bearing—for the purposes of justice, indirectly on the performance of that which I cannot enforce. But I do not continue the injunction upon that ground, because I disclaim doing indirectly that which I cannot do directly; but I say it is a fortunate thing for justice, if it does indirectly induce this lady to do the act which she is bound to execute. Now, this case has been very elaborately argued upon the authorities. I bow to the authorities; and I mean to execute the authorities. I am assuming no power of my own; I am giving no authoritative decision of my own; but I mean to follow the current of authority; and as there is no doubt a difference of decision between the learned judges who have preceded me, I mean calmly and patiently to consider in what the difference consists, and to arrive at the best conclusion I can, but meaning to follow the better authority as I find it. Now, the first case is that of *Morris* v. *Colman*. Mr. Colman was a part proprietor with Mr. Morris of the theatre in the Haymarket, and there was a partnership deed, and therefore a quasi partnership transaction, because this Court has thought proper to treat a theatre as a sort of trade, and so to bring it within the jurisdiction; but it is a jurisdiction which I shall very sparingly exercise. Mr. Colman, by that deed of partnership, agreed that he would not exercise his dramatic abilities for any theatre other than the Haymarket. Observe he did not enter into a covenant that he would write for the Haymarket, but it was merely a negative covenant that he would not write for any other theatre than the Haymarket. Now, Lord Eldon granted an injunction and maintained that injunction against Mr. Colman, and prevented his writing for any other theatre than the Haymarket; and the point which is in discussion at the Bar is, what was the ground upon which Lord Eldon assumed that jurisdiction? It was truly said for the appellant, that that was a quasi partnership; and it was said, moreover, that Lord Cottenham was mistaken in the case of *Dietrichsen* v. *Cabburn*, when he said that Lord Eldon had not decided that upon the question of partnership; and I agree that the observations which fell from Lord Eldon in the subsequent case of *Clark* v. *Price*, shew that he did mainly decide it on the ground of partnership; but he did not decide it exclusively on that ground. In the argument of that case by Sir Samuel Romilly and another counsel, they put, I may say, this very case. They said, "I suppose that Mr. Garrick had been living, and that he had entered into a covenant that he would not perform anywhere but at the theatre in the Haymarket." Lord Eldon, in his judgment took up that; and he said, Suppose that Mr. Colman and Mr. Garrick, if he had been living, had entered into a stipulation that Colman would not write for any other house than that in the Haymarket, and that Garrick would not perform at any other house than the Haymarket; he said, I can suppose that that would be a very valuable engagement on both sides, for the benefit of the theatre and for themselves, and he gives the clearest enunciation of his opinion, that that would be an agreement which this Court would enforce by way of injunction. Now, in a later case the late Vice-Chancellor Shadwell decided in a different way. He said that you must understand Lord Eldon to have spoken according to the subject-matter before him, and that he must there be considered to be addressing himself to a case in which Colman and Garrick had both an interest in the theatre. Now, I must take the liberty of entirely differing from that notion. Lord Eldon's words are perfectly plain. They are quite clear, and they want no comment upon them; they speak for themselves. He spoke of a case in which Garrick was a performer, and had nothing to do with the theatre beyond the engagement that he

would not perform anywhere else; and that he makes a stipulation with this distinguished performer that if he would not perform anywhere else (he engaging Garrick of course), he, Colman, would not write for any other theatre. I think, therefore, after the greatest attention I have been able to give to that case (which of course I was sufficiently familiar with before), after the attention I have felt bound to give to it on the present occasion, I have come to the very clear conclusion that Lord Eldon would have granted the injunction in that case, although it had not been a case of partnership. Now, the case of *Clarke* v. *Price* was one in which there was no negative stipulation, and, therefore, does not properly belong to his argument; I admit, and every judge who has sat here has admitted, that you cannot enforce an affirmative stipulation to do such an act. Mr. Price, the reporter, agreed to sit in the Court of Ex. and to take notes and compose reports, and print and publish them for Mr. Clarke. He did not do so; and Mr. Clarke filed a bill for an injunction. Lord Eldon said, "I cannot compel Mr. Price to sit in the Court of Ex. and take notes and compose reports—I cannot compel him to do the act:" and he said—he did not say it in so many words, but the whole of his judgment shews that he proceeded (and so it has been considered in later cases) on the ground that there was no covenant that he would not publish with any other person. Now, the expressions in the judgment are, "I cannot compel him to do the act indirectly by compelling him not to publish with anybody else;" and then comes these important words—"because it is against the meaning of the agreement." Those are the precise words. Lord Eldon, therefore, was of opinion upon the construction of that agreement, that it would be against the meaning of the words of the agreement to affix to them a negative quality; that is to say, a covenant by implication, for there was none expressly, that Mr. Price would not only publish with Mr. Clarke, but would not publish with anybody else. Lord Eldon, therefore, very properly, as I conceive, refused that injunction; and that is a case which in no respect touches the question now before me, because I at once declare that if I had only to deal with that first covenant by Mdlle. Wagner that she would perform in this theatre, I should not have granted any injunction. Now, so far, I think the authorities are very strong, and the principles of the Court are very broad, against the appellant in this case. But then comes the case of *Kemble* v. *Kean*, before the late Vice-Chancellor Shadwell, which has, in point of fact, introduced with subsequent decisions, the difficulties on this part of the law. Mr. Kean entered into an agreement as nearly like this, I admit, as two agreements can be one to the other. Mr. Kean agreed that he would perform for Mr. Charles Kemble at Drury-lane, and that he would not perform anywhere else during the time that he had stipulated to perform for Mr. Kemble; Mr. Kean broke his engagement; a bill was filed, and Vice-Chancellor Shadwell was of opinion that he could not grant an injunction to restrain Mr. Kean from performing elsewhere, which he was going to do, or was actually doing, because he could not enforce the performance of any affirmative covenant that he would perform at Drury-lane for Mr. Kemble. It is precisely this case, and we shall presently see what the Vice-Chancellor himself says of it subsequently. Being pressed by that passage to which I have referred in the Lord Chancellor's judgment in *Price* v. *Clarke*, he put that paraphrase, or that commentary, upon it which I have referred to, that is, he says, "Lord Eldon only intended this to apply to a case of partnership." I have come to a different conclusion, and I am bound to say, that in my apprehension of the case of *Kemble* v. *Kean*, it was wrongly decided, and could not be maintained. Now, the same learned judge followed that decision in the case of *Kimberley* v. *Jennings*, and that was a case of hiring and service. The learned Vice-Chancellor, in that case, admitted that a negative covenant could be enforced in this court; and he quoted an instance within his own knowledge. He said, a nephew of a man had a great disposition for the stage, which was very distasteful to his uncle, and the uncle gave him a large sum of money upon his entering into an obligation not to perform within certain localities. The man received the money and broke the engagement, and the Court, as I understand his statement, enjoined the nephew from performing within the localities. He admits, therefore, the jurisdiction of the Court, if nothing but that remains to be executed. But the learned judge says, "Here the negative covenant does not stand by itself: it is coupled with an agreement for service for a certain number of years, and then for taking the defendant into partnership. This agreement cannot be performed in the whole, and therefore the Court cannot perform any part of it." I apprehend in that case that there were rights which one party had to be performed by another, which might prevent the Court from giving effect to such a negative covenant. That does not embarrass the Court in this case, because I have already shewn that both the covenants are on the part of the same person, and that person is Mdlle. Wagner. Now, so far we advance. *Hooper* v. *Brodrick* was quoted as a case in which the Court had refused the injunction of which we are now speaking. The case was this:—To lessee of an inn covenanted to use and keep it open as an inn during the time, and not to do any act whereby the license might become forfeited. In point of fact, the application was that he might be compelled to keep it open, and the Vice-Chancellor makes this observation:—"The Court ought not to have restrained the defendant from discontinuing to use and keep open the demised premises as an inn, which is the same in effect as ordering him to carry on the business of an innkeeper." So far all the authorities agree; it was an affirmative covenant, and this Court cannot indirectly enforce it. "But it might have restrained him from doing, or causing or permitting to be done, any act which would have put it out of his power, or the power of any other person, to carry on that business on the premises. It is not, however, shewn that the defendant threatens or intends to do or to cause or permit to be done any act whereby the license may become forfeited or refused; and, therefore, the injunction must be dissolved." That is an authority directly against the appellant; because it shows that the Court, if there had been an intention to break the covenant, a negative covenant, this Court would have granted the injunction. Another case has also been quoted (*Smith* v. *Fromont*) which contained no negative covenant, and consequently does not bear on this point; but it was an attempt to restrain by injunction a man from horsing a part of a road when the party who was applying for the injunction was himself incapable of performing his obligation to horse that part of the road. Lord Eldon shews how grievous a thing it would be to grant such an injunction, and refuses it. But see what Lord Eldon says on that case:—"The only instance that I recollect of an application to this Court to restrain the driving of coaches occurred in the case of a person who, having sold his business of a coach proprietor from Reading to London, and undertaking to drive no coach on that road, afterwards established one. With some doubt whether I was not degrading the dignity of this Court by interfering, I saw my way in that case; but one party had there covenanted absolutely against interfering with the business which he had sold to the other." That again is a direct authority against the appellant; because there Lord Eldon tells you that he could interfere in the case of a negative covenant, although he could not interfere in this case, because there was no such covenant. Now, that brings us down to the case, I think first before Sir Launcelot Shadwell, and then before Lord Lyndhurst, of *Hills* v. *Croll*. Some observations have been made upon a decision of my own in Ireland in the case of *Jervais* v. *Edwards*. There is no fault found with that decision, and I believe it is right, but it is quoted to shew that I was of opinion that this Court cannot interfere and specifically perform unless it can execute the whole of an agreement. I abide by that opinion, and I mean to do nothing in this case which shall in any manner interfere with that opinion. There the whole was properly a case for specific performance; but, from the nature of the contract itself, there was a portion of it which could not be executed. I said, "I cannot execute this contract, which is intended to be binding on both parties. I cannot execute a portion of this contract for one, and leave the other portion of the contract unexecuted for the other; and therefore, as I cannot execute the whole of the contract, I am bound to execute no part of it." But that has no bearing on this part of the case. Here I execute the whole duty of this Court; here I leave nothing unperformed which the Court can ever be called upon to perform; and here I do no injustice, but I simply order the lady not to do the act which she has covenanted not to perform. Now, in *Hills* v. *Croll*, Lord Lyndhurst followed the decision which has been referred to, and other authorities of the same sort. But in *Hills* v. *Croll*, he refused to enforce an injunction for a negative covenant. But observe on what grounds. It was a case in which one man had given to another a sum of money; and the man who had received the money covenanted that he would buy all the acids that he wanted from the manufactory of the other, and covenanted that he would take his acids from no other person. Lord Lyndhurst refused to prohibit the man who entered into that covenant from obtaining acids from any other quarter. Why did he do so? Because the person who had contracted with him had entered into a covenant to supply him with acids. Lord Lyndhurst therefore found these things correlative. He said "A. is to supply B. with acids; B. is not to buy acids anywhere else; I cannot compel A. to supply B. with acids; if, therefore, I restrain B. from obtaining acids from any other quarter, I actually paralyse his manufactory and ruin him, because I have not the means of compelling A. to supply the acids; and, therefore, I cannot interfere." Now, that case has never been rightly understood. It is supposed that Lord Lyndhurst decided that case upon a wrong principle; that he went on the decision of *Jervais* v. *Edwards*, and such cases; and that he applied the rule, which was properly applied there, improperly; but I do not think he did improperly apply it. I think, as you could not enforce the act, the benefit of which the man was to have who entered into the negative covenant, you are not to enforce the negative covenant if you could not enforce the affirmative covenant; for you would ruin the man whom you enjoined in case of the other man breaking his covenant, and you had no means of compelling him to adhere to it. Then comes the case which has been so much observed upon, before Lord Cottenham, of *Dietrichsen* v. *Cabburn*. That was a very simple case; and the only question is, upon what principle it was decided. It was a case in which a man, in order to obtain a great circulation for his medicine, through the instrumentality of a vendor of medicine, a man who very much dealt in advertisements, entered into a contract, that he should have a general agency, with 40 per cent. allowed, and that he would not supply anybody else with a discount of more than 25 per cent. He did so, and he was proceeding to employ other agents with a larger discount than 25 per cent.; and an injunction was applied for and granted; and it is said properly granted, because that was a case of partnership. Now, I wholly deny that it was a case of partnership. It was no case of partnership; it was strictly a case of principal and agent; and it was only because there was that negative covenant that the Court gave effect to it. It is impossible to read Lord Cottenham's judgment without being satisfied that he did not consider it to be a partnership. He called it in the nature of a partnership: he did not call it a partnership. In a popular sense, you may no doubt call it in the nature of a partnership, because they were both dealing with respect to the same subject, from which each was to have a benefit, but in no legal sense was it a partnership; and it is, in my apprehension, impossible to read that judgment of Lord Cottenham's without coming to the conclusion that he was of opinion that this jurisdiction could, in cases similar to this, be properly exercised. Now then, stopping there, it is impossible to have, as I conceive, a doubt on the law of the case; and the only matter which can create a doubt is the authority of Vice-Chancellor Shadwell. Now, with great submission, it appears to me that the whole of Vice-Chancellor Shadwell's authority is removed by himself: I am of opinion that the case of *Rolfe* v. *Rolfe*, which was the last case before him, entirely displaces the whole of his authority on the subject. In that case there were three persons, brothers, I suppose, who were partners as tailors; two went out of the trade on a consideration of 1,000*l*. each, and the third was to continue. One of the brothers who went out, entered into a covenant that he would not carry on the trade of a tailor, which he had just sold, within certain limits; the brother who had bought the trade entered into a covenant that he would employ that brother William as a cutter, at a certain allowance. The bill was filed simply for an injunction to prevent William from setting up as a tailor within the prescribed limits, and the Vice-Chancellor granted that injunction. It was objected, How can you grant this injunction when there is something remaining to be performed; for William has a right to be employed as a cutter; and you cannot enforce that and you do not attempt to deal with it? How can you, therefore, grant an injunction against William, restraining him from setting up as a tailor, when you cannot compel his brother, and do not affect to enter into the question of compelling his brother, to employ him? Now that was open to a difficulty which does not occur here; that was a difficulty which might have arisen in *Hills* v. *Croll*, before Lord Lyndhurst. But Sir Launcelot Shadwell held that to be no difficulty at all. He says, "They come here simply for an injunction, and I will grant that injunction, although I cannot give effect to that covenant to do the act in respect of which no performance is asked." Well, then, his own decisions in *Kemble* v. *Kean*, and in *Kimberley* v. *Jennings*, were quoted, and it was said, how can you decide this case in the face of those decisions? "Oh," he said; "those cases depend on a totally different rule. *Kemble* v. *Kean*, and *Kimberley* v. *Jennings*, were cases for specific performance, and the injunctions were asked as ancilliary to the relief, and as I could not grant specific performance, I would not grant an injunction." The learned judge no longer put it upon the inability of the Court to enforce a negative covenant, but he put it on the form of the pleadings. Whether that form was sufficient to justify his opinion, is a question with which I need not deal; but I am very clearly of opinion, that the case of *Rolfe* v. *Rolfe* does remove the whole of the authority of that learned judge on the subject. It was said in argument that the injunction in that case was prayed merely as ancilliary to the relief. It will be seen that that was not so. It was a case which merely went to the injunction, and had nothing to

do with relief; and the learned judge himself tells you that if it had gone to that extent, he, following his former authority, would not have granted the injunction. The result, and I must say, the clear result, is, that in my mind, this point of law has been properly decided in the Court below; and, therefore, as far as regards that, I must confirm the decision. There has, no doubt, been much controversy on the point; and I am not surprised, and, indeed, I was going to say I am not sorry, that the point has been brought here for full consideration. Whether my authority may be considered sufficient to settle this question is another question; but I wish it to be distinctly understood, that I have no doubt whatever on this question as applicable to this case. Now that relieves the case entirely of the question of law, which was the only question proposed to be brought before me; but no doubt it has been necessary, and it was inevitable, to enter into the merits. It was insisted, and very properly insisted, that if upon the merits I ought not to give relief to Mr. Lumley, then, although the point of law be decided in his favour, I ought not to allow this injunction to stand. If the point of law was in his favour, then the merits have nothing to do with it; but if the point of law is in his favour, still he may be excluded from having the benefit of that point of law by the merits. Now, the merits, after a good deal of discussion, rest on two points. It was first of all said, that there was an abuse of confidence by Dr. Bacher. Now I never saw a case in which there was less foundation for that charge. This young lady seems to have got an introduction to Dr. Bacher, who, after hearing her sing, put himself in communication with Mr. Lumley, a friend of his. Mr. Lumley had a printed form, which contained many and onerous terms; and it contained the precise condition which is said to form, by its introduction ultimately into the agreement, the fraud in this case. That printed form it was which Mr. Lumley signed in the first instance with Dr. Bacher, and which was sent over to the Wagners. It was the general form of all engagements entered into by Mr. Lumley. They knew what were the common and usual terms of such an engagement. But what do the Wagners do? The father, repudiates it; and, according to his own account, sits down and draws the agreement which is now before me; and he omits every one of the penalties which find their way into Mr. Lumley's printed form, so that the young lady would have been entirely free, however she might misconduct herself, absenting herself from rehearsal or what not, and disregarding the rules of the theatre and the injunctions of the director, she would have been entirely free from all obligation as regards penalty, and he also omits the clause prohibiting her from singing at theatres or private concerts. Now, under those circumstances, Dr. Bacher going to Paris, takes back the agreement with him, with those omissions, upon which Mr. Lumley, acquiescing as to the omission of the penalties, says "It is impossible I can agree to this; I cannot give this young lady (the terms had been much increased), however great her abilities, this sum, unless I have some stipulation that she will not perform at other places." Dr. Bacher says, "I think it must have been omitted by mistake, I will insert it;" and he actually inserts it in his own handwriting, and signs it. This he does in Paris, on the 15th November, 1851, by the authority, he says, of the Wagners. Now the Wagners do not tell us when they received that, and it was for them to tell the Court when they did receive it; but it is perfectly clear they received it before the several letters were written which are now before the Court; and in no one of those letters do they complain, as an article to be rejected, of the terms which had been thus introduced. M. Wagner finds fault; but in that very act of finding fault, he acquiesces, he does not like it; but the very finding fault with it, without saying, "I will not be bound by it," is a clear acquiescence. It shews his knowledge; it shews his distaste for it; and the more he dislikes it, the stronger his acquiescence when he does not reject it. Now observe, when they received that document so signed, they had the most complete power to reject the contract altogether. They had the power to reject it; they could not be taken by surprise, because the printed form signed in the first instance by Mr. Lumley and sent to them, contained the clause. Then when the document which they themselves had drawn with the omission of that clause went back with that clause inserted, they might have rejected it; but instead of rejecting it, they accept it. It is much too late now to raise any objection on that ground, and, therefore I must overrule it. Now, the remaining question is a simple one. There were 300*l.* stipulated to be paid by Mr. Lumley, at a day named, to this young lady. I am told that the decision of the Court below was, that that was not a reciprocal obligation, and that it was an independent covenant. With this I cannot agree, and, so far, I come to a different conclusion. Whether time was so much originally of the essence of the contract either by the foreign law or the law of this country, I need not, under the circumstances of the case, inquire; because the time was open. But I am clearly of opinion that Mr. Lumley could not come here to enforce that contract, unless he had put himself right, by tendering at a proper and reasonable time the 300*l.* which he had stipulated to pay. Observe what a hardship it would be. The construction of law is perfectly clear in such cases: if you desire to enforce a contract, you must first put yourself right by performing your part of the contract, or being willing to perform it. If a performer abroad stipulates for a sum of money to be paid by the director here by a given day, and she is to arrive in London within a certain number of days after that payment, is not it apparent that the money ought to be paid to her, not simply as caution-money, but as money to enable her to perform her own obligation? She could not perform her obligation when you withheld from her those moneys which you were bound to give her to enable her to do so. I am of opinion, therefore, that Mr. Lumley was bound to pay the 300*l.* before he could enforce this contract. The question only remains, when was he bound to do it? By the original contract he was to pay it on a given day in March. Before that day arrived the young lady herself, by her father, applied to Mr. Lumley to enlarge the terms of the contract. The father writes on the 9th of March, but before that letter could have been received by Mr. Lumley, Dr. Bacher writes to M. Wagner to say that he, Dr. Bacher, had the 300*l.* to pay to Mdlle. Wagner, and asking her how and where he should send it. He swears to the contents of that letter, and he swears that he received no answer to it. Now what is the allegation on the other side? That they remember they did receive a letter of the 10th of March; but they contradict, in the flattest terms, the truth of Dr. Bacher's statement in regard to the contents of that letter. I called for the production of that letter, and I am not satisfied with the account given of its non-production. Dr. Bacher does not know that that letter is not in existence, and he swears, in the first instance, to the absolute contents of that letter as a positive fact, not knowing, as he could not know if he were swearing falsely, that the letter might not be produced the next hour in order to establish the falsehood of which he was guilty? If, therefore, a party at that peril makes such an affidavit in the first instance, and the other party merely says that it is not true that those are the contents, I must take the contents to have been as Dr. Bacher has sworn they were. Then, on the 18th, Mr. Lumley himself writes (the letter of the 10th having in the meantime been received): "I will do as well as I can about the rehearsal, and will postpone the appearance of the young lady." "I have sent to Dr. Bacher. Dr. Bacher has undertaken to pay you a bill of exchange for 300*l.* (which was before it was due), and by this time I have no doubt all is in order." What do M. Wagner and his daughter do? They never say a single word; they never raise the slightest complaint; they make no communication to Mr. Lumley; they make no communication to Dr. Bacher; but they actually remain satisfied with the money being, as they supposed, and as I suppose it was, in Dr. Bacher's hands. It was said this was not the money of Mr. Lumley. What has that to do with the case? Dr. Bacher was his agent. Madlle. Wagner had no right to inquire whence the money came. There was the money; and whatever may have been the embarrassments of Mr. Lumley, they cannot bear on this case. I must say that when the money was required—that is, when the necessity for producing it arose—the money was forthcoming, and would have been sent as a matter of course, if the lady had insisted upon it. On the 2nd of April this lady writes to Dr. Bacher, writes and asks him to come to Hamburgh in order to accompany her to London for the purpose of performing her engagement. There is not a word of complaint about the nonpayment of the money. The money would then have been paid in sufficient time if she had asked for it to answer the very object for which it was undertaken to be paid. Dr. Bacher comes to Hamburgh to this young lady, but instead of being ready to accompany him to London, she, on the 5th of April, entered into an agreement with Mr. Gye, and on the 6th she goes before a notary, and a most absurd declaration was then made in the absence of all parties, in which she declares she is released from the contract. This Court declares she is not released from the contract, and the power of this Court is more effectual than that of a notarial protest in Hamburgh, and she will find that she must obey the order of the Court, and that that transaction is a simple nullity. I think she has nothing to complain of. I think it is entirely her own fault, and that she intended, as far as she could, to prevent the money being paid in order to escape the liability of performing the contract. Therefore, although I find no fault on the point of law being raised, yet looking at the merits and circumstances of the case, I must refuse this motion with costs.

ROLLS COURT.

Reported by J. Macaulay, Esq. of the Inner Temple, Barrister-at-Law.

Thursday, Jan. 22.

HILLS *v.* NASH.

Law of Evidence Acts, 6 & 7 *Vict. c.* 85, *and* 14 & 15 *Vict. c.* 99—*Examination of plaintiff and defendant in support of plaintiff's case—Practice—Reception or rejection of evidence by the Master—Preliminary objection.*

Quære, whether the stat. 14 & 15 *Vict. c.* 99, *applies to causes at issue before the passing of Lord Denman's Act* (6 & 7 *Vict. c.* 85)?

The Master ought either to accept or reject evidence, and then the parties objecting to either should come before the Court upon exceptions to the Master's report.

Where the Master merely says he doubts whether he can receive evidence, and the parties come to the Court to decide the point, that is irregular, and no arrangement by consent between the parties can give the Court jurisdiction, or waive the irregularity.

This was a motion by the plaintiffs on behalf of themselves, that they might be at liberty to exhibit interrogatories to examine themselves and the defendant, William Carpenter, as witnesses on their behalf. The bill was filed on the 27th of May, 1842, by the plaintiffs, Messrs. Hills and Busk, against Messrs. Nash (the executors of Thomas Nash, deceased) and William Carpenter, to establish a partnership in certain grain speculations, in the years 1840 and 1841, in which it was alleged that the plaintiffs, the said Thomas Nash, Carpenter, and two others named Wedd and Shepherd (who are now defendants), were interested in different proportions. Heavy losses were alleged to have been sustained, and it was sought to render the estate of Thomas Nash liable for one-eighth af the loss, that being his share in the alleged partnership. Wedd had been a factor of Thomas Nash, and it was said was largely indebted to him, and accordingly Mr. Nash's executors took an objection for want of parties, which was overruled by Lord Langdale on the 10th of July, 1843, when a decree was made establishing the partnership and directing an account. This order, however, was discharged by Lord Lyndhurst on appeal, his Lordship holding that Wedd and Shepherd were necessary parties, but giving the plaintiffs liberty to amend. The plaintiffs accordingly made Wedd and Shepherd parties, and examined the former as a witness (having previously released him in respect of his liability), and also another witness to prove the agreement of Thomas Nash to join in the speculation. On the 22nd of March, 1847, a decree was made similar to the former, from which the defendants appealed, on the ground that Wedd and Shepherd were parties whose interest was such as to render their testimony inadmissible; but Lord Cottenham on appeal held that it was admissible. The parties then went into the Master's office, and carried on interrogatories for the examination of witnesses; but it was found that the books themselves proved nothing to fix Thomas Nash; and the plaintiffs therefore found themselves in a difficulty in point of evidence. On the passing of the statute 14 & 15 Vict. c 99, the plaintiffs insisting that it was retrospective and applicable to this case, applied to the Master under the Act for an order to exhibit interrogatories to examine themselves and the defendant Carpenter, but the Master declined to give any such leave, doubting whether it was within his province to allow a party to be examined as a witness in the cause. The plaintiffs thereupon, with the consent of the defendant, now applied to the Court for an order for leave to exhibit interrogatories as already stated.

Roupell and *Piggott* for the motion.—The decree was, that the Master should be at liberty to examine on interrogatories as he might think fit; and evidence having been gone into in the Master's office, it was proposed to examine the plaintiffs and one of the defendants under the provisions of the Act to Amend the Law of Evidence (stat. 14 & 15 Vict. c. 99), which is applicable to all cases, and to suits pending at the time. We may examine witnesses, and come to this Court for that purpose, for Lord Denman's Act (6 & 7 Vict. c. 85), enacts that "In Courts of Equity any defendant to any cause pending in any such court may be examined as a witness on the behalf of the plaintiff, or of any co-defendant in any such cause, saving just exceptions."

R. Palmer and *Smythe* contra.—The bill was filed in May 1842, and Lord Denman's Act was passed in 1843, putting an end to incapacity of a witness from crime or interest, and rendering the defendants in a Court of Equity examinable as witnesses, "saving just exceptions;" but providing that nothing in the Act should apply to or affect any suit, action, or proceeding brought or commenced before

the passing of the Act. So that Lord Denman's Act does not apply to this case, and even if it did, it would exclude the evidence in the present case. Now the scheme of the late Act, 14 & 15 Vict. c. 99, is to leave existing cases to the operation of Lord Denman's Act, except in one case, and that is in the first clause, which repeals the provision in Lord Denman's Act, sec. 1, against thereby rendering competent any party to any suit, action, or proceeding individually named in the record, &c., that is, in all cases to which Lord Denman's Act applies, namely, where the suit was commenced since the passing of the Act. It enacts, in short, that Lord Denman's Act shall govern all cases since that Act passed, but does not make it retrospective. Then comes the second section, which is comprehensive enough in its language, but is not retrospective.

Roupell in reply, said there had been decisions at law holding the Act to be retrospective, and the terms of the second section were large enough.

The MASTER of the ROLLS said he would express no opinion at present, but he had great doubts whether, according to the practice of the Court, he could entertain the question at all. The Master ought either to object to or accept the evidence tendered, and then the parties should come to the court upon exceptions. But to come there and say the Master doubted whether he would receive the evidence, and to ask the Court to decide, is not the regular course. If the Court was to act under those circumstances, it would be introducing great irregularity. His Honour had suggested this in the course of the argument to counsel, and though an arrangement should be made by consent between the parties, no such arrangement could give him jurisdiction. He would not express any opinion upon the point in question without giving it more consideration, but if he still felt the preliminary objection, on the matter being mentioned again, as strongly as he did then, he would make no order on the motion.

The matter was subsequently mentioned, but his Honour refused to make any order.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. HENRY COOKE, Esq. Barrister-at-Law.

Friday, April 30.

KER *v.* RUXTON.

Husband and wife — Separation deed — Separate estate.

A husband, in a deed of separation from his wife, B. covenanted with trustees to assign upon certain trusts for her benefit one-half of all property coming to her or him in her right, and it was agreed that the other half should belong to him absolutely. One of the trustees, by will, gave a share of her property to A. a married lady, for her separate use for life, with a general power of appointment on her decease. She gave another share to B. (the wife who was separated from her husband) for her separate use for life, with remainder to her children. By a codicil she revoked the bequest of this last share, and directed B. should have her share the same as A. to be at her own disposal, independent of her children, so that no part of it should be under trust, but to be "entirely at her own disposal, to give to any of her children who may be kind and dutiful to her:"

Held, first, that the husband's covenant did not extend to the property so bequeathed to his wife for her separate use, so as to entitle him to have a moiety of it; and

Held, secondly, that the wife (B.) took an estate for her separate use during her life, and that she had a general power of appointment.

This was a suit instituted for the purpose of ascertaining the true construction of a deed of separation, and of a will and codicil. Mrs. Hay had three daughters—Mrs. Ker, Mrs. Ruxton, and another lady, Mrs. Rhode. After the death of Mr. Ruxton his widow married Mr. Artley. By her first husband Mrs. Ruxton had eight children. Before the second marriage a settlement was executed, but it was not affected by the questions in the suit. After the marriage between Mr. and Mrs. Artley a separation between them took place, and a deed, dated the 9th of July, 1842, was prepared, to which she and her husband were parties, as were Mrs. Hay, her mother, and another person, in the character of trustees on behalf of Mrs. Artley. By this deed, Mr. Artley covenanted with the trustees that the wife should be at liberty to retain for her absolute use all her jewels, trinkets, ornaments of her person, wearing apparel, &c.; and he also covenanted that he would assign to the trustees, or to such persons as Mrs. Artley should appoint, one half of all the real or personal estate to which she or he, in virtue of his marital right, should or might during the said intended separation become seised or possessed of or interested in. And it was by the same indenture covenanted that the remaining moiety of all such property should belong absolutely to Mr. Artley, his heirs, executors, administrators, or assigns. Two days later, namely, on the 11th of July, 1842, Mrs. Hay made her will, by which, after giving various specific legacies, she directed that her trustees, Mr. Rhode and Mr. Ruxton, should hold the whole of her residuary real and personal estates, as to one-third part, in trust for such persons and estates as her daughter, Mrs. Ker, should by deed or will appoint, and in default of appointment for Mrs. Ker during her life to her separate use, and after her decease in trust for her executors and administrators; and as to one other third part on similar trusts for the benefit of the testatrix's second daughter, Mrs Rhode; and as to the remaining one-third part in trust to raise thereout 300*l.* and to pay the same to Mrs. Artley for her separate use, or as she alone should appoint; and subject to raising and paying this sum of 300*l.* the residue of the remaining third part was to be paid to Mrs. Artley during her life to her separate use, without power of anticipation; and after her decease in trust for her eight children equally, or such of them as should survive the testatrix and attain the age of twenty-one years. The testatrix made a codicil to her will, dated 10th Aug 1843, by which she revoked all the dispositions she had made respecting the third part of her residuary estate in favour of Mrs. Artley, and directed and declared as follows:—"At my decease my said daughter, Mrs. Artley, may have her share of my funded property the same as her sisters, to be at her own disposal independent of her children, so that no part of it shall be put under trust as mentioned in my will, but to be entirely at her own disposal to give to any of her children, the Ruxtons, who may be kind and dutiful to her." Mrs. Hay having died several questions were raised, and among them what interest Mrs. Artley took under the will and codicil, and also how far her interest, whatever it was, was bound by the covenant in the deed of separation that is, whether she was bound to join in any assignment she might make of one moiety, and whether she was entitled absolutely to the other moiety.

Stuart and *Faber*, for Mrs. Artley.—The codicil only gives an unlimited power of disposition over the reversion of the property, subject to the life-interest to the separate use of Mrs. Artley. That codicil, by referring, as it does, to the dispositions in the body of the will in favour of the other daughters of the testatrix, clearly shews an intention that Mrs. Artley, like Mrs. Ker and Mrs. Rhode, her sisters, should take an estate for her life to her separate use, and that the unlimited power of disposition should be subject to that life-estate.

Rolt and *Greene* for Mr. Artley.—There is an absolute gift by this codicil to Mrs. Artley, not in favour of her children, but in favour of any one she chooses. The words referring to the Ruxtons do not raise a precatory trust, and she takes absolutely. If her children can take any thing it must be by her disposition in their favour, at her absolute will and pleasure; and if no such disposition be made, then they take under the codicil. The true construction, however, is that the whole one-third is placed at her entire command, and therefore subject to the rights of Mr. Artley, and bound by the covenant in the deed.

Sir *W. P. Wood*, *Kenyon Parker*, *Chandless*, *Southgate*, *Allnutt*, and *Mackinson*, were for the trustees and for other parties.

The cases of *Prichard* v. *Ames*, 1 Tur. & Russ. 222; *Tyler* v. *Lake*, 2 Russ. & Myl. 183; *Douglas* v. *Congreve*, 1 Keen, 410; and *Blacklow* v. *Laws*, 2 Hare, 49, were cited.

The VICE-CHANCELLOR.—I am of opinion that the covenant in the deed of separation does not affect property afterwards coming to the wife, given to her for her separate use. The covenant secured to Mrs. Artley all linen and other articles which are usually known and considered as paraphernalia; but as it was contemplated that she would also become entitled to certain other property, there was the further covenant to convey or assign one-half of all real or personal estate to which she or he in her right should during the separation be entitled. The husband only covenants to "assign," not to join in or otherwise confirm any assignment. It is, therefore, only on the property on which his assignment could have any operation that this covenant was intended to operate. If I had any doubt on the point, the case of *Douglas* v. *Congreve* would be a sufficient authority; but this is a stronger case, for the wife, Mrs. Artley, is a party to this deed. This clause, therefore, does not give to the husband a moiety of the property, which after the separation should come to the wife for her separate use; and what makes this case still stronger, is, that the property here is derived from a person who was a trustee named in, and a party to, the very deed which contains the covenant in question. With regard to the questions as to the 300*l.* legacy, concerning which it was argued that the codicil changed the previous gift of that sum into a mere power of appointment over the whole, thereout of which it was raiseable, I am of opinion that the codicil operates thus: it places Mrs. Artley in exactly the same position as the two other daughters with regard to their respective third shares. The testatrix intended to extend the benefits previously given by her will. By her will she had thus disposed of Mrs. Ker's share, viz. she had given her a general power of appointment over it, subject to the life estate given to her for her separate use, and in default of appointment it was to go to her executors, administrators, and assigns; and the testatrix had made similar dispositions as to Mrs. Ruxton's share. But as to Mrs. Artley's share, the testatrix had by her will given her a general power of disposing only of 300*l.* part of it, and had given the bulk of it to Mrs. Artley's children, subject to their mother's life interest; she had reduced Mrs. Artley to the position of being a tenant for life of her third, with no disposing power, excepting as to the 300*l.* Taking up that position, she says in her codicil "Mrs. Artley is to have her share" (i. e. the one-third part, which in my will I have given to her and her children), not to go on the trusts mentioned in my will, but "the same as her sisters, and to be at her own disposal," i. e. with the same power of appointment as that previously given to Mrs. Ker and Mrs. Ruxton as to their shares, "independent of her children," i. e. the power of appointment is to be general. "So that no part of it shall be put under trust." If there was nothing more, this would be intelligible enough, but she adds the words "as mentioned in my will," i. e. the trusts for the benefit of herself for life, with remainder to her children. "But to be entirely at her own disposal to give to any of her children, the Ruxtons, who may be kind and dutiful to her." That is, the Ruxtons are not to take under the codicil, but under the appointment. I must, therefore, declare that the fund is subject to her general power of appointment and to her estate for life. It would be premature to say anything as to the rights of those in remainder: all I can now do is to dispose of it during her life for her separate use. There ought to be a sufficient portion of the assets retained in Court to indemnify the trustees against any breach of the covenants in the deed of separation, and if the parties cannot agree as to the amount before the decree is drawn up, there must be a reference to the Master to ascertain it.

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

July 15 and 16.

BARKER *v.* BARKER.

Will—Construction—Vesting.

A testator, by his will, gave to trustees 22,000l. upon trust, to invest, and to pay the interest to his daughter, A. B. for life, and after her death in trust as to the principal sum, "to divide the same equally between the children of A. B. who should be living at the time of her decease, and the lawful issue of such of them as should be then dead leaving issue, so as that the issue of each child so dying should take the part or share which their deceased parent would have taken if living, ... to be paid to all such children and issue upon their respectively attaining, and in case they should live to attain, the age of twenty-one years." And the testator directed the interest in the meantime to be applied for the benefit of such children and issue. A. B. left only two children her surviving, but C. D. one of her children, died in her lifetime, leaving four children, of whom two only survived A. B. the other two having died in her lifetime infants:

Held, that the fund was divisible into thirds, one to be taken by each of the surviving children of A. B. and that the remaining third was to be divided between the four children of C. D.

Philip Protheroe, by his will dated the 30th of August, 1803, bequeathed as follows: "I give and bequeath unto my sons, Edward Protheroe and Philip Protheroe, my executors hereinafter named, the sum of 22,000*l.* of lawful money upon trust to place the same out at interest, on such security or securities as they shall think proper and approve, and to pay the interest and income arising therefrom as the same shall be received unto my daughter, Elizabeth Barker, wife of William Barker, for and during the term of her natural life, and for her proper use and benefit, and from and after her decease, then in trust, as to the said principal sum of 22,000*l.* to divide the same equally between all and every the children of my said daughter, Elizabeth Barker, who shall be living at the time of her decease, and the lawful issue of such of them as shall be then dead, leaving issue, so as that the issue of each child so dying shall take the part or share which their deceased parent would have taken if living, and so as that such issue of each child shall take equally share and share alike, to be paid to all such children and issue upon their respectively attaining, and in case they shall live to attain, the age of twenty-one

years; and in the meantime I order and direct that my said executors shall apply all or any part of the interest and income of the same sum of 22,000*l.* for and towards the support, maintenance, and education, or otherwise for the use and benefit of such children and issue respectively as my executors shall think fit." The testator died in Sept. 1803. Elizabeth Barker died on the 4th of August, 1844, leaving only two children, viz. Mrs. Miller and Susan Barker, her surviving. Besides these children Mrs. Barker had six others, all of whom, excepting one, died in her lifetime without leaving issue. Philip Barker, one of Mrs. Barker's children, died on the 13th of May, 1838, having had five children, of whom four survived him. Of these four children two died in Mrs. Barker's lifetime, infants, and the other two survived her, one having attained twenty-one and the other being an infant. The question submitted by this special case for the opinion of the Court was, as to the interests which the children of Philip Barker took in the bequest of 22,000*l.*

Russell and *Metcalfe* for the plaintiff, the son of Philip Barker, who had attained twenty-one.

Elmsley and *Carter* for the infant child of Philip Barker.

Bacon and *C. Hall* for the residuary legatees.

Piggott for parties in the same interest.

Walker and *Hanson* for the administratrix of the infant children of Philip Barker.

Metcalfe in reply.

The following cases were cited:—First, as to the time when the class was to be ascertained, *Kevern* v. *Williams*, 5 Sim. 171; *Bennett* v. *Merriman*, 6 Bea. 360; and *Beck* v. *Burn*, 7 Bea. 492: and, secondly, as to the vesting being contingent upon attaining the age of twenty-one, *Bolger* v. *Mackell*, 5 Ves. 509; *Knight* v. *Cameron*, 14 Ves. 389; *Massey* v. *Hudson*, 2 Mer. 130; *Lister* v. *Bradley*, 1 Hare, 10; *Packham* v. *Gregory*, 4 Hare, 396; *Bull* v. *Pritchard*, 5 Hare, 567; and *Masters* v. *Scales*, 13 Bea. 60.

The VICE-CHANCELLOR said the questions in this case were two. The first was, what was the class of persons who took under the gift contained in the will; and the second was, whether the individuals of that class did or did not take interests which vested at the death of the tenant for life. The gift was after the death of the tenant for life, "to divide the same equally between all and every the children" of the tenant for life who should be living at the time of her death—and as to them no question arose—"and the lawful issue of such of them as should be then dead, leaving issue." Two constructions had been contended for: one, that the issue of a child who were to take were a class to be ascertained at the death of the child whose death was contemplated; the other construction was, that the class were to be ascertained at the death of the tenant for life. As he had before said, his Honour rejected the construction, which would include a child dying in the life of the person whose death was contemplated, for the gift seemed to be confined to the class of issue left by the child. The Court had to determine between the two constructions which he had mentioned; and it was a question of considerable doubt and difficulty. The general rule of law was not to import a contingency into gifts of this kind, and there could be no doubt, if the gift had stood alone, "to the lawful issue of such child as should die in the life of the tenant for life leaving issue,"—that the class would include all the children left by the child who died, and would not be confined to the children who happened to be in existence at the time of division. That was the general rule. The question was, whether, in the words of the will, could be found enough—not upon a conjectural ground merely—to take the death of the tenant for life as the period for ascertaining the class, and not the death of the stirps concerning whose issue there was this question. His Honour did not think there was enough in this will so to confine the gift. If the words "leaving issue" could be read as referring to issue living at the death of the tenant for life, then no doubt that might be the period for ascertaining the class. Having considered the words as carefully as he could, he thought "leaving issue" meant at the death of the child in question, and not at the death of the tenant for life, and that consequently the time for ascertaining the class was the death of such child. No doubt the testator, with respect to the children of the tenant for life, said that those only were to take who were living at the period of division of the property. It might very well happen that grandchildren, whose parents were dead, might have had issue in the life of the tenant for life, and making the gift to the grandchildren conditional in the same way, might take it away altogether in that event, without substituting their issue. He could not see how to import this additional contingency into this gift. The class to take, therefore, were the children left by Philip at the time of his death, who were four in number. Mrs. Miller and Susan each took one-third, and these four children of Philip took the remaining one-third between them. The next question was, whether these children left by Philip took vested or contingent interests, there being a clear gift to them, and he thought that this was the ordinary case of a gift, with a direction to pay superadded to it, which had not the effect of divesting the gift, although words of contingency were attached to the direction to pay at the age of twenty-one years. A gift to parties, to be paid to them at twenty-one, was not materially different from a gift to be paid to them if they attained twenty-one, or in case they attained twenty-one. His Honour, therefore, thought that these interests vested in the children of Philip, who survived him; and he might observe, that it seemed hardly possible to distinguish this case from *Masters* v. *Scales*, 13 Bea. 60, but he must say that he considered that the questions upon this will were very doubtful.

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VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. BENNET, Esq. of Lincoln's-inn, Barrister-at-Law.

Tuesday, July 20.

BROWNE *v.* PAULL.

Trust—Discretionary power of sale—Jurisdiction—Infant.

Generally the Court has no authority to direct a sale of the real estate of an infant, or to convert it, merely upon the notion that it would be for the benefit of the infant.

But where a testator had given all his real and personal estate to devisees in trust for certain purposes, and with the consent of an annuitant (his wife), to sell and dispose, and after her decease on their own authority to sell and dispose of all or any part thereof, and to invest the proceeds upon the trusts of the will, and the devisees in trust had renounced probate and disclaimed:

Held, that the Court had jurisdiction to direct a sale of such real and personal estate on bill filed by the infants, taking interests under the testator's will to carry the trusts of the will into execution.

And a purchaser of a portion of the real estate under the decree of the Court,

Held liable to complete his purchase.

This was a motion by a purchaser under a decree for sale in the cause, to be discharged from his purchase of lot 26, on the ground that there was no jurisdiction in the Court to order the estate to be sold, and that thereby there was an alleged defect of title.

Charles Harwood by his will, dated the 7th of July 1841, gave all his real and personal property to Richard Knight and Thomas Burlton, their heirs, executors, &c. upon trust, out of the rents and profits of his said estate and effects, to pay an annuity to his wife for life, and subject to and charged with such annuity, upon trust to convey and assign, or transfer all his said freehold, leasehold, and other estate and effects unto and equally between his eight children (naming them), when and as they severally attained the age of twenty-one years; and in the meantime with certain trusts for the maintenance, education, and advancement of the children; and the will contained the following power:—"Provided also, and I do further declare and direct, that it shall be lawful for the trustees or trustee for the time being, of this my will, at any time or times, with the consent of my said wife, in writing, during her life, and after her decease, of their or his own authority, to sell or dispose of all or any part of my said freehold, leasehold, or other estate or effects, either by public sale or private contract, and to convey and assign the same when sold to the purchaser or purchasers thereof, and to invest the moneys to arise therefrom, and stand possessed thereof, and of the dividends, interest, and proceeds to arise therefrom upon the trusts aforesaid, or as near thereto as may be."

The will then provided for the appointment of new trustees, and for the indemnity of the trustees and executors, and it concluded by appointing Mrs. Harwood and the trustees executrix and executors thereof.

The testator died on the 9th of July 1841. His widow alone proved the will. Knight and Burlton, the executors and devisees in trust, renounced probate, and disclaimed the trusts of the will.

No new trustees had been appointed under the power for that purpose in the will. The bill was filed by the testator's children, all of whom were then infants, as some of them were now.

A decree had been made directing the usual accounts and other references, and subsequently a decretal order had been made referring it to the Master to inquire if it would be for the benefit of the infants that the real estate should be sold, and if so, to proceed to a sale. The Master having found that it would be for their benefit, a sale had been proceeded with in the usual way, and the party now moving had been declared a purchaser of one of the lots at such sale.

W. P. Jolliffe, in support of the motion to discharge the purchaser from his purchase, relied mainly on *Calvert* v. *Godfrey*, 6 Beav. 97, as deciding that the Court had no authority to convert or sell an infant's estate upon the idea that such sale would be for the benefit of such infant, and that consequently no complete title to the land could be made to him, the purchaser. That the devisees in trust having disclaimed, the Court would not carry out a mere discretionary trust.

Craig and *Pownall*, contrà, contended that the present case was dissimilar in its circumstances from *Calvert* v. *Godfrey*. In that case the owner of the estate ordered by the Court to be sold, had died intestate, and consequently no power of sale could have been given. Here, on the contrary, the testator had himself provided for a sale under certain circumstances.

Jolliffe in reply.

The VICE-CHANCELLOR said, he did not think *Calvert* v. *Godfrey* governed this case. In the propriety of that decision he quite acquiesced. Here no trustees had been appointed in the room of those who had disclaimed. Now supposing those trustees had not disclaimed, but conceiving as they might have done, there were other difficulties in the case, and had come to this Court to carry out the trusts of the will under the decree of the Court,—could it be said that the Court then would not have had jurisdiction to refer it to the Master to report if a sale would be beneficial, and if so, to proceed to a sale? He thought not; here there was by the testator's will a proviso for a sale; and he (the Vice-Chancellor) thought there was nothing to prevent the Court from executing the trust, the trustees of the testator having disclaimed, and no others appointed in their room. He considered it a general rule that where trustees refused to accept the trusts, the Court would see that those trusts were properly carried into effect. Here the testator had ordered that the nature of the property might be converted, if in the exercise of a proper discretion. He thought the purchaser would be quite safe in accepting the title.

No order on motion. The purchase-money to be paid into Court.

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Friday, July 16.

Re BANGLEY'S Trust,(a) and *Re* 10 & 11 Vict. c. 96 (Trustee Relief Act).

Trustee Relief Act—Practice—Costs.

Where a trust fund has been paid into court under the Trustee Relief Act, the costs of an application by the tenant for life for payment of the dividends to her ought not to come out of the corpus of the fund.

In this case a sum of 6,000*l.* Consols, which, by the will of a Mr. George Bangley, was given to trustees, upon trust for a Mrs. King for life, for her separate use, and after her death, and in default of children, in trust for three charitable institutions, had been paid into court, under the Trustee Relief Act, by the sole surviving trustee.

The trustee and the tenant for life now petitioned for the payment to the tenant for life of the dividends of the trust fund during her life, and that the costs of the petition might be paid out of the corpus of the fund.

There were no children of the marriage, and the charities had not been served with the petition.

Goren, for the petitioners, cited, as to costs, *Ross's Trust*, 15 Jur. 241, V.C. Lord Cranworth, and *Re Field's Settlement*, Rolls, 11 June, 1852, 19 Law T. 253, in both of which cases the costs of an application such as the present had been ordered to be paid out of the corpus of the fund, and asked that if necessary the petition might stand over so as to enable the charities to be served.

The VICE-CHANCELLOR said,—Even if the parties entitled in remainder were here I should not make the order asked for. There is a difference of opinion as to the practice to be adopted in these cases; I conferred, not long ago, with the other equity judges on this very point, and there is not, I regret to say, an unanimity of opinion on the subject. Until the practice is settled, I shall act upon my own view of what is right. I do not think it right that the parties entitled in remainder should bear the expense of an application which is solely for the benefit of the tenant for life. This application does not in any way relate to the corpus, but is for the sole benefit of the tenant for life. I do not think that the analogy drawn in the case of *Ross's Trust* between the costs of such applications as the present and the costs of an administration suit is a sound one. The costs of paying the fund into court, and the costs of all applications which have reference to the corpus, are properly payable out of the corpus, in the same manner as the costs of ascertaining and realising the fund in an administration suit are payable out of the estate. Such applications as the present are, however, more analagous to applications by parties entitled to specific funds after they have been carried over to a separate account, in which case the costs of an

(a) See *Re Lorimer*, 12 Beav. 531; *Re Fletcher*, 619, V.C. Knight Bruce; and contrà, *Re Stapler's* [illegible] *ment*, 15 Jur. [illegible]

cation by a tenant for life of any one such specific fund would have to be paid by such tenant for life, and would not be payable out of the corpus of the fund, and I think I must follow the same rule in this case.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

Friday, June 18.

MACKENZIE v. THE SLIGO AND SHANNON RAILWAY COMPANY.

Joint-stock Company—Winding-up Acts—Order for dissolution, effect of—Suspension of right to sue until proof of debt before the Master—Pleas in bar.

To an action against an incorporated railway company commenced after the passing of 12 & 13 Vict. c. 108, and before the passing of 13 & 14 Vict. c. 83, the defendants pleaded in bar—1st, that the Lord Chancellor had made an order for the dissolution of the company under 11 & 12 Vict. c. 45, and before the passing of 12 & 13 Vict. c. 108: 2ndly, that an official manager had been appointed, that no permission had been given by the Master to commence or proceed with the action, nor had the plaintiff proved his debt before the Master:

Held, upon demurrer, that both parties were bad—1st, because the order of dissolution alone did not take away the right of action; and 2ndly, because the appointment of the official manager only suspended the right of action until the plaintiff had proved his debt before the Master, and only entitled the defendant to an order for a stay of proceedings until that had been done.

Declaration in debt upon an award. The writ was issued on 8th March, 1850. 4th plea. That defendants were incorporated by Act of Parliament in August 1846; that on the 10th April, 1849, a petition was presented for the dissolution of the company under the Winding-up Act (11 & 12 Vict. c. 45), and an order made by the Lord Chancellor for its dissolution on the 17th May, 1849.

5th plea. That on the 2nd June, 1849, before the commencement of the action, an official manager was appointed; that no permission had been given by the Master to commence or proceed with this action; and that the plaintiff had not proved or exhibited or made any proof of his debt before the Master.

Demurrer to both pleas.

Tuesday, June 1.—Raymond in support of the demurrer. The stat. 11 & 12 Vict. c. 45, did not apply to railway companies incorporated by Act of Parliament; and the Amendment Act 12 & 13 Vict. c. 108, makes the intention of the Legislature upon that subject quite clear.

Wordsworth, contrà, referred to sec. 30 of 13 & 14 Vict. c. 83, as giving validity to all proceedings which had taken place under any previous order of dissolution.

Raymond.—That only gives validity to the proceedings from the day on which that Act passed, viz. August, 1850; and therefore, when this action was brought the plaintiff could not prove his debt before the Master. Supposing, however, that the Winding-up Act of 1848 applies to this case, still the pleas are bad. The fourth plea is no answer to the action, because it clearly was not the intention of the Legislature that the winding-up order should at once put an end to all the liabilities of the company. (He referred to secs. 50, 52, 53, 58, 70, and 73, as shewing that the continuance of actions, notwithstanding the order, was contemplated.) Nor is the fifth plea an answer to the action. It is founded upon sec. 73 of 11 & 12 Vict. c. 45, which provides that after the appointment of an official manager no creditor shall, except so far as the Master shall permit, have power to commence or proceed with any action until after proof, or exhibiting such proof as he may be able of his debt before the Master; and that it shall be lawful for a judge, upon summons, to order a stay of proceedings until after such proof. The effect, therefore, is only to suspend the action; and the remedy given is a stay of proceedings by order of a judge. It would be strange if this could be pleaded in bar to the action, which was commenced at a time when, by the 12 & 13 Vict. c. 108, the proceedings before the Master had been stopped altogether. (*Hitchcock* v. *May*, 6 Ad. & E. 943; *Edwards* v. *Sherren*, 11 Mee. & W. 595.) [Lord CAMPBELL, C.J.—The very scope and object of the stat. 13 & 14 Vict. c. 83, is retrospective. COLERIDGE, J.—It takes up the previous proceedings as valid, and says that they may be proceeded with. Then if the proceedings under the Winding-up Act are valid, do they not prevent such an action as this?] No; the defendant ought to apply to a judge for an order staying the proceedings until proof. *Moon* v. *Durden*, 2 Ex. Rep. 22; and *Marsh* v. *Higgins*, 19 L.J. 297, C.P. are strong authorities against construing Acts of Parliament so as to deprive parties of vested rights.

Wordsworth, contrà.—Sec. 30 of 13 & 14 Vict. c. 83, is quite conclusive as to the validity of the proceedings under the Winding-up Act. (*Ex parte Barber*, 1 McN. & G. 176.) And that being so, the plaintiff is prohibited from commencing as well as from proceeding with any action previously commenced. (*Prescott* v. *Hadow*, 5 Ex. Rep. 726; *Macgregor* v. *Keily*, 4 Ex. Rep. 801; *Thompson* v. *The Universal Salvage Company*, 3 Ex. Rep. 310.) In this case the official manager was appointed before the commencement of the action.

Raymond, in reply. *Cur. adv. vult.*

JUDGMENT.

Lord CAMPBELL, C.J. now delivered the judgment of the Court.(a)—In this case, upon a demurrer to the fourth plea in bar of the action, the question has been raised whether the dissolution of the company under the Joint-Stock Companies Winding-up Act, 11 & 12 Vict. was a bar to the action. And upon the demurrer to the fifth plea, the question is raised, under sec. 73 of the same Act, whether the action—no proof of the debt having been made or exhibited before the Master—was wrong. We are of opinion that there ought to be judgment for the plaintiff on both these demurrers, the pleas being bad. There is no provision in the statute taking away the common law remedy for a debt, on dissolution under the statute; on the contrary, by sec. 58 it is enacted that nothing in the Act shall alter or affect the rights and remedies of creditors; and, with respect to prohibiting any action after an order for dissolution until proof before the Master under sec. 73, it is clear that no bar to the action is created, but a suspension until proof is made of the debt; after which the creditor is at liberty to proceed with the action, as was decided in *Prescott* v. *Hadow*, 5 Ex. 730. All that the 73rd section provides is a power, whereby there may be a suspension of the action until after proof, by application for an order to stay proceedings. Full effect is given to all the other parts of the section by holding that the action may be stayed by order until after proof, but is not barred altogether. Therefore, judgment will be for the plaintiff.

Judgment for the plaintiff.

REG. v. THE INHABITANTS OF LONGWOOD.

Poor-rate—Waterworks for district of two town ships—Reservoirs and apparatus in each—Restrictions on supply and charge—Commissioners' rate for one township.

Upon appeal by Commissioners of Waterworks, created and carried on under two Local Acts, for the purpose, under certain restriction of price, of supplying with water the townships of L and H. against a rate for the relief of the poor of L. made on them in respect of their occupation of the waterworks in L: the Sessions found that the sum of 190l. was the rateable value per annum of all the reservoirs, pipes, and other apparatus of the company in L. taken in connection with and as part of the entire waterworks in L. and H and that the amount was made up of the sum of 300l. being the net annual value which the Sessions assigned to the reservoirs, and the sum of 190l. being the net annual value of the pipes and other apparatus in L. as shewn by the appellants and found by the Sessions. 2. That if the whole works in L. ought to be assessed at their intrinsic value in that township, and with reference to the profit that could be derived from them in L. alone, without taking into account their connection with the works in H. their net rateable value ought to stand at 150l. and no more. 3. That a yearly tenant of the entire waterworks, if relieved from the restrictions contained in the commissioners' Acts of Parliament, and able to exercise his discretion as to the amount of waterworks and rates, might calculate with reasonable certainty on a gross revenue of 3,000l. from the works, and that, after deducting the sum of 800l which the Sessions considered to be the fair average of the current annual expenses allowable under the circumstances: and the sum of 1,100l which was proved and admitted by the respondents to be a proper annual deduction in respect of repairs, renovations, and tenant's profits; the residue of the 1,100l. represents the net rateable value per annum of the entire works. 4. That if such yearly tenant is to be considered as subject to the restrictions in the Act, he could make no profit at all by his tenancy. The statutable restrictions were to furnish water gratuitously in case of fire, and for use on the highway; 10,000 gallons for watering the streets; and to the consumers at certain specified rates, so calculated that the amount of the water-rents in any one year should not, after payment of the annual expenses, exceed 7½ per cent. upon the amount of the debt which should be owing by the commissioner in respect of the waterworks:

Held, per Coleridge, J. that the rent ought to stand at 490l. which must be taken to be the proportion of the sum of 1,100l. mentioned in the third finding as representing the net rateable value per annum of the entire works, apportioned by the Session to L. on the principle mentioned in the third finding.

Held, by Wightman and Compton, JJ. that the case suggested by the Sessions of a tenant entitled to charge any rate he might please for water, did not furnish a criterion for the amount of the rate in respect of property of this peculiar description, but that as the sum of 490l. was the estimated net rateable value per annum of all the reservoirs, &c. in L. in connection with and as part of the entire works in L. and H. it was the proper amount of the rate.

Upon hearing the appeal of the Commissioners of the Huddersfield Waterworks against a rate or assessment made for the relief of the poor of the township of Longwood, in the said riding, allowed on the 30th of March, 1850, it was ordered that the said rate appealed against be amended by reducing the assessment upon the said appellants to the sum of 490l. as the net rateable value of the reservoir, banks, pipes, lands, and hereditaments in the said town of Longwood, and that the difference between that sum and the sum paid by the appellants upon such assessment be refunded, subject to the opinion of the Court of Q. B. upon the following

CASE.

On an appeal by the Commissioners of the Huddersfield Waterworks against a rate made on or about the 30th of March, 1850, for the relief of the poor of the township of Longwood, in the West Riding of Yorkshire, in which the said commissioners were rated at the sum of 1,010l. for and in respect of certain reservoirs, banks, pipes, lands, and hereditaments, situate in the said township of Longwood, the sessions held at Pontefract, in the said riding, in April, 1851, allowed the appeal, and reduced the rate to 490l. subject to the opinion of this Court.

The said commissioners are occupiers of the abovementioned lands and hereditaments, upon part of which the said reservoirs and pipes are constructed and laid. The commissioners purchased the said lands, and constructed the said reservoirs and pipes under and by virtue of an Act of Parliament passed in the seventh and eighth years of the reign of Geo. 4, intituled "An Act for supplying with Water the Town and Neighbourhood of Huddersfield, in the West Riding of the County of York." This Act, and also another Act passed in the eighth and ninth years of the reign of her present Majesty Queen Victoria, intituled "An Act to alter, enlarge, and amend an Act for supplying with Water the Town and Neighbourhood of Huddersfield, in the West Riding of the County of York," accompanied this case, and was considered to form part of it.

The following facts were found by the Sessions:—After the passing of the 7 & 8 Geo. 4, and before the passing of the said Act of the 8 & 9 Vict. two reservoirs, one for the supply of water to the town of Huddersfield, and the other as a compensation-reservoir to prevent injury to certain owners and occupiers of mills in Longwood, were constructed on part of the lands in Longwood so purchased and occupied by the said commissioners, of the dimensions, in the manner, under the powers and provisions, and subject to the conditions and restrictions contained in the 7 & 8 Geo. 4, and which two reservoirs have respectively been used ever since their construction, until the passing of the above-mentioned Act of 8 & 9 Vict. in the manner and subject to the conditions and restrictions, and in strict conformity with the powers mentioned and contained in the said stat. of 7 & 8 Geo. 4. And since the passing of the Act 8 & 9 Vict. the commissioners have constructed another reservoir in Longwood, and also occupied the same in manner and subject to the conditions and restrictions, and in strict conformity with the powers mentioned and contained in both the abovementioned statutes, as far as the same are respectively applicable. The commissioners appointed under the above Acts have borrowed, under the powers thereby given to them, money amounting to 20,000l. and have laid down pipes and other conveniences in Longwood for conveying water to the township of Huddersfield, by means of which a constant and ample supply of water has been and is provided under the said Acts to the said township of Huddersfield. The commissioners have received the rents, which by their said Acts they have been from time to time entitled to demand, for such supply of water to the said township of Huddersfield; and the commissioners have, from time to time, applied rents so received to the purposes of the said Acts; and the said water-rents have been reduced by the commissioners to one-half the amount which was originally charged by them for such supply of water, by authority of the said Acts, to the said township of Huddersfield. The compensation clauses which were inserted in the said Acts to prevent injury to individual owners and occupiers

(a) Lord Campbell, C.J. and Coleridge and Erle, JJ.

of mills in Longwood have been strictly observed and fulfilled by the commissioners, and the compensation reservoir has been made by them as aforesaid for the exclusive use of the said owners and occupiers of mill property in Longwood, and has been used by them accordingly, on part of the land for the occupation of which the commissioners are now rated, by which the said mill property and the said mill-owners have been protected from injury. The said mill-owners obtaining water or deriving benefit from the said compensation reservoir, do not pay, nor have they ever paid, any rent or consideration in money or otherwise to the said commissioners; every thing required to be done, observed, or performed by the said commissioners by the above Acts of Parliament, or either of them, either for the reservation of the rights of the inhabitants of Longwood, or other parties mentioned in the said Acts, or either of them, or for any other purpose whatever, has been done, observed, and performed by the said commissioners. The works bring no water to Longwood, but they detain water in that township in winter, and the supply of water in that township in winter and the supply of water to Longwood has not been interrupted since the passing of the above Acts, or of either of them. The said owners of mill property in Longwood have been benefited by the works made under the said Acts. The Session also found —1st. That the above sum of 490*l*. is the estimated net rateable value per annum of all the reservoirs, pipes, and other apparatus of the company in Longwood, taken in connection and as part of the entire waterworks in Longwood and Huddersfield, and that the amount is made up of the sum of 300*l*. being the net annual value which the Sessions assigned to the reservoirs, and the sum of 190*l*. being the net annual value of the pipes and other apparatus in Longwood, as shewn by the appellants and found by the Sessions. 2nd. That if the whole works in Longwood ought to be assessed at their intrinsic value in that township, and with reference to the profit that could be derived from them in Longwood alone, without taking into account their connection with the works in Huddersfield, then their net rateable value ought to stand at 150*l*. and no more. 3rd. That a yearly tenant of the entire waterworks, if released from the restrictions contained in the commissioners' Acts of Parliament, and able to exercise his discretion as to the amount of water rents and rates, might calculate with reasonable certainty on a gross revenue of 3,000*l*. from the works, and that after deducting the sum of 800*l*. which the Sessions considered to be the fair average of the current annual expenses allowable under the circumstances, and the sum of 1,100*l*. which was proved and admitted by the respondents to be a proper annual deduction in respect of repairs, renovations, and tenant's profits, the residue of 1,100*l*. represents the net rateable value per annum, of the entire works. 4th. That if such yearly tenant is to be considered as subject to the restrictions in the Act, he could make no profit at all by his tenancy. 5th. That the total outlay of the commissioners in Longwood has been 115-189th parts of the entire outlay, in the two townships. That the present actual value of the respective works in the two townships may be assumed for the purposes of this case to be equal. That the area occupied by the reservoirs and the apparatus (consisting of mains and pipes), in Longwood, is 28 acres and a quarter, out of which the reservoirs comprise 27 acres, and the apparatus one and a quarter acres; and the area occupied by the like apparatus in Huddersfield is seven acres. That the length of the apparatus of mains and pipes in Longwood is to the length of the like in Huddersfield, in the proportion of five to twenty-six, thence it follows that, if the total net annual value be apportioned in the ratio of the outlay, the rateable value of the whole works in Longwood will be 660*l*. and a fraction. If it be apportioned in the ratio of the actual value of the respective works in the two townships, the rateable value of the works in Longwood will be 550*l*. If it be apportioned in the ratio of the area or acreage occupied by the whole works, the rateable value of the works in Longwood will be 880*l*. and a fraction. 6th. If the reservoirs be rated separately at the value specified above, and deducted from the total net value of the entire works as found above, and the residue be apportioned in the ratio, either of area or the lengths of the apparatus in the respective townships, then the net rateable value of the whole works in Longwood will, on the first supposition, be 441*l*. and a fraction. If the Court of Q. B. should be of opinion that the rateable value of the property and works of said commissioners in Longwood should be fixed at either of the other sums so found by the Sessions as above mentioned, the said sum of 490*l*. is to be altered to such sum as this Court may decide to be such rateable value, and the judgment of the Sessions to be altered accordingly. If the Court of Q. B. should be of opinion that the sum of 490*l*. is the proper rateable value of the property and works of the said commissioners in Longwood, the judgment of the Sessions to stand confirmed.

Saturday, April 24.—*Pashley* Q.C. and *Overend,* in support of the order of session.

R. Hall and *Pickering,* contra.

The cases cited were *Re Longwood,* 13 Q. B. 125; *R.* v. *Kentmere,* 16 Jur. 205.

The argument sufficiently appears from the judgment. *Cur. adv vult.*

JUDGMENT.

Friday, June 18.—COLERIDGE, J.—In this case, argued before my brothers Wightman, Crompton, and myself, the question was, at what amount the Commissioners of the Huddersfield Waterworks ought to be rated for the relief of the poor in respect of certain reservoirs, banks, premises, lands, and hereditaments, situate in the said township, and the Sessions have found that 490*l*. is the estimated net rateable value of the premises above mentioned, taken in connection with, and as part of the entire waterworks in Longwood and Huddersfield. It was contended upon the argument for the respondents, that the rate must stand for the amount at which they are assessed, unless it could be shewn that they ought to stand higher, and it was contended that this was shewn in the following finding of the Sessions: "That a yearly tenant of the entire waterworks, if released from the restrictions contained in the Commissioner's Acts of Parliament, and able to exercise his discretion as to the amount of water-rents and rates, might calculate with reasonable certainty on a gross revenue of 3,000*l*. which, after making the proper annual deductions, will leave the sum of 1,100*l*. as the net rateable value per annum of the entire works." The Sessions having found that, the respondents insisted that, in order to shew the true rateable value, the tenants must be considered to be subject to the statutable restrictions, which are understood to be an obligation to furnish water gratuitously in case of fire, and for use of the highway; 10,000 gallons for watering the streets, and to the consumers at certain specified rates, so calculated "that the amount of the water-rents in any one year do not, after payment of the annual expenses, exceed 7½ per cent. upon the amount of the debt which shall be owing;" the effect of which would be, that when the debt was extinguished, the rents would be equal to the expenses. The cases mainly relied on, and from which the true principles are to be gathered, are *Reg.* v. *Longwood* and *Reg.* v. *Kentmere.* In the former case, which related to the same subject, and in which the preliminary facts were stated in the very same words that are now used, the only point decided was the rateability of the commissioners; but the Court came to their decision in this way,—"If private speculators," said they, "had invested capital for the supply of water at a profit, and had so become occupiers of the premises in question, in Longwood, they would have become rateable (*Reg.* v. *The Overseers of Mile-end Oldtown*), and the money paid for the rate would be part of the costs of the supply, and would fall on the consumer. The private Acts enable a portion of the inhabitants, by commissioners, to obtain the supply without the intervention of a water company; but, as far as respects the rights of other townships, this portion of the inhabitants, by their commissioners, stand in the situation of an ordinary water company, and have no greater right to exempt from rateability a portion of land in Longwood, and so to obtain water at a less cost than such a company would have had." (13 Q.B. 125.) The Court, therefore, arrived at the conclusion, that the commissioners were rateable, by considering them as the representatives or trustees for and as identical in interest with a certain portion of the inhabitants of Huddersfield, and not merely as public officers acting for the public, and having no interest but as members of the public. In *Reg.* v. *Kentmere* this view was adopted, and the rateability of the commissioners was there established. These cases appear to me to have been decided with great propriety, and I think that they ought to govern our decision upon the question immediately before us. It is contended that the measure of the rateability is the amount of rents the commissioners in fact receive from the consumers of the water, as they are restricted to that by the private Act, and consequently it must also be contended that, when all the outstanding incumbrances are paid off, and these rents are, under section 74, reduced so that the proceeds therefrom only cover the current expenses, there would then be left nothing on which they could be rated at all. This might be true if the commissioners were like a water company or body of speculators, separate in interest from the consumers, and being also occupiers of property which the Legislature had made wholly unproductive of profit to them; and whether that should be the result of inherent and natural causes, or the act of the Legislature, the same consequence might follow, the subject-matter of the rate would de facto have been limited in the first instance, and gradually cease to exist. The inhabitants of Longwood would have had reason to complain if a portion of the rateable property had been withdrawn from Huddersfield, but this is prevented by looking to the commissioners and the consumers as one body, as trustees and cestui que trust, as they were, and when so considered the compensation clause becomes no more than an agreement between themselves as to the terms on which the latter may enjoy the benefits which are derivable therefrom; these are the supply of water for the various purposes enumerated in the Act of Parliament, and these arrangements have no bearing whatever on the question of rateable value as between themselves and the inhabitants of Longwood. If some munificent person had provided funds to bear the whole expenses of the works so as that the commissioners should supply the water gratuitously to the consumers, it was not contended that thereby the occupation would cease to be beneficial, and the commissioners, for the water supplied to the consumers, would be rated as before. The Sessions found, that if a supposed yearly tenant was to be considered as subject to the restrictions in the Act, he could make no profit at all by his tenancy. That is true, for substantially he can only receive such a return from the consumers as would be equivalent to the expenses. This seems to shew that the restriction can have no bearing upon the question of the amount of the rate. It is then said we may discard that consideration and make the commissioners pay on the actual amount which they might, under other circumstances, receive. The answer is, in substance, that the commissioners are not the occupiers of the property rated, nor do the water-rents represent the rateable value of the land: the consumers are the occupiers really, and they are really rated, and they pay the rate, and the use and enjoyment of the water constitute the rateable value. Indeed, the Court has no difficulty, on the question raised by the third and fourth findings of the Sessions. As to the suggestion made, that the commissioners should pay as an ordinary water company would pay, subject to the ordinary restrictions of every water company, the answers seem to be, first, that they are not an ordinary water company, but an invention to avoid the necessity of a water company, and so to escape the payment of such prices as an ordinary water company would be required to pay; and, secondly, I am not aware that the law imposes or that the Court can take notice of any restrictions imposed on water companies; and for myself, I really do not find, nor does the case find, that they have. But when we come to determine the specific question whether the rate is to stand at 490*l*. or anything higher, I feel a difficulty. It is stated to be the estimated net rateable value per annum; if so, it is a rent taken on the principle stated in the third finding, for that 1,100*l*. is made to represent "the net rateable value per annum of the entire works." If 190*l*. be the proportion of the 1,100*l*. which the Sessions has attributed to Longwood, then 490*l*. is the right sum, and has been arrived at on the right principle, at least the whole sum of 1,100*l*. has clearly been arrived at on the right principle; whether the proportions of the two townships are or are not, we have no means of ascertaining; they are not calculated on the same facts. Still, with respect to Longwood, 490*l*. may be what the Sessions have stated it to be, the right proportion of the 1,100*l*.; and I think I am bound to assume that it is, and on this ground I am of opinion that the rate ought to stand at that sum. My brothers Wightman and Crompton have arrived at the same conclusion, although on somewhat different grounds. They do not think the case put by the Sessions, of a tenant who may charge any rates he pleases, can furnish a proper criterion for the amount of the rate in respect of property of this peculiar description, which can have no existence in the case of a tenant, without some legislative restriction being imposed upon him as to the amount of the rate; and they think that a fictitious and impossible value may be put on the land by supposing the case of a water company or a tenant able to put their own price on the water supplied. No such company or tenant can receive the powers necessary to carry on such an undertaking without some restriction as to the price of the water to be supplied. But being satisfied with the view suggested in the third finding of the Sessions, they concur with me in thinking that the rate must stand at 490*l*. the sum which was to be taken as the representative value per annum of the proportion of the entire works in Longwood, and the judgment of the Sessions will be confirmed.

Friday, June 18.

REG. v. THE INSOLVENT DEBTORS' COURT.

Insolvent—Re-hearing—Jurisdiction of Insolvent Debtors' Court in cases originally heard before a County Court Judge.

The Insolvent Debtors' Court has no jurisdiction to re-hear the case of an insolvent originally heard before a County Court judge.

Griffiths moved in last Trinity Term (a) for a rule for a mandamus to the Insolvent Debtors' Court to re-hear the case of an insolvent which had been originally heard before a County Court

(a) *Thursday, June* 3.—Before Lord Campbell, C.J., Coleridge, and Wightman, JJ.

judge. The application had been made to the Insolvent Court, and refused by that Court on the ground that it had no jurisdiction. He submitted that that Court had jurisdiction. The stat. 10 & 11 Vict. c. 102, s. 10, only substituted the judges of the County Court for the Insolvent Commissioners on Circuit; and the Commissioners on Circuit had no authority to grant a rehearing. The jurisdiction, therefore, of the Insolvent Debtors' Court in London, as to rehearing under sec. 96 of 1 & 2 Vict. c. 110, remains as before. (*Re Willcox*, 18 L. J. 241, Q.B. also reported in 13 Q. B. Rep.) *Cur. adv. vult.*

JUDGMENT.

Lord CAMPBELL, C.J. now delivered the judgment of the Court. Upon a motion for a mandamus to the Commissioners of the Court for the Relief of Insolvent Debtors, to hear an application for an order for rehearing the case of an insolvent under the 1 & 2 Vict. c. 110, s. 96, the question raised is whether, in respect of an insolvent heard before the judge of a County Court, and discharged by him under the stat. 10 & 11 Vict. c. 102, s. 10, the Court for the Relief of Insolvent Debtors has jurisdiction to make the order applied for. We are of opinion that this question must be answered in the negative. There is no provision expressly giving power to the Commissioners over cases heard by the judge of a County Court, and the provision in the 96th section of the former Act does not, in terms or in principle, apply to these cases; in terms it does not apply to County Courts, and in principle it was reasonable to vest the power of deciding on a re-hearing in a tribunal in which all, or at least one, of the judges was present who had presided over the former hearing. It would be inconvenient to require a tribunal to decide whether a judge had been deceived by false evidence or otherwise, without any power of communicating themselves with the judge on a matter that depended on what passed in his own mind. The rule must be refused, unless jurisdiction exists in the Insolvent Debtors' Court. It is not necessary to decide that the jurisdiction exists in any other tribunal; we forbear, therefore, to say more with respect to the powers of County Court judges than that the words of the section so conferring jurisdiction on them to hear, originally appear wide enough to comprehend a power of re-hearing, as we think that the words describing their powers do not bring them within the limits of the power formerly exercised by the commissioners themselves.

Rule refused.

April 29, May 4, and June 18.

STEWART *v.* THE ANGLO-CALIFORNIAN GOLD MINING COMPANY.

Joint-stock company—Deed of settlement — 7 & 8 Vict. c. 110, s. 51.

A scripholder in a joint-stock company did not execute the deed of settlement within three months from its date, although he had no notice of the clause of forfeiture therein for neglecting to do so, whereupon the board of directors, in pursuance of the clause, forfeited his shares. The clause did not expressly require any notice to be given to scripholders.

Held, that the shares were duly forfeited, and that in an action for refusing to allow the plaintiff to execute the deed of settlement, the plaintiff could not object that such clause of forfeiture was illegal, as being ultra vires.

Case.—The declaration stated that the defendants were a joint-stock company, completely registered and formed by a deed of settlement; that the plaintiff became entitled to 210 shares in the capital or joint-stock of the defendants, and that after complete registration of the said company, he, the plaintiff, being so entitled to the said shares, became and was entitled, by virtue of the 7 & 8 Vict. c. 110, to have made out by the defendants a certificate of the proprietorship of each of the before-mentioned shares, specifying therein, &c. [*the things required by sec. 51*], and to have such certificate, with the common seal of the defendants affixed thereto, delivered to him, the said plaintiff, on demand; that the plaintiff was ready and willing to execute the deed of settlement under which the defendants, as such company, were formed.

Averment of notice of the premises, and request by the plaintiff to permit him to execute the deed, and demand of a certificate of proprietorship of each of the before-mentioned shares.

Breach.—That the defendants, although a reasonable time had elapsed, would not suffer or permit the plaintiff to execute the deed of settlement; and that the defendants would not, on demand, or at any other time, cause a certificate of proprietorship of each of the before-mentioned shares to be delivered to the plaintiff, but refused so to do.

Pleas.—2. That the plaintiff did not become, nor was he entitled to the said shares in the said capital or joint stock of the defendants, in the declaration mentioned, modo et formâ.

3. That the plaintiff did not become, nor was he entitled under or by virtue of the 7 & 8 Vict. c. 110, to have made out by the defendants such certificate of the proprietorship of each of the said shares in the declaration mentioned, or to have such certificate, with the common seal of the defendants affixed thereto, delivered to him, the plaintiff, on demand, modo et formâ.

The case was tried before Lord Campbell, C.J. at the sitting after last Hilary Term.

The following was the clause of forfeiture in the deed of settlement:—That the share or shares of every subscriber who should not execute the deed of settlement within three months from the date thereof, should be forfeited if the board of directors thought fit, and the amount paid upon such share or shares should become the property of the company.

The defendants refused to permit the plaintiff to execute the deed, on the ground that the shares of the plaintiff had been forfeited by the board of directors, in conformity with the above clause; but the only notice of the provision of the deed was one sent to the plaintiff a day or so before the expiration of the three months. And in consequence of not having executed the deed, it was contended that the plaintiff was not entitled to the certificate of shares under sec. 51 of 7 and 8 Vict. c. 110. The jury gave a verdict for the plaintiff, finding that he had no reasonable notice from the defendants of the deed, requiring him to execute it within the period of three months from its date.

Bramwell, in Easter Term, obtained a rule nisi to set aside the verdict and enter it for the defendants on the second and third issues.

Thursday, April 29.—*E. James, Paterson*, and *J. Thompson*, shewed cause.—The points made were, 1. That the clause of forfeiture implied that the defendants were to give three months' notice to subscribers before the defendants could enforce it. 2. That there was no power to forfeit the shares if the subscribers did not sign the deed. 3. That the clause of forfeiture was ultra vires and void. 4. That the forfeiture should have been specially pleaded.

The plaintiff's counsel referred to ss. 7, 26, 38, and 51 of 7 and 8 Vict. c. 110, and cited *Banwell Iron Company* v. *Barnett*, 8 C B. 406; *Ashpitel* v. *Sercombe*, 5 Ex. 147; and *Vyse* v. *Wakefield*, 6 M. & W. 412.

Tuesday, May 4.—*Bramwell* and *Gray*, in support of the rule. 1. All subscribers are bound by the provisions of the deed of settlement when it has been executed by one-fourth of the subscribers at its date, and has been approved of by the registrar. 2. If the deed is not a proper deed, the remedy of a subscriber to the company is an action to recover the deposit paid, or perhaps an action for not preparing a proper deed; but there is no ground for an action for refusing to allow the plaintiff to sign the deed in this case. 3. The plaintiff was bound to inform himself of the contents of the deed at his own peril. 4. The plaintiff was not entitled to the certificate of shares by sec. 51, because not a shareholder within meaning of interpretation clause, not having executed the deed of settlement. (*Sparkes* v. *The London Waterworks Company*, 13 Ves. 428.)

Cur. adv. vult.

JUDGMENT.

Friday, June 18.—Lord CAMPBELL, C.J.—In this case a rule was granted on a point reserved, whether there was any evidence to prove that before the plaintiff requested that he might be permitted to execute the deed of settlement, his shares in the company were duly forfeited. If they were, the defendants are entitled to have the verdict entered for them on the issue on the second plea, that the plaintiff was not possessed of the shares. It appeared that this company was provisionally registered in August 1850; that the plaintiff obtained scrip certificates for shares in the company; that the deed of settlement was completed and executed by one-fourth of the shareholders on the 16th of August, 1851; that it contained a clause which authorised the directors to declare forfeited, the shares of any such scripholder who had not executed the deed within three months from its date; and after the expiration of three months from the date of the deed, and before the plaintiff requested that he might be permitted to execute the deed, the directors declared his shares forfeited; that he had no previous notice from the company to come in and sign the deed; that the company was completely registered in 1851, and afterwards the company refused leave to the plaintiff to execute the deed, on the ground that his shares were forfeited. It was contended before us that this clause of forfeiture was unreasonable and void, and that at any rate it could not be acted on as against a subscriber or scripholder till he had notice of it, and had afterwards refused or neglected to execute the deed. But, looking to the provisions of the 7 & 8 Vict. c. 110, and the nature of the undertakings which that statute was meant to regulate, we think the shares were duly forfeited. There is necessarily authority given by all the subscribers to obtain a certificate of complete registration; and it could not be completely registered unless it be formed by deed or writing, under the hands and seals of the shareholders, which must be signed by at least one-fourth of the persons who at the date of it had become subscribers. This deed must likewise be submitted to the registrar of joint-stock companies, that it may be seen by him to be conformable to the statute, and in other respects unexceptionable, and he must arrive at that before the certificate of complete registration is granted. We conceive that no subscriber can ask to be allowed to execute it, and at the same time object to its contents. In the case of *Wilkinson* v. *The Anglo-Californian Gold Mining Company*, 19 L. T. 181, we lately held that a subscriber could not partially execute the deed of settlement, excepting the clauses which he objects to. If he execute it absolutely, he must be bound by it, if, on its face, it is not against the law of the land. This is an action for not permitting the plaintiff to execute the deed, and the plaintiff must be supposed to have availed himself of his opportunities of becoming acquainted with its contents, and to have assented to it as it stands. If the deed contains anything contrary to the principles of law or in other respects is objectionable, the plaintiff might possibly recover back the sums he has paid for the scrip from the individuals who compose the company; but in an action against the company for not permitting him to execute the deed he cannot object to it as unreasonable. Then as to the want of notice, the evidence was that he had no notice till the day before the time expired, which the jury found not to be sufficient, and the case stands as if he had received no notice. But no notice is required to be given by the deed which confers upon the directors an absolute power to declare forfeited the shares of the subscribers who do not execute the deed within three months from its date. Therefore if the deed be valid no notice was required. In truth, the subscribers have ample means of becoming acquainted with the peril which they run of the shares being forfeited if they delay the execution of the deed. In this action no doubt the plaintiff's title to the shares, in the sense in which the word is used in declaration, could not be denied on the ground that he had not executed the deed, and therefore could not be a shareholder within the definition of the term laid down in the interpretation clause; but as the shares were duly forfeited the verdicts on the second issue will be entered for the defendants.

Rule absolute to enter the verdict for the defendants on the second issue.

EXCHEQUER CHAMBER.

Reported by JOHN THOMPSON, Esq. of the Inner Temple, Barrister-at-Law.

Reported by R. VAUGHAN WILLIAMS, Esq. of Lincoln's-inn, Barrister-at-Law.

Tuesday, May 11.

ERROR FROM THE COURT OF COMMON BENCH.

(Before ALDERSON and PLATT, BB. and COLERIDGE, WIGHTMAN, ERLE, and CROMPTON, JJ.)

HEATH *v.* UNWIN.

Patent—Infringement—Improvement upon a patent.

A composite substance includes its elements, and the use of the elements is a use of the composite, so as to be an infringement of a patent for the use of the composite substance:

The use of the elements of a composite substance, if in the process the composite is itself formed, is not the use of an equivalent for that substance, but the use of the substance itself.

H. took out a patent for certain improvements in the manufacture of iron and steel, and in his specification he claimed, fourthly, "the use of carburet of manganese in any process whereby iron is converted into cast steel;" and in the description of his process he said he proposed to make his improved steel by introducing into a crucible broken steel, or malleable iron, and carbonaceous matter, along with from one to three per cent. of their weight of carburet of manganese, and melting them together. It was afterwards discovered that the same result was produced at a much less expense by putting oxide of manganese and carbonaceous matter instead of carburet of manganese into the crucible with the iron. The defendant made use of this new process, and an action was brought against him for infringing the patent. It was proved at the trial that in this process the oxide of manganese and the carbonaceous matter first combined together, and formed a carburet of manganese, and that afterwards in the same process, but at a higher temperature, the carburet combined with the steel, and produced the desired result. The learned judge directed the jury that this was not evidence of an infringement:

Now held (dissentientibus, Alderson, B. and Coleridge, J.) that there was evidence of an infringement which ought to have been submitted to the jury:

That the patent was for the use of carburet of man-

ganese in the converting of iron into steel, and that the description of the modus operandi given by the patentee in his specification, was only one instance of how it might be used, and did not limit the patent; that the defendant's process was only a neater and cheaper modus operandi, and that in that process he had used the carburet of manganese, and had directly infringed the patent:

Held by Alderson, B. that in the specification the patentee claimed only the use of the carburet of manganese in the particular way described by him; that the oxide of manganese and carbonaceous matter not being, at the time of the patent, known to ordinarily skilful chemists as equivalents of carburet of manganese for all purposes, were not included in the specification; that even if the patentee knew that they were, his specification did not impart that knowledge to the public, and that the use of them, therefore, was a new discovery, and did not infringe the patent.

Held by Coleridge, J. that a specification to be perfect must specify directly or impliedly all the chemical equivalents of the chemical means expressly stated, and that the patentee cannot withhold the knowledge of one of two equivalents, as that might be for his own benefit at the expense of the public, that although, at the time of the patent, it was known what were the component parts of carburet of manganese, it not being known that the component parts applied in the manner they have been applied by the defendant were equivalents to the carburet itself applied according to the specification, such application of them was a new discovery, and an improvement upon, not an infringement of, the patent.

Quære, whether, supposing the defendant's process were an improvement upon the process of the patentee, a patent could be taken out for such improvement? See judgment of Crompton, J.

Case for the infringement of a patent for certain improvements in the manufacture of iron and steel. The defendant pleaded (inter alia) not guilty.

At the trial before Cresswell, J. at the Middlesex Sittings, on the 30th of November, 1850, it appeared that the patent in question was taken out by Mr. Heath, the plaintiff, since deceased, in the year 1839, and that by his specification he had declared the nature of his inventions to be as follows:—"First, the extraction of pure cast-iron from certain ores of that metal, without the intervention of any earthly alkaline or saline matter to form a vitreous flux, cinder, or slag; secondly, the formation of cast-steel, by fusing the said pure cast-iron along with malleable iron, or certain metallic oxides, in such proportion as may decarburate the cast-iron to a certain degree, and by completing the decarburation in a suitable cementing furnace; thirdly, the use of a certain portion of oxide of manganese in the process of converting cast-iron into malleable iron by the process of puddling; and, fourthly, the use of carburet of manganese in any process whereby iron is converted into cast-steel." And the plaintiff described the last process in these terms:—"Lastly, I propose to make an improved quality of cast-steel by introducing into a crucible bars of common blistered steel, broken as usual into fragments, or mixtures of cast and malleable iron, or malleable iron and carbonaceous matter, along with from one to three per cent. of their weight of carburet of manganese, and exposing the crucible to the proper heat for melting the materials, which are, when fluid, to be poured into an ingot mould in the usual manner; but I do not claim the use of any such mixture of cast and malleable iron, or malleable iron and carbonaceous matter, as any part of my invention, but only the use of carburet of manganese in any process for the conversion of iron into cast-steel." Before Heath's discovery in 1839, it was practically impossible to produce cast-steel capable of being welded with iron, except Swedish and some other iron of the very best quality, and the price of cutlery was consequently much enhanced, it being necessary to use in its manufacture shear steel, which is formed by an expensive process of manipulation under a forge hammer from bar steel (*i.e.* bar iron carbonised in a converting furnace), which contains a portion of earthy matter to be got rid of before shear steel is produced. It was therefore very desirable to form cast-steel capable of being welded with iron, and several attempts were made to effect this by the use of oxide of manganese. In order to form common bar steel, iron, mixed with carbonaceous matter, is melted in a crucible, and having thus absorbed a quantity of carbon, is run into bars. This is again formed into cast steel by being broken up and exposed to a very high heat, until it becomes liquid; being again run into bars, it is called cast-steel. Bar steel is sometimes called blistered steel, from the appearance it represents after the carbonizing process. It was thought that if oxide of manganese were placed in the crucible or earthen pot together with the bar or blistered steel, it would, upon fusion taking place, alloy itself with the steel, and form cast-steel, capable of being welded with iron; but, upon experiment, it was found that the oxide of manganese, having an affinity for the earthy matter of the pot, formed with it a kind of glass, and caused it to crack. Mr. Heath, by a series of experiments, discovered that carburet of manganese (which is the product of oxide of manganese and coal tar, or carbonaceous matter, exposed to an intense heat in a pot lined with charcoal) put into the pot with the blistered steel, did not cause the pot to break, but alloyed itself with the steel and formed a steel capable of being welded, and of a very superior quality to any before produced. Mr. Heath took out a patent for this, and for some time continued to manufacture carburet of manganese at a considerable expense for the purpose of producing welding steel in this way. It was afterwards, however, discovered, both by him and by the defendant, that if oxide of manganese and coal tar or carbonaceous matter were placed in the pot together with the steel, the same result would take place. The defendant availed himself of this, and at a much less cost produced the same quality of steel. Mr. Heath in the year 1843 brought an action against him for an infringement of his patent, on the ground that the oxide of manganese and the carbonaceous matter being put together with the steel into the pot first formed carburet of manganese, and in that state mixed with the steel, and that therefore this was a use of carburet of manganese in the conversion of iron into cast-steel, and an infringement of his patent. In this action, under the direction of Lord Abinger, he was nonsuited. In 1844, he commenced another action, which was tried before Parke, B. and at which scientific witnesses gave it as their opinion that the carbonaceous matter and the oxide of manganese would first form carburet of manganese, and that afterwards that would combine with the steel, and a verdict was found for the plaintiff, leave being reserved to the defendant to move to enter a verdict for him, on the plea of "not guilty." The case was fully argued afterwards before the Court of Ex. and Parke, B. delivered the judgment of the Court in favour of the defendant, in which it was held that the patent was obtained for the use of one peculiar combination of carbon and manganese, *i. e.* carburet of manganese, and for the use of it in that state, and that the defendant not having used that substance in the mode described in the specification, had clearly not directly infringed the plaintiff's patent; and, secondly, that he had not indirectly infringed the patent, inasmuch as it was quite clear that he never meant to use the carburet of manganese at all, he not knowing and there being no reason to think that prior to that investigation any one else knew, that that substance would be formed in a state of fusion, and inasmuch as it was a mere matter of speculative opinion (though after verdict it must be assumed to be a correct opinion) amongst men of science that it would, but was clearly not an ascertained and still less a well-known fact. And that there was, therefore, no intention to imitate the patented invention. And that the defendant could not be considered to be guilty of an indirect infringement, if he did not intend to imitate it at all. In 1850 the present action was tried, and Cresswell, J. directed the jury that there was no evidence against the defendant on the issue of not guilty, and that they must find a verdict for the defendant, he considering himself bound by the decision of the Court of Ex. A bill of exceptions was thereupon tendered, and a writ of error brought.

Sir *A. Cockburn*, Q.C. (with whom were *Bramwell*, Q.C. and *Webster*), for the plaintiff, after stating the facts as above, contended that the defendant in using the oxide of manganese with carbonaceous matter in the conversion of iron into steel, had infringed the plaintiff's patent. That in using the elements out of which the carburet of manganese was formed in the manner described by the scientific witnesses, he had, in fact, used the carburet itself, and had thereby infringed the patent. That the compound includes the elements, and by mentioning the compound in the specification the patentee implicitly mentioned the elements.

T. Jones (with whom was *Deighton*) for the defendant, argued that there was no evidence of an infringement. It is a matter of speculation, a mere theory that the carburet is first formed, and then unites with the steel, and this is not sufficient to support a verdict of guilty. Even if the jury had found that the theory was a fact, the law would not recognise such an infringement, as it rests only in opinion, and as there may be a difference of opinion. The law will not recognise an act as wrongful unless it is clearly so in its essence and nature. [ALDERSON, B.—Suppose, when all three substances are brought together, from the two being acted upon first by a lower heat a carburet is formed, and then in the same process, but at a greater heat, the combination of the carburet with the other, and that this result takes place, is that an improvement, or is it an infringement—the forming of carburet of manganese itself being an expensive process?] It is an improvement, and was not known at the time of the patent being taken out. The strength of the defendant's case is that mentioned by Baron Alderson. The plaintiff must make out that the formation of the carburet in the manner described is an established recognised fact. The use of the carburet of manganese, in a separate and distinct state, is that which is really patented, and the patent is confined to the use of it as a distinct substance. We do not use it as a distinct substance. We use the oxide of manganese and carbonaceous matter which has the same effect, and that it has the same effect is a new discovery, the use of the carbonaceous matter with the oxide of manganese in the way we use it was not known. Heath's carburet of manganese costs 780*l.* a ton. What we use costs 7*l.* a ton. If he had known of it he would have used it. If he knew it and suppressed the knowledge, his patent would be void. [ALDERSON, B.—Was it known that the three substances being heated together in the pot two would first form the carburet of manganese?] No. And that, namely the modus operandi, is the very point in question. (*Barber* v. *Grace*, 17 L. J. Ex. 122.) The Lord Chief Baron, in his judgment in that case, says, "cylinders were never dreamt of," so here this process was never dreamt of. This steel, moreover, can be made without carbonaceous matter. [Sir *A. Cockburn*.—No. The carbon is got out of the highly carbonized steel.] Then we must not use highly carbonized steel because carburet of manganese may be formed.

Sir *A. Cockburn*, in reply.—The only question is whether the defendant has used carburet of manganese in his process; whether he intended to use it, or knew that he was using it, has nothing to do with the matter. There was evidence to go to the jury; for the scientific witnesses shewed clearly that the carburet would be formed. A patentee may not know to what extent his discovery may be carried, but if a discovery cheapening his process is made, the inventor must make his terms with him. His discovery is the foundation, and the other has only built a superstructure upon it. I submit that, at all events, the question ought to go to a jury.

Cur. adv. vult.

Monday, June 21.—There being a difference of opinion, their lordships delivered their judgments seriatim.

JUDGMENT.

CROMPTON, J.—This was an action for an infringement of a patent. The only question which is now material to be considered arose at the trial, on the plea of "Not guilty," and the learned judge who tried the cause directed the jury according to the decision of the Court of Ex. in a previous case between the same parties that there was no evidence of infringement. A bill of exceptions was tendered against this direction, and we have now to consider whether there was any evidence of infringement which ought to have been submitted to the jury. For present purposes we must assume that the invention patented was novel and useful, and the only question is, whether there was any evidence of infringement to go to the jury. It will be first necessary to see of what the invention consists. The patentee, after mentioning other inventions which are not material, declares his invention to be the use of carburet of manganese in any process whereby iron is converted into cast-steel. In the subsequent part of his specification he states what that operation is, as follows. [His lordship read the plaintiff's description of his process as above set out.] He states his claim with reference to this invention to be the employment of carburet of manganese in preparing an improved cast-steel. The two substances are to be placed together, forming (as proved by the evidence) alloy. This being the invention, one mode of carrying it out is particularised in that part of the specification in which the patentee specifies his modus operandi, and shews how he brings the two substances together by introducing them into the same crucible. It is important to distinguish between the invention and the particular mode of working it described in the patent. There may be other modes than that pointed out by the patentee of bringing the two substances together, which would, I apprehend, be an infringement of the patent if they involved the use of carburet of manganese in the process of the conversion of iron into cast-steel. The question is, whether, what the defendant was proved to have done, was not evidence of the use of carburet of manganese in the process of the conversion of iron into cast-steel, although the operation was carried on in an improved mode, different from that described in the specification, and originally adopted by the plaintiff. It appeared from the evidence that the plaintiff had first worked his patent by preparing the carburet of manganese from coal tar and oxide of manganese, and by then using the carburet so prepared in the process of converting the iron into steel in the manner described in the specification. He afterwards found that the same advantage was attained by taking oxide of manganese and coal tar, and putting them into the crucible in which the steel was melted; and witnesses in the employ of the plaintiff stated that he discovered that

the using the carburet in the way I have described would answer the same purpose as making the carburet first. Strong evidence was given by several scientific witnesses that when the coal tar and the oxide of manganese were put into the crucible, a carburet of manganese was formed from them before the melting of the steel. They said the carburet of manganese would be first formed, and would immediately alloy itself with the steel, and that the carburet would be formed at a lower temperature than that at which steel was melted, and they said in this way, when the carburet of manganese was employed in the manufacture of steel, it was an improved process. It appeared that the plaintiff had been in the habit of making up coal tar and manganese into packets to be used in the new method. Some of these packets had been supplied by him to the defendant. The defendant was admitted to have manufactured cast-steel, by using the oxide of manganese and carbonaceous matter introduced into the pot at the same moment with the steel. I think that this was evidence of using carburet of manganese in the process of converting iron into steel, and was evidence of a distinct infringement of the patent. It was a neater mode of carrying out the invention by making the carburet in the crucible instead of preparing it out of the crucible and then introducing the carburet and iron into the crucible together, and in both operations the two substances are brought together and the alloy is formed. The question does not seem to me to be one of imitation or of equivalent, but whether there is not evidence of the direct use of the carburet for the purpose of manufacture, though in a neater mode than that described in the specification. I do not agree with the suggestion that the invention was the putting the two substances in the crucible together in the exact manner pointed out by the plaintiff, but I think that the discovery claimed is the use of the carburet in the manufacture, and that it is not limited to the mode of working mentioned in the specification, which I think the plaintiff gives merely as a means of working his invention. The discovery of the new mode of making the carburet in the pot in the course of the process so as to be ready to alloy with the steel in a subsequent part of the process may have been a discovery and an improvement on the plaintiff's invention, for which a patent might perhaps have been taken out, and if taken out by a stranger the plaintiff could not have used the new method without infringing the patent for the improvement. On the other hand the new method could not in such case have been carried on without infringing the plaintiff's patent, if, as I think, it was an improved and neater mode of bringing the two substances together, being a use of carburet in the state of carburet in the manufacture of steel. I do not attribute any weight to the fact of the plaintiff himself being the discoverer of the new mode, or of the defendant having had it communicated to him by the plaintiff. However much these facts might affect the moral justice of the case, they do not seem to me to alter the law. If the new plan was a distinct invention, the defendant might have used it, whoever was the inventor. If, on the other hand, it was the use of carburet in the process of manufacture, it would be an infringement of the plaintiff's patent, even if the defendant himself had invented the improvement. I think there was abundant evidence from which the jury might infer that in the new method the carburet was first formed in the crucible from the materials so as to be in the distinct state of carburet before the user of it in the manufacture of steel commenced, and that after its formation it was used as a carburet of manganese in the process of converting the iron into steel, and I think that from such state of facts it was competent for the jury to find that the patent had been infringed by the defendant. I think that the judgment should be reversed and the venire de novo awarded.

Platt, B. This was an action on the case charging the defendant with an infringement of the plaintiff's patent, and on the issue joined on the plea of not guilty, the learned judge directed the jury at the trial that the matters deposed to by the plaintiff's witnesses were not evidence of that infringement. The plaintiff having excepted to that direction, and brought his writ of error, the question arises whether, on the matter adduced in support of the plaintiff's case on the trial, there was such evidence. It appeared that the plaintiff's patent was for an improvement in the manufacture of steel, by the use of carburet of manganese, in the process of converting iron into that metal. By the specification he claimed as part of his invention the use of carburet of manganese in any process whereby iron was converted into cast steel; and he describes the mode by which he obtained fine cast steel from simple iron, by the use of carburet of manganese. It was admitted at the trial between the plaintiff and the defendant, that since the date of the patent the defendant had manufactured cast steel by using oxide of manganese and carbonaceous matter, introduced into the melting-pot at the same moment with the steel,—the three ingredients, oxide of manganese, carbonaceous matter, and steel, being, however, separate and apart, and not in combination with either of the others. It is also admitted, that since the date of the patent, the defendant had manufactured cast-steel, by using only, I think, oxide of manganese and highly carbonised steel, introduced separately into the pot at the same time; and the testimony of chemists at the trial tended to shew that in each of these two processes carburet of manganese would be formed, and would become the active means of effecting the improved manufacture. Surely, whether the carburet or its constituent parts separately are put into the melting-pot, could not make any difference if those parts afterwards combined, and in their combined state acted in the same manner on the subject of the manufacture. By the defendant's selection of substances he put into the melting-pot, he collected together oxygen, carbon, and manganese. The relative affinities sufficed to lead to the natural expectation that they would, on the application of the proper heat, combine, and in that combination form the carburet required. This may constitute a different manner of manufacturing carburet of manganese, but however manufactured, if the defendant used it in the conversion of iron into cast-steel, he, in my judgment, infringed the patent. Whether the chemical testimony was credible or not, is not a matter for our consideration. We are required to consider and determine whether, coupled with the admissions on the trial, it was evidence, and evidence to be left to the jury, of the defendant having used carburet of manganese in the process for the conversion of iron into cast-steel. I think it was, that the ruling of the learned judge was incorrect, and that the venire de novo should be awarded.

Erle, J.—In this case the question is, whether there was any evidence of an infringement of the plaintiff's patent for the use of carburet of manganese in the process of converting iron into cast-steel, whether there is any evidence, and whether there was evidence that the defendant, by heating the elements of carburet of manganese with iron, formed, first, the carburet, and then cast-steel. If this be true, the defendant would, in my judgment, be guilty of a direct infringement. But assuming this to be doubtful, there was also evidence that he has indirectly infringed this patent for the use of a substance in a process by the use of a known chemical equivalent for that substance in that process. At the time of the patent the patentee made the carburet by heating the carbon and manganese till the carburet was formed, and then heated the carburet with the iron to form the cast-steel. He afterwards discovered that if the elements of the carburet were heated with the iron, the same result would be obtained and one heating would be saved. He communicated the effect of this discovery to the defendant, by selling to him a packet containing the elements of the carburet to be so used, and the patentee knew at the time of the patent the elements from which he formed the carburet, and from that knowledge was induced to use these elements as equivalent to the substance mentioned in the specification. There is thus some evidence that the defendant infringed the patent by the use of a chemical equivalent for the patented substance, which was known to be so at the time of the patent. But I am further of opinion, that a patent for the use of a substance in a process is infringed by the use of a chemical equivalent for that substance, known to be so at the time of the use, if used for the purpose of taking the benefit of the patent and of making a colourable variation therefrom. Taking the instance put in the argument in this case in the Exchequer, if the patent was for the use of soda in a process, and by a subsequent analysis sodium and oxygen were discovered to be the elements of soda, the use of sodium and oxygen in the patented process, for the purpose of being equivalent to soda in that process, would appear to me to be an infringement, although the analysis of soda was subsequent to the patent. On these grounds it appears to me that there ought to be a venire de novo.

Coleridge, J.—My brother Wightman being ill, has desired me to read his judgment.—"I cannot come to the conclusion that there was no evidence for the jury in this case, that the defendant in the action had infringed the plaintiff's patent, and if there is any evidence the plaintiff is entitled to judgment upon this bill of exceptions, and to a venire de novo. The action was on the case for infringing the plaintiff's patent for certain improvements in the manufacture of iron and steel. The defendant pleaded not guilty, and several other pleas, but the question arises on the plea of not guilty. The plaintiff in his specification declared that one of his improvements was in the use of carburet of manganese in any process whereby iron is converted into cast-steel, and he claims that as his invention. It appears by the evidence that the use of carburet of manganese in the manufacture of steel was unknown before the plaintiff's invention, and that it was a most important improvement; and by the specification the plaintiff states the mode in which he applied carburet of manganese to the iron or steel, but states expressly that all he claims as his invention is the use of the carburet in any process for the conversion of iron into cast-steel. It appears by the evidence that the carburet may be applied in three ways: one, by making the carburet first, and then introducing it into the melting-pot with the iron or steel to which it is to be applied, and this was the mode stated in the specification; another, by putting the ingredients which were to form the carburet into the pot at the same time with the iron or steel, in which case the carburet is formed in the pot before it acts on the iron or steel, and this was the mode adopted by the plaintiff subsequent to the patent and the specification; and, thirdly, by putting oxide of manganese into the pot with the steel so highly carbonised that, at a high temperature carburet of manganese would be formed, and produce the same effect on the steel as if either of the other processes was used. It was admitted that the defendant had adopted both of the last modes in using carburet of manganese in the manufacture of steel. In each of the three modes the same materials are used, and the same effect is produced by the same means, namely, by the action of the carburet of manganese on iron. The materials are the same in each—iron, manganese, and carbonaceous matter, which two latter must unite before they act upon the iron; and in all the three the union of the carbon and the manganese takes place before the united substance acts upon the iron. The mode adopted by the defendant is not by using chemical equivalents. The material combinations are the same as those of the plaintiff, with this difference, that his carburet is formed in the same pot in which the iron is, and that by the plaintiff's specification the carburet is formed before it is put into the pot, but in both the carburet must be formed before it can act upon the iron. By the mode adopted by the defendant, and which indeed the plaintiff of himself had adopted, one heating suffices for the whole process; whereas by the mode in this specification the oxide of manganese and carbon must first be converted into carburet by the action of one fire, and then there must be another fire to produce the action of the carburet on the iron. The plaintiff's patent, however, is not for the mode of preparing the carburet of manganese, but for the use of it in any process whereby iron is converted into cast steel. The process by which the defendant makes his carburet may be an improvement on that mentioned in the specification; but when made, he uses it for the same purpose, and with the same effect as the plaintiff. Both the plaintiff and the defendant operate on the iron and produce the same effect upon it by the same agent, namely, carburet of manganese, and it is for the operation of that agent on iron in the process of converting it into steel, that the plaintiff has taken out his patent. I think, therefore, there was evidence for the jury that the defendant had infringed the plaintiff's patent, and that there should be a venire de novo."

I have now to read my own judgment. The only question in this case is, whether there was any evidence for the jury of an infringement of the plaintiff's patent, and this must be considered on the assumption that the plaintiff's specification was unexceptionable—a condition which it will be found very important to bear in mind in the examination of the evidence. Limiting myself to all that is in question in the present case, I may state that the specification, to be perfect, must be taken to specify implicdly all the chemical equivalents of those chemical means expressly stated for producing the promised result, which were at the time of specifying known to ordinarily skilled chemists, or to the patentee himself. The latter of these seems to me to be as necessary as the former. If the inventor of an alleged discovery, knowing of two equivalent agents for effecting the end could by the disclosure of one preclude the public from the benefit of the other, he might for his own profit force upon the public an expensive and difficult process, keeping back the simple and cheap one, which would be directly contrary to the good faith required from every patentee in his communication with the public. Now the plaintiff thus describes the process which he claims: "I do it," says he, "by introducing into a crucible bars of steel broken into fragments, mixtures of cast and malleable iron, or malleable iron and carbonaceous matter, along with from one to three per cent. of their weight of carburet of manganese." He then declares that he does not claim the use of the mixture of cast and malleable iron, or malleable iron and carbonaceous matter, as any part of his invention, but only the use of carburet of manganese in any process whereby iron is converted into cast steel; and in the first enumeration of his claims he repeats: "I claim the employment of carburet of manganese in making and preparing an improved cast steel." This being the specification and the claim, it appears now, upon the evidence that the same result may be produced as certainly and far more cheaply by substituting for

the carburet of manganese oxide of manganese and coal tar, a carbonaceous matter, which being thrown into the crucible with the iron, affords a very strong ground for believing that carburet of manganese is formed before the iron is in a state of fusion, and before, therefore, any mixture of the two takes place. The difference is, that instead of the formed composite substance being thrown into the crucible in certain proportions to the iron and carbonaceous matter, the ingredients of such substance are introduced which in one and the same process, but in an earlier stage of it, form a composite substance, which then applies itself to the iron, and produces the desired result. There can be no doubt, I think, that an equivalent has been used. If that equivalent were known at the date of the specification to the plaintiff or ordinary chemists—those, I mean, who would bring to the reading of the specification such knowledge as must be presumed in those to whom the patent must be taken to be addressed—then it is within the specification, and the use of it is an infringement. If not, the contrary conclusion follows, and the use of it is an improvement in virtue of a new discovery, and the knowledge I speak of is of course not the knowing what were the component parts of carburet of manganese, but the knowing that the component parts thus applied were equivalents to the thing itself, applied according to the specification for producing the desired result. This limitation seems to me to be required by common sense and common justice. Unless it be imposed, I see no means of knowing whether the latter process is or is not within the specification, and unless I know that, I have no means of distinguishing improvement from infringement. Whether the equivalent be in its nature near to or remote from the thing itself, seems to me in principle wholly immaterial, and equally so that the one should be so nearly identical with the other as, that in themselves, the component parts may be of composite substances. The new conclusion may be deducible from known and specified premises, and in strict reasoning, therefore, involved in them; still, he who first puts the premises side by side, and deduces the conclusion, is the inventor. Many of the greatest and most unquestionable discoveries resolve themselves into no more than this. Having applied these principles to a careful examination of the evidence, I cannot perceive that there was anything to shew either that chemists or the plaintiff himself, at the date of the specification, had any knowledge of the equivalents which the defendant has used, although there is evidence that at a later period the defendant may have gained that knowledge from the plaintiff himself. I think, therefore, that the ruling of the learned judge at the trial was correct, and that the judgment ought to be affirmed.

ALDERSON, B.—The first question is, I think, what really is the invention described and claimed by the plaintiff in his specification. He describes the process thus:—"I do it," he says, "by introducing into a crucible bars of steel broken into fragments, mixtures of cast and malleable iron or malleable iron and carbonaceous matter, along with from one to three per cent. of their weight of carburet of manganese." And he adds that he claims the use of carburet of manganese in any process for the conversion of iron into steel. Now we are all aware that carburet of manganese was a well-known substance existing before the patent, and the specification describes it as being introduced into the crucible with steel or iron, and as it is to be introduced in a given proportion of weight with the steel or iron, I do not myself see how any language could more accurately express to those who read it that the patentee really meant to take two existing substances, to weigh them, to take their definite proportion of weight the one to the other, and then introducing those definite proportions of carburet of manganese and of steel into the crucible, to proceed

specified is this which I have described. But I fully agree also that according to the due administration of the patent law, every specification is to be read as if by persons acquainted with the general facts of the mechanical or chemical sciences involved in such invention. Thus if a particular mechanical process is specified, and there are for some parts of it as specified other well-known mechanical equivalents, the specification of those parts is in truth a specification of the well-known equivalents also to those whose general knowledge we refer to, namely, mechanics and readers of specifications. And so it is with chemical equivalents also in a specification which is to be read by chemists. But it may be that there are equivalents, mechanical or chemical, existing, but previously unknown to ordinarily skilful mechanics or chemists. These are not included in the specification, but must be expressly stated therein. These are, in fact, new discoveries in themselves, wholly independent of the specification, which omits them, and for these there is no specification or patent at all. They may be used by all persons without infringing the patent. These are the principles upon which I hold that this question must be determined, and which we must look to and be governed by when we answer the question here, whether there is any evidence of the infringement of this patent by the defendant, and I propose, therefore, referring myself to these principles to consider the evidence which has been given, and which is stated on this record. It is clear that there is no evidence here that the defendant melted carburet of manganese with the broken steel or iron, by taking each of those existing substances in a separate state, and putting them into a crucible, and then applying heat. He has not, therefore, directly, and in terms infringed the patent. But I have before shewn that an infringement may be if a defendant use a known chemical or mechanical substance, equivalent to the very thing pointed out, for the equivalent being known as a part of the general knowledge of the world, he who by his specification describes the ingredients which he uses describes impliedly also all their known equivalents, and so does, in fact, communicate to the world by his specification the knowledge of the invention, and on this knowledge thus expressly or impliedly communicated, he who afterwards infringes the patent really acts. But this depends upon the equivalent being a known equivalent before. If the equivalent be not before known, he who discovers de novo the equivalent, if it be better than the original for which it was the equivalent, has, by the use of the equivalent, improved upon, not infringed the original invention. That is the case here. Carburet of manganese is to be taken, and melted with broken steel or iron. This is the invention. An improved steel is the result. Now carburet of manganese is an expensive ingredient, produced by an additional process from oxide of manganese and carbon. There is no evidence that oxide of manganese and carbon were known to be at the time of the specification (which time and not the time of the use is the material time to look at) exactly and under all circumstances an equivalent in chemistry to carburet of manganese. They did produce it, but only after having been subjected to a special process, which was an expensive one; but it is now found that by putting these ingredients with the broken steel or iron into the crucible they produce the same effect when melted as the carburet of manganese with the broken steel or iron did before this fact existed, and a scientific reason is to be found for it. It is said now, therefore, that these ingredients melted together at a lower heat than will melt steel or iron do in the crucible first form carburet of manganese, and then, secondly, there being the carburet of manganese formed and existing in the crucible with unmelted steel or iron, the subsequent melting of these two substances together forms the good steel. It seems clear, therefore, that this order of formation in the crucible is of the essence as to the success of the operation, and that this order of formation under these circumstances was utterly unknown at the time of the patent and specification. I agree that there is now abundant evidence to shew that these materials thus treated do thus form, and form in succession an equivalent chemically for the carburet of manganese, although the evidence even now fails altogether as to the existence of the two substances in definite proportions in the crucible, such as are mentioned in the specification; but I can find no evidence on the record that at the time of the plaintiff's patent and specification, this was well known to persons ordinarily skilled in chemistry, and unless this fact be added, I think there is no evidence for the jury of the infringement of that peculiar process which, by the specification, the plaintiff has claimed to be his invention, for the specification by which he does state his invention does not communicate, if read by any ordinarily skilful chemist of that day, the know-

plaintiff did not then know it himself, nor did any one else then know it. If they know it now it is in consequence of a new discovery alone, for which no patent has been taken out, and no specification enrolled. I apprehend that nothing is an infringement now which would not have been an infringement immediately after his specification was enrolled. The knowledge of the equivalent must be the knowledge the world had before the experiments now called infringement, were first made. I think, therefore, that the judgment ought to be affirmed, but as the majority of the Court are of a different opinion, the judgment must be reversed, and a venire de novo awarded.

Nisi Prius.

COURT OF EXCHEQUER.

ESCRITT *v.* MASON.

(See *ante*, 19 Law T. Rep. 232, where this case is wrongly reported. The head note should have been as below.)

A promissory note was in the following form:—
"We promise to pay the bearer fifty pounds on demand for value received of Moses Escritt, of Broughton, this ninth day of May, 1849. Witness our hands, this 9th day of May, 1849."
It was stamped with a 3s. 6d. stamp.
Held, to be wrongly stamped; the proper stamp being 5s. as being payable "to bearer."

The facts and arguments in this case, ante, p. 232, are correctly stated, with the omission only of the form of the note, and to that the reader is referred.

BANKRUPTCY.

COURT OF BANKRUPTCY, LONDON, reported by JOHN A. FONBLANQUE, Esq. Barrister-at-Law.
COURT OF BANKRUPTCY, DUBLIN, reported by J. LEVY, Esq. Barrister-at-Law.

BRISTOL DISTRICT COURT.

(Before Mr. Commissioner HILL.)
Thursday, March 11.
Re WILLIAM WOOD.

Absconding bankrupt—Extraordinary expenses.
The Court will sanction and direct payment out of the estate on petition of extraordinary expenses incurred by the assignees in the payment of a reward for the bankrupt's capture, and sending an officer abroad, when the expenditure has resulted in a great accession of property to the estate.

This was the petition of Messrs. Chope and Gilbert, the trade assignees, and it prayed the payment out of the estate to the assignees of the costs, charges, and expenses incurred by them in sending an officer to Glasgow, London, and various places in England, and to New York, in search of the bankrupt, who had absconded, and of a reward of 100*l.* which had been offered for his apprehension, together with the costs incurred in his capture and bringing him before the Court at Bristol, amounting together to a considerable sum, the amount to be ascertained by taxation by the registrar in the usual way.

W. Bevan, for the petitioners, in support of the application read an affidavit, from which it appeared the petition for adjudication was filed, by the present petitioner, Gilbert, on 15th January last, under which Wood was adjudged bankrupt on the following day. That the bankrupt absconded, and never surrendered. That the petitioners, in conjunction with several of the creditors, caused diligent search to be made for him and traced him to Glasgow, whence it was discovered he had embarked with his family, under an assumed name, in the steam-ship *Glasgow* for New York, on the 8th of January last, with a considerable sum of money and property in his possession; they had also offered 100*l.* reward for his apprehension. The evidence then went on to state that the bankrupt so left the country with intent to defraud his creditors, and to avoid surrendering; and that the petitioners, with the concurrence of the principal creditors had adopted these prompt and energetic measures as well for the protection of the estate as for the interests of trade generally, and to prevent a recurrence of gross frauds upon the mercantile community, of which they were members. It also appeared that the ship in which the bankrupt had embarked put back to Glasgow from stress of weather, when the bankrupt was captured, and a considerable sum of money, with other valuable property, found in his possession; he was from thence brought before the commissioner, and surrendered, was examined, and made a full disclosure of his estate; giving up the money and pro- ... and disclosing the places ... property were deposited, ... possession of by the ... was now claimed by the officer who apprehended the bankrupt. Under these circumstances, it was asked that the expenses so incurred, and which had resulted so favourably to the estate, including the 100*l.* reward, might be defrayed out of the assets.

The petition was unopposed; and it was stated the creditors concurred in the prayer.

Mr. Commissioner HILL.—I think there cannot be a doubt as to the propriety of this application. In fact, it was the promptitude which was displayed that caused so great an accession of property to the estate. Take the order. *Ordered as prayed.*

Tuesday, March 9.
Re WILLIAM WOOD.

Fraudulent bankrupt—Prosecution—Offence conditioned by subsequent conduct.
Where a bankrupt commits a penal offence within sec. 253 of the Bankrupt Law Consolidation ... by obtaining goods with intent to defraud ... owners, but the assignees and creditors are satis-

fied, from subsequent conduct and delivery up of property to the estate, and do not press for an adverse judgment, the Court, although it refrains from ordering a prosecution under the 215th section, will nevertheless mark its sense of the guilty conduct by adjourning the last examination sine die, without protection, and refusing a certificate altogether; and the duty of the Court is not limited by the views which creditors may take of a bankrupt's conduct.

This was a sitting for the last examination of the bankrupt, at which he was present. The balance-sheet shewed an amount due to unsecured creditors of 6,214*l.* 10s. 8d.; assets in possession and available, about 4,400*l.* The facts above stated having been referred to as having transpired on the previous examinations of the bankrupt, and it having also been found that the bankrupt had obtained goods under false pretences, rendering himself liable to the penal claims of the Consolidation Act.

W. Bevan, for the assignees, now stated that those gentlemen had various private examinations of the bankrupt from time to time, and were satisfied of the correctness of the balance-sheet, which had been well tested, and neither they nor the creditors desired to press the case further against the bankrupt.

Mr. Commissioner HILL.—Under the very peculiar circumstances of this bankruptcy the assignees, I presume, have looked at the accounts themselves with great suspicion, so as to be satisfied that they now have a complete knowledge of the bankrupt's affairs.

The official assignee (Miller) said that was so, and that the assignees had paid very great attention to the matter.

Mr. Commissioner HILL.—I have then to pronounce upon this examination, and the question immediately before me is, whether the bankrupt upon this his last examination can pass. Upon a full consideration of all the circumstances, I am of opinion that he ought not to pass, but must be adjourned sine die; and I proceed to give my reasons for this decision. It appears from the proceedings before me, that the bankrupt, William Wood, in the most deliberate, artful, and systematic manner, with a long and continued desire to defraud his creditors, fled from the country, carrying with him a large sum of money, and having converted, as he thought, another sum in a manner in which it could not come into the power of his creditors. Under these circumstances, the obvious course was to order him to be prosecuted for felony. I have not done this, and I do not intend to do so; but in refraining from that course, I feel that I take upon myself a grave responsibility. I am induced, however, to forbear from the representations which have been made to me by those who are the greatest sufferers by this bankrupt. But, short of prosecution, all severity must be used against this man to mark the sense which the Court entertains of his guilty conduct. He is not like a man of limited education, or one who was in want of food or clothing; on the contrary, he was in a state of life in which he was protected from the motives which sometimes lead men to swerve from the path of rectitude, he had the advantage of an education and an early training in an honest course. It is utterly impossible that he should ever be put in a situation in which he will have the means of defrauding other tradesmen; he must never be armed with a certificate to enable him to enter into trade again. Many persons infinitely his superiors in moral worth, are labouring for their daily bread by occupations laborious and exhausting. To their situation let this man be reduced; let him go and do likewise. At least this Court will furnish him with no assistance. Let him esteem it as a privilege, that he may thus gain his livelihood in company with those the least of whom is infinitely his superior in all that constitutes true respectability. He departs from this Court under the stigma of felony, for felony is not created by punishment, or by conviction, but by established guilt. A man who is a felon is so, though he may never have been convicted or prosecuted. I am glad that I shall never see this man again. Let him depart. He has much to be thankful for in the lenity of those friends whose feelings he has tortured, and who have suffered under the degradation he has inflicted upon his family and his friends.

Adjourned sine die, without protection.

Ecclesiastical Courts.

CONSISTORY COURT.

Reported by Dr. WADDILOVE, of Doctors' Commons.

Wednesday, May 26.

THE RECTOR AND CHURCHWARDENS ST. JOHN'S, WALBROOK, *v.* THE PARISHIONERS THEREOF, AND ALL OTHERS IN GENERAL.

London City Improvement Acts, 1847-1850 (10 & 11 Vict. c. 280, and 13 & 14 Vict. c. 56)—Burial ground—Faculty to remove boundary-wall of, refused.

The mayor and corporation of the city of London proceeding under the powers given them by two Acts of Parliament (the 10 & 11 Vict. c. 280, and the 13 & 14 Vict. c. 56), directed a new street to be made from Cannon-street to St. Paul's Churchyard, and projected other improvements in the neighbouring locality, for the completion of which it became necessary to remove the wall of the burial-ground of the parish of St. John's, Walbrook. It was proposed to rebuild the wall on a different site, not far from its original position, and to remove also, so as to place it within the new wall, a certain tomb, at present standing in the north-east corner of the burial-ground; any bodies that might be disturbed by the proposed alterations were to be re-interred in some suitable place.

It appeared from the affidavit of the vestry-clerk of the parish, that at a vestry meeting an agreement had been made between the parish and the mayor and corporation of the city of London, for the purpose of carrying out these alterations on terms advantageous to the parish, and that very few bodies were ever now interred in the burial-ground, and that the family to which the tomb in question had belonged, was extinct.

It also appeared that by an Act subsequently obtained by the corporation (14 & 15 Vict. c. 91), entitled "The City of London Sewers Act, 1851," having for its object to continue "The City of London Sewers Act, 1848," and to alter and amend the same, it was provided in the 32nd clause "that after any churchyard or burial-ground should have ceased to be used for the interment of the dead, it shall be lawful for the commissioners, with the consent of the Bishop of London, to be signified by any instrument in writing under his hand and seal, to enter into such arrangements as may be agreed upon with the incumbent and churchwardens of the parish in which such churchyard or burial-ground may be situated, for the appropriation thereof, or of any part thereof, to public improvements, or to enlarge and improve the public streets." Other clauses followed, giving powers, in such a case, to remove and re-inter bodies without any faculty for that purpose, and to level and alter the ground, &c. at the expense, under certain limits, of the commissioners. Upon this it was suggested, that had the burial-ground of St. John's, Walbrook, been wholly discontinued as a place of sepulture, then, under the Act last referred to, the entire ground or any part of it might have been appropriated to the enlargement of the adjacent streets or any other recognised public improvement without the aid of the Court; but as the major part of it was proposed to be still retained as a burial-ground, the smaller portions proposed to be taken away, though not required, nor for at least eighty-five years past used for interments, could not be detached from the main body of the ground, however ample the remaining portion might be for the burials required by the parish, except under the authority of a faculty to be granted by the Court for that purpose.

Sir *J. D. Harding*, Q.A. under these circumstances, applied to the Court for a decree, with intimation to issue, calling upon the parishioners, &c. to shew cause why a faculty should not issue for making the proposed alterations. He cited *Steeren and Hollah* v. *St. Martin's Organs*, 2 Add. 255, in which a faculty was granted to take down a building erected for the performance of divine service, &c. in the French language, upon the site of a church destroyed in the fire of London.

Dr. LUSHINGTON.—If this case comes within the statute referred to, 14 & 15 Vict. c. 91, it is clear that the application should be made, not to me, but to the Bishop of London, who may consent in the manner pointed out in the 32nd section. But if the case does not come within that statute, and the application is rightly made to me, can I grant a faculty to desecrate this piece of ground? Upon principle I do not think I could grant such a faculty; but the point has been settled by authority, for I distinctly remember an application of this kind being rejected by Sir Wm. Wynne, in the parish of Ewelme, in Surrey, where he observed that no thing, save an Act of Parliament, would enable him to apply consecrated ground to secular purposes. And I also remember Sir C. Robinson refusing an application of the same kind respecting consecrated ground in some parish in Colchester. Sir W. Wynne's authority is binding on me; and both here and in Rochester I have constantly refused to grant faculties for these purposes. I must reject this motion, however desirable it may be, as advantageous to the public or to the parish, that these improvements should be effected.

Thursday, July 8.

CAMPBELL and OTHERS *v.* THE PARISHIONERS OF PADDINGTON and OTHERS.

Faculty to build a vestry-room on consecrated ground granted.

Since 1824, the parochial business of the parish of Paddington has been managed by certain parishioners elected for the purpose, under the provisions of 5 Geo. 4, c. 126, but as the population and business of the parish increased, it was found that the building originally used for holding the vestry meetings was inconveniently small. At meetings duly held, on the 2nd of March and 4th of May, 1852, it was resolved, in accordance with the recommendation of a committee appointed by the vestry, to remove from the present building, to obtain a site for the erection of a new vestry-room and appropriate offices, and that a certain piece of ground purchased by the parish in 1843 was the most eligible site that could be procured. This piece of ground, however, had been consecrated as a burial-ground, but no bodies had been interred, nor was it intended to be used as a burial-ground. The Bishop of London is the patron of the perpetual curacy and parish church of Paddington. A decree with intimation issued, and was served in the usual manner, and

Middleton now moved the Court to decree a license or faculty for erecting suitable buildings for holding vestry and other parochial meetings on this piece of ground.

DR. LUSHINGTON.—If this application was for the purpose of applying this consecrated ground to purely secular purposes, I should, notwithstanding the consent and convenience of all the persons interested, and of the parishioners, hold myself obliged to reject it; for I should be bound by the case of *St. George's, Hanover-square*, v. *Stewart*, 2 Str. 1126, where a prohibition was granted in a case in which it was proposed to erect a charity school-room on part of the churchyard. But I have considered the present case a good deal, and I think I can find a distinction between a school-room, which is used for purposes merely secular, and a vestry-room, which may be used for religious purposes. I shall, therefore, grant this faculty, but I do so with no inconsiderable doubt; and it must be taken liable to all the consequences which may follow, if there should happen to be proceedings taken in other Courts

Irish Reports.

COURT OF CHANCERY.

Reported by J. BLACKHAM, Esq. Barrister-at-Law.

Nov. 27 and Dec. 18.

WISDOM *v.* THE MAYOR, ALDERMEN, AND BURGESSES OF DUBLIN.

Absence for seven years—Presumptive death—Renewal of lease—Compensation.

A lease for lives was made, renewable during the period of seventy years, each life to be added within twelve months after the fall of the previous life; one of the lives was not heard of during a period of eighteen years; immediately previous to the expiration of the seventy years the lessee presented a petition for a renewal, nominating a new life in the place of the cestui que vie, who had gone abroad:

Held, that he was entitled to have a renewal, there being no fraud.

Held, that the lessee was not bound to make application for the renewal in the twelve months after the presumption of death had arisen.

Held, also, that the lessors were not entitled to compensation for the presumed dropping of a life every seven years.

This was a cause petition to compel the renewal of a lease. The petition stated that by indenture of the 6th of Nov. 1764, the Corporation of Dublin leased to the Earl of Mornington a plot of ground, to hold for three lives, and for the life of such other person or persons as should thereafter be nominated and appointed during the continuance of a lease granted to a person of the name of Thomas Pooley, which was to determine at the feast of Easter 1781, and for the lives of such other persons as should be nominated and appointed, and from thence during the term of seventy years. The new life to be nominated within twelve months after the fall of each life, a peppercorn fine to be paid on each renewal; and if the rent and duties were not paid, and the life nominated, within the twelve months, the corporation were to be at liberty to refuse to renew. The interest of the Earl of Mornington having by assignment vested in Peter Wilson, the Corporation of Dublin granted, on the 8th of July, 1778, to Peter Wilson a renewal of the lease of 1764, for the lives of his three sons, William, Richard, and David Wilson, with the same covenant for renewal as in the previous lease; in addition to which this lease contained a recital in these words: "And whereas the said Peter Wilson, at Easter assembly, 1777, on account of the fall of the life of Arthur Gerrard Wesley, and also on account of the great inconvenience that might arise in ascertaining the lives in being, the said Garrett Earl of Mornington and Lord Wellesley being abroad, did petition the said Lord Mayor, &c. to have a new lease of the said premises made to him in his own name, for the lives of

his three sons, &c. upon the same terms of the said hereinbefore recited lease. Upon which petition it was ordered that a new lease of the said premises should be granted to the said Peter Wilson for the lives in the said petition set forth, on his surrendering the lease granted to the said Earl of Mornington, subject to such covenants as Mr. Recorder should advise." The petition stated several subsequent renewals of the lease in similar terms, the last of which bore date the 3rd day of June, 1820, and deduced the title to the petitioner, and then charged that Joseph Wilson, one of the costui que vies named in the therein-before stated renewal of the year 1820, went to America some time in the month of March 1825, and is now dead, or must be presumed to be dead. That for some time after the said Joseph Wilson left Ireland he corresponded with his cousin, Richard Wilson; but that although letters have been frequently written by Richard Wilson to Joseph Wilson, no reply has been received from him since the year 1833. The petitioner, on the 28th of August, 1848, presented a memorial to the Lord Mayor, &c. praying, under the circumstances already mentioned, a renewal, and nominating a new life. The prayer of the memorial was refused in consequence of there being no evidence of the death of Joseph Wilson.

Green, Q.C. with him *Francis Fitzgerald*, Q.C. and *R. R. Warren*, contended that the petitioner was entitled to a renewal, the presumption being that the life was dead since the year 1840; they cited *Sweet* v. *Anderson*, 2 Bro. P. C. 256; *Lannon* v. *Napper*, 2 Sch. and Lef. 682; *Kensington* v. *Phillips*, 5 Dow. 61; *Fitzgerald* v. *Vicars*, 2 Dru. and War. 298; *Shore* v. *Lord Darnley*, App. to Lyne (case 6), p. xviii; *Peal* v. *Hamilton*, 1 Ridg. P. C. 180; *Vesseau* v. *Doe* dem. *Knight*, 2 Mee & W. 910; *Lord Palmerston* v. *The Corporation of Dublin*, Lyne on Leases, App. p. lxxiv, case 20.

Christian, Serjt. and Sir *C. O'Lochlan*, for the corporation, cited —— v. *Napper*, 2 Sch. & Lef. 682; *Harris* v. *Bryant*, 4 Russ. 89; *M'Alpin* v. *Swift*, Ball & B. 285.

Thursday, Dec. 18.—The Lord CHANCELLOR.—This is a petition to obtain the benefit of a covenant for renewal contained in a lease made by the corporation of Dublin. The covenant in the lease of 1778 is that upon which the petitioner must rely. [His lordship stated the terms of the covenant and the facts of the case.] This case does not rest upon the ordinary provisions contained in leases for lives with a covenant for renewal *Lord Palmerston* v. *The Corporation of Dublin* was of that class, and therefore does not apply. The case rests upon the ordinary equity of the Court in cases of accident. The case of the petitioner is that, though he cannot comply with the terms of the covenant, he is prevented from doing so by unavoidable accident, and is, therefore, entitled to a renewal of the lease. The cases of *Sweet* v. *Anderson*, 2 Bro. P. C. 256, and *Shore* v. *Darnley* (ubi sup.), are authorities in favour of the petitioner on this part of his case. The statutes 19 Car. 2, c. 6, Eng.; 7 Wm. 3, c. 18, s. 1, Ir. do not apply to the case of a tenant seeking a renewal. *Ferman* v. *Lord Ormonde*, Beat. 355, Ir. Rep. is a distinct authority that this doctrine of relief will apply to a contract for a renewal for a limited time. Taking these three cases together they establish the proposition that this is a case to which the Court should apply the doctrine of relief in case of accident. I do not think there is any case shewing that a party relying upon the death of the absent party is bound to make inquiries or institute proceedings in a foreign Court as to the existence or not of the life. The rule of this Court, in cases of accident, is stated by Sir A. Hart in *Ferman* v. *Lord Ormonde*, and in *Harris* v. *Bryant*. The other question is, whether the tenant was bound to come to the Court the moment the statutable death took place, that is, within twelve months after the year 1840. The authorities shew that, though the statute enables the Court to say that the absent party is dead, it affords no evidence of the period of his death, and for aught we know he may be now alive. This objection was taken in *Sweet* v. *Anderson*, and *Shore* v. *Lord Darnley*, but seems to have received no countenance. The expiration of the seven years does not conclude the party in all cases, and if the cestui que vie returned, the petitioner would be remitted to his rights. It is for these reasons difficult to hold that under such circumstances the petitioner should be debarred of relief. Compensation has been asked for, and the case of *M'Alpin* v. *Swift*, 1 Ball & Beat. 285, was relied upon by the respondent. I do not think this is a case for compensation; none would have been claimed of Mr. Wilson had he within twelve months claimed his right of renewal.

HOUSE OF LORDS.

Reported by JAMES PATERSON, Esq. Barrister-at-Law.

Thursday, July 1.

MARIANSKI *v.* CAIRNS.

Evidence—Practice—Tendering admissible evidence for improper purpose—Mis-entry of verdict on postea—Judge's notes.

An issue was sent to trial, "whether A. (plaintiff) was, at the respective dates of twenty documents, of weak mind; and whether B. (defendant), taking advantage of such weakness, procured A.'s signature to these documents, or any of them, by fraud or intimidation;" and a verdict was entered on the postea thus,—"The jury gave a verdict for the plaintiff on the said issue:"

Held, this verdict was too ambiguous to be applied, but it seemed to be merely a misentry by the clerk of N.P. and that the proper recourse was to the judge, to ask him to correct the verdict according to his notes.

At the trial of the same issue, certain account-books kept by A. were tendered by his counsel, the purpose not being stated, but they seemed to have been used for an improper purpose. B.'s counsel objected that they were inadmissible generally, but the judge admitted them:

Held, the books were admissible, if properly used, under the issue, and as no objection had been taken to the summing up, it was to be presumed the judge directed the jury to make the proper use of them.

Semble, if, at N. P. a document tendered, but excepted to, and afterwards admitted, and used for an improper purpose, yet, if the document be admissible for a proper purpose under the issue, no exception lies to its admission, but the proper course is to except to the judge's summing up, if he does not confine the jury to that use of the document as evidence which alone is proper.

This was an appeal from the Court of Session, in Scotland. A suit was instituted by the respondent, as the representative of the late Alexander Fairservice, to set aside certain securities, purporting to have been granted by the latter for sums of money advanced to him by Marianski, the appellant. Fairservice had two daughters, one of whom is the respondent, and the other, in 1839, married Marianski, who thereupon, with his wife, continued to live in the same house with his father-in-law. Old Fairservice died, seven years after, at a very advanced age, leaving his property, upwards of 20,000*l.* equally between his daughters. Shortly after his death, however, Marianski made out a claim against the executor for a sum of about 10,000*l.* which he alleged was due to him by the testator. In support of this claim, M. represented that he possessed twenty documents as securities for these debts, some of which were in the form of deeds, attested and signed by the testator; others were bills of exchange accepted by him, and bearing to be for value received; the rest were letters or acknowledgments for money lent. Ultimately, issues were directed by the Court for trial in the following terms:- "Whether at the dates, when the signatures and indorsations of Alex. Fairservice were attached to the writings No. 1, 2, 3 (and so on to No. 20), or any of them, the said A. F. was of weak and facile mind, and easily imposed upon; and whether the defendant, taking advantage of his said weakness and facility, did by fraud, or circumvention, or intimidation, procure or obtain the said signatures and indorsations, or any of them, to the injury of the plaintiff." In course of the trial, certain private account-books, and extracts of the same, containing entries of his income and expenditure, kept by Fairservice, and in his handwriting, were tendered in evidence. "Whereupon," says the bill of exceptions, "defendant's counsel objected to the admissibility of the said documents as evidence in the cause, in respect that any written statements or books made or kept by the deceased A. F. in whose right the present suit was raised, was not competent evidence for plaintiff." The judge overruled the exception, and allowed the plaintiff's counsel to ask the witness to read those entries which purported to state the transactions of Fairservice at particular dates. A similar objection as to oral evidence was raised, and overruled—as when plaintiff's counsel asked a witness "whether N. had said he had paid certain expenses himself," alluding to expenses which one of the alleged fraudulent documents purported that Marianski had advanced the money to pay. A bill of exceptions having been tendered, which the Court disallowed, this formed the first half of the present appeal. No objection was taken by defendant's counsel to the judge's summing up, and the jury returned a general verdict for plaintiff, which was entered on the postea thus, "Whereupon the said jury did then and there find a verdict for the plaintiff on the said issue." The second part of the present appeal complained, that this general verdict was too indefinite to form the foundation of a correct judgment, and that it was left uncertain, whether it applied to all the documents and all the means specified in the issue. On both the above grounds, viz. disallowing the exception and the improper verdict, the defendant now appealed, and moved to set aside the verdict, and to have a new trial.

The case was argued in July, 1851, before Lord Chancellor Truro and Lord Brougham.

Sir *F. Kelly* and *Bethell* (and *Anderson*) for appellant.

1. As to the bill of exceptions. This suit might have been maintained by Fairservice himself when alive, to set aside these documents, and we may suppose that he had tendered his own books and declarations as evidence. That would have been to allow a plaintiff to manufacture his own evidence, and put in books, which the defendant had never heard of. [Lord TRURO.—Unless you could shew these books were accessible to Marianski, who lived in the same house. Thus in actions against railway directors, a prospectus lying on the table in the room may go to the jury, to raise a presumption that defendant had notice.] It ought to have been first clearly proved, that defendant knew of these books, whereas there is here no such evidence. The purpose for which the books were tendered, was to contradict the documents relied on by Marianski, to shew, for instance, that the 50*l.* for which M. produces Fairservice's acceptance was in reality lent by F. to M. instead of the reverse. This was clearly an improper purpose. [Lord TRURO.—But it does not appear from the bill of exceptions what was the purpose. We must look then to the issue, to see whether these books were admissible. Now if they were tendered to shew the state of mind of F. that was a proper purpose. I argued in the *Irish Society* v. *Bishop of Derry*, 12 Cl. & Fin. 641, that if a document is admitted for one purpose it could not be used for another purpose for which it was not tendered, but the House held the other way.] We do not deny that if the books had been put forward for the purpose of shewing testator's state of mind, they were admissible; but having been put in for the wrong purpose of proving the amount of testator's property, the plaintiff cannot now turn round and say, "Oh, I might have used them for a right purpose." The *Irish Society* case merely shews that if evidence is admitted for one proper purpose, it may be used for every other purpose; but here it was tendered for an improper purpose. In fact, the books could not have been put in here to shew testator's impaired capacity, for they shew the reverse,—that he was a careful man, and quite capable of conducting his own affairs. 2. As to the verdict, it is too uncertain. The issues comprised several distinct points. Thus four of the jury may have thought that the documents were obtained by fraud, other four that they were obtained by intimidation, and other four that F. was of weak mind; or they may have thought that some of the documents were obtained one way and some the other. As the verdict stands, it is impossible to know which of many suppositions is correct. The jury are asked if twenty documents are obtained in three alternative ways, and they answer "Yes," which is, in fact, an evasive answer, and no judgment can be pronounced on such a foundation. (*R.* v. *O'Connell*, 11 Cl. & Fin. 155.)

Peacock, Q.C. and *H. Hill*, Q.C. for respondent.

1. As to the bill of exceptions, the simple question is, were the books and declarations of Fairservice admissible evidence under an issue as to his sanity or state of mind. Though it does not appear distinctly for what special purpose they were tendered, yet they were clearly admissible evidence, and we must presume they were put in for a right purpose. The whole acts and writings of a person go to the question of sanity. (*Wright* v. *Tatham*, 5 Cl. & Fin. 670.) 2. As to the verdict, it is quite capable of application, and would be a correct verdict in this country. Thus in trespass for breaking a house and garden, the two being distinct trespasses, if the verdict was for plaintiff that would mean defendant was guilty of both. (*Ladd* v. *Thomas*, 4 Per. & D. 9.) So the common-sense meaning of this verdict is, that all the documents were obtained by fraud and intimidation. (Com. Dig. Pleader, s. 26.33.) It is the every-day practice here to include fraud and intimidation under one count. (*Robson* v. *Luscombe*, 2 D. & L. 859; *Goram* v. *Sweeting*, 2 Wms. Saund. 205.) But, at all events, it was impracticable to plead with greater certainty and minuteness in the present case, and the law yields to circumstances. Marianski kept Fairservice entirely under his control, and nobody but himself could know whether it was fraud or intimidation that was practised, but it must have been one or other of these means. Want of certainty in such circumstances is dispensed with, and the verdict is not bad on that ground. (*R.* v. *O'Brien*, 1 Den. Cr. C. 9; *R.* v. *Sarah Willis*, Ibid. 80; *R.* v. ——, Russ. & R. 489; Steph. pl. 367.)

Anderson replied. *Cur. adv. vult.*

Lord TRURO.—It will be observed that these issues are not in the form in which issues are usually directed. Issues from the Courts of Law in this country are so framed as to present a single question

to the jury—an affirmation with a negation, and admitting of a distinct answer by the verdict of the jury. I, however, have seen issues, even in this country, from Courts of Equity, which have assumed something like the form of those in question; but it has led to no inconvenience, for this reason, that issues from the Courts of Equity, being merely to inform the conscience of the Court, and to afford collateral assistance, they are always accompanied by a direction and permission to the learned judge to make any special indorsement that may be necessary, and when, therefore, it has become necessary to distinguish the parts of the verdict applying to only certain parts of the issues, that has been done by indorsement upon the postea. Now, the question raised by the objections taken at the trial is this: in an issue relating to the state of mind of an individual, are his declarations and conduct evidence I must ask, by what test do you always try, whether of sane mind or of weak mind or not? Shut out his conduct, his declarations, and his acts, and what is the test by which you are to try the state of his mind? How do you try it in a criminal case, or in any case? The mistake seems to me to be this: the learned counsel seems to have mistaken the substance of these issues. If the issue had been, whether Fairservice was indebted to Marianski in this amount, what F. had said or done about this not in the presence of M. or to his knowledge might be subject to objection. But when the question is weakness, or imbecility of mind, or insanity, there is, in truth, no other means and no other species of evidence pertinent to that issue, but the man's sayings and his conduct. Look at it as applied to this case. You want to know, with reference to certain documents signed by him, the state of his mind and the state of his memory. Suppose he almost at the same instant writes in his book, that he has paid certain sums of money out of his own resources, and also writes on a piece of paper to Mr. Marianski that he has paid them for him, and that it is a debt due to him, what would you say to such a case as that? Suppose you find on the same subject inconsistent conduct at the same period of time, so as to evidence that either the man has no memory at all, or that some most extraordinary fatuity must have attached to him, in order to induce conduct so opposite and inconsistent. I put the illustration, because it is of a character which applies to the case. He is supposed to have drawn money from his bankers on a certain day. He has entries in his book of payment on a certain day: he has, almost contemporaneously, admissions which purport to be admissions of those very payments by Marianski. But, without adverting to the particular evidence in the case beyond this, that it is a question as to Fairservice's declarations and as to his entries, the exception taken to that is general: that no declarations, that no entries on his part, no writing on his part, can be evidence. That exception is much too wide. It was only evidence to shew the state of his mind. If used as evidence of the truth of the entries, as evidence connected with the existence of the debt, the exception would have been to the abuse of it—to an improper mode of dealing with it, and not to its admissibility itself. But that evidence being properly receivable with regard to the state of his mind, I take it for granted that it was properly used, and your lordships cannot doubt but that the learned judge, in summing up to the jury, told them to what part of the issue it was applicable, and to what extent it might be used as supporting that issue. There is no exception to the summing up of the learned judge. The argument has run here as though this was used, in order to enable a man, by his own declarations, to defeat a claim made against him of a pecuniary nature. If used for that purpose, it was proper matter of objection. But looking to the intelligence of the learned counsel below, and seeing that there was every disposition to preserve the utmost regularity in the proceeding, one cannot doubt that, if the learned judge had left it in the manner which has been argued at the Bar, it would have been a matter of exception. It therefore comes to this: the summing up of the learned judge is free from objection; this was pertinent evidence to the issue if properly used; therefore the House may take it for granted, as every appellate tribunal must take it for granted, that that which might be properly done in the jurisdiction below, was properly done, more particularly when the parties are understood to have taken every objection which was fairly open to them, and no objection was taken to that. Then the evidence is admissible, and the exception is undoubtedly too large, but that is the less material, the evidence being admissible. The second exception with respect to any objection to the summing up, and it therefore appears to me, that the interlocutor disallowing the bill of exceptions must be confirmed. The second matter of objection to which the interlocutor appealed against relates to is the application of the verdict. Now it will be observed, that the issues are no doubt framed in an objectionable manner. If the issue, instead of being "whether the said documents, or any of them had said "whether the said documents were respectively obtained by fraud," it would have got rid of the objection; but looking at it as it is, it is said *that there is a great difficulty in applying the verdict to* the issue, so as to make that verdict the foundation of a correct judgment. The first issue directed is, "Whether Mr. Fairservice was of weak and facile mind, and easily imposed upon." The second is, "Whether the said documents, or any of them, were obtained by fraud, or circumvention or intimidation." "Verdict for the plaintiff." My lords, there is this mistake, instead of entering the verdict of the jury according as it must have been understood to have been pronounced, the officer's note of that verdict was entered. It will be perfectly well understood at your lordships' Bar, that although the clerk at Nisi Prius takes the "verdict for plaintiff" or "for defendant," the postea is entered up, "and the jury, upon their oaths, say that the defendant did this, that, or the other," embodying in the entry on the postea that which is the substance of the finding. The learned judge says to the jury, if you are of opinion that such and such facts occurred, then you will find your verdict for the plaintiff; "If you are of opinion that such and such other facts occurred, you will find your verdict for the defendant." When you come to make the entry upon the postea, though the clerk takes a note of the verdict, as being for the plaintiff or defendant, you expand it, and make it in substance an answer to the question put, just as when you ask a witness, Was so and so present? "Yes" is his answer. But if you had to state that man's evidence, you would not put his answer "Yes." You would state "The witness said that A. B. was present." So that here this appears to me to be little more than a misprision of the clerk in making the entry. Suppose the judge directed the jury thus: "Gentlemen, in whatever verdict you give you must be unanimous. You cannot find a verdict for plaintiff or for defendant, upon the ground that some of you think that five of the documents were obtained by fraud, and others of you think that the rest of them were obtained by intimidation, and so dividing yourselves you all agree that the twenty documents were obtained by some of these means, but you differ with regard to the means as applicable to certain sets of them. You cannot find your verdict at all for the plaintiff in such a case, but if you are unanimously of opinion that the whole of these twenty documents were obtained by the same means, being unanimous as to the documents and being unanimous as to the means, you may find your verdict for the plaintiff; or if you are of opinion unanimously, that certain of these documents were obtained by given means, and others were not, you may give your verdict for the plaintiff with regard to the documents, numbers one to ten, and for defendant with regard to documents from ten to twenty." Supposing the learned judge so directed the jury, this issue, notwithstanding the form in which it is framed, would admit of such a summing up as might be the foundation of a correct verdict. Are your lordships to presume that there was a correct summing up in this case? No doubt you are, and are bound so to do, there being no objection to it, and no reason upon earth why the common principle should not prevail of presuming things to be rightly and properly done, until you have some ground presented for inferring the contrary. Now, it will be observed that, when this case comes on before the Court below to apply the verdict, they have the report of the judge's summing up, and they have then the answer of the jury. There is no doubt that below the judge reported that which, independent of any character belonging to the learned individual in the particular case, any judge competent to his duty would do. He would report,—"I directed the jury that they must be unanimous; and that if they were of opinion so and so and so and so and so, they could find a verdict generally for the pursuer." Reporting, that the judges below had the answer of the jury,—"Verdict for plaintiff." What does that verdict mean? You must resort to the summing up, to know what "verdict for plaintiff" means. It means, that each and every of the respective documents was obtained by such and such means. Then, when the Court had so assumed, the proper mode of entering up and applying the verdict upon the record would have been to have stated, not "verdict for the plaintiff," generally, but that the jury found that the said documents mentioned were obtained by such and such means. It seems to me, therefore, that this is a mere informal entry of the verdict. What is the course in such a case? Why, it is a perfectly well known one. It is, that, perceiving a verdict which appears to be inapplicable to the issue from its uncertainty and its ambiguity, you refer to the judge who tried the cause, that the verdict may be entered according to the substance of the actual finding, which he may do by his notes. It is not at all too late to do that; and it has been of frequent practice. My lords, there are several cases in which it has been done after a judgment of reversal. In one case which I may mention, a modern one, *Richardson* v. *Mellish*, 7 B. & C. 819; 3 Bing. 334, S. C.; in which I was of counsel, the Court of C. P. had given judgment against a motion for arrest of judgment. A writ of error was brought in the K. B. and the judgment was reversed. Application was made to the C. P. to amend the record by the judge's notes. I objected, the judgment being reversed. That was held not to be a valid objection, and the Court of C. P. amended the verdict by Lord Gifford's notes; and in a remarkable case, for Lord Gifford had ceased to be a judge of the Court at the time, being then Master of the Rolls; but they sent for his notes, and they used his notes to correct the entry of the verdict. The parties then went to the Court of K. B. to ask the K. B. to alter the record in that Court, to make it correspond with the record as it stood in its amended state in the C. P. and then to amend and alter the judgment of reversal to a judgment of affirmance. Some doubt was entertained, and it was fought with considerable spirit. It was a large verdict, and the Court were induced to make a special entry of these circumstances; upon which a writ of error was brought to this House, and the objection was again raised at the Bar; but the House held that this was matter of practice of the Court below, of which they could take no notice, and the judgment was affirmed. So, my lords, we find in several other cases, though I need hardly refer to them, because in Tidd's Practice, tit. "Verdict," you will find the matter all laid down, with a note of several cases. But I will just mention one case, in order to shew how strong the practice is, because it was a criminal case, and the man was executed. That is mentioned in *Short* v. *Coffin*, 5 Burr. 2730, where it is said that, in the case of Mr. Francis, after the entry of the judgment of attainder, the verdict was altered according to the judge's notes, and the man executed. Now the cases, as I have before mentioned, are very numerous. There is a very strong one, *Harrison* v. *King*, 1 B. & Ald. 161. The amendment was refused there; but why? It was after a judgment of reversal, and eight years after the trial; and the ground upon which it was refused was, that coming so late, you had to trust to the judge's memory and recollection; and where, as Lord Tenterden said, the gentlemen at the Bar might have left the Bar, whose assistance might be necessary to make the entry correspond with what had actually taken place at the trial. It was merely on account of the delay that it was refused in that case, and there, also, after a judgment of reversal. There is another case of *Eddowes* v. *Hopkins*, 1 Doug. 376. In fact, it is almost waste of time to refer to the cases, they are so numerous. It is a matter of constant practice, and your lordships find it laid down in Tidd's Practice, that it may be done at any stage of the proceedings. It is in the discretion of course of the Court below, who will exercise, it is to be supposed, a sound discretion on the subject. Then, my lords, how does the case stand? Here is an issue which, if properly conducted, would lead to a verdict which might be the proper foundation of a judgment, but here is an ambiguous verdict. The proper course, and the course sanctioned and called for by practice, seems to me to be, to let this case stand over, in order to furnish an opportunity for an application to the Court below to amend the entry of the verdict according to the judge's notes. It is in that learned judge's discretion, always meaning, of course, not an arbitrary discretion, but one governed by law, and by fact, and by justice, whether he will amend it in the way in which he may be asked. If he thinks fit to alter the entry of the verdict, then it will be for the Court to say, whether they will amend the application of that verdict, in which case the record in this House will be amended to correspond with it, and the House will give judgment according to the record in its amended state. At present, therefore, I should recommend your lordships not to act upon the ambiguous verdict as it stands, but to overrule the exception so far as it applies to the admissibility of the evidence, and to let the case remain over for ultimate judgment, until there has been an opportunity to make the application which I have mentioned. Such appears to me to be the correct view of the case sanctioned by principle and practice, and I think it is the safest course for your lordships to pursue.

Lord BROUGHAM concurred.

Remit to the Court below.

Equity Courts.

LORD CHANCELLOR'S COURT.

(Before Lord ST. LEONARDS, L.C.)

Reported by C. H. KEENE, Esq. of Lincoln's-inn, Barrister-at-Law.

Wednesday, June 9.

MONCKTON *v.* THE ATTORNEY-GENERAL.

Practice—Drawing up order after death of party.

affected by it—Injunction restraining proceeding on petition of right—Monstrans de droit.

On the hearing of a petition of right, upon which an injunction was granted, one of the petitioners had died, and after the hearing and before judgment was pronounced, the other had also died. Motion to discharge an order (for irregularity) obtained as of course at the Rolls, under which the order made on the petition had been drawn up, nunc pro tunc, refused.

Where two persons are in the same interest, and one dies before judgment, the interest being represented, there is no abatement.

After hearing and before judgment, parties petitioning died: an order made on the petition can be entered nunc pro tunc.

In this case an injunction had been granted by the late Lord Cottenham to restrain all further proceedings in the Petty Bag Office under a petition of right The case is reported in 2 Mac. & Gor. 402, where the facts are very fully stated.

They are very briefly these. Catherine Robson and Isabella Ainsley (who came in before the Master under a decree of 1794, directing an inquiry who were the next of kin of Samuel Troutbeck, in the year 1815) their husbands being dead presented their petition of right, claiming to have restored to them the sum of 400,000*l.* as being, together with interest, the amount of the real and personal estate of the said Samuel Troutbeck, wrongfully seized into the hands and to the care of the Crown, upon an untrue suggestion and surmise that the testator had died without heir or next of kin, and the erroneous judgment and decree of the Court of Chancery made in pursuance of such untrue suggestion or surmise. In the year 1813, the Master had reported that only one person (not either of the above parties) had claimed, but which claim had been disallowed, and that there were no next of kin or heir-at-law, and the property having, in 1815 and 1816, been accordingly paid to the officer of his Majesty's Treasury, an order was made in the year 1825, upon the petition of Catherine Robson and Isabella Ainsley and their husbands and another person, with the consent of the Attorney-General, referring it again to the Master to make the general inquiry as to the next of kin and heir-at-law of the testator. These parties having made their claim before the Master, it was by his report of June 1827, disallowed. Exceptions were taken to this finding and overruled; but upon an appeal an issue was directed which produced a verdict against the claim. A motion for a new trial was refused, and a similar motion having been made in 1833 upon the ground of the discovery of new evidence, that motion was also refused. All those orders were, upon an appeal to the House of Lords, affirmed in 1843.

The petition of Mrs. Robson and Mrs. Ainsley in 1846, received the usual indorsement "Let right be done," and the usual commission having issued, the return found certain facts confirmatory, as the petitioners alleged, of their case; whereupon they insisted that the Attorney-General was bound to meet their case upon that return by plea, traverse, or demurrer, which in effect would be to continue the litigation at law, and to try the cause upon the strength of these ladies' case alone.

Accordingly, in the year 1848, a petition was presented by the Attorney-General, in the suit of *Monckton* v. *The Attorney-General*, praying that those parties might be restrained by injunction from taking any proceedings in the office of the Petty Bag of the Court of Chancery to confirm the verdict taken upon such inquisition, or from taking any proceedings at law on the verdict or inquisition, or any proceeding arising out of or incident thereto, or from using the same proceedings, or any of them, except under the order and direction of the Court as a Court of Equity, in the suit or such suit, or other proceeding in Chancery as the Court should direct. On the hearing, Lord Cottenham made an order according to the prayer of the petition, adding only "the petitioners being at liberty to institute such proceedings, or to make such application in this honourable court relative to the matter of the said petition of right as they might be advised."

At the hearing of the petition, upon which that injunction was granted, one of the parties prosecuting the petition of right had died, and the other had also died before the judgment was pronounced. Lord Cottenham's order was drawn up nunc pro tunc under an order of course at the Rolls. The representatives of Mrs. Robson and Mrs. Ainsley having commenced proceedings under a writ of monstrans de droit to carry out the remedy given them by the finding under the inquisition, the Attorney-General presented this petition to restrain that proceeding, which, as it was alleged, was in contravention of the order of 1848, pronounced by Lord Cottenham. There was a motion also on behalf of the representatives of the suppliants to discharge Lord Cottenham's order and the order at the Rolls for irregularity.

Stuart, Rolt, Page Wood, W. M. James, and *Anstey,* appeared for the several parties.

The following cases were cited:—*Lee* v. *Lee,* 1 H. 617; *Fallowes* v. *Williamson,* 11 Ves. 312; *Boddy* v. *Kent,* 1 Mer. 364; *Sheffield* v. *The Duchess of Buckingham,* Cases temp. Lord Hardwicke, 676; *Davies* v. *Davies,* 9 Ves. 461; *Bertie* v. *Lord Falkland,* 1 Dick. 25; *Eastwood* v. *Glenton,* 2 M. & K. 280; *Ex parte De Vismes,* 6 Jur. 911; *Sellas* v. *Dawson,* 1 Atk. 263; *Rex* v. *Hornby* (the *Banker's* case), 5 Mod. 30; *Kirk* v. *The Bromley Union,* 2 Purton Cooper, 177; Staunforde on the King's Prerogative, and the argument of the Lord Keeper Somers in the *Banker's* case, 14 State Trials, 39.

Stuart, in reply.

The LORD CHANCELLOR, in giving judgment, said, that the first question raised was a point of practice,—what was the effect of a judgment pronounced, after one of the persons, alive at the hearing of a cause, had died? Two persons were in the same interest, one only was alive at the hearing, but the interest was completely represented; then, before the judgment was delivered, both persons had died. His lordship had always thought that the judgment dated from the conclusion of the hearing, and in that opinion he was borne out by what Lord Eldon decided in *Davies* v. *Davies.* There Lord Eldon held that the death of one of the defendants after the hearing, and before judgment, was not material; and the case of *Kirk* v. *The Bromley Union* was a clear authority that judgment might be given, notwithstanding the death of the party affected after the hearing. It was, indeed, a rational construction, and the law of abatements had been productive of so much delay and expense that he should have been slow to decide otherwise. Where all parties had been substantially heard there was very little danger in following the practice. Lord Cottenham, his lordship considered, had decided the point; and if he (Lord St. Leonard's) had then to decide it for the first time without authority, he should probably have decided that the judgment might be carried out by entering it, as had been the case, nunc pro tunc. That question being so decided, and the order of Lord Cottenham being in existence, he could not, until it was reversed, refuse to continue the injunction. That order of Lord Cottenham might, it was true, be reheard, but before it could be reheard, it was necessary that permission for a rehearing should be obtained, and his lordship would not, when made, be disposed to grant it. Mrs. Robson and Mrs. Ainsley might have had a claim on the private benevolence of the Crown, but they had no right on which they could found their claim. There had been a failure of representation, and in such case the writ of right could give no relief, and it was therefore strange that such a writ should have been conceded. A writ of right was a remedy against the Crown when no other relief could be obtained; but the parties here had other remedies, and which they had failed to establish, and they had failed, too, not in one instance, but in every court in which they had endeavoured to establish it. The matter had been properly decided. Lord Cottenham had so thought, and had so decided; and his lordship was not disposed to grant any facility for new experiments, which would lead to fresh expenses without any useful result. With respect to the remedy by monstrans de droit, his lordship did not see how it could produce any beneficial result. Nobody ever had a more perfect opportunity of litigating any right upon every point than these parties; they had tried every method and had failed in all. If they could have shewn a title superior to that of the Crown there would have been something to try, but they had nothing to offer but a denial of the right of the Crown, without being able to sustain any of their own. Conceiving that the writ of right had been too hastily granted, and that on that account these parties might have been induced to institute further proceedings, his lordship made no order as to costs.

Injunction granted as respected the proceedings by monstrans de droit on the same terms as the injunction granted by Lord Cottenham, and the motion to discharge the orders for irregularity refused.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

(Before the LORDS JUSTICES.)

IN BANKRUPTCY.

Ex parte RUFFORD, *re* RUFFORD.

Ex parte WRAGGE, *re* WRAGGE.

June 1, 5, 7, 8, 9, *and* 10.

Bankrupt Law Consolidation Act, 1849—*Conduct of a trader—Refusal of certificate—Bankers when insolvent receiving deposits.*

Bankers continued to trade and receive deposits, knowing that they were deeply insolvent:

Held, affirming the decision of the commissioner, that they were not, under the 198th section of the Bankrupt Act, entitled to certificates of conformity; but, with the consent of the assignees and opposing creditors, personal protection, as far as it might be available, was granted to them.

Quære, whether the Court can grant protection to bankrupts, to whom certificates have been refused, as against all creditors?

This was a petition by way of appeal from the order of Mr. Commissioner Balguy, of the 1st May, 1852, refusing, under the 198th section of the Bankrupt Law Consolidation Act, 1849, the bankrupts, Mr. Francis Rufford and Charles John Wragge, certificates of conformity, and it prayed that the said order might be reversed or varied, and that certificates, or, in any event, protection from arrest, might be granted to the petitioners.

The 198th section is as follows:—"That forthwith after the bankrupt shall have passed his last examination, the Court shall appoint a public sitting for the allowance of his certificate (whereof, and of the purport whereof, twenty-one days' notice shall be given in the *London Gazette,* and to the solicitor of the assignee), and at such sitting the assignees, or any of the creditors of such bankrupt, who shall have given to the registrar of the Court three clear days' notice in writing of his intention to oppose, may be heard against the allowance of such certificate; and the Court, having regard to the conformity of the bankrupt to the law of bankruptcy, *and to his conduct as a trader before as well as after his bankruptcy,* and whether the allowance of such certificate be opposed by any creditor or not, shall judge of any objection against allowing such certificate, and either find the bankrupt entitled thereto, and allow the same, or refuse or suspend the allowance thereof, or annex such conditions thereto as the justice of the case may require."

It appeared that some time previous to the year 1810, Mr. Philip Rufford, together with the petitioner, Francis Rufford, his son, carried on in partnership the Bromsgrove Bank, under the firm of Rufford, Biggs, and Rufford, and Philip and Francis Rufford and Charles John Wragge carried on the Stourbridge Bank in partnership together, under the firm of Rufford, Biggs, and Rufford. The Bromsgrove Bank, up to the period of the bankruptcy, was under the direction of Francis Rufford, and the Stourbridge Bank under that of Mr. Wragge. With regard to Mr. Philip Rufford, he was a gentleman far advanced in life, and had taken no part in the control or management of either of the banks, and the commissioner suspended his certificate for twelve months from the filing of the petition in bankruptcy, when a third-class certificate was to be delivered to him. Mr. Philip Rufford did not appeal from the decision of the commissioner. It appeared that the bankrupts commenced business with a very small capital, viz. Mr. Philip and Francis Rufford each, with 2,500*l.* nominally, and Mr. Wragge with that sum in cash. One ground upon which the decision of the learned commissioner turned (and which may be briefly noticed, although their lordships' decision proceeded on another ground) was, the improper and the speculative nature of the investments made by the bankrupts of the large deposits which were intrusted to them.

In one instance advances to the amount of about 90,000*l.* were made by the Bromsgrove Bank to Messrs. Fardon and Gossage, who carried on large chemical works in the neighbourhood of Bromsgrove. These works were subsequently transferred to a company called the British Alkali Company, of which Mr. Francis Rufford was a large shareholder and chairman (Mr. Wragge being also a shareholder), for upwards of 100,000*l.* Messrs. Fardon and Gossage, continuing shareholders to a considerable amount, and, as such, being without capital, required and obtained large advances from the Bromsgrove Bank, to the amount, in 1841, of 67,000*l.* at which time that bank arranged to take in full discharge for that sum, from Messrs. Fardon and Gossage, their shares in the British Alkali Company, shares in the White Lead Company, the Disc Engine Company, and other patents. Ultimately, in 1851, it appeared that upwards of 100,000*l.* had been advanced by the Bromsgrove Bank on the account of this speculation, and that there was then due to the bank for interest and other charges the additional sum of nearly 60,000*l.* while the shares of the British Alkali Company and the White Lead Company were almost valueless, and the Disc Engine Patent, although apparently an invention which might, if brought into use, be productive, was not then available for the purposes of bringing in any revenue.

Again in 1841, the Stourbridge Bank took to the Churchbridge Colliery for a bad debt, and it was found out when worked to be a losing concern.

Another speculation, in which Mr. F. Rufford and Mr. Wragge joined, was the Bloxwich Colliery. In the first instance they advanced 10,000*l.* between them out of the moneys of the Stourbridge Bank, and in 1846, the colliery had become indebted to the bank in the sum of 34,000*l.* and in 1851, at the time of the bankruptcy, in the sum of 43,000*l.*

In the year 1845, they closed their account with

Messrs. Spooner and Attwood, to whom at that time there was a balance of nearly 40,000*l.* owing from the Bromsgrove Bank, but there was a balance in favour of the Stourbridge Bank of 7,000*l.* They then transferred their account to Messrs. Glyn, Halifax, and Mills, who, in 1847, began to complain that they had overdrawn their accounts, and their complaints continued without intermission until they refused to honour their notes, and the parties were declared bankrupts in June 1851. It appears from the accounts of the two banks, that in the year 1849, if not long before, they were both deeply insolvent, and from the circumstances and letters noticed in the judgment of their lordships, it appears that the bankrupts, although they knew that such was the case, continued to receive deposits down to the time of their bankruptcy, and, in fact, during the six months preceding the bankruptcy, the Bromsgrove Bank received fresh deposits to the amount of 7,200*l.* and the Stourbridge Bank to the amount of 8,500*l.* At that time the debt due to Messrs. Glyn and Co. reached the sum of 70,000*l.*; but what with current bills which were productive, and securities which they from time to time obtained from the bankrupts, they would sustain no loss whatever, but would absorb all that could properly be considered the substantial and certain property of the two banks, leaving to the body of the creditors such divisible assets only as might be raised from balances owing. At the time of the bankruptcy the Bromsgrove Bank was indebted to the Stourbridge firm to the amount of 120,000*l.*; and although it appears that Mr. F. Rufford had exercised considerable influence over Mr. Wragge, who managed the Stourbridge Bank; still Mr. Wragge must have been aware of the advances which created the debt.

With regard to the private expenditure of the bankrupts, it appeared that Mr. Francis Rufford had, although unmarried, been living at the rate of 3,000*l.* a year, was a member of Parliament, and had spent between 3,000*l.* and 4,000*l.* in a contested election at Worcester. The expenditure of Mr. Wragge, who was a married man with a large family, appears to have been moderate.

Sir *W. Page Wood, Atherton* (of the Common Law Bar), and *Renshaw*, in support of the appeal, urged upon the Court that a third class certificate would be a sufficient punishment for the petitioners; that with regard to Mr. Francis Rufford, he had been led into speculations which turned out unfortunately, from an over-sanguine temperament; that he was willing to give up all his time to the winding up of the affairs of the banks, and to alleviate the distress occasioned by the bankruptcy as far as it was in his power, by giving up all his future property as the Court might think fit to order. On behalf of Mr. Wragge it was submitted that he had been misled or over-persuaded by Mr. Francis Rufford; that his private expenses had been on a most moderate scale; and that the case of the Stourbridge Bank stood upon a different footing from that of the Bromsgrove Bank. On behalf of both, it was contended that they did not believe their affairs desperate; they had still hopes of retrieving them (as many eminent firms, it was said, had done), until the time when they became bankrupts. [Lord Justice Knight Bruce.—The great question is, whether they continued to receive deposits at the bank when, as honest men, they ought not to have done so.] True, but the bankrupts had been guilty of no dishonesty; their speculations, though perhaps unsuccessful, and even rash, ought in the award of punishment, which to a certain extent they merited, to be distinguished from cases where the parties had been guilty of the grossest fraud and dishonesty. A refusal of a certificate would confound them with such persons. A third class certificate would sufficiently testify the censure of their imprudence by the Court; or if that was refused, protection to their persons ought to be granted. *Dornford's* case, and *Johnson's* case, 15 Jur. 278; 20 L. J. N.S. 6 & 7, Bank.; 16 Law T. Rep. 346; *Wakefield's* case, 17 Law T. Rep. 55; *Holthouse's* case, 18 Law T. Rep. 84; *Ex parte Jardine*, 1 Fonb. 182; 16 Law T. Rep. 305; *St. Alban's Bank*, 1 Fonb. 81; and *Martyn's* case (not yet reported), were cited and commented on.

Swanston and *Huddleston* (of the common law bar) for the official and creditors' assignees, contended that as the bankrupt had engaged in reckless speculations, and had, although they were for several years in a state of deep and increasing insolvency, continued to receive deposits until the very day of their bankruptcy, their conduct was such as traders as disentitled them to certificates. And with regard to Mr. Francis Rufford, his personal expenditure, in his circumstances, was altogether unjustifiable. [Lord Justice Knight Bruce.—Suppose we were to come to the conclusion that the certificates ought to be refused, should you object to our granting personal protection?] We should not.

Bacon, for some opposing creditors, contended that certificates ought not to be granted, although the creditors would offer no opposition to personal protection being granted.

Sir *W. Page Wood* in reply, amongst other grounds upon which he urged the Court to grant third-class certificates, stated that he feared the protection which the assignees and creditors were disposed to consent to the Court granting would not be available for all purposes, and that the bankrupts would still be liable to arrest at the hands of those creditors who had not come in under the bankruptcy.

Lord Justice Lord Cranworth.—This is a very distressing case, and if further consideration would have been of any use, we would have taken further time to look at the examinations used in evidence; but the truth is, that the point we have to decide does not depend on a very nice construction of the particular passages to which our attention has been drawn, but depends rather upon those general principles which have been discussed in the able arguments which have been addressed to us. The question is, whether these gentlemen, Mr. F. Rufford and Mr. Wragge, or either of them, are entitled to a certificate under the 198th section of the Bankrupt Act. The learned commissioner having heard the case and refused the certificates, Mr. F. Rufford and Mr. Wragge have appealed to us, and the question is whether they have made out such a case as to warrant our saying that the commissioner is wrong. It is our duty, and it is a very painful one, to say that they have failed in establishing such a case, and we think, therefore, that the commissioner was right. It is said that he proceeded on several grounds, one of which was, that the parties had laid out money on improvident investments as bankers; but it is not necessary for us to consider how far the investments were of such a character; for, independently of that, we think that the bankrupts had not so conducted themselves as to warrant the granting of a certificate, that they had misconducted themselves as traders, by going on trading and receiving deposits after they must have known they were utterly and hopelessly insolvent. Sir W. Page Wood said this is often the case with men who afterwards retrieved their affairs, and recovered themselves, but I hope this is a somewhat exaggerated representation, caused by the sanguine view which he takes of his clients' case; but I must observe that although that may be sometimes the case, it would be no justification for such conduct, and least of all in the case of bankers, because every one must know that the misery produced in a neighbourhood by the failure of a bank is so great that one almost shrinks from contemplating it, and it appears to have been the case in the present instance. The question is, did the bankrupts continue to carry on their business as bankers when they must have known that they were hopelessly insolvent, and that misery and ruin must be the consequence of their continuing to do so? I think it is impossible to answer that question otherwise than affirmatively. At the time of the bankruptcy there were assets of the Stourbridge Bank to the amount of four shillings in the pound, and in the Bromsgrove Bank to the amount only of one shilling in the pound, not taking into consideration the expenses of the bankruptcy. So that, looking at the facts of the case in the most favourable light, they continued as bankers to receive deposits, knowing that if their whole affairs were wound up there would not be more than five shillings in the pound, and that, in my opinion, is conduct utterly unjustifiable. That was the state of the assets when the bankruptcy took place in 1851, and there was no great difference from the state of their assets in 1849, and at the time of the bankruptcy. When had the parties a knowledge of this state of affairs? There is abundant evidence to shew that the truth of the case was perfectly manifest to their minds. In September Mr. Wragge came to London to Messrs. Glyn and Co. and had an interview with Mr. Glyn and his solicitor, and Glyn consented to make further advances with great reluctance, because on the 19th Wragge writes to Mr. F. Rufford, that if Mills had been there they would not have got the money. That was the state of things in September. On the 7th of October, Wragge having returned into the country, and at the instance of the Glyns, investigated the state as well of the Stourbridge as of the other bank, writes a letter to Mr. F. Rufford, in which he says, "I cannot see my way without something important and immediate from the engine." "Engine" means the patent right in the disc engine, the result of which is always doubtful; but to rely upon that, however useful and ingenious the disc engine might be in order to make up the deficiency, was absurd. An investigation takes place, various letters pass on the occasion, and Glyn requiring further information, writes into the country; and I was much struck by the letter of the 12th of October from Wragge to Rufford, saying that the "answer to Glyn must be written with great care." But all letters ought to be written with great care; but I cannot help seeing that he meant "Answer truly, but let it be such an answer as shall lull suspicion." It was an answer written with great care—the whole truth was not discovered—it was not suggestio falsi, but suppressio veri. The correspondence goes on with Messrs. Glyn and more assistance is obtained, but if at that time Mr. Wragge had looked into the affairs of the banks he would have known, and must on the evidence be taken to have known, that the Stourbridge Bank owed 225,000*l.* and had no more than 4s. in the pound, and the Bromsgrove Bank owed 227,000*l.* and had less than 1s. in the pound of assets. Having ascertained this they continue to receive deposits from rich and poor, but with a perfect knowledge that if all demands were made on them at once, there was not the remotest hope of paying them in full. This state of things continued for a year and a half before the bankruptcy, and I must say it is conduct in traders such as clearly disentitles them to the benefit of certificates. It is said that by refusing the certificates we shall be placing the bankrupts in the same category as the bankrupt in the case of St. Alban's Bank, which was clearly a breach of trust, a misappropriation of a bill, and confounding them with the bankrupts in *Holthouse's* case, who bought goods on credit, and immediately sold them at lower prices, conduct something analogous to swindling. And in one sense this is true, so far as the refusal is to be regarded as a punishment; but this is a misfortune incident to all laws that partake of a penal character. It is impossible that persons shall not sustain the same amount of punishment, though their faults may not be precisely equal. If not, no person could be hanged except for the worst kind of murder. If we are to make nice distinctions, and say that if the moral guilt of one bankrupt be somewhat less than the moral guilt of another, we will not visit both alike, we might as well say that if one murder committed is not of equal aggravation with another, that one has circumstances of extenuation which another has not, in cases of murder, you cannot possibly execute any murderer of the less atrocious dye. I do not agree to that, and to such an extent the principle must be carried, if the appellants' case is to be decided on the argument adduced. Human laws cannot make such nice distinctions, especially laws relating or analogous to criminal justice. But I do not agree that we have to inflict a punishment; the case is whether *the conduct of the parties as traders is such as entitles them to a benefit in the shape of a certificate, giving them protection from their creditors; it is rather withholding a benefit from them which good conduct might have entitled them to, rather than awarding to them a punishment.* I think, however, with regard to this case, the interests of society require that we should not cast any doubt on the judgment of the learned commissioner, and that we ought to refuse a certificate to both these gentlemen; for though distinctions have been attempted to be made between their cases, and stress laid upon the difference of their temperaments, we cannot go into those niceties. I think it utterly impossible to believe that two persons who day by day, and almost hour by hour, were in communication with each other by letter and personally, can either of them be ignorant of all that was known to the other; both of them must have known that in truth their affairs were desperate; and if they did not, they must have wilfully closed their eyes to the truth; and I am much struck with Mr. Wragge's answers in his examination, for when he was asked as to the state of their affairs in 1849, he did not venture to say that he believed that the banks had the means of paying their debts; that they were not, in fact, insolvent. There is no objection raised on the part of the assignees to protection being granted to the bankrupts, and I am of opinion we ought only to grant it by consent as far as it can be made available; it is not necessary to discuss the question. It is available against creditors coming in under the statute, but whether it may avail against the Common Law right of any creditor not coming in under the bankruptcy, it is not part of our duty to speculate. Our judgment must simply be to dismiss the appeal, qualifying the order in regard to protection so far as it is consented to by the assignees and the opposing creditor.

Lord Justice Knight Bruce.—Acceding entirely to what has just been said by my learned brother, I wish to be distinctly understood as not departing from anything said or done by me in the cases of *Wakefield, Dornford, Johnson*, and *Martyn*. If I had been persuaded that there had been any error in all, or any of those cases, on my part, I hope I should have been prompt to have stated it; but having since the commencement of the argument considered those four cases, I adhere to them as decided by myself, observing only in passing as to *Dornford's* case that my only doubt was, whether he had not been too severely dealt with by the commissioner. My opinion ultimately was that he was not. The present case is importantly distinguishable from each and every of those cases. The present case is distinguishable not only by the fact, that these gentlemen were bankers in a populous neighbourhood, but also on other grounds. The

bankruptcy happened in June 1851, and it is not necessary to go farther back with the history of those gentlemen or the banks than the autumn of 1849, and I do not think that it would be of any advantage to the bankrupts to go farther back. Commencing at that period, I have to ask myself these questions:—"Is it or is it not clearly proved that, in the autumn of 1849, these parties then were, on a just and reasonable view and estimate of their assets and liabilities, deeply insolvent? On the evidence, that question can only be answered in the affirmative. Again; did they at that time know the state of their affairs, and that they were insolvent? It may be a proper question to consider, what was their own estimate of the state of their assets? might they not have supposed the state of their assets more favourable than it really was? I cannot answer that question favourably to the petitioners—they knew no other word could represent their affairs than "insolvency." But they might say it was only a temporary insolvency, and that they might reasonably hope for improvement of the state of their assets, and for assistance from their friends, excusing, if not justifying, their continuing to transact business. However, from the statements in the books and other evidence, as rational men they could not, and, in point of fact, they did not, consider their situation as one of hope. This, then, was their situation in 1849; they continued, however, to carry on business, to issue notes, and to receive deposits from rich and poor, till 1851. Then it is to be asked, did their position in that interval improve? The answer upon the evidence is, it did not, and this includes in it the fact that they were during the whole of that time trading while deeply insolvent. Consistently, then, with that gentler estimate of their conduct which any man would wish to take, and attributing it to fear of exposure—to the dislike which most men have of looking at what is disagreeable—to the weakening nature of difficulties, these gentlemen went on; and it is not necessary to characterise their conduct by any harsh term, for who in a state of success and prosperity shall venture to say what would be his own conduct under similar circumstances? "Let him who standeth take heed lest he fall." Still, the interests of society at large preclude the exercise of any private feelings, and require that such conduct should be marked with reprehension, and we have no doubt that we are acting rightly in affirming the decision of the learned commissioner, of the correctness of whose judgment no doubt ought to be entertained. Let the appeal be dismissed, but the assignees and opposing creditors consenting, let the bankrupts have protection. My own impression is, that protection will be available for all purposes, although I no not bind myself to that expression of opinion.

The costs of the assignees were ordered to be paid out of the estate; and 50*l*. were also allowed out of the estate to the opposing creditors for their costs.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. HENRY COOKE, Esq. Barrister-at-Law.

Tuesday, Jan. 13.

JONES *v.* STARKEY.

Policy—Cargo—Equitable lien—Charge.

An account was opened with a bank on the agreement that the customer might overdraw to a stated amount, but that if he overdrew beyond he should find security. The account was overdrawn beyond the agreed amount, and the bank required security, whereupon the customer wrote a letter to the manager, stating that the arrival of a particular ship would put him in funds to enable him to adjust the account, and he inclosed a policy on the cargo of that ship for 5,000*l. indorsed payable to the manager in case of loss. The bank filed a bill for the purpose of having the bills of lading of this ship delivered up, and to have their lien or charge realised by a sale of the cargo. The defendants demurred to the bill for want of equity:*

Held, that there was not such a specific appropriation of the cargo as gave the bank a lien on it in preference to the other creditors of the customer, for that to create a lien on property there must be a clear agreement for the specific appropriation of it.

This was a bill filed by the registered public officer of the Liverpool Borough Bank against Messrs. James and John J. Starkey, trading at Liverpool under the firm of James Starkey and Co. and at San Francisco under the firm of Starkey, Brothers, and Co. the former being conducted by James Starkey and the latter by John J. Starkey, in California. James Starkey and Co. kept an account at the Liverpool Borough Bank, under an agreement that the firm should be allowed to overdraw to the extent of 3,300*l*. but should not overdraw beyond that amount without providing security for the amount beyond the 3,300*l*. In May 1851 the account of James Starkey and Co. was overdrawn 8,570*l*. beyond the 3,300*l*. or in all the overdrawn account was 11,870*l*. The only security the bank held was for about 3,500*l*. of the 8,570*l*. On the 23rd and 24th of May interviews took place between the manager of the bank and James Starkey, at which, the bill stated, "the manager urgently pressed on him the necessity of forthwith repaying some portion of the advances, and of reducing within further limits the account." On the last-mentioned day, James Starkey addressed a letter to the manager, in the following words:—

"Dear Sir,—With reference to our conversation this morning, we observe that the date of our order on Starkey, Brothers, and Co. for 3,000*l*. was 14th February, so that you ought to hear from them in a fortnight, and receive the amount within the current half-year. This order or credit was passed, in conformity with Starkey, Brothers, and Co.'s letter of the 1st September, authorising such, and of course we naturally went upon this as an accepted security, in the same degree as the previous transaction of 3,000*l*. with you. The arrival of our pearl-shell vessels, the *Nereus* and *Hellespont*, now both overdue, will enable us to reduce the account within its understood tother, which it now exceeds by about 1,000*l*. this article now paying a profit of between 400*l*. and 500*l*. per cent.; we shall have the bill of lading of 200 tons ditto, per *Lalla*, in time to make our balance creditable on 30th proximo; and finally, the arrival of the *Tagus* will put into our hands 8,000*l*. net, which will enable us to adjust the account, and what is more, to carry on with satisfaction to you and comfort to ourselves. The *Tagus* left Honolulu on the 14th January, to load shell and oil at Tahiti, which had been previously prepared, hence direct to Liverpool, so that the bill of lading will not anticipate the arrival of the vessel. We enclose your policy on her cargo, cost 5,000*l*. and we are about to cover 4,000*l*. more as profit."

The sum of 3,000*l*. mentioned in this letter was an extra credit on bills drawn by Jas. Starkey and Co. on Starkey, Brothers, and Co. which bills were then overdue. The policy of insurance referred to and inclosed in the same letter was endorsed, "In case of loss, pay to Wm. Cross, esq. Borough Bank, Liverpool, or order," and such endorsement was signed "James Starkey and Co."

The bill having stated the foregoing facts, alleged that the bills of lading of the *Tagus* had arrived, and were in the hands of the defendants, and that the ship was daily expected in port, and that a large balance was due from the defendants on their overdrawn account, for which the plaintiffs, according to the agreement, ought to have security; but they had none, excepting an equitable lien on the cargo of the *Tagus*, which they asserted they had, under the circumstances aforesaid; that the Bank had applied to James Starkey and Co. for the bills of lading, but the firm alleged that they could not part with the same, on the ground, as was the fact, that they were in insolvent circumstances, and could not defeat the rights of their other creditors, the bills of lading being assets applicable to the payment of the creditors. The bill prayed the delivery up of the bills of lading, and that the plaintiffs' lien or charge on the cargo might be realised by a sale of the cargo on the arrival of the ship in port. To this bill the defendants demurred for want of equity.

Bacon and *Selwyn*, in support of the demurrer.—The letter of the 24th of May, 1851, coupled with the indorsement on the policy, does not amount to such a lien or charge on the cargo as entitles the Bank of Liverpool to preference over the other creditors of the firm of James Starkey and Co. To constitute an equitable assignment, there must be an engagement to pay out of the particular fund or property, as was held in the case of *Watson* v. *The Duke of Wellington*, 1 Russ. & Myl. 602. All that the letter mentions is a florid idea of the value of the prospects of the firm, but as to an express appropriation of the profits of any part of the mercantile speculation there is none. It is well known to every banker and merchant that a transfer of a ship and cargo, or a ship or cargo, must be effected in a particular manner, where such a transfer is intended; and here, considering the facts as admitted, they shew that no such purpose was intended. All that fairly can be inferred from the letter is this—'If the voyage is prosperous, if the ship arrives safely, there will be ample funds to pay the amount overdrawn, and more to carry on our transactions in future with satisfaction to you and with comfort to ourselves; but if there should be a loss of the ship, the policy will be a security for 5,000*l*."

Eddis, for the plaintiff.—The true construction of the letter is that the writer engages to apply the proceeds of the cargo in the liquidation of the amount overdrawn. Had it not been so, there was no necessity for the great particularity in the description of several cargoes, nor in that especially on board the *Tagus*. Reason for the assignment of the policy there was none, because the ship was daily, if not hourly, expected in port. When the letter was written the bills of lading had not arrived, and the letter itself shews that the reason for no undertaking being given to assign the bills of lading was, that the cargo itself might arrive as soon as the bills of lading themselves. The learned counsel cited and commented on the cases of *Nicholson* v. *Hooper*, 4 Myl. and Cr. 180; and *Ex parte Bedaile*, 3 M. D. & De G. 109.

Bacon was not called on to reply.

The VICE-CHANCELLOR.—I think the demurrer in this case must be allowed. There is, perhaps, no general rule applicable to the decision for the present case beyond this, that to constitute a lien there must be a clear agreement, and I think it extremely doubtful whether the letter of the 24th May, 1851, contained any agreement at all. It is clear we must bear in mind the original agreement between the parties, according to which the firm of James Starkey and Co. were bound to give security to the bank for the excess of what their account with the bank should be overdrawn beyond the 3,300*l*.; and we must also, it is clear, bear in mind what passed at the interview immediately preceding the letter of the 24th of May, and to which that letter referred. It does not appear, and there is no allegation, that the bank applied for any further or additional security; but the application made was for repayment, that the overdrawn balance might be reduced to the original limits of 3,300*l*. Then came the meeting of the 23rd May, at which, according to the plaintiff's own statement in his bill, "the said Wm. Cross, the manager of the said bank, urgently pressed upon the said James Starkey the necessity of forthwith repaying some portion of the said advances, and of reducing within proper limits the said banking account." There is no mention of any proposition for securing the amount overdrawn, or any portion of it. Then we come to the letter of the 24th May. Now, independently of the terms of the letter, it is strange that, if the intention of the writer had been to create a security, this letter should contain no expression of any such intention. It does refer to a deposit of the policy of assurance, but it does not refer to any deposit or proposed deposit of the bills of lading, nor to any mode of assignment of the ship or cargo; nor does it contain or refer to any agreement to give a security throughout, though there is an agreement to give a security in the meantime, namely, until the safe arrival of the vessel at the end of her voyage. But there is no proposition for delivery of the bills of lading when the vessel shall arrive, which we should naturally expect to find, if the cargo as well as the policy had been intended to be given as a security. The writer appears to me to enumerate in this letter the assets of the firm which might be expected to be applicable to the payment of their debt,—namely, in the first place, the Californian order of the amount of 3,000*l*.; then the cargoes of the *Nereus* and *Hellespont*, the *Lalla*, and finally of the *Tagus*. Then come the words in the letter—"The bill of lading will not anticipate the arrival of the vessel;" words, which were relied upon as being evidently an excuse for not sending the bill of lading, and implying, therefore, that the firm felt that they would have been bound to send the bill of lading if it had been in their power. I admit that the words are open to that construction; they might have been used in such a sense; but they are at any rate open to a double construction, and the whole letter may be very well taken to mean, "You are quite safe, for as the bills of lading will not anticipate the arrival of the vessel, we cannot transfer her cargo to any other party, and when she arrives, we shall be in ample funds to pay you; and to guard against any loss before she comes into port, we send you the policy of insurance on the cargo, endorsed to yourselves." No doubt it was intended to create a charge upon the policy for 5,000*l*. and no doubt that charge was created; but I do not think that leads to a necessary inference that the cargo was also intended to be specifically appropriated for the benefit of the bank. I will not say that whenever equivocal words are used, this Court will decide against your lien; but the leaning of this Court certainly is against creating partial liens in mercantile transactions on the strength of equivocal expressions.

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

Friday, Feb. 20.

THE GREAT WESTERN RAILWAY COMPANY *v.* RUSHOUT.

Application to Parliament—Injunction—Pleading—Parties.

Where the directors of a railway company were irregularly entering into contracts with reference to a scheme for an extension line, the Court, at the instance of shareholders, granted an injunction to restrain the application of the company's funds to the payment of costs occasioned by the scheme, or in promoting the Bill in Parliament, and also to restrain the directors from entering

to contracts in the name of the company, with reference to the said scheme, &c.; but the Court declined to restrain an application to Parliament to enable the company to make the extension line.

The Great Western Railway Company being empowered by the Oxford, Worcester, and Wolverhampton Railway Company's Act to hold shares in the latter company, took the shares in the names of four persons as trustees, who became the registered owners thereof. The Great Western Company, on behalf of themselves, and other the shareholders of the Oxford, Worcester, and Wolverhampton Company except the defendants, filed a bill against the directors of that company, the company itself, and the four trustees as defendants.

Held, that the suit was properly framed, although the Great Western Company were only equitable shareholders.

The bill in this case was filed by the Great Western Railway Company on behalf of themselves and all other shareholders in the Oxford, Worcester, and Wolverhampton Company, except such of the defendants as were shareholders therein, against the directors of that company, the company itself, and the persons in whose names shares were standing as trustees thereof, for the Great Western Railway Company as defendants, and it prayed for the injunction now moved for. The motion was, that the Oxford, Worcester, and Wolverhampton Railway Company, and the directors thereof, might be restrained from using or applying the name, seal, funds, and moneys of the company for or towards the payment of any costs, charges, or expenses of, or relating to, or in any manner occasioned by the scheme for the extension railway in the bill mentioned, or the soliciting or promotion thereof, or the bill as in the said bill mentioned, introduced or about to be introduced into Parliament, as in the said bill also mentioned, or in anywise connected therewith, or from or by reason of any other bill or scheme for the like purpose, and also from introducing or soliciting the said bill, or any other bill for the like purposes, or using the name or seal of the said company for the introducing or soliciting of such bill, and, in particular, from entering into any contracts, agreements, or engagements in the name or on the behalf of the said company, with reference to the said proposed undertaking, or any other scheme for the like purpose, or the promotion thereof, or with reference to the said bill or any other bill for the like purpose, or the soliciting or promotion of any such bill, and also from excluding Samuel Baker, Frederick Pratt Barlow, Thomas Bulkely, Richard Potter, Henry Simonds, and Thomas Williams, or any of them, or any other of the Great Western directors of the said Oxford, Worcester, and Wolverhampton Railway Company, from full and free access to, and inspection of, and obtaining full and complete information touching and concerning all agreements, contracts, reports, correspondence, proceedings, acts, matters, and things made, done, received, passed, entered into, or by any of the directors or officers, servants or agents of the said Oxford, Worcester, and Wolverhampton Railway Company, relating to or concerning, or in any manner touching or connected with the said proposed scheme or undertaking, or the solicitation or promotion of the said bill, or any matter antecedent or preliminary thereto respectively, or connected therewith respectively; and also from excluding the said persons before named, or any of them, or any other of the Great Western Directors of the said Oxford, Worcester, and Wolverhampton Railway Company from their full and free participation in and management of the affairs of the said Oxford, Worcester, and Wolverhampton Railway Company and from full and free access to all the books, and papers, and proceedings of the same company, and of the officers, servants, and agents thereof, and from receiving full information in all respects as to the resolutions, deliberations, and proceedings of all and every of the committees of the same board of directors appointed and to be appointed.

By a provisional agreement dated the 15th of August, 1844, and made between the directors of the Great Western Railway Company and the committee of management of the Oxford, Worcester, and Wolverhampton Railway Company, the Great Western Railway Company agreed to render assistance to the project of the promoters of the Oxford, Worcester, and Wolverhampton Railway Company upon certain conditions. That agreement was altered by another agreement, dated the 20th of September, 1844, the effect of which, as stated in the prospectus of the new company, was, that the Great Western Railway Company would, on certain conditions, guarantee 3½ per cent. per annum on the ... capital, with half the surplus profits to ... By the subscribers' agreement of the ... company, it was provided that the company might make further agreements with the Great Western Railway Company to carry the said two agreements into effect, with such modifications as might be advisable. On the 18th of February, 1845, the general half-yearly meeting of the Great Western shareholders authorised the directors to apply to Parliament for the construction of the new line of railway. In 1845 the Oxford, Worcester, and Wolverhampton Company was incorporated by an Act whereby it was enacted that the capital of the company should be 1,500,000*l.* in 30,000 shares of 50*l.* each; and the company was authorised to borrow 500,000*l.* when the whole of its capital was subscribed for and one-half paid up. By sec. 11 of the Act, the Great Western Company were authorised to subscribe towards and become shareholders in the undertaking to any extent not exceeding 750,000*l.*: and by sec. 12, the Great Western Company were empowered, out of their corporate funds or annual revenue, to guarantee interest after a rate not exceeding 5*l.* per cent. on the shares they might subscribe for, as therein-mentioned, for such periods and upon such conditions as to the redemption of such shares as the holders for the time being of those shares, or the parties in whose hands they were placed as a security, might agree upon. By sec. 13, at all special or general meetings of the company, the Great Western Company might vote in respect of the shares held by them by any shareholder for that purpose deputed by them, except as to any question of the sale or lease of the railway to the Great Western Company, or as to the working or as to the working or using thereof by them. By sec. 15, the number of directors was to be fifteen, of whom six should be appointed by the Great Western Company, the rest by the new company. By sec. 16, the provisions of the Companies Clauses Act as to the election, removal, &c. of directors, were not to apply to the directors so appointed by the Great Western Company. By sec. 23, the directors were not to be reduced in number, except with the consent of the Great Western Company. After determining the line of the new railway, and providing that it should be on the broad gauge, and in certain parts on the narrow gauge also, the Act (sec. 91) made the Great Western Company and the new company liable to the Commissioners of the Navigation of the Severn to indemnify them against damage occasioned by loss of their tolls to a certain amount, and sec. 95 provided that the companies should be severally, as well as jointly, liable to the payment thereby imposed upon them both. The Act also (sec. 128) authorised the new company to lease their line to the Great Western Company, with the approbation of three-fifths of their shareholders, and (sec. 129) the sale of the line in like manner to the Great Western Company. By sec. 130, it was declared that all contracts made previously to the Act between the provisional committee of the new company and the directors of the Great Western Company, with the sanction of a general meeting, should be as valid and binding in every respect as if made subsequently to the Act, and in conformity with its provisions. Sec. 131 provided that if the new company failed to complete their railways within the time thereby limited, the Great Western Company might finish them, and, in certain events, might be required by the Board of Trade and compelled to do so. By sec. 152, in consideration of the probable advantages by the Act given to the Great Western Company, they were from the passing thereof subjected to the provisions of an Act to attach certain conditions to the construction of future railways, &c.

The Great Western Company took 3,600 shares in the new company, in the names of certain persons as registered holders thereof, upon trust for them, as declared by an indenture of the 23rd of March, 1848; and the Great Western Company paid 180,000*l.* in respect of such shares; and they also, under the before-mentioned Act, appointed six members of their own body directors of the new company. The Oxford, Worcester, and Wolverhampton Company appointed their chairman and three other persons a committee, to negotiate with the Great Western Company for a lease to the latter company of the line, and, requiring additional capital, they applied to the Great Western Company to enlarge their guarantee, which they agreed to do upon certain conditions. By two Acts passed respectively in 1846 and 1848, the Oxford, Worcester, and Wolverhampton Company were authorised to raise 22,000*l.* and 750,000*l.* additional capital. By another Act, passed in 1848, certain alterations in the company's line, so as to effect a junction at a particular point with the London and North-Western Railway were authorised; and it was thereby enacted, that it should not be lawful for the said company out of any money by that or any other Act authorised to be raised for the purposes thereof, to pay or deposit any sum of money, which, by any Standing Order of either House of Parliament, then in force or thereafter to be in force, might be required to be deposited, in respect of any application to Parliament for the purpose of obtaining any Act, authorising the company to construct any other railway, or execute any other work or undertaking.

By an Amendment Act of 1850, additional facilities were given to the company for raising the capital authorised to be raised by the previous Acts, and the Shrewsbury and Birmingham Railway Company, the Shrewsbury and Chester Railway Company, and the South Staffordshire Railway Company were authorised to subscribe money to, and to hold shares in, the Oxford, Worcester, and Wolverhampton Company, as therein mentioned, but it was provided that nothing in that Act contained should affect the rights, privileges, interests, or liabilities of the Great Western Railway Company under the previous Acts.

An agreement was afterwards entered into between the Great Western Company and the Oxford, Worcester, and Wolverhampton Company, according to which, the latter company were to complete their undertaking between Wolvercot, near Oxford, and a junction with the London and North Western Railway, near Wolverhampton, with a double line of broad gauge, &c., and lease it when completed to the Great Western Railway Company, for 999 years, upon certain terms: and a deed of mutual covenants, embodying such agreements, was duly executed, under the common seals of both companies.

On the 15th of July, 1851, this agreement was adopted, at a meeting of the shareholders of the Great Western Company, but it was adopted by the shareholders in the Oxford, Worcester, and Wolverhampton Company, subject to a condition that a provision should be added that the Great Western Company should purchase the undertaking on being requested to do so, by the Oxford, Worcester, and Wolverhampton Company, at any time after four years from the date thereof, upon the terms, and in manner, therein mentioned.

At a meeting of the directors of the Great Western Company, on the 25th of September, 1851, it was resolved, that the Oxford, Worcester, and Wolverhampton Company, should be informed that the terms of the condition annexed to the agreement were inadmissible, for certain reasons stated in the resolution.

At a meeting of the shareholders of the Oxford, Worcester, and Wolverhampton Company, on the 28th of October, 1851, this resolution of the directors of the Great Western Company, and also a reply thereto by the directors of the Oxford, Worcester, and Wolverhampton Company, were submitted for their consideration. The effect of this reply was that the agreement was rejected, and that three alternatives presented themselves: 1st. To make no present arrangement with any party, but to endeavour in the next session of Parliament to obtain an opportunity of meeting the Great Western Company on the merits of the whole case, before a parliamentary committee. 2nd. To enter into an immediate arrangement with the narrow gauge companies north of the Great Western line, if possible. 3. To apply to Parliament for powers to obtain independent outlets for their traffic by joining the Buckinghamshire Railway near Oxford, and the South Eastern and South-Western Railways. A committee was afterwards appointed to consider what measures should be taken for promoting the new company's interest. By the bill which was filed on the 9th of February, 1852, it was stated that the funds, by the various Acts of the Oxford, Worcester, and Wolverhampton Company, authorised to be raised, were not more than sufficient to complete their undertaking; that a majority of the directors of the Oxford, Worcester, and Wolverhampton Company, had lately determined to make a narrow gauge extension line from Wolvercot, three miles north of Oxford, to the line of the South-Western Railway, near Brentford, and to employ the name, seal, moneys, funds, and credit of their company, to obtain the necessary powers from Parliament. That on the 25th of November last, a notice was published for a bill to authorise the extension, which notice was signed by the solicitors of the Oxford, Worcester, and Wolverhampton Company; that the proposed extension was illegal, and would be prejudicial to the interests of the company; and that the scheme for it was without the sanction of their shareholders; that other measures had been taken, and agreements entered into, with a view to the formation of the proposed line, by a majority of the directors of the Oxford, Worcester, and Wolverhampton Company, and that they had been improperly expending the moneys and pledging the credit of the company for these purposes, and that they had employed the company's name and seal in promoting the Bill. That the subscription contract for the said extension was colourably got up upon the credit of the company; that the 1-11th part of the capital subscribed had been deposited, not out of the moneys of individual subscribers to the undertaking, but the whole, or a large part thereof out of the funds of the company; that in the early part of 1851 the majority of the board of directors appointed themselves a committee, to be called "the general purposes committee," to the exclusion of the Great Western directors, and dele-

gated all their powers to, or that all such powers had been exercised by such committee, and that all the acts of such committee to which the directors named by the Great Western Company were not summoned, were illegal and void; that at a meeting of the entire board of directors of the Oxford, Worcester, and Wolverhampton Company, on the 28th of Jan. 1852, minutes of the proceedings of the general purposes committee, on the 6th of Dec. last, were read, whereby it was resolved that Mr. Locke should be appointed engineer, to the said extension line, upon certain terms, and four persons named were appointed to be a deputation to canvass the landowners on the proposed line; and a minute of proceedings taken on the 23rd of Dec. 1851, whereby Mr. Fuller was appointed land surveyor, upon certain terms and minutes of the 24th of the same month of the appointment of Mr. Fowler engineer, and of a resolution that the secretary should be authorised to affix the corporate seal to petitions to Parliament, to subscription contracts, and all requisite documents for prosecuting the company's bills in the ensuing session. At the same meeting the directors appointed by the Great Western Railway Company proposed a resolution to the effect that the introduction of the bill being without the knowledge of the shareholders, and contrary to their interests, the name, seal, moneys, or credit of the company be not used, applied, or expended in any manner for the purpose of promoting the said bill, which resolution was negatived, and thereupon a protest of that date was signed by three of the said directors. The bill also stated that at the same meeting it was resolved that, inasmuch as the position of the company rendered it desirable that they should take steps which the Great Western Company might deem hostile, which steps it was desirable should not be made known for some time to the Great Western Company, and which could not be attained so long as the Great Western directors sat at and attended that board, authority should be granted to the general purposes committee to withhold their proceedings from confirmation until, in their estimation, the object desired rendered the withholding such minutes unnecessary; that this "resolution" be brought before every board meeting, and at such meeting the committee be requested to report their opinion of the propriety or impropriety of the confirmation of such minutes, and that the Great Western directors were purposely excluded from the said committee and kept ignorant of all its proceedings. The bill charged that the Oxford, Worcester, and Wolverhampton Company would not institute proceedings in their corporate capacity for the redress of the aforesaid grievances; that the company had no power to raise capital except by the said Acts of Parliament, and that such capital was insufficient for its special purposes, and the contribution of any of their moneys towards the said extension line would be a misapplication thereof, and would make it impossible for the company to complete their authorised works.

Bethell and *G. L. Russell*, appeared in support of the motion for the injunction.

Malins, Follett, and *Bovill*, for the defendants.

Bethell, in reply, as to the form of the suit, and the injunction extending to the use of the name and seal of the company in the application to Parliament.

The following cases were cited: *The Attorney-General* v. *The Corporation of Norwich*, 16 Sim. 225; *The Attorney-General* v. *The Guardians of the Poor of Southampton*, 17 Sim. 7; *Colman* v. *The Eastern Counties Railway Company*, 10 Bea. 1; *Munt* v. *The Shrewsbury and Chester Railway Company*, 13 Bea. 1; *Stevens* v. *The South Devon Railway Company*, 13 Bea. 48; *Ware* v. *The Grand Junction Waterworks Company*, 2 Russ. & Myl. 470; *Heathcote* v. *The North Staffordshire Railway Company*, 2 Mac. & Gord. 100; *Parker* v. *The Dun Navigation Company*, 1 De G. & Sma. 192; *The Newry and Rostrevor Railway Company*, v. *Moss*, 15 Jur. 437; *Hodgson* v. *Earl Powis*, 12 Bea. 392; *Lord* v. *The Copper Miners Company*, 2 Ph. 740; *Foss* v. *Harbottle*, 2 Hare, 461; *The Mayor and Burgesses of Lynn* v. *Pemberton*, 1 Swanst. 244; and *Graham* v. *The Birkenhead Railway Company*, 2 Mac. and Gord. 146.

The VICE-CHANCELLOR said, that the first question in this case was as to the form of the suit. The bill was filed by the Great Western Railway Company on behalf of themselves, and all other the shareholders in that company, seeking the relief prayed by the bill. It appeared by the bill and upon the affidavits, that the plaintiffs were not shareholders in their own name; but the bill stated, and it was proved by affidavit, that they had a large number of shares that were standing in the names of four persons, who were trustees for the company, and who were named as defendants on the present record, and in that state of matters it was contended that the company had no such interest as enabled them to maintain this suit on behalf of themselves and all other the shareholders. With reference to that question, his Honour thought that they had an interest to maintain this suit. There was a valid trust, beyond all doubt valid, on which these shares were held for the Great Western Railway Company—they were the only persons, who, under that trust, were interested in the shares. They had, therefore, an interest in what was sought by this bill to protect the property and concerns of this company. It was very true, that for many purposes the company were only bound to regard the legal title. One of the clauses of the Act was, that the company should not be bound to see to the execution of any trust, but they were not asked here to see to the execution of any trust, they were only asked to act on the title, which was a trust executed, and was an equitable title, and not a legal title, and enabling these parties to maintain this suit did not in any way change the jurisdiction on the subject matter, so that he must assume for this purpose that the legal shareholders themselves could maintain this bill. It was not like those cases in which the cestui que trust suing in this court, and making the trustee a defendant, asserted a right against another party which was a right to be asserted by the trustee in a court of law. The trustee, or cestui que trust could sue in this court, and therefore that objection could not apply; and when there was the additional fact that the trustee himself, the person who was legal owner of the shares, was a party to the suit, and bound by the proceedings, he did not see any objection to the frame of the suit. Moreover the Act of Parliament itself assumed that the Great Western Railway Company might have an equitable title in the shares where it provided in the 12th section that having taken these shares, they might guarantee interest on the money necessary to enable them to take the shares on such conditions as the holders for the time being of the shares, or the parties in whose hands they might be placed as security, might mutually agree upon. It appeared that these shares were, in fact, placed in the hands of the trustees, subject to a certain guarantee, and pursuant to that clause, so that the Great Western Railway Company was here precisely in the position that the Act of Parliament regulating the company, which was now before the Court, contemplated, namely, having an equitable title in these shares subject to certain guarantees by other persons who were the owners of the shares, and for these reasons, his Honour thought the suit was properly constituted as to the frame of it. The next question was as to the substance of this application. The object of the application to Parliament, which was the subject of this suit, was to vary the object and scheme of this railway company, and to apply to Parliament for an Act for that purpose. The objects of the Act of Parliament applied for were fully stated in the advertisement contained in the *Gazette*, which appeared on the 11th of November, and on some subsequent occasions. Now, in his Honour's opinion, having regard to the case that had been referred to, the object of the application to Parliament, as appearing by those notices, was a lawful object, if lawfully pursued. Parliament created this company, and having created this company, and limited it, he thought the power must rest with Parliament to vary the constitution of the company, to control it, to annihilate it, or deal with it as the wisdom of Parliament should think fit. Any argument addressed to the application to Parliament for varying the original object, as being a thing beyond the scope of the Act, should be addressed to Parliament, and not to this Court. He therefore thought, as he had before said, that there was nothing illegal in the object of this application to Parliament, assuming it to be legally pursued by the company. Now, the notice appeared in the *Gazette* on the 11th of November, and there was a resolution of the general purposes committee on the same 11th of November, directing the solicitor to take measures to lay before Parliament a Bill which was brought before the whole board, and was known to the board of directors on the 19th of November, 1851. It did not appear that that advertisement, or that which was done, was in the least degree necessarily calculated to apprise the parties who represented the Great Western Railway Company of any intention to appropriate the funds of the company improperly in the application to Parliament. He thought, as it had been contended, that they might fairly suppose that the subscribers' contract and the deposits were made, not out of the funds and moneys of this company, but by the moneys of persons who came forward independently; that it was quite competent for those parties, for anything that appeared in this resolution, to come forward with their own moneys, and pledge their own credit, and find the means for going on with this application to Parliament. It did not, therefore, appear to him on the point of acquiescence, that it was at all necessarily known to the parties at that time that there was any intention of improperly dealing with the funds of the company. That brought it down to the 19th of November. Then there were resolutions of the general purposes committee of the 16th, the 23rd, and 24th of December, and on subsequent occasions, from which it appeared that they had [illegible] onerous contracts on the part of the Oxford, Worcester, and Wolverhampton, Railway Company, not only for spending money, but binding themselves to pay salaries and incurring other expenses on account of the company at the time he had mentioned. All this was not alleged to be known to the Great Western Railway Company directors, who were directors of the company, until the 28th of January. Now it was clearly not in dispute in the affidavit that the company meant to make use of the funds, and to pledge the credit and enter into contracts on behalf of the Oxford, Worcester, and Wolverhampton Railway Company for the purpose of promoting this undertaking. It was said that it was to be a temporary use only, but it was nowhere alleged that the expenses, which might be very great, for promoting it in Parliament and other things of that kind, were not meant to be defrayed out of the funds of the company. Now upon all the authorities referred to that was an unlawful application of the funds, an application which this Court would not permit, and he did not see any difference between applying the funds of the company and entering into contracts in the name of the company for this purpose. Upon the authorities that had been referred to there could be no doubt that was a course of things that this Court would interfere to restrain, and his Honour had no doubt, therefore, as far as the injunction was sought as to that, that the injunction ought to be granted. The next question was as to the exclusion of the Great Western Railway Company's directors from the meetings of the board, and the concealment from them of what had been going on. It was said at the bar that that course of proceeding was strictly within the letter of the law. He certainly was surprised to hear that stated, because upon every principle, not only governing bodies of this kind, but private partnerships, where there was a body of persons where the majority was to bind the minority, it was essential to the validity of all their acts that the voice of the minority should be heard; that the minority should have an opportunity of stating their view, and it was not until they had had that opportunity that the acts of the majority became binding on the minority—and he thought Lord Cottenham's opinion might be referred to as shewing that even if the minority had a voice given to them, if there had been a combination among the majority before that voice was received to overbear it, he should consider the acts of such a body illegal, and upon the principles of this Court his Honour thought that would be so. Now, it appeared to him—without stopping to consider how it was in the affidavits before that time, that the resolution of the 28th of January, and what followed it on the 4th of February, appointing a committee for the purpose of carrying into effect the resolution—it appeared to him that course of proceeding was one that the Court had not any difficulty in restraining. Then it was argued that that was a part of the internal regulations of the company which ought not to form the subject of the interference of this Court, but ought to be allowed to be dealt with by the company itself. Now, how could the company deal with it? By a meeting being called of the directors. Of course they would not be parties who would be likely to call a meeting. It would be a long time before the shareholders could call a meeting. It was probable that that meeting might not support the directors in the course they thought fit to pursue, and then they must go for a mandamus, and all this to obtain an object which it was absolutely necessary should be done at once. There could be no doubt whatever that the aid of this Court was properly called in to prevent such a course of proceeding as that. That disposed of all the objects of the notice of motion except one, which was to restrain the defendants "from introducing or soliciting the said Bill or any other Bill for the like purposes, or using the name or seal of the company for the introduction or soliciting of such Bill, and in particular from entering into any contracts, agreements, or engagements in the name or on the behalf of the company in the introduction or soliciting the Bill." That was the point in this case on which his Honour had the most difficulty. He felt the force of Mr. Bethell's argument, which was, that the introduction of this bill could not be considered as having been done on behalf of the company by the body who were intrusted by the company with the care of the common seal for that purpose; it was done by a section of that body, acting, as it appeared to him, on many occasions, illegally, and excluding the voice of the minority. It was that portion of the case that had created much difficulty in his mind how to deal with it; but the order that he should make with respect to the other parts of this application, in the first place, would be to prevent the use of the company's funds or pledging their credit in any way for the purpose of promoting their Bill in Parliament. It would also insure to the Great Western Railway Directors and the whole body of shareholders who had an interest in having the whole board present, that the Great

Western directors should have a voice in all the subsequent proceedings relating to the conduct of this Bill in Parliament; and considering that the proceedings of Parliament were now inchoate only, there would be ample opportunity hereafter, pending the Bill in Parliament, for the Great Western directors, having all their powers restored to them, and having full access to the meetings of the board, to discuss and debate what ought to be done in Parliament. He could not interfere to restrain the defendants to the extent to which the notice of motion went to restrain them from soliciting this Bill in Parliament, or any other Bill for the like purpose.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

SITTINGS AFTER TRINITY TERM.

Friday, June 18.

MARSHALL *v.* NICHOLS.

*Action—Statutable remedy—*6 & 7 *Vict. c.* 79—*Justice of the Peace.*

Under the 6 & 7 *Vict. c.* 79 *(a Fishery Convention Act between England and France), a party who has sustained damage from breach of any of the regulations made by the Act, must pursue his remedy for damages before a magistrate or justice of the peace, as directed by sec.* 11 *and art.* 69 *of the Act, and cannot maintain an action for such damages.*

Case, for negligence.—The count of the declaration now in question was framed upon the 6 & 7 Vict. c. 79, and alleged that the plaintiff was engaged in drift-net fishing off the coast of Yorkshire, as the defendant well knew, and that it was the defendant's duty to abstain from trawl fishing within three miles from where the plaintiff was so fishing. A breach of this duty was alleged whereby the plaintiff's nets were injured.

Plea to this count.—That at the time when, &c. it was between sunset and sunrise, and that there were not two lights hoisted on the masts of the plaintiff's boat one over the other, 3 feet apart.

Demurrer to this plea.

The 6 & 7 Vict. c. 79 is an Act to carry into effect a convention between her Majesty and the King of the French, concerning the fisheries in the seas between the British Islands and France.

Art. 24 provides,—Trawl fishing is forbidden in all places where there are boats engaged in herring or mackerel drift-net fishing.

Art. 25. Trawl boats shall always keep at a distance of at least three miles from all boats fishing for herrings or mackerel with drift-nets.

Art. 26. Whenever herring or mackerel boats shall commence drift-net fishing in any place whatever, the trawl boats which may be already fishing in such place shall depart therefrom, and shall keep at a distance of at least three miles from the said drift-net herring or mackerel boats.

Art. 69. All transgressions of these regulations established for the protection of fisheries in the seas lying between the coasts of the British islands and those of France, shall in both countries be submitted to the exclusive jurisdiction of the tribunal, or the magistrates, which shall be designated by law. This tribunal or these magistrates shall also settle all differences and decide all contentions, whether arising between fishermen of the same country or between fishermen of the two countries, and which cannot have been settled by the commanders of cruisers, or by the consular agents and the collectors of customs or commissaries of marine, according to the country. The above-mentioned jurisdiction shall not, however, be understood to apply to murder, felony, or any other grave crime, all such crimes remaining subject to the ordinary laws of each country respectively.

Art. 70. The trial and judgment of the transgressions mentioned in the preceding article shall always take place in a summary manner, and at as little expense as possible.

Art. 71. In both countries the competent tribunal or magistrates shall be empowered to adjudge the following penalties for offences against the regulations committed by fishermen subject to their jurisdiction:—1st. Forfeiture and destruction of nets or other fishing implements which are not conformable to the regulations. 2dly. Fines from 8s. (10 francs) to 10*l*. sterling (250 francs); or imprisonment for not less than two days and not more than one month.

Art. 75. The competent tribunal or magistrates shall, when the circumstances are such as to call for it, award, over and above all penalties inflicted for offences against the regulations, the payment of damages to the injured parties, and shall determine the amount of such damages.

Sec. 11 enacts, That all offences against the said articles, &c. committed by any of her Majesty's subjects, may be heard and determined by any magistrate or justice of the peace having jurisdiction in the county in which, or in the waters adjacent to which, the offence shall be committed, or to which the offender shall be brought, &c.

Sec. 14. It shall be lawful for the magistrate or justice before whom the offence shall be inquired into, to take evidence of loss or damage, and award compensation to the injured party, and to enforce payment thereof.

S. Temple, in support of the demurrer to the plea, contended that the matters set up by way of defence to the plea, could not be considered as a condition precedent to the plaintiff's right of recovering damages resulting from the defendant's violation of Arts. 24, 25, 26.

Archibald, contrà.—This is not the proper tribunal for the recovery of these damages. The cause of action is founded upon the breach of the articles of convention in this Act, and a special tribunal has been created for the hearing and adjudicating upon offences against the articles, viz. a tribunal of magistrates. (Art. 69 and sec. 11.) The trial and judgment is to take place in a summary manner, and at as little expense as possible. (Art. 70.) The magistrates have power to award compensation to the injured party for damage done by breach of the articles. (Art. 75 and sec. 14.) So that a full and sufficient remedy is provided by the Act for the hearing and adjudicating upon offences against it, and the plaintiff should have pursued that remedy which supersedes the Common Law remedy. (*Stevens* v. *Jeacocke,* 11 Q. B. 731; *Crisp* v. *Bunbury,* 8 Bing. 394; and *Timms* v. *Williams,* 3 Q. B. 413.) [It is unnecessary to notice the other points, as the case was decided upon the above objection.]

S. Temple, in reply.—This is an action for consequential damage occasioned by a Common Law injury, and therefore the Common Law remedy is not taken away by the statutory one. (*The Mayor of Lichfield* v. *Simpson,* 8 Q.B. 65.) So also upon the Loan Societies Act, 5 & 6 Wm. 4, c. 23, where a summary jurisdiction was given to magistrates by a very similar provision to this, it was held that the statutory remedy was cumulative only, and did not take the Common Law remedy by action. (*Albon* v. *Pyke,* 5 Sc. N. R. 241; 4 M. & G. 421, S.C.)

Lord CAMPBELL, C.J.—I am clearly of opinion that this objection is fatal, and that no action can be maintained in any of the Courts on such a cause of action. This is an action for the violation of the 25th article of the treaty whereby, &c. [His lordship then read the article.] The declaration is framed upon it, and alleges that it was the duty of the defendant not to come within three miles, and the gravamen is in disobeying that article. Then what do we find in article 69? [His Lordship then read that article, and also article 75.] And when we turn back to secs. 11 and 14 of the Act, irrespective of the articles of the treaty, there is a specific tribunal pointed out for the trial of offences against the articles. It seems to me as clear as any point can be, that an action cannot be brought for such a cause of action, and that there is no remedy, except before the specific tribunal created by the Act of Parliament. It is unnecessary to consider the cases cited, as it is clear that where a new duty or a new offence is created, and a statutory remedy is given, that remedy must be exclusively pursued. Here we have a positive enactment in Art. 69 of the treaty, that all transgressions of these regulations shall be submitted to the exclusive jurisdiction of the tribunal or the magistrates designated by law. It would be a clear violation of the convention to bring an action against a French subject in the Superior Courts here for a transgression of these articles; and it is equally a violation of this Act of Parliament to bring an action in the Superior Courts against an English subject for a similar cause of action.

COLERIDGE, J.—This statute creates an entirely new right and a new duty, and also gives a remedy for the breach thereof; and the question is, whether for an infraction of that right, and a breach of that duty, an action can be maintained in the Superior Courts. We need not speculate upon the subject, for Art. 69 expressly provides that all transgressions of these regulations shall be submitted to the exclusive jurisdiction of the tribunal designated by law; and by sec. 11 a tribunal is created with exclusive jurisdiction. It is declared (Art. 69) that this tribunal shall decide all differences, &c.; and to shew that it does not confine its jurisdiction to some offences only against the articles, it expressly excepts murder, felony, and other grave crimes, and leaves them to the ordinary laws of each country.

ERLE, J.—Unless there is a statutable one, the declaration sets out no ground of complaint. It alleges that the damage was caused by the defendant's not keeping at the distance of three miles from where the plaintiff was fishing, and that two of the plaintiff's nets were broken. Then the statute, for the infraction of these regulations, and giving compensation to the injured party, creates a new tribunal with summary jurisdiction. Upon this statute, and upon general rules of law, I think it perfectly clear that the plaintiff cannot sue upon this cause of action in the Superior Courts, but must pursue the remedy given by the Act. *Judgment for the defendant.*

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY and C. J. B. HERTSLET, Esqrs. Barristers-at-Law.

Tuesday, May 25.

HILL *v.* PHILP.

Lunatic—Removal of papers—Trover.

The wife of a lunatic ordered the medical gentleman having the care of the lunatic to take from him certain letters and papers, which was done accordingly:

Held, that the medical gentleman was not liable in an action of trover brought against him subsequently by the lunatic. Martin, B. dissentiente.

This was an action tried before the Lord Chief Baron, and a rule for a new trial having been obtained on the ground of misdirection, and upon the evidence of a conversion on the count in trover,

Sir *F. Thesiger* (Att.-Gen.) and *Bovill* appeared to shew cause, but

James, Q.C. *J. A. Russell,* and *Chandler,* were called upon to support the rule.

The arguments and facts sufficiently appear in the following judgment. *Cur. adv. vult.*

JUDGMENT.

Wednesday, May 26.—PLATT, B.—In the case of *Hill* v. *Philp,* which was argued yesterday, two points were raised: the first was, with reference to the direction of the learned judge with regard to the treatment which had been received by the plaintiff. The other point raised was with reference to the question of a conversion or no conversion on the count in trover. Since the argument, I have read the whole of the summing up taken by the short-hand writer from beginning to end, and certainly my reading of that satisfies me that the jury could not have been misled, as has been suggested, because it is plain that though some expressions in the course of the summing up, might, if taken alone, have that effect, yet when you couple the whole context, each part of the context together, it is quite impossible that the jury, a special jury, could have been mistaken in the view the Lord Chief Baron took at the trial, who, at the very outset, took great pains to shew this, that there was not any objection to the rule by which the jury were to be guided. Now this is a part in particular, as it seems to me, that points out to the jury what their duty was. "I do not want to do more than again state to you that if Dr. Philp obeyed the directions of Mrs. Hill, the wife, who had placed him there, to whom he was responsible, she was the person who put him there, he was responsible to her, and he was quite correct. Taking that alone as against the defendant, he was under the direction and opinion merely of the wife; but if taken together, the statements have a totally different meaning. He was quite correct when he states some other person came and proposed to take him away. I have no objection to his going, but cannot let him go without the permission of Mrs. Hill. All that is right. I go further; if Mrs. Hill thought, and in consequence Dr. Philp also thought, that communication with other persons in the course of writing this correspondence with Col. Thompson, or with the Secretary of State or other persons on such matters, was calculated to keep up the irritation, Dr. Philp was perfectly right in obeying her instructions, and acting according to that course of conduct; if she and he thought, the one with reference to the knowledge of his person and history, and the other as to his medical skill, if they thought that that was the fittest course to adopt, it was right that that should be adopted. Can any one say that the skill required from the defendant was improperly administered? It is perfectly plain it was not. Now, with regard to the other question as to the conversion, I own I cannot see what is the conversion, because though true it is there is a scene enacted between him and this unfortunate medical gentleman at the establishment when he comes and demands the papers of Mr. Hill, yet, from the evidence of the person who was called in for the purpose of speaking to that circumstance, I cannot see anything like a trespass, or an asportation, or carrying off (which would be a conversion), or an assumption of dominion over the property that was placed in the care of Dr. Philp. But when a man is insane, this will happen. How can you say that is a conversion which is an act adopted merely for the purpose of protecting his property, over which he has not a complete control. It seems to me that the man, and handing it over to Mrs. Hill (the wife), that, of itself, is not a conversion. Then, is there any other evidence of it? Why, there is no doubt if Dr. Philp had kept these papers, thus sealed up, until the man under his care had arrived at that point when he might be said to be sane, and on de-

manding his papers Dr. Philp had refused to give them up, that would be clear evidence of a conversion, because he would have been a man capable of exercising his understanding, and ought to be attended to in any demand he made. But that is not so here; there has been no such demand made, though it was certainly stated to be so from what fell from the learned counsel yesterday in commenting upon the correspondence. It seems a very unusual proceeding for a learned counsel in so important a matter to make a mistake in that on which the whole question turns,—whether or not there was evidence of a conversion. It is plain that no such demand was made for the delivery up of the papers by Dr. Philp to the plaintiff, and therefore the issue upon that is not supported. I think, therefore, this rule ought to be discharged.

MARTIN, B.—Two points were raised in this case; one with respect to the misdirection on the first count, and the other with respect to the question arising on the count in trover. With respect to the supposed misdirection, the first question is, upon what, in his summing up, the Lord Chief Baron told the jury, that if they believed Dr. Philp acted on the instructions given by the plaintiff's wife he was justified in his conduct. If such had been the direction, I should certainly have been of opinion that he was wrong. But when the summing-up comes to be read and considered, it appears to be perfectly clear the summing up was, if he exercised his skill bonâ fide, acting on the information given to him by a person whom he had every reason to believe was acquainted with the circumstances in which the man was, he was right. I apprehend that was most clearly a right direction, and without such a direction no medical man would be safe in approaching a patient or doing anything with him. Every medical man must, to some extent, act upon the information he receives. He is bound to take care that the information comes from a quarter that he has reasonable ground to suppose is a reliable one, and he ought not, otherwise, to act on the information. No man would be safe in approaching a patient at all unless he had that correct information. In this particular case, it seems to me in the course of the argument, that the main question was a mere question of degree. The man having been confined to his bed, the surgeon having given permission to his brother on the previous day, and he being told the following day that it had produced evil consequences, though he might possibly be wrong in the abstract sense, how, possibly, could a man be liable for having treated that person with unfair harshness? This is a matter of a different kind, but the same in degree, because this lady founded her information on some letters she received from him, and she observing that in the course of that correspondence the man's mind became more affected in consequence of her husband having an opportunity of mixing with others. I own, the direction was perfectly right and any other direction would have been an erroneous one. With respect to the other point, I am sorry to say I do not concur with the rest of the Court. I am of opinion that there was a conversion, and that the plaintiff ought to have the verdict entered for him, with 1s. damages in this case. The facts of the case were these,—this man was in possession of a number of papers which he had kept by him; the wife wrote a letter to the defendant, desiring him to take those papers from him; and accordingly, on the occasion of his leaving the asylum, some person acting under the direction of Dr. Philp insisted on the papers being given up; upon his refusing to give them up—I believe he stated he would not give them up—a keeper was sent for and the papers were taken from him, or he delivered them up protesting at the same time against it; and they were given up to the person whom Dr. Philp directed to receive them. Ultimately they were received by him, but they were sent to the plaintiff's wife some time after. This is an action of trover; the pleas are, as I understand, not possessed, not guilty, and leave and license. I do not know whether any plea could be pleaded for protecting this Act and rendering such a conversion necessary. Perhaps not: at all events, I am of opinion that the plaintiff is entitled to recover in respect of it. No doubt they were taken from him against his will. I think he had will enough for the purpose of preventing his property being taken from him. If he has not will to prevent it I do not see any wrong is committed on an unfortunate lunatic when anything is done to him which he has not the will to assent to or dissent from. The property is taken from him against his will and afterwards given to a person who is (in my opinion) in law a stranger to all intents and purposes. Now what is a conversion? A conversion is the removal of a chattel without any authority of the owner or by any authority else; and it is stated again and again the asportation for the use of a third person of a chattel amounts to a conversion, for the reason that it is an act inconsistent with the general rights of dominion by the owner over the chattel, so that the person who has the right has not the power to use it as he pleases. I own that I am of opinion the jury ought to have been directed to find the verdict for the plaintiff with damages merely nominal, because these were nothing more than certain documents to which no value was attached in the course of the case. I am of opinion the rule should be discharged, the defendant consenting to the verdict being entered for the plaintiff on the count in trover. Such is my opinion, and the defendant is entitled to the judgment of the Court.

POLLOCK, C.B.—I concur with the rest of the Court. I state my opinion now, because my brother Alderson was not here during the whole of the argument. I concur with respect to what has been said on the subject of the direction. In truth, the application to the Court for a new trial was founded on a misapprehension. It was supposed that the first letter would be put in evidence, and if put in the objection might have been correct. The objection resolves itself into this, that the use that was made of the letters was wrong, thou h the letters were by consent received in evidence. n point of fact, the use that was made of the letters was this, they were considered by me as information coming from a person likely to give unprejudiced, probably affectionate, certainly correct and honest information as to the past history and the present condition of the man as far as the wife could form any opinion; and the direction to the jury was, that whatever was suggested by the wife he coincided in, exercising his own judgment as a medical man. The distinction was particularly noticed to the jury in the early part of my summing up—that what she stated as a fact, if the medical man believed it to be true, and in exercising his medical skill upon the facts so communicated to him, he thought that the suggestion as to the particular line of treatment was a proper one. Exercising his skill in that way upon the information of the wife, he was not responsible for the consequences. With respect to the count in trover, it certainly is remarkable that it was not opened to the jury. In the reply, not one syllable was said about it. There was no evidence at all at any time; none was suggested; nor were the jury even asked to give any opinion upon it. If, therefore, we were under the necessity of entering a verdict for the plaintiff, own I do not see why my brother Martin should take away 11½d. of the defendant's money. I think, if the verdict were found at all for the plaintiff, it should be with damages one farthing; for there was no suggestion given in his evidence, nor by the counsel in the opening, or the reply, that these papers were worth a single solitary farthing, which must be given, if the verdict is to pass for the plaintiff. But I entirely agree with my brother Platt, and I think if we were to allow a verdict to be taken for the plaintiff under these circumstances, we should introduce a new head of conversion, and create an extreme difficulty in the mode of dealing with the property of insane persons, and treating them in respect of the personal property that they might have along with them when they were in a lunatic asylum. I can take no distinction, as a matter of law, between these supposed papers of possible value and a few shirts, and a few pairs of stockings; and I must say, if one's attention is transferred, for a moment, from the papers to the contents of the portmanteau, and to the time the insane person is merely removed from one custody to another, when the attendant who came to him said, "I cannot allow you to carry away with you your linen in the state in which it is at present; it must be taken from you and washed before it is sent away. I cannot allow you to go without first changing the linen you have upon you, and your putting on fresh clothes;"—and if he were then sent away, and the clothes so taken from him were washed and subsequently delivered to the wife, it would have been just as much a conversion of the shirts and pairs of stockings as of these papers. The facts were, it was considered advisable when he was removed that he should not take those papers, the possible brooding over which had contributed very much to continue the visitation, and the insanity for which he was placed there to be removed and to be cured, and for which he was to be removed to another place for the purpose of perfecting the cure. I think, under those circumstances, the conduct of the medical officer of the establishment, who went to him and insisted on taking those papers from him, was perfectly justified. It appears that before he gave them up he sealed them up in a parcel; subsequently that parcel was delivered to his wife. Now I am quite ready to adopt the distinction in respect of trover being an action that may be maintained where any one has taken property in favour of himself or a third person. The wife, in my judgment, is not a third person. The wife was the individual who had placed him there. The law requires that if a person be insane he shall be sent to a lunatic asylum by the direction of some particular individual. I apprehend that the individual who interferes and gives that direction, under the authority of the Act of Parliament, to a medical man to certify, does stand in the situation, ex necessitate, of a sort of guardian, a sort of committee, at the period before any inquisition has been taken, so as to ascertain whether he is a fit person to have the appointment regularly of a committee of the estate. The wife, in this instance, having called in a medical man (as the Act of Parliament requires that somebody should be the individual who places the lunatic there), in my judgment, the wife, the person who placed him there, would have the same protection. But here it was the wife: she interferes as his wife; she sends him here, and I think that she was quoad hoc the guardian of his person and his property, and what was done under her direction, he being mad, and having no power or will of his own, was perfectly right and proper, and, as one of my brothers has suggested, when the property was taken it was not so much taken *from* him as *for* him, in order that it might be protected and delivered into the custody of one who, it was supposed, had a legitimate right to it,—it was delivered to his wife. I am of opinion that there is no conversion. It was not taken by Dr. Philp for his own purpose: it was not taken for the use of any third person, for I think the wife is not a third person; and I think a guardian quoad hoc cannot be considered a third person for this purpose. It seems to me, therefore, that there was no occasion for any justification, and there was no justification in this case, for there was no conversion at all. It was merely taking care of the property because it was right to take care of it; sealing it up and taking care of it, and ultimately delivering it to the person who most likely would be entitled to retain it. Upon these grounds, it appears to me that there was no conversion, and that the rule ought to be discharged.

ALDERSON, B.—I did not hear the argument, but I heard the report read. I quit of the Court in thinking that there is no doubt whatever the proper direction was given, and that it was properly put that the letters were simply an assistance to Dr. Philp in order to guide his medical judgment. If the unfortunate patient had been in a state of collapse altogether it would be necessary for some one to examine the circumstances and symptoms of the case in order that the doctor might act upon it; like a mad person, a person incapable of explaining the symptoms of his own disease where the ordinary nature of the disease shews that he cannot explain the symptoms of it. The taking the property of a madman from his possession is not of itself a conversion of the property. If it were so, the consequences would be enormous and fatal. Suppose a person holds in his possession the title-deeds of a large estate and is about to destroy them, does any person say that a person taking from a madman the power of destroying the interests of his family and of those who came after him, that that would be a conversion of the title-deeds? If so, you might say if a man was about to cut his own throat with a razor the taking of the razor out of his hands would be a conversion of the razor. Then, would the delivery of these papers to the wife for him make it a conversion? I confess that I think it does not. *Rule discharged.*

April 15 *and June* 7, 1852.

BLUCK *v.* GOMPERTZ.

Guarantee—Statute of Frauds.

A guarantee was given in the following form: "Upon your handing me your two drafts on A. B. for 200l. and 146l. respectively at six months from this date, I undertake to get them accepted, and see that they are duly paid." Signed C. D. the defendant, directed to E. F. the plaintiff; this was subsequently altered by a memorandum written across it by the defendant, but signed by the plaintiff alone to this effect:—"I have received the two drafts, one being for 150l. instead of 146l. there being an error in the invoice:"

Held, sufficient to satisfy the Statute of Frauds, and that the defendant was liable as a surety for the 150l. bill, although he had not signed the second memorandum, it being in his handwriting.

This action was tried before Pollock, C.B. at the sittings in Middlesex in Michaelmas Term last, when the learned judge having left it to the jury that there was evidence of the contract declared upon, a verdict was returned for the plaintiff. Subsequently

Knowles, Q.C. obtained a rule for a new trial, on the ground of misdirection, against which

Thursday, April 15.—*Welsby* (*Pierce* with him) shewed cause. *Cur. adv. vult.*

The facts and arguments fully appear in the

JUDGMENT.

POLLOCK, C.B.—In this case the declaration stated that Morgan John O'Connell agreed with the plaintiff to buy certain wines, part for 200l. and part for 150l. and thereupon, in consideration that the plaintiff would, at his own expense, procure stamps for and draw two bills, one for 200l. and the other for 150l. at six months, and deliver them to the

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defendant, he, the defendant, would get them accepted, and see them paid when due; and the breach was that the defendant did not see them paid. It appeared that Mr. Morgan John O'Connell did purchase two parcels of wine, one for 200*l.* and the other, as it was at first supposed, of the value of 116*l.* and a guarantee was given in this form:—"Kensington, March 19, 1851. Dear Sir,—Upon your handing me your two drafts on Morgan John O'Connell, esq. M.P. respectively for 200*l.* and 146*l.* at six months from this date, I undertake to get them accepted, and see that they are duly paid. I remain, dear sir, yours truly, H. G. Gompertz" (*the defendant*). Directed to J. Bluck, esq. (*the plaintiff*). As no bills existed at the time the memorandum was signed, and the plaintiff was to draw them, and they could only be drawn upon stamps so as to be valid, it followed that the plaintiff was to procure the stamps at his own expense. It was discovered afterwards by the plaintiff that the true price of the second parcel was not 116*l.* but 150*l.* Bills were drawn payable at the time, as agreed, for 200*l.* and 150*l.* and the defendant got them accepted and gave them to the plaintiff, and the defendant then wrote across the face of the guarantee in his own hand as follows:—"I have received the two drafts, one being for 150*l.* instead of 146*l.* there being an error in the invoice of 4*l.* both accepted by Mr. O'Connell," and the plaintiff signed this memorandum, but not the defendant. On the memoranda, consisting of these two writings, being produced at the trial, Mr. Knowles objected that it was not a memorandum signed by the defendant of the contract declared upon. The original memorandum signed by the defendant was of an executory contract, to be performed after the date of the transaction in consideration that the plaintiff would draw two bills, one for 200*l.* and the other for 146*l.* and hand them to the defendant, he (the defendant) would get the bills accepted, and see them paid; and that contract was never performed by the plaintiff, for one for 150*l.* was drawn, and not 146*l.* So far, no doubt, it is clear. But for the plaintiff it was contended that the memorandum written on the face of the original guarantee explained that this was a mistake, that the true contract was for a bill of 150*l.* The memorandum, therefore, merely corrected a mistake, and being written on the same piece of paper, and on the face of the guarantee to be signed by the defendant, his original signature was a signature, though only to satisfy the enactment of the Statute of Frauds. If the defendant, by any memorandum signed by him, had stated that the original contract was, that if the plaintiff would procure stamps, and draw two bills, of 200*l.* and 150*l.* the defendant would see them paid; but that the latter amount had been by mistake described for 146*l.* it would have been sufficient, for the Statute of Frauds does not require the contract itself to be in writing, but any memorandum of it, and a memorandum properly signed that there be such contract is quite sufficient. And we also think that words introduced into a paper signed by the party may be considered as authenticated by a signature on the paper, if it is plain that they were meant to be so authenticated. The act of signing after the introduction of the words is not absolutely necessary. The difficulty in the case is, that the words, though written by the defendant across the original guarantee, are not written as his words, but they are written as the words of the plaintiff, and the effect of the instrument altogether is this, the original guarantee remains unaltered, with the substitution of the defendant. The plaintiff states that he has drawn instead of one of the bills—that for 146*l.*—a bill for 150*l.* assigning a mistake in the invoice; and the reason for that is, that he has received it back from the defendant, accepted as part performance of his original contract, and so discharges the defendant in that respect. It may, however, be inferred, from the fact of the defendant himself writing the memorandum across for the plaintiff to sign, not only that he agreed that the bill for 150*l.* previously substituted instead of the one for 146*l.* of the plaintiff should stand in the place of that for 146*l.* and implicitly that the defendant should be responsible for it; but also that he admitted that the original contract was, that he should procure to be accepted and see paid any bills for the amount of the invoice of the second parcel of wine, and that the invoice was 150*l.* so that this would be proved, as the contract alleged in the declaration. If so, it may be inferred from the fact of the second memorandum being written on the same paper by the defendant, it was meant to be authenticated by the signature so as to constitute a memorandum in writing signed by the defendant. If so, the Statute of Frauds has been complied with; and although we do not come to this conclusion without some difficulty, a doubt still remaining on the minds of some of the members of the Court, we think this is the true view of the case, and that the rule should be discharged.

PLATT, B.—I certainly had very great difficulty in bringing my mind to this conclusion. I am now

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satisfied, beyond all question, this is the contract signed; in fact, it is under the signature of the party. Suppose, after this instrument was drawn, the defendant had, in his own hand, altered the 146*l.* to 150*l.* in the account, there would be no doubt that would be sufficient without resigning the contract. Then the effect of the contract it seems is this: it is just the same as if the defendant had written upon the face of it, "One of the two bills has been drawn for 150*l.* instead of 146*l.*;" and then for the plaintiff to have written on that, "I accede to that." I being in the hand-writing of the defendant, it seems to me, viewing it in that light, there is quite sufficient, upon the face of the original agreement, to justify us in holding this is a signature in compliance with the Statute of Frauds.

POLLOCK, C. B.—The two points on which it appeared to me, I own, at the trial, free from any considerable doubt, after the points taken by Mr. Knowles in the able manner in which he presented them, are these: a paper writing set out by a party signed by himself may well be taken as authenticated in all its parts by a signature, although he does not go through the ceremony of running a dry pen over his handwriting. I think we are all of opinion that the mere running a dry pen over a signature would authenticate it, though certainly it is not necessary to go through the ceremony for the purpose of complying with the Statute of Frauds. The other point is, where any man calls upon another to admit or assent to a particular fact as against him that is cogent evidence that the fact is true. Now here Gompertz wrote in his own hand and called upon the plaintiff to sign a memorandum, distinctly stating that there was an error in the invoice, and that it ought to have been 150*l.* instead of 146*l.* and that as against Gompertz, who wrote it and called upon the plaintiff to sign it, I apprehend that there could not be more cogent evidence that the fact was true, and he having delivered out a paper containing that statement, or what was tantamount to a statement, it appears to me the Statute of Frauds is sufficiently complied with, and the declaration is good. *Judgment for the plaintiff.*

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Reported by JOHN THOMPSON, Esq. of the Inner Temple Barrister-at-Law.

Tuesday, June 15, 1852.

(Before PARKE, B. ALDERSON, B. MAULE, J. CRESSWELL, J. PLATT, B. WILLIAMS, J. and TALFOURD, J.)

OSTLER *v.* COOKE and OTHERS.

Drainage Act—Commissioners—Appointment—Execution of powers.

By a local Act for draining part of the county of Lincoln (6 & 7 Vict. c. lxxvi. s. 1) the lords of three manors for the time being, or in their absence their respective agents, appointed by writing under their respective hands for each of the said manors, were appointed commissioners for executing the Act. By sec. 2 no person could act as a commissioner or the agent of a commissioner, until he had subscribed a certain declaration. By sec. 3, in case any commissioner shall act before making the declaration, or if any person not duly qualified shall act or shall appoint an agent who shall act, he shall be liable to certain penalties. By sec. 6 no act of the commissioners should be valid unless done at a public meeting of the commissioners. The lords of the three manors mentioned in the Act never met together, nor did any of them subscribe the above-mentioned declaration, but all three of them being in England, though not in Lincolnshire, and apart from each other, respectively signed instruments in the form given by the statute, appointing the defendants their agents for executing the Act. The defendants subscribed the required declaration, and then proceeded as commissioners to put the Act in force:

Held, that they were by such appointment themselves commissioners, and as such authorised to put in force the compulsory powers of the statute.

The defendants, in execution of the Act, gave the plaintiff notice that for certain works they would require part of his land, which was particularly described therein. Upon his refusal to treat for the purchase of the land, the defendants, in pursuance of powers given by the Act, issued their warrant to the sheriff to summon a jury to assess the value of the land required, and the compensation to be paid to the plaintiff for injury to other land. In obedience to that warrant a jury was summoned, and an inquisition taken. The warrant and inquisition described the lands generally, but did not recite or refer to the previous notice of the defendant's intention to take the lands, nor did they state that the plaintiff and defendants had been unable to come to an agreement:

Held, that it was not necessary that those matters should appear upon the face of the warrant or

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inquisition, and that the identity of the lands not being questioned in point of fact, the proceedings were regular.

Ostler *v.* Cooke, 13 *Q.B.* 143; 18 *L.J.* 185; 13 *Law T.* 67, *affirmed.*

This was an action on the case for injury done by the defendants to the plaintiff's reversionary interest in certain lands in the county of Lincoln. Various issues were raised upon the record; and when the case came on for trial at Lincoln before Patteson, J. it was agreed that the facts should be turned into a special case for the opinion of this Court.

The plaintiff, previous to and at the time of the passing of the stat. 6 & 7 Vict. c. lxxvi. "for draining, embanking, and improving the fen lands, &c. within the parishes, &c. of Bardney, Southrow, otherwise Southrey, Tupholme, Bucknall, Horsington, Stixwould, Edlington, and Thimbleby, in the county of Lincoln," was entitled, as owner in fee simple, to the reversion of certain land to the extent of upwards of 200 acres situate in Southrey, of which the three closes in the declaration mentioned, in the occupation respectively of Perrin, East, and Goodyear, as tenants to the plaintiff, form a part, and he is still entitled to such reversion, unless, under the circumstances hereinafter stated, he has, by virtue of the provisions of the said Act, become divested of the same.

The said Act of Parliament is to be considered as forming part of this case.

By the said Act it was enacted, that from and immediately after the passing of the same, the lords or ladies of the respective manors of Bardney, Tupholme, and Stixwould, aforesaid, for the time being, or, in his or her or their absence, their respective agents appointed by writing under his or her or their respective hands for each of the said manors respectively, and which respective appointments may be made according to the form specified in Schedule (A) to this Act, or as near thereto as circumstances will admit, shall be and are hereby appointed commissioners for executing this Act. Provided that no person shall act as agent for more than one commissioner at one time.

Sec. 2. It was further enacted, that no person shall be capable of acting as a commissioner or as an agent of a commissioner until he shall have made and subscribed a declaration in the words or to the effect set forth in the Schedule (B) to this Act.

Sec. 3. It was enacted, that in case any commissioner shall act before he shall have made the said declaration, or if any person not being duly qualified shall act, or shall appoint an agent or deputy who shall act, in the execution of this Act, he shall be liable to certain forfeitures, and the mode of recovery of the same is provided.

Sec. 4. It was enacted, that no act or proceeding of the commissioners shall be impeached or rendered or decreed to be informal by reason of any person not duly authorised to act as a commissioner in the execution of this Act having acted or concurred therein.

Sec. 5, comprises certain provisions relative to the meetings of the commissioners for carrying the Act into execution.

Sec. 6. It was enacted that no act of the said commissioners shall be valid unless done at some public meeting to be holden by virtue of this Act (save as in this Act is particularly mentioned), and all powers and authorities granted to or vested in the commissioners may, from time to time, be exercised by the major part of them present at any meeting.

(Schedule A.)

I   do hereby appoint   of   to be my agent, or deputy, to act for me in all respects as if I myself were present and acting in the execution of an Act passed in the   year of the reign of Queen Victoria, intituled, &c.

(Schedule B.)

Form of declaration by commissioner or agent.

I   do solemnly declare that I will, without favour or affection, hatred or malice, truly and impartially, according to the best of my skill and knowledge, execute and perform all the powers and authorities in the execution whereof I shall at any time act as a commissioner (or as an agent of   ), appointed in and by an Act passed in the   year of the reign of Queen Victoria, intituled, &c.

Before and at the time of the passing of this Act, Lord Harrowby, Mr. Vyner, and Mr. Turnor claimed to be respectively lords of the manors of Bardney, Tupholme, and Stixwould. At the trial it was admitted that Bardney was a manor, and that Lord Harrowby was lord thereof. In order to shew that Tupholme and Stixwould were manors, and that Mr. Vyner and Mr. Turnor were lords thereof, the defendants relied upon the said Act of Parliament as conclusive evidence, and in addition (with respect to Tupholme) put in evidence a deed, &c. The case then set out the evidence adduced at the trial upon this subject.) Lord Harrowby, Mr. Vyner, and Mr. Turnor never met together, nor did any

two of them meet, for the purposes of the Act, nor did any of them ever subscribe the declaration contained in Schedule (B) to the said Act. On the 1st of August, 1843, being all three of them then in England, but not in Lincolnshire, and apart from each other, they respectively signed instruments in the form which is given in Schedule (A) of the said Act; the instrument signed by Lord Harrowby, purporting to appoint the defendant George Cooke as his agent; the instrument signed by Mr. Vyner, purporting to appoint the defendant Thomas Greetham as his agent; and the instrument signed by Mr. Turnor, purporting to appoint the defendant John Young Macvicar as his agent.

The three defendants are respectively stewards of Lord Harrowby, Mr. Vyner, and Mr. Turnor, and claim to be and act as commissioners under and by virtue of the said instruments.

Lord Harrowby, Mr. Vyner, and Mr. Turnor never did any other act as commissioners than sign the said instrument, nor did they in any way interfere with the proceedings of the defendants. Mr. Turnor and Mr. Vyner have been in Lincolnshire repeatedly during the interval between the time when the said instruments were signed and the doing of the acts complained of by the defendants which they claimed to do as commissioners. The defendants respectively, before acting as commissioners, made and subscribed the declaration set forth in Schedule (B) of the Act.

Under the directions of the defendants very extensive works of drainage were commenced, to complete which the defendants considered it necessary to take a portion of the plaintiff's land, consisting of parts of the three closes mentioned in the declaration. The plaintiff, not recognising the authority of the defendants, refused to treat respecting the sale of the same.

On the 14th of July, 1845, the defendants served the plaintiff with a notice, of which the following is a copy:—

"*Bardney, &c. Drainage.*

"We, the undersigned commissioners appointed for carrying into execution an Act of Parliament passed, &c. do hereby give you notice, that for the construction and site of certain works which will conduce to the more effectual drainage of the said fen lands and low grounds,—that is to say, for the widening, deepening, and improving a certain soke dyke, and for the construction of a catch-water, we require to take and purchase certain lands wherein you are interested, lying and being in the hamlet or township of Southrow, otherwise Southrey, and parish of Bardney, and that the said lands which we so require to purchase, for widening, deepening, and improving the said soke dyke, consists of a strip of land lying [describing it].

"And we do further give you notice, that we require for our temporary occupation, for depositing the earth and soil in widening, deepening, and improving the said soke drain, to take and use certain lands lying in the hamlet or township of Southrow, otherwise Southrey, wherein you are interested, and adjoining the said soke drain, &c.

"And that the said lands which we so require to purchase for constructing the said catchwater, amount altogether to 2r. 39p. consisting of, &c.

"And we do further give you notice, that for our temporary occupation for depositing the soil and earth in constructing the said catchwater, we require to take and use certain lands wherein you are interested, lying and being in the hamlet or township of Southrow, &c.

"And we do hereby demand of you the particulars of your estate and interest in the said lands which we so require to purchase or to take as aforesaid, and of the claims made by you in respect thereof.

"And we do hereby give you notice, that we are willing to treat with you for the purchase of your interest in the lands which we so require to purchase or take as aforesaid, and as to the compensation to be made to you for the damage that may be sustained by you by reason of the making of the said works. Dated at the city of Lincoln, this 11th day of July, 1845; George Cooke, Thomas Greetham. To William Ostler, esq."

On the 9th of August, 1845, the defendants served the plaintiff with a notice, of which the following is a copy:—

"*Bardney, &c. Drainage.*

"We, &c. do hereby give you notice, that in consequence of your failing to treat with us, and of our being unable to come to any agreement with you as to the value of certain lands in the hamlet or township of Southrow, &c. of which you are the owner, and which are required to be purchased for the purposes of the said Act, and as to the value of certain other lands which will be injuriously affected by the execution of certain works to be by us executed in pursuance of the powers of the said Act: and as to the compensation to be made in respect thereof; and as to the amount of the damages occasioned or to be occasioned to such lands by the temporary occupation thereof, in the making of the said works, and for the injury done or to be done to the said lands of which you are the owner by the severance from such lands of the said lands so required to be purchased as aforesaid, and which said lands respectively are the lands described and specified in a certain notice or plan thereunto annexed, bearing date the 11th day of July last, and served upon you on or about the 14th day of the same month of July: we intend, after the expiration of one month after the service of this notice, in pursuance of the powers and authorities given to and vested in us by virtue of the said Act, to cause a jury to be summoned in such manner as by the said Act is provided, to inquire of, assess, and ascertain the sum or several sums of money to be paid to you for the purchase of three acres, one rood, and twenty-five perches of land of which you are the owner, and which are situate in the hamlet or township of Southrow, otherwise Southrey, &c. and which lands are desirable and required for the purposes of the said Act for the site of certain works which will respectively conduce to the more effectual drainage of the said fen lands, &c.; and also the sum of money to be paid to you for the injury done or to be done to your lands by the severance from such lands of the lands so required as aforesaid, &c. And also the sum of money to be paid to you by way of compensation for the damage occasioned to your lands by the execution of the said works, whether it be for damage sustained before the time of the inquiry, or for future damage either temporary or permanent, or for any recurring damage of which the cause is at the time of the inquiry only in part obviated, and which cannot or will not be further obviated by us, the said commissioners. And we do hereby give you further notice that we are willing to give you the sum of 260*l.* for your interest in the said lands. As witness our hands this 9th day of August, 1845. G. Cooke, Thomas Greetham, J. Young Macvicar. To W. Ostler, esq."

On the 15th September, 1845, the plaintiff served on the defendants the following notice:—"To Messrs. Geo. Cooke, Thos. Greetham, and John Young Macvicar, and to Messrs. Pearson and Holdrich.—I, the undersigned William Ostler, do hereby give you notice, that you, the said George Cooke, Thos. Greetham, and John Young Macvicar, have not, nor has any one of you, been duly appointed commissioners, or a commissioner, for executing an Act of Parliament made and passed in the sixth and seventh years of the reign of her present Majesty Queen Victoria, intituled, &c.; and that you, the said Geo. Cooke, Thos. Greetham, and John Young Macvicar, are not commissioners, nor is any one of you a commissioner, for executing the said Act, and that you have not, nor has any one of you, power or authority to cause a jury to be summoned or an inquiry to be held under or by virtue of the provisions of the said Act, to inquire of, &c. And I hereby give you, and each of you, further notice, not to cause, or attempt to cause, a jury to be summoned, or any inquiry to be held, for the purposes mentioned in the said notice of the 9th day of August, 1845; and that in case you shall cause such jury to be summoned, or inquiry to be held, I shall consider the same, and all proceedings to be had and taken in pursuance or in consequence thereof, absolutely null and void, and shall take such proceedings in reference thereto as I may be advised. Dated the 1st day of September, 1845.—William Ostler."

A notice to the same effect was served on the under-sheriff of the county of Lincoln on the 15th of October, 1845.

The defendants issued a warrant to Thomas Coltman, the sheriff for the county of Lincoln, dated the 3rd day of October, 1845, of which the following is a copy:—"To Thomas Coltman, esq. sheriff of the county of Lincoln.—The undersigned, being commissioners duly appointed pursuant to and acting in execution of an Act of Parliament passed in the sixth and 7th years of the reign of her present Majesty, intituled, &c. in pursuance and exercise of the power and authority in this behalf granted to and vested in us by the said Act, do by this our warrant, under our hands, require you to summon, empannel, and return twenty-four indifferent persons duly qualified to act as common jurymen in the Superior Courts to appear before you at the Angel Inn, in Bardney aforesaid, on, &c. in order that out of them a jury of twelve may be sworn, to inquire of, assess, and ascertain the sum or several sums of money to be paid to William Ostler, of Grantham, in the said county of Lincoln, gentleman, for the purchase of 3a. 1r. 25p. of land, of which the said William Ostler is owner, and which are situate in the hamlet or township of Southrow, &c. and which lands are desirable and required for the purposes of the said Act for the site of certain works, which will respectively conduce to the more effectual drainage of the said fen lands, &c.; and also the sum of money to be paid to the said William Ostler for the severance, &c.; and also the sum of money to be paid to the said William Ostler by way of compensation for the damage occasioned to the lands of the said William Ostler, by the execution of the said works, whether it be the damage sustained before the time of the inquiry, or the future damage, &c. (as in the notice). Dated this third day of October, in the year of our Lord 1845. Geo. Cooke, Thos. Greetham, John Young Macvicar."

Defendants, on the 6th of October, 1845, served the plaintiff with a notice, of which the following is a copy:—"To Wm. Ostler, esq.—Take notice, that in pursuance of a warrant, under the hands of the commissioners duly appointed, pursuant to and acting in execution of an Act of Parliament, &c. to him directed, Thomas Coltman, esq. sheriff of the county of Lincoln, hath summoned a jury of twenty-four indifferent persons duly qualified, &c. to meet at the Angel Inn in Bardney, &c. in order that out of them a jury of twelve men may be sworn to inquire of, assess, and ascertain the sum, or several sums, of money, &c. (as in the warrant), and take notice that the said inquiry will be had before the said sheriff, at Bardney aforesaid, on the day and hour aforesaid. Dated this 6th day of October, 1845.—Pearson and Holdich, Clerks to Bardney, &c. Drainage Commissioners."

Under the instrument before set out, a jury was summoned, and met at Bardney on the 23rd of October, 1845, the under-sheriff presiding; the plaintiff, attending by his attorney, Mr. Staniland, who, before the jury was sworn, orally protested against the inquiry, and likewise handed in the following written protest. The protest was set out in the case and stated the following grounds:—1st. That there are no such manors as the manors of Bardney, Tupholme, and Stixwould, in the said Act of Parliament mentioned, and that of consequence there are no lords or ladies of such manors. 2ndly. That the several persons assuming themselves to be the lords of the respective manors of Bardney, Tupholme, and Stixwould, in the said Act mentioned, have never made or subscribed the declaration required by the said Act to be made and subscribed by the persons thereby appointed the commissioners for executing the said Act, and were therefore incapable of appointing any agents to act in the execution of the powers of the said Act. 3rdly. That the instrument, or respective instruments, by which the persons assuming themselves to be lords of the said respective manors of Bardney, Tupholme, and Stixwould appointed, but illegally as I contend, the said George Cooke, Thomas Greetham, and John Young Macvicar, were signed by the persons assuming themselves to be lords of the said manors as aforesaid, *separate and apart from each other*, and not at a meeting of the commissioners, as required by the said Act. 4thly. That the several notices addressed to William Ostler, and dated respectively the 11th day of July, 1845, the 9th day of August, 1845, and the 6th day of October, 1845, and the said instrument purporting to be a warrant, were not signed, given, or issued in the absence of the persons assuming themselves to be lords of the said respective manors of Bardney, Tupholme, and Stixwould, according to the true intent and meaning of the said Act. 5thly. That the said several notices of the 11th day of July, 1845, the 9th day of August, 1845, and the 6th day of October, 1845, are bad, imperfect, and invalid, both in form and substance, and not in accordance or compliance with the provisions of the said Act of Parliament. 6thly. That the said instrument, purporting to be a warrant, is also on the face of it bad and invalid, inasmuch *as the same ought to have recited or referred to the said several notices hereinbefore mentioned, or one or more of them, or ought to have set forth by a sufficient and proper description the particular lands required to be purchased, as also the particular nature of the damage or injury to be sustained by the said William Ostler*, by the execution of the works of drainage, and the several sums or sum of money to be paid to the said William Ostler, for or in respect whereof the jury to be summoned in pursuance of such warrant were to assess and ascertain."

In addition to the objections in the written protest, Mr. Staniland objected that the warrant was defective, because it did not shew on the face of it that the commissioners and Mr. Ostler had been unable to come to an agreement for the sum to be paid to him.

The under-sheriff determined to hold the inquiry, saying he should leave the points of law and objections to be disposed of by the Superior Courts.

The jury were then sworn, and after hearing evidence on both sides, and taking a view of the land in question, as required by the defendants, in conformity with the Act, returned their verdict. The under-sheriff read over the inquisition to the jury, and signed the same. The following is a copy of the inquisition:—

"Lincolnshire, to wit. } An inquisition, verdict, and judgment, indented, had, taken, &c. upon the oath of Benjamin Fowler, &c. sworn and charged in that behalf, and having heard and duly weighed and considered the evidence, &c. upon their oaths present and say that they have acquired, ascertained, and assessed, and do find, ascertain, and assess, and deliver their verdict for the sum of 160*l.* as and for the sum of money to be

paid by the said commissioners to the said William Ostler, for and for the purchase of 3a. 1r. 25p. of land in the said warrant mentioned, and described as and which are situate in the hamlet or township of Southrow, &c. and which land is and is in and by the said warrant stated to be desirable, and required for such purposes of the said Act, as in the said warrant in that behalf mentioned, and which land can and may, under and by virtue of the said Act, be taken and made use of for the purposes of the said Act. And the jurors aforesaid, upon their oaths aforesaid, do further present and say that they have inquired of, ascertained, and assessed, and do find, ascertain, and assess, and deliver their verdict for the sum of 30*l*. as and for the sum of money to be paid by the said commissioners to the said William Ostler, for the injury done and to be done to the lands of the said William Ostler, by the severance from such lands of the lands so as aforesaid required, &c. And the jurors aforesaid, upon their oaths aforesaid, do further present and say that they have inquired of, ascertained, and assessed, and do find, ascertain, assess, and deliver their verdict for the sum of 248*l*. as and for the sum of money to be paid by the said commissioners to the said William Ostler for the damage done by the execution of such works as in the said warrant in that behalf mentioned, and as well for such damage sustained before the time of taking this inquisition as for any future damage either temporary or permanent, and also for any recurring damage, &c. Whereupon I, the said sheriff, &c.

"In witness whereof, I, the said sheriff, according to the said Act of Parliament, have hereunto signed, set, and subscribed my name, this 23rd day of October, 1845."

The purchase-money and compensation so awarded to the plaintiff by the jury as above mentioned was tendered to the plaintiff by the defendants, on the 15th of November, 1845, and the plaintiff refused to accept the same.

Plaintiff served on defendants on the 26th day of November, 1845, the following notice:—"To Messrs. George Cook, &c.—I, the undersigned William Ostler, do hereby give you and every of you notice that in case you or any of you shall proceed to cut, take, enter upon, or damage any land or property belonging to me, under or by virtue of an alleged inquisition, &c. I shall forthwith apply to the Court of Chancery for an injunction to restrain you and all parties concerned from proceeding, &c. and shall take such further proceedings, both at law and in equity, against all parties concerned as I may be advised. Dated this 25th day of November, 1845.—William Ostler."

On the 3rd day of December, 1845, the defendants paid into the Bank of England, with the privity of the Accountant-General of the Court of Chancery, the sum of 438*l*. being the full amount awarded by the inquisition.

This sum was so paid under sec. 63 of the Act.

No precept was ever issued by or on behalf of the defendants to the sheriff of Lincolnshire to deliver possession of any lands or property belonging to the plaintiff and situate at Southrey or elsewhere to the said defendants or any of them, or to any person or persons for them or on their behalf.

On the 14th of January, 1846, the defendants entered upon the closes and did the acts mentioned in the declaration, which is the trespass complained of.

The qualification of the defendants to act as commissioners except as to the fact of their having taken the declaration required by the Act set forth in Schedule (B), is to be held not to have been admitted by the plaintiff, and he is to be allowed to dispute the same.

The question for the opinion of this Court is, whether, upon the issues joined, the circumstances above stated afford a justification for the acts of the defendants in breaking and entering, &c. the closes in question. The Court to have the power to draw the same inferences of fact from the evidence that a jury ought, in their judgment, to have drawn either party to have the right to turn the case into a special verdict, and if there be a special verdict the inferences of fact drawn by the Court are to form part of their special verdict.

The case was argued in the Court of Q. B. in Hilary Term 1849, and judgment given for the defendants (13 Law T. 67). Upon that judgment the plaintiff brought a writ of error, which now came on for argument.

The *Attorney-General* (*Willmore* with him), for the plaintiff. The proceedings taken to obtain possession are void, the defendants having no title as commissioners. No act of theirs in that character is valid. The whole proceedings purport to have been done in that character, and they having no title as commissioners, the lands did not vest in them under the Act. The lords of the manors never took the declaration in Schedule B, required by the Act to be taken (sec. 2), before they are capable of acting as commissioners, or did any act, except nominating the defendants as their agents. But before they could appoint agents to act for them as commissioners it was necessary that they should qualify themselves as commissioners, for the appointment of such agents was an act done by them as commissioners. The agents are spoken of throughout the Act as agents of the commissioners and not of the lords. There is a distinction taken in the Act between the commissioners and their agents, and schedule B provides for the agents subscribing the declaration to be made, not as commissioners, but as agents. That being so, the defendants should have taken the proceedings not as if they were acting as commissioners, but as agents. Then, as by sec. 1 no person can act as agent for more than one commissioner at one time, the proceedings should have shewn for whom each defendant was acting. Secondly, the inquisition should have specified the land with particularity. In the notice for the defendants to treat for the lands in the first instance, the land was minutely specified. The sheriff's authority would be a warrant from the commissioners to the sheriff requiring him to summon a jury (sec. 78), and the warrant should have set out that notice, or have specified the particular land as to which the jury were to assess the compensation to be given. But here the warrant is general, and might relate to any land that the plaintiff had in the township of Southrow. *Taylor* v. *Clemson*, 2 Q. B. 978; and 11 Clk. & Fin. 610, S.C.; *Rex* v. *Manning*, 1 Burr. 377, were then cited. The commissioners have a statutable title to the land required, it is necessary therefore that some specific mention of them should appear on the face of the inquisition, as no conveyance is necessary to give title to the commissioners.

Bramwell (for the defendants) was stopped by the Court.

PARKE, B.—The Court is of opinion that the judgment of the Court of Q. B. on both points was right. The first point is, whether or not the defendants were made by the Act commissioners themselves, and could act as such, or only as agents to the lords of the manors. It must be admitted that the first section of the Act is inartificially drawn, when coupled with the two clauses in the schedule. By the 1st section, the lords or ladies of the manors mentioned are constituted commissioners, or, if they do not choose to act, then in their absence their agents are themselves to be commissioners. It must be admitted that the form in the schedule is not well adapted to the case, but that is not to obliterate the effect of the enacting part of the statute, for the latter is the governing part of the statute, and not the schedule. The effect, therefore, of each lord appointing his own agent was, that the agents became commissioners, to act in their own names. Then it was said that the lords could not appoint their agents to act for them without previously making the declaration in schedule B. Now, supposing that to have been necessary, the omission would not have made their acts void, but would only have rendered the lords liable to certain penalties under the 3rd section. The second point is, whether the inquisition ought to have stated with some particularity the lands which were valued by the jury. It appears to me that it was not void in this respect. The inquisition does not constitute any part of the conveyance; the verdict was only necessary to establish the amount to be paid or tendered as the price of the land. And as soon as the amount is tendered, then under sec. 63, the land vests in the commissioners, whether the owner refuses to accept the same, or fails to make out a title to the land. If evidence of different land had been given before the jury, the inquisition would have been irregular, and might have been set aside. The notice to the plaintiff set out the land required by metes and bounds, and he had no difficulty in knowing what it was. The judgment of the Court of Q. B. must therefore be affirmed.

The rest of the Court concurring,

Judgment affirmed.

INSOLVENCY COURT.

Reported by DAVID CATO MACRAE, Esq. of the Middle Temple, Barrister-at-Law.

Wednesday, July 28.

(Before the CHIEF COMMISSIONER.)

Re GEORGE WILLIAM DYSON.

Misconduct of assignees—Jurisdiction of the Court.

The Court will hold assignees responsible for all moneys received through their instrumentality, and will look to the assignees personally and not to their attorneys.

The facts of this case are sufficiently stated in the judgment of the Court, which was delivered by

The CHIEF COMMISSIONER, who said,—In this case I find that the first step taken in reference to the appointment of an assignee was on the 11th of January, 1850, when a rule was granted on the application of Archibald Mattheson and James Markwell, Mr. Paxton being then, as now, their attorney, calling upon insolvent to shew cause why they should not be appointed assignees. On the 27th of February that year, Mr. Cooke, on behalf of the insolvent, showed cause, on which occasion the matter was ordered to stand over until the hearing of the insolvent on the 14th of March. On this 27th of February, however, the report of the provisional assignee, to whom I had referred in consequence of the indorsement "Equity suit" in the schedule, which denoted that he had been made a party to some suit, was read. On the 14th of March, 1850, on the hearing of the case, it is evident that I attached much weight to the reasons alleged against the appointment of an assignee, and particularly to the inexpediency of trusting the large sums, which it was admitted on all hands would be coming from this estate, in the hands of persons, who, however respectable they might be, were liable to the casualties of traders, and subject to the Bankrupt Laws; for, although I did appoint assignees, I find the order as recorded by the officer of the court to be as follows:—"Rule absolute, the assignees consenting that all moneys coming from the estate shall be paid into court, and *undertaking* to give notice to the provisional assignee when any money is likely to be paid from the Court of Chancery or otherwise." Now, can anything be more conclusive than this, and can there be a doubt, that on the faith of this consent and undertaking alone, the Court was induced to appoint assignees in this case? Now, let us see how this undertaking, which was afterwards reduced into writing, and incorporated in a rule of the Court of the 14th March, 1850, has been carried out? In a paper filed in this Court on the 24th of February last, it is admitted that as long ago as 11th October, 1850, a sum of 22,000*l*. was received, and after making certain alleged payments, the legality and propriety of which cannot be ascertained, because the assignee has filed no such account as is required by the statute; and no audit, therefore, such as is required by the statute, has been made; so that this balance, 1,072*l*. has remained in his hands, as he must have signed the receipts for money. It is sought to excuse the assignee upon the pretence that all moneys have been received by the attorney and not by him; but the words of the statute sec. 62, which are "an account of the estate and effects got in by, or for the said assignee," negative such a construction. This Court, therefore, can admit no such excuse. The assignee, and he only, is responsible to this Court, and with him and not with his attorney, is the Court to deal. Let us now see what steps have been taken to endeavour to get the assignee to act up to the undertaking, on the faith of which he was appointed. On the 23rd of April last, on the audit of what is called an account before the proper officer of this Court, I find that he has treated such account as the account of the assignee, and that he then directed the sum of 1,072*l*. 18s. to be paid into Court on or before the 30th April then next. The assignee treats such directions, as he has all along his own undertaking, and the provisions of the statute, with contempt. The money is not paid in to this hour. The next step appears to have been taken on the 9th of June, when, on proof of the service of the last-mentioned order of Mr. Dance, the examiner, and also on proof that the money had not been paid, as directed, an order was made by the Court, directing the assignee to pay into the hands of the provisional assignee, on or before the 23rd of June then next, the sum of 1,272*l*. 8s. (*a*), unless Mr. Richards's allocatur for costs be in the meantime produced. Is this order complied with? No. Not in either alternative; viz. by paying in the balance admitted, viz. 1,072*l*. 18s. or producing Mr. Richards's allocatur. What is the next step? It is the applications respectively made on the 25th of June, by Mr. Markwell, the assignee, and by Mr. Dyson, the insolvent; with these the Court is now to deal. With respect to the rule granted on the application of the assignee, calling upon the insolvent to shew cause, why the order of the 9th of June for the payment of the sum of 1,273*l*. 8s. should not be rescinded, it appears to me to be improvidently granted, and must be discharged; and inasmuch as it appears to me that the assignee ought to have paid into Court the sum of 1,072*l*. 8s. *immediately* after it had been received, in pursuance of his undertaking, and then not having done so, should have immediately on being served with Mr. Dance's order of the 23rd of April, obeyed it, he will not be allowed his costs out of the estate. With respect to the rule granted on the application of the insolvent, calling upon the assignee to shew cause why he should not be committed for the contempt in disobeying the order of the 9th of June, for payment of the sum of 1,272*l*. 8s. I think that must also be discharged, because that sum was improperly inserted instead of 1,072*l*. 8s. and the attorney for the insolvent ought not to have so drawn it up; the costs also of this rule, must, for that reason, be paid by the party who obtained it. My decision in both these rules as to costs, extends not only to the costs

(*a*) This sum is incorrect; it should have been 1,072*l*. 18s.

of obtaining them, but also shewing cause to the costs of shewing cause, which must be borne respectively by the parties. Having disposed of both these rules, I will say what I will do in the matter. The only excuse attempted by the assignee for his contempt in having so long disobeyed the rule of this Court, incorporating his undertaking, and having failed to pay in the money since March 1850, is that his attorney has it, and claims a lien on it for his costs. This is a matter between him and his attorney with which this Court has nothing to do; this Court looking to the assignee and not to the attorney, and holding the assignee responsible for all moneys which have been received through his instrumentality. But whose fault is it that these costs have not been long ago taxed and paid, as far as relates to the costs incurred in this court? For by the attorney's own shewing in his affidavit sworn on the 23rd June last, the costs incurred in the Court of Chancery are by the order made in that court on the 30th March last provided for, and to be paid out of a fund in that court. The fault, therefore, is with the assignee and his attorney, and of them alone, for they were bound by law, under the 62nd section of the Act, to have all costs claimed, taxed, between the time of filing what they have called an account and the day fixed for the audit of it; moreover, the terms of the attorney's undertaking are that all moneys are to be paid into court, to be subject, in the first instance, to the just claims of the assignee in respect of the costs. This undertaking is witnessed by Mr. Paxton, their attorney, and the assignee is not to be permitted to evade this undertaking under the pretence of the money being in Mr. Paxton's hands, and that he claims a lien upon it for costs. I now, therefore, make an order, that on reading the undertaking of Archibald Matthison and James Markwell, and the rule of this court, respectively dated 14th March, 1850, and the joint affidavit of James Markwell, surviving assignee of estate and effects of George William Dyson, an insolvent debtor, and of Arthur John Hughes, clerk to Francis Paxton, attorney for the said assignee, purporting to contain an account of moneys received by the said surviving assignee, filed in this court on the 24th day of February last, that the sum of 1,072*l.* 18*s.* the balance stated in the said account, after certain alleged payments not yet proved, be paid into court on or before Thursday next, the 29th inst. at four o'clock, by the said James Markwell.

(Before Mr. Commissioner Law.)

Tuesday, August 3.

Re George Fisher.

Annulling vesting-order on creditors' petition—Practice.

Macrae moved for the annulling of the vesting-order, which was obtained upon a creditors' petition filed so far back as the year 1839. The practice in Mr. Commissioner Law's Court, being somewhat different from that in the other Courts, may be gathered from the following record of the proceedings upon this motion. The motion was "For an order declaring the vesting-order, No. 48,437, T. made on the 9th August, 1839, on the petition of George Pearson and William Upton, null and void, the insolvent having been discharged from custody without taking the benefit of the Act." The motion was supported by the following documents:—1. Affidavit of facts by insolvent. 2. Office copy of petition filed. 3. Office copy of vesting-order made thereupon. 4. Certificate of discharge. 5. Undertaking by Fisher not to bring action for any act done. 6. Consent of petitioning creditor to the discharge. The affidavit of facts, after stating the date of the vesting-order in 1839, stated that, "at that date he was indebted to several persons in divers sums amounting in the whole to the sum of four hundred pounds, or thereabouts, and this deponent further saith, that shortly after the date of the said vesting order, he (this deponent) paid, satisfied, and discharged all the said debts as aforesaid; and, this deponent further saith, that he was, at the date of the said vesting-order, possessed of certain book debts, goods, chattels, and effects, but of what value he (this deponent) is not now able to set forth, and also of a contingent reversionary interest, under the will of his (this deponent's) late father, George Fisher, expectant upon the decease of his (this deponent's) mother, Maria Fisher, afterwards Maria Seanly; and this deponent further saith, that certain proceedings are now pending in the High Court of Chancery for the recovery of the said reversionary interest; and he (this deponent) has been advised that it is material and necessary that a vesting-order made in the above matter, on the petition of George Pearson and William Upton, should be declared null and void; he (this deponent) having been discharged from custody without taking the benefit of the said Act."

Mr. Commissioner Law intimated that it was not a matter of course in his court that a creditor's petition should be dismissed because the creditor consented. He never dismissed a petition and annulled the vesting-order simply because a creditor consented. A man who was arrested and did not file a schedule, and after some months remaining in prison chose to pay one creditor, had no right, simply from that circumstance, to the dismissal of the petition, the filing of which created a trust for the creditors generally. The insolvent might have been put up to receiving property. The provisional assignee must be referred to. There is no minute from the provisional assignee. There must be a voucher from the provisional assignee, first, that there is no creditors' assignee; secondly, that there is no property in court; and, thirdly, that nothing has been done in the case. *Motion refused.*

The motion was again made with the required vouchers from the provisional assignee, when the [illegible]

[illegible] on a paper form of creditor list in schedule, and verify the payment with dates as nearly as he can.—July 12, 1852." *Motion refused.*

A schedule or list of the insolvent's debts at the date of the filing of the creditors' petition in 1839 was accordingly prepared with the required vouchers verifying the payment with dates as nearly as possible; also an affidavit from the parties who had paid the debts as to that fact, and who had advanced the sums necessary for that purpose, &c.

Tuesday, July 27.—The motion was again renewed, with these additional documents, when the learned commissioner indorsed the following order: —"Let insolvent swear that the list is a true list of all debts owing at insolvency. That is all I required. These papers will put him to much expense, which I did not require. If he will walk into court for five minutes he can do it." *Motion refused.*

Wednesday, Aug. 4.—*Macrae* again renewed the motion, offering the additional affidavit required, intimating that he was instructed to say that the attorneys in the cause had done all that they possibly could to satisfy the Court, and that if the order was not now made they would to-morrow serve the provisional assignee with copies of two long bills in Chancery, and he would be formally made a party to the suits.

Mr. Commissioner Law then intimated that the required order would be made.

HOUSE OF LORDS.

Reported by W. H. Bennett, Esq. of Lincoln's-inn, Barrister-at-Law.

June 22 and 26.

(Present, the Lord Chancellor, Lords Brougham, Truro, Campbell, Devon, Cranworth, Sydney, and other Peers. The judges present were, Coleridge, Wightman, Compton, Erle, Maule, Cresswell, Williams, Talfourd, Barons Parke, Alderson, Martin, and Platt.)

Hutton *v.* Bright.

Bright *v.* Hutton (No. 2.)

Winding-up Acts, 1848, 1849—Joint-stock company or association.

Persons who acted together for the purpose of obtaining an Act of Parliament to make a railway, and formed themselves into an association which was provisionally registered under the 7 & 8 Vict. c. 110, are to be considered as a company or association within the meaning of the Joint-Stock Companies Winding-up Acts, 1848 and 1849, and therefore,

Held, that such an association may be wound up at the discretion of the Court of Chancery, under the provisions for that purpose contained in those Acts of Parliament.

The question as to the extent of the liability of a contributory, decided in the above case, was reported in 19 Law T. 249. The question which was considered the more important of the two, as to whether associations, similar to the one in the present case, did or did not come within the scope and provisions of the Winding-up Acts, remains to be reported. The facts of the case were stated in the former report, but it may be convenient to give the most important features of the case on the present occasion.

In the year 1845 a company was provisionally registered, pursuant to the statute 7 & 8 Vict. c. 110, intituled "An Act for the Registration, Incorporation, and Regulation of Joint-Stock Companies," by the name and style of "The Direct Birmingham, Oxford, Reading, and Brighton Railway Company;" but it was necessary that an Act of Parliament should be obtained to authorise its formation, and to carry into effect its objects. The capital of the proposed company was to be 2,000,000*l.* divided into 80,000 shares of 25*l.* each. Upon the allotment of each share it was proposed that a deposit of 2*l.* 12*s.* 6*d.* should be paid. A prospectus, [illegible]istered the 25th September, 1845, was printed [illegible]blished, and circulated amongst the public by the promoters of the company, containing the names of divers persons (and amongst others that of the respondent) as the provisional committee of the company. On the 8th October, 1845, a meeting of gentlemen was held at the office of the company in Moorgate-street, at which a provisional committee and a committee of management were appointed, and resolutions passed to the following effect—viz. that the prospectus issued as that of the provisional committee, then read, should be approved and adopted, and that until an Act of Parliament should be obtained, the affairs of the company should be under the control of the managing directors, to whom power was given to allot the shares, and to apply the funds of the company in payment of all the expenses incurred in its formation, and in the preparation of the plans and sections to be submitted to Parliament. The respondent was not present at the meeting of the 8th October, 1845, and had no notice whatever thereof. On or about the 11th October, 1845, the respondent received from Mr. Rayner, the secretary of the proposed company, a circular letter, dated the 10th October, informing him that 100 shares had been appropriated to each member of the provisional committee. On the 14th October, 1845, the respondent wrote to the secretary a letter in reply to the circular, stating that he was willing to take the 100 shares placed at his disposal as a member of the provisional committee. On or about the 18th October, 1845, the secretary sent to the respondent the letter of allotment. The respondent paid the sum of 262*l.* 10*s.* as the deposit on 100 shares allotted to him by the letter of allotment; no part of that sum has been returned to the respondent, nor has he paid any further sum on account of the company; 67,630 shares only of the 80,000 of which the said company was to consist were allotted, the deposits were paid on 1,295 only, no Act of Parliament was ever applied for to invest the company with the powers necessary to accomplish its object, and the undertaking was wholly abandoned. The several persons who were appointed the managing committee accepted and took upon themselves the office and duties thereof, and expenses to a large amount were incurred by them in and about the formation of the company; but the respondent never authorised the incurring of any such expenses; he was never present at any meeting of the company; nor did he in any manner whatever become a party to any contract under which any of such expenses were incurred. On the 21st December, 1849, an order was made by his honour the late Vice-Chancellor of England for the dissolution and winding-up of the company under the provisions of the Joint-Stock Companies' Winding-up Acts, 1848 and 1849, and the matter was referred to Master Brougham, who appointed Mr. Hutton official manager of the company, and Mr. Bright was afterwards declared to be a contributory. On the 13th June, 1851, the Master ordered a call of 10*l.* per share upon each of the contributories, in order to pay the expenses of the company. Mr. Bright, on the 3rd July, 1851, moved the Court of Chancery against the call, but Vice-Chancellor Lord Cranworth did not think fit to make any order thereon, and gave judgment to that effect on the same day. Mr. Bright appealed against that order, first, because he contended that previously to the passing of the Joint-Stock Companies' Winding-up Acts he was not liable at law or in equity to pay any part of the expenses of the company; and, secondly, because the Joint-Stock Companies' Winding-up Acts have not the effect of making any contributory to the company liable for any part of the expenses incurred on its behalf, for which he was not previously liable.

When the case came on for argument, the House expressed a desire to have the question argued, whether the Winding-up Acts were applicable to a company which was only provisionally registered?

C. P. Cooper, Q.C. (*Morris* with him), after stating that it had been a subject of great regret to several judges in the Court of Chancery that orders had been so indiscriminately made for the winding up of abortive schemes, contended that the Winding-up Acts never contemplated that an inchoate association, similar to the one in the present case, was such a company as was directed to be wound up under those Acts. He mentioned and cited *Walstab* v. *Spottiswoode*, 15 Mees. & Wels. 501; *Ex parte James*, 1 Sim. N.S. 145; *Vansandau* v. *Moore*, 1 Russ. 441; *Barber's* case, 1 MacN. & Gord. 176; Appendix to Wordsworth on Railways, 431—433, 6th edit.; *Lefroy* v. *Gore*, 1 Jones & Lat. 571; Parke's Insurance, tit. "General Average;" *Cowell* v. *Edwards*, 2 Bos. & P. 268; *Brown* v. *Lee*, 6 Bar. & Cr. 697.

Bethell, Q.C. (*Roxburgh* with him), for the official manager, contended that the word "association" in the last Winding-up Act clearly indicates the nature of the present company, and was clearly within the terms of the Winding-up Acts, and as such, the order pronounced by the Court below for the winding up of this company or association was perfectly correct. That if that order should be discharged, not only the proceedings in this case, but in thousands of others, would be thrown into inextricable confusion. That the general words in the Winding-up Acts were introduced intentionally to allow of the greatest

scope of interpretation. He referred to *Ex parte Sharpe and James*, 19 Law T. 193; *Barwick* v. *Lambert*, 15 Mes. & W. 489; *Besley's* case, 3 MacN. & G. 81; Dict. of Maule, J. in *Bradshaw* v. *Lord Londesborough*, 21 L. J. 17; *Ex parte St James's Club*, 20 L. J. 650; *Re Sherwood Loan Company*, 1 Sim. N.S. 165.

Cooper, in reply, referred to *Thompson's* case, 3 Ho. Lord's Cases, 187; and *Williams* v. *Piggot*, 2 Exc. Rep. 201.

At the conclusion of the argument, the following questions were put to the judges for their opinions:—

QUESTIONS.

A railway company was projected and provisionally registered by the promoters. A prospectus was published, containing a list of the provisional committee. The shares of the proposed company were 10,000; a managing committee was appointed, and 5,000 shares allotted to different persons, in various numbers, but 500 only were accepted by the allottees. It was ultimately found to be impracticable to procure subscribers for a sufficient number of shares to enable the parties to carry the project into effect, and it was, therefore, by an order under the Winding-up Acts, ordered that the company should be dissolved.

"Are the provisions of those Acts applicable to this case?

"A railway company was projected and provisionally registered by the promoters. A prospectus was published, containing a list of the provisional committee, which consisted of more than seven persons appointed with their own consent. The shares of the proposed company were 10,000; a managing committee was appointed, also consisting of seven persons appointed by their own consent. There was an agreement for the obtaining subscriptions and raising capital by the provisional committee and others, in order to the formation of a company or partnership for making a railway, which could not be carried into execution without obtaining an Act of Parliament, and for obtaining an Act of Parliament for that purpose, and the preparation of necessary plans and sections, 5,000 shares were allotted to different persons, in various numbers, but 500 only were accepted by the allottees. It was ultimately found to be impracticable to procure subscribers for a sufficient number of shares to enable the parties to carry the project into effect, and it was, therefore, by an order under the Winding-up Acts, ordered that the company should be dissolved.

"Are the provisions of those Acts applicable to this case?

"A railway company was projected and provisionally registered by the promoters. A prospectus was published, containing a list of the provisional committee, which consisted of more than seven persons appointed with their own consent: in which prospectus it was proposed to establish a railway company with a capital of 2,000,000*l*. in shares of 25*l*. each.

"A meeting of more than seven of the persons whose names had been inserted in the prospectus as provisional committee was held, at which a provisional committee and also a managing committee were appointed, each consisting of more than seven persons nominated with their own consent. At that meeting it was resolved to establish the company as proposed by the prospectus for constructing the railway therein mentioned, and to apply for an Act of Parliament to establish such company, and to procure the necessary plans, &c. for that purpose. 5,000 shares were allotted to different persons, in various numbers, but 500 only were accepted by the allottees. It was ultimately found to be impracticable to procure subscribers for a sufficient number of shares to enable the parties to carry the project into effect, and it was therefore, by an order under the Winding-up Acts, ordered that the company should be dissolved.

"Are the provisions of those Acts applicable to this case?"

After consultation together, the opinion of the judges was pronounced by Mr. Baron Parke in the following terms:—

PARKE, B.—In answer to your lordship's question, I have to state, that we are of opinion that the persons who acted together for the purpose of obtaining an Act of Parliament to make a railway in the manner therein stated, were a company or association within the meaning of the Joint-stock Companies Winding-up Acts 1848-49, and that the association of those persons may be dissolved and wound up under the direction of the Court of Chancery, if that Court consider that it is fit and proper that it should be so dealt with. The first of these two Acts, 11 & 12 Vict. c. 45, reciting the previous Act of 7 & 8 Vict. c. 111, and the Irish Act, 8 & 9 Vict. c. 98, and the 9 & 10 Vict. c. 28, and the propriety of amending them, and giving further facilities for the dissolution and winding up of joint-stock companies and partnerships, enacts, that the Act shall apply to all companies, corporate or incorporate, within the provisions of the two first-mentioned Acts, to other companies not material to the present inquiry, and lastly, to all companies, associations, and partnerships to be formed after the passing of that Act, whereof the capital or the profits is or are divided, or to be divided, into shares, and such shares transferable without the express consent of all the copartners; and by sec. 2, to all associations and companies formed for the purpose of working mines, and benefit societies not certified and enrolled. By the interpretation clause, the word "company" in the Act is to mean any partnership, association, or company, corporate or incorporate, to which the Act applies. The body of persons or association in question is not within the latter part of the first section above referred to, for it has no stock divisible into shares; whether it is within the former (7 & 8 Vict. c. 111) is a more doubtful question. It clearly does not fall within the other Act referred to, for it is an Act confined to Ireland. The 7 & 8 Vict. c. 111, comprises in it various companies. It embraces commercial or trading companies incorporated; this is not one. But it also applies to any company or body of persons associated together for commercial or trading purposes to which privileges have been granted under the 7 Wm. 4 & 1 Vict. c. 73, or which is registered provisionally or completely under the 7 & 8 Vict. c. 110. Now, this is not a company or body of persons associated together directly for commercial or trading purposes (if the making of a railway be such a purpose, which may be questioned). The immediate object of this association is not the making of a railway, but the obtaining an Act to enable them to do so, after subscriptions have been obtained and a company has been formed. But as the Act speaks of such a body being *provisionally* registered as a condition, and a *complete* company practically never is, the probable meaning of the section is, that a body of persons associated to obtain an Act of Parliament to enable them to act as a company for commercial or trading purposes, whose ultimate though not immediate purpose is commercial or trading, is within this Act, and if so, it would be within the 11 & 12 Vict. c. 45, as that Act is expressly made applicable to every company within the provisions of the former Act, 7 & 8 Vict. c. 111. If the question depended upon this company or association being within the 7 & 8 Vict. c. 111, we should have to decide whether the construction of a railway were a "commercial or trading purpose;" but it is not necessary to do so. It is, however, material, as it seems to shew that an association of promoters may be dealt with by the Court of Chancery, for the purpose of being wound up, if their object is to form a company for commercial or trading purposes. The statute 9 & 10 Vict. c. 28, shews this more clearly. It provides that persons or companies who before that Act have entered into a subscription contract, or any other agreement or agreements, in writing or otherwise, for the formation of a company or partnership for making any railway, which cannot be carried into effect without obtaining the authority of parliament, and in respect of which no Act had been obtained to dissolve the company or partnership contract or agreement, whether or not such contract or agreement shall contain any provisions for the dissolution of the company or partnership intended to be thereby formed. This statute provides that it shall be lawful for the committee, provisional directors, or other persons, by such contract or agreement intrusted with the management or carrying on of the undertaking, to call a meeting to ascertain if the company shall be dissolved, and whether such dissolution shall be deemed an act of bankruptcy, in which case the affairs of the company shall be wound up, under the provisions of the 7 & 8 Vict. c. 111, otherwise as an ordinary partnership. No such proceeding appears to have been taken in the case supposed in your lordships' questions, and therefore that particular statute is not applicable to it. But the statute shews that an undertaking by projectors to form a future company is capable of being dealt with under the 7 & 8 Vict. c. 111, as a company, and may have its affairs wound up and settled by the Court of Chancery under sec. 22 of that Act, if that Court shall think fit. It does not follow that *every* case of projectors of an intended company ought to be or would be so dealt with. This statute was followed by the 11 & 12 Vict. c. 45, which extended the operation of the prior Winding-up Acts, and gave the Court of Chancery the power, on the application of a contributory by petition to the Lord Chancellor or Master of the Rolls to order the dissolution or winding up of the company or association therein referred to, not merely in case of bankruptcy, but in case of insolvency or a judgment or decree against the company unpaid, or on a proceeding by a creditor of the company, or if any other matter or thing should be shown which, in the opinion of the Court, should render it just and equitable that the company should be dissolved. This statute, as has been before stated, does not in terms embrace this company, unless it be a company or body of persons, formed for commercial or trading purposes under 7 & 8 Vict. c. 111. And it contains many provisions which are inapplicable except to regularly formed companies. In the case of provisional committees, or the projectors of a company, it is now perfectly well settled law, and acted upon in every court of law in Westminster Hall, that there is no partnership between them, no common power of binding each other merely by such a relation; each man binds himself by his own acts only. There are therefore very few creditors of such a body collectively, though many of one, two, three, or more of the acting individuals who compose the committee, or are projectors; and so there may be a series of contracts to which there are different contributories according as they have been authorised by different persons,—very few binding all, and those only upon the rare accident of each individual authorising that particular contract. These inchoate undertakings have generally no joint estate, effects, or credits, of which there can be a manager (11 & 12 Vict. c. 45, ss. 19 & 20); the body cannot have a judgment or decree against the whole body, except in the rare case that all the projectors have jointly contracted so that no proceedings could be taken under that statute, sec. 5, nor are there any contributories of the entire company except in the extraordinary case of all having contracted; for contributories are those only who have contracted by themselves or agents, with the creditor, or who have agreed to indemnify or repay in part or in all those who have contracted with the creditors on their own account. We consider the law to have been most correctly laid down by Lord Cranworth in *Carrick's* case, 1 Sim. N.S. 509. All the questions of contributories resolve themselves into two simple questions of fact,—first, by far the most frequent occurrence—did the alleged contributory make or authorise to be made, the contract in respect of which he is called on to contribute on his account jointly with others? or, secondly, if any one or more entered into the contract in his or their own behalf, did he agree to indemnify the person or persons contracting in part or in all against the consequences of that contract? The machinery of this Act 11 & 12 Vict. c. 45, is undoubtedly not well adapted to such a case. This statute was followed up by 12 & 13 Vict. c. 108, passed to amend the former. It is enacted that, notwithstanding anything in that Act importing a more limited application thereof, the same shall apply to all partnerships, associations, and companies, whereof the partners or associates are not less than seven in number, whether incorporated or unincorporated. This statute renders all liable whether their purpose were commercial or not; we think that the term "association" is applicable to such a body of persons as is described in your lordship's question. That body would, we think, have been within the 11 & 12 Vict. if its object had been commercial, the only question on that Act being whether a railroad fell within that description. The object of the 12 & 13 Vict. was to extend the former Acts, upon which a more limited construction was put. This body would clearly have fallen within the 9 & 10 Vict. c. 28. We are of opinion, therefore, that it was meant to be comprised in the class of "associations." It is perfectly true that some of the provisions in this statute, as well as the bulk of those under the former, are applicable only to partnership and companies which have a joint-stock capital and credits, who are united together with a common purpose of making joint contracts, who for that purpose are bound by the agency of one another, or by that of one or more common agents, be they directors or officers, and who would necessarily have been contributories bound by such joint contract. But though these provisions are inapplicable generally to the cases of projectors of different companies, there may be cases in which they, or some of them, are capable of being applied with advantage entirely or partially, and we think it is for the Court of Chancery to decide, which it has undoubtedly a discretion to do (sec. 12, 11 & 12 Vict. c. 45) on each application, whether the particular concern is one to which it will, under all the circumstances, be proper that the Act should be applied. We think this consideration affords an answer to an objection which appeared at first sight to present a formidable difficulty, that there are associations comprehended in those which we consider to be within the Winding-up Act, in which there would be great difficulty and inconvenience in applying the Acts. At the same time it may be observed, that there are others in which they may with convenience be applied. We answer your lordship's questions by stating that the proposed case is one to which the Winding-up Acts may be applied if the Court think fit, not one to which the Court *must* apply them.

JUDGMENT.

The LORD CHANCELLOR.—My lords, I shall propose to your lordships to pursue the same course as that which I suggested to your lordships in the last case. The learned judges have now given their opinions, in which, as at present advised, I entirely concur,—that this is a case which does fall within the Acts, if the Court of Chancery shall so think fit.

The great point in the opinion which has been delivered, in which I entirely concur, is, that according to that opinion, every word in the Act of Parliament in question has given to it its natural import; and though it is very difficult, I admit, to bring within the Act of Parliament some of the cases which are, by the construction, brought within it, yet it would be impossible to give the natural effect to the words of the Act of Parliament, if you were to come to a contrary conclusion. It strikes me, therefore, that the opinion is one in which your lordships will probably entirely concur; but as this case came before your lordships on the merits, and this was a preliminary point upon which the opinion of the judges has been taken, and has now been delivered to your lordships, I should propose, as I did in the former case, that your lordships should adjourn the further consideration of this case, in order that the case itself may be heard at your lordships' bar upon the merits; and, when the argument is concluded, your lordships will then, with the assistance which you have now derived from the opinion just delivered, be enabled, without difficulty, I apprehend, to dispose of the case.

Lord BROUGHAM.—My lords, I take it to be quite clear that this is the course we ought to pursue. The argument at the bar was stopped in order to obtain the opinion of the learned judges on the question, whether we ought to go on with it at all; because the result would have been to stop the case, if the learned judges had given a contrary opinion; and if we had been of opinion with them that the case was not within the Act of Parliament. Therefore we waited until we saw whether or not that opinion would be given for or against the case being within the Act of Parliament, and whether or not we should agree with that opinion if it were so put. The judges are clearly and unanimously of opinion that the case is within the Act of Parliament; and I agree with my noble and learned friend, and with the judges. I originally was of that opinion, two years ago, agreeing with Lord Cottenham. I afterwards, I own, had doubts on the subject; those doubts the further consideration of the case, and, no doubt, also the learned opinion and arguments of the learned judges, have tended to remove; and I am prepared to say that my opinion, as my noble and learned friend's, agrees with the opinion of the judges. But it is not necessary that we should now dispose of that. It is quite sufficient for us to say that we see, at all events, good reason for going on with the rest of the case. No doubt as anticipating that, in all probability, we shall agree with the learned judges that this case is within the Act of Parliament.

The argument on the other point was then proceeded with, and eventually the

Appeal against the order for winding up the company was dismissed.

HUTTON v. BRIGHT.—The following was the precise form of the question put to the Judges. It varies a little from the statement in the report :—"Do the facts above stated afford sufficient evidence at law to warrant a verdict that A. is liable to *a creditor on the employment of the managing directors for work done, necessary for obtaining the Act of Parliament?*"

Equity Courts.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

(Before the LORDS JUSTICES.)

Thursday, July 29.

Ex parte THE ASSIGNEES OF NICHOLAS, *re* THE MONMOUTHSHIRE AND GLAMORGANSHIRE BANKING COMPANY.

Winding-up Act, 1849.—Shareholder of joint-stock company bankrupt—Official manager—Separate creditors.

Where a shareholder in a joint-stock company became bankrupt, before an order was obtained for winding up the company, and afterwards obtained his certificate :

Held, that under the 14th and 30th sections of the Winding-up Act, 1849, the official manager could go in and prove for the calls made on the bankrupt in competition with the separate creditors.

The facts of this case, and the points taken by counsel, are sufficiently stated in the judgment.

Bethell and *W. M. James*, for the official manager, cited *Steward* v. *Greaves*, 10 M. & W. 711; *Davison* v. *Farmer*, 20 L. J. 177, N. S. Ex.; and they contended that, according to the proper construction to be put on the 14th and 30th sections of the Winding-up Act of 1849, the official manager was entitled to prove for the calls made on the bankrupt in competition with his separate creditors.

Roundell Palmer and *Karslake*, for the assignees, contrà.

Lord Justice KNIGHT BRUCE.—These applications, the one in the bankruptcy of Mr. J. J. Nicholas, and the other under a winding-up order that applied to a joint-stock company of which Nicholas was a shareholder, raise substantially this only question, whether by the effect of the Acts of Parliament called the Winding-up Acts, the general separate creditors of a bankrupt who happens to hold shares in a joint-stock company which is made liable to the operation of these Acts, are placed in a different position from separate creditors of any other person engaged in a mercantile partnership. The question is, not whether there ought to be an alteration nor whether there are grounds in reason for making it, but whether the Legislature has said it shall be so in language not to be mistaken. Now the case stands thus: Mr. Nicholas was unfortunately a shareholder in one, I believe, of the most wretched of the joint-stock companies in its results, which stopped payment on the 6th Oct. 1851. At the time of the stoppage, Nicholas had not become a bankrupt, he became a bankrupt afterwards; and after that event, but before his certificate, a winding-up order was made, and after the winding-up order was made his certificate was obtained; it is now contended by or on behalf of the official manager of the company, that a call made in respect of the shares which this bankrupt held before his bankruptcy is to be treated for every purpose as a separate debt of the bankrupt in the administration of his estate—a startling proposition, certainly, to any person who has not had his attention called to the details of these Acts of Parliament. It is clear that, independently of these Acts of Parliament, according to all the ordinary law relating to bankruptcy, proof could not be made in competition with the separate creditors. It could not be made on behalf of the partners in the joint-stock company, because all the debts are not paid by the partners; according to the law in ordinary cases it could not be done; therefore, if general separate creditors are to suffer, it is on the ground of a particular law created by these Acts, and the case seems to me to turn entirely upon the 14th and 30th sections of the Winding-up Act of 1849. By the 14th section it is enacted, "That if any contributory, or alleged contributory, be a bankrupt or insolvent, he shall be entitled to attend by his assignees, and in all proceedings against his estate under the said Act shall be sufficiently represented by such assignees." By the 30th section it is enacted, "That where any contributory of the company *is* a bankrupt or insolvent, it shall be lawful for the official manager to prove in the matter of such bankruptcy or insolvency for any *balance* ordered by the Master to be proved against the estate of such contributory, and to take and receive dividends in respect of such balance in the matter of the bankruptcy or insolvency as a separate debt due from such bankrupt or insolvent, *and rateably with the other separate creditors*: Provided always, that if any creditors of the company, not being such petitioning creditor under the fiat as after-mentioned, shall have proved or shall prove against the estate of such bankrupt or insolvent contributory in respect of any debt due from the company, then the dividends received by the official manager from the estate of such bankrupt or insolvent contributory shall be paid and distributed by the official manager, under the direction of the Master, in the first instance, rateably amongst the creditors of the company so proving against the estate of such bankrupt or insolvent contributory as aforesaid, until the debts due to such creditors respectively be fully paid, and, subject thereto, such dividends shall be applied by the official managers towards the general purposes of the winding up of the affairs of the company. Provided also, that in case any such fiat shall have been issued on the petition of a joint creditor of the said company in respect of his joint debt, and he shall have proved such joint debt for the purpose of receiving dividends under such fiat, then any dividends paid to such petitioning creditor under such proof shall be set against the dividends payable to such official manager in respect of the proof so made by him as aforesaid, so far as the same will extend." It is difficult to surmount these words, but it has been contended that this Act does not apply to a case of this description, where the bankruptcy has taken place before the winding-up order. As I have already said, the word "is" cannot be construed literally; it means "shall be," or, "may happen to be." According to the construction offered on the part of the assignees, the word ought to be rather "becomes." The bankruptcy did not relieve this gentleman from his liabilities; he was as liable at the moment of the winding-up order as ever, and so is his estate now. He was liable because he had no certificate. The estate is liable because it was liable before bankruptcy. This Act clearly changes the law of the country as to particular persons under circumstances which I do not understand, but our business is to construe. I fear the rights of these persons are changed by the legislature. The latter clauses are, perhaps, locus communis, and afford an argument each way, but the argument preponderates in favour of the view taken by the official manager. It is true they are not provisions which seem to me well or correctly adapted to any theory or any practice that ever prevailed in the country, but it is very unsafe to rely on such words as contravene language so clear as the provisions of these sections. I feel myself, therefore, obliged to say with regret, that this demand has been directed by the law of the country to come in competition with the separate creditors, so that they are placed in a different position from any other separate creditors.

Lord Justice LORD CRANWORTH.—I concur in arriving at the same result, and with the same degree of regret. Whatever the date of the bankruptcy, there is the same anomaly, if the separate creditors are put on a different footing from that in which they would have stood if the Act had not passed. It is difficult to believe the Legislature intended to put them in a different position, but it is our duty to consider the language of the Act, which we cannot construe in any other way

Lord Justice KNIGHT BRUCE.—I had omitted to observe, that during the argument, I was under the impression that this result might have been avoided by adopting a limited construction of the word "balance," but as it proceeded I was convinced that this was impossible.

ENTHOVEN *v.* COBB.

Production of documents—Privileged communication.

A. and B. having substantially a common cause of action against C. brought separate actions against him, which were still pending. A. took the opinion of counsel as to the claim against C. and gave a copy of the case and opinion to B. C. filed a bill of discovery against B. who by answer admitted the possession of this copy among other documents, but claimed a right to withhold it on the ground of its being privileged :

Held, affirming the decision of the Court below made on a motion for the production of documents, that the copy of the case and opinion was privileged.

This was an appeal from the decision of Vice-Chancellor Parker, who, on a motion by the plaintiff for the production of documents, held a case and opinion of counsel given by two ladies of the name of Hoyle to the defendants Messrs. Cobb, to be privileged. The facts are fully stated in the judgment and in 19 Law T. Rep. 243.

Wigram and *Rawlinson*, in support of the appeal, cited *Whitbread* v. *Gurney*, 1 You. 541; *Storey* v. *Lord George Lennox*, 1 Ves. 352; *Bolton* v. *The Corporation of Liverpool*, 1 Myl. & K. 88; *Greenough* v. *Gaskill*, 1 Myl. & K. 98; *Desborough* v. *Rawlins*, 3 M. & C. 518; *Knight* v. *The Marquis of Waterford*, 2 Y. & C. 22, Ex.; *Sawyer* v. *Bricknore*, 3 Myl. & K. 572; *Greenlaw* v. *King*, 1 Bea. 137; *Combe* v. *The Corporation of the City of London*, 1 Y. & C. C. C. 631; *Curling* v. *Perring*, 2 Myl. & K. 380; *Flight* v. *Robinson*, 8 Bea. 22; *Goodall* v. *Little*, 1 Sim. 155, N.S.; *Glyn* v. *Caulfield*. 3 Mac. & G. 463; *Holmes* v. *Baddeley*, 1 Phil. 176; *Pearse* v. *Pearse*, 1 De G. & S. 12.

Molins and *Karslake*, for the defendants, were not called upon.

Lord Justice KNIGHT BRUCE.—The opinion of counsel was taken by ladies of the name of Hoyle, who claimed to be creditors of a person of the name of Enthoven. They had sued him at law, and obtained, as I understand, a verdict against him, the effect of which is suspended by a bill of exceptions before the House of Lords, so the possible effect might be a venire de novo, in which the whole matter in dispute would have to be tried again. It appears that Messrs. Cobb, who were the defendants on the record, also claimed to be creditors of Mr. Enthoven, the same gentleman, and are suing or intended to sue him at law. In aid of the defence for the purpose of discovery, this bill is filed. But the circumstances under which the Messrs. Cobb claimed to become creditors, is, if not identical with those under which the ladies claim to be creditors, very similar, and connected with them, as I understand, so much so, that the ladies have, through their solicitor, taken the opinion of counsel, and communicated that case and that opinion to the solicitor of Messrs. Cobb, as having a common cause substantially with him against Mr. Enthoven, the common object of pursuit. Now the first question is, for what purpose and with what view, on the materials before us, we ought to infer that the case and opinion were communicated with permission to copy them? In my opinion, the first and unavoidable inference is, that the communication was not only not made with the view of allowing unlimited publication and use, but made in confidence, and for limited and restricted use for assisting him in that claim, which was to all intents and purposes common with that of the ladies, whose solicitor lent it. I infer, therefore, and from the materials before the Court believe, that it would be an unjust and unlawful act on the part of the present defendants, to allow that case, or that opinion,

or copy of opinion, to be published or even to be communicated by any means, except for the purpose of defence. The ladies have had and still maintain a material interest in this document, the production of which is sought by their adversary. Without entering into other questions which have been properly and ably urged in support of this motion, it is sufficient for me to be satisfied that the interest of the ladies, and their rights in these documents, require that their use should be limited to purposes for which they were communicated, and are of themselves sufficient to preclude the plaintiff from demanding the production of the documents. I agree entirely in the view taken by the Vice-Chancellor; the motion, therefore, must be dismissed, with costs.

Lord Justice Lord CRANWORTH concurred, and observed that the case was beside all the cases cited. In those cases the question had been between the plaintiff and defendant, in this case the defendants had no right as between themselves and third persons to produce the document.

ROLLS COURT.

Reported by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

March 19 and 22, and April 19.

BELL *v.* THE LONDON AND NORTH-WESTERN RAILWAY COMPANY.

Chose in action—Assignment in equity—Consent of debtor—Notice—Evidence—Agent.

J. B. a railway contractor, being in want of money to carry out his contract, entered into arrangement with a bank whereby they allowed him to draw on them to a certain amount on condition of his giving an order to the railway company to pay over to them the moneys which from time to time became payable to him under the terms of the contract, as the works advanced. J. B. accordingly wrote and delivered to the bank a letter, in which he simply directed the railway company "to pay into the bank to the account of J. B. such sums as might become due in respect to his contract." This letter the bank sent the next day to the railway company, requesting that it should be acknowledged, and it was so in due course, and the payments were afterwards made into the bank by the company. J. B. then entered into a second contract with the same railway company, and they on that occasion wrote to the bank to inquire whether they required the payments as they became due under that contract to be made to them, and they replied they did not. The secretary of the company also observed in the letter that he presumed any money coming otherwise than as by Contract No. 1 could be paid in any way J. B. wished, and the reply was in the affirmative. J. B. became bankrupt, being indebted in a large sum to the bank. No notice of the arrangement between J. B. and the bank, nor any communication, other than the letters, was given or made to the company:

Held, that the order given by J. B. did not amount to an assignment in equity of the sums due to J. B. from the company, and that the subsequent letter from the company to the bank did not alter the construction of that order, and could not be treated as an admission by the company that they had ascertained that the moneys due under Contract No. 1 had been irrevocably assigned.

This was a suit by the National Provincial Bank of England by Robert Bell, their public officer, against the North Western Railway Company, Edward William Watkin, and others, for an account of certain moneys alleged to have been improperly paid by the company to Thomas Burden, a contractor for the execution of certain works of the company. On the 12th of December, 1846, Mr. Burden entered into a contract with the company for the construction of a branch line from Rugby to Peterborough and Stamford for 107,860*l*. one of the terms of the contract being that the company should pay at the end of each month for nine-tenths of the work certified by their engineer to have been completed, and that the other one-tenth should be reserved till the expiration of one twelvemonth after the whole contract was completed, during which period Mr. Burden was to keep the line in repair. Mr. Burden being in want of money to carry on the works applied to the company for an advance of 10,000*l*. but his application was not acceded to; and in March, 1847, he applied to the bank to advance him money to enable him to carry out the contract, and they agreed to allow him to draw upon them to the amount of 4,000*l*. on his giving an order on the railway company to pay into the bank to his account the moneys by instalments as they became due under the contract. On the 29th of March Mr. Burden accordingly wrote and delivered to the bank a letter addressed to the company, in which he simply directed the company to pay into the bank to the account of Thomas Burden, such sums of money as might become due on the contract. This letter the bank the next day (8th March) forwarded to the company with a request that it should be acknowledged, which was done the following day by Mr. Watkin, the secretary of the company, and payment of subsequent instalments was made by the company to the bank.

At the time the order was given, however, to pay to the bank, no money was due from the company to Burden, and there was no evidence that any communication, either verbal or written, was made by the bank to the company of the arrangement between Burden and the bank, or that there existed any arrangement whereby Burden was prevented from paying the money to any other party if he so thought fit. The letter of Burden was relied upon as itself sufficient evidence of the arrangement, but it was perfectly consistent with that letter that the bank should only have been constituted Burden's agent instead of equitable assignee. Subsequently, however, Mr. Burden entered into a second contract with the company, which was called Contract No. 2, as the first was called Contract No. 1, for the construction of another portion of the line; but the agreement between Burden and the bank related only to Contract No. 1. Contract No. 2 having been entered into, the secretary of the company, Mr. Watkin, wrote a letter, dated 8th July, 1847, to the bank, to inquire whether they required the payments becoming due to Mr. Burden under Contract No. 2 to be made to them, and the reply was, that they did not. Mr. Watkin, also, in the letter of the 8th of July to the bank, "presumed that any money coming otherwise than as by Contract No. 1, could be paid in any way Mr. Burden wished." Under the agreement with the bank, Mr. Burden overdrew his account to the amount of upwards of 4,000*l*. and getting into difficulties, he applied to the company to advance him 10,000*l*. which they refused to do, but through their engineer, Mr. Liddell, offered to pay him a week's amount of wages and materials, which offer, after some remonstrances, he accepted.

In September 1847 the works were stopped, and the company took them into their own hands, in consequence of Mr. Burden not being able to carry them on; and in December following Mr. Burden became bankrupt, and a large sum being claimed from the company by his assignees, the claim was referred to arbitration, and the sum of 4,000*l*. was awarded to be paid by the company. This sum the plaintiff, on behalf of the bank, insisted ought to have been paid to him under the arrangement as to sums payable under contract No. 1, but this being resisted by the assignees, the plaintiff filed his bill on behalf of the banking co-partnership, and now asked a declaration by the Court that the bank was entitled to a charge on him on all moneys which became due to Thomas Burden, not exceeding the sum of 4,000*l*. in respect of the contract No. 1. This claim they based upon the letters of March and July 1847, contending that the railway company had thereby constructive notice of the arrangement between Burden and the bank, and that formal notice was not necessary; and they insisted that the letters amounted to an equitable assignment to them of the debt.

R. Palmer and *Cairns*, for the bank, contended that the letter of the 8th of July from Mr. Watkin to the bank was a clear admission that the company had notice of the arrangement. They cited *Tibbits* v. *George*, 5 Ad. & Ell. 107; *Smith* v. *Smith*, 2 Cr. & M. 231; *Gardner* v. *Lachlan*, 4 Myl. & Cr. 129; *Burn* v. *Carvalho*, 7 Sim. 109; *Lett* v. *Morris*, 4 Sim. 607.

Roupell and *Speed*, contrà.

R. Palmer, in reply.

The MASTER of the ROLLS.—The plaintiff, Robert Bell, is the public officer of the National Provincial Bank of England, suing on behalf of the co-partnership of that bank; and the defendants are the North Western Railway Company, Edward William Watkin, and others. The object is to make the railway company account to the bank for sums of money alleged to have been improperly paid by them to Thomas Burden. It appears that on the 12th of December, 1846, Mr. Burden, who was a railway contractor, entered into a contract with the company for the construction of a branch line from Rugby to Peterborough and Stamford for 107,660*l*.; the company agreeing to pay at the end of each month for nine-tenths of the work certified by their engineer to have been completed, the other tenth being reserved by them till the expiration of one twelvemonth after the completion of the contract, Mr. Burden undertaking to keep the line in repair for that period. In March, 1847, Mr. Burden applied to the bank to advance him money to enable him to carry out the contract, and an agreement was come to between him and the bank, they allowing him to draw upon them to the amount of 4,000*l*. on condition of his giving an order to the railway company to pay the money as it became due to him under the contract No. 1, into the bank to his account. Burden gave the order accordingly, on the 29th of March, 1847, to the bank, who sent it on the 30th to the railway company, with a request that it should be acknowledged, which was done the following day by their secretary, and payments were afterwards made by them to the bank. Mr. Burden then entered into contract No. 2 with the railway company, for constructing another portion of the line; but the agreement with the bank related only to contract No. 1, for, on the 8th of July, 1847, when Mr. Watkin, the secretary, wrote to them to inquire whether they required the payments due to Mr. Burden, under contract No. 2, to be paid over to them; they replied they did not claim anything under that contract. During the year 1847, Mr. Burden fell into difficulties, and applied to the defendants to advance him 10,000*l*. which they refused to do, but offered through Mr. Liddell, their engineer, to pay a week's amount of wages and materials, to which Mr. Burden, after remonstrating, consented. In September 1847, the works were stopped, the company taking them into their own hands, and in December following, Mr. Burden became bankrupt, and a large sum was claimed from the defendants by his assignees, and upon the claim being referred to arbitration, 4,000*l*. were awarded to be paid by the defendants, which sum the plaintiff, on behalf of the bank, insisted ought to have been paid to them, under the contract No. 1. The first question I have to consider is, whether the letter of the 29th of March, 1847, written by Burden, and sent by the bank to the railway company, was such an assignment of all Mr. Burden's interest in the payments to become due to him as the Court could carry out against the defendants; second, whether any notice was given to the defendants of that assignment, and if so, whether that would be in favour of the plaintiff; and third, whether the sums allowed were or not proper sums. That, if necessary to be considered, would be the subject of reference to the Master. First, then, as to the question of assignment. As to this there is no difficulty in the principles of law in such a case, but there is some difficulty as to the facts, and the application of the principles of law to those facts. That a debt or chose in action may be assigned in equity without the consent of the debtor is a well-established rule in law, and does the present case come under that law? The letter of Mr. Burden was simply to direct the railway company to pay into the bank to the account of Thomas Burden such sums as might become due in respect to contract No. 1. At the time this order was given no money was due from the company to Burden, and it was not proved that any communication, either verbal or written, was made by the bank to the defendants of any such arrangement, or that any arrangement had been made by which Burden was prevented from directing the money to be paid to any other party if he thought fit to do so. The letter seemed merely to constitute the bank the agent of Burden. If the matter had depended solely on Mr. Burden's letter I should have considered that the plaintiff had failed in making out his case, but Mr. Watkin, the secretary to the railway company, had written, in a letter of the 8th of July, 1847, directed to the bank, that he presumed any money coming otherwise than as by contract No. 1, could be paid in any way Mr. Burden wished. If that expression was to be treated as an admission by the railway company, that Burden's letter was or ought to be treated as an assignment to the bank of the moneys becoming due to him under contract No. 1, it would be difficult to get over such an admission. The bank wrote in reply to Mr. Watkin on the following morning, that any money which was due to Burden under any contract except No. 1, might be paid to him. No notice, however, was given by the bank to the railway company of any arrangement with Burden. But it was said that this letter was binding on the company. Unless, however, the first letter was to be treated as an admission by the respondent that an assignment had been made which was binding on them to pay all moneys due under contract No. 1 to the bank, the second letter of 9th July could not be treated as binding in any way upon the company. Upon the best consideration I have been able to give the case, after some hesitation I am of opinion that Mr. Watkin's letter, although it has caused considerable trouble in my mind, cannot vary the previous order of March 1847; and that if that order did not amount to an assignment, the subsequent letter could not alter its construction, and could not be treated as an admission by the railway company that they had ascertained that the moneys due under contract No. 1 had been ever in reality assigned. The burden of proof lay upon the plaintiff, who was bound to make out an assignment of all moneys due to Burden under contract No. 1; and that notice of that fact had been given to the defendants. No evidence has been given of any assignment nor of the communication of such an assignment to the railway company, and therefore the bill must be dismissed; but taking into consideration the letter of July 1847, it must be without costs. The assignees of Burden to have their costs out of the estate.

V. C. TURNER'S COURT.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. HENRY COOKE, Esq. Barrister-at-Law.

Tuesday, June 8.

PADWICK *v.* STANLEY.

Bill for account—Complication of accounts.

P. had advanced to S. various sums of money, and had procured other moneys for him upon bills and other securities, upon which P. was liable; the documents necessary satisfactorily to shew the accounts between the parties, were in the possession of S. P. filed a bill for an account and for discovery, and praying that the bills and other securities might be paid off, and P. discharged from his liability. S. demurred to the bill, and it was

Held, that the accounts were not of such a nature as entitled the plaintiff to relief, whatever might have been the event of the suit, had discovery alone been prayed. A very strong case of entanglement must be made out to induce a Court of Equity to interfere where receipts have been all on one side, if even that alone constitutes a ground of such intervention.

The bill in this case was filed by Mr. Padwick against Sir —— Stanley, bart. stating that the plaintiff had been the solicitor of the defendant, and had been employed to raise money for him, and that he had himself advanced money to the defendant; that he had procured divers persons to advance moneys to the defendant on bills of exchange and promissory notes, and that he the defendant was also liable, and that such bills and notes were then outstanding; but the accounts extended over a very considerable space of time, and were in their nature and details very complicated, and that it would be highly inconvenient, if not impossible, to take such accounts at law: that the plaintiff had given and delivered to the defendant the accounts and papers relating to these transactions, and had written various letters to him thereupon, of divers of which letters, accounts, and papers the plaintiff had not preserved any copies. The prayer of the bill was, that the defendant might render an account, or might furnish the plaintiff with such accounts, papers, and letters as would enable him to make them out, and that all accounts between the parties might be taken in this Court, and that the defendant might be decreed to pay off the bills and notes, and discharge the plaintiff from his liability, and for discovery. The defendant put in a demurrer for want of equity.

Stuart and *Bates* for the defendant. This is a case for a settlement between these parties at law, and no case for the intervention of this Court. There are no mutual accounts; all the payments are, as the bill itself shews, on one side; and, besides, that the plaintiff was the solicitor for the defendant, and as such it was his business to keep accounts, and not having so done, he has no title to call on the defendant to furnish or help to furnish them. His remedy is at law. (*Dinwiddie* v. *Bailey*, 6 Ves. 136; *Alison* v. *Herring*, 9 Sim. 583.)

Rolt and *Amphlett*, in support of the bill. The plaintiff is a party for the defendant, being a party to, and liable on the bills and notes, and, therefore, on the authority of *Antrobus* v. *Davidson*, 8 Mer. 569, the case can be supported. Beyond that the bill is one for an account, which accounts are complicated, and although those accounts are not mutual, still a bill will lie. (*O'Mahony* v. *Dixon*, 2 Sel. and Laf. 400; *North-Eastern Railway* v. *Martin*, 2 Phil. 78; *Pierce* v. *Creswick*, 2 Hare, 286; *Taff Vale Railway* v. *Nixon*, 1 Ho. of Lords cases, 111; and *Foley* v. *Hill*, 2 ibid. 28.) The cases, in the House of Lords especially, shew that the idea of the necessity of accounts being mutual to sustain a bill is greatly weakened. Still, further, there is a third reason for the bill being supported, namely, that the accounts are accounts between principal and agent; and if it had been that the plaintiff had been the principal, no question could have been raised. (*M'Kenzie* v. *Johnstone*, 4 Madd. 375.) This Court will exercise the concurrent jurisdiction which it has with courts of law, by granting relief, it having, by means of its power of compelling discovery, and for which discovery the plaintiff has been forced to come, full possession of the case.

Stuart was not called on to reply.

The VICE-CHANCELLOR.—This demurrer must be allowed. The first ground on which it has been sought to support the bill is the right which the surety has to have himself discharged from his liability. I should be sorry to say anything likely to prejudice such right; but the jurisdiction of the Court is exercised only when creditors have a right to sue a debtor, and refuse to do so. It does not appear by this record that the creditor has any present right to sue. The statements in the bill must be taken most strongly against the pleader, and it is consistent with those statements that the bills may not yet have arrived at maturity. As a bill for an account it is sought to be supported,—firstly, on the ground that the accounts are complicated. I have expressed my opinion in a very recent case (*Phillip* v. *Phillip*, 9 Hare, 473) on the nature of the accounts which would give this Court jurisdiction. I take the rule to be that a bill of this nature will lie only where it relates to that which is the subject of a mutual account, and I understand a mutual account to mean not merely where one of two parties has received money and paid it on account of the other; but where each of two parties has received and paid on the other's account, I take the reason of that distinction to be that in the case of proceedings at law, where each of two parties has received and paid on account of the other, what would be to be recovered would be the balance of the two accounts; and the party plaintiff would be required to prove not merely that the other party had received money on his account, but also to enter into evidence of his own receipts and payments, a position of the case which, to say the least, would be difficult to be dealt with at law. I think that in order to support a bill for an account there must be mutual receipts and payments to give the Court jurisdiction. I will not say that there can be no case of complicated accounts which would give concurrent jurisdiction, but all such cases must depend on their own particular circumstances; I think no such case is made out here. The time may come when all accounts of this sort will come to one court; perhaps such a state of things would be most desirable, but we have not yet arrived at that. Next it was said that this was a case of agent and principal, and that if the principal might file a bill against the agent, the agent might do so against the principal, but I do not think there is any such mutuality in the relation of principal and agent. The right of the principal rests upon the trust reposed in the agent, but the agent reposes no such trust in the principal. It was lastly said that the accounts have been given up, but if such a case were sufficiently made out, it would only give a right to discovery, for which the plaintiff might file his bill, but such a case would give him no right to relief. The demurrer, as I have said, must be allowed, but the plaintiff is to have liberty to amend, if he can make out his case of surety and principal.

V. C. PARKER'S COURT.

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

Feb. 28 and May 24.

HEWARD *v.* WHEATLEY.

7 Geo. 4, c. 46—Deceased partner.

In a suit for the administration of the estate of A. B. deceased, a decree was made referring it to the Master to take the accounts. A. B. had been a partner in a joint-stock banking company. C. D. a creditor of the company, petitioned for leave to go in under the decree to prove his debt, but the Court dismissed the petition, as it was not shewn that the liability could not be satisfied by proceedings against the present members of the partnership.

This was a petition by George Wilson, praying that he might be at liberty to go in before the Master, to whom, by a decree in this cause, a reference had been made, and prove as a creditor of Joseph Elder, the testator in the cause, for the sum of 5,958*l.* 16s. 8d. the balance remaining due for principal on his debt, together with interest thereon at five per cent. from the 3rd of April, 1849. Joseph Elder was in his life-time, and up to the time of his death, a member of the Newcastle, Shields, and Sunderland Union Joint Stock Banking Company, which was a banking partnership, carrying on business under the provisions of the 7 Geo. 4, c. 46. On the 3rd of April, 1847, upon a deposit of money by George Wilson, the petitioner, with the bank, the bank gave him an accountable receipt, carrying interest at five per cent. per annum. The testator was at this time a partner in the bank, and he continued so until his death, which happened on the 8th of December, 1847. On the 9th of April, 1848, the petitioner recovered judgment against the public officer of the company for 5,958*l.* 16s. 8d. In the present suit, which was for the administration of the testator's estate, a decree was made on the 22nd of December, 1848, directing the usual accounts of the testator's personal estate and debts, and it was for permission to go in under this decree that the petition was presented.

Malins and *Toller*, in support of the petition, cited *Barker* v. *Buttress*, 7 Bea. 134; *Steward* v. *Greaves*, 10 Mee. & Wels. 711; *Wilkinson* v. *Henderson*, 1 Myl. & K. 582; *Cowell* v. *Sykes*, 2 Russ. 191; and *Hills* v. *Macrae*, 20 L. J. N. S. 533, Ch. They also referred to the 1st, 9th, 11th, 12th, and 13th sections of the 7 Geo. 4, c. 46.

K. Parker and *Hislop Clarke*, for the plaintiffs in the suit, cited *Ness* v. *Armstrong*, 4 Ex. 21; and *Ricketts* v. *Bowhay*, 3 C. B. 889.

W. D. Lewis, for J. Elder's executors, referred to *The Bank of England* v. *Johnson*, 3 Ex. 598; and *The Bank of Scotland* v. *Fenwick*, 1 Ex. 792.

Malins, in reply.

Monday, May 24.—The VICE-CHANCELLOR (after stating the facts) said that independently of the statute (7 Geo. 4, c. 46) the case would admit of no doubt. On the death of the testator his liability on the contract would have ceased, though his assets would have continued liable in equity. In this case, however, the liabilities were regulated by the statute of the 7 Geo. 4, c. 46. The courts of law and equity had found a difficulty in acting on that statute, and its enactments were found to be inconsistent with each other, and not entirely intelligible. The first section appeared to create a several liability on the part of the members to pay all bills and notes issued by the company, and all sums borrowed and owed by the company, and it had frequently been noticed that this clause extended the ordinary liability, and included various classes of members of the company. There was nothing to take away the liability which in equity would attach to the assets of a deceased partner, who was party to the contract as the testator was in this case. The 11th section related to decrees of courts of equity obtained against the public officer. His Honour noticed that, because it was difficult to reconcile the provisions as to decrees in equity with those as to judgments at law. A decree of this Court might be a simple order to pay money, as simple as a judgment of a court of law. By the 11th section a decree for payment of money is to be enforced against every or any member of such co-partnership in the same manner as if they were parties before the Court. The very special provisions of the 13th section were not to be found in this 11th section, as applicable to a decree which was to result in the payment of money. The 13th section provided the means of enforcing judgments at law. The 11th section appeared to give a judgment the same effect as a decree in the Court of Equity against the public officer of the company. The 13th section contained most important provisions applicable to the mode of enforcing execution upon a judgment against the public officer at common law. By that section, execution was first to be issued against any member or members for the time being of the co-partnership, and the Court of Ex. in the case of *Dodgson* v. *Scott*, 2 Ex. 157, decided that "the time being" meant the time of the execution. Execution must first be issued against the persons who were members of the partnership at the time of the execution, and in case that should be ineffectual for the purpose of obtaining satisfaction, then execution might be issued against certain persons who had ceased to be members before that time. This section provided only the mode of issuing execution against those persons who were liable at law. If the assets were liable in equity only, this clause contained no means by which that liability might be enforced. It appeared to his Honour that it did not follow that there was to be no liability in equity. The state of the law and the previous sections of the Act appeared to shew that there was to be a liability in equity, and if that were so, that liability must be enforced according to the ordinary principles of this court, because there was nothing about it in the clause pointing out how a judgment at common law was to be enforced against the parties equally liable in asserting an equitable liability against the assets of a deceased partner: however, he thought that regard must be had to those provisions of the Act which would have been applicable if it had been a legal liability, according to the view taken by Lord Langdale in the case of *Barker* v. *Buttress*. One of the most material provisions of the 13th section of the Act was that a creditor of the partnership was in the first instance to issue execution against the members for the time being, and only in the case that execution proved insufficient was execution to be issued against other parties. The reason of that was very obvious: the members for the time being were those who had control over the assets of the partnership, and those who had ceased to be partners had no such control. The object was to provide a mode of first rendering liable the funds of the partnership which were primarily liable to pay the debt, by issuing execution against those who had the control over those funds in the first instance, and execution was not to go against those who had no control over the funds until the others had been found not to be available. The present was an application to enforce the equitable liabilities of a deceased partner in the same way as if he had ceased to be a member by a transfer of his interest, and therefore it appeared to his Honour that the parties must first shew that the liability could not be satisfied by proceedings against those who were members of the partnership at the time. In the present case no such statement was made: there was no statement that the bank had ceased to carry on business, or that there had been any attempt to enforce judgment against those who were primarily liable, and therefore they had not made out their

case to reach those who were liable in the second degree. There must be no order, but the statute was so difficult, that he thought it was not a case for costs.

March 18 *and* 19.

NEDBY *v.* NEDBY.

Appointment by wife in her husband's favour—Fraud—Practice.

A wife having by deed duly executed appointed, in her husband's favour, certain property over which she had a power of appointment, it was held that the deed must be held valid, unless it were proved to be otherwise.

A deed of gift by a wife in favour of her husband was drawn by the husband's solicitor, and executed by her in the presence of two of the solicitor's clerks, without the same having been read over to her, and according to the evidence of one of the attesting witnesses, she was agitated and distressed, and signed it in a reluctant manner:

Held, that these circumstances were not sufficient to invalidate the deed.

James Keegan, by his will dated the 1st of July, 1820, bequeathed his personal estate to W. Nedby and Thomas Anns, upon trust to sell, to invest the produce, and to pay one-half of the income to his wife for her life for her separate use: the testator then proceeded, "and my will and meaning is, that my wife shall have full power by any will, testament, or instrument in writing to be by her duly executed to bequeath and dispose of one half moiety of the moneys so to be invested by my said executors and trustees, in manner and for the purposes aforesaid." The testator appointed W. Nedby, T. Anns, and his wife executors and executrix of his will. On the 7th of July, 1820, the testator died, and on the 7th of October in the same year, Mrs. Keegan, his widow, married William Nedby. By an indenture dated the 9th of January, 1821, Mrs. Nedby, in consideration of love and affection for her husband, granted and assigned to him one half part of the personal estate of James Keegan, deceased, bequeathed to her. In August, 1836, William Nedby and his wife separated, and in September in that year, Mrs. Nedby instituted a suit against her husband, and the other persons interested, for the administration of J. Keegan's estate. By the bill, it was stated that W. Nedby claimed to be entitled to the plaintiff's share of the estate under an indenture; but it was charged that the plaintiff never executed any such indenture, or that if she executed the same, she did so in ignorance of its contents and purport, and without professional advice or assistance, and upon the faith of a representation made to her by the said W. Nedby, under whose influence she was; that the execution of such indenture was merely intended to facilitate the proving of the will and the due administration of the estate of the testator, and that she was deceived and imposed upon in respect thereof, and that such indenture ought to be held fraudulent and void as against her; and it was prayed that it might be declared that the indenture, if any, was fraudulent and void. By his answer, W. Nedby stated the indenture, and that it had been prepared by Mr. Vincent, who had acted as solicitor on behalf of the plaintiff, and that the deed had been executed by her at Mr. Vincent's office. At the hearing of the cause in November 1841, it was referred to the Master to inquire whether the indenture in question was ever, and when, executed by the plaintiff, and under what circumstances. By his report, the Master found that the deed had been prepared by Mr. Vincent, who was then, and had previously been, Mr. Nedby's solicitor, and that it was executed by the plaintiff at ... the presence of Williams and Beale, two of Mr. Vincent's clerks; that the deed was not read over to her at the time of the execution, and that, except as aforesaid, he was unable to state the circumstances under which the deed was executed, no sufficient evidence having been laid before him. In his affidavit, in the inquiry before the Master, Williams, one of the attesting witnesses, stated that at the time of executing the deed, the plaintiff "was agitated and distressed, and that she signed it in a reluctant manner, with a dash of the pen." No exceptions were taken to the Master's report, and the cause now came on for further directions, Mr. and Mrs. Nedby having died, and the suit having been revived.

Glasse and *Greene* appeared for the plaintiff; and upon their proposing to read Williams's affidavit,

Wigram and *Hoare*, for the representatives of Mr. Nedby, objected.

The VICE-CHANCELLOR said that the plaintiff was at liberty to give any information to the Court as to the materials used before the Master, and, therefore, the affidavit might be read.

Glasse and *Greene* cited *Huguenin* v. *Baseley*, 14 Ves. 273; *Dent* v. *Bennett*, 4 Myl. & Cr. 269; *Gibson* v. *Russell*, 2 Y. & C. C. C. 104; *Pybus* v. *Smith*, 1 Ves. 189; and *Milnes* v. *Busk*, 2 Ves. 488.

Wigram and *Hoare* cited *Grigby* v. *Cox*, 1 Ves. 517; and *Collinson* v. *Pattrick*, 2 Keen, 123.

Bacon, Nichols, and *Bevir*, for other parties.

Glasse, in reply.

The VICE-CHANCELLOR said, that in this case Mrs. Nedby had made an appointment under a power, in favour of her husband, and the Court had thought it right, under the circumstances, to direct an inquiry whether the deed of the 9th of January, 1821, the appointment in question, was executed by her, and under what circumstances. The Master had made his report, containing nothing very material or decisive with respect to the circumstances, and that gave rise to the question on which side was the burden of proving the appointment valid or invalid; whether, unless the husband could shew that the circumstances were such that the appointment ought to be supported, it would be void; or whether, unless the wife could shew that the circumstances were such as ought to invalidate it, it would be good. The wife was put by the instrument which created the power in the position of a feme sole with respect to the particular subject thereof. She had a good power of appointment, the protection to her being that the act of appointment was to be by an instrument duly executed, so that she had whatever protection that might afford. His Honour thought, that, on all the principles governing the Court, he was bound to consider the appointment good, unless those claiming against it could produce sufficient matter to invalidate it. No doubt the Court regarded such transactions with jealousy, and considered it right to inquire into them, as in the case of *Grigby* v. *Cox*. Then, what were the circumstances in this case? The Master had found in substance that the deed was prepared by the husband's solicitor, and was executed by the wife in the presence of two of the clerks of that solicitor, and was not read over to her. All these circumstances constant[ly oc]curred in perfectly proper transactions, and it would be a dangerous thing to say that the deed could not be supported merely on those grounds. The only other circumstance on which the Court was asked to set aside this deed was, that one of the attesting witnesses said that she signed it with agitation and reluctance. It was impossible to act upon that as a ground for setting aside the deed. The costs of the general administration must come out of the entirety, except so far as they were increased by the inquiry as to the validity of the deed, which must come out of Mrs. Nedby's moiety.

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. BENNET, Esq. of Lincoln's-inn, Barrister-at-Law.

June 9 *and* 10.

BODENHAM *v.* HOSKINS.

Breach of trust—Banker and customer—Marked fund—Receiver.

The general rule is, that in a naked case of banker and customer, bankers need not inquire upon what account moneys are paid in or drawn out, and such cheques as the customer may think fit to draw on the bank the bankers are bound to honour.

But, where three accounts had been opened by a customer with his bankers, one of which was called the "Rotherwas estate account," and which was opened by such customer as the receiver of the rents of an estate of that name belonging to the plaintiff, the bankers are not warranted (knowing that such was a receivership account) in allowing the customer to draw cheques on that particular account to liquidate a balance due from the customer to the bankers on his "office account," and, therefore,

Held, that the customer having failed, the bankers were liable to make good to the owner of the estate the balance so allowed by them to be carried over from the "Rotherwas estate account" to the credit of the customer's private account.

This was a bill filed by the owner of an estate called the Rotherwas Estate, in the county of Hereford, against the defendants, bankers at Hereford, to charge them with a sum of 829*l.* 11s. 9d. improperly allowed by them to be drawn out of their hands by the receiver of that estate appointed by the plaintiff. The judgment of the Vice-Chancellor so fully enters into the facts and evidence in the case as to render it unnecessary further to state them.

Bethell and *E. W. Collins* for the plaintiff.

Stuart and *W. Wright* for the defendants, the bankers, contended that it was a simple case of banker and customer, and that the cheques drawn by the receiver, hereafter mentioned, they were bound to honour, and that the character of customer and banker did not exist as between them and the owner of the estate, the receiver having unlimited control over the account opened at the bankers.

Bethell in reply.

The principal cases cited were *McLeod* v. *Drummond*, 14 Ves. 353; S.C. on appeal, 17 Ves. 152; *Keen* v. *Robarts*, 4 Madd. 357; *Connell* v. *Herley*, 1 Coll. 241; *Wilson* v. *Moon*, 1 Myl. & K. 337; *Attorney-General* v. *Wilson*, Cr. & Ph. 1; *Wren* v. *Kirton*, 11 Ves. 377; *Foley* v. *Hill*, House of Lords Cas.; *Salway* v. *Salway*, 4 Russ. 60. See also Bennet's Receiver, 89, and notes.

JUDGMENT.

The VICE-CHANCELLOR.—The doubt that has from time to time crossed my mind in this case was chiefly this, whether the facts were stated in the pleadings with that degree of particularity as that I could say there had been a full opportunity for the defendants to meet those allegations of fact by the evidence which they might be able to adduce. Now that I have become more acquainted with what is contained in the pleadings, I feel myself in a condition, without waiting to look through the pleadings more in detail, to express my opinion in this case. I will first consider the case as between the plaintiff and Parkes; that is, what was the state of things as between the plaintiff and Parkes in the course of these transactions; and then consider what was the relation of the defendants, the bankers, towards Parkes in the matter, and how far the plaintiff, upon that state of things, is entitled to the decree which he asks against these defendants. Now, as between the plaintiff and Parkes, the matter seems to have stood thus,—the plaintiff was the owner of the Rotherwas estate and considerable property in the neighbourhood of Hereford; and it seems that he had employed as his solicitor and his agent and receiver a gentleman of the name of Blount. Mr. Blount being about to give up his employment, sold his business, or transferred it to Mr. Parkes, who had been previously a solicitor in London, and it was arranged between Parkes and Blount that for six months Parkes should use the name of Blount, and accordingly an account was opened by Parkes, with the concurrence of Blount, with these bankers, in the joint names of Blount and Parkes. It was intended that that should not continue longer than six months. When that account ceased,—in short, when Parkes was to use his own name exclusively in the matter, or shortly after that period, he was employed by the plaintiff as his solicitor, succeeding Blount in that employment; and shortly after that period again (all within the period of a very few months or even weeks), Parkes was employed by the plaintiff as his receiver and agent in respect of the Rotherwas estate, apparently in the same manner as Blount had been employed before. Parkes having, on the occasion of the ceasing of the account, the putting an end to the joint account in the names of Blount and Parkes with the bankers, having opened a private account of his own on the 23rd of June, 1846. When he came to be appointed the receiver of the rents and profits of the Rotherwas estate by the plaintiff, he very properly, as it appears to me, opened another account with the bankers for the purpose of placing to the credit of that account with the bankers the sums which he might receive in respect of the rents and profits of the Rotherwas estate, and drawing from the account the sums which he might have to pay on account of the Rotherwas estate, or which he might have to pay to his employer, the plaintiff. I say that that account was very properly kept separate from his own account; and, at all events, as between the plaintiff and Parkes, that account, although unquestionably it was the account of Parkes, and the bankers were to look to Parkes as the only person entitled to draw upon that account. Still I say, as between the plaintiff and Parkes, that account was opened by Parkes for the purpose of keeping in that form an account of the receipts and payments by Parkes as receiver in respect of the Rotherwas estate, and Parkes very properly entitled the account as the "Rotherwas estate account," which distinctly marked it, at all events as between him and the plaintiff, as being the account of the Rotherwas estate. How far it marked it as between Parkes and the bankers, I shall have occasion to refer to presently. I am now, as I have said, considering the case as between the plaintiff and Parkes. With regard to the third account which Parkes opened, the plaintiff had nothing to do with that, I mean that account which is called the "general account." Now, whatever balance might from time to time be standing to the credit of the Rotherwas account, it is quite clear that, as between the plaintiff and Parkes, Parkes would violate his duty if he applied any part of that balance to any purpose of his own; if, for example, he had drawn out that money and applied it to any purpose of his own, the bankers knowing nothing of the matter, still, as between Parkes and the plaintiff, it would be a gross breach of duty,—I may say, a breach of trust,—a breach of that duty which Parkes owed to the plaintiff, not to apply the moneys which should arise from the Rotherwas estate to any other purposes than the purposes of the plaintiff. When, therefore, Parkes drew the cheque on the 9th of July, 1847, for the 829*l.* and a fraction, which was then the balance standing to the credit of the Rotherwas account; when he drew that cheque in order that the proceeds of that cheque or the amount of that cheque might go towards the liquidation of the separate account of his own on which he was debtor,

without at present saying how far the bankers were affected by that, as between Parkes and the plaintiff it was a breach of trust committed by Parkes as against the plaintiff; it was a fraud, in fact, committed upon the plaintiff—it was a misappropriation by Parkes of that which was, in fact, the money belonging to the plaintiff to purposes of Parkes, and not to the purposes of the plaintiff. That, I conceive, is beyond all question the condition of things, and the relation as between Parkes and the plaintiff is, and I do not understand that there is any controversy raised on that part of the case; it is stated on both sides, that whether or not the bankers have made themselves liable, that as far as Parkes is concerned, there is a great breach of duty and it was very justly made a matter of observation on the part of the defendants' counsel, that Parkes's own representations were such as to shew that he had been guilty of very great misconduct, and from that an argument was drawn, with more or less of weight, that he was not to be believed in the representations of fact which he made; but at all events I take it thus, for it is beyond all controversy that that act of Parkes was a great breach of duty towards the plaintiff, his employer. Now, as the agent or receiver of Mr. Bodenham, the plaintiff, he clearly was in one sense a trustee for him—there was a fiduciary character created between the plaintiff and Parkes. I do not know that it is very material whether this be technically called a breach of trust on the part of Parkes, but at all events it was a breach of duty which Parkes owed to the plaintiff, standing towards him in a fiduciary character in respect of the moneys which, as receiver of the Rotherwas estate, he received in respect of the rents and profits. Now, then, I approach the question as to the participation of the bankers in this misconduct of Parkes—how far the bankers (the defendants) were in any way participators in this misconduct of Parkes—participators in the act they were; but it does not follow because they were so, they were participators in the fraud of Mr. Parkes. Let us see, therefore, what was the position of the bankers in the matter. I entirely agree with many of the observations that have been made by the counsel for the defendants, that as between banker and customer, in a naked case of banker and customer, the banker looks only to the customer in respect of the account opened in that customer's name, and whatever cheques that customer chooses to draw the banker is to honour. He is not to inquire for what purpose the customer opened the account; he is not to inquire what the moneys are that are paid into that account; and he is not to inquire for what purpose moneys are drawn out of that account. That is the plain general rule as between banker and customer. But now, let us see whether that naked state of circumstances existed in the present case. Now, the first transaction or circumstance that appears important to notice first in point of date appears to be the interview which, on the 10th of June, 1846, took place between Parkes and Mr. Hamp (one of the partners) and Spozzi, a clerk or cashier of the bankers. It appears that at this time there was a considerable balance, I think somewhere about 1,200*l.* to the credit of the joint account which I have mentioned had been opened in the names of "Blount and Parkes," but the six months during which Parkes was to keep that account open, that is, to use the name of Blount, were nearly expired, and Parkes represented to the bankers, that is, represented to Mr. Hamp and Mr. Spozzi, the cashier on that occasion, that he would have occasion to draw largely for purposes of his own, and wished to know whether they would honour his cheques; that is to say, allow him to overdraw the account which he had with them. One can easily conceive there would be some hesitation in acceding to that proposal, and Mr. Hamp very fairly, I think, said, "Well, if we are to do this for you, you ought to be doing something for us, we should expect some sort of return of obligation," and whether suggested originally by the bankers, or offered by Parkes, this at least took place, that Parkes told the bankers that he would introduce to them the Rotherwas account. Now, referring to the statement in the evidence of Parkes upon this part of the case, I find that he represents it thus. After stating what I have already adverted to, which is not precisely material to the present case, the particulars of that account opened in the names of Blount and Parkes, he states this, that when that joint account was closed the balance standing to the credit of that account was transferred to the credit of his own account which he himself opened, and which I should observe was not opened until some days after this interview. It was on the 26th of June, 1846, that the private account was opened, and the interview I have adverted to was on the 10th, just before the opening of the private account, he says; he speaks of the separate account, and then goes on thus:—"The book produced and shewn to me at this, the time of my examination, marked with the letters A, B, is the pass-book, wherein such private or office account was kept by the said defendants, the bankers." Then he goes on thus:—"Before the said joint account was closed, and on or about the 10th of June, 1846, while there was a balance to the credit of the said joint account of 1,337*l.* or thereabouts, I had an interview at the defendants' banking-house, with the defendant Francis Hamp and Mr. Spozzi, the cashier of the bank, touching certain pecuniary engagements to persons in London, which I was about to be called upon to meet. The six months during which I was entitled to use the name of the said Charles Blount had then nearly elapsed, and it was consequently in contemplation to close the said joint account, and open a separate account. The object of that interview was to obtain leave from the defendants, the bankers, to overdraw my account, from time to time, as might be necessary, to the extent of about 1,500*l.* for the purpose chiefly of making certain payments in London, and also temporarily the expenses of my business in Hereford. On my making the application in question, the said Francis Hamp, in the presence of Mr. Spozzi, said that he and the said Nathaniel Morgan, 'the two partners, would assent to it, and that they would communicate with the said K. Hoskins, who would no doubt also concur in it;'" those are the three partners. "In the course of the interview, the said Francis Hamp said to me, 'I understand from Mr. Spozzi, that you intend to introduce the Rotherwas account; you ought to do something for us if we help you.'" I confess it does appear to me that the use of the word "introduce" there, which occurs more than once, is important. It is evidently not the splitting of a pre-existing account into two, for the mere convenience of the individual keeping the account; it was a holding out to the bankers, or a conception on the part of the bankers, that there was held out to shew the introduction to them, that is, the opening with them, of some account, the opening of which would of course be for their benefit. Now, whether the benefit that they were to derive from that was a benefit merely of having an additional customer, at least an additional account on which there would be generally some balance (which is always to the advantage of the banker), or whether they contemplated something beyond that,—namely, that in allowing Parkes to overdraw his account, they might appropriate the balance, which might be to the credit of the Rotherwas account to protect themselves against the loss of such balance. Whatever was the view which they had, this at all events appears to me to be clear in this transaction that the question of the opening of this Rotherwas account was mooted on this 10th of June, as the introduction to them of some account, which was to be doing something for the bankers, as the bankers were doing something for Parkes, that is, for the benefit of the bankers. Well, the witness goes on and says,

I said that I did intend to introduce that account when I became the plaintiff's receiver, and the said Francis Hamp then asked me two or three questions as to the rental of the Rotherwas estate, and the balance that would probably be kept on the account. I told him that the rental was about 6,000*l.* a year, and the balance I would keep as large as I could; that it would probably average about 1,000*l.* He then said that he was satisfied. The arrangement then entered into between the said Francis Hamp, on behalf of the defendants, the bankers, and myself, was undoubtedly that I should be allowed to overdraw my said separate account when the same was opened, if I would introduce to the bank the account of the rents of the said Rotherwas estate, so soon as under my arrangements with the said Charles Blount I became the receiver thereof. I did certainly promise the said Francis Hamp, or lead him to understand, that on my becoming such receiver I would open the last-mentioned account at the banking-house of the defendants." Now, when this evidence was read, I had not heard the pleadings, and I confess I was in some doubt, especially when I came to the evidence of the defendants, and found there was no evidence given on the subject of this interview in any way contradicting this. I doubted whether the matter had been so alleged in the pleadings as to give the defendants an opportunity of meeting it, in which case I certainly should not have come to a decision without further inquiry, either by means of an issue or referring it to the Master on the facts. But I find in substance, perhaps a little more strongly put, but in substance the same statement is contained in the bill as to what took place on the 10th of June; and when I come to the evidence given by Spozzi, who is here alleged to have been present during this matter, I do not find that Mr. Spozzi makes any attempt, or that any question is put with a view to his making an attempt to say that Mr. Parkes is not to be believed on his oath. He is a man who, by his own shewing, has been guilty of misconduct. "Believe what I tell you on the subject, and I tell you what took place is totally different from what Parkes states, and what is alleged in the bill." I see no reason, I confess, for disbelieving Parkes, whatever. I agree with Mr. Wright, that Mr. Parkes's evidence is to be looked at with great jealousy; and if I find that Parkes positively swore one way, and Spozzi positively swore the contrary, I confess I should be much more disposed to put confidence in what Mr. Spozzi stated than what Parkes stated, for the very reason that Mr. Wright has assigned, that Parkes has been guilty of misconduct in the matter, but when I find that of the two persons present during that transaction, when both sides have the opportunity, the one of examining the one, and the other of examining the other, or of each examining both, or cross-examining, if they please; when I find that one is called upon to state what took place according to his view, and the other is not called upon to state it; and when the interrogators abstain from giving him the opportunity of stating it, I do consider myself bound to believe the witness on his oath, and I see no reason for disbelieving him. Now, it does not stand only on the evidence of Parkes, for although Parkes and Spozzi were the only persons present at that interview, except Hamp, who could not, of course, be examined as a witness, we find the corroboration not of all the details of what is stated to have passed at this interview, but this corroboration of the substance of it, which goes to shew that the bankers knew this was a receivership account in respect of the rents and profits. We find, on the 26th of October, 1846, when the Rotherwas account was actually opened, another person intervened, who is examined as a witness, for the precise act of opening the account was not by Parkes himself going to the bankers, but by his sending Mr. Ward, his clerk. Now, let us see what Mr. Ward states passed between him and the bankers on that occasion. Ward states—and I have not heard a word of suggestion that Mr. Ward is not to be believed on his oath—in answer to the 20th interrogatory, he states this: after stating he was in the employ of Parkes as his clerk and bookkeeper from such a time to such a time, he says—"I was directed by Mr. Parkes, in the month of October 1846, to open an account with the house of Messrs. Hoskins and Co. of Hereford, bankers, which was then composed of Kedgwin Hoskins, Nathaniel Morgan, Francis Hamp (since deceased), and Joseph Morgan (who are named as defendants in the title to these interrogatories) for him, Mr. Parkes, in the name of the Rotherwas estate account; I accordingly attended at the bank of Messrs. Hoskins and Co. in Hereford, on the 26th of October, 1846, and opened the said account, and paid to the credit of it the sum of 700*l.* I saw Mr. Spozzi, the then manager of the bank, on that occasion, and addressed myself to him, but, to the best of my recollection, the defendant, Joseph Morgan, was in the bank, and near enough to hear what passed between Mr. Spozzi and me. I stated to Mr. Spozzi, on the last-mentioned occasion, by Mr. Parkes's directions, that the said account was to be opened under the title of the 'Rotherwas Estate Account,' and that the cheques which he (Parkes) would draw upon it, would be so endorsed as the money which would be paid in to the said account belonged to Mr. Bodenham (meaning Charles Thomas Bodenham, the plaintiff in this suit), and that he (Mr. Parkes) wished it to be kept separate from the other account which he had with the bank. The sum of 700*l.* which I paid in to the credit of the said account, consisted of rents arising from the Rotherwas estate, which had been just received by Mr. Parkes, and belonged to the plaintiff, and was, to the best of my recollection, chiefly composed of country bank notes. Mr. Parkes had, at that time, another account with the bank, entitled 'Office Account,' and which related to his business as a solicitor; and in the ensuing month of December he opened a third account." Then he goes on to describe the opening of the third account, which is not material to the present case. Nothing can be more precise and clear than this, that Parkes having sworn that on the 10th of June he had promised to introduce the Rotherwas account to these bankers as soon as he was appointed receiver, according to the arrangement with Blount, his predecessor, whatever doubt might exist as to whether Parkes accurately stated the truth when he stated that he then represented to the bankers that this was a receivership account for the purpose of keeping the account of the Rotherwas rents, and so forth,—whatever doubts, I say, might exist on Parkes's evidence, as to whether the bankers knew the nature of the account, and that, in point of fact, it was Bodenham's account—not Bodenham's account in the sense that Bodenham was to draw on it, but that the moneys belonged to the estate of Bodenham, and that it was the account of Bodenham's receiver,—whatever doubt might exist on Parkes' sevidence, here is Mr. Ward's evidence, shewing that when the account was opened at the moment when the very first sum was paid in to the credit of that account, the bankers were distinctly informed of the reason why it was kept as a separate account, why the cheques were to be entitled with the words "the Rotherwas account;" the reason was because the moneys which had been paid in to that account belonged to Mr. Bodenham, the plaintiff. It appears

to me beyond all question, therefore, that from the very commencement of that account the bankers knew that the money paid in to that account were the moneys of Mr. Bodenham arising from the rents and profits of his Rotherwas estate, and that the account was kept by Parkes not as an account of his own in relation to his own moneys, which belonged to himself, but in his character of receiver to Mr. Bodenham's Rotherwas estate. Now, whether the bankers in their own minds, or even in their own books, if the fact had been so, treated the Rotherwas account as if it had been the private account of Mr. Parkes—whether they did so or not, the question is whether they had a right to do so; whether they had a right to say, knowing from the outset that the money placed to that account was Mr. Bodenham's money, and that any balance standing to the credit of that account at any time was Mr. Bodenham's balance; the question is whether they had the right to say that they would make such an arrangement with Mr. Parkes as that at any time they should be at liberty to appropriate that balance to the credit of that account towards the liquidation of the balance standing to the debit of the private account of Mr. Parkes. It appears to me that on every principle of equity they had no right to do so; it appears to me that it is not a question whether simply at the time when the cheque was drawn for the 829*l.* they had a right then to allow that cheque to be placed to the credit of the other account, the private account of Parkes; but whether they had a right ever to make an arrangement with Parkes to that effect, if the arrangement was made, or intended to be made, whether they had a right to say that the receiver should so deal with them as to make his principal's money at any time liable to be appropriated to discharge the private debt of the receiver to the bankers. I am quite satisfied that upon all principles of equity that could never be done; and this case illustrates what has often struck me as a very remarkable view of the principles of equity, that almost all the principles which are acted upon by a Court of Equity, in point of fact, are pervaded by a higher, and purer, and more exalted tone of morality than that which prevails among mankind, even among the moral portion of mankind, and I wish it to be understood that I do not think there is to be imputed to these gentlemen any design of doing that which in their minds was dishonest or improper. I believe they had no such intention. All I think that I can impute to them is, that they were not aware that according to the principles—the moral principles of a Court of Equity, and acted upon daily by a Court of Equity—a person who deals with another, which other he knows to have in his hands, or under his control, moneys belonging to a third person, cannot deal with the individual holding those moneys for his own private benefit, when the effect of that transaction is, that that person commits a fraud on a third person. That Parkes was committing a fraud in appropriating to his own purposes the money of his employer, is beyond question. The bankers did not seem to feel or be aware that they had no right, and that Parkes had no right to enter into any arrangement, the effect of which was to make the money (although Parkes was the only person who could draw on that particular account) liable to any defalcation, any deficiency that might exist upon the private account of Mr. Parkes with the bankers. Now, I do not know that in the view which I take of this case, it is necessary to consider that the bankers from time to time, in the course of the transactions, considered to be the state of circumstances. The two witnesses, Messrs. Spozzi and Fryer, labour very much, or rather the interrogatories have laboured, to bring them over and over again to repeat this, particularly in the deposition which is in answer to the 26th interrogatory, that Bodenham, the plaintiff, never told them that these were his moneys; that Bodenham, the plaintiff, never told them that this was his account; that Bodenham, the plaintiff, never claimed to have any control over that account, and so on · that is not the question. Again, it appears to me immaterial to consider, whether their suggestion is well founded, that the bankers, at the time the account was settled, treated the three accounts as the accounts of one single customer. If it were necessary to consider what is meant by that deposition, I confess I am at a loss to know what was in the mind of the witnesses when they so deposed, for the deposition amounts to this, that when the account was settled, the bankers treated and acted upon the three accounts as the account of one single customer. Now, that led me to suppose, that when I came to look at the books I should find that when the accounts were settled (which appears to have been done half-yearly or yearly) there was an amalgamation at least of the balances of these three accounts, to see what the result of the three would be. But so far from that, there is never any thing of the kind in the books. If by the term, "the time of settling the accounts," they mean the 9th of July, 1817, when two of the accounts were closed, if that is the time they mean, even then the accounts are never treated as one and the same account, or the account of one customer, any further than this, that by arrangement between them and Parkes, the balance appearing to the credit of each of the two accounts was carried to the credit of the other account (the private account) on which there was a debit, but in no other sense, at the time of the settling of any account, did the bankers treat and act upon the three accounts as the account of one and the same customer. If it be meant, as Mr. Wright says, that the accounts were kept in the name of the same individual, then it is perfectly true; but, as I observed, it is a strange mode of putting the proposition, namely, for the purpose of alleging that the accounts were headed in the name of Parkes, to put it in this shape, to say, that the bankers at the time of settling the accounts, treated and acted on the three accounts as one. It appears to me to be really immaterial what view the bankers took of it between the time when the Rotherwas account was opened and the 9th of July, 1817, when the balance of that account was transferred to the credit of the private account, because I find at the very opening of the account, nay, some months, three months at least, before the opening of that account, the bankers were well aware that that account was the account of Mr. Parkes, as receiver of the Rotherwas estate, and that the moneys which were to be paid in to the credit of the account were the moneys of Mr. Bodenham, and that it was for these very reasons that that account was to be kept as a separate account, and so headed. Well, then, I am constrained to arrive at the conclusion that the bankers, although I must exonerate them from any deliberate intention to commit a robbery or commit a fraud, that the bankers still were not only parties to the simple fact of the transfer, but were parties to the fraud in question in this sense, that they were aware of the circumstances which made it a fraud in Parkes to make the transfer to his private account, and being cognisant of that, and having been cognisant of it before that time when the account was opened under the name of "the Rotherwas account," they being cognisant of that throughout, they concur in a transaction, the effect of which is, that for their own pecuniary benefit an act was done by Parkes which is a fraud upon the plaintiff. Now, according to the plain principles of a Court of Equity such an act never can be sustained; a party cannot retain the benefit which he has derived from being a party to such an act, with such knowledge of the nature of such act. I am, therefore, under the necessity of decreeing the repayment of the 829*l.* 11s. 9d. by the defendants, the bankers, to the plaintiff. With respect to the question of interest, it appears to me that I cannot give any higher interest than the interest which the bankers allowed upon the account. If there had been no interest allowed, it does not appear to me that I could give any interest at all, but considering that this was transferring to the detriment of Mr. Bodenham from an account which was yielding interest, a sum of money which if it had still stood there would be bearing interest, I think it ought to be with interest at the same rate at which the interest was allowed by the bankers. Whether that was five per cent. I do not know, it does not appear.

Decree accordingly.

Common Law Courts.

COURT OF COMMON BENCH.

Reported by Daniel Thomas Evans and R. Vaughan Williams, Esqrs. Barristers-at-Law.

COUNTY COURT APPEAL.

(Before Maule, Cresswell, Williams, and Talfourd, JJ.)

The Great Western Railway Company, Appellants; Goodman, Respondent.

Railway company—Bye-laws, effect of—Liability for passengers' luggage.

By an Act of Parliament incorporating a railway company (5 & 6 Wm. 4, c. 107, s. 144), the company were empowered to make bye-laws, which, it was declared, "shall be binding upon and be observed by all parties, and shall be sufficient in all courts of law and equity to justify all persons who shall act under them, provided they be not repugnant to the laws of the realm." The company, under this authority, made certain bye-laws, amongst which was one permitting each passenger to carry a certain weight of luggage, cost free, and declaring "that the company would not be responsible for the care of luggage, unless booked, and paid for accordingly." The plaintiff having delivered her luggage, without having so booked and paid for it, to a porter in the employ of the company, with directions to him to label it for West Drayton, which he did, got into the train, and on demanding it at the place of her destination, it was not to be found, and the company admitted it to have been stolen:

Held, on appeal from the County Court, that there was a sufficient delivery to the company, and therefore, notwithstanding the bye-laws, they were, on the general law of carriers, liable for the loss.

Appeal from the Marylebone County Court of Middlesex.

The case, as stated by Mr. Amos, the judge, shewed that this was an action brought in the above-named County Court, to recover 35*l.* 14s. 3d. the amount of damage alleged to have been sustained by the plaintiff, by reason of the defendants having, on the 9th day of October, 1851, received the plaintiff, as was alleged, as a passenger on the defendants' railway, to be conveyed with her luggage from Paddington to West Drayton, for hire, and through the carelessness, negligence, and default of the defendants, as was alleged, part of the plaintiff's luggage, which accompanied the plaintiff, was lost by the defendants, and had never been delivered to the plaintiff.

On the trial of the case in the said court, the following facts were proved:—

That on the 9th October last the plaintiff had travelled from Hitchin, in Hertfordshire, by the Great Northern Railway, to London, having then three articles of luggage belonging to her, consisting of one large trunk and two smaller boxes properly directed to the plaintiff's address at Uxbridge; that on her arrival at the London terminus of the Great Northern Railway she hired a cab, and had the said three articles of luggage placed on the cab, that she (and the said luggage) was driven in the cab to the station of the defendant's company at Paddington, arriving there at a little before twelve at noon; that she alighted from the cab and called a porter of the defendants' to assist in getting her said luggage down from the cab, which the said porter did. The train by which she (plaintiff) intended to travel not starting until twenty minutes before two p.m. the plaintiff desired the defendant's porter to take the said luggage into the second class waiting-room. The porter took the said articles of luggage into the waiting-room accordingly, the plaintiff herself going there with the said luggage; the porter placed the said luggage on the floor, and left the room; and the plaintiff remained in the room to take care of the same until about twenty minutes past one p.m. That the plaintiff then left the waiting-room, and took a second-class ticket from Paddington to West Drayton by the said train, which was to start at twenty minutes before two p.m., and paid the usual fare for such ticket; she then called another of the company's porters to her, and told him that she and her luggage were going to West Drayton by the said train, which was to start at twenty minutes before two p.m., and desired him to label her luggage for West Drayton by that train. That the porter then, it being about half-past one p.m., took the said three articles of luggage, and labelled each of them in the presence of the plaintiff, who proved that she saw them labelled, but did not see for what place they were labelled. That West Drayton is one of the company's stations on the company's line. That the plaintiff then left the trunk in the care of the porter, and without giving further directions, or waiting to see the said luggage put into the train, got into one of the carriages of the train, which was to start at twenty minutes before two p.m.; and the train accordingly started at twenty minutes before two p.m. and the plaintiff proceeded in the train to West Drayton. On the arrival of the train at West Drayton, plaintiff asked the guard for her luggage, but only received two of the said articles; the third, being the large trunk, which is the subject of this action, was not found, and has never been delivered to her, and it was admitted that it had been stolen. The company proved the bye-laws, of which the following is a copy, and which were duly proved at the trial. It was agreed that all the bye-laws should be considered part of the case.

"The Bye-Laws of the Great Western Railway Company.

"1. No person will be allowed to travel upon the railway without first having paid his fare and received a ticket.

"2. If any passenger shall refuse to produce or deliver up his ticket when required so to do by the conductor, guard, or other attendants on the train, he shall be chargeable with the fare for the entire journey, and shall forfeit and pay a sum not exceeding the sum of 40s.

"3. Every first-class passenger will be allowed 112 lbs. and every second-class passenger 56 lbs. of luggage free of charge; but the company will not be responsible for the care of the same unless booked and paid for accordingly; all surplus of luggage and merchandise of every description will be charged for. The company's porters will load and unload the luggage at the different stations free of charge.

"4. No dogs will be permitted to accompany passengers in the carriages, but they will be conveyed separately and charged for.

"5. No smoking will be allowed in any of the carriages or stations of the company, and any person so offending shall forfeit and pay any sum not exceeding the sum of 40s. and be liable to be removed from the company's premises or carriages.

"6. If any passenger conducts himself improperly, or shall be intoxicated to the annoyance of the passengers, or wilfully obstruct any of the company's officers in the discharge of their duty, he shall forfeit and pay any sum not exceeding the sum of 40s. and be immediately removed from the company's premises, or carriage, and shall forfeit any fare which he may have paid.

"I allow the above bye-laws,

"J. PATTESON."

A witness proved that, being desirous of insuring and booking his luggage, he endeavoured to do so a few weeks ago, when he took his place, and asked the company's servant, of whom he took his place and from whom he got a ticket, in pursuance of which he travelled by one of the company's trains from Paddington to West Drayton, to be allowed to book and insure his luggage, but the said servant of the company told him to give his luggage to the porters, and they would take care of it. He accordingly gave the luggage to one of the company's porters, who labelled it, and he left it with him without any further directions, and it was afterwards safely delivered. No evidence was given on the part of the company of any arrangements being made by them for booking the luggage of passengers, nor was the porter who labelled the missing luggage produced as a witness. The plaintiff did not book her luggage, or any part of it, or pay anything to the company in respect of it. It was contended on these facts in behalf of the defendants, the railway company, that they were not liable for the lost box on two grounds; first, that it had never been delivered in fact into the custody of the company so as to make them liable for its safe delivery at West Drayton or elsewhere; second, that the company are absolved from the liability by their bye-laws. It was admitted that the company were not in any way protected by the Carriers Act, 11 Geo. 4, and 1 Wm. 4, c. 68. The judge decided that the defendants were liable, and directed a verdict to be entered for the plaintiff, with damages, £35 14s. 3d. which was admitted to be the value of the contents of the lost box.

The question for the opinion of the Court is, whether the decision of the judge was right. If so, the verdict is to stand and remain in force; if not, it is agreed between the parties that the verdict be entered for the defendants, or a nonsuit be entered, as the Court may direct.

Willes, for the appellants.—The question is, whether railway companies are to be liable in cases of this description. There is a duty on travellers, well known to them, to take care of their luggage, and to see it placed in the luggage van of the train. The company by this appeal seek to establish as a rule that persons must take care of their luggage. Had there been a jury there would have been nothing to go before them. [MAULE, J.—You say the judge would have been bound to nonsuit?] Yes, for the facts were insufficient to maintain the action. No doubt the fact that the trunk was stolen is no ground of exemption from liability for the company. The recent gold-dust robbery case established that. Here there was no evidence of delivery to the company. [CRESSWELL, J.—After the trunk was given in charge of the railway porter,—you say that was no delivery. MAULE, J.—It is a vulgar error, no doubt.] Perhaps there was some slight evidence of delivery to the company, by reason of their bye-law, which directs that the luggage shall be given to a porter of the company to be labelled; but the same bye-law says, the company will not be responsible for the luggage unless booked and paid for accordingly. [MAULE, J.—Had the plaintiff below any need of relying on bye-laws. Is she not justified in saying (independently of the bye-laws, which say the company's porters will take the luggage) that the luggage was delivered to the company? There is not the least doubt that this is evidence of delivery. The trunk was delivered to be carried; and, independently of the general Act, the company would be liable at common law as carriers.] The Court should observe that the luggage is carried free. [MAULE, J.—Not so. The fare taken covers the conveyance of passengers and the carriage of luggage.] Yes, of a certain quantity of luggage, but not of extra luggage. [MAULE, J.—It is like the case of the bookseller who gave away the books to children, but charged them twopence each for the binding.] It is only under the bye-laws that respondent had a right to carry luggage. [CRESSWELL, J.—Is there anything in the case which shews that the plaintiff had any knowledge whatever of the bye-laws? She said to a porter, "Label my luggage;" and that is evidence of delivery.] It is straining the law too far to say that the mere labelling by a porter is delivery to the company. The bye-law referred to expressly negatives liability unless the luggage be booked and paid for accordingly. [MAULE, J.—How is that bye-law made a bye-law under which the respondent is bound?] By the company's Act, 5 & 6 Wm. 4, c. 107, sec. 144, which empowers the company to make bye-laws. It is there enacted, "that the company, at some special or general meeting, shall have full power and authority to make such bye-laws, orders, and rules as to them shall seem expedient for the good government of the affairs of the said company, and for regulating the proceedings and remunerating and reimbursing the directors, and for the management of the said undertaking, &c. and to impose and inflict such reasonable fines and forfeitures upon all persons offending against the same as to the said company shall seem meet, not exceeding 5*l*. &c. which said bye-laws, orders, and rules being reduced into writing, under the common seal of the said company, shall be painted on boards and hung up and affixed and continued on the front or other conspicuous part of the several toll-houses to be erected on the said railway, &c. and such bye-laws, orders, and rules, shall be binding upon, and be observed by, all parties, and shall be sufficient in all Courts of Law and Equity, to justify all persons who shall act under the same, provided that such bye-laws, &c. be not repugnant to the laws of this realm," &c. [MAULE, J.—Then you think the company may by a bye-law repeal the law of carriers? If a carrier undertakes to carry a passenger and trunk to West Drayton he is responsible for loss. Is it then to be said that, because the directors of the Great Western Railway chose to pass a bye-law to the effect that without insurance they will not be liable, the traveller is to lose his trunk?] I say the bye-law is binding, and to be observed by all parties. The respondent was bound to take notice of it. The case now resolves itself into two questions. First, is this a good bye-law under the general Act of Parliament. Secondly, is it binding upon the respondent? That it is a good bye-law is clear, inasmuch as it is duly made under the 144th section. [MAULE, J.—The object of the bye-law, as regards the company, was, that they should keep an insurance office by which they may profit, binding themselves with travellers if travellers please.] Then as to the next point I own I cannot see how it can be said that the bye-law is not binding upon all parties; by express words it is made so. It is found upon the case that there was no payment in respect of luggage. The respondent had therefore no right to have her luggage carried at all except under the bye-law: if she avails herself of it in part, she must be subject to the whole, and the company are not responsible to her because her luggage was not booked and paid for. Then as to notice of the bye-law, the erecting of a notice board is not a condition precedent to make the bye-law operative. If, however, the Court should consider that it is a condition precedent, then the statement in the case that the bye-laws were "duly proved," is sufficient to make them binding in this case. They are furthermore generally binding by virtue of their having been made under the direction of, and in compliance with, the statute.

T. Jones, for the respondent, was not called on.

MAULE, J.—What the Court have here to look at are the questions of fact, whether a contract was made between these parties, and if so, whether it was broken. It is enough for our decision to see that the evidence before the judge, as disclosed by the case, did not make it compulsory on him to find that the primâ facie liability of the company was rebutted: he was fully justified in taking the view of this case which he did, and in the judgment which he gave. If there had been a jury the judge would have been right in directing them to find as he has decided. Judgment will, therefore, be for the plaintiff below, with costs of appeal.

Appeal dismissed with costs.

COUNTY COURT APPEAL.

(Before MAULE, CRESSWELL, WILLIAMS, and TALFOURD, JJ.)

Tuesday, May 11.

CUTHBERTSON, Appellant, PARSONS, Respondent.

Harbour commissioners, liability of, for negligence—Reversal of judgment where not sustainable by facts.

By a local Act, which appointed commissioners for the harbour of Neath, it was provided that it should be lawful for the commissioners for the time being to build or provide steam-tugs for towing vessels into and out of the harbour, and that any person requiring the assistance of a towing vessel should pay to the commissioners such reasonable compensation as the commissioners should fix. Between the commissioners and the owners of certain steam-tugs which had theretofore plied in the said harbour, without being under the control of the commissioners, an arrangement was entered into, under which the owners bound themselves to work their boats at reduced charges, the commissioners in consideration thereof binding themselves to pay an annual sum to the owners of the boats by way of compensation for the reduction. By consent of the owners of the steam-tugs, the latter were placed under the control and superintendence of the harbour master, whose authority by the Act extended generally to the control of the vessels in the harbour. The plaintiff's vessel hav[ing] through the negligence and unskilfulness of [the] captain of a steam-tug so employed, sustained damage, he brought his plaint in the County Court against the commissioners and recovered judgment against them, the judge holding that they were responsible for the misconduct of the captain of the steam-tug:

Held, on appeal, that the judgment must be reversed: because, on no inferences of fact that could fairly be drawn from the case, could the judgment in the County Court be based, without error in law.

Appeal from decision of the judge of the County Court of Glamorganshire.

This was an action brought in the County Court of Glamorganshire, held at Neath, by the abovenamed appellant, as clerk to the Commissioners for Improving the Port and Harbour of Neath, and who is liable to be sued as the nominal defendant, on behalf of the said commissioners, in pursuance of an Act of Parliament, 7 Vict. c. 521, intituled "An Act for Improving and Maintaining the Port and Harbour of Neath, in the County of Glamorgan." The action was so brought by the respondent, as the owner of a ship called the *Grace Darling*, against the appellant, as such clerk, to recover damages from the said Harbour Commissioners for an injury done or occasioned to the said ship of the respondent, on the 28th of February, 1851, by the negligence, carelessness, and want of skill of certain persons alleged to be the agents and servants of the said Harbour Commissioners. The following were the particulars of the respondent's claim delivered in the said action:—The plaintiff asked to recover the following damages, as having been sustained by him, for that the Commissioners for Improving the Port or Harbour of Neath, on the 28th of February, 1851, and within the jurisdiction of this court, did, by reason of the want of proper care, skill, and diligence on the part of the said commissioners, their agents and servants, cast away the tow-rope of a certain vessel, called the *Grace Darling*, while in tow of the steam-tug called the *Dragon Fly*, and did thereby damage and injure the said vessel, called the *Grace Darling*, belonging to the said plaintiff, and the plaintiff was, by reason thereof, prevented for a long time from trading and carrying on his business as owner of the said vessel, and the plaintiff was also thereby subjected to the expenses of repairing the said vessel, and otherwise damnified to the plaintiff's damage of 27*l*. 6s. 9d.

Section 189 of the before-recited Act contains the following words, viz.—"And be it enacted, that it shall be lawful for the harbour-master for the time being to give directions to all or any of the following purposes, that is to say, for regulating the time and manner in which any vessel shall enter into, go out of, or lie in the limits of the said port and harbour, and the position, mooring, unmooring, placing, or removing of any vessel within the said limits; for regulating the manner in which any vessel shall take in or discharge its cargo, or any part thereof, or shall take in or deliver ballast within the limits of the said harbour; for regulating the government of any vessel within the said limits." In support of the claim for damages, the respondent adduced evidence to prove that the harbour-master would not allow the said vessel, the *Grace Darling*, to be taken into tow by the said steam-tug, without first taking a pilot on board, and accordingly the master of respondent's vessel took one of the pilots of the said harbour on board, who took charge of, and steered her, and that by the negligence and unskilfulness of the master of the steam-tug the *Dragon Fly*, in improperly casting off the tow-rope attached to the said vessel, the *Grace Darling* sustained the damage which was the subject of the action, and which was proved to be of the extent and amount stated in such particulars. In addition to such evidence, and in order to prove the liability of the said Harbour Commissioners for such damage, the said respondent further put in evidence certain minutes of proceedings of the said Harbour Commissioners of the 29th of April, and the 13th of May, 1844, in respect to an arrangement then entered into by them with the proprietors of the said tug-boat, for the employment of the tug-boat, in the port and harbour of Neath, and which said arrangement continued in force at the time the damage complained of was done. The following are copies of the said minutes:—

Copy of minute made on the 29th day of April, 1844:—"Your committee having given some attention to the effect of the present charges for steam towage on the trade of the port Neath, and having become aware that daily instances occur where vessels prefer waiting the chances of a fair wind to incurring the expense of steam, and the Act, clause 206, authorising the commissioners to provid[e] tugs for towing or hauling ships, [...] the commissioners to enter into an

with the proprietors of the Neath steam-tugs for the employment of their boats, at a scale of charges reduced to one half of the present rates, and that the commissioners do offer as a compensation to the proprietors of such steamer for making such a reduction in their rates the sum of 225*l.* annually, being the interest at 5*l.* per cent. on 4,500*l.* the estimated value of the boats, the proprietors to engage to provide boats or tugs equal to the works at such reduced rate, and the contract to be annual, subject to six months' notice by either party to discontinue the same.

"Your committee rely that the proposed measures will induce such an increase in the trade of this port that the receipt from shipping dues will very much approximate to the amount to be paid to the proprietors of the steam-tugs.

"Resolved, that the standing committee be authorised to treat with the Neath Steam Company, on the terms of the report."

Copy of minute made on the 13th of May, 1844:—

"Mr. Gwyn and Mr. Jonathan Rees having reported to this meeting, on behalf of the steam-tug proprietors, that they accede to the proposition made to them, respecting the employment of the *Pioneer* and *Dragon Fly*, at the harbour meeting held on the 29th of April last.

"Resolved that the agreement be confirmed."

The minute-book of proceedings of the said commissioners also set out, in several subsequent annual reports, that the arrangements made with the tug proprietors had worked most beneficially for the interest of the harbour, and that it was desirable that such arrangement should continue.

The following is a copy of one of the minutes made on the 24th of April, 1848:—

"Your committee also deem it essential to the interests of the port, that the compensation be continued to be paid to the owners of the steam-tugs, to enable the tugs to work at their present low rates of towage."

The said respondent also cited and relied on the 206th section of the said Act of Parliament, of which the following is a copy:—"And be it enacted, that it shall be lawful for the said commissioners to build or provide vessels, to be propelled by steam or otherwise, or to provide a dredge for the purpose of cleaning, scouring, and deepening the said port or harbour, or any part thereof, and also steam-tugs, for towing or hauling ships, barks, or other vessels, or rafts of timber, into or out of the said port or harbour, or for either of such purposes; and any person requiring the assistance of such towing vessel, steam-tugs, or dredges, shall pay to the said commissioners such reasonable rates or compensation for the use thereof as shall from time to time be established by the said commissioners."

It was also proved by the evidence of a proprietor of one of the steam-tugs employed in the harbour service, and who is also one of the Harbour Commissioners, and was a Harbour Commissioner when the aforesaid resolutions were passed, that the Harbour Commissioners had nothing to do with the steam-tugs up to the end of the year 1843; that the steam tugs had previously been under the management of different captains or masters; that the resolution of the Harbour Commissioners was passed in order that the tugs should be under the control of the Commissioners, with the view of controlling the dues of the harbour, and that the control of the steam-tugs was given to Captain Lowther, the harbour master, because he was the harbour master. It was contended that, by virtue of the said section of the said Act of Parliament, and on the above evidence, the said commissioners were liable for the damage occasioned to the said ship of the respondent by the negligence, carelessness, and want of skill of the master of the tug-boat.

On the part of the said commissioners evidence was adduced, but failed to prove that the injury to the respondent's ship arose from the negligence and want of skill on the part of the master and pilot of the *Grace Darling*. It was further proved, in order to shew that the commissioners were not liable for the damage done to the said ship, that the tug-boat *Dragon Fly* was the property of a private company, and not the property of the commissioners; that the proprietors of the tug-boats appointed their own collector or agent, and that they or their agent appointed or hired the master and crew of the *Dragon*; that such agent, master, and crew were paid their salary and wages by the proprietors of the tug-boats, and that such proprietors alone and exclusively received the proceeds arising from the towage of ships into and out of the port and harbour of Neath, and all the other earnings of the said tug boats; that the harbour-master was appointed by the proprietors of the steam tugs in the year 1843 exclusive manager of the tugs employed in the harbour service, and has continued to be so up to the present time. On the above evidence the judge of the said County Court was of opinion that the damage done to the respondent's said ship was occasioned by the negligence and want of skill of the master of the said tug-boat; and that the said commissioners, by reason of the arrangement disclosed by the said minutes of proceedings and the 206th section of the said Act of Parliament, were liable and responsible to the respondent for such damage, and he ordered judgment to be entered for the respondent for the amount claimed in his said particulars against the said commissioners. The question for the opinion of the Court was, whether, upon the evidence, and under the circumstances hereinbefore set forth, the said judgment given for the respondent was right.

Quain, for the appellant.—The question here is, whether the relation of master and servant subsisted between the proprietors of the tug-boat and the commissioners. The latter cannot be said to be in the position of a master, for they have no control over the boat; they cannot appoint or remove the officers who navigate the boat; and the sum of 225*l.* which they pay is expressly paid for the benefit of the trade of the harbour. (*Reedie* v. *The London and North-Western Railway Company*, 4 Ex. 254.) The Court here interposed and called on

Baddeley, for the respondent.—There are cases where the Court will not at all interfere, and this is one of them. First, here questions of law and fact are mixed; the Court, therefore, will not interfere. It has not jurisdiction. (*The East Anglian Railway Company* v. *Lythgoe*, 20 L. J. 84, C.P.; *Cawley* v. *Furnell*, 20 L. J. 197, C.P.) Secondly, where the judgment went almost entirely on a question of fact, the Court has no jurisdiction, and will not interfere. It is so laid down in *The East Anglian Railway Company* v. *Lythgoe* (supra). Thirdly, where no jury has been summoned, and there has been a decision by the judge of the County Court on the facts, his judgment will not be interfered with, for he is like an arbitrator, to whom both law and facts are submitted. Fourthly, where the decision of the judge can be supported by any view that can be taken of the case, and it can be inferred that he has decided rightly, the Court of Appeal will not interfere. (*Cawley* v. *Furnell*, supra.) As regards the first point, the facts are jumbled together. It is not shewn whether the party who did the injury was in the employ of the commissioners. There is no clear point of law raised before the Court, but your lordships are asked to decide on the evidence and upon the facts. As to the second point, the real and material question is, whether the owners and navigators of the steam-tug were or were not the servants of the appellants in this case. The judge having determined on the question of fact, the Court cannot interfere. Taking the third point, there was no jury summoned here, but the judge was called on to decide as if he were an arbitrator between the parties; the case, therefore, fails as an appeal. Then, with regard to the fourth point; if it can be considered that the judgment is supported by the facts, the Court will not disturb it. (He referred to the 206th section of the Neath Harbour Act, and argued that the steam-tugs were pro hac vice the property of the commissioners, and therefore the latter were answerable for whatever happened in the use of them). The commissioners, instead of building steam-tugs themselves, made arrangements with persons already possessing some. They were placed under the direction of the harbour-master, who clearly is the servant of the commissioners. Suppose negligence in the employment of defective steam-tugs; the boiler bursts, or the tug sinks, carrying down with it the vessel it has in tow, who but the commissioners would be liable, who by Act of Parliament are required to provide the tugs? The Act throws on them the duty of providing steam-tugs, and compels the parties availing themselves of such aid to pay for their use; if the commissioners employ defective tugs, or negligent persons to navigate them, they are clearly liable. This point alone would entitle the plaintiff below to succeed, and it may be that the judge decided rightly and strictly according to law. (*Bush* v. *Steinman*, 1 Bos. & Pul. 405.) This was a contract made by the commissioners for their own benefit and that of the harbour.

MAULE, J.—There is no doubt at all, that if it could have been made to appear by any inference that could legitimately be drawn from the evidence, that the decision might have been in favour of the plaintiff below, without any miscarriage in law of the County Court judge; in that case the judgment could not be disturbed, notwithstanding the more probable inferences which the Court of Appeal would draw from the same, would sustain a different judgment without error in point of law. But we all feel no difficulty in saying that, drawing any inferences from the matters of fact and the evidence, as stated in the cases which could be properly drawn, the judgment could not have been arrived at without error in point of law; the Court is, therefore, justified in reversing this decision, which in this case can be done without in any way conflicting with the cases cited. *Judgment reversed, with costs.*

COUNTY COURT APPEAL.

KELLY, Appellant; WEBSTER, respondent.

Statute of Frauds, 29 Car. 2, c. 3, s. 4—Contract for sale of interest in or concerning land—Quitting possession—Partly executed contract.

The plaintiff being tenant of a house, held under an agreement with his landlord for a seven years' lease, agreed verbally with the defendant to give him immediate possession of it, together with certain fixtures therein and improvements made on the premises by the plaintiff; and the defendant, in consideration of the foregoing, agreed to pay plaintiff 100l. The landlord assented to the exchange of tenants. The plaintiff performed his part of the contract, and the defendant in part performed his by paying to the plaintiff 51l. On his refusal to pay the balance plaintiff brought his plaint to recover it:

Held, that he could not recover, this being a contract concerning an interest in land, and, therefore, void within the 4th section of the Statute of Frauds, as not being in writing.

Appeal from the County Court of Yorkshire.

This action was brought into the County Court of Yorkshire, holden at Leeds, to recover 49*l.* stated in the plaintiff's particulars of demand annexed to the summons to be due to him from the defendant for "balance due to me from you of a sum of 100*l.* in consideration of my giving up possession to you of a messuage or dwelling-house and premises, situate in Wellington-street, Leeds, on the 6th day of July, 1850, and for the valuation of certain Venetian blinds, passage lamp, and partitions therein contained, and certain paperings, painting, and other improvements made by me in the said house."

The facts as proved at the trial were that the defendant occupied as yearly tenant a house on the south side of Wellington-street, in Leeds, which he kept and used as a beer-shop. The landlord being desirous of pulling down the house, gave the defendant notice to quit it.

The plaintiff occupied as a private dwelling-house, a house on the opposite side of the street, at a rental of 36*l.* per annum, as tenant to James Holdforth, esq. under a parol agreement for a lease for seven years, commencing in July, 1849, but no lease was ever executed. In or about the month of May, 1850, the plaintiff being desirous to quit the last-mentioned house, the defendant applied to the plaintiff to let him have the same. The plaintiff thereupon wrote to Mr. Holdforth, the owner of the house, the following letter:—

"14, Wellington-street, 6th May, 1850. To James Holdforth, esq. Dear sir,—From unforeseen circumstances, I find I shall be obliged to remove to Kirkstall, to take management of our mill, much against my inclination. I have shown the house to three or four different parties, and all complain both of the rent for the situation, and very noisy. It is my opinion that it will answer your purpose better to let it as an inn, and I think the bearer would give perhaps 50*l.* or more if tried. If you think proper to accept him as tenant, please to say so, that I can make arrangements accordingly, as I find he wishes to enter to it in three weeks' time. I can only add my sorrow for leaving it after getting it into such nice order, and laying out what I have done in it.—I am, dear sir, yours respectfully, S. P. WEBSTER."

The defendant applied to Mr. Holdforth to let him the house to be used by him for the purposes of a beer-shop, and as Mr. Holdforth appeared to have no objection to do so on certain terms, a verbal agreement was, after some negotiations, come to between the plaintiff and defendant on the 4th day of July, 1850, that the defendant should pay to plaintiff the sum of 100*l.* in consideration that the plaintiff would give up immediate possession of the house to the defendant, in order that the defendant might enter on it as Mr. Holdforth's tenant, and also as compensation for the improvements made by the plaintiff, and for the value of the articles mentioned in the particulars of the plaintiff's demand. Mr. Holdforth and the plaintiff agreed that the plaintiff should quit his possession of the house on payment of the rent then due; and Mr. Holdforth and the defendant agreed that the latter should become the tenant at an advanced rent of 50*l.* And accordingly, in pursuance of this arrangement, on the 6th day of July, 1850, the plaintiff gave up the key to Mr. Holdforth's agent, and paid him the rent up to that time, and Mr. Holdforth's agent then and there delivered the key to the defendant, who has occupied the house from that time to the commencement of this action. About ten days after the 6th day of July, the defendant paid to the plaintiff 51*l.* in part of the said sum of 100*l.* and this action was brought to recover the balance of 49*l.* The agreement between the plaintiff and the defendant of the 4th of July, 1850, on which this action was brought, was not nor was any memorandum or note thereof in writing. It was objected, on the part of the defendant, that this action was brought upon a contract for the sale of lands, tenements, or hereditaments, or some interest in or concerning them, and

that it could not be maintained on a verbal agreement. The judge overruled the objection, and ruled and determined that the plaintiff was entitled to recover, and accordingly gave a verdict for the plaintiff for 49*l.* There was no evidence of an account stated, the defendant having always alleged that the 51*l.* which he had paid was all he had agreed to pay. The question for the opinion of the Court of C. P. was, whether the ruling and determination of the judge of the County Court, that this action could be maintained on the verbal agreement of the 4th of July, was correct in point of law, and if the Court of Law should be of opinion that such ruling and determination were correct in point of law, then the said Court were to set aside the verdict entered for the plaintiff, and make such further order thereupon as the said Court might think proper.

Udall, for the appellant.—The simple question here is, whether, upon the case before the Court, the ruling of the judge below, that it was not necessary that the agreement should be in writing, was or was not a proper ruling. This appeal should be affirmed, because, first, the agreement is void, and an action cannot be maintained upon it, for it falls within the 4th section of the Statute of Frauds, 29 Car. 2, c. 3, as a contract for the sale of lands, or interest in them; secondly, if it does not amount to the sale of an interest in lands, the contract is void under the 4th section of the statute, as relating to an interest *concerning* lands. The agreement relates to the sale of an interest in lands, because i is to give up the house, and because part of it relates to improvements, such as papering the house (*Cocking* v. *Ward*, 1 C. B. 858.) It is distinctly found by the case that there was no evidence of an account stated; it is entirely an executory consideration, the money not being paid. In the next place, the painting and papering the house and the improvement of the premises surely amount to an interest in lands. It has been held that a person cannot recover for work and labour expended on lands under the common count for work and labour (*Earl of Falmouth* v. *Thompson*, 1 Cr. & Mees. 89.)

Hall, for the respondent.—This appeal should be dismissed, because the agreement does not fall within the prohibition in sec. 4 of the Statute of Frauds. The case of *Cocking* v. *Ward* does not apply here because there the circumstances materially differed that was altogether a different contract. [Cresswell, J.—How was the old tenant to get rid of his interest?] By surrender of the key. [Williams, J. referred to *Dodd* v. *Acklom*, 7 Scott, N. R. 415.] Here there was a surrender by operation of law; the plaintiff had at that time agreed to surrender to the landlord [Cresswell, J.—There is this difficulty in your position: you are proceeding on this agreement; are you not bound to shew it is binding on both parties?] That question may be answered in the affirmative, so far as a Court of Equity is concerned. [Cresswell, J.—It may be so; but that will not do here.] The defendant has taken possession of the goods, which is part performance of the agreement; there is no case where it has been held, that where there is complete performance of an agreement upon the one part, and partial performance on the other, that that is a case within the Statute of Frauds. (*Souch* v. *Strawbridge*, 2 C. B. 808.) In that case it was held that "a contract for the maintenance of a child, at the defendant's request," to enure "so long as the defendant should think proper, is a contract upon a contingency, the performance of which is not necessarily to take place beyond the space of a year, and therefore not within the 4th section of the Statute of Frauds." Tindal, C. J. there expressed an opinion that the statute does not apply when the action is brought upon an executed consideration. As to part performance of the agreement, there is the dictum of Lord Ellenborough, C.J. in *Inman* v. *Stamp*, 1 Stark. 12. That was an action of assumpsit for not occupying plaintiff's lodgings, pursuant to the defendant's verbal undertaking. Lord Ellenborough was there of opinion that this was a contract for an interest in land, within the 4th section of the Statute of Frauds, and was therefore void, but held that it would have been otherwise if the defendant had entered upon the premises, since that would have been a part execution of the contract. As to the argument that papering the house gives the agreement the character of an interest relating to land, that is completely answered by the case of *Hallen* v. *Rundell*, 1 Cr. M. & R. 266. Neither does the delivery of possession constitute it a contract for the sale of any interest in lands. The giving up of possession has been considered in *Buttemere* v. *Hayes*, 5 M. & W. 456. There Parke, B. intimates an opinion that a mere agreement to relinquish possession of premises would not amount to a contract for an interest in land. The effect of the present agreement was merely to suffer the defendant below to enter without being guilty of trespass. This is not a contract relating to the sale of lands because it does not amount to an assignment; the defendant has taken quite a different term, which begins at a different time, and is for a different rent. [Maule, J.—The right was to have a seven years' lease. That was surely an equitable interest in lands. Is not this substantially an agreement to have a seven years' lease?] No; for although the plaintiff had an equitable interest for a term of seven years, the letter he wrote to his landlord shews he was desirous of getting rid of it; he divested himself of his interest in order that he might go and keep a mill. [Williams, J.—Surely the tenant had in him an interest in the lease.] He had it for two days, from 4th to 6th of July, and for no longer; it extended only until the new term of the incoming tenant commenced. [Maule, J.—The Statute of Frauds does not speak of assignments of interest in lands, but of sales. The statute does not contemplate this or that mode of conveyance, only whether there is a sale of any kind of interest in land.] If the Court should uphold this appeal, it will be the first instance in which it has been held that where there has been part performance of an agreement on one side, and complete performance of it on the other, that is a contract which shall not be enforced. (*Seaman* v. *Price*, 2 Bing. 437.)

Udall, in reply.—The Court will see that this is clearly an action upon the agreement itself.

By the Court.—After the case of *Cocking* v. *Ward*, we must hold that the judgment of the Court below was wrong. Let the appeal be affirmed with costs. *Appeal affirmed with costs.*

COURT OF EXCHEQUER.

Reported by Frederick Bailey and C. J. B. Hertslet, Esqrs. Barristers-at-Law.

April 29 and June 26.

The Galvanised Iron Company v. Westoby.

Joint-stock company—Winding-up—Shareholder—Liability.

An agreement to take shares is a conditional contract, and if the whole capital of the company is not subscribed for, a person who has taken shares and paid the deposit is not liable as shareholder unless he assents to the company's proceeding on the smaller capital:

The defendant accepted an allotment of shares, and paid the deposit thereon, and he was registered as a shareholder, but he never signed the deed:

Held, that he was not liable to calls as a shareholder.

Martin, B. dubitante.

This was an action brought to enforce payment of a call of 2*l.* per share on 100 shares, with interest from August 18, 1848, held by the defendant in the Galvanised Iron Company. It appeared that the company was started in the year 1845, and at one of the meetings a director procured an allotment of 100 shares to be made to the defendant, without any formal application having been made by him. The secretary caused a letter of allotment to be written to the defendant, and directed to the address mentioned by the director at the meeting. That letter requested that payment of the deposit of 1*l.* per share should be made to Messrs. Prescott and Grote, the bankers of the company, within a certain time. The deposit was duly paid, and the defendant's name was entered in the register as the holder of 100 shares, but he never signed the deed. Subsequently, several calls were made, and letters, announcing them, were sent to the defendant at the same address; to these letters no replies were received, nor were any of the calls paid. In 1847, upon a suggestion that the defendant was not in circumstances to pay the calls, the directors passed a resolution forfeiting all his shares, and the secretary struck his name out of the register; but no general meeting of the shareholders was held to confirm this forfeiture, as required by the terms of the deed. In 1848 the company became embarrassed, and on the 22nd of July, in that year, an Act passed (11 & 12 Vict. c. 103, local and personal), to enable the directors to wind up its affairs, and for that purpose they were authorised to make certain calls on the shareholders. Under this Act a call of 2*l.* per share was made on the 24th July, and for that call this action was brought, to which the defendant pleaded that he was not a shareholder of the company at the time the call was made. The cause was tried before Pollock, C.B. on the 13th December, 1851, when a verdict was returned for the plaintiffs for 233*l.* 6*s.* 8*d.* with leave reserved to the defendant to move the Court to enter a nonsuit. A rule nisi having been obtained accordingly,

Thesiger (with him *Willes*) showed cause.

Crowder (with him *Millward*) in support.

Cur. adv. vult.

JUDGMENT.

Parke, B.—In this case the point reserved on the trial before my Lord Chief Baron was, whether the defendant was a shareholder, and liable to contribute to the debts of the company under the private Act, the 11 & 12 Vict. c. 103 (local and personal), passed for the purpose of winding up the affairs of the company. He had applied for and obtained an allotment of shares; he had paid the deposit upon them, but he had not executed the deed of settlement of the company, or any deed referring to it. The capital of the company was to consist of 500,000*l.* in 50,000 shares. The defendant applied for and obtained shares; the full amount never was subscribed, but the company began business with less, and not succeeding, a private Act of Parliament was passed for the purpose of winding up the concern. That Act recites the deed of settlement, and that, at the time of the execution, the number of shares taken was not 50,000, but 45,407 only, of which 25,000 were considered as fully paid up, and the rest in part only; that the company was completely registered, and 51,652*l.* remained unpaid on 20,407 shares. That in consequence of irregularity in the proceedings of the company and the directors, doubts were entertained as to the power of the company to enforce, without expensive litigation, the payment of the total amount remaining unpaid. That the company was in pecuniary embarrassment, and it had become necessary to wind it up. That in the then present state of the affairs of the company the liability of each shareholder exceeded the nominal amount of the shares, and that in the deed of settlement no provision was made for the then existing condition of the company, and it was necessary to wind up their affairs. The Act proceeds to enact, that the company shall be dissolved; that the 20,407 shares mentioned in the second schedule to the deed of settlement remaining shall be paid up; and it provides, by sec. 29, that the directors may, when they think fit, call up and compel payment of the sums of money as instalments of capital in respect of the 25,000 and the 20,407 shares as they shall think necessary, at certain intervals. Then follows a clause enacting, except as by that Act otherwise provided, every such call shall be made according to the provisions of the deed of settlement, and as regards the liability of the shareholders, a forfeiture of shares and otherwise shall be deemed to have been made under such provisions. Another clause, the 32nd, provides, that if at the time appointed any shareholder shall fail to pay the call, the company may sue such shareholder, and the form of declaration is given. It is enacted, that at that trial it shall be sufficient to prove that the defendant was a holder of shares at the time of the call; and by sec. 35 the production of the register of the shareholders of the company shall be primâ facie evidence of the number of shares held by him; and the 54th section is as follows:—"Provided always and be it enacted, that this Act, or anything therein contained, shall not, except so far as is therein expressly enacted, render liable to any creditor of the company, or any person having or alleging any claim or demand against the company, or any shareholder or other person, if the company, or such shareholder or other person, would not have been so liable if this Act had not been passed, or render liable to any call, contribution, debt, claim, or demand the company or any shareholder or other person, if the company or such shareholder or other person would not have been liable thereto if this Act had not been passed." It appears from the deed itself that, amongst the subscribers holding shares parcel of the 20,407 in the second schedule mentioned, there is the defendant's name, and if the statute had enacted that those who are named as shareholders in the second schedule should be compelled to pay, this express enactment, however unjust, would have rendered the defendant liable, and he, under this clause, would not have been exempted, though otherwise not liable. But there is no such express enactment, and it would be certainly most unjust if there had been; nor is it implied that those named in the deed as shareholders who should not execute it should be obliged to pay. The statute enacts that the directors should call for money or instalments on so many of the 25,000 and the 20,407 shares as shall exist, and makes the shareholder—that is, the real shareholder—who fails to pay such call liable to an action; but it leaves the question open, who is a shareholder. Who, then, is such a shareholder? In the interpretation clause, the word "shareholder" is declared to mean shareholder of the company, and to include former shareholders and their representatives. By the Act 7 & 8 Vict. c. 110, under which the company was completely registered, the word "shareholder" is by the interpretation clause, clause 2, declared to mean any person entitled to shares in any company who has executed the deed of settlement, or any deed referring to it. By section 25 the shareholders are incorporated. Sec. 55 gives a remedy for the company's calls against the shareholders. Under this Act of Parliament a shareholder, therefore, must be one who has subscribed the deed of settlement, or one referring to it unless there is something in the context to give a different meaning. Certainly, there is nothing in that clause to give a different meaning, but in the 26th section there is provision that no shareholder of any joint-stock company completely registered under this Act shall be entitled to receive any dividend or profits, or be

entitled to the remedies or powers hereby given to the shareholders until he shall have executed the deed of settlement of the said company or some deed referring thereto, and also have paid up all instalments or calls due from him, and shall have been registered in the registry office aforesaid. In this last section the word "shareholder," by reason of the context, may have a different interpretation, but not in the other part relating to the enforcements of calls. The argument used by the Attorney-General, that this clause shews that a shareholder may be liable to calls before he has executed the deed, does not appear to us to be of any weight; the meaning is, that a shareholder who has executed must nevertheless pay the calls before he is entitled to a share of the profits. From these references to the Act of Parliament, it is no doubt clear that there was a primâ facie case against the defendant, that he was a shareholder within the meaning of the later Act, as his name appeared in the register which is made primâ facie evidence. But we think that on the facts in proof in this case, that primâ facie case was rebutted, and the defendant was not a shareholder liable to calls under the private Act. First, because that Act applies to "shareholders" only, and "shareholders" are, by the general Act, the 7 & 8 Vict. c. 110, those who have executed the deed; and by sec. 13 of the private Act, the liability of the shareholder to calls is to be according to the deed of settlement, which could attach only on those who have signed. And again the private Act expressly provides that no one shall be made liable by it who would not have been liable if the Act had not passed, that is, provided there is no express enactment; and, as I have before said, it appears to us there is not. By the general Act shareholders only, that is, those who had executed the deed, were liable. The object of the private Act appears to us merely to give greater effect to the provisions of the deed, and extend its operation against the parties to it only. As it appeared by the evidence in this case that the defendant never did execute the deed, and therefore was not a shareholder in the proper sense, the primâ facie evidence of the register is rebutted. But, secondly, if this view of the construction of the private Act is wrong, and it extends to subscribers or persons who have taken shares and who have not executed the deed, we are still of opinion that the defendant is not liable. This agreement to take shares in a concern which was to have a capital of 500,000*l.* is, upon the authority of many cases, *Pickford* v. *Davis*, 5 M. & W. 2, among others, a conditional contract that is provided that that capital is subscribed for, and unless that condition was performed or waived the defendant is not a shareholder in the sense of a person having agreed to take shares. Then although the register is primâ facie evidence that the defendant was a shareholder, the fact of the agreement to take shares having been conditional is proved in this case, and also the non-compliance with that condition, for the Act shews that less than 50,000 shares were taken. This, we think, proves that he was not bound to take the shares unless the plaintiff proved affirmatively that the defendant waived the condition and agreed to take shares in a concern with a less capital than 500,000*l.* which certainly was not done. We think that the rule to enter a nonsuit should be absolute. This is the judgment of my Lord Chief Baron, my brother Alderson, and myself. My brother Martin is not entirely satisfied with it. He still entertains some doubt about the propriety of that judgment principally on the ground that he thinks it may be inferred from the private Act that the Legislature meant that those whose names were in the second schedule to the deed should be all obliged to pay.

MARTIN, B.—If I were to give judgment I should think it would depend much more upon the private Act of Parliament itself than upon the public Act, and I own if this man is not liable, I doubt whether any other man is liable for this call.

Rule absolute.

EXCHEQUER CHAMBER.

Reported by A. BITTLESTON, Esq. of the Inner Temple, Barrister-at-Law.

ERROR FROM THE QUEEN'S BENCH.
Tuesday, Feb. 3.

HALLETT, and OTHERS, *v.* DOWDALL.(*a*)

Insurance company—Partnership—Joint contract—Limited liability of shareholders.

A policy of insurance, signed by three directors, but purporting in terms to be made between an insurance company by name and the insurers, contained an express agreement between them that the capital stock and funds of the company should alone be liable to answer and make good all claims and demands whatsoever, under or by virtue of the said policy; and also that no proprietor of the company should in anywise be liable or charged by reason of the said policy beyond the amount of his shares on the capital stock of the company. Upon this policy the insurers declared as upon a joint contract by four of the proprietors, alleging that there was sufficient capital stock and funds of the company to pay the amount of the policy. Upon demurrer thereto,

Held, affirming the judgment of the Q. B. that inasmuch as the demurrer admitted a joint contract, the declaration was good.

Upon a plea of non-assumpsit to the same declaration the deed of settlement of the company containing the above-mentioned stipulations was given in evidence; and by that deed it appeared that the capital of the company was to be one million; that policies were to be si[illegible] three directors, and to contain the above stipulations. It was proved that in fact when the policy in question was signed, only 500,000l. had been subscribed towards the capital of the company. Upon the trial of the issue the learned judge told the jury that there was evidence of a joint contract by the defendants; and upon a bill of exceptions tendered to that ruling:

Held (Cresswell and Williams, JJ. dissentientibus), that the ruling was wrong; and that although by the terms of the policy the company was described as the party contracting with the insurers, yet, according to the proper construction of the stipulations above mentioned, there was no joint contract by the shareholders to pay the sum insured.

This was a writ of error from the Court of Q. B. upon demurrer to the declaration by one defendant, and upon a bill of exceptions tendered to the ruling of Lord Campbell, C.J. at Nisi Prius by another defendant.

The declaration was on a policy of insurance effected by the plaintiff in the office of the General Maritime Insurance Company, and alleged a joint contract by the four defendants, who were proprietors of shares in the company, to pay the amount insured.

The case was argued November 26 and December 3, 1851, by

Peacock, for the plaintiffs in error.

Mellish, contrà.

The great length of the judgment, and the full consideration given to the arguments urged and authorities cited on both sides, renders any repetition of them here unnecessary. *Cur. adv. vult.*

JUDGMENT.

MARTIN, B.—This is an action on a policy of insurance on the ship *Vindicator*, dated the 18th of November, 1846, and signed by three directors of the Maritime Insurance Company, called the General Maritime Assurance Company. The defendant Hallett demurred to the declaration. This demurrer was argued in the Court of Q. B. and judgment given for the plaintiff. There were various pleas by the other defendants, but it is only necessary to refer to the plea of non-assumpsit, which was pleaded by the defendant Gooden. The case was tried before Lord Campbell, at Guildhall, when the verdict was found for the plaintiff, and final judgment was afterwards signed against all the defendants. A bill of exceptions was tendered at the trial to the direction of the learned judge, and the whole case has been brought before us by writ of error. Two points have been made by the learned counsel for the plaintiffs in error. First, that the judgment of the Court of Q. B. on the demurrer was erroneous; and, secondly, that the direction of the Chief Justice at Nisi Prius was also erroneous. The declaration stated that the defendants were proprietors and shareholders of, and partners in, the General Maritime Assurance Company; and that the plaintiff made a policy of insurance with the company. The declaration set out the policy; whereby it was declared and agreed by and between the company and assured, "that the capital stock and funds of the company, should alone be liable to answer and make good all claims and demands whatsoever, under, or by virtue of, the said policy; and that no proprietor of the said company, his or her heirs, executors, or administrators, should be in anywise subject or liable to any claims or demands, nor be in anywise charged by reason of the said policy beyond the amount of his or her share or shares in the capital stock of the company, it being one of the original and fundamental principles of the company that the responsibility of the individual proprietors should in all cases, and under all circumstances, be limited to their respective shares in the said capital stock." The declaration proceeded to allege that in consideration that the plaintiff, at the request of the defendants, had paid to the defendants the sum of 92*l.* 8s. as a premium, &c. the defendants promised the plaintiff, that they, the defendants, would become, and be insurers to the plaintiff of the said sum of 1,100*l.* upon the said ship, and would perform and fulfil all things in the said policy contained on their part as such insurers to be performed and fulfilled; and the defendants then became, and were, insurers to the plaintiff, and then duly subscribed the policy as such insurers of the said sum upon the said ship. The declaration then contained the usual averment of the plaintiff's interest, and the loss of the ship, and proceeded to allege that "although the capital stock and funds of the said company always from the time of the making of the said policy hitherto have been, and still are, sufficient to pay the plaintiff the said sum of 1,100*l.*; of all which premises the defendants had notice, and were, after the loss, requested to pay the said amount; yet the defendants have not paid the said sum, and the said sum is still wholly unpaid." The objection was, that there was no personal obligation on the defendants to pay. I am, however, of opinion that there is no fatal objection upon the face of the declaration. It is there alleged that the defendants made the promise and subscribed the policy, both of which facts are admitted by the demurrer; and it seems to me that the declaration alleges and imports a direct personal promise by the defendants to pay the amount insured, if the capital stock was sufficient for the purpose, and which it was averred in the declaration and admitted by the demurrer to have been. The breach is, that the defendants did not perform what, as it appears to me, they admit they promised should be done, namely, the application of the capital stock to the payment of the loss. The cases of *Andrews* v. *Ellison*, 6 J. B. Moore, 199, and *Dawson* v. *Wrench*, 3 Exch. Rep. 359, are directly in point, and I am not prepared to say they were not rightly decided. So also the cases of *Gurney* v. *Rawlins*, 2 M. & W. 87, and *Reid* v. *Allan*, 4 Exch. Rep. 321, are to the same effect; and I think, therefore, that the judgment of the Court of Q. B. on the demurrer to the declaration ought not to be reversed. The second question arises upon the bill of exceptions, and the point that has been argued before us is, whether there was any evidence to go to the jury against the defendant Gooden upon the issue upon the plea of non assumpsit. The following was the evidence adduced by the plaintiff:—The deed of settlement of the company, dated the 23rd of April 1840, executed by all the defendants. The parts material are set out in the bill of exceptions. That all the defendants severally and individually held shares in the capital stock of the company; that the defendant Gooden was a director, and held 250 shares, of 100*l.* each, in the capital stock; that Brightman, Owen, and Chambers were three directors, and as such signed the policy. The policy itself, which is set out at length in the bill of exceptions. That a total loss was adjusted at 1,100*l.*; that 7,500 shares had been subscribed for, and held originally by the defendants and others; that 5,000 were so held at the time of the commencement of this suit, the remainder having become forfeited in various ways; that calls had been made to the extent of 25*l.* per share, the last being a call of 10*l.* made on the 29th day of September, 1847; but that nothing was paid upon it, although certain directors and proprietors had advanced 10,500*l.* in anticipation of it. That in September, 1847, the company ceased to underwrite policies; but the directors continued to attend the office for some months, when it was given up. On behalf of the defendant Gooden it was proved that the company had not at the time of the accruing of the causes of action, or at any time after, any money, property, or available funds in their hands wherewith to satisfy the plaintiff's claim. Upon this evidence, the counsel for the defendant Gooden submitted that there was no evidence to go to the jury upon the issue on the plea of non-assumpsit. The chief justice ruled that there was: and thereupon the bill of exceptions was tendered. The points submitted to the chief justice, as stated in the bill of exceptions, were:—First, that no action at law would lie upon the policy; secondly, that the defendants were not jointly liable upon it; but if liable at law at all, were only liable severally to the extent of the shares held by them individually. Thirdly, that no action would lie against Gooden, as he had not signed the policy. Fourthly, that the promise laid in the first count had not been proved, as the promise therein alleged was a general promise by defendants to be and become insurers, whereas the only promise to be collected from the policy was to pay out of the capital stock and funds, if they were sufficient. Lastly, that the policy was illegal and void, by reason of 35 Geo. 3, c. 63, the names of the defendants not being expressed in the policy. In the argument for the plaintiff in error, it was contended that the partnership created by the deed of settlement of the 23rd of April, 1840, was a lawful partnership; that there was nothing illegal in the capital of the partnership being divided into shares, and the partners or shareholders agreeing that no one should be liable to be called upon to pay more than the amount agreed to be subscribed by him; that the plaintiff below had agreed with the company by an express term contained in the policy, that the capital, stock, and funds in the company should alone be liable to make

(*a*) The delay in the publication of this case has been occasioned by its great length; and even now we have been compelled to abridge it considerably.

good all claims under the policy, and that no proprietor should be in anywise subject, or liable, to a claim made by reason of the policy beyond the amount of his share or shares in the capital stock, it being one of the original and fundamental principles of the company that the responsibility of the individual proprietor should, in all cases, and under all circumstances, be limited to their respective shares in the said capital stock; that, except as against the individuals who signed the policy, the plaintiff below could not, in any event, maintain an action against more than one shareholder, without a violation of the express condition that the liability of each shareholder should be restricted to the amount of his own share, and that he should not be responsible for his co-shareholders. It was also contended that no action at law was maintainable upon the policy except against the persons who actually signed it: that in this there was no repugnancy; for that a suit in equity was maintainable against all the shareholders of the company, and that it was no valid objection to a contract, that in the event of a breach of it, the proceedings to obtain redress were confined to the Court of Equity. The case of *Reid* v. *Allan*, was cited to show what was the real nature of the legal liability, as alleged by the counsel for the plaintiffs in error, namely, a separate one, confined to the extent of the shares not paid up. And the cases of *Halkett* v. *The Merchant Traders' Ship Loan Association*, 19 Law J. Q. B. 59, and *Hassell* v. *the same*, 4 Ex. Rep. 525 were cited as authorities, that the defendant was not liable at all at law. On the the other hand, it was contended on behalf of the defendant in error, that the General Maritime Assurance Company was a mere trading partnership, that in law there was no distinction as to liability between a joint-stock partnership, as this is usually called, and an ordinary partnership, that throughout this policy the company were universally described as the contracting party, and that in this action, there having been no plea in abatement, the plaintiff below was entitled by law to consider every shareholder as the company, and as if the company were named as defendants upon the record; that the true rule as to partnership liabilities was that laid down in *Hawken* v. *Bourne*, 8 Mee. and W. 703, namely, that the partner authorised to make a contract was in the nature of a general agent, and had by law authority to bind his co-partners in contracts usually made in the partnership business, although in direct contradiction to the actual authority given by the co-partners. And the case of *Smith* v. *The Hull Glass Company*, 8 Com. B. 668 was cited, to show that there was no distinction between joint-stock companies and other partnerships. The question which arises here is one of great importance; there are very many companies (life insurance and others), carrying on business under deeds similar to that in the present instance; and provisions substantially the same as those contained in the present policy, are, I believe, universally inserted with the view of restricting the liability of the shareholders. The circumstance that Gooden was himself a director, will make no difference, for even assuming that the liability of a director, who has not signed the policy, is different from that of a mere shareholder, there are in the present case other defendants, who are mere shareholders, and it is quite clear that in order to fix the defendant Gooden on the plea of non-assumpsit, evidence must be given of the liability of all the defendants upon the promise alleged in the declaration. The question of the general liability of the

question is, are the stipulations in the deed as to each subscriber, or partner, being responsible only to the amount subscribed for by him, lawful and valid, as amongst themselves? I entertain no doubt that they are. Such stipulations have been long in general use. Their object is to restrict, as far as possible, the liability of the partners to the same extent as that of shareholders. In the various corporations which have for a long period been created by Acts of Parliament for the purpose of effecting great public works, the partners agree amongst each other that each shall subscribe, and be responsible for, a certain amount only, and that in the event of one being compelled to pay a demand, the others will indemnify him separately, and in proportion to the extent of their respective interests and no further; and it seems to me clear that, as amongst themselves, when one has paid up the whole amount subscribed for by him, he is no longer responsible to any further amount to his co-shareholders, their liability to each other being precisely the same as that of shareholders in the ordinary joint-stock corporations created by Acts of Parliament, in which the subscribers are liable to the extent of their subscriptions only, and when they have once paid up all their calls, the legal liability to contribute further is at an end. The further question then arises, what is the liability of shareholders and partners in such companies to third parties, on contracts made by the directors in the ordinary course of business? and it seems clearly established by the authorities, that with respect to third persons, who have no notice of the terms of the partnership, the shareholders and partners in joint-stock companies are liable to the same extent and in the same manner as the partners in ordinary partnerships; and that the law pays no regard to the stipulations contained in the partnership deed as to the restriction of liability, or to any particular provision as to the mode of carrying on the business different from that ordinarily used in such concerns. In the case of *King* v. *Dodd*, 9 East, 527, Lord Ellenborough, in delivering the judgment of the Court, stated that the holding out in the prospectus of two proposed trading companies, one for manufacturing paper and the other for distilling spirits, that no subscriber would be responsible beyond the amount of the shares for which he subscribes, was a mischievous delusion: that as amongst the subscribers themselves, they might stipulate with each other for such restricted liability; but that, as to the rest of the world, it was clear that each subscriber was liable for the whole amount of the debts contracted by the partnership. So, also, Lord Eldon, in *Carlen* v. *Drury*, 1 Ves. & Bea. 117, stated that he held it to be clear law that each individual in a joint-stock brewery company was answerable for the whole of the debts of the concern. (After referring at some length to the cases of *Hawken* v. *Bourne*, and *Smith* v. *The Hull Glass Company*, his lordship proceeded)—The result of these authorities, therefore, is that when persons constitute a partnership, whether in the form of a joint-stock company or otherwise, the individual or individuals who are authorised to make contracts for the partnership have authority to bind all the partners in the manner usual and customary in the same trade or business, and even to delegate to others the authority so to bind them, if it be usual so to do, notwithstanding an express agreement not so to deal, and it is, I apprehend, upon this principle that partners in a trading company in a business in which bills of exchange are usually issued can bind their copartners, notwithstanding the issuing of bills is expressly prohibited by the partnership agreement. In the present case, therefore, if the policy contained no notice of a restricted liability, proprietors, shareholders, or partners, by whatever name they may be called, would be liable upon it, for it was a contract made in the way of their business, and by the partners authorised to make such contracts for the company. But the plaintiff had express notice on the face of the policy of the restriction, and he agreed that the capital stock and funds should alone be liable to him, and that no proprietor should be in anywise subject to his claim beyond the amount of his shares, which the defendant Gooden would certainly be if the plaintiff was entitled to recover on the promise alleged in this declaration; for to hold that the defendants promised as alleged would render them all liable to any extent, and each for the other, which is directly contrary to the restrictive clauses. It was argued that this view was repugnant to the contract contained in the policy, and that a contract cannot at the same time be made, and a provision be inserted that an action shall not be maintained in the event of its being broken; and that the case of *Furnivall* v. *Coombs*, 5 M. & G. 736, is an authority to this effect. This may be so, but I think that this principle does not apply to the present case. There are two sets of actions which, in my opinion, may be maintained upon a policy in the present form. First, I think, upon the authority of *Andrews* v. *Ellison* and *Dawson* v. *Wrench*, that the individuals

capital stock or funds of the company should be applied to answer the claim on the policy; and, secondly, that each individual shareholder may be sued and recovered against to the extent of his unpaid subscription. The contract is contained in a policy which, I have no doubt, was in a great measure copied from the form of the policy used by the two incorporated companies,—the Royal Exchange and the London Assurance Companies,—who were respectively authorised by Act of Parliament to insure as companies or partnerships on joint capital. The policy expressly declares that the capital stock and funds of the company shall alone be liable to make good all claims under it; and the meaning of this seems to me to be, that the plaintiff agreed or consented to look, not to the general property of all the shareholders, but to confine himself, first, to a fund expected to be accumulated from the payment by the shareholders of a portion of the sum subscribed from time to time and the premiums received in the course of business, and kept by the directors for the purpose of current demands upon the company; and, secondly, as a sort of reserve fund, to the liability of each shareholder to the extent of his shares not paid up. But the policy proceeds further, and expressly declares that no shareholder shall be liable to any claim, nor be in anywise charged, by reason of the policy, beyond the amount of his shares in the capital stock. Now, it seems to me that it is here declared, first, that the shareholder shall be liable to the extent of his unpaid shares; and, secondly, that he shall not be liable further; and to hold the defendants liable in the present action might render them further liable, and would render them jointly liable, which is equally inconsistent with the above provision, which clearly contemplates a separate liability only. The plaintiff was under no obligation to insure with the company, but as he thought proper to do so, he is, in my opinion, bound by the express declaration in the policy. I am unable to understand how a shareholder can, upon a contract, or, in other words, by his own agreement, be rendered liable to an unlimited extent, when he and the party with whom he has contracted have, as it appears to me, in the most plain and unambiguous terms, agreed that he shall be liable only to a limited extent. If this agreement be illegal, it is, of course, void and of no effect, but I see nothing illegal in it; and if it be legal, the proper duty of the court of law is to carry it out; and even if it were incapable of being carried out, I do not think that such incapacity would empower a court of law to impose upon the shareholders a liability or obligation, which they, and the parties with whom they contracted, expressly agreed that they should not bear. In my opinion, however, the contract is capable of being carried out; and although the remedy is an inconvenient one, and may probably lead to a multiplicity of actions, I see no objection in point of law to a separate action being maintained against a shareholder to recover from him upon the policy to the extent of his unpaid shares. Upon a common marine policy each underwriter incurs a separate liability, and to a limited amount. Upon the present policy I think also each shareholder incurs a separate liability, and to an amount limited to his unpaid shares. It seems to me that each shareholder authorises the pledging of his personal liability to this extent. This liability is referred to in the judgment of the Court in *Reid* v. *Allan*, and as I have already observed, I see no objection to it in point of law, as it seems to me to be entirely consonant to the intention of the parties expressed in their contract. In reality, it is an agreement to perform a contract, with a proviso, that in the event of a breach, the payment to be made in respect of it shall be made by each contractor separately, and be so much, and no more. In my judgment it is lawful for parties so to agree. It may be observed, that by the 36th section of the Companies Clauses Consolidation Act, 8 & 9 Vict. c. 16, execution may be issued against a shareholder to the extent of the shares not paid up, if a judgment against the company cannot be made available against the property of the company; which is a liability very like that which I consider to be the contract of the individual shareholder in the present case. The cases of *Halket* v. *The Merchant Traders' Company*, and *Hassall* v. *The Merchant Traders' Company*, were relied upon as authorities directly in point for the plaintiffs in error. By the statute 7 & 8 Vict. c. 110, the Act for the regulation of joint-stock companies, provision is made by the 66th section for enforcing judgments; and it is enacted, that execution shall be enforceable not only against the property and effects of the company, but also, if those funds be unavailing, against the persons, property, and effects of the shareholders. (His lordship then referred particularly to the former of the two cases last mentioned.) From this judgment it appears that the Court of Q.B. considered that no action at all lay at the suit of the assured against the individual shareholder; and I have already stated that I do not concur in this view; but in the case of the Q.B. the policy was under seal, and the point was not much discussed at the Bar. The case of *Hassall* v. *The Merchant Traders' Company*, in the Exchequer, is precisely to the same effect. I am therefore of opinion that there was no evidence of any joint liability of the defendants to go to the jury, which was one of the points submitted to the learned Chief Justice, and stated in the bill of exceptions, and that the final judgment of the Queen's Bench ought to be reversed, and that there must be a venire de novo.

TALFOURD, J. concurred in the judgment above given.

WILLIAMS, J.—I am of opinion that the direction of the Judge to the jury upon the trial of this cause was unexceptionable, and the judgment ought to be affirmed. Although I have the misfortune to differ from most of my learned brothers in this respect, yet we all agree, I think, that no objection can be made in support of the writ of error, upon the ground that the company of which the defendants below were proved to be members, did not authorise the making of the policy upon which the action is founded. No such point is properly raised on the bill of exceptions; it must, therefore be taken that it was duly proved at the trial, that the defendants below, together with the other members of the General Maritime Assurance Company, entered into such a contract with the plaintiff as is constituted by the terms of the policy. It was, however, contended on the part of the defendants below, that those terms do not amount to a joint

contract by them, and all the other members of the company, but to a several one with each of them, and consequently that the declaration being founded upon a supposed joint contract was not sustained by the evidence, and that the Judge ought accordingly to have directed the jury to find for the defendant on the issue of non assumpsit. But I am of opinion that the terms of the policy constitute a joint contract by all the members of the company, and therefore this exception fails. With respect to the form of the policy, the company in the ordinary way become the assurers of the ship upon the specified terms, and promise to perform those terms, and acknowledge the receipt of the premium as the consideration for their promise; and but for the introduction of the special clause hereafter to be considered, this would be the plainest possible case of an association of assurers entering into a contract of insurance for the joint benefit of all the partners in the ordinary course of their partnership business. But it is expressly stipulated that the capital stock, which is stated in the heading of the policy to be one million, shall alone be liable to answer any claim under the policy. And it has been held in several decided cases, and seems to be undisputed, that by reason of this stipulation it is a good plea in bar of any such claim that the company have no assets to meet it, inasmuch as they have spent the whole of their capital stock. There is, however, a further stipulation, which is said to demonstrate that the contract is not joint by all, but several by each of the members who authorise the policy to be made, namely, it is carefully stipulated that no proprietor shall be in any way charged by reason of the policy beyond his share in the capital stock; and it has been mentioned as one of the principles on which the policy is founded that the responsibility of the individual proprietors shall in all cases and under all circumstances be limited to their shares in the capital stock. It is argued in support of the writ of error that this shews that each member contracts not jointly but severally to bear the loss in proportion to his share or shares. It may be observed, however, as was pointed out by Lord Denman, in giving judgment in the case of *Halkett* v. *The Merchant Traders' Association*, that there is no provision that where the shareholder has paid up the full amount of his shares to the company he shall not be liable in proportion to his shares to the assured. This responsibility, it is conceded, is to exist, but, it is said to be limited to the amount of his shares; and it seems to follow that he could not be allowed to plead that he is not responsible to that amount, because he has paid up the whole of his shares, that payment having been made since the policy was effected, and the money appropriated to claims on the company, which have arisen later than the plaintiff's claim. Supposing, therefore, an action was brought against a single shareholder, and suppose a certain contract contained in that policy such as the present, where there has been an indisputable loss recoverable under the policy, practically speaking if the company were solvent no defence would be made, and the loss would be paid; but supposing the company to be insolvent and the capital stock all spent, must the defendant at his peril ascertain the amount of the loss, and whether that exceeds the amount of the shares he holds; and if it does, confess the action, and plead payment of money into Court to the amount of his shares; and as to the residue that he is only a shareholder to the amount he has paid into Court? This seems to be the only course of pleading open, unless, indeed, he has paid up all his shares, and it were considered competent to him, notwithstanding the difficulty I have above suggested, to plead that fact as in itself a bar to the action; but in neither case would there be any room for the plea that the capital stock of the company has been exhausted; for that would be altogether immaterial, if the defendant's liability is to be confined to the amount of his own shares. The only answer to this difficulty is the proposition contended for by Mr. Peacock, that the signature of the policy by the directors enures to make it a joint contract on their part to pay all just claims on the policy, provided the capital stock be sufficient, and that the rest of the company who have authorised the making of the policy on their behalf, but have not signed it, contract severally, and not jointly, and contract only to pay in proportion to their own shares. I am, however, of opinion, that the signature of the directors has no such operation, and purports merely to testify the contract, and that the company are content with the assurance; and there is nothing in the language or in the nature of the instrument which indicates that those who subscribed, intended, by reason or by force of the signature, to increase their liability beyond that of the other contracting parties, or to do any thing more than to authenticate the instrument as the policy under which the company have become the insurers. It is not required by law that such a contract should be signed by those who are to be charged; and I feel it difficult to understand how the signature, not being necessary for the validity of the contract, or in any way of the essence of it, can be capable of varying its meaning or effect, or how the members being directors who signed it, or other members of the company, by whose actual authority such a contract purported to be made and was made on their behalf, can be at all in a different position from that in which they would have been if the instrument had not been signed at all, or had been signed by all the individuals instead of by some of them, on behalf, and by the authority, of the rest. I therefore think that the plaintiffs in error cannot sustain the proposition that the liability of the directors who signed the policy is different from that of the other members of the company who authorised the signature. And if their liability be identical, another argument arises against the validity of the plea in an action against a single shareholder, that he has paid up all his shares; for if this were the only plea, and all shares were paid up, it is obvious that each member would have a good answer to an action against him. Therefore, unless a joint action can be maintained against all, no action whatever would lie upon the policy, notwithstanding the capital stock of the company was fully sufficient to answer the claim. Perhaps the explanation of the matter is this, that the form of the policy was introduced in earlier times when the system of allowing the shareholders to keep back part of the money due on their shares was unknown, and therefore the policy assumes that there is a capital stock of one million in the sense that every member has actually brought the whole amount of his shares into the partnership stock, and it is accordingly stipulated that recourse shall only be had to this fund for satisfaction of all claims under the policy. If, therefore, all the capital stock happen to be spent this would be a good answer to any such claim in any action whether brought against all or any of the members, and thus the individual members having already contributed the whole amount of their shares, cannot be compelled to pay more or be made further responsible, as they might have been but for the special clause. If this be so, the whole difficulty arises from the members choosing to sanction the modern practice of allowing part of the capital stock to remain in the shape of money unpaid upon the shares, and thus introducing the question of one member being made responsible for another's paying up his shares, which could not possibly arise if the theory of such partnerships were carried into due effect, and the capital really existed in the shape of contributed capital stock. Unless the policy will admit of this construction, I think the latter al clause must be rejected in construction, as being repugnant to the general effect of the contract, which, in my opinion, is a joint contract of insurance by several insurers. If such a contract contains stipulations for restricting the liability of the insurers, the legal consequence is that it must be rejected as impracticable in law, as was done in the case of *Furnivall* v. *Coombes*, 5 M. & G. 736, where the defendant entered into a personal covenant, and then endeavoured, by the introduction of a proviso, to relieve himself from all personal liability. It was also contended, on the part of the plaintiff in error, that the Court of Q. B. had erroneously given judgment on the demurrer for the plaintiff below, but I am of opinion that that judgment is right. On this question, however, as I do not differ from any other member of the Court, I do not deem it necessary to explain the grounds of my own opinion. Upon these grounds I think the judgment of the Court below ought, in all respects, to be affirmed.

Platt, B. (after stating the declaration and the special clause in the policy).—To this declaration one of the defendants demurred. With regard to that demurrer it is sufficient to say, that the judgment of the Court may be founded upon other parts of the objections to this record, without deciding upon the validity of that demurrer. Upon the question raised by that I have considerable doubt; but another of the defendants has pleaded, amongst other pleas, non assumpsit, raising, therefore, the question whether there was a joint promise made by the four defendants in the manner in which it is stated upon the record. (His lordship then stated the points raised at the trial.) Now, it was contended, in the course of the argument, that this was in fact an attempt on the part of partners to do that which the law would not permit. And it seems to me, I own, that that proposition was founded on a fallacy; because there is no magic in a number of persons becoming partners, which will prevent them from acting independently with persons with whom they contract; and the general responsibility, beyond all question, may be modified and varied. What objection could be raised to a contract by which four parties agreed to buy of a merchant merchandise upon the terms of one of them paying half the price, and the three others paying each a third of the remainder, and by which it was distinctly stipulated between the buyer and the seller that the seller should not be entitled to demand payment except in the several proportions, and severally against the different parties? Is that an illegal contract? Is the law to make a contract which the parties never contemplated? That is the bargain which they have made, and that is the bargain by which all ought to be bound. It is no answer to say that they contracted as partners, and that by the general law partners are jointly liable. In the case supposed, they would not have contracted on that footing. Now, upon the evidence, it appears that the policy was made according to the deed of settlement, and according to that deed no power whatever was given to the directors to bind the shareholders jointly. The contract which they have made pursuant to the deed of settlement is no evidence whatever of the other contract alleged upon the record, and for that reason I think that the defendant Gooden ought to have had the verdict upon that plea. With regard to the question, whether separate actions may be brought upon this contract against the several shareholders, possibly the contract may be such as to enable the parties to sue the persons who sign as directors, or to sue any one of the several parties who would be liable to the extent of their unpaid contributions to the capital stock; but there is considerable difficulty in making a contract with two aspects, and great difficulty, as it strikes me, in that respect as regards this particular contract; therefore, with respect to that, I beg to be understood as not expressing any opinion.

Cresswell, J. (after stating the pleadings).—On demurrer by one of the defendants, the Court of Queen's Bench decided that the declaration was good, they must, therefore, have held that it disclosed a joint contract enforceable at law. The promise is laid merely as a promise to perform what the policy contained, on their part, to be performed; and if the policy did not contain anything to be performed by them jointly, the promise would not enure as a joint promise. The natural meaning of the words is, that they promised according to the terms contained in the policy. If the contract was joint, the promise would be joint; if several, the promise would be construed as several. I apprehend, therefore, that the Court of Q. B. must have been of opinion that the contract, as set out, independently of the promise, is joint; and the language which they are reported to have used is not consistent with any other view of the case. I am of opinion that their judgment was right, and that the declaration shews a joint contract by those who entered into the obligation which it contains, whatsoever those obligations may be, and that such contract may be enforced by action at law. The first question raised at the trial was on the plea of non-assumpsit, namely, whether all the defendants became insurers by the policy, or, in other words, whether the contract of assurance was made in a manner, and by persons competent to act for, and bind, the defendants being themselves members of, and shareholders in, the company. In order to prove the affirmative, the plaintiff put in evidence the deed of settlement and the policy. The latter was issued by the company in the form always used by them, and no question was made as to the propriety of issuing policies in that form, and it was signed by three members or shareholders, who were also directors, but neither the directors, nor any other member of the copartnership had authority to act for the other members, except in their capacity of directors; they could make no contract for them as individuals, and therefore the contract in question must either bind them jointly, or not at all. If the case is looked at as one of an ordinary copartnership, the contract of insurance having been made by three members of the firm, in the name of the firm, and in the course of business carried on by the firm, is binding upon all the members; if it is considered in a different point of view because the copartnership appears to be a joint-stock company, and it is considered necessary to shew the directors had authority by the deed of settlement to make such contract; I think it appears that they had. It was not objected that the policy was not in conformity with the deed of settlement, the directors, therefore, in issuing it, acted within the limits of the authority conferred upon them, and their contract was the contract of all the copartners just as much as if each member had signed it. On non assumpsit, therefore, it must be held that the defendant entered into the contract alleged in the policy; but on non assumpsit it is also said that the declaration is on a joint contract, and that the policy shewed a several contract only. Let us look at the terms in which the policy is made. It is headed "General Maritime Assurance Company. Capital one million," importing that it is a policy of the company. Then, in describing the risk against which the insurance was made, it says, "Touching the adventures and perils which *the said company* are contented to bear, and do take upon them," not "which the members of the company are content, &c. and do take on themselves respectively." Again, as to the expenses of "suing, &c. by the assured," it says, "to the charges whereof *the company* will contribute according to the rate and quantity of the sum herein assured." And "it is declared by and between the said *company* and the assured." Again—"And further

it is agreed by the said *company* that this writing or policy of insurance shall be of as much force, &c. and so the said *company* are contented and do bind themselves and their successors to the assured for the true performance of the promise, confessing themselves paid the consideration due unto the company for this assurance." Read *co-partnership* for *company*, and it would seem impossible to contend that the engagements entered into are not joint. I now proceed to consider what the contract entered into is; undoubtedly it is a contract of insurance. The policy begins by stating that Buckley and Company caused themselves to be assured, and the company bind themselves for the performance of the promises in the policy whatever they may be, confessing themselves paid the premium for that assurance, they undertake to insure, and we must look to the earlier part of the policy to see against what they insure, and there the risks usually insured against in such policies are found. Now, by insuring against certain risks they undertake to indemnify against them. But now we come to the provision that the capital stock and funds of the company shall alone be liable to make good demands, which has been construed as a proviso upon a general contract to indemnify, which must therefore be read that the company undertake to indemnify against the risks enumerated, provided the capital stock and funds are sufficient for that purpose. (*Gurney* v. *Rawlins*, 2 M. & W. 87, and *Dawson* v. *Wrench*, 3 Ex. 359.) We now come to the consideration of the clause in the policy,—"That no proprietor, &c. shall be in anywise subject or liable to any claim, &c. beyond the amount of his or her share or shares, &c." It is not very easy to determine the meaning of this proviso. In considering it, perhaps we should assume that the company are in possession of the whole of the capital which they profess to have, which is a capital equal to the amount of the shares held by the different members; or, in other words, that the whole has been paid up. If that were so, as by the conditions in the policy the assured are only to be paid if the stock suffices, if they establish a right to be paid, there must be a fund adequate to make the payment, and any individual proprietor affected by a judgment would have a fund to resort to for indemnity; and the deed of settlement provides for indemnifying the individual shareholders in such cases. If this proviso is construed to mean that the individuals shall have such indemnity, there is nothing in it repugnant to the primary contract contained in the policy; if it is construed so as to compel the assured to sue each separately for his share of the loss, it is repugnant to the original joint contract to pay, if the funds of the company suffice. Again, there is no stipulation that each shall pay only a part of the loss in proportion to his share in the joint stock of the company, but that he shall not by this policy be made liable to more than the amount of his shares. Construing that strictly, any one shareholder might, upon every policy issued by the company, be compelled to pay a part of the loss equal to the whole amount of his shares; a situation not much preferable to that from which these defendants seek to escape. I am, therefore, much disposed to think that the clause in question is incapable of receiving any intelligible meaning, and if insensible or uncertain it must be inoperative. If it receives any construction other than that which I first suggested, it is repugnant to the contract of insurance entered into by the policy, and therefore void. (*Furnivall* v. *Coombes*.) If the construction contended for by the defendants is correct, that the policy contains a separate contract by each proprietor only, and that the having paid up the amount of his shares furnishes a good plea in bar to the action, which is a necessary consequence of that construction, it follows that if all the shareholders have paid up the full amount of their shares, and the whole capital is in the hands of the company, no action at law can be maintained on the policy issued by them;—not against all the members, for the policy contains no joint contract;—not against individual members, for each is supposed to have paid up the whole of his share in the capital. This shews that even if the contract to pay, if the capital stock fail, be several, the proviso is repugnant to it. I am therefore of opinion that Lord Campbell was right in telling the jury that upon the evidence they might find a verdict for the plaintiff on the issue upon non-assumpsit On the other point argued before us, namely, whether there was evidence that the capital stock and funds of the company were sufficient to pay the plaintiff, I think that the direction was right, for that the company must be taken to have available funds so long as a large portion of the capital stock remained uncalled for. I think that the judgment of the Court below should be affirmed.

ALDERSON, B.—I shall confine myself to that question upon which alone I differ from the judgment of the Court of Q. B. and from the opinions delivered by my learned brothers Cresswell and Williams to-day. (After stating the question, and the terms of the special clause, his lordship proceeded:)—Now, if words can clearly express an intention, these words do so; therefore, if we can in any way construe this policy so as not to fix the individual proprietors in all cases of policies thus claimed upon, we shall only be effecting the plain intention of those who framed it, and those who were parties to the contract; and I think we may construe this policy as shewing that the directors contracted, not for the individuals, but that the funds of the company should indemnify the plaintiff, and that they should be alone liable in the hands of the signing directors for the claim; or if this be not so, and if we must construe the word "company" to mean the individuals for whom the three directors contract, that then the meaning may be that the different members of the company are to be taken as signing each for himself through his agents, the three directors, for the amount of his shares remaining unpaid, just like a body of separate underwriters signing for one another, and thus we shall make them separately liable to that extent, and so give effect to the declared intention limiting their liability. In either way of construing it, the issue, on non assumpsit, must be found for the defendants. If we look carefully at the deed under which the directors have the power to bind the defendants, we shall find that it directs all policies to be signed by three directors in a given form. It provides that every policy shall state that the subscribed capital, and stock, and funds of the company remaining undisposed of at the time of the claim, shall alone be liable to make it good, adding affirmatively, that the directors signing such policy shall be responsible to the extent of the funds in their hands or power, and negatively that no proprietor, obviously meaning, therefore, no other proprietor, except the directors so signing, shall be liable beyond the amount of his unpaid shares. I doubt whether this policy was made according to the powers given by the deed, inasmuch as Gooden really never gave any authority to the directors to make any policy which did not state those three things; first, that the funds were alone to be liable; secondly, that the directors were to be liable to the extent of the funds in their hands or power; and thirdly, that the proprietors were only to be liable to the extent of their shares; the second clause, if it had been inserted, coupled with the other two, would have shewn clearly that the individual proprietors could only be made liable through the directors; and upon the issue on non assumpsit the defendant, Gooden, would have been entitled to the judgment of the Court.

PARKE, B.—In this case some important questions arise, partly on demurrer, partly on a bill of exceptions to the ruling of Lord Campbell, on the trial of the issues. [After stating the material parts of the pleadings the learned judge proceeded.] On demurrer, the question was, whether the first count was bad either in substance or form. The Court of Q. B. held the first count to be good, and I think they were right in so holding: the formal objections, the principal of which was the uncertainty whether the defendants became insurers, generally, and with all the obligations of ordinary insurers, or only insurers upon the terms of the policy, I think are untenable; for the context clearly shews that the declaration meant to charge them only as insurers by that policy with the obligations only which were created by it. The other objection as to the uncertainty of the time of the promise is equally unfounded. The objection of substance was, that there was no contract at all made by the policy on the part of any one; but only a charge of a joint-stock fund, and available in equity only; and that if there was a contract, it was not a joint one by all the defendants, but a separate one by each, whereby each agreed to be responsible only to the amount of his shares in the capital stock, and not for the whole loss if it exceeded it, nor did any or either agree to be liable for the non-payment of another's share. I think the Court of Q. B. rightly held that the declaration is good on general as well as special demurrer. In the declaration it is averred that the plaintiff paid the premium, and promised to fulfil and perform everything in the policy contained on the part of the assured to be performed and fulfilled; and that the defendants promised that they would become and be insurers to the plaintiff for the sums specified, and perform and fulfil all things on their part as such insurers to be performed and fulfilled; and there is an averment of the sufficiency of the capital stock of the company. In considering, therefore, the sufficiency of the declaration on demurrer we are to assume that a joint contract by all the defendants is admitted, and on that assumption to construe the terms of the policy. So doing I think it amounts to a joint contract that the company shall pay out of their capital stock, in other words, if the capital stock and funds should be sufficient. In *Dawson* v. *Wrench*, the Court of Ex. on demurrer held in an action on a policy by the same company, in which the declaration was against the subscribing directors, that the clause had that meaning, and the general course has been in actions on fire policies, in which there is usually a similar clause charging the funds, to bring an action as on a covenant or contract by the subscribing directors to pay out of that fund. The objection, therefore, in the present case, that on the face of the declaration the policy operated merely as a charge, cannot prevail. It was, secondly, contended that taking the declaration altogether there was no joint promise by the defendants, but only a several and limited promise by each, namely, to contribute to the amount of his share. This objection is certainly of more weight than the others and raises some doubt whether the allegation "that the defendants promised (which, as I have stated, means jointly promised) to be insurers on the terms of the policy" is not inconsistent with one of the terms of it, "that no proprietor shall be in anywise subject to any claims or demands, nor be in anywise charged, by reason of the said policy, beyond the amount of his share in the capital stock of the said company," it being stated to be one of the original and fundamental principles of the said company that the responsibility of the individual proprietors should in all cases, and under all circumstances, be limited to their respective shares in the said capital stock; for if there be a joint contract by all the proprietors to pay if the capital stock be sufficient, each is liable if the stock be sufficient to have the full amount of the loss levied upon him, and so he is charged, by reason of the policy, beyond the amount of his shares. It may be said, therefore, that where one of the material and alleged fundamental terms of the joint contract is wholly irreconcileable with the joint liability, there is no joint contract at all, taking all the averments in the declaration together. The sufficiency of the declaration is, therefore, questioned; but as upon demurrer it must be taken that the contract is set out according to its legal effect, we must assume that the defendant did jointly contract in the manner alleged, and thus we must either reconcile the apparently inconsistent provision with the joint liability of the defendants to the plaintiff, which follows from their joint contract, by supposing that it is a mode of regulating their liability *inter se*, though unnecessary to be introduced into a contract with the assured; or, if incapable of being reconciled, we must reject it as repugnant and void, as an attempt by the parties to do what by the law of England they cannot—contract jointly with a separate limited liability to damages for the breach of the contract. I therefore think that the judgment of the Q. B. on the demurrer ought to be affirmed. The next question arises upon the bill of exceptions. (The learned judge stated the evidence and the points raised.) First, that no action at law would lie on the policy, as there was no contract to pay, but only a charge in equity; secondly, that the defendants were not jointly liable upon it, but if liable at all at law, were only severally liable; thirdly, that no action would lie against Goodon, as he had not signed the policy; fourthly, that the promise alleged was general to become insurers to the plaintiff, and the promise proved was, to pay out of the capital in the terms of the policy; fifthly, that the policy was void by the 35 Geo. 3, c. 63, s. 2. I have already intimated my opinion, that the fourth of these objections is untenable. The third and fifth are equally so; indeed, the fifth, which was stated in one of the pleas, was given up, and the plea was admitted to be bad, as it could not but be after the judgment of Lord Cranworth in the case of *Reid* v. *Allan*; and the third is untenable, as no personal signature by the defendants is required; and if the objection had been, that the directors who actually signed were not authorised by the defendants to do so, the objection ought to have been pointedly and distinctly stated, which it certainly is not. The only objections which remain to be considered are the first and second. They are shaped in two ways. It is contended that, if the terms of the policy alone are looked at, the legal effect is, that the different proprietors do not thereby contract jointly at all, and that if the policy is construed to be a joint contract of all the proprietors, the directors have no authority from the proprietors to make such a policy for them. As to the second branch of the argument, the authority expressly given by the deed was certainly not pursued, and that in more than one respect. One difference is, that in the policy the stock or funds generally are pledged; in the deed the power is to pledge only the funds undisposed of at the time of the claim under the policy, and the directors ought to state that limitation in the policy, which they have not done; and further, that no shareholder shall be liable beyond the unpaid part of his share. There is no evidence that this particular form of policy so deviating from the directions given by the deed was sanctioned by the defendants; and whether unchartered companies of assurance against marine risks (which companies did not exist before the 6th George 4, and of the usage of which no evidence was offered) are on the footing of ordinary partnerships, so that in the absence of proof of the recognition of a parti-

cular form of contract, an authority to the directors would be implied as to all strangers to the real authority, is a question on which I need not on the present occasion express any opinion; first, because I think that the want of authority in the directors to make policies binding on each proprietor, was not objected to in a distinct manner as it ought to have been, the only objection really made being that the defendants were not jointly liable on the policy, and that the policy was not signed by the defendant Gooden; and, secondly, because I think that, looking at the policy alone, and construing every part of it together so as to give effect as far as possible to its different provisions, it does not contain any joint contract with the assured, by all the proprietors, and consequently no joint contract by the defendants. In construing the instrument itself we are not embarrassed by the admission of the fact, which on the demurrer was necessarily assumed, that the defendants did jointly contract; the question on the evidence is whether they did; nor are we to assume that the defendants duly subscribed the policy as assurers, which on the demurrer is admitted. This also is a question to be determined on the construction of the instrument. What, then, is the legal effect of the policy which is unquestionably a very confused and inartificial instrument, very difficult to understand, probably copied in a great measure from one of those used by the chartered insurance companies, and perhaps without understanding its meaning. (The learned judge read the material terms of the policy). It is impossible to doubt that the object of this clause, which is stronger than that in *Halkett* v. *The Merchant Traders' Association*, was to protect the proprietors from personal responsibility to any persons whatever beyond a limited amount; and in construing that instrument we must give effect to the provision, so clearly expressed, if we can consistently with the other provisions contained in it. I think we can do this by construing the term "company" to mean not the whole body collectively, so as to make the whole body joint contractors, but each individual of the company, so as to make each of them to contract to bear the loss in the same proportion as his share bears to the total capital, in the nature of the contract of a separate underwriter. It is true that there may be difficulties in ascertaining how much each is to pay in a case where the assurer has already been obliged to contribute to other losses; but a similar sort of difficulty would exist if all jointly undertook to pay out of the capital stock; if the capital stock had already been reduced by the payment of prior claims, the residue only would be capital liable to pay. But whatever difficulty might arise on this ground, the assured must suffer, for I think it quite clear that the individual proprietors were never meant to be responsible for any others than themselves. I think it unnecessary to decide whether the subscribing directors were responsible on the policy, by reason of their signatures as contracting parties, or not; all I think it necessary to decide is, that there was no evidence in this confused and ill drawn instrument, warranting the judge to say there was any joint contract by the defendants with the plaintiff, as alleged in the declaration. It may be, that there is no contract at all, but at all events, I think there is no joint contract by the proprietors, who are not directors, with the plaintiff, and therefore Lord Campbell ought to have directed a verdict for Gooden upon non assumpsit, and if so, all the other defendants were entitled to the benefit of that verdict. This makes it unnecessary to discuss the last question, whether the direction of Lord Campbell was right as to the meaning of the term "capital stock and funds," but I do not mean to intimate that I think the ruling in that respect was not correct, though it is not the same that the judges of the Queen's Bench appear to have put on those terms, according to the report in the 19 L. J. 37. Therefore, I think the judgment should be affirmed on demurrer, and a venire de novo awarded on the issues.

Judgment on demurrer to declaration affirmed. Judgment on issue on non assumpsit reversed, and a venire de novo awarded.

ADMIRALTY COURT.

Reported by Dr. WADDILOVE, of Doctors Commons.

Feb. 13, 17, and 22, and May 14.

Ship abandoned at sea—Claim for salvage by part of her crew.

A ship was, under the orders of the master, abandoned, and her crew, who had taken refuge on board a steamer, landed at Vigo. There they were, by the British consul, put on board another steamer, to be taken to England. On the day following they fell in with the abandoned ship. Part of the crew boarded her and took her into the port of Corunna:

Held, that those of the crew who did so were entitled to remuneration as salvors.

This was a question of considerable importance to the underwriters and owners of sea-going vessels.

The ship *Florence* sailed from Liverpool, bound for the coast of Africa. Meeting with bad weather, after losing her rudder in the Bay of Biscay, she was taken in tow by a steamer (the *Montrose*). The tow-ropes breaking, she was abandoned, her crew taking refuge on board the steamer, which landed them at Vigo, whither she was proceeding; thence they were transhipped by order of the British consul on board the *Madrid* steamer, to return to England. Early on the day following that on which the *Madrid* left Vigo they fell in with the abandoned ship. A smack, which proved to be *The Rising Sun*, which also claimed salvage, was near her. The mate and part of the crew of the *Florence* volunteered to return on board her; the master and the rest of the crew remaining on board the *Madrid*. The mate and seventeen of the late crew then went on board the *Florence*: the master with the rest of the crew proceeded in the *Madrid* to Southampton. The *Florence* was, by the assistance of the smack, *The Rising Sun*, and some other boats hired for the purpose, taken into the port of Corunna. An agent sent from this country had settled the claims of the crew save those of three, who now claimed as salvors, viz. the mate, boatswain, and carpenter. The claim of the smack, *The Rising Sun*, was resisted on the ground that her crew had plundered the *Florence*, and so forfeited what salvage might be due to them. The claims of the mate and the two seamen were resisted, first, on the ground that being part of the crew, they had done no more than their duty, and were, therefore, not entitled to salvage; secondly, that by plundering and wasting the cargo and stores, and allowing others to do so, they had forfeited any lvage to which the Court might think them entitled, should it be of opinion that they could claim as salvors.

smack, with a view of shewing the amount of remuneration the smack's men were entitled to, cited the *Columbia*, 3 Hag. Adm. Rep. 428; and *Rowe* v. *Brig*, 1 Mason, Amer. Rep. 371.

Waddilove and *Twiss*, for the mate and seamen of the *Florence*, contended that the abandonment of the ship had put an end to the contract of hiring and service. They cited *Cutter* v. *Powell*, 2 Smith's L.C. 17, note; *The Neptune*, 1 Hagg. Adm. Rep. 227; *Beale* v. *Thompson*, 3 Bos. & Pull. 405; *The Governor Raffles*, 2 Dods. 17; *Mason* v. *The Ship Blaireau*, 2 Cranch, Amer. Rep. 240; 3 Kent's Com. Amer. 197; *The Two Catherines*, 2 Mason's Amer. Rep. 319; *Hobart* v. *Drogan*, 10 Peter's Amer. Rep. 108; *The Schooner Boston and Cargo*, 1 Sumner's Amer. Rep. 328; *The Beaver*, 3 Rob. 292.

Harding and *Deane*, for the owners of the *Florence*, referred to Abbott on Shipping, p. 552 1 Bell's Com. on the Law of Scotland; *Harris* v. *Watson*, Peake, 102; *Still* v. *Myrick*, 2 Camp. 217; *Hulle* v. *Heightman*, 2 East, 145; *Newman* v. *Walters*, 3 Bos. & P.; and *The Aquila*, 1 Rob. 42.

JUDGMENT.

Sir JOHN DODSON.—I shall commence this judgment by a consideration of that very important legal question which was so fully and carefully discussed by counsel at the hearing; and I shall, in the first instance, state what I apprehend that question to be, without reference to the particular circumstances of this particular case. The course which I purpose to follow is this:—I mean first to discuss the general proposition which was so much argued at the bar, and then, whatever may be my opinion of the law, consider whether the facts of this case will bring it within that principle. The next step will be, whether Wills, who commanded the *Rising Sun*, and the persons with him, are entitled to be salvors, or whether their claims are barred by their conduct; and the same with regard to Veal. Finally, there is this consideration, namely, what are the principles with regard to the amount of salvage which the Court ought to adopt in dealing with a case of this peculiar kind? With respect to the question of law, I conceive it to be as follows: Whether, when a merchant ship is abandoned at sea—sine spe revertendi aut recuperandi—in consequence of damage received, and the state of the elements,—such abandonment taking place bonâ fide and by orders of the master, for the purpose of saving life—the contract entered into by the mariner is by such circumstances entirely put an end to, or whether it is merely interrupted, and capable by occurrence of any, and what circumstances, of being again called into force. I think all the circumstances I have stated are indispensable to the just framing of that proposition. First, the abandonment must take place at sea, and not upon a coast; for if the ship be driven upon a coast, and become a wreck, and the mariners escape to shore, the contract ends to this extent at least—that if they act as salvors, and successfully, so as to save enough to pay their wages, they will be entitled to those, if not to salvage. If they do not so exert themselves their wages will be lost. The well-known case of the *Neptune* (1 Hagg. Adm. Rep. 227) is an authority for this proposition. Secondly, the abandonment must be "sine spe revertendi;" for no one would contend that a temporary abandonment, such as frequently occurs in collisions from immediate fear, before the state of the ship is known, would vacate the contract. Thirdly, the abandonment must be bonâ fide for the purpose of saving life. Fourthly, it must be by the orders of the master, in consequence of danger, by reason of damage to the ship and the state of the elements. The master is, as I conceive, the proper person to form a judgment whether abandonment be absolutely necessary or not. He is the person whom the owners voluntarily entrusted with the command of their vessel, and the care of the property embarked in it. They must be supposed to have believed him competent to the discharge of the duties committed to him, and especially that he would not, without adequate cause, leave to destruction their property. I think, again, there cannot be a reasonable doubt that in all cases of bonâ fide abandonment the crew are justified in obeying the orders of the master to quit the ship. It must be presumed that he is the most competent judge of the degree of danger, and the last who should quit without a rational belief that there existed that degree of danger to life which rendered the abandonment a duty. I say a duty, for I consider it clearly to be a duty not to sacrifice human life. What is the degree of danger which would justify the master in adopting this measure cannot be defined. Assuming, then, all the circumstances I have stated to be combined, let me, before I consider whether the contract is put an end to, inquire what the contract is which is made with the mariner. The contract itself is for the services of the mariner, as a mariner, during a given voyage. The services are not defined in the contract: the duration is for a voyage or voyages, and sometimes for a specified time. In some special cases provision is made for the termination of the contract, on the occurrence of other circumstances, as the sale of the ship, or the impossibility of getting a cargo. The services, though not defined in writing, are defined by usage, and so, in some cases, is the duration of them, as, for instance, in shipwreck and capture. In shipwreck the contract continues to lie as long as a plank can be saved. By capture, certainly, if there be no recapture, the contract is at once put an end to; and this, I apprehend, whether by an enemy or by pirates; and I may here observe, that, by their calling, mariners are bound to incur a certain degree of danger, whether it proceeds from an enemy, or from pirates, or from the tempestuous state of the elements; but there is a limit to the risk to which every seaman is bound to expose himself. Human life is more valuable in the sight of God and man than any property; and if it should so happen that the choice should lie between them, there can be no doubt as to which should prevail. Fortunately, however, this state can but seldom occur, for if there be a reasonable chance of saving the ship, and consequently the cargo, there must, in almost all cases, be the same reasonable chance of saving the lives of the crew. What is generally the fate of a ship so abandoned at sea? In a large number of cases she is never heard of more; in some she is found by other vessels, which are enabled by their own undamaged condition, and perhaps from a change in the weather, to effect the saving of the abandoned ship. So far as my experience enables me to judge, there is not one case in many thousands in which the seamen obtain possession after her abandonment at sea. I use these words, "at sea," emphatically; for I hold that there is a wide distinction between an abandonment at a distance from land in the open ocean, and the quitting the ship on the coast. Take the crew of a vessel abandoned coming to any port at a distance from home, or from the place where the ship was left, are they not at liberty to form a fresh contract, or are they to wait at a foreign port, and how long; and what is to become of them in the interval? But if a crew so circumstanced are at liberty to form a fresh engagement, is not the former necessarily at an end? What owner or master could legally, or would willingly, engage a seaman followed by a former contract? Can there be any possible motive, as the law now stands, to induce a mariner to abandon his vessel, sine spe revertendi, for that is the proposition? Clearly none, for he loses his wages; and there is no fear, therefore, that a seaman will hastily abandon his vessel. Then, if a mariner's contract be at an end, may he not be a salvor? He then becomes precisely in the situation which belongs to a salvor, according to Lord Stowell's description of him in the case of the *Neptune*. If it should be said that, allowing a seaman who had belonged to the ship to become a salvor, after abandonment, might lead to an improper and hasty abandonment, I think the answer is twofold: first, that the proposition I am considering is a bonâ fide abandonment, and, if it be otherwise right, in such case, a mere possibility is no argument against it; secondly, that the occurrence of salving [illegible] mariners who have abandoned her at sea so rare, and necessarily so

rare, that the danger of ——— by the hope of future salvage is all imaginary. I now turn to the authorities which bear on the question, for all of these I am indebted to the industry of counsel, for I have searched, but in vain, for cases other than those cited in the argument. This Court itself furnishes no direct authority; but from the American courts was cited the case of *Mason* v. *The Ship Blaireau*, 2 Crouch's American Rep. 240, which well deserves serious attention. That case appears from the report to have been very diligently argued, and the judgment of the first court was, so far as relates to the present point, affirmed on appeal. The facts of that case, so far as it is necessary to state them, were these:—The *Blaireau* was abandoned by her master and all the crew, except a seaman of the name of Toole, who was left on board, but under what circumstances does not clearly appear from the report. A Spanish vessel came to her assistance. Toole rendered very efficient aid, and he was held by both the Courts of America entitled to the character of salvor, and he was accordingly largely rewarded as such. I am aware that Lord Stowell repudiated the doctrine which had gained ground in the United States, viz. "that in the case of shipwreck the mariners exerting themselves to save part of the wreck were entitled to salvage;" Lord Stowell having held "that they were not, but to wages only." But the case of the *Blaireau* was not decided on those grounds. The claim for salvage was upheld expressly upon the principle that the master had discharged the mariner from his contract by the abandonment of the vessel. This case goes the whole length of the reasoning which I have already applied, and beyond it, for it decided that the abandonment was complete, and dissolved the contract with the mariner, although he remained on board the vessel; whether left behind with or without his will does not appear. I give no opinion, for it is unnecessary to do so, what would be the effect of mariners remaining on board against the orders of the master. It is sufficient at present to say that the effect of this case is to shew that the Court of America held abandonment by the master to be a dissolution of the contract. The authority of this case is strongly upheld by other very eminent judges in that country. The books have been cited at the bar, and to them I think it necessary to advert. Kent's Commentaries was one of them. In vol. 3, p. 198, it is stated, "that if a ship has been so abandoned as to discharge the mariner from his contract, if he subsequently contribute to the preservation of the vessel, he will be entitled to salvage." It is clear, then, that Chancellor Kent, a great authority, approved of the doctrine as laid down in the *Blaireau*, and that he entertained no doubt that a vessel might be so abandoned as to discharge the mariners from their contract; and he must at the same time have been aware that it was the doctrine of the American Courts, since, at p. 199, he cites the case of the *Two Catherines*, reported in 2 Mason, 319, in which it was laid down that "the character of seamen creates no incapacity to assume that of salvors, and though the contract be not dissolved by shipwreck, and it be the duty of seamen to remain and labour to preserve the ship and cargo, yet they may be entitled to recompense by way of salvage for their peculiar services." It matters not that the latter doctrine has not obtained in our courts, a clear distinction is taken between abandonment and shipwreck. The same doctrine is again set forth in *Hobart* v. *Drogan*, 10 Peters, 122. The facts of that case do not apply to the case before us, but some of the observations of Mr. Justice Story do, for he says, "That seamen, in the ordinary course of things, in the performance of their duties, are not allowed to become salvors, whatever may have been the perils or hardships or gallantry of their services in saving the ship and cargo; I say in the ordinary course of things, for extraordinary events may occur in which their connection with the ship may be dissolved de facto, or by operation of law, or they may exceed their [illegible] which cases they may be permitted to claim as salvors." "Such," he then says, "was the case of the *Blaireau* to which I have referred." To the extent, and to the extent only, that the connection of the mariner with the ship may be dissolved by circumstances beyond his control, such as abandonment for the preservation of life, I recognise this authority. Another case, that of *Bele* v. *Thompson*, 3 Bos. & Pull. 405, was cited, and much commented upon at the hearing. The substance of that case consisted in the question, whether the crews of British ships detained in Russia by reason of an embargo issued under the orders of the Russian government in the year 1800, were entitled to wages during the time the ships were so detained. In that case the seamen returned on board as soon as the Russian government released them and their ships, and they navigated them home. If the original contract was terminated by the Russian orders, of course the mariners could not be entitled by virtue of that contract to any wages after its termination. That it was so terminated, three out of four of the judges of the Court of C. P. decided; but these three were not unanimous in opinion, for one of them, Mr. Justice Rooke, was of opinion that the [illegible] to recover, but deferred his opinion in order that a judgment might be arrived at. Lord Alvanley alone declared himself in favour of the plaintiffs. I do not think this case throws much light upon the question under consideration. It was argued that an embargo does not dissolve the contract, and that clearly is so because it is but of a temporary character. It was argued that capture puts an end to the earning of wages, but the effect of a recapture was not distinctly argued. I cannot extract from this report any principle directly applicable to this case. The real question is, what is that vis major which puts an end to the contract? Lord Alvanley says, "That as long as the contract subsists, there can be no interruption; it is either entirely at an end or entirely subsists;" but he immediately follows this up by saying, "that capture puts an end to the contract, but not capture one day and recapture the next; but capture followed by a total loss does put an end to the contract." The effect of this latter dictum is, that capture does not put an end to the contract, but leaves it in abeyance, to be revived by recapture,—not easily to be reconciled with the former expressions. The true question is, whether there was a vis major of so permanent a character as to dissolve the contract, a permanent according to all human probability, for the law never can depend on mere possibilities. Assuming, then, the law to be, though I give no opinion upon it, that capture followed by a total loss puts an end to the contract, and that capture followed by recapture, the mariners remaining on board, does not either put an end to or revive the contract; I still think there is a strong distinction between capture and abandonment at sea; they are, it is true, both vis major, but the probability of recapture is not an unlikely event; the probability of recovering a ship abandoned at sea is so small as very seldom to occur, and can scarcely be in contemplation when the abandonment takes place. The present is the first instance of it to my knowledge. If capture alone puts an end to the contract, which appears to have been the leaning of Lord Stowell (*The Governor Raffles*, 2 Dods. 18), then à fortiori abandonment ex necessitate would do so. Upon the whole, I have come to the conclusion that, under the circumstances I have stated, an abandonment at sea does vacate the contract. The next inquiry is, whether the facts of this case bring it within the terms of the proposition stated. In the first instance I will look to the statement of the owners, which is, that the *Florence* was a vessel of 640 tons, manned with a crew of thirty-seven persons, and sailed from Liverpool on the 5th Dec. 1850, bound to the coast of Africa. The ship soon after leaving port encountered a series of tempestuous weather, whereby the rudder was ultimately carried away; that the ship became unmanageable, and that part of her cargo was thrown overboard; that in consequence of blue lights the steamer *Montrose* came down to the *Florence*, that she was taken in tow; that the hawser parted; that the lieutenant in charge of the mails refused to allow the steamer to continue to tow the vessel longer; that Pearson, the master, resolved then to abandon the ship, as there was no vessel in sight to render assistance in case of the return of stormy weather; that at two o'clock they all went on board the *Montrose*, Pearson being the last to quit; that they quitted so precipitately that the greater part of their clothes were left behind. The owners, after this statement, cannot aver that this was not an abandonment by order of the master, in apprehension, of danger to life. It was, too, a bonâ fide abandonment for that reason; and looking to the state of the ship, what she had suffered, the place she was in, above thirty miles from land, in the Bay of Biscay, and the season of the year, it is equally clear there was cause for that apprehension, and that the seamen were justified in obeying the orders of the master. I consider that the facts of the case do bring it within the terms of the proposition stated, and that it was an abandonment sine animo revertendi. If left to herself the wind must inevitably either have driven her out to sea or wrecked her upon the coast. The contract, then, with the mariners was, I think, at an end, not suspended, but terminated. Their right to wages was gone, and would have been if a year's wages had been due to them. I now proceed to state the claims of the two classes of salvors who have sued for a salvage remuneration. The first party are the owners, master, and crew of the *Rising Sun*, the second parties are Veal, originally the mate of the *Florence*, and two of the mariners who were with him. Holding that they may be entitled to salvage, I come to consider the services [illegible] performed, to what remuneration they are [illegible], and how far that salvage recompense, may be diminished, [illegible] wholly taken away by proved misconduct on their part. The vessel having been found by the smack, *Rising Sun*, she was taken in tow. At about 8 o'clock, on the morning of the 21st, the master, Wills, saw the *Madrid* steamer, bound for England; shortly after which, Veal, the mate of the *Florence*, came in a boat from the steamer, and asked him if he would stay by the ship, to which he consented. Sixteen or seventeen of the crew of the *Florence* also came on board from the *Madrid* steamer, and the vessel was ultimately conducted to Corunna, on the 30th of December. If this be a true statement, there can be no doubt that the *Rising Sun* assisted in the performance of a salvage service of great merit. The owners, however, have preferred a very serious charge against Wills—that of spoliation and robbery—which, if proved in the manner alleged, would extinguish all claim to any reward whatever. (The learned Judge then examined the evidence adduced as to this charge, and came to the conclusion that it was not proved.) With regard to Veal and the crew quitting the vessel, I do not doubt that, under all the circumstances, they were fully justified in so doing. I cannot perhaps form a very accurate opinion as to the degree of danger which the vessel was in, but so much is clear, that she had suffered greatly from tempestuous [illegible] ther, and that, in the judgment of the [illegible] was a case for abandonment. The next qu[illegible] the return of Veal and his companions on [illegible] ship. It appears, that by order of the lie[illegible] charge of the mails, the *Madrid*, upon falling with the *Florence*, was not allowed to take her [illegible] tow, and it is alleged by the owners that Pearson, the master, was ready to have returned on board, but that Veal and the crew refused to accompany him, and would only go without him as salvors. On the part of Veal, this is all denied; he alleges that Pearson would not go on board, and endeavoured also to discourage them. From the evidence of the captain of the *Madrid*, and the officers on board, I derive the conclusion, that Veal did not misconduct himself on this occasion, and that his courage in taking charge of the vessel, with less than half the original crew, was most praiseworthy. But a charge was brought against Veal and those who accompanied him of robbery, or connivance at robbery, and the improper waste and consumption of the ship's provisions—wines and preserved meats—part of the cargo. [After examining the evidence adduced in support of the charge, the learned judge said:] I am of opinion that the charge of robbery is not established; at the same time I think there is good reason to conclude that the expenditure of liquors and provisions was extravagant, though I am of opinion that great allowance ought to be made for persons who undertook the salvage of this ship under such difficult and trying circumstances. The only question, then, that remains, is the amount of salvage due to the parties. It was, no doubt, anciently the practice to award the moiety of the property found derelict to the salvors, but that practice has been departed from for a long space of time. The reason for a large reward in such cases was danger to the property in the highest degree, and no more. The value of the property salved is about 14,000*l*. I shall allot to the *Rising Sun* 1,200*l*. to Veal I shall decree 500*l*. and to each of the other two salvors 150*l*.

Erratum.—The name of Sir John Dodson was erroneously stated as that of the judge in this case, instead of Dr. Lushington. The title of it was also omitted; it is the case of *The Florence*.

HOUSE OF LORDS.

Reported by James Paterson, Esq Barrister-at-Law.

Monday, June 28.

Stoddart v. Grant and Others.

Probate—Several wills—Implied revocation—My "last" will—Same solicitor preparing several wills—Alterations and erasures.

An illiterate old lady left seven testamentary writings, each purporting to be "my will," and the third and fourth to be "my last will," and four were in her own handwriting. There were alterations, and words written on erasures, in the first four documents by testatrix, and blanks and misspelled words abounded. None of the documents revoked specially or generally any prior wills, though the first, fifth, and sixth were prepared by the same solicitor, and the sixth referred to the fifth, but to no other as an existing will. Several legatees had each legacies of different amounts under two or more of the instruments. No residuary legatee was named except by the first, though the sixth reserved power to do so, which power was never executed. There were ample funds to satisfy the legacies given by all the instruments:

Held, the whole seven instruments were to be admitted to probate as the will.

If a testator leave several documents, each purporting to be "my last will," this expression is mere matter of form, and does not imply revocation of preceding documents; and if the same solicitor has prepared several of the wills found at death, and in the last has not specially or

generally revoked any prior will, this circumstance rather goes to support the supposition that testator intended all the instruments to be valid.

This was an appeal from the Court of Session in Scotland. Mrs. Agnes Bell, widow, died in Edinburgh, March 23, 1846. On examining her repositories, seven testamentary writings were found, nearly all of which purported to be wills. The executors named in the last of these submitted the whole of the documents to the Court of Session as a Court of Probate, and cited the next of kin and others interested, when Miss Martha Stoddart (the appellant), who was a legatee under five of the documents, contended that the whole seven were valid testamentary writings, and ought to be held as together making up the will. These writings were of the following description:—The *first* (No. 1) was dated 15th Aug. 1828, and was prepared by Mr. Gibson, the solicitor of the testatrix. It recited a deed of agreement and separation executed in the English form by testatrix and her husband, to the effect that a moiety of 8,333*l.* 6s. 8d. of Three per Cents. was thereby directed to stand vested in trustees therein named, who were to pay the same to testatrix if she survived her husband, and if she died during his lifetime then to such persons as she should by will appoint. This power she thus proceeded to execute:—"And now seeing that I am desirous to settle the succession in the event of my death to the above-mentioned moiety of the aforesaid sum of Three per Cent. Consolidated Annuities, therefore to prevent all disputes after my decease, and for the favour which I bear to the several parties hereinafter mentioned, I do hereby dispose, assign, give, grant, and bequeath,—first, the sum of *five* hundred pounds to Martha Stoddart," &c. The word *five* was written on an erasure, and there were three other similar words on erasures in the instrument. This will concludes with appointing a residuary legatee, trustees, and an executor, after which, "and I reserve full power at any time of my life to alter, revoke, or add to these presents, as I may think proper." The *second* document (No. 2) was dated July, 1837, and was in testatrix's handwriting. It began, "I, Agnes Bell, &c. hereby make my will and testament; I hereby nominate and appoint trustees as follows." (Then follow the names of trustees.) Amongst other bequests is this:—"To Miss Marty Stoddert (appellant), and her brother, Richard Stoddart, residing in Constitution-street, Leith, I leave and bequeath the sum of 50*l.* yearly, or the longest liver of them." Several blanks occur in this instrument, and no residuary legatee is appointed, but the last sentence is as follows:—"And also whatever other legacy, or whatever else I may afterwards name, either on this, or on any other piece of paper, they trustees will have the goodness to order to be paid." The *third* instrument (No. 3), is also in testatrix's handwriting, dated January 2, 1840, and begins,—"I, Agnes Barclay, &c. widow of Dr. Bell, do hereby make my last will, and I do hereby leave and bequeath," &c. Then follow bequests to charities and individuals, some of whom were former legatees, thus:—"I bequeath to Miss Marthy Stodd (appellant) 20*l.* yearly, to be paid yearly." No residuary legatee or executor is appointed, nor is any reference made to former wills. The *fourth* (No. 4), also in testatrix's handwriting, begins,—"This is my will and testament, 1842; 3, George's-place, Edinburgh. I, Agnes Bell, &c. do hereby make my last will and testament, and I do hereby leave, bequeath all the furniture," &c. She merely bequeaths the furniture and wearing apparel to her servant absolutely, adding, "this only in the event of my death, and leave myself a power of altering this at any time." No other bequests are given. The *fifth* document (No. 5), was prepared by Mr. Gibson, the same solicitor who prepared No. 1, and is dated June 26, 1844, and begins,—"I, Mrs. Agnes Bell, &c. with a view to the settlement of my property hereinafter conveyed, in the event of my death, do hereby assign and dispone," &c. She then gives her house and furniture to her servant, as in No. 4, for life only, then to Martha Stoddart for life, whom failing, to another, "equally between them and their heirs in fee." None of her personal property is bequeathed by this instrument, nor any executor appointed; and at the end is the following:—"And I reserve my own life-rent of the whole premises, and full power to alter or revoke these presents, in whole or in part, at any time during my life, as I shall think proper, but in so far as not altered, I do hereby declare the same to be valid and effectual, though found undelivered in my repositories, or in the custody of any person to whom I may entrust the same at the time of my death, dispensing with the delivery hereof." The *sixth* document (No. 6), prepared by the same solicitor, who drew No. 1 and No. 5, is dated May 3, 1845, and begins,—"I, Mrs. Agnes Bell, &c. considering that I some time executed a settlement of my dwelling-house furniture, and other articles therein contained, and that I have now resolved to make a settlement of my personal estate in manner hereinafter written, therefore I do hereby leave and bequeath, first." Then follow legacies to charitable institutions, and persons who were legatees in former documents; amongst others this—"And I leave and bequeath to Miss Martha Stoddart, of Charlotte-street, Leith, during all the days of her lifetime, and after her death to her brother Richard Stoddart, Leith, during all the days of his lifetime, a free yearly annuity of 30*l.*" At the end of this document is this clause,—"And I reserve full power to myself, at any time in my life, to revoke or alter these presents in whole or in part, as I shall think proper, and also full power to me hereafter to name residuary legatees, and to appoint executors for carrying my will into execution." No other reference was made to her former wills, and neither residuary legatees nor executors were appointed. The *seventh* document (No. 7), has no date, but from internal evidence was admitted to be subsequent to No. 6. It is in testatrix's handwriting, and begins,—"I do hereby add this codicil to my will, and do hereby nominate and appoint the following executors." Then follow the names of respondent and others, as executors, with occasional blanks in the designations. No residuary legatee is appointed, but a legacy is given of 200*l.* to each executor.

With respect to the above instruments, the following facts appeared. The testatrix, at her death, left ample funds to satisfy the legacies in all the seven instruments, and her property had been gradually increasing as she made these successive instruments. The early instruments contained several blanks, and words written on erasures—the latter in testatrix's own handwriting. The third and fourth documents began as "My last will," the others as "My will," or in words equivalent. In several instances the same person was legatee in two or more of the documents, and the legacies to such were sometimes of the same amount, but generally of a different amount. The same solicitor prepared the first, fifth, and sixth instruments. The sixth referred to the fifth, but to no other as a co-existing instrument but neither the fifth nor the sixth revoked special or generally any of the prior instruments. The first instrument alone named a residuary legatee, but the sixth reserved power to name both executors and residuary legatees, and in the seventh such executors were named, but no residuary legatee was ever appointed. In the fourth instrument, testatrix gave her house and furniture absolutely, and in the fifth she gave the same house and furniture to the same person for life only. On weighing all these circumstances, the Court below came to the conclusion that the three last instruments alone ought to be admitted to probate. From this interlocutor Martha Stoddart now appealed.

Sir F. Kelly and *Anderson*, Q.C. for appellant.

Bethell, Q.C. and *Rolt*, Q.C. for respondents.

The law of Scotland was assumed to be the same as that of England on this subject. The points of the argument are fully brought out in the judgment, and the following English authorities were cited:—*Masterman* v. *Maberly*, 2 Hagg. 235; *Lee* v. *Pain*, 4 Hare, 216; *Greenough* v. *Martin*, 2 Add. 239 *Coot* v. *Boyd*, 2 Bro. C.C. 521; *Plenty* v. *West*, 1 Rob. Eccles. 266; *Henfrey* v. *Henfrey*, 4 Moo P.C. 29; 2 Curt. 468; *Hardwicke* v. *Douglas*, 7 Cl, & Fin. 794; *Thomas* v. *Evans*, 2 East, 489 *Methuen* v. *Methuen*, 2 Phillim. 416; *Ex parte Holt, re Jane Holt*, 6 Notes on Cases Eccles. 93; *Boys* v. *Williams*, 2 Russ. & M. 689; *In the goods of William Beatson*, 6 Notes on Cases, 13.

Cur. adv. vult.

Lord TRURO.—My Lords, the question in this case is, whether certain papers left by a lady of the name of Bell, should be held to form her last will and testament. It is a question of that nature which is exceedingly unpleasant to decide upon, and it is one upon which, from its nature and circumstances, very different opinions may be formed. From several papers left by the same person—an individual very illiterate, and in all probability not very nicely weighing the expressions which she adopted from time to time,—you have to collect what her will and intention was with regard to these several papers, whether it was her intention, that the one should supersede the other or others, or whether she intended that they should be all deemed to be her last will and testament, and that they should be executed, subject to alterations from time to time which she might express, leaving at the same time the matter in such a position as that it would be possible to execute these papers as her will, subject to such alterations as were made My lords, the general rule applicable to the case is perfectly clear. I am not aware that there is any exception to be found anywhere,—and the rule is this, that all questions relating to wills should be decided by looking to the whole contents of the documents, with a view to discover what is fairly to be inferred as the intention of the testator. I will just call your lordships' attention to various circumstances in this case, which are relied upon on each side. In the first place in support of the opinion that the will ought to be deemed to consist of the three last documents, reliance is placed upon the words used "the last will." Now several of those documents do profess to be the last will, as of course they were: but these words "last will," found in testamentary papers have for a very long time been the subject of comment. Such questions have more generally arisen, I should observe, with regard to real estate. The question of what constitutes a will in this country with regard to personalty is decided by the Ecclesiastical Courts; but the question, as to what constitutes a will with regard to real property, is decided by the Courts of Common Law, though the same principle applies to both. In *Thomas* v. *Evans*, 2 East, 489, which related to real property, Lord Ellenborough states the facts of the case, and he says,—"So circumstanced he makes another will, which he describes as his last will, on which stress is laid; and so indeed it was his last will with regard to his newly acquired property. But it is not enough to say, that by making this will in terms large enough to include all his property, he must therefore have meant to revoke the former will, unless it be shewn, that he has made a disposition of the same property inconsistent with it, especially since the case of *Harwood* v. *Goodright*, and of *Hutchins* v. *Basset*. It is said that he must have intended either to confirm or revoke the dispositions contained in the first will; but there is a third proposition,—he might not have contemplated to do either, but to make a more collateral disposition of other property, and that seems to have been the case." He then further remarks, "Here the devisor has concluded by declaring his intention to dispose of the rest of his real and personal estate by a codicil thereafter to be made." That seems equivalent to this lady's reservation (in No. 6) of the nomination of residuary legatees. "The plain sense of which is, that instead of having two distinct instruments, he meant to dispose of his personal property, the bequest of which had lapsed by the death of his mother, and also of his real property, which he had acquired subsequent to his first will, and by means of a codicil to connect the two instruments, and make it all one will." Lawrence, J. also says, "The circumstances relied on to shew that the subsequent instrument was a revocation of the former, are, first, that the testator calls it his last will; to which the true answer was given at the bar, that it is merely a word of form, and he meant no more by it than that it was the last of those instruments which he had executed." My lords, I do not apprehend that in reality those words ought to receive any weight whatever in deciding this question. The next ground which is laid down by the learned judges is, that the last of the papers, which the majority of the judges were of opinion should be deemed a testamentary paper, was prepared by a professional man. I own that it strikes me, that that argument rather tells the other way. Mr. Gibson appears to have been this lady's adviser for a considerable period, as he prepared the deed of 1828 (No. 1), as well as that of 1845 (No. 6). It is perfectly well known among professional men, that when called in to prepare a will, it is proper to ascertain whether there be any former testamentary paper; and if there be, what is the intention of the testator who is about to make a new will, whether he intends to revoke it, or to make this new will subsidiary and additional. And as this gentleman had prepared that deed (No. 1), in which there was a power of revocation expressly reserved, it does strike me that the circumstance is very much in favour of those papers, this document being prepared by a professional man, and not containing any clause of revocation on the part of this lady, whose disposition for making wills might to a degree have been known to her professional advisor; but whether it was so or not, it was very likely, that in the length of time that had elapsed, this lady might have made testamentary papers. I cannot help thinking, therefore, that if it had been intended to revoke such papers, the professional man would have inserted such a clause; and supposing him to possess, as no doubt he did, ordinary intelligence, I can hardly imagine he would have omitted inquiring whether there were any former testamentary papers, and more particularly as he had himself prepared one in 1828. I should have supposed, with a professional man making a will, who had prepared a former paper which was to operate as a testament, as the deed of 1828 (No. 1) was, that it was more natural that such a person would have introduced a clause of revocation, if the testator had intended it, and that he would have taken care clearly to understand whether there was any previous testamentary paper which she desired to revoke. That is one of the circumstances that is put forward; it is one of those from which different men may draw different conclusions of equal authority; but those are not circumstances which the law permits to revoke a will: it is not upon speculation of expressions used in the will, or circumstances which are just as much open to the one conclusion as the other, that the Courts act. The object is to ascertain the intention of the testator.

You find that she has left certain papers, which, from their import, are testamentary; having preserved them all, subject to another circumstance which I shall mention, primâ facie they are all to be taken as one will. Then, if you say a portion of them is not to be so taken, I think there should be something more than that upon which you may conjecture or may guess, for your guess and your conjecture may lead to the very opposite conclusion to that which a person of equal professional experience and equal common sense would draw. The next circumstance referred to is, that the will of 1845 (No. 6) refers to one paper only,—that one paper, your lordships will have observed, is the paper (No. 5) which disposes of the house in particular. That also had been prepared by Mr. Gibson, and he refers to that in very general terms. The paper says, "Having disposed of so and so by such a paper, I now propose to settle my personal estate." I own I cannot understand why, from the circumstance of that gentleman, when alluding to the disposition of a particular property, referring to a previous paper which had been prepared by himself, it should be supposed, from a reference to that paper and no reference to the others, that that was the only paper which was intended to be continued and confirmed by the subsequent documents—it strikes me that that is much too uncertain to form the ground of any such conclusion. It is further observed that the executors are named; but it is perfectly plain that there were yet important things to be done, that is to say, there was a disposition of the residue. Now, it is very true that she did a very important act in naming executors: she had done so before, and she had done it before in cases where it appears to me there was nothing whatever upon the face of the document to import an intention to revoke the previous documents, nor can I draw any inference from that circumstance. My lords, there is another circumstance relied on, which appears to me also rather to weigh against the conclusion which has been formed,—that is to say, that as to the earlier testamentary papers, some of them are altered by the lady—erasures are made, and new matter is written upon the erasures. My lords, that seems to me rather to imply that she altered it, as far as she intended that it should be altered; and the leaving the paper with those alterations rather imports an intention on her part that it should continue to operate as a testamentary paper, subject to the alterations, and that there was no intention to destroy it by those means; and further than that, when the paper is preserved in the house with others—and I believe that they were stowed in the same places of deposit, but at least they were stowed in places of deposit equally calculated to keep them secure,—I think that is a circumstance rather in favour of her intending them to operate than the other way. But that is another instance of the danger of drawing conclusions from slight circumstances, which are open to two constructions. I think that it would tend very much to diminish the power of testators over their property, if the rule were to be acted upon, that from any expressions which anybody can lay hold of, you may draw conclusions adverse to the continuance of the previous documents, and therefore hold that they might be revoked. I do not understand the law to be such: as I understand the law, if you can execute the whole of the papers as one testament, you are bound to do so. It is said that the dispositions are inconsistent. I can hardly call them inconsistent. It is very true that in one case she gives the house and furniture absolutely, and she afterwards cuts down that interest to a life interest. She gives the household furniture, except such as shall be marked; and that which is marked is to go to the person indicated by the mark. But has it ever been contended, that the mere circumstance of a subsequent testamentary paper, cutting down and diminishing the interest which had been given by the previous one, was to be held to be an entire revocation of the will. I am not aware of any authority whatever for that proposition, and I do not see, that in this case the subsequent bequests have any other effect than that of modifying the previous bequests. The next remark is, that legacies are repeated to the same persons. What is the inference from that? Why that happens constantly, viz. that the question arises, whether cumulative or substitutional legacies are intended to be given to the same persons by the previous and subsequent papers. But you do not hold that to be any evidence of an intention to revoke—it becomes a question with reference to the particular legacy, how you shall deal with it—whether you shall deal with it as revoked or not. But that this lady, whose property is said to have been growing from time to time, should give 30*l.* to an object of her bounty in one case, and 200*l.* to this person in another case, does not seem to me, the lady living and growing richer, inconsistent at all. My lords, I think I have adverted to all the circumstances which are relied on by the learned judges who held the former papers to be revoked. I think I have mentioned them all—not that the judges all adopted the same grounds—some think the erasure important—others think it not important—it will be found that there are differences of opinion, and different inferences drawn from some of the circumstances among the learned judges, who adopt the conclusion as to the revocation of the earlier testaments. Having stated what appears to me to have been the foundation of the opinion of the learned judges adverse to the continuance of the previous testaments, I will call your lordships' attention to what is relied upon by those who hold the contrary opinion. They rely upon the very alterations in the uncancelled papers, which formed the subject of the opposite inference by the other learned judges, and they also rely upon the papers being uncancelled—they also rely upon the continuance of the power which the lady refers to of revocation and alteration, because in several papers she says,—"I reserve to myself to alter them in all or in part,"—showing therefore the probability that an alteration might take place in her intention, without her intending absolutely to revoke the whole documents. That is to be found in three or four of the papers. I have remarked upon the last papers being prepared by a professional man, and that is another of the circumstances from which the judges draw opposite conclusions. One of the conclusions I draw from that is, that it rather tends to shew that revocation was not intended, when there is the omission of so necessary and so ordinary a provision, and one so likely to occur to a professional man, and I think the omission of that, where the document was drawn by a professional man, is much more favourable to the continuance of these former documents than if it had been drawn by the lady herself. And more than that, when I see that this lady is animated by the same benevolent spirit from the period from 1828 to 1845, and that she is constantly giving legacies to charitable institutions, I can discover no reason to warrant the conclusion that, because she gave legacies to new institutions, or increased her legacies to the old institutions, she meant to revoke the former bequest. I think, on the contrary, it marks the continuance of the same feeling, and, considering that her property was accumulating, it is but an exercise of the same benevolent disposition, and which leads to any conclusion rather than that she was disposed to do less for these institutions instead of more. I have explained to your lordships what I consider to be the general rule, viz. that all these documents, being found under circumstances which entitle them to consideration, are primâ facie to be regarded as one will. They may be altered, and they may be partially revoked, or they may be inconsistent, without the latter operating as an entire revocation of the former. The circumstance of a partial inconsistency, as it is called, that is to say, dispositions in two documents, both of which cannot be fulfilled, is held only to operate as a revocation pro tanto, and only to bear upon the particular legacy in which that inconsistency exists. And the general rule being that the onus is upon those who seek to impeach those documents, the question is, whether your lordships are satisfied with the reasons which are assigned by the very learned judges below. If those reasons satisfy your lordships, then they form a proper judicial ground from which to infer this intention to revoke the previous papers. I own they appear to me to be in themselves but slight, and they appear to me, being slight in themselves, to be outweighed by the circumstances which tend to the opposite conclusion. Therefore, my lords, I do not think it necessary to trouble your lordships by referring to the text-books for those principles, which are too well understood by the profession to render it at all necessary, and particularly as I do not find that any of them are in any respect impeached by what has fallen from the learned judges who have pronounced an opinion, which does not appear to be warranted by the principles which are admitted. I think that the principles are admitted, but that in this case there has been a misapplication of those principles to the particular case. Your lordships will have observed that the question as to what part of the will may be revoked, as to what legacies may be cumulative, or what may be substitutional, is a matter not now before your lordships. The interlocutor of the Court below is to the effect, that the testament is to be deemed to consist of only three documents to the exclusion of the previous four. Thus, therefore, if your lordships shall take the view which occurs to me as the correct view to be taken, namely, that there is nothing to be found upon the face of those latter papers to warrant the conclusion that the former papers were intended to be revoked, the case must go back to the Court of Session to consider those papers, and to give effect to different parts of them as by law they may: where there is an inconsistency it will operate as a partial revocation; where the inconsistency is only of such a nature as that the general intention can yet be executed, the general intention will prevail. I therefore fully submit to your lordships that this interlocutor should be revoked and the case remitted to the Court of Session.

Lord Brougham concurred.

Bethell asked that the costs be paid out of the estate, and it was ordered accordingly.

Interlocutor reversed.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. Keene, Esq. of Lincoln's-inn, Barrister-at-Law.

Friday, July 9.

Re The St. James's Club—*Ex parte* Greenway.

Winding-up Acts—Clubs—Contributory.

Clubs are not within the operation of the Winding-up Acts.

If any member of a club gives or concurs in the giving of an order to a tradesman for goods to be supplied on the behalf of the club, he is liable for its payment.

This was an appeal from an order of the Vice-Chancellor Knight Bruce.

In 1848 the club was formed, for the benefit and convenience of officers of the Militia, the Yeomanry, and the East-India Company's Service, and its affairs becoming embarrassed, a meeting of its members took place, when it was agreed that it should be dissolved, and its business suspended.

On the petition of the committee of management for the winding up of its affairs under the Act, the Vice-Chancellor made the order. (17 Law T. Rep. 219.) From this one of the members of the club appealed.

The 7th and 8th clauses of the 5th section of the 11 & 12 Vict. c. 45, provided that;—"If any company shall have been dissolved, or shall have ceased to carry on business, or shall be carrying on business only for the purpose of winding up its affairs, and the same shall not be completely wound up," "or if any other matter or thing shall be shewn, which, in the opinion of the Court, shall render it just and equitable, the company should be dissolved."

The 1st sec. of the 12 & 13 Vict. c. 108, declares that notwithstanding anything in the said Act contained importing a more limited application thereof, the same shall apply to all partnerships, associations, and companies, whereof the partners or associates are not less than seven in number, whether incorporated or unincorporated, and whether formed or subsisting before or after the passing of the said Act, or this Act, other than and except railway companies incorporated by Act of Parliament, to which companies such Act shall not apply."

Bacon and *Burdon* supported the appeal.

Malins and *Toulmin*, contrà.

The cases of *Mountcashel* v. *Robertson* (not reported); *Fleming* v. *Hector*, 2 M. & W. 172; *Richardson* v. *Hastings*, 7 Bea. 301, 323, 354; and 11 Bea. 17; and also the several Acts of Parliament which are referred to in the judgment were cited.

The Lord Chancellor.—The question involved in this case is of great importance, though of itself very simple. It is this—Are clubs, in the ordinary acceptance of that term, within the scope and operation of the Winding-up Acts? The judge in the Court below thought that they were. This must depend on the construction of certain Acts of Parliament, and in construing those Acts the nature and constitution of associations calling themselves clubs must not be overlooked. They are now very numerous, and nearly all of the same character, although, looking at the rules of the one now under consideration, they appear to be more than ordinarily stringent as to the character and conduct of the members, and are very definite as to the measures which should be proposed at the general meetings. In this club, however, as in all others, a man could not become a member without having been elected, nor after he had been elected unless he paid a large entrance fee and an annual subscription. Being in this manner admitted a member, what was his interest as an individual member, and what were his liabilities? No doubt so long as a person continues a member he has an interest in the general assets of the company; and if it were broken up while he remained a member he would maintain a suit for the administration of those assets; but he has no interest that is transferable; he cannot sell it; he cannot give, transfer, or bequeath it; and therefore it is not in the ordinary sense the interest of anything like, or approaching to, a partnership. If the club were dissolved he would be entitled to his share of the assets, and nothing more. As regards the liability of the members, nothing would be more mischievous than a decision of either this Court or of a Court of Law which would make clubs subject to the operation of the Winding-up Acts. Such a decision would have the effect of deterring persons from entering into or continuing members of them; and, considering the general utility of such associations, I am happy to say that the law does not, as has been erroneously supposed, render any of the members liable to the

creditors of the club except for what they may have individually ordered or agreed to become liable. The law at one time took an unreasonable view of the liability incurred in such cases, for it held that a member was answerable for expenses and supplies to the incurring or ordering of which he had been no party, and I consider that the order of the Court below strikes very forcibly at the root of such associations, and it, therefore, becomes important to see whether such a decision can be supported. That must depend on the construction of several Acts of Parliament. What is the true construction of the Act 7 & 8 Vict. c. 110? That Act is expressly confined to "trading and commercial companies," and its provisions apply only to companies established for the purposes of profit; and are only applicable to such companies. In this club, so far as the members were concerned, there was undoubtedly a benefit,—a personal enjoyment; but profit, in the ordinary sense of the word, there was none. With respect to the next Act, 11 & 12 Vict. c. 45, that in a sense might be considered to have enlarged the provisions of the former Act, but it must be remembered that that Act was passed to wind up companies that were unable to meet ther pecuniary engagements. Then comes the 12th and 13th Vict. c. 108, the construction of which had given rise to the only difficulty that this case presents. Now, this last statute was meant to confine itself to the objects of the former Act, and was passed for the same purpose, to amend that Act, but the language used in the 1st section is certainly more extensive. Under that section it was contended that a club, being an association, came within the description, and was therefore subject to its operation. I am of opinion that it does not. The Court is bound to give not a literal, but a natural and reasonable construction of the language of the Act. The Act must be construed, not as standing by itself, but it must be taken in connection with the other Acts, of which it formed a part, and I must deal with it as if the whole formed one body of legislation. These latter Acts did not relate to the formation, but to the dissolution of companies, and their various enactments simplify the manner in which the dissolution is to take place. Those companies which can be brought within the operation of the Winding-up Acts are defined—they are described as "companies, associations, and partnerships, whereof the capital or the profits is or are to be divided," &c. In this club no man could ever receive any dividend; and although it may be an association, yet that is no reason that it should be such an one as is pointed out in the last Act. I cannot hold that it is. That Act I must construe as only interpreting the former Acts; and it is so dovetailed and incorporated into them, that to give it a more extensive signification would be a very dangerous proceeding. Were I to hold that all associations of gentlemen or clubs were subject to the operation of the Winding-up Acts, I must go further, I must say that every cricket club and archery society, or even charitable societies, can be wound up. The term "association" must have a limited signification. It is not, that because a society may have an annual subscription and an entrance-fee, and commensurate benefits, that it is to be an association within the meaning of the Act. Such associations as those to which I have alluded have benefits which no member of a club ever could have. An association may mean a partnership, yet to make it a partnership it must be associated for the purposes of trading and for the making of profits. As Lord Bacon was once said to have expressed himself on the Act applying to uses, so shall I to this; I shall not state what associations are within the operations of the Act, but what are not; and looking at the character and objects of these clubs, the connection with which is purely voluntary, I cannot say that they are associations within its provisions. Many a man belongs to a club not intending ever to set his foot within the door of it; others pay their annual subscription and never interfere in their management. Members cease their connection with clubs by stopping their subscriptions, and on their leaving they can claim no benefit. They may be turned out, they cannot be compelled to pay their subscriptions; if they cease to pay they lose all their interest; there is no liability between the members, and, therefore, there is no partnership. It is impossible to say that the word "club" can come under any of the denominations specified in the Act. The judges are bound not unnecessarily to extend the meaning of those words. I have given the word its real meaning—its true and natural meaning. At the passing of those Acts clubs were well known; and had the Legislature meant that they should have been included, they would have been particularly mentioned. Adhering, therefore, to the natural construction of the Act, I am of opinion that the association therein named does not apply to a club. Although I have decided that individual members of those clubs are not liable to its debts and engagements, yet, if any member should give or should concur in giving an order to a tradesman he would become liable on his own contract. I am of opinion that the power which the committee had to raise money did not authorise them to borrow the 5,000*l.* in the manner in which they have done: they have exceeded their powers. They were to raise money by debentures: instead of that they borrowed, and gave their promissory notes for the amounts; and they, and not the general body of members are responsible for its payment. It is with great deference that I discharge the order for winding up the affairs of this club, inasmuch as I am differing from the very able judge who decided the case in the court below. I shall give no costs. *Appeal allowed.*

WALTER *v.* SELFE.

Private nuisance—Injunction restraining the burning of bricks—Waiver of issue at law on the hearing of a motion.

Prior to the year 1829 *W. erected a dwelling-house on land belonging to him, and laid out the land adjoining as a garden and pleasure-ground. S. the owner of the adjoining land, in* 1850, *converted part of his property into a brick-field, and began burning the bricks in a clamp, whic was erected within forty-eight yards of the windows of W.'s house:*

Held, affirming the decision of the Court below, that W. was entitled to an injunction to restrain S. from continuing to burn bricks.

Where parties, defendant and plaintiff, decline to try an action as to matters alleged in a bill, and request the decision of the Court upon a motion without any assistance from a jury or a Court of Law, from that decision they cannot appeal.

This was an appeal motion from an order made by the Vice-Chancellor Knight Bruce, restraining the defendant from burning or making bricks, as a nuisance; and which order commenced with a declaration that the defendant and plaintiff declined to try an action, and requested the decision of the Court upon the motion, without any assistance from a jury or a Court of Law.

The case is fully reported 17 Law T. Rep. 103.

Malins, Shebbeare, and *E. G. White,* appeared in support of the appeal motion, and contended that, although bound by the decision of the Court below to admit the nuisance, yet that the nuisance being such a one as the Court would not restrain by injunction, the order ought to be discharged. They cited *Duke of Grafton* v. *Hilliard,* mentioned by Lord Eldon in *The Attorney-General* v. *Cleaver,* 18 Ves. 219, 211; *Barwell* v. *Brooks,* 1 Law T. 75 & 454; *Elmhirst* v. *Spencer,* 2 Mac. & G. 45; *Soltau* v. *De Held,* 19 Law T. Rep. 162.

Rolt and *G. W. Collins* appeared in support of the order of the Vice-Chancellor, and referred the Court to *Rex* v. *White,* 1 Burr. 333; and *Stewart* v. *Forbes,* 1 Mac. & G. 137. They were not called upon for any argument.

The LORD CHANCELLOR confirmed the order of the Court below, observing that there was no question as to the jurisdiction of the Court to deal with matters similar to that now under discussion, if a case had been made out. As to the authority of *The Duke of Grafton* v. *Hilliard,* his lordship had a MS. note, from which he was induced to think that the ground upon which the ex parte injunction was dissolved rested on the fact, that although there *might* be a nuisance, yet that *no* nuisance was then proved to exist. His lordship also considered that, as the parties had taken the opinion of the Vice-Chancellor in the place of an issue at law, they were bound by his decision, and could not be heard as appealing from it. Such a declaration of the Court was tantamount to a verdict of a jury, and therefore in a case of established nuisance he could not interfere. His lordship could not do otherwise than consider this a nuisance, and it was not competent for him to enter into the question as to what nuisance it was. The parties had, in fact, agreed upon the injunction, and that injunction must be contnued. *Appeal dismissed, with costs.*

KEMP *v.* SOBER.

Injunction—Covenant in Lease.

A covenant contained the words, "that the lessee should not carry on any trade, business, or calling," on the premises in question:

Held, that the carrying on of a school for young ladies was a calling, within the terms of the restrictive covenant, and the Court (affirming the decision of the Vice-Chancellor) granted an injunction restraining the same from being carried on.

This was a motion to discharge an injunction granted by the Vice-Chancellor Lord Cranworth, restraining the defendant from carrying on the business of a school-mistress at Sussex-square, Brighton.

The facts of the case, the authorities cited, and the names of the several counsel who appeared, will be found, 17 Law T. Rep. 117.

The LORD CHANCELLOR affirmed the decision of the Court below, and said, that the covenant must receive the same construction in equity as at law; it was an express covenant to restrain such an occupation or calling as the carrying on of a ladies' school, and unless some special ground could be shewn, the injunction must go as of course. Since the covenant had been entered into, the property had not been dealt with in any manner which could induce the Court to waive the further performance of the covenant.

Monday, July 12.

KEKEWICH *v.* MARKER.

Practice.

A motion cannot be reheard before the Lord Chancellor without leave of the Court.

In this case an injunction had been refused by the Vice-Chancellor Lord Cranworth; but, on appeal, had been granted by the late Lord Chancellor. (3 Mac. & Gor. 311.)

Bethell (with him *Giffard*) moved to dissolve the injunction.

Rolt and *Fooks,* as a preliminary objection, contended that the rule requiring leave to be obtained before an appeal could be reheard, was, by the modern practice, applicable as well to the rehearing of motions as to causes.

Bethell, in arguing against the existence of any such practice, cited *Deerhurst* v. *Duke of St. Albans,* 2 R. & M. 702; and *Mousley* v. *Carr,* 3 M. & K. 205. A second rehearing had been repeatedly had on interlocutory applications, and the prohibition only extended to the rehearing of causes, as was proved by the observations of his lordship when counsel in the former case.

The LORD CHANCELLOR said that without doubt such was the practice when he was at the Bar, but as it was a point of great importance he had consulted with the registrar (who had obtained the opinion of three other of the registrars upon the practice), and from what he had been informed he must consider the practice, which was a modern one even as respected causes, to have become extended to motions: consistently with what he believed now to be the practice of the Court, he could not rehear this motion until leave having been obtained. The practice, his lordship considered, as settled, was a wholesome one, and he had always been at a loss for a reason for the distinction between the rehearing of motions and the rehearing of causes, as to leave. If there were any new circumstances which could be shewn why the case should be reheard he would hear them, and if they warranted his so doing he would give leave for a second rehearing at once.

It was ultimately arranged that the cause should be brought to a hearing without delay, and that in the meantime the motion should stand over.

Re PAYNE.

Practice—Commissioner of bankrupts, insolvency of—Substituted affidavit for payment of annuity granted by way of compensation.

A commissioner of bankrupts to whom compensation had been awarded, upon his insolvency refused to make the affidavit required by an order of the Lord Chancellor made in pursuance of the Act of Parliament, to enable his assignees to receive the annuity. The Lord Chancellor, on the petition of the assignees, ordered that the accountant-general should make the payment to the assignees upon their affidavit that they had made all proper inquiries and that they believed that the insolvent held no other office.

The insolvent was a commissioner of bankrupts for the county and district of Bristol at the time of the passing of the 5 & 6 Vict. c. 122; under that Act he was entitled to an annuity of 199*l.* To this it was decided his assignees were entitled (*Spooner* v. *Payne,* 18 Law T. Rep. 322), but the insolvent refusing to make the affidavit required by the Lord Chancellor's order, the assignees were unable to obtain its payment. On a petition by the assignees, the Lord Chancellor directed the annuity to be paid upon their substituted affidavit, with liberty to the accountant-general to apply.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

Saturday, July 10.

(Before the LORDS JUSTICES.)

WRIGHT *v.* CALLENDER.

Will—Construction—Annuity—Residue.

A testator directed his executors to invest a sufficient portion of his personal estate in the public funds to produce an income of 2*l. a week, to be paid by them to his son J. for life, and after his decease the sum so invested was to fall into residue of the testator's personal estate, and, after dividing freehold and leasehold property amongst all his other children, he directed that, as soon as the youngest should attain twenty-one, the executor should divide the residue among all his children except J. equally. And, in like manner, he*

directed, on the decease of J. that the sum to be invested to produce and pay the annuity of 2l. a week, should be divided unto and amongst all his other children who should be then living, or the issue of such of them as might be dead, share and share alike. The testator's residuary personal estate, when invested, was not sufficient to produce an income equal to the annuity given to J.:

Held (reversing the decision of the Court below), that the annuitant was entitled to have the deficiency raised from time to time, by the sale of the sum invested for the purpose of paying the annuity.

The testator, William Wright, after giving a pecuniary legacy, and directing his debts and funeral and testamentary expenses to be paid out of his personal estate, directed them to get in such personal estate, and to stand possessed thereof, upon trust to invest a sufficient portion thereof in the public funds of Great Britain, or upon other Government securities, to produce an income of 2l. a week, to be paid by his executors to his son James Wright, during the term of his natural life, to and for his own use and benefit, for his support and maintenance; the said annuity to be in bar and satisfaction of all claim, right, or title to the testator's real and personal estate, or any part thereof; and from and after the decease of his said son James, the said sum so invested to fall into and become part of the residue of the testator's said personal estate. The testator then, after a recital in his will that he was seised and possessed of certain freehold and leasehold estates particularly mentioned, gave the same, in certain specified shares, to his other children, Thomas, Isaac, Rebecca, and Hannah, absolutely, at the age of twenty-one respectively; and he adds, "And whereas, when and as soon as the youngest of my said children shall attain that age, upon trust that my said executors do and shall pay and divide my said residuary estate (all such parts of which as do not already consist of public stocks, funds, and securities, I direct may in the meantime be invested in the public funds or on Government securities), after deducting the several payments aforesaid, and all due allowances to my said executors, unto and amongst all and every my said children, except my said son, James Wright, share and share alike, to and for their own absolute use and benefit, and *in like manner* I direct, that, upon the decease of my said son James, the sum to be invested to produce and pay his annuity of 2l. a week, shall be divided unto and amongst all my other children who shall be then living, or the issue of such of them as may be dead, share and share alike." The testator died on the 20th July, 1841, and his executors proved the will, paid the debts and funeral and testamentary expenses, and the pecuniary legacy. They then invested the whole of the testator's residuary personal estate in the purchase of 2,200l. 17s. 6d. Three per Cent. Consolidated Bank Annuities; the dividends of the stock were regularly applied in payment of the annuity of 2l. a week to the testator's son James, until January, 1852, the executors from time to time making up the deficiency of such dividends by payment of the annuity out of the capital. The executors then refused to pay more in respect of the annuity than the dividends of the 2,200l. 17s. 6d. whereupon the testator's son James filed this claim, praying that a sufficient sum might be set apart out of the personal estate of the testator, and invested in the public funds, or upon Government securities pursuant to the terms of the will; or otherwise to have the annuity valued, and the sum at which the same should be valued paid to the annuitant out of the testator's personal estate.

The claim coming on to be heard before the Vice-Chancellor Sir R. T. Kindersley, he was of opinion that there was not a specific gift of the annuity charged upon the whole personal estate of the testator, since the fund upon which it was secured was given over, on the death of the annuitant, to a different class of persons to those entitled to the residue. His Honour, therefore held, that the testator's son James was only entitled to be paid the annual dividends of the fund arising from the investment of the testator's residuary personal estate.

From this decision the plaintiff now appealed.

Malins and *Drewry*, for the appellant, contended that the annuity was charged upon the whole personal estate, and that the appropriation of a fund for its payment could not affect his right to be paid the whole annuity. (*Gordon* v. *Bowden*, 6 Madd. 342.) That the testator's direction that the appropriated sum should, on the decease of the annuitant, become part of the residue of his personal estate, and his gift of it to his children other than the annuitant; and his subsequent gift of the appropriated sum, "in like manner," on the decease of the annuitant, to the children of the testator other than the annuitant and their issue, although held by the Vice-Chancellor to be a circumstance in favour of the respondent, did not in reality vary what would have been the rights of the parties had the appropriated fund been simply directed to fall into the residue, as no intention of the testator could be inferred from a difference in the destination of the appropriated fund and the residue, which in reality only arose from the awkward expressions the testator had inadvertently made use of. That the direction to set aside a fund for payment of the annuity was merely a means for the end of securing the annuity, and substantially the gift was the gift of an annuity. That the appellant according to the authorities ___ entitled either to have the annuity valued, and be paid the amount of the valuation (*Wroughton* v. *Colquhoun*, 1 De G. & S. 36, 357; *Carr* v. *Ingleby*, 1 De G. & S. 362; *Long* v. *Hughes*, 1 De G. & S. 364), or he was at any rate entitled to have the deficiency from time to time made up by the sale of part of the capital of the appropriated fund. (*May* v. *Bennett*, 1 Russ. 370; *Davies* v. *Wattier*, 1 Sim. & S. 463; *Ex parte Wilkinson, re The London, Brighton, and South Coast Railway Company*, 14 Jur. 301.) Moreover, the annuity was clearly intended as a certain provision for James, the testator's other children being provided for by the gift of his freehold and leasehold property, and also the residue, after satisfying the annuity.

Stuart and *Shebbeare*, for the executors, insisted upon the distinction relied upon by the Vice-Chancellor, and the different destination of the appropriated fund from the residue, in the last clause in which it was mentioned; that although in the first clause it was directed to fall into the residue, yet, in a subsequent clause, it was given to different persons, and where there were two inconsistent clauses in a will, the first was to be rejected. [Lord Justice Knight Bruce.—Whatever may be the order of the clauses of the testator's will, every part of the instrument becomes his will at the same instant, viz. that of the execution of the will by the testator. The rule of construction you rely upon is, that the general residue of the personal estate is given in one way, and the capital of the appropriated fund in another, notwithstanding the introductory words, "in like manner," occurring in the latter clause, and notwithstanding the direction in the prior clause that it shall become part of the residue.] That is so; James is, we submit, only entitled to the dividends of the appropriated sum, for his life and the other children, or their issue, take it upon his death. The testator could not have intended that the appropriated fund should go to purchase an annuity for James, or be applied in payment to him of a sum equal to the value of such annuity.

Drewry, in reply.

Lord Justice Lord Cranworth said he did not express a very confident opinion, and that in a will so obscurely worded it was not to be wondered at that different minds arrived at a different conclusion. He was, however, bound to confess that he did not concur in the view taken by the Vice-Chancellor. The view he took was this, the testator had by his will, in effect given to his son James an annuity of 104l. per annum, and had directed that such annuity should be secured by means of a fund out of which it might be paid. He left assets insufficient to raise a fund out of the dividends, for the purpose of paying the annuity in full; in fact, it would not be sufficient for the payment of more than 60l. or 70l. per annum. The question then arose, what was to be done under these circumstances? It was hardly controvertible that if there had been a mere gift of the annuity, and afterwards a simple gift of the residue, the annuitant would be entitled to be paid in full. The Vice-Chancellor, however, had proceeded upon this distinction, that the fund to be appropriated to secure the annuity, though directed by the will to fall into the residue of the testator's estate, was by a subsequent clause of the will in effect given to a different class of persons from those who were to have the residue. So far he went with the Vice-Chancellor in thinking that the same persons did not take the appropriated fund and the general residue, but that did not affect the question. The testator in substance said that an annuity of 104l. should be secured to his son James, and as a means of doing it, directed an investment in Consols; now that was nothing more than the law itself would have directed to be done. There was nothing in the terms of the gift over shewing that the testator intended the fund to be preserved in its integrity during the life of James. It is a gift over, in that event, of so much as shall then remain. There was, in reality, no distinction between this case and that of *May* v. *Bennett*, 1 Russ. 370. There, as in the case before the Court, the question arose between the annuitant and the residuary legatee. The testator, in that case, having directed his executors to lay out in what Government security they pleased, so much money as would produce an annual interest, and having given that annual interest to his wife during her life, in case she did not marry again, the executors invested in the Five per Cents. a sum which yielded dividends exactly equal to the specified income. Eighteen years afterwards the dividends were diminished by the conversion of the Five per Cents. into Four per Cents. and became, therefore, insufficient to meet the annuity. Lord ___ (Master of the Rolls) held that the setting apart a fund was only a means to the end, and that if that means failed, the intention was, that the nominal amount of the annuity should be made up out of the other assets. What Lord Gifford said was this:—"If there is any difficulty in making good the difference out of the general estate of the testator, the widow must have the deficiency raised from time to time by the sale of parts of the appropriated stock." Now, that was, in his opinion, equity, and the only equity which the annuitant in the principal case had. He could not agree that the law was as had been stated by the counsel for the appellant, viz. that where the question arose between the annuitant and those entitled to the residuary estate, the annuitant was entitled to have the annuity valued, and to be paid the amount of the valuation in respect of his annuity. In all the cases which had been cited in support of that view of the law, the question had arisen, not between the annuitant and the residuary legatee, but between the annuitant and pecuniary legatees. But as between an annuitant and pecuniary legatees, the Court held that there must be an abatement pari passu in case of deficiency of assets, and knew of no other way of dealing with the subject but by means of a valuation. The case was different where the claimant was entitled, as against the residue, to an annuity and something else, namely, the investment of a fund as a means to secure the payment of the annuity. Then, all that could be asked, was payment of the annuity, and an investment of the fund by way of security; and, in the event of the dividends of that fund being insufficient to meet the annual payments in respect of the annuity, then to have the deficiency made good from time to time, either by a sale of portions of the appropriated stock, or out of any other part of the residue which could be made available. It might happen, certainly, that by this means the whole appropriated fund would, in the end be exhausted, if the annuitant lived long enough. In that case, the annuitant would only be in the situation of any other person to whom a testator bequeaths a benefit without leaving assets to provide for it.

Lord Justice Knight Bruce said, that in electing between the two different constructions which had been put upon the language of the will in question, he arrived at the same conclusion with Lord Cranworth, differing from the Vice-Chancellor. The opinion which he had formed when he first read the will, and which had continued unchanged during the argument, was, that the plaintiff was entitled to have the will read as if he had been named in it simply and merely as a legatee of an annuity of 2l. per week for life. He certainly was not at present disposed to direct that the annuity should be valued, or to do more than allow the annuitant from time to time to break into the capital of the appropriated fund, for the purpose of making good any deficiency in the dividends to pay his annuity. If the parties could not agree upon that mode of raising the deficiency, the case might, as to that, be mentioned again to the Court.

The order ultimately made declared that the plaintiff was entitled to be paid his annuity in full, and to have the arrears then due, as well as any deficiency in the dividends of the appropriated fund to meet the future payments, raised by sale from time to time of part of the capital of such fund.

ROLLS COURT.

Reported by J. Macaulay, Esq. of the Inner Temple, Barrister-at-Law.

Feb. 19 *and* 20.

Long v. Long!
Long v. Watkinson.

Will, construction of—Gift to executors, whether beneficial or in trust.

A testator by his will directed his executors to pay over his residuary property to his sister F. and in case of F.'s death, "to the executors or executrixes whom F. by her will, might appoint." F. died before the testator, having by her will given the residue of her estate to W. and appointed L. her executrix. L. the executrix of F. filed her bill against W. the residuary legatee of F. claiming to be beneficially entitled to the residue under F.'s brother's will:

Held, that L. did not take beneficially, but only on the trusts of F.'s will.

The suit in this case was instituted to determine who were the parties entitled to the residuary estate of a testator under a bequest to the executors or executrixes of his sister, who died after the date of the will, but before the testator. William Long, by his will bearing date the 2nd of November, 1848, bequeathed to his sister, Mary Fowler, his sister-in-law, Mary Long, and to George Sandeman, all the property to which he should be entitled at his decease, and appointed them his executrixes and executor, and provided thus:—"My instructions to my executor and two executrixes are, that they do

pay out of the above my just debts and funeral expenses, the expenses of proving this my will, likewise my servants' wages, also a legacy of 20*l.* to my executor, and a legacy of 20*l.* to my executrix, Mrs. Mary Long; and that they then pay over all the residue and remainder of my estate and effects to my sister, Mrs. Mary Fowler, my other executrix; but in case of my said sister's death, my instructions are then to pay over all the residue and remainder of my estate and effects to the executors or executrixes which my said sister, Mrs. Mary Fowler, by her will may appoint." Mrs. Mary Fowler died on the 1st January, 1849, in the lifetime of the said testator, having by her will, bearing date the 28th December, 1846, bequeathed the residue of her property to Isabella Watkinson, and appointed the said Mary Long her sole executrix. William Long, the testator, died on the 25th of January, 1849, and on the 22nd of February following, George Sandeman having renounced probate, Mary Long alone proved his will, and on the 28th of February, 1849, she also proved the will of Mary Fowler, and became the sole executrix of both testator and testatrix. Mary Fowler having predeceased her brother, William Long, a question arose as to who were entitled under the residuary bequest in William Long's will, and to determine this, Mary Long, the executrix of both wills, filed her bill against Isabella Watkinson, the residuary legatee under the will of Mary Fowler, who claimed to be entitled as such residuary legatee to the residue given by the will of William Long to the executors or executrixes of his sister's will in case of her death, Mary Long herself claiming the same residue beneficially as executrix of Mary Fowler's will. A question also was raised as to the rights of Mary Fowler's next of kin. The cause having come on to be heard a decree was made referring it to the Master to ascertain who were the next of kin of the testatrix, Mary Fowler, living at her death, and at the death of the testator, William Long. The Master made his report, finding that at the death of the testatrix, William Long, the said testator, was her sole next of kin, and that at the death of William Long, certain other parties therein particularly mentioned were her sole next of kin. It being necessary to bring those parties who were Mary Fowler's next of kin at the death of William Long before the Court, a supplemental bill was filed for that purpose, and the cause now came on to be heard for further directions in the original and supplemental suits. The first question for the consideration of the Court was, whether the executrix of Mary Fowler took beneficially, and if not, and she took only as a trustee; then, secondly, whether in trust for the residuary legatee, or next of kin of Mary Fowler.

K. Parker and *Shebbeare*, for the plaintiff, Mary Long, contended that she was beneficially entitled, and took a distinction between the present case and that of *Palin* v. *Hills*, 1 Myl. & K. 170, on the ground that in *Palin* v. *Hills*, the bequest was to the "executors and administrators," here only to the "executors." They relied upon *Evans* v. *Charles*, 1 Anstr. 128, as in point, and cited *Bridge* v. *Abbot*, 3 Bro. C. C. 225; *Price* v. *Strange*, 6 Madd. 159; *Sanders* v. *Franks*, 2 Madd. 147; *Sibley* v. *Cooke*, 3 Atk. 572; *Collier* v. *Squire*, 3 Russ. 467; *Stocks* v. *Dodsley*, 1 Keen, 325; *Holloway* v. *Holloway*, 5 Ves. 399; *Nurse* v. *Oldmeadow*, 5 L. J. N. S. 300, Ch.; *Holloway* v. *Clarkson*, 2 Hare, 521; *Allen* v. *Thorp*, 7 Bea. 72; *Daniel* v. *Dudley*, 1 Phill. 1; *Long* v. *Blackall*, 3 Ves. 486; *Wallis* v. *Taylor*, 8 Sim. 241.

Lloyd and *Hardy*, for the residuary legatee, Isabella Watkinson, were proceeding to argue against the executrix as taking beneficially, but

The MASTER of the ROLLS said he was of opinion that she did not, and they need not trouble themselves on that point. His impression, subject to what might be said on behalf of the next of kin, was, that the personal representative of Mary Fowler took the property in question but as part of her assets, and subject to the dispositions thereof made by her will.

Lee and *Eddis*, for some of the next of kin, cited *Ripley* v. *Waterworth*, 7 Ves. 425; *Bulmer* v. *Jay*, 3 Myl. & K. 199; *Morris* v. *Howes*, 4 Hare, 599; *Cotton* v. *Cotton*, 2 Beav. 67; *Wallis* v. *Taylor*, 8 Sim. 241.

R. Palmer and *James*, for other next of kin, cited *Clapton* v. *Bulmer*, 10 Sim. 426; S. C. 5 Myl. & Cr. 108; *Wilkinson* v. *Garratt*, 2 Colly. 643.

The MASTER of the ROLLS.—I think it is clear what the decision ought to be, though there is some conflict in the authorities. There are two questions to be considered on the words of the will. The brother and sister were both old, and he made his will in 1848, and she hers in 1846. The bequest in his will was, in case of her death, to pay over all the residue of his estate and effects to the executors or executrixes of Mary Fowler. The sister died first, on the 1st day of the month of January, 1849, and he on the 25th of the same month; and thereupon a question arose as to who were entitled under the words of the testator's will. Mr. Kenyon Parker and Mr. Shebbeare have contended that the executrix of Mary Fowler's will is beneficially entitled to the property. I was of opinion that she was not, and stopped the argument as to that on the other side, considering that the executrix took only as a trustee and not beneficially. The decision in *Evans* v. *Charles*, 1 Anst. 128, is no doubt irreconcileable with this view of the case, and with the decisions since, and I think *Evans* v. *Charles* has, after being doubted for a considerable time, been overruled by several authorities, and is not now law. Before I go on I may here say I except all classes of cases where the parties to take are specified. The testator might have directed that his sister's executors should take beneficially, and they would do so if any intention to that effect were shewn, but there is no expression of intention here, and therefore all I can do is to act upon the words used. The question, then, is, on what trusts do the executors of his sister take under William Long's will? and it must be remembered I am construing the will of the testator, not the testatrix, and the testator gives property to the executrix of the testatrix, and the question is, how she takes, if not beneficially. I am of opinion she takes it in trust to administer according to the will of her own testatrix, and therefore you must specify the trusts on which the executrix holds, or if not, then it is on the trusts of the will constituting the executor. It the original testator did not express any trust, it would be an intestacy; but if he says his sister, or her executors, are to take, on what ground can you say it is a trust for the residuary legatee? Neither the residuary legatee nor the next of kin can take as personæ designatæ, but the trust is an office to be administered by the executor. I take the case to be the same now as if the sister had made a deed conveying property to A. and B. on trust, and the testator had given his property to A. and B. on the trusts of that deed. I think the will of the testator has said just this,—"The property goes to the executors of my sister, to be administered according to the trusts of the office." I am of opinion, therefore, that the residuary legatee takes the property, but she takes it as forming part of the property of the testatrix. The residuary legatee is not persona designata, but one of the cestui que trusts of the will of the testator, and the property does not pass by the will of the testatrix. But there is nothing to prevent me saying, I wish a legacy to go to the executor of another, to be administered according to the trusts of that other's will; that is, first, the creditors of the person, then the residuary legatee. It is said, I am concluded by authority, and that I cannot distinguish this case from *Palin* v. *Hills*, and undoubtedly that case is entitled to great weight, but I cannot reconcile it with *Daniel* v. *Dudley*, *Allen* v. *Thorpe*, *Holloway* v. *Clarkson*, and other cases of that class. If, therefore, I look at authorities, I am concluded by the Lord Chancellor's decision, the latter of which has been followed by later authorities, I must hold that the proper construction of the testator's will is, that he has directed his property to go to the trustees of his sister's will, to be administered as her estate, and I am of opinion that, on principle, I must make the same decision. The result is, that the fund is to go to the executrix, and if the debts and legacies are paid, the residuary legatee will be entitled. Costs of all parties must be paid out of the fund; those of the plaintiff as between solicitor and client.

Saturday, April 24.

LODGE v. PRICHARD.

Claim filed by specific legatee—Assent by executors—General administration suit—Decree for an account of assets not specifically bequeathed—Residuary legatee.

A residuary legatee, who was also a specific legatee, filed a bill as residuary legatee, against the executors, for administration of the testator's estate, and obtained a decree for an account of assets not specifically bequeathed. Pending this suit, the plaintiff filed a claim against the executors for payment of the specific bequest, to which they had assented, but of which they resisted payment, on the ground that they had paid the plaintiff various sums in respect of the residuary estate, and it would probably turn out, on the balance of accounts, which were being taken, that the plaintiff had received more than was due to him. On this latter ground, without going into the question of assent by the executors, the claim was dismissed, with costs.

This was a claim filed by a specific legatee to enforce payment of a specific legacy, to which the executors had assented. It appeared that the testator, Adam Lodge, had bequeathed to the claimant twenty-five shares in the Liverpool Marine Insurance Company, and had devised to him certain real estate, and appointed him residuary legatee. The testator died in April 1837, and in the same year the defendants, the executors of the will sold the shares for 252*l.* having assented to the specific bequest thereof, but the proceeds of the sale had never been paid to the plaintiff. Delays subsequently took place in winding up the affairs of the testator's estate, in consequence of its being subject to debts of a considerable amount, which were partly charged on the real estate. Ultimately, the plaintiff, in his character of residuary legatee, filed a bill against the executors, for the administration of the testator's estate, and obtained a decree for an account of the assets not specifically bequeathed. Pending the taking of the accounts, under this decree, the plaintiff filed a claim against the executors to enforce payment of the specific bequest, or of the proceeds of the sale thereof, on the ground that they had assented to the bequest. The executors resisted payment, on the ground that they had advanced various sums to the plaintiff, amounting to about 560*l.* on account of the rents of the real estate, and the residuary bequest, and that, on taking the accounts, the plaintiff would be found to have received more than he was entitled to.

The plaintiff appeared in support of his own case and cited *Smith* v. *Brooksbank*, 7 Sim. 18.

Follett and *Tillotson*, for the executors, contended that the claim ought to be dismissed, for it would turn out on the balance of accounts in the administration suit, that the plaintiff had received more than he could claim.

The MASTER of the ROLLS.—This gentleman being devisee and residuary legatee, has instituted a suit as to the residue in this court, and has obtained a decree for an account of assets not specifically bequeathed. Pending that account he files a claim in this branch of the court, claiming 250*l.* the produce of certain shares specifically bequeathed to him and sold by the executors. The executors say, "There are claims by us against the plaintiff in respect of transactions between us, in which we have advanced to him the sum of 560*l.* and upon the taking of the accounts it may turn out that a balance will be owing from the plaintiff to the executors, and, therefore, we may have to receive something." Now nothing can be clearer than that this Court never does partial justice, but always endeavours to do complete justice between the parties; and, therefore, does not treat the question of set-off in the same way as courts of law, but will take a much wider view of the case. There are accounts pending between the plaintiff and the executors under the decree in the administration suit, which the plaintiff has himself obtained, and if more has been paid him than he is entitled to, it may be set off against what is due under the specific legacy; and where there is a sum due to or from him there will be an account taken of it, and a balance will be paid either way. It is impossible, therefore, to allow him to come here to enforce a claim as to one particular part of a transaction, respecting which an account is now pending. And, therefore, without going into the question of the effect of the assent of the executors, I dismiss the claim, and with costs.

Ex parte LOWE, *re* BIRMINGHAM, WOLVERHAMPTON, AND STOUR VALLEY RAILWAY COMPANY.

Petition—Investment of purchase-money—Title—Terms of contract—Reference to the Master.

One of the terms of the contract for the purchase of land taken by a railway company was that the title previous to the year 1824 should be taken to be good. A petition being presented, praying a reference to the Master to ascertain whether a good title could be made since 1824, the Court refused to make the order as prayed, but directed an inquiry whether it was for the benefit of the parties interested that the contract should be entered into, and if so, then whether a good title could be made according to the contract.

This was a petition of the tenant for life of certain estates, of which a part had been taken by the Birmingham, Wolverhampton, and Stour Valley Railway Company, for the re-investment of the proceeds of the sale in other lands. It appeared that one of the terms of the contract for the sale to the company was that the title to the land should be considered as good previous to the year 1824. An affidavit of a solicitor in support of the petition was produced, stating that he well knew the property and the title thereto; that he had been concerned for the petitioner on the sale in 1824, and that the previous title had continually been investigated and always approved. The petition prayed that it might be referred to the Master to ascertain whether a good title was shewn since 1824.

Speed appeared in support of the petition.

The MASTER of the ROLLS refused to make the order without further and satisfactory evidence of the validity of the title previous to 1824—such evidence as would have been produced to the Master; as, for instance, the opinions of conveyancers, &c.; but he referred it to the Master to ascertain whether it was for the benefit of the parties interested that the contract should be entered into, and if he was of opinion that it was so, then that he should inquire whether a good title could be made according to the contract.

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

June 8 *and* 9.

WRIGHT *v.* WRIGHT.

Will—Construction—Conditional gift.

A testator gave the residue of his real and personal estate upon trust to convert the same into money, and out of the said money to apply such sums for the maintenance and education of his sons A. B. and C. D. during their minorities, and apprenticing them, as his trustees should think proper, and when his said sons attained their respective ages of twenty-one, to pay the residue of the moneys to A. B. and C. D. in equal parts, provided they should be at that time, in the opinion of his trustees, of competent understanding and sufficient discretion to manage and take due care thereof; and if either of his sons should die under twenty-one, the share of such son so dying should be paid to the survivor upon attaining twenty-one, provided he should then be of sufficient discretion, &c. A. B. and C. D. attained twenty-one, but were then lunatics. C. D. afterwards died, and it was

Held, that notwithstanding the proviso in the will, A. B. and C. D. took absolute interests.

William Wright, the testator in this cause, by his will, dated the 3rd of September, 1813, gave his real and personal estate to L. Wright, W. Wright, and J. Lambert, their heirs, executors, and administrators, upon trust for sale and conversion into money, and then, after directing the payment of certain legacies to his daughters, the testator proceeded as follows:—"And that they, my said trustees, or the survivors or survivor of them, or the executors or administrators of such survivor shall from and out of the said moneys pay and apply such sums of money for the maintenance and education of my said sons, Joseph Wright and Jonathan Wright, during their minorities, and for apprenticing them to any trade or business, and paying any fee or fees in respect thereof as they my said trustees shall think most proper and for their advantage, and when they my said sons shall have attained their respective ages of twenty-one years, then upon trust that they my said trustees, and the survivors and survivor of them, and the executors and administrators of such survivor shall pay all the then residue of the moneys which may have arisen from my said real and personal estates as aforesaid unto my said two sons, Joseph Wright and Jonathan Wright, in equal parts and proportions, share and share alike, as tenants in common for their own respective use and benefit, provided that they my said sons shall be at that time in the opinion of my said trustees, or the survivors or survivor of them, or the executors or administrators of such survivor, of competent understanding and sufficient discretion to manage and take due care thereof; and if it shall happen that either of my said sons shall die during his minority, then my will is, that the part and share of such son so dying shall be paid unto the survivor of them, my said sons, upon his attaining his said age of twenty-one years, provided he shall then be of sufficient discretion to manage and take proper care thereof. And my will is, and I hereby direct that my said trustees, and the survivors and survivor of them, and the executors and administrators of such survivor, shall, from time to time, as occasion shall require, during the minority of my said children, place out at interest upon some sufficient mortgage security, or securities, all the moneys which they may receive from and in respect of my said real and personal estates, except what may be then paid and applied in discharge of my debts, funeral and testamentary expenses, and in the maintenance and education of my said children during their minorities, or in the payment of any apprentice-fee or fees to be paid upon the apprenticing of my said sons to any trade or business as aforesaid." The testator appointed the said L. Wright, W. Wright, and J. Lambert, his executors, and died shortly after the date of his will. In 1819 Joseph Wright attained twenty-one, and in 1823 Jonathan Wright attained twenty-one, and afterwards died. The suit was instituted by Joseph Wright (who had been found a lunatic), by his committee, and the administrators of Jonathan Wright against L. Wright, the surviving trustee, and the representatives of the deceased trustees for the administration of the testator's estate. Joseph Wright and Jonathan Wright, the two sons of the testator, were both lunatics at the time they attained their majority; and L. Wright, the surviving trustee, stated in an affidavit filed by him, that, in his opinion, and, as he believed, in the opinion of his cotrustees, they were not, on their attaining their majority, of competent understanding and sufficient discretion to manage and take due care of the property. The question arising in the suit was as to the effect of the proviso contained in the testator's will.

Roll and *Prior* appeared for the plaintiffs.

Malins and *Amphlett* for the defendants.

Prior, in reply.

The cases of *Festing* v. *Allen*, 5 Hare, 573; and *Bland* v. *Williams*, 3 Myl. & K. 411, were referred to.

Thursday, June 9.—The VICE-CHANCELLOR said, the question in this case turned upon the construction of the will of the testator, William Wright. The question was, whether his sons Joseph and Jonathan, who had both attained the age of twenty-one years, took absolute interests under the residuary gift contained in the testator's will, or whether that gift was subject to the condition of the proviso that the testator's sons should be at that time, in the opinion of his trustees, or the survivors or survivor of them, or the executors or administrators of such survivor, of competent understanding and sufficient discretion to manage and take due care of the subject of the gift. It was quite plain that, but for that proviso in the will, the testator's two sons would take the subject of this gift absolutely, and that construction of the will which would find a conditional gift to them in this proviso would be a very absurd construction as regarded the intention of the testator, because it was to be observed he made a very anxious provision for these sons until they should attain twenty-one, which was to take effect not only out of the income, but out of the corpus of this property, and yet the Court was asked to say that the gift entirely failed, and there was an intestacy as to that share. The construction contended for, moreover, would make the failure of the gift depend on the capacity or incapacity of these parties at the time of their respectively attaining the age of twenty-one years, though they might afterwards recover. There was a gift over as between themselves, in case either of them should die under age,—the whole was given, on that event, to the survivor; but, on the construction contended for, if one of them attained twenty-one, and the gift failed by reason of his incapacity, there would be an intestacy as to that share. This was a residuary bequest framed under the notion that the testator was making a complete disposition of his property. If this was conditional, it must be so construed, but it appeared to his Honour that it was not conditional. The gift was not attached to the condition at all. It consisted of a direction to pay to the sons their shares, provided they were of competent understanding and sufficient discretion to manage the property, and to take due care of it. The condition was part of the direction to pay, and not attached to the gift. A direction to pay, subject to a proviso of this kind, did not make the gift conditional, but it remained absolute. It appeared, therefore, to his Honour, that the two sons took absolute interests.

Thursday, July 1.

ABBOTT *v.* SWORDER.

Vendor and purchaser—Costs of reference as to title.

Where in a suit for specific performance, which had been occasioned by the purchaser's conduct, a reference to the Master as to the title was directed, the purchaser was ordered to pay the costs of the reference, as well as the other costs of the suit, although the Master found that a good title was only shewn a few days before the date of his report.

This was a suit by the vendor for the specific performance of the following contract:—

"Memorandum of an agreement made the 10th October, 1848, between William Ward Abbott, of, &c. of the one part, and Thomas Sworder, the younger, of, &c. of the other part, whereby the said W. W. Abbott, for himself, his heirs, executors, administrators, and assigns, agrees to sell, and said Thos. Sworder, for himself, his heirs, executors, administrators, and assigns, agrees to purchase all that freehold messuage or tenement called or known by the name of Ceunen Tower, and also all that farm called Cefuyfodw containing by estimation, &c. together with all common rights, members, and appurtenances whatsoever to said messuage or tenement and farm belonging, or in anywise appertaining, upon the following terms (that is to say) the purchase-money for the estate is to be 5,000*l*. and is to be paid and satisfied unto the said W. W. Abbott in manner following (that is to say), &c. The said W. W. Abbott is to deliver unto said Thos. Sworder an abstract of his title to said estate, and a good title being shewn, he, said W. W. Abbott, hereby agrees to convey and assure [illegible] unto said T. Sworder, free from all incum[illegible]hatsoever, except the land-tax and the chief rent of [illegible] payable yearly to Earl Cawder, and said W. W. Abbott is to give immediate possession of said estate unto said Thos. Sworder, and is to pay for all the materials supplied and the labour and work done to said messuage or tenement and buildings up to the 14th instant."

The performance of the contract was resisted on the ground of the price being far beyond the value of the farm, but no question was raised as to the title.

The cause came on to be heard on the 28th of April, 1851, before the Vice-Chancellor Knight Bruce, when it was declared that the plaintiff was entitled to a specific performance of the agreement, and it was referred to the Master to inquire whether the plaintiff could make a good title to the estate, and if so, when such good title was first shewn. The Master by his report, dated the 29th of April, 1852, certified that an abstract of title was left in his office on the 3rd of November, 1851, and an additional abstract and certain affidavits on the 8th of December, 1851, and he found that the plaintiff could make a good title to the estate, and that such good title was first shewn on the 1st of April, 1852.

The cause now came on upon further directions.

Russell and *Hardy* for the plaintiff.

Malins and *Hislop Clarke*, for the defendant, contended, that as the plaintiff had not shewn a good title until the 1st of April, 1852, the costs of the reference as to title ought to be borne by him.

The following authorities were cited: *Long* v. *Collier*, 4 Russ. 269; *Townsend* v. *Champernowne*, 3 Y. &. C. Ex. 505; *Croome* v. *Lediard*, 2 Myl. & K. 293; *Scoones* v. *Morrell*, 1 Bea. 251; *Monro* v. *Taylor*, 8 Hare, 51; and 3 Sugden's Vendors and Purchasers, 10th ed. 143.

The VICE-CHANCELLOR (after disposing of the other parts of the case) said that the decree reserved the consideration of the costs of the suit until the Master had made his report. The investigation of the title seemed to have proceeded up to a certain point, and then the defendant insisted that the contract was not binding on him for a certain reason, and thereupon the further investigation of the title stopped, and the plaintiff filed his bill to enforce specific performance of the contract, and obtained a decree. His Honour entertained no doubt that a plaintiff getting a decree for specific performance was entitled to the general costs of the suit; and the only question was as to the costs of the reference as to title. The rule of the Court was very clear as to that when the parties had a dispute as to the title, and the question of specific performance turned on the title to the property. In such a case the Court, if it found that the plaintiff was in the wrong at the time when he filed the bill, was accustomed to consider that fact in disposing of the costs of the suit, and sometimes made a decree for specific performance only on the terms of his paying the costs, because he was in the wrong when the bill was filed. But this did not belong to that class of cases. Here the reason for refusing to complete was a question on the validity of the contract. According to the case of *Croome* v. *Lediard*, the general rule would entitle the plaintiff to the costs of the reference as well as the general costs of the suit. The plaintiff was under a condition to make out a good title, which he would have done at his own expense if there had been no suit instituted. He thought the defendant had brought upon himself the costs occasioned by having the title investigated in the Master's office. The only doubt his Honour had was occasioned by the direction in the decree, which seemed to be in some degree inconsistent with that view. By the decree it was referred to the Master to inquire when a good title was first shewn. In the case of *Long* v. *Collier*, the purchaser took his stand on a particular investigation, and there it stopped short: the Master found against the purchaser on the ground on which he took his stand. Something that the purchaser had not asked for until he was in the Master's office was not supplied until after the bill was filed. Here a preliminary objection was taken on the contract. If the Master's report shewed that the ground of title in that case on which the purchaser took his stand was unsubstantiated, it was not material to the question of costs, that the other matters were supplied in the Master's office. His Honour thought that he was not bound by the form of the decree in this case to depart from the general rule, that where the purchaser's conduct had led to the institution of the suit, he was not entitled to the costs before the Master. He thought that the purchaser must pay the costs of the suit.

June 26 *and July* 3.

Re REYNOLDS.

Practice—Receiver.

Receiver of the rents of real estates appointed on petition.

Phillips appeared in support of this petition, which, among other things, prayed the appointment, without suit, of real estates belonging to an infant. He referred to *Re Leeming*, 17 Law T. Rep. 231, and *Re Gascoigne*, 20 L. J. N. S. 550; 18 Law T. Rep. 3.

Saturday, July 3.—The VICE-CHANCELLOR said that he had looked into the cases which had been cited, and would make the order.

Saturday, July 3.

Re ———, an Infant.

Infant.

An allowance out of an infant's income to his father, who was in great need, refused.

This was a petition by an infant, seventeen years

of age, stating that he was absolutely entitled to property which produced about 220*l.* per annum; that it was proposed that he should be articled to a solicitor, named in the petition, who was willing to take him; and that he should, during his minority, live with an uncle who resided in the same town as the solicitor. The father of the infant, who was a clergyman of the church of England, holding no preferment, was not entitled to any property, and his only means of subsistence were the emoluments derived from teaching a village school, which amounted to 20*l.* a year. He resided at a distance from the town where it was proposed that the infant should be articled. It was proposed by the petition that the infant's uncle should be appointed to act in the nature of a guardian to him, and that an allowance of 90*l.* a year should be paid to him for the infant's benefit, and that the father consented to this arrangement, and did not wish to interfere with the infant in any way. Under the circumstances of the case, it was proposed that an allowance of 20*l.* a year should be paid to the father out of such part of the infant's income as was not required for his maintenance.

B. L. Chapman, for the petition, in support of that part of it which prayed that an allowance of 20*l.* a year should be paid to the father out of the income of the infant, referred to *Heysham* v. *Heysham*, 1 Cox, 179, and *Allen* v. *Coster*, 1 Bea. 202.

The VICE-CHANCELLOR said, that in the case of *Heysham* v. *Heysham* a benefit was given to the mother. The present case was different. A father was bound to maintain his children, and he thought he could not make an order giving him a direct benefit out of the income of the infant's property. In *Allen* v. *Coster* there was a kind of compromise. He must decline to make any order as to that part of the prayer of the petition which asked for an allowance to the father. An order might be made as to the other objects of the petition.

Ex parte THE VICAR AND PATRON OF CREECH ST. MICHAEL, SOMERSET, *re* THE BRISTOL AND EXETER RAILWAY COMPANY.

Railway company—Investment of purchase-money—Costs.

By a Railway Act provision was made for the re-investment of the purchase-money of vicarage lands upon the petition of the vicar and patron with the consent of the ordinary of the diocese. An order was made referring it to the Master to inquire as to a proposed investment in land. The Master having reported in favour of the title, a petition was presented by the vicar and patron to confirm the report, and for consequential directions

Held, that the bishop was entitled to his costs of [illegible]

By the 9th section of the Bristol and Exeter Railway Company's Act (6 Wm. 4), provision was made for the purchase by the company of the vicarage house and part of the glebe of the vicarage of Creech St. Michael, in the county of Somerset, and that the purchase-moneys might, on petition to the Court, "by the vicar and patron for the time being of the vicarage, and with the consent of the ordinary for the time being of the diocese," be laid out and disposed of in the purchase of other lands, &c.

The 44th section provided that it should be lawful for the Court to order all the costs, charges, and expenses of or which might be incurred in consequence of the purchase or taking or using of such lands by the said company under or by virtue of that Act; and also of the investment in Government Securities or in the reinvestment in land, together with the necessary costs of obtaining the proper orders for such purposes, to be paid by the company. For the lands belonging to the vicarage, and taken by the company 2,450*l.* were paid into court, and were afterwards invested in the purchase of a sum of Consols, the dividends whereof were ordered to be paid to the vicar. Investments having being made of the greater part of the amount of stock, it was referred to the Master to inquire as to the propriety of the purchase and as to the title of a piece of land on which it was proposed to invest 184*l.* 11s. 6d. Consols (the remainder of the stock) and a small sum of cash. The Master, by his report dated the 4th of May, 1852, approved of the purchase and the title, and the present petition was presented to confirm the Master's report, and for consequential directions.

Prendergast appeared for the petitioners.

Fooks appeared for the Bishop of Bath and Wells to consent and asked for costs.

Osborne, for the railway company, objected to pay these costs, as the appearance here was unnecessary.

The VICE-CHANCELLOR made the order, and allowed the Bishop his costs, to be paid by the company, as he had a right to be present at all the proceedings.

Common Law Courts.

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY and C. J. B. HERTSLET, Esqrs. Barristers-at-Law.

May 25 and June 26.

MASTERS *v.* JOHNSON.

Defendant about to leave the country—Arrest by warrant of bankruptcy — Commissioner under 14 & 15 Vict. c. 52—Issuing and serving writ of capias within seven days from the date of such warrant.

The defendant was arrested under a warrant issued by a bankruptcy commissioner upon an affidavit satisfying him that defendant was about to leave the country. A writ of summons was sued out, and also a capias, but not within seven days afterwards, as required by the 14 & 15 Vict. c. 52. The defendant having been discharged after the seven days, he was again taken on the writ of capias:

Held, that he was entitled to be discharged, and to have the deposit he had made returned to him.

Field moved that the deposit made upon the arrest of defendant be returned, and the defendant discharged. The defendant had been arrested pursuant to the warrant of a Commissioner in Bankruptcy, at Birmingham (upon an affidavit stating that the defendant was about to leave the country); under the 14 & 15 Vict. c. 52, entitled "An Act to facilitate the more speedy Arrest of absconding Debtors;" by the 2nd section of which it is provided, "that every creditor who shall cause such warrant to issue shall forthwith cause to be issued a writ of capias, and also in cases where no action shall be pending, shall, before the issuing of such writ of capias, cause a writ of summons to be issued out of some one of the Superior Courts of Law against such debtor or debtors, and that upon such capias all mandates and warrants shall issue according to the practice now in use, notwithstanding that the defendant shall have been arrested by virtue of any warrant or warrants granted by such commissioner or judge, and such debtor or debtors shall, if in custody, be served with such writ of capias within seven days from the date of such warrant, including the day of such date, and thereupon such debtor or debtors shall be considered and deemed to have been arrested by virtue of such writ of capias, and all proceedings shall be had upon such writ of capias as if the same had been issued prior to the issuing of such warrant, and the arrest made on such writ of capias, and according to the practice now observed in the said Superior Courts of Law." And by the 3rd section it is enacted, "that the warrant or warrants which shall be issued by virtue of this Act, shall be auxiliary only to the processes now in use, and shall be wholly void and of none effect whatsoever as a protection to the person on whose behalf such warrant shall have issued, unless such writ of capias shall be issued and served in manner aforesaid." And by the 6th section it is provided, "that if no writ of capias be issued and served within seven days from the date of the said warrant, including the day of such date, the person arrested under such warrant shall be entitled to be discharged from custody, or in case the deposit has been made with, or bail bond given to, the said messenger or high bailiff, then the said deposit shall be returned, and the said bail bond given up to be cancelled." The warrant was dated the 4th May, 1852. Defendant was taken and detained in custody until the 11th May, but as his time expired on the night of the 10th, application was made for his discharge on the morning of the 11th: he was not discharged until the evening of the 11th, the capias was tested on the 11th, and in the evening of that day, on his return home, he was arrested on the capias. First, it was contended he was wrongly arrested; second, he could not be arrested twice for the same thing. The detention on the 11th was wrong and illegal as against the sheriff and the plaintiff; he was entitled to be discharged under the 6th section by the sheriff, and under the 3rd section by the plaintiff; if the detention be illegal then no process of detainer would be available. He referred to Chitty's Prac.; *Burch* v. *Podger*, 1 N.R.; *Loveridge* v. *Plaistow*, 2 Hy. Black. 29; *Hooper* v. *Lane*, 10 Q.B., where all the cases are collected; and see also *Anon.* 1 Dowl. 157.

Phipson contrà, shewed cause in the first instance, and contended under the Act of Parliament the writ and the arrest were good: when defendant was taken on the 11th he was on his return home; it was a detainer under the Act, so that it was, in fact, an original arrest or a second arrest.

Cur. adv. vult.

Saturday, June 26.—ALDERSON, B. delivered judgment.—This was an application to restore to the defendant sums deposited in this case. It appeared on the affidavit that under the provisions of the 14 & 15 Vict. c. 52, s. 1, application had been made to the commissioner of bankruptcy in the county, founded on certain facts as to the defendant's intention of leaving the country, and a warrant in due form was issued for apprehending him and lodging him in gaol. The parties then proceeded, and as we must presume on the same facts, to sue out a writ of summons, and to apply for a capias to be issued from this Court, in order that the defendant might be treated as arrested under such capias, and all proceedings taken under the commissioner's warrant under such writ, as by the Act is required to be done within the space of seven days after the date of the commissioner's warrant. This was not done; then the gaoler, after detaining the defendant in custody for the seven days, and even longer (an excess which does not seem material to our judgment, although unquestionably utterly indefensible), discharged him from custody; he was afterwards apprehended under the capias and detained until he made deposit, for the return of which this application was made. We think the rule must be made absolute. This capias was applied for, not on independent grounds, but on the same grounds on which the commissioner's warrant was originally obtained, and is in truth a part of and a completion of the proceeding, and, inasmuch as it did not comply with the Act by being issued and served within the limited time, the seven days, we think the defendant could not legally be arrested and detained under it. The 6th section of the Act provides that all the proceedings of making deposit or giving bail under a writ of capias may take place under a commissioner's warrant, but subject to the proviso, that if the writ of capias applied for does not arrive and is not served within the limited seven days, the deposit shall be restored and the bail-bond cancelled. Now we think the Legislature could never mean that this should be served, yet that if the writ of capias come down a little too late, the deposit should be made again, or a fresh bail-bond again. We think, therefore, that this falls within the principle of law "nemo debet bis vexari pro una et eadem causa," and a capias thus applied for legalising the proceedings under the warrant, and on the same ground as those on which the warrant was itself void, falls with the warrant, unless it be granted and served within the seven days limited by the Act. We do not, however, say that no fresh capias could issue; on the contrary, if applied for on fresh grounds, and at any time afterwards, it would be valid, and the defendant may be lawfully detained under it, then it will not be a second arrest "pro una eadem causa." In the present case we are of opinion that the rule must, for this reason, be made absolute. The other grounds on which it was applied for seem to us to be untenable. *Rule absolute, but without costs.*

Saturday, June 5.

SWATMAN (Clerk to Commissioners) *v.* AMBLER.

Letting of Tolls—Local Act of Parliament directing how letting to take place, and number of commissioners to sign lease—Less number executing—Action for rent.

A certain number of commissioners, by virtue of a local Act of Parliament, had power to let and demise certain tolls, and to sue by their clerk. The tolls were properly let, and the demise purported to be made by and between five of the commissioners (the number required) and the lessee: the whole five commissioners did not sign the deed. The lessee entered and received the tolls. In an action of debt on the demise,

Held, that the commissioners could not recover.

Action on an indenture purporting to be made by and between five commissioners, under an Act of Parliament for letting tolls, and the defendant, for the recovery of the rent due in respect thereof.

Plea.—That the number of commissioners named in the indenture never executed the lease, and that the nature of the occupation was at the will of the commissioners only, and not under the demise. The question turned upon the validity of that plea on a special demurrer to the replication.

Malcolm argued for the defendant, and relied upon *Pitman* v. *Woodberry*, 3 Ex. 4, and the local Acts of Parliament as to the tolls, and *Doe d. Barlow* v. *Wiggins*, 4 Q.B. 376.

Jas. Wylde, contrà.—This case is distinguishable from *Pitman* v. *Woodberry*; that was for letting land, and to repair, &c.; this is for letting tolls,—it is a letting for one year, and the money is to be payable monthly; and although it is reserved under the denomination of rent, yet, in fact, it is not rent at all, as is usually understood by that term "rent;" in cases of rent, there is a right of distress, also a reversion (Sheppard's Touchstone, tit. "Exposition of Deed," c. 5, 80), and therefore it is a covenant to pay a specific sum of money, which distinguishes it from *Pitman* v. *Woodberry*, and sufficient may be collected to support an action of debt. (*Rose* v. *Poulton*, 2 B. & Adol. 840.) *Cur. adv. vult.*

Saturday, June 26.—MARTIN, B. delivered judgment. This was a demurrer to the replication to the plea to the first count of the declaration. The count was in debt on an indenture, dated the 27th of December, 1849, alleged to have been made between

five commissioners of an inland navigation, under the authority of several Acts of Parliament on the one part, and the defendant on the other part, whereby the commissioners, as the plaintiff alleged in the declaration, in consideration of the rent therein mentioned, demised the tolls of the said intended navigation to the defendant for one year, from the 1st of January, 1850, at a rent of 3,470*l.* payable monthly, together with some other payments, and the defendant's covenant with the commissioners, parties to the said indenture, and also with the whole body of commissioners of the navigation, as a separate covenant for due payment of the rent. The declaration then averred entry by virtue of the demise, occupying and receiving tolls during the entire year, and concluded in the usual way, alleging nonpayment of the rent. To this the defendant pleaded that the commissioners, the lessors named in the indenture, never executed the lease, and that the nature of the occupation was at the will of the commissioners only, and not under the demise. There was an immaterial replication to the plea, and demurrer to the replication. The only question argued before us was, whether the judgment of the Court, in *Pitman* v. *Woodberry*, in 3 Ex. 4, governs the present. It was argued, on the part of the plaintiff, that the principle of that case only applied to rent properly so called; that in the present case there was really no rent at all, but merely a sum in gross covenanted to be paid, and which was recoverable under a covenant, either by the body of commissioners at large, or by the five commissioners, parties to the indenture; and, inasmuch as the defendant actually enjoyed the tolls in precisely the same manner as if the lease had been executed, he was liable upon a covenant to pay the stipulated compensation, it being a gross sum; there is no doubt that this was not rent properly so called, this rent could only issue out of a corporeal hereditament, which tolls are not. We nevertheless think the principle of the judgment of *Pitman* v. *Woodberry* applies. That which the defendant stipulated for, and for which he was to pay the sum of money mentioned in the indenture, in the first count of the declaration, and in both designated as rent, was an estate in the tolls for the year, or a legal right to use an incorporeal hereditament for a year. The payment was to be made by him in consideration of his having such an estate or right as would, if the lessors had executed the indenture, have been an estate permanent, and continuing the right during the term of the demise. It is true that he had enjoyed the tolls during the whole term, but he had them under a different right altogether than that stipulated for by the indenture. In reality he occupied and enjoyed them under a licence, revocable at any moment; he, therefore, never had, nor did he enjoy, the interest for which he contracted to make the payment. We think the principle of *Pitman* v. *Woodberry* applies, as the true consideration for the payment stipulated in the indenture, viz. certain estates in the tolls for one year, never arose as a consideration, which has wholly failed, and the liability of the defendant could only, in our judgment, be enforced in a form of action totally different from that framed by a demise under the indenture, and the entry and enjoyment under it, which is the form of the claim set up in the first count, and which in reality never took place at all. The judgment will be for the defendant.

Judgment for defendant.

THOMPSON *v.* EASTWOOD.

Pleading—Replication de injuria.

The interest which excludes this replication must be an interest of the defendant in the land of the plaintiff, as to a common or rent out of the land, or a highway or passage over the land, and the authority which excludes must be an authority pleaded as coming from the plaintiff given to the defendant to do the act which is justified.

The case was argued by *Cleasby* and *Lush*. The facts and arguments sufficiently appear in the following

JUDGMENT.

Saturday, June 26.—ALDERSON, B.* delivered judgment.—This was a demurrer to a replication de injuria. The action was an action of trespass for entering the plaintiff's close, and pulling down stables. The defendant pleaded that he was possessed of a dwelling-house adjoining the plaintiff's close, and was entitled to have the light and air enter through a certain ancient window therein; that the stable wrongfully and unlawfully obstructed the ___ and darkened the window, wherefore he entered the plaintiff's close and pulled down the stable in order to remove the obstruction. To this ___ the plaintiff replied de injuria, to which the defendant demurred specially, setting forth the usual cause of demurrer to such a replication. We are of opinion the replication is good. The learned counsel on both sides applied to *Crogate's case*, 7th Rep. B, as laying down the rule,—namely, that such replication is proper when the plea consisted merely of excuse; and on no matter of interest or of authority or power mediately or immediately derived from the plaintiff. It was argued on behalf of the plaintiff that the defendant's enjoyment of the plaintiff's land was of the nature of a negative easement, and did claim an interest in the nature of a negative easement on the plaintiff's land, namely, to have no obstruction there to his window; and, secondly, he could only have the right to this light as entering the window by virtue of some authority from the plaintiff or those under whom the plaintiff claimed. But we think this plea claims no interest as set up, and no authority from the plaintiff or those under whom he claims, in the sense laid down in the rule which excludes this replication of de injuria. We think the interest which excludes this replication must be an interest of the defendant in the land of the plaintiff as to a common or rent out of the land, or a highway or passage over the land, and the authority which excludes must be an authority pleaded as coming from the plaintiff given to the defendant to do the act which is justified. The plea in the present case claims no interest in or profit to arise out of the plaintiff's land, but only claims the right on the part of the defendant to enjoy his own land in a given way, and without inconvenience or any nuisance erected on the plaintiff's land. Nor does it at all shew that the defendant's right to do the act complained of arose out of any authority given by the plaintiff or those under whom he claims, as is the case in a right of way; in which the going on the land to do the act complained of arises either directly in the exercise of the authority given to go on the plaintiff's land, or indirectly, where, there being an obstruction, it is removed in order to facilitate the exercise of the right of way given. Here the plea only shews a lawful excuse given by the law to the defendant for entering the plaintiff's land and pulling down the stable there because it was a nuisance and obstruction to the right he has to enjoy his own land without inconvenience. This is a plea, therefore, merely of excuse, and the plaintiff had a right, therefore, to reply de injuria as he has done. Our judgment, therefore, must be for the plaintiff.

PLATT, B.—The plea, in fact, admits a trespass, but excuses it on that ground. It comes completely within the rule. *Judgment for the plaintiff.*

Monday, June 8.

Doe dem. SARAH JOHNSON *v.* E. H. JOHNSON.

Will, construction of—Estate in fee, or an estate in tail—(Glover *v.* Monckton, 3 *Bing.* 13.)

This was a special case, stated for the opinion of this Court, upon the construction of a will. The question being, whether Samuel Johnson took under the devise an estate in fee or an estate in tail only. The plaintiff contended it was an estate tail only, and the defendant that it was an estate in fee.

Walters appeared for the lessor of the plaintiff, and referred to *Lord Scarborough* v. *Lumley*, 3 A. & E. 1; *Glover* v. *Monckton*, 3 Bing. 13; *Doe dem. Bloomfield* v. *Eyre*, 5 C. B. 713.

Fooks, contra, for defendant, referred to 2 Jarman on Wills, 428; *Roe* v. *Jefferys*, 7 T. R. 589; *Eastman* v. *Baker*, 1 Taunt. 174; *Doe dem. Smith* v. *Weller*, 1 B. & Ald.; *Doe* v. *Frost*, 3 B. & Ald. 546; *Ex parte Davies*, 2 Simons, n. S. 114. The devise was as follows:—"I give and devise unto my dear wife, E. Johnson, all and singular my freehold and copyhold estates, situate, &c. in the parish of Great Coggeshall aforesaid, and Fearing, in the said county of Essex. To hold unto my said wife Elizabeth, and her assigns, for and during the term of her natural life, she keeping the same in good and tenable repair; and from and after her decease, I do give and devise the same unto my nephew Samuel Johnson, who now resides with me, his heirs and assigns, for ever, provided always, and my will is, that in case my said nephew, Samuel Johnson, should depart this life before he should attain the age of twenty-one years, and if after he shall have attained twenty-one years, should die unmarried, or having been married, without lawful issue, then I do give and devise the same in manner following; that is to say, I do give and devise unto my brother, E. H. Johnson, and his heirs, all that my copyhold farm and estate called Roots Farm, situate in the parish of Fearing, in the said county of Essex, to hold to my said brother, E. H. Johnson, his heirs and assigns, for ever; and I do give and devise my said estate in Great Coggeshall aforesaid, [illegible] others T. Johnson, Joseph Johnson, [illegible] and James Johnson, and [illegible], to hold to them (naming them), their heirs and assigns, for ever, as tenants in common, and not as joint tenants."

The testator died in 1827, the wife and devisee, Samuel Johnson, survived the testator, and Samuel Johnson survived the widow.

Cur. adv. vult.

JUDGMENT.

Saturday, June 26.—MARTIN, B. delivered judgment.—This was an action of ejectment, to recover the possession of certain lands in the parish of Coggeshall, in the county of Essex, in which, by consent of the parties, and on order of the judge, a case was stated for the opinion of the Court. The question is, whether the lessor of the plaintiff, Susanna Mary Johnson, was entitled to the lands above mentioned by virtue of a devise in the will of her grandfather, one William Johnson. If her father, Samuel Johnson, took an estate in fee by virtue of the devise she is not entitled; but if he took an estate tail she is. William Johnson, the devisor, being seised in fee of the lands devised in substance as follows: "I give and devise unto my wife Elizabeth the lands, to hold the same as to her and her assigns for and during her natural life, and after her decease, I give and devise the same to my nephew, Samuel Johnson, his heirs and assigns, for ever; provided always, and my will is, that in case it should happen that my said nephew should depart this life before he should attain the age of twenty-one years, or dying unmarried without lawful issue, then I give and demise the same unto my brothers, Thomas, Joseph, Edward, and James, and their heirs for ever, as tenants in common." The nephew, Samuel Johnson, attained twenty-one, and conveyed away the land, assuming to be tenant in fee simple thereof. He died, leaving two children, a son and a daughter, the lessor of the plaintiff surviving him. The son died an infant in the lifetime of Elizabeth Johnson, the tenant for life, and on her death the daughter brought the present ejectment, insisting that, by the devise above set out, an estate tail was created in her father, Samuel Johnson, and this estate not being barred by conveyance executed by him, she was entitled to recover possession of the lands in question. The case was fully argued before us, and we are of opinion Samuel Johnson did not take an estate tail, but took an estate in fee simple, with an executory devise over, in the event of his dying under twenty-one, or after that age dying without issue living at the time of his death. The estate expressly devised to him was an estate in fee simple to him and his heirs for ever; then there came a proviso, first, if he should die under twenty-one; secondly, if he should die after twenty-one, or marriage; thirdly, if he should die, he having been married, without lawful issue. Now, the first two of these events directly point to the period of his death. We think it would be a very forced construction of the devise to hold the third event pointed not to his death without leaving issue then living, but failure of issue of his body at any period however remote, which is the construction contended for on behalf of the lessor of the plaintiff. The same words "if he die under twenty-one, &c. if he should die after twenty-one unmarried, or dying, married, without lawful issue;" we think it was a state of things existing at the time of Samuel's death, which was to determine whether the future estate of the uncle, Thomas Johnson, and Joseph Johnson should come into the enjoyment or not. Indeed, the estate which it was contended by the learned counsel for the lessor of the plaintiff was created by the will was of such a shifting character, namely an estate in fee to Samuel Johnson, with an executory demise to his uncle in the event of his dying under twenty-one, but on attaining twenty-one, an estate tail to himself, with the remainder over to his uncle, we think that very plain and express words would be necessary to create such an estate. If the case stood alone without authority, we should have been of opinion Samuel Johnson took an estate in fee-simple, with an executory devise over. The case of *Glover* v. *Monckton*, 3 Bing. 13, seems to us expressly in point. There was there a devise of the real and personal estate in the first instance for the benefit of the son and daughter of the testator until they attained twenty-one, or the daughter married, and then to raise 5,000*l.* for her, then to his son, his heirs, executors, administrators, and assigns for ever, according to the respective nature of the estate; but as to the real estate, in case his son should not live to attain twenty-one, and his daughter should be living at his decease, or in case his son should live to attain such age, and should afterwards die without lawful issue, then to his daughter for life, the Court of C.P. certified to the Master of the Rolls in their opinion the son took an estate in fee of the real estate, with the executory devise over in the event of his dying without issue living at his death. This case seems to us directly in point, and confirms our view as to the true construction of the devise in the present case. None of the ___ cited by the learned counsel for the lessor of the plaintiff appear to us at all at variance with the C.P. in *Glover* v. *Monckton*, and we therefore, in pursuance of the power given to us, direct the judgment of

Non pros. to be entered.

EXCHEQUER CHAMBER.

Reported by Frederick Bailey, Esq. Barrister-at-Law.

ERROR FROM THE EXCHEQUER.

(Before Coleridge, Cresswell, Wightman, Erle, Williams, Talfourd, and Crompton, JJ.)

Wednesday, May 12.

The Eastern Union Railway Company *v.* Hart and Another.

Mortgage by a railway company—Mortgagee's right to sue the company on covenant in mortgage to repay—Local Acts.

A Railway Act, 7 & 8 Vict. c. 85 (local), enacted (sec. 51) that if any interest due on any mortgage to the company should remain unpaid for thirty days after it had become due, and demand thereof had been made in writing, the mortgagee might sue for the interest in the Superior Courts, or require the appointment of a receiver. The 52nd section enacted, that if the principal money and interest were not paid within six months after it had become payable, and after demand in writing, the mortgagee might sue for the same in the Superior Courts. The 10 & 11 Vict. c. 174 (local, July 9, 1847), repealed the above Act; but by the 43rd section, re-enacted in substance the 52nd section of the repealed Act, so far as regarded the recovery of the interest due. The 10 & 11 Vict. c. 225 (local, July 22, 1847), under which the money hereinafter mentioned was borrowed, enacted, sec. 8, that the several provisions in certain recited Acts, amongst which was the repealed Act, 7 & 8 Vict. c. 85 (local), should apply to moneys "by this Act authorised to be borrowed." The Companies Clauses Consolidation Act, 8 & 9 Vict. c. 16, enacts, in sec. 50, that "the company may, if they think proper, fix a period for the repayment of the principal money so borrowed, with the interest thereon, and in such case the company shall cause such period to be inserted in the mortgage-deed or bond, and upon the expiration of such period the principal sum, together with arrears of interest thereon, shall, on demand, be paid to the party entitled to such mortgage or bond." The defendants, a railway company, having borrowed 1,000l. of the plaintiffs, executed to them a mortgage-deed in the form given in Schedule C, annexed to the Companies Clauses Act. The deed contained the following stipulation:—"The principal sum to be paid on the first day of January, 1851." An action having been brought by the plaintiffs to recover the principal sum lent:

Held, first, that the stipulation in the mortgage-deed that the principal sum was to be repaid on the 1st of January, 1851, imported a covenant by the defendants for the repayment of that sum on that day; that by virtue of that clause, and of the Companies Clauses Act, section 50, if that sum were not repaid on the day fixed, the plaintiffs had a right of action for the recovery thereof, and that such right was not taken away or affected by any other part of the Companies Clauses Act, or by the special Acts:

Held also, that where a corporation is created for certain purposes, with power to sue and to be sued, to borrow money for the completion of those purposes, and to secure the repayment of such money by an instrument which, on its face, imports a covenant for repayment, if money be so borrowed and so secured, an action may be maintained against the corporation on a breach of the covenant; and as all these circumstances concurred here, the company were bound by their covenant so as to give, in this case, a right of action thereon:

The money here was borrowed under the 10 & 11 Vict. c. 255 (local), under the same or the like provisions as contained in the 8 & 9 Vict. c. 94 (local), which authorises their borrowing pursuant to the 7 & 8 Vict. c. 85. The 37th section gives power to borrow and secure repayment by mortgage of the railway and future calls. The 49th section enables the company to fix the period for repayment of principal and interest, which was done, and the security was in all respects in the form prescribed by the Legislature; the 51st section provides for the recovery of the principal, interest, and costs at the respective times at which the same became due, and that if the interest shall remain unpaid for thirty days after it shall have become due, and demand thereof made in writing, the mortgagee or bond creditor may either sue in an action of debt, or require the appointment of a receiver; and the 52nd section enacts, as to principal, interest, and costs, that if the same be not paid within six months after the same have become payable, and after demand thereof in writing, the mortgagee or bond creditor may sue for the same: or if his debt amount to 5,000l. and if not, in conjunction with other creditors to 10,000l. may require the appointment of a receiver:

Held, that these enactments do not alone give any right of action as upon a condition not complied with; they only recognise the pre-existing right of action, and add thereto another specific remedy at the option of the borrower: these clauses provide only specifically for the case of default for thirty days or six months respectively after demand made in writing, and in either of these specified cases to enact that the company would be subject not only to an action, but at the option of the lender to have a receiver put upon them.

Debt.—The declaration stated that after the passing of four Acts of Parliament, to wit, "The Eastern Union Railway Act, 1844," "The Eastern Union Railway Amendment Act, 1845," "The Eastern Union, Hadleigh, and Colchester Railway Act, 1846," and an Act of 11 & 12 Vict. entitled "An Act to amalgamate the Eastern Union and Ipswich and Bury St. Edmunds Railway Companies;" and after the making of the deed of mortgage hereafter mentioned, it was proved to the satisfaction of the Commissioners of Railways, and certified by them, that one-half of the whole amount of the capital, exclusive of loans, by the several Acts of Parliament relating to the company, namely, the Eastern Union Railway Company mentioned and referred to in the first-mentioned Act of Parliament, authorised to be raised, and also half of the capital authorised to be raised by the Acts of Parliament relating to the Ipswich and Bury St. Edmunds Railway Company mentioned and referred to in the said Act fourthly above mentioned, had been actually paid up and expended for the purposes authorised by the several Acts of Parliament relating to the said two last-mentioned companies respectively; and that thereupon and by virtue of the Act of Parliament fourthly above mentioned, the defendants became incorporated by the said name of "The Eastern Union Railway Company." That after the passing of the said Acts of Parliament and of the Eastern Union and Harwich Railway and Pier Act 1847, and before the granting of the certificate, the Eastern Union Railway Company, in pursuance of the provisions of the said last-mentioned Act, and also of an order of a general meeting of the last-mentioned company, them empowering, by a certain deed of mortgage, in consideration of the 1,000l. by the said company then borrowed at interest from the plaintiffs, the company did assign to the plaintiffs the undertaking in the said last-mentioned Act mentioned, and all the tolls and sums of money arising by virtue of that Act, and all the estates, right, &c. of the company in the same, to hold unto the plaintiffs until the sum of 1,000l. with interest at 5l. per cent. should be satisfied; and by the said deed it was stipulated that the principal sum of 1,000l. should be repaid on the 1st of January, 1851, being the period fixed by the company for the payment thereof, which period elapsed after the certificate, before the demand hereafter mentioned, and before action, averment, that before the making of the said order of the said general meeting and the borrowing of the money, all the moneys by the Acts of Parliament, first, secondly, and thirdly above mentioned authorised to be raised by shares, had been subscribed for, and that half thereof had been paid up, and that the sum so borrowed of the plaintiffs did not, at the time of the borrowing, and at the date of the mortgage, together with other sums then borrowed, under the authority of the said Acts, exceed the sum of 66,666l. in addition to the sum which, by the said three last-mentioned Acts, the Eastern Union Railway Company was empowered to borrow, and that from the making of the said deed the plaintiffs have been and still are the holders of and entitled to the said deed of mortgage, and that the said principal sum of 1,000l. was not paid to the plaintiffs on the 1st of January, 1851, but that the said principal sum is still due. The declaration then stated a demand of payment of the 1,000l. and nonpayment by the defendants.

The plea craved oyer of the mortgage-deed, which was in these words:—"Eastern Union Railway Company debenture bond, 1,000l. Mortgage, No. 112. By virtue of an Act passed on the 22nd day of July, 1847, intituled 'The Eastern Union and Harwich Railway and Pier Act,' we, the Eastern Union Railway Company, in consideration of the sum of 1,000l. paid to us by J. G. Hart, of Stowmarket, in the county of Suffolk, esq. and Charles Robert Bree, of Stowmarket, in the county of Suffolk, surgeon, do assign unto the said J. G. Hart and Charles Robert Bree, their executors, administrators, and assigns, the said undertaking, and all the estate, right, title, and interest of the company in the same, to hold unto the said J. G. Hart and Charles Robert Bree, their executors, administrators, and assigns, until the said sum of 1,000l. together with interest for the same, at the rate of 5l. for every 100l. by the year, be satisfied; the principal sum to be paid on the 1st day of Jan. 1851. Given under our common seal," &c. The defendants then pleaded that they borrowed from various other persons divers sums of money, parcels of the 66,666l. and executed to them mortgages of the same tolls and sums of money as are mentioned in the deed-poll and in the form given in schedule C; that the 1,000l. mentioned in the declaration was another parcel of the 66,666l.; that the said sums are still unpaid, and that the sums applicable for the payment thereof are insufficient; that for securing to the said mortgagees their proportions it was necessary for a receiver to be appointed to divide the same rateably, or that some other course, not being an action at law, should be adopted, and that the present action was brought for the purpose of obliging the defendants to pay to the plaintiffs more than their just proportion of the mortgaged tolls and sums of money.(a)

Demurrer to the plea.—The plea was, however, given up, and the real question turned upon the sufficiency of the declaration. The case was argued below (see it reported 21 L.J. N.S. 97, Ex.; and 18 Law T. Rep. 290) in the Court of Ex.;

(a) The 7 & 8 Vict. c. 85, "An Act for making a Railway from Colchester to Ipswich." Sec. 51. "And in order to provide for the recovery of the arrears of interest and costs, or of the principal and interest and costs of any such mortgage or bond, at the respective times at which such interest, or such principal and interest and costs become due, be it enacted, that if such interest or any part thereof shall for thirty days after the same shall have become due, and demand thereof shall have been made in writing, remain unpaid, the mortgagee or bond creditor may either sue for the interest so in arrear by action of debt in any of the Superior Courts, or he may require the appointment of a receiver by an application to be made as hereinafter provided."

Sec. 52. "And with respect to such principal money, interest, and cost, be it enacted, that if such principal money and interest be not paid within six months after the same has become payable, and after demand thereof in writing, the mortgagee or bond creditor may sue for the same in any of the Superior Courts of Law or Equity; or if his debt amount to the sum of 5,000l. he may alone, or if his debt does not amount to the sum of 5,000l. he may in conjunction with other mortgagees, or bond creditors whose debts being so in arrear after demand as aforesaid, shall together with his amount to the sum of 10,000l. require the appointment of a receiver, by an application to be made as hereinafter provided."

The Companies Clauses Consolidation Act, 8 & 9 Vict. c. 16.—Sec. 42. "The respective mortgagees shall be entitled one with another to their respective proportions of the tolls, sums, and premises, comprised in such mortgages, and of the future calls, payable by the shareholders, if comprised therein, according to the respective sums in such mortgages mentioned, to be advanced by such mortgagees respectively, and to be repaid the sum so advanced, with interest, without any preference one above another, by reason of priority of the date of any such mortgage, or of the meeting at which the same was authorised."

Sec. 50. "The company may, if they think proper, fix a period for the repayment of the principal so borrowed, with the interest thereof; and in such case the company shall cause such period to be inserted in the mortgage deed or bond; and upon the expiration of such period, the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to such mortgage or bond, and if no other place of payment be inserted in such mortgage or bond, such principal and interest shall be payable at the principal office or place of business of the company."

Sec. 53. "Where by the special Act the mortgagees of the company shall be empowered to enforce the payment of the arrears of interest, or the arrears of principal and interest due on such mortgage by the appointment of a receiver, then, if within thirty days after the interest accruing upon any such mortgage has become payable, and after demand thereof in writing, the same be not paid, the mortgagee may, without prejudice to his right to sue

if within six months after the principal money owing upon any such mortgage has become payable, and after demand thereof in writing, the same be not paid, the mortgagee, without prejudice to his right to sue for such principal money, together with all arrears of interest, in any of the Superior Courts of Law or Equity, may, if his debt amount to the prescribed sum alone, or if his debt does not amount to the prescribed sum, he may, in conjunction with other mortgagees whose debts being so in arrear, after demand as aforesaid, shall, together with his amount to the prescribed sum, require the appointment of a receiver, by an application to be made as thereinafter provided."

The 11 & 12 Vict. c. 174. "An Act to Amalgamate the Eastern Union and Ipswich and Bury St. Edmunds Railway Companies" (9th July, 1847), sec. 43, "And in order to provide for the recovery of the arrears of interest and costs, or of the principal and interest and costs of any such mortgage or bond as may have been or may be granted by either of the dissolved companies, or by the new company, at the respective times at which such interest or such principal and interest and costs become due, be it enacted, that if such interest or part thereof shall, for thirty days after the same shall have become due, and demand thereof shall have been made in writing, remain unpaid, the mortgagee or bond creditor may either sue for the interest in arrear by action of debt in any of the Superior Courts, or he may require the appointment of a receiver, according to the provisions in that behalf contained in the said Companies Clauses Consolidation Act."

The 10 & 11 Vict. c. 225, "An Act to empower the Eastern Union Railway Company to make a Railway from the Eastern Union Railway at Manningtree to Harwich, with Branches thereout, and for other Purposes." Sec. 8 enacts, "That the several provisions of the said recited Acts, with regard to the borrowing of the moneys thereby authorised to be borrowed, and the conversion thereof into capital, and as to the creation of shares or stock in lieu of borrowing the same, and as to consolidating the old with the new shares of the company, shall equally apply to the moneys by this Act authorised to be borrowed, and the shares by this Act authorised to be created."

and that Court decided that the general ordinary right of the mortgagee to sue on such an instrument was not affected or taken away by the Companies Clauses Consolidation Act, or the special Acts referred to in the statute under which the mortgage was given, and therefore the plaintiff was entitled to maintain this action against the company. The company thereupon brought a writ of error.

Bramwell and *Willes* appeared for the company, the plaintiffs in error.—It will be recollected that these companies are statutory corporations only, with certain defined powers, beyond which they cannot go, nor can this company bind itself by any such covenant as this, unless enabled to do so by specific statutory provision, so as to give a right of action in the way the plaintiff seeks to enforce it. These Acts of Parliament are to authorise or command the company to make highways: they are permitted also to be carriers; but that is permissive only, and not compulsory. It certainly was never intended that one mortgagee should have advantage over another, and the Legislature never intended that any one creditor should have a preference over or against the other creditors of a railway company, and so by bringing an action, prevent the company from themselves carrying on their trade. If it had been designed that a mortgagee should have a right of action for the principal, the Legislature would have said so in express terms. A form of bond is given in the schedule, but the words of that instrument do not give a right of action. All the rights and remedies that a mortgagee of a railway company possesses are given by the Acts of Parliament, and there is no authority given by any of these Acts to sue as the plaintiffs here have; and not only are there no such enabling clauses in the statutes relating to this company, but these statutes point out distinctly what specific remedies are to and shall be adopted for the recovery of moneys advanced, and those alone, therefore, can be had recourse to. It is unreasonable that a mortgagee should, as against a public company, under the circumstances, have this right of action. The 7 & 8 Vict. c. 85 (secs. 51 and 52), gives power to get a receiver appointed upon default; and it is contended by the other side that this is additional to the right to sue, but the company insist this is not so, and that the Court below have given a very strained construction to those two sections. The true remedy is to go to a Court of Equity, where all can properly share alike. No action can be brought, therefore, as the remedy is by the appointment of a receiver by a Court of Equity under the clauses of the Act of Parliament. It may be that the right of action is taken away altogether for recovery of the principal. The Court below say that there is a right of action existing, unless it be expressly taken away; but the company contend there is no right of action subsisting, unless given. The instrument itself gives no right of action, and no right of action is given under any circumstances. (The following cases upon the subject were referred to as upon points somewhat similar:—*Pontet* v. *The Basingstoke Canal Company*, 3 Bing. N.C. 433; *Pardoe* v. *Price*, 13 M. & W. 267; and 16 M. & W. 451; *Doe dem. Wyatt* v. *The St. Helen's and Runcorn Gap Railway Company*, 2 Q. B. 364.) The language and enactments of the local Acts shew that the plaintiffs are not entitled to recover the principal money. The 7 & 8 Vict. c. 75 (1844), by secs. 51 and 52, gives a mortgagee and bondholder the right of recovering both interest and principal. The 8th section of the 10 & 11 Vict. c. 225 (July 22, 1847), incorporates the provisions of certain recited Acts, namely, the 7 & 8 Vict. c. 85, and two other Acts. But then at that time the 7 & 8 Vict. c. 85, had been repealed by the 10 & 11 Vict. c. 174 (9th of July, 1847). Now, the 53rd section of 10 & 11 Vict. c. 174, gives a power of recovering interest only, but not principal. It must, therefore, be considered that the power of suing for the principal money having been deliberately taken away, and a right of suing for the interest only having been substituted, the Legislature did not intend that any power of suing for the principal should belong to the mortgagees. Again, if the Court should be of opinion, that the plaintiffs have a right to recover the principal money, under the 53rd section of the Companies Clauses Act, the declaration is bad in not stating that the six months mentioned in that section have elapsed, and that there has been a demand in writing.

Mellish, for the defendants in error.—With respect to the objection that the declaration does not state that six months have elapsed, or that any demand in writing has been made, it is enough to say, that this objection being taken on general demurrer, the declaration is in that respect sufficient. It says, there was a demand, but not in writing; but how could a demand like this be made on a corporation except in writing? The plaintiffs have a right of action against the company for the recovery of the principal money lent. It will be necessary in the first instance, to look particularly to the form of the instrument upon which this action is brought, and it will be seen thereby that the 1st of January, 1851, is the day expressly fixed for the repayment of the money. It may be conceded that the company could only borrow under and in pursuance of the various Acts giving them the power to do so; yet at the same time, the deed when so made by them must have its natural and ordinary operation, otherwise the covenant contained therein under the seal of the company would act rather as a trap than otherwise upon a creditor; the dates of the several Acts of Parliament in reference to this company are material. [He then stated the dates of the several Acts of Parliament passed, as already given.] The company was dissolved after the mortgage by the Act, and another formed, and the amalgamating Act is cap. 174. The point in the present case will, in some degree, turn upon the construction to be placed upon the sections in the Companies Clauses Consolidation Act, the 8 & 9 Vict. c. 16, from sec. 38 to sec. 55 inclusive. Of these sections the 42nd, 50th, and 53rd are the most material; the 49th and 52nd sections of the main (local) Act are the sections which the defendants in error mostly rely on, they correspond with the 48th, 50th, and 53rd sections of the Companies Clauses Consolidation Act; the 53rd is the same in effect as the 52nd of the other local Act, it gives the right to recover without prejudice to any action to be brought. The 50th section empowers companies to fix a time for repayment of the money borrowed, at the expiration of which time the principal and interest are to be repaid on demand. The 53rd section empowers the mortgagees to enforce payment of the principal and interest due, by requiring the appointment of a receiver, without prejudice, however, to their right of suing at law for the interest. If a receiver is appointed under this Act, he would be bound to take the profits and tolls of the railway company. The 42nd and 44th sections of the Companies Clauses Consolidation Act do not give the mortgagees and bond creditors of a railway company a specific lien upon the goods and chattels of the company. (*Russell* v. *The East Anglian Railway Company*, 3 Mac. & G. 104; and 20 L. J. Ch. 257.) And it may be doubtful whether the Court of Chancery has jurisdiction to appoint a receiver and manager of a railway; it would certainly be a very dangerous proceeding, so far at least as the public are concerned, that different managers should be allowed to come in from time to time, and at a day's notice take the entire management of such undertakings into their own hands, to work the railway and trust these newly constituted managers with the lives of passengers. The form of bond given in the schedule of the local Act is the same as in the Companies Clauses Consolidation Act, and is nothing more than a common money bond, the promise being to pay on a particular day; surely they have a right of action then, if it be not expressly taken away; there is no other remedy except the appointment of a receiver, unless by action. *Pontet* v. *The Basingstoke Canal Company* is a different case altogether to this, because here in the instrument itself is an express day appointed for payment of the money; a railway company and a canal company are also different,—with the latter a receiver and manager may be conveniently appointed, but not so with a railway company. That case shews that lenders of money to canal companies have great difficulty in recovering the interest. Since, therefore, a mortgage passes no interest in the real or personal property of the company, and gives scarcely any interest in the profits of the concern, as there exists great difficulty in getting the tolls of a railway paid, the mortgagees ought to possess the power of bringing actions for the interest and principal. The 42nd section merely enacts, that the mortgagees are to be entitled, one with another, to their proportions of the tolls, &c. without any preference by reason of priority of the date of the mortgage; then, the 50th section enacts, that on the expiration of the time fixed for payment, the principal and interest shall on demand be paid to the mortgagee. The right of action given is not taken away in express terms, and these Acts of Parliament should be construed against the company.

Willes in reply. *Cur. adv. vult.*

Tuesday, June 1.—COLERIDGE, J. delivered judgment.—This case was argued during the last vacation. The question, in substance, is, whether on the declaration with the instrument declared on, imported into it on oyer, the action is maintainable against the Eastern Union Railway Company. We are of opinion in the affirmative, and consequently the judgment of the Court below must be affirmed. It was not denied by the counsel for the plaintiff in error that the instrument itself on its face, apart from all considerations of its validity, importing a covenant by the company for repayment of the money advanced upon a day therein named for the purpose, for that, apart from such consideration, the action would be maintainable. But it was contended, in the first place, unless enabled by specific statutory provisions, the company could not bind themselves by any such covenant as this instrument imports, so as to give a right of action; and, secondly, not only were there no such enabling clauses in the statutes relied on by the plaintiffs, but that these statutes give other specific remedies for the recovery of the money advanced, which, alone, can be had recourse to; and, thirdly, it was contended even if an action could be maintained at all, it could only be after demand in writing, of which there was no sufficient allegation in the declaration. Now we are clearly of opinion, where a corporation is created for certain purposes, with power to sue and be sued, and to borrow money for the completion of those purposes, and to secure the repayment of such money by an instrument which on its face imports a covenant for repayment, if money be so borrowed and so secured, an action upon promises may be maintained against the corporation on a breach of the covenant. This appears to us a necessary inference from the premises just stated; and as all these premises concur in the present case, without a more specific examination of the sections of the various statutes, this is enough to dispose of the first point made by the plaintiffs in error, a point undoubtedly not very earnestly insisted on by their counsel. The second point will require a more detailed examination of the several statutes referred to in the argument. By the mortgage it appears that the money in question was borrowed under the powers conferred by the 10 & 11 Vict. c. 255 (local). The money borrowed under that Act is by the seventh section borrowed under the same or the like provisions as are contained in the 8 & 9 Vict. c. 94 (local). This Act, in sec. 6, enables the company there named to borrow on mortgage or bond, and for securing the repayment of the mortgage-money, as authorised by the 7 & 8 Vict. c. 85. To this Act, therefore, we must look, and though by the 10 & 11 Vict. c. 174 (local), it is, for general purposes, repealed, yet, for the purposes of our present inquiry, it is in full force. The 37th section of this Act gives power to borrow and secure repayment by mortgage of the railway and future calls; the 49th section enables the company to fix the period for the repayment of the principal and interest, and in such case they are to cause a period to be inserted in the mortgage-deed, as they have done here, on the expiration of which period it is enacted that the principal and the arrears of interest shall be paid to the party entitled, to the mortgagees, it being undisputed that the money in question was borrowed under such circumstances in all respects as satisfied the conditions imposed by the Legislature, and that the instrument of security is in the form prescribed. It is clear if the statute had stopped here an action might have been maintainable, and this is very important in determining the constructions of the sections to which we are now coming, and on which has arisen whatever difficulty has been felt by any member of this court in the decision of this case. The plaintiffs in error contend that these, and these alone, give any right of action as upon a condition not complied with. The defendants in error maintain that they give no right of action,—they only recognise the pre-existing right, and add thereto another specific remedy at the option of the borrower. These sections, 51 and 52, which may be read as one, commence with this preamble,—"In order to provide for the recovery of the arrears of interest and costs, or of the principal, interest, and costs of any such mortgage or bond at the respective times at which such principal, interest, and costs, become due." And the 52nd section, as to principal and interest and costs, enacts, "that if the same be not paid within six months after the same have become payable, and after demand thereof in writing, the mortgage or bond creditor may sue for the same, or if his debt amount to 5,000*l.* and, if not, in conjunction with other creditors, to the amount of 10,000*l.* may require the appointment of a receiver. The 51st section had previously provided that if the interest shall remain unpaid for thirty days after it shall have become due, and demand thereof shall be made in writing, the mortgage or bond creditor may either sue in an action of debt or may require the appointment of a receiver. Now, as to both principal and interest, the 49th section, as we have just seen, provided it shall be paid at the expiration of the period on a day named in the instrument of security. If, therefore, we hold the expiration of six months in one case, and thirty days in the other, after such period, are conditions precedent to any right to recover by action, either we make the sections inconsistent, or we must suppose a mere right has been declared by the former section, that is a right to repayment on a day named for the purpose by the debtor, but no remedy to enforce it given until the thirty days or six months later, with a superadded condition of a demand in writing. This in itself would be unreasonable, and the more so because these terms certainly do not apply to the company, which is left at liberty to pay at a day named, at all events, a liberty which, considering how often such loans are made by way of investment, and how the value of money fluctuates in short periods of time, will, in many supposable cases, operate very inconveniently to the lender.

Moreover, if we give this construction to the 49th section, we must do the same to the 56th, which provides for cases where no time has been fixed in the mortgage-deed or bond for the repayment of the money, and enacts that the lender may, at the expiration of, or at any time after the expiration of twelve months' date, if the mortgage or bond demand payment of the principal, with all arrears of interest, on giving six months' previous notice for that purpose. It would be strange to hold that, where by six months' notice the money under this section had become payable at the end of twelve months, still that no action could be maintained till after six months' further default, and demand in writing. Yet this must be the consequence if we hold the right of action is given by the 51st and 52nd sections only. But this construction, which involves such difficulty, is not a necessary one; all the enacting words of both would receive a full and satisfactory meaning if we suppose them to provide only specifically for the case of default for thirty days or six months respectively after demand made in writing, and in either of these specified cases to enact that the company would be subject not only to an action, but at the option of the lender to have a receiver put upon them,—an arrangement which, whether advantageous or not to the lender, could not but be highly inconvenient to them. We agree with the Court below in thinking that this is the true construction of these sections; and it has the advantage of making them agree with the corresponding sections of the Companies Clauses Act, the 8 & 9 Vict. c. 16, ss. 50, 51, 52, and 53 of which provide for the repayment of the money borrowed at interest where a time has been fixed; and where no time has been fixed in the instrument, and the last of which expressly give a right to require the appointment of a receiver after thirty days' or six months' default, as the case may be, and after demand in writing, without prejudice to the right to sue. The conclusion to which we have been thus brought on this point makes it unnecessary to consider whether the demand in writing is sufficiently alleged, and we are therefore of opinion the decision of the Court of Ex. ought to be affirmed. *Judgment affirmed.*

Reported by A. BITTLESTON, Esq. of the Inner Temple, Barrister-at-Law.

Tuesday, June 1.

McGREGOR *v.* THE OFFICIAL MANAGER OF THE DOVOR AND DEAL RAILWAY COMPANY.

Railway company—Purposes of incorporation—Limited authority to contract—Illegal contract.

A railway company, incorporated by Act of Parliament, cannot apply the corporate property to any purposes not authorised by the Act; and a contract made by such a company to pay the costs of an application to Parliament for an Act to authorise the making of another railway projected by other parties, if that application should fail, and to take a lease of the line, if it should succeed, is illegal and void, unless the power to do so should be expressly conferred by the Act; and the contract is equally void, although in form it be a contract by the chairman that the company shall pay.

This was a writ of error brought by the defendant below upon a judgment of the Court of Q. B. and came before the Court upon a bill of exceptions; but the case was decided upon an objection taken in arrest of judgment to the sufficiency of the declaration; and the points raised by the bill of exceptions therefore became immaterial.

The declaration alleged that a certain company had been formed for the purpose of making a railway from Dovor to Deal, which required an Act of Parliament; that doubts were entertained by the managing committee whether it was expedient to apply to Parliament, and that certain negotiations were pending between the managing committee and the South-Eastern Railway Company, of which the defendant was chairman, as to certain propositions made by the one company to the other; and that in consideration that the managing committee would not abandon their object, but would proceed therewith, and apply to Parliament for an Act to authorise the making of the Deal and Dover Railway, and would hand over the scheme to the South-Eastern Railway Company in the event of an Act being obtained, the defendant promised the plaintiffs that in the event of an application to Parliament failing, the South-Eastern Railway Company would insure the company, of which the plaintiffs were the provisional managing committee, against any loss which might be caused to the said company by such rejection and failure, and would defray and pay all expenses that should be incurred by them in endeavouring to obtain the Act of Parliament. The declaration contained averments stating the application to Parliament, the rejection and failure of that application, the amount of the expenses incurred; and that the South-Eastern Railway Company had failed to make good the loss; which the plaintiffs therefore claimed of the defendant.

The case was argued on Monday, May 10, before Alderson, B., Maule, Cresswell, JJ., Platt, B., V Williams, and Talfourd, JJ.

Sir *F. Kelly*, Solicitor-General (*Watson* with him), for the plaintiff in error, the defendant below, contended that the South-Eastern Railway Company, having been incorporated for certain purposes expressed in their Act of Parliament, had no authority to apply the funds of the company to any other purposes; and that the contract declared upon was a contract that the company should do an illegal act, and was itself illegal and void. He relied upon *The East Anglian Railway Company* v. *The Eastern Counties Railway Company*, 21 L. J., C. P. 23, and cases there cited.

Channell, Serjt. contrà.—The case cited is distinguishable. There the plaintiffs were an incorporated company, having no existence except under the Act of Parliament; here the plaintiffs are a provisional committee of a projected company, and not tied down by the provisions of an Act of Parliament, and how can the Court know that the South-Eastern Railway Company, mentioned in the declaration, is the same company as is incorporated under that name by Act of Parliament. [MAULE, J.—The Court knows only of one company by that name; and we must intend that that is the company mentioned in the declaration.] Assuming that to be so, there is still this important distinction between the present case and the one cited; that this is not a contract by the company, but a contract by an individual that the company will do a certain act. Why may not a stranger undertake to pay certain costs in consideration of a particular course being taken, provided a certain company does not pay them? If it would be illegal for the company to pay them, it is not illegal for a stranger to do so. [MAULE J.—How could he plead performance of this agreement unless the company paid?] He might plead that he himself had paid. [MAULE, J.—No; that would not be performance of the contract; he must allege that the company has paid. CRESSWELL, J.—Can A. contract that B. shall sell a void term in an advowson? PLATT, B. — That B. should commit simony? V. WILLIAMS, J.—That would be malum in se.] This is a personal undertaking by Mr. M'Gregor, and therefore no violation of the law. If he makes the payment out of his own funds upon the default of the company, he might be said to make it on their behalf. [MAULE, J.—Wherever the company get the funds, it is contrary to public policy that persons incorporated for a specific purpose should exceed the authority conferred for that purpose only. PLATT, B.—If this is a contract by the defendant to pay, it is not illegal, but otherwise it is.] The contract may fairly be taken to mean that the defendant contracts on behalf of the individuals constituting the company, and not on behalf of the corporate body.

The COURT intimated that probably it would not be necessary to hear the Solicitor-General in reply. *Cur. adv. vult.*

JUDGMENT.

ALDERSON, B. now delivered the judgment of the Court.—We do not think it necessary to hear the Solicitor-General in reply to the arguments of my brother Channell in this case, nor to consider the question involved in the bill of exceptions at all. We are of opinion that the declaration does not state any sufficient cause of action, and that the judgment ought to be arrested for this defect, and this involves the reversal of the present judgment of the Court of Q. B. [His lordship then stated the substance of the declaration.] The Solicitor-General argued that this promise of the defendants was in truth a promise that the South-Eastern Railway Company should do an illegal thing, and that the promise was therefore void, and we are of that opinion. This is not like the promise of a party that an act impossible to be done shall be done by the defendant or by some third person, but it is a promise that an act shall be done contrary to the public law of the country, of which both parties are bound to take notice; the act is therefore illegal, and the promise that it should be done is a void promise. The question, we think, is determined by the decision of the Court of C. P. in *The East Anglian Railway Company v. The Eastern Counties Railway Company*. It is there laid down that a railway company, incorporated by Act of Parliament, is bound to employ all the funds of the company for the purposes directed and provided for by the Act, and for no other purpose whatever; and there the defendants having, inter alia, covenanted to pay the costs of soliciting Bills then pending in Parliament, it was held that the Act incorporating the defendants being a public Act, must be presumed to be known to the plaintiffs, and that they could not recover, inasmuch as the covenant entered into by the defendants was beyond the scope of their authority as a corporation, and was therefore illegal and void. The Court there say such a contract is illegal, because it is contrary to the Act of Parliament, which was passed to give them certain powers as a corporation for public purposes of advantage to the country at large, as well as for the private gain of the individual members of the corporation; and they add, that the actual assent of the whole body of shareholders would make no real difference in the matter. If this be so, both the plaintiffs and the defendant here must be taken, with full knowledge of the powers conferred on the South-Eastern Railway Company, to have made a contract by which the defendant is to bind the company to do an illegal act; not merely an act which they have not power to do, but an act contrary to public policy and the provisions of a public Act. This, we think, is a void contract, and one which, therefore, could not form the proper ground for a suit in a court of law. The declaration is therefore, we think, bad, and the judgment ought to have been arrested, and ought now to be arrested in this Court. We think therefore the judgment of the Q. B. must, for these reasons, be reversed, and the judgment must be arrested.

Judgment reversed.

Reported by JOHN THOMPSON, Esq. of the Inner Temple, Barrister-at-Law.

Monday, June 14.

ERROR FROM THE COURT OF QUEEN'S BENCH.

Before JERVIS, C.J.; PARKE, B.; ALDERSON, B.; CRESSWELL, J.; PLATT, B.; TALFOURD, J.; and MARTIN, B.)

SIDEBOTTOM *v.* BOSTOCK.

Deed—Construction—Power when determined.

Demise, with liberty to cut a goit out of a river, through, &c. at a convenient distance above, &c. in the most convenient direction through, &c. with liberty from time to time to view, repair, and amend the goit. Covenant, to arch over the goit, and then cover it with soil so as to make the same into arable or mowing land.

goit was accordingly completed and covered over, and continued so for a long time, but being then found too small, was re-opened and widened.

Held (affirming the decision of the Court of Q.B.), that the power being only to make a goit, and then from time to time to view and repair that goit, was determined by once making and completing a goit, and hence that the re-opening and widening of it constituted a trespass.

Trespass for breaking and entering plaintiff's close, cutting down the sides, and widening of a sluice, goit or watercourse there.

Plea.—The defendant set out an indenture of demise for 999 years inter alia of certain lands being intended for a milldam or reservoir for water, and also part of the watercourse or bed of the river Mersey, and also liberty inter alia to make a weir or dam in, through, or across the said river, and also to cut a goit or sluice out of the said river through the close in the declaration mentioned, at a proper and convenient distance above the said weir, in the most convenient line or direction through the said close: and also to make a fender of shuttle at the mouth of, and a by-wash or wastegate at or by the side of such goit or sluice, and to cut a drain from such by-wash or waste gate into the said river, with liberty from time to view, examine, carry, and lay down materials, and repair and amend the said weir or dam, and also the said goit or sluice, fender or shuttle, by-wash or waste-gate and drains, as often as occasion should require, making satisfaction for damage. The indenture contained a covenant to erect certain buildings on part of the land demised, and to arch or over over the said goit or sluice, with good stone or brick, and afterwards cover the same again with soil, so as to make the same into good arable or mowing land or ground and keep and continue the same so covered with soil. The plea then traced the title of the defendant to the said demised premises, with the appurtenances, and to the said liberties, privileges, and powers so therewith granted, for the residue of the said term.

Averment, that the defendant being so possessed of the said demised tenements, with the appurtenances and liberties, and a certain weir or dam having before then, during the said term, under and by virtue of the said indenture, and in due exercise of the said liberties, privileges, and powers been made, and at the said time, when, &c. continuing so made in, through, and across the said river, and a certain goit of sluice (being the same sluice, goit, or watercourse, in the declaration mentioned), having also before, then, and during the said term, under and by virtue of the said indenture, and in due exercise of the said liberties, privileges, and powers, been cut and made, but the said sluice, goit, or watercourse, not being at the said time, and when, &c. cut or made to a sufficient width, and the same being then completed, and cut and made to a small width, to wit, &c. and such width being a wholly insufficient width, so that without widening the said sluice, goit, or watercourse, the said defendant could not have or enjoy the use and benefit of the said demised tenements in so free and ample a manner as he otherwise might and could, and was entitled to have and enjoy, by virtue of the said indenture, he, the said defendant, for the

purpose of so widening and amending the said goit, as aforesaid, committed the trespasses in the declaration mentioned, doing no unnecessary damage.

Replication.—That before the expiration of two years from the commencement of the rent in the indenture reserved, and during the term and before the said time when, &c. the said lessees cut, made, and completed a certain goit out of the said river Mersey, the said goit being the same goit, sluice, or watercourse in the declaration and in the said plea mentioned, and then arched and covered over the said goit, and the same remained and continued so arched and covered over, and in that state and condition was used and enjoyed until the defendant, under colour of the said indenture, in pretended further exercise of the said liberties, broke and entered the said close, &c. in manner and form as in the declaration alleged.

Demurrer to the replication.

Friday, April 30.—The demurrer was argued in the Court of Q.B. by *Maynard* (*Collier* with him) for the defendant, and *J. A. Russell* for the plaintiff.

Cases cited.—*Thicknesse* v. *Lancaster Canal Company*, 4 M. & W. 472; *Dand* v. *Kingscote*, 6 M. & W. 174; *Bishop* v. *North*, 11 M. & W. 418; *Hodgson* v. *Field*, 7 East. 613; *Mildmay* v. *Standish*, Cro. Eliz. 34.

Lord CAMPBELL.—I am of opinion that the plaintiff is entitled to our judgment. The replication seems to me to be a sufficient answer to the plea. I think that the license here given is to make a goit, and it is to be made at once; and that when it has once been made and completed, there is no power to make any other goit. It is not like a case where there is a power to do things toties quoties, to make various roads; but it is to make a goit. Then the replication shews that that power had once been exercised, and once exercised it was exhausted. The plaintiff having complained, declaring in trespass quare clausum fregit, the defendant relies on the power to make the goit. Then the replication shews that that power had been exercised, and having been exercised, I am of opinion that it is gone. There was a power to repair and a power to amend, but not a power to make another goit. Now I think this must be taken to be another goit, and not the goit originally made, as set out. The replication expressly avers, "that they cut, made, and completed a certain goit out of the river Mersey, in the said indenture, in the said plea mentioned, and at such distance from and above the said weir, in the said indenture and in the said plea mentioned, and in such direction as in the said indenture mentioned, and required and through the said close," shewing a complete exercise of that power. Then if this power was not to be exercised toties quoties it is gone, and affords no justification. If Mr. Maynard could have made out that which he was almost bold enough to contend for (and I think very properly, for that seems to me to be the only chance he had of succeeding), if he could have made out that this power might have been exercised from time to time in any direction, so as to suit the purposes of the lessees and their assigns during the whole 999 years, then it might be just as well with regard to the width as to the direction; but the power is "to cut a sluice or goit out of the said river at a proper and convenient distance from and above the said weir, in the most convenient line or direction through the close called the Em Meadow." If he could shew that, a goit having been cut and enjoyed for a number of years, it was found to be inconvenient, and that another goit might be cut in a direction more convenient, then he would have succeeded. It seems to me this is not the license and liberty which is reserved, but if it is to make a goit, and when that goit is once made and completed, the power is exercised, and cannot be exercised in making another goit, either of a greater width or in a different direction, of course the plea is completely answered. As to the cases referred to, I do not think they are in point. The first he referred to of the canal was quite clear. The canal had never been made, and had not been completed; it was only a part of the canal that was made; and in the other case there was a power of making roads toties quoties, and it was not one power, but it was a power which might be exercised from time to time during the whole occupancy. For these reasons I am of opinion that the replication is good, and that we are bound to give judgment for the plaintiff.

WIGHTMAN, J.—Considering the power which is given by the indenture in this case and the mode in which that power has been exercised by the defendant, it appears to me the plaintiff is entitled to our judgment. Now what is the power? The power is to cut a goit or sluice out of the river at a proper and convenient distance in the most convenient line or direction through a close called the "Em Meadow." That is a power to cut the goit in a most convenient line, and then there is full and free liberty and privilege and power from time to time and at all times during the term, to view, examine, and carry and lay down materials, and repair and amend the said weir or dam, and also the said goit and sluice when so made as aforesaid, and any of them, when and as often as need or occasion should be and require, making satisfaction for any damage occasioned thereby. Now, taking these terms as I have read them, it appears to me clearly to contemplate the making of one goit, and making [illegible] once for all, and not merely experimentally making a goit which might possibly be considered not completed, but making a goit which, when completed, may be repaired and amended, making compensation, but with no power to make such an alteration as that which is contended for by Mr. Maynard. Now, what has been done in the present case? Taking the plea as it stands, it appears there was a goit completed, and taking the terms of the replication, it was a goit which was completed within two years from the commencement of the rent, which, by the indenture, was to commence in 1801; and the goit which is said to have been made by the replication within two years, is said in express terms to be the same goit, sluice, and watercourse in the declaration and in the plea in that behalf mentioned, and expressly averred to be the same. Now, according to the terms of the plea, that goit was cut, made, and completed, therefore the power given seems to have been completely exercised and fulfilled, unless there are other terms in the deed which make up alteration in that. It seems to me, that the power is exhausted if once the goit is completed, with the exception only of the power to repair and amend, and therefore the plaintiff is entitled to our judgment, the facts appearing in the replication containing a sufficient answer to the case set up.

ERLE, J.—I think the power of making the goit in the plaintiff's land was to be exercised once for all, that the power to repair and amend from time to time was that which might be repeated as necessity might require, and amending would not at all extend to constructing a new goit of different dimensions. It appears to me that the provision that the power granted should be exercised for two years, without compensation, and, after that time, on making compensation from time to time, indicated the intention that might have been within the mind of the grantor; that the grantee, at the expense of making the works anew, should be allowed to make them without paying him compensation; but after once made and completed, if damage is done to his land by their coming in to repair and amend, that such damage should be from time to time compensated for.

CROMPTON, J.—I am of the same opinion.

Judgment for the plaintiff.

Upon this judgment the defendant below brought a writ of error, which now came on for argument.

Monday, June 11.—*Collier* (*Maynard* with him) for the plaintiff in error.—It is admitted, upon the pleadings, that the goit, as originally cut, was insufficient for the full enjoyment of the premises, and the only question whether, having been once made, it can be altered. The question would have been the same if the defendant had narrowed the goit instead of widening it. [PARKE, B.—It is a very different thing to give a power once to make and liberty to enter at different times and repair, from giving a power to make from time to time.] It could not have been intended that the lessees were to be bound during the 999 years by once having made a goit at the beginning of the term. [PLATT, B.—You must make a new bargain with the reversioner.] There is no limitation in the grant as to the size or width of the goit, and the grantees were, therefore, entitled to make a goit of a reasonably sufficient width, and that not having been done in the first instance, they were entitled to do so at any time during the term. The following cases were cited in addition to those cited in the Court below—*Senhouse* v. *Christian*, 1 T. R. 560; *Luttrell's* case, 2 Co. Rep.; *Hall* v. *Swift*, 4 Bing. N. C. 381.

J. A. Russell, for the defendant in error (the plaintiff below), was stopped by the Court.

JERVIS, C. J.—It seems to me that the judgment of the Court of Q.B. must be affirmed. The power granted was only to make a goit, and that having been once exercised is gone.

PARKE, B.—I am of the same opinion. It is a more onerous servitude to grant a liberty to enter and make a goit toties quoties than to make a goit, and then enter to amend and repair it, from time to time.

The rest of the Court concurring,

Judgment affirmed.

HOUSE OF LORDS.

Reported by W. H. BENNET, Esq. of Lincoln's-inn, Barrister-at-Law.

June 22, 24, 26, *and* 29.

Present: The LORD CHANCELLOR (St. Leonard's;) Lords TRURO, BROUGHAM, CAMPBELL, CRANWORTH, and other Peers. The Judges present were—Barons PARKE, ALDERSON, PLATT, and MARTIN. Justices—MAULE, COLERIDGE, ERLE, CRESSWELL, WILLIAMS, TALFOURD, and CROMPTON.

DIMES *v.* THE COMPANY OF PROPRIETORS OF THE GRAND JUNCTION CANAL and OTHERS.

Jurisdiction—Interest of Judge in the subject matter of suit—Signature of Lord Chancellor to authorise enrolment.

In the above cause the Lord Chancellor was interested in the Grand Junction Canal Company as a shareholder, to the amount of several thousand pounds, which was unknown to the defendant below; the Lord Chancellor had granted an injunction, and on the hearing of the cause, had decreed for the relief prayed by the Grand Junction Canal Company as plaintiffs in the cause:

Held, that the order for the injunction and decree so pronounced by the Lord Chancellor was voidable, on the ground of the interest which he had in the subject matter of the suit;

And the order and decree on appeal reversed.

The Vice-Chancellor of England appointed under the 53 *Geo.* 3, *c.* 24, *is not the mere deputy of the Lord Chancellor; and all orders and decrees pronounced by him, are obligatory, and are in no way affected by the disqualification of the Lord Chancellor, and therefore:*

Held, that such orders of the Vice-Chancellor were neither void nor voidable.

The signature of the Lord Chancellor to authorise a decree or order to be enrolled is discretionary and ministerial only, and any disqualification in the Lord Chancellor as judge in the cause on the ground of interest, cannot prevail, and therefore;

Held, that such signature for such enrolment is neither void nor voidable.

This was an appeal from several decrees pronounced and orders made by the Master of the Rolls (Langdale), the late Vice-Chancellor of England, and Lord Chancellor Cottenham; commencing with an order made on the 18th June, 1838, and terminating with another of the 6th Feb. 1850; and the appellant complained that he was aggrieved by all the proceedings in the cause, and particularly by certain orders and decrees more particularly specified.

The questions propounded for the opinion of the judges were in general terms, it is therefore unnecessary further to state the dates and effects of the several orders and decrees.

In the year 1793, the Grand Junction Canal Company was created a corporation by the 33 Geo. 3, c. 80, and in 1796 their engineer and surveyor laid out and eventually cut through the corners of four fields containing in the whole two acres, three roods, and two perches. The angles and corners that were cut off by the canal amounted in the whole to one acre and fifteen perches. The company purchased this and other land of one Skidmore, the copyholder, for 308*l.* 10*s.* which sum they paid over to him, whereupon he executed a deed, dated March 13, 1797. The canal was completed and opened for public traffic early in the year 1797, and from that time until the commencement of the present appellant's proceedings the company and their assigns remained in uninterrupted possession of the lands in question. In May, 1835, Skidmore, the copyholder, died intestate as to lands vested in him as a trustee, leaving the respondent, Thomas Emmott, then a minor, his customary heir. Proclamations were then made in the manor court for the person entitled to admittance to come in and be admitted; and the appellant, as lord of the manor of Rickmansworth, issued a warrant to the bailiff to seize the land, and brought an action of ejectment against the company; but on the trial before the late Lord Chief Baron Abinger, at the summer assizes in 1836 for Herefordshire, the appellant was nonsuited, on the ground that the statutory assurance of the 13th of March, 1797, operated to vest the freehold and inheritance in fee of the three acres, three roods, seventeen perches in the company. Liberty was, however, given to the appellant to move the Court of King's Bench to set aside the nonsuit and enter a verdict in the ejectment for the appellant. He accordingly obtained a rule nisi for this purpose in November, 1836, and, on argument, this rule was made absolute on the 7th of June, 1838, on the ground that the company had acquired an equitable estate only in the land as copyhold. The appellant having obtained possession under a writ of possession, placed a bar across the canal, and threw a large quantity of bricks into the canal, to prevent the passage of the barges; and on the 14th of June, 1838, he threatened to stop the navigation unless the company at once paid him the sum of 5,000*l.* which demand on the 18th of the same month he advanced to 5,500*l.* Upon this last-mentioned day the company, however, filed their original bill in this suit against the appellant, and the respondent Skidmore, seeking admission to this part of their canal and towing-path as copyhold, and praying an injunction against the appellant's interference with the navigation. A series of litigation thereupon ensued, in the course of which the decrees and orders now complained of resulted. The appellant now appealed, praying that they might be reversed and discharged for these reasons—first, that by reason of the pecuniary interest

in the subject matter of the suit which the said Earl of Cottenham possessed at the time of filing the original bill, and the continuance of such interest, and by reason that the fact of such interest was known to the company, but was not known to the appellant until after the order dated the 25th day of January, 1848, was pronounced, the original bill in this cause (being addressed to the said Earl as Lord High Chancellor, and omitting to state the fact of such interest) was improperly filed; and all the proceedings in this cause on the part of the said company were irregular; and, therefore, that the applications to have the said original bill taken off the file with costs to be paid by the said company, or that all proceedings in the said cause might be stayed, which were made by the appellant on the 30th day of May, 1849, and on the 6th day of February, 1850, ought to have been granted; secondly, that the decree, and all the orders made in this cause, and in particular the several orders dated the 15th of December, 1838, and the 27th of January, 1848, are void, by reason of the pecuniary interest which the said Earl of Cottenham had in the subject-matter of this suit at the time of filing the original bill and pronouncing the said orders, and by reason, also, that the fact of such interest was known to the said company, but was not known to the appellant; thirdly, that if the objections arising from the pecuniary interest of the said Earl of Cottenham, and the non-disclosure thereof to the appellant, as mentioned in the preceding reasons, did not exist, the case as exhibited by the pleadings and evidence does not shew proper or sufficient grounds for the exercise of the jurisdiction of the Court of Chancery for the purpose of any of the relief sought by the said bill, and that the bill ought to be dismissed with costs; fourthly, that if, notwithstanding the foregoing reasons, the company should be held entitled to any relief, it should be granted only upon the terms of purchasing the appellant's estate and interest as lord under the provisions of the company's Acts, and without prejudice to or interfering with his legal rights in the mean time; fifthly, that the orders dated respectively the 18th day of June, the 26th day of July, and the 15th day of December, 1838, are not warranted by the proceedings and evidence, and ought not to have been made; sixthly, that the decree dated the 16th of November, 1846, was not warranted by the proceedings and evidence, and (without reference to the other objection taken) the bill ought to have been dismissed with costs, seventhly, that the said decree was erroneous in directing the amount of the fine payable upon the admission of a copyhold tenant to be ascertained and settled by the Master, and that the amount of such fine ought to be settled by a jury; eighthly, that the decree was erroneous in directing that the costs of the respondents, Boham and Martin, ordered to be paid by the company, should be repaid to them by the appellant; ninthly, that the several other orders made in this cause, and particularly the orders dated the 2nd of June and the 10th of December, 1849, were not warranted by the proceedings and evidence, and ought not to have been made; and, lastly, that the orders dated the 4th and 6th of February were not warranted by the proceedings and evidence in the cause, and ought not to have been made, and that orders ought to have been made in conformity with the respective notices of motion, or of some of them, upon which the said orders respectively were founded."

The *Solicitor-General (Kelly)*, *Smythies* (of the Common Law Bar), and *Selwyn* appeared for the appellant.

The *Solicitor-General*, after stating at considerable length the facts of the case, and the various proceedings which had been had in the courts below, contended, first, that the whole proceedings in Chancery were incompetent and void ad initio, by reason that the Lord Chancellor to whom the original bill had been addressed, had a pecuniary interest in the company, and therefore submitted that the whole proceedings should be reversed; secondly, on the merits, that the decree of the Vice-Chancellor of England (which had declared that the company being a corporation, were not entitled to be admitted to the tenements, but that they were entitled to have the customary heir of the deceased tenant admitted, and that on his admittance he would be a trustee for the company) ought to be reversed. (*a*)

The LORD CHANCELLOR requested the Solicitor General to apply himself to the first point, upon which the House had sought the assistance of the judges.

The *Solicitor-General*, as to that point.—He said, the appellant disclaimed all idea that improper motives had swayed the mind of the late Lord Chancellor, but only that he erred in judgment in entertaining the cause at all—having the pecuniary interest he had in the matter in litigation before him. That in any suit or action a party had a right to call upon the judge to abstain from deciding a suit or action where he had an interest. That it was to be regretted that he had not done what, in this same case, when before the Court of Q.B. and Ex. Mr. Justice Wightman and Mr. Baron Alderson had done, viz. retired from the court during its discussion, they being shareholders in this same company. That the Lord Chancellor, as one of the shareholders, was, in fact, one of the plaintiffs; that it was not only the law of England, but it was recognised by the civil law, and all other enlightened tribunals that no man should be a judge in his own cause; that the same principle applied to all courts not only before the Lord Chancellor in the Court of Chancery, but also before every County Court judge and all other courts in the kingdom. That this was, in fact, the universal principle.

Smythies, on the same side, contended that the application for the Chancellor's signature to perfect the enrolment of the decree and order to enable the appellant to appeal was no admission by the appellant of the Lord Chancellor's jurisdiction, and that the Lord Chancellor, having such a class of interest as would have disqualified him from being a witness in a cause before Lord Denman's Act (6 & 7 Vict. c. 85) was incompetent to entertain the cause. It would have equally disqualified him from being a juror in a cause. They concluded a very elaborate argument, in the course of which the following authorities and cases were cited:—Mitford's Pleadings in Chancery, 7; 4 Vin. Ab. L.; Rolle's Abr. tit. "Judges," A. pl. 11; Disc. of the Author. of the Master of the Rolls, 178, et seq.; Leg. Jud. in Chy. stated, 113; *Lord Derby's case*, 12 Rep. 114; *Great Charte* v. *Kennington*, 2 Str. 1173; *City of London* v. *Wood*, 12 Mod. 687; *Day* v. *Savadge*, Hob. 87; 1 Kent' Comm. on American Law, 120; *Brookes* v. *Earl Rivers*, Hardres, 503; *Chancellor of Oxford's* case, 3 Bla. Comm. 299, n.; S. C. Year Book, 8 Hen. 6, 20; *Anon.* 1 Salk. 396; *Reg.* v. *The Commissioners of Cheltenham*, 1 Q. B. Rep. 467; *Reg.* v. *The Justices of Hertfordshire*, 6 Q. B. Rep. 753; *Reg.* v. *The Justices of Suffolk*, 19 Law T. Rep. 107; *Esdaile* v. *Lund*, 12 Mees. & W. 731; *Reg.* v. *The Justices of St. Leonard's*, 10 Q. B. Rep. 827; *Mostyn* v. *Spencer*, 6 Beav. 135; Code Nap. C. Civile, 21, art. 373; Code of the State of New York, Jan. 1850; *Rex* v. *The Inhabitants of Yarpole*, 4 Term R. 71.

Stuart, Q.C. *Bethell*, Q.C. and *Busk*, for the respondents, as to the first point, urged that the original bill was properly addressed to the Lord Chancellor; that it could not have been addressed in any other way. That on the face of the record no interest in the Lord Chancellor appeared. That if Lord Cottenham had ceased to hold the Great Seal before the hearing, the cause would have been heard by his successor, Lord Lyndhurst; and it could not be pretended that if the order and decree had been pronounced by him, they would have been either void or voidable. They did not controvert the general rule of natural justice and the law of the land, that no judge ought to hear or determine a cause to which he was a party, or directly interested; but that was not this case, where it was even unknown to any party at the time of filing the bill, or at the hearing, that the Lord Chancellor was a shareholder of the company. That, at all events, all the proceedings in the cause up to the time of its being brought by appeal before the Lord Chancellor were unimpeachable, and that all the orders and decrees pronounced by the Vice-Chancellor of England were good, and were not made by him as the deputy of the Chancellor, but as arising from the powers and authorities granted to him by the 53rd Geo. 3, c. 24. That what had been done by the Lord Chancellor was at most an irregularity, and as such might be, and was, waived by the acts of the appellant. They cited *Ex parte Baddeley*, 5 Rail. Cases, 512; *Anon.* (*Mayor of London*) v. *Markwick*, 11 Mod. Rep. 164; *Rex* v *Justices of Essex*, 5 Mau. & Sel. 513; *Stone* v. *Byrne*, 2 Bro. P. C. 409; and other cases.

The *Solicitor-General*, in reply.

At the conclusion of the argument, the following questions were put to the judges for their opinion:—

QUESTIONS TO JUDGES.

A public company established for constructing a canal was incorporated, and they bought some land for the purpose of making the canal; a person claiming adversely an interest in such land, recovered the property by ejectment.

The corporation then filed a bill against the claimant, and so have their title confirmed. The Lord Chancellor had an interest as a shareholder in the company to the amount of several thousand pounds, which was unknown to the defendant, and he (the Lord Chancellor) granted the injunction and the relief sought.

Was this a case in which the order and decree of the Lord Chancellor were void, on account of his interest and of his having decided in his own cause?

A public company established for constructing a canal was incorporated, and they bought some land for the purpose of making a canal; a person claiming adversely an interest in such land, recovered the property by ejectment.

The corporation then filed a bill against the claimant, and to have their title confirmed.

The Vice-Chancellor, whose authority is derived under the 53 Geo. 3, c. 24, granted an injunction and the relief prayed; and the Lord Chancellor, who had an interest as a shareholder in the company to the amount of several thousand pounds, which was unknown to the defendant, upon an appeal by the defendant, affirmed the orders made by the Vice-Chancellor.

The orders were then enrolled; some upon the application of the defendant, and others upon the application of the plaintiff, by the order of the Lord Chancellor.

1. **Were the orders of the Vice-Chancellor void on account of the interest of the Lord Chancellor?**
2. **Were the orders of the Lord Chancellor void on account of his interest, and of his having decided in his own cause?**

The judges took some days to consider the questions, and on the 26th of June delivered the following opinion:—

PARKE, B.—In answer to the first question proposed by your lordships, I have to state the unanimous opinion of the judges, that in the case suggested the order and decree of the Lord Chancellor was not absolutely void on account of his interest, but voidable only. If this had been a proceeding in an inferior court, or one to which a prohibition might go from a court in Westminster Hall, such a prohibition would be granted pending the proceedings upon an allegation that the presiding judge of the Court was interested in the suit. Whether a prohibition could go to the Court of Chancery it is unnecessary to consider. If no prohibition should be applied for, and in cases where it could not be granted, the proper mode of taking the objection to the interest of the judge would be, in the Courts of Common Law, by bringing a writ of error for error in fact, and assigning that interest as cause of error. The former course was stated to be proper in the case of *Brooks* v. *Earl of Rivers*, Hardres, 503, it being suggested that the Earl of Derby, who was Chamberlain of Chester, had an interest in the suit; and the Court held that where the judge has an interest, neither he nor his deputy can determine a cause or sit in Court, and if he does a prohibition lies. The latter course was adopted in the case of *The Company of Mercers and Ironmongers in Chester* v. *Bowker*, Strange, 639, where it was assigned for error in fact on the record of a judgment for the companies in the Mayor's Court at Chester; that after verdict and before judgment one of the Company of Mercers and Ironmongers became mayor, and for that reason the judgment was reversed in the Court of Quarter Sessions, and that judgment of reversal affirmed in the King's Bench. In neither of those cases was the judgment held to be absolutely void. Till protection had been granted in one case or the judgment reversed in the other, we think that the proceedings were valid, and the persons actually under the authority of the Court would not be liable to be treated as trespassers. Many cases in which the Court of King's Bench has interfered (and they have gone to a great length), where interested parties have acted as magistrates, and quashed the orders made by the Court of which they formed part, afforded an analogy. None of those orders are absolutely void, it would create great confusion and inconvenience if they were. The objection might be one of which the parties acting under them might be totally ignorant till the moment of the trial of an action of trespass for the act done; but the orders may be quashed after being removed by certiorari, and the Court did complete justice in that respect. We think that the order of the Chancellor is not void; but we are of opinion, that as he had such an interest which would have disqualified a witness under the old law, he was disqualified as a judge; that it was a voidable order, and may be questioned and set aside by appeal, or some application to the Court of Chancery, if a prohibition would not lie. As to the second question, we are of opinion that the Vice-Chancellor (53 Geo. 3, c. 24) is not the mere deputy of the Chancellor, and that the interest of the principal affects the deputy on the principle adopted in *Ward* v. *The Corporation of London*, and *Brooks* v. *The Earl of Rivers*, but has independent jurisdiction, subject to the power of the Chancellor, to be reversed, discharged, altered, and allowed by the Chancellor. We think this is to be deduced from the language of the Act. By the 2nd section the Vice-C[illegible] has full power to hear and determine all [illegible]atters, causes, and things depending in the Court of Chancery, and all decrees, orders, and acts [illegible] Vice-Chancellor so made or done, shall

(*a*) It has not been thought necessary to report the arguments on this second point. The whole of the arguments below, and the judgment of the late Vice-Chancellor in England are reported in 15 Sim. Rep. 402. That as to the injunction before the Master of the Rolls, 12 Beav. 63.

be deemed to be orders and acts of the Court of Chancery, and shall have force and validity, and be executed; subject, nevertheless, in every case to be reversed, discharged, altered, or allowed, and no decree shall be enrolled, until signed by the Lord Chancellor. If the decrees or orders are not reversed by the Chancellor, they, in our opinion, are obligatory, and are in no way affected by the disqualification of the Lord Chancellor. But in order to appeal against them to the House of Lords, they must be enrolled; and enrolment cannot be made without the Lord Chancellor's signature. In giving that signature, the Chancellor has a discretion which he may exercise. But he may be applied to for that purpose, and if he gives his signature, his interest affords no objection to its validity. For this is a case of necessity, and where that occurs the objection of interest cannot prevail. Of this the case in the Year Book, 8 Hen. 6, 19, 2nd Roll's Abridgment, 93, is an instance where it was held, that it was no objection to the jurisdiction of the C. P. that an action was brought against all the judges of the C.P. in a case, no doubt, which could only be brought in that court. We therefore answer the first question by saying that the orders of the Vice-Chancellor are neither void nor voidable on account of the interest of the interest of the Lord Chancellor. That the orders of the Lord Chancellor are not void, but voidable, and his signature to the order for the purpose of the enrolment is neither void nor voidable.

On the 29th of June, the House of Lords was moved in the following terms:—

JUDGMENT.

The Lord Chancellor.—My lords, it is not necessary in this case to hear the respondent's case on the merits. The case does not present any real difficulties, as the facts are now understood. In reference to the question upon which her Majesty's judges gave their opinion at the desire of this House, the effect of that opinion—in which I for one concur—is, that as regards the interest which the late Lord Chancellor had in the Grand Junction Canal, his decisions must be considered voidable, and it appears clearly that an appeal to this House would be considered as in proceedings in a court of equity, the proper step to be taken to avoid such decrees. I apprehend, my lords, it would be proper, adopting the opinion of the learned judges in that respect, to declare that the orders and decrees appealed against, so far as they were made by the late Lord Chancellor, shall be reversed. Upon that we are all, my noble and learned friends and myself, entirely agreed. Upon the other question, upon which I never myself entertained any doubt, namely, whether the decrees and orders or the decrees of the Vice-Chancellor could be affected by the circumstance that the Lord Chancellor who affirmed those orders and decrees had an interest in the subject of the suit. The learned judges have given the House a very clear opinion, and in that opinion of course I entirely concur, as it is the opinion I always entertained. It is impossible to represent, upon the statutable authority given to the Vice-Chancellor, that he is in the situation of a mere deputy, to fall within the cases referred to, and therefore any order or decree made by him would be void, or voidable, in case the Lord Chancellor himself had an interest in the matter. There is no warrant for it in the words of the statute; and I cannot conceive anything more mischievous or absurd than to suppose that an order or decree made by one of the Vice-Chancellors, in the Court of Chancery, should be void in a case where the Lord Chancellor did not interfere at all judicially, merely because the Lord Chancellor himself had an interest in the subject of the suit. Lord Cottenham thought so differently upon that point, that he called in one of the judges of the Court, no doubt that judge depending upon original jurisdiction in some measure; but still an inferior judge,—he called him in to his assistance to advise him upon the very point now being decided by your lordships. I apprehend, my lord, that clearly these decrees are good so far as they can be maintained consistently with the rules of equity, and if your lordships should be of opinion that the case is not made out on the part of the appellant as to the equity he maintains, that is, to say, that no relief ought to have been granted to the company as against him, I apprehend your lordships will feel no difficulty in affirming the orders and decrees of the Vice-Chancellor, and of declaring that they shall be made good and unaffected by anything that took place as to the affirmance of them, or the dealing with them by the Lord Chancellor. After that point was disposed of, the case stood over to be argued this morning upon the merits, namely, upon the injury done, and the case assumes a very singular character. The case itself is a very simple one—the case of a copyhold tenant of a small piece of land—some two acres of land which were wanted for the purposes of the Grand Junction Canal. It turned out to be copyhold, and Mr. Dimes, the present appellant, at a subsequent period bought that manor, and thereby became the lord of that particular copyhold tenement. The company bought the land of Mr. Skidmore, the copyhold tenant, under powers in the Act, and they were perfectly at liberty to do so. It admits of no doubt, that the Act enabled them to make that purchase; nor is it disputed by the appellant at your lordships' bar, that it could be purchased. The different sections of the Act, the 30th and the 101st, shew clearly and entirely the description of the property, and that the copyhold interest was one which might be purchased under the Act. The property having been purchased, the then lord of the manor neither attempted to take advantage for a forfeiture—and it will be a very different question whether a subsequent lord could take advantage of that after the waiver—but he neither did that nor did he attempt to disturb the company at all in their possession of the land. They had a right to cut through the land and to form it into their canal by the terms of the Act of Parliament, and whatever rights the lord may have must depend upon the Act of Parliament; as regards that act so done, for it was done under the Act. But, unfortunately, the Act of Parliament being an early one upon the subject, did not, I admit, my lords, provide properly for the interest of the lord, as distinguished from the interest of the tenant, upon which all the difficulty has turned. We must, therefore, deal with the case as we find it upon the Act of Parliament. Now, my lords, in consequence of the purchase, a conveyance was executed by the tenant in the form prescribed by the Act of Parliament; that form, of course, was not adapted to a copyhold; for instead of being a surrender in the common ordinary and proper way, it was a conveyance in a few short words of "all estate, right, title, and interest of the person conveying." Now the great question has turned on the effect of that conveyance. But to proceed for a moment with the facts of the case. After that conveyance, no steps being taken by the then lord of the manor (Mr. Skidmore lived some years), Mr. Dimes became lord of the manor; and upon the death of Mr. Skidmore, after some attempts at negociation, which I need not trouble your lordships with (looking only to the legal acts of the parties), —after some time Mr. Dimes, the lord of the manor, called upon some person to come in at the death of Mr. Skidmore, to be admitted, stating expressly in the proclamation he issued, and which he had a right to make, stating in so many words that they were to come in and claim the estate "of which Joseph Skidmore, one of the customary tenants of the said manor, lately died seised." My lords, that is an assertion that this Joseph Skidmore had died seised of that estate, and that could only be on the construction that the legal estate in the copyholds had not passed by the conveyance in question, and that the copyhold inheritance still remained in Skidmore, and descended to his customary heir. In the result, for I have stated what I considered to be the operation of that conveyance, Mr. Dimes seised quousque, he seised quousque because of the want of a tenant, upon the death, as he alleged, of Skidmore; Skidmore having died seised, and no heir having come in to be admitted, he then proceeded to recover the estate at law. After a considerable discussion, the Courts differing, it was held that he was entitled to do—what?—to seise quosque. How could he seise quousque in the manor? He did seise upon his own allegation, as one ground of title that he did so seise, because Skidmore had died seised of the copyhold property, else his title would have been a totally different one. He should have put it on a different ground. In the result the then mesne profits were recovered. A bill was filed, and upon that bill the Vice-Chancellor of England made orders granting interim injunctions, and ultimately made decrees making the injunction perpetual, his opinion being that the copyhold estate did not pass at law by the conveyance in question, declaring that Skidmore was a trustee for the company, and that the heir of Skidmore was entitled to be admitted, decreeing Dimes to admit that heir, and that the heir should be deemed a trustee for the company. What mischief did that do to Mr. Dimes? He remains the lord of the manor, riding over this piece of ground through which the canal had been cut, just as he remained the lord of the manor before entitled to the fruit, entitled to all the quit rents, entitled to all the fines, and entitled to have a tenant always on the roll. In short, his rights were in no manner cut down as regarded that declaration. Those orders and decrees were affirmed by the Lord Chancellor. But unfortunately it turned out that the Lord Chancellor was the holder of some shares in the Grand Junction Company, and by the strict rule of law, his orders and decrees are to be deemed voidable, and now are declared to be void. Now, my lords, what was the real operation of this conveyance? It is quite clear that the Act of Parliament did not contemplate the exact case, and it is very difficult to say that the conveyance could pass a copyhold estate without a surrender and without an admittance, so that nobody would appear upon the face of the roll in the way in which it seems to have been contended that it did, but there is no objection which operated in the way in which the Vice-Chancellor decreed it to operate. The Act intended and did give to the copyhold tenant the power to sell his fee, and it gave the company power to buy it, and to appropriate it for their works. Then, so far, how did that stand? Suppose that conveyance to be incompetent to pass the copyhold estate as a copyhold estate—that is, to operate as a surrender, and perhaps as an admittance, which would be a very strong operation to give to it—then, by the clearest and plainest rule of equity, which has been never departed from, Skidmore having sold to the company, and having, by an imperfect conveyance, conveyed to them his copyhold estate, he becomes in equity trustee for them, and the Court would compel him to deal with his legal estate, if it did remain in him simply as trustee for that company; and upon that ground the Vice-Chancellor acted. Now, my lords, the case has assumed a very singular shape, for Mr. Dimes's only title to recover at law being founded upon the seisure quousque, in consequence of Skidmore having died seised of this copyhold—his own assertion—his old title—and having recovered upon that title, he now turns round, as sometimes it has been said, upon himself, and actually maintains that that conveyance, and a conveyance under that form, conveyed the whole copyhold interest to the company, and that they took that copyhold interest without an admittance. If they did, they became copyhold tenants. Then, what became of the title of the lord? He could not insist, having seised quousque upon coming in under a new title, and Mr. Dimes, upon that new title, if it be one—and certainly that is a new mode of looking at it—never could have insisted upon that title as against the company,—I mean, if the effect of the conveyance was to vest the copyhold estate, as a copyhold estate, absolutely in the corporation without admittance. They were not bound, I agree, to admit the corporation. Then in all time there would be no admittance: then, in that case, what becomes of the supposed legal title of the lord—where is his legal title? He has got his freehold, he is lord of the manor, but he has got a copyhold tenant according to the very arguments at the bar—who being a corporation will never die, and will remain for all time—a copyhold tenant without requiring any admittance. That, my lords, is indeed a new view of the case, and that is a view which I must advise your lordships cannot be taken by the appellant at your lordships' bar. You cannot allow a party to turn round and assert a title in direct opposition to the title upon which he has recovered the property upon which everything has been depending throughout this long and painful litigation. It is impossible that you can allow a party to turn round and to say, that the title upon which he recovered was naught—that he discards that title, and insists upon a totally different title, depending upon an entirely different construction of the Act of Parliament, and upon which the whole thing turns. Now, my lords, it is said independently of that—not denying on the part of the appellant that the company could buy, and that the tenant could sell—it is said that he must do something else; the company must (they say) buy the freehold, and add that to the copyhold interest. And then it is said, where is the direction in the Act of Parliament? The direction of the Act no doubt is, that a man shall hold it, and hold it for ever. Here he will hold it for ever, but qua copyhold; therefore the words of the Act of Parliament perfectly satisfy the interest of the lord. He has an inheritance totally distinct from the interest of the tenant, a distinct inheritance in itself. The heir has a right, and the heir may sell the right, and it would have been well if the Act had provided more carefully for these different interests, but it is utterly impossible to contend that the purchase of a copyhold, being of itself independently a perfect purchase, can be affected by the company subsequently not purchasing the freehold interest. I attended, with some curiosity, to hear what the time was in which this purchase must be made; and during the suspense what the interest was of the different parties; but the learned counsel,—not for want of ability or ingenuity, but the case rendered it impossible that he should do so,—never was able, and did not offer to your lordships any explanation. When was the time to end in which the purchase was to be made? Is the time closed now? May it not take place to-morrow? When is the time? The Act points out no time. The first purchase is perfectly good: during what period are you to wait? As regards the interest in the mean time, is the interest divested? Where is it? It cannot be in the lord. The learned counsel for the appellant is in this difficulty,—whilst he contends that the two interests must unite in order to bring the case within the Act of Parliament, he totally loses sight of this,—what is his interest? Where does he get any under this Act, beyond that which he had before as lord? Where can he find in the Act any clause giving him an interest greater than he had before? Then, as regards the

lord, if he is entitled to damages or compensation for an act done on the copyhold property, that is a distinct question, and he must try his right upon that question. I do not advise him to do so; it is a distinct question, and if he asserts that right, it must be in a different way. The question then comes, I apprehend there is no foundation for the argument which has been maintained at your lordships' bar, that the corporation did take that copyhold; but if they did take it, I think that tells more against the appellant than against the respondent: but I apprehend they did not take the copyhold. I think, considering the ambiguity of the Act, from its not providing, as it ought to have done, for the interest of the lord, that the Court below has hit upon the true construction to be given to this conveyance, its perfect operation as an equitable conveyance, conveying all the equitable right, and leaving the legal tenement in the lord and in the tenant unaffected. It meets the justice of the case. It leaves the rights of the parties utterly unaffected. Then, my lords, the equity admits of no doubt, Skidmore being, as I have stated to your lordships, by the clear rule of equity, a mere trustee for the company; he held, during his life as trustee for the company, and they never were disturbed. Your lordships will observe, that it was not till the death of Skidmore that any body asserted a right on the part of the lord of the manor over this property. When his heir, who was under disability became entitled, that heir immediately became trustee for the company, and when the company filed a bill against the lord who had recovered the property upon a seisure quousque, which everybody knows, and which it is not denied does not operate beyond the time that the person entitled comes in to be admitted, Mr. Dimes, still insisting upon his legal right, the Court declared that he should be bound, as he ought to be, to admit Mr. Skidmore's representative as a trustee for the company, and thus to clothe in that respect the company, not with a legal title, for they would not be legal tenants, but with all the equitable rights which they really purchased, and for which they paid. This inflicts no hardship whatever, my lords, upon Mr. Dimes; he has all the interest he ever had—no more and no less. My lords, some difficulty has been raised in this case by the original contention of the company. They had, I dare say, supposed that the purchase of the tenant would be a purchase of the lord, and that the interest and (I suppose) the purchase money would be apportioned between them. I know not how that was, but the original contention of the company was indeed very different from that at which we have now arrived, for they insisted that the conveyance by the tenant was a conveyance of the whole freehold, and that it divested the lord of the manor of his freehold. The learned judges in the Q. B. in the Ex. Ch. the learned Vice-Chancellor, and the Lord Chancellor, in fact, every judge in every court before whom this case has come, have all decided that that was not the true operation, but that the operation was to leave the lord with all his rights unaffected, but to give to the company the interest which the copyhold tenure possessed. My lords, some question has been raised as to the costs. I can see no sufficient ground to advise your lordships to touch that question of costs. With regard to the decrees of the Vice-Chancellor, the only remaining question is, that it is referred to the Master to compute or settle the amount of fine to be paid on admission. It is said that that ought to go to a jury. I think as the Court was dealing with the case, it was quite within its competency to deal with that question; also as part of the general relief sought. But if, in any future stage of the case, it should appear that there really was a difficulty which ought to go to a jury, the Court would have no difficulty in that subsequent stage in sending it to a jury, if necessary, to ascertain the amount that the fine ought to be. I do not consider, therefore, that the parties are precluded, if the Court should authorise it; from still having recourse to a jury, if they want it, in order to ascertain the amount of fine to be paid upon the admission of a trustee. I therefore advise your lordships that the orders and decrees of the Lord Chancellor shall, without prejudice to the orders and decrees of the Vice-Chancellor, be reversed, and that the orders and decrees of the Vice-Chancellor shall remain unaffected by the orders and decrees of the Lord Chancellor, and shall be affirmed.

Lord BROUGHAM.—My lords, there are two branches of this case to which my noble and learned friend has just referred,—the one that which arose upon the first argument of the plaintiff, upon which your lordships took the opinion of the learned judges; and it is immaterial as to the result of this case, in which way we dispose of the first question put to the learned judges, namely, whether or not the Lord Chancellor, in respect of his interest, was, as it were, disqualified from acting as a judge in the cause, and, therefore, his decree is voidable or void. That it was not void we entertained a very strong opinion, both my noble and learned friend and I, during the course of the argument, as well as my noble and learned friend, Lord Cranworth, who is not now here. I do not think that the noble and learned Lord Chief-Justice was here during that argument, but we entertained a very strong opinion—a great inclination of opinion against its being void—and against the proceedings, in consequence of its being void, being, as it were, assumed to be null in the Court of Chancery. The learned judges, however, have come to a clear opinion upon that subject, that they are not void, that his judgment was not void, but only voidable; nevertheless that it is to be avoided when brought under review, and the objection is taken. But with respect to the second point submitted to them, whether or not the Vice-Chancellor's judgment is void in respect of the Lord Chancellor's authority being null; from the beginning of the whole proceedings in the Court of Chancery, including the Vice-Chancellor's decree, being therefore founded upon a nullity, and void upon that, I must say that I never, from the beginning, had the least doubt, and was, therefore, very little surprised to find the learned judges declare that the Vice-Chancellor has an entirely independent jurisdiction, and is not, in any respect, dependant upon the Lord Chancellor, from whom he only receives directions as to what cases he shall entertain, and what cases he shall therefore dispose of. That, by the Act, is the only connection which subsists between the two branches of the Court of Chancery, with the exception of the final enrolment, which requires the previous signature of the Lord Chancellor; but, as plainly as an enactment can speak, the Vice-Chancellor has an independent jurisdiction, and the very words of the statute (53 Geo. 3, establishing the Vice-Chancellors, and which passed in the year 1813, I think), are as plain as words can be, that there is a substantive and an independent jurisdiction conferred upon the Vice-Chancellor, and it is expressly stated in this enactment that his decrees shall be the decrees of the Court of Chancery, and shall have execution as such; and then follows the only connection established between his proceedings and those of the Lord Chancellor, that there shall be no enrolment of a decree with the view to further proceedings without the previous signature of the Lord Chancellor. Therefore, my lords, we have now in the first place to declare, agreeing in opinion with the learned judges, that the interest of the Lord Chancellor rendered his decree voidable, and to declare that that decree is reversed. Your lordships' have, then, to deal with the decree of the Vice-Chancellor which remains, and which is now subject to the discussion which has been the subject-matter of the arguments which we have heard to day at your lordships' bar. I concur in the opinion of my noble and learned friend, and in the opinion of the Court below—that is, of the Vice-Chancellor. I am quite aware that there is a difficulty in it. I am quite aware that there is a defect in the Act, and that that defect must have given rise, and no doubt did give rise, to some contention, and was a subject of some difficulty and doubt even in the court below. But I do not find any sufficient reason for differing from the Court below in the manner in which the Vice-Chancellor has extricated the question from that difficulty, and has disposed of the cause. I do not find sufficient reason, as to that difficulty, to differ from the Court below, and it is not merely the Vice-Chancellor, but there is also the other learned judge of that court—there is the Master of the Rolls, who assisted the Lord Chancellor upon the argument, upon an appeal from the Vice-Chancellor - he agreed entirely with the Vice-Chancellor, and was against any declaration or alteration of that judgment.

Lord CAMPBELL.—My lords, I take exactly the same view of this case as my noble and learned friends, and I have very little to add to their observations. With respect to the point upon which the learned judges were consulted, I must say that I entirely concur in the advice which they have given to your lordships. No human being can suppose for an instant that my Lord Cottenham could be in the remotest degree influenced by the infinitesimally small interest that he had in this concern, nor if his interest had been ever so great; but, my lords, it is of the last importance that that maxim should be held sacred, that no man is to be a judge in his own cause; and that is not to be confined to a cause in which he is a party, but a cause in which he has an interest. Since I have had the honour to be Chief Justice of the Court of Queen's Bench, we have again and again set aside proceedings in inferior tribunals, because an individual who had an interest in a cause took a part in the decision. And it will have a most salutary influence when it is known that this high Court of last resort, in a case in which the Lord Chancellor of England had an interest, considered that his decree was not according to law, and must be set aside. This will be a lesson to all those in the inferior tribunals to take care that in their decrees they may not be influenced by their personal interest, and to avoid the appearance of doing what is wrong. It is quite clear, likewise, I believe, that the orders of the Vice-Chancellor cannot be in the slightest degree affected by what the Lord Chancellor has done, nor can it be supposed that the Vice-Chancellor was acting as the Lord Chancellor when these orders and decrees were pronounced. Then, my lords, when we come to the merits of the decree itself, I have not been able to form any doubts respecting its propriety. This decree deals only with the copyhold tenement, and it lies upon the present appellant, Mr. Dimes, to shew that he is prejudiced by it. Now, in no point of view can it be shewn that he is prejudiced by it. If (as it has been argued) the whole of the interest in the copyhold tenement passed absolutely to the company, this decree would not in the slightest degree prejudice the lord, because it would give him a fine, and it would give him advantages which he would not otherwise be entitled to. But that, I apprehend, is clearly not a just view of it. And when your lordships look at the Act, and what was done under it, you cannot consider that the legal interest in the copyhold tenement did pass from the copyhold tenant to the company, because it never could be the intention of the Act of Parliament that a grantor should have the power to part with a greater interest than he possessed himself, and the copyhold tenant would do nothing which, in the slightest degree could prejudice the rights of the lord. Therefore, the view which was taken by Mr. Dimes, when he became lord of the manor, was a just view, that he had a right to the tenement, and he seises quousque, and he brings his ejectment, and he recovers the mesne profits. Well, but then, if that be so, can he in the subsequent stages of the proceedings, when he drives the company to proceed against him for an injunction, and to have an admittance of the heir of the copyhold tenant, can he be allowed to say that the whole interest passed from Joseph Skidmore, the tenant, and you are now forcing upon me, a mere stranger (for Skidmore is a mere stranger, he has nothing in him), and you are compelling me to put a mere stranger upon my copyhold roll? This cannot, my lords, be allowed; for, by the manner in which Mr. Dimes proceeded he made a proclamation for the heir of Joseph Skidmore,—in fact, he called by his proclamation upon Emmott Skidmore to come in and be admitted. After that, how can he be allowed to say that Emmott Skidmore is a mere stranger? Emmott Skidmore is the heir of Joseph Skidmore, in whom, I think the legal estate, so far as the lord is concerned, was considered as having remained; and therefore Joseph Skidmore must be considered as having died seised, and that Emmott is his heir, and he ought to be admitted. This litigation has, at last, I hope, reached its termination. I know not what further step can be taken. I think there is no other step; and now that the company will be allowed upon the terms mentioned in the decree quietly to remain in possession of that which they ought to enjoy.

Lord BROUGHAM.—It would be one of the most absurd things, if afterwards he was to object to the assessment of the fine by the Master in the Court of Chancery, and he was then to proceed at law, it would be one of the most ill-advised steps that a man could possibly take.

That the orders and decrees of the Lord Chancellor be reversed without prejudice to the orders and decrees of the Vice-Chancellor.

That the orders and decrees of the Vice-Chancellor, appealed against, be affirmed, and declared to be unaffected by the orders and decrees of the Lord Chancellor, and that the appeal be dismissed.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. KEENE, Esq. of Lincoln's-inn, Barrister-at-Law.

July 17, 19, and 20.

MONYPENNY v. DERING.

Will — Construction — Cy-près — Remoteness — Void devise — Life estate — Estate tail — Issue — Shifting clause — Recovery by tenant for life.

The words, "in default of issue of the body, or in case of his not leaving any at his decease," considered

J. M. devised "the Maytham Hall Estate" to trustees upon trust (inter alia) for P. M. for life, then in trust for the first son of the body of P. M. for life, "and from and immediately after his decease upon trust for the first son of the body of such first son, and the heirs male of his body, and in default of such issue upon trust for all and every other the son and sons of the body of P. M. severally and successively, according to their seniority of age, for the like interests and limitations as before directed respecting the first son and his issue, and in default of issue of the body of P. M. or in case of his not leaving any at his decease, upon trust for T. M. for

life; and after his decease upon trust for T. G. M. the eldest son of T. M. for life, and after his decease upon trust for the first son of the body of T. G. M. and the heirs male of his body, and in default of issue of the body of T. G. M. upon trust for all and every other the son and sons of the body of T. M. for like estates," &c.; "and in failure of all such issue of the body of T. M. upon trust for him, his heirs and assigns, for ever," provided that if P. M. or T. M. "or either of them, their, or either of their issue, shall become entitled to," &c. (the Joddrell estate), then the trustees "shall stand seised of my devised estates upon trust for the next person entitled thereto, under this my will, in the same manner as they would have done if the person so succeeding to 'the Joddrell estate' were actually dead." T. M. died after the date of the will, and the testator, by a codicil, declared that his trustees should stand seised of the devised estates upon trust for his wife for her life, and after her decease upon the trusts declared by his will subject to the declaration therein contained with reference to the Joddrell estate:

Held, that P. M. took an estate for life, subject to the life estate of the testator's widow:

That the limitation "to the first son of the body of such first son" of P. M. "and the heirs male of his body" was void for remoteness:

That T. G. M. "in default of issue of the body of P. M." took an estate for life, determinable on his becoming entitled to the Joddrell estate, and also a remainder in tail general after the estate tail of his eldest son:

That the eldest son of T. G. M. took a contingent remainder in tail male after the life estate of his father:

And that P. M. acquired no estate or interest under a recovery which, after the testator's death, he suffered of the devised property to the use of himself in fee.

J. devised "the Joddrell estate," to P. M. (subject to certain life estates) for life, with remainder to his sons and daughters in tail, with remainder to T. M. with like remainders to his sons and daughters in tail, with divers remainders over, provided "that if P. M. and T. M. or either of them, their, or either of their issue male or female, or any other son or sons of T. M." (who were provided for by the will), "hereafter to be born, or his, their, or any of issue male or female shall, at any time or times, be or become entitled to any estate of freehold, or inheritance in possession of or in the messuage," &c. (the Maytham Hall estate), "or the greatest part of the same, messuages," &c. "so as to be in the possession or in the actual receipt of the rents and profits thereof," then and in that case the estates devised by the will should shift, &c. On the death of P. M. without issue these estates became vested in T. G. M. (the eldest son of T. M.); at the date of J's will, R. M. was entitled to "the Maytham Hall estate," he devised it to J. M. who disentailed it, and under the limitations in his will (vide supra), it became vested in T. G. M.:

Held, that on his succeeding to the estate the shifting clause took effect.

A gift to A. for life, then to his issue, and, in default of issue generally of A. over, raises an estate tail general, having the operation, first, of raising an estate tail, and, secondly, of creating a remainder over on that estate tail, the intention of the testator being that the estate should not go over until there was a general failure of A.'s issue.

Where an estate is given to an unborn person for life, with remainder to the children of that unborn person in tail, the Court, to effectuate the intention of a testator, will create an estate tail, contrary to the words, in the first donee.

The Court cannot, by implication, or by the doctrine of cypres, give an estate to a class, or a portion of a class, for whom a testator has not intend to provide; but where he has shewn such an intention, although they could not be provided for in the manner pointed out by the testator, the Court may provide for them differently.

The Court will not hold a gift over in words comprising only one event, although it may reasonably consist of two branches, unless the testator has done so.

This was an appeal from a decision of the Vice-Chancellor Wigram. The material questions arising under the will of Mr. James Monypenny are incidentally alluded to by the Lord Chancellor in his judgment, and the facts are fully reported in 7 Hare, 568.

The will of Mrs. Toddrell is set out in the report of this case (18 Law T. Rep. 15), on the question arising as to the operation of the shifting clause.

Wigram, Rolt, and *C. Hall,* appeared for the plaintiff.

Bethell, Malins, Willcock, Rogers, Faber, F. T. White, Browell, Borton, and *Bagshaw,* jun. for the several parties interested.

The following were some of the cases cited during the argument:—*Pitt* v. *Jackson*, 2 Bro. C. C. 51; *Stackpool* v. *Stackpool*, 4 Dr. & W. 186; *Routledge* v. *Dorril*, 2 Ves. jun. 364; *Nicholl* v. *Nicholl*, 2 Wm. Bl. 1159; *Montgomery* v. *Montgomery*, 3 J. & L. 74; *Longhead* v. *Phelps*, 2 Wm. Bl. 704; *Beard* v. *Westcott*, 5 Taunt. 398; *Somerville* v. *Lethbridge*, 6 Term Rep. 213; *Robinson* v. *Hardcastle*, 2 Term Rep. 242; Gilbert on Uses; *Proctor* v. *Bishop of Bath and Wells*, 2 H. Bl. 704; *Langley* v. *Baldwin*, 1 P. Wms. 59; *Attorney-General* v. *Sutton*, 1 Pr. Wms. 754; *Smith* v. *Lord Camelford*, 2 Ves. jun. 698, 714; *Langston* v. *Langston*, 8 Bligh, N.S. 167; *Seaward* v. *Willcock*, 5 East, 198; *Lethieulier* v. *Tracy*, 3 Atk. 774; *Robinson* v. *Grey*, 9 East, 1; *Mortimer* v. *West*, 2 Sl. 274; *Lees* v. *Mosley*, 1 Y. & C. 589; *Doe* v. *Gallini*, 5 B. & Ad. 621; *Morse* v. *Lord Ormond*, 5 Mad. 99; *Baker* v. *Tucker*, 3 House of Lords Cases, 106; *Crozier* v. *Crozier*, 3 Dr. & Wr. 373; *Turke* v. *Frenchan*, 2 Dyer, 171; S.C. 1 Russ.; *Ellicombe* v. *Gompertz*, 3 Mylne & C. 127; *Glover* v. *Clatches*, cited Cro. Eliz. 16; *Southby* v. *Stonehouse*, 2 Ves. sen. 610; *Doe* v. *Applin*, 4 T. R. 82; *Greenwood* v. *Rothwell*, 6 Scott, N.R. 670; *Doe* v. *Cooper*, 1 East, 229; *Brooke* v. *Turner*, 2 Bingh. N.C. 422; *Toller* v. *Atwood*, 15 Q.B. 929; *Arlson* v. *Eden*, 2 Ex. 386.

Monday, July 19.—The LORD CHANCELLOR.—As I entertain no doubt upon the principal question in this case, I will at once dispose of that: with regard to the question arising upon the shifting clauses obtained in these wills, I will postpone disposing of that until to-morrow. Both questions are of great importance. Mr. James Monypenny seems to have had a great desire to provide only for the first son of the person to whom he gave one of the properties. It is given to the use of his nephew for life, and then for the first son of the body of that nephew and the heirs male of the body of such first son; there he leaves off, and except that the reversion would fall into the general devise of a portion of the residue, an event that I cannot give him credit for being aware of, there would be no further disposition of that estate; it would not go to any person except the first son and the heirs male of his body; no other person is in any manner provided for; but that is different from the question which arises under the general gift. The testator gives the legal fee to trustees who are to raise the debts, and then limits the estates in trust for his brother Phillips for life without impeachment of waste, then in trust for the first son of the body of Phillips for his life, and "immediately after his decease to the first son of the body of such first son and the heirs male of his body; and in default of such issue in trust for all and every the son and sons of the body of my said brother Phillips Monypenny, severally and successively according to seniority of age for the like interests and limitations as I have before directed respecting the first son and his issue, and in default of issue of the body of my said brother Phillips Monypenny, or in case of his not having any at his decease, upon trust for my said brother Thomas Monypenny for and during the term of his natural life without impeachment of waste, and from and immediately after his decease upon trust," and so on. Now stopping there, and without including the gift over, if the issue had been born in the lifetime of the testator, those would have been valid devises; but Phillips Monypenny never had any issue, and the rule of law forbids you to raise successive estates by purchase to unborn children; that is, to an unborn child of an unborn child. There is, therefore, taking the limitations as they stand, a good life estate to Phillips and to his first unborn son, if he had one, and the remainder to the other sons and their issue, would be absolutely void as being upon too remote a contingency. Now did the testator intend to provide for the other sons of the first son, beyond a first son? The gift is "upon trust for the first son of the body of such first son, and the heirs male of his body, and in default of such issue," not in trust for the second son, and every other the son and sons of the body of such first son, but on trust "for all and every other the son and sons of the body of Phillips, severally and successively." So that, had he intended to provide for other sons of a person for whose first son he had provided, he knew perfectly well how to do so, for he has done it in clear and express words. As it stands, the whole would be void after the first life estate to the first unborn son; and can I, by construction or otherwise, raise estates to the other sons of that first son? It was argued that I might, on these grounds, first, by the doctrine of cypres; secondly, by a particular construction of the will itself; and thirdly, upon the rule which gives to a general intent a preference over a particular intent. Now, the doctrine of cypres, as I understand it, is nothing more than the giving effect to a general at the expense of a particular intent. It is this: where there is a valid particular intent and a valid general intent, and the former, in the opinion of the Court, not effectuating all the intention of the testator, the Court looks to his general intent, and will effect that general intent, at the sacrifice of the particular intent. But here you sacrifice nothing. In the case of a limitation, where there is a good gift under a power to the objects of a limited estate, and an ulterior gift to children who are not objects; the Court, if it can, will effectuate the further intention of the testator by giving to the parent himself an estate of inheritance, through whom it will descend to his children. There you effectuate the general intent, but at no expense of the particular, because there was no particular intent to which you could give validity. And in the present case there is a limitation to an unborn son for life, with remainder to his unborn children for life; now you cannot give effect to that intent, because you cannot give successive estates to an unborn person and to the issue of that unborn person; but were that limitation to be effected, it would be as a general intent, and not at the sacrifice of any particular intent. Now, the words of the will are,—"And in default of issue of the body of Phillips, or in case of his not leaving any at his decease," then a gift over. That gift over would by construction in an ordinary case give an estate tail to Phillips himself. Some of Phillips's issue being provided for, and Phillips himself having a life estate, and then the estate being given over in default generally of issue of Phillips, the true construction would, I think, be that the testator intended to provide that that estate should not go over until there was a general default of the issue of Phillips, and if so, then there would be an estate tail general raised by those words, which would have a double operation; first of all, to raise an estate tail, and secondly, to create a remainder over on that estate tail. That construction would, according to the *Attorney General* v. *Sutton*, leave the express limitations of the will to operate as they were directed; in that way, although in remainder, all the issue of Phillips could be provided for. The will then goes on, "in trust for his brother Thomas for life, and immediately after his decease in trust for Thomas Gybbon, the eldest son of Thomas for life, and immediately after his death upon trust again for the first son of the body of the said Thomas Gybbon and the heirs male of his body" (there he creates an estate tail), "and in default of issue of the body of the said Thomas Gybbon upon trust for all and every other the son and sons of Thomas for the like estates," and so on, "and on failure of all such issue of the body of Thomas upon trust for him in fee." It is quite clear then that the limitation over in default of the issue of Thomas Gybbon would give Thomas an estate tail in remainder expectant on the estate tail to Thomas Gybbon, and in that way all the intention of the testator would be effected as regarded the issue of Thomas. Looking at the whole frame of this will there is ground to suppose that the testator did fancy that he had provided for all the issue. But can that intention be effected by the rule of law. Now some doubt was thrown out during the argument on the case of *Pitt* v. *Jackson*. I have always held it to be law. I followed it in *Stackpool* v *Stackpool*, and so did Lord Alvanley in *Routledge* v. *Dorril*. The clear doctrine is that where an estate is given to an unborn person for life, with remainder to the children of that unborn person in tail, you may, to effectuate the intention, create an estate tail, contrary to the words in the first part. If the cypres doctrine be not applicable to this case, it must be inapplicable upon the ground that the testator's intention was illegal; and it must be said that although it may be applied to the destruction of the intention of a testator, or rather not to carry it into effect, you cannot effectuate the intention in this particular case, because it is illegal, and therefore it can never be effectuated; but that it may be carried into effect, as far as it can, if the class of persons to whom the testator's intention would apply could be found; I apprehend the rule is this, that you cannot by any implication or by any doctrine of cypres carry an estate to a class or a portion of a class for whom the testator never intended to provide; you cannot provide for persons whom the testator did not intend; you may provide for them differently, as in the case of *Pitt* v. *Jackson*. I do not apprehend that the Court of Ex. thought that *Nicholl* v. *Nicholl* meant to, or that it did introduce by cypres any person or class of persons for whom the testator did not intend to provide. Applying that doctrine to this case, I feel that I am not at liberty to disregard the clear words of this testator; words which I am perfectly satisfied he meant to use according to their import; he meant both to give it to his brother for life, and to the first son of his brother for life, and to the first son of that first son and the heirs male of his body; and he meant nothing to interfere with that disposition. I cannot, therefore, by the doctrine of cypres, include any limitations which would provide for the second and other sons of the first grandson, contrary to the words of the will in the express limitation. I am therefore of opinion that the doctrine of cypres does not enable me to give

effect to the supposed intention of the testator beyond the clear limited expression in his will. I may dispose, also, of the third ground; because I consider them as both depending upon the same doctrine, although having very different circumstances in some respects. Can I give effect to this under the doctrine of providing for the general at the sacrifice of the particular intention? There is no case that was ever decided that would enable me to cut down this clear estate in tail male to the first son. Suppose the son had been born in the testator's lifetime, what right have I, as a judge, to say that the testator may not give that estate to his brother for life, then to his brother's first son for life, and to the first son of that son, and the heirs male of his body? I have no right so to say. they are perfectly valid and strict words of limitation; there is no ambiguity; and no construction is wanted. I cannot, therefore, on that general intention effect them. Then can I in any other way effectuate what is supposed to be the general intent? The testator immediately proceeds to give the estate "for all and every other the son and sons of the body of my said brother Phillips Monypenny, severally and successively, according to seniority of age, for the like interests and limitations, as I have before directed, respecting the first son and his issue." How can I cut out the second and other sons of Phillips, to whom he has expressly given it, on failure of the heirs male of the body of the first grandson? The words are just as express, and just as plain; and they shew that where he meant the estate to go to the second and other sons, he knew how to provide for it. I had occasion to review the cases in *Montgomery* v. *Montgomery*, and I took great care to see what the real rule was. There I found myself bound to give effect to the particular intent, which did not embrace every thing, but which gave a proper legal operation to the will according to the expressed intention of the testator; and by that rule I am ready to abide, or not say I will not apply the general intent, or even sacrifice a particular intent if I find it necessary, but I will not without an actual necessity. It was argued, that if an estate, which might be construed into an estate tail, were in any part of a will given to a parent, the Court would vest that estate in him, notwithstanding the limitations to the issue attempted to create estates, which would be void for perpetuity; it was said that you might reject those limitations, except for the purpose of collecting the intention of the testator. I know no such rule. I do not mean to say that, if I could see a general clear intention to provide for the issue generally in a way which could be effectuated, though there might be a superadded intention to provide for that issue illegally, by confining it to successive life estates, I might not reject that which was illegal, to give effect to that which was legal. Cases may exist in which you may properly reject the illegal limitation, and give effect to the legal intention, by giving an estate tail to the parent; but here I can do no such thing. I cannot give it to the father, because that would not effect the intention. If I give it him in remainder, it is exposed to the same objection; it is a remainder then (by implication) expectant upon the remote estates, and it is void with those which precede it. If I were to attempt to carry it back by any construction, and to make him tenant in tail in possession, I should destroy the whole intention of the testator. Then comes the other ground, namely, that of construction simply. It was said, that if I could give the first son, the grandson of the body of the first son of Phillips, an estate tail, that then the other estates would naturally follow under the actual gifts of the will. That construction would certainly do less violence than any other, if I could adopt it I would; but I cannot do so consistently with this will, for, in the first place, I must not only introduce lines of issue for whom the testator has not provided, but I must exclude those for whom he expressly has. I must not only introduce second and other sons of the first son, but I must exclude until those so introduced are dead without issue the second and other sons of Phillips. I am bound to give this with a legal construction to the extent to which it may be legally executed. I cannot give any other than the general legal construction to these limitations. The consequence is, that as they stand, Phillips took a good estate for life, at his death his first unborn son, had he been born, would have taken a good estate for life, and all the remainders over are void and inoperative, and cannot be considered as standing in the way of any body who is entitled otherwise in the property. That brings me to that important clause, namely, the gift over; and a very important question it raises. After having provided for these unborn children and their issue, he says, "and in default of issue of the body of my said brother, Phillips Monypenny, or in case of his not leaving any at his decease, upon trust for my said brother Thomas Monypenny, for and during the term of his natural life," and so on. Now, if this was a regular remainder, depending upon all the previous limitations, it would be just as objectionable as the rest. The law in this case stands in a peculiar position; *Longhead* v. *Phelps*, shews, that in a case where there are two clauses you may embrace the first clause upon which you have to decide—which I must take to have been a limited clause,—a gift over in the event of the party dying without leaving issue male, and disregard the second which would be too remote and void; and if there be a good gift over in the particular event, that may be taken advantage of. That, I apprehend, does not arise on a gift over following a disposition illegal on account of perpetuity. In *Beard* v. *Westcott*, like *Somerville* v. *Lethbridge*, there were successive life estates for terms of years to unborn issue, which were clearly void beyond the first takers: and then there was a disposition to a grandson, and "in case he should leave no issue male at the time of his death, or in case there should be any, and they should all die before twenty-one without issue male," then the estate was given over. That case was sent to the Court of C. P. and the judges were of opinion that the gifts were all void after the gift to the unborn son, but that if the event arose within the legal limits of perpetuity, the gift over would take effect. To that I never could subscribe. Lord Eldon subsequently sent it to the Court of King's Bench, which held that the gift over was void, not because it was not within the time of perpetuity, but expressly on the ground on which I had so considered it—that the limitation over was never intended by the testator to take effect unless the persons whom he intended to take under the previous limitations would, if they had been alive, been capable of enjoying the estate, and that he did not intend that the estate should wait for persons to take in a given event where the person to take was actually in existence, but could not take at all. Lord Eldon affirmed that decision, and the estate was enjoyed accordingly. So that you cannot, upon gifts over, which are void for perpetuity, take an independent clause and say upon any gift which is within the line of perpetuity you will give something over, but you must see whether that will dovetail in and accord with the previous valid limitations, and that will apply to this case. If I can read this as a gift in the alternative, "in case there is no issue living" at the death of the brother, then I do not interfere with any intention of the testator, because nobody is excluded, and I may, therefore, give effect to that alternative if I find it consistently with *Beard* v. *Westcott*, and every other authority; but I do not give the estate over to a person under the limitation at the expense of any person who is intended to take under that limitation. Now, in the case of *Proctor* v. *The Bishop of Bath and Wells*, there was a disposition to the first son who should come into being and take holy orders; and there was no son. Every body knows he could not take holy orders until the age of twenty-four, and, therefore, taking it as it stands, it was too remote. It was argued that that limitation over embraced two events, namely, that of a son being born, and that, if born, his taking holy orders. There was no son, and the Court there expressly held that they could not divide the limitation. The Courts, have, therefore, gone to this extent,—they will not hold a gift over in words comprising only one event, although, in point of fact, it may consist very reasonably of two branches, unless the testator has done so. Now, what is contended here is, that I am to consider these words, which, at all events, point to different events, as pointing only to one event. There is no doubt about this, that in the sense in which the Court uses the words, "and in default of issue of the body of a man," that that means a failure of issue at any time, it does embrace beyond all question a failure of issue, at the death of a testator, for example, or at any time; but when I find the testator using that which would embrace all other events, and also using words which embrace an event within those general words, I am bound to consider he did not use the general words in the sense in which the Court would use them, because he tells me he did not use them in that sense. If you are to say that he used them in the sense in which the Court uses the words, then the other clause would be insensible, it would be surplusage,—it would be inoperative. I have not added to the words; I have refused to do so. I refuse on the same ground as I refused to strike out his words. I feel myself bound to give effect to every word in the will, as far as the law will enable me to do so. If I consider the words "in default of issue of the body" to have a more limited sense than the words "in case of his not leaving any," then those words may be operative. Lord Hardwicke lays it down, that it is utterly immaterial what words come first or what words come last in a will: there is no magic in words. I am clearly of opinion, therefore, that if there be ambiguity here, I am at perfect liberty to clear it up, and to read this clause, as "and in case." If a person, looking at an event which may soon be ascertained, says, "if upon my death," or "in case of my not leaving issue at my decease," or "if at my death I shall leave no issue behind me," or "if I do, and at any period, however remote, that issue shall fail," I give the estate in such and such a way, there is nothing insensible in that; it may be expressing unnecessarily that which would be included in the latter branch; but it shews that the testator has, as he might have done in that case, of *Proctor* v. *The Bishop of Bath and Wells*, done under one form of expression what he might have done under two. If, in that case it had been said, "and if having no son born," or "having a son born he shall be in holy orders," then so and so,—one is as good as the other. Here the Court of Ex. read it as if it were one clause; I can hardly suppose that any two clauses providing for one event which must happen, but at different periods, may not be read in the same way. *Leake* v. *Robinson* might so be read, and so might be said of almost every case. Nothing is so dangerous with regard to a man's will as to strike out words which admit of a reasonable interpretation. I am clearly of opinion that effect must be given to this clause as an independent clause, and that the gifts over are perfectly valid. As far as the decision of the Court below depends on this point, I affirm it; and I cannot say that I entertain any doubt upon it. As regards the other question, I must look into the materials before me, and I will dispose of it to-morrow morning.

Tuesday, July 20.—The LORD CHANCELLOR.—Mrs. Joddrell, by her will, gave the Joddrell estate to Mary Jefferson for life, then to her sons and daughters in tail, then to Silvestra Monypenny for life, and her sons and daughters in tail; then to Phillips Monypenny for life, and his sons and daughters in like manner; and then to Thomas for life, and his sons and daughters in like manner, and so on. And then there was the shifting clause, "that if Phillips Monypenny, and Thomas Monypenny, or either of them, their or either of their issue, male or female, or any other son or sons of said James Monypenny (who were provided for by her will), hereafter to be born, or his, their, or either of their issue, male, or female, shall at any time or times be or become entitled to any estate of freehold or inheritance in possession of or in the messuages, lands, tenements, and hereditaments, in the said county of Kent" (the Maytham Hall estate), "now of, or belonging to my cousin Robert Monypenny, of Rolvenden, aforesaid, esq. elder brother of the aforesaid James Monypenny, or the greatest part of the same, messuages, lands, tenements, and hereditaments, so as to be in the possession, or in the actual receipt of the rents and profits thereof," then the use was to shift over; it was to shift in case either of those parties became entitled to the Maytham Hall estate. Now, I do not think, looking at the limitations of that estate at the time the will was made, and the subsequent acts, namely, the two recoveries and the particular charge, that that estate ever did become vested in the devisees of Mrs. Joddrell, within her shifting clause. That is not very material, because we are not dealing with the Joddrell estate, but with the Maytham Hall estate. If Phillips lost his estate in the Joddrell estate, he could not have done so till 1836, because in 1826, when he came into possession of the Maytham Hall estate, he had only an estate in remainder, which never could have come within the shifting clause of the Maytham Hall estate, as it never could have been intended that the mere accession to a life estate in remainder should take away an estate in possession. But if Phillips ever did take a life estate in the Joddrell estate, he conveyed it to Thos. Gybbon Monypenny. Now, the Maytham Hall estate was settled (after the death of the widow) to Phillips, for life, then to his first unborn son, which was valid, then to that unborn son's son, which was void for perpetuity, and then the estate was limited over, which has been held to be good. Now, when Phillips became tenant for life in possession, which he did not till 1826, when the former tenant for life died, then, no doubt, the clause relating to the Joddrell estate, supposing it to have been within it, would have operated. Now, as regards the Maytham Hall estate, suppose the event which has happened not to have happened, Thomas would take a contingent life estate; for the shifting clause is, "if the brothers, or either of them, should become entitled to the Joddrell estate, then the next person entitled under the will shall take as if the party succeeding were dead." If Phillips took the Joddrell estate, which, in point of fact, he would do when Silvestra died, then the Maytham Hall estate would go over. To whom was it to go? It was to go over as if the party taking that estate were dead; but that would not carry it to Thomas, because, at the death of Phillips, if he had a son he would have taken it, and Thomas Gybbon never could take unless Phillips had died without issue living at his death, under the clause which has never been sustained by the Court. The consequence, therefore, is, that Thomas Gybbon had not, upon the estate going over, an estate for life. I apprehend that the estates created in the Maytham Hall estate would all go over to the trustees, but for whom I need not inquire. Well, in 1837 Thomas Gybbon and Phillips execute

mutual cross conveyances; and I am clearly opinion that they are binding, and effectually convey whatever estates they had in the property. Thomas Gybbon suffered a recovery in respect of the Joddrell estates: he claimed to be seised in fee of them. Silvestra Monypenny joined in making tenant to the præcipe, and Phillips himself joined in the deed, and conveyed a life estate. Phillips suffered a recovery of the Maytham Hall estate, which had no operation; he claimed the fee, and the deed of conveyance by Thomas Gybbon to him, after reciting that, conveys to Phillips in fee. Whatever estate Thomas Gybbon had, passed by that conveyance; of that I have no doubt. Now, he had not any estate in consequence of the shifting clause, but he had a contingent estate for life in the event which happened, and which he was capable (being an equitable estate) of transferring; and that estate, in my opinion, he has transferred to Phillips in fee, and to that estate the parties who claim under the will of Phillips would be entitled. When Phillips died without issue, Thomas Gybbon became entitled, as the Court has already held, to a life estate in the Maytham Hall estate, and he became entitled also to a life estate in the Joddrel estate; and then the question arises, will the shifting clause in the Maytham Hall estate operate or not? I am of opinion that the conveyance by Thomas Gybbon, which passed the life estate in contingency to Phillips, could not prevent its operation. I am also of opinion that the dealings by Thomas Gybbon with the Joddrell estate did not prevent the shifting clause in Jas. Monypenny's will from operating on those estates, because, in point of fact Thomas Gybbon took an estate tail under the original donation; that estate tail he enlarged into a fee by a common recovery. Now, the shifting clause is "But I do hereby declare that if it shall happen at any time hereafter that my said brothers, or either of them, their or either of their issue, shall become entitled to the real or copyhold estate, or any part thereof, late of Elizabeth Joddrell, widow, daughter of the late Phillips Gybbon," situate in the parishes of so and so, "then and in that case and immediately upon such an event taking place, my said trustees and the survivor of them and his heirs shall stand seised of my said estates hereinbefore devised for the benefit of my said brothers and their issue, upon trust for the next person entitled thereto under and by virtue of this my will, in the same manner as they would have done if the person so succeeding to the said estates late of the said Elizabeth Joddrell were actually dead." Now, no doubt this is ambiguous, and it might only mean that there shall be only one shifting; he talks of "then and in that case," "immediately on such event taking place," and "then and in that case," and certainly it has a bearing towards the clause operating only once; but on the other hand, the express declaration is, "that if the said brothers, or either of them, shall become entitled to the said estates,"—I must suppose him to have known what the limitations were of the Joddrell estates: he knew that they were settled on these persons in succession, and therefore, he says, "If either of my said brothers or their issue shall become entitled;" he provides expressly for both events, namely, both brothers becoming entitled or either of them becoming entitled; and then, when he afterwards seems to confine this clause to the one event, it may be a little ambiguous, but there is nothing insensible in it; you provide for two persons taking in succession or only one of them, and then you say, "in that event," that is, when the event happens, then such and such a proceeding shall take place. I think, therefore, the true construction is, that this clause is to operate toties quoties as regards the particular person named; then, if that is so, how does it stand as regards Thomas Gybbon? He had conveyed the life estate to which he might become entitled, in the Maytham Hall estate; but that would not prevent his estate going over in the event provided for, and, therefore, when Phillips died without issue, Thomas Gybbon became entitled for his life, and was also entitled at that time to the Joddrell estate, and in a way that I think was within the shifting clause—when the event happened the estate went over; and the consequence is that his son then became entitled; the clause then properly applies. If Thomas Gybbon were then dead his son would take. I am of opinion that the decision which has been come to in the Court below is the right one, and that the clause has operated a second time, and that it did operate on the Joddrell estate, and through that estate on the Maytham Hall estate.

The Lord Chancellor gave the costs out of the fund, it being understood that the litigation was not to be carried further. The next of kin to bear their own costs.

ROLLS COURT.

Reported by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

Thursday, April 29.

Ex parte LAKE, *re* THE NORTHERN COAL MINING COMPANY.

Winding-up Act—Calls—Judgment debts under 1 & 2 Vict. c. 110—Balance order, form of—Administration suit—Proof of debts—Charging administrator personally—Interest.

An order was made for winding up the affairs of a company, and a call of 10l. per share was made on all the shareholders. A claim for the amount due on the call was carried in and proved in a suit for the administration of the estate of a deceased shareholder, and subsequently a balance order was issued charging L. as administrator of the estate simply with the amount of the calls and interest thereon. This order was discharged, on the ground that it was made personally against L. as administrator, and because interest was charged thereon. On motion to vary or discharge the order discharging the Master's order:

Held, that the Master's order must remain discharged, but the order discharging it must be varied so as to allow the official manager to prove for the calls in the suit for administration against the assets without prejudice to any claim for interest to be made in that suit.

Quære, whether calls made by the Master under the provisions of the Winding-up Act are to be considered judgment debts under the 1 & 2 Vict. c. 110.

Daniel (with him *James*) in this case moved to discharge or vary an order of the Master of the Rolls discharging an order of the Master, whereby the Master ordered the sum of 13,365l. to be paid by Mr. Lake as administrator of the estate of the late Sir Augustus Brydges Henniker, being the amount of a call and interest thereon in respect of 1,160 shares in the Northern Coal Mining Company, of which Sir A. B. Henniker had been the holder. It appeared that Sir A. B. Henniker died in the year 1849, being then a shareholder to the extent already stated, and the suit of *Roberts* v. *Henniker* was instituted for the administration of his estate, and in this suit Mr. Lake, as administrator of the estate, was made a defendant. In January 1850 an order was made under the provisions of the Winding-up Act for winding up the affairs of the Northern Coal Mining Company, and a call of 10l. a share was made upon all shareholders or contributories, including the estate of Sir A. B. Henniker. No balance order had then been issued as against the estate of Sir A. B. Henniker, but shortly after the call was made a claim was taken in in the suit of *Roberts* v. *Henniker*, and a proof was made for 11,620l. and afterwards another claim for interest on that sum was taken in, and an objection was taken that there was no balance order made. A balance order, however, was subsequently made on the 27th of May, 1850, by the Master, whereby, on the ground that the order for a call was a judgment under the 1 & 2 Vict. c. 110, he ordered interest to be paid on the call, and he charged Mr. Lake, as administrator of Sir A. B. Henniker, with the amount of the call in respect of the 1,162 shares, and with interest thereon. This order was discharged by the Master of the Rolls on the 15th of April last, in the absence of the official manager, who, however, had been served, on the ground that it was made against Mr. Lake personally, instead of directing him to pay out of the assets of Sir A. B. Henniker, and also on the ground that the Master had allowed interest on calls. It was now asked to discharge or vary this order of the Master of the Rolls, and it was argued that the calls made by the Master were a judgment debt under the 1 & 2 Vict. c. 110, and it was insisted that the order if discharged on the point of form, regarding the charge against the administrator personally, at least ought to be supported on the question of interest.

R. Palmer and *Selwyn* for the administrator.

The MASTER of the ROLLS would not determine the question whether calls made by the Master were or not judgment debts under the 1 & 2 Vict. c. 110, because the application was not made to him in the suit of *Roberts* v. *Henniker*, and his decision, if he made one here, would not be final, and the parties might notwithstanding open the question again in the administration suit. Then, again, it might turn out not to be necessary to decide the question at all, for it might happen that the estate would be solvent, and then the question would not arise. As to the other point, that of the form of the order, it was clear that the Master's order was wrong. On the 15th of April, an order was obtained by Mr. R. Palmer and Mr. Selwyn, to discharge the order of the Master, and a motion is now made to discharge that order, or vary it; but I cannot discharge the order without setting up the order of the Master. But the Master's order cannot stand, for it is an order directing Mr. Lake to pay within seven days the sum of 13,365l. due by him on balance of account as administrator of Sir A. B. Henniker's estate. That charges him as administrator simply, and in so doing, assumes that he has assets in his hands; but he has not admitted assets, and therefore the order cannot stand. How, then, can I vary the order? I am disposed to think that, unless by arrangement counsel can agree upon some other plan, I must adopt the same course on this as on all other like occasions; that is, to let the matter stand over, to give an opportunity for proposing an exact form of order. But subject to that, the order may be, that Mr. Lake, as administrator, pay out of the assets of the estate the sum to be proved, and the official manager be directed or allowed to go in in the suit of *Roberts* v. *Henniker*, and prove the amount of the calls before the death of Sir A. B. Henniker, and since, without interest. Let the balance order be made up between the parties, and let the official manager go in in *Roberts* v. *Henniker*, and prove that, and claim, if he thinks fit and necessary, interest on the calls. Discharge the order of the Master, and let the order discharging it be varied without prejudice to the official manager going in in *Roberts* v. *Henniker*, and proving calls and raising the question of interest.

Thursday, May 6.

LAKE *v.* THE EASTERN COUNTIES RAILWAY COMPANY.

Railway company—Purchase-money—Investment—Costs "incidental to conveyance."

A. B. H. contracted to sell a piece of ground to a railway company. The contract contained a stipulation that the company should pay all costs and expenses "of and incidental to the conveyance." The title was accepted, but before completion of the purchase A. B. H. died, leaving an infant heir on whom the estate descended. To obtain a conveyance a suit was necessary:

Held, that the costs of it were to be paid by the company as being included under the words "of and incidental to the conveyance."

Sir Augustus Brydges Henniker contracted, on the 5th June, 1847, to sell some land to the Eastern Counties Railway Company. The contract for sale contained a stipulation that the company should pay "all costs and expenses of and incidental to the conveyance." The abstract of title was delivered on the 8th of March, 1848, and it appeared that some of the deeds were not forthcoming; but ultimately, subject to a statutory declaration verifying those deeds, the title was accepted, after being duly investigated. Before the conveyance, however, could be executed, and in January, 1849, Sir A. B. Henniker died, leaving an infant heir, on whom the estate descended.

On the 1st of February, 1849, some days after the death of Sir A. B. Henniker, the solicitors of the company sent a draft conveyance to the solicitors of Sir A. B. Henniker, who replied that it could not then be executed. Mr. Lake, as the administrator of Sir A. B. Henniker, then filed a bill against the company to have the contract carried into effect, and a proper conveyance executed by the order of the Court. The only question now was as to the costs of the suit, which the death of Sir A. B. Henniker had rendered necessary, whether they were to be paid by the company under the stipulation already mentioned.

R. Palmer and *Erskine*, for the plaintiff, insisted that the costs were payable by the company. They cited *Hanson* v. *Lake*, 2 Y. & Coll. C. C. 328; *Re Taylor*, 1 Macn. & G. 210.

Shee, for the company.

The MASTER of the ROLLS was of opinion that the costs in question were included in the terms of the contract. Nobody was to blame. Sir Augustus died before the conveyance was executed, and a suit therefore became necessary. The provision as to costs contained in the contract includes all costs of and incidental to the conveyance, and the suit was no doubt incidental.

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

Tuesday, July 6.

MIDDLETON *v.* MIDDLETON.

Spoliation of will—Costs of issue devisavit vel non. Where the heir-at-law shortly after the death of a testator tore the will in pieces, but the paper writing was afterwards restored and proved, and in a suit the heir required an issue devisavit vel non, the Court, upon the validity of the will being established, ordered that the costs of the issue should be paid by the heir in consequence of his misconduct in tearing the will.

John Middleton, the testator in this cause, by his will directed that his estates should be sold and the proceeds divided among the persons therein named. In consequence, however, of the will not containing any devise of the estates they descended upon George

Middleton, the eldest son and heir-at-law of the testator. A claim was filed by one of the persons interested in the proceeds of the sale against George Middleton for the purpose of having the estates sold under the direction of the Court, and that the heir-at-law might be directed to execute the necessary conveyances. The heir-at-law disputed the validity of the will, and at the hearing of the claim required an issue devisavit vel non. That issue having been decided in favour of the validity of the will, the case now came on upon further directions. The only question now raised was as to the costs of the issue. The affidavit of James Crosby stated the following circumstances relative to the heir-at-law's conduct:—The testator died on the 25th day of May, 1846, and the deponent was present at his funeral, which took place on the 28th day of the same month. The defendant, George Middleton, the eldest son of the said testator, and other members of the testator's family, were also present at and after the funeral. Mrs. Middleton produced and handed to the deponent a paper-writing purporting to be the testator's will and to be signed at the foot thereof by the testator and subscribed by William Banting and Richard Spooner as witnesses. The will was then read over, and Mrs. Middleton afterwards requested that the deponent would take care of the will, as John Middleton, her son, one of the plaintiffs who was appointed executor of the said will, was absent, and it was then arranged by the said George Middleton and the deponent, that they should meet at Appleby on the following morning, at the house of Samuel Crosby, to consult as to the affairs of the testator. George Middleton and the deponent met on the following day at the house of Samuel Crosby, at Appleby, and when there, deponent proposed that they should go into the summer-house at the back of the house, and again peruse the will. George Middleton, Samuel Crosby, and the deponent, went into the summer-house, and deponent there gave the said will to Samuel Crosby to read over, and whilst he was doing so, George Middleton, who was sitting next to him, suddenly rose from his seat, and snatched the will out of his hands, and tore it into several pieces, saying, whilst he was doing so, "I will remove that barrier," and he then threw the pieces of paper on the ground. George Middleton then went away, and deponent did not see him again on that day. The paper writing so torn in pieces by George Middleton was the paper writing received by the deponent from Mrs. Middleton, the widow of the testator, and purporting to be his last will and testament. Samuel Crosby, by his affidavit, confirmed these statements, and said, that, whilst he was reading the will, George Middleton, who sat next to him, suddenly got up and snatched it out of his hands, and commenced, in a very violent manner, to tear it to pieces. He remonstrated with him against doing so, and endeavoured to stop him, but he did not succeed. G. Middleton said, it was useless deponent remonstrating with him, for "he had done it," meaning that he had destroyed the will, and "did not care if he was hanged for it; that the will was John's will," meaning the plaintiff, John Middleton; "that it was his making, and was all a forgery." Some time after James Crosby and George Middleton had gone away on the same day it occurred to the deponent, Samuel Crosby, that the pieces of paper which had composed the said will might be put together again, and he went to the place where the said pieces of paper were lying, and gathered them all up, and assisted by Richard Winter, put them on another sheet of paper with gum, the writing being all on one side of the paper writing, and made the paper writing as distinct and readable as before it was torn. He afterwards gave the paper writing to John Middleton, the plaintiff, who was the executor thereof, and by whom, as he had been informed and believed, the same was proved in the Consistory Court of Carlisle.

Bagshawe, Jun. (with whom was *Russell*), contended that in consequence of the heir-at-law's misconduct in tearing up the will, he should be compelled to pay the costs of the issue. (*Berney* v. *Eyre*, 3 Atk. 387.)

Robson, for some of the defendants.

Faber (with whom was *Stuart*), for George Middleton, the heir-at-law, said that the act of spoliation had nothing to do with the question of the issue. The heir had not destroyed the will, so as to compel the parties to set it up by means of secondary evidence.

The VICE-CHANCELLOR said that he considered the misconduct of the heir-at-law to be so very great, that he must pay the costs of the issue, although they had not been increased by what the heir had done in attempting to destroy the will.

GOUGH *v.* OFFLEY.

Mortgagor and Mortgagee—Production of documents.

In a suit for the administration of the estate of a deceased mortgagee, the executors may be compelled to produce the mortgage deeds admitted by their answer to be in their possession, although the mortgagors are not parties to the suit, and although such production might be attended with loss to the testator's estate.

This was a motion on behalf of the plaintiff for the production by the defendants, James Offley and Charles Higgs, of the several deeds and papers admitted by their answer to be in their or one of their custody, possession, or power.

The answer of the defendant, James Offley, who was executor and trustee, and Charles Higgs, who was another trustee of the testator in the cause, to the bill, which was for the administration of the testator's estate, admitted, among other things, that the testator's estate consisted of upwards of 30,000*l.* the principal part of which was composed of moneys due on mortgage; that the whole of the personal estate of the testator was vested in the defendant, James Offley, as the sole legal personal representative of said testator; and that he had in his possession the several deeds and documents, a list of which was set forth in the first part of the seventh schedule thereto, and that the defendants had in their possession, on behalf of themselves and their co-trustees, the deeds and documents, a list of which was set forth in the second part of the said seventh schedule thereto; that as to the deeds mentioned and referred to in the third and sixth schedule, the same were the title-deeds of the various persons who were entitled to the equity of redemption of the properties comprised therein, and that such parties were not parties to the suit; that the defendants had set forth in the said third and sixth schedules thereto a statement of the annual rental and estimated value of each of the said mortgaged properties; and that the said mortgaged properties were an ample security for the moneys invested thereon; and the defendants submitted that it would be a great injury to the parties entitled to the equity of redemption in the said mortgaged properties if their mortgages were made known, by means of this suit, to Ralph Dickinson Gough, the husband of the plaintiff, who was an attorney and solicitor, carrying on business in the immediate neighbourhood of the said mortgaged properties; and they submitted that in the absence of such parties the defendant, James Offley, could not disclose any further particulars relating to the said mortgage and title-deeds, without violating the confidence reposed in him as the mortgagee or executor of the mortgagee, and, therefore, that he ought not to be called on so to do, and that the production of said deeds mentioned or referred to in said third and sixth schedules ought not to be ordered in this suit, but that the same ought to be protected from production.

In opposition to the motion an affidavit was filed, stating that most of the mortgagors would pay off their mortgages rather than allow the deeds to be produced by the mortgagees, and that such payment, by reason of the present low interest of money, would occasion considerable loss to the estate.

Martindale (with whom was *Malins*) appeared in support of the motion.

J. Baily and *Batten*, for the defendants, referred *Lambert* v. *Rawlins*, 2 Mer. 489, and *Reid* v. *Langlois*, 1 Mac. & Gord. 627.

The VICE-CHANCELLOR said that he did not think there was any thing in the circumstances of this case to take it out of the ordinary rule. The plaintiffs had a right to see all the securities. As to the interest of the mortgagors, they subjected themselves to all the inconveniences consequent upon it when they mortgaged their property. This case did not appear to come within any of the exceptions to the rule.

Wednesday, July 7.

FOOTNER *v.* STURGIS.

Judgment-creditor—Foreclosure.

The Court will not make a decree of foreclosure upon the claim of a judgment-creditor.

This was a claim by a judgment-creditor to enforce his charge against certain real estate belonging to the defendant.

Hallett, for the plaintiff, proposed to take a foreclosure decree, and referred to *Ford* v. *Wastell*, 2 Ph. 591, as an authority for a judgment creditor's having a decree of foreclosure.

The VICE-CHANCELLOR said, that upon a charge like that of the plaintiff's, it was not the course to decree a foreclosure. He could not, therefore, make the decree proposed.

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. BENNET, Esq. of Lincoln's-inn, Barrister-at-Law.

June 26 and 30.

Re MAIS.

Trustee Act, 1850—Removal of trustee.

The sections 22 and 32 of the Trustee Act, 1850, do not give the Court power to remove a trustee merely because he is out of the jurisdiction, and to appoint another.

This was a petition presented on behalf of certain infants, which, amongst other things, stated that one of the trustees in whose names a sum of 1,035*l.* 3 per cent. Consols was standing, had been and then was residing at Jamaica, out of the jurisdiction of the Court, and praying that another trustee might be appointed in the place of the one so residing out of the jurisdiction; that the two new trustees might be appointed guardians of the infants; and that a sum of 263*l.* part of the corpus of the fund, might be sold out and applied towards the past and future maintenance of the infants.

E. W. Collins, in support of the petition, relied upon the 22nd and 32nd sections (*a*) of the Trustee Act, 1850 (13 & 14 Vict. c. 60), as giving the Court power to remove a trustee residing out of the jurisdiction, and cited *Re Hobson's Settlement*, 15 Jurist, 552.

The VICE-CHANCELLOR, having taken time to consider the question, said that he had done so to enable him to confer with one of the other Vice-Chancellors on the subject. That he had done so, and that he (the Vice-Chancellor) now thought that he ought not to remove this trustee and appoint another on the mere ground of the trustee residing out of the jurisdiction of the Court. The words of the sections to which reference had been made were very general, but he did not think that the Legislature could have intended that a trustee should be summarily removed merely because he was out of the jurisdiction, which probably might be the case only for a short time.

Common Law Courts.

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY and O. J. B. HERTSLET, Esqrs. Barristers-at-Law.

COUNTY COURT APPEAL.

Feb. 21, May 12, and June 19.

SHEPHERD *v.* THE GREAT NORTHERN RAILWAY COMPANY.

Railway Carriers—Responsibility for merchandise disguised as luggage.

A railway company is not responsible for the loss of merchandise which is put into receptacles such as ordinarily contain luggage, even though such loss be occasioned by negligence on their part during the carriage, unless notice be given to them and the nature of the articles declared.

The rule permitting every passenger by a third-class Parliamentary train to carry with him 56lbs. of luggage, empowers a husband and wife travelling together to take double that quantity between them.

Appeal from the County Court of Yorkshire holden at Sheffield.

CASE.

"This was an action brought by the plaintiff against the defendants to recover damages amounting to the sum of 10*l.* 3*s.* 2*d.* comprising the following items:—124 dozen of ivory handles, cost price, 33*l.* 19*s.* 8*d.*; carpet bag, 7*s.*; boots, 15*s.*; two handkerchiefs, 1*s.* 6*d.*; loss of sale of ivory handles and expenses, 5*l.*; total, 40*l.* 3*s.* 2*d.*; and was tried on the 5th November last; and on the hearing the following facts were proved or admitted.

"On the 2nd August last the plaintiff, who is a cutler at Sheffield, took a third-class ticket of the defendants at the Great Northern Railway station at Sheffield, to go (by one of the excursion trains which left Sheffield on that day) to London, and to return to Sheffield, and for which he paid the sum of 5*s.* During the plaintiff's stay in London he purchased a large quantity of ivory handles for table-knives, for the whole of which he paid a sum exceeding 33*l.* 19*s.* 8*d.* On the 6th August the plain-

(*a*) Sec. 22.—And be it enacted, that where any person or persons shall be jointly entitled with any person out of the jurisdiction of the Court of Chancery, or who cannot be found, or concerning whom it shall be uncertain whether he be living or dead, to any stock or chose in action upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for or recover such chose in action, or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons, together with any person or persons the said Court may appoint; and when any sole trustee of any stock or chose in action shall be out of the jurisdiction of the said Court, or cannot be found, or it shall be uncertain whether he be living or dead, it shall be lawful for the said Court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof, in any person or persons the said Court may appoint.

Sec. 32.—And be it enacted, that whenever it shall be expedient to appoint a new trustee or new trustees, and it shall be found inexpedient, difficult, or impracticable so to do without the assistance of the Court of Chancery, it shall be lawful for the said Court of Chancery to make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees.

tiff left London by the return excursion-train of the defendants, accompanied by his wife, his father-in-law, and another person, his sister-in-law, each of whom had also a third-class ticket for the defendants' excursion-train back to Sheffield.

"The luggage of the plaintiff consisted of a carpet bag, a deal box, about two feet long, and two brown paper parcels wrapped in blue checked handkerchiefs. The carpet-bag (besides some boots and other trifling articles of the value of 1*l.* 3*s.* 6*d.*) contained ivory handles, as did also the box and parcels, and the total quantity of ivory handles was 283 dozen. Each package had upon it the plaintiff's name and address, both at Sheffield and in London. The luggage allowed to a third-class passenger by the 7 & 8 Vict. c. 85, s. 6, was 56 lbs. and the same weight was also allowed to third-class passengers by the defendants' excursion trains.

"The plaintiff admitted, on oath, that he took no other luggage with him from Sheffield, and that the ivory handles were articles bought by him to use in his business; that he, the plaintiff, with his wife, his father-in-law, and his wife's sister, each took a parcel of the luggage and put it in the carriage in which they rode, under the seats, and that the porters of the company did not interfere in any way, and that the box was placed in the luggage-van by the plaintiff; that the weight was about 100 lbs. altogether. The wife's personal luggage was very trifling, and did not exceed 3 lbs. in weight; that the plaintiff, on his arrival at a place called Retford, between London and Sheffield, where the line of the railway divides, and where the passengers for Sheffield were obliged to change their carriages, took the parcels out of the carriages, and placed them with the box on the platform, where they remained for nearly an hour, until the fresh carriage was ready for them to proceed to Sheffield. The plaintiff then put the box in the luggage-van, and he placed the other parcels in the carriage where they took their seats to continue the journey to Sheffield, and did not call the porter to assist him; that subsequent to their departure in the train from Retford, and previous to their arrival at Sheffield, the train was obliged to stop on account of some obstruction; there was no guard in attendance upon it to warn any coming train, and the next train ran into the train in which the plaintiff and his wife were. They were both much hurt (for which the defendants have made them compensation by arrangement), and upon the plaintiff and his wife being assisted into another train, which was then provided for them by the company, to be forwarded to Sheffield, he spoke to one of the railway porters (as he was getting into the train) about his luggage, who told him "not to make himself uneasy—it would be all right." A messenger, sent by the plaintiff to the defendants' station to inquire for the luggage on the following day, was told that the defendants would inquire about it. The box was afterwards forwarded to the plaintiff by the defendants, but the other articles were never restored to him.

"The first point raised on the part of the defendant was, that the goods lost were not luggage, but merchandise, and being also above the weight allowed to third class passengers, even if luggage, the plaintiff was not entitled to recover. The judge decided against that objection on the following grounds, namely, that as the plaintiff and his wife were travelling together they would be entitled under the Act regulating railways to carry half an hundred weight each, and therefore the two would be entitled to carry one cwt. between them, which was more than the whole of the parcels weighed, but that even assuming that the company were not bound to carry the goods in question without extra charge, and that they might have refused to do so, either on the ground of their being above the weight allowed for one passenger, or on the ground of their being merchandise and not articles of personal luggage, yet as they had not refused, he held that they were just as much subject to the ordinary liabilities of carriers as if the goods had been under the allowed weight, and had been personal luggage of the passengers, the object of the clause in the Act of Parliament, in his opinion, being merely to compel railway companies to carry a certain quantity of luggage for each passenger without extra charge, and not to affect their liabilities for loss of such goods as they do consent to carry. The second point raised by the defendants was, that the goods were never in the custody of the defendants; but the judge found that the goods were in the custody of the defendants, and gave a judgment for the plaintiff for 35*l.* 3*s.* 2*d.*

"The questions for the opinion of her Majesty's judges of the Court of Ex. of Pleas to decide are,—

"1st, Whether, under the circumstances proved at the trial of the above cause, the company were liable for the loss of the above articles of merchandise.

"2nd, Whether, under the circumstances proved at the trial, the plaintiff and his wife were justly entitled to carry between them 112 lbs. weight of luggage.

"3rd, Whether the company had accepted the custody of the goods, under the circumstances proved at the trial, so as to render them liable to the plaintiff; or whether the goods were in the sole personal custody of the plaintiff."

The above case came on for argument before Parke and Platt, BB. on the 21st February, 1852, when

Phipson, for the appellants, the defendants below, contended that the company were not liable for the loss of the ivory handles, which were merchandise and not personal luggage, even admitting that they were responsible for the loss of such articles as would come under the denomination of personal luggage.

Mellor, for the respondent, the plaintiff below.—The defendants are liable as common carriers, unless protected by a special contract, or by Act of Parliament. Here there was no special contract, and this excursion-train was not subject to the restrictions contained in the 6th section of 7 & 8 Vict. c. 85. The defendants are subject, therefore, to the ordinary liabilities; and these ivory handles being brought by the plaintiff, not for sale, but to be used by him in his business, cannot be considered as merchandise.

PARKE, B.—If these goods had been so packed that the servants of the company could have seen that they were merchandise, and the company, with such knowledge, had taken them without making any contract for the carriage, I am of opinion that they would have been responsible for the loss. But the contents of these bundles were disguised; some of these ivory handles being in paper parcels tied up in blue handkerchiefs. The company, therefore, being ignorant of the contents of these bundles, had no opportunity of making a charge. As to the second question submitted to the Court, I am of opinion that the rule permitting every passenger by a third-class Parliamentary train to carry with him 56lbs. of luggage, empowers a husband and wife travelling together to take double that quantity,—namely, 112lbs. between them. The case, however, must be referred back to the judge that he may restate a part of it, and say whether this excursion-train was considered as an ordinary third-class Parliamentary train, or what were the terms upon which the company carried passengers by it.

The following rule was accordingly made:—

"In the Exchequer of Pleas, Hilary Term, in the fifteenth year of the reign of Queen Victoria. On appeal from the Sheffield County Court of Yorkshire, in a plaint between Thomas Shepherd, plaintiff, and the Great Northern Railway Company, defendants.

"Saturday, 21st day of February, 1852.

"Upon reading the special case stated betwee parties for the opinion of this Court, and upon hearing Mr. Phipson of counsel for the defendants, the appellants, and Mr. Mellor, of counsel for the respondent, it is ordered that the special case be referred back to the judge of the said County Court to state the terms upon which the defendants carried passengers by the excursion-train in question, and whether they carried them upon the terms contained in the 6th section of the statute 7 & 8 Vict. c. 85.

'BY THE COURT."

The following supplemental case was accordingly prepared, and was now (May 12) submitted to the Court.(*a*)

AMENDED CASE.

"The Court of Exchequer having, on the hearing of the appeal, ordered that the special case be referred back to the judge of the County Court to state the terms upon which the defendants carried passengers by the excursion-train in question, and whether they carried them upon the terms contained in the 6th section of the statute of the 7 & 8 Vict. c. 85, I have to state that no evidence was given or tendered as to the terms upon which the defendants carried passengers by the excursion-train in question, unless the admitted fact, that the charge for each third-class passenger by the said train was much less than a 1d. for each mile travelled, be, of itself, in the opinion of the Court of Appeal, sufficient proof, in point of law, that they carried them upon the terms contained in the said 6th section, and (subject to such opinion of the said Court) I find that the defendants did not carry passengers by the said excursion-train upon the terms contained in the 6th section of the statute 7 & 8 Vict. c. 85, and that there was no special contract as to the terms between the plaintiff and the defendants, but that they carried him and other passengers and their luggage by the said train upon the same terms as those upon which the defendants and other railway companies carry passengers, whether of the first, second, or third class, and their luggage by their ordinary passenger trains, and which terms (as I conceive) are the same as those on which stage-coach proprietors and other common carriers of passengers for hire do, by the laws of England, carry passengers and their luggage.

"I ought to add, that had I been specially called upon at the trial to find the terms upon which passengers were carried by the said train, I should have found them as above set forth; but I considered and stated that it was unnecessary for me to do so, because, even on the assumption that the defendants were right in contending that they carried the plaintiff on the terms contained in the said sixth section of the statute, I thought they were liable for the loss of his goods, and that consequently, à fortiori, they were so if they did not carry him on such terms.

"I would take the liberty of respectfully adding, further, that the County Court judge does not state the case on appeals; he merely signs the statement prepared by the parties, if they agree, and determines which of two statements is to be adopted when they differ, unless he happen to notice some manifest error or omission.

(Signed) "WM. WALKER.

"Sheffield, 1st April, 1852."

Phipson for the appellants, the defendants below.—The principle of a carrier's liability is the hire for which he undertakes to convey. The 7 & 8 Vict. c. 85, s. 6, establishes Parliamentary trains, and provides the hours for starting, the rate of speed, stoppages, carriages, and fares; and that "each passenger by such train shall be allowed to take with him half a hundred weight of luggage, not being merchandise, or other articles carried for hire or profit, without extra charge; and any excess of luggage shall be charged by weight, at a rate not exceeding the lowest rate of charge for passengers' luggage by other trains." At the trial it seemed to be supposed that this was a Parliamentary train, and the judge seemed to think that even if the train was within this section of the Act, the company was liable for the loss. The learned judge who first heard the appeal appeared to be of opinion that if this excursion-train was to be taken to be a Parliamentary train, the company was not liable. [ALDERSON, B.—This was clearly not a Parliamentary train within that section.] Here there was no special contract, and the question then is, whether railway carriers are to be held liable beyond other carriers? Is a carrier to be held responsible for merchandise wrapped up and disguised as luggage? The company never undertook to carry these ivory handles, and were utterly ignorant that they were carrying them. The principle is laid down by Lord Mansfield in the case of *Gibbon* v. *Paynton*, 4 Burr. 2298. There a man sent 100*l.* in money from Birmingham to London, and hid it in hay in an old nail bag. The bag and hay arrived safe, but the money was gone. Lord Mansfield said, "His (the carrier's) warranty and insurance is in respect of the reward he is to receive; and the reward ought to be proportionable to the risk. If he makes a greater warranty and insurance, he will take greater care, use more caution, and be at the expense of more guards or other methods of security; and therefore he ought in reason and justice to have a greater reward; consequently, if the owner of the goods had been guilty of a fraud upon the carrier, such fraud ought to excuse the carrier." As regards the personal luggage, the company cannot dispute their liability, and must pay those items amounting to 1*l.* 3*s.* 6*d.*

Saturday, June 19.(*a*)—*Field* was now called upon for the respondent (the plaintiff below). It is found by the judge of the County Court that there was no special contract, and no notice was displayed by the company limiting their liability, so as to make a special contract between the parties. These are not articles mentioned in the Carriers' Act, and the case is easily distinguishable from *Batson* v. *Donovan*, 4 B & A. 21, and that class of cases, because there notice was given by the carrier; here there was none. [PARKE, B.—If the company had been informed that these parcels contained merchandise, and not personal luggage, they would have required an additional payment.] It was the duty of the company to inquire. In *Riley* v. *Horne*, 5 Bing. 217, Best, C.J. in his judgment, said,—"A carrier has a right to know the value and quality of what he is required to carry. If the owner of the goods will not tell him what his goods are, and what they are worth, the carrier may refuse to take charge of them; but if he does take charge of them, he waives his right to know their contents and value." That is precisely what has been done by the defendants in this case. [PARKE, B.—Here the company say "We will take you and your luggage;" but there is no special contract; they do not undertake to carry merchandise, unless properly declared and paid for. If you do not give them notice, they cannot know the nature of the contents of the packages, and the risk they incur in carrying them. In this case there was false colour, by disguising the nature of the goods, whether intentionally or not does not signify, since it had the effect of preventing inquiry, and did not give the defendants full opportunity of knowing the contents.] In *Batson* v. *Donovan*, and *Gibbon* v. *Paynton*, fraud was expressly found. [PLATT, B.—You say that the company took these packages as luggage, and, therefore, cannot now complain; but why did they take them as luggage? Why, because

(*a*) Alderson and Martin, BB.

(*a*) Before Parke and Platt, BB.

their contents were disguised. PARKE, B.—If these articles had been declared, and the company had known what they were carrying, they would probably have compelled the respondent to send these packages by the luggage train, and pay for them.] Suppose, according to the regulations, I am allowed 112 lbs. of luggage, and I take 113 lbs. and my luggage is lost, does the fact of my having one pound more than the amount allowed release the company from liability? [PARKE, B.—No; it would be the duty of the company in that case to weigh the luggage.] It is equally their duty to inquire the nature of the luggage. This is a peculiar case; the facts show that the respondent was injured by an accident in the railway, and was, in consequence, prevented looking after his luggage, and there was an implied contract by the company to take care of it. [PARKE, B.—There was no new contract by the company after it in consequence of the accident; it was only a continuance of the old contract.]

PARKE, B.—In this case there being no special contract, the defendants were only bound to carry the plaintiff and his luggage, and under that term may be comprised his clothing and everything required for his personal convenience; and perhaps even a small present, had he had such with him, or a book to read on the journey might also be included in that term, but they were certainly not bound to carry merchandise and materials intended for trade, and to be sold at a profit. [The learned judge here recapitulated the facts of the case.] If this plaintiff had exposed these goods and the defendants had known and had full notice of what they were carrying, they would have been responsible, but they were not bound to carry merchandize, articles wholly disconnected with personal luggage. It is not necessary, therefore, to inquire whether there was fraud practised or not; the plaintiff conducted himself as if his intention had been fraudulent, and his sole desire to get his journey at as cheap a rate as possible. The argument that there was a new and special contract entered into between the parties founded on the case of *Coggs* v. *Barnard* is not valid. There the defendants agreed to carry, and here likewise the defendants would have been responsible if they had agreed to carry these articles, but they only agreed to carry the plaintiff as a passenger, and after the accident occurred there was no new contract; they only intended to carry out the original contract, and the subsequent carrying became a part of it. The company, therefore, is not liable for the loss. The judgment of the Court below will, therefore, be reversed, but, considering all the facts of the case, I think the usual rule as to costs should not be insisted upon.

Phipson intimated that the company would do whatever his lordship thought right.

Judgment reversed without costs, the defendants undertaking to pay 1l. 3s. 6d. the value of the plaintiff's personal luggage, if not already paid.

EXCHEQUER CHAMBER.

Reported by A. BITTLESTON, Esq. of the Inner Temple Barrister-at-Law.

ERROR FROM THE COURT OF QUEEN'S BENCH

Monday, May 10.

THE GRANTHAM CANAL COMPANY v. THE AMBERGATE, &c. RAILWAY COMPANY.

Railway Act—Construction—"Opening of the railway between A. and G."

By a railway Act, authorising the construction of a line from A. through N. and G. to B. and the purchasing of the N. and G. canals, it was enacted that "from and immediately after the opening of the railway between A. and G. for public use," the railway company should purchase the shares in both canals. The railway was opened for public use between G. and N. but not between N. and A. The part opened competed with the G. canal, that not opened would compete with the N. canal. In an action by the G. Canal Company against the railway company for the price of their shares:

Held (reversing the judgment of the Court of Q B.) that the railway had been opened for public use between A. and G. within the meaning of the Act of Parliament. (Williams, J. dissentiente.)

This was a writ of error upon a judgment of the Court of Q.B. pronounced in favour of the defendants upon a special verdict. The question turned entirely upon the construction of a few words in a local Act of Parliament, and is sufficiently stated in the judgment of the Court.

The case was argued on the 2nd of Feb. before Parke, B. Alderson, B. Maule, J. Cresswell, J. Platt, B., V. Williams, J. Talfourd, J. and Martin, B. by *Bramwell*, for the plaintiffs in error; and by Sir *F. Kelly* for the defendants. *Cur. adv. vult.*

JUDGMENT.

ALDERSON, B.—The question in this case arises upon a special verdict in an action brought by the plaintiffs against the defendants upon a private Act of Parliament (9 & 10 Vict. c. 155). From the statement in the special verdict, it will be seen that the sole question is as to the meaning of some words in the 73rd section of the 9 & 10 Vict. c. 155, and that section is as follows:—"And whereas the capital of the Nottingham Canal Company consists of the sum of 75,000l, divided into 500 shares of the original value of 150l. each. And whereas the capital stock of the company of proprietors of the Grantham Canal Navigation, otherwise called in this Act the Grantham Canal Company, originally consisted of 75,000l. divided into 750 shares, of the value of 100l. each, which capital was, under the powers of the said Act of the 37th year of the reign of King George the Third, increased to the sum of 112,500l. by the conversion of the said shares into shares of 150l. each. And whereas all calls have been paid upon the shares in the said canal company, with the exception of one share in the said Grantham Canal Company, which was forfeited for non-payment of calls, and each of the said shares in the Nottingham Canal Company is now of the value of 225l. and each of the said shares in the Grantham Canal Company is now of the value of 160l. be it enacted that, *from and immediately after the opening of the railway between Ambergate and Grantham, for public use,* the company hereby incorporated shall be liable to pay to the committee of management for the time being of the Nottingham Canal Company, for the use of the persons who, at the time of the opening of the railway between Ambergate and Grantham, shall be proprietors of the Nottingham Canal, the sum of 225l. for and in lieu of each share in the Nottingham Canal, and shall also be liable to pay to the committee of management for the time being of the Grantham Canal Company for the use of the persons who, at the time of the opening of the railway between Ambergate and Grantham, shall be proprietors of the Grantham Canal, the sum of 160l. for, and in lieu of, each share (including the said forfeited share); and they are hereby required to pay the same several sums to the said committee of management for the time being respectively within six calendar months from the opening of the railway between Ambergate and Grantham, but without interest in the meantime." And then it provides that it shall be treated as a debt and may be recovered in an action of debt. The opening of the railroad mentioned in this section is, no doubt, the opening of the railway authorised by the Act, namely, the railway from Ambergate to Nottingham, and between Spalding and Boston called the Ambergate, Nottingham, Boston, and Eastern Junction Railway, which was to begin at Ambergate and pass through Nottingham and Grantham and end at Spalding. The sole question is, whether that opening was to be through the whole or part of the intermediate space intended to be occupied by the present railway between Ambergate and Grantham, in the sense in which one end is Ambergate and the other is Grantham? Now the railway is opened between them if it is opened in that space, and in any and every part of the intermediate space between the two places. If the intention of the Legislature had been different, the correct expression would have been that it should be opened from one place to the other, or for the whole space between them. The words used, however, would be very likely to be used in that sense in common parlance, and so to be understood by an ordinary reader, although, in their strict grammatical sense, they do not so import. The words, therefore, being in a certain degree ambiguous, we must refer to the context to determine in what sense they were used, and what is their meaning. If we look at the context, [illegible] think the meaning of the words [illegible] that which they bear in their strict grammatical sense. The recital of the Act shews that it was intended that the present railway, and also the Nottingham and Grantham Canal Company, should be worked in connection, and that the companies should be consolidated and incorporated with the railway company, and for the purpose of effecting that object, the 73rd section enacts that the railway company shall purchase both the canals at a price given, and both at the same time. When is that time? According to the plaintiff's construction and the common grammatical sense of the words used, it is when the railway from Ambergate to Spalding is opened in any part between Ambergate and Grantham. According to the defendants, and according to the probable and popular understanding of the words used, it is when the whole space between these two stations is made. Which is the more reasonable construction, looking at the objects of the Act—the purchase of both canals at the same time? We may collect from the special verdict that the Grantham Canal would be injured by the opening of the part of the railway lying between Ambergate and Grantham, for it is expressly found it would be injured by the opening of a part of the railway lying between Nottingham and Grantham, and the opening of the residue of the space between Nottingham and Ambergate would, in like manner, presumably injure the Nottingham. Is it not more reasonable, then, to hold that the time for the purchase of both is, when either of the canals begins to be injured by the opening of any part of the railway, between Ambergate and Grantham, rather than after both had been injured by the opening of the whole space, in which case the degree of injury will vary, according as one or the other end be first opened, and according to the length of time it continues open before the whole is completed? In the former case each canal receives the full stipulated price at the same time, and each before it has sustained any material injury, and thus both are placed on precisely the same footing, or one must have all its profits for a long time, much longer than the other, and compensation for the loss, that is, the sum to be paid to each canal. It is exactly the same, at whatever time it is made, and both would become payable at precisely the same time, according to the clear provisions of the statute. The Grantham Canal is now injured by the opening of the railway from Nottingham to Grantham, and would probably continue so injured for years, until the railway is extended to Ambergate. And the proprietors are to receive only a stipulated price, and without interest. The Nottingham Canal would be injured for a much less time, and yet it would receive the full agreed price. Surely that is very unreasonable. We think, therefore, the plaintiff's construction ought to prevail, it being at the same time the strict grammatical sense of the words, and by far the most reasonable. If the provisions of the statute enacted that the railway company were to receive some public advantage from the construction of the railway from Ambergate to Grantham, it might have been properly construed a statute against them, and to hold that the company was bound to open it for the whole space; the context in that sense would have required us to have put the popular construction on the words of the clause. On the argument before us, inferences were attempted to be drawn by the learned counsel on each side, from other clauses of the Act. We think there is no light thrown on the question by either of them. Sir Fitzroy Kelly argued from the 77th section, which gives an option to take shares in the railway at any time before the expiration of two calendar months, from the opening of the railway between Ambergate and Grantham for the public use, that it must be the opening for the whole distance, which would be notorious. The canal proprietors must reasonably be presumed to know it. Surely the opening of any part of the same space, though not so notorious, is sufficiently notorious to make it well known. On the other hand Mr. Bramwell argued from the 78th section, that it was obvious the Legislature contemplated a payment of dividends from the railway profits, payable to the canal shareholders by virtue of the former clause. But the answer is, that such proposition may be explained on the supposition that the railway was completed, and open for all the space between Ambergate and Grantham, but not complete to Boston or Spalding. Our opinion is formed on the grammatical construction of the 73rd section, its perfect fairness, and the unreasonableness of that contended for by the defendants. The opinion, therefore, of the majority of the Court is that the judgment of the Court of Q. B. must be reversed.

WILLIAMS, J.—I am of opinion that the judgment of the Court of Q. B. was right. I think that the word "between" may be applied grammatically, as well in speaking of the whole distance included between two designated extremities, as of any point between them. The application seems to be governed by popular usage, according to the matter spoken of; for example, the word is applied in the one way when we speak of a carrier between London and York, and in the other when we speak of an inn between those two cities, only the sense of the word between is varied, but in the one case there is before the word an ellipsis of "along the whole distance," and in the other of "at some spot in the distance." In speaking of opening the railway for public use between the one and the other, the terms "along the whole distance" are plainly, in my apprehension, meant to be before the word between. It is said the enactment in question, if so held, would work harshly, but I do not think that it is any good reason for giving to the words used by the Legislature a meaning which I cannot believe they were ever meant to have. *Judgment reversed.*

INSOLVENCY COURT.

Reported by DAVID CATO MACRAE, Esq. of the Middle Temple, Barrister-at-Law.

(Before Mr. Commissioner PHILLIPS.)

Saturday, July 17.

Re F. COKER.

Discharge on Sureties—1 & 2 Vict. c. 110.

Held, that when there is a clear case of remand within the statute, the Court will not discharge an insolvent upon bail before his hearing:

Held, also, that when there is only a primâ facie

case for remand, which may be answered by the production of additional evidence at the hearing, the Court will accept bail for an insolvent's appearance at the hearing.

The learned Commissioner some time since, with a view, as he intimated, to put a stop to the acceptance of accommodation bills, intimated that he would admit no insolvent to bail before the day appointed for his hearing, if he found any accommodation bills in his schedule. He carried out this determination by refusing to accept bail in various cases.

To-day, this insolvent applied to be liberated upon tendering sureties for his appearance at the hearing.

Mr. Commissioner PHILLIPS intimated, that as there were accommodation bills in the schedule, he should adhere to the rule which he had laid down for his own guidance in all these cases, and refuse the application.

Sargood argued the matter on behalf of the insolvent, and contended that the bail being simply a matter between the detaining creditor and the insolvent, the Court had no jurisdiction to proceed upon the merits, as the hearing was the proper time for their discussion. He also questioned the probability of the rule meeting the evil it was intended to combat, as although accommodation bills were doubtless generally to be reprobated, the effect of the Court pronouncing a primâ facie judgment upon them would be to induce insolvents to conceal facts, if not to falsify their schedule. He therefore hoped his Honour would reconsider his opinion, and not expose the insolvent to an imprisonment of six weeks or two months without a hearing.

Mr. Commissioner PHILLIPS said he had adopted the rule, after mature deliberation, as the only way of meeting the giant evil of accommodation bills, which every day appeared in this Court, and he had heard nothing to induce him to alter or relax that rule. He should therefore refuse to accept bail in this case. *Bail refused.*

Two other bail cases, in a similar category, were in the list, but as they were appointed to be heard by the Chief Commissioner, they were adjourned until Tuesday, when they were accepted by that learned judge.

Tuesday, July 20.
(Before the CHIEF COMMISSIONER.)
In re E. AUGARDE.

In this case the CHIEF COMMISSIONER, having had mentioned to him by counsel the rule laid down by Mr. Commissioner Phillips, thus expressed himself in reference thereto:—

The CHIEF COMMISSIONER.—As to myself, it is no mystery that I look upon accommodation bills, and the whole system connected therewith, as one of the most desolating and mischievous things that can occur in society. I see its desolating character every day, and whatever we can fairly do to check it would be most useful employment of our functions. But I am not prepared, on taking up a schedule in which there happen to be one, two, or three accommodation bills, to say that without any inquiry, without any consideration of how they bore upon the other debts, without their circumstances being inquired into, to make the mere abstract fact of there being accommodation debts a reason for refusing the debtor his discharge upon sureties. Nor have I ever held so. But primâ facie they are debts which a party is to explain and shew if he can that they are debts which have been contracted without detriment to his other bonâ fide creditors, and that they have not been the means of reducing him to the necessity of applying to this Court for relief, thus leaving his honest creditors in the lurch. If I discover in this schedule, or in any other, debts which bear this character, I should refuse the application. If not, I grant it. Very early, when the privilege of bail was first granted, a question came before us as to whether, when there were debts owing visibly falling within the 76th and 77th sections of the Act, as in cases of damages in actions of crim. con., seduction, and others of a personal nature, we should grant bail, and my late learned brother who then sat with me, Mr. Commissioner Bowen, used to say, we cannot let you out on bail, because there is an obvious remand upon your own shewing, and the judgment always running from the vesting order, we cannot suffer the debtor to spend a portion of that period at liberty. By this rule we have always acted, and as this case has been sent to me I shall decide upon it on that principle. Upon inquiry, one of the proposed sureties being unsatisfactory, the bail was refused on that ground.

Mr. Commissioner PHILLIPS upon this reconsidered the propriety of the rule he had laid down, and finding that it was not in accordance with the practice of the two senior Commissioners or of the Court hitherto, he withdrew his rule.

Monday, August 2.—Mr. Commissioner PHILLIPS said,—I think it right to take this opportunity of stating more distinctly than I have hitherto done, the reasons which have influenced me in refusing a discharge on sureties in cases of accommodation paper. In the adopting this rule, I had hoped somewhat to discourage what the learned Chief Commissioner has truly and felicitously called "a desolating system." The insolvent law of England, with the administration of which we are charged, is based on the most indulgent principle possible as regards petitioners. It enables any man, no matter howsoever encumbered with debt (and we have had some bending under the burthen of 30,000*l*. or 40,000*l*.) to approach this court and free himself at once from all responsibility. A large and liberal boon to debtors! not, however, granted unconditionally. Its immediate operation is limited to cases of mere misfortune, or where the insolvency has resulted from the unavoidable vicissitudes of trade. The statute, however, specifies exceptions where this relief cannot be immediate. Even here, however, the law, as contrasted with the code of other civilised countries, is comparatively lenient. The power of remand ranges, according to the nature of the case, from a week up to a period of three years: but three years is the limit. The dwarf delinquent who filches a handkerchief may be transported for life, but at the end of three years, the most accomplished graduate in swindling—the practical professor of every possible insolvent law offence—the proficient in every variety of fraud—who has cheated his creditors, made away with his property, mutilated his books, given dishonest preferences, and victimized every human being with whom he has come in contact, may "shake the dust" off at his prison door, and walk forth a free man—free from the thousands upon thousands he had appropriated and squandered! Surely, this is liberal legislation—towards the debtor at all events. However, it ends not here. It relieves him even from previous imprisonment, if he can procure bail; a privilege but rarely attainable by the humbler and generally the more scatheless petitioners. The discharge upon sureties is, however, in the discretion of the Court, and the question now is, whether that discretion should be exercised in favour of a man who takes upon himself the debts of others, when his schedule shews he cannot pay his own? I think that it should not; and I will state my reasons. I think no such person entitled to any favour. Now, it is admitted that where a clear case of remand, as for damages in an action for seduction, crim. con. &c. &c. appears upon the schedule, bail should be refused. This was decided, after full conference between the learned Chief Commissioner and Mr. Commissioner Bowen, and it establishes two points; first, that bail is not a matter of right (indeed, the power to allow it is not of very distant date), and next that it may be refused before the hearing, even where there is no opposition to the application. Now, it appears to me that when an insolvent's own debts, for which he has had consideration, remain unpaid, the rendering himself liable for the debts of others, for which debts he has had no consideration, is quite as clearly a statutable offence as is the case of damages alluded to, and in my opinion a much worse one, taken abstractedly, because in the one case an individual only is affected; but in the other the whole community. If a man cannot pay his own bonâ fide debts of previous standing, by what right does he subsequently make himself responsible (a cheap responsibility, no doubt,) for the debts of others? Is not this, in the words of the statute, "contracting a debt without a reasonable expectation of being able to pay it;" and will not a reference to the dates in the schedule establish the fact? Why does not the insolvent pay the tradesman who trusted him with his goods? There can be but one of two reasons. Either he is unwilling, and therefore dishonest, and therefore disentitled to indulgence, or he is unable, and so his subsequent voluntarily incurred liabilities on account of another, are clearly contracted without expectation of being able to pay, and so they are offences under the statute. In my judgment, this is rank dishonesty. It has been sometimes urged on me that an accommodation acceptor may rely upon the drawer's having means to meet the bill when at maturity. A very irrational reliance, and one which, in such a case, he has not the least right to entertain. What answer is this to the bonâ fide holder, who took it in open market, and gave full value for it on the faith of names which represented shadows? But the acceptor has no foundation for such reliance. He must know perfectly well that none but a man in difficulties would thus solicit his acceptance, and he must equally well know that if the drawer could not honour it, neither could he, except at the expense of his own just creditors, and seldom even then. But the truth is, when the acceptor of such bills makes his appearance here, the drawer is sure very soon to follow him; such is the force of companionship. My rule has been decried, too, on the score of philanthropy. It is unkind, forsooth, to check the exercise of friendship! Far be it from me to discountenance such a virtue. If a man is able to assist a friend, let him do so to the utmost—it is almost a duty. All I object to is that he should do so at another person's expense. Nothing is so easy as to be generous by proxy. But, the honesty of this cheap munificence may be questionable. None, however, except those who have access to these Courts can have any idea of the extent to which it is carried. We have few schedules which are not defiled by these fraudulent devices, varied by their twin-frauds, surety-ships—surety-ships by paupers, who cannot themselves pay the poor dupes who trusted them. I confess, if it is admitted, and admitted it is, that there are any cases in which bail should be denied, it seems to me that these are the very cases. It is said that these bills have been occasionally met. All I know is, that the records of this Court will shew in what shoals they have been dishonoured, and, I much fear also, what misery they have occasioned. They may perhaps have been occasionally, though I believe rarely met, but in the cases before us, it is clear enough they are outstanding, else why are they in the schedule? But, my position is this, that no insolvent acceptor has any right to indulge in this experimental dishonesty. He has no right whatever to send his fraudulent missives into the world, coolly speculating in his closet whether by some happy chance they may not destroy the man who holds them. We know here from experience, that this nefarious traffic is carried to such an extent, and based on such an organization, that no ordinary caution can cope with it. Men whose appearance would baffle all suspicion—officials presenting the delusive guarantee of salaries long anticipated—regular confederacies, where each member gives and gets a character in his turn — referee conspirators bestowing every virtue under the sun, and vouchees ready at hand to coin the plausible falsehood into a share of the plunder—such is the machinery by which the most prudent shopkeeper is mystified and plundered. There is no necessity now for any honest man, in need though he be, to resort to these perilous expedients. If he be a trader, with debts not amounting to 300*l*.—or, being a non-trader, unlimited in amount — he may approach this Court at any time with his petition — obtain a protection at once, and a final order afterwards, freeing him from all personal responsibility, and this without a moment's imprisonment or any bail whatever. If a boon like this is refused, and the desperate expedient of propping up a tottering credit by this delusive and deceitful paper is preferred, I do not think the discretion of the Court should be indulgently exercised, or that there is any ground for complaint if it is not. The person thus complaining that he is not at large has given a voluntary preference to a prison. But, after all, is such a class of debtors to monopolise our sympathy? Have none else some claim on us? Are the defrauded creditors unworthy of consideration? What say we to the humble tradesman, struggling daily for his daily bread, toiling for a numerous dependent family,—paying rent and rates, and heavy taxes,—and after all his toil, and thrift, and anxiety, driven to the workhouse by this heartless system? Its spread and operation is almost incredible,—it pervades almost every grade of society. Take one class only,—those from the government and public offices, and our shelves abound in them,—young men just entering into life, with salaries sufficient to support them comfortably, lured by this fatal facility into extravagance. One clerk draws upon another, he does the same in turn; and some considerate usurer, at the modest rate of forty, fifty, and sometimes sixty per cent. furnishes them with the purchase-money of their ruin! How many instances of this have we not had. Take a worse case even than this,—that of a subordinate influenced by his superior to lend the name he has not fortitude to refuse. The cost is little; it is only a stamp spoiled. But why should I dwell upon the evil of a system which every one admits? It tempts the young, demoralises the pure, ministers to the unprincipled, and effects the ruin of industrious honesty. Toleration for such a course, or pity for those who follow it, is downright cruelty to those who deserve compassion. Feeling this deeply, I have endeavoured to devise a remedy. In that remedy my excellent colleagues do not concur; I therefore at once bow to their decision. I do so, not merely because they constitute the majority, but also from the sincere respect and regard in which I hold them both. It is all-important that there should be a uniformity of procedure in our Courts. I hope some more unexceptionable means may be devised to mitigate, if not to crush these monstrous and desolating frauds, and I indulge that hope in common with themselves. Thanks to some great and good men, and thanks also to the public press, the spirit of law reform is abroad; it is, at last, in our very neighbourhood, and I hope will not pass us by unvisited.

[The practice of the Courts upon this point is therefore again uniform.]

SCOTLAND.

Scotch Reports.

DIGEST OF SCOTCH CASES.(a)

COURT OF SESSION.—SECOND DIVISION.

Friday, Jan. 23.

STARK DOUGAL'S TRUSTEES AND OTHERS *v.* TAY FERRY TRUSTEES AND OTHERS.

Jury trial—Opening.

In opening to the jury it is sufficient briefly t refer to the import of parole proof, but document to be given in evidence should be fully opened upon.

In this case, recently tried before the Lord Justice-Clerk and a jury, when in the course of the trial the defendant's counsel proceeded to open the case for the defendant, and was referring to certain documents proposed to be given in evidence, the Lord Justice-Clerk took an opportunity of stating that he wished these documents to be fully opened upon. His lordship observed that, in reference to parole proof proposed to be adduced, it was not necessary or proper that there should be any but a brief reference to its import in the opening for the defendant; but that in reference to documents, it was right that the plaintiff should be put in possession of the information necessary to enable him to meet the effect of these documents in his reply, and that this gave a good opportunity for determining the admissibility of documents proposed to be adduced.

The *Dean of Faculty* observed, that it was desirable that the views of the Court upon that matter should be known. He was the more anxious to suggest this, as an impression had gone abroad that a different rule had been laid down at a recent trial before another judge.

Thursday, May 27.

CAMPBELL *v.* CALEDONIAN RAILWAY COMPANY.

Railway company—Passenger luggage—Liability. Circumstances in which it was

Held that a railway company is liable for the value of a passenger's luggage lost on their line, although such luggage was not addressed.

This was an appeal from the sheriff-court of Glasgow. The action was originally brought for the value of luggage lost by the plaintiff, Donald Campbell, when travelling on the Caledonian Railway. Proof was led for both parties, and the sheriff having found for the plaintiff, the railway company appealed.

The facts as detailed in the special findings of the interlocutor of the Court, were these:—The plaintiff arrived at the Caledonian Railway Company's station in Glasgow, on the evening of Sunday the 12th of May, 1850, and had with him a leather portmanteau and carpet bag filled with ordinary wearing apparel. He announced that he was to go to Edinburgh, and obtained his ticket for that place, to go by a train then about to start; and he informed the porter of the company, who took possession of his baggage, that it was to go to Edinburgh, and it was received accordingly in order to be sent there. The baggage, however, was not sent to Edinburgh, nor taken out of the van in which it was placed, when it became necessary, owing to the arrangements of the company, to tranfer the pursuer and his baggage, at the Carstairs junction station, from the train by which he left Glasgow to another, which was expected to arrive, by which he was to be carried to Edinburgh. The luggage was not afterwards recovered.

The LORD ORDINARY (Robertson), upon the motion of the advocators, reported the cause to the Second Division of the Court.

Baillie and *The Lord Advocate* appeared for the appellants (Caledonian Railway Company), and argued that the company were not responsible for the baggage. It was not directed, and the plaintiff did not look after it himself. Angell on the Law of Carriers, p. 134; Story on Bailments, ed. 1846, p. 537; Tomlins, Law Dict. voce Carrier, 3rd head.

Cook and *T. Mackenzie* for the respondent (pursuer) were not called upon.

The authorities referred to be the sheriff, in his note appended to his interlocutor finding for the pursuer, were Bell's Commentaries, I. p. 467; *Robertson* v. *Dunmore*, II. Bosanquet. 47; *Brook* v. *Pickwick*, 26th May, 1827, IV. Bign. 217; Chambers and Paterson, 356; Angell on the Law of Carriers in America, p. 112, 113.

The LORD JUSTICE-CLERK.—I am of opinion that judgment must be given against the appellants. While there is certainly an important principle of law involved in the case, yet I am anxious to state no point of law as to the liabilities of a railway company as to luggage of passengers, which the special facts of this case do not necessarily raise. The company undertook to carry the respondent from Glasgow to Edinburgh, and they further undertook to carry his luggage, which was lodged in a luggage van. And here, at the outset, two observations occur, which appear to me to be of importance. The first is, that whatever the servants of the company do in such circumstances must be taken as the act of the company; and the second is, that a court of law cannot split down the obligation of the company into the various duties and acts of the different servants they employ, such as station-masters, porters, and guards. Each ought to give the other the information necessary to perform the contract undertaken on the part of the company, of carrying the passenger and his luggage. Further, the change of carriage or van at Carstairs is not a fact at all in favour of the company—quite the reverse. It imposed on them greater care, and attention, and vigilance as to the arrangements required to ensure the due execution of their contract in all particulars, and required that their officers at Glasgow attending the train, and at Carstairs, should be attentive to everything necessary to ensure that the passenger and his luggage should be duly transferred at Carstairs from the carriage and van going to Carlisle, and placed on those which were to go to Edinburgh when they arrived from the south. I lay aside as being immaterial in the circumstances, the fact that the luggage of the respondent had no address. They might have insisted on one being put on. But they received the luggage as that of a passenger going to Edinburgh, and so were bound to forward it. It is proved that there is no ticket put on the luggage going to Edinburgh by that train, although the very occasion on which a ticket was most required. As a matter of fact, it is fully proved that the company undertook to carry the passenger's luggage as it was delivered to them, to Edinburgh; and that being the case, their liability in law is clear. All the authorities quoted by the company are quite inapplicable to the facts proved.

Lord MEDWYN.—It was not contended on the part of the railway that the company, on taking into their custody the luggage of a passenger travelling in a railway, and placing it in their luggage van, was not liable for the safe delivery of it at the terminus of the passenger, but it was argued, that if not bound actually to look after it himself, the passenger was bound to inquire for it, and, at all events, should have his name upon his luggage, that it might be identified. In the present case there was no name on his portmanteau and carpet bag, and he did not inquire for them at the Carstairs Junction till after the train for Carlisle was gone, when, if not taken out, it was too late. Had the pursuer inquired for it, the lost would have most probably not occurred; but this is not sufficient to justify the inference, or raise the plea, that the loss arose through his neglecting to remind the officials of the company of their duty, which, I think, as common carriers, lay upon them. When the luggage was brought to them at Glasgow it was taken possession of by their porters, and packed in the van without objection that it had no address. And I cannot find that the law of England shifts the responsibility of a carrier under such circumstances as occur here. Nothing was rested on the Carriers Act of Wm. 4, and therefore, on the whole, I am not for relieving the railway company from this loss of the pursuer's luggage, the value of which is proved in the usual way.

Lord COCKBURN.—I am of the same opinion. The facts of the case are few and simple. The mere taking the luggage, I think, implied a contract to redeliver it. The company take the man and his luggage for a particular ticket; and therefore the money, I should think, is spread over the whole concern. It applies to the luggage as well as the passenger himself. The luggage was not addressed. This was very foolish on the part of the man; but the company take it as it was. If they should advertise that they will not book luggage without being addressed, it would be a great mercy to travellers, and a wise thing for themselves. But no matter how the luggage is lost. It is lost to him; and the company are liable for it unless they shew that it was lost by his own negligence, which they have failed to do.

Lord MURRAY agreed.

(a) We take as before from *Stuart and Milne's Reports*, some cases that are equally interesting as affecting the law of England as of Scotland.

IRELAND.

Irish Reports.

INSOLVENT DEBTORS COURT DUBLIN.

Reported by J. LEVY, Esq. Barrister-at-Law.

March, 1852.

Re WARD.

Rehearing evidence.

Where an application is made for a rehearing of an insolvent, on the ground that he obtained his discharge on false evidence, the Court will refuse the application if all the facts upon which the creditor who applies for the rehearing were known to him at the time of the insolvent's discharge.

Query, has the Court power to give the insolvent the costs of opposing such an application?

The 85th section of the 3 & 4 Vict. c. 107 (English analogous 1 & 2 Vict. c. 110, s. 96), enacts "that the order of adjudication of an insolvent's discharge shall be final and conclusive, and shall not be reviewed by the said Court, unless the said Court shall thereafter see good and sufficient cause to believe that such adjudication has been made on false evidence, or otherwise improperly made or fraudulently obtained; in which case it shall be lawful for the said Court, upon the application of such prisoner, or of any creditor of such prisoner, to order such prisoner, upon due notice to be given, &c. to attend or to be brought up, and the said matter to be reheard before the Court or one of the Commissioners thereof." The insolvent in this matter had been heard on the 17th of January previous, and had been remanded under the discretionary clause at the suit of two creditors. On the hearing he was opposed by a third creditor named Agnew, on the ground of suppression of property. The creditor swore that he saw in his possession in the month of May 1849 bank checks and cash amounting to 1,600*l.* of which no account had been given in his schedule or balance-sheet. The insolvent was examined, and most positively swore that this statement was false, that he never had such a sum of money in his possession, and that he never shewed Agnew bank checks or cash to any amount whatever. The Court was of opinion that, considering the circumstances of the insolvent and the improbability of the story, they thought the weight of evidence was in the insolvent's favour, and that they could not act upon the statement of Agnew; and that as far as regarded his opposition, the insolvent was entitled to his discharge, but they remanded him at the suit of two other creditors under the discretionary clause.

Phillips now applied for a rehearing, upon the ground that the insolvent had obtained his discharge upon false evidence. He moved upon an affidavit made by the same Agnew, who deposed that he was taken by surprise as to the insolvent's swearing; that if a rehearing were granted, and a subpœna issued to bring up a party named M'Claverty, he would corroborate Agnew as to insolvent having the money at the time stated.

Levy opposed the application, on the ground that there was no newly-discovered evidence; and that the facts on which the creditor applied could have been proved at the first hearing in case they had existence.

Mr. Commissioner BALDWIN delivered judgment.—He thought the general rule with regard to such applications was, that they should be founded upon newly-discovered evidence, and that the evidence should have relation to property concealed by the insolvent, and subsequently discovered by the creditor. He did not say that cases might not arise where the opposing creditor was so taken by surprise as to the swearing of the insolvent, that he could not possibly be prepared to controvert it at the moment; and if the insolvent got his discharge under such circumstances, the Court ought to grant a rehearing. But the proper course would be for the creditor to ask for a postponement till he could procure his witnesses. No postponement was asked by the opposing creditor in the present case, but a postponement actually did take place, and in the interim the insolvent furnished a special balance-sheet, omitting any mention of the large sum of money sworn to have been in his possession; that was the time for the creditor to have brought up the witness who he now swore would corroborate him. The Court was of opinion that it was too late for him to do so now; it would be in effect granting a new trial, because he omitted to produce his witness in time. Agnew seemed to think that the Court was of opinion that he perjured himself; they expressed no such opinion: they only said that his story was improbable; that there was cause to doubt it, and, upon a well-known principle in the rules of evidence, they gave the benefit of the doubt to the insolvent, who stood in the character of an accused person. With regard to costs, they believed they had not power to give them; and if they had, they did not think the insolvent was entitled to them. They refused the application on the grounds, that it would be unjust in principle to grant it; that there was no evidence whatever offered to be produced that the applicant was not perfectly aware of at the time of the insolvent's discharge; and if the Court were to grant the application it might be a precedent for every disappointed creditor, who failed to make a case of opposition, to ask for a rehearing. *Application refused.*

Reported by W. H. Bennet, Esq. of Lincoln's-inn, Barrister-at-Law.

March 22 and 25.

LEWIS v. HILLMAN.

Setting aside deed—Misrepresentation—Power of Sale.—Trustee Relief Act, 10 & 11 Vict. c. 96—Jurisdiction of Court of Chancery under.

A trustee acting under a deed in which is contained a power of sale, cannot be the purchaser under such power of sale.

If an attorney or agent can shew, by circumstances, that he was entitled to purchase the property as a stranger would; yet, if instead of openly purchasing, he purchased in the name of a sub-agent, the purchase will be set aside.

So, if an attorney put forward a clerk as a bonâ fide purchaser for the purpose of perfecting the title to the property sold, such a transaction will not be allowed to stand.

The appellants had, in the Court below, petitioned, under the Trustee Relief Act, 1847, to have a trust fund paid out to them; there was no cross petition, but the respondents had consented that the case should be treated as if there had been a cross petition; the Vice-Chancellor had ordered the money to be paid out to the petitioners. On appeal to the Lord Chancellor, this order on the petition was reversed, and the Lord Chancellor ordered the money to be brought back into court, and had made a declaration on the petition that the deed of sale (on which the order of the Vice-Chancellor was founded) was invalid and could not stand:

Held, that the declaration on such a petition was good in point of form.

This was an appeal against a decree of the late Lord Chancellor Cottenham, which had reversed a decree of the Vice-Chancellor of England, made on a petition presented to the Court, under the 10 & 11 Vict. c. 96, "An Act for better securing Trust Funds, and for the Relief of Trustees."

Two questions were raised on this appeal—first, whether on a petition under this statute for the payment of money secured under a deed the Court of Chancery could make a decree declaring the deed invalid; and, secondly, whether the circumstances in the case shewed that the deed was invalid. William Mitchell Bloye being entitled under the will of his uncle, Francis Bloye, to one-fifth share of the residuary estate of the testator, subject to the life interest of Robert Bloye therein, by a deed dated the 6th of April, 1840, in consideration of 600*l.* granted to Elizabeth Pratt, her executors, &c. during the joint lives of Elizabeth Pratt and three other persons therein named, and the lives and life of the survivors and survivor of them an annuity of 42*l.*; and by the same deed assigned to Elizabeth Pratt his one-fifth share under the said will with provisions for the re-purchase of the annuity, and with certain powers to Elizabeth Pratt for sale of the said reversionary interest in case of default in payment of the annuity.

Stuart and *Cairns*, for the appellants, contended that upon a petition under the statute of Victoria, the Lord Chancellor had no jurisdiction, as he would have had under a bill and cross bill, to declare the deed of assignment invalid. (*a*) But if he had such jurisdiction he had wrongly exercised it in two respects—first, as to facts; and next, as to the form. As to the facts, they contended that there was nothing to impeach the fairness of the purchase; and as to the form of the order, they insisted that if the deed could be declared invalid on petition, that declaration ought to have been accompanied, as it would have been accompanied in a proceeding by bill, with a direction for the appellants to receive back the money they had paid. No such direction had been given here, and the order therefore was bad in form as well as substance. Had a bill been filed there might have been better means of defending these appellants against the case now set up; but upon petition they could not compel the production of evidence, as they could upon a bill, and therefore they ought not to be bound by this order of the Court below.

Bethell and *Rogers*, for the respondents, were not called on.

The LORD CHANCELLOR thought, that in this case their lordships need not call upon the counsel on the other side. It was impossible to doubt either upon the merits of the case, or on the question of form. The merits lay in a very small compass. The property in question was one-fifth part of a reversionary interest, which ultimately came to Mrs. Hillman, as administratrix under the will of her first husband. She had married again, and at the time of these transactions was the wife of a poor and illiterate man, who was at the time confined to his bed, while she was left without the assistance of any professional adviser. She was, indeed, assisted by a clerk to an attorney, but she had no regular professional adviser. The person to whom this property had originally belonged had granted an annuity upon it. The annuity was 42*l.* a year, and the purchase-money was 600*l.* In the annuity deed there was a power of sale, and the interest, therefore, which Mrs. Hillman had in the property was in respect of that which should remain after the annuity and the expenses had been satisfied. The annuity fell into arrears, and Mrs. Woodman, the administratrix, determined to sell the property. Messrs. Overton and Hughes acted as her solicitors. They began the matter in a regular way, and as to that he (the Lord Chancellor) had no fault to find with them; but he had much fault to find with them in respect of their subsequent proceedings. Considerable costs were incurred, costs which they were not entitled to charge against Mrs. Hillman, by whom they were not employed to make the sale, but which they could charge against Mrs. Woodman, and which had the effect of lessening the balance that Mrs. Hillman would ultimately be entitled to receive. At the sale of the property, it was bought by a Mr. Barker, for a sum of 900*l.* But for an objection to the title, to make the sale, it would have been worth a much larger sum. Overton and Hughes must at an early period have had a doubt as to the title to sell the property. The sale was advertised as being made by order of Mrs. Woodman, under power of sale in the annuity deed. The annuity was enrolled under an Act which he (the Lord Chancellor) had had the satisfaction to draw, and which was calculated to secure considerable advantage to the public. That Act contained a schedule of forms of a plain and simple kind, and if these forms had been duly observed, this mass of litigation might have been spared to the parties. It was impossible to say who had made the mistake; but a great mistake had been made, for the annuity was not properly enrolled, and consequently the annuity was not as an annuity, and the power of sale it contained was not as a power of sale, and were not worth the ink with which, and the parchment upon which, they were written. Overton and Hughes soon had reason to doubt their power to sell, and they applied to Mrs. Hillman, who was not a party to the sale. They applied to her when she had no professional adviser, and got her to execute a document which was to give them her consent to the sale. (His lordship read the document.) On the face of it this document amounted to a confirmation of that invalid title on which they had put up the property to auction. After the sale they get her to make a declaration to the effect that there had been a sale for 900*l.* and then a resale for 900*l.* and that she was satisfied with what had been done, and that she acknowledged the accounts they presented to her to be correct. It was probable that such a transaction as this had never before been seen in a court of equity. At that very time the property was sold to Barker, and that sale was not rescinded; so that if Mrs. Hillman was the seller upon this resale, the first contract of sale not having been rescinded, she was left exposed to an action by Barker for breach of contract. Could there be more improper conduct? He did not wish to give pain to any one, but he was compelled to make these observations. Could anything be more improper than selling to one man whilst a previous sale to another remained unrescinded, the second sale being made as if the property was unfettered and unbound by the first? What was the meaning of this transaction? Why was this machinery brought into play? He thought he could see the reason. As a lawyer, indeed, he could not shut his eyes to it. Overton and Hughes had found from Mr. Lake, the solicitor for Mr. Barker, that the sale was void, because the deed containing the power of sale could not be enforced, and they therefore hit upon the expedient which had been the cause of all this litigation. They thought that if they could get Mrs. Hillman, an ignorant woman in poor circumstances, and without a regular professional adviser, to bring her title in aid of theirs, they would then, when the property was in their hands, hold out this attraction to Baker, and induce him to become a purchaser. They thought, if they could get the property out of Mrs. Hillman's hands, though the annuity might be void, they could make a good title to the reversionary interest. She was sent for, and asked to execute a deed, which was not read over to her. What was that deed? It was a regular deed of purchase by Lewis, who turned out to be their clerk, and who, though represented to be the purchaser, as much advanced the purchase money as did any of their lordships. They had previously cast on Mrs. Hillman the unnecessary expense of taking out probate to her husband's will, an expense wholly unnecessary, since, if the power of sale in the annuity-deed was valid, it needed no assistance from Mrs. Hillman to enable Mrs. Woodman, the annuitant, to sell. He perfectly agreed with the order which had been made in the Court below. This deed was invalid. It had been said that Mrs. Hillman had full knowledge of what was done. He had looked through these papers most carefully, and he could not find any proof that she had such knowledge as equity required that she should have, considering the situation in which she stood. She was sent for to the office of Overton and Hughes, and asked to sign a deed of which she knew nothing, and as to which she had no proper professional advice. She seems to have suspected that there was some irregularity, for she asked who was the purchaser, but Hughes answered her that "there was a difficulty about the title, though it was as good a title as could generally be got with reversionary interests, and that it was still for sale to any one who chose to give 900*l.* for it." Hughes was bound to tell her the truth; to tell her that he and his partner were the purchasers, and had become so as the mere channel to make a sale to Barker. But when Overton and Hughes had thus got rid of the difficulty as to the title, Lake said he would not look at the title. Why not? It was as good a title as any man could have as a legal title, but it was obtained from Hillman without sufficient knowledge on her part, and therefore Barker himself, had he then purchased it, would not have been safe. Their lordships had been told that Hughes laboured under difficulties in this matter, that he had not the proper means of defence, that a bill ought to have been filed, and that then he could have had proper evidence. Why did he not file a bill? It was he who presented the petition to take the fund out of Court, and he supported that petition by his own affidavit. Was he not competent to state his own case? Perfectly so; but his case would not bear stating. The case was put forward in the affidavits as one of kindness and benevolence in Overton and Hughes agreeing to take the property. With whom did they agree? Not with anybody. Two minds were essential to a contract of sale and purchase; there must not only be a buyer but a seller; here there was a buyer, but there was not a seller. The deed of sale was a scheme to get a good title to the property, so as to give validity to all the invalid acts that had before taken place. He (the Lord Chancellor) should not have thought so ill of this matter, if Overton and Hughes had fairly said to this woman, "We cannot make a good title; the objection is a valid one—take back your property;" but they sought to obtain against her a confirmation of all that had been done. The course pursued was entirely against the rules of equity. If a power of sale existed, the trustee to sell must not buy; he must have somebody to deal with some one, who was not his mere agent, in making the purchase. He should advise their lordships that in equity the clear rule was, that if an attorney or agent could shew he was entitled to purchase, yet if instead of openly purchasing he purchased in the name of an agent, such a purchase could not stand for a single moment. Such transactions to stand must be open and free from all concealment. If an attorney put forward a clerk, not as a clerk, but as a bonâ fide purchaser, the moment that fact was stated the deed became valueless, and the courts would hold all the parties to such a transaction responsible. He then came to the other part of the case,—namely, that which related to the jurisdiction upon petition. On that he felt no doubt whatever. The appellants here had petitioned to have the fund paid out to them—there was no cross petition, but the respondents had consented that the case should be treated as if there was a cross petition; and the Vice-Chancellor, who was made to believe that this was a real transaction of sale, had ordered the money to be paid to the appellants. Lord Chancellor Cottenham had, on appeal, reversed that decision, and had ordered the money to be brought back into court, and had then declared, and properly declared, that the deed of sale was invalid, and could not stand. On that there was no judge in equity who ought to entertain a doubt. Lord Cottenham had then reserved, as to the question of interest, liberty to the parties to make any further application they might think fit. As to the jurisdiction to do this on petition he would only add that, though true it was that the statute reserved to the Court the power to direct a bill to be filed, if necessary, the existence of such power was discretionary in the Court, and without such bill the Court might proceed as it had done

(*a*) 10 & 11 Vict. c. 96, s. 2. And be it enacted, that such orders as shall seem fit shall be from time to time made by the High Court of Chancery in respect of the trust moneys, stocks, or securities so paid in, transferred, and deposited as aforesaid, and for the investment and payment of any such moneys or of any dividends or interest on any such stocks or securities, and for the transfer and delivery out of any such stocks and securities, and for the administration of any such trusts generally, upon a petition to be presented in a summary way to the Lord Chancellor or the Master of the Rolls, without bill, by such party or parties as to the Court shall appear to be competent and necessary in that behalf, and service of such petition shall be made upon such person or persons as the Court shall see fit and direct; *and every order made upon any such petition shall have the same authority and effect*, and shall be enforced and subject to re-hearing and appeal *in the same manner as if the same had been made in a suit regularly instituted in the court*; and if it shall appear that any such trust funds cannot be safely distributed without the institution of one or more suit or suits, the Lord Chancellor or Master of the Rolls may direct any such suit or suits to be instituted.

here. On the whole, he proposed to vary Lord Cottenham's order, by requiring the appellants to pay 4 per cent. interest on the money while it remained in their hands under the Vice-Chancellor's order, and he proposed to affirm the order so far as it declared the deed of sale invalid; but to add that the purchase-money was to be repaid with interest, and that from the charges of Overton and Hughes, settled at the time of this purchase, the sum of 10*l.* should be deducted as an amount of expense unnecessarily incurred.

Subject to the alterations pointed out: the order of the Lord Chancellor affirmed; appeal dismissed with costs.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

(Before Lord TRURO.)

Nov. 3 *and* 19, 1851, *and Feb.* 12, 1852.

ZULUETA *v.* VINENT.

Principal and agent—Constructive fraud.

A and Co. induced B. to make advances for the purpose of working some mines abroad, belonging to C. the produce of which was to be remitted to A. and Co. as consignees, who were to account to B. for the proceeds:

Held, that A. and Co. could not set up an antecedent title to the proceeds of the consignment.

Where a man induces another to place himself in a particular position, upon condition that when he has so placed himself in that position he will conduct himself in a given manner towards him, he cannot reject the condition without the concurrence of the other party, or set up any right which is inconsistent with it.

The question in this case was whether the plaintiffs, who were merchants in London, were entitled to an injunction to restrain the defendant, Antonio Vinent, a merchant in the island of Cuba, from prosecuting an action commenced by him against the plaintiffs, so far as such action related to the recovery of the proceeds of the cargoes of two vessels, called the *Golconda* and the *Goldsmidt*, consigned by Vinent to the plaintiffs, and consisting of the copper ore raised from a certain mine called the San José Mine, in the same island of Cuba.

The pleadings were very lengthy, and the transactions to which they related were involved in great complexity and obscurity. But on the question of the right to the injunction, the only material facts necessary to be stated in order to understand the details in the Lord Chancellor's judgment, are the following.

In and previously to the year 1846, José de Onate, Julian de Onate, Cipriano Casamadrid, and Miguel Estoreh, were the owners of the San José Mine, but in what proportions, or whether as partners or as tenants in common, or otherwise, without priority, it was unnecessary to be determined. Estoreh afterwards sold his interest to José Bonastra, José de Onate, Julian de Onate, and, subsequently, Cipriano Casamadrid employed Enrique Casamayor, a merchant in Cuba, as their reffaccionista of the mine, whose business, according to a statement inserted in the amended bill, was to advance such sums of money as might from time to time be required for the working of the mine, or, in other words, to raise the ore at his own expense, and then to sell and dispose of it at his discretion, and out of the proceeds to retain a certain commission to himself, and to repay himself the amount with interest thereon, and also such sums of money as he might advance to the owners employing him, and to account for the surplus proceeds to such owner.

The bills of lading of the cargoes of the ore were made out in the name of Casamayor, and he consigned the cargoes to the plaintiffs as factors or agents in this country to dispose of the cargoes, and he drew bills of exchange upon them in respect of the proceeds of the sale of these cargoes.

Upon the account between him, Casamayor and the plaintiffs, as such factors or agents, a large balance became due to the plaintiffs from the mine, or from him as such reffaccionista. Casamayor became bankrupt in March 1848, a large balance being at that time due to the plaintiffs in respect of the bills which they had paid, drawn by him and on account also of supplies sent out to the mine.

Between that time, that is, the date of Casamayor's bankruptcy and the month of August, in the same year, the mine was managed by the owners and a person of the name of De Toledo, into the particulars of which management it is not material to enter. On the 5th of October, in that year, the defendant, Vinent, sent a bill of lading of goods shipped on board the ship *Golconda*, to the plaintiffs, which ship arrived, and the goods were delivered to the plaintiffs in the following months of November and December.

On the 3rd of January, 1849, the defendant also sent to plaintiffs a bill of lading of ores raised from the mine, and which had been shipped on board the *Sir I. L. Goldsmidt*, which vessel arrived in England in the following month of April, when the goods were delivered to the plaintiffs, and subsequently sold by them, and they received the proceeds.

The defendant commenced an action against the plaintiffs for the amount of the proceeds of such two cargoes, and also for the balance of an account current between them, and thereupon the plaintiffs instituted the present suit to restrain Vinent from prosecuting such action, so far as related to the proceeds of such two cargoes.

The plaintiffs claimed a right to apply the proceeds of the cargoes, in satisfaction of the balance owing to them from Casamayor, or the owners of the mine, on the following grounds:—In their amended bill they state according to the laws in force in the island of Cuba, the reffaccionista for the time being of any mine or share of a mine was entitled, by virtue of his office, to a lien on the mine, or a share of the mine, and its produce as a security for the money which he might advance for the purpose of working the mine, or otherwise, for the use of the parties to whom he acted as reffaccionista, and he was also entitled and authorised to hypothecate or pledge to a third person the said mine or shares of the mine, and its future produce as a security for any money which such third party might have advanced to him in his character of reffaccionista for the purpose of working the mine; that the mines in Cuba were generally worked by foreign capital, which was most commonly advanced by English houses; that by virtue of the laws of Cuba, and by the custom of trade in the island, where a foreign merchant advanced money to any proprietor or reffaccionista of any mine for the purpose of enabling him to work the mine, such foreign merchant acquired by such advance a lien upon the said mine and its future proceeds to the extent of the money so advanced in the same manner as if the mine and its proceeds were expressly hypothecated or pledged to him by the proprietor or reffaccionista thereof, and that, in fact, such foreign merchant was entitled to stand in the place of the proprietor or reffaccionista, and to hold the mine and its proceeds in pledge until the amount of his advance was repaid to him. That the plaintiffs in all their dealings with Casamayor fully relied on the aforesaid law of Cuba and custom of foreign trade, and the plaintiffs, in accepting and paying his bills, did not at all recognise him as a principal, nor looked to his personal or individual security. And the plaintiffs charged that he advanced as reffaccionista; that his advances as reffaccionista to the owners of the mine were, for the most part, made with the plaintiffs' money, and that the plaintiffs thereby acquired a lien on the mine and its produce to the extent of their advances, and were to that extent entitled to stand in the place of Casamayor as the first creditors and incumbrancers upon the mine, and that long before the cargoes of the *Golconda* and the *Goldsmidt* were placed at the disposal of the plaintiffs by Vinent he was aware that there was a large balance due to the plaintiffs from Casamayor as reffaccionista. Various proceedings had taken place in the cause, but it is sufficient to state that after an answer had been put in to the original bill, the late Master of the Rolls refused an injunction on the merits. The plaintiffs then amended their bill, and thereupon, before the defendant answered the amendments, the plaintiffs applied again for an injunction to the present Master of the Rolls, who refused the application, on the ground that he was absolutely bound by the decree of his predecessor, Lord Langdale, except so far as the case was varied by the amendments, and that he did not consider the amendments varied the case made by the original bill sufficiently to entitle the plaintiffs to an injunction, and in consequence of that order the application was made to the Lord Chancellor for the injunction which was so refused by the Court below. Two notices of motion were given by the plaintiffs, one for an injunction to stay proceedings at law until the answer to the amended bill should be put in; the other, that the injunction, if obtained, might be extended to stay trial.

Roupell and *Shadwell* in support of the appeal.

Lloyd and *Willcock* for the respondent.

Roupell in reply.

The LORD CHANCELLOR, after stating the preliminary facts which have been before given, delivered judgment as follows:—Numerous questions have been raised in the pleadings and at the bar, which I think it is not necessary for me to determine. I think it is unnecessary for me to determine whether the plaintiffs are or are not precluded from having an injunction in the cause on the case made by the amended bill, on the ground that they ought to have inserted the matter in the original bill. Nor whether Casamayor was a mere agent of the mine owners, or was a principal; nor whether the rights of a reffaccionista and of a foreign merchant are or are not such as the amended bill states; nor whether the plaintiff did not acquire such a lien as the bill charges; nor whether the new company called the San José Mining Company were entitled, as against the plaintiffs, to transfer the cargoes to Vinent; nor whether the mine did or did not continue to be subject to the debts of the former owners; nor whether Vinent, as a shareholder in, and as president of the new company or otherwise, had or had not notice of those debts; nor whether the cargoes in question were procured with the moneys supplied by the plaintiffs, or with the money supplied by Vinent; nor whether the law of Spanish mines is, that persons who furnish the means of working a mine have precedence over prior creditors. It appears to me that the merits of the present application depend upon grounds and considerations altogether independent of the numerous and complicated questions to which I have referred, and the grounds of my determination will be the relation between the plaintiffs and the defendant, in respect of the cargoes in question, as created by the direct correspondence between them, and the contract which results from that correspondence. The transactions between the plaintiffs and the defendant commenced in the beginning of the year 1847, by the defendant consigning to the plaintiffs, a cargo of copper ore for sale on his account. After the connection commenced, other commercial transactions of the same character I have referred to, took place between them of the nature of principal and factor, or principal and agent, the plaintiffs selling the cargoes consigned to them by Mr. Vinent drawing upon the plaintiffs in respect of the proceeds of the cargoes in their hands, and it will appear incidentally that account which was originally opened between the parties connected itself with the San José Mine. The relation between these parties as well in reference to the defendant's other transactions with the plaintiffs, as in connection with the proceeds of the cargoes in question, is to be ascertained from the answer of the defendant, and from the correspondence which is set forth in it. Among the letters is one from the plaintiffs to the defendants of the 1st of February, 1847, which is a letter of introduction by Pezuela of the defendant Vinent. It opened a connection as to commercial transactions between these parties; and by that letter and letters of the 1st of March, 1847, the 1st of May, 1847, and the 31st of May, 1847, it will appear that that connection consisted in consignments of copper and other goods, as before mentioned, by Vinent to the plaintiffs, as factors or agents, and the plaintiffs accounting to him for the proceeds, which proceeds he obtained by drawing bills upon them. There is also a letter of the 16th of March, 1849. I have stated the general contents of these letters, I think, sufficiently for the purposes of this case, inasmuch as these letters, in the early introduction, do not touch the question, and are only necessary to be adverted to in order to explain the origin of the connection between the parties. There is also a letter dated the 1st of March, 1849, which I refer to rather out of order, which is material, although it is a letter not written until after the transaction may be considered as terminated, that is to say, after both the cargoes had arrived of the *Golconda* and *Goldsmidt*, and the produce received by the plaintiffs, and probably sold by them. The rights of the parties must at that time have been determined. The letter, however, is material as affording some explanation in relation to what the previous transactions between the parties had been. It must be remembered, that the bill of lading of the *Golconda* was sent on the 5th of October, 1848, and the bill of lading of the *Sir I. L. Goldsmidt* was sent on the 6th of January, 1849. The letter is a very long one. It is in answer to a letter from the defendant Vinent to the plaintiffs, in which Vinent informs the plaintiffs that Pezuela had repudiated the debt, and had insisted that the debt was due from Casamayor, and not the mine nor the proprietors of the mine were responsible for the debt, nor the new company. It travels into those former matters, and then in reference to the bills of lading which had been remitted by Vinent, the letter of the plaintiffs themselves says: "You forwarded the bills of lading to us on your own account, and not on account of the mine, and it was evident that we could not treat with any one but yourself, whatever might be the real interest which the shareholders of the mine still preserved therein." That is a statement after all these transactions have occurred of the plaintiffs' views, and the understanding with which the bills of lading which the defendant had remitted to them had been so remitted, and it therefore seems to me to be material to be referred to at this moment. There are also two letters, dated the 14th of April, and the 18th of April, which are also pretty much to the same effect, as likewise the letters of the plaintiffs to Pezuela dated the 30th of November, 1848, where the plaintiffs are reasoning with Pezuela on the injustice of the repudiation of their demand by the new company. That is also material as giving the plaintiffs' views of the [illegible] of the transaction as between the plaintiffs [illegible] the defendant as contra-

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distinguished in the course of transactions carried on between Casamayor and the plaintiffs. [illegible] says in this letter:—"I cannot believe that it escaped your knowledge and information, so as not to be aware of the great difference there is between the mode in which we have understood matters with Casamayor, and that which we observed pre-

[illegible]

forwarded to us by the shippers drawn or endorsed in their favour, so that the ownership was theirs, they drew against the same, and therefore they had a right to the surpluses under the obligation of paying the deficiencies as it unfortunately happened with Mr. Vinent. If the bills of lading that Mr. Vinent forwarded to us after the failure of Casamayor had not been endorsed in his favour, if they had come in the same manner as Casamayor sent his, which is what constitutes all the difference we might and ought to have demanded of them the amount of our credit. However, it never occurred to us to bring into question the principles of justice and of universal mercantile law, because, for our part, interest never induces us to swerve from what we recognise as just." Now, the relation between the parties is to be collected, not simply from the letters written by the plaintiffs to the defendant which I have read, but also from the statement in the original bill, which statement is set forth in the answer so far as it is material, and the way in which the plaintiffs in the original bill state their case is this:—"And your orators being such correspondents of the said last-named defendant as aforesaid, a certain contract, arrangement, and agreement was come to and entered into between your orators and the said last-named defendant in the promises, to the purport and effect following: namely,—it was contracted, stipulated, and agreed between your orators and the said last-named defendant, he, the same defendant, having such right as aforesaid, that he, the said defendant, Antonio Vinent, should and would ship and consign to this country to your orators all the copper ores and produce of the said mines and works for the purpose of, and that the same ores and produce should be sold by, your orators in this country for and on behalf and on the account of him, the said defendant, Antonio Vinent, and that your orators should receive the moneys to arise from the sale of such ores and produce, and apply the same to the credit or on account of him, the said defendant, Antonio Vinent." That is the statement in the original bill of the terms on which, and the understanding on which, the bills of lading were forwarded by Vinent to the plaintiffs. Now, up to the year 1848, the consignments of proceeds from that time have yielded a surplus, after satisfying the plaintiffs' claims in respect of the bills drawn, and by Casamayor's orders such surplus was occasionally transferred to the credit of the defendant in his private account with the plaintiffs. Casamayor failed in 1848. At that time it became uncertain how the operations at the San José Mine would be carried on, from whence funds would be obtained by which to work the mine, or how the proceeds were to be disposed of. It appears at that time the plaintiffs had chartered certain vessels to proceed to Cuba, in the expectation of being there loaded by the produce obtained from the San José Mine. The plaintiffs became alarmed in consequence of Casamayor's stoppage, and the uncertain state in which the mine then was. The owners themselves interfering in the management, and conducting the affairs there with Toledo, whom they had appointed their agent or accountant, it does not appear what was the character to which he was particularly appointed. It appeared uncertain whether the ships which they had sent out would be loaded, and if they were not loaded, they would return in ballast, and the plaintiffs would be obliged to pay dead freight. In consequence of that apprehension, the plaintiffs wrote to Vinent, and a correspondence then arose between the parties, which appears to me to govern the rights of the parties in respect to the transactions involved in this case. In going through the voluminous correspondence, it will be seen that the letters are not always consistent, and there are expressions used so ambiguous as to make it difficult to understand precisely the sense in which they were written, but I still think enough remains to render the real character of the transaction perfectly intelligible. The ambiguity that I have mentioned probably arises from the translation, and the enormous difficulty in rendering precisely and particularly the technical terms used applicable to the particular course of trade from one language to the other. The letter, which it is material to begin with, is dated the 16th of August, 1848. I may briefly state what was the situation of the parties at that time. There was a large debt due to the plaintiffs from the mine. Casamayor had stopped payment. De Onate, Casamadrid, and the other owners, getting on as well as they could, appoint Toledo to perform certain duties in respect of the mine; and upon the 16th day of August, 1848, the plaintiffs wrote thus:—"The precarious state of the San José Mine, which you point out to us yourself by your doubts respecting the future progress thereof, leads us to apprehend that some case may occur to put a stop to the exportation of the ores, which would involve us in serious difficulty with the chartered vessels. If such should be the case, we request you will interpose for the purpose of adopting some measure to facilitate the despatch of vessels, by acting as circumstances may require: as you are on the spot, this great inconvenience may be obviated through your experience and influence; we make the same remark to Messrs. Brooks and Co. in order that they may co-operate with you in meeting our wish, and we doubt not you will both do whatever is possible to that effect. What seems to us the most to be dreaded is, lest the want of funds should stop the works. If this should be the cause of the stoppage, you might obviate it by advancing the necessary amount for the shipment of the ore that might be prepared or in greater forwardness, and you could take the requisite securities, so that the ore should be entirely at your disposal; and then, on your responsibility, we have no objection to your anticipating the drafts upon any cargo or cargoes which may be in a course of despatch." What I understand by that is this, "We have no objection to your anticipating the drafts, to your drawing money on the drafts before their acceptance;" and the passage is material, when it says, "You might obviate it by advancing the necessary amount for the shipment of the ore that might be prepared or in greater forwardness, and you could take the requisite securities; so that the ore should be entirely at your disposal, and then, on your responsibility, we have no objection to your anticipating the drafts upon any cargo or cargoes which may be in a course of despatch." That is, "Your being liable to repay us in case that which you shall send to us shall not produce sufficient for that purpose." "As you are at the seat of operations, you are able to take securities and precautions which we could not devise here." That is to say, "You must act on your own responsibility, because we have not the same means of providing for our security here that you have while on the spot,"—such I understand to be the effect of that letter. The next letter material to be adverted to is the 5th of September, 1848. Now this, I must observe, opens a new series of transactions, and we will just [illegible] how it proceeds on the 30th of September, 1848; there is also an intermediate letter which the plaintiff wrote to the defendant, a letter of the 31st of August, in which he says, "We are apprised of the advances that you have made on the last cargoes, the proceeds of which we have already stated to you, on which you must make your calculation, excepting the *Matilda*, with which a trial has not yet been made, but she will not cover the [illegible]*l.* 10*s.* per ton for the shipment. We can have no difficulty in deducting here your commission of 3 per cent. on the gross amounts of the sales, and to pay the same to you whenever you forward us the competent order; but in that case, this 3 per cent. which to you will be equivalent to 5 or 6 per cent. on the net proceeds, must necessarily be considered in the advances so as to diminish the latter, for in the contrary event you will find deficiencies, as there were in the last cargo of Casamayor, and if we have to honour to their full amount the bill which you draw for the advances, the loss would fall upon yourself, as you would be uncovered with the mines, as we ourselves are from the same course." Now, it is not very easy to understand the precise effect of that letter; there is an answer to that, in which the defendant says, "No, do not you deduct my commission, I will deduct my commission here, and add that to what is due to me, and get paid when God pleases." That is something like the expression he uses. Now, what I understand to be the meaning of that is this, that Mr. Vinent being on the spot in connection with the mine making advances, attending to the shipments, consigning to the plaintiffs, and attending to the accounts,—and for all that business he intended to charge a commission of 3 per cent. on the net proceeds, which is said to be equal to 5 per cent. on the gross proceeds. Then, he says, "Do not you deduct that [illegible] you out of the proceeds that come to your hands, [illegible] will manage that myself here in my connection with the mines;" and nothing further is said about that; that is one of the letters as to which there is some ambiguity. Now, there is a letter of the 30th September; the defendant had written a letter to the plaintiff which is not set out, but only referred to in the answer, and it appears by that letter that the defendant had drawn on the plaintiffs in respect of, I think, either the cargo of the *Golconda* or of some other vessel. He says in this letter, "Toledo has not drawn on you, notwithstanding we have authorised him so to do." In this the defendants say "Toledo has delivered the bill of lading to you, but he has not drawn on you, notwithstanding the authority that we gave him to draw. You observe that Mr. Toledo delivered his bill of lading to you, notwithstanding the authority that we gave him to draw. In this there is a mistake, because we have given no special or particular authority in this matter—we merely stated to him and to Mr. De Onate, as well as to you, the amounts to which it was necessary to limit the advances in proportion to the actual prices. In such a situation, when we are left uncovered for 5,000*l.* in an indefinite manner, it becomes an imperative necessity for us to appoint an attorney in your country to watch our interests. We should have had much satisfaction in requesting this favour of you, but on considering that you are also compromised in the matter as creditor in various ways, your interference is not admissible for us, and we have decided upon forwarding our procuration as we do to Messrs. Brooks and Company." Then they write on the 30th of September, "Knowing that Mr. Pezuela has considerable interest in the mine if the works can be continued, for which perhaps that which is most wanted is a good facultative direction, it appears to us probable that you will continue to receive the ores, making the advances; we shall be glad if it be so, for we think it would be most convenient for all parties." That is, that Vinent should receive the ore and make the advances. Then comes a letter of the 5th of October, and by that letter of 5th of October, it appears that the defendant sent the bill of lading of the cargo of the *Golconda* to the plaintiffs, "I now enclose you also bill of lading of 491 tons of ore which I have shipped on board the English ship, *Golconda*, Captain Oliver, consigned to you, namely, 156 tons of rock, and 435 sand ore, total 591 tons, and will be obliged to you on its arrival at Swansea to have the goodness to direct that the said ore be received, and the sale thereof be proceeded to, placing the net proceeds to the credit of my account." Then he goes on upon other matters as to rates and prices and so on, which do not bear immediately upon any question now in this suit. Then with regard to the commission I before mentioned, he says,—"With regard to what I observed to you in mine of the 19th of July about my commission, I beg you will not be surprised that I shall charge it here in my liquidation with the partners in the San José Mine in order to recover it jointly with the deficits when it pleases God." So that here it appears that by the letter which I first read, in September the plaintiffs tell the defendant it will be very agreeable to them if the defendant will make the advances, and get the ore at his disposal and consign it to them, and then accordingly on the 5th of October the defendant sends to the plaintiffs the bill of lading, with directions to sell the goods referred to in that bill of lading and to place the proceeds to his credit, and accordingly the plaintiffs receive the bill of lading, possess themselves of the cargo, and have received the proceeds. The answer to this letter is on the 15th of November. "We are in possession of the bill of lading which you transmitted us of 591 tons of ore shipped per *Golconda*, which vessel has not yet appeared; enclosed is account, sale of the cargo of the *Matilda*, for the net proceeds whereof being 2,555*l.* 5s. 9d. we credit your account per 7th of December next. As we told you at the time it does not suffice to cover 5*l.* per ton shipped." That is the acknowledgment of the receipt of the bills of lading, which bill of lading is accompanied by the letter directing the proceeds to be applied to the defendant's account. No repudiation of the transaction, but an apparent acquiescence by receiving the bill of lading, and receiving it in the manner I have stated. Now, in the letter of the 30th of November, "We wrote to you last on the 15th instant. We have the pleasure to acknowledge receipt of your favour of the 10th ultimo. The calculation which you forwarded us of the state of your account is substantially correct, for you were not aware of the differences that exist. We have drawn up the annexed statement, from which on comparing your calculation with our books, there appears at present in your favour, the sum of 3,750*l.* 18s. 11d. supposing, as we have entered the same, for conformity sake, that you are credited for the advances to the ships *Sarepta* and *Golconda*, noted in red ink, at the same amount as you have noted them. At the end of the year we shall make up the balance in the usual manner, and forward you extract of the account current. It is to be regretted that the *Golconda*, which has just arrived, cannot liquidate before the end of January. The drafts of which you advise us will be punctually honoured." So that here, after the receipts of the bills of lading of the *Golconda* and the advice of certain bills being drawn, the plaintiffs write thus:—"The drafts of which you advise us will be punctually honoured." Such is the correspondence previous to the arrival of the ship *Golconda*. Now, it will be proper to consider what is the effect of this correspondence, and what is the contract and understanding to be inferred as between these parties from that correspondence; and before I deal with that, I will refer to the correspondence of the same description with regard to the *Goldsmidt*. On the 1st of January, 1849, the bill of lading is sent of the ore

put on board the *Goldsmidt*. In that bill of lading Vinent is described as the shipper; that is the description in the bill of lading, and it is upon the 3rd of January, 1849, that the bill of lading is sent by Vinent to the plaintiffs. The effect of that letter is the same as the letter with reference to the *Golconda*, that he desires it to be sold, and the produce to be applied to his account; and further than that he goes on to say,—"I have also drawn three bills for 700*l*., 700*l*. and 700*l*. odd, making together about 2,100*l*." He says, "I have drawn these three bills to be applied to the proceeds of the cargo of the *Goldsmidt*," and in the same letter he advised as to certain bills drawn in respect of them. Now, in another part of the answer is the acknowledgment of the receipt of the bill of lading. "By the packet which arrived on the 26th, we received your favour of the 19th of December, in which you announced to us the shipment by the *Sir I. L. Goldsmidt*, and order us to effect the insurance, to execute which we have had to struggle with the difficulty of the period of the year." Then there is a long paragraph about the premium, and the season of the year, and so on. Here, again, it will be observed that there is an acknowledgment of the order to affect the insurance, on account of the plaintiffs, and to debit them with the premium; and in the bill is set forth the letter which acknowledges the receipt of the bill of lading:—"We have received your favour of the 3rd ultimo, together with the bill of lading of the *Sir Isaac Lyon Goldsmidt* of the 428 tons of ore shipped by the company of the San José Mine to their order, and endorsed to you by Mr. Ruiz Toledo, as mercantile director of said company, from which we infer that that gentleman is the agent of those who, under the title of New Company, take upon themselves to dispose freely of the property, setting aside legitimate creditors. You advise us of having drawn upon us at ninety days' sight, applicable to this cargo, 720*l*. and 732*l*. 10s. 9d. total, 2,182*l*. 10s. 9d. order of Messrs. Antonio Viental and Company, and you also advise us," and then this letter travels into the merits of the question of how far it was competent to the new company to repudiate the debt which the plaintiffs claimed to be owing to them as a debt from the mine during the time of Casamayor, and they argue their own. Towards the latter part of the letter is the acknowledgment of the receipt of the bill of lading. With respect to the cargo of the *Sir I. L. Goldsmidt*, there is therefore this distinction. As to the *Golconda*, after the arrival of the ship, with the direction to account, the defendants write an answer, in which they in no respect repudiate any of the terms which were contained in the defendant's letter. With respect to the *Sir I. L. Goldsmidt*, the announcement of the intention to consign is acknowledged, and the insurance effected according to orders, but the bill of lading and the vessel do not arrive until after the repudiation by the new company of the debt claimed to be owing and to be a charge against the mine. The plaintiffs, in their answer to that letter acknowledging the receipt of the bill of lading of the *Sir I. L. Goldsmidt*, intimate that they shall claim to retain the proceeds of that cargo for their own benefit in liquidation of their demand, and the question will be, under what circumstances were the bills of lading forwarded to them; because, if the previous correspondence which had induced the defendant to remit that bill of lading had so induced him to remit it upon an understanding created and justly to be inferred from the plaintiffs' correspondence that the plaintiffs would account to him for the proceeds, it would not be competent to them to obtain possession of the cargo upon such an understanding, and when they have done so, then to set up a different right and to repudiate that understanding. Now, the question is, what is the result of the correspondence which I have just read? In the answer the defendant distinctly states the various sums that he had advanced to the company in order to obtain possession of these goods, and he states that, independently of other advances, he had advanced 17,000 dollars at one time and 14,000 dollars at another, and he expressly swears in the passages to which I have referred, that he had made those advances, and that in consequence of those advances he had made, the goods were shipped either by him, the bills of lading being forwarded as a sort of policy, or shipped by Toledo on behalf of the company, and the bills of lading endorsed to him, which would make no difference, as it strikes me, with regard to the defendant's interest. Now, then, what is the just result of this correspondence? It seems to me that the plaintiffs found themselves in this situation: they had a large debt due to them—they had chartered vessels, for the freight of which they would become liable—they were uncertain whether the goods would be loaded or not,—they were uncertain not only whether they would ever recover the debt which was due to them, but also whether they would continue to be the consignees of the produce of the mines, an employment no doubt of importance to them in respect of the ordinary commercial position which they held derived out of that employment. I think it is plain that the plaintiffs were not disposed to advance any further sums of money on the responsibility of what I will call the mine of the owners of the mine, but they were content to advance on the responsibility of Vinent, the defendant, and they therefore suggest to him that if he shall find it to his advantage to enter into an arrangement with those who had the control of the mine by which he should make the necessary advances and secure to himself the control of the proceeds in consequence of making those advances, and would send those proceeds to the plaintiffs, that they would account to him for them, and would accept the bills to be drawn by him upon them, and that they would authorise him to act in what they call anticipation of the drafts, that is, to make advances upon them before they could be actually accepted, in order that he might not be placed in the situation of having made advances to those who had the control of the mine on the faith of bills drawn on the plaintiffs, and then find those bills dishonoured, and therefore be uncovered for those advances. The language of the letters appears to me sufficiently plain, and the question is whether the defendant was induced by the plaintiffs to make advances for the purpose I have mentioned of the mine, in order that he might obtain the possession and control of the ores with the view that they might be consigned to the plaintiffs upon the express terms of the plaintiffs accounting to him for the proceeds. If the defendant did, upon such inducement, make such advances, and consign the ores to the plaintiffs, so obtained upon the faith of the plaintiffs accounting to him, can the plaintiffs now dispute the defendant's title to the proceeds on the ground of rights which might have vested independently of that correspondence and contract arising out of it? Is it not obvious that the defendant would have been greatly misled in having made those advances if the plaintiffs were now at liberty to repudiate the express statements in their letters that they would place the proceeds to his credit and were to resort to antecedent rights which might have been independently of any control or modification of those rights or rejection or repudiation of those rights arising out of the contract? I think it is plain that he would. By what the defendant has done the plaintiffs certainly appear to have escaped the probability of having a large sum to pay by way of dead freight, and they also got the profitable employment from those particular consignments, and which profitable employment appears likely to have continued except for the repudiation on the part of the plaintiffs of their liability to account to the defendant for the two cargoes of ore that have been received. Now I take it to be perfectly clear, that if one man induces another to place himself in a particular position, on the faith that when he has so placed himself in that position he will conduct himself in a given manner towards him; where the party has acted on that contract, he cannot reject the condition without the concurrence of the other party, and set up any right which is inconsistent with that understanding. There are numerous authorities to that effect at law, and I should say the principles of equity are still stronger than at law; but it is sufficient for all legal purposes at law that the individual cannot, as I before said, induce another to place himself in a certain situation and then set up rights antecedent to the understanding upon which the individual was so induced to place himself at the peril of some responsibility in that situation. There is a case of *Dixon* v. *Hamond*, 2 Barn. & Ald. 310, of considerable importance with regard to the principles involved in it, which are applicable to this case. In that case one Flowerden mortgaged a ship to an individual of the name of Hart; and Hamond, the defendant in the cause, became ultimately the mortgagee of that ship. The same Flowerden, the owner of the vessel, directed Hamond to effect an insurance on the ship, Hamond being the legal owner of the vessel in respect of his mortgage. The vessel was lost at sea, and Hamond received the insurance from the underwriters, on which the assignees of one Davidson, the partner of Flowerden, and who had survived Flowerden, brought an action to recover the amount of that insurance. Hamond said this was the insurance of the mortgaged vessel; "I am the legal owner of the vessel in respect of the debt which Flowerden, the partner of Davidson, had contracted to me. This insurance was expressly obtained from the underwriters as an indemnity to me for the vessel. I am the owner. I am entitled to recover this money." But the Court said—No; it makes no difference whether you are the owner of the vessel or any body else; if you affected this policy by order Flowerden and Davidson, to cover their interest in the ship, you have received the money from the underwriters on that ground, the money is received to their use, and you can no more control or resist their rights on the foundation of your being the owner of the vessel, than as if somebody else had been the owner of the vessel. The principles in that I take to be applicable to this case in its present view. Now Vinent appears, at the request of the plaintiffs, to have advanced his money for the purpose of his obtaining the control and possession of the ores to load the ships with, sent out by the plaintiffs for the purpose of receiving the ores, and consigning those goods to them, but upon the distinct understanding that no matter to whom the ores belonged, no matter who would ultimately be entitled to the proceeds, on the condition that Vinent so advancing, and consigning to the plaintiffs, that the plaintiffs would account to him. If such be the just result, and the legal result of the correspondence that I have mentioned, then I say it is not competent to the plaintiffs to repudiate that contract by reason of any rights which might have existed previous to this, and which they might have enforced, if they had not affected those rights by the correspondence. I think that the defendant made the advances sworn to in the answer with the concurrence of the plaintiffs, and for the purpose of obtaining possession of the ores, upon an understanding between the plaintiffs and the defendant, or agreement. What I mean by understanding in this case is that the plaintiffs would account to the defendant for the proceeds of such ores as the defendant ought to consign to the plaintiffs. I think that the cargoes in question were consigned and received by the plaintiffs under that agreement, and that it is not open to the plaintiffs to dispute the defendant's title to the proceeds of such cargoes. Under these circumstances, it is unnecessary to consider the numerous other points made on the part of the plaintiffs, because assuming them all to be decided in the plaintiffs' favour, such decision can have no effect to impeach the defendant's right under the express agreement, with reference to which it appears to me the ores have been consigned to the plaintiffs. It seems to me, therefore, that there is no equitable ground whatever which can impede the defendant's right to proceed at law, if he can make out his case there to recover the proceeds of these two cargoes. It is for that only that the present injunction has been applied for, and I think the application must be refused with costs.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

Monday, March 29.

THE SUTTON HARBOUR IMPROVEMENT COMPANY v. HITCHENS.

Lands Clauses Consolidation Act 1845, sec. 68—Plaintiff dismissing bill without costs.

A lessee of a warehouse adjoining some works of an incorporated company carried on under the powers of an Act, wherein the provisions of the Lands Clauses Consolidation Act were incorporated, claimed compensation under the 68th section of the latter Act for damages to his property, "injuriously affected," as he alleged, by the works of the company, or that the damages should be ascertained by arbitration. A bill being filed to restrain proceedings under the Lands Clauses Consolidation Act, the Court of Appeal dissolved an injunction granted by the Master of the Rolls on the authority of The London and North-Western Railway Company v. Smith, *since overruled. A notice of motion was thereupon given by the defendant before the Master of the Rolls to dismiss the bill with costs, and afterwards notice of a cross-motion was given by the plaintiff to dismiss the bill without costs, and, on the hearing of the motions, no order was made on the former, and the latter was dismissed without costs:*

Held, varying the decision of the Court below, the cause being treated, by consent, as if it had come regularly to a hearing, that the defendant ought to have had his costs of his motion to dismiss, and that as the plaintiffs were justified in filing their bill by the authority of The London and North-Western Railway Company v. Smith, *their bill ought to be dismissed without costs, but leave was given to the defendant to apply as to costs if he succeeded in obtaining compensation.*

In this case the Sutton Harbour Improvement Company, under the provisions of their Act, whereof the provisions of the Lands Clauses Consolidation Act 1845, were made part, in the course of their works, made a coffer dam, which temporarily prevented ships from coming so near to the warehouses adjoining the harbour as they had previously done; whereupon a lessee of one of the warehouses, under the 68th section of the Lands Clauses Consolidation Act, none of whose property was required for the purposes of the company, but it being, as he alleged, in the words of the Act, "injuriously affected by the works," claimed compensation to the amount of 65*l*. or to have the damage ascertained by arbitration. The company, denying his rights to compensation, filed the present bill to restrain him from proceeding under the before-named section of the Lands Clauses [illegible] of the Rolls, upon the authority of *The London and North-Western*

Railway Company v. *Smith*, 1 Mac. & Gord. 216, granted the injunction. This decision was reversed on appeal to the Lords Justices, who dissolved the injunction (18 Law T. Rep. 162), and the case of *The London and North-Western Railway Company* v. *Smith* has also been virtually overruled by *The South Staffordshire Railway Company* v. *Hall*, 1 Sim. N.S. 373; and *The East and West India Docks and Birmingham Junction Railway Company* v. *Gattke*, 3 Mac. & Gord. 155. After the order made by the Lords Justices, the defendant gave notice of a motion before the Master of the Rolls to dismiss the bill for want of prosecution, with costs, and the plaintiffs thereupon gave notice of a cross-motion, that the bill might be dismissed *without costs*. Both motions came on to be heard together at the Rolls, and the Master of the Rolls refused to make any order on the former motion; and on the latter ordered that the bill should be dismissed without costs. From this order the defendant now ...ealed; and on the suggestion of Lord Justice ...ght Bruce the parties agreed that the cause ...ld be considered as having come on for a hearing, the affidavits being treated as depositions, the plaintiffs admitting that, as the law now stood, no decree could be asked for by them, and that the only remaining question was whether the bill was to be dismissed with or without costs.

Bethell and *Terrell*, for the defendant, the appellant, argued, first, that the defendant, having moved to dismiss the bill for want of prosecution, the plaintiffs could not move to dismiss the bill. [Lord Justice KNIGHT BRUCE.—If there was no contempt on the part of the plaintiffs, I think that the pendency of the defendant's motion would make no difference; it would merely have to be taken into consideration with regard to costs.] At all events, a bill ought not to be dismissed *without costs* upon such an application as this, unless it appears clearly that bill would be dismissed without costs at the hearing; it should also be made promptly to the Court, when it is found out that the authorities which justified the filing of the bill were overruled by subsequent decisions. If the plaintiffs, without putting the defendant to unnecessary expense, had immediately, upon the decision in *Gattke's* case, come to the court, or on the service upon him of the notice of motion, and had said that the bill had been filed in consequence of the erroneous impression of the law which prevailed in consequence of the decision of *The London and North-Western Railway Company* v. *Smith*, his bill might have been dismissed without costs, but this he neglected to do. In such a case costs ought, following the general rule, to go by the event. Moreover, the case of *The London and North-Western Railway Company* v. *Smith*, was not such as to justify the filing of this bill, for there the amount in dispute was considerable, here it was small; and it was evident that more expense and inconvenience would be caused by the Court's interfering than by its refusal to do so.

Roundell Palmer and *C. Hall*, for the plaintiffs, insisted that the case of *The London and North-Western Railway Company* v. *Smith* was a sufficient authority for them to institute the suit, and in the cases which had been alluded to as overruling it, the judges who decided them expressly disclaimed any intention of doing so, and distinguished those cases from *Smith's* case. That the fact of the claim being for a small amount, did not distinguish this from *Smith's* case, for unless the plaintiffs had applied to the Court, many similar attempts to obtain compensation for alleged injuries to property would have been made by a great number of persons. That under these circumstances the bill ought to be dismissed without costs. They cited *Robinson* v. *Rosher*, 1 Y. & C. C. C. 7; and *Flight* v. *Bentley*, 7 Sim. 149.

Terrell in reply.

Lord Justice Lord CRANWORTH.—We think that the order of the Master of the Rolls was quite right, except that the defendant ought to have had the costs of his motion to dismiss, and with the qualification which I shall mention; for we think that the bill was filed upon the authority of existing much-considered decisions, which were sufficient to warrant the plaintiffs in filing the bill, so as to entitle them, as was held by my learned brother in *Robinson* v. *Rosher*, 1 Y. & C. C. C. 7, to have their bill dismissed without costs. It was argued that this was a special case, and not within the authority of *The London and North-Western Railway Company* v. *Smith*, 1 Mac. & G. 216; but we look in vain for any valid distinction between them. The cases are as nearly similar as two such cases can be expected to be. It has been said that the smallness of the demand ought to induce the Court to say that the bill ought never to have been filed. That, however, is always a difficult question to deal with, and it seems that there were many other persons besides the defendant who would be affected by the question. We think the case within the authority of *The London and North-Western Railway Company* v. *Smith*, and as the doctrine on which that case proceeded has been since got rid of, the defendant is entitled to have the bill dismissed, but without costs, so far as that case warranted the institution of the present suit. But there is nothing in that case to lead to the inference that the defendant there would not have had his costs if the case had proceeded, and he had obtained compensation in the action which the Court there held must be brought. And in the present case, if the defendant should establish a right to compensation, he will be in a different position from that in which he now stands. We propose, therefore, to vary the order of the Master of the Rolls, by giving the defendant the costs of his motion to dismiss, and to affirm the order in other respects; but to give the defendant liberty to apply as to the other costs of the suit, if he shall before the last day of Trinity Term next establish his right to compensation.

Friday, June 11.
IN LUNACY.
Re POWEL.

Lunacy—Committee of the estate—Appointment of committee of the estate of a lunatic, without a reference to the Master.

This was an application for the appointment of a new committee of the estate of the lunatic. The present committee of the estate having attained the age of eighty-five years, and being in an infirm state of health, was desirous of retiring from the office. Sir John Dean Paul was proposed, and was willing to act in his place, and the heir-at-law and next of kin were anxious that the appointment should be made. The petition was supported by affidavits, containing all the evidence which would be required before the Master in lunacy, and it was therefore asked that the appointment should at once be made without a reference.

Jones Bateman in support of the petition.

Lord Justice KNIGHT BRUCE said that as the evidence was satisfactory, the Court under the circumstances would make the order, but that of course the usual securities must be entered into.

Lord Justice Lord CRANWORTH concurred.

Saturday, July 24.
IN BANKRUPTCY.
Ex parte STANER, *re* STANER.

Bankrupt Law Consolidation Act, 1849—Certificate—Conduct as a trader.

A person carrying on the trade of a baker previous to the Bankrupt Law Consolidation Act coming into operation, obtained money under the fraudulent pretence of investing it on security, which he never did:

Held, that this was conduct in him as a trader, though not in the course of his trade, disentitling him to a certificate.

Held also, that if the case came otherwise within the Bankrupt Act of 1849, it was not the less so, because the conduct complained of took place before the passing of the Act.

This was an application on behalf of the bankrupt, George Staner, to reverse the decision of Mr. Commissioner Holroyd, refusing to allow him a certificate, and withholding from him protection. The bankrupt was a baker at Margate, and was, it seems, in the habit of borrowing and laying out money on mortgage and other investments. The assets of the bankrupt, whose unsecured debts amounted to about 7,600*l.* were sufficient to pay his creditors about ten shillings in the pound. The bankrupt's application was opposed by two creditors, from whom he had obtained money under the pretence of investing it, but, as he himself swore, merely on his own personal security. The bankrupt, Mr. Jay, one of the creditors, and Miss Fife, the daughter of Mrs. Fife, the other creditor (Mrs. Fife being too ill to attend in court) were examined and cross-examined orally in court, and all adhered to their contradictory statements. Mrs. Fife's affidavit was used in evidence, and on the bankrupt being asked by the Court whether he would wish the matter to stand over until she was sufficiently recovered, so as to give him the opportunity of cross-examining her orally, he declined the offer. The circumstances under which the debts were contracted, and the material facts, are sufficiently stated in the judgments.

Cooke, for the bankrupt, contended,—first, that it was not proved that he had obtained the money from the two opposing creditors under the pretence of investing it upon securities for them; the result of the evidence clearly shewed that he had borrowed it solely on his own personal security, at times when he believed himself solvent, and he would have remained so but for unavoidable and unexpected accidents. Secondly, that even on the supposition that he had obtained those moneys for the purposes ... posing creditors, still, as they had ... by him as a trader, his conduct as a trader was not affected thereby, within the meaning of the Bankrupt Law Consolidation Act, 1849. (*Wakefield's* case, 17 Law T. Rep. 55; and *Dornford's* case, 15 Jur. 278; 20 L. J. N.S. 6, Bank.) Thirdly, supposing his contracting these two debts was to be attributable to him as a trader, still, as they had been contracted before the bankrupt came into operation, his case did not come ... that Act.

Bacon and *Bagley* for the two opposing creditors.

J. T. Wood for the official and other assignees.

Lord Justice Lord CRANWORTH.—This is another of those distressing cases with which we have got to deal. It is an application by a party against the decision of the commissioner for a certificate, which he thought it his duty to refuse. It is an extremely painful duty to have to perform, sitting in a civil matter, to adjudicate whether a punishment—for such it is in effect—is, or not, to be inflicted. I confess I think the commissioner is right in refusing the certificate, on several grounds. In the first place, before the bankrupt can ask for a certificate, he should have conformed to the bankrupt law since his bankruptcy; he should have stated the truth and the whole truth respecting his estate, and I do not shrink from saying that here he has not done so. I do not believe the statements he has made. There were two transactions relative to loans brought in question. The first was that of Mr. Jay. Now if the question was, whether Mr. Jay could be considered as in any other light than a simple contract creditor, there might be doubt, because his subsequent conduct led to the conclusion that the 450*l.* advanced by Jay should be in the hands of Staner, to be as well secured as he could, on his (the bankrupt's) houses. That is not the question; the real point is, what was the original transaction? Mr. Jay says that he advanced his money to Staner originally on an undertaking that it should be invested on security; he says, that in a letter, which is now lost, Staner told him that it was to be invested on a mortgage of an estate of a Mr. Petley, but after many inquiries made by him, and many excuses made by Staner, the latter called on Mr. Jay, and told him the mortgage was at length completed, but he added that it was taken for 700*l.* or more, and that as he (the bankrupt) had advanced the greater proportion of the money, he would retain the mortgage in his own hands, and give Mr. Jay a security on his own property, and to this Mr. Jay acceded. As I have already stated, it is immaterial to consider, whether that did or did not absolve the bankrupt from the former engagement. But the purpose for which I wish to consider it is this, what was the true transaction? If what the bankrupt has stated to be the true transaction is not so, then he has been deliberately stating what he knew to be untrue. Mr. Jay says it was a contract for a mortgage from Petley. The bankrupt says it was a loan to him on his promissory note. Looking at the documents, which statement do they bear out? The transaction opens by a letter in May, in which Staner tells Jay as to the state of the Funds, recommending him to sell out, and adds, "Now if you get this letter soon enough to have time to answer me to-night do it in the following way: are you desirous to sell out if I can get you five per cent. say upon *my own security*, for what I expect it may be wanted for is *equal to that*? next the amount, what would be convenient to invest? Your answer will be waited for by me, because I can do you *this service*. I shall be very pleased, and do not always *have the opportunity*." Can any one understand that otherwise than that he was proposing some security other than his own? Mr. Jay agrees to sell out, and letters pass as to the mode of transmitting the money by a registered letter, to which Mr. Jay objects, and then the bankrupt writes to him,—"I take it for granted you will have the money on Friday. The security, you may rest assured, is of the most desirable character, or you should not have the investment. Leave that to me." Now, these are terms utterly irreconcileable with the notion that he was borrowing money on his own security. I come to the conclusion that Jay is a person to be believed, and that the bankrupt is to be disbelieved. One circumstance is important for the bankrupt, that it does not appear in writing that the name of the mortgagor was mentioned. Jay, however, says, it was mentioned in the lost letter; that was fairly a matter for observation, but I do not attach much importance to that, because much that passed between these parties was by word of mouth, and a person desirous of manufacturing a story which was untrue, would more probably have put it on what passed by word of mouth, instead of referring it to a lost letter. I am therefore inclined to regard the circumstance as favourable, rather than otherwise, to the truth of the statement made by Jay. If the case had rested on the evidence of Jay alone, I should have come to the conclusion that the bankrupt had wilfully intended to deceive his assignees and the parties interested in his estate, and had not conformed to the bankrupt laws. The case does not rest here, there is another transaction; and if any thing is to be gained by the maxim "noscitur a sociis," it is by its application to the present case. This transaction, of a similar character to the former, took place between the bankrupt and Mrs. Fife; and in this instance also we

have had the advantage of seeing the demeanour and hearing the statements of Miss Fife and the bankrupt, and we have had the affidavit of her mother, Mrs. Fife, who cannot be examined here orally, on account of her illness; and the bankrupt, who knows the evidence she gave before the commissioners, and is probably aware that her cross-examination would not be favourable to him, did not wish that the matter should be delayed on that account. Now, what is the account given by the mother in her affidavit, and in a very straightforward manner by the young woman here to-day? Mrs. Fife lost her husband in 1849, leaving a little money, about 200*l.* in the house. Staner knew them at Margate, and took, or professed to take, some interest in him and his family, and the widow and daughter supposed him to be their only friend. He tendered his advice to them, and appointed to meet them at the London terminus of the Blackwall Railway by the hour, he said, of ten o'clock. The daughter says, and the mother states in her affidavit, that they went, and Staner asked them how they were left off, and was told that she had 200*l.* and that was more money than she liked to have in the house. He said that it was unlucky he had not known sooner, as he could have got it invested; that a Mr. Powell, of Quex-park, was just dead, that the *Collinses were, therefore, in want of money*, and that he could have got 5*l.* per cent. He then asked them how long it would take them to get the money, as perhaps *it was not too late.* He then promised to wait while they went for the money, and in the meantime to see if he could manage the matter. They go and get the money, and on their returning with it, he said, *he had seen the party and was happy to say it was not too late*, and that he could put the money to work directly. Then, relying upon him and his friendship, they put their all into his hands, he takes it, and goes away. The bankrupt denies all this, and that there was to be any security, except his own personal security. It is utterly incredible that the story told by the daughter of Mrs. Fife can be an invention; and it is strangely corroborated by the mode in which the bankrupt himself has answered the questions put to him regarding it. At first, he said, he did not recollect it; why he must have recollected it if it had occurred, and if it had been untrue, he would at once have contradicted it. When pressed with further questions, he seemed to feel his position, and then he denied the story to be true. A man may well say, "I do not recollect whether it rained this day fortnight," but he could not be heard to say, with any hope of belief, that he did not recollect whether a man gave him a blow in the face, or did any act of violence on that day. So, if he was speaking the truth, he would not in this transaction have said he did not recollect. We have the duty cast upon us, in this case, of saying whether we disbelieve this young woman, supported as she is by the affidavit of her mother (too ill to be examined, it is said), or to pay no attention to the oath of the bankrupt. I have no hesitation in saying that, in my opinion, *the bankrupt has told a deliberate and intentional falsehood, and that on that ground alone the certificate has been most properly refused him.* Further, I believe his debts to have been *contracted by fraud*, and in every way by means not such as are proper in the *conduct of a trader.* I do not think his application for his certificate is to be for one moment listened to, and I am of opinion that his petition must be dismissed.

Lord Justice KNIGHT BRUCE.—The agreement of Lord Cranworth with the decision of the learned commissioner would be an affirmation of it, whatever might be my own opinion; therefore it would be unnecessary in me to state my view of the case, whatever that view may be. I think it right, however, not to abstain from stating what my opinion really is. First as to the law. It has been suggested, with great propriety, by Mr. Cooke, the learned and able counsel for the bankrupt, that even if the case set up by the opposing creditors were made out, it does not fall within the 256th section of the Bankrupt Act of 1849, because these particular facts having occurred, these acts having been done by the bankrupt before that statute, they cannot be said to come within its operation. For this no decision was cited; and considering the learning and experience of the learned counsel who supports the bankrupt—Mr. Cooke, I think I may take it no case exists, *and I state my opinion to be, that if the case comes otherwise within the Act of Parliament, it is not the less so because the conduct complained of took place before the passing of the statute.* Another observation made was, that the debt was not fraudulently contracted by the bankrupt in his trade, and that, therefore, it was not conduct in a trader within the meaning of the Bankrupt Act, and for this my decision in *Wakefield's* case was referred to and relied upon. My impression is different as to the effect of that case, and I think that such conduct would be conduct of a man in trade shewing him to be unworthy of that degree of estimation which ought to belong to one engaged in the transactions of commerce, or indeed in any other transactions of life.' If in *Wakefield's* case I said anything contrary to this, I was wrong; but I do not think I so said. My impression has always been, and my opinion now is, that *if a man in trade deals in the way alluded to, though not in the course of his trade, or in matters connected with his business, it is, for the purpose of such an application as the present, conduct of a man as a trader within the Act of Parliament.* So far as to the law in this case. There are two acts of the bankrupt impeached. How the matter would have stood if Jay's case had been the only one against the bankrupt, I will not give any opinion, because it is not necessary; but I am satisfied on the evidence, so far as any one subject to human infirmity in judging can be satisfied, on the comparison of a conflict of testimony by adverse witnesses, that the money of Mrs. Fife was obtained from her unfairly, improperly, and fraudulently. A state of things was represented to them which did not exist; they were ignorant (I do not use the term in an offensive sense) and helpless women, whom this tradesman, who professed to be their friend, ought to have assisted, advised, and supported, and if he saw they were about to commit an act of imprudence, he ought to have prevented them; at all events, he ought to have told them the exact truth. He allowed them, however, to part with their money in a mistake, which he might have prevented. I come to the conclusion, then, on the evidence, that the bankrupt contracted a debt with Mrs. Fife by fraud and on false pretences. Considering that I come to that conclusion, and considering the 256th section of the Bankrupt Act, I am to ask myself, whether a man capable of committing this single act as to these women, is worthy to receive what I have called a passport to enter into trade again without paying his debts. I am of opinion that he is not, and on the ground of his conduct to these helpless women alone I refuse him his certificate. Let the petition be dismissed, and the costs of the assignees and opposing creditors come out of the estate.

ROLLS COURT.

Reported by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

March 8 and 30.

Re WAUGH.

Costs, taxation of—Married woman—Separate estate—Security for costs—Practice.

A married woman entitled to separate estate had employed solicitors to act for her and had given them some securities for costs incurred by them on her separate estate. She then obtained an order of course for delivery and taxation of their bill of costs, but without the intervention of a next friend. On motion to discharge the order for irregularity in not having a next friend, or in the alternative that security for costs might be given:

Held, that security for costs must be given, or the order must be discharged; that there was no real distinction between the case of an order of course, and any other case: but that the practice having been, though erroneously, to give orders of course without the intervention of a next friend, there could be no costs of the motion.

This was a motion on behalf of Messrs. Waugh and Mitchell, solicitors, to discharge for irregularity an order of course for taxation of their bill of costs obtained by Rossetta Waddell, a client, on the 15th December last; or in the alternative that she might be ordered to give security for payment both of the costs of the application for the order and of the amount which, upon taxation of the bill, should be found due; and that in the meantime proceedings might be stayed, and that Mrs. Waddell might be ordered to pay the costs of and consequent upon this application. It appeared that Mrs. Waddell, who was a feme covert, was possessed of considerable property, which was settled to her separate use, and of which the income was about 900*l.* a year. Messrs. Waugh and Mitchell had for some time acted as her solicitors, and the result was that costs for their professional services to a considerable amount had been incurred. It appeared also that they had obtained from Mrs. Waddell in respect of these costs some securities on her separate estate. On the 15th December, 1851, Mrs. Waddell, describing herself as Rosetta Waddell, formerly Rosetta Bagster, of Warwick-square, in the city of London, now the wife of John James Robert Waddell, obtained an order of course, whereby Messrs. Waugh and Mitchell were ordered to deliver their bill of costs within a fortnight, and a reference was directed to the Master to tax the same, and that Messrs. Waugh and Mitchell might be ordered, upon payment of what should be found due, to deliver upon oath all deeds, books, papers, and writings in their custody. This order was served on the 19th December. Messrs. Waugh and Mitchell now moved to discharge this order.

R. Palmer and *Greene*, in support of the motion, contended that it was irregular, and ought to be discharged, because it had been obtained by a married woman without the intervention of a next friend. They cited *Re Williams*, 12 Beav. 510; *Re Taylor*, 10 Beav. 221.

Roupell, contrà, contended that the intervention of a next friend on behalf of a married woman was merely by way of giving security for costs; but where a married woman has separate estate, and has given security for costs, as in this case, she may present a petition herself, and there is no need of the intervention of a next friend. [The MASTER of the ROLLS.—In answer to a question I sent to the secretary's office, I am informed that the practice is for married women to petition without the intervention of a next friend.] It was a reasonable practice if a married woman had no property, for in that case there was nothing out of which to pay the costs; but where, as here, there is separate estate and money set apart out of it to answer costs, what pretence can there be for these gentleman to require further security? It was assumed that the order was merely waste paper; but if her separate estate went to pay she was as to that a feme sole and had a right to tax the bill of costs.

R. Palmer, in reply, contended that a next friend was necessary, for a separate estate might not be sufficient to liquidate the amount. Moreover, the application should have been by special petition and not an order of course.

Tuesday, March 30.—The MASTER of the ROLLS.—This was a motion to discharge an order of course, obtained by a married woman to tax a bill of costs, on the ground that the order was applied for without a next friend; or, in the alternative, that security for the costs of the taxation might be given. I am of opinion that it is settled in the case of *Murray* v. *Barlee*, that a married woman's separate estate is liable for costs. It has been also, I think, the usual practice in a case of this kind to allow a married woman to do without a next friend; but the practice is nevertheless erroneous; and as in all other cases, a next friend is necessary to be appointed, to be answerable for costs to the party sued, so in this a similar precaution must be taken. There is no intelligible reason why, if this had been the case of a special petition, there must have been a next friend, and yet that it should be unnecessary where a common order only has been obtained. Whether there be special circumstances in the case, or it is such that a common order is sufficient, the petition in either case must be by a next friend. The liability, however, of the next friend is not extended beyond his liability in the case of a special petition, but is confined to the costs incurred by reason of the petition. I must, therefore, either direct security for costs in this case to be given, or else discharge the order of course. As for many years it has been the practice to give orders of course without the intervention of a next friend, I will give no costs of this application, but will, if it is desired, make the costs abide the result of the taxation.

April 20 and 30.

GOODAY *v.* THE COLCHESTER AND STOUR VALLEY RAILWAY COMPANY.

Railway company—Contract—Specific performance—Adoption by a third party of contract between others—Abandonment of scheme.

A railway company who had projected and were promoting a new line of railway, being opposed by a landholder on the line, arranged, through a third party, who professed to be the agent of the company, to purchase his land at a certain price. The landholder accordingly withdrew his opposition, and the Bill passed authorising the construction of the new line. No steps, however, were taken to carry out the scheme, and the compulsory powers having expired, though the time for completing the line had not, the landholder filed his bill against the company for specific performance of the contract to purchase his land:

Held, that there was no contract between the plaintiff and the company, for before they obtained their new Act they could not enter into a contract; and as to their adoption of the contract made by their professed agent for their benefit, as a corporation subsequently established, there had been nothing done after obtaining the Act which the plaintiff's withdrawal of opposition had enabled them to do, and therefore they could not be said to have adopted it.

The Court refused even to put the company on terms to admit the contract at law; but dismissed the bill with costs.

The bill in this case was filed by the plaintiff Gooday to enforce specific performance of an agreement for the purchase from him by the Colchester, Stour Valley, Sudbury, and Halstead Railway Company, of a piece of land for the purpose of an extension line projected by them. It appeared that the company were desirous of constructing a branch line of railway from Sudbury to Lavenham and Melford, but such a work not being within the powers conferred on them by their Act of Incorpora-

tion, it became necessary for them to apply to Parliament for the purpose of obtaining the necessary authority. Accordingly, in 1845, they applied to Parliament for an Act to enable them to construct the proposed line, but their application was opposed by the plaintiff, through whose land the new line was intended to pass. It became necessary, therefore, to buy off the plaintiff's opposition; and, accordingly, after some negotiations, an agreement was entered into on the 13th of May, 1847, between the plaintiff and a person who professed to act as the agent of the company, whereby the plaintiff was to withdraw his opposition, and the company were to purchase his land, or so much thereof as they required, for the sum of 1,850*l*. This agreement was not under the seal of the company, nor was the agent who acted for them authorised by an instrument under their seal. The company acted as to the new line simply as promoters thereof, and contracted through a third party for the purchase of land for the purposes of the undertaking. The contract itself was not denied; it was merely alleged that it was void. In consequence of the agreement, however, the plaintiff withdrew his opposition, and the company obtained their extension Act on [illegible] 8th of June, 1847. In pursuance of the agreement the plaintiff delivered an abstract of his title to the land in question, and no objection was taken to the title; and on the 17th of June, 1847, a draft conveyance was sent to the plaintiff's solicitor by the solicitor of the company, and was returned approved. Nothing more, however, was done in the matter, and the contract has never been completed, on the ground, as contended by the defendants, that it was a void contract, not having been under the seal of the company. But the plaintiff alleged that they refused to complete, because he would not, at their request, postpone the payment of the purchase-money, and that they had expressed their determination for that reason to take every legal advantage against him of which they could avail themselves. There was no distinct evidence that the new line of railway had been actually abandoned, but no steps had been taken for constructing the line, and the time for exercising the compulsory powers of their Act had expired in June 1850, though the time for completing the line will not expire till June 1853. Under these circumstances, the plaintiff, in May, 1850, before the expiration of the time for exercising the compulsory powers had expired, filed his bill against the company to compel specific performance of the contract.

Roupell and *J. H. Palmer* for the plaintiff.—The company admit the contract, and the investigation of title, and its validity; but because the plaintiff refused to postpone payment of the purchase-money, they refuse to complete, and though they have got part of the consideration, the withdrawal of the plaintiff's opposition, yet they will take advantage of every legal objection they can raise to the contract. The plaintiff undertook to withdraw his opposition and sell his land for a given sum; he did the one and offered to do the other; but the company will not accept the offer, and they are therefore compellable to do so. What has been done by the plaintiff in giving his consent to the Act passing cannot be undone, nor can the company restore that part of the consideration The contract was a good contract, and not void for want of being under the seal of the company; it was not made with them as a company, but as individuals promoting a new line before the Act was obtained for constructing it; for if the case is once got beyond the necessity for a corporate seal, it is no longer as to the extension a company transaction, but only one by private individuals acting by a party employed as their agent. Then the company took the benefit of the agreement, and thereby adopted it, and are therefore bound by it. This case differs from *Webb* v. *The Direct London and Portsmouth Railway Company*, 9 Hare, 129; S.C. on appeal, 21 L. J. 337, Ex. Ch.; 16 Jur. 323; for in that case there was a regular contract; and in *Stuart* v. *The London and North Western Railway Company*, 19 Law T. Rep. 43, there was a contract, in consequence of which the landholder's opposition was withdrawn, but the railway was not carried out, and could not then be completed. In this case, however, they have eighteen months to complete, and they may go to Parliament for an Act to restore them the compulsory powers. If the Court should not decree specific performance, it will at least put the defendants on terms, and compel them to admit the contract in an action at law for damages. They cited *Winne* v. *Bampton*, 3 Atk. 472; *Macker* v. *The Foundling Hospital*, 1 Ves. & B. 188; *Maxwell* v. *The Dulwich College*, cited in *Carter* v. *The Dean of Ely*, 7 Sim. 211; *Marshall* v. *The Corporation of Queenborough*, 1 Sim. & S. 520; *Wilmot* v. *The Corporation of Coventry*, 1 Y. & Coll. 518, Ex. Eq.; *The Fishmongers' Company* v. *Robertson*, 5 Man. & G. 131; *Edwards* v. *The Grand Junction Railway Company*, 1 Myl. & Cr. 650; *Hawkes* v. *The Eastern Counties Railway Company*, 15 Jur. 979; *Rex* v. *The Inhabitants of Throscross*, 1 Ad. & Ell. 126; *Preston* v. *The Liverpool, Manchester, and Newcastle-upon-Tyne Junction Railway Company*, 1 Sim. 586, N.S.

Lloyd and *Goodeve*, for the company, refused to consent to the same order as had been made on appeal in *Stuart* v. *The London and North Western Railway Company*, on the ground that there were several points in this case which made it differ from the other,—the uncertainty of the contract, for instance. They contended that the agreement was void, as not being under the seal of the company, and that it was not made by any person lawfully authorised as agents for the company, and that nothing had been done by the company which amounted to the ratification of it. They cited *The Fishmongers' Company* v. *Robertson*, 5 Man. & Gr. 131; *Bland* v. *Crowley*, 6 Ex. Rep. 522; *Kirk* v. *The Bromley Union*, 2 Phill. 640.

The MASTER of the ROLLS.—I regret that in the present state of the authorities I cannot give the plaintiff a decree. There are two questions to be considered in the present case,—first, whether there is any contract at all between the plaintiff and the defendants for the purchase by the latter of the land of the former, and if it should be found that there is, what remedy this Court can give for the breach of it; and secondly, whether there is any contract between the plaintiff and a third party, of which the defendants have taken the benefit, and by so doing have adopted the contract. Now, it is clear that there is no contract between the plaintiff and the defendants, for before they obtained their Extension Act, they could not, as a company, make any contract at all. Had there existed any such a contract, then it has been settled as a rule of law by recent cases that assuming a contract to have existed between an individual and a railway company, and if the undertaking had been abandoned, the Court will, nevertheless, in the exercise of its discretion, send the case to law, instead of granting specific performance. In this case, however, no sub-contract between the plaintiff and the defendants exists. But it is, nevertheless, immaterial whether such a contract exists or not, if there was a good and valid agreement between the plaintiff and a third party, of which contract the company had received the benefit, and which they had by their acts adopted and ratified. The cases of *Edwards* v. *The Grand Junction Railway Company*, and *Preston* v. *The Liverpool, Manchester, and Newcastle-upon-Tyne Railway Company*, establish the principle that wherever a third party enters into a contract with the plaintiff, and the defendant takes the benefit of it, he is bound to give the plaintiff the advantage he has contracted for. Here, then, the question is, whether the defendants did adopt the agreement previously entered into by their agent, or alleged agent, with the plaintiff. The contract was entered into with the plaintiff for the benefit of a corporation not then, but subsequently, established, and the withdrawal of the plaintiff's opposition, which was part of the contract, enabled them to obtain their Act of incorporation. Since the Act was obtained, however, nothing has been done, nor any step taken to construct the railway. There is no distinct evidence, indeed, that the railway has been abandoned; but no money has been paid, no land taken, nor any movement made towards carrying on the scheme, and the compulsory powers of the Act have now ceased. Under these circumstances I cannot say that the company has adopted the agreement, or is bound by its terms; and therefore I do not think that I can compel them to admit the contract in an action at law. I must dismiss the bill, but without costs.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. HENRY COOKE, Esq. Barrister-at-Law.

Jan. 13, 15, 22, 27, *and* 28.

THE GRAND TRUNK STAFFORD AND PETERBOROUGH RAILWAY COMPANY *v.* BRODIE.

Bill by one scripholder on behalf of himself and others—Joint-stock Companies Winding-up Acts—Suit conducted by, and costs of, an official manager—Fraud—Stat. 11 & 12 *Vict. c.* 45, *s.* 53.

A. B. a subscriber to a railway company, which failed by noncompliance with the Standing Orders, filed a bill on behalf of himself and all other scripholders except such as were defendants, alleging various fraudulent acts by the defendants, such as the issue of spurious shares and the repayment of pretended deposits, praying that the defendants might make good such payments. The p[illegible] back part of his deposits, on giving up the old certificates received new ones; and on receiving back a further part of the deposit, gave up the new certificates, and signed a memorandum engaging to release the promoters. After the answers were put in by several of the defendants, an order for winding up the affairs of the company was made and an official manager was appointed, and afterwards an order, in the causes and the matter, was made for the official manager to carry on the suit. The evidence did not sustain the charges of fraud;

Held, that A. B. could not have maintained the suit and retained the moneys he had received back, the subsequent transactions creating a new contract; that, therefore, the official manager was not in a condition to do so; and that it must be dismissed with costs, to be paid by the official manager without prejudice as to how they were, as between him and the assets of the company, to be ultimately borne.

The bill in this case was originally filed by Mr. Warren on behalf of himself and all other scripholders and shareholders, against the defendants, who were several of them provisional directors, and one of them had been secretary, to the Grand Trunk Stafford and Peterborough Railway Company, which had been projected in 1845. Two guineas had been paid as a deposit by each subscriber. Mr. Warren, the plaintiff, had subscribed for forty shares, and had paid his deposit upon them. The company, which had been provisionally registered, failed to obtain an Act of Parliament in consequence of being too late in complying with the Standing Orders of the House of Commons. Under these circumstances a meeting of the company was called in the month of May 1846, and it was resolved not to prosecute the scheme. It was at the same time also resolved, that the sum of one guinea per share should be repaid to each subscriber as the first dividend or instalment, and afterwards a further dividend of 2*s.* 6*d.* per share. These were paid through the defendant, Mr. Harman, the secretary, by cheques on the company's bankers, signed by some of the provisional directors. The bill alleged that a dividend of one guinea had been paid upon each of 1,490 shares, which had been fraudulently issued, and on which the deposit of two guineas had never been paid. The bill prayed that the defendant Harman might be decreed to repay with interest at 5 per cent. the sum of 1,564*l.* 10*s.* alleged to have been received by him out of the funds of the company by means of twenty-four bankers' cheques given in respect of the alleged spurious scrip certificates, and 235*l.* received or retained by him in respect of dividends upon 200 shares belonging to the company; that he might be decreed to repay all other moneys belonging to the company, and retained by him for his own use which had been received by him, and for which he was accountable; that proper accounts might be taken, for the purpose of ascertaining what was due from the defendant Harman to the company; that it might be declared that the several payments in respect of such alleged spurious scrip certificates were breaches of trust on the part of such of the defendants as had signed the cheques, and that they might be ordered to make good all losses upon the same; that the directors might be directed to refund with interest all moneys of the company retained or applied by them to their own use by way of remuneration for their services, or for purposes not authorised by the subscribers' agreement. In December 1846 the bill was filed, and after several of the defendants had put in their answers, an order for winding up the affairs of the company was obtained. An official manager was appointed, and on the 31st of July, 1849, an order was made in the cause, and in the matter of the company, that the suit should be prosecuted by the official manager, as the nominal plaintiff.

The *Solicitor-General* (Sir *W. P. Wood*), *Stuart*, *Bolt*, *J. Baily*, *J. Nicholl*, *Selwyn*, *P. Stevens*, *Rogers*, *Collier*, *Osborne*, *Roxburgh*, and *W. Morris*, appeared for the several parties. The arguments lasted the greater part of five days, and are sufficiently stated in the judgment of the Court.

The VICE-CHANCELLOR.—Two questions, not involving the merits of the case, were much discussed at the hearing,—namely, first, whether the original plaintiff, Mr. Warren, could have maintained the suit; and secondly, what was the effect of the order for substituting the official manager as plaintiff? As to the competency of Mr. Warren to maintain the suit, it appears by the bill that about the latter end of 1845 he had deposited the scrip certificates for his forty shares with the defendant, Mr. Harman, for securing a sum of money; that on the dividend of one guinea per share being repaid, the original scrip certificates were called in, and new certificates were issued; and that on the payment of the further dividend of 2*s.* 6*d.* per share, these new certificates were called in, and the parties who brought them signed a memorandum undertaking to execute a release to the directors when called upon to do so. It was stated that the defendant, Mr. Harman, had signed this memorandum. It appears, therefore, that both on the original and on the new certificates being delivered up, new contracts were entered into by the parties. These contracts the bill does not seek to disturb, but it went on the footing of the original partnership, as if the scripholders and shareholders who had entered into these new contracts were entitled to recover beyond the amounts and [illegible] lated under these contracts. And the first

V. C. TURNER'S COURT. V. C. TURNER'S COURT.

therefore, to be considered was, whether the plaintiff, suing on behalf of himself and the other scripholders and shareholders, could have maintained any such right. It may, I think, on the evidence, be assumed that the defendant, Mr. Harman, is to be considered merely as the agent of the plaintiff, Mr. Warren, in delivering up the certificates, and that both were ignorant of the alleged frauds, but that some of the defendants were cognisant of and participators in such alleged frauds. Upon this assumption it can hardly be denied that the original plaintiff and his mortgagee would be entitled to undo the contracts which were entered into in the manner I have mentioned on the occasion of the new and original certificates being delivered up, nor would they have been held bound by the undertaking to release the directors. But does it follow that they can undo the contracts, and at the same time retain the moneys received under those contracts? I think not; and if the contracts are to be undone at all, they must be undone in toto. What then would be the position of the original plaintiff, Mr. Warren, as between himself and his mortgagee, and as between himself and the other shareholders? As between himself and his mortgagee there would have been an obligation on him to bring back at least the instalment paid on each share; and the difficulty might have been surmounted by making the relief conditional on his doing so. But how would it have been as between the plaintiff and the other shareholders, whom he had assumed to represent? How could the plaintiff compel the other shareholders to refund the sums which they had received? Each of them might at least have a right to elect whether he would abide by the transaction, retaining the moneys, or impeach the transaction and refund the moneys. What right would the original plaintiff (Mr. Warren) have had to make this election for them? If, therefore, the bill rest solely on the right of the original plaintiff to sue, it cannot be sustained. Several other points affecting the same result were brought forward in argument on the part of the defendants, and some of them were not less unfavourable to the right of the plaintiff to sue on behalf of himself and the other scripholders and subscribers. Some of the objections, indeed, were scarcely attempted to be answered on the part of the plaintiff. The conclusion to which I have arrived on this part of the case, therefore, without reference to the question of the merits, is, that this bill cannot be sustained by the original plaintiff, Warren. It remains to be considered, what is the effect of the order for the prosecution of the suit by the official manager. This order depends on the construction of the stat. 11 & 12 Vict. c. 45, s. 53, which enacts that where any action, suit, or other proceeding shall have been brought or instituted, or shall be pending, by or on behalf of the company in respect of which the official manager shall have been appointed, or by any person duly authorised to sue as the nominal plaintiff on behalf of such company, or by any one or more members or contributories of such company, on behalf of himself and the other members and contributories thereof, it shall be lawful for such plaintiffs to substitute the official manager as the plaintiff in such action, suit, or other proceeding, by entering a suggestion on the roll to that effect in an action, and by obtaining an order to that effect in such suit; such order to be obtained on motion or petition, without notice, and that it shall be lawful for the official manager thenceforward to prosecute such suit or other proceedings in the same manner and with the same effect, to all intents and purposes, as if such suit or proceeding had been commenced by the official manager as plaintiff under the provisions of the Act. It has been insisted, on the part of the defendants, that the case did not at all fall within the provisions of the section in question. But I think that it would be difficult to answer some of the arguments which have been urged on that point, particularly as to the character of the suit which was instituted on behalf of the scrip holders and shareholders, and not on behalf of all, but of all except the defendants. I do not, however, think it necessary to give any opinion upon the question whether the case falls within the provisions of the section; because, what the official manager has to make out to entitle him to maintain the suit is, that he had a better right than the original plaintiff. I am of opinion that the official manager had no better right when he became plaintiff than the original plaintiff had; but the moment he took the suit upon himself, he adopted it with all the infirmities attached to it, and by these he must abide. According to the provisions of the section, he was thenceforward to prosecute the suit in the same manner and with the same effect as if it had been commenced by him as plaintiff, under the Act. What he is to prosecute is the original suit, and by that, or by any amendment of it, he must, in my opinion, abide. To construe the words of the section, "as if the suit had been commenced by him," as freeing the suit from objections to which it would have been open if carried on by the original plaintiff, would lead to the most palpable injustice. If that is to be the construction put upon these words, defendants might find themselves called upon at the hearing of the cause to encounter equities which they would have had no opportunity of meeting. It would, in my opinion, require the strongest proof of such an intention on the part of the Legislature, to warrant the Court in adopting this construction, as contended for by the official manager. I find nothing in the Act which at all points to the conclusion that the Legislature had any such intention. Independently of the merits of the case, therefore, I am of opinion that the frame of the pleadings is such, that the bill must be dismissed; but as the merits of the case very materially affect the character of the parties, and are proper to be taken into consideration on the question of costs, I have felt it to be my duty to look into them. The case made by the bill is, that the company's certificates were, in the first instance, printed in blank, as to the numbers and as to the names of the two directors by whom they were to be signed; that these certificates were bound up in books with counterfoils to the certificate, each book containing certificates to the amount of several thousands of pounds; that as they were thus bound up, the directors signed their names to the certificates, and put their initials to the counterfoils, and then handed back the books to the secretary, for the purpose of countersigning the certificates when issued; that the company had also a share register book, in which were entered the names of parties who had signed the agreement, and the number of shares which had been issued to each subscriber; that as the signature of the certificates occupied a considerable time, the directors occasionally took the scrip books home with them for the purpose of signing the certificates, and returning them to the secretary to fill up and sign as they were wanted; that since the time when the defendant Harman became secretary, the scrip book, No. 39, was in the hands of the defendant, Mr. Brodie, for the purpose of signing the scrip certificates, which had already been signed by Harrison or some other provisional director, that it contained certificates for 2,000 shares, none of which had ever been issued, that it was suffered to remain in Mr. Brodie's possession and was never returned to the office of the company; that the plaintiff, Warren, had lately discovered that the defendants Brodie and Harman had entered into some secret arrangement by which they might make use for their own benefit and in fraud of the company of the scrip certificates contained in the book No. 39, so taken from the office by Mr. Brodie; that the defendant Harrison had assisted Brodie and Harman in their acts or proceedings which were to enable them to practise these frauds; that the scrip certificates so made use of by Messrs. Brodie, Harrison, and Harman amounted to 1,500*l.* and the same were spurious scrip certificates and had been cut from the missing book No. 39, and that the remuneration they had paid themselves had not been sanctioned by any meeting of the company. [His Honour, after going through the details of the charges, proceeded.] If the case had to be decided upon the merits, the plaintiff could not have obtained any decree grounded upon these charges, for, in the first place, as to the case against the defendant, Mr. Brodie (which I deal with as being the one most strongly relied upon, and which certainly is the strongest case in the plaintiff's favour), I see nothing in the evidence which could justify the Court in considering him to have been a party to any such fraud as was alleged, nor, indeed, any evidence which could lead to the inference of participation in it beyond the fact of his having been for some time in possession of the book or collection of documents by means of which the fraud was alleged to have been committed, and not accounting for the book, nor for the fact of such possession or retention. But it would be going beyond authority and beyond principle if I were to hold a party chargeable for a fraud on the mere ground that the document by means of which the fraud had been perpetrated had been in his possession and was not accounted for. And as to the case of wilful default on the part of Mr. Brodie, I think the statements do not raise the question. If such a case was raised, it would be inconsistent with the case of fraud as alleged. As to the defendant Harman, who being merely secretary of the company, cannot be charged on any other ground than that of fraud, the evidence fails to shew that he has ever had possession of the document by means of which the fraud was or could have been perpetrated. Without looking to the defence, therefore, the plaintiff, I think, has failed to substantiate his case. But whatever might have been the result as to this part of the case, if the question had depended solely upon the evidence to which I have referred, some passages read by the plaintiff, from the answers, seem to remove all doubt, for the answer of Mr. Brodie shews that he knew nothing of the matter. I am of opinion that if the case could have been determined upon the merits, the bill must have been dismissed as to the 1,490 shares, and it must also have been dismissed as to the directors' remuneration. As to this part of the case, the plaintiff has read the statements in the defendant's answer, which completely and satisfactorily explain it. Having regard to the charges of the bill, whatever relief might have been given as to the other matters, these parts of the bill must have been dismissed with costs. To what extent any decree as to the other matters could have been serviceable to the plaintiff, I am unable to judge. But under the circumstances, I feel it my duty to dismiss this bill with costs, to be paid wholly by the official manager.

March 2 and 8.

BLACKWELL *v.* PENNANT.

Legacy—"Servant living with me."

A will contained the bequest "to all my servants living with me at the time of my decease, who shall have then lived in my service for three years, one year's wages:"

Held, that all servants at a yearly hiring were entitled, although not resident with him; but that a gardener, who was engaged at a stated sum per week, although it was paid at irregular intervals, was not entitled, although he had lived more than three years in the testator's service.

This was a claim filed by the plaintiff against the executrix of a will for the payment of an alleged legacy of 44*l.* 4*s.* that being the amount of a year's wages at 17*s.* per week. The testator, Mr. Pennant, of Brymber Hall, by his will bequeathed as follows: —"I give to every servant living with me at the time of my decease, and who shall then have lived in my service for three years, one year's wages." The plaintiff was an under-gardener, and had been for many years, far exceeding three, at first at 15*s.* a week, and afterwards at 17*s.* a week. By his claim he alleged that he was entitled to a year's wages, and that his salary was paid at irregular intervals. The widow and executrix of the testator, by her affidavit, said that a book was kept by her husband and herself, marked "Servants at Brymber-house," in which book the name of the plaintiff did not appear; and she deposed that the plaintiff was considered as a weekly labourer, exclusively employed in out-door work; that seven or eight men and boys were employed about the mansion-house and home farm, and that, except during a short time, the defendant was continued in his employ by her at 17*s.* and afterwards at 20*s.* a week, and that it was untrue that the plaintiff had been hired by the testator by the year. She also swore that the employment by her was on the same footing as to term of hiring, viz. weekly, as that on which the testator himself employed the plaintiff, and not different. A man named Jones also made an affidavit, in which he said that the plaintiff had represented himself untruly as hired at a yearly salary: that he had heard the testator say the plaintiff was engaged at 17*s.* a week, but before that at 15*s.* a week, but this was in lieu of some allowances of beer which he formerly had, and that it was always understood that the plaintiff was a weekly servant.

Monday, March 8.—The VICE-CHANCELLOR, after detailing the facts of the case said,—I have no doubt that the plaintiff was a servant living with the testator at the time of his decease, within the meaning of the will. That meaning is to be gathered from the terms used, taken in connection with the circumstances in which the testator was at the time of using them. But the Court is not to place itself in the situation of the testator with any idea of speculating as to what he might have intended, but only to explain the words used, when the words used may be taken in more senses than one. Now, the only important circumstance here is, that the testator had several servants under weekly, yearly, and quarterly contracts of hiring, living, some in the mansion-house, and others in the lodge and cottages on the estate, and it is not certain from the terms of this disposition, whether the testator meant his bounty to extend to both classes or to one class only. It was contended by the defendant, that by the words "living with me at the time of my decease," the testator meant "living along with me in the same house." I do not adopt this view, but think that the expression is equivalent to living in my service. Here the plaintiff was living in a cottage near the mansion, and on the grounds held along with it. It cannot be said that because he was not living within the same house, he was, therefore, not a servant living with the testator, and in his service; I think, therefore, he came within that description: and he had been so for the required term of three years previous to the testator's decease. The cases of *Booth* v. *Dean*, 1 Myl. and Keen, 560, and *Townshend* v. *Windham*, 2 Vern. 546, were cited, as well as the very late case of *Ogle* v. *Morgan*, before Sir J. L. K. Bruce, but reversed on appeal [illegible] the late Lord Chancellor, Lord Truro (18 Law T. [illegible] 196), were referred to. In *Ogle* v. *Morgan*, the [illegible]ion turns more on the meaning of the term "domestic establishment," which does not occur here to borrow the meaning of

the testator's expressions; and, therefore, I am bound to adopt Lord Cowper's opinion in *Townshend* v. *Windham*, that the description, "Servants living with me at the time of my death," is not to be confined to such servants only as were in the testator's house, or had diet from him. But then there is the case of *Booth* v. *Dean*, before Sir J. Leach, which is not opposed to this view, but has an important bearing on the present case, because there as here a servant hired by weekly wages claiming under a gift of a year's wages to all servants living with the testator at the time of his decease; and the Master of the Rolls decided that the expression "a year's wages" clearly had reference to a yearly hiring—to servants "usually hired by the year." And this I take to be the right interpretation. When the testator gives to his servants a year's wages, he gives it to those whom he had hired at yearly wages. Has he ever entered into any contract with the plaintiff respecting a year's wages? Has a year's wages ever been defined by him? Nothing of the sort is proved. When the testator gives a year's wages he must mean to such as were hired yearly, or who had yearly contracts. What the plaintiff claims can be taken to be only the aggregate sum payable for fifty-two weeks at 17s. per week. This would be a very strained construction. It is incumbent on the plaintiff to shew that a yearly sum was agreed upon between himself and the testator; but this, I am of opinion, he has not sufficiently shewn. The plaintiff has sworn that he was hired by the year, and that his wages were calculated first at the rate of 15s. a week and afterwards 17s. a week; but he has nowhere sworn that he was paid yearly; on the contrary, his affidavit states that the payments were sometimes half-yearly, sometimes quarterly, but generally at irregular intervals. Not only do the sums of 39*l*. 7s. and 44*l*. 1s. appear unusual and improbable to be selected with reference to an annual engagement; but it appears from the plaintiff's own affidavit that it was adopted with reference to a weekly sum of 15s. and afterwards of 17s. It is clearly very improbable that he should be paid first half-yearly, then quarterly, and then at irregular intervals, if there had been originally a yearly hiring, and on reference to the books it appears clearly that the first entry of payment was calculated at the footing of so many weeks' wages. Then there is in addition the evidence of Jones, which clearly shewed that the plaintiff had complained of the amount of his wages as weekly wages. I am, therefore, of opinion that this claim must be dismissed. If the result had been arrived at on a point of law merely, I should have been disposed to dismiss it without costs; but looking to the case which I have cited of *Ogle* v. *Morgan*, and my decision turning on the facts of the case, and the plaintiff not having substantiated the case which he brought forward, I must dismiss this claim with costs.

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

July 7 *and* 13.

SAWREY *v.* RUMNEY.

Will—Construction—Substitutionary gift.

A testatrix by her will gave 1,000*l. stock upon trust for the maintenance of A. B. until she attained twenty-two years of age, and then for A. B. absolutely. By a codicil the testatrix confirmed the bequest except as to the trusts, which she revoked, and declared the trusts to be for A. B. for life, and afterwards for A. B.'s children. By a subsequent codicil the testatrix thus expressed herself:—"I have altered my views respecting A. B. respecting the* 1,000*l. as left in my will, and which I now think may prove a snare for her. I now leave* 500*l. for schooling and board, when at a proper age to be sent to a respectable place for useful teaching:"*

Held, that the 500*l. was an additional gift, and not a gift in substitution for the* 1,000*l. the trusts of which were declared by the former codicil.*

Catherine Rumney, by her will dated the 29th of July, 1847, made the following bequest:—"I give and bequeath unto John Fenwick and Jonathan Thompson the sum of 1,000*l*. Three per Centum Consolidated Bank Annuities, part of the stock standing in my name in the books of the Governor and Company of the Bank of England, upon trust, to pay, apply, and dispose of the dividends and annual proceeds thereof as and when the same shall become due and payable, for and towards the maintenance and education of my granddaughter, Catherine Lowdon, until she attains the age of twenty-two years, then in trust for her my said granddaughter, Catherine Lowdon, her executors, administrators, and assigns for ever. But in case my said granddaughter, Catherine Lowdon, shall depart this life before she attains her said age of twenty-two years, then, in trust, for my children living at the time of her death, and the children of such of my children as may then have departed this life, in equal shares and proportions for ever, such children of my said deceased children nevertheless taking only per stirpes and not per capita." By a second codicil, dated the 22nd of February, 1850, to her said will, the testatrix, after fully reciting the said bequest contained in her will, proceeded thus:—"Now I hereby confirm the said bequest of one thousand pounds, Three per Centum Consolidated Bank Annuities, except as to the trusts upon which the same was so bequeathed, and which I hereby revoke, and in lieu thereof I will and direct that the said John Fenwick and Jonathan Thompson shall stand possessed of the said sum of one thousand pounds so bequeathed to them as aforesaid, upon the trusts following (that is to say) upon trust to pay, apply, and dispose of the dividends and annual proceeds thereof, as and when the same shall become due and payable for and towards the maintenance and education of my said granddaughter Catherine Lowdon, until she attains the age of twenty-two years, and when and so soon as my said granddaughter attains the said age of twenty-two years, upon trust to pay the dividends and annual proceeds thereof as and when the same shall become due and payable unto my said granddaughter Catherine Lowdon, to and for her own use and benefit, and without the same or any part thereof being subject or liable to the contract debts or engagements of any husband she may marry, for and during the term of her natural life; and in the event of my said granddaughter, Catherine Lowdon, dying either under or above the age of twenty-two years, leaving lawful issue, then in trust for all and every the children or child of my said granddaughter Catherine Lowdon, and if more than one, in equal shares, as tenants in common, but in case my said granddaughter Catherine Lowdon shall depart this life without leaving lawful issue, then in trust for my children living at the time of her death, and the children of such of my children as may then have departed this life in equal shares and proportions for ever, such children of my said deceased children nevertheless taking only per stirpes and not per capita." The testatrix executed another codicil, dated the 3rd of March, 1851, and which was in these words:—"I declare this is the last codicil to the will and testament of me, Catherine Rumney, of, &c. to say I have altered my views respecting my dear granddaughter, Catherine Lowdon, respecting the thousand pounds as left in my will, and which I now think might prove a snare for her; I now leave five hundred pounds for schooling and board, when at a proper age to be sent to a respectable place for useful teaching under the sanction of my trustees and friends, Mr. John Fenwick, and Mr. Jonathan Thompson, which my other friends and her aunt I hope will approve on." The testatrix died shortly after the date of the last codicil. The question arising in this suit was as to the effect of the last codicil, viz. whether the bequest of 500*l*. was additional or substitutionary.

Forster appeared for the plaintiff.

Giffard for some of the defendants.

Malins and *Smythe* for the trustees.

Martineau, for the residuary legatees, contended that the bequest by the codicil was in substitution for the 1,000*l*. previously given. He cited *Heming* v. *Clutterbuck*, 1 Bligh, N.S. 479; *Fraser* v. *Byng*, 1 Russ. & Myl. 90; *Kidd* v. *North*, 2 Ph. 91; and *Russell* v. *Dickson*, 2 Dr. & War. 133.

The VICE-CHANCELLOR said that it was of course impossible upon such instruments as these, to be sure that the Court can put a construction which would fully carry into effect the testatrix's intention. There was first a gift by the will of 1,000*l*. which was to become absolute on the legatee's attaining the age of twenty-two years, and the income until that period was to be applied for her maintenance. In the second codicil, the testatrix said, "I hereby confirm the said bequest of 1,000*l*. Three per Cent. Consolidated Bank Annuities, except as to the trusts upon which the same was so bequeathed, and which I hereby revoke, and in lieu thereof," &c.; and then she went on to declare the trusts of the 1,000*l*. by which in effect the legatee took a life interest, with a provision for maintenance, and then for her children. Under the will and this codicil, then, there was a provision for the maintenance of this legatee until twenty-two; then a life interest to her, and then the capital to her children; and then came another codicil, in which occurred these words:—"I declare this is the last codicil to the last will and testament of me, Catherine Rumney, to say I have altered my views respecting my dear granddaughter respecting the 1,000*l*. as left in my will, and which I now think might prove a snare for her." The testatrix said that she had altered her views. There was no reference made to the former codicil, but it was an alteration of her views as to what was in the will. His Honour could not speculate on a revocation. He saw nothing to revoke the provisions made for the children of the legatee by the codicil. Whether she had the codicil before her or not, he could not tell. She said, "I now leave 500*l*. for schooling and board, when at a proper age to be sent to a respectable place for useful teaching." Whether she meant 500*l*. in addition to the 1,000*l*. or in substitution for 500*l*. part of the 1,000*l*. he was unable to say, but there was nothing to revoke the codicil, and there was a substitutionary gift for 500*l*. given by the will, which according to the rule of law was not in substitution for the gift in the codicil for another purpose, and not being at all sure, his Honour thought that the 500*l*. was given substantively, and the 1,000*l*. in accordance with the former codicil.

Tuesday, July 13.

MEYER *v.* SIMONSON.

Will—Tenant for life—Conversion of property.

A testator gave the residue of his property to his wife and to any persons who might be executors or trustees of his will upon trust to pay to or permit his wife to receive the income and profits thereof so long as she continued his widow, and after her decease upon trust for other persons. A sum of 12,000*l. the testator's share of the capital of a partnership, was, after the testator's death, secured to be paid to his estate according to the articles of partnership by the warrant of attorney of the surviving partner in the following manner. The capital was to be paid off by annual instalments of* 1,500*l. and interest at* 5*l. per cent. per annum was payable on the debt until discharged:*

Held, that the widow was entitled to 4*l. per cent. only of the interest, the remaining* 1*l. per cent. being treated as capital and to be invested, the widow having the interest of such investment.*

Solomon Meyer, by his will dated the 19th of February, 1819, after bequeathing certain legacies, proceeded as follows:—"I give, devise, and bequeath all the rest, residue, and remainder of my real and personal estate and effects whatsoever and wheresoever, unto my said wife and to any person or persons who may be executor or executors, trustee or trustees of this my will, and their heirs, executors, and administrators for and during the term of her natural life, if she shall so long continue my widow upon trust to pay to or permit her, my said wife, to receive the income and profits thereof for her use and benefit so long as she shall continue my widow, and from and after her decease," &c. and the testator appointed his said wife, Gusta Meyer, sole executrix of his will. The testator died in August, 1850, and his will was proved by Gusta Meyer. By articles of partnership dated the 4th of January, 1850, and made between the testator of the one part and Meyer Meyer of the other part, after reciting (among other things) that it had been agreed that the share of the said S. Meyer of and in the said capital stock of the said copartnership should consist of 12,000*l*. it was agreed (among other things) that in case either of the said parties should depart this life during the said copartnership, then the heirs, executors, or administrators of such deceased partner should immediately thereupon transfer and deliver over to the surviving partner the whole of the effects of the copartnership; and that thereupon the surviving partner should execute a warrant of attorney to the legal personal representative or representatives of such deceased partner, with a judgment thereon to be then entered up to secure the payment of the whole and entire amount and capital, sum of money which should have been carried to the credit of such deceased partner in the ledger of the said co-partnership on the last yearly settlement of accounts preceding the death of such partner, with such qualification as therein mentioned, and that such warrant or warrants of attorney respectively should contain a defeazance specifying the mode of payment of such sums or sum of money with interest thereon at the rate of 5*l*. per cent. per annum in manner following,—that is to say, the sum of 1,500*l*. part thereof at the expiration of twelve calendar months following such decease as aforesaid, and the sum of 1,500*l*. at the expiration of each succeeding twelve calendar months, until the whole of such capital amounts or sums so to be ascertained by the ledger as aforesaid, with interest as aforesaid, should be fully paid. By agreement between the executrix and the surviving partner the amount of 12,000*l*. was to be paid to the testator's estate, and accordingly by a warrant of attorney, dated the 22nd of January, 1851, and upon which judgment was entered up, the said sum of 12,000*l*. and interest at 5*l*. per cent. per annum was secured to be paid by Meyer Meyer, by the instalments mentioned in the articles of co-[illegible]. The question submitted by this special case for the opinion of the Court, was whether Gusta Meyer, the widow, was entitled to the whole of the interest payable by the surviving partner, and if not, what part was to be considered interest, and what part capital.

Waley appeared for the widow.

Goldsmid, for the persons entitled in remainder.

Waley, in reply.

The following cases were cited:—*Howe* v. *Lord Dartmouth*, 7 Ves. 137; *Mills* v. *Mills*, 7 Sim. 501; *Fearns* v. *Young*, 9 Ves. 549; *Taylor* v.

Clark, 1 Hare, 161; and *Sutherland* v. *Cocke*, 1 Coll. 498.

The VICE-CHANCELLOR said that the question in this case was a question familiar to this Court, viz. how to deal with a residue as between tenants for life and those entitled in remainder, where the will contained no direction to convert the property. The case of *Howe* v. *Lord Dartmouth* seemed to contain the whole rule applicable to such cases, and the only difficulty was in applying that rule in particular instances. Residuary estate might, for this purpose be considered to consist of three classes; first, what was found at the testator's death invested in such securities as the Court could adopt, as money in the funds or on real securities, and these the tenant for life was entitled to take *in specie;* secondly, that property which could be sold, having due regard to the interests of parties, and not to sacrifice anything by a forced sale; as to this property, the rule was clear, it must be converted, and the produce invested in permanent securities, and the tenant for life was entitled to the income of such investments; the third class consisted of property not capable, in a reasonable course of administration, of immediate conversion, which was the position of property such as that in the present case. Here there was money reasonably well secured, payable at deferred periods, which could not be immediately sold without involving a sacrifice of both principal and interest. The rule of the Court in such a case was to take the present value of the testator's interest, and to give the tenant for life the full income of that present value; and that was all, as his Honour understood the rule, that the tenant for life was entitled to. In the present case part of the estate was out on personal security, and was payable by annual instalments, and was producing interest at the rate of 5*l.* per cent. It might have been to remain out for a longer period, or there might be a valid contract to pay a larger rate of interest, as 10*l.* per cent.; and the result of Mr. Waley's argument would be that the tenant for life would be entitled to the whole of the income so produced during that period. His Honour did not think that that was the rule of the Court. The testator had entered into a beneficial contract, which increased the value of the residue, but not in the shape of capital. The case could not be stated more beneficially for the tenant for life than by assuming that the debt was well secured, and was sure to be repaid, without any loss of capital. Assuming that to be so, his Honour did not think that the tenant for life could be allowed to have the whole interest of 5*l.* per cent. payable upon the debt: that would clearly be giving her more than a life interest in the present value of the property. (*Fearns* v. *Young*, 9 Ves. 549; *Caldecott* v. *Caldecott*, 1 Y. & C. 312, 737), and similar cases proceeded upon the principle that 4*l.* per cent. upon the present value, was the amount of interest to which the tenant for life was entitled. Of this interest, then, of 5*l.* per cent. the tenant for life would have as much as she was entitled to, by her taking 4*l.* per cent. upon the sum secured, the remaining 1*l.* per cent. to be invested from time to time, she being entitled to the income arising from that investment, and also from the investments of the instalments of the debt from time to time paid.

Saturday, July 10.
Re TINKLER'S TRUST.
Annuity payable out of corpus.

Where real estate had been devised charged with an annuity, with powers of distress and entry, and a railway company had taken a portion of the estate, and paid the purchase-money into Court, the Court directed the sum to be paid to the annuitant in discharge of the arrears of her annuity.

This was a petition presented by Mrs. Tinkler, an annuitant, under the following circumstances:—By his will, dated in January, 1840, R. Tinkler devised real estate to certain uses charged with an annuity of 100*l.* a year to his wife during her life or widowhood, with powers of distress and entry. The testator died soon after the date of his will. The rents of the devised real estates were insufficient for the discharge of the annuity, and an arrear of upwards of 300*l.* became due to Mrs. Tinkler. The Great Northern Railway requiring some portion of the devised land, paid into court the sum of 262*l.* in respect of the purchase-money. The petition prayed that this sum of 262*l.* might be paid to her.

C. J. Simpson, in support of the petition, cited *Greathead* v. *Elliott*, 15 Jur. 986; 18 Law T. Rep. 71.

Hislop Clarke, for the devisees, contended that the petitioner was entitled only to the income arising from the fund.

A. J. Lewis for the company.

The VICE-CHANCELLOR said, that although the Court would not sell the estates for the purpose of paying off the arrears, yet, as by means of the powers of distress and entry, the devisee could not touch any of the rents until the arrears were discharged, the annuity was in a sense charged on the corpus. Although the Court would not sell at the instance of the person having powers of distress and entry, yet here there had been a compulsory sale, and he thought that the money produced by such sale was available for the payment of the arrears, and the order should therefore be for payment of the fund to Mrs. Tinkler.

Re JAMES'S TRUST.
Trustee Act, 1850.

Where the Court had declared a person a trustee, and directed him to surrender certain copyholds, it was, upon evidence that he could not be found, ordered that a person be appointed to surrender the lands in his stead.

This was a petition presented for the purpose of having a person appointed to surrender certain copyhold lands in the place of a Mr. Phelps, who had been declared by the Court to be a trustee of the lands, and had been ordered to surrender them. From affidavits filed in support of the petition, it appeared that Phelps, who had been described as a solicitor at Newport, in Monmouthshire, was not now known there, and had left no address at the Post-office; and also that it was uncertain whether he was in England or abroad, but that if he was still in England he was avoiding his creditors and could not be found.

W. M. James appeared in support of the petition.

The VICE-CHANCELLOR said, that as Phelps had been declared a trustee, the petitioner was entitled, upon the evidence, to an order for the appointment of some person to surrender in the place of Phelps.

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. BENNET, Esq. of Lincoln's-inn, Barrister-at-Law.

Thursday, May 27.
MAGAN *v.* MAGAN.
General Order, 11th November, 1841—Motions of course—Irregularity.

In a cause attached to one of the Vice-Chancellor's courts, an order of course may be obtained in the court of any other Vice-Chancellor.

The word "had," in the above general order to be read "heard."

Semble.—The insertion of seven days instead of eight days in an order nisi is not such an irregularity as renders it void.

An order nisi had been obtained as of course before one of the Vice-Chancellors for a sequestration against the defendant (a member of Parliament) for not putting in his answer. The cause was attached to the Court of another Vice-Chancellor. It had now been transferred to this Court. Seven days to shew cause against making the order absolute had been inserted in the order nisi by mistake: it should have been eight days. Eight days having now expired,

C. Hall moved to make the order nisi for a sequestration absolute, which was granted.

H. Nichols then moved to discharge the order nisi for irregularity, as having been improperly obtained in the court of the Vice-Chancellor, to which the cause was not attached. By the fifth General Order of the 11th November, 1841, it is provided, "That all motions, petitions, and further proceedings in causes in the Lord Chancellor's Court (except any motions or proceedings which are now part heard) shall be had before the judge to whose court the same shall, under the provisions of these orders, be attached, unless removed therefrom by any special order of the Lord Chancellor." He therefore contended that motions of course were included in the terms of this order, and that the one in the present case should have been made in the court to which the cause was attached:—Another ground of irregularity upon the face of the order nisi was, that only seven days were given to shew cause, which should have been eight days. See 2 Dan. Pract. 1 edit. 652.

Forster, contrà, contended that the 5th order of November, 1841, did not include orders of course, but left the practice as it was under the general orders of the 5th May, 1837, by which motions of course are allowed to be made before any of the judges of the court. As to the second point, eight days had expired before the motion to make the order nisi absolute had been made.

The VICE-CHANCELLOR.—The first ground upon which it is contended that this order is erroneous is that it had been obtained in the court of Vice-Chancellor Knight Bruce, to whose court the cause was not attached, and that was founded on the 5th order of November 1841, which no doubt in terms directs that all motions, petitions, and other proceedings should be *heard* before the judge to whose court the cause should be attached. He said he had no doubt that the order in terms included all motions; but then it directs that they shall be "heard," and the question is whether that applies to orders made upon motions, &c. merely matters of course. Now, by the 26th order of 1850 it is directed that any order merely of course may be discharged by the judge to whose court the cause is attached. It thereby assumes that all orders merely of course may be properly made by a judge in a different court, and that it appears to me puts an interpretation on the 5th order of November, 1841, and to shew that that order did not allude to orders of course. As to the other ground, the question is whether seven days being inserted in the order nisi instead of eight, vitiates it, and, therefore, ought to be discharged. The party should have applied to discharge it before the time for making it absolute had expired. The answer ought to have been put in long since. It is not now filed. I think it is not such an irregularity as warrants me in discharging it.

Motion dismissed with costs.

Thursday, July 1.
Re FARMER.
Practice—New trustee.

The application to confirm a Master's report approving of a new trustee must be made by motion, and not by petition.

A petition praying that the Master's report, approving a new trustee, should be confirmed, had been presented, and now came on to be heard. A reference had been made to the Master to approve of a new trustee; he had done so, and had granted a certificate to that effect.

C. Hall in support of the petition.

The VICE-CHANCELLOR said that he had some time since communicated with Vice-Chancellor Turner on this subject, and he believed with the other judges, and it had then been settled that these applications should be made by motion and not by petition.

Common Law Courts.

JUDGES' CHAMBERS.

Monday, July 26.
(Before ERLE, J.)
MILLER and OTHERS *v.* CONWAY and BROWN.

Writ of summons—Description of defendant's residence, or supposed residence—Uniformity of Process Act—What sufficient to satisfy the statute and rule of Court, as to the "supposed residence" in describing a party in the writ.

This was an application by the defendant Brown to set aside the writ of summons, and copy and service, on him for irregularity; on the ground that neither the place of his residence, or supposed residence, nor the place where he was, or was supposed to be, was mentioned in the writ and copy. The application was also in the alternative, to set aside the service, and copy, on the applicant, the other defendant not having been served, and was founded on the uniformity of Process Act, 2 Wm. 4, c. 39, s. 1, which enacts that in every writ of summons and copy, the place and county of the residence, or supposed residence, of the defendant, or wherein he shall be, or be supposed to be, shall be mentioned; and if this be omitted, or insufficiently stated, the process shall be set aside. R. M. 3 Wm. 4, c. 10.

The affidavit of the defendant, upon which the application was founded, stated the actual residence of the defendant to be at a different place from that described in the writ, and distant ten miles therefrom, but in the same county; and that the description "Llanhiddel," in the county of Monmouth, of which place he was described in the writ, was unknown to the defendant, but that he knew a parish of that name, or sometimes called so, but did not reside there, or within ten miles of it.

From an affidavit in support of the writ it appeared that the plaintiffs were assignees of one Budgen, a bankrupt, formerly of the place called "Llanhiddel," and were suing as such for a claim alleged to be due to the bankrupt's estate, the official assignee (being the moving party in collecting the assets of the estate) residing at Bristol. That previous to the commencement of the action the attorney of the plaintiffs, who also resided at Bristol, wrote to the defendants, on the subject of the claim for which the action was brought, addressing the letter to them at "Llanhiddel," of which place they were described in the writ, and that the defendants by return of post replied to the application, referring to their attorneys for an undertaking to appear; that such undertaking was applied for but refused to be given, and the writ was accordingly issued, describing the defendants as of "Llanhiddel aforesaid, being the place to which the deponent had written and addressed the said letter so received and acknowledged by them, and which said place deponent for this reason fully believed and understood was the residence of the said defendants," and that at the time of instructing the writ to be issued and served the deponent "supposed and fully believed that the address 'Llanhiddel,' of which place the said defendants are therein described, was the place of re-

sidence and business of the said defendants, and the proper address to be inserted in the writ;" and that such supposition was founded principally on the fact of the letter of application sent to the defendants by the address of which they were described having been received and replied to by them, and deponent had in consequence no doubt or hesitation in describing them in the writ as of that place.

The summons was therefore opposed, principally on the ground that this was sufficient to satisfy the statute and rule of Court as to the description, being the "supposed residence" of the defendants or wherein they were, or were "supposed to be" residing at the time of the issuing of the writ.

Erle, J. observed, that if a person had been seen on the top of a coach in the Haymarket, the plaintiff might describe him of "the Haymarket, in the county of Middlesex," and the plaintiff might suppose him to reside in the Haymarket, and that it had been so held. Upon the merits as disclosed by the affidavits, his lordship observed, it was a "bad case" as regards the defendants, and dismissed the application with costs. The summons did not ask for costs.

Summons dismissed, with costs.

SHERIFFS' COURT.

(Before Russell Gurney, Esq.)

Thursday, Aug. 26.

Dossett v. Rymill and Another.

A. hired a horse and gig of B. and the same day pledged it with C. an innocent party for value. After some inquiries made, B. demands the restitution of them from C. who offers to restore them on being satisfied of B.'s right to recover. A magistrate's order is then obtained by B. under 2 & 3 Vict. c. 71, s. 40, compelling C. to deliver the goods to B. which order is immediately complied with by C. A. was, subsequently to this order, tried and convicted on the evidence of B. and C. of stealing the horse and gig, and after such conviction B. enters a plaint against C. for special damage arising from the detention of the goods prior to such restitution:

Held, first, that the order under 2 & 3 Vict. c. 71, s. 40, afforded no defence to the plaint.

Secondly, that there was no evidence of a conversion by C. so as to enable B. to recover in this action.

On the 7th of May, 1852, one Rawlings hired of the plaintiff, a livery stable-keeper, a horse and gig for a few hours, giving a false address. The same day he deposited the horse and gig with Messrs. Rymill and Gower, the defendants, who advanced him 6*l.* upon the security. Ten days afterwards the plaintiff traced out the horse and gig and demanded them of the defendants, who refused to give the same up until satisfied of the plaintiff's right. The plaintiff then applied to a magistrate and obtained an order under the 2 & 3 Vict. c. 71, s. 40, for the delivery of the goods, which the defendants at once complied with. Rawlings was not taken into custody until after such restitution of the goods, but was then duly committed for trial and subsequently convicted upon the evidence of the plaintiff and the defendants and their servants.

Pulling, for the defendants, submitted that under these circumstances the plaintiff must be nonsuited. The order of the magistrate, under the 2 & 3 Vict. c. 71, was a bar to the present plaint. It was in the nature of a judgment recovered for the goods which formed the subject-matter of the present proceedings. (Comyn's Digest, Action K, 3.)

The learned Judge held that inasmuch as no special damages for the detention could be awarded by the magistrate, his order was no bar.

Pulling then urged that inasmuch as the demand by the plaintiff was previous to the conviction of Rawlings, and the defendants had only refused to give up the goods until satisfied of the plaintiff's right to them, there was no evidence of a conversion so as to entitle the plaintiff to recover the present action. (*Green* v. *Dunn*, 2 Campb. 216, note.)

The learned Judge held that the refusal of the defendants to deliver the goods did not, under the circumstances, amount to a conversion; and that the defendants having done all in their power to insure justice being done between the plaintiff and Rawlings, could not be held liable to the plaintiff.

Verdict for defendants.

SUPREME COURT, SYDNEY, NEW SOUTH WALES.

(Before the three Judges.)

Saturday, May 1.

Ex parte Smith, *re* Mercantile Marine Act.

Agreement for service by seamen—Breach.

Stephen, C.J. delivered the judgment of the Court in this case as follows:—

The question in this case is brought before us under the local Act, commonly called the Prohibition and Amendment Act, s. 12, by which an appeal is in effect given to the Supreme Court from all convictions by justices in the exercise of their summary jurisdiction: the party complaining having been convicted by two justices, under the Mercantile Marine Act of 1850, s. 70, of having deserted from the ship *Thomas Arbuthnot*, he being at the time a seaman belonging to that vessel. The fact of the man's desertion was not denied; but it is contended on his behalf, that the agreement for service entered into by him, and of which the breach is complained of, does not contain the particulars required by the said Act, sec. 46, and so, that his absence from such service is justifiable, or, at any rate, is not liable to summary punishment, under sec. 70. It appears to us most clearly, that if the agreement does not contain those particulars, the seaman is not so liable. The enactment, in express terms, applies only to those who have signed the agreement as required; which must be understood to mean, in the form and manner, and to the effect required. The question to be determined, therefore, is, whether the agreement entered into in this case does, in fact, answer that description. In other words (for nothing turns on the mere form or manner), does the agreement contain the necessary particulars which sec. 46 of the Act requires? Now, that section requires the agreement to set forth, among other things, the following,—"The nature and (as far as practicable) the length of the voyage or engagement on which the ship is to be employed." And the agreement here is, as to that matter, in the following words:—"From London to Plymouth and Sydney, and from thence wherever freight or employment offers—forwards and backwards, and backwards and forwards, in any rotation, and back to her final port of discharge in the United Kingdom, calling at all necessary ports. The voyage not to exceed three years." It was insisted that this description of engagement, or voyage, is too vague and indefinite; and several cases were cited (*The Countess of Harcourt*, 1 Hag. Adm. 248; *The Minerva* and *George Home*, in the same book, 361, 375; and of the *Westmoreland*, 1 W. Rob. Adm. 216) in support of that position. In deciding the question thus raised, it will be necessary to consider the terms of the Act of Parliament, on which the question arose in those cases; as well as the terms and nature of the particular agreement, to which they severally had reference. At the date of the decision of the three first cases, the Act in force was the 2 Geo. 2, c. 36; by which "the voyage," was required to be expressed. Something determinable, therefore, and specific, was obviously here intended; a statement, as Lord Stowell expresses it, of "the extent," of the voyage; the "precise voyage" contracted for. As to that, however, in the first case, nothing whatever turned on it. The voyage described was from London to Van Diemen's Land, viâ Cork, or elsewhere, and back to London." The ship arrived in the Downs, and the master went up to London; and then, he claimed to take the vessel on to Holland. But the Court held that this was an alteration of the voyage; and consequently not within the contract. The decision, therefore, was not on the ground of indistinctness, or too much generality; but because, simply, the described voyage was at an end. In the case of the *Minerva*, however, in which the words "or elsewhere," were relied on, the objection of indistinctness was certainly sustained. There was much dispute whether these words had not been interpolated. But Lord Stowell held that, even if originally in the contract, they could only be taken to include such places as were within the natural course of the voyage specified; and that, if construed otherwise, they would be so indefinite as to amount to no description at all. In the case of the *George Home*, the agreement was too vague and loose to admit of doubt. It was for a voyage "from London to Batavia, and any ports or places in the East India seas or elsewhere, or until her final arrival at any port or ports in Europe." Here, obviously, everything was uncertain. No ultimate port is specified; and there is neither limit to the duration, nor clue to the extent, of the engagement. The case, therefore, one would have supposed, was too clear for controversy; and it seems too isolated in character, to be useful as an authority now. The law then in force required a statement, not of the nature only, or duration of the voyage, but of the voyage itself. It was not possible, therefore, to hold otherwise, than that such a description was a mockery and a snare. Such a description, said Lord Stowell, does by no means answer the purposes for which the law requires the voyage to be made known to the mariner. Those purposes are, "that he may know as exactly as can be described, for what probable space of time he surrenders himself—his services, his interest, his domestic comforts, his health, and personal convenience." "He has a right to be informed, as far as competent accuracy can be applied to the subject." Lord Stowell adds—"It may truly and justly be said that cases may occur, in which the exigencies of commerce may not admit of such accuracy;" but the seaman should receive "full information of all which it imports him to know, in order to determine his mind upon the propriety of his engagement." The general rule is then thus stated, that there must be precision, "as far as is practicable." Such is Lord Stowell's exposition of the law in the year 1825, under the enactments in force at that period. Ten years afterwards was passed Sir James Graham's Act, the 5 & 6 Wm. 4, c. 19; by the 2nd section of which, not the voyage, but "the nature of the voyage" is required to be stated. And the section declares the object of that statement to be, "that the seaman may have some means of judging of the probable period for which he is likely to be engaged." Then, by section 3 (in connection with the schedule there referred to), a form of agreement is given; which provides for two modes of statement in these words:—"Here the intended voyage is to be described, as nearly as can be done, and the places at which it is intended that the ship shall touch; or, if that cannot be done, the nature of the voyage in which she is to be employed." In these enactments two circumstances are found, which appear to us to be worthy of note. First, the declared purpose of the enactment, requiring the nature of the voyage (or, according to the schedule, the voyage itself) to be stated in the agreement, is precisely that which Lord Stowell, as we have seen, had said was the object of the previously existing law. Secondly, the enactment (in the schedule) draws a distinction in terms between a voyage, or places at which the vessel is to touch, and the "nature" of a voyage; a distinction which we therefore conclude was intentional, and deemed important. We now come to the case of the *Westmoreland*, decided under the last-mentioned enactments; the authority of which has been much pressed on us. In that case the voyage described was, "from London to Swan River, and thence to any port in the Indian or Chinese Seas; and during her stay and trade there, until her return to a port of discharge in Great Britain, or the Continent of Europe. In either case, the voyage to end in Great Britain; and the term of time not to exceed three years." It appears from the report, that the ship returned, in fact, to Great Britain; that is to say, to Cowes—after which the master desired the crew to make sail for Holland. Some of the men, conceiving the voyage to be at an end, went on shore to get advice. This act was treated as a desertion; and the first question was, whether (supposing the voyage not to have terminated, and the agreement to be subsisting and valid) such an act was in truth a desertion. The second question was, whether, if a desertion, in point of fact, it was nevertheless punishable; that is to say, was or not the agreement void? The learned judge, Sir Stephen Lushington, held that the act did not amount to desertion. It became unnecessary, therefore, to pronounce any decision on the validity of the agreement; and the observations, consequently, made by that very distinguished person on that point should, perhaps, rather be regarded as the inclination of his opinion on a point not so fully considered as the former, than as a matured and deliberate judgment. But for the weight which must be ascribed to anything falling from a judge occupying so high a position, and of such eminent talents, we should have been disposed to think that the description of the voyage, in the case of the *Westmoreland*, was a sufficient compliance with the statute. Not only the primary voyage, but the final port of discharge, and places of intermediate trading, are set forth with considerable precision; and, at all events, are so far definitely stated, that, coupled with the expressed limitation of time, the declared object of the enactment would seem to have been attained. The question, whether the voyage had not, in fact, terminated by the arrival of the ship at Cowes, appears not to have been raised. The objection, however, which struck the mind of the learned judge, evidently was to the very comprehensive description of the port of discharge. And it probably was his opinion, looking at the terms of the schedule, that it is not sufficient to state the "nature" of a voyage, in any case where the course of the voyage itself can be described. If so, the invalidity of the agreement would be established on a ground apparently less assailable, than the one by which alone (according to the report) it seems to be vindicated. It is unnecessary to notice, with any particularity, the provisions in the next succeeding statute, the "General Merchant Seamen's Act" of 1844 (still for the most part in force, being the 7 & 8 Vict. c. 112), by which Sir James Graham's was repealed; because they are, as to the requisites of seamen's agreements, the same as the enactments preceding. The next is the "Mercantile Marine Act of 1850," on which the question in the present case depends. And we observe, in the first place, the important difference between this and the previous enactment, that there is here no schedule, or other provision, by which the words "nature of the voyage" are (as in Sir James Graham's Act) controlled, or affected in any manner. It is true that, by sec. 46, the "nature" as well as "length of the voyage," be specified. But, when we look to the

and find that the distinction (to which we have already adverted) is there clearly drawn, between the description of a voyage, and that of the nature of a voyage,—and when we at the same time bear in mind, that although (for a reason easily collected the object of requiring that description, namely, to enable the seaman to estimate the time, is now no longer expressed, yet Lord Stowell's declaration, of such being in fact the object, remains,—and when we perceive that, in the agreement before us, a seeking voyage is described, the limitation of which, in point of time, is defined, as well as the vessel's final port of discharge, we feel little difficulty in holding that the requisites of the Act of 1850 are satisfied; and, consequently, that the seaman who seeks our interposition has been rightly convicted. It is impossible to say, that the mariner does not in such a case know precisely the space of time for which, in the language of Lord Stowell, he surrenders himself. But, if he knows this, the object (according to the same eminent judge) is accomplished for which he receives information as to the voyage. If, on the other hand, as was well observed during the argument, it were required to particularise it by ports and places specially, there would be then no need to state the probable time; for the seaman could as easily estimate it in that case, as could his employer. The time, however (or, in other words, the expected length of the engagement), is in all cases to be stated or estimated; and this again supports the inference, that the voyage itself in detail need not, but that only its nature, coupled with the time, is required to be stated. Moreover, a new expression has been introduced. The enactment speaks of an "engagement," not "a voyage" merely. The difference may not be very material; for the engagement must, in its nature, be still of the same class or species of employment. But, by using a second term, in addition to that which alone was previously employed, the Legislature must be supposed to have had some object; and the only reasonable one would appear to have been, to give a greater latitude of construction to the thing or matter to be described. Nor is it altogether unimportant to observe, considering some of the topics which have been introduced, that although "Shipping Masters" may not be very superior people, and although, whatever their description or attainments, they probably might not interfere with sailors' agreements, merely because of their improvidence, yet much is done through the intervention of these functionaries, to prevent imposition on seamen, and take care that they shall, at the least, understand the engagements into which they enter. And, this being so, it is very difficult to believe that this man, when he signed the agreement now sought to be repudiated, did not in fact understand and approve of it; with sufficient knowledge at the time, common to sailors of any experience, to what extent and course of voyaging such an engagement was likely to expose him. The main ground, however, on which we rest our judgment, is this; that here the nature of the voyage (as distinguished from the course of the voyage, defined by its termini and intervening places of call), is sufficiently described, and that the duration of the voyage is distinctly and unequivocally described. The meaning of the Legislature, when it used the expression "nature" of the voyage, may be gathered from the language of the schedule, so often mentioned, and to which (as annexed to the Act of 1844) reference is made by the Act of 1850. In that schedule, a clear distinction is drawn between the voyage and places to be touched at in its course, and the nature of the voyage. That distinction must have been apprehended and considered by the Legislature which passed the Act of 1850; because they there, in sec. 20, refer to the schedule. But by sec. 2 of the Act to which that schedule is annexed, requiring a statement only of the nature of the voyage, it is plain that the sole object of that provision was, that the seaman might be enabled to judge of the probable duration of such voyage—not of the particular places to be visited during the voyage. Consequently, the statement of the nature of the voyage, mentioned in sec. 46 of the Act of 1850, may reasonably be concluded to have the same object—that of enabling the sailor to judge of the duration of the voyage. And the more so when we find, that whatever may be said of the voyage, whether its course or its nature, its expected length shall notwithstanding be specified also. Here the voyage was a seeking voyage—in search of employment, wherever likely to offer. The probable length of such a voyage, obviously, it is not practicable to mention. The agreement limits, therefore, a specific time which it shall not exceed. To hold, under such circumstances, that this is no compliance with the statute, would be equivalent to holding that the statute had prohibited such voyages altogether; a conclusion at which we could not arrive, without supposing that the Supreme Legislative Authority of the greatest commercial empire upon earth, was either ignorant of the mighty distant interests which are subject to its power, and of the exigencies of commercial pursuits and enterprise in these vast regions, or that it was indifferent to and careless alike of both It appears to have been thought, that the "comprehensive ambiguity" of terms such as we have been here discussing, was not necessary for any interests of commerce. The fact is far otherwise. To us who live among these rapidly-advancing communities, it is only matter of daily observation that new sources of wealth, new or expanding markets for commodities, new wants and the means of gratifying them, crowd our ports with vessels, which leave them again on voyages, which, before their crews left England, the owners never could have contemplated, and for which they could by no foresight, by any specific contracts, have provided. We have ships departing for China and India, and the various ports in those oceans, for New Zealand, for the Mauritius, for Valparaiso, or Lima, for California, and the thousand islands of the southern seas. And if seeking voyages, or such agreements as those of the *Thomas Arbuthnot* be prohibited, I would for myself say, that a blow will be struck at this extended and ever extending commerce, the evil effects of which may be felt for perhaps a generation.

The rule was therefore discharged, but their Honours refused to give costs, remarking that a person seeking his liberty ought not to be mulcted with costs except in extreme cases; and it could not be denied that the point involved in this case was one of much difficulty.

BANKRUPTCY.

BANKRUPTCY COURT, DUBLIN.

Reported by J. LEVY, Esq. Barrister-at-Law.

April, 1852.

PROTECTION CASE.

Re DELEMERE.

A debtor who petitions under the Protection Statutes, who has no estate to administer, and who contracts a debt without probable expectancy of paying it, or by any false representation, will have his final petition refused and his petition dismissed.

The 90th and subsequent sections of the Irish Bankrupt Act up to sec. 107 inclusive, which are copied from the English Protection Statutes, enables any debtor who is unable to meet his engagements with his creditors to petition the Court for protection from arrest, having the concurrence of two-thirds in number and value of his creditors; and the commissioner, upon examining privately into the matter of the petition, may grant protection de bene esse. It is also enacted that, whatever resolutions the necessary number of creditors may come to, they are to be submitted to the commissioner for his approval, and at the meeting for that purpose any creditor may come in and oppose the granting final protection to the petitioner. The petitioner in the present case had obtained the necessary number of creditors to accept of the offer of composition made to them, and he had also obtained his order or protection de bene esse. A meeting was then held for the purpose of having the resolutions of creditors sanctioned by the commissioner and of obtaining his final protection.

Levy now opposed the petitioner on two grounds: first, that he had no estate to administer; secondly, and most important, that he had contracted the debt with his client by false representations as to his circumstances and solvency. It was laid down in *Macrae's Practice under the Protection Statutes in England*, that the Court should first consider for what purpose the petitioner came into Court,—was to divide his estate, or obtain protection against his creditors? In the present case there was no estate to administer, and the petitioner came there merely to accommodate himself. Then, with regard to the debt due to the opposing creditor, the petitioner represented at the time he contracted it that he was in solvent circumstances, and in partnership with his brother, who was a merchant in Liverpool. The creditor was then examined, and proved the fact as the representations of the petitioner. The goods sold by him was wine, for which the petitioner was to give a bill at three months,—he did give the bill, but post-dated it; this led to inquiry, and the creditor ascertained that he was insolvent at the time; he then sent him back his bill, and required the wine to be given up to him, but the petitioner refused to do so. This wine, which was valued at 40*l.* appeared to be the principal asset returned to meet debts to the amount of 1,000*l.* Under these circumstances, the petitioner appeared to be unworthy of the protection intended by the statute. (*Re Reynolds*, 13 Law T. 490; *Re Watson*, 14 Law T. 320.)

The COMMISSIONER said, on looking at the schedule attached to the petition he saw that the petitioner had hardly any estate to administer; at the same time, if the necessary number of creditors signed for him, he (the commissioner) thought the Court should pay due regard to that circumstance: but if there were really no assets to be divided, neither the petitioner nor creditors ought to trouble the Court with the case. But if a debtor whilst in a state of hopeless insolvency contracted a debt by a false statement as to his circumstances, he had no business coming before that Court. It further appeared that at the time the debt of the opposing creditor was contracted, Mr. Delemere had been sued for debts that he had no earthly means of paying. Coupling that circumstance with his statement that he was in partnership with his brother in Liverpool, no such partnership existing, it was impossible his petition could be entertained. Those who sought the protection of the Court under these sections of the statute, which were, to say the least, exceedingly complicated, should come before the Court with a case perfectly free from the slightest fraud.

Petition dismissed.

INSOLVENCY COURT.

Reported by DAVID CATO MACRAE, Esq. of the Middle Temple, Barrister-at-Law.

Monday, August 16.

(Before Mr. Commissioner LAW.)

Re THOMAS ASHBY.

The debts of an insolvent who has obtained a final order under the Protection Acts, must not be inserted in a subsequent schedule under the prison statute.

This insolvent came up to be admitted to bail until the day appointed for his hearing, under the 1 & 2 Vict. c. 110. It appeared that four years ago he had been insolvent under the Protection Acts, and obtained his final order, and that he had inserted the official assignee in the present schedule for the amount of those debts.

Mr. Commissioner LAW ordered those debts to be struck out of the schedule, and excluded from the warrant of attorney which the insolvent must execute previous to his adjudication.

Re WILLIAM ROUTH.

Admission to bail—Outlawry—An outlaw may be admitted to bail.

This insolvent appeared to be admitted to bail till his hearing.

Dowse opposed the application, upon the ground that the insolvent was in custody upon a capias utlagatione, and was an outlaw, and had no civil rights. It was laid down in Tidd's Practice, that in such a case a judge would not discharge under a certificate.

Mr. Commissioner LAW said it was a question of jurisdiction, and the nature of the detainer not being such as would prevent his ultimate discharge, it followed that it would not prevent his intermediate discharge. *Objection overruled.*

The insolvent was then discharged on bail till his hearing.

Note.—A doubt was at one time entertained, says Mr. Cooke, as to whether a person in custody upon a capias utlagatione could be heard in this court upon his petition, it being contended that outlawry had deprived him of all civil rights, and had debarred him from appearing in any court of justice to seek for any advantage or protection, save only in the court in which the original proceedings had been instituted against him, for the purpose of reversing the outlawry; but in the case of *Lord Edward Thynne*, the Court held that outlawry was for the purposes of this Act of Parliament to be considered simply as *process*, that the imprisonment could not be regarded in any other light than as one for the non-payment of money, and that consequently it fell within the provisions of the 7 Geo. 4, c. 57, s. 10, which are similar to those of 1 & 2 Vict. c. 110, s. 35.

INSOLVENT DEBTORS COURT DUBLIN.

Reported by J. LEVY, Esq. Barrister-at-Law.

Re BRADSHAW.

Opposition—Payment by instalments.

The Court will not discharge an insolvent upon entering into an undertaking, to be made a rule of Court, to pay an opposing creditor by instalments, it being contrary to the principles of the Insolvent Law, even though that creditor is a menial servant.

Quæry, could the Court enforce such an undertaking after the insolvent obtained his discharge?

The insolvent, who was a dentist, was opposed by several creditors, who did not appear to have any specific grounds beyond the fact, that repeated promises of payment had been made which were never fulfilled. Amongst these was a servant woman, who resided with the insolvent, and to whom upwards of a year's wages were due.

Creighton, for the insolvent, said it was not the intention of his client to take his discharge from the debt due to the poor woman, although there was no fraud in contracting that or any other debt which the

insolvent owed, and he proposed to enter into an undertaking, to be made a rule of Court, to pay it by monthly instalments, but it was necessary that he should take his discharge, as his professional pursuits and prospects would be much injured by being obliged to come before the Court again. There were no grounds whatever for refusing his discharge, but he would not take it without binding himself to pay the debt in question.

Mr. Commissioner BALDWIN said he did not recollect having ever heard of such a course being pursued. In the first place, it was contrary to the principles of the insolvent code to pay one creditor in preference to another; and in the second place, when the insolvent was discharged, what authority would the Court have to compel him to carry out such an undertaking?

Creighton.—The Court, he apprehended, would have the same power that any other Court had of issuing an attachment against a party in contempt; it would be a contempt of the Court if he did not fulfil his undertaking or shew cause to the contrary. There was the case of *John Francis Walter*, reported in 18 Law T. Rep. 20, where the English Insolvent Court discharged an insolvent on entering into such an undertaking.

Mr. Commissioner BALDWIN thought the English Insolvent Court sometimes made decisions that would be more honoured in the breach than the observance. He would, however, adjourn the case and let the insolvent arrange the debt without making the Court a party to it.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

(Before Lord Chancellor TRURO.)

HUGHES v. WILLIAMS.

Dec. 2 *and* 3, 1850; *Feb.* 26, 1852.

Settlement of mortgaged estates—Covenant against incumbrances—Arrears of interest on legacy.

A. who was seised in fee of four estates, mortgaged two of them, and afterwards executed a settlement, on his marriage, of the mortgaged estates, and of one of the others, under which he took a life interest, with remainder to his son B. in tail. There was a covenant in the settlement by A. against incumbrances, but there was no recital shewing that there were any incumbrances. A. afterwards mortgaged the fourth estate, and took the benefit of the Insolvent Debtors Act. Soon afterwards a judgment-creditor, being also equitable mortgagee of a mining lease on one of the estates, filed a bill against A.'s assignee and B. the tenant in tail, and against the other incumbrancers, praying a sale in satisfaction of the judgment-debt, and of what the plaintiff might pay in discharge of prior incumbrances, subject to the estate and interest of B. under the settlement:

Held, reversing the decision of the Court below, decreeing foreclosure against B. that the settled estate must be regarded as exonerated from incumbrances as between A. the tenant for life, and B. the tenant in tail, and that the plaintiff was subject to the same equities as A. the settlor, and that the judgment being of a later date than the settlement, B. the tenant in tail, was not affected by such judgment.

One of the incumbrances on the estates was a legacy of 800l. subject to the payment of which the estates had been devised by the testator (who died in 1810) to A. The bill was filed in 1845, at which time neither the legacy nor any interest thereon had been paid:

Held, reversing the decision of the Court below, that only six years' arrears of interest previous to the filing of the bill could be recovered.

This was an appeal by the defendant, Edward Richard Rees, against a decree of Vice-Chancellor Wigram, first, upon the ground that it had improperly directed a foreclosure of certain settled estates, to which he was entitled as tenant in tail, under a settlement made by his father Edward Rees; secondly, upon the ground that the person who was an incumbrancer on the estates as a legatee under the will of his grandfather, the father of Edward Rees, had been allowed interest for a greater number of years than he was entitled to claim by the Statute of Limitations. The material circumstances of the case were as follows:—

In the year 1810, the grandfather of Edward Richard Rees, died, having devised his real property, which consisted of four estates, called Tycanol, Foesfack, Panthowell, and Caerdalen, to Edward Rees in fee, subject to a legacy of 800l. to the defendant, Catherine Rees, which remained unpaid at the date of the filing of the bill in 1845.

In 1818 Edward Rees mortgaged Tycanol and Caerdalen to R. B. Williams.

In 1822 Edward Rees executed a settlement on his marriage of three of the estates, viz. Tycanol, Panthowell, and Caerdalen, whereby they stood limited to himself for life, with remainder to Edward Richard Rees, the appellant in tail, and he thereby covenanted against all incumbrances made by himself, or any of his ancestors. There was no recital in the settlement that there were any incumbrances on the estate.

In the year 1823, Edward Rees granted a mining lease of certain collieries, under the Tycanol estate, to a person of the name of Thorpe; and in the year 1836, mortgaged Foesfack to Henry Lawrence.

In the year 1843 Elizabeth Hughes, as personal representative of David Hughes, to whom Edward Rees was indebted in certain bills of exchange, became a registered judgment creditor of Edward Rees, who deposited with Elizabeth Hughes Thorpe's lease, by way of equitable mortgage, and agreed to execute a legal mortgage thereof, as a collateral security for the payment of the judgment debt.

In the year 1844 Edward Rees took the benefit of the Insolvent Debtors Act, and Henry Chappell was appointed assignee of his estate and effects.

In the year 1845 the present bill was filed by Elizabeth Hughes against the several incumbrancers, and against Edward Richard Rees and Henry Chappell, praying, amongst other things, that an account might be taken of the debts due to her, and that it might be declared that she was entitled to a charge and an equitable mortgage, and that it might be ascertained whether the defendants, Williams and Lawrence, were entitled to any charge, and that an account might be taken of what, if anything, was due to Catherine Rees; and that the priority of the estates and charges might be ascertained, and that the plaintiff might be permitted to pay off the debts prior to her own, and that the defendants might be decreed to deliver up possession of, and to convey, the mortgaged premises to the plaintiff, and that what the plaintiff should pay in redemption might be added to her own debt, and that that sum might be raised and paid to her by sale of the hereditaments, or a sufficient part thereof, subject to the estates and interests therein of the issue of the said Edward Rees.

On the hearing, Vice-Chancellor Wigram, amongst other things, decreed that an account should be taken of what was due to Catherine Rees for principal and interest, such interest to be calculated from the end of one year after the testator's death; that an account should be taken of what was due to Williams and Lawrence; that on payment by the plaintiff to Catherine Rees, Williams, and Lawrence, they should release and convey; and that, in default of payment by the plaintiff to them, the bill should be dismissed; that in case Henry Chappell should pay the plaintiff what she should so pay to Catherine Rees, Williams, and Lawrence, and her own debt, the plaintiff should convey to Chappell, but that in default of his paying such sums to her, he should be foreclosed; that in case of such foreclosure, and of Edward Richard Rees paying such sum to the plaintiff, she should convey to him, but that in default of his paying those sums, he should be foreclosed.

Rolt, for the plaintiff, in support of the decree.

The *Attorney-General* and *Pitman*, for R. B. Williams, in the same interest.

Freeling, for Catherine Rees, and some other incumbrancers, contended, amongst other things, that the decree was right in giving interest to Catherine Williams for a year after the testator's death, and after commenting upon the 25th and 42nd sections of 3 & 4 Wm. 4, c. 27, submitted that there was an express trust created with regard to the legacy within the meaning of the former section; and he cited *Ward* v. *Arch*, 12 Sim. 472; *Young* v. *Lord Waterpark*, 13 Sim. 201; *Christ's Hospital* v. *Grainger*, 1 Mac. & Gord. 460; *Gough* v. *Bult*, 26 L. J. 486.

J. Parker and *Terrell*, for the appellant, Edward Richard Rees, contended that the bill ought to have been dismissed as against him, and they cited and commented on *Averall* v. *Wade*, Llo. & Goo. 252, temp. Sug.; *Ravald* v. *Russell*, You. 9; *Raffety* v. *King*, 1 Keen, 601; 1 & 2 Vict. c. 110, s. 13.

Rolt, in reply, contended that the plaintiff was a purchaser without notice, and was therefore entitled to have the mortgages paid out of the estates generally, to be apportioned by the Master. (*Neate* v. *The Duke of Marlborough*, 3 Myl. & Cr. 407; *Whitworth* v. *Gaugain*, 1 Ph. 728.) With regard to the time from which interest ought to be paid on the legacy, he cited *Philippo* v. *Munnings*, 2 Myl. & Cr. 309; *Hunter* v. *Nockolds*, 1 Mac. & Gord. 640.

The LORD CHANCELLOR, after stating the before-mentioned facts, and the decree of the Vice-Chancellor, proceeded as follows:—The defendant, Edward Richard Rees, has appealed against the decree, to which he takes these several objections—First, that the interest on the legacy to Catherine Rees is to be calculated from the end of one year after the testator's death, instead of being confined to the period of six years allowed by the Statute of Limitations, 3 & 4 Wm. 4, c. 27. Secondly, that, looking to the state of the pleadings and to the merits of the case, the plaintiff has no right to foreclose the appellant. Thirdly, that there is no reference as to the existence and priority of the incumbrances. Fourthly, that a sale would be the proper remedy, rather than a foreclosure. With regard to the first objection, as to the arrears of interest, this must have been an inadvertence in drawing up the decree. The Vice-Chancellor could not have intended to give interest for so long a period; that would have been contrary to one of his own decrees. I allude to *Francis* v. *Grover*, 5 Hare, 39. There a testator gave an annuity, and charged the same on his real estate, and then devised the estate to trustees on trust, subject to, and charged with, the annuity to and for the use of his grandson, and Sir James Wigram held that the grandson was not a trustee for the annuitant within the 25th section of the stat. 3 & 4 Wm. 4, c. 27, or otherwise; and that under the 42nd section the annuitant could only recover arrears for six years before the filing of the bill. And this is not opposed to the case of *Gough* v. *Bult*, 26 L.J. Ch. 486, which was cited at the bar; for that was a case of express trust, and therefore held to be within the saving of the 25th section. With respect to the second objection, that the plaintiff had no right to foreclose the appellant, the state of the pleadings prevents the plaintiff from doing this. The statements and charges of the bill do not drop a single hint of any intention to ask any such decree against the appellant; and when the prayer, so far from seeking such a decree, does not point to any foreclosure at all, but expressly prays that what the plaintiff shall pay in redemption of the several charges may be added to what shall be found due to her; and that the same may be raised and paid by sale, subject to the estate and interest therein of the issue of the said Edward Rees, the son, surely if there ever was a case in which a defendant was liable to be taken by surprise, this is one. Not only is there an omission of any statement, or charge, or prayer applicable to the relief asked at the hearing, but there is a prayer of that which is absolutely inconsistent with that relief, and which expressly saves the rights of the appellant unprejudiced by the suit. I will not, however, dismiss the bill as against the appellant on the mere ground of pleading, because I am of opinion that the bill cannot be sustained against them on the merits; and I think it desirable to decide in favour of the appellant on the merits as well as on the ground of pleading, or rather than on that ground, in order to prevent the possibility of a new bill being filed against him. In the first place, the appellant is to be foreclosed, unless he pays what the plaintiff shall pay to Catherine Rees and R. B. Williams. Now, although their charges may be valid charges on the inheritance, inasmuch as the first was created by the will of Edward Rees, the father, who devised to Edward Rees, the son in fee, subject to the legacy to Catherine Rees; and inasmuch as the mortgage to R. B. Williams was made prior to the settlement by Edward Rees, the son, when he was owner of the fee, before he became tenant for life under the settlement, yet, as he covenanted against incumbrances made by himself or his ancestors, the settled estates must be regarded as exonerated from incumbrances as between himself and the appellant, who claims as a purchaser for valuable consideration under the settlement. The plaintiff is subject to the same equities as Edward Rees himself, and she is not in the situation of a purchaser for valuable consideration without notice, and cannot oblige the appellant to pay off incumbrances against which Edward Rees, the judgment debtor, covenanted by the settlement. To allow Edw. Rees himself to assert the validity of those incumbrances against the appellant would be most inequitable; and how, then, can his assignee, the judgment creditor and equitable mortgagee, who was bound by all the equities to which Edward Rees was subject, and advanced nothing on the security of the land, be in a better position than Edw. Rees? As between Edw. Rees, or the plaintiff as claiming under Edw. Rees, on the one hand, and the appellant as tenant in tail under the settlement on the other hand, I think the effect of the covenant against incumbrances in the settlement is to throw the incumbrances made prior to the settlement on the Foesfack estate, or on the life interest only of Edward Rees in the settled estate. I do not consider it necessary to produce any authority for this view, but a case was cited at the bar which seems to bear very strongly on the point; I allude to *Averall* v. *Wade*, Llo. & G. temp. Sug. 252. There a party seised of several estates, and indebted by judgment, settled one of the estates for valuable consideration, with a covenant against incumbrances, and subsequently acknowledged other judgments, and it was held that the prior judgments should be thrown altogether on the unsettled estates. The Lord Chancellor (Sir Edward Sugden) there observed, "Suppose there was no covenant in the settlement, a man seised of estates A. and B. both subject to a judgment debt, settles A. for valuable consideration, without notice of the judgment, the judgment creditor would be compelled to go against estate B. and the persons claiming under the settlement would be entitled to have the settled estates exonerated, at the expense of the unsettled estate; the judgment

binds both, and, where there is a settlement of part of an estate, as if free from incumbrances, equity will throw the whole on the unsettled part, which still belongs to the original owner. Here there is a covenant that the estate is free from incumbrances; assuming that there was no such covenant, but a mere declaration that the estate was free from incumbrances, there can be no doubt that that declaration would throw the incumbrances on the unsettled estate. I cannot put the point on lower grounds, but I can put it on much higher. The covenant is enforced, not by giving damages, because this Court does not give damages, but according to the peculiar jurisdiction of this Court, by specifically doing that which ought to be done. I thought, therefore, that by reason of the covenant the judgment should be thrown altogether on the unsettled estate." Having now disposed of the question as to the foreclosure of the appellant on nonpayment of what may be due to Catherine Rees and R. B. Williams, it is only necessary to remark upon the question of the foreclosure of the appellant on non-payment of what may be due to Lawrence, that Lawrence's mortgage is only a mortgage of Foesfack, which is not in settlement, and in which the appellant has no interest; and that, therefore, to foreclose the appellant on non-payment of the debt to Lawrence seems to me to be clearly wrong. And as to the judgment debt itself, in respect of which the bill is filed, that being a debt of Edward Rees, the son, and being subsequent to the settlement, cannot affect the appellant. For these reasons, I think that the bill must be dismissed as against the tenant in tail; and, being of this opinion, and the tenant in tail being the sole appellant, it becomes unnecessary for me to consider the remaining objections which he has urged against the decree.

Reported by C. H. Keene, Esq. of Lincoln's-inn, Barrister-at-Law.

May 5 and July 28.

IN LUNACY.

Torbuck *v.* Hewitson

Re Hewitson.

Practice—Special case — Trustee Act—Married woman—Conveyance by a married woman of her legal estate in customary freeholds by deed enrolled—Extinguishment of a power of appointment by will.

The legal estate of a married woman, in customary freeholds, was vested in a lunatic trustee, in trust for the married woman, during the joint lives of herself and her husband, for her separate use (without restriction as to alienation or anticipation), with remainder in case she survived her husband, to her absolutely; but in case she died in his lifetime, to such uses as she should appoint, no trusts were declared in default of appointment. She mortgaged the estate by deed enrolled under the Fines and Recoveries Act.

The Court, on a petition under the Trustee Act, vested the legal estate in the mortgagee.

Mrs. Torbuck previously to her marriage, was seised of customary freeholds, held of the manor of Kirkby Stephen, in the county of Westmoreland, and by indenture of the 10th of April, 1818, conveyed them to a Mr. Hewitson, who, by an indenture of the same date declared that he held it upon trust for Mrs. Torbuck, for life to her separate use (without restriction as to alienation or anticipation), with a power of disposition by will; and in default of appointment, in case she survived her husband, to her absolutely. Mr. and Mrs. Torbuck had mortgaged the property, and were desirous of conveying the legal estate to the mortgagee. Mr. Hewitson having become of unsound mind, though not found lunatic by inquisition, an application was made for an order, under the Trustee Act, to appoint a person to convey in his place.

Toller supported the application.

The Lord Chancellor, on an ex parte application, and in the absence of all information touching the custom of the manor, refused to make the order, but gave leave to state a special case under Sir George Turner's Act. The petition to stand over until the special case was filed and both were to be heard together by his lordship.

Wednesday, July 28.—On this day the special case and petition were heard. It appeared to be the custom of the manor, in cases where married women conveyed the legal estate, for the steward to examine them as to their consent, and, if given, to endorse a memorandum to that effect on the deed of conveyance. The deed was then presented at the next Court, and the alienee admitted.

Toller appeared for all the parties interested except the lunatic trustee;

Bickner appeared for him, but was not called on.

The Lord Chancellor said that this appeared to be the conveyance of an estate by bargain and sale and admittance, and that no surrender ...... necessary. The custom of the manor was not to admit on surrender. His lordship having explained the trusts of the deed, said, that the result of the limitations upon which the estate was settled had, in default of appointment by Messrs. Torbuck, the effect of vesting in her the fee. The question was, had she extinguished the power of appointment by will; he was of opinion that she had. If this had been a freehold estate, she would have barred it, and the Act of Parliament did not touch the case. The Act 3 & 4 Wm. 4, c. 77, provided that the Act should not extend to lands held by copy of court-roll, of or to which a married woman, or she and her husband, in her right might be seised in any case in which any of the objects to be effected could have been effected by surrender into the hands of the lord of the manor of which the lands might be parcel. The provisions of that Act applied only to estates which passed by surrender; the result therefore was, that she had barred her power, and had converted the estate into a fee-simple. The case was within the Act, and not within the saving, and it was a case in which he should make the order as prayed.

COURT OF APPEAL IN CHANCERY.

Reported by Owen Davies Tudor, Esq. of the Middle Temple, Barrister-at-Law.

(Before the Lords Justices.)

Tuesday, July 20.

Re The Great Western Extension Atmospheric Railway Company, and *Re* The Joint Stock Winding-up Acts, 1848 and 1849, *ex parte* Wryghte.

Winding-up Acts—Claim against individual contributories.

Where a company or association is ordered to be wound up, the Master has no jurisdiction under the order, to take cognizance of a claim not alleged to be due from the company, but only from individual members of it.

This was an appeal from the decision of the Master charged with the winding up of the Great Western Extension Atmospheric Railway Company, who had refused to admit a claim brought in by Mr. Wryghte, the official manager of the Tring, Reading, and Basingstoke Railway Company, which was then being wound up, for the payment of two sums of 2,000*l.* and 500*l.* advanced, as it was alleged, by the directors of the latter to the directors, and for the use, of the former company. The circumstances of the case are as follows:—On the 23rd of October, 1845, at a meeting of the directors of the Tring, Reading, and Basingstoke Railway Company, a resolution was passed, that 2,000*l.* should be lent and advanced to the directors of the Great Western Extension Atmospheric Railway Company, upon their personal responsibility, for a time not exceeding three months, at the rate of 5*l.* per cent. per annum; and the solicitor of the company was authorised to carry out an arrangement for completing the loan. Accordingly on the following day 2,000*l.* were advanced and lent out of the assets of the company to the directors of the Great Western Extension Atmospheric Railway Company: and the following memorandum signed by twelve of the twenty-one directors of the latter company was delivered to G. P. Hill, esq. the solicitor of the former company, by way of security.

"Great Western Extension Railway Company,

"To G. P. Hill Esq. Oct. 27, 1845.

"In consideration of your lending and advancing to us, the undersigned, the sum of 2,000*l.* we hereby jointly and severally guarantee to you the repayment of the same, with interest at 5 per cent. per annum, within three months from the date hereof."

On the 28th November, 1845, the Directors of the Tring, Reading, and Basingstoke Company passed the following resolution:—"Resolved, That the sum of 500*l.* be lent to the Great Western Extension Railway Company, on the guarantee given to Mr. Hill on behalf of the company, the solicitor undertaking to produce the 500*l.* whenever wanted for the purposes of this company at a week's notice." Thereupon, on the same day, a sum of 500*l.* part of the assets of the Tring, Reading, and Basingstoke Company, was lent to the Great Western Extension Atmospheric Company; and the following memorandum, signed by ten out of the twenty-one directors of the Great Western Extension Atmospheric Railway Company, was delivered to Mr. Hill, as solicitor of the Tring, Reading, and Basingstoke Railway Company, by way of security for the payment of such sum of 500*l.*

"Great Western Extension Railway Company.

"To Mr. G. P. Hill.

"In consideration of your advancing and lending to us 500*l.* we hereby jointly and severally promise and undertake to repay to you that sum, with 5 per cent. interest, on the 1st day of February next.—Dated the 24th November, 1845."

The money advanced upon these guarantees, at any rate the greater part thereof, was used for the purposes of the company.

On the 27th July, 1849, the Great Western Extension Atmospheric Railway Company was ordered to be wound up, and on the 23rd November following, an official manager was appointed.

Early in June 1849, the Tring, Reading, and Basingstoke Railway Company was ordered to be wound up, and soon after Mr. Wryghte, who was chosen official assignee, brought into the Master's office an affidavit to prove a debt of 2,500*l.* against the Great Western Extension Atmospheric Railway Company, being the sum advanced under the before-mentioned guarantees, the whole of which was then due and owing to the company he represented. In December 1851, when the matter came on before the Master, Mr. Wryghte not appearing, his claim was disallowed. But he was again allowed to make his claim before the Master on the 15th of January, 1852, but as he came without the books of the company he represented, and had no other evidence of the debt which he alleged was due except the affidavit he had before brought into the office, his claim was again disallowed, the Master saying, "I adhere to my former decision, and have disallowed the claim, both for want of evidence and as being barred by the Statute of Limitations." A similar application to the Master by Mr. Wryghte on the 6th of February, 1852, was followed by the same result.

On the 15th of February, 1852, Mr. Wryghte appealed to Vice-Chancellor Parker, who seeming to consider that the objection of the Statute of Limitation was the sole ground of the Master's decision, reversed it, as he held that the statute would cease to run, if not from the date of the winding-up order, at any rate from the time when the affidavit of the debt was carried into the Master's office, and he referred back the matter to the Master to review his decision.

The matter accordingly came on before the Master on the 4th of June, 1852, when it appears to have been considered that, according to the decision in *Lloyd's* case, 1 Sim. 248, N.S. that though the claim could not be proved against the company, it might be proved against the individuals who had made themselves liable by signing the guarantees, and who, together with the other nine directors of the company, constituted the body of contributories put on the list by the Master, as liable to the debts of the company. Leave was thereupon given to Mr. Wryghte, upon giving due notice to the parties to be charged thereby, to carry in an amended claim before the Master. Accordingly, on the 17th June, 1852, Mr. Wryghte carried in the following claim:—"The said W. C. Wryghte, as such official manager as aforesaid, claims of the following parties, as contributories in the above-mentioned Great Western Extension Atmospheric Railway Company, that is to say (here follows a list of names), being the persons who signed the guarantee of the 24th of October, 1845, and who have been settled on the list of contributories of the said company as contributories thereof, the sum of 2,000*l.* with interest thereon from the 24th of October, 1845, until payment, for money lent and advanced on the said 24th of October, 1845, by the directors of the Tring, Reading, and Basingstoke Railway Company, to and for the use of the Great Western Extension Atmospheric Railway Company, of which company the said several persons were then directors; and the said W. C. Wryghte, as such official manager as aforesaid, also claims of the following parties as contributories," &c. The second claim against the persons who had signed the guarantee of the 24th of November, 1845, was in similar terms. Notice had been duly served upon the contributories sought to be charged individually, and upon the amended claim coming on to be heard before the Master he disallowed the same, upon the ground that the Winding-up Acts did not give him jurisdiction in respect of claims made against individuals. From this decision an appeal was presented by Mr. Wryghte to the Lords Justices, who heard it, with other motions, for the Vice-Chancellor Parker.

Daniell and *Roxburgh*, in support of the appeal, said that the claim was originally made against the company, but on the authority of *Lloyd's* case, 1 Sim. 248, N. S. and *Carrick's* case, Id. 505, it was amended and brought in against the individuals who signed the guarantees. [Lord Justice Knight Bruce.—You disclaim to bind the whole company. What authority is there for saying that such a proceeding is within the scope of these Acts of Parliament? How can any one be admitted to claim as a creditor when his claim is not made against the whole company? If you bring before us a claim upon the whole company, evidenced by the act of its agent, of course we shall attend to it? This is a very different proceeding. Lord Justice Lord Cranworth.—All that I decided in *Lloyd's* case, and *Carrick's* case, was this,—that where an attempt is made to prove against the whole body of contributories a debt which has been contracted by some of them, it was necessary, before the debt could be admitted, to shew that it had been authorised to be contracted, either expressly or impliedly by the whole body. I have never decided that under a winding-up

order a debt or claim could be proved against some only out of the body of contributories, unless the debt had been authorised so as to bind the whole.] In this case, however, the money was expended for the purposes of the company, to whose directors it was advanced and lent, and the debt, although due from individual contributories, is within the operation of the Winding-up Acts. They also cited *Upfill's* case, 1 Sim. N.S. 391; 15 Jur. 481.

Selwyn, for the official manager of the Great Western Extension Atmospheric Railway Company and *Wickens*, for some of the contributories sought to be charged, were not called upon by the Court.

Lord Justice KNIGHT BRUCE.—The company, or association in this case directed to be wound up, is the Great Western Extension Atmospheric Railway Company. It seems, the other company now claim, or at one time supposed themselves, to be creditors of the company to be wound up. They may or not have been so; or, being so, the question is not before us. The question raised before us is, whether under the order which I have mentioned, the Master could take cognizance of a demand not alleged to be due from the company, but from some, and only some, of the persons members of it. My opinion is, that the Master has no jurisdiction to enter into such a question. It has been said to be convenient and just that it should be so, inasmuch as, in this particular instance, the money was applied for the purposes of the company. That circumstance can make no difference in the principle, or in the rights of the persons cognisant of the transaction; and concerning a debt of the company, the purpose for which it is applied is absolutely immaterial. If such a demand is to be admitted, the private debts of every individual contributory might be brought in under the order.

Lord Justice Lord CRANWORTH.—I regret if any thing which I may have said extrajudicially in *Lloyd's* case should have led to the construction which has been put upon it. In that case, if I remember rightly, the Master declined to admit a claim as a debt, unless it were shewn that the company or some of the contributories were liable to it; but he admitted it as a claim. An application was made to me when Vice-Chancellor to reverse what had been done by the Master, and to adopt the claim as a debt. I refused, and at the same time expressed a doubt whether the Master had not gone too far in admitting it as a claim. I thought that, before admitting either a claim or a debt, it was necessary to shew not only that there was a creditor, but also that there was a debtor; and, what is perhaps more material, to go and shew that the debtor was a debtor whose debts were to be wound up under the order. The language attributed to me by the report of the case, seems to have led to the inference that I also meant to say that the Master might adopt a claim against individuals forming part only of the company, if they alone were the parties liable. If the language of the report bears that construction, it is to be regretted, that what was meant, has been couched in language so inaccurate. All I intended to decide or say was, that the claim should not be admitted as a proof, and that I doubted whether it ought to be admitted as a claim until it had been shewn that the parties sought to be charged were the parties liable to the demand.

The order made was, that the appeal motion should be dismissed with costs, but without prejudice to any application which might be made to the Master to prove the debt against the company or association to be wound up.

ROLLS COURT.

Reported by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

Nov. 25, 1851, and Jan. 13.

LAWRIE *v.* CLUTTON.

Legacy duty—Investment in joint names of husband and wife—Stats. 36 Geo. 3, c. 52; 45 Geo. 3, c. 28—Transfer wife of stock in satisfaction of legacies, &c. husband.

A testator gave several specific legacies, and devised real estates to his wife, and also devised and bequeathed real and personal estate to trustees, in trust for his wife, for life, with remainder over. He also gave a legacy of 10,000l. for the benefit of his daughter and her children. At his death large sums of stock stood invested in the joint names of the testator and his wife, but his estate being insufficient to pay certain specialty debts and the legacies, the wife, who survived and was his executrix, transferred to the trustees of the wife a large portion of the stock standing in the joint names, for the payment of the debts, &c. including the 10,000l. bequeathed to the daughter. The Stamp-office having made a claim for legacy duty on the 10,000l.:

Held, that none was payable under the 36 Geo. 3, c. 52, and 45 Geo. 3, c. 58.

This was a petition by defendants, Owen Clutton and John Clutton, the legal personal representatives of the late Samuel Webb, respecting a claim for legacy duty set up by the crown. The petition came on for hearing with the causes which were heard for further directions, at the close of the sittings after Trinity Term last, and it was then ordered that the sum of 300l. should be paid to the executors in the mean time to answer any liability of the fund in question in the cause, to legacy duty; and the petition was ordered to stand over till the crown was prepared to argue the question of liability. The petition now came on to be heard. It appeared that Samuel Webb by his will, bearing date the 6th of January, 1827, after directing his debts, funeral and testamentary expenses to be paid out of the residue of his personal estate bequeathed to his wife Elizabeth Webb, as her own absolute property, the specific chattels, moneys, and effects therein mentioned; and he thereby also devised certain freehold and copyhold hereditaments therein mentioned to his wife, her heirs and assigns, and devised and bequeathed several freehold, copyhold, and leasehold hereditaments therein mentioned, to or in trust for his said wife, during her life, with divers remainders over to the several ... therein named, and the testator also bequeathed to Kenrick Collett and John Clutton the several sums of Three per Cent. Consolidated Annuities, and Three per Cent. Reduced Annuities, and Four per Cent. Annuities, in his said will mentioned, in trust, that his said wife might be entitled to the interest and moneys thereof for life, and subject to the said life interest, the testator gave the said several sums to the several persons and in the respective amounts in the said will mentioned. The Three per Cent. Consolidated Annuities included a sum of 10,000l. like annuities, which the testator directed should be held in trust that his daughter, Mary Ann Collett, might be entitled to the dividends and income thereof for her life for her separate use, without power of anticipation, and subject thereto in trust for the issue of the said Mary Ann Collett as therein mentioned, with a direction that in default of issue (an event which did not happen) the said sum of 10,000l. Consols should fall into his residuary estate. And as to the residue of his real and personal estate, the testator devised, appointed, and disposed of the same unto and to the use of his said wife, her heirs, executors, administrators, and assigns, as her own absolute property and he declared that the provisions thereby made for her were meant to be in bar and satisfaction of dower, free bench, and thirds, and all other claims and demands she might have against his real or personal estate; and he declared that all government or public stocks, funds, or securities which, at his decease, should be standing in the joint names of himself and his said wife should, for the purpose of answering the legacies thereby given, be considered as his property and thereby made liable to the same; and the testator declared that neither of the sums in stock thereinbefore given (with the exception of 5,010l. Four per Cent. Annuities) should be considered a specific legacy; and that with the several legacies of stock thereby given, he intended to give the dividends and income which would become due thereon from and after his decease, and he appointed his wife Elizabeth the sole executrix of his will. The testator made several codicils not affecting the trusts of the 10,000l. Consols, and he died on the 8th of February, 1835, and on the 4th of March, 1835, his widow proved his will. It appeared that the testator's personal property at the time of his death was of less value and amount than the amount of the debts and funeral and testamentary expenses, and that Mrs. Webb paid or provided for payment of the same. Mrs. Webb, on the death of her husband, entered into possession or receipt of the rents and profits of the leasehold and real estates devised to or in trust for her for her life, and remained in such possession or receipt up to the time of her death; she also entered into possession or receipt of the rents and profits of the freehold and copyhold estates devised to her absolutely as aforesaid, and treated such estates as her own property, and she retained possession of such parts of the personal estate of the said testator other than leasehold estates as were not sold by her for the purpose of in part discharging the said debts, funeral and testamentary expenses. It appeared also that at the death of the said testator there was standing in the joint names of himself and his said wife certain sums of Bank Annuities to an amount exceeding the amount of the legacies given by his said will.

By an indenture, bearing date the 16th of March, 1835, and made between Elizabeth Webb, the widow of one part, and Kenrick Collett and John Clutton, of the other part, after reciting the said will of the said testator Samuel Webb, and a certain indenture of the 23rd April, 1831, therein mentioned, and the said five codicils, and reciting certain bonds, &c. for various sums of money which had been given by the said testator to divers persons, being part of the said debts, and that the said Elizabeth Webb had, since the death of the testator, discharged out of his personal estate, his then present ascertained debts (except the moneys secured by the said covenants and bonds respectively) and all the funeral and testamentary expenses, and had also paid certain pecuniary legacies, and legacies of stock, and specified legacies respectively bequeathed by the said testator, but had paid none of the legacies bequeathed to the said Kenrick Collett and John Clutton, upon the several trusts therein-before recited, but that the pecuniary legacies thereinbefore referred to had been satisfied by her, and the whole personal estate of the said testator, remaining in the hands of the said Elizabeth Webb as such executrix as aforesaid, and not specifically bequeathed by him, was wholly insufficient for discharging the said unsatisfied legacies and the moneys secured by the said covenants and bonds, and that the funds invested in the joint names of herself and her husband were so invested without any express trust declared, and now were her own absolute property, and that to effectuate the unsatisfied purposes of the testator, she had agreed to transfer to Collett and Clutton the stocks thereinbefore covenanted to be transferred, and on the trusts thereinafter declared. It was witnessed that the said Elizabeth Webb did for herself, &c. covenant to transfer to Collett and Clutton, and the survivor, &c. the sums of 36,700l. Three per Cent. Consols, and 10,500l. Three per Cent. Reduced Annuities, to be held by them on the trusts of the will and codicil of the said testator. The said sums of stock were accordingly so transferred; and after the other purposes were satisfied, there remained a larger sum than 10,000l. Three per Cent. Consols, which Collett and Clutton retained to meet the 10,000l. Consols intended for Mary Ann Collett. Elizabeth Webb died on the 24th of February, 1836, having made her will, bearing date the 8th of December, 1835, and appointed Kenrick Collett and John Clutton her executors, who duly proved the will. John Clutton, who was the surviving executor, died on the 14th of April, 1841, having by his will appointed Owen Clutton and John Clutton and another person, since deceased, his executors, who proved the will, and thereby became the legal personal representatives of Elizabeth Webb, as well as of Samuel Webb. The question now was, whether the 10,000l. given by the will of the testator, and which was made good by Mrs. Webb, under the provisions of the deed of the 16th of March, 1835, was or not subject to legacy duty. For the purpose of the argument, the Attorney-General and the parties interested in the estate had agreed to admit as true the statements in the petition and in the deed of 1835, and the Attorney-General declined to take a case for the opinion of the Court of Ex.

Walpole for the petitioners.

The *Solicitor-General* and *James*, on behalf of the Crown, contended that the claim for legacy duty made by the commissioners was made against the legatee in respect of the money paid on account of the legacy, and not against the donor of the legacy, and, of course, the legatee's estate was chargeable. If an estate was devised subject to a legacy, payment of the duty would not be avoided merely because the parties did not want the land sold. The real question was, whether or not there was a charge?

R. Palmer and *Whaley*, for Mr. and Mrs. Lloyd, and their adult children, cited *Matsom* v. *Swift*, 8 Beav. 368; *Custance* v. *Bradshaw*, 4 Hare, 315.

Roupell and *Tillotson*, for other parties, cited *Gretton* v. *Haward*, 1 Swanst. 409, 433, n.; *Shirley* v. *Earl Ferrars*, 12 L. J. N.S. 114, Ch.; 1 Rop. Husb. & W. 566.

Temple and *Stevens* for Mr. and Mrs. Lawrie.

Lloyd and *Lewin* for the infant children of Mr. and Mrs. Lloyd, cited *Re Evans*, 2 Cr. M. & Ros. 206; *Attorney-General* v. *Mangles*, 5 M. & W. 120; *Attorney-General* v. *Simcox*, 18 L. J. 61, Ex.; *Attorney-General* v. *Holford*, 1 Price, 426.

The MASTER of the ROLLS.—This was a petition presented by the defendants, who are now the legal personal representatives of a lady of the name of Elizabeth Webb, and her deceased husband, Samuel Webb, praying in effect the opinion of the Court upon the question whether legacy duty is or not payable in respect of the sum of 10,000l. Consols mentioned in the will of Samuel Webb, and for the consequential directions in case the Court shall be of opinion that such duty is payable. The case is singular, and the point raised, so far as I am aware, is a new one, and it arises thus. [Here his Honour stated the facts.] The question depends solely upon whether the words of the Acts of Parliament are sufficient to meet and include this case. The statutes upon which alone any question can arise are the 36 Geo. 3, c. 52, and 45 Geo. 3, c. 28. I may state here that a question might have arisen upon the 8 & 9 Vict. c. 76, but this will was previous to that time. There is also a later statute affecting those questions. I shall first consider whether it is affected by the 36 Geo. 3, c. 52, and if not, then whether it is liable to a duty, as being a charge upon land, under the provisions of 45 Geo. 3, c. 28. The words of the statute of 36 Geo. 3, s. 7, are—"Any gift by any will which shall, by virtue of such will, have effect

be satisfied out of the personal estate of the testator, or out of any personal estate which he shall have power to dispose of, shall be deemed a legacy." It is clear from this that nothing is to be deemed a legacy unless it be a gift satisfied out of the personal estate of the testator, or out of some personal estate which he had power to dispose of. I am of opinion that the words of the statute do not include this property. It would be a manifest straining of the words to cause them to include property which, in fact, is not, and never was, the property of the testator. The consequence also which would necessarily follow from a contrary decision would be absurd. Suppose a testator having 10,000*l.* in the Funds to bequeath it to A. and at the same time to bequeath to B. a sum of 5,000*l.* standing in the name of A.; as A. gains 5,000*l.* on the whole by the effect of the will, it is probable that he might give effect to it, and elect to take the 10,000*l.* and give the 5,000*l.* to B. But it would be absurd on that account to hold that, under these words of the statute, duty must be paid exactly in the same manner as if the testator had been possessed of 15,000*l.* and had given 10,000*l.* out of the 15,000*l.* to A. and the remaining 5,000*l.* to B.; and yet it is obvious that it must, if good at all, under the words of the statute, be carried to that extent, because it is not in the nature of a charge that the provision of the statute operates at all, but, if sufficient to include the case, it must be because it is a gift by the testator, to be satisfied out of some personal estate which he had the power of disposing of. I am of opinion that these words in the statute apply to funds over which the testator had a power of appointment, but that they cannot be extended to [illegible], which belong to a stranger, and which the testator might induce that stranger to dispose of, as the condition upon which he should be entitled to take another legacy given to him by the testator's will. The argument has not been carried to this extent on the part of the Crown, and I have no hesitation in coming to this conclusion, that the mere fact of electing to take under the will does not make this property, which neither belonged to the testator, nor was property over which he had the power of disposition, subject to any charge for legacy duty under the first statute. There is, however, more difficulty in the second branch of the question, and it was on this account principally that I reserved my judgment. The 45 Geo. 3, c. 28, makes legacies charged upon land liable to the payment of legacy duty. The words of the four sections which apply to the question, are as follows. It enacts, nearly in the words of the [illegible], or 36 Geo. 3, c. 52, "that every gift which by virtue of any will or testament in after the passing of the Act, shall have effect, or be satisfied out of the personal estate or the person so dying, or out of any personal estate which he shall have power to dispose of" (then come the new words), "or which shall have been charged upon or made payable out of any real estate, or directed to be satisfied out of any moneys to arise by the sale of any real estate of the person so dying, shall be deemed to be a legacy." This now applies exclusively to real estate, and, therefore, it is not necessary to consider the various instances which were suggested at the bar of a specific charge created by the operation of the rules of equity clearly. It is a pecuniary legacy, such as where a testator [illegible] 1,000*l.* to A. and leaves to B. a picture, the property of A. because, as there is no question about the real estate in any of these cases, if any duty is payable it must be under the 36 Geo. 3, c. 52. But the question raised under the 45 Geo. 3, c. 28, is that it not merely embraces all cases of legacies charged upon the real estate directly and expressly, but all cases where by operation of the rules of equity a legacy becomes payable out of real estate. Now, if a testator shall devise his real estate to A. and by the same will dispose of 1,000*l.* belonging to A. in favour of B. whatever may be the course of conduct pursued by A., B. would in any event take an interest in the real estate of the testator to the extent of 1,000*l.* If A. elected to take under the will, he would take the estate charged with the 1,000*l.* in favour of B.; and if A. elected to reject the will, the heir-at-law of the testator would in like manner take the estate, but would do so burthened with the payment of the 1,000*l.* in favour of B. And if both A. and the heir-at-law repudiated the real estate of the testator, B. would himself take it as if he had been the original devisee thereof. It is therefore contended on the part of the Crown, that in any event B. would take a bequest of the 1,000*l.* charged on the real estate of the testator; and that if the Court were to hold otherwise the effect would be, that instead of directly charging legacies on the real estate, the testator might produce exactly the same result, and escape the payment of the legacy duty by devising the real estate, and then dispose of the property of the devisee of the real estate to the extent of the legacy intended to be charged upon the land devised. It is certainly extremely difficult to discover any distinction that is not merely nominal between any one of the four following cases which were suggested in the argument at the bar, viz. a devise of land to A. charged with 1,000*l.* Three per Cent. Consols to B.; a devise of land to A. on condition that A. shall transfer the 1,000*l.* Consols to B.; a devise of land to A. on condition that A. out of the Consols standing in his own name, shall transfer 1,000*l.* to B.; or, lastly, a devise of lands to A. and a direct bequest to B. of 1,000*l.* Consols standing in the name of A; and it was argued with great force, that as in the three first cases there would be a clear legacy to B. charged upon the estate devised to A. within the words of the statute, and as the legal effect of the remaining mode of effecting the charge is the same, and that they will all take effect by means of the doctrine prevailing in courts of equity, the consequence with regard to legacy duty must also be the same. It would not, in my opinion, be any answer to this, when it is suggested that there would be considerable difficulty in working out such a principle, if that observation is correct. In the present case it is admitted that the value of the land devised is below 10,000*l.* the amount of the legacy. The duty, if I adopted the principle in this case, would be charged upon the whole value of the estate, whatever that might be, provided it did not exceed the 10,000*l.*, and it is argued that, although in such case this difficulty might be surmounted, still, if the testator devised land to A. and bequeathed to B. a valuable picture, for instance, the property of A. and that A. repudiated the devise, and elected to retain his own property, it would be impossible to determine with precision what sum was to be charged on the estate. It is true that the value of the picture may [illegible] be impossible to be ascertained without actual sale, or even that the saleable value [illegible] be a small portion of its real value both to A. and B. which may consist in a pretium affectionis. But the statute only applies to cases where the gift is charged on real estate; and I have not been referred to, nor am I myself aware of any case that decides that the estate would descend [illegible] the [illegible] law charged with the pecuniary bequest [illegible] of a sp[illegible] bequest to the ex[illegible] [illegible] the specific legacy [illegible] of the [illegible] then would not be [illegible] specific legacy [illegible] it, as a sum [illegible] the testator, which [illegible] specifically bequeathed [illegible] the purpose of [illegible] or of legacy [illegible], therefore, that the will of the testator [illegible] the 10,000*l.* a charge upon his real [illegible] I should not have felt much hesitation in deciding that legacy duty must be paid upon it. But upon the preliminary question which arises on the words of the [illegible] of the statute, in other words, whether the 10,000*l.* is a gift by the will of the testator which has been charged upon or made payable out of any real estate of the testator, I have, on the materials before me, come to a conclusion adverse to the claim of the Attorney-General. It does not [illegible], upon the facts before me, that the testator [illegible] any stock or property [illegible] the property of his wife, [illegible] real estate. The [illegible] will, as stated in [illegible] to this effect. The testator bequeathed [illegible] his daughter and her issue 10,000*l.* Consols, generally, as if he himself had been possessed of [illegible] of that nature, or had possessed personal property sufficient to purchase such an amount. But it is not a specific bequest of any existing or particular sum of Consols, or of any portion of such specified Consols standing either in his own name or in the name of himself and his wife. If he had expressly disposed of 10,000*l.* Consols belonging to his wife in favour of his daughter, she would have had a charge on the land devised to the extent of that legacy. But if, as appears to be the case, he has simply bequeathed a legacy of 10,000*l.* Consols to his daughter and her issue, then, in my opinion, no question of election arises upon the will, but that the widow might have kept the real estate, and have wholly disregarded the bequest of the stock. If a testator, however, having no stock of any description, devises land to A. and 10,000*l.* Consols to B. no obligation lies on A. to make good the bequest to B. but the bequest simply fails because the testator either has no stock, or having some when he made his will, has disposed of it since, or if it is not a specific bequest, but a pecuniary bequest of the value of so much stock, it fails from the deficiency of his personal estate. The latter is the case here. This is not a specific bequest of so much stock, the property of the wife, but a bequest to the value of 10,000*l.* Consols, which fails because the personal estate is deficient; there is nothing in the will, as here stated, that points specifically to the stock, which became the property of the wife on surviving her husband, and in this respect the case resembles the case of *Dymmer* v. *Pitcher*, 5 Sim. 35; 2 My. & Keen, 262; but unless that had been done by the testator the widow could not have been put to her election, nor could any question of charge have been maintained. I am, therefore, of opinion that this case does not fall within the words of the 45 Geo. 3, c. 28, and that no duty is payable on the legacy of 10,000*l.* or on so much of it as may be equal in value to the value of the real estate. I have been in some degree embarrassed from not having the will before me; but I have assumed that the petition states what are the words of the will, that in fact they could not amount to a specific bequest of the stock, which was standing in the name of the widow, and having no doubt upon that, my judgment proceeds upon that ground.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. HENRY COOKE, Esq. Barrister-at-Law.

July 29 and August 3.

THE ATTORNEY-GENERAL AND THE SHEFFIELD UNITED GAS-LIGHT COMPANY *v.* THE SHEFFIELD GAS CONSUMERS' COMPANY.

Injunction—Public company—Information—Bill—Nuisance—Laches.

A gas-light company was empowered by Act of Parliament to supply the town of S. with gas, and for the purposes of their business, to take up the pavement of the streets, and they were bound to restore the pavement in a certain manner, and in a specified time. A new gas-light company was projected late in 1851 (of this the old company had full notice), and early in 1852 was completely registered under the Joint Stock Companies Acts. The old company in April, filed a bill for an injunction, but the Court being of opinion that the matter was of a public nature, refused to interfere. The company thereupon, dismissed their bill, and having obtained the sanction of the Attorney-General, they filed an information and bill, and then moved for an injunction to restrain the new company from taking up the pavement, and obstructing the public use of the streets, or damaging the pipes belonging to the old company. The Court, although of opinion, without deciding that the breaking up the streets was a nuisance, considered it only of a temporary nature, and one in which the Court ought not to interfere, and being of opinion that, as the company knew so early as the autumn of 1851 of the intention of the new company, and did not take any steps to interfere until April, 1852, there had been such acquiescence that the parties must be left to their legal remedies, refused the injunction.

This case came on upon a motion to restrain the defendants from breaking up the streets of Sheffield and from laying down any gas mains, pipes, or works, in or under the streets and highways in the borough of Sheffield, and from breaking up, or disturbing for that purpose, any road or highway, and from doing any other act whereby the passage of her Majesty's subjects along such highways, or any of them, might be obstructed or rendered less safe or convenient, or whereby the gas-mains or pipes, or other works of the plaintiffs, might be interfered with or damaged. The application was made upon an information and bill; the information being at the relation of a Mr. Unwin, who was stated to be in some way connected with the company; the bill itself being filed by the United Gas Light Company. The nature of the case made by the plaintiffs was, that there were formerly two gas companies in Sheffield, each company being incorporated under an Act of Parliament, and each Act containing a power to break up pavements, with special provisions for compensating damages caused by that proceeding. The Act of the second company provided for the pavements not being broken up, except upon notice to the first company. There was also a water company in the town of Sheffield, whose Act contained similar provisions respecting the breaking up of pavements, and compensating for damages caused by it. In 1841 an Act of Parliament was passed, by which the two gas companies of Sheffield were united. The united company were the plaintiffs in the present suit. In addition to the special statutes relating to the two gas companies, there was a general Act applicable to all gas companies, containing Parliamentary powers; and this Act contained special clauses as to breaking up, repairing, and restoring the pavements. In the autumn of 1851 the defendants' company was projected. Soon afterwards, a clerk of the two united companies stated publicly that the Highway Board had no authority to permit the defendants to break up the pavement. The defendants then published a handbill, in which they insisted that the Highway Board had such authority. In Nov. 1851, the united company published a counter handbill, stating that the defendants, if they proceeded to break up the pavements in Sheffield, would be liable to indictment, and to the interference of this Court by injunction. On the 10th of Feb. last the company became completely registered. On the 6th of April the directors of the defendant's company made a report, by which they stated that they had authority from the parish boards to break up the pavements, and that the surveyors

of highways were favourable to the objects of the company.

In this state of circumstances, on the 17th of April last, a bill was filed by the plaintiffs against the defendants for an injunction similar to that which was asked by the present information and bill. That injunction was refused on the 24th of May. In June the plaintiffs gave notice to the surveyors of highways not to sanction the breaking up of the pavements. Of the several boards and surveyors of highways, some returned answers to the notice, and others returned none. The answers which were returned not being deemed very satisfactory to the plaintiffs, they, on the 6th of July filed the present information and bill. The case raised by these was this:—That the defendants had no legal authority to break up the pavements; that proceeding on their part would be attended with great injury to the highways from the laying down of the pipes, and from the continually recurring necessity of taking up pavements for the purpose of supplying any defects whicl there might be in the veins and pipes, and which might be laid down by the company. The information, therefore, stated a case of public injury continually recurring. The case made by the bill was one of damage to the plaintiffs, arising from the injury to their pipes, which had already been laid down in the streets of Sheffield.

Daniel and *Terrell*, for the defendants, took a preliminary objection to the case being heard, on the ground that the present case, so far as it consisted of a bill complaining of the invasion of a private right, had been already decided in the former suit, which the plaintiffs had thought fit to dismiss; and, further, that so far as the public was concerned, the preventive remedy, if there was one, was not by suit in this court, but under the Highway Acts; or, if by a suit, one instituted by the plaintiffs on behalf of themselves and the other ratepayers, and not by information with the sanction of the Attorney-General,—a sanction no one knew how obtained. In fact, the suit was nothing but the revival of the old suit,—a quarrel of the old stamp revived,—under the sanction of the Attorney-General, and ought, therefore, to be at once dismissed, and dismissed with costs.

His HONOUR having decided that there was a sufficient locus standi for the plaintiffs in court, determined that the motion should proceed.

Sir *W. P. Wood* and *Amphlett* for the motion.

Daniel and *Terrell* for the defendants.

Sir *W. P. Wood* was heard in reply.

The following cases, among others, were cited; but the principal one relied upon on the part of the plaintiffs was the *Attorney-General* v. *Johnson*, 2 Wils. 87. *Mayor of London* v. *Doughty*, 5 Ves. 129; *The Attorney-General* v. *Nicholl*, 16 Ves. 338; *The Attorney-General* v. *Cleaver*, 18 Ves. 211; and *Crowder* v. *Tinkler*, 19 Ves. 617.

Tuesday, Aug. 3.—The VICE-CHANCELLOR.—I reserved my judgment in this case, on the motion made for the injunction, considering that the question was one of considerable importance, and not altogether free from difficulty. The first fact urged on the part of the defendants was a formal objection taken by them to the motion. It was said that there had been a previous decision; that the plaintiffs could not maintain their case; that as the United Gas Company had failed in the suit, and now were proceeding by information and bill, notwithstanding the decision against them, the Court ought not to entertain the motion. I think the plaintiffs had sufficient interest to enable them to join in the suit, although probably it would have been more proper for them to have sued on behalf of themselves and the other ratepayers. I could not uphold this, which was raised in the first instance. Another objection, not depending upon the merits of the case, was also made on the part of the defendants. It was said that this was not a bonâ fide information by the Attorney-General, but the case must be looked on as a proceeding by the plaintiff, both as to the information and as to the bill. I feel myself bound to consider, and I did consider, that the Attorney-General would not lend himself to the private views and interests of parties. Therefore, as to the information, I must consider it as a bonâ fide proceeding by the Attorney-General, in his public capacity. The case must, therefore, be decided upon its merits. Before, however, referring to the facts of the case, it may be as well to make some observations as to the authorities. That the Court has power to interfere in cases of this nature I have no doubt whatever. I cannot permit myself to doubt that the Court may, if it has proper cause for its interference, interpose its authority by injunction, whether there may or may not be a case to try at law. There has been no time at which the power of the Court has not been capable of being, and has not been, called in aid for the protection of property and of right, whether public or private. The law gives to the subjects of the country some remedies, and the remedies which the law gives would, in many cases, be insufficient, if the Court had no preventive jurisdiction, unless the aid of the Court might be invoked, and it had at all times been so, to supply the legal remedy. It would be lamentable for the Queen's subjects if there did not exist the power of interposing by injunction, which is one of the most useful powers the Court possesses when exercised as it ought to be with reasonable discretion. But, though the power to interfere in certain cases is undoubted, the rules by which its interference is to be governed are not so clearly laid down. The subject was much considered by Lord Langdale, in a case of *Hines* v. *Taylor*, 10 Beav. 78, in which he expressed his opinion as to the jurisdiction in these terms:—"I do not think the case new in principle, for I agree that if a work is going on, which, though not a nuisance in itself, must manifestly end in operations which, when carried into effect, will prevent that species of nuisance in respect of which this Court acts and gives relief, the Court will at once interfere. It is new in its circumstances in this respect, that, as far as I am aware, there is no instance in which there has not been some work commenced capable in its nature of being made the subject of a legal proceeding, except, perhaps, the case of *Crowder* v. *Tinckler*, 19 Ves. 617. In the other cases something had been begun upon which the Court might rely as a matter of fact, and which might at once be made the subject of trial. I have looked with some care to find instances to the contrary, but I have found none on which I could at all rely. The only one where it is distinctly stated by way of dictum, is the case of the ancient lights; and all the cases which have since occurred have been more or less connected with a trial to be had at law. I do not mean that a verdict must necessarily be first obtained; because when trials are directed to ascertain the right to relief, this Court will vary its order according to circumstances. In some cases this Court, impressed with the danger of letting the matter proceed, will stop it in the meanwhile; and in others it will not interfere with the works until the result of the trial is known. The Court, under different circumstances, will act differently. The principle on which it acts in these cases is clear. It has in itself a jurisdiction, not to determine what is or is not a nuisance, but to protect the legal right which persons have to avoid nuisances, in a way which courts of law cannot do, namely, by preventing it or the future; and when the Court sees that the nuisance is such that damages given at law, will not do justice to the party, it will interfere by administering its preventive process. It is said that if a trial cannot be had, in this case,—and yet it is clear and apparent that the act about to be done is such as must necessarily give the other party a right to redress and further protection,—this Court will interfere at once; and I certainly do not mean to say that this Court might not have jurisdiction to do so; but you must learn two things,—first, the impossibility of proceeding to trial at law; and, secondly, the certainty that mischief will ensue from the act proposed to be done, in order to induce the Court to interfere beforehand." This gives a very clear summary of Lord Langdale's view of the principles governing these cases, and in that view I concur entirely. I may add to the observations, that as I apprehend it is the duty of a Court of equity in a case of this kind, when called upon for its summary interposition, to have regard to the nature and extent of the injury of which complaint may be made, the time before the application is made to the Court, and, where the extent of the injury is not ascertainable, to the comparative mischief from granting or withholding interference. These are the principles by which this case must be decided. The facts upon which the question comes to be decided, although contained in voluminous affidavits, do not appear to me to admit of much dispute; so far as the interests of the public are concerned, and so far as the private interests of the plaintiffs extend, I see no reason, therefore, for altering the opinion which I have before given on the case. The more careful reading of the affidavits has confirmed the opinion which I have expressed, and I do not think it proper, therefore, to enter into that part of the case. So far as the public interests are concerned, I think the case stands thus,—that the defendants have no legal authority to break up the pavements, and that it is proved that considerable, if not continued recurring inconvenience will be caused by their being permitted to lay down their pipes. Whether or not this inconvenience would amount at law to a nuisance, is not for me to decide. I am rather disposed to think that it would. The question which I have to decide is whether the nuisance, if nuisance it be, would be so extensive and of such a nature as that the Court ought, under the circumstances of this case, to interfere, not merely to prevent it, but to prevent the question of nuisance or no nuisance being presented to a Court of Law for its decision, for that would be the effect of the injunction which is asked. I am of opinion that the Court would not be justified in going that length, and that the injunction ought not, therefore, to be granted. If it is a nuisance, of course it will be but temporary; and if it is a recurring nuisance, the recurrence will be but of a temporary nature. In fact, no case can be found, I believe, where the Court has interfered in which the public right is interfered with by that which is merely a temporary nuisance. Reliance has been placed upon the absence of the legal right of the defendants to do the act, but it is not in every case in which the act done is done without legal authority that this Court can be called upon to interfere. The original ground of its interference is irreparable injury. Its interference has of late years, I admit, been carried much farther. But if the Court is to be called upon to interfere in every case where a piece of pavement is taken up without authority, I know not where its interference is to stop. What nuisance or what trespass may not be brought within its jurisdiction? It is to be observed, too, that the Legislature has provided some remedy for such cases, for the Highway Act throws upon the party doing an injury the cost of repairing it, with a small penalty. I quite agree that although the remedy thus provided cannot oust the jurisdiction of the Court to interfere in a proper case, I think the existence of such a remedy ought not to be disregarded in determining whether the Court, in its discretion, ought or ought not to interfere. If this application had been made at a more early period I think I should have said it was right not to interfere, but whatever might have been done at an earlier period, I think lapse of time alone would be sufficient ground to justify me in declining to exercise the summary interference of the Court. The company was projected in the autumn of 1851, and the town of Sheffield had taken a warm interest in its proceedings, and had full notice of the company having been formed and of its contemplated improvements. Yet the company was permitted to go on without the interference of the Attorney-General up to the last moment, when it was about to lay down its pipes. Expenses must have been incurred. It is admitted that land has been purchased and contracts have been advertised for, and in all probability have been acted upon. Then, and not till then, does the Attorney-General interpose. Upon the effect of lapse of time I adopt most fully Lord Eldon's opinion in *The Attorney-General* v. *Cleaver*, and *The Attorney-General* v. *Johnson*, where I find his lordship saying, that as there has been considerable delay without applying to the Court for protection, the Court would not consider the party entitled to the extraordinary assistance of a Court of Equity, but would leave him to his legal remedy. The case of *The Attorney-General* v. *Johnson* has been much relied upon in support of the present motion; but it is to be observed, that was a case of permanent not of temporary mischief. Many of the reasons which were given in that case would apply to the question of the comparative injury likely to arise from granting or withholding the injunction. Upon all the grounds I have mentioned I must refuse the motion, but without costs. I desire to add, that nothing which I have said must be considered as in the least degree intimating that the Court would not, in every proper case, interfere most promptly to keep companies within proper limits. My opinion agrees most fully with that of Lord Cottenham, that the preventive powers of the Court have in no cases more usefully been exercised than by interfering with such bodies as the present.

Motion refused without costs.

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

March 11, 12, *and* 16.

EGREMONT *v.* LEE.

Will—Election—Set-off.

In 1810, *T. C. after cancelling his will, wrote a memorandum addressed to his daughter, who was his only child, charging her, after his death, to divide his property among her three children, J., L., and E. The daughter, H. E. treating this memorandum as altogether inoperative, took out administration to T. C.'s estate, and she and her husband, J. E. entered into possession of the real and personal estate of T. C.; and in* 1811, *by a deed reciting that T. C. had died wholly intestate, and that H. E. and J. E. were desirous of fulfilling T. C.'s wishes expressed in the memorandum, T. C.'s real estate was settled upon certain trusts for the said H. E. and J. E. and their three children. H. E. died in* 1827, *and J. E. then took out administration de bonis non to T. C.'s estate. Upon the marriage of L. the daughter of H. E. to T. L. in* 1829, *L.'s interest under the deed of* 1811 *was conveyed to trustees for the benefit of herself and her children. After her marriage L. was allowed by her father J. E.* 300*l. per annum. J. E. by his will, dated in* 1837, *directed his debts to be paid, and after reciting*

his desire to carry into effect T. C.'s wishes, gave his real and personal estate among his children. In 1840 J. E. died, at which time T. L. was indebted to him. T. L. became bankrupt in 1813, but by a deed in 1845, T. H.'s interest in right of his wife to one-third of T. C.'s estate was vested in him. The memorandum before mentioned having been established as a will of personal property, administration with it annexed was, in 1845, granted to L. who, as such administratrix, and as beneficially entitled to one-third, claimed to be a creditor against J. E.'s estate in respect of T. C.'s personal estate received by him:

Held, that neither the deed of 1811, nor the will of J. E. raised a case of election against L. as the deed and will had referred only to T. C.'s real estate

Held also, that the 300l. per annum allowed to L. by J. E. must go in satisfaction of interest in her one-third share, and that T. L.'s debt must be set off against his right in L.'s share.

Thomas Crowther having made a will of his real and personal estate, dated the 21st of December, 1808, cancelled the same on the 1st of May, 1810, and wrote on the back of it a memorandum as follows:—"Me dear child Mrs. Hannah Egremont, you will see I have canseld my will, therefore you are ares-at-law, but I must charge to you to fulfil my will as under at your death. I will and leave to my granson John Egremont my estate in Northgate, Wakefield, or his children lawfully begotten, after that to divide my property equally amongst your three children, John, Louize, and Edward Egremont, or their children, lawfully begotten. At my death give Richard Henry Barker 50l. I promist him. I hope you will strictly fulfil the above from your affectionate father, THOMAS CROWTHER.

"Wakefield, 1st May, 1810."

Thomas Crowther died on the 10th of December, 1810, leaving his only child, Hannah Egremont, his heiress-at-law, and sole next of kin, him surviving, and on the 20th of April, 1811, she took out administration to his estate, as if he had died wholly intestate, and she and John Egremont, her husband, received nearly all his personal estate, and entered into possession of his real estates.

By indentures dated the 24th and 25th of May, 1811, after reciting that Thomas Crowther had died wholly intestate, having cancelled his will, but upon which he wrote a few lines, requesting Hannah Egremont to convey and settle his freehold and copyhold property according to the directions specified by the said endorsement; and that Hannah Egremont and her husband were desirous of complying with and fulfilling the request and intention of her late father. The said freehold and copyhold estates were conveyed and covenanted to be surrendered to C. Crowther and J. Schofield, and their heirs, upon trust, as to part for J. Egremont, the father, for life, remainder to H. Egremont for life, remainder to their said three children equally, as tenants in common in fee, with survivorship, in case either of them should die under twenty-one, and without issue; and if all of them should so die, upon trust for the appointees of Hannah Egremont; and in default for Hannah Egremont in fee. And as to another part, upon trust for such persons as John Egremont, the father, and Hannah, should jointly appoint; and in default upon similar trusts for their said children. And as to another part, in trust for John Egremont, the father, for life, remainder to the said Hannah Egremont for life, remainder to John Egremont, the son, in fee; and if he died under twenty-one, without issue, for E. Egremont, in fee, with a similar executory devise in case of his death under twenty-one, without issue, for Louisa Egremont, in fee; and if all of them so died, upon trust for the appointees of Hannah Egremont; and in default, for herself in fee. A fine was duly levied to the same uses, and the copyholds were surrendered to the trustees. John Egremont, the father, allowed 400l. a year to each of his sons, and 300l. a year to his said daughter Louisa, from the time of her marriage. Hannah Egremont died in October, 1827, and John Egremont, the father, thereupon took out administration de bonis non to Thomas Crowther, and also took out administration to his late wife. On the 8th of October, 1829, Louisa Egremont was married to Tottenham Lee, and indentures of settlement, dated the 7th and 8th of October, 1829, were made previously to such marriage; and thereby, after reciting the deeds of 1811, the one-third share in remainder to which Louisa was entitled in the said freehold estates under the deeds of 1811, was conveyed to Edward Egremont and Legendre Nicholas Starkie, in fee, for the purposes therein mentioned; and trusts were declared of a survivor, which had been made to the same trustees, of her one-third share of the copyhold premises, in favour of T. Lee and his wife and the children of the marriage. In 1836 John Egremont, renounced probate, John Egremont, the grandson, took out administration, with the will annexed, to his father's estate. By his will, dated the 11th of May, 1837, John Egremont, the father, directed his debts to be paid out of his personal estate, and if that should be insufficient out of his real estate, and recited that he had made considerable purchases of estates which were contiguous to and intermixed with the estates comprised in the settlement; and being desirous of making his children and grandchildren thereinafter named interested in the whole of his real estates in Reedney and Swinefleet, and personal property, as well certain estates comprised in his marriage settlement, as those subsequently purchased by him, and to carry into execution and effect, as far as might be, the desires of Mr. T. Crowther, his late father-in-law, deceased, he devised all his real estates in the county of York to Edward Egremont and Thos. M. Maude, their heirs and assigns, upon trust, as to part for Edward Egremont, in fee, subject to the payment of 5,000l. and interest due upon a bond entered into by the testator, in contemplation of Edward Egremont's marriage, and subject to the payment of 3,700l. with interest, at the rate of 4l. 10s. per cent. which interest he directed to be paid to the said Louisa Lee for her life, for her separate use, without power of anticipation; and, after her decease, the testator bequeathed the same sum of 3,700l. in favour of the children of Louisa Lee, as therein mentioned; and in case no child of the said Louisa Lee should attain a vested interest in the same sum of 3,700l then to such persons as Louisa Lee should, by deed or will, appoint; and, in default of such appointment, to E. Egremont And in case E. Egremont should die without leaving lawful issue, then the testator devised the said hereditaments (subject to the principal and interest due on the said before-mentioned bond), to the intent that Louisa Lee and her assigns might, during her life, receive an annuity of 225l. as therein mentioned. And, subject to such annuity, he devised the same hereditaments to Thomas Bailey and Joseph Bayldon Rayner, their executors, administrators, and assigns, for 500 years from the decease of Edward Egremont, upon certain trusts, for the benefit of her children; and, after the determination of the same term, and, in the meantime, subject thereto, to the use of John Egremont, his grandson, for his life, with remainder to trustees, to preserve contingent remainders, with remainder to the use of the first and other sons of his grandson successively in tail male, with remainder to the daughters of his said grandson in tail general, as tenant in common, with cross remainders between them in tail general, with remainder to the use of his said granddaughter, Harriet Frances, her heirs and assigns, for ever. And the testator gave and devised his estate in Swinefleet, called Dixon's Grounds, together with Sill Close, so purchased by him, to E. Egremont and Thos Maude, their heirs, executors, administrators, and assigns, upon trust, to pay the rents thereof to the said Louisa Lee for her life, for her sole and separate use, and, after her decease, in trust for such of the children of Louisa Lee, in such shares and manner as she should appoint, and in default of appointment, in trust for all her children, their heirs, executors, administrators, and assigns absolutely; and in case there should be no child of Louisa Lee, then that the said last-mentioned premises should be upon the trusts thereinafter declared concerning the residue of his personal estate. And the testator gave and devised all the residue of his freehold estates in Yorkshire to the use and intent that Louisa Lee should receive thereout during her life an annuity of 166l. 10s. for her separate use without power of anticipation; and subject thereto he devised the same estates to Thos. Bailey and Joseph Bayldon Rayner, their executors, administrators, and assigns, for the term of two thousand years: upon the trusts thereinafter mentioned concerning the same, and (subject to the said term of two thousand years, and to the payment of a bond given by the said testator to the trustees of the settlement made on the marriage of his deceased son John) to the use of John Egremont, the grandson, for life, with remainder to trustees to preserve contingent remainders, with remainder to the use of the first and other sons of his said grandson successively in tail general, with remainder to the use of his said grandson's daughters equally as tenants in common in tail general, with cross remainders between them in tail general, with remainder to his said granddaughter, Harriet Frances, for her life, with remainder to trustees to preserve contingent remainders, with remainder to her first and other sons successively in tail general, with remainder to her daughters equally as tenants in common in tail general, with cross remainders between them in tail general, with remainder to E. Egremont for life, with remainder to trustees to preserve contingent remainders, with remainder to the first and other sons of E. Egremont successively in tail general,

general,

Lee for her life, without impeachment of waste, with remainder to trustees to preserve contingent remainders, with remainder to her sons successively in tail general, with remainder to her daughters equally as tenants in common in tail general, with cross remainders between them in tail general, with remainder to testator's brother, Godfrey, his heirs and assigns for ever subject to the payment of 2,000l. to each of his the said testator's sisters, Elizabeth Gee and Sarah Richardson, their executors, administrators, or assigns, and the said testator by his said will declared that the trusts of the said term of 2,000 years were to raise 1,000l. and to pay the same with interest at 4l. 10s. per cent. from his decease to the said E. Egremont; and immediately after the decease of Louisa Lee to raise the further sum of 3,700l. which he bequeathed unto all and every or such one or more of the children of the said Louisa Lee in such shares and proportions, and in such manner and form, as the said Louisa Lee should appoint, and in default of such appointment to her children equally; but in case the said Louisa Lee should die without issue, then the said sum of 3,700l. should not be raised. And the said testator declared that E. Egremont, Louisa Lee, and his said grandchildren, should, upon demand, execute all such deeds and assurances as should be respectively advised by counsel for the purpose of carrying into force and effect the several devises and bequests therein by him made as aforesaid, and of annulling and making void the said settlement; and that if either of his said children, the said Edward Egremont and Louisa Lee, or his said grandchildren, should exercise any right or claim, or demand any title, interest, or property, under the said settlement, or should refuse to execute such deeds and assurances as aforesaid, then and from thenceforth every devise, bequest, interest, benefit, and advantage which they or any of them would otherwise have been entitled to, or might claim under or by virtue of that his will, should cease and be void; and after reciting that he had conveyed certain part of his real estates to his said son John, and after bequeathing certain specific legacies, the testator gave the residue of his personal estate to his executors upon trust to convert the same into money, and to pay thereout his funeral and testamentary expenses and debts, and to invest the residue in Government or real securities, one half thereof to be in trust for the issue of his said son John Egremont in like manner as thereinbefore declared concerning the hereditaments limited to the issue of his said son John, or as near thereto as the different natures of the property would admit of, and the other moiety to be in trust for the said E. Egremont; and the said testator thereby appointed the said E. Egremont and Thos. Mitchinson Maude executors of his said will. By a codicil dated the 12th of May, 1837, John Egremont the father declared that his grandson John should be considered in his minority until he should attain the age of twenty-five years; and by a second codicil, dated the 6th of April, 1838, after reciting that in case of the death of E. Egremont without issue, he had devised certain hereditaments, subject as therein mentioned, to the intent that Louisa Lee should receive an annuity of 225l. and that he had devised the residue of his freehold hereditaments, to the intent that his said daughter should receive an annuity of 166l. 10s. the testator thereby revoked the same gifts, and devised the said hereditaments to the intent that his trustees should receive the said annuities, and pay the same to Louisa Lee, for her sole and separate use, his intention being that no husband of Louisa Lee should have any power over the property devised or bequeathed to her; and further reciting that he had, after divers prior limitations, devised his residuary real estates to Louisa Lee, the said testator thereby revoked the same devise, and thereby devised the same unto his trustees, their heirs, and assigns, during the life of Louisa Lee, upon the same trusts as were declared respecting Dixon's Grounds and Sill Close, during her life. By a third codicil, dated the 18th day of July, 1839, the testator, after reciting that he had lately purchased certain hereditaments situate in the township of Alverthorpe, devised the said last-mentioned hereditaments, and all other hereditaments which he had purchased, or might thereafter purchase, or become entitled to, unto E. Egremont and Thomas Mitchinson Maude, their heirs and assigns, upon and for the same trusts, intents, and purposes as in and by his said will were expressed concerning the residue of his real estate thereby devised. John Egremont the father died in March, 1840, and his will and codicils were proved on the 13th of July, 1840, by the said E. Egremont. On the 2nd of December, 1841, Tottenham Lee was declared bankrupt. On the 1st of March, 1843, administration, with the said memorandum before mentioned annexed, to the estate of Thomas Crowther was granted to Louisa Lee. At the death of John Egremont, the father, Tottenham Lee, was indebted to him in a sum of 3,130l. secured by bond. The benefits given by the deeds of 1811, and by John Egremont's will to Mrs. Lee were con-

siderably greater than those given by the memorandum of 1810, and the annuity of 300*l.* so allowed to Mrs. Lee by J. Egremont was more than the yearly interest of one-third of T. Crowther's personal estate. By a deed of arrangement between Tottenham Lee and his creditors, dated the 19th of February, 1845, all the personal estate to which T. Lee might be entitled under the memorandum of 1810, was vested in him, and his creditors disclaimed all interest therein. In March, 1843, John Egremont, the grandson, instituted a suit (*Egremont* v. *Egremont*), for the purpose of having the trusts of the said will and codicils of the said John Egremont, the father, carried into execution, under the direction of the Court, and by the decree made therein on the 22nd day of March, 1844, the usual accounts of the testator's estate were directed to be taken. Louisa Lee, as the administrator of Thomas Crowther, went in before the Master under that decree, and required payment out of the estate of John Egremont, the father, of the sum of 18,319*l.* 11s. 1d. alleged by her to be the amount of the personal estate of Thomas Crowther, but the claim was opposed by E. Egremont, who contended that she could not come in under this decree, but ought to file another bill to establish her claim. The Master having decided in favour of E. Egremont's view, Mrs. Lee, on the 27th November, 1845, by her next firiend, filed a bill on behalf of herself, and all other the creditors of John Egremont, her father, deceased, against Edward Egremont, Tottenham Lee, John Egremont, the grandson, and Harriet Frances Egremont, praying that an account might be taken of the personal estate and effects of Thomas Crowther, possessed or received by John Egremont, the father, and that what was due from him in respect thereof might be ascertained; and that an account might also be taken of what was due to Louisa Lee, in respect of the said allowance of 300*l.* per annum; and that it might be declared that what was due from John Egremont, the father, in respect of the personal estate of Thomas Crowther, together with interest thereon, was payable to Louisa Lee, as such administratrix, with the will of Thomas Crowther annexed as aforesaid; and that what was due in respect of the said allowance of 300*l.* per annum, together with interest thereon, was also payable to her; and that such sums were payable out of the estate of John Egremont, the father, deceased, in a due course of administration; and that the same might be decreed to be paid accordingly; and for the usual accounts and relief. This was the suit of *Lee* v. *Egremont*. Edward Egremont then, on the 14th of August, 1846, filed a bill against Tottenham Lee, and Louisa, his wife, and other parties, stating the above facts, and praying that the true construction of the memorandum or will of Thomas Crowther, of the 1st day of May, 1810, might be declared; and that the rights and interest of all parties beneficially entitled to the personal estate of Thomas Crowther, which remained after payment of his funeral and testamentary expenses and debts, might be ascertained and declared; and that in particular it might be declared that Thomas Crowther died wholly intestate as to the beneficial interest in his personal estate which remained after payment of his funeral and testamentary expenses and debts. Or, if the Court should be of opinion that the memorandum or will of Thomas Crowther, of the 1st day of May, 1810, applied to the beneficial interest in his personal estate, which remained after such payment as aforesaid, and contained a valid disposition thereof; then, that it might be declared that the benefits by the will and codicils of the said testator, John Egremont, the father, and by the indentures of the 24th and 25th of May, 1811, given to Louisa Lee and her issue, and the said allowance of 300*l.* per annum, to her were a satisfaction of all the claims and rights of the said Louisa Lee, under the memorandum or will of Thomas Crowther, and that Louisa Lee could not, nor could any person or persons claiming from, through, or under her be allowed to avail herself, himself, or themselves, of any claims or rights, of the said Louisa Lee, under the said memorandum or will, without first giving credit for all the benefits by the indentures of the 24th and 25th of May, 1811, and the will and codicils of John Egremont, the father, given to or intended for Louisa Lee and her issue, and for the said allowance, and that it might be declared that by having accepted the said allowance and the benefits by the indentures of the 24th and 25th of May, 1811, and the said will and codicils, Louisa Lee had elected to take those benefits, and that she and all persons claiming from, through, or under her were bound to give effect to the said will and codicils; but if Louisa Lee had not made her election, then that she and all persons claiming from, through, or under her were bound to make an election, and that in case Louisa Lee was beneficially entitled to any moneys whatsoever from the estate of John Egremont, the father, in respect of any of the matters aforesaid, then that it might be declared that the money so as aforesaid due from Tottenham Lee, her husband, to the estate of John Egremont, the father, should be set off against the moneys to which Louisa Lee was entitled as aforesaid from that estate, or must be considered and taken as payment or part payment thereof, as the case might be; and that in case anything should, under the circumstances therein stated and appearing, and notwithstanding such circumstances be found due to the estate of the said Thos. Crowther from the estate of the said John Egremont, the father, then that all proper directions might be given for raising and paying the same, having regard to the suits of *Egremont* v. *Lee* and *Lee* v. *Egremont*. This was the suit of *Egremont* v. *Lee*.

Bacon, *Elmsley*, and *G. L. Russell* for E. Egremont.

Swanston and *Nalder* for some of the defendants.

Wigram, *Follett*, and *W. M. James* for Mrs. Lee.

J. Russell and *Goodeve* for the children of Mrs. Lee.

Bazalgette and *Thring* for other parties.

Bethell in reply.

The following cases were cited:—*Clark* v. *Cort*, Cr. & Ph. 154; *Clarke* v. *Guise*, 2 Ves. 617; *Cherry* v. *Boultbee*, 4 Myl. & Cr. 442; *Stackhouse* v. *Barnston*, 10 Ves. 453; *Chance's* case, 1 P. Wms. 408; *Richardson* v. *Greese*, 3 Atk. 61; *Rowe* v. *Rowe*, 2 De G. & Sma. 294; *Ex parte Blake*, 2 Rose, 249; and *M'Mahon* v. *Burchell*, 3 Hare, 97.

The Vice-Chancellor said that the case came on upon a bill of *Lee* v. *Egremont*, and a bill in the nature of a cross bill of *Egremont* v. *Lee*. The bill in *Lee* v. *Egremont* was a bill by the personal representative, who was the administrator with the will annexed, of Thomas Crowther against the representative of his deceased administrator, who had received, but had not duly accounted for and applied the assets of Thomas Crowther. Whatever Mrs. Lee, who sued in that character, might recover, there being no debts of Thomas Crowther, no legacies, and no purposes of administration to answer, was a clear and ascertained residue to be divided into thirds, one third of which belonged to Mrs. Lee, or to her husband in her right; and to claim that one-third of the personal estate of Thomas Crowther, as money in the hands of John Egremont, who was his administrator, was really the substance of the litigation in both of these suits. Mrs. Lee's right to that sum, supposing it not to be barred, accrued as an interest in possession upon the death of her mother in the year 1827, and therefore primâ facie, unless something could be found in the case to bar the claim, his Honour apprehended that a decree in the nature of a creditor's decree, in *Lee* v. *Egremont*, to the extent to which there might be a demand, was entitled as a matter of course. Now this claim was one that was brought forward after the lapse of upwards of thirty years after the death of both the parents, John Egremont and his wife, after settlements had been made, and after family arrangements had been completed and benefits bestowed, which the Court might have a conviction would not have been what they have been if the claim had been brought forward and known to exist at an earlier period. But, however, upon the principles of this Court, that furnished no equity for denying the claim if it were really found to exist; and therefore the claim must be examined upon legal principles with reference to the facts and circumstances of the case. In the first place, it was contended that the deed of 1811 raised a case of election precluding the children of Mrs. Egremont from claiming anything in respect of the personal estate of T. Crowther, if they took the benefits in the real estate conferred by that deed. Thos. Crowther had left an unattested paper, which had been now decided to apply legally to his personal estate, and which in terms also applied to his real estate; but which, of course, being unattested, was quite inoperative as to real estate. The deed of 1811 recited that Thos. Crowther being in his lifetime seised of or well entitled to certain real property described, departed this life wholly intestate, having some time previous to his decease annulled and cancelled a written document or instrument which purported to be his last will, but upon which he endorsed and wrote a few lines, requesting his only daughter and heiress-at-law, Hannah Egremont, to convey and settle his freehold and copyhold property according to the directions therein contained: it then, after reciting that Hannah Egremont was desirous of complying with and fulfilling the said request and intention, and it is witnessed that for effectuating as near as might be such intention and purpose as aforesaid, the settlement was made. This instrument obviously related exclusively to the real estate; it recited an intention appearing upon a certain document, which, though it was not legally operative, still, just as a request by word of mouth might be operative, was an intimation of Thos. Crowther's intention as to his real estate, and that intention this deed purported to effectuate. If it had contained a recital that Thos. Crowther had died intestate as to his personal estate, and that both Mr. and Mrs. Egremont being in possession of the real and personal estate, were therefore moved to make a voluntary settlement of the real estate, that might have given rise to a question whether parties claiming real estate under that will could dispute what the author of the settlement had asserted in the deed with respect to the personal estate; but it appeared that there was no such intention in that settlement. It recited that Thos. Crowther died wholly intestate, possessed of certain freehold property, which must mean intestacy as to real estate, and it was a settlement of real estate, and it would be mere speculation to consider what intentions, if any, John Egremont and his wife had in respect of the personal estate at the time they executed this instrument. It appeared, therefore, to his Honour that, notwithstanding the benefits of the real estate given to the children, this deed did not interfere with their right to the personal estate under T. Crowther's will, and that immediately after the execution of this instrument any of them might have made a claim to a share of the personal estate of Thos. Crowther. In 1827, Mrs. Egremont died, and Mrs. Lee married in 1829, and a settlement was then made; and if the deed of 1811 had raised a case of election, it was extremely likely that this settlement would have been an election by Mrs. Lee; but if the previous deed raised no case of election, this settlement made upon the marriage of course could be no election. The settlement referred to parts of the deed of 1811, and through the deed of 1811 to the memorandum signed by Thos. Crowther, which at that time was in the possession of Mrs. Lee. If either of the instruments had referred to that memorandum as an instrument affecting the personal estate, no doubt a question of importance would have arisen whether the parties were not bound to ascertain their interest in the personal estate by referring to that memorandum. And whether, on the ground of laches, they were not too late in bringing this claim; but as the deed of 1811 referred to the previous memorandum only, so far as real estate was concerned, and conveyed no intimation to any body reading it that the previous memorandum related to the personal estate, the case stood clear of any observation on the conduct of Mr. and Mrs. Lee in not having had the knowledge conveyed to them of that instrument, and in not having brought forward the present claim at an earlier period. The next part of the case was the question of election on the will of Mr. Egremont. Now the will of Mr. Egremont disposed of his real and personal estate in favour of his children and grandchildren, including Mrs. Lee and her children; and it recited that he had made considerable purchases of several estates, which lay contiguous to, and intermixed with, the estate comprised in the settlement, and being desirous of making his children and grandchildren thereinafter named interested in the whole of his real estates in Reedness and Swinefleet, and personal property as well the estates comprised in the settlement as those subsequently purchased by him in such manner as thereinafter mentioned, and to carry into execution and effect (as far as might be) the desires of Mr. Thos. Crowther, his late father-in-law, deceased; and then the testator, disposed of his real estate. The question was, what were the desires of Thos. Crowther, referred to in that recital? Beyond all doubt, if those desires were his wishes as to his personal estate contained in the instrument of 1810, the question of election would have arisen; but attending to it as closely as he could, his Honour saw nothing to lead him judicially to the conclusion that this will did refer to that instrument. He had already entirely executed the desires of Thos. Crowther as to his real estate. There was, therefore, nothing remaining to be done as to his real estate, and here he recited that, in order to carry into execution and effect the desires of Thomas Crowther, he devised real estate of his own. How could that refer to the desires of Thomas Crowther, expressed in respect of the personal estate of Thomas Crowther? The conclusion that his Honour came to upon the whole of the case was, that this testator, John Egremont, was entirely left unconscious up to the hour of his death that Thomas Crowther had ever expressed or entertained any wish or desire whatever with respect to the disposition of his personal estate. Therefore, it appeared to his Honour that it was quite impossible, without resorting to speculation, to find in this will an express intention to put the parties to their election. Then there was a proviso in the will which really only related to putting the parties who took interests under the marriage settlement upon the terms of confirming the will, as a condition for entitling themselves to the benefits which the will gave to them; and therefore, being under the conviction that, if at the time of the settlement of 1811, or the marriage settlement, or the will, John Egremont had known of this claim, he would have made a different disposition of his property from what he did. His Honour did not see how, with that conviction, he could put the parties claiming under the instrument to an election according to the understood principles of the Court. In this suit, therefore, of *Lee* v. *Egremont*, looked upon as a creditors'

suit, the plaintiff was entitled to establish against the estate of John Egremont a certain amount of demand, and the question was how much? It had been already stated that the substance of the claim was Mrs. Lee's one-third of the clear residue of that part of her deceased grandfather's estate which was remaining in the hands of John Egremont. It appeared that John Egremont allowed to her for a considerable portion of her life after the marriage 300*l.* a year, and after that time, he made an advance to Tottenham Lee upon his bond. That was reduced. But all the time the amount of the allowances made by John Egremont to Mrs. Lee, or her husband, exceeded the interest of her share of the money belonging to Crowther's estate, which was in his hands. Although, therefore, John Egremont made that allowance to her, not being aware that she and her husband had a demand against him in respect of the one third of the estate in his hands, his Honour considered himself bound to look upon that yearly allowance as a payment made to her in satisfaction of any claim she might have in respect of interest on that sum, and it appeared to his Honour, therefore, that any claim for interest must be a claim that only commenced with the death of John Egremont, and there must be a declaration to that effect in the decree. The next question was the question of set-off, and on that question he entertained no doubt. The case made by Mr. and Mrs. Lee was, that John Egremont, in his lifetime, and before his death, had in his hands a considerable sum of money, which belonged to Mr. Lee, in right of his wife, and which in that right he might at any time have called upon Mr. Egremont to have satisfied in his lifetime. The claim was not brought forward until after the death of Mr. Egremont, and Mr Lee's bankruptcy; but if he had sued before his bankruptcy, it appeared to his Honour that, upon every principle of this Court, whatever was coming to him in respect of that claim must have been set off against the debt due from him to John Egremont. It was, therefore, a right of set-off existing at the time of the bankruptcy, and the set off clearly existed to this extent, that it must be subject to all the claims, whether by way of survivorship or by way of settlement of Mrs. Lee and her children. [illegible] had been referred to upon that subject. *Cherry* v. *Boultbee* did not decide the case, because in *Cherry* v. *Boultbee* the bankruptcy had occurred in the lifetime of the testator. It was put on this, that the demand from the bankrupt's estate against the testator was a legacy, not arising [illegible] the death of the testator, and that before that [illegible] the demand of the testator against the bankrupt had become merely a right of proof against his estate in the hands of the assignees. Without saying whether that case was to be supported or not, it was a totally different case from the present, where the right to receive and the right to pay were both in existence at the time of the bankruptcy of Lee, because the circumstance that administration was not taken out until after was a mere matter of form. It did not create the debt, nor did it advance the debt; it was only a step necessary to enable the parties to recover that debt which had been so ascertained to be a debt due from John Egremont to the estate of Crowther from the first. The case that had been referred to, *Ex parte O'Ferrall, re Gordon*, 1 Gl. & Jam. 347, clearly established that there was a right of set-off, subject to the equity of the wife. There was a case of *Ranken* v. *Barnard*, 5 Madd. 32, where it appeared the husband had survived the wife, and he, or rather his assignees, were claiming a legacy through the husband as administrator of his wife, and it was held, that that must be set off against a debt due from the husband's estate to the testator; and Mr. Wigram, in his argument, referred to what fell from Sir James Wigram in *M'Mahon* v. *Burchell*, 3 Hare, 97, but in 5 Hare, 325, Sir James Wigram complained of the report in 3 Hare, and said that he was misrepresented, and begged that it might be corrected. He said, that in his opinion there was a set-off against the husband in right of the wife, and an amount due to the husband, subject only to the equity of the wife and children. His Honour therefore considered that upon the principles of this Court he was bound to make a declaration to the effect, that, subject to the rights of Mrs. Lee and her children, the amount coming to her and her husband in her right from this estate was to be set off pro tanto against the debt due from Tottenham Lee to the testator, John Egremont. Whatever would be raised in respect of Mrs. Lee's share, must be carried to her separate account. The general costs of the two suits must be paid out of T. Crowther's estate, except so far as the costs in *Lee* v. *Egremont* had been increased by the special relief prayed in respect of the annuity of 300*l.* which must be paid by Mrs. Lee, and, except in *Egremont* v. *Lee*, the costs occasioned by the claim for election and satisfaction, which must be paid by the plaintiff in that suit.

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. BENNET, Esq. of Lincoln's-inn, Barrister-at-Law.

Dec. 12 *and* 13, 1851, *and Feb.* 10, 1852.

PLOWDEN *v.* HYDE.

Mortgage—Equity of redemption—Effect of will on—After-purchased estates.

A testator, who had the equity of redemption in certain mortgaged hereditaments, made his will devising that estate, and any other which he had contracted to purchase, to trustees upon certain trusts for certain persons, one of whom was his heir-at-law. He subsequently took a reconveyance of the hereditaments in the usual form to exclude the dower of his wife, and with remainders over.

Held, that those hereditaments of which he had obtained the reconveyance did not pass by the devise in his will.

Held, that to put the heir to his election, the testator's intention to devise or dispose of such estate or interest must clearly appear by his will, and this will not disclosing such intention, the heir-at-law was not to be put to his election between the estates thus descended to him and a share of the produce of the estates directed to be sold, and to which he had become entitled.

This was a petition by C. H. C. Plowden, praying a declaration that an indenture of the 7th of December, 1813, did not, as to the hereditaments therein comprised, operate as a revocation of the will of a testator under the circumstances in the petition thereafter stated; and that it might be declared that the legal estate in the same hereditaments descended upon the death of the said testator to his heir-at-law as a trustee for the devisee then named, and that it might be declared that the hereditaments comprised in a deed of the 9th of November 1811, [illegible] vised by the will of the [illegible] testator [illegible] that if the Court should be of opinion that the devise of the last-mentioned hereditaments was revoked by the said conveyance of the 9th of November 1811, then that it might be declared that the heir was bound to elect between the said last-mentioned hereditaments and the moneys to which he would otherwise become entitled under the same will by virtue of the bequest to his father, J. C. Plowden; and that the heir might be ordered to join in certain conveyances to a Mr. G. M. W. Peacocke, a purchaser. The facts of the case as they appeared upon the petition, and which were not, in fact, disputed, appeared to be as follows. In the year 1809, Henry Chichely Plowden mortgaged in fee certain hereditaments in the parish of Boldre, forming the greater part of an estate called the Newton Park Estate. He afterwards paid off that mortgage. By indentures of the 22nd and 23rd April, 1811, these hereditaments were conveyed to uses to bar dower "to the use of such person or persons, and for such estate or estates, and in such parts, shares, or proportions, manner or form, and either with or without power of revocation and new appointment, as he the said Henry Chichely Plowden shall by deed or will direct, limit, or appoint; and in default of such direction, limitation, or appointment, or until any such shall be made and take effect, and as to such estate or interest as shall not be directed, limited, or appointed to the use of the said Henry Chichely Plowden and his assigns for and during the term of his natural life, without impeachment of waste; and after the determination of that estate by any means in his lifetime, to the use of John Dynley, his executors, administrators, and assigns, during the life of the said Henry Chichely Plowden upon trust, nevertheless, for the only benefit of the said Henry Chichely Plowden and his assigns, to the intent that any wife of the said Henry Chichely Plowden may be excluded from all dower or thirds, or right and title to dower or thirds of and in the said premises; and from and immediately after the determination of the said estate hereby limited to the said John Dynley, his executors, administrators, and assigns, to the use of the said Henry Chichely Plowden, his heirs and assigns for ever.' Henry Chichely Plowden shortly after this borrowed of Wm. Newton a sum of 3,000*l.* secured on mortgage of this estate, and thereupon by indentures of lease and release, dated the 30th April and 1st May, 1811, after reciting the indentures of lease and release of the 22nd and 23rd April, 1811, the said Henry Chichely Plowden, in consideration of the sum of 3,000*l.* so advanced by said Wm. Newton, appointed and conveyed the estate to Newton in fee, subject to a proviso for redemption, by which it was declared and agreed that if the said Henry Chichely Plowden, his heirs, *appointees*, administrators, or assigns should pay or cause to be paid unto the said Wm. Newton, his executors, administrators, and assigns, the sum of 3,000*l.* with interest at the rate of 5 per cent. per annum, on the 1st November then next ensuing, then the said Wm. Newton, his heirs and assigns, and all and every other person and persons claiming under him or them, should and would, upon the request, and at the proper costs and charges of the said Henry Chichely Plowden, his heirs, *appointees*, or assigns, reconvey and reassure the hereditaments and premises unto the said Henry Chichely Plowden, his heirs, appointees, or assigns, or to such person or persons as he or they should direct, free from incumbrances. In the year 1809, certain lands called Hornscroft, at South Baddeley, in the county of Southampton, were put to sale by auction, and H. Chichely Plowden became the purchaser of lot 1, for the sum of 1,800*l.* This lot comprised the freehold land and hereditaments after mentioned, and also certain leaseholds. *No written contract* for the purchase was produced on the hearing, nor was any evidence given of the exact time of the contract. On the 15th May, 1811, H. C. Plowden executed his will, whereby he devised to John Dynley, his heirs and assigns, "all and every my messuages, land, tenements, and hereditaments, and all other my real estate whatsoever, *or which I have contracted to purchase*, situate in or near the parishes of Boldre and South Baddeley, in the county of Southampton, or elsewhere in England, or to which I, or any person or persons in trust for me, am, is, or are seised or entitled for any estate of freehold and inheritance, or of freehold only, in possession, reversion, or expectancy, or which I have power to dispose of or appoint by this my will, with their rights, members, and appurtenances, to hold to the said John Dynley and his heirs, to the use of the testator's wife, during so long as she should continue his widow, and other the determination of that estate to certain trustees, upon trust to sell and divide the produce into fifteen parts, and pay the same to the parties therein named. By this will it was provided that *James* Chichely Plowden was to receive four fifteen parts of the produce.

By an indenture dated the 9th November, 1811 (with the usual indenture of lease), after reciting that the freeholds and leaseholds forming the estate of Hornscroft had been put up to sale, and that Henry Chichely Plowden had been declared the highest bidder for and purchaser thereof, at the price of 1,800*l.* and that it had been agreed that the hereditaments intended to be thereby conveyed, and forming the freehold part thereof, were of the value of 10 *l.* and that it had been agreed that the said sum of 100*l.* should be the apportioned part of the said sum of 1,800*l.* to be paid in respect of and as the purchase and consideration money for the pieces of land and hereditaments thereinafter mentioned and expressed to be thereby conveyed; it was witnessed that in pursuance of the said agreement, and in consideration of 100*l.* paid as therein mentioned, certain persons therein mentioned conveyed unto the said H. C. Plowden, his heirs and assigns, the said hereditaments called Hornscroft, to hold unto the said H. Chichely Plowden, his heirs and assigns, to such uses as the said H. Chichely Plowden should appoint, and in default of, and until and subject to any such appointment to the use of the said Henry Chichely Plowden and his assigns for his life, and after the determination of that estate by any means in his lifetime to the use of the said John Dynley, his executors, administrators, and assigns, during the life of the said H. C. Plowden, upon trust for the benefit of the said H. C. Plowden, and to the intent that any wife of the said H. C. Plowden might be excluded from dower, and other the determination of the estate so limited to the said John Dynley to the use of the said Henry Chichely Plowden, his heirs and assigns, with remainder to the use of the said John Dynley, his executors, administrators, and assigns, during the life of the said Henry Chichely Plowden and his assigns, in trust for the said H. Chichely Plowden, with remainder to the said H. C. Plowden, his heirs and assigns for ever." This mortgage of 3,000*l.* to Newton had been paid off, and by indentures of lease and release of the 6th and 7th of December, 1813, made between the said W. Newton, of the first part, said H. Chichely Plowden, of the second part, and said John Dynley, of the third part, after reciting the said indentures of the 30th of April and 1st of May, 1811, it was witnessed that in consideration of the sum of 3,000*l.* to the said W. Newton, paid by the said H. Chichely Plowden, in full for the said mortgage money and interest, he the said W. Newton did bargain, sell, and release unto the said H. Chichely Plowden, his heirs and assigns, all and every the hereditaments comprised in the said indenture of the 1st of May, 1811, to hold the same unto the said H. Chichely Plowden, his heirs and assigns, for ever, subject nevertheless to the use of such person or persons, and for such estate or estates, and in such parts, shares, or proportions, manner or form, and either with or without power of revocation and new appointment as the said H. C. Plowden shall, by deed or will, direct, limit, or appoint; and in default of such direction, limitation, or appointment, or until any such shall be made and take effect, and as to such estate or interest as shall not be directed, limited, or appointed to the use of the said H. C. Plowden and his assigns for and during the term of his natural life without impeachment of waste, &c." to the

ultimate use of the said H. C. Plowden, his heirs and assigns for ever. The testator died in the year 1821, leaving a wife and his brother *James* C. Plowden surviving him. After his death his widow entered into possession of the testator's real estates, including those comprised in the above-mentioned indentures as tenant for life under his will, and continued in possession up to the time of her own death in 1845. *James* Chichely Plowden was found a lunatic by inquisition in 1834, and that he had been so since the year 1813. He died in 1848 intestate so far as related to any interest he might have had as the heir-at-law of his father, the aforesaid Henry Chichely Plowden. He left James Chichely Plowden his heir-at-law. A suit was subsequently instituted for the purpose of having the trusts of the will of Henry Chichely Plowden carried into effect, and for the administration of his estate. It was in this suit that the petition had been presented by the present petitioner, one of the parties claiming an interest in the produce of the real estates, directed to be sold, and raising the question whether the devises contained in the will of the testator above set out were or were not valid. Under an order of the Court the estates had been ordered to be sold, and a Mr. G. M. W. Peacocke had been confirmed the purchaser of the greater part of them, particularly those comprised in the indentures hereinbefore mentioned and set forth. The petition had been rendered necessary by the heir-at-law, representing as such the original testator, Henry Chichely Plowden, having refused to join in the necessary conveyances to the purchaser.

Willcock and *Jessell*, in support of the petition, contended that the reconveyance did not operate as a revocation of the testator's will. That it was merely a modification of the testator's estate, which, in effect, remained in him as it was before the execution of the mortgage. What the testator had done was not a resettlement of the estate. They commented also upon there being no contract in writing by the testator as the purchaser of the estates bought by him at the auction, and urged that the recitals in the d[illegible] that effect were not of sufficient force to establ[illegible] contract. That by the reconveyance he only took [illegible] modification of the fee with a particular intenti[illegible] expressed by his will, which a Court of Equity [illegible] o effect. That although the testator took the [illegible]nveyance in the form he did, yet he [illegible] intention of attesting his interest in the estate. Th[illegible] equity of redemption would be to the old u[illegible]ated of the estate, and was an equity of redempt[illegible] n ated to uses to bar dower, and that the intent[illegible] t the reconveyance was to preserve those uses.

Malins and *F*[illegible] appeared for the parties in the same int[illegible]st, and supported the arguments in favour of the pr[illegible]er of the petition.

The following were some of the cases relied on in support of the petition:—*Harwood* v. *Oglander*, 6 Ves. 222; *Br*[illegible]*ges* v. *Chandos*, 2 Ves. 417; *Vaudr* v. *Jones*, 14 Sim. 163; 1 Jarm. on Wills, 135; *Thellusson* v. *Woodford*, 13 Ves. 209; *Wilby* v. *Wilby*, 2 Ves. & B. 187; *Ward* v. *Moore*, 4 Mad. 368; *Brain* v. *Brain*, 6 Mad. 221; *Bullin Fletcher*, 2 My. & Cr. 432; *Poole* v. *Cooles*, 2 Dru & War. 197, and other cases.

Jas. Russell and *Lewin*, for the heir-at-law, contended that there was a clear distinction between the legal intention of the testator and that which was now put forward in argument as being the conjectured one. The legal intention was alone that on which the Court would and ought to act. Here was clearly an alteration of the estate which the testator formerly had, and that the intention to revoke was manifest. *Rawlins* v. *Burgis*, 2 Ves. & B. 382, was a direct decision on the point. As to the after-purchased property, the testator had expressed no intention to put the heir-at-law to his election. It must be assumed that at the time of executing his will the testator was quite aware that he could only devise the interest which he had in the hereditaments at that time. In addition to the case above cited they relied on *Ward* v. *Moore*, 4 Mad. 368; *Locke* v. *Foote*, 5 Sim. 618; *Anson* v. *Lee*, 4 Sim. 364; *Back* v. *Lett*, Jac. Rep. 534; *Tennant* v. *Tennant*, Lloyd & G. 516; *Johnson* v. *Telford*, 1 Russ. & M. 244.

Wood, *Hetherington*, *Daniel*, and *Stevens*, for other parties.

Willcock replied.

JUDGMENT.

The VICE-CHANCELLOR said—Two questions are raised in this case; first, whether certain acts done by the testator after making his will, with respect to certain real estates of which he was the owner in equity at the date of his will, and which, but for those acts, would have passed by his will, have had the effect of revoking the devise of those estates; and, secondly, if such revoking has resulted from those acts, whether the testator's heir claiming those estates by descent ought to be put to his election. These questions arise with respect to two different portions of the real estates of the testator, under somewhat different circumstances. With respect to the first portion, which for convenience I will call the mortgaged property, the question as to this mortgaged property is, whether by reason of the conveyance of the 7th December, 1813, the will was revoked so far as it operated to devise that property? With respect to the second portion of the testator's real estates now in question, which for convenience I will call the purchased property; the question as to this purchased property is, whether by reason of the conveyance of the 9th of November, 1811, the will was revoked, so far as it operated to devise that property? With respect to this question of revocation, as applicable both to the mortgaged and the purchased property, several cases have been cited in the arguments, and many others are to be found in the books. In some of these cases the testator, at the date of his will, had the legal estate in the lands, and in others he had only an equitable estate or interest. In the case now before me, the estate or interest which, at the date of his will, the testator had in each of the two portions of the property in question, was an equitable estate or interest; and therefore it is to the cases comprised in the latter class, that more especial reference must be had in order to deduce the established doctrine on the subject as applicable to the case now under consideration. The general rule of law to be deduced from this class of cases may be thus stated—that if, after the date of the will, the land is so conveyed to the testator that the legal estate therein which becomes vested in him by the conveyance is the same in quality as the equitable estate which he had at the date of the will, the conveyance does not revoke the devise; and so, in the case where the testator's interest in the land, at the date of the will, consists of a contract which he had entered into for the purchase of the land, if the land is afterwards conveyed to him by the vendor, in accordance with the terms of the contract between them, the conveyance does not revoke the devise; but, on the other hand, if the legal estate which the testator acquires by the conveyance differs in quality from the equitable estate which he had at the date of the will, the conveyance revokes the devise; and so, in the case of the contract for the purchase, if the legal estate which the testator acquires by the conveyance differs from that which, by the terms of the contract, the vendor agreed to convey to him, the conveyance revokes the devise; and this revocation equally takes place, even though the testator, after the conveyance, has as absolute a power of disposing of the property as he had before; and the revocation takes place without regard to the testator's intention, and even in direct contravention of his intention. Eminent judges have heretofore expressed, in strong terms, their disapprobation of the principle of this rule of revocation, and their regret that it should have been established, or at least that it should have been carried so far; but they have felt themselves constrained to follow it. While I fully participate in that disapprobation and that regret, I am equally obliged to recognise it as the well-established rule of the Courts, and if the occasion requires, to act upon it. Now with respect to the mortgaged property, if we are to inquire what estate the testator had in the equity of redemption at the date of his will, I think it would be very difficult to say that he had any other than an estate in fee-simple; and if I were compelled to confine myself to this view of the matter, it would follow that a subsequent conveyance of the legal estate to the testator in any other form than in fee would be a revocation of the devise. But the devisee has a right to refer to the particular terms of the proviso for redemption in the mortgage deed, as shewing an agreement between the mortgagors and mortgagees, that upon repayment of the mortgage money the premises should be reconveyed not simply for the mortgagor in fee, but in some other special form and if the legal estate was, in fact, reconveyed in the form in which by the terms of that proviso it was agreed to be conveyed, the reconveyance does not operate as a revocation of the devise. What, then, are the terms of the proviso for redemption of premises on payment of the mortgage money. They are to be reconveyed "unto the said Henry Chichely Plowden, his heirs, appointees, or assigns, or to such person or persons, to such uses and in such manner as he or they shall direct." A question here arises, whether the words "unto the said Henry Chichely Plowden, his heirs, appointees, or assigns," are to be construed as designating the person or persons to whom the premises were to be reconveyed, or the form in which the reconveyance was to be made. The language of the proviso throughout seems to favour the former construction, for it imports that the appointees of Plowden (as well as Plowden himself or his heirs or assigns) may pay off the mortgage debt; that the reconveyance is to be made upon the request and at the cost and charges of Plowden or of his heirs, or of his appointees or assigns; and that not only Plowden himself, his heirs or assigns, but his appointees also, should have the right to direct to what persons and to what uses, and in what manner the estate should be reconveyeyed; the word "appointees," which is used several times in the proviso, seeming in every instance to be used to designate some person or persons to whom Plowden might appoint the estate previously to its being reconveyed. If this is the construction which ought to be put upon the words "unto the said Henry Chichely Plowden, his heirs, appointees, or assigns,"—that is, if the parties agreed by this proviso that the premises were to be reconveyed to Plowden or to his assigns, or to his appointees in the alternative, that could only mean to one or other of those persons in fee; and then it is clear upon the authorities, that the reconveyance which was made to Plowden, not in fee, but to the common uses to bar dower, would be a revocation of the devise; and the addition of the words, "or to such person or persons, &c. as he or they may direct," would not have any effect to prevent the revocation. But let us now take the other supposition, and assume that the words "unto the said Henry Chickley Plowden, his heirs, appointees, or assigns," are to be construed as designating the form in which the premises were to be reconveyed to Plowden, which is the view most favourable to the devisee. Upon that assumption, I think that the word "appointees" would be sufficient to justify the introduction into the reconveyance of a power of appointment, and that if the reconveyance had been made to the use of such persons and for such estates as Plowden should by deed or will appoint, and in default of appointment, to the use of Plowden his heirs and assigns, such reconveyance would have been in conformity with the proviso and would not have worked a revocation. If so, the question is reduced to this,—do the other words, "unto the said Henry Chichely Plowden, his heirs and assigns," justify the reconveyance to the use of Plowden for life, and after the determination of that estate, by any means in his lifetime to the use of a trustee during his life, with the remainder to the use of Plowden in fee; or (to put the question in another form), if by the proviso for redemption, it had merely been agreed that on repayment of the money, the estate should be reconveyed to Plowden, his heirs, or assigns, and the reconveyance had been made to the use of Plowden for his life, and then to the use of a trustee during his life, and then to Plowden, his heirs, and assigns, would this have been a reconveyance in conformity with the terms of the proviso, so that the devise would have remained unrevoked? It appears to me that if I were so to decide, I should be acting in direct opposition to the principle of all the decided cases. An estate to a man for his life, with an estate in fee simple by way of remainder, the union of the two estates being prevented by an intermediate limitation to a trustee during his life, is a very different estate from an estate in fee simple in possession. If the testator's estate, previously to the conveyance, had been an equitable estate in fee, his taking a conveyance of the legal estate for his life, with a legal fee, by way of remainder, the two estates being kept from uniting by the interposition of a limitation to a trustee, is not (in the language used in some of the cases) simply taking the estate home, but it is creating a new and different limitation of it. And, according to all the authorities, if the effect of the reconveyance is to create a new limitation of the estate different from the equitable estate which the testator had at the date of his will, or different from that which would be created by pursuing strictly the terms of the contract for the reconveyance, the effect is a revocation of the devise. It has indeed been argued before me, that the words "unto A. B. his heirs, appointees, or assigns," constitute an apt and appropriate formula for expressing briefly all the limitations ordinarily contained in a conveyance to the common uses to bar dower, including not only the general power of appointment, but also the limitation for life to the party in whose favour the conveyance is made, and the remainder to him in fee, with the intermediate limitation to the trustee to prevent the union of the life estate and the remainder in fee; and it was contended that the formula in question is often used for that purpose, as in the present case, because the indenture of mortgage to Newton recites the indenture of April 1811, by which the estate had been conveyed to the testator to the common uses of bar dower, and that, therefore, in effect the proviso for redemption ought to be road as if it had stipulated that, on payment of the mortgage-money, the premises should be reconveyed to the same uses to which they had been limited by the indenture of April 1811. I should have been well pleased if I could have acceded to this argument, but I look in vain to the language of the proviso for redemption to find any reference to the indenture of 1811; in fact, it does not contain the slightest trace of any such reference. If it had been intended that, upon the repayment of the mortgage-money the premises should be reconveyed to the same uses to which they had stood limited by the indenture of April 1811, it would have been easy to have worded the proviso for redemption so as to have expressed that intention. The recital of that indenture in the mortgage-deed cannot, in my opinion, be

considered as introduced for the purpose of shewing that the parties intended a reconveyance to be made to the same uses as were expressed in that indenture; in fact, such recital was introduced for another purpose, viz. that as the conveyance to the mortgagee must be by an exercise of the power of appointment as well as by lease or release, it was necessary to recite the indenture creating the power; and that recital would have been equally introduced whatever might have been the intention of the parties as to the form of the reconveyance by the mortgage when the mortgage-debt should be paid off. And with regard to the suggestion that the words "unto A. B. his heirs, appointees, or assigns," are often used as a formula for expressing all the limitations ordinarily contained in a conveyance to the common uses to bar dower, I answer, that they are so used only in loose parlance, and not in the formal and appropriate language of a deed, and that such use of them is inapt and inaccurate; for, granting that those words sufficiently indicate a power of appointment, and that they would constitute an apt and appropriate formula for expressing a limitation to the use of such persons and for such estates as A. shall appoint, and in default of appointment to the use of A. in fee, how do they indicate the dividing and parcelling out the fee into a life estate, and the remainder in fee, with an intermediate limitation to the use of a trustee during the life of the tenant for life? I cannot decide that a contract to convey to A. his heirs, appointees, or assigns, does ex vi terminorum import that the conveyance is to be made in the especial form of limitations, to the use of such persons and for such estates as A. shall appoint, and in default of appointment to the use of A. for life; and after the determination of that estate in his lifetime to the use of a trustee during his life, and after the determination of the estate so limited, to the trustee to the use of A. his heirs and assigns. I may refer to the judgment of Lord Langdale, Master of the Rolls, in *Bullin* v. *Fletcher*, 1 Keen, 369, as a clear and (as I think) unimpeachable authority on this part of the case. I am, therefore, constrained to conclude, with respect to the mortgaged property, that by the reconveyance from Newton to the testator of the 17th December, 1813, the devise of that property was revoked. With respect to the purchased property the case is even still more clear; indeed, the only argument that could be offered as a ground for holding that the conveyance from the vendors by the indenture of the 9th November, 1811, did not revoke the devise, was this, that as the indenture expressed that the conveyance was made in pursuance of the agreement for the purchase, it is to be inferred that there was a special contract between the testator and the vendors that the purchased lands should be conveyed to the testator, not in fee, but to the common uses to bar dower. Even if the fact were, as assumed by this argument, that conveyance was expressed to be made in pursuance of the agreement for the purchase, I could not have concurred in the conclusion. The purchaser of a fee-simple estate has a right to have the estate conveyed to any uses or in any manner he may please to direct, and to whatever uses or in whatever manner the estate may be conveyed by the purchaser's direction; the conveyance might, with equal propriety, be expressed to be made in pursuance of the agreement for the purchase, although there was no special provision in the contract as to the particular uses to which the estate was to be conveyed by the vendors. But further, the very foundation of the argument fails, for upon examination of the language of the indenture of the 9th November, 1811, it will be found that the conveyance is not expressed to be made in pursuance of the agreement for the purchase. It will be remembered that lot one, for which the testator had bid 1,800*l*. at the sale, comprised the freehold in question, and certain leaseholds. The indenture of the 9th November, 1811, which only conveys the freeholds, recites that Plowden was allowed and declared to be the highest bidder for and purchaser of the premises comprised in lot one at the price of 1,800*l*. and that it had been ascertained that the hereditaments intended to be thereby conveyed, which formed the freehold part of the said lot one, were of the value of 400*l*. and that it had been agreed that the said 400*l*. should be apportioned part of the said sum of 1,800*l*. to be paid in respect of and as the purchase and consideration money for the hereditaments thereinafter expressed, to be thereby conveyed; and the indenture witnesseth that in pursuance of the said agreement, and in consideration of 100*l*. paid to the vendors by Plowden, the vendors convey the freehold hereditaments in question to Plowden to uses to bar dower. So that the words, "in pursuance of the said agreement," refer not to an agreement for the purchase of the land, for no such agreement is specified, but to the agreement which is specially mentioned as to the 400*l*. being the apportioned part of the whole purchase-money which was to be paid in respect of the freeholds. With respect, then, to the purchased property, I am of opinion that by the conveyance of the 9th November, 1811, the devise of the property is revoked. The only question which remains for consideration is this, whether the testator's heir claiming these lands by descent, and claiming also certain benefits under the will, ought to be put to his election as regards either the mortgaged or the purchased property. It is to be observed, that the mortgaged property is not specially mentioned in the will, but the will does specially mention, amongst the real estates devised, the lands which the testator had contracted to purchase, situate in or near the parishes of Boldre and South Baddeley, in the county of Southampton. I will assume in favour of the devisee (although the fact is not clearly ascertained), that the purchased property now in controversy is part of the hereditaments thus specially mentioned and devised by the will; and in considering the proposition that the heir ought to be put to his election, I will have regard more particularly to the lands thus specially mentioned and devised, because, if the proposition cannot be maintained as to those lands (as in my opinion it cannot) à fortiori, it cannot be maintained as to those lands which are not specially mentioned and devised. The argument on behalf of the devisee is this: that the effect of the testator acquiring by the subsequent conveyance a different estate from that which he had at the date of his will, is not, properly, speaking, revocation, but ademption; and that the estate or interest which he had when he made his will, is indeed gone from him, and therefore the devise cannot operate upon it; but that the words of the devisee are not expunged from the will; they are still capable of expressing, and do express the testator's intention to devise the lands there specially mentioned. So that at the testator's death, when the will comes into operation, the devise of the particular lands still stands part of the will, and the testator died seised of those very lands; and although by the rule of law, the devise cannot actually pass the estate which the testator acquired by the subsequent conveyance, yet as the heir, by asserting his right to take the estate by descent, would defeat or disturb the express disposition of that estate by the will, he ought, according to the plain principle of election, to give up his right to take the estate by descent, or abandon the benefits intended for him by the will. Now, it may be admitted, that if the heir, by asserting his right to take the estate by descent would defeat or disturb an express disposition made by the will of that estate which he thus claims by descent, he ought to be put to his election, according to the decisions in *Thellusson* v. *Woodford*, 13 Ves. 209, and *Churchman* v. *Ireland*, 1 Russ. & M. 250. And therefore the only question is, whether the testator by his will, made an express disposition of that estate which the heir claims by descent. What is the estate the heir claims by descent? It is that estate in fee simple in remainder (expectant on the determination of the estate limited to the trustee during the testator's life) which became vested in the testator by the conveyance made to him after the date of his will. Has then the testator by his will made an express disposition of the estate which became vested in him by that subsequent conveyance? The devise of the will is of "all and every my messuages, lands, tenements, and hereditaments, and all other my real estate whatsoever, or which I have contracted to purchase, situate in or near the parishes of Boldre and South Baddeley, in the said county of Southampton, or elsewhere in England, of or to which I, or any person or persons in trust for me, am, is, or are seised or entitled, for any estate of freehold and inheritance, or of freehold only, in possession, reversion, remainder, or expectancy, or which I have power to dispose of or appoint by this my will." In this language there is nothing that points to any estate or interest which the testator might have at a future time; on the contrary, the terms of the devise refer exclusively to such estate and interest as he then had. At the time when he penned that devise he had an estate or interest to which the language was properly applicable, and which, but for the subsequent conveyance, would have passed by the devise. What is there which indicates the slightest intention to devise another estate and interest which was not then vested in him, but which he might thereafter acquire? It is a rule which ought to be strictly adhered to, that to put the heir to his election, the testator's intention to devise or dispose of such estate or interest as he might thereafter acquire, must be expressly and unequivocally manifested by the will; and in this will there not the slightest trace of any such intention. To shew that the language here used by the testator must be held to refer exclusively to the estate or interest which he had at the date of his will, I may refer to the cases of *Birdstone* v. *Anderson*, 2 Ves. sen. 419, and *Hone* v. *Medcroft*, 1 Bro. C.C. 263, and the judgment of Lord Eldon in *James* v. *Dean*, 11 Ves. 390. It is true that those were cases of leaseholds; but that is immaterial with respect to the question whether the words of the devise to be construed as pointing only to the testator's present estate or interest, or to such estate or interest as he might thereafter acquire. Being, then, of opinion that the testator has expressed his intention to devise only the estate or interest which he had in the lands at the date of his will, and not such other estate or interest as he might thereafter acquire, I am brought to the conclusion that the heir does not, by claiming these lands by descent, defeat or disturb any disposition made or intended to be made by the will, of that estate which has descended upon him, and that therefore he ought not to be put to his election. In truth, the disposition which the testator had made by his will with regard to these lands has been defeated in his lifetime by his own act, in taking such a conveyance as put an end to the estate or interest which he then had, and which was alone intended to be disposed of by his will, and vested in him a new and different estate, which the will does not manifest any intention to dispose of. Upon the whole of the case, I am of opinion that the devise in the testator's will, so far as relates to the lands comprised in the indentures of the 7th of December, 1813, and the 9th of November, 1811, respectively, was revoked by those respective conveyances, and that those lands did not pass by the will, but descended on the testator's heir-at-law, and that the heir ought not to be put to his election. I must therefore dismiss the petition.

Petition dismissed, but without costs.

Nisi Prius.

COURT OF QUEEN'S BENCH.

Reported by W. J. METCALFE, Esq. of the Inner Temple, Barrister-at-Law.

SECOND SITTINGS IN LONDON IN EASTER TERM.

Thursday, April 29.

(Before ERLE, J.)

COGGAN *v.* WARWICKER.

Use and occupation—Liability.

A. and B. agreed that A. should occupy B.'s warehouse for five years, at 75l. a-year, and as much more as half the profits made by A., and that an agreement in writing should be drawn up. A. was let into possession without any agreement, and with a view to the intended agreement, but when the written agreement was drawn up he refused to sign it:

Held, that A. was liable to B. in an action for use and occupation for the time during which he had been in possession.

The action was in debt for use and occupation of a warehouse, with the use of an hydraulic press and implements for packing, from November 10, 1851, to January 17, 1852.

The evidence of the plaintiff was as follows:—I am a packer; the defendant is a packer; I entered into a written agreement with the defendant; it was drawn by Mr. Potter, who had previously been his attorney; it was an agreement for service by him to me as a packer and clerk, and he was to receive one-fourth of the profits. He afterwards suggested that as he knew the merchants and shippers, which I did not, the business would be carried on better in his name; and he proposed to carry on the business in his own name in my warehouse in Huggin-lane, and he proposed to pay me half the profits, or be put upon a rent. He proposed to give 75*l*. a-year, and if that did not cover half the profits, he would give more, or I might receive a rent weekly. I told him I did not require it weekly; I told him he might go into possession, and we went together to Mr. Potter, and gave him instructions to draw a written agreement. The defendant took possession of the warehouse in Huggin-lane on the 10th of November, 1851; I afterwards applied to him to execute the agreement, and he said he would take time to consider. I gave him possession in consideration of his signing the agreement that Mr. Potter was to draw up. He complained that Mr. Potter had drawn up the agreement for a term of seven years, which, he said, was too long; I said it might be for five years, and he agreed to that, and we went to Mr. Potter to give him instructions so to draw it up. Afterwards the defendant said he would not sign it, and on the Wednesday or Thursday before the 17th of January, 1852, I told him he could no longer remain, as he would not complete his engagement. He said he would give up possession in a week or ten days. I said I would have possession either immediately, or on the following Saturday." The plaintiff further stated that he went to the warehouse at about noon on Saturday, the 17th of January, and found everything removed, and a boy left in possession, but that he did not turn the boy out, or tell him to go out of the warehouse.

Carrington, for the defendant, contended that the defendant was in possession as a tenant for a year at least, or as a partner with the plaintiff, and that if the defendant was a tenant, no rent was due till the end of a year, and that on the 17th of Janu-

ary, 1852, the plaintiff had disentitled himself to any rent by having evicted the defendant.

For the defendant, a boy named William Smith was called. He stated that he was left in possession of the warehouse on the 17th of January, 1852, and that the plaintiff came there, and having bolted the back door, and put up the shutters, he told the witness to go out, which he did, and went to the defendant's house, leaving the plaintiff in possession of the warehouse.

Erle, J.—It appears that there was a treaty going on between these parties, and an agreement in writing proposed, and that the defendant was let into possession with a view to his entering into the agreement. Until the agreement was entered into, and while he was in possession on the faith of the intended agreement, he was a tenant at will, and was liable to pay the plaintiff a fair compensation for the property for the time he occupied it.

Petersdorff, for the plaintiff, asked that it should be left to the jury to say whether the defendant was let into possession by the plaintiff in this way.

Erle, J. (to the jury).—Was the defendant let into possession without any agreement whatsoever, and was he let into possession provisionally and with a view to the proposed agreement?

The foreman of the jury.—We are of opinion that the defendant was let into possession without any agreement, and provisionally with a view to an intended agreement.

Erle, J.—Then you find for the plaintiff.

Verdict for the plaintiff.

Petersdorff for the plaintiff.

Carrington and *Hawkins* for the defendant.

COURT OF COMMON BENCH.

SECOND SITTINGS AT WESTMINSTER IN HILARY TERM.

(Before Talfourd, J.)

Thursday, January 22.

Wadsworth *v.* Collins.

Apothecary—License—London—Pleading—General issue.

Semble.—An extra-urban license to an apothecary, that he is qualified to practice except in the city of London and ten miles round it, is sufficient to support an action by such apothecary for services rendered within such ten miles.

The license is put in issue by a plea as to part payment into Court, and as to the residue non assumpsit.

Assumpsit for work and labour and for goods supplied as an apothecary.

Plea as to part money paid into Court; as to residue, non assumpsit.

At the close of the plaintiff's case,

Byles, Serjt. for the defendant, objected that there was no evidence of the plaintiff being a licentiate of the Apothecaries' Company pursuant to the Apothecaries' Act 6 Geo. 4, c. 133.

E. James, for the plaintiff, submitted that under the pleading such evidence was not necessary. The form of plea in this case was not tantamount to the general issue, which alone would put the fact of the license being given in issue.

Talfourd, J. held that proof of the plaintiff's license must be given. The license accordingly was put in and read. It was an extra-urban license, certifying that the plaintiff was qualified to practice everywhere except in the city of London, and ten miles around. It was in evidence that the plaintiff's services, from which the action arose, had been rendered in Westminster.

Byles, Serjt. hereupon submitted that the evidence was insufficient. The plaintiff had not produced such a license as the Act required as evidence of competency; at least not one which the Court would receive, when the cause of action arose within ten miles of the city of London.

E. James contrà.—All the Act requires was evidence of competent skill. Now if the plaintiff was competent out of London, he must be so likewise within it. The distinction between urban and extra-urban licenses was simply a financial one, a higher fee being paid to the Apothecary's Company for the one than the other, and was not in the least relevant to this case.

Talfourd, J. expressed a strong opinion that the objection was untenable, but ultimately reserved the point, and upon that understanding the case proceeded. *Verdict for the plaintiff.*

E. James and *Remmett* for the plaintiff.

Byles, Serjt. and *M. Lloyd* for the defendant.

BANKRUPTCY.

LEEDS DISTRICT COURT OF BANKRUPTCY.

August 24 *and* 27.

(Before Mr. Commissioner Ayrton.)

Re Roberts.

Petitioning creditor's debt—Solicitor—Time for disputing adjudication—Notice—Act of Bankruptcy.

A solicitor's bill is a good petitioning creditor's debt before taxation.

A bankrupt may dispute the adjudication within the fourteen days mentioned in s. 104, although he does not give notice within the seven days.

What is sufficient notice of his intention to dispute within rule 13.

A trader, being insolvent, goes from home to collect money to pay off a distress for rent, leaving instructions with his book-keeper to call a meeting of his creditors for a particular day, and promising to attend it, his non-attendance is an act of bankruptcy.

A petition for adjudication of bankruptcy was filed on the 14th of August, and opened on the same day. The adjudication was also renewed on the 14th. The bankrupt took no step until the 24th, and in the meantime the meeting had been fixed, and the advertisement sent to the *Gazette*.

Ferns, on his behalf, applied to the commissioner to fix a day for hearing him dispute the adjudication, on the grounds that there was no valid petitioning creditor's debt, and that he had not committed an act of bankruptcy. He cited *Ex parte Castelli*, 18 Law T. Rep. 202.

Bond, for the petitioning creditors.—The bankrupt is too late. The seven days given by s. 104 having expired cannot now be "extended." In *Ex parte Castelli* the notice was given within the seven days, and while the matter was in fieri. Here no notice has been given, and the advertisement is gone to the *Gazette*. He referred to *Ex parte Cantees*, 18 Law T. Rep. 162.

Mr. Commissioner Ayrton thought he might still hear the bankrupt, and fixed the 27th inst. for that purpose.

Saturday, August 27.—The case coming on this morning,

Bond objected that by rule 13, two days' notice ought to have been served on the petitioning creditors, and also on the registrar.

Ferns.—Verbal notice is sufficient. Both the petitioning creditor and the registrar were in court on the 24th, and had notice that the case was to come on to-day. Rule 13 is no longer in force.

Bond.—The words "secured on" must refer to a written notice. *Ex parte Delany*, 12 Law T. 26; and in *re Wood*, Mr. Commissioner West refused to hear a bankrupt who had given notice to the petitioning creditor, but had omitted to secure the registrar. These cases are in point. Rule 13 is revived by the rule of 12th of October, 1849.

Mr. Commissioner Ayrton.—"Secured upon" must apply to a notice in writing, and I think rule 13 is made to apply by the rule of 12th of October, 1849. But in this case the registrar and petitioning creditor had notice, because the petitioning creditor was in court. As he has had notice, though not in writing, I hold that rule 13 does not apply to this case.

The petitioning creditor was then examined. He proved that he had acted as the bankrupt's attorney, and that there was due to him a balance of 110*l.* but his bill had not been delivered a month. The bankrupt called a meeting of his creditors on the 4th of August, which he attended. A composition was proposed, but rejected by the creditors. They asked for an assignment, which the bankrupt refused to make. On the 11th of August the bankrupt's book-keeper gave notice of another meeting for the 13th. The bankrupt failed to attend that meeting, but the book-keeper attended. He resumed the proposal for a composition, but nothing was done. The bankrupt's book-keeper proved that he called the latter meeting by the instructions of the bankrupt. The bankrupt went to London on the 11th to get some money for the purpose of paying off a distress for rent, and promised to return in time to attend the meeting on the 13th, but he failed to do so.

Another witness was called who proved that he lent the bankrupt 8*l.* to pay his expenses to London. The bankrupt deposited with him a horse and cart as security for the 8*l.* and also for 12*l.* previously owing to him.

Ferns contended that, although the bankrupt's non-attendance at the meeting might, unexplained, be an act of bankruptcy, yet that he was detained in London by illness. He had gone there for a proper and legitimate purpose, and when he found he could not attend, he wrote to his wife to send the book keeper to represent him. The transaction with Smith was not a preference.

The bankrupt declared that when he went to London he intended returning in time to attend the meeting on the 13th, but he was taken ill in London, and that he sent a letter stating the reason of his non-attendance. The letter, however, bore the London post-mark of the 14th, and instead of explaining the cause of his absence, it simply requested his wife to join him in London; and he admitted, on cross-examination, that he was not taken ill until the 13th, and that he was able to ride about London and attend to business there. He stated, further, that he had received 47*l.* in London, of which he and his wife had expended 39*l.*

Mr. Commissioner Ayrton, without hearing *Bond* in reply, confirmed the adjudication, observing that the petitioning creditor's debt was ample, and that if ever there was an act of bankruptcy committed by absenting himself from a meeting, there was one proved in this case.

Ecclesiastical Courts.

PREROGATIVE COURT.

Reported by Dr. Waddilove, of Doctors' Commons.

Saturday, Feb. 28.

In the Goods of W. F. Stevenson.

Executor according to the tenor—Practice—Justifying sureties.

"I request J. M. L. to assist my daughter in the execution of my will:"

Held not to be an appointment of J. M. L. as executor according to the tenor. The daughter sole executrix and residuary legatee, being incapable of acting, administration decreed to J. M. L. for her use and benefit on consent of all persons interested. Justification of sureties not required.

W. F. Stephenson, by his will, appointed his daughter, H. Stevenson sole executrix and residuary legatee. Subsequently he made a codicil in the words following:—"I request J. M. L. to assist my daughter in the execution of my will, and I trust he will be able to effect an arrangement with the societies interested in the residue of my personal estate, and in which I am sure he will receive their aid, for the management of my property so as to prevent the necessity of a suit in Chancery, which I much deprecate, and as a compensation for his services I direct him to be paid the sum of one hundred and fifty guineas out of my personal estate. I hereby declare this to be a codicil to my will, as witness," &c.

The death of the testator was very sudden, and had such an effect upon the health of the daughter that she was unable to prove the will. The sons of the deceased, who were the sole next of kin of the daughter, and legatees to a considerable amount under the will, consented to the motion made by

Harding for probate of the will and codicils (there were two, but the second had no bearing on the motion) to J. M. L. as executor according to the tenor of the recited codicil, a power being received for making a grant to the daughter.

Sir J. Dodson.—I do not think the words of this codicil can be carried beyond a mere request that J. M. L. should assist the executrix as her adviser. I must reject the motion.

Tuesday, March 16.—Sir *J. D. Harding*, Q.A. moved the Court to decree administration with the will and codicils annexed to J. M. L. for the use and benefit of the daughter during her incapacity, on consent of all persons interested, and on an affidavit of the daughter's state of mind being brought in. The property of the deceased was about 70,000*l.* and according to the practice of the Court where a grant is made for the uses and benefit and during the incapacity of the person primarily entitled thereto, the sureties in the bond are required to justify in double the amount of the property, but looking at the confidence placed by the testator in J. M. L. and that seeing that the consent of all interested has been obtained, he asked the Court to dispense with the justification of the sureties.

Sir J. Dodson.—Looking to the special circumstances of this case and that you have obtained the consent of all interested parties, or can do so, I will grant the motion without requiring the sureties to justify.

Circuit Reports.

OXFORD CIRCUIT.

WORCESTER SUMMER ASSIZES.

Reported by J. E. Davis, Esq. Barrister-at-Law.

Monday, July 19.

(Before Williams, J.)

Nicholls and Wife *v.* Brookes.

Evidence—Admissibility of wife as a witness.

Semble.—In an action by husband and wife, where the wife is the meritorious cause of action, she is a competent witness.

This was an action on the case for negligent driving, whereby the plaintiff's wife was injured.

The plaintiff was returning with his wife in a gig from Kidderminster to Stourbridge, when they met a carriage drawn by the defendant's horses, and under the guidance of his postilion. The carriage came in collision with the plaintiff's gig, overturned it, throwing out the plaintiff and his wife, and breaking the arm of the latter. The husband was examined as a witness, and the wife was called into the witness-box, when

Keating, Q.C. (with whom was *Huddleston*) for

the defendant, objected to the admissibility of her evidence. There was undoubtedly a distinction between this and an ordinary action, but although the wife is the meritorious cause of action, he contended that she is not admissible, being still a witness on behalf of her husband.

WILLIAMS, J. without hearing *Allen*, Serjt. who (with *Phipson*) appeared for the plaintiff, said he should receive the evidence, but take a note of the objection.

The wife was then examined. After hearing evidence on both sides, the jury found a verdict for the plaintiff, damages 50*l*.

Tuesday, July 20.

CHRISTIE and ANOTHER *v.* WINNINGTON, Bankrupt.

Notice of act of bankruptcy—Statute 12 & 13 *Vict.* c. 106—*Bill of sale by the sheriff to the execution creditor when complete—Affidavit of execution of cognovit under* 3 *Geo.* 4, c. 39, *by whom to be made.*

1. *The question whether an execution creditor has received notice of an act of bankruptcy in sufficient time to render his execution ineffectual under the statute* 12 & 13 *Vict. c.* 106, *s.* 133, *is sometimes one of fact for the jury. Proof of the service of a written notice at the residence of the execution creditor, and also at the residence of his solicitor before sale, raises a question for the jury whether such notice was communicated to either of them before the sale.*
2. *Quære, whether a wilful abstaining from the receipt of such notice is equivalent to actual service, and renders evidence of the latter unnecessary.*
3. *Semble.—A bill of sale by the sheriff to the execution creditor in the ordinary form, and delivered to him, confers a complete title to the goods in the creditor, without execution of the bill of sale by him.*
4. *Quære, whether it is necessary that the affidavit of the time of execution of a cognovit, under the stat.* 3 *Geo.* 4, *c.* 39, *s.* 3, *be by the attesting witness, and if necessary, Quære, whether an execution founded on a judgment entered up on a cognovit duly filed, but the affidavit of the execution creditor not being by the attesting witness, is void as against the assignees of a bankrupt.*

This was an action of trover brought to try the right of the sheriff to sell certain goods and chattels claimed by the plaintiffs as assignees of Francis Tandy, a bankrupt, but sold by the sheriff of Worcestershire under an execution at the suit of Frederick Langman.

Alexander, Q.C. and *Gray*, for the plaintiffs.

Keating, Q.C. and *Whitmore*, for the defendant.

Alexander, Q.C. in stating the case, said the plaintiffs claimed, as assignees of Tandy, a bankrupt, to recover the value of the stock in trade and effects of the bankrupt, seized by the sheriff under an execution at the suit of a Mr. Langman. The plaintiffs alleged, that he had notice of an act of bankruptcy by Tandy before the sale, and, therefore, under the Bankrupt Act was not entitled to retain the goods as against the assignees. It was also contended by the plaintiffs that the bill of sale by the sheriff to Langman was not complete until executed by him, which was not done for two days after its execution and delivery by the sheriff.

On the part of the plaintiffs, Francis Tandy, the bankrupt, was examined. He stated that he was an ironmonger at Stourbridge, and on Friday, the 19th of December, 1851, his furniture and stock in trade were seized by an officer of the sheriff, under an execution at the suit of Frederick Langman, a wholesale druggist at Wolverhampton, and a creditor. On the following day, Saturday, the 20th, an inventory was made by an appraiser. About three o'clock on the afternoon of that day the witness executed a deed of assignment for the benefit of his creditors (this was the act of bankruptcy); and between five and six o'clock the same day, the witness went with John Mills, clerk to Mr. Corser, the solicitor for the assignees, to the residence of Mr. Langman, at Wolverhampton, and left a notice of the act of bankruptcy at his house. On Monday, the 22nd, Price, an appraiser, and Mantell, clerk to the defendant's attorney, came to the witness's house, Prosser, the sheriff's officer, was also ther . [The conversion by Prosser, as an officer of the sheriff, of the goods mentioned in the inventory and bill of sale, was admitted.] On cross-examination, the bankrupt stated that in August 1851 he was served by Langman with notice of bankruptcy, and that in consequence, and to avoid it, he agreed to pay Mr. Langman by instalments, and executed a cognovit. He paid two of those instalments, but they subsequently fell into arrear, and the execution in question issued. When the witness went with Mills, on the 20th, to serve the notice, Mr. Langman, he believed, was not at home, but in the town. Witness believed there was a party at his house.

On re-examination the witness said that he executed the cognovit in the office of Mr. Smith, the attorney for Langman.

John Mills, clerk to Mr. Corser, the attorney for the assignees, stated that he was the attesting witness to the deed of assignment of the 20th of December, and that it was executed by the bankrupt at three o'clock in the afternoon of that day. He served a written notice of that act of bankruptcy on Mrs. Langman, at Mr. Langman's residence, at forty minutes past five in the afternoon, and also at Mr. Smith's residence, the attorney for Mr. Langman, at five minutes before six the same evening.

Cross-examined.—Witness did not see Mr. Smith; he served the notice on his sister, and requested her to deliver it to her brother, who, she said, was out.

Mr. Gillam, the under-sheriff, deposed to having executed the bill of sale from the sheriff to Langman between eight and nine o'clock on Saturday evening, the 20th of December. It was the ordinary form of bill of sale, containing an indemnity to the sheriff by the execution creditor. It was not executed by Langman at that time.

On cross-examination, Mr. Gillam said, that when he executed the bill of sale, he delivered it as the deed of the sheriff, not conditionally, or as an escrow, but unconditionally. After the execution, he gave it to the sheriff's officer for the execution of Mr. Langman, and for the goods to be delivered to him under it. If Mr. Langman's solicitor or his clerk had been present, it would have been delivered to him as Langman's agent, he having given instructions for the deed; but the clerk who had given the instructions, was in haste to return, and directed the bill of sale to be sent after him. In case of any loss of the goods in the mean time, neither the sheriff, nor Prosser, the officer, but the witness would have sustained the loss.

Prosser, the sheriff's officer, stated that he saw Mr. Langman execute the bill of sale from the sheriff about three o'clock on the afternoon of Monday, the 22nd of December, and he delivered the goods to him immediately afterwards, by delivering the fire-irons in the name of the whole, according to the ventory.

A copy of the cognovit executed by the bankrupt to Mr. Langman, filed of record, and of the affidavit of its execution, and of the judgment entered up thereon, were put in, as part of the plaintiff's case, for the purpose of raising the point that the affidavit must be by the party attesting the cognovit, which was not the case here.

WILLIAMS, J. thereupon observed, that the point raised would go to upsetting the judgment, but not to affect the proceedings now in issue between the parties.

Gray.—The statute 3 Geo. 4, c. 39,(*a*) says that the proceedings shall be null and void if its provisions are not complied with. That statute requires an affidavit of the time of execution to be filed, and it is submitted that affidavit can only be made by the party attesting it, under the 1 & 2 Vict. c. 110.

WILLIAMS, J. said he would take a note of the objection.

The proceedings in the District Court of Bankruptcy having been admitted, the plaintiff's case closed.

Keating, Q.C. submitted that the plaintiffs had failed in making out any primâ facie case. By the 12 & 13 Vict. c. 106, s. 133, "all contracts, dealings, and transactions by and with any bankrupt, really and bonâ fide made and entered into before the date of the fiat or filing of such petition, and all executions and attachments against the lands and tenements of any bankrupt bonâ fide executed by seizure, and all executions and attachments against the goods and chattels of any bankrupt bonâ fide executed and levied by seizure and sale before the date of the fiat or the filing of such petition, shall be deemed to be valid, notwithstanding any prior act of bankruptcy by such bankrupt committed, provided the person so dealing with, or paying to, or being paid by such bankrupt, or at whose suit, or on whose account such execution or attachment shall have issued, had not at the time of such payment, &c. or at the time of so executing or levying such execution or attachment, or at the time of making any sale thereunder, notice of any prior act of bankruptcy by him com- [illegible] Unless, therefore, proof was given of notice of an act of bankruptcy, there is no case to invalidate the execution. All that is shewn is a delivery at the house of the execution creditor, and at his attorney's house, of a written notice left with a person at each house, and information given at the same time, that the execution creditor and the attorney were not at home. In the case of *Pike* v. *Stevens*, 12 Q.B. Rep. 465,(*a*) which was tried at Gloucester, and afterwards argued in the Q. B. it was held that a notice to the attorney's clerk not having the management of the cause was insufficient.

WILLIAMS, J.—There is evidence for the jury, I think. They may assume, in the absence of evidence to the contrary, that the notice reached Langman and his attorney.

Keating then addressed the jury, observing that the dates in this case were extremely close. Mr. Langman, the real defendant, having signed judgment, and issued execution on Tandy's cognovit, the goods were levied at Stourbridge on the 19th of December. On the 20th the sale by the sheriff to Langman was effected. It was contended for the plaintiffs that the bill of sale was not complete on the 20th. He, on the part of the defendant, contended that the deed was delivered, not as an escrow, but absolutely, and consequently that it was completed between eight and nine o'clock on Saturday evening, the 20th, when executed by the under-sheriff. The deed of assignment by Tandy, conveying all his property for the benefit of his creditors, which was an act of bankruptcy, was executed at three o'clock the same day. Langman, and Smith, his attorney, lived at Wolverhampton, Tandy at Stourbridge, and the under-sheriff at Worcester. The question was, whether Mr. Langman or his attorney had personal notice of the act of bankruptcy before eight or nine on Saturday, the 20th. A written notice, if delivered into Mr. Langman's hands, would be sufficient, but it would be proved that he was out at the time the notice was left, and did not reach home until eleven at night. On the other hand, Mr. Smith did not return home or receive notice until long after eight or nine o'clock that evening.

Frederick Langman, the execution-creditor and real defendant, was then called. He said he did not receive the notice until Sunday morning, the 21st of December. He was out all day on Saturday. He went in the morning to Stafford, as he generally did every Saturday. He returned from Stafford about five or six o'clock, and went into his office adjoining his house, and left the cash he had received during the day. He then went into the town of Wolverhampton, without going into his house, and met with a person named Griffiths, with whom he remained till after eleven o'clock. He returned home with him, and on the following morning his wife gave him the notice in question, which he had no expectation of receiving.

Mr. Griffiths and Mrs. Langman corroborated the evidence of Mr. Langman.

Mr. Smith, his solicitor, stated that he left his office between five and six o'clock on Saturday evening, the 20th of December, and did not reach his private residence until ten at night, and that the notice was handed to him the following morning by his sister, who was also called as a witness to confirm Mr. Smith's statement. He declared that he did not stay out to avoid notice of an act of bankruptcy by Tandy.

Alexander, Q.C. in reply, repeated the objection as to whether the bill of sale was perfected until the indemnity to the sheriff was completed by its execution by Langman. He also submitted to the jury, subject to the correction of the learned judge, that if Mr. Langman, or his attorney, remained out on purpose to avoid notice of the act of bankruptcy, the service at the house would be sufficient, and he believed that there was a case decided to that effect. (*b*) He proceeded to contend that the evidence justified the supposition that there was an attempt to avoid service.

WILLIAMS, J. to the jury, said the question between the parties turned on the validity of the sale by the sheriff to Langman. About three o'clock Tandy committed an act of bankruptcy by executing an assignment for the benefit of creditors. That had no effect on the subsequent sale at eight or nine o'clock, unless Mr. Langman, or his attorney, had notice of the act of bankruptcy previously to that time. The question, therefore, was whether notice to that effect had been received by either of them before that hour. It was a question of fact for the jury, but unless they were prepared to impute perjury to the witnesses for the defendants, not only had the plaintiff failed to prove notice, but the contrary was shewn. All the plaintiff proved was a notice left at the house of Langman forty minutes past five; and on the other hand it was proved that Langman was from home, and did not receive the notice until the next morning. It was said by the plaintiff's counsel, that if the jury were of opinion that Langman wilfully abstained from receiving

(*a*) [illegible] statute, after providing for the filing of warrants of attorney, enacts (sec. 3) "that every cognovit actionem given by any defendant in any personal action, in case the action in which such cognovit actionem shall be given shall be in the said Court of King's Bench, or a true copy of such cognovit actionem in case the action whereon the same is given shall be [illegible] any other court, shall, together with an affidavit of the time of the execution thereof, be filed with the said clerk, in like manner as such warrants of attorney, or copies thereof and affidavits, within the space of twenty one days after such cognovit actionem shall have been executed; otherwise [illegible] cognovit actionem, and any judgment entered up thereon, and any execution taken out on such judgment, shall be deemed fraudulent and void against the assignees of the person giving such cognovit actionem, under a commission of bankruptcy issued against him, after the expiration of the said space of twenty-one days, in like manner as warrants of attorney, and judgments and executions thereon are deemed and taken to be fraudulent and void by this Act." The 1 & 2 Vict. c. 110, s. 9, requires all cognovits to be attested by an attorney expressly named by, and attending at the request of the person giving it.

(*a*) Reported also 17 L.J. (N.S.) Q.B. 282.

(*b*) See *Bird* v. *Bass*, 6 M. & G. 193; 6 Scott, N.R. 928, S.C.

notice, it was effectual without absolute service. That might be so, but the question is, whether there is any evidence of such a wilful abstaining.

The jury returned a verdict for the defendant.

Alexander, Q.C. requested to have his lordship's opinion on the point relative to the non-execution by Langman of the bill of sale.

WILLIAMS, J.—My impression is, that there is nothing in the objection, but you shall have leave to move on it. With respect to the question raised by Mr. Gray as to the affidavit, I have a note of it, but I shall not give leave to move on that point.

STAFFORD SUMMER ASSIZES.

Reported by J. E. DAVIS, Esq. Barrister-at-Law.

Friday, July 23.

(Before CRESSWELL, J.)

ATTWOOD *v.* HILL and OTHERS.

Trespass—Right of a boat-building club to seize boat allotted to a defaulter—Pleading—Not possessed.

The rules of a society established for the purpose of providing the shareholders with canal-boats, provided that as soon as a certain sum was raised, a boat should be ordered by and for a particular number, selected by lot, to whom, on the dissolution of the society, the boat should belong, the holder in the meantime paying to the society for the use of it 5l. per cent. on the sum expended by the society in its completion, "as such boat shall not be the property of the member to whom the same shall be allotted, until the society shall be discontinued, but belong to the committee for the time being in trust for the society;" and further stipulated that, until the dissolution of the society, every boat should be kept in good repair "by the member to whom the same shall be allotted; and at such dissolution the boats shall become the absolute property of the respective persons to whom they shall have been allotted." The rules also provided that if any member, "after he shall have obtained a boat by allotment, shall make default in paying the remainder of his subscription money, forfeits, and interest, in respect of every share he may hold in this society, when due, it shall be lawful for the committee, without any notice whatever, to seize every such boat so allotted to such defaulter, and to let out the same for hire, for the benefit of all the members of the society, and the defaulter shall not be entitled to resume the possession of, or use such boat, until the expiration of three calendar months after he shall have fully paid all subscriptions, forfeits, and interest due from him."

W. a member of the society, became the allottee of a boat, and subsequently sold it to A. his landlord, for a certain sum credited to W. in his rent, A. at the time not having notice of the nature of the title of W. who subsequently became a defaulter to the society, who thereupon seized the boat:

Held, that the society was entitled to the boat as against W. and

Semble, that the special facts might be given in evidence under a plea of not possessed to a declaration in trespass by A.

Trespass, for taking a boat of the plaintiff.

Plea, not guilty, and that the plaintiff was not possessed of the boat as alleged.

Whateley, Q.C. and *Phipson*, for the plaintiff; *Keating*, Q.C. and *Whitmore*, for the defendants.

The case on the part of the plaintiff alleged that a person named Woodall being his tenant, and his rent in arrear, agreed with the plaintiff, that the latter should take a canal-boat of the value of 80*l.* in part payment of the rent. At the time of this sale the boat was in the possession of Lord Ward, having been let to him by Woodall, at a weekly rent of six shillings. Notice was given to Lord Ward's agent of the transfer, and Lord Ward continued to use the boat at the same rent, payable to the plaintiff, until it was seized by the defendants, who claimed it under the rules of a boat club, as subsequently mentioned.

Mr. George Attwood, the plaintiff, a banker, of Birmingham, and proprietor of Lodge Ford and other iron works in Staffordshire, stated that Benjamin Woodall, his tenant, being in arrear of his rent, to the amount of between 200*l.* and 300*l.* an agreement was effected in March 1851, by which the witness agreed to take the rent partly in goods and partly in a canal-boat. He did not see Woodall personally on the subject, the arrangement being effected through the witness's clerk, Eglington. He did not receive any notice before the arrangement, from any party, that the boat was not Woodall's own property.

James Eglington, the plaintiff's clerk, proved the verbal agreement between the plaintiff and Woodall. The boat was to be taken in part payment of the rent, and it was to be valued by a person named Turner, on the part of Woodall, and by Daukes, on Mr. Attwood's behalf. They valued it at 80*l.* The witness took a stamped receipt for the amount from Woodall, and credited him with the same amount of rent. Understanding that the boat was in Lord Ward's employment, a communication was made to Mr. Smith, Lord Ward's agent, that the boat was transferred, and the witness received the rent for it from Lord Ward's agent down to Michaelmas 1851. Witness subsequently gave directions to Dance to bring the boat to Mr. Attwood's collieries. It did not reach there, but in February 1852 Dance brought witness a paper he had received. On cross-examination, the witness said he never heard from Woodall, or any other person, previously to February, that the boat belonged to the Tipton Iron Boat Society, No. 2.

Daukes proved that he saw the boat on the canal, when he valued it at 80*l.* Early in the present year, in consequence of orders from Eglington, he ordered a man to bring the boat to witness's premises. While it was there he received the notice produced, dated January 7, 1852, and signed by John Hill and the other defendants, being an authority by them, severally and jointly, as partners of the Tipton Iron Boat Society, No. 2, directed to Mr. Thomas Woodall (not the plaintiff's tenant), authorising and empowering him to seize and have again the boat No. 11, of Benjamin Woodall, who had become a defaulter of the said society. Thomas Woodall, after delivering a copy of the authority to the witness, took the boat away with him.

Cross-examined.—When the witness went to value the boat, he did not see an iron plate on the boat with the letters "T. I. B. S. No. 2—No. 11;" he saw that plate on it when it was brought to his premises in consequence of Eglington's orders.

Isaac Mullet stated that he hired the boat from Benjamin Woodall, in 1850, for Lord Ward's use, and it was used by his lordship's men for two years.

This was the plaintiff's case.

Keating, Q.C. opened the following case for the defendants:—In 1846, a society was formed at Tipton, called the "Tipton Iron Boat Society, No. 2." It consisted of fifteen members, and its object was to supply canal-boats to the members who could not individually obtain them on account of the expense, each boat costing 125*l.* Each member subscribed until the sum of 60*l.* was accumulated; a boat was then ordered by the managers of the society and allotted to one of the members, but the boat remained the property of the society until all the instalments were paid by the allottee to make up the difference between 60*l.* and the cost of the boat; and the society were empowered, in case of default in payment of the instalments, to take possession of the boat. When fifteen boats were built (corresponding with the number of members), and the money paid, the society would be dissolved, having attained its ends. Benjamin Woodall, one of the members, had a boat allotted to him, and for some time paid the instalments, but, becoming involved in pecuniary difficulties, the instalments fell into arrear, and the defendants, who were the committee, were bound to interfere. They accordingly signed the authority which had been put in evidence, and the boat was seized. The defendants alleged that Benjamin Woodall gave the plaintiff notice of the circumstances under which he was in possession of the boat, but whether that was material would be a question for the learned judge. He apprehended that his lordship would tell the jury that Attwood could not become the owner of the boat with a better title than Woodall himself.

CRESSWELL, J.—There is a question whether you ought not to have specially pleaded the limited right of Woodall.

Keating.—That question was under the consideration of the pleader. The plaintiff complained of the seizure; the defendants say they had a right to the boat at that time, and that the plaintiff had no interest in it. A special plea was considered unnecessary. It should be stated that the society offered the boat to the plaintiff provided he would pay the arrears due.

The rules of the society were produced and admitted. They were headed—

Articles of agreement of the Tipton Iron Boat Society, No. 2. Held at Mr. J. Whitehouse's, Swan Inn, Tipton, in the county of Stafford. Dated the 22nd day of July, 1846."

The following are the material parts of the rules:—

"Articles of agreement made and concluded the 22nd day of July, 1846, between the several persons whose names and seals are hereunto subscribed and affixed as members of the society, hereinafter constituted, of the first part, and Thomas Woodall, of Netherton, in the parish of Dudley, boiler maker and iron-boat builder, of the second part.

"1. Whereas the several parties hereunto of the first part agreed to establish a society, with a view of raising by subscriptions a fund, in shares of 125*l.* each, for the purpose of obtaining as many wrought-iron canal-boats as shall be equivalent to the number of shares subscribed for, to the intent that such boats may be allotted and disposed of in the manner hereinafter provided."

"2. Now these presents witness, that the several parties hereto of the first part, in order to carry the said agreement into effect, and accomplish their object, mutually covenant, promise, and agree to and with each other, his executors and administrators, by these presents, that the said several persons will henceforth become a society, under the designation of 'The Tipton Iron Boat Society, No. 2,' for raising by subscription a fund, to be divided into shares of 125*l.* each, and to be applied in obtaining wrought-iron canal-boats of the value of 125*l.* each (subject as hereinafter mentioned), equivalent to the number of shares subscribed for, under the regulations, conditions, and agreements hereinafter contained for the governance of the undertaking; and each person on being admitted a member shall execute these presents, and set forth the number of shares he intends to hold."

3. Provides for the monthly meetings of the members, and states that each member shall, at every such monthly meeting, for every share he may hold, pay to the treasurer of the society for the time being, to be added to the amounts already subscribed, the sum of one pound in aid of the fund, and sixpence to be spent by the members present; and in addition to the above monthly payments, and in augmentation of the fund, pay at every third or quarterly meeting, a further sum of one pound per share; and if any member make default in paying the above contributions when due, or within four weeks afterwards, he shall forfeit one shilling per share; for eight weeks, 2s. 6d.; for twelve weeks, 5s.; for sixteen weeks, 10s.; and in case of default in payment, with such forfeit for four calendar months (seven days' notice in writing having been previously given to or left with the defaulter by the clerk of the society, demanding payment), the committee of the society for the time being shall have full power to sell the share of the defaulter by public auction, and out of the moneys arising therefrom defray the expenses of such sale, and pay to the treasurer all arrears and forfeits then due from such defaulter, his executors, administrators, or assigns; and the receipt of the auctioneer or of the treasurer shall be an absolute discharge for the purchase-money, and effectually vest the property of the share of the purchaser; and if the moneys so to arise shall be insufficient to pay the expenses of such sale, and the arrears due from the defaulter, the deficiency shall be paid and made good by such defaulter to the treasurer on demand.

The 6th article provides for the appointment of a committee of seven, of whom three are empowered to act.

"12. As soon as the sum of 60*l.* (or a sufficient sum, to be regulated by the price of iron as hereinafter mentioned) shall be in the hands of the treasurer, the members on some club-night shall cast lots in order to determine to whom the first boat shall (on the dissolution of the society) belong, by making out as many tickets as there are shares belonging to such of the members who shall then have fully paid up their subscription-money and forfeits; and each such member shall have his name on as many tickets as he shall have shares in the society, &c. and the member whose name shall be written on the ticket so drawn shall be the person to whom (on the dissolution of the society) the boat shall belong, and so from time to time as often as there shall be 60*l.* &c.; and as each boat shall be allotted, the member to whose lot the same falls, shall contract for building it with the said Thomas Woodall," &c.

"14. Every person obtaining a boat by allotment, as aforesaid, shall pay to the society for the use of it the sum of 5*l.* per cent. per annum on the sum to be expended by the society in its completion, as such boat shall not be the property of the member to whom the same shall be allotted, until the society shall be discontinued, but belong to the committee for the time being, in trust for the society, and the letters T. I. B. S. No. 2, made of cast iron, and a number corresponding with the number of each share, according to the order of allotment, shall be affixed thereon, and rivetted to the boat: until the dissolution of the society, every boat shall be kept in good repair by the member to whom the same shall be allotted, and at such dissolution the boats shall become the absolute property of the respective persons to whom they shall have been allotted."

"15. If any member, after he shall have obtained a boat by allotment, shall make default in paying the remainder of his subscription money, forfeits, and interest, in respect of every share he may hold in this society, when due, it shall be lawful for the committee, without any notice whatever, to seize every such boat so allotted to such defaulter, and to let out the same for hire, for the benefit of all the members of the society; and the defaulter shall not be entitled to resume the possession of or use such boat, until the expiration of three calendar months after he shall have fully paid all subscriptions, forfeits, and interest due from him."

The 16th article declares "that no member shall transfer his share in the society to any person."

Turner, who valued the boat with Daukes, stated that the society's mark, "T. I. B. S. No. 2," was

on the boat at that time, and that the witness pointed it out to Daukes.

Mr. Whitehead, the secretary of the society, proved that Benjamin Woodall was the allottee of the boat No. 11, and paid in the whole 97*l*. He became in arrear to the amount of 4*l*. or 5*l*. whereupon the boat was seized by the society. On cross-examination the witness said the society was aware that Woodall had let the boat out, and also, before the seizure, that it was sold to Mr. Attwood. The club met every twenty-eight days, and the seizure of the boat was ordered at the first meeting after the sale was known. Benjamin Woodall was not in arrear at the time of the sale to the plaintiff in March 1851. The arrears began in October 1851. The authority for the seizure was given in January, 1852, and acted on in February.

Thomas Woodall, boat-builder and a member of the club, stated that he paid the instalments on the boat, on Benjamin Woodall's behalf, for some time, in consideration of the latter supplying the witness with some iron. When that failed he left off paying the instalments. Witness knew the boat was let to Lord Ward; and the fact of the sale to the plaintiff was told him by Turner, the valuer, and witness's foreman, after Benjamin Woodall became a defaulter. A meeting of the society was called on purpose, and then witness said that the boat was turned over to the plaintiff.

CRESSWELL, J.—Even if the society had notice that the boat was turned over to Mr. Attwood, so long as the instalments were paid there would not be any interference. I think the boat was not the property of the plaintiff, and shall direct the jury accordingly.

Verdict for the defendants on the second issue, for the plaintiff on the first, with leave to move to enter a verdict for him on the second issue.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

(Before Lord TRURO, L.C.)

Feb. 21, 22, 26, 27, 1851; *Feb.* 26, 1852.

BLUNDELL *v.* GLADSTONE.

Devise to Roman Catholic priest—Latent ambiguity—Admission of evidence—Lapse.

A testator having two farms, A. and B. in C. both in the occupation of the same tenant, D. by his will made a general devise of all his real estates (except the hereditaments thereinafter particularly devised), including all estates vested in him upon trust, or by way of mortgage, to trustees, their heirs and assigns, nevertheless as to such trust and mortgage estates, subject to the subsisting trusts and equity, or right of redemption thereof. In a subsequent part of the will, the said testator devised his farm with the appurtenances in C. in the possession of D. unto the Rev. T. R. in fee. Evidence was admitted which shewed that both by the testator's ancestor and himself it was considered that B. one of the farms in C. was held upon trust for the Roman Catholic priest for the time being at L.

Held, reversing the decision of the Court below, that as the testator considered he held the estate B. upon the trusts before-mentioned, he must be taken to have intended to devise estate B. to the trustees as a trust estate, and that it was immaterial whether the trusts were valid or invalid, and that estate A. (as being excepted from the former devise) was intended to be devised to the Rev. T. R who, having died in the testator's lifetime, it lapsed for the benefit of the testator's heirs-at-law.

This was an appeal from a decree of the late Vice-Chancellor of England by Lord Camoys and Sir Charles Robert Tempest, bart. who, as co-heirs of the testator, Charles Robert Blundell, claimed to be entitled to a farm in Aughton, in the county of Lancaster, called Molyneux, as having been devised by the will of the testator to the Rev. Thomas Robinson, who died in the testator's lifetime. The question to be decided was whether it could be ascertained with sufficient legal certainty that that farm was intended to be devised, or another farm which the testator had in the same parish, and was let to the same tenant who occupied the farm called Molyneux.

The will of the testator, which was dated the 28th of November, 1834, contained the following residuary devise:—"And all and singular my real estate whatsoever and wheresoever (except the hereditaments hereinafter particularly devised), of or to which I or any person or persons in trust for me, am, is, or are seised or entitled for any estate of freehold or inheritance in possession, reversion, remainder, or expectancy, in or of which I have any power of disposition or appointment (including all estates vested in me upon trust or by way of mortgage), and their respective rights, members, and appurtenances, and including any copyhold estates, and all rents and franchise whatsoever relating to any of the said manors, lands, and hereditaments, to hold the same, &c. unto and to the use of my said trustees and executors, their heirs and assigns, for ever; nevertheless, as to such trust and mortgage estates, subject to the subsisting trusts, and equity or right of redemption thereof, and so that all moneys coming to me thereon may form part of my personal estate." In a subsequent part of the will, the testator made the devise to which the present appeal relates, and it is in these words:—"I give, devise, limit, and appoint my farm, with the appurtenances, in Aughton, in the possession of Thomas Haskeyne, and my farm, with the appurtenances, in Lydiate, called Shacklady's, in the possession of — Shacklady, or all my estate and interests therein respectively, unto the Rev. Thomas Robinson, to hold the same unto and to the use of him, his heirs, and assigns for ever."

The testator died on the 30th October, 1837; and a suit having been instituted in relation to the will, and certain proceedings having taken place therein, the cause came on for further directions before the late Vice-Chancellor of England in March, 1841, when his Honour directed a reference to the Master, to inquire what farms and lands the testator had in Aughton.

The Master found that the farms and lands which the testator had in Aughton consisted (amongst other things not in question) of a farm called Shepherd's, containing about thirteen acres of land, Cheshire measure, let to Thomas Haskayne, at the yearly rent of 50*l*. and a farm called Molyneux, containing about thirty acres, Cheshire measure, on lease to the said Thomas Haskeyne, at the yearly rent of 120*l*.; and the Master's report was confirmed by an order dated the 20th of January, 1844.

Lord Camoys and Elizabeth Tempest (under whom the appellant, Charles Robert Tempest, claimed) thereupon presented a petition praying to be let into possession of the farm called Molyneux. The late Vice-Chancellor of England, on the 30th of March, 1844, ordered that the petition should be dismissed, his Honour being of opinion that the facts relied on were inconclusive of the testator's intention; and that, as it had not been shewn with certainty which of the two farms the testator meant to except out of the general devise, his will, so far as those farms were concerned, must be considered as containing no exception at all, and consequently that they passed by the general devise to his trustees. (See 11 Sim. 83.)

A petition of appeal was thereupon presented by the heirs against that order to Lord Lyndhurst, who, by an order dated the 20th of December, 1845, directed that the said order of the 20th of January, 1844, confirming the Master's report, should be discharged, and that the order of the 30th of March, 1844, should be reversed, and that it should be referred back to the Master to inquire what farms and lands the testator had in Aughton, and whether such farms or lands, or any and which of them were or was held by him upon any and what trust.

In pursuance of this order the Master, by his report of the 21st of March, 1849, found to the effect that the farm called Shepherd's was purchased in 1705 by Dame Margaret Anderton of Thomas and Richard Molyneux, who conveyed and covenanted to levy a fine to the use and behoof of Nicholas Starkie and Henry Tyrer, as trustees for Dame Margaret Anderton. That lady, by her will in 1720, devised all her lands in Aughton and certain other places to the use of Nicholas Starkie, his heirs and assigns for ever. That at the time of making her will, and at her death, she was seised of the farms called Molyneux and Shepherds, and other farms and lands at Aughton. The Master then stated two marriage settlements, one dated the 20th of February, 1728, the other the 30th of March, 1761, whereby all the lands in Aughton and certain other places, which had belonged to Dame Margaret Anderton, were put in settlement, except Shepherd's farm, which was expressly excepted in each settlement.

The Master then made the following statement:—"It hath been alleged before me that the messuage or tenement, with its appurtenances, in Aughton, excepted as aforesaid by the two last-mentioned indentures, was by some instrument, or in some other manner, directed by the said Dame Margaret Anderton to be held in trust to or for the benefit of the priest of the Roman Catholic Church, who should for the time being officiate in Lydiate aforesaid, and that the rents and profits of the said messuage or tenement should from time to time be paid to him accordingly, and that a deed or instrument in writing was executed by the said Dame Margaret Anderton for that purpose, but which cannot be found; but such allegation hath not in any manner been proved before me, and hath not been admitted by the solicitor for the plaintiff, yet I conceive that from the terms of the recitals in and effect of the deed next hereinafter stated, that it may be presumed that such trust was created, and in some manner declared, although such declaration or any evidence that the same existed cannot now be found."

The Master then stated that Henry Blundell, who, according to the Master's report, was the son of Robert Blundell, the heir-at-law of Sir Francis Anderton, and was one of two parties in the last of the two settlements before mentioned, executed a declaration of trust, bearing date the 11th of May, 1793, and that in such indenture it was recited, among other things, that the said Henry Blundell was then in the occupation and in the receipt of the rents and profits of a certain estate, situate in Aughton, in the county of Lancaster, commonly called Shepherd's tenement, consisting of a messuage or dwelling-house, and out-buildings, and about seventeen acres of land, then in the occupation of Richard Molyneux, as farmer thereof; that he, the said Henry Blundell, had also the custody of all the deeds, evidences, and writings relating to the title of the said estates; that the said estate was purchased in the year 1705 by the Honourable Dame Margaret Anderton, then late of Loslock, in the said county of Lancaster, widow, deceased, and by her designed and ordered for the benefit and advantage of such priest of the Roman Catholic religion who should officiate in the township of Lydiate, in the said county of Lancaster; that the said Henry Blundell was desirous that the clear rents, issues, and produce of the said estate in Aughton, should from time to time be paid to and be received by the priest of the Roman Catholic religion officiating in Lydiate aforesaid, according to the intention of the said Dame Margaret Anderton; and it is then by the said deed witnessed, that in consideration of the premises, and with a view towards permanently securing the benefit of such priest as aforesaid, and in consideration of five shillings, the said Henry Blundell did thereby testify and declare that he had not any right, title, interest, property, claim, or demand of, into, or out of the said estate, or any part thereof, for his own private use, advantage, benefit, or behoof, but all and every the right, title, and interest therein, which in any manner was vested in him, he had and held the same in trust as to the said estate at Aughton, and the deeds and writings thereto belonging, for the benefit and advantage of the officiating Roman Catholic priest in Lydiate aforesaid for the time being, and to and for no other use, intent, or purpose whatsoever; and the said Henry Blundell thereby covenanted for himself, his heirs, executors, administrators, and assigns, with the said testator Charles Robert Blundell and Thomas Stanley Massey, their heirs and assigns, that he, his heirs, executors, administrators, and assigns, would from time to time, and at all times thereafter, for ever pay to the Roman Catholic priest for the time being officiating in Lydiate aforesaid, the yearly rents, issues, and profits of the said estate in Aughton aforesaid, as the same should arise and come to his or their hands after deducting the expenses of all needful and necessary repairs, taxes, assessments, and other outgoings for the use of such priest; and that he, his heirs, executors, and administrators, would, to the utmost of his and their power, promote and assist the said priest for the time being in the receipt of the said clear rents and issues and profits of the said premises, and not in any manner retard, hinder, or prevent their full enjoyment thereof.

And the Master found that Henry Blundell died in the year 1810, leaving one son only, Charles Robert Blundell, the testator. And the testator having suffered a recovery, became seised in fee of the hereditaments comprised in the last settlement.

And the Master further found that in the rent-books of the said Henry Blundell, subsequent to the year 1793, and also in the rent-books of the testator, the rent of Shepherd's farm for a long period had some special note or description attached to it, and amongst others such expressions as the following,—"The priest of Lydiate," "As trustee for Shepherd's," "As trustee for the priest's estate," "Shepherd's, the priest at Lydiate," "Shepherd's, in trust for the priest at Lydiate Hall," or similar words denoting the existence of some trust.

And the Master further stated, that from the year 1822 to the year 1832 inclusive, with the exception only of the year 1828, there were contained in the rent-books of the testator for that period entries for rents received in respect of waste land belonging to "Shepherd's Farm" or "the priest's estate," and sometimes in the words, "waste land in Cleeves Hill belonging to priest's estate." At other times, "Waste land belonging to the priest's estate;" at other times, "Waste land belonging to Shepherd's;" at other times, "Waste land in trust." And the Master found that it was also stated in the cash-book of James Fletcher, the steward or agent of the said Henry Blundell, containing the rent account as settled between and by the said James Fletcher and the said Henry Blundell, and signed, as allowed by them, the following items as payments out of the rents:—

Creditor—that is to say, "1808, June 29th, by cash paid the Rev. Mr. Johnson the sum due of Aughton Estate, after deducting his share of property tax, 3*l*. 18s.; 1809, February 9th, by ditto, the Rev. Mr. Johnson, for half a year's rent of Shepherd's, in Aughton, 25*l*.; July 4th, by ditto, the Rev. Mr. Johnson, half a year's rent, deducting property-tax, 22*l*. 8s. 10d." And that in the account of the said James Fletcher, subsequently to the death of the said Henry Blundell, as the steward and agent of the executors of the said Henry Blundell, and signed and allowed by two of them, there are contained the items:—"1810, February 13th, by cash paid the Rev. Mr. Johnson, Lydiate, half a year's rent of Shepherd's, deducting property tax, 2*l*. 12s. 2d., 22*l*. 11s. 10d.; June 10th, the Rev. Mr. Johnson, half a year's rent, 25*l*."

And the Master stated that a Mr. Tate, who was a Roman Catholic priest of Lydiate, from the year 1823 to the time of the death of the testator, delivered to the executors an account setting forth divers sums of money as rent received by the testator as trustee for the incumbent of Lydiate.(a)

And the Master further stated, that by the affidavit of Mary Fletcher, daughter of James Fletcher, it is stated that in the cash-book of James Fletcher there is an entry in the following words:—"By cash, paid the Rev. Mr. Johnson first half year's rent of Shepherd's, in Aughton." And each half year, from November, 1811, to the 6th of May, 1818, similar entries are made, and that such books of account were regularly examined and signed by the testator, Charles Robert Blundell, up to the month of March, 1834, when her father finally settled his accounts with Mr. Blundell.

The Master stated and found that the Rev. Robert Johnson, who is mentioned in that account, was the officiating minister of the Roman Catholic church of Lydiate for many years previous to the date when Mr. Tate became such minister, and continued to be up to a short time before his death, in 1823.

The Master also found that Ann Sephton, a person of the age of sixty-six years, well remembered the parish of Aughton for sixty years past, and that a farm at Aughton, which appeared to be Shepherd's Farm, was called, and was long known in the parish by the name of the priest's land, and that she had often heard her mother and others say that the farm was considered to belong to the Roman Catholic priest for the time being of Lydiate. The Master further found that the testator, up to the time of making his will had, in Aughton, a farm called Molyneux, containing about thirty acres of land, Cheshire measure, and that he was beneficially seised of or entitled thereto, and that he was in receipt of the rents and profits of Shepherd's tenement and seventeen acres of land, Cheshire measure, in Aughton, and certain waste land, and that the testator held the same in trust for the Roman Catholic priest for the time being of Lydiate, such trust having been created by Dame Margaret Anderton, and afterwards by Henry Blundell, the father of the testator, by the indenture of the 11th of May, 1793.

On the 25th of May, 1849, the appellants presented a petition praying that this report might be confirmed; and on the previous day the plaintiff, T. Weld Blundell, presented a petition praying that the report might not be confirmed, and that his petition might be considered as, or in the nature of, exceptions thereto, and that it might be declared that the farms and lands which the testator had in Aughton were not held by him on any trust or otherwise; that it might be referred back to the Master to review his report for the following reasons:—

1st. That there did not exist any evidence of any deed or instrument in writing ever having been made or signed by Dame Margaret Anderton, who mentioned the farm called Shepherd's, in the year 1705, and made her will in 1720, and died soon afterwards, whereby she declared any trust in the said farm called Shepherd's, or the rents and profits thereof to or for the benefit of the Roman Catholic priest for the time being officiating at Lydiate aforesaid; and that any declaration of trust by her must, according to the provision of the Statute of Frauds, be manifested, or proved by some writing, signed by her, or by her will, or else the same would be utterly void, or of no effect.

2ndly. That no such declaration of trust in writing could or ought to be presumed, inasmuch as there was no fact in evidence on which to ground such presumption, and inasmuch as having regard to the state of the law at that time touching Roman Catholic priests professing the Roman Catholic religion, such declaration would have been for a superstitious and unlawful use.

3rdly. That the indenture of the 11th of May, 1793, in the report mentioned to have been executed by the said Henry Blundell, the father of the testator, raised an inference against any declaration of trust in writing having been signed by the said Dame Margaret Anderton, inasmuch as if there had been any such declaration in writing by her, no further declaration in writing by the said Henry Blundell or any other party would have been necessary, or would have been of any avail.

4thly. That the indenture of the 11th of May, 1793, was not effectual for the purpose of declaring any trust of the said farm called Shepherd's, for the benefit of a Roman Catholic priest for the time being of Lydiate, inasmuch as such indenture was not enrolled in her Majesty's High Court of Chancery within six calendar months next after the execution thereof, according to the provision of the Act of the 9 Geo. 2, for restraining the disposition of land, whereby the same became inalienable, and was therefore null and void.

5thly. That such indenture did not state any declaration of trust in writing to have been made or signed by the said Dame Margaret Anderton, nor furnish any evidence or presumption in favour of any such declaration of trust in writing by her.

6thly. That such indenture could not operate to confirm any trust in favour of the Roman Catholic priest for the time being at Lydiate, created or supposed to have been created by the said Dame Margaret Anderton, inasmuch as any trust created or supposed to have been created by her would have been null and void.

These two petitions came on to be heard before the late Vice-Chancellor of England on the 29th of June, 1849; and by an order of that date, his Honour declared that the farm called Molyneux passed under the general devise contained in the will to the trustees and executors therein named, and that the petition of the 25th of May, presented by the appellants for the confirmation of the Master's report, should be dismissed.

From this decision of the Vice-Chancellor the heirs-at-law now appealed to the Lord Chancellor.

J. Parker, *Malins*, and *Fleming* for the appellants, contended that it must have been the intention of the testator to except Molyneux farm from the general devise to trustees, and to give it and not Shepherd's farm to the Rev. Mr. Robinson, for although an ambiguity was created by both farms being in Aughton and both in the occupation of the same tenant, yet as Shepherd's was subject to a trust for the benefit of a Roman Catholic priest, it clearly shewed that such last-mentioned farm was not intended to be devised to Mr. Robinson. That three objections had substance been raised to the appellant's claim. First, it was said that according to the Statutes of Frauds a trust of lands could not be declared by parol. That might as a general rule be so, but there was a well known exception in those cases where land was either devised or left to descend, upon the faith that the heir or devisee would do certain acts in favour of certain persons (*Strickland* v. *Aldridge*, 9 Ves 516; *Paine* v. *Hall*, 18 Ves. 175; *Podmore* v. *Gunning*, 5 Sim. 185.) The second objection was that in and before 1793, when the alleged trust for the Roman Catholic priest was enacted, it was illegal and void. That may have been so, but it was rendered good by 2 & 3 Wm. 4, c 115. (*Bradshaw* v. *Tasker*, 2 My. & K. 221; *West* v. *Shuttleworth*, 2 My. & K. 684.) The third objection was that the deed of gift from Lady Anderton was not properly rolled. In answer to this it must be observed that the Statute of Mortmain, 9 Geo. 2, c. 36, did not pass until after her death, and therefore the trust was not affected by it. The trust is admitted by the trustee, and under such circumstances as these the Court ought not to dispute it. (*Attorney-General* v. *Ward*, 6 Hare, 477.) The question is not whether there was a valid trust as to Shepherd's, but whether the testator considered such trust to be in existence. As to the admissibility of evidence. (Wig. on Extrinsic Evidence, prop. v. *Blundell* v. *Gladstone* 1 Phil. 279. They also cited *Broome* v. *Monk*, 10 V 97, 605; *Napier* v. *Napier*, 1 Sim. 28; *Denn* v. *Rooke*, 5 B. & C. 720.)

Bethell, *Bacon*, *Campbell*, and *Witham* in support of the decision of the Court below, contended that the parol trust was void by the Statute of Frauds, or even if it were not so it was void under the laws which formerly affected Roman Catholics; as to which subject they referred to the following statutes and cases: 23 Hen. 8, c. 10; 1 Eliz. c. 1; 5 Eliz. c. 1; 27 Eliz. c. 2, ss. 3 & 4; 11 & 12 Wm. 3, c. 4, s. 4; 18 Geo. 3, c. 60; 13 Geo. 3, c. 32; *The Attorney-General* v. *Gayner Jones*, 1 Cro. Eliz. 288; Journals of the House of Lords, vol. xiv. 560, 20th Nov. 1690; Printed Cases in House of Lords, Linc. Inn Library, vol. i. 175; *Martindale* v. *Martin*, 1 Rep, 16, a, b; *Porter's* case, Moore's Rep. 781; *Croft* v. *Evetts*, 1 Salk, 162; *The King* v. *Portington*, 3 Salk. 334; *Carey* v. *Abbot*, 7 Ves. 190; *Da Costa* v. *De Pas*, 1 Amb. 228; *Jenner* v. *Harper*, 1 P. Wms. 247; *Addlington* v. *Cann*, 3 Atk. 141; *The Attorney-General* v. *Ward*, 6 Hare, 477. That the enrolment necessary under 6 Geo. 2, c. 36, could not be preserved. As to presumption, they cited *Williams* v. *The East-India Company*, 3 East, 192; *Rex* v. *The Inhabitants of Twining*, 2 B. & Ald. 386.

J. Parker, in reply, said that *Rex* v. *Twining* was not to be any longer considered an authority, and cited *Lapsley* v. *Grierson*, 1 H. & Ca. 498. He also referred to *The Attorney-General* v. *Todd*, 1 Keen, 803.

The LORD CHANCELLOR, (a) after stating the facts before given, said, the onus or burthen of producing the evidence by which the farm intended to pass by the devise was to be ascertained rests upon the respondents, and I have examined the evidence produced on their behalf, by which they contend that it is established with sufficient legal certainty, that Molyneux's farm was the farm intended to pass by that devise. It appears that the ground on which the Vice-Chancellor, by the order of the 30th of March, 1844, dismissed the appeal of Lord Camoys and Elizabeth Tempest, praying that they might be let into possession of Molyneux Farm, was, that there was nothing in the will to shew that the trusts meant any thing else but the subsisting trusts,—that there was no evidence that there were any subsisting trusts, or that the testator meant to devise one farm rather than the other; that, therefore, there was nothing to shew with certainty what the exception was, and, consequently, as to the farms in Aughton there was no exception, and such being the case, they passed under the general devise to the trustees and executors in the same manner as if there had been no exception in words. It also appears that the Vice-Chancellor made the order which is the subject of appeal, on the same ground, and notwithstanding the Master's report, he still remained of opinion that there was no valid trust of either of the farms in Aughton. In the beginning of his judgment he says, "The mere question, as I understand it, is this, whether such farms and lands, or any or which of them were or was held by the testator on any and what trust,—that is the real question." And in another part, after reviewing the Master's report, he says, "I think the fact remains as it did before, namely, that Mr. Blundell, at the time of his death, was not bound by any subsisting trust,—any valid trust which could have been enforced as against him by the Roman Catholic priest." And this view of the question to be tried seems to me to be in accordance with the language which, from the same notes, appears to have been used by Lord Lyndhurst, and with the terms of the order of reference made by him, when he referred it back to the Master to inquire as to the existence of any trust, for his lordship is reported to have said in that judgment, "Upon the case as it stood, I think the Vice-Chancellor's decree was right: but if it should appear that Shepherd's was held by the testator on any valid trust, it seems that the will may be so construed as to include it in the general first devise, and if so, the subsequent devise of the farm in Aughton may perhaps be construed to refer to the farm in Aughton not before devised, and this was Moylyneux. The proper course will therefore be to refer it back to the Master to inquire whether the estate or interest of the testator in the farms in question, or either of them, was subject to any and what trust, with liberty to the Master to state special circumstances." The terms of the order made by Lord Lyndhurst were in accordance with this judgment. The question being which farm the testator intended to give to Mr. Robinson, and the devise importing a beneficial devise, it would seem that if Shepherd's farm was held by the testator on a valid trust, and Molyneux farm was not, Shepherd's may be regarded as included in the general devise to the trustees and executors, and Molyneux farm may be considered to be the farm meant to pass in the subsequent devise. But I do not think that in the absence of proof Shepherd's was held on a valid trust, that it would then be necessarily uncertain which of the two estates was meant to pass by the substituted devise, nor did Lord Lyndhurst appear, either directly or indirectly, to assert this. The expressions used by Lord Lynhurst are quite consistent with his having considered it, if not certain, yet highly probable, that the Master would find, as he did in fact find, that there was a valid trust, and that he (Lord Lyndhurst) should have been satisfied with the Master's conclusion upon that point. He may, therefore, not have thought it necessary to make the terms of the inquiry more extensive by directing the Master to inquire whether the farms, or any of them, were or was held by the testator, or treated by him as if held, on any and what trusts, therefore I do not conceive the observations I am about to make are necessarily at variance with Lord Lyndhurst's view of the question. But even supposing this to be otherwise, I must, although with the greatest deference, express my opinion, that the only question which is absolutely necessary to be decided is this, not whether the testator really held these estates, or one of them, on any valid trusts, but rather what he considered and understood to be the trust. Whether he supposed he held them, or one of them, on any and what trust, or intended to treat them and have them treated, either them or one of them, as if held on trust. If he supposed that he held one

(a) The Lord Chancellor said, although this statement was made by the Master, it was not evidence, and he did not, therefore, rely upon it in the opinion he had formed.

(a) Lord Truro.

on trust, or treated one of them as if held on trust. and intended it should be continued as if held on trust, and if it does not appear that he held or supposed that he held the other on any trust, I repeat that it seems to me that the one which he supposed he held in trust, and treated as if he held it in trust, and intended to be treated as held on trust, cannot be regarded as having been intended by him to be the subject of devise to Mr Robinson, and consequently, that the other estate may be deemed to be the one referred to in the devise. The point to be determined is, whether the case furnishes the means of ascertaining, with sufficient legal certainty, which of the two farms in Aughton the testator intended to give by the devise. The devise is expressed in general terms, unaccompanied by any words restrictive of their effect, and he must, therefore, be taken to be giving the subject-matter of devise beneficially to the devisee. The estate is not described as trust estate, neither is it given with a view that any trust shall be admitted respecting it. The inference from the terms of the devise that the subject-matter of it was not given upon trust, nor intended to be treated as subject to any trust, strengthened by the difference in the structure and language of the two devises to which I have referred. And if it can be proved, or may be assumed, that the devise is to be construed to be beneficial, or in other words, if the subject of it was given for the personal advantage of the devisee, it will, as I before stated, as it seems to me, follow that, if it can also be ascertained that one of the farms at Aughton was subject to a trust, or that the testator desired or intended that it should be applied to purposes other than those which would be beneficial to the devisee, it ought to be inferred that the farm could not be intended to pass under a devise the terms of which indicate it was to be beneficially enjoyed by the devisee. I will state the facts, which I think are sufficient in themselves. The two houses were purchased by Lady Anderton, that the property devised from Lady Anderton became the subject of two settlements, and that Shepherd's farm was expressly excepted out of those two settlements, but for what reason does not distinctly appear. However, from the statement in the declaration of trust, and the deed of covenant executed by Henry Blundell, from whom the testator devised his estate, and that deed in 1793, it is certainly highly probable, though it may not be established with legal certainty, that it was in fact subject to a trust, or at all events esteemed to be so, which precluded it from being at the disposal of those who could beneficially dispose of the remainder of *Lady Anderton's property*. The testator, as I have stated, devised the property in Aughton from Henry Blundell, and is therefore affected by Henry Blundell's acts and declaration while in possession of those estates, regarding the nature of his interest in them. Henry Blundell, as before stated, in 1793, executed a formal declaration of trust under his hand and seal, by which he declared that Shepherd's farm had been ordered and directed by Lady Anderton, the former owner, to be held in trust for the Roman Catholic priest officiating in Lydiate, and that he, Henry Blundell, held it upon trust also for the same purpose, and covenanted to apply the proceeds accordingly. It is further proved that, in the rent-books of Henry Blundell, Shepherd's farm was always inserted, accompanied with words importing that it was trust property. The expressions are various, as appears by the Master's report, but all to the same substantial end. Further, the steward's account, in which the steward is charged with the receipt of the rent of Shepherd's farm, contains as a credit a charge as having paid the amount of the rent credited to the Roman Catholic priest officiating in Lydiate. The same course was also pursued in the testator's time, that is, treating Shepherd's farm as held, or at all events as applied as a trust to the Roman Catholic priest officiating in Lydiate. I consider the evidence which I have detailed, therefore, to establish that throughout the lives of the testator's father, from whom he derived the estate, and of himself, that the proceeds of Shepherd's farm were always paid and applied to the use and benefit of the Roman Catholic priest officiating in Lydiate. The evidence does not apply to each year during their lives, but to a sufficient number of years to furnish satisfactory evidence, notwithstanding occasional omissions, that the same course was pursued throughout their lives. It is not altogether immaterial that Shepherd's farm had acquired by reputation the name of the priest's land. I am of opinion that the evidence I have stated established with sufficient legal certainty that Shepherd's farm came to the testator's, at all events, as property subject to a trust that he accepted, voluntarily or otherwise, and adopted such trust, and applied the proceeds in conformity with the real or supposed trust, and that he understood and intended to comprise it in the general devise of his trust estates, and that he did not intend the devise to John Robinson, of "his farm in Aughton" to comprise or include Shepherd's Farm, and that as he had no other farm in Aughton than Shepherd's Farm or Molyneux's Farm, it follows that Molyneux's farm was intended to pass by that devise. The decision of the Vice-Chancellor must be reversed, with a declaration that Molyneux's farm was intended to be devised to the said Rev. Thomas Robinson, and that the estate lapsed in favour of the coheirs of the testator. Costs to be paid out of the estate of the testator.

Reported by C. H. KEENE, Esq. of Lincoln's-inn, Barrister-at-Law.

(Before Lord ST. LEONARDS, L.C.)

IN LUNACY.

LEAF *v.* COLES, *re* COLES.

March 13 *and May* 5.

Lunacy—Recovery of a lunatic—Mode of proceeding in such cases—Re-transfer of his estate from his committee—8 & 9 Vict. c. 100, considered.

In a case where the dissolution of a partnership had been decreed in consequence of the lunacy of one of the partners, and large sums had been paid into court to the separate account of the lunatic in respect of his share of the capital and profits of the business: the Lord Chancellor, on being subsequently satisfied of the complete recovery of the lunatic, ordered the fund to be paid out to him.

On the 10th December, 1851, a decree was made in this cause and matter by Lord Truro, L. C. (1 De Gex, M. & G. 171) for the dissolution from that date of the partnership which then existed between the plaintiffs and the defendant, James Coles, on the ground of the insanity of the defendant, upon the terms of the plaintiff paying into court, to the credit of the cause and matter, to an account to be entitled "The separate account of James Coles, a person of unsound mind;—capital account," the sum of 66,474*l.* 5s. 1d. as the amount of the capital of the defendant in the business on the 31st December, 1850, including his share of the profits therein up to the same day; and also of paying into court, to an account to be entitled "The separate account of James Coles, a person of unsound mind—income account," the sum of 6,726*l.* 8s. 5d. in respect of his share of the profits of the business from the 31st December, 1850, to the dissolution, and interest on the said sum of 66,474*l.* 5s. 1d. at 5 per cent. from the 31st December, 1850, to the 12th January, 1852, after deducting the amount of certain sums drawn out on account of the defendant, and interest thereon. The payments were accordingly made by the plaintiffs. Shortly afterwards the defendant, James Coles, became restored to health and soundness of mind; and on the 10th February, 1852, was, under the 72nd section of the Act 8 & 9 Vict. c. 100, discharged from the care of Dr. Stilwell, with whom he had been placed.

The defendant then presented a petition to the Lord Chancellor, which, after stating the proceedings in the suit and above facts, and that he had gradually completely recovered his health, and was then of sound mind, and sufficient for the government of himself and of his estate, and was willing to submit himself to the examination of such medical men as his lordship should direct, and that he entirely approved of the arrangement made with respect to the co-partnership and his interests therein, prayed that the before-mentioned two several sums might be respectively paid to him, and that George Coles, the brother of the petitioner, and who had be appointed the guardian of his person, and the receiver of his estate, might be discharged from those offices.

The petition was supported by the affidavits of Doctors Conolly and Stilwell.

Bethell and *Chapman Barber* appeared for the petitioner.

Bacon and *Stevens* for the guardian and receiver, the heir-at-law, and all the next of kin who consented.

The LORD CHANCELLOR.—I should be sorry, by any delay in making the order which is asked, to throw the slightest imputation of a doubt on my belief of Mr. Coles's recovery; but his recovery is very recent, and the Act of Parliament has manifestly pointed out that there shall, in these cases, be a discretion in the holder of the Great Seal during a particular portion of time. What I propose to do, having some experience in matters of this kind, is, to make an order for the payment to the petitioner of such a sum of money as he may have immediate occasion for; if for instance, he requires the 6,726*l.* 8s. 5d. he may, on these affidavits, receive it. If this was a case of real estate I feel that I could have no hesitation in making the order at once; but the sum in court is a very large one to be put into the possession of any man, and looking, therefore, to the safety and comfort of Mr. Coles, looking also at the Providence which is over us all, and which has so visited him, I think it will be more prudent to delay the order for the payment of the whole of the fund. I repeat that in prudence I think it better to make now an order for the payment only of such sum as he may require for his immediate wants, and I propose on this day month to request one of the Masters to see Mr. Coles, and after that, when I have had the pleasure of conversing with Mr. Coles for a quarter of an hour in my private room, I will make the order for the payment of the whole of the funds in court.

Bethell, on being asked by his lordship what sum would be now required, stated that nothing would be wanted at present; the main object of the petition being to obtain the investment of the 66,474*l.* 5s. 1d. which was in court and unproductive.

The LORD CHANCELLOR, stating that he wished it to be understood that he did not entertain the least doubt of Mr. Coles's recovery, then made an order that the sum of 66,474*l.* 5s. 1d. should be invested in Consols, and that Mr. Coles should attend one of the Masters in Lunacy on the 13th of April next, in order that the Master might personally examine him as to his state of mind.

On that day, Mr. Coles attended the Master, in pursuance of the foregoing order, and the Master having made his report, dated the 16th of April, 1852, the petition was again put in the paper of the Lord Chancellor.

The LORD CHANCELLOR, on coming into court, said that he had just had an interview with Mr. Coles in his private room, and that the result was that he had much pleasure in making the order asked by the petition.

The order stated that upon hearing the petition and report of the Master, and Mr. Coles having attended and been personally examined by the Lord Chancellor, and appearing to be in a sound state of mind, his lordship ordered that the proceedings in the matter should be superseded and determined, and that George Coles should be discharged from the several offices of guardian and receiver, and from the care of the person and receipt of the estate of James Coles, and that James Coles should be restored to the government of himself and his estate; and his lordship further ordered that the stock purchased with the said sum of 66,474*l.* 5s. 1d. in pursuance of the order of the 13th March, 1852, should be transferred into the name of James Coles, and that the said sum of 6,726*l.* 8s. 5d. cash, should be paid to James Coles.

Saturday, June 12.

ATTORNEY-GENERAL *v.* MAYOR OF EXETER, *re* THE HOSPITAL OF ST. JOHN.

Municipal Corporation Act—Construction of the 71st section—Charitable trustees.

The corporation of the city of Exeter, with their recorder, were, before the passing of the Municipal Corporation Act, trustees of the hospital of St. John, the recorder, though not a member of the corporation of the city, was elected by that body:

Held, that this was a corporation, as charitable trustees, within the meaning of the 71st section of the Act 5 & 6 Wm. 4, c. 76.

The mayor, bailiffs, and commonalty of the city of Exeter were, together with their recorder, who was not a member of the corporation, before the passing of the Municipal Corporation Reform Act, trustees of the charity of St. John's Hospital.

Lord Cottenham, by an order made in 1851, on a petition presented to his lordship for the purpose of obtaining the opinion of the Court as to whether the corporation were charitable trustees of the hospital under the 71st section of the Municipal Corporations Act or not, decided that the purposes for which the hospital was designed were charitable, and that as such it could not be vested in them otherwise than as contemplated by 5 & 6 Wm. 4, c. 76; and that such properties were by that Act withdrawn from corporations and transferred to other trustees. (3 Mac. & Gor. 235.)

An appointment of a schoolmaster having become vacant, and the corporation considering the above order erroneous, again desired the opinion of the Court on the construction of the Act. The question turned on the 71st section, which, as far as it was material, was as follows:—"Whereas divers bodies corporate now stand seised or possessed of sundry hereditaments and estates in trust, in whole or in part, for certain charitable trusts, and it is expedient that the administration thereof be kept distinct from that of the public stock and borough fund; be it enacted, that in every borough in which the body corporate, or any one or more of the members of such body corporate, in his or their corporate capacity, now stands or stand solely or together with any person or persons elected solely by such body corporate, or solely by any particular number, class, or description of members of such body corporate, seised or possessed for any estate or interest whatsoever, of any hereditaments, or any sums of money, chattels, securities for money, or any other personal estate whatsoever, in whole or in part, in trust or for the benefit of any charitable uses or trusts whatsoever, all the estate, right, interest, and title, and all the powers of such body corporate, or of such member or members of such body cor-

porate, in respect of the said uses and trusts, shall continue in the persons who, at the time of the passing of this Act, are such trustees as aforesaid, notwithstanding that they may have ceased to hold any office by virtue of which, before the passing of this Act, they were such trustees until the 1st day of August, 1836, or until Parliament shall otherwise order, and shall immediately thereupon utterly cease and determine."

Fooks, in the absence of *Rolt*, opened the case, and contended that the Hospital of St. John was not a charitable trust within the meaning of the Act, it was a corporation distinct from that of the city; the duties of the one corporation were inconsistent with those of the other, and its offices could not be satisfactorily and disinterestedly discharged were its management confided to the same body. Some of the trustees of the hospital were incapable of becoming members of the city corporation. The recorder, though not a member of the one, was yet a trustee of the other. They were distinct bodies, had distinct officers, and a distinct seal.

Follett, for the trustees, contended that the language of the 71st section was conclusive. The recorder, though not a member of the corporation, was elected by that body; the Act applied as well to the members of, as to those elected by, the corporation, and would in either event apply. The word "trustees" in the interpretation clause was not only meant to include trustees in the ordinary sense of the word, but to mean any person charged with the execution of a trust, and had no reference to the manner in which, or to the persons by whom such persons might be appointed.

Rolt in reply.

The LORD CHANCELLOR.—The corporation of the city of Exeter consisted of its mayor, bailiffs, and commonalty; and at the time of the passing of the Municipal Corporation Act, the corporation of that city, with their recorder, were incorporated for a certain charitable purpose. The first question, therefore, was, whether that purpose was of such a character as to be within the operation of the 71st section of the 5 & 6 Wm. 4, c. 76. Of that there was no doubt; but were those persons who had been so incorporated a distinct body? Could they be so distinguished from the city corporation as to be considered for the purposes of the charity a separate and distinct corporation? There might be and were several instances of a corporation of mayor, bailiffs, and commonalty, constituting separate corporations, and distinct as respected several purposes. The city of London was one of them, and Bristol another. The corporations of each of those cities were trustees for distinct purposes. Looking at the nature of this corporation, and the manner in which it was constituted, his lordship very much doubted whether, as the law at present stood, it existed at all, as a separate and distinct corporation. That, though, was not the question which he had to decide, but without its members were substantially, not nominally, different for the corporation of the city, if its objects were not of a totally different character, he must consider it as within the Act. The members of both corporations were the same, with the exception of the recorder, who was an officer elected by themselves, and the objects of the hospital were undeniably of a charitable nature. They had the management of the funds and the appointment of the officers. Now the object of the Legislature in passing the 5 & 6 Wm. 4, c. 74, was to prevent corporations from blending together the funds of different charities which were confided to them. It was anxious lest the funds belonging to charities should be confounded with those of other institutions. It was probable that such might happen; and to guard against that probability it was considered advisable to have distinct trustees. His lordship considered that these were not distinct corporations; he considered that the one was so allied with the other, and was so essentially the same, that he could not see how they could be excluded from the provisions of the Act. The 71st section, he was of opinion, was applicable to such a corporation, and in that opinion he was confirmed by the 73rd section and the interpretation clause. *Petition dismissed; but without costs.*

Wednesday, July 28.

IN LUNACY.

Re WILSON.

Refusal of the carriage of a commission to the son-in-law—Borrowing money of an alleged lunatic.

The Court is very reluctant at issuing commissions in the cases of persons whose minds have become affected merely by age and infirmity.

Stuart and *Elderton* appeared in support of the petition in this case, which was presented by the son-in-law and daughter of the alleged lunatic, and who applied for the carriage of the commission.

The alleged lunatic was a person of considerable substance, and lately lived upon his own property. At the instance of his son-in-law he sold it, and went to reside with him. Part of the produce of the sale the son-in-law borrowed, on the security of a bill of sale of his household furniture, and the good will of a school, which he (the son-in-law) had lately established.

The LORD CHANCELLOR said that he had always been very reluctant to issue commissions of lunacy against persons whose minds had become affected merely by age and infirmity. It was the duty of those whom such persons had taken care of when young to watch over and tend their parents when old. They ought not for slight and trivial reasons to sue out commissions, and commit their relatives to the custody, and place them under the control of strangers. The party applying for this commission had been dealing with the property of the alleged lunatic, his father-in-law, as if it had been his own, and in his dealing with him, he had treated him as a sane person; he had borrowed of him 700*l.* upon (to say the very least) very uncertain security, and he now came to this Court and asked for a commission against this very person. It was difficult to understand how he (the petitioner) could consider him sane enough to lend him 700*l.* on a bill of sale, and now affect to treat him as a lunatic. His lordship was of opinion that a commission ought to issue to protect, as well his person as his property, and he would consult with the Master as to the best method of securing both those objects; he certainly would not trust the carriage of the commission to the petitioners. If this unfortunate person had not been a person of substance, this application would not in all probability have been made.

July 9 and 10.

DUNKLEY *v.* DUNKLEY.

Married woman—Husband and wife—Wife's equity to a settlement—Claim of creditors on the part of the husband to participate in a fund belonging to the wife—Practice—Appeal—Claim.

A wife obtained a divorce from her husband on the ground of adultery, but without alimony. On the falling in of the wife's reversionary interest in a sum of 1,000l. the whole of that amount was directed to be settled in opposition to the claim of the assignees of the husband.

It is in the discretion of the judge to settle the whole, or any smaller portion of a fund on a married woman.

In a case where no provision had been made by a husband for his wife and children, the Court directed the whole of a fund to be settled to her separate use.

On an appeal under a claim, there must in future be a deposit as upon a bill.

The practice as to the opening of an appeal under a claim is the same as under a Bill.

This was an appeal from an order of the Vice-Chancellor Knight Bruce made on a claim.

Bethell directed the attention of the Court to the omission of the payment of a deposit on appeals under claims.

The LORD CHANCELLOR.—The omission shall be supplied; I will make an order declaring that in future no appeal under a claim shall be set down until the usual deposit be paid.

Schomberg, for the appellant, claimed the right of opening the case.

Bethell objected, on the ground that the appeal was from the whole decree. In an ordinary suit, by bill, he would have had the right.

The LORD CHANCELLOR held that to be the better practice.

The facts of this case were shortly these:—Mr. Dunkley, the husband of the plaintiff, had been living in a state of adultery since 1840. In 1850 the wife obtained a divorce. During the whole of that time the husband forsook his wife and children, and did not contribute anything to their support. In 1850 a sum of 1,000*l.* (being property which had belonged to the father of the wife) fell into possession, and to which the assignees of the husband, who had become bankrupt, laid claim. The husband had previously obtained in right of his wife property to a considerable amount.

On a claim by the wife, the Vice-Chancellor ordered the whole fund to be settled on herself and children.

From this order the assignees appealed.

Bethell and *Leach* supported the order of the Vice-Chancellor.

Schomberg and *Burden* appeared for the appellants.

J. H. Palmer for the trustees of the fund.

The following cases were cited during the argument:—*Gardner* v. *Marshall*, 14 Si. 575; *Scott* v. *Spashett*, 3 Mac. & G. 599; *Gilchrist* v. *Cator*, 1 De G. & S. 288; *Napier* v. *Napier*, 1 Dr. & W. 407; *Vaughan* v. *Buck*, 1 Si. N.S. 284; *Greedy* v. *Lavender*, 13 Bea. 62; *Green* v. *Otte*, 1 S. & S. 250; *Coster* v. *Coster*, 9 Si. 595, *Brett* v. *Greenwell*, 2 Y. & C. Ex. cases, 230; *Ball* v. *Montgomery*, cited in *Oswell* v. *Probert*; *Burdon* v. *Dean*, 2 Ves. jun. 607, 680; *Sturgis* v. *Champneys*, 5 M. & C. 97.

The LORD CHANCELLOR.—It is of great importance that there should be some settled practice as to this point, in order that counsel, when giving advice in chambers upon cases of this kind, may advise their clients of the law, and so save much expensive litigation and its attendant delays. There is a discretion reposed in the judge, but it is only a judicial discretion; there is, however, a rule which can guide me in exercising it. Now, first let us consider what that rule is: According to the old practice, the fund, in ordinary cases, where there was no misconduct, was equally divided. I believe I set the example in Ireland (*Napier* v. *Napier*) of deciding what share the wife ought to have and that without directing a reference. I did so, in order to save unnecessary expense. I am referred to cases as establishing a rule which prevents the whole fund being given to the wife. No doubt Lord Eldon was of that opinion; but in the case before him the wife had filed the bill, and therefore it was that she had not the whole. That rule has not since been adhered to. *Green* v. *Otte* is only important because it has been insisted that the fact of the husband having already received property in right of his wife, would not entitle her to the whole of a fund; but we have the authority of the learned judge who decided that case, that, in point of fact we must regard the wife's property, and look to the manner in which it has been applied. *Gardner* v. *Marshall* shews that, where large advances had been made to the husband by the wife's father, and he had become bankrupt, on the death of the father, leaving other property to the wife, the Court gave the wife the whole fund. In *Gilchrist* v. *Cator*, the whole was given to the wife; that certainly might have been because it was small; it was not even sufficient for her maintenance. *Scott* v. *Spashett* is certainly a very strong case, because there the whole was given against the particular assignee of the husband and wife; I once thought that there should be no relief against a particular assignee. In *Vaughan* v. *Buck* two-thirds of the fund were given; that might have been a very proper proportion to give, as it was a peculiar case. I have referred to these cases, not because I entertain any doubt of what the rule is, but from my anxiety to prevent litigation, and to shew that they are not inconsistent with the conclusion I have come to. If in any given case the judge thinks the wife ought to have the whole, he has full power to give it her. Now, what are the facts of this case? The whole of the funds belonged to the wife, and the husband has been living in a state of adultery; the wife subsequently obtained a divorce; from 1840 to 1850 he deserted his wife and family, and during the whole of that time of desertion he never advanced a shilling to her or came forward in any way as her husband to assist or protect her; he became bankrupt, and his assignees came in for an interest in property of his wife's, represented on one side as worth 200*l.* and on the other as worth 122*l.* a year: at the same time the fund now in question, amounting to 1,000*l.* fell in. In 1834, an estate of the wife's was sold for 4,800*l.* It is represented that the estate was mortgaged. The husband mortgaged it, and it is alleged that the mortgage money was expended upon an estate to which the ... would be ultimately entitled. That is a question as between the husband and wife; and, though he may not have shared in the purchase-money, the mortgagees being paid off, his assets were left clear for other creditors. The husband settled on his wife 3,000*l.* part of that sum to which he, in her right, was entitled; and this the Court is bound to take into consideration. He settled 3,000*l.* and sold her real estate for 4,800; so that he did not settle too much. Then, in 1850, the assignees take this life interest, say of the annual value of 122*l.* which if her age were forty-six may be worth about 1,000*l.* The judge below thought that he was not exceeding his duty in giving the whole of the 1,000*l.* now in question to this unhappy lady. The assignees, representing the husband or his creditors, can have no better right than the husband; they have no moral right to the fund. I entirely concur with the learned Vice-Chancellor, and shall dismiss this appeal with costs.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

July 20 and 26.

Re JOINT-STOCK COMPANIES WINDING-UP ACTS, 1848, 1849, and *re* DIRECT EXETER, PLYMOUTH, and DEVONPORT RAILWAY COMPANY, *ex parte* WOOLMER and OTHERS.

Winding-up Acts, 1848, 1849—***Application to discharge winding-up order—To discharge calls.***

An action having been commenced against a member of the managing committee of an abortive railway company, he obtained a winding-up order, before some other members of the same body who were about to proceed to obtain such order. An official manager was appointed, and proceedings under the winding-up order prosecuted with the concurrence of the other members of the managing committee:

Held, affirming the order of the Court below, that such last-mentioned persons could not, whether such winding-up order were rightly or wrongly obtained, now move to discharge it.

Held also, that although considerable costs and expenses had been incurred by the official manager in endeavouring to place the members of the provisional committee and allottees on the list of contributories, which ultimately consisted only of the managing committee, that a call upon all the members of the managing committee by the Master was properly made.

This was an appeal against the decision of Vice-Chancellor Parker of the 13th December last (reported 18 Law T. Rep. 152), refusing to discharge a winding-up order, and also against an order of Master Horne, making a call upon seven persons, members of the committee of management of the Direct Exeter, Plymouth, and Devonport Railway Company. The circumstances of the case are as follows:—

The company or association called "The Direct Exeter, Plymouth, and Devonport Railway Company," had for its object the formation of a line of railway from Exeter to Plymouth, and its proceedings were set in motion at Exeter by persons who styled themselves the "provisional committee." It was intended that the capital of the company should be ultimately held in shares of 25*l.* each; but before this could be accomplished, it was necessary that certain preliminary proceedings should be taken to place the company in a position to apply to Parliament for an Act of incorporation. This duty was undertaken by the provisional committee, who proceeded to register the company under the Registration Act, and then, at a meeting of the provisional committee held on the 7th October, 1845, at which thirty-one members attended, seven gentlemen, viz.—Mr. Woolmer, Mr. Bastard, Major D'Urban, Col. Ellis, Mr. Kingdon, Mr. Salter, and Mr. Tanner, were elected as the committee of management. The committee of management took the usual preliminary proceedings, opened a banking account, appointed engineers, surveyors, solicitors, and others, who surveyed the proposed line, published the Parliamentary notices, advertised for parties to apply for shares, and lodged the Parliamentary plan. An allotment of shares was made in the following month of December, but the deposits were not paid, and ultimately the scheme was abandoned in the same month. The committee of management considered that both the members of the provisional committee, and the parties who applied for shares, were bound to contribute towards the payment of the liabilities which had been incurred, and took legal proceedings to enforce such contributions. In the month of December, 1848, several creditors of the company brought actions against Colonel Ellis, and, amongst others, Mr. Floud, the solicitor of the company, for 1,508*l.* Things being in this position, there being many debts and claims to a large amount unsettled, and disputes and differences between the parties, several members of the committee of management were desirous of obtaining an order for the winding up of the company, but Colonel Ellis was successful in first obtaining the order on the 8th of June, 1849, which was served on Mr. Salter, one of the committee of management. That several of the other members were endeavouring to obtain a similar order, was clear on the affidavits. Amongst others, the affidavit of the appellant, Mr. Woolmer, who now sought to discharge the order sworn 5th June, 1849, contains the following passage—"That immediately after the decision of the Lord High Chancellor that railway companies similar to the Direct Plymouth and Devonport Railway Company were within the operation and effect of the said Joint-Stock Companies Winding-up Act, 1848, we began to collect, and subsequently, at great labour and expense, collected all the information that we believed necessary for determining the number and amount of contributories, and also the moneys paid by various members of the company, and the debts and liabilities still remaining due; and we directed a petition to be prepared and presented to this Honourable Court; but that in the meantime, before such petition could be prepared and presented, the said Colonel Ellis presented his said petition, and it appears in the account of disbursements sent in by Mr. Woolmer, that he made two journeys in April 1849, with the view of preparing materials for such petition." Immediately after the winding-up order was obtained, Mr. Alexander Sandeman was appointed interim manager, and the 29th of June was fixed for the appointment of the official manager. Four of the other persons constituting the committee of management apparently acquiesced in the propriety of the winding-up order being acted upon, but they wished to have an official manager of their own nomination, viz. Mr. George B. Gregory, of Bedford-row, London, instead of Mr. Sandeman, whom Colonel Ellis supported; they appear, in fact, to have wished to get the carriage of the winding-up order in effect into their own hands, as they considered that they could manage matters better than Colonel Ellis, or at any rate that they should have a considerable control over his proceedings. The following extracts are taken from their affidavits:—"We fully believe that the said Col. Ellis will be unable to give the necessary information for determining the persons who ought to be made contributories, the amount of moneys paid by the several members of the company, and an account of the present debts and liabilities of the company." Again, "We firmly believe that for the fair and equitable adjustment of the affairs of the company, it will be absolutely necessary that we should by our solicitor attend before the manager and assist in winding up of the said company, and that without such attendance and assistance it will be impossible for the said manager to wind up the affairs of the said company in a fair and equitable manner." And they added, that "The principal duties of such manager will consist in indicating who should be contributories." The question as to the appointment of the official manager was discussed before the Master in the presence of the solicitors of Mr. Woolmer, Mr. Bastard, Mr. Kingdon, and Mr. Salter, and at their request an adjournment took place till the 10th July following, when Mr. Alexander Sandeman was appointed official manager. The claims made against the company by creditors were as follows: Bankers (Sanders and Co.) 800*l.*; Mr. Floud, 509*l.*; Mr. Force, 78*l.* 11s. 1d.; Mr. Farrant, 282*l.* 5s. 10d.; sundry tradesmen, 282*l.* 5s. 10d.; making, in the whole, 1,722*l.* 2s. 2d. Part, however, only of these claims had been regularly proved, and amongst others those of Mr. Floud, Mr. Force, and some of the tradesmen. On the appointment of Mr. Sandeman as official manager, after investigating the affairs of the company, he, with the advice of counsel, put upon the list of contributories several classes of persons besides the seven persons who were ultimately decided to be the sole contributories, viz. all the members of the provisional committee and allottees, to whom liabilities of different degrees were supposed to attach. The investigation of these cases occupied a considerable time, and the Master placed nearly the whole of them on the list as contributories; but appeals from the decision of the Master reduced the number of contributories as before mentioned to the seven persons constituting the committee of management. Until this time all these proceedings, which it was supposed would have the effect of reducing the liability of the committee of management, were acquiesced in by the present petitioners, but then it appeared that no benefit could be derived from those proceedings, but on the other hand considerable costs incurred. The appellants, on the 15th of May, 1851, presented a petition to Vice-Chancellor Parker to discharge the winding-up order, upon two grounds, first, that the company was not within the Winding-up Acts; secondly, that there was nothing to wind up, the sole persons liable being the committee of management, who knew they were liable before. In that petition is contained the following statement:—"That the whole of the debts due from any or the members of the said intended company in respect of the affairs thereof, do not exceed the sum of 1,000*l.* including the sum of 750*l.* or thereabout, due to the Exeter Bank, and that none of the creditors have taken any proceedings for the purpose of enforcing payment of their debts except the action brought by Charles Langley against Col. Ellis, and that the call made by the master was made only for the purpose of discharging in part the costs of the proceedings under the winding-up order, and which costs are alleged to amount to several thousand pounds." On the 26th January, 1852, the petition was dismissed by the Vice-Chancellor Parker, with costs. A call was then made on the committee of management of 100*l.* a-piece, but against that there was an appeal, on the grounds that the debts had not been accurately ascertained and proved, that the costs to be paid had not been taxed. On these grounds the order for a call was discharged, and proceedings were taken to dispose of the claims for debts which had been brought into the Master's office. It was then found that all the creditors, with the exception of two, amounting in the whole to only 86*l.* 3s. had been induced to withdraw their claims. Other debts, the secretary's being one of them, were also discharged, although actions were pending for their recovery. On this, an appeal against the order of Vice-Chancellor Parker was presented to the Lords Justices, in which it was contended by the appellants, as the principal reason for reversing the decision of the Vice-Chancellor and discharging the winding-up order was, that there were no debts due from the company; their lordships, however, ordered that the petition should stand over generally, upon an arrangement that the Master should complete his inquiries into the debts and expenses, and make such call as he should think proper, and that the appeal from the call should be made directly to their lordships, and be brought on with the petition of appeal from the original order, so that they might be able to dispose of the whole matter altogether. Afterwards, the debts of the company and the costs and expenses incurred by the official manager having been ascertained to amount to 3,019*l.* 4s. whereof the debts amounted only to the sum of 86*l.* 3s. and the costs had been taxed at the request of the Master by one of the Taxing Masters. On the 3rd of July, 1852, the Master made a call upon the seven members of the managing committee, namely, on Mr. Woolmer, 277*l.* 16s. 5d.; Mr. Bastard, 358*l.* 15s. 5d.; Mr. Kingdon, 359*l.* 16s. 5d.; Col. Ellis, 451*l.* 1s; Mr. Tanner, 496*l.* 6s. 3d.; Col. D'Urban, 515*l.* 18s. 5d.; Mr. Salter, 559*l.* 9s. 9d.; and the way in which he arrived at this result was by debiting each of these gentlemen with one-seventh of the expenses of the company, including the costs of the winding up, and crediting them with such sums as they had properly paid towards those objects. According to the arrangement made, when the matter was part heard before their lordships, Mr. Woolmer, Mr. Kingdon, Mr. Bastard, and Mr. Salter now appealed against the order of Vice-Chancellor Parker, and applied to discharge the order for a call made by the Master.

Bacon and *Terrell* for the appellants, contended that the order for winding up the company was unnecessary, and ought never to have been obtained; that there were in fact no debts, at any rate at the time the winding-up order was obtained, no proceedings were taken by the creditors against any one, except the action against Col. Ellis. That the call was a mere call for costs, which as they had been incurred by Col. Ellis obtaining the winding-up order, from which the appellants had never derived any benefit, and in which they alleged they did not acquiesce, the call as against them ought to be discharged. That the amount ordered to be raised was far too large, that the costs of the official manager had not been properly taxed, and the manner of assessing the calls to be made upon each contributory respectively had not been made upon a right principle; that the call ought therefore to be discharged.

Sir *W. Page Wood* and *Roxburgh*, for the official manager, contended that the winding up order was properly obtained by Colonel Ellis, and was intended to be for the benefit of all the persons on the committee of management; that they would have obtained the same order had not Colonel Ellis done so; that as long as the official manager was successful in extending the liabilities to a larger class of contributories, the present appellants acquiesced in all his proceedings; but when they turned out to be unfavourable, they wished to leave the costs and expenses to Colonel Ellis to pay, although they would have equally derived benefit from those proceedings had they been successful. That there were debts due from the company at the time when the winding-up order was obtained; and even now there were debts to a small amount; that other debts to a considerable amount were not at present claimed, but that was by some arrangement with the appellants, in order that they might come to the court with the argument which they now adduced, that there were no debts, and that this was a call merely for the costs and expenses of the official manager; that those costs had been duly taxed, and the expenses properly incurred, and the call made upon the parties by the Master was on just and equitable principles.

Malins and *Daniel*, for Colonel Ellis, supported the same views as the counsel for the official manager.

Lord Justice Lord CRANWORTH.—This case comes before us upon two proceedings—first, upon a petition by four out of seven gentlemen, who constitute the list of contributories, as ultimately established in the Master's office, to discharge the winding-up order; and, secondly, upon a motion by those same gentlemen to discharge an order which was made for a call to raise a sum of 3,019*l.* 4s. We have already intimated in the progress of the argument, that when the affidavits came to be fully stated before us, the first application,—the application by the petition to discharge the winding-up order, which Vice-Chancellor Parker had refused to discharge,—was entirely without foundation. We not only intimated that, but we intimated pretty clearly the ground on which we came to the conclusion, that the winding-up order, whether rightly or wrongly obtained, was an order obtained practically as much by the present petitioners as by Colonel Ellis. They were both proposing to obtain what they thought, and perhaps rightly thought, was a fit and expedient course to take. They were both proceeding in that course, and Colonel Ellis got the order first. It was prosecuted by him, but evidently with the sanction and concurrence of the other parties, who took as much part in the proceeding as he took, and, therefore, we are clearly of opinion that they could not say that Colonel Ellis had done wrong in obtaining the order from the commencement. If he had not done it, if he had been a fortnight later, or a week later, they would have got it themselves. Both parties were proceeding to obtain the order. Colonel Ellis obtains it, and the other party can-

not now say that the order was wrongly obtained. We think the Vice-Chancellor was right in refusing the present petition to discharge that order, and, consequently, that the appeal from him must be dismissed with costs. Now how is the matter with regard to the motion to discharge the order for the call? When it comes to be sifted the way the matter stands is this:—The great object of the parties obtaining the order—I say the parties, because I consider Mr. Woolmer and Mr. Kingdon, and other gentlemen who are trying to discharge the order, were just as much applicants for the order as Colonel Ellis himself—the great object was to fix the liability to the expenses of this company, not upon the managing committee only—the seven who were eventually constituted the only contributories—but to throw that liability over a much wider surface, to include among the contributories either the whole body of the provisional committee-men, or certain of the provisional committee-men who were supposed to have rendered themselves more liable than the general body, and, in short, to disperse among thirty or forty the liabilities which have been eventually thrown upon the seven, and for that purpose they endeavoured to place upon the list of contributories a great number of other persons. They succeeded in doing so as far as the Master's office was concerned; but those parties from time to time appealed against the decision of the Master, and, it turned out, successfully appealed—so successfully, that instead of the number, thirty or forty, that was originally put on the list as being contributories, by successful appeals made by those parties so placed, their names were removed and the number reduced to the present seven that constituted the managing committee. The result of all those appeals was, that very heavy costs were incurred, costs that practically amount to the whole of the sum now sought to be recovered, because, although there is one creditor of 83*l.* he may be put out of the case; and therefore it turns out that the attempt to wind up the affairs of the company and to diffuse the liability among other persons beside the seven eventually found to be liable, has occasioned the sum which the Master estimates at 3,019*l.* 1*s.* I say *estimates*, for I will assume, for the purpose of the present argument, that the exact amount has never been conclusively established; but this estimate is made, not on any loose grounds; for even if Mr. Bacon is right in saying that there has never been any taxation, properly so called, at which the parties interested in cutting down the amount of the bill have been heard as against the party setting up the bill, yet the bill has been in a sense taxed. The Master has had it laid before a party competent to exercise a judgment upon it, and that party, one of the Taxing Masters, has reduced it to an amount that leaves it at 3,019*l.* 1*s.* for the whole demand. The Master thinks it reasonable that that amount should be raised, and we both concur in thinking that was a very reasonable conclusion. It is true that this is a sum for which the parties that will be liable to pay it have, in one sense, had no value—that is, they get nothing; but I think the observation is very truly made on that remark, that that may be said of any person who, having resisted a demand, has to pay large costs. It is true that in one sense he gets nothing, because he was wrong, yet he got a locum standi to contest the point whether he was right or wrong. If his views of the law had been right, he would have got a great benefit; it turns out that he was wrong, consequently he is like any other parties, litigants in a court of justice, who have bonâ fide endeavoured to resist a demand, thinking they have a legitimate defence, and it turns out that they have no such defence. Who is to pay? Why, the parties who have caused this expense. They have been endeavouring to satisfy the Court that they were not the only contributories, but that others were liable with them, and they endeavoured to reduce the sum to a very small amount. They failed in doing so, and for their attempt they must pay. Now, we are desired to make a final end here. Probably it may be exceedingly reasonable that these parties should acquiesce in the taxation, or the arrangement which the Master has made about the amount that is to be raised. But we do not think that by our decision we necessarily conclude the parties, if they mean to say that this sum, when raised, is not to be applied in the manner proposed, because some of it will be unnecessary. That is open to them, if they should be so advised. It would be a very unwise thing so to act, but that is a matter in which they must exercise their own judgment. All that we can say is, that the Master exercised a sound judgment in directing that this amount, which has been ascertained as nearly as it can be, must be raised for the purpose of paying these costs. Then, that being so, the only question is, has he assessed it in a reasonable and proper manner. There again, not meaning to say a case might not be made hereafter to shew that some of this must be returned to the parties, yet primâ facie we think the Master has taken the most convenient and only practical course that could be taken—he has found seven people who are among themselves liable to pay this sum of money. In what proportion have they hitherto paid? He has taken the payments de facto made, and all made bonâ fide. It may be that what the present petitioners say is right, that Colonel Ellis was less justified in incurring his costs in resisting the creditors than they were in resisting their creditors, because the liability was more clear at the time Colonel Ellis resisted than at their time, but these are niceties which, in the present state of our information, we cannot possibly inquire into. It appears to us, not only that the Master has done right in saying that this sum must be raised, but that he has taken the only legitimate mode of ascertaining the proportion in which each party is to contribute. He has taken the proportion arising from what each party has contributed, then, finding that what he contributed shews what he is to pay on the shares, he makes a ratio of equality among them. I do not know that it is an absolute equality, but they have all the same amount of shares. It seems to us that this is a reasonable and proper course to be taken, and, consequently, that this application ought not to have been made; and therefore this motion must be dismissed with costs, in the same way as the petition of appeal.

Lord Justice KNIGHT BRUCE.—I am of the opinion.

ROLLS COURT.

Reported by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

Feb. 9 and 12.

Re GEDGE.

Solicitor—Bill of costs—Taxation—Order of course—Special order—Suppression of facts necessary to be stated on applying for an order of course—Action at law—Judgment.

The rules and principles upon which orders of course for taxation are obtained, though originally unsettled, are now finally settled, and the rule as laid down is, that it is incumbent on the party who applies for an order of course to tax a bill, to proceed in the same manner as if he were asking the Court for an ex parte injunction, that is, to state every fact to the officer to whom he applies which can be material to the matter, in order to enable the officer to judge whether it really is a proper case for an order of course; and that if he do not do so, and there are special matters affecting the question whether he ought to have an order of course or not, and these are suppressed, or are not mentioned, the Court will not stay to inquire whether in fact, if a special application had been made, he would have been allowed to have an order to tax, but will discharge the order of course, even though, as a special application, he might have been entitled to the order to tax.

The Solicitors' Act (6 & 7 Vict. c. 73) provides "that no such reference to tax shall be directed after a verdict shall have been obtained, or a writ of inquiry executed in any action for the recovery of the demand of such attorney or solicitor."

Held, that the words "writ of inquiry executed" were put in for the purpose of shewing that a mere judgment obtained by the party was not to prevent his obtaining the order of course; so that the Act provides that the order of course shall go in every case where there has either not been a verdict in a contested action or not been a writ of inquiry, where the judgment goes by default, to assess the amount of damages.

That consequently, where a solicitor brought an action for a bill of costs, and obtained judgment by default, for want of a plea, and then the client obtained an order of course to tax, and there was no writ of inquiry executed, the order of course was not irregular or invalid on that account. Sed quære, for in the case of an action for debt, there is no writ of inquiry, the judgment is final.

That, however, there having been previously to obtaining the order of course three several applications made to the Courts of Common Law, one of which had been granted upon terms, and afterwards abandoned, and the other two refused, that was a material circumstance which ought to have been mentioned to the officer from whom the order of course was obtained, and as it was not, the order of course must be discharged with costs.

This was a motion to discharge an order of course obtained by the governors and guardians of the poor of St. Mary's, Newington, for the taxation of certain bills of costs for business done for them by Mr. Gedge, whom they had employed as their solicitor. The grounds upon which the application was made to discharge the order were, first, that at the time it was obtained, a judgment had in fact been obtained at law for the amount of the bills; and besides there had been several applications to the Courts of Common Law for a reference to tax, and this had not been stated to the officer when applied to for the order of course. There were several bills delivered by Mr. Gedge, including one for costs in soliciting a Bill in Parliament. Some correspondence took place after the delivery between Mr. Gedge and his clients; but on the 18th of December, 1851, the latter obtained an order from Coleridge, J. referring all the bills, including that for the parliamentary, on condition of their paying into court the sum of 500*l.* This order they abandoned, or at least did not act upon it, and they afterwards applied to the Court of Ex. for and obtained another order of reference, which, upon its being shewn what had been done before Coleridge, J. was discharged by Platt, B. who refused to entertain the case after hearing that it had been before another judge. On the 13th of January, 1852, Mr. Gedge brought his action to recover the amount of the bills, and on the 24th of the same month, the order of course was obtained, but was not served till the 27th, on which same day, but some hours prior to the service, judgment by default for want of a plea was signed in the action. None of the proceedings at Common Law were mentioned to the officer in making application for the order of course. Mr. Gedge now moved to discharge the order as improperly obtained.

Stuart and *Collier*, for the motion, cited *Holland* v. *Gwynne*, 8 Beav. 124.

Roupell and *Hardy* contrà.

Thursday, Feb. 12.—The MASTER of the ROLLS.—This was a motion to discharge an order of course for the taxation of a solicitor's bill of costs; and the grounds upon which the application was made were twofold. It was stated that there had been, in fact, a judgment obtained at law for the amount of the bill at the time when the order to tax was obtained, and also that three several applications had been made to the Courts of Common Law for the purpose, one of which had been granted upon terms, and the other two refused; the one granted upon terms was abandoned, and two subsequent ones applied for afterwards, or rather I may say one applied for since and refused, which were reasons for not obtaining an order of course. The rules and principles upon which orders of course are obtained originally appear to have been a little unsettled, but were finally settled by Lord Langdale; and I have adopted the rule he laid down, and the rule he laid down was this, that in applying for an order of course, it is incumbent on the party who applies to adopt the same rule that would be applied if he were asking the Court to grant an injunction ex parte—that he must state every fact to the officer to whom he applies which can be material to the matter, in order to enable the officer to judge whether it really is a proper case for an order of course; that if he do not do so, and there are special matters affecting the question whether he ought to have an order of course or not, and if those are not mentioned, the Court will not stay to inquire whether, in fact, if a special application had been made he would have been allowed to have an order to tax the bill; but if it be a matter of sufficient moment and sufficient importance to require grave consideration or discussion, then the officer would not have granted the order of course; it would have been necessary to have made a special application, and the Court would then have decided on the propriety of taxing the bill. And where there is a matter of that description not stated, and by reason of that non-statement of it the applicant has obtained an order of course, which he could not have obtained except by the non-statement—I do not use the word "suppression" in any harsh sense,—but by the suppression of that fact, in all those cases, even though on a special application he might be entitled to the order, the Court will not allow the order of course to stand. I have myself so decided on more than one occasion, and in doing that I have followed Lord Langdale; and I am satisfied that this is the proper rule that ought to prevail. I have, therefore, now to consider whether the facts which were suppressed here were of sufficient moment and importance to warrant the Court in saying that they ought to have been gravely discussed. Now, the first which I shall mention—not that which was previously put forward—but the first I shall mention is the fact of a judgment having been obtained. I am of opinion that the judgment having been obtained in the manner it was obtained here was not a matter to make it necessary, it might be proper, to mention it, but I have no doubt that the officer would have granted the order of course, although there had been the judgment, for this reason: the Act of Parliament is precise on this point—it says there shall be an order of course to tax within twelve months after the delivery of the bill, and then it states, "provided always, that no such reference shall be directed after a verdict shall have been obtained, or a writ of inquiry executed in any action for the recovery of the demand of such attorney or solicitor." Consequently, the Act of Parliament provides that this order of course shall go in every case where there has either not been verdict or not been a writ of inquiry, but the verdict of course is in those cases where there is a contested action, but where the judgment goes by default, in every case there is a writ of inquiry to assess the

amount of damages; consequently it is, I apprehend, perfectly clear that the words "writ of inquiry executed," were put in for the purpose of shewing that a mere judgment obtained by the party was not to prevent the party obtaining the order of course.

Roupell.—The judgment was after the date of the order.

The MASTER of the ROLLS.—I understand that; but I have decided in your favour on this part of the case. The date of the order was on Saturday, and the judgment was in fact signed on the Tuesday; but I am not of the opinion that, even if the judgment had been obtained that was a matter of any moment. The order was served on the day (a short time after) the judgment had been signed, but it was a judgment by default for want of a plea; and I am of opinion that as there was no writ of inquiry executed (nor could there have been), which must take place in every case of judgment by default, the mere circumstance of the judgment, if the other circumstances are the same, is not a sufficient reason for withholding the order of course. I explain this rather the more fully, because the word "judgment" appears in some of the cases where it is evident that the word "judgment" is used as the judgment obtained subsequent to a verdict. The verdict for an amount of damages on a solicitor's bill of costs precedes the judgment; the judgment is only obtained in consequence of that.

Collier.—Will your honour allow me to say that the judgment in an action of debt is final; there is no writ of inquiry in the case.

The MASTER of the ROLLS.—That may be, Mr. Collier; there is no writ of inquiry at all?

Collier. Not in an action of debt; the judgment is final at once.

The MASTER of the ROLLS.—That may possibly make a difference in the view which I have taken of this case. I certainly have considered, that in every case where a judgment went by default (having made inquiries on the subject) there would have been a writ of inquiry executed; still I should not, on that ground, have considered that the fact of judgment having gone by default would have rendered the order of course that was obtained improper, the fact being that there had been no inquiry into the amount of the debt at this time, as there would have been in the case of a verdict, or in the case of a writ of inquiry executed, which is what I think the clause meant to refer to. With respect to the other part of the case, I am of opinion that that is a material circumstance which ought to have been stated. I do not at this moment understand why the application was made to a Court of Common Law, which does not grant orders of course to tax, instead of coming to this Court, nor do I exactly understand upon what grounds it was that Mr. Justice Coleridge made an order that the taxation should only be allowed on payment of the sum of 500*l.* Undoubtedly, if there were nothing else in the matter prior to obtaining that order, the clients might have come here and obtained a taxation of Mr. Gedg[illegible] bill. Now the subsequent proceedings before Mr. Baron Platt proceeded solely upon the ground that the order had been made by Mr. Justice Coleridge, which had been declined. I do not now inquire into whether that would be sufficient to induce this Court not to tax the bill. Upon that I particularly wish not only not to express an opinion, but to give no impression that I think it would prevent the bill from being taxed; but I am satisfied that this matter was a matter of sufficient importance to have it mentioned to the officer that there had been an application made to a court of competent jurisdiction to tax the bill, which taxation had been refused, and that if that had been so mentioned the officer would not have given the ordinary order of course to tax the bill, but that it would have been necessary to come to the Court to make a special application for that purpose; and therefore, on that ground, which in fact was the principal ground set forth, without in the slightest degree prejudicing any special application that may be made to tax this bill, I am of opinion that this order of course cannot stand, and that it must be discharged in the usual manner, and with costs.

Monday, Feb. 16.

PEARD *v.* KEKEWICH.

Will, construction of—Accumulation—Power—Appointment, validity of—Vested interest, subject to be divested—Independent gift distinct from time of payment.

S. P. by his will gave and devised certain property to G. P. for life, remainder to such of G. P.'s children as he should appoint, and in default of appointment remainder to the children equally as tenants in common in tail. G. P. by his will bequeathed, devised, and appointed to trustees in trust for his eldest son G. S. P. his heirs, executors, &c. to be conveyed, assigned, and assured to him when and as he should attain the age of twenty-three, and if he should die before twenty-one, then "to the use of the second, third, &c. son of G. P. in tail, with remainder over. He then directed the payment out of the rents of annuities for the benefit of his wife and children, and subject thereto, to invest the residue of the rents and profits in government or real securities, to accumulate, and also "to accumulate the accumulations in like manner until his son G. S. P. (who was born at the death of S. P.), or &c. should attain the age of twenty-three, and then to pay, assign, and make over all such securities and accumulations to G. S. P. &c. for his own absolute use and benefit."

[illegible]

the power of appointment created by the will of S. P.

That G. S. P. took an estate in fee, liable to be divested in case of his death under twenty-one.

That the accumulation directed by G. P. in favour of G. S. P. who was born at the death of S. P. or such other son as should attain twenty-three, was valid as to G. S. P.

But semble, such a trust for sons not in esse at the time of the creation of the power would not be valid.

This was a special case for the opinion of the Court as to the effect of two wills, one that of Rear-Admiral Shuldham Peard, late of Exeter, and the other that of his son George Peard, the former creating and the latter purporting to exercise a power of appointment in favour of George Peard's children; the question being whether the former had been legally and effectually exercised by the will of George Peard. A question also was raised as to the appropriation of the residuary personal of the admiral, which, by his will, he had directed to be accumulated. Admiral Peard, by his will bearing date the 15th of June, 1829, gave and devised all his lands, tenements, and hereditaments whatsoever unto and to the use of the defendants William Henry Whitehead and Deeble Boger, their heirs and assigns, upon the trusts thereinafter expressed, that is to say, as to one half of whatever might be his estate and interest in the tithes of Budock and Falmouth, in the county of Cornwall, and as to certain other hereditaments therein particularly described upon certain trusts in favour of the testator's son John Whitehead Peard and his children. And as to all the rest and residue of the lands, tenements, and hereditaments so devised as aforesaid upon trust for the testator's son George Peard and his assigns for life, with remainder for all and every or any or more, to the exclusion of the others or other of them, of the children of the said George Peard, for such estate and estates, and in such manner and form as the said George Peard should at any time or times, by any writing or writings to be by him signed and sealed in the presence of and attested by two or more credible witnesses, or by his last will and testament in writing, to be signed and published as the law required for the devise of real estates, direct, limit, and appoint; and in default of such direction, limitation, or appointment, and subject thereto in trust for all and every the children of the said George Peard in tail, such children to be entitled equally as tenants in common in tail, with cross-remainders in tail between such children respectively, the tenants in tail for the time being to be always entitled, if more than one, as equal tenants in common with remainder, if there should be but one child for that one child in tail, with remainder for the said John Whitehead Peard, his heirs and assigns for ever; and the testator thereby declared that each of the estates for life thereby limited should be without impeachment of waste, and that the estate and interest of all married women under the will should, both as to real and personal estate, be for their own separate use and benefit, independent of their husbands. The testator afterwards made a codicil to his will, dated the 4th of June, 1831, and thereby, after stating that he had contracted for the purchase, from the representatives of Mr. Richards, deceased, of his moiety or interest in the said tithes, he thereby devised the same to his said trustees, their heirs and assigns, on the same trusts as were by his will expressed and declared of and concerning the moiety of the said will, and devised as aforesaid, but the codicil did not otherwise affect the trusts of the will.

The testator, Admiral Peard, died on the 27th December, 1832, without having revoked or altered his said will and codicil, and leaving his two sons, John Whitehead Peard and George Peard, him surviving. The testator was seised in fee of divers real estates of considerable value. By an indenture dated 5th July, 1833, and made between the said John Whitehead Peard of the one part, and the said George Peard of the other part, John Whitehead Peard granted and released to George Peard the moiety of the said tithes so devised by the said codicil in trust for him, the said John Whitehead Peard, and his children, to hold to him, his h[illegible] and assigns, during the life of him, the said John Whitehead Peard.

Previous to the dates of the will of Shuldham Peard, George Peard had married, and there was issue of the marriage two sons and three daughters, viz. George Peard, who was born on the 25th July, 1825, and died in the same year; George Shuldham Peard, the plaintiff, who was born on the 29th of June, 1829, in the lifetime of Shuldham Peard; the defendant, Charlotte Kekewich, wife of defendant Trehawke Kekewich, now twenty-one; Francis Peard, who was born 30th of June, 1832, and died 30th of June, 1834; and Frances Peard, who is still an infant.

George Peard, by his will dated 30th November, 1836, appointed his wife, the defendant, Frances Cooke Peard, sole executrix thereof, and of the various provisions respecting his personal estate, gave, devised, bequeathed, and appointed all that the one-eighth part of the great tithes of Budock aforesaid, or the sum of money equivalent thereto, as the same might have been conveyed or secured to him by virtue of a deed under the hand and seal of his brother, John Peard, and also all and singular other the lands, tenements, tithes, and hereditaments of or to which he was in anywise seised or entitled, or over which he had a power of appointment or disposal under and by virtue of the last will and testament of his father, the late Shuldham Peard, or otherwise, howsoever, unto Hugh Myddelton Ellicombe, William Henry Whitehead, and George Bradford Ellicombe, their heirs, executors, and administrators, according to the nature and quality thereof, in trust for his son, the said George Shuldham Peard, his heirs, executors, administrators, and assigns, and to be respectively conveyed, assigned, and assured to him when and as he should attain the age of twenty-three years; and in case his son George Shuldham Peard should die before he should have attained the age of twenty-one years, to the use of the second, third, and fourth, and all and every the other son and sons of his (the testator's) body lawfully begotten, whether born in his lifetime or after his decease severally and successively and in remainder, &c. and of the several and respective heirs of the body and bodies of all and every such son issuing, the elder of such sons and the heirs of his body to take before the younger, &c. and to her respectively conveyed, assigned, and assured to such respective sons when and as they should first attain the age of twenty-three years, and for default of such issue to the use of the testator's daughters Charlotte and Frances, and of all and every other the daughter and daughters of his body lawfully issuing, equally to be divided between and among them, share and share alike as tenants in common, and to the use of the several heirs of the body and bodies of all his several daughters respectively issuing; and in case of the death and failure of issue of the body or bodies of any one or more of his said daughters, then as to the part of her or them so dying without issue, to the use of the survivors or others to be divided, &c. and for default of such issue to the use of his brother John Whitehead Peard, his heirs and assigns. The testator then directed his trustees to pay out of the rents and profits of the lands, tithes, &c. certain annuities for the benefit of his wife and children as therein mentioned, and subject thereto, to invest the residue of the said rents, &c. in government or real securities, to accumulate, and also "to accumulate the accumulations in like manner until his said son George Shuldham Peard, or such other son as aforesaid, should attain the age of twenty-three years; and on his or their first attaining that age, then upon trust to pay, assign, and make over all such securities and accumulations unto the said George Shuldham Peard, or to such other sons as aforesaid, who should first come to attain that age, his executors, administrators, and assigns, for his and their own absolute use and benefit."

George Peard died on the 16th February, 1837, having never had any other child than the said children already mentioned. The executrix, his widow, duly proved his will, and certain questions were then raised upon its construction, as respected the appointment thereby made, or purported to be made, under the power created by the will of Shuldham Peard, and as to the disposition of the tithes granted by the indenture of the 5th July, 1833.

The first question on the case was whether the power of appointment given by the will of Shuldham Peard was duly exercised by the will of George Peard.

Secondly, what estate or interest George Shuldham Peard took under such appointment (if any), and in particular whether the same estate or interest was or not vested on the said George Shuldham Peard attaining the age of twenty-one years.

Thirdly, whether under such appointment (if any), the trust in the said will of the said George Peard contained, for accumulating the surplus rents of the residuary real estate of the said Shuldham Peard, until Geo. Shuldham Peard, or such other sons of George Peard, should attain the age of twenty-three years, is valid or invalid; and if invalid, to what extent is the same invalid, and who are or is entitled to such surplus rents and the accumulations thereof, and in what proportions?

And, fourthly, whether the trust in the will of

George Peard for accumulating the profits of the tithes granted to George Peard by the indenture of 5th July, 1833, until George Shuldham Peard, or such other sons of the said George Peard, should attain the age of twenty-three years, is valid or invalid, and who are or is entitled to the profits of the said tithes and the accumulations thereof, and in what proportions?

Walpole and *Amphlett* for the plaintiff.—It is a gift to a person not on attaining but if he should attain twenty-three, and if not, then over to another; and if the latter gift is void there is no reason why the first ought to be void. Then if the accumulations are not given to any one they must go to us. They cited *Kampf* v. *Jones*, 2 Keen, 756; *Ring* v. *Hardwick*, 2 Beav. 352; *Carver* v. *Bowles*, 2 Russ. & M. 301; *Lord Southampton* v. *Marquis of Hertford*, 2 Ves. & B. 54; *Marshall* v. *Holloway*, 2 Swanst. 432; *Browne* v. *Stoughton*, 14 Sim. 369; *Farrand* v. *Wilson*, 4 Hare, 344; *Lord Dungannon* v. *Smith*, 12 Cl. & F. 546; *Saunders* v. *Vautier*, 1 Cr. & Ph. 240, Off. 4 Beav. 115; *Arnold* v. *Congreve*, 1 Russ. & Myl. 209; 1 Jarm. Wills, 257.

Lloyd and *J. H. Palmer* for Mrs. Kekewich and Francis Peard, an infant, contended that the qualifying words at the end of the will of G. Peard applied to the whole of it. They cited *Holliday* v. *Overton*, *Porter* v. *Fox*, 6 Sim. 485; *Boraston's* case, 3 Rep. 16.

J. H. Palmer and *Nalder* for other parties.

The MASTER of the ROLLS.—There are several points in this case which I think abundantly clear. In the first place there is no question respecting the first question put in the case; in fact, Mr. Lloyd, with great propriety, did not offer any argument upon that subject. There can be no question that the will was a good exercise of the power of appointment. With respect to the second question, I think that also very clear. I think the construction of the gift to George Shuldham Peard perfectly clear and distinct. Now it is to be observed it is given to trustees in trust for his son George Shuldham Peard, his executors, administrators, and assigns; and Mr. Walpole contends that I am to stop there, and I am of that opinion. Mr. Lloyd and Mr. Palmer think that I must necessarily mix it up with the sentence which goes afterwards. Now, if you stop there, the gift is complete. There can be no question but that if you give an estate to trustees in trust for another person, and his heirs and assigns, that that other person will take a complete fee simple upon the death of the original testator, and words are required for the purpose of making the gift complete - the words are complete in themselves. Well, it is said I cannot separate that gift from the words which follow afterwards, which are mixed up with it. That appears to me contrary to the true grammatical sense of the sentence, and also to the various authorities in which similar words have been construed, and which are analogous to these. There might possibly have been some question if it had gone on to say in trust for his son, his heirs, and assigns, to be conveyed and assigned at the age of twenty-three years, which might have mixed it up more; but the word "and" really makes a distinction and a separation between the two sentences; but giving it to the trustees in trust for the son, his heirs, and assigns, and to be regularly conveyed, assigned, and assured to him, when and as he attains the age of twenty-three years, does make a distinction between the gift to him and the period when he is to have the enjoyment of the gift itself; and that is made consistent and clear with the subsequent gift by which the rents are directed to accumulate till the age of twenty-three years, and is made still more distinct by what follows, because it directs that in case the son should die before he attained twenty-one years of age, then it was to go over to the second, third, fourth, and every other son. Then the observation forces itself upon the mind of every person reading this sentence, if the construction contended for by the defendant in this case be admitted by the Court, what is to take place if George Shuldham Peard should die after having attained twenty-one and before attaining twenty-three. According to the statement, he would not have obtained a vested interest in himself, nor would the gift ever take effect, and consequently it would be a case where the testator had evidently endeavoured to provide for every event—a case manifestly not provided for by the will. But that is made perfectly distinct and intelligible if the gift be given to the son in fee simple—that it is to be conveyed to him, and he is to have the benefit of the gift at the age of twenty-three, with accumulations in the mean time, but a gift over if he should attain the age of twenty-one. A case similar to that is that which constantly occurs in legacies. A case which Mr. Lloyd cited to me of *Porter* v. *Fox* was really no authority for holding a contrary decision to that which I think is the true construction of the clause, because in *Porter* v. *Fox* it was an interest given to trustees in trust to accumulate the rents for the benefit of certain persons. The moment you direct the rents to accumulate for certain persons, it shews that they are not to have a vested interest in them on the death of the testator, because if that were so there could be no accumulation, and then the testator himself must fix the period of the accumulation, and in that case he fixed it at the age of twenty-five; the consequence of which was that there was no gift to them until they attained the age of twenty-five, which was a period up to which the rents were to accumulate. *Leake* v. *Robinson* is also perfectly clear. In that case the estates were given to trustees in trust, to receive the rents and profits of the estates, and to apply such portion of the rents and profits of the estates as might be thought proper for the maintenance and support of certain persons. That is no gift to those persons—it is a mere trust to apply the rents for the benefit of certain persons. Well, when is that trust to cease? The trust is to cease when they attain the age of twenty-one, and then the trustees were to pay over to them certain shares; and Sir William Grant held, no doubt in accordance with all former and subsequent decisions, that there was no gift to them until they attained the age of twenty-one—that the gift was only contained in the words of payment. Here there appears to me to be a distinct gift, independent of any words of payment; and there is no direction here that the estates shall not be vested in George Shuldham Peard, but that they should be conveyed to him when he attains the age of twenty-three years. I am, therefore, of opinion, that George Shuldham Peard took an estate in fee simple, upon the death of the testator, liable to be divested in case of his death under the age of twenty-one years (which event has not occurred), and with a direction that the estates should be regularly conveyed and assured to him upon attaining the age of twenty-three. Then with respect to the trust for accumulation. I am also of opinion that that is governed by the principle and authority to which Mr. Walpole referred, which is distinctly laid down in the case of *Williams* v. *Leale*, that this is the case of a gentleman who gave a power of appointment to the donee of the power to be divided amongst a certain class. The donee of the power cannot give to any person to whom the original creator of the power could not himself have given it, and the testator gives a power to the donee of the power to divide the estate between one or more child or children, exclusive of the others, in such shares and proportions as he should think fit by will. At the time when that power came into effect, there is one son of his son alive. Why could not the original testator have given a limited estate to that son if he had thought fit, or directed that there should be an accumulation during the period until that son attained the age of twenty-three years? Well, being of opinion that he had the power of doing so, I am also of opinion that the testator had the power of making that accumulation in favour of the eldest son. Now with respect to the other sons no point arises, and therefore I shall express no opinion, though it is pretty evident what my opinion would be, that that would not come within the same rule as the other, but that to the extent of the accumulation until the son then in esse attained the age of twenty-three, the trust for accumulation was a good, valid, and subsisting trust. Now I think, having expressed that opinion, the fourth question which was stated, on which Mr. Walpole suggested some difficulty to the Court, will not arise. Costs of all parties to come out of the accumulated fund.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. HENRY COOKE, Esq. Barrister-at-Law.

CHANT v. BROWNE.

Monday, May 24.

Privileged communications—Solicitor and client—Suppression of interrogatories.

Documents prepared by a solicitor acting for a party under whose bill the plaintiff and defendant claim, and acting also for a third party as a mortgagee, form privileged communications, and therefore the interrogatories relating to them and depositions thereupon, must be suppressed, excepting for the mere purpose of proving handwriting.

Such documents as are prepared for the person under whom the plaintiff and defendant claim are not privileged.

This was a motion to suppress the fifth and twelfth interrogatories, which had been exhibited for the examination of witnesses in this cause, and to suppress also the depositions of the witness Thorne in answer to the fifth interrogatory, and of the witnesses Clatworthy and Hancock in answer to the twelfth interrogatory, on the ground that the evidence was given in breach of professional confidence. The bill was filed by Mr. and Mrs. Chant, for the purpose of setting aside an appointment made in 1828 by Edward Melton, in favour of one of his children, and a mortgage which was made of the lands so appointed. The case made by the bill was, that by a settlement dated in 1805 lands were settled upon trust for Edward Melton for his life, with remainder to his wife for her life, with remainder to such of his children as he should appoint, and in default of appointment, to the children equally, as tenants in common in tail general; and if no children, upon trust for Edward Melton's appointment generally; and if he make no appointment, then to his right heirs. Edward Melton had four children; the plaintiff Mrs. Chant, and the defendants Richard Melton, Mary Melton, and Mrs. Bult. Mrs. Melton being dead, Edward Melton, in exercise of his power, appointed the lands in question to one daughter in fee, and then joined with her in executing a mortgage for securing two sums of 4,000*l.* and 600*l.* with interest, to John Timewell. The defendant Augustus Pulsford Browne was the solicitor of Melton in respect of the appointment and mortgage, and of Timewell in respect of the mortgage. Timewell died, and by his will left all his mortgages upon trust for the benefit of his daughter, the defendant Mary Browne, the wife of the defendant A. P. Browne. This motion was an application on behalf of the defendants A. P. Browne and his wife, and their three children, and Francis Timewell, the executor of John Timewell, to suppress, first, the fifth interrogatory, and Thorne's deposition in answer to that interrogatory. That deposition was as follows:—"That the said document or bill of costs now produced and shewn to me, marked 'N.' is in my handwriting. It was written by me by the direction and as the clerk of the said A. P. Browne; and I have no doubt but that I copied it from a draft bill of costs, made out from the last-named defendant's attendance-book; but whether I or the last-named defendant prepared the draft I am unable to say. I have no doubt but that the exhibit 'N.' was written for the purpose of its being sent to the said Edward Melton; but I cannot speak to the fact of its having been sent or delivered to him, or of its having been paid or settled in account." Such is the history of the case so far as it relates to the fifth interrogatory, and the answer to it. But as to the twelfth interrogatory, it appeared that in 1827 it was proposed to raise some money by mortgage of the property in question, and a case marked "L." in the exhibit in the cause was prepared on behalf of Edward Melton, for the purpose of obtaining opinion of counsel whether a good security could be made for an advance of 1,300*l.* and upwards. This case was prepared in the office of Mr. Hancock, now deceased, who was then the solicitor of Edward Melton. "L." was prepared apparently from original documents. The security concerning which it was prepared had no reference to any exercise of the power of appointment under the settlement of 1805, and therefore did not respect Timewell's mortgage. The exhibit "K." was also prepared in the office of Mr. Hancock, and it was prepared in 1840, and was in the handwriting of the deponent Clatworthy. This case was prepared for the purpose of taking counsel's opinion in the suit on behalf of Mrs. Bult, and appeared to have been principally copied from the document marked "L." The third document marked "M." was prepared in 1841 in the same office, and was also in great measure copied from "L." with the necessary additions for taking a further opinion, which was taken on behalf of the plaintiff Mr. Chant, and the defendants Mary Melton and Mrs. Bult. This appeared from the depositions of Hancock and Clatworthy.

Rolt and *Dickenson*, for the plaintiffs.

Sir *W. P. Wood* and *Terrell*, for the defendants.

The VICE-CHANCELLOR, after detailing the facts of the case, observed that the document "N." was the bill of costs of the defendant A. P. Browne, against Edward Melton, in reference to the mortgage; and his Honour was of opinion that the deposition of Thorne could not be made use of except for the purpose of proving the handwriting. The evidence was tendered for the purpose of impeaching the title of the mortgagee. If it had been attempted to examine Browne himself as a witness, his evidence would have been inadmissible. The witness Thorne was at the time of copying the document the clerk of Browne, and copied it in that character, and derived all his knowledge of the matters in question from his occupying that position. A bill of costs is the attorney's written history of the transactions between himself and his client. The attorney not being competent to come and give his own account of the transactions vivâ voce in answer to interrogatories, it was impossible that it should be permitted to take his written account of them. The position which this deponent Thorne occupied, and in consequence of which he obtained his knowledge, closed the source from which that knowledge was derived, and this deposition must, therefore, be suppressed. As to the twelfth interrogatory, and the depositions and exhibits, it is to be remarked, that the position of these witnesses was wholly different, and his Honour did not think the objection could be sustained. The witness

Hancock was the son and partner, and had ultimately succeeded to the business of the Mr. Hancock in whose office these documents were prepared. He was, at the time of preparing them, as was also the witness Clatworthy, a clerk in Mr. Hancock's office, and Clatworthy had continued to be the clerk of the witness Hancock. But Hancock never was the solicitor of Timewell, or of any party claiming under him; but of Melton and those claiming under him. He thought the two portions of the case were quite distinguishable, and therefore that the motion must, as to the twelfth interrogatory, and the depositions founded on it, be refused; but must be granted as to the 11th interrogatory and its depositions.

June 11 and 25.

Re BARTON'S TRUST.

Severance of joint tenancy—Reversionary interest of wife in chattel personal—Bankruptcy of husband.

A certain sum of money was bequeathed, the interest to be paid to A. for life, and, after her decease, the capital was given in such a way among B., C., D. and E. as made them joint tenants equally. B. married, and her husband became bankrupt. B. then died, and, after her death, A. the tenant for life, died. On a division of the fund, the Court

Held, that C., D. and E. the three other joint tenants who survived B. were entitled in preference to the assignees of the bankrupt husband of B.

A testator, by his will, bequeathed 2,000*l.* to Mary Barton for life, naming her sole executrix of his will. After her death he bequeathed the 2,000*l.* in such a way as that the four children of another person were entitled thereto as joint tenants. One of these four children married, and her husband, in 1841, became bankrupt, and obtained his certificate. In 1847 [illegible] wife died, and subsequently Mary Barton, the tenant for life of the fund, died. A question having arisen between the assignees of the husband of one of the four children and the other three children, the remaining joint tenants of the fund, the money was paid into court, and the question was now argued between counsel for the assignees on the one hand, and for the other joint tenants on the other, the husband's counsel submitting his rights, if any, to the decision of the Court.

Campbell and *Bruce*, for the surviving joint tena[illegible] the real question was, whether the bankrupte[illegible] husband had the effect of severing the joint t[illegible] which, they contended, it did not, and that, [illegible]re, the bankruptcy could only transfer t[illegible] the assignees such an interest as the husband himself possessed, and that such interest being a materially qualified interest, namely, both reversionary and irreducible into possession, did not in any way affect the fund. A joint tenancy could only be severed by an actual agreement to sever it, or by a positive alienation of the share. As to bankruptcy being held to be in the place of an agreement, that was out of the question, first, because bankruptcy was altogether an adverse matter; and, secondly, because the husband when he became bankrupt, was not a joint tenant himself. Whatever might be said of marriage as an assignment to the husband of all a wife's personal estate, it was limited to such as she had in possession; or such as during the coverture could be and was reduced into possession. Here, however, marriage was not equivalent to an assignment; because the interest of the wife was, and continued during the whole coverture to be, merely a reversionary *chose in action*. Whatever the assignees could take, was only that which the husband had, and what the husband had was merely the chance of being able, by means of the death of the tenant for life of the fund, of reducing the share of his wife into possession. This chance never arose; for the tenant for life outlived the wife; and therefore the husband never could defeat the right of the surviving joint tenants by a severance of the joint tenancy. On the whole, therefore, although the bankruptcy could pass all the interest the husband had, still that interest was confined to the contingent right he might have, but never had, of severing the joint tenancy, by reducing the chose in action into possession; for the estate of the tenant for life did not fail until after the death of the wife, and long after the bankruptcy of the husband. (They cited *Brown* v. *Randle*, 3 Ves. 256; *Mitford* v. *Mitford*, 9 ib. 87; *Purdew* v. *Jackson*, 1 Russ. 1; *Ripley* v. *Wood*, 2 Sim. 165; *Pierce* v. *Thorneley*, id. ib. 177; *Ellison* v. *Elwin*, 13 ib. 307; *Ashby* v. *Ashby*, 1 Coll. C. C. 553; and 2 Cruise Dig. 378, and cases there cited.

Fabo, for the husband, took no part in the discussion.

Bacon, for the assignees.—To say that there is no right in the assignees in this case, is equivalent to saying that no feme covert can sever a joint tenancy. The marriage of this lady with the husband sufficiently severed her joint tenancy, as is shewn from the case of *Brown* v. *Randle* (before cited), where it is laid down that a covenant by one joint tenant to sell his share has the effect of a severance in equity, although it has not that effect at law. Marriage, however, is far more than a mere covenant or agreement, and is in fact an actual assignment of the interest of the female joint tenant.

Friday, June 25.—*Campbell*, in reply, was stopped by the Court.

The VICE-CHANCELLOR.—I should not have stopped this case, but that I have looked into the authorities in Coke upon Littleton, and Plowden, on the point, involved in this most singular case, and I think them quite decisive on the question. The will here gives 2,000*l.* to Mrs. Barton for life, and then to Frederick Ekin, if he survives; otherwise the 2,000*l.* is to go to his children. Frederick Ekin died in the lifetime of Mrs. Barton, leaving four children; one of them married Mr. Loraine, who afterwards, in July 1841, became bankrupt. In February 1847, Mrs. Loraine died, leaving Mrs. Barton, the tenant for life, her surviving; and Mrs. Barton being now dead, the question is, who is entitled to Mrs. Loraine's share? That these four children took as joint tenants, there is no doubt; and the first question is, what is the effect of the marriage on the joint tenancy between Mrs. Loraine and the other children? Now, on looking into Co. Litt. 185, b, I find something there which seems to lead to the decision of this question. "Two femes, joint tenants of a lease for years; one of them taketh husband and dieth, yet the term shall survive; for though all chattels real are given to the husband if he survive, yet the survivor between the joint tenants is the elder title, and after the marriage the feme continued sole p[illegible]d; for if the husband dieth, the feme shall have it, and not the executors of the husband; but otherwise it is of personal goods." Now this is a case of personal [illegible]od, and as Lord Coke relies on Plowden for this, [illegible] must see what Plowden [illegible]. The case referred to is that of *Brace*[illegible] *Cooke*, Plowd. 418, [illegible]ere, after stating that th[illegible] [illegible]ate will be remitted to [illegible] But otherwise it is of [illegible] personal, for if a woman who has personal [illegible] husband the law devests the property [illegible] the wife and vests it in the husband only; and [illegible] if a stranger gives personal goods to a feme covert and to a[illegible], the jointure is presently severed by the law, as th[illegible] the whole shall not go to the surviv[illegible] of the wife [illegible] the other, but the husband and the other [illegible] tenants in common presently, and the title of [illegible] of them as dies shall go to the executors; for chattels personal are esteemed in law of less value and are of a baser degree than chattels real; and so there is a diversity between them. Wherefore [illegible] as this is a chattel real the coverture of the wife makes no severance of the jointure. [illegible] is it any impediment to the plaintiff's having the whole as survivor, it so [illegible] the other point does not hurt him." And then the report proceeds to disc[illegible] the other points of the ca[illegible]. In the present case, also, there is another circumstance to be considered, viz. that the property is not only personal goods, but that the wife's interest was reversionary, and therefore the husband's right to take could only be by survivorship, in case of his surviving his wife. Then the instant the wife dies there accrues a right to the husband which passes to his assignees, and a right also to the other joint tenants claiming by survivorship, and it is brought to this next point, whether the one right or the other accrues first. Now, in the same page of Co. Litt. from which I have already quoted, we find a distinction taken, which is, I think, decisive on this question. Littleton having stated that a devise by one joint tenant shall not prevail against the surviving joint tenants, says.—"And the cause is, for that no devise can take effect till after the death (*post mortem*) of the devisor, and by his death (*per mortem*) all the land presently cometh by the law to his companion. Here," says Lord Coke, "both their claims commence at one instant; and although an instant *est unum indivisibile tempore, quod non est tempus nec pars temporis, ad quod tamen partes temporis connectuntur*," and that "*instans est finis unius temporis et principium alterius*;" yet, in consideration of law there is a priority of time in an instant; as here the survivor is preferred before the devisee; for Littleton saith that the cause is, that no devise can take effect till *after* the death of the devisor, and *by* his death all the land presently cometh by the law to his companion; whereby it appeareth that Littleton, by these words *post mortem* and *per mortem*, though they finish at one instant, yet alloweth priority of time in the instant which he distinguisheth by *per* and *post*; and the reason of this priority is, that the survivor claimeth by the first feoffer, as hath been said, and therefore, in judgment of law his title is paramount—the title of the devisee.' Putting the case, therefore, on the narrow question whether the survivorship took effect in favour of the husband or of the surviving joint tenants, I think the distinction here taken between taking *per* and *post* settles the question; and the authorities being in favour of the older title; where two titles of different dates come into possession at the same moment, I must decide in favour of the joint tenants surviving, and against the assignees of the husband.

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

Monday, July 19.

BRYAN *v.* MANSION.

Will—Construction—"Issue"—"Children."

A testatrix bequeathed a sum of stock to trustees, upon trust to pay the dividends to A. the wife of C. D. for her life, and after her decease, in case C. D. should survive her, and she should leave no issue living at her decease, then to C. D. for his life, but in case she should leave issue, then one moiety of the dividends to be paid to C. D. for his life, and the other to be applied for the benefit of such issue, and after the decease of A. as to one moiety of the capital, and after the decease of the survivor of A. and C. D. as to the whole of the capital upon trust, to divide the same among the children of A. in certain proportions, with provision for maintenance, and in case A. should die in the lifetime of C. D. leaving issue, and all such issue should die under age and unmarried during the lifetime of C. D. in trust to pay the whole of the dividends to C. D. during his life, and after the decease of A. and C. D. and the survivor, and failure of issue of A. upon trust for the children of E. F.

Held, upon the construction of the will, that the gift over, after "failure of issue" of A. was valid.

Jane Clementina Bryan, by her will dated the 10th of August, 1819, made the following bequest:—"I give and bequeath to my friends John Collins, Edward Jerningham, Anthony Blake, and George Tennant, the capital sum of 29,558*l.* 8s. 10d. Four per Cent. Bank Annuities, &c. upon the trusts following, that is to say, upon trust that they, &c. do and shall pay and apply the dividends and produce thereof when and as the same shall be received, unto my niece Mary Doyle, wife of Sir John Milley Doyle, for her life; and after her decease, in case her husband, the said Sir J. M. Doyle, shall survive her, and she shall leave no issue living at her decease, then to the said Sir John Milley Doyle for his life, but in case she shall leave issue, then one moiety or half part only of such dividends and produce to be paid to the said Sir John Milley Doyle for his life, and the other moiety thereof, to be applied during his life to or for the benefit of such issue of my said niece for their respective minorities as my said trustees for the time being shall think fit and proper, and from and after the decease of my said niece, then as to one moiety or half part of the said capital stock, and after the decease of the survivor of my said niece and of her said husband, then as to the whole of the said capital stock, upon trust to pay, transfer, and divide the same respectively unto, between, and amongst all the children of my said niece either by her said present or any future husband, in the shares and proportions and in the manner following: that is to say, if there shall be only one such child, the whole to such only child, but if there shall be a son and one or more younger child or children, then one-half part thereof to such son, and the other part thereof into and equally amongst such younger children, the shares of sons to become vested at their respective ages of twenty-one, and of daughters at their respective ages of twenty-one years, or at their marriage with the consent of her or their parents or guardians which shall first happen; and in case of the death of any such child before his or her portion shall become vested, the same to be divided equally between the brothers and sisters of the child so dying, and to become payable in like manner as their original shares; and in case there shall be only daughters, the whole to be divided equally amongst such daughters, and to be paid and payable at the times and in the manner hereinbefore mentioned; and my will is that my said trustees for the time being shall, during the minority of any of the children of my said niece, apply all or any part of the interest of the expectant portion of such children in or towards their respective maintenance, education, or advancement, as my said trustees for the time being shall think fit; and in case my said niece shall depart this life in the lifetime of her said present husband, leaving issue, and all such issue shall depart this life under age and unmarried during the lifetime of her said husband, then in trust to pay the whole of the said dividends and interest to the said Sir John Milley Doyle during his life, and from and after the decease of my said niece, and of the said Sir John M. Doyle, and the survivor of them, and failure of issue of my said niece, upon trust to pay and transfer the whole of the said capital stock unto and equally between and among all the daugh-

ters and younger children of my nephew George Bryan," &c.

The testatrix gave all the residue of her estate to the said Mary Doyle, and appointed John Collins and George Tennant executors of her will. The testatrix's niece, Lady Doyle, died without issue, and leaving her husband, Sir J. M. Doyle, her surviving; and a question arose in this suit as to the before-mentioned bequest, viz. whether the gift over upon Lady Doyle's death without issue took effect or not.

Russell and *J. S. Moore* for Sir J. Doyle.

Busk for parties in the same interest.

Malins and *Renshaw* for the persons interested in the gift over.

The following cases were cited: *Nicholls* v. *Hooper*, 1 P.W. 199; *Pinbury* v. *Elkin*, 1 P.W. 563; *Target* v. *Gaunt*, 1 P.W. 432; *Hockley* v. *Mawbey*, 1 Ves. 143; *Leeming* v. *Sherratt*, 2 Hare, 11; *Hughes* v. *Sayer*, 1 P.W. 534; *Doe* v. *Lucraft*, 8 Bing. 386; *Forth* v. *Chapman*, 1 P.W. 661; *Carter* v. *Bentall*, 2 Ben. 551; *Head* v. *Randall*, 2 Y. & C. C. C. 231; *Ellicombe* v. *Gompertz*, 3 Myl. & Cr. 127; *Banks* v. *Holme*, 1 Russ. 394 n; *Lanesborough* v. *Fox*, ca. temp. Talb. 262; *Morse* v. *Lord Ormonde*, 1 Russ. 382; *Malcolm* v. *Taylor*, 2 Russ. & Myl. 416; *Blackburn* v. *Edgeley*, 1 P.W. 600; *Baker* v. *Tucker*, 3 H. L. ca. 106; *Ginger* v. *Waite*, Wills, 318; *Trickey* v. *Trickey*, 3 Myl. & K. 560; *Salkeld* v. *Vernon*, 1 Eden, 64; *Ellis* v. *Selby*, 7 Sim. 352; and *Eno* v. *Eno*, 6 Hare, 171.

The VICE-CHANCELLOR said that he considered the issue referred to in the gift over were not general issue, but those who were to take under the previous limitations. The testatrix had provided for all the children of Lady Doyle whom she intended to take vested interests—namely, the sons at their respective ages of twenty-one years, and daughters at their respective ages of twenty-one years, or at their marriage, with consent of their parents or guardians. She did not intend any son to take who might have married and died under twenty-one, leaving issue. His Honour considered it to be a rule of construction not now to be controverted, that where there was a gift to some only of a class, and then a gift over upon failure of all the class, it was to be construed upon failure not of the whole class, but of those only who were mentioned before. This was the rule laid down in the cases of *Malcolm* v. *Taylor* and *Salkeld* v. *Vernon*, among others. A case of *Doe* v. *Lucraft* had been cited, in which Lord Chief Justice Tindal was pressed by that rule, and it appeared that he did not dissent from it, but said that he would not apply it in that case so as to make the word "issue" include the issue mentioned before with the restrictions which had accompanied the mention of them, and he said, "If we were to import such a restriction into this part of the will, we should manifestly do violence to the intention of the testator expressed in another part." His Honour did not feel sure that in this will he was obliged to call in aid that rule of construction. The gift here was on failure of issue, and he thought that the word "issue" in this will meant children, and thus it came within the very words. It was obvious that in many parts of this will, "issue" must mean "children." The testatrix first disposed of the income of the fund during the lives of Sir John and Lady Doyle, and the survivor of them, and then she proceeded to dispose of the capital; and the application which she made of that was, that during the lifetime of Sir John Doyle one half, and after the decease of the survivor of them the whole, was given to the children of Lady Doyle, with a provision for the maintenance of the children until they came of age. That was obviously a repetition of that part of the provision for the application of the income during the lives of them, and the survivor of them. In case she should leave issue, then one moiety or half part only of the dividends was to be paid to Sir John Doyle for life, and the other moiety thereof to be applied during his life, for the benefit of such issue of the testatrix's niece, or for their maintenance, education, or advancement during their respective minorities; and then she proceeded, during the life of Sir John Doyle, to give half the capital for the benefit of the "children" of her said niece. It was obvious that she did not mean a different class to take under the latter bequest to "children," from those who were to benefit by the former gift to "issue." She made the same provision for "children," eo nomine, as she before made for "issue," meaning, according to his Honour's judgment, "children." And then the word "issue" in the clause which followed, "In case my said niece shall depart this life in the lifetime of her said present husband, leaving issue, and all such issue shall depart this life under age and unmarried," obviously meant "children," and confirmed this construction. His Honour therefore thought, that without calling in aid the general rule, there was enough in this will to shew that the failure of issue here mentioned meant a failure of children, and consequently the gift over took effect.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

Friday, June 18.

POCOCK *v.* PICKERING.

Warrant of attorney—Attestation, insufficiency of—Declaration by subscribing witness that he is the attorney for the person executing the warrant.

A warrant of attorney had the following attestation:—"Signed, sealed, and delivered, &c. in the presence of me, H. C., who at the request and in the presence of the said J. P. &c. (the parties executing) have set and subscribed my name as the attorney on their behalf attesting the execution hereof, having first read over and explained to them and each of them the nature and contents thereof.—H. C."

Held (Erle J. dissentiente), that the attestation did not comply with the requisites of the stat. 1 & 2 Vict. c. 110, s. 9, for want of a declaration that the subscribing witness was the attorney in the transaction for the parties executing the warrant.

B. C. Robinson had obtained a rule calling upon the defendant to shew cause why an order of the Lord Chief Baron setting aside a warrant of attorney and the judgment and execution thereon should not be rescinded. The attestation was in the following form:—"Signed, sealed, and delivered, &c. in the presence of me, Henry Clarke, who at the request and in the presence of the said Joseph Heathcote, J. H. Pickering, and others (naming them), have set and subscribed my name as the attorney on their behalf attesting the execution hereof, having first read over and explained to them and each of them the nature and contents thereof."—(Signed) "Henry Clarke." The rule had been obtained on the ground that this attestation was a sufficient compliance with s. 9 of 1 & 2 Vict. c. 110 (*a*)

Saturday, June 12.—*Bramwell* and *Hall* shewed cause.—1. This is a second application upon amended materials, which is not allowed. (*R.* v. *The Great Western Railway Company*, 5 Q.B. 597.) [Lord CAMPBELL, C.J.—When we granted the second rule, we thought that in this case an exception might be made to the general rule.] 2. The attestation is insufficient. The statute requires two things: the witness is not only to sign as attorney, but he is to declare that he is the attorney in the transaction (*Hibbert* v. *Barton*, 10 Mee. & W. 678); and in this case he fails to do the latter. All the decisions shew that the statute is to be applied stringently, and that the form of attestation must be beyond the power of quibble. (*Potter* v. *Nicholson*, 8 Mee. & W. 294; *Everard* v. *Poppleton*, 5 Q B. Rep. 181; *Lewis* v. *Lord Kensington*, 2 C.B. 463; *Gay* v. *Hall*, 5 D. & L 522; *Holt* v. *Kershaw*, ib. 119)

B. C. Robinson and *Lush*, contrà, admitting that the statute was to be applied stringently, contended that the attestation did contain all the particulars required by the statute. (*Phillips* v. *Gibbs*, 16 M. & W. 208.) *Cur. adv. vult.*

JUDGMENT.

Friday, June 18.—Lord CAMPBELL, C.J.—I am of opinion that this attestation is insufficient. The rule established by the case of *Hibbert* v. *Barton* and other cases cited seems to be, that if the form given by the 1 & 2 Vict. c. 110, is not exactly followed, the words used must, by necessary implication, shew that all the three requisites of the statutable attestation have been complied with. Here the attorney sufficiently subscribes his name as a witness to the due execution of the warrant of attorney, and states that he subscribes as such attorney; but does he "thereby declare himself to be attorney for the person executing the same?" that is to say, that he acted as the attorney of the party in this transaction, doing what is required as such attorney to give validity to the instrument. According to probable intendment, from the words "having first read over and explained to them and each of them the nature and contents hereof," it may be inferred that he did so as their attorney, and at their request. But this is not, as it seems to me, a necessary inference, for he may have read over the document, and explained it, as the attestation states, without any request from them, and before he was employed by them as their attorney. It is painful to consider such subtleties, but, as it seems to me, we are bound to give effect to them, if we would follow former decisions upon this enactment of the Legislature for the protection of debtors.

COLERIDGE, J.—The question in this case is, whether the provisions of the 1 & 2 Vict. c. 110, s. 9, are satisfied by an attestation to the execution of a warrant of attorney by three persons named therein, which is in the following words:—"Signed, sealed, and delivered, being first duly stamped in the presence of me, Henry Clarke, who, at the request and in the presence of the said Joseph Heathcote, James Coghlan, and James Henry Pickering, have set and subscribed my name as the attorney on their behalf, attesting the execution hereof, having first read over and explained to them, and each of them, the nature and contents thereof," followed by the signature. The section enacts, that "no warrant of attorney to confess judgment in any personal action, or cognovit actionem, given by any person, shall be of any force unless there shall be present some attorney of one of the Superior Courts on behalf of such person expressly named by him, and attending at his request, to inform him of the nature and effect of such warrant or cognovit before the same is executed, which attorney shall subscribe his name as a witness to the due execution thereof, and thereby declare himself to be attorney for the person executing the same, and state that he subscribes as such attorney." In construing an Act of Parliament, our first business, I conceive, is to examine the words themselves which are used, and if in them there be no ambiguity, it is seldom desirable to go further; and although, from the common uncertainty of language we may very frequently be driven to ascertain the intention by a consideration of the preamble, where it recites the object, or of the previous common law, where the statute clearly alters or supersedes it, in order to settle the meaning of the enactment itself; yet the object still is only to ascertain the mind of the Legislature as expressed in these words; and where in either of these ways you have arrived at the meaning, I conceive nothing is more dangerous than to flinch from that conclusion because we think the enactment is less wise or efficacious than it might have been made, or even wholly fails of its object. Perhaps the most efficacious mode of procuring good law—certainly the only one allowable to a Court of Justice—is to act fully up to the spirit and language of the enactments, and to let their inconvenience be fully felt by giving them their full effect. The clause in question has obviously two parts. Certain things it requires to be done before execution. An attorney must be present on behalf of the person about to execute; he must have been expressly named by that person; he must attend at his request, and he must inform him of the nature and effect of the instrument he is about to execute. All this precedes execution and a fortiori attestation; and whether all this have been complied with is left, in case of dispute, to be proved extrinsically by evidence. No particulars of it need appear to have been done on the face of the instrument. Then comes the execution and the provision as to the form of attestation; the same attorney spoken of before is now to become the witness, and in discharging this distinct duty he is to do three things: first, he is to subscribe his name as witness; secondly, he is in the attestation to declare himself to be the attorney for the person executing; and, thirdly, he is also, in the attestation, to state that he subscribes as such attorney. The two parts seem to me entirely distinct, and framed with different objects. Both must be complied with, or the instrument will be of no force. If the attorney has failed in any one of these requisites in fact, which the former part requires, it will be in vain to rely on an attestation faultless on the face of it; if the attestation be deficient, or informal in any particular on its face, that cannot be cured by its being proved that, in fact, he fulfilled all the requirements of the former part. In the attestation in question, H. Clarke has subscribed his name as witness; he has stated that he has so done as the attorney of the parties executing; but he has not beyond this declared himself to be their attorney. There is not then a literal compliance with the statute. Is there, then, a virtual one? It appears to me not; and I wish to observe that this is not the same question as whether the attestation shews that the parties have had substantially all the protection and information which they could reasonably desire, or the statute intended—the protection and information which they could reasonably require, and which the statute intends, must be given before execution, and before attestation; and we are now upon a question as to the sufficiency of the attestation. It is not enough that Mr. Clarke should have been de facto such an attorney, so named, so requested, and so discharging his duty, as the section requires before execution; he must beyond this declare in his attestation on the face of it that he is the attorney of the parties. Now, there can be only two ways in which this attestation can be said to shew a virtual compliance with this requirement. The first, that to state that he subscribes his name as the attorney, is the same as to declare himself to be the attorney. But if that be so, I remark first, that you may then strike the words in question out of the statute,—you give them no distinct meaning at all; and, secondly, that, in common sense, the two parts of the sentence have not the same meaning, are not tautologous. A man may very well subscribe his name as attorney, and state truly that he does so, without

(*a*) A former rule had been obtained and discharged on the ground that the affidavits did not disclose the materials upon which the Lord Chief Baron made the order.

being the attorney in the transaction; if he came in at the last moment before the execution, he might do the former, and yet not be in a condition to make the attestation as to the latter. The second mode in which it may be argued that this attestation shews a virtual compliance with the statute, is in its asserting that H. Clarke has subscribed his name at the request of the parties, and in their presence, and that he had first read over and explained to them and each of them the nature and contents of the instrument; in other words the argument is, that to declare he has performed the duties of an attorney to the parties in the transaction, is the same as to declare that he is their attorney. Now here, again, it is obvious to remark: first, that this particular enumeration does not include all the particulars required by the statute, it does not include the being "expressly named by" the parties; secondly, that if the statute only intended the attestation to shew on its face a compliance with the particulars required before execution, its language is most inappropriate for any such purpose; and, thirdly, that to perform the duties of attorney to a person in this matter, and to be his attorney in it, may be in fact, according to this statute, as expounded in many decisions, a very different thing. If the plaintiff's attorney, "at the request of the parties," had "read over and explained to them and each of them the nature of the instrument and its contents," before execution and attestation, and "had set and subscribed his name as the attorney on their behalf attesting the execution thereof," he yet would not have been their attorney, nor could he truly have declared himself to have been so. In other words, the present attestation may be true in every particular, and yet the requisites of the statute not complied with. But, lastly, it is obvious, on reading the statute, that the precisely worded provisions as to the attestation are intended as an additional security, certainly to the debtor, probably to both parties, beyond what is afforded by those which guard the execution. Whether such additional security is thereby gained, or whether it was on the whole wise to seek for it, is immaterial to us, whose only business is to see that the provisions, such as they are, are complied with. I conclude, then, that this attestation neither literally nor in substance satisfies the requisites of the statute, and I feel neither regret nor satisfaction in arriving at any such conclusion in this or in any similar case. In deciding them, we ought not to have our minds distracted by looking to the right or left at the particular circumstances, which we very often know but imperfectly after all, and which, if we knew them ever so well, could form no safe rule for the interpretation of the statute, which ought to be general. If there are careless lenders and fraudulent borrowers on the one hand, there may be usurious or overreaching lenders and oppressed or overreached borrowers on the other; but in either case the rule must be the same which the statute lays down, if a Court of Law is to apply it with certainty; and unless applied with certainty, it becomes no rule at all. The strictness of former decisions has been complained of as technical and favouring fraud. I am far from saying that none of them have had the effect of defeating an honest security. Is any rule so wisely framed as to be secure from abuse? But I believe that this strictness has led to greater care in the execution of the instruments, which is attested by their coming before the courts much less frequently than formerly. It is perfectly easy to comply literally with what the statute requires: that course must be safe. I cannot feel the force of the argument that it is difficult to frame a faultless equivalent; no one need have recourse to equivalents, and those who will speculate on such have no right to complain if they should turn out to be insufficient. I have not thought it necessary to refer to any decisions specifically. It was not contended that the general current of authority was not in accordance with the view I have taken; but it was rather desired to review them. In my opinion, if the matter were now for the first time to be considered, it would be right to come to the same conclusion. I think the rule should be discharged.

ERLE, J.—In this case the question has been, whether a memorandum of attestation to a warrant of attorney in these words, "Signed in the presence of A. B. who subscribe my name as the attorney attending on behalf of the defendant, and at his request attesting the execution, having first read over and explained the instrument," is a sufficient compliance with the 1 & 2 Vict. c. 110, s. 9. The memorandum is properly subscribed by the name of the witness, and properly states that he subscribes as attorney; and, according to my understanding of the words, it declares that he who now, as the attorney of the party, attests the execution, did, before such execution, as the attorney of the party, read over and explain to him the nature of the instrument. Assuming that the statute is to be construed strictly, and a literal compliance exacted, according to the judgment in *Hibbert* v. *Barton*, this is sufficient. According to that case, the memorandum must allege that the attorney subscribing had acted as attorney to inform the party of the nature of the instrument. It assumes that an attorney may subscribe, as attorney, an attestation, without having been the attorney to inform him of the nature of the instrument. It was an extreme construction, adopted without doubt by Parke, B. and with such repugnance on the part of Lord Abinger, that he assigned as his reason the then existing feeling in favour of defendants and prisoners; and no one perceived more clearly than himself the mischief which must result if this feeling were carried to the extent of generally construing instruments, so as to defeat the intention of the parties who would think the existence of courts a nuisance. There is no dispute that this attestation, in respect of the witness subscribing his name, and stating that he subscribes as the attorney, is correct. But the question has been whether the witness declared by the attestation, according to Lord Abinger, that he had been "the attorney in the actual transaction, and knew what the document was about;" according to Parke, B. "that the attesting attorney was present for the purpose of advising the defendant as to the nature and effect of the instrument, and that he attested as such attorney." Now, by the present attestation, it appears to me to be stated, that the witness who subscribes as attorney had, as attorney, first read over and explained the instrument as attorney acting on behalf of the party. In grammar, "who" may, according to the context, signify "and I;" "as," in law, signifies "in the capacity of." The expression that "an agent did an act in a certain capacity is equivalent to "the agent being in that capacity, did the act;" and the expression that "an agent, being in a certain capacity, did an act, having first done another act," is equivalent to the expression that "the agent, being in that capacity, did the first act first, and then the second act." This attestation then expresses grammatically, "that I, being the attorney acting on behalf of the party, and at his request, read over and explained the instrument to him, and now attest his execution." That which is expressed is both stated and declared; and he who states or declares need not state or declare that he states or declares. Whether the statute or the decision be referred to, the attestation expresses all the ideas required by the Legislature as perfectly as language will permit; it being, as far as I know, impossible to frame a sentence incapable of misconstruction. No definite objection was offered to this attestation in argument. The learned counsel suggested that quibbles in respect of such instruments had been before supported, and perhaps a quibble might be found on the present occasion. If it is said that "the parties have the words of the statute before them, and why cannot they use them?" I would answer that no form is given by the statute, and that this objection ought never to receive assent, unless the objector adduces that which he can shew to be a valid form, and, by comparison with a valid form, points out the invalidity of the form objected to. If the words of the enactment are strictly followed, the attestation would be void, according to *Hibbert* v. *Barton*. In the words of the statute, the attestation would be—"I subscribe my name as a witness to the execution, &c. and I hereby declare myself to be attorney for the party executing the same, and state that I subscribe as such attorney;" and it would be consistent with this, that the subscribing witness became attorney at the time of subscribing, without having been attorney before. And according to that decision, it is necessary to add, that he who subscribes and declares himself to be the attorney, had first informed the party of the nature of the instrument, that is, read over, and explained it to him; which is done here; and as the subscribing must be not merely by the same man but by the same attorney who gave the information, I cannot suggest a more precise expression than that "I subscribe as the attorney attending on behalf of the party attesting his execution, having first explained the instrument to him." I regret that I differ from my brethren, because this case will be added to the number of those where the creditor, instead of receiving from, is adjudged to pay to his debtor, and where the law increases, instead of redressing, the loss from wrong.

Lord CAMPBELL, C.J.—The rule will be discharged, and I think it should be without costs.

Rule discharged.

Nisi Prius.

COURT OF EXCHEQUER.

Reported by J. B. DASENT, Esq. Barrister-at-Law.

Thursday, June 21.
SITTINGS AT NISI PRIUS.
(Before Sir F. POLLOCK, C.B.)
LINES v. LORD C. RUSSELL.

Parliaments—Select election committee—Warrant of chairman—Form of.

The proceedings of a select committee of the House of Commons under stat. 11 & 12 Vict. c. 98, are entitled to the respect accorded those of the House itself, and of all Superior Courts of Justice: where, therefore, the chairman of such a body has power by the 83rd section to commit witnesses and others to custody in certain events, it is not necessary that the warrant should specify the particular misconduct of which the party committed has been guilty; but it is sufficient if it states that he has been "guilty of prevarication and misbehaviour before the committee."

The declaration stated that the defendant, on the 5th day of April, A.D. 1851, and on divers other days and times, with force and arms, assaulted the plaintiff, and imprisoned him, and forced and compelled him to go from and out of a certain house or room, in which he, the plaintiff, then lawfully was, to wit, the House of Commons, into and along divers passages and ways to a certain other part of the said house; and then and there again imprisoned the plaintiff, and kept and detained him in prison without any reasonable or probable cause, for a long space of time, to wit, for three days then next following, at the expiration of which time he, the defendant, again with force and arms forced and compelled the plaintiff to go from and out of such last-mentioned part of the said house into and along divers ways and passages unto and into a certain other part of the said house, and there again imprisoned the plaintiff for a long space of time, to wit, twelve hours, whereby the plaintiff was not only greatly hurt and injured, but was also obliged to pay a large sum of money, to wit, 30*l.* and to become liable to pay a certain other large sum of money, to wit, 30*l.* in endeavouring to obtain his liberation from the said imprisonment and other wrongs to the plaintiff then did, against the peace, &c.

Pleas, first, not guilty.

Secondly, that before, and at the said several times, when, &c. in the declaration mentioned, and during all the time in the declaration and in the plea mentioned, a parliament of our Sovereign Lady the Queen was holden at Westminster, in the county of Middlesex, and that during all the time aforesaid he, the defendant, was the Serjeant-at-Arms attending the House of Commons. That before, &c. to wit, on the 18th of February, 1851, a certain petition had been and was presented to the said House of Commons, complaining of an undue election and return of Jabob Bell, esq. to serve in the said Parliament as a burgess for the borough of St. Albans, in the county of Hertford, and that afterwards and shortly before the first of the said several times, when, &c. to wit, on the 28th of May, 1851, the said petition had been and was referred in due form of law to a select committee of the said House of Commons, duly chosen, appointed, and sworn to try and determine the merits of the said petition, of which said committee, Edward Ellice, the younger, esq. before any of the said several times when, &c. to wit, on the day and year last aforesaid, had been and was duly selected to be and act as the chairman, and which said committee before and at the said several times when, &c. was sitting for the trial and determination of the merits of the said petition. And the defendant further says, that immediately before the first of the said several times, when, &c. to wit, on the said 5th day of April, in the year aforesaid, the plaintiff was a witness before the said select committee, and was as such witness examined upon oath before the said committee, and did then as such witness, and while he was so examined before the said committee, prevaricate and otherwise misbehave himself, whereupon the said Edward Ellice, the younger, then being and acting as such chairman of the said committee, according to and by virtue and authority of the statute in such case made and provided, and by the direction of the said committee, by his warrant in that behalf, under his hand then duly made and bearing date the said 5th of April, in the year aforesaid, after reciting therein that the select committee appointed to try and determine the merits of the petition, complaining of an undue election and return for the borough of St. Albans, had that day ordered that the plaintiff, therein described as William Lines, of St. Albans, having been guilty of prevarication and misbehaviour before the said committee, should be committed to the custody of the Serjeant-at-Arms attending the said House of Commons, did require and authorise the said Serjeant-at-Arms to take into his custody the body of the plaintiff, and to keep him in such custody until twelve of the clock on Tuesday then next, the 8th day of April, at noon. And the defendant further says, that at the time when the said Edward Ellice, the younger, so made his warrant as aforesaid, the House of Commons was not sitting, and that the said House of Commons had before then been duly adjourned to a certain time after the making of the said warrant, the same being a time less than twenty-four hours before the said hour of twelve of the clock at noon on Tuesday the 8th day of April, in the said warrant mentioned, that is to say, at the hour of a quarter before four of the clock on Monday, the 7th day of April, in the year aforesaid. And the defendant further saith, that the said warrant was

afterwards and before any of the said several times when, &c. to wit, on the said 5th day of April, in the year aforesaid, duly delivered to the defendant, then being such Serjeant-at-Arms as aforesaid, to be by him executed in due form of law, by virtue and in execution of which said warrant he, the defendant, as such Serjeant-at-Arms as aforesaid, afterwards and at the same time when, &c. in the said declaration mentioned, to wit, on the day and year last aforesaid, gently laid his hands on the plaintiff to arrest him and take him into custody, and did then arrest him by his body by virtue of and in execution of the said warrant, and did then, in execution of and in obedience of the said warrant, imprison the said plaintiff, and keep and detain him in custody, and did also, in further execution of their obedience to the said, necessarily force and compel the plaintiff to go from and out of the said several houses, rooms, and places in the said declaration first-mentioned, into and along the passages and ways therein mentioned, and did then, in execution of and in obedience to the said warrant, imprison the said plaintiff, and keep and detain him in custody, until he, the plaintiff, was afterwards, to wit, on the 7th day of April in the year aforesaid, and before the expiration of the time mentioned in the said warrant as aforesaid, by the order of the said House of Commons, discharged from the said imprisonment and custody, which are the said several trespasses in the said declaration mentioned, and whereof the plaintiff hath above complained against the defendant, and this the defendant is ready to verify, &c.

Edwin James, Q.C. and *Allan*, for the plaintiff.

Sir *F. Thesiger*, Attorney-General, and *Andrews*, Q.C. and *Welsby*, for the defendant.

This was an action to recover damages from the Serjeant-at-Arms of the House of Commons for the imprisonment of the plaintiff under a warrant issued by E. Ellice, esq. M.P. for the borough of Coventry, as chairman of the select committee appointed to try the validity of the return of J. Bell, esq. for the borough of St. Albans.

E. James submitted that the warrant was illegal. The question was one of law rather than of fact, and turned entirely on the form of the following warrant:—

"House of Commons—

"St. Alban's Election Petition Committee.

"Whereas the select committee appointed to try and determine the merits of the petition complaining of an undue election and return for the borough of St. Albans, have this day ordered that William Lines, of St. Albans, having been guilty of prevarication and misbehaviour before the said committee, be committed to the custody of the Serjeant-at-Arms attending this House. Now these presents are therefore to require you to take into your custody the body of the said William Lines, and to keep him in such custody until twelve of the clock on Tuesday next, April 8, at noon. For which this shall be your sufficient warrant.

"Given under my hand this 5th day of April, one thousand eight hundred and fifty-two.

(Signed) "EDWARD ELLICE,

"Chairman of the said Committee."

"To the Serjeant-at-Arms attending the House of Commons, or his deputy or deputies."

It was contended that there was no authority for the issue of such a warrant. Mr. Ellice, as chairman of the St. Alban's committee, derived his power and jurisdiction exclusively from the provisions of the 11 & 12 Vict. c. 98, and it was submitted that being the creature of a statute, he was bound to keep himself strictly within it. Now the 83rd section gives the chairman of such committees power to commit witnesses to custody under certain circumstances and conditions alone, and in the exercise of that power they ought to bring themselves within the very words of that section on the face of the warrant. By that section it is enacted, —"That every such select committee may send for persons, papers, and records, and may examine any person who has subscribed the petition which such select committee are appointed to try, unless it otherwise appear to such committee that such person is an interested witness; and they shall examine all the witnesses who come before them upon oath, which oath the clerk attending such select committee may administer; and if any person summoned by such select committee, or by the warrant of the Speaker of the House of Commons (which warrant the speaker may issue from time to time as he thinks fit), disobey such summons, or if any witness before such select committee give false evidence or prevaricate, or otherwise misbehave in giving or refusing to give evidence, the chairman of such select committee, by their direction, may at any time during the course of their proceedings report the same to the House for the interposition of the authority or censure of the House, as the case may require, and may by a warrant under his hand directed to the Serjeant-at-Arms attending the House of Commons, or to his deputy or deputies, commit such person (not being a peer of the realm or lord of parliament) to the custody of the said serjeant, without bail or mainprize, for any time not exceeding twenty-four hours if the House be then sitting, and if not, then for a time not exceeding twenty-four hours after the hour to which the House stands adjourned." Now the plaintiff appeared as a witness before the committee, and for his conduct as such it was that the chairman thought proper to order him into custody, for which purpose he issued this warrant; but it was submitted that the warrant was defective in omitting to specify the particular misconduct of which the plaintiff had been guilty, and to set forth the particular ground for his imprisonment. The fact was, that the plaintiff had not answered a certain question in a manner satisfactory to the chairman; but whether he gave false evidence, or prevaricated, and if so, in what manner, or misbehaved himself, or whether his misconduct consisted of his refusal to give evidence, or in his manner of giving it, did not clearly appear on the face of the warrant. That instrument rather treated the plaintiff as if he had been guilty of all the offences specified in the section; but whereas it ought, as is submitted, to have distinctly set forth the particular misbehaviour and prevarication imputed to the plaintiff. Then again, the warrant did not allege that the plaintiff had been examined on oath, which, if his offence occurred while giving evidence, ought to have been the case. Nor did the warrant allege that the offence was committed in the House of Commons. In fact, the warrant was in form a general warrant; and though it may be that the speaker of the House itself may have power, as one of the highest tribunals in the land, to issue such an instrument, it is contended that the chairman of a select committee sitting under a particular Act, which defines and gives to it certain powers, does not partake of the same immunity from the common law, and that any warrant issued by him under such circumstances, ought to specify the precise nature of the offence sought to be punished. As the action was brou ht entirely to try the validity of this warrant, the plaintiff would be content to take the opinion of the Judge at Nisi Prius, without troubling the jury with any assessment of damages.

Sir F. POLLOCK, C.B.—As the facts are admitted, and raise a question which must go to the Court above, and I have a clear opinion on them, I think I may as well express my view of the law at once, leaving it to the plaintiff to move. My present impression is strong that the proceedings of a select committee of the House of Commons, sitting under the statute alluded to, are entitled to the same degree of respect which is accorded to those of the highest tribunals known to the English law. As regards the Superior Courts of Westminster-hall, the rule clearly is that a liberal construction prevails. Though a strict compliance with technicalities is required from the Inferior Courts, it is not so in regard to the proceedings of the Superior Courts. Whether it be that it is assumed that they will not conduct themselves improperly, I know not, but so it is.

COURT OF COMMON BENCH.

Reported by W. J. METCALFE, Esq. of the Inner Temple, Barrister-at-Law.

SECOND SITTINGS AT WESTMINSTER IN HILARY TERM.

Thursday, Jan. 29.

(Before TALFOURD, J.)

ANDERSON v. WHALLEY.

Ship's log—Refreshing memory.

A ship's log written by the mate, but read by the captain about a week after it was written, may be used by the captain to refresh his memory.

Case for the negligent navigation of a vessel, whereby the vessel was injured.

In the course of the cause, the captain of the defendant's vessel was put into the witness-box. He deposed that the ship's log, which he produced, was written by the mate, and that the mate was, and had been for some time, serving abroad on the coast of Portugal; that he had himself read the log about a week after it was written; that the matters to which it referred were then fresh in his mind, and he at that time thought the narrative it contained to be correct.

It was then proposed that the witness should refresh his memory by looking at the log-book.

Byles, Serjt. for the plaintiffs, objected. The witness had not himself written the log-book, and therefore could not be allowed to refresh his memory by it. The absence of the mate was not an excuse.

Crowder, contrà.

The learned judge overruled the objection, and the evidence was admitted.

Verdict for the plaintiffs, damages 50l.

Byles, Serjt. and *Unthank*, for the plaintiffs.

Crowder and *Duncan*, for the defendant.

SITTINGS AT WESTMINSTER AFTER HILARY TERM.

Wednesday, Feb. 4.

(Before JERVIS, C.J.)

CAMFIELD v. BOND.

Slander—Evidence—Animus—Amendment.

In an action for slander, the plaintiff may give in evidence other slanderous words to shew the animus of the defendants.

The Court will not amend the declaration, if it appears that by the words really used, the defendant did not intend to make a slanderous and actionable charge.

Case for slander.

The declaration alleged that the defendant had said of and concerning the plaintiff, "That's the man,—Camfield, I mean. He's a thief."

Pleas—Not guilty, and a justification.

In the course of the cause, *Horn*, for the plaintiff, asked a witness as to some other slanderous words spoken by the defendant of the plaintiff, to shew the animus in which he had used the words complained of in the declaration.

Petersdorff, for the defendant, objected. Other slanderous words could not be given in evidence unless there was some ambiguity in the words complained of, or as to the spirit in which they were used. In this case there was nothing of the kind.

Horn, contrà, submitted that evidence to shew the animus in which slanderous words were used was always admissible, whether there was ambiguity in the words themselves or not. He cited a case, *Cafflin* v. *Cooper*, tried by Coleridge, J. at the Lewes Summer Assizes, 1845, where it was held that evidence might be given of words spoken five years before, to shew the animus; similar words being used from time to time, down to the periods of using the words complained of.

JERVIS, C.J. thought the evidence admissible for the purpose proposed.

The facts of the case were these:—Fifteen years before the action was brought, the plaintiff was employed as a journeyman by the defendant, who is a plumber; he charged the plaintiff with robbing him of some solder, and dismissed him from his employ. Subsequently and recently, he said to a plumber named Slane,—"You have got a man named Camfield in your service; I had him in my employ. I was looking about and found some solder hidden. I told him he was a thief, and discharged him." Slane mistook the name for that of one Caulfield, also in his service, and told him what had been said. Caulfield immediately went to the defendant, and asked him why he had charged him with robbing him. Defendant answered, "It is not you, it was Camfield I meant."

At the close of the case, *Petersdorf* submitted that the plaintiff must be nonsuited. He had failed to prove the words alleged in the declaration.

Horn applied to the Court to amend the declaration, by substituting the words proved for those declared on.

JERVIS, C.J.—I would amend, if the difficulty was one merely technical, but the words proved were not actionable.

Horn contended that if the words used by the defendant on both occasions were coupled together, they would be actionable. In answer to the question, why did you charge me with robbing you, the defendant answered, "It was Camfield, I meant." That, taken in conjunction with what he had said before, was a charge of felony. [JERVIS, C.J.—He only meant that Camfield was the man he alluded to on the former occasion.] He submitted that the question, what the defendant meant was a question for the jury. The impression necessarily made on Camfield's mind was, that a charge of felony was made. That was enough. An additional ground for the Court to amend was, that if it were improper so to do, the Court above could amend the error, while in the opposite case the plaintiff would be without a remedy.

JERVIS, C.J.—What the defendant said was strictly true, and merely historical. He had found the solder, he had told the plaintiff he was a thief, he had discharged him. In my opinion, the subsequent remark merely meant that Camfield was the individual he had alluded to. Under these circumstances, I do not think I ought to amend.

Nonsuit.

Horn for plaintiff.

Petersdorff for defendant.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

June 11, 16, and 25, 1851; and Feb. 26, 1852.

ROBINSON v. GELDARD.

Will—Charitable legacies—Pure personalty—Personalty savouring of realty—Abatement—Marshalling.

Although according to the general rule personalty savouring of realty and pure personalty, will not be marshalled so as to throw the general legacies on the former, and to leave the latter for the payment of the charitable legacies, if the testator shews a clear intention to give priority to the charitable legacies with reference to the pure personalty, the Court will give effect to such intention.

A testator gave legacies to charities to be raised and paid out of such of his ready money, goods, and personal effects as he might or could by law charge with the payment of the same; and he gave other legacies for charitable purposes:

Held, reversing the decree of the Court below, that the charitable legacies were a primary charge on the pure personalty, in preference to the general legacies.

The testator, Thomas Clapham, by his will dated the 2nd of January, 1816, bequeathed as follows:—"I give and bequeath to the treasurer for the time being of the General Infirmary at Leeds the sum of 10,000*l.* to be raised and paid out of such of my ready money, goods, and personal effects as I may or can by law charge with the payments of the same, which sum I declare and desire may be applied towards carrying on the charitable purposes of the said infirmary." The testator then gave, in similar terms, other charitable legacies, to the amount of 20,000*l.*; and afterwards other legacies, not charitable, to the amount of 36,000*l.* The testator's general personal estate, consisting of pure and mixed personalty, was more than sufficient for the payment of his debts, funeral and testamentary expenses and legacies; but his pure personalty alone was insufficient for that purpose. His Honour the Vice-Chancellor Knight Bruce, upon the authority of *The Philanthropic Society* v. *Kemp*, 4 Beav. 581, and *Sturge* v. *Dimsdale*, 6 Beav. 462, held that the charitable bequests ought to abate in the proportion which the pure personalty bore to the whole personalty, but his Honour stated, that had it not been for those cases, he should have held otherwise.

This was an appeal from the decree of the Vice-Chancellor.

J. Parker, Malins, and *Bolton*, in support of the appeal, contended that the charitable legacies were, in effect, given by the testator out of the personalty, which he could by law charge with the payment of the same, that is to say, out of the pure personalty. The rule, therefore, that the Court will not marshal assets in favour of a charity was inapplicable to this case, and was unnecessary in order to give effect to the testator's intention. That the cases of *The Philanthropic Society* v. *Kemp*, 4 Beav. 581, and *Sturge* v. *Dimsdale*, 6 Beav. 462, by which the Vice-Chancellor considered himself bound, did not apply to the present case; if they did, they were rather in favour of the appellants. These charitable legacies were in effect given specifically out of a particular fund, and ought to be considered as demonstrative legacies. *Acton* v. *Acton*, 1 Mer. 178; *Fowler* v. *Willoughby*, 2 S. & S. 354; *Newbold* v. *Roadnight*, 1 Russ. & My. 677; 1 Roper on Legacies, 198, 4th ed.; Wms. Executors, 923, 928, 931, 1083, 3rd ed.

Walker, J. Russell, and *Willcock* for the residuary legatees, in support of the decision of the court below, contended that the charity legacies were not entitled to any priority over the other legatees as far regarded the pure personalty, and that, according to the general rule, assets could not be marshalled in their favour.

J. Parker, in reply.

The following cases were cited and commented upon by the counsel on both sides:—*Attorney-General* v. *Lord Weymouth*, Amb. 20; *Attorney-General* v. *Graves*, Amb. 155; *Attorney-General* v. *Tomkins*, Amb. 216; *Negus* v. *Coulter*, Amb. 367; *Waller* v. *Childs*, Amb. 524; *Attorney-General* v. *Caldwell*, Amb. 635; *Arnold* v. *Chapman*, 1 Ves. 108; *Middleton* v. *Spicer*, 1 Br. C. C. 201; *Paice* v. *The Archbishop of Canterbury*, 14 Ves. 364; *Curtis* v. *Hutton*, 14 Ves. 537; *Currie* v. *Pye*, 17 Ves. 462; *Cherry* v. *Mott*, 1 My. & C. 123. As to marshalling assets:—*Attorney-General* v. *Tyndall*, Amb. 614; 2 Eden, 207; *Foster* v. *Blagden*, Amb. 704; *Hillyard* v. *Taylor*, Amb. 713; Dick, 475; *Mogg* v. *Hodges*, 2 Ves. 52; 1 Cox, 19; *Foy* v. *Foy*, 1 Cox, 163; *Coleman* v. *Taylor*, cited in *Ridges* v. *Morrison*, 1 Cox, 180; *Attorney-General* v. *The Earl of Winchelsea*, 3 Br. C. C. 373; 2 Cox, 364; *Attorney-General* v. *Marint*, cited 3 Br. C. C. 377; *Attorney-General* v. *Lord Mountmorris*, Dick, 379; *Makeham* v. *Hooper*, 4 Br. C. C. 153; *Hobson* v. *Blackburn*, 1 Keen, 273; *Crosbie* v. *The Mayor of Liverpool*, 1 Russ. & Myl. 761, n.; *Foudrin* v. *Gowdey*, 3 My. & K. 383.

The LORD CHANCELLOR (Truro).—In this case a suit was instituted to administer the testator's estate, and at the hearing it was contended, on behalf of the charities, that the legacies given to individuals ought to be paid out of the personalty savouring of realty, so as to leave the whole of the pure personalty for the payment of the charitable legacies so far as it would extend; and the Vice-Chancellor Knight Bruce was apparently of opinion that on principle that mode of payment ought to be adopted, but in deference to two cases before Lord Langdale, *The Philanthropic Society* v. *Kemp*, 4 Beav. 581, and *Sturge* v. *Dimsdale*, 6 Beav. 462, which appeared to him to be authorities for the opposite course, he made a decree that the charitable legacies ought to abate in the proportion that the part of the testator's personal estate savouring of realty bears to the whole personal estate. Against this decree the charitable institutions have appealed; and I am of opinion that the appeal ought to be allowed. However proper it might have been for the Vice-Chancellor to have deferred to the language used by Lord Langdale in the two cases which I have mentioned, the actual decisions in those cases do not govern the present case, and of course I should not be justified in yielding to any mere expression of opinion on the part of the learned judge who decided those cases, which did not accord with my own conclusion as to the true doctrine applicable to the present case. In *The Philanthropic Society* v. *Kemp*, 4 Beav. 581, the testatrix gave legacies to certain individuals amounting in the whole to about 4,000*l.* and she also gave legacies to charities amounting together to about 1,300*l.* which charitable bequests she directed should be paid and satisfied out of her ready money, and the proceeds of the sale of her funded property, personal chattels, and effects, and not from the proceeds of her leasehold or real estate; and the testatrix charged her leasehold estate bequeathed to S. B. and M. S. in addition to her other personal estate, with the payment of her debts, funeral, and testamentary expenses, and the legacies not given to charitable uses. The assets of the testatrix consisted of about 1,200*l.* in pure personalty, and 5,400*l.* in personalty connected with real estate, and were liable to about 1,500*l.* debts, besides her funeral and testamentary expenses. Lord Langdale, after observing that it was a new question, and making some other remarks, proceeded thus:—"The leaseholds being given 'in addition to,' and not 'in exoneration of,' the other personal estate, we have the whole personal estate subject to the debts, &c. and all the other the legacies; the necessary consequence is, that when you come to apply the assets in payment, you must have pro ratâ payments out of different sorts of persona estate; you pay the debts, funeral expenses, an legacies, out of the common fund, and yet it is de sired that the charity legacies should be first pai out of the pure personalty; here, as in every case the testatrix intended all the legacies to be paid, but it must be done according to the principle of law and if this were a matter altogether independent o authority, I own I should have thought that gooc reasons might have been found for marshallin assets; I cannot help very strongly thinking so, bu considering the authorities which have prevailed the language which has been laid down on this sub ject, and the necessity of having pro ratâ payments in cases where charity legacies are concerned, I think that something more than is to be found in this will is wanting to entitle the charity legacy to be paid in full out of the pure personalty; the words in thi will seem to me insufficient to enable her intention to be carried into effect in the state of her assets the intention was perfectly lawful, and might have been effected in a different way, if there had been words introduced into this will expressly, throwing the other burdens upon the other portions of the estate; in that case I think the lawful intentio would have been carried into effect, and there would have been no such difficulty as at present appears.' The circumstance that in that case the testatrix expressly subjected the pure personalty to the payment of debts and legacies to individuals, as well as the personalty savouring of realty, and the circumstance that the personalty savouring of realty was insufficient for the payment of the debts and legacies to individuals, constitute, as it seems to me, two material distinctions between that case and the present. I regard the first circumstance as constituting a material distinction, because in such a case, if the Court directs the legacies to individuals to be paid partly out of the pure personalty, the direction is only in accordance with the express words of the testator. And I regard the second circumstance as constituting a material distinction, not indeed as affecting the construction of the will, but as influencing the adjustive interference of the Court, which is not the result of construction, but of the application of equitable principles independent of construction or any intention on the part of the testator as to the mode of payment, although in furtherance of the presumable general intent as to the payment itself. In this view, the insufficiency of the personalty savouring of realty for the payment of debts and legacies to individuals, forms a strong reason for allowing the private legatees to participate in the pure personalty, which reason does not exist in the present case, as they can satisfy themselves out of the personalty savouring of realty. But even, notwithstanding these circumstances, Lord Langdale intimated that he should have decided the case in the contrary way, but for the language used in previous cases as distinguished from principle, or from any actual decisions on the point, of which he considered there was none. In *Sturge* v. *Dimsdale*, 6 Beav. 462, a testatrix created a mixed fund of realty and personalty for the payment of her debts and legacies, some of which were given to charities; but she directed that the chari table legacies should be paid exclusively out of such part of her personal estate as was legally applicable thereto; she afterwards directed her trustees to retain a part of the stock of which she might be possessed, sufficient for the payment of some annuities; she then gave a number of legacies to individuals, including twelve legacies of 500*l.* each; and in case her real and personal estate, after payment of her debts, funeral and testamentary and other expenses, and the investment of the annuity fund, and the payment of the legacies, except the said twelve legacies should prove insufficient to pay those twelve legacies; then she directed her trustees, as the annuitants died, to pay off as much of the twelve legacies as should remain unpaid; and, after full payment of all the legacies, annuities, and charges, she bequeathed various charitable legacies to be paid out of the annuity fund as the annuitants died: the actual decision of Lord Langdale in that case, instead of being an authority against the charities in the present case, was a decision that the legacies were demonstrative, and were to be paid out of the annuity fund, as a fund demonstrated (to use the technical expression), for that purpose; and the dicta occurring there which were adverse to the charities in that case are mere extrajudicial doubts, and not considered by Lord Langdale himself as founded on principle or on actual decisions, but on the language used in some previous cases; and it is to be observed that in *Sturge* v. *Dimsdale*, as well as in *The Philanthropic Society* v. *Kemp*, the testatrix expressly alluded to the pure personalty as a fund applicable jointly with the personalty savouring of realty to the payment of debts, and the legacies given to individuals. On the whole, therefore, so far from those cases being authorities against the charities, I regard them as authorities for the charities, or at all events as not furnishing any conclusive authority against them; and I am not aware of any previous cases which resemble the present. Notwithstanding the decisions of Lord Hardwicke, by which he permitted the marshalling of assets in favour of charities, I quite admit that it has long been settled that assets cannot, in favour of charities, be marshalled in the ordinary way by the mere application of those principles upon which the Court has usually proceeded in marshalling assets; but I consider the charitable legacies in the present case as having the same incidents as demonstrative legacies to individuals, and as being analogous to, if not strictly identical with, such demonstrative legacies, except so far as regards the right to satisfaction out of other assets in the event of the failure of the fund out of which they are directed to be paid, a right of which they are debarred by the Statute of Mortmain, 9 Geo. 2, c. 36. The nature and incidents of demonstrative legacies are thus explained by Mr. Justice Williams, in his valuable work on Executors, p. 923:—"A legacy of quantity is ordinarily a general legacy; but there are legacies of quantity in the nature of specific legacies, as of so much money with reference to a particular fund for payment: this kind of legacy is called by the civilians a demonstrative legacy, and it is so far general, and differs so much in effect from one properly specific, that if the fund be called in or fail, the legatee will not be deprived of his legacy, but be permitted to receive it out of the general assets; yet the legacy is so far specific that it will not be liable to abate with general legacies upon a deficiency of assets." And again, p. 1083, "And in this the testator's intention is the principle; for it is inferred that he, in referring to specific parts of his estate for payment of particular legacies, intended those legacies to have a preference to others which he had not so secured." n illustration of this, as far as it is applicable to .he present question, I may mention two cases. In *Acton* v. *Acton*, 1 Mer. 178, a testator bequeathed, s a portion to his daughter, 12,000*l.* and to his iece 4,000*l.* directing that the latter sum should be aid out of the money in his banker's or agent's ands; at the time of the testator's death, there as a sum of money in his agent's hands exceeding he sum of 4,000*l.* but the whole amount of his ersonal property, after payment of debts and specific legacies, was not sufficient to discharge both the legacies of 12,000*l.* and 4,000*l.* Sir William Grant, Master of the Rolls, said,—"This is a question of riority, not of ademption; no other legatee can ave any right to the fund so appropriated, till after payment of the 4,000*l.*; that legacy must therefore be paid in full out of the money reported to be in the agent's hands at the time of the death of the estator." In *Livesay* v. *Redfern*, 2 Y. & C. 90, a testrix charged an annuity upon her leasehold messuage in Wimpole-street, and all her residuary personal estate and effects whatsoever and wheresoever, except her

leasehold property at Richmond. Mr. Baron Alderson held that the annuity was payable out of the leasehold premises in Wimpole-street in priority over the other legacies given by the will. These authorities appear to me to shew that the charitable legacies in the present case are demonstrative legacies, or analogous thereto; but whether this is the precise character of these legacies, so that had there been a deficiency of assets they would have been entitled to be paid in full in priority to the other legacies, it is not necessary to decide: all that I need determine in the present case is, whether the legacies to individuals are to be paid partly out of the pure personalty, or whether they are to be paid exclusively out of the personalty savouring of realty, which is sufficient for the full payment of those legacies. Now, where there is no direction as to the payment of any legacy out of a particular fund, it may be admitted, for the purpose of the present question, that the different legacies may fairly be regarded as intended to be paid out of the different funds rateably, *Roberts* v. *Walker*, 1 Russ. & M. 752; and where there is a deficiency of personalty savouring of realty to pay the legacies to individuals, there, in furtherance of the general or paramount intention that all the legacies should be paid, the legacies to individuals may be paid partly out of the pure personalty, even although the legacies to charities may be expressly made payable out of the pure personalty; and this will more especially be the case, where the will purports to make the legacies to individuals also payable out of the pure personalty as well as out of the personalty savouring of realty, as in *The Philanthropic Society* v. *Kemp*, 4 Beav. 581. Where, however, the testator expressly directs charitable legacies to be paid exclusively out of his pure personalty, and the personalty savouring of realty is sufficient for the payment of the legacies to individuals, and the will does not purport to make those legacies payable out of the pure personalty as well as out of the personalty savouring of realty, and the pure personalty is not sufficient, or only sufficient for the payment of the charitable legacies. Here, it appears to me, that to direct that the legacies to individuals should be paid partly out of the pure personalty, to the partial defeasance of the charitable legacies, would be a complete and unjustifiable inversion of the rule that charities are favoured in law, and an utter violation of the general or paramount intention of the testator as to the payment itself, and probably, also, of the particular or subordinate intention as to the mode of payment. As regards the rule that charities are favoured in law, it cannot be reasonably contended for one moment that an exception to this rule is called for in the present case, in order to prevent the mischiefs intended to be guarded against by the Statute of Mortmain. The charitable legacies are expressly made payable out of pure personalty; and a legacy of pure personalty, however large, however unjust towards relations who have the strongest moral claims on the testator, however "languishing" or near death the testator may be at the time of making his will, is contrary to the provisions of the Statute of Mortmain, for that statute does not affect to prohibit disposition of pure personalty at all. Whether it would be expedient to extend the provisions of the statute to pure personalty, is a question which it is not for me but for the Legislature to decide, and on which I give no opinion but until the Legislature shall think fit to extend the restrictions of the Mortmain Act, I have no power to do so either directly or indirectly. It may, however, be said, that the Court has refused to marshal assets in favour of a charity; but this Court would by so doing be occasioning the mischiefs intended to be prevented by the Mortmain Act, and that, in the present case, the Court ought not to compel the private legatees to pay themselves out of the personalty savouring of realty; for by so doing the parties who are interested in the personalty savouring of realty, after the payment of legacies, will be losers to the extent of that which the charitable legatees take out of the pure personalty, which would otherwise pay the private legatees. This argument is specious enough, but it is founded in sophism. The cases in which the Court has refused to marshal assets have, in truth, nothing whatever to do with the present case. In these cases a testator had affected to do what he could not lawfully do: he had attempted to make charitable bequests payable wholly or partly out of real estate or personalty savouring of realty, and the Court refused to marshal his assets in favour of the charities, and thereby caused the legacies to be paid in a different way from that which he intended. But in the present case the testator in effect has himself marshalled or arranged his assets, by directing the charitable legacies to be paid exclusively out of the pure personalty; and there can be no reasonable doubt of the lawfulness of his intention. He gives charitable legacies out of his pure personalty. It cannot be said that it would have been a contravention of the Mortmain Act if he had merely made charitable bequests out of pure personalty, and had made no other bequests; and it can make no difference that he happens to have left other legacies. It may, however, be said, that if the charitable legacies be allowed to exhaust the whole of the pure personalty, the diminution of personalty savouring of realty caused by the payment thereout of legacies to individuals, is indirectly occasioned by the charitable legacies. And this argument, if it proved anything, would prove too much; for it would prove that the legacies to individuals ought to be entirely paid out of the pure personalty so far as it would extend, rather than out of personalty savouring of realty, and that the charitable legacies ought to take no part of the pure personalty until after the other legacies were satisfied; but that would never be contended. And again, this argument is founded on mere conjecture, for non constat but that the testator, if he had not given legacies to charities, would have given as much more to individuals, so that the parties interested in the personalty savouring of realty, after payment of legacies, would take no more than if the charitable legacies had not been given; and therefore it cannot be said with any certainty, that, by allowing the charitable legacies to exhaust the pure personalty, the parties interested in the personalty savouring of realty are injured by the bequests being made in favour of charities, for they would equally have been injured if additional bequests had been in favour of individuals. The argument which I have combated derives some countenance from an equivocal expression of Lord Hardwicke in *Arnold* v. *Chapman*, 1 Ves. 108, 110, where he remarks,—"It is said the assets should be marshalled; and this case put, that since this Act a man may say that he charges his real estate with debts and legacies, and gives his personal estate to a charity: possibly that may do; but it would go a great way towards overturning this Act; but as to that I will give no opinion, for there an intention appears in the testator." To so much of the language as implies a doubt of the lawfulness of exonerating pure personalty in favour of charities from legacies to individuals, I attach no weight, for the reasons I have assigned; and, indeed, in *The Attorney-General* v. *Lord Mountnorris*, Dick. 379, where a testator charged his real estate with the payment of his debts and legacies, except three legacies given for charitable purposes, which he directed should be paid out of his personal estate, Lord Northington decreed the charitable legacies to stand in the place of the specialty creditors for what they should exhaust of the personal estate. And it was admitted by Lord Langdale in *The Philanthropic Society* v. *Kemp*, 4 Beav. 581, that if the testator, instead of expressly making the legacies to individuals payable partly out of the pure personalty, had expressly thrown the legacies to individuals on the personalty savouring of realty, as well as directed the charitable legacies to be paid exclusively out of the pure personalty, yet there the effect, as regards the alleged contravention of the Mortmain Act, would have been precisely the same; the means alone would have been somewhat different. In *Williams* v. *Kershaw*, 1 Keen. 274, n. of which there is only a short note, where it was contended that charitable legacies ought to be made good out of so much residue as consisted of pure personalty, Lord Cottenham is reported to have said,—"This would be marshalling the assets at least against the next of kin, and would be contrary to the rule of the Court adopted in all such cases, which is to appropriate the fund as if no legal objection existed as to applying any part of it to the charity legacies, then holding so much of the charity legacies to fail as would in that way be to be paid out of the prohibited fund." In the cases in which the rule so stated by Lord Cottenham has been adopted, the testator himself, by giving the charitable legacies out of a mixed fund, intended that the fund should be appropriated as if no legal objection existed as to applying any part of it to the charitable legacies; but this rule is obviously quite inapplicable to a case in which the testator himself, far from intending such an application of the fund, has taken care expressly to negative such an application of it. I have alluded to the general rule that charities are favoured in law, but I need not at all rely on it, although it bears very strongly on the present question. I think the case may be viewed as if the legacies directed to be paid out of the pure personalty were legacies to individuals; and I conceive that an attention to the fundamental maxim, that the lawful intent of the testator, expressed or implied, is the governing rule in the construction of wills, is all that is necessary for the determination of the present question in favour of the charities. The claim of the appellants is not properly a claim to have the assets marshalled, but a claim of priority; and the cases on the subject of marshalling of assets in favour of charities has in reality nothing to do with the present question. Marshalling of assets, in the ordinary acceptation of the term, is not an arrangement directed by the testator, but is the result of the application of the principles of equity jurisprudence. But the arrangement insisted on by the [illegible]nts in this case is plainly directed by the testator h[illegible]self; he has in effect marshalled or arranged his a[illegible]ts himself. It is true he has not expressly thrown the [illegible] legacies to individuals on the personalty savouring of [illegible]alty, but he has plainly manifested his intention that [illegible] they are paid at all out of the pure personalty, it shall [illegible]ly be after payment of the charitable legacies; for by directing that the charitable legacies shall be paid exclusively out of the pure personalty, he has plainly shewn his intention that they shall be satisfied out of the pure personalty in preference to the legacies to individuals, whether they are strictly demonstrative legacies or not. No one can doubt that the testator intended all his legacies to be paid in full, and that he well knew that the charitable legacies could not receive a shilling out of the personalty savouring of realty; it is clear, therefore, that he intended the charitable legacies to be paid in full out of the pure personalty, so far as it would extend, leaving the legacies to individuals to be paid out of the personalty savouring of realty, to which the charities could not resort. I confess I am unable to perceive anything to debar me from giving effect to his intention. The Mortmain Act, and the actual decisions against the marshalling of assets in favour of charities, have nothing whatever to do with the question. The policy of the law, as it relates to the subject, requires that the charities should be favoured rather than injured by the decree of the Court; and the fundamental rule of effectuating the lawful intention of the testator, expressed or implied, makes it incumbent upon me to direct that the charitable legacies be paid out of the pure personalty, so far as it will extend, in preference to the other legacies. The result, therefore, is, that the Vice-Chancellor's decision, made in deference to the language used by Lord Langdale, must be reversed, while at the same time the opinions of both those learned judges will be affirmed.

Reported by C. H. Keene, Esq. of Lincoln's-Inn, Barrister-at-Law.

July 10 *and* 12.

STROUGHILL *v.* ANSTEY.

Equitable mortgage—Trustees for sale charged with the payment of debts and legacies—Effect of such a charge—Breach of trust—Trustees' receipts—Purchaser's liability to see to the application of purchase-money, and the doctrine relative to trustees' receipts considered.

Power of sale, whether it includes a power to mortgage.

The cases of Mills *v.* Banks, Ball *v.* Harris, Johnson *v.* Kennett, *and* Forbes *v.* Peacock, *considered.*

Distinction between a trustee raising money after a distance of time, where he is merely a trustee, and where he is beneficially entitled to the estate subject to the charge.

Testator bequeathed a leasehold house to trustees, for his wife for life, and after her death, in trust for sale; and he also bequeathed all his personal estate (including leaseholds A. and B.), under a general residuary bequest, to trustees, who were also executors, upon trust to sell, for the payment of debts and legacies, with a special power to the trustees to give receipts.

The testator died in 1826, *his wife in* 1841.

In 1842, *the then trustees borrowed two several sums of money on the security of the title-deeds to leaseholds A. and B. In* 1846 *one of the trustees died, and the survivor, who continued to pay the interest, shortly afterwards absconded. On an equitable mortgagee's claim, filed by the lenders of the money:*

Held, overruling the decision of the Vice-Chancellor, that a mortgage was not authorised by the trust to sell, and that their security was invalid.

A testator declared that the purchaser of a particular house bequeathed in trust, and who should pay his purchase-money to the trustee or trustees for the time being of his will, "or who now have or hath, or from time to time shall or may have all or any part of the said trust moneys, subject to the bequests and trusts of this my will, in his or their hands," should not be obliged to see to the application of the said money after payment to the acting trustee or trustees, and that the receipt or receipts of the acting trustee or trustees should be sufficient discharges:

Held, that the above receipt clause gave the trustees a power to give discharges.

If a trust be created for the payment of debts and legacies, a purchaser or mortgagee is not bound to see to the application of the purchase-money.

When a testator charges his estates with the payment of his debts and legacies, it shews that he intends to entrust his trustees with the power of receiving the money in case there may be debts, and by implication he imposes upon them, and not upon a purchaser or mortgagee, the obligation of seeing it properly applied.

A mortgage, under a mere trust for conversion out and out, is not a due execution of it.

LORD CHANCELLOR'S COURT.

LORD CHANCELLOR'S COURT.

Where trustees are entrusted with the legal estate, and with the performance of a particular trust, through the medium of a sale, although a direction for a sale does not properly authorise a mortgage, the Court has in some measure a discretion whether it will sanction a mortgage.

A power of sale out and out for a purpose, or with an object beyond the raising of a particular charge, does not authorise a mortgage, but where it is for raising a particular charge, and the estate is settled or devised subject to that charge, the Court will support a mortgage, as a conditional sale, as a proper mode of raising the money, and within the power.

Where a trustee, who is also owner of the estate, raises money, a purchaser or mortgagee is not liable for its misapplication, unless it clearly appear that he is raising it not for the purposes of an obligation with which the estate may be charged. But where an estate is devised subject to a charge, and the trustee, from the intrinsic evidence of the transaction, appears not to be acting in the execution of his duty, a purchaser or mortgagee will be liable, as in the case of a purchase or mortgage from an executor, as a party to a breach of trust.

If trustees, at a considerable distance of time, raise money without any apparent reason, those advancing it must be considered as under an obligation to inquire for what purposes it is about to be used, otherwise a breach of trust may be established, of which they ought to have taken notice.

Where there is a general trust without pointing out the mode of raising charges, or where by force of the charge itself there is an implied trust to raise it, and the estate itself is disposed of subject to it, there the charge may be raised as well by mortgage as by sale, because there is no trust to sell out and out for its payment, but where estates are devised upon trust for certain persons as a residue after a direction to pay debts, that would be a charge generally for the payment of debts, and one which the Court would construe into a general trust to dispose of the estates in a manner best suited to effect the objects of the testator.

The Court, in favour of the intention of a testator, will construe a clause empowering trustees to give receipts in respect of the sale of a particular property into a general receipt clause.

This was a claim arising under the will of a Mr. George Anstey, by persons alleging themselves to be equitable mortgagees, and seeking to obtain the benefit of their securities.

Mr. Anstey having by his will appointed several gentlemen his executors in trust, gave a particular leasehold estate in trust to his wife for life, and then to be sold and the money to form part of his residuary personal estate. He then gave all his personal estate, which included the leasehold houses in question, by the general description of "residue," upon trust, at such time or times as to the trustees should seem meet, to sell and convert into money all such part thereof as should not consist of money, and to invest the produce of such sale and conversion in manner therein mentioned, with power to vary the securities, and to be possessed of the same, upon trust to pay and discharge his funeral and testamentary expenses, and all his just debts, and then to pay an annuity and certain legacies, including two legacies of 15,000*l.* each to two of his daughters, and he disposed of the other residue in the manner therein mentioned. The will contained the following power to the trustees to give receipts:—"I declare that the person or persons who, from time to time, shall become the purchaser or purchasers of the house in Montague-street [which was the house given to his wife for life], and who shall pay his, her, or their purchase-money or moneys to the trustee or trustees for the time being of this my will, or who now have or hath, or from time to time shall or may have all or any part of the said trust moneys, subject to the bequests and trusts of this my will in his, her, or their hand or hands, or upon securities to be given by him, her, or them, shall not be obliged or required to see to the application of the same moneys, &c. or any part thereof." The testator did not absolve the purchaser of the other property, but expressly absolved the purchaser of that particular leasehold so directed to be sold after the death of his wife; but he exonerated all persons who should or might have any part of the trust moneys in their hands.

Mr. Anstey in his life time contracted for the purchase from Mr. Cubitt of two leasehold houses, Nos. 35 and 39, Tavistock-square, and which, after Mr. Anstey's death, were assigned to Mr. Frampton, the only executor who proved the will, and who subsequently assigned them to the two acting trustees (one of whom was a Mr. Anstey, a party beneficially interested), and in whom the legal estate then became vested. In 1836, Mr. Frampton died, whereupon Mr. Hobson (a solicitor) was appointed a trustee.

In August 1842, the plaintiffs advanced to Messrs. Anstey and Hobson the sum of 1,800*l.* for the repayment of which they agreed to take as a security the title-deeds to one of the leasehold houses; and in the month of November following they advanced the further sum of 1,000*l.* on the security of the other.

The original lease and two several indentures of assignment were deposited with the plaintiffs when they paid the two several sums of money to Messrs. Anstey and Hobson, and who, by two several articles of agreement accompanying such deposits, covenanted to pay the two principal sums and interest, at 5 per cent. on a day named. In June 1846, Anstey died intestate, and Hobson duly paid the interest on the money up to the month of November 1847. In 1848 h absconded, and the interest being in arrear, the plaintiffs filed their claim, for the purpose of having the mortgaged premises sold, and the produce applied in satisfaction of their claim.

The claim was heard by the Vice-Chancellor Knight Bruce, and his Honour, upon the authority of the cases, declared the plaintiff entitled to the usual foreclosure decree, on suits by equitable mortgagees. From this decree the defendants appealed. The judgment of the Vice-Chancellor, the facts of the case, th ent, and the names of the counsel, will be found in 18 Law T. Rep. 60.

The following cases were cited: -*Mills* v. *Banks*, 3 Pr. Wms 1; *Ball* v. *Harris*, 8 Si. 185; 4 M. & C. 265; *Balfour* v. *Welland*, 16 Ves. 151; *Johnson* *Kennett*, 6 Si. 384; 3 M. & K. 625; *Dolton* v. *Hewen*, 6 Mad. 9;, *Wilson* v. *Moore*, 1 M. & K. 337; *Forbes* v. *Peacock*, 11 Si. 152; 1 Phil. 717 *Sha* v. *Borrer*, 1 Keen, 559; *Watkins* v. *Cheek*, 2 S. & St. 205; *Haldenby* v. *Spofforth*, 1 Bea. 390; *Doe dem. Jones* v. *Hughes*, 6 Ex. 223; *Raikes* v. *Hall*, Ex. temp. Lord Abinger, MS.; *Page* v. *Adam*, 4 Bea. 259; *Eland* v. *Eland*, 1 Bea. 235, 4 M. & C. 429.

At the close of the argument, the Lord Chancellor said that as the case was one of very great importance on the general practice in conveyancing, he would look into the authorities, and give judgment in the morning.

Monday, July 12.—The LORD CHANCELLOR having gone through the facts of the case as they appear above, and observed that it was the intention of the testator to make the trustees' receipts discharges to purchasers generally; and that although the words of the will were somewhat difficult to deal with, yet, being sufficient for the purpose, the Court was bound to consider the trustees as having the power to give discharges, said.—The learned Vice-Chancellor is reported to have decided this case on the authorities, but what those authorities were does not appear. Those that were cited before me depend upon grounds very different to the present case. This was not the case of an executor. The legal estate in these leasehold houses was in the trustees. They had the legal estate for the purposes of the will, and the power of the executor was at an end. Mr. Hobson acted fraudulently, and raised the money for his own benefit. He prevailed on Mr. Anstey to join with him in raising the money upon the security of the estates. Although the two trustees were present upon the first transaction, and the cheque was drawn in favour of Mr. Hobson by the desire of the other, yet it got to the private bankers of Mr. Hobson, who used the money for his own private purposes. It was, therefore, a gross breach of trust. These were mere agreements for securing the particular sums of money advanced: there is not a word upon the face of either of them to shew that it was for the purposes of the will, except that in describing the parties, they are described as trustees; there is not a word pointing out that the money was wanted or was raised for the purposes of the trust: they covenanted to pay the money themselves at the end of a year from the date of the transaction. That was very unusual; it gave the plaintiffs no legal estate. Now, the first question is, was a mortgage or not authorised by the trusts of Mr. Anstey's will? I think that where trustees have a legal estate, and where they are to perform a particular trust, through the medium of a sale—although a direction for a sale does not properly authorise a mortgage, yet where the circumstances justify it, it must be in some measure in the discretion of the Court whether it will sanction that particular mode or not. It may be the saving of an estate; it may be the most discreet thing that could be done; and, as the legal estate would go, and the purposes of the trust become satisfied, I think it impossible for the Court to lay down that in every case of a trust for sale to raise particular sums, a mortgage might not under circumstances be justified; but as a general rule there can be no difficulty in saying that a mortgage under a mere trust for conversion out and out, is not a due execution of that trust. The nature of this property was leasehold, a varying property, and one which the Court would, as a matter of course, even under a general gift, convert into money, where it is to be distributed among different parties, having different interests. This Court would not allow such property to remain unconverted, under an absolute trust for conversion out and out, and allow the trustees to deal with it as if it were property that was to be enjoyed in specie. Now, what do they do? They receive the rents and account to the persons who are beneficially entitled to the purchase-money for those rents; Mr. Hobson sends in his accounts without mentioning the money which he has raised: he deducts no interest, although he pays it. This is the case of a trust in which it was meant that, with all convenient speed after the testator's death, the property should be converted out and out, not simply for the purpose (for that is the point) of paying a charge, which might therefore be more conveniently raised by a mortgage, but for the purpose of conversion. One of the objects of the conversion was to pay debts; but there were other and final objects, which render a conversion out and out absolutely necessary—namely, the dedication of the trust-moneys to raise particular sums according to the testator's will; and to continue the property unconverted is to set aside the will and to treat it as nought, instead of executing its trusts. If the trusts had been properly executed this fraud could not have taken place. Now as to the authorities. The case of *Mills* v. *Banks* was simply a trust under a term of years to raise portions: there was an ambiguity from the nature of the trust whether it was to be raised by sale or mortgage—the Court decreed a sale: the trustees made a mortgage, which was disputed, the dispute being whether the money ought to be raised out of the annual profits or thrown as a charge upon the corpus. I have no hesitation in saying that the money was raised properly out of the corpus, because large portions were directed to be raised out of the term. The estate was to be settled for other purposes: the estate was not to be set aside, and the annual rent received to pay the charge, so that during that time nobody should have the enjoyment of the estate; but it was intended to be borne by all. That case was re-heard, and the Chancellor was not inclined to agree with his predecessor, although he did ultimately affirm it. And Lord Cottenham, in *Ball* v. *Harris*, referring to that case, considers it as settling a general question. He says:—"The third point is untenable, viz. the right of the trustee to sell did not authorise a mortgage—a power to sell implies a power to mortgage, which is a conditional sale." I think that a power of sale out and out for a purpose, or with an object beyond the raising a particular charge, does not authorise a mortgage; but that where it is for raising a particular charge, and the estate itself is settled or devised subject to that charge, there it may be proper to raise the money by mortgage, and the Court will support it as a conditional sale,—as a proper mode of raising the money, and within the power. Now, this case is not without authority upon the general question. The point came before Lord Langdale, M. R. in *Haldenby* v. *Spofforth*. There the trustees were to sell and dispose of real estate and such part of the personal estate as should not consist of money; and there was a power to give receipts; and seven years after the death of the testator the trustees mortgaged the property, and it was held that that mortgage could not be sustained. In *Raikes* v. *Hall*, Lord Abinger set aside a mortgage which was of this nature. The testator devised his estates upon trust for sale, and at the time of his death he had an account at his bankers', and there was a balance against him on that account of about 5,000*l.*; the executors opened themselves an account with the same bankers, and they incurred a debt after some years which amounted to another 5,000*l.*; they then gave the bankers a mortgage for both sums. The bankers filed a bill as mortgagees to establish their claim and to have a sale; their bill in respect of that claim was dismissed with costs. It was treated as a common creditor's bill, and there was a common decree for sale, and they came in therefore as creditors, but not as mortgagees. Now I think that that was quite right, as there was no power in the trustees there to convert a simple contract debt of the testator to the bankers into a mortgage debt. The trust was to sell and pay, and not to cover simple contract debts with the legal estate so as to convert them into mortgage debts. The debt they had themselves incurred, though it might be in execution of the trusts, was also a simple contract debt. They were not justified in giving to the debt a different character from that in which the debt had been contracted. In *Ball* v. *Harris* the testator charged all his just debts and so on to be paid, the result of which was that the words which afterwards followed "as to the rest and residue of his estates" did by implication create a charge of the debts upon his real estates which he had devised to trustees in fee upon trust for certain persons successively; there was then a power of sale and a power to give discharges, and the question was whether those trustees could make a title irrespectively of the question of the debts without the purchaser being bound to see to the application of the purchase-money. They had made a mortgage, and the question was whether that mortgage could be maintained. The Lord Chancellor maintained it,

upon the ground that it was not a mere power to sell, but a trust to raise money out of the estate to pay debts by implication. That case, therefore, introduces this distinction—that where there is a general trust without pointing out the mode of raising the charges, or where, by force of the charge itself, there is an implied trust to raise it, and the estate itself is disposed of, subject to obligation or charge there it may be raised by mortgage as well as by sale, because there is no trust to sell out and out for the payment of debts or to apply the money; but where there is a devise of estates upon trust for certain persons, and which are devised as a residue after a direction to pay debts, that would be a charge generally to pay debts, and one which this Court would construe into a general trust to dispose of the estates in a manner best suited to effect the objects of the testator. That case, therefore, introduces a very proper distinction, but it does not disturb the authorities to which I have referred. I am of opinion, therefore that this trust did not authorise a mortgage, and that this equitable claim cannot be maintained. This case was argued before me on another and a distinct line of cases, and no doubt those are the cases to which the learned Vice-Chancellor referred as compelling him to make the decision at which he arrived; but do those cases bear upon this? They were cases in which, there being a charge for debts and no declaration that the trustees' receipts should be discharges, the purchasers or mortgagees were to be absolved from looking to the application of the purchase-money from the circumstance that the legacies only were not charged; that where debts and legacies were charged, the payment of the former being too extensive an obligation, they were not bound to see to the latter. That led to occasional differences of opinion between the late Vice-Chancellor of England and Lord Lyndhurst. Now, *Watkins* v. *Cheek* established this rule: if a man is himself the trustee as well as owner of the property, unless it absolutely appear that he is raising the money not for the payment of the obligation with which it is charged, the purchaser or mortgagee is not bound to see to its application; but if he holds the property subject to a charge, and is selling or mortgaging not for that purpose, it should appear it would be the same case as an executor mortgaging at a distant period, or selling under circumstances that would raise a fair presumption that he was selling for his own benefit. In that case, the Vice-Chancellor held, which I think was good law, that if it clearly appear a man is not meaning to execute his trust, but endeavouring to do something for his own personal benefit, which cannot go to the trust, that cannot be deemed a good execution of it, so as to absolve the purchaser from seeing to the application of the money. In *Johnson* v. *Kennett*, the testator gave, subject to the payment of his legacies and debts, all his real and personal estate to his son in fee. There is a distinction between cases where an estate is given to trustees for a purpose, and where it is given to a man subject to a charge absolutely. By that gift the son became a trustee for the payment of the legacies and debts, but he did not lose his character of owner—he could not be divested of that—he was owner of the estate, subject to those legacies and debts, and therefore in his dealings he filled the two characters. He settled the estate to uses as if it were his own property, and then raised money by sale of the estate. The question was, whether the sale could be maintained? The Vice-Chancellor thought it could not, on the ground that the man was dealing with the property as his own, and that therefore it could not be supposed it was an execution of the trust for payment of the debts. Lord Lyndhurst reversed that decision, and upon a ground, I think, not altogether satisfactory. His lordship having referred to Lord Lyndhurst's judgment in 3 M. & K. p. 631, said,—the purchasers had a good title, but not upon the ground there stated. The testator had entrusted his son with the ownership of the estate; he had given it to him beneficially, and entrusted him with the obligation or trust to pay debts and legacies—that did not take away his ownership; he was at liberty to settle it to uses to bar dowry for himself as he thought proper, and when he sold he, of course, sold not only as owner, but as trustee: selling therefore as owner was no breach of trust; it was a sale by him in his proper character, but subject in equity to the payment of the debts and legacies. It was not a breach of trust, it enabled him to pay the debts and legacies, and it put him on the same footing as that on which an heir-at-law stands in regard to his liability to debts and expenses; he had power to dispose of the estate by sale, but he was bound, and this Court would compel him, to apply the purchase-money in payment of the debts, and would not allow him to divert it to other purposes. It must not be supposed that he meant to commit a breach of trust. In *Page* v. *Adam* there were debts at the time of sale. The property was given, subject to the payment of debts, legacies, and annuities, and the question there raised was, whether the purchaser took subject to an annuity? The Master of the Rolls very properly decided that he did not. The sale was good against the annuity; and it being a general charge, the purchaser was safe, and he did not think it right to follow the decision of the Vice-Chancellor in *Johnson* v. *Kennett*. The Vice-Chancellor Shadwell, again, had to decide a similar point in *Forbes* v. *Peacock*, in which, after a direction for the payment of debts, an estate was given to the wife for life, subject to their payment, and also to certain legacies. The testator gave her power to sell it in her lifetime, if she thought proper, and declared what was to be done with the money; and provided that if the estate were not sold in her lifetime it was to be sold at her death: she lived twenty-five years after her husband's death, and did not sell the estate; at her death it became saleable, which is a circumstance to be noted. It was not the case of an executor selling at the end of twenty-five years without any reason for doing so, but it was a clear execution of the trust; at that time it became a trust for sale, and was properly held to be in the executor. The Vice-Chancellor, on the case coming before him again, on the authority of *Page* v. *Adam*, in which he did not acquiesce, held that, although the legal estate was conveyed, the purchaser from the inquiries which he had to make, was bound to know that there was an outstanding charge, and therefore he did not sustain the purchase. He considered the title was not good. *Forbes* v. *Peacock* came in review before Lord Lyndhurst, who reversed the decree, and admitted what I have already stated,—that if a purchaser had notice that the vendor intended to commit a breach of trust, and was selling the estate for that purpose, he would, by purchasing under such circumstances, be concurring in the breach of trust, and thereby become responsible. His lordship having then read a part of Lord Lyndhurst's judgment, and a note by the reporter, said I do not think that Lord Lyndhurst's view is a satisfactory settlement of so important a point, nor can I follow the distinction which he (Lord Lyndhurst) has there pointed out. The case must stand upon one of two grounds,—either it must stand on the ground that it is unimportant that the purchaser should know that there are no debts, and then, upon principle, it would be indifferent whether there were no debts at the death of the testator, or no debts at the time of the purchase, which is the more satisfactory, and open to none of those ambiguities. That, when a testator by his will charges his estates with debts and legacies, he has shewn that he intends to entrust his trustees with the power of receiving the money, because there may be debts. He has anticipated that there will be debts, and he provides for their payment; it is, therefore, by implication a declaration by the testator that he intended to entrust the trustees with the receipt and application of the money, and not to throw the obligation upon the purchaser. The intention does not cease because there are no debts: he has imposed upon them the trust and has given them the power of absolving the purchaser or mortgagee by implication; that remains just as much whether there are debts or not, because the power arises from the circumstance that the debts are provided for. The power does not cease because there are no debts, it being in the very creation of the power a declaration or indication by the testator that he means the trustees alone to receive the money and apply it. In that way all the cases would be reconcilable and stand upon this footing, namely, that if a trust be created for the payment of debts and legacies, the purchaser or mortgagee shall in no case be bound to see to the application of the purchase-money. That would be a consistent rule on which every body would be able to act. It is a sensible rule, and is authorised by the words, and draws none of those fine distinctions which embarrass Courts and lead to so much litigation. That would be a broad and sensible rule, and one to which I shall allude. But those cases do not apply to this. They are cases shewing that at a considerable distance of time a mortgage or sale has been upheld under trusts of this nature; but they do not bear out that proposition; they stand upon distinct grounds. In *Johnson* v. *Kennett* there was an actual gift to a person of the property, subject to the trust. In such a case the purchase-money could not be followed in the hands of the purchaser or mortgagee. The other cases depend on the intention of the testator to delegate to the trustees the right of giving receipts. In *Forbes* v. *Peacock* it is a mistake to suppose that that was a trust executed at a distance of twenty-five years from the time when it arose—it was executed at the very time it arose, the happening being twenty-five years after the death of the testator. I apprehend, therefore, that those cases which I have endeavoured to reconcile, have no proper bearing upon this case. As regards the general question of distance of time, if people deal with trustees, who at a considerable distance of time raise money without any apparent reason, those advancing it must be considered as under some obligation to inquire, to look fairly at what the trustees are doing. I do not mean to incumber or lessen the security of purchasers or mortgagees under trusts, but those who deal with such trustees may be in the situation of having it established that there was a breach of trust, of which they ought to have taken notice, but this arises only if they deal with the trust. I am endeavouring to lay down a rule to make purchasers and mortgagees, under ordinary circumstances, more secure than perhaps they have hitherto been. There is no authority in favour of the plaintiffs. I cannot maintain the order of the Court below. I must set aside these mortgages and declare them invalid, and to be no charges upon the property. Strictly I ought to dismiss this appeal with costs, but considering the great hardship of the case, I shall not do so.

COURT OF APPEAL IN CHANCERY.

Reported by Owen Davies Tudor, Esq. of the Middle Temple, Barrister-at-Law.

Friday, July 2.

MILES v. DURNFORD.

A. the surviving executor of B. filed a bill to set aside a mortgage of assets made by C. the deceased executor of B. A. was also the administrator of C.:

Held, that A. might, notwithstanding he filled these two characters, file a bill to set aside the deed of C.

Held, also, that the mortgage made by C. must be considered as primâ facie good, although the money was originally advanced to him without security, and that in the absence of evidence impeaching it, the bill filed for setting it aside ought to be dismissed.

This was an appeal by the plaintiff from the decision of Vice-Chancellor Kindersley, under the following circumstances:—A bill was filed by Miles, who was the surviving executor of the testator, John Punter the elder, to restrain the sale, which was alleged to be improper, of some premises, part of the estate of the testator, which had been mortgaged to the defendant Mrs. Durnford, for 370*l.* by the deceased executor, J. Punter the younger, and to set aside the mortgage altogether, or otherwise to redeem, upon the usual terms. It was alleged by the plaintiff that J. Punter the younger had made the mortgage for his own private debt, and that the mortgagee had actual or constructive notice that such was the fact. J. Punter the younger died in September 1849, and the plaintiff Miles, his co-executor, was also *his administrator.* The defendant, on a motion by the plaintiff for an injunction, submitted to an order being made against him, as the attempt to sell was made without giving three months' previous notice, according to the provisions contained in the mortgage-deed. It was alleged by the defendant that the mortgage was made to her by J. Punter the younger, as executor, to raise money for executorship purposes; that after advances had been made by the defendant, and before the execution of the mortgage-deed, an equitable mortgage had been made to the defendant, in respect of which she had filed a bill as an equitable mortgagee. In the mortgage-deed there was the following recital:—"That on the application and request of the said J. Punter the son, the said Durnford, at divers times between the months of October 1846, and February 1848, advanced and lent to the said J. Punter the son, several sums of money, amounting together to the sum of 600*l.* and that the sum of 350*l.* part of the said sum of 600*l.* was so advanced and lent to the said J. Punter the son, for the purpose of enabling him, as such executor as aforesaid, to pay off or discharge a certain mortgage debt of 250*l.* and interest, to Henry Smart, charged upon three houses in Earl-street aforesaid, and also to pay certain charges which the said J. Punter the son had incurred as such executor as aforesaid, to the said E. Durnford, in respect of the said sum of 350*l.* and the interest thereon, the sum of 370*l.*" There was a cross bill also by Mr. Durnford, for, amongst other objects, to set up the deed. On the cause coming on to be heard before Vice-Chancellor Kindersley, his Honour held that he could make no decree impeaching the mortgage, and must, so far as the bill sought to impeach that deed, dismiss it with costs, inasmuch as the plaintiff, after proving the will of J. Punter the elder, took out letters of administration to J. Punter the younger, he could not be heard to say that filling two characters, in one of which—namely, as administrator of J. Punter the younger, he could not sue, he had a right to be heard in that character in which, if he filled that only, he might sue. Had it not been for this objection his Honour said that he would have referred it to the Master to inquire whether any and what sums out of the 600*l.* were applied in the administration of the testator's estate, his Honour considering it to be the rule of the Court, that where a party was applied to to advance money on the representation of an executor that it was for the purposes of the estate, and he advanced the money

on the mere personal security of the executor, and without taking any security or agreement for security; if he *afterwards* took a security, the onus of proof was on the person who advanced the money to shew that the moneys advanced were applied to the purposes of the testator's estate. (2 Sim. N.S. 234.)

On the case coming on to be heard on appeal, two points were taken for the appellant. First, that there was no misjoinder, as the bill was properly filed by Miles. Secondly, that although the money was advanced by Mrs. Durnford to Punter the younger, before she obtained the security from him, that circumstance did not throw upon him the onus of shewing that the transaction of Punter the younger, as executor, was a proper one,—that in fact the loan, primâ facie, must be considered as properly obtained for the purposes of the executorship.

Nalder, in the absence of *Stuart*, who was with him, for the appellant, first insisted that the bill was properly instituted in point of form.

Willcock and *Giffard* contrà.

Lambert v. *Hutchinson*, 1 Beav. 277; *Griffiths* v. *Van Heythuysen*, 9 Hare, 87, were cited.

Lord Justice Knight Bruce.—The case is this. One of the two executors, by being acting executor, committed, it is alleged, a breach of trust with respect to the general personal estate, and having done so, he died, and the surviving executor of the testator, innocent of participation in the breach of trust, makes himself an administrator of the executor who committed the breach of trust. I am of opinion it is competent for him to file a bill to make good the breach of trust, submitting all in a proper mod to this Court.

Lord Justice Lord Cranworth concurred.

Nalder was then heard on the second point. *M'Leod* v. *Drummond*, 14 Ves.; *Keane* v. *Robarts*, 4 Madd. 332; *Eland* v. *Eland*, 4 My. & Cr. 420; *Scott* v. *Tyler*, 2 Dick. 725; *Hill* v. *Simpson*, 7 Ves. 152, were referred to.

Willcock and *Giffard*, on the other side, were not called upon.

Lord Justice Knight Bruce.—On the evidence, the security is not impeached, not touched. Assuming, then, that all the evidence that can be, has been, adduced, the question is, whether this creates such a case of suspicion as that further inquiry should be directed or allowed. I am of opinion that that proposition cannot be warranted. The only evidence is, then, that the advances were originally made without security, and that the security was afterwards added. That is a circumstance deserving of attention, but it does not go a long way, it is not inconsistent with the probability that the advances were made for the purpose for which he might properly borrow as executor. But that being the case, all is clear, and in my opinion, the presumption is in favour of that view of the case, and that the plaintiff wholly fails.

Lord Justice Lord Cranworth.—We both concur with the Vice-Chancellor that the bill ought to be dismissed, but we arrive at that conclusion on different grounds.

July 1 and 2.

MOORHOUSE v. COLVIN.

Contract in letter—Marriage portion—Reference to will.

P. C. who sent his daughter out to India, and upon that occasion wrote to his friend T. there, to whose guardianship and charge he committed her,—" In regard to her settlement in life I shall be naturally anxious. . . . . . You may assure the young gentleman she may choose that, on his marriage with her, he shall have 2,000l. sterling; nor will that be all,—she is and shall be noticed in my will, but to what further amount I cannot say, owing to the present reduced and reducing state of interest, which puts it out of my power to determine at present what I may have to dispose of." Previous to writing this letter P. C. had made a will, in which he left his daughter a lac of rupees, or about 12,000l. M. made proposals of marriage, and was informed by T. of the letter written by P. C. and, as it was alleged, by Miss C. of the will then existing in her favour. The marriage took place in 1826, and in 1829 M. and [illegible] wife returned to England. P. C. [illegible] afterwards made another will, in which [illegible] he gave all his real and personal property [illegible] for the benefit of his wife, and his two sons [illegible] by her, and in case of their dying without [illegible] issue, he gave the whole to the issue of his [illegible] daughter. Upon a bill being filed by the daughter [illegible] insisting that the testator had agreed to [illegible] settle a lac of rupees upon her, and that [illegible] contract was contained in the letter written by him:

Held, affirming the decision of the Court below, that P. C. had only contracted to give his daughter 2,000l. which had been already paid to her, and that as there was no contract in the letter to leave her in addition any specific or definite sum, the bill must be dismissed, but, under the circumstances, without costs, and the deposit was returned.

This was an appeal from the decision of his Honour, the Master of the Rolls, dismissing the plaintiff's bill, but without costs.

The facts of the case are stated in the judgment, and are fully reported in 18 Law T. Rep. 296.

Bethell and *Toller*, for the appellant, cited *Luders* v. *Anstey*, 4 Ves. 501; 5 Ves. 213; *Randall* v. *Morgan*, 12 Ves. 67; *Hammersley* v. *De Biel*, 12 C. & F. 45; affirming 3 Beav. 469; nom. *De Biel* v. *Thomson*.

Sir *W. Page Wood*, *Willcock*, *Anderson*, *G. W. Collins*, *Giffard*, and *W. Morris*, for the respondents, or parties in the same interest, were not calle upon.

Lord Justice Lord Cranworth.—This is a bill filed for the purpose of establishing the right of Mr. and Mrs. Moorhouse to a lac of rupees, that is to say, a sum of not less than 12,000l. out of the estate of the late Dr. Peter Cochrane; and the foundation of this claim was a letter written by Dr. Cochrane on the 6th July, 1825, to a gentleman of the name of Dr. Thomas, in India, on the occasion of Mrs. Moorhouse, then Miss Cochrane, going out to that country with a view to establishing herself for life. The lady being then of the age of nineteen, Dr. Cochrane sent her to India, and simultaneously wrote a letter to Dr. Thomas. By it he bound himself to give her on marriage 2,000l. in the following terms:—" You may assure the young gentleman who may meet with your and Mrs. Thomas's approbation, that on his marriage with her he shall have 2,000l. sterling;" and then he adds, " nor will that be all, she *is and shall be noticed in my will*, but to what *further* amount I cannot say, owing to the present reduced and reducing state of interest, which puts it out of my power to determine at present what I may have to dispose of. I hope, however, that he will have no objection to admit of the 2,000l. and whatsoever else may follow, being settled on herself and children. Should she die before him without issue, he shall have the 2,000l. to himself." Now the real question is, what is the correct interpretation to be put on that letter? I will assume that the letter was shewn to Mr. Moorhouse previous to his marriage with Miss Cochrane, and on that assumption even I still concur with the judgment of the Master of the Rolls. It in effect means this, " I leave you, Dr. Thomas, in charge of my daughter. I wish her to marry, and you have my authority to say she shall have 2,000l. with a provision that it shall be settled; but I further add, I have made a will, and have made a further provision, but to what amount I cannot and will not say; as to the amount of 2,000l. I bind myself to pay it, but no more than the 2,000l." Dr. Cochrane then having paid the 2,000l. she has no further claim upon his estate. But then it is contended that by his writing to Dr. Thomas, " she *is* and shall be noticed in my will," he had at any rate bound himself not to reduce the provision made for her by will below a lac of rupees, or 12,000l. to which she was then entitled under a then existing will; but that is not so. The testator in effect says, " I have or shall make a will, but I reserve to myself full power either of increasing or reducing by it the provision for my daughter." It is a case of great hardship for Mr. and Mrs. Moorhouse, who were doubtless led to expect a large fortune, but we must not allow any private feelings to make us swerve from our duty. The contract is to give 2,000l. and nothing more, unless it be something which is left entirely to his discretion by will, but he has given nothing. The party might perhaps have a right to an action, in which merely nominal damages could be obtained, but that the Court would disregard. The authorities the counsel for the plaintiff relied on were the case before the House of Lords, *Hammersley* v. *De Biel*, 12 C. & F. 45, and *Luders* v. *Anstey*, 4 Ves. 501; 5 Ves. 213; but both cases are distinguishable materially from the present. The question in each of those cases was whether the expressions made use of amounted to a contract between the parties, and Lord Loughborough, in the one case, and the House of Lords in the other, held that they did. Whether on the question in *Luders* v. *Anstey* all minds would have arrived at the same conclusion, it matters not, because there was no difficulty, assuming that there was a contract in that case, in knowing what was to be done; but in this case the difficulty is, even if there had been an express contract, that the Court cannot tell what sum is to be given. The authorities fail, therefore, in supporting the case of the plaintiff. On the whole, my opinion is, that this amounts to a contract to do a deed which has been done,—that he would give her 2,000l. The Master of the Rolls has acted correctly in dismissing the bill.

Toller asked for a reference as to whether Mr. Moorhouse had the contents of the will communicated to him previous to his marriage, and whether Dr. Cochrane was aware that such communication had been made to him.

Lord Justice Knight Bruce.—I am most clearly of opinion that there was no contract beyond the 2,000l.; the only question which could possibly arise would be whether, notwithstanding our opinion on that subject, a case should be directed on the question of contract to a Court of Law,—first, on facts as they stand proved; and, secondly, with the addition of the facts which it is suggested can be proved. I do not think a case would do the plaintiff any good; but I should not have disagreed as to sending a case to law, if my learned brother thought that it ought to be sent. I am not strongly impressed that a case should be sent, but if Lord Cranworth thinks it should, I shall not dissent.

Lord Justice Lord Cranworth.—I do not think a case should be sent.

Lord Justice Knight Bruce.—We both think it right to dismiss the appeal; but it must be dismissed without costs, and the deposit must be returned.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. Henry Cooke, Esq. Barrister-at-Law.

April 22 and 23, and Aug. 6.

EDLESTONE v. COLLINS.

Copyholds—Infancy—Deputy steward—Acknowledgment.

A conditional surrender was made of copyhold property of inheritance belonging to a married woman by that lady and her husband, and she was examined by the deputy steward who took her acknowledgment, and it turned out that the deputy steward was an infant of twenty years of age and upwards:

Held, the officer being ministerial only, and not judicial, that the surrender was good.

This was a suit for foreclosure. The defence raised questions of fraud, but they are immaterial to be stated, the chief point argued being the validity of the conditional surrender of the copyhold estate on the ground that the acknowledgment of a married lady, to whom the property belonged, was taken by a deputy steward who was an infant.

The short facts were as follow, so far as it is needful to state them:—Property held of the manor of Lyses descended upon a lady, then single, and her heirs in fee-simple, according to the custom of that manor. She afterwards married Mr. Collins, who, with his wife, in 1844, conditionally surrendered out of court the estate to Mr. Adcock for securing 50l. and interest. On this occasion the wife was separately examined and her acknowledgment taken in regular form. The 50l. were not paid, and further sums were advanced, which, together with the original money, amounted to 100l.; and in December, 1846, Mr. and Mrs. Collins made a surrender of the equity of redemption to such uses, and charged with such sums of money for the benefit of Mr. Collins as Mr. Adcock should, by the direction of Mr. Collins, appoint, and in default of, or until, appointment to the use of Mr. Adcock, his heirs and assigns, according to the custom of the manor subject to the surrender of 1844, and to a proviso that the surrender should be void on payment by Mr. Collins, his heirs, executors, or administrators, of the 100l. and interest. This surrender of 1846 was taken by a Mr. Bell, the deputy steward of the manor, and who also took the acknowledgment of Mr. Collins, and it turned out that he was then under the age of twenty-one years, he having been born in Feb. 1826, and the transaction having taken place in Dec. 1846. The surrender was duly presented by the homage and entered on the court-rolls in April 1847. By subsequent instruments the estate was further charged to the extent of nearly 550l. and ultimately, by deed, dated 10th March, 1849, the securities were assigned to the plaintiff, Mr. Edlestone, who then advanced a fourth sum, and the charge was increased to altogether 600l. In August following Mr. Collins died intestate, leaving the infants, who were the defendants in the suit, his coheirs according to the custom of the manor, and subsequently the widow married the plaintiff, Mr. Edlestone.

The arguments in support of the validity of the surrender were that any act done by a steward or by his deputy de facto is good, and for this Coke's Copyholder, 101, and Scriven on Copyholds, 111, and the case of *Hippisley* v. *Tucke*, were cited. Admitting that in Co. Litt. b 3, and the note thereupon by Mr. Hargrave, shewed a different conclusion, it was to be remarked that the doctrine was dissented from and expressly overruled in late cases. In the case of *Scambler* v. *Waters*, Cro. Eliz. 637, it is said an infant cannot be judge in a court; as, for instance, steward of a court leet, and the reason given is such a steward is a judge. In Cro. Car. 279 and 256, are to be found cases equally in support of the validity of the surrender. If this were held void the effect might be a loss of his office by the steward, since his appointment of an improper person works a forfeiture.

The cases of *Zouch* v. *Parsons*, 3 Burr. 1794; *Burrow* v. *Parrot*, 1 Mod. 246; and *Crosby* v. *Hurley*, 1 Alcock & Napier, 431, were cited and observed upon.

In opposition to the validity of the examination, acknowledgment, and surrender of 1846, it was contended that care and discretion were necessary in the performance of the duties of a deputy steward, and therefore such an office could not be intrusted to an infant, for if it could be trusted to an infant of twenty why not to one of ten years old? From Co. Litt. 3 b, it was clear an infant could not be steward, and the authority of Co. Litt. was, to say the least of it, as great as that of the cases cited as overruling it. Although this Court takes consents of married women, in some cases by deputy, it always takes care that such consents are taken by adult persons. No argument could be raised on the presentation of the surrender by the homage, for that could be considered as nothing more than a report by the homage to the lord of what the steward had done.

Sir *W. P. Wood* and *R. Smythe*, supported the validity of the surrender.

Glasse and *Beale* opposed it.

Sir *W. P. Wood* was heard in reply, and the judgment was then reserved.

Friday, Aug. 6.—The Vice-Chancellor.—The only question which required any consideration or was raised in this cause, was, whether a surrender of copyholds by a married woman, taken by a deputy steward under twenty-one years of age at the time, was void, by reason of the non-age of the person taking the surrender. The surrender impeached in the present case was a surrender by baron and feme, the feme being privately examined as to her consent by the deputy steward, who was at the time upwards of twenty years of age, and had for more than five years been clerk to a solicitor. Several cases and authorities have been quoted and examined at the bar, and I have taken an opportunity of going into them again, and I am of opinion that the surrender in question is not void. The argument that it was void went chiefly on *Scambler's* case, in which it appears to have been ruled by the justices, Popham and Fenner, that an infant could not be a steward nor an under-steward; the case being solely as to the capacity of an infant to be an under-steward. And the authority of Co. Litt. 3 *b*, was also relied on to the same effect; but these authorities were denied and overruled in the cases of *Young* v. *Stoell*, and *Young* v. *Fowler*, in Cro. Car. In the former of these cases, it was held by all the judges present, that the grant of the office of registrar to a bishop, was good, notwithstanding the infancy of the grantee at the time of the grant. "That the grant was not void because he was at that time an infant, or because he cannot make a deputy; for an infant who can write and understand the Latin tongue, may be a registrar, and may have sufficient knowledge to write and register Acts, which is sufficient for his place; at leastwise he may have sufficient knowledge to make an able deputy, and if he put in one who is insufficient, it is a cause of the forfeiture of his office." And in *Young* v. *Fowler*, Ib. 557, it is stated, and as to this point, it was held by all the judges that this grant of an office to an infant of the age of eleven years, "exercendum per se vel sufficientem deputatum," as the usual grants are, is good notwithstanding the infancy, and "the opinion cited in Co. Litt. 3, and there stated to have been resolved in *Scambler* v. *Waters*, (viz.) that the grant of an under-stewardship in possession or reversion to an infant is void. But this case was denied, unless it be with this difference, where it is granted with such a clause to execute it per se vel deputatum; for an infant may elect a sufficient deputy, and if he do not elect such, it is a forfeiture of his office. And a deputy is allowed, especially in ministerial offices, and to be approved of by the judges of that Court. And as an infant may present to a church, because the ordinary gives the allowance, whether the clerk be sufficient, or the lord of the manor, or judge of the Court is to give allowance of the deputy's sufficiency. And as an infant may well have an office descend upon him by inheritance, so he may as well have it by grant;" and so in Coke's Copyholder, p. 45, it is said that an infant may be steward, for what he performs is incident to his place, and therefore his official acts shall not be avoidable by reason of this disability. But then it was said, that if an infant might be steward at all, it was only when the office was granted with a clause that it was to be exercised "per se vel deputatum," and that then he could exercise it per deputatum; and this argument was supported by the same book, s. 46, in which it was said that a steward could not, without special words in his patent, make a deputy unless in case of necessity; e. g. as where the office descended upon an infant; then, without any special words in the original grant, he might appoint a deputy, for the law presumed him to be incapable of executing all the duties of his office himself. But the second passage from the copyholder is not inconsistent with its being shewn that the deputy steward was of capacity to exercise his duties in person; and I think this is the true meaning of the passage in "Copyholder," viz. "that without special words in his patent, a steward cannot appoint a deputy unless in case of necessity, as e. g. where the office descends upon an infant of such tender years as to be unable to perform the duties in person;" and this is confirmed by what I have just read from Croke's report of the case of *Young* v. *Stoell*, where it is said that "an infant registrar may know how to write and understand Latin, which may be sufficient learning for his office." Many other cases and analogies support this view. In particular, I may remark, that an infant may be appointed an executor, and afterwards have all the powers incident to that office; and formerly he might, at seventeen, have exercised almost all the powers of an ordinary executor. *Eyle's* case, 1 Ventr. 153, was referred to, to prove that the office of steward was a judicial office. But this office of taking the separate examination of married women is, at any rate, not judicial, for, in the first place, such an office cannot be delegated; while in practice this office is constantly delegated, and the Court acts on the report of the commissioners entrusted with that authority without ever inquiring whether or not any of the commissioners might chance to be an infant. The surrender has been duly entered in the court rolls, and though it might have been impeached by a cross bill upon a proper case being made out, yet in this suit, on the state of the pleadings, and on the circumstances now shewn, I do not think I can accede to this request to treat the surrender as a nullity. There will be the usual decree in a mortgage suit as if this point had not been raised.

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. Bennet, Esq. of Lincoln's-inn, Barrister-at-Law.

Friday, April 23.

In the matter of Prescott's Trust.

Trustee Act, 1850—*Practice.*

Where a tenant for life petitions under the above Act for a vesting order, the cestui que trusts interested in the fund should be before the Court.

This was a petition by a tenant for life of a fund, to have a vesting order under the Trustee Act, 1850.

Martindale in support of the petition.

The Vice-Chancellor, however, declined to make any order unless the cestui que trusts of the fund in remainder, who were infants, were made parties as co-petitioners, or should appear by counsel in the usual way. He said that the Act only provided a summary remedy, instead of the proceeding by bill, but that all parties beneficially interested must be before the Court, as if the remedy had still been by bill.

Monday, June 28.

Coles *v.* Waters.

Interest on bond—Specialty creditor.

A deed of composition recited the debts as simply debts, without stating whether simple contract debts or by specialty, rating them in proportion to the amount of debts owing to the creditors respectively:

Held, that thereby the simple contract debts were not turned into specialty debts carrying interest:

Held, also, that those creditors whose debts were secured by bond could not receive more for principal and interest than the amount of the penalty in which the bond was taken.

These questions came before the Court, by way of exceptions to the Master's report, computing and allowing interest at five per cent. on the amounts of the several debts proved before him in the usual way. He had also found, that certain bond creditors were entitled to amounts of principal and interest exceeding in amount, the penalties in which those bonds had been taken.

The facts of the case appeared to be as follows:—Mr. Edmund Waters being indebted, in the year 1823, to several creditors in very large amounts, made a composition with these creditors, and which was effectuated in the following manner. By an indenture of assignment dated in March 1823, the Opera House, in the Haymarket, with the appurtenances, were assigned to the late Alderman Winchester, upon trust for sale of the interest which Waters had therein, which comprised the residue of a term in a renewable lease of those premises, with the scenery, furniture, &c. thereto belonging. The deed also assigned all sums of money, stocks, funds, and securities payable, or thereafter to be payable to said E. Waters, his executors, administrators, or assigns, by virtue of any decree of the Court of Chancery, in any suit or suits then pending, or thereafter to be instituted respecting the Opera House or its concerns. By another indenture of the same date, Waters assigned to Winchester all the leasehold hereditaments to which he, Waters, was entitled, and all sums of money due to him on account of the rents and profits thereof, and certain other credits and claims. By an indenture of trust bearing date the same day, and made between Waters of the first part, Winchester of the second part, and the several persons creditors of Waters, who by themselves, their agents, or attorneys, should subscribe their names and affix their seals thereto, of the third part. It was witnessed that Winchester should stand possessed of the moneys to arise by the sale of the leaseholds and other saleable property and effects, and which should be collected and received on account of the sums of money, stocks, funds, and securities assigned by the above stated indentures, and also of the rents, issues, and profits of the leaseholds, sums of money, stocks, funds, and securities, in the mean time, and until the same should be respectively sold, collected, and received, "upon trust that the said Henry Winchester, his heirs, executors, administrators, or assigns, do and shall, in the first place, deduct, retain, and reimburse himself and themselves, all usual outgoings for rents, taxes, and repairs, and all such costs, charges, and expenses as they respectively should sustain, expend, or be put unto in the execution of the trusts by the said indentures of assignment of equal date with these presents, and also by these presents reposed in him or them; and in obtaining the consent to and execution of these presents, and otherwise incident to the trusts reposed in him or them, and also all the expenses incurred, or which should be incurred preparatory to the execution of these presents or in relation to the same, and all the expenses incident to the sale and disposal of the said property and effects, or to the collecting in or recovering and receiving of the said sums of money, stocks, funds, and securities, and in or about the execution of the several trusts by these presents, and the said indentures of equal date herewith reposed in him or them, or otherwise relating thereto; and after payment and satisfaction of the same, costs, charges, disbursements, and expenses, upon trust that he, the said Henry Winchester, his executors, administrators, or assigns, do and shall apply all the money which shall be received under or by virtue of the said indentures of equal date with these presents, and which shall remain after answering the purposes aforesaid, or a competent part thereof, in payment of the debts owing by the said Edmund Waters, to such of his creditors respectively as have executed or shall execute these presents, or to their representatives, executors, administrators, or assigns, *rateably and in proportion to the amount of debts owing to them respectively, without any priority or preference of any one or more of them before any other or others of them, until each of the same creditors respectively, his or her executors, administrators, or assigns, shall have received the full amount of the debts owing to him, her, or them respectively*, and to and shall pay the surplus, if any, to said Waters, his executors, administrators, or assigns." In this last-mentioned indenture was contained a provision that any creditor who had any security *by way of mortgage* might execute the indenture without prejudice to the same security, and, with the consent of the trustee or trustees for the time being, might convert his security into money, and receive a dividend rateably with the other creditors on so much of his debt as should not be paid out of the produce of the said securities; and that the said trustee or trustees for the time being should or might make any arrangements he or they might deem reasonable, with any person who at that time or thereafter should hold any security or securities given by the said Edmund Waters upon all or any part of the property and effects assigned by the said indentures, with the view or for the purpose of procuring all or any part of the property comprised in such security or securities to be exonerated or released of and from the security so given by him the said E. Waters, so as the trustee or trustees for the time being should not pay or give any consideration or price for or upon any such arrangements, beyond the amount or value of the principal money and interest then due to the persons respectively holding such securities respectively, and the incidental expenses attending such arrangements and release. And the said several persons of the third part did give and grant unto said Waters, until the trustee or trustees for the time being should declare this license to be determined, full and free liberty to go about and attend to any business without arrest, attachment, or other impediment to be offered or done unto or against the said E. Waters, or his future or other property or effects, by the said several persons, parties to the said indenture, of the third part, or any of them.

To this indenture was appended the list of creditors, with the amounts of principal and interest supposed to be due to them in the usual way. A reference to the Master had been made to take an account of the sums due to the creditors of Waters, who had executed this deed of arrangement and compromise, to compute interest on such of the

debts as carried interest after the rate of the interest the same respectively, carried under the provisions of such indenture. Under this reference the Master had made his report, dated the 7th day of July, 1851, and finding, as before stated, the amount of the debts proved before him, and computing interest on all at five per cent. and to some of the bond creditors he found due more than the penal sums in those bonds stated. To this report exceptions had been taken.

Willcock and *Wickens*, in support of the exceptions, contended that the Master had clearly miscarried in allowing any interest at all upon the simple contract debts; and also in finding due to some of the creditors more than the penal sum in which the several bonds had been taken. They cited, among other cases, *Hughes* v. *Wynne*, 1 Myl. & Keen, 20; *Tait* v. *Northwick*, 4 Ves. 816; *Sharpe* v. *Scarborough*, 3 Ves. 557; *Tew* v. *Lord Winterton*, 3 Bro. 489.

Malins and *Briggs* supported the Master's finding, and contended that all the debts which had been subscribed to the deed of composition became thereby specialty debts, and as such carried interest from the date of that deed. That it was inequitable that as the estate of Waters realised by the trustees had or might have made interest in the mean time, and the fund by its accumulations being amply sufficient to pay the amounts found due by the Master, that those creditors should not be paid what the Master had found due to them. Although they admitted interest at law might not be recoverable, yet it might be in a Court of Equity in such a state of circumstances as the present. That it had been admitted at the bar, that interest on all the debts had been computed up to the date of the deed—and why was the interest then to cease?

They cited—*Craven* v. *Tickell*, 1 Ves. jun. 63; *Hyde* v. *Price*, 1 C. P. Cooper's Rep. 193; *Brown* v. *Newall*, 2 My. & Cr. 558.

The VICE-CHANCELLOR said, the first question raised by these exceptions was, whether a creditor in respect of a debt not carrying interest was nevertheless entitled to interest under the terms of the deed of compromise? The second was, whether a creditor by bond could receive more than the penalty expressed in that bond? No reference is contained in this deed, or in any part of it, to the question, whether any of the debts are specialty or simple contract debts? It speaks of debts due without any reference to the nature of those debts. If, then, all the debts had been simple contract debts not carrying interest, what is there to indicate any intention that these debts, which are to be paid out of this property, are to cease to be simple contract debts, and forthwith to become specialty debts? or what was there to indicate that any one of these creditors was to receive interest by virtue of the deed, which he would not otherwise have been entitled to receive? If the deed, an instrument under seal, had contained a covenant in the part of Waters, or an agreement for payment, then they might have been considered as specialty debts, being secured under seal. But it is far from that; the intention of the deed was, that he being liable to pay the debts, but not being able to pay them, makes provision for payment of them, not by stipulating that he himself would pay them, but placing all his property in the hands of a trustee to pay those debts, did so that they should be paid in the manner he himself would have been bound by law to pay them. Some provisions of the deed had been pointedly referred to during the argument. For instance, the provisions in the deed by which there is a direction as to those creditors who held securities for their debts upon certain property of Waters's; and the stipulation was, that any creditor in that position might, when his security had been realised, come in for the balance pari passu with the other creditors, and that the trustee might pay any such creditor holding security for the benefit of the creditors at large, and they stipulate that not more shall be paid to them than their principal and interest. That does not, as he, the Vice-Chancellor, thought, vary the state of circumstances, nor affect the question whether the deed made all debts bear interest alike. Can this deed create a right to interest which he, the creditor, would not otherwise have had? He thought not. Nor could he see that any instrument of this kind, making provision for payment of debts, could be taken to vary the nature in the slightest degree of the debts, for which provision is so made. Now it has been said that the creditors give consideration, as they agree not to sue, except so far as the trustees may give them a right to sue. If they contend that by reason of this the debts were for the future to bear interest, surely it would require a special stipulation to that effect in the deed—they would have asserted such intention by the deed; nor could he, the Vice-Chancellor, understand why, in the absence of any such stipulation, the deed was to have that effect. Now, with reference to the schedule, that of course contains a statement of certain gross amounts; but neither the deed nor the schedule shews that these were the sums actually due. The deed itself provides for the payment in this way; the proceeds are to be applied in payment of the debts due by Waters, to such of his creditors as shall execute the deed, not in payment of the debts mentioned in the schedule. When we look at the deed we find the sums set opposite to the respective creditor's names in the schedule, but no heading to shew that those are the sums due or claimed. If a creditor was there put down with 500*l.* opposite his name, and could prove a debt of 1,000*l.* he would be entitled to this 1,000*l.* so on the contrary, if put down at 1,000*l.* if only 500*l.* should be due, there would have been no obligation in the trustee to pay the 1,000*l.* Now it is alleged that the amounts set down in the schedule include interest; but how a blunder in the calculation of previous interest upon debts, which did not in fact carry interest, can alter the construction of the deed, he (the Vice-Chancellor) could not conceive. The argument would go to shew that simple contract creditors were entitled to interest prior to the date of the deed. It is merely a question of what the contract was between these parties. No doubt, if he (the Vice-Chancellor) could find an implied contract that the debts were to carry interest, he would give effect to it; but so far as omission is a ground of implication, it is only an implication to the contrary. Then as to the clause by which it is stipulated that the debts are to be paid without priority or preference, and that if you paid one creditor interest and another none, you would give a preference. Now that is not so, for he was already entitled to interest, and the other was not; and what was meant by this clause was, that one creditor, because he was a specialty or a judgment creditor, should not be paid in priority, but all should stand pari passu, as this Court is in the habit of dealing with a case of equitable assets. There is no contract to pay interest. As to the second question, whether a creditor by bond can receive more than the penalty mentioned in his bond, I think that clearly settled that he cannot. *Hughes* v. *Wynne* is a distinct decision on this very point. The Court then decided that a creditor could not, on a trust deed, receive more than the amount of his bond, as he clearly could not have recovered more at law.

Exceptions on both points allowed.

Nov. 1851.

BOURNE *v.* BUCKTON.

Accumulations—Thellusson Act, 39 & 40 Geo. 3, c. 98—Portions.

The testator devised his freehold estates to trustees in trust, to accumulate the rents during the life of his niece, and on her decease to stand seised of the estates to the use of her first and other sons in tail.

Held, that the trust for accumulation became void at the end of twenty-one years from the testator's death; that the void accumulations were undisposed of, and therefore that, as regarded the residuary personal estate of the testator, the accumulations thereof, from the period of twenty-one years after the testator's death, belonged to the personal representative of the sole next of kin of the testator at the time of his death.

The testator, in the clauses for the maintenance and advancement of the children of his niece, termed the provision which he had made for them sometimes "their portions," and sometimes "their portions or shares:"

Held, that such provision was not one within the meaning of the 2nd section of the Thellusson Act, and did not prevent the operation of the 1st section of that Act.

This was a petition to have it declared that a large sum of money standing to the credit of several causes, and which formed the corpus of the general residuary personal estate of the testator, William Stains, accrued since the 24th September, 1848, being twenty-one years after the death of the testator, might be paid to the petitioners (husband and wife), as representing the sole next of kin of the testator at the time of his death. William Stains, by his will dated the 16th November, 1824, devised estates in the county of Kent, which he described at length, and all his other real estates not thereinafter well and effectually given and devised by him to the plaintiffs in the first suit and their heirs in trust during the life of his neice, Elizabeth Stains, to make certain payments out of the rents (particularly mentioned), and to lay out the residue of the rents, or any part or parts thereof, in the purchase of freehold estates in the same county, and to settle, convey, and assure the estates so to be purchased to the same uses, &c. as were declared by his will concerning the estates thereinbefore devised, and in trust (at the discretion of said plaintiffs) as to such part or parts of the said residue as should not be laid out in such purchase or purchases as aforesaid, and also until such purchase or purchases should be made as aforesaid, as to the whole of the said residue, to lay out the same in the securities therein mentioned, and to change such securities from time to time at their discretion, either by making such purchase or purchases as aforesaid, or into other securities of the like nature, and to invest the interest and dividends of such securities in manner aforesaid, so that the same and all the remitting income and produce thereof might accumulate in the nature of compound interest; and immediately after the death of his niece, to stand possessed of all the securities so directed to be purchased and accumulated upon the trusts thereinafter declared concerning his residuary personal estate, of which the same was to be deemed a part; and after the death of his niece to stand seised of all the estates thereinbefore devised to the use of her first and other sons in tail male; with remainder to the use of the defendant Edwin Stains for life, with remainder to the use of his first and other sons in tail male; with remainder to the use of all the children of John Palmer, as tenants in common in tail, with remainder to the testator's right heirs. And the testator gave all his stock, funds, moneys, mortgages, ready money, and securities for money, and also the securities thereinbefore directed to be purchased and accumulated, and all the residue of his personal estate, to defendants Buckton and Bourne (the executors), in trust, to sell such parts thereof as should not consist of stocks, funds, moneys, mortgages, and securities for money, and to get in such parts thereof as should consist of moneys or securities for money, and at their discretion to lay out the moneys to arise by such sale or sales, and to be got in as aforesaid, or any part or parts thereof, in the purchase of freehold estates in Kent, which he directed to be conveyed to the same uses and upon the same trusts as were thereinafter declared concerning such part or parts of his said net moneys as should not be laid out by his trustees in such purchase or purchases as aforesaid; and in trust at their discretion as to such part of the said net residue as should not be laid out in such purchase or purchases as aforesaid, and also until such purchase or purchases should be made as aforesaid as to the whole of the said net moneys, to lay out the same in the securities therein mentioned, and to receive the dividends and interest of such securities, and again lay out the same in manner aforesaid, so that the same and all the resulting income and produce thereof might accumulate in the way of compound interest during the life of his niece, and after her decease in trust to transfer the securities and accumulations to her child, if only one, and if more than one, to her children, exclusive of an elder or only son (such only son not being an only child), equally as tenants in common, and to be vested in the male children at twenty-one, and in the females at that age or on their marriage. And the testator declared that if any of the male children should attain twenty-one, or any of the female children should attain that age or marry, and should die before their mother and leave issue, such issue should stand in the place of and take *the share* of he securities which their parent would have been entitled to if living; and should take the same in equal shares, and that the shares should vest in the male issue at twenty-one, and in the female at that age or on their marriage. And the testator further declared, that in case any of the younger children of his niece should die before her without leaving issue, who should be living, and have acquired a vested interest at her death, the trustees should transfer *the shares* of the children who should so die as last aforesaid to the survivors or others of the same children (but exclusive of an eldest or only son, unless he should be an only surviving child), and the issue of such of the same children as should be then dead leaving issue, such issue taking only *the shares* which their parents would have been entitled to if living, and taking the same in equal shares, and that the same should be vested interests in the male issue at twenty-one, or in the female at that age or on their marriage.

The testator then empowered Buckton and Bourne, after the death of his niece, to apply any part of the income arising from the portion of any of her children and issue, of and in the said trust securities, for the maintenance of such child or issue during his or her minority, and also to apply not exceeding one-half of the then vested or expectant *share* of any such child or issue, of and in the said trust securities, for his or her advancement in the world; and he directed that the sum which should be advanced for each such child or issue, should be considered as part of his or her portion or share, and should be deducted and allowed out of the same, notwithstanding his or her death before his or her portion should be absolutely vested; and that so much of the income arising from the portion or share of each such child or issue as should not be applied for the maintenance or advancement of the child or issue to whom the same portion or share should belong, should be added from time to time to the principal of the same portion or share, and be improved at interest together with the same, and be subject to all the limitations, trusts, and depositions thereinbefore and thereinafter expressed concerning

the principal of the same portion or share, until the principal should become payable.

The testator then directed that, on failure of the before-mentioned trusts, Buckton and Bourne should stand possessed of the trust securities, upon like trusts, for the benefit of the children and issue of Edwin Stains, and of the children and issue of Henry Palmer successively; and, on those trusts also failing, in trust for his own next of kin according to the statutes of distribution; and he appointed Buckton and Bourne his executors.

The testator died in 1827. His brother, James Stains, was his heir both at law and in gavelkind, and also his sole next of kin. James Stains died in 1828, intestate as to any real estate which descended to him from the testator. Buckton was his executor, as well as one of the executors of the testator. Elizabeth Stains was the only child and heir, both at law and in gavelkind, of James Stains; and, on his death, she became such heir to the testator.

A petition had been presented in December 1848 by the heiress-at-law of the testator, to have it declared that she had become entitled, as such heiress-at-law, to the rents and profits of the devised and purchased estates of the testator, as from the 24th of September, 1848, being twenty-one years after his death, and to have the subsequent rents, and for a receiver. An order was made as to these rents by the late Vice-Chancellor of England, in January 1849, declared the trusts for the accumulation, as to the rents and profits and the real estate, void. A similar question now arose on the present petition, as to the accumulated residuary personal estate of the testator, which had accumulated in the hands of the Accountant-General to a considerable amount.

The petitioners were the husband of the legal personal representative of the sole next of kin of the testator living at his death, and his wife, being such representative.

Rolt and *Fooks*, for the petitioners, contended that testator's accumulated personal residuary estate, from the 24th of September, 1848, being twenty-one years after the death of the testator, was undisposed of by this will, and that it belonged after that time to the testator's next of kin. They relied on the 39 & 10 Geo. 3, c. 98 (*a*).

Stuart and *Jessel*, for the defendants, Halford and others.

Bethell and *Goodeve*, for the defendant Elizabeth Stains, and others.

JUDGMENT.

The VICE-CHANCELLOR, after reading the trusts of the will and the several limitations, said the question as to the devised estates has already been decided by the late Vice-Chancellor of England, in which decision he entirely concurred, although probably not for the same reasons as given in the judgment as reported. The question is now limited to the accumulated residuary personal estate; and he was of opinion that, from the period mentioned in the petition being twenty-one years after the death of the testator, it belonged to his next of kin, or those who now represented the sole next of kin. With regard to the second question, whether the word portion, used as it was by the testator, and which was the word used by the Legislature in the second section of the Thellusson Act, would take the will out of the general operation of the first section of that Act, he was of opinion that it did not. The meaning of the Legislature was not trusts created by another instrument, but by the very instrument creating the portions. That here there was one gift of an aggregate fund, and therefore not a portion within the meaning of the Act. He considered *Eyre* v. *Marsden*, 2 Keen, 561, had decided the question, and that the principle involved in that case and the present was the same. He was also of opinion that the word "devise" could not include the whole will, although it might include a gift of personal as well as real estate. After referring to the elaborate judgment of Mr. Justice Bosanquet, sitting as one of the Commissioners of the Great Seal, in *Shaw* v. *Rhodes*, 1 Myl. & Cr. 135, he made the order in the terms prayed by the petition, stating at the same time that there was no objection to a declaration on a petition of this kind.

The costs out of that portion of the testator's estate declared to be undisposed of.

(*a*) The following are the sections upon which the question turned:—

Sec. 1 enacts "That no person or persons shall, after the passing of this Act, by any deed or deeds, surrender or surrenders, will, codicil, or otherwise howsoever, settle or dispose of any real or personal property so and in such manner that the rents, issues, profits, or produce thereof shall be wholly or partially accumulated for any longer term than the life or lives of any such grantor, or grantor's settlor or settlors, or the term of twenty-one years from the death of any such grantor, settlor, devisor, or testator, or during the minority or respective minorities of any person or persons who shall be living or in ventre sa mère at the time of the death of such grantor, devisor, or testator, or during the minority or respective minorities only of any person or persons who, under the uses or trusts of the deed, surrender, will, or other assurance directing such accumulations, would, for the time being, if of full age, be entitled unto the rents, issues, and profits, or the interest, dividends, or annual produce so directed to be accumulated; *and in every case where any accumulation shall be directed otherwise than as aforesaid, such direction shall be null and void, and the rents, issues, profits, and produce of such property so directed to be accumulated shall, so long as the same shall be directed to be accumulated contrary to the provisions of this Act, go to and be received by such person or persons as would have been entitled thereto if such accumulation had not been directed.*"

Sec. 2. "Provided always and be it enacted that nothing in this Act contained shall extend to any provision for payment of debts of any grantor, settlor, or devisor, or other person or persons, *or to any provision for raising portions* for any child or children of any grantor, settlor, or devisor, or any child or children of any person taking any interest under such conveyance, settlement, or devise, or to any direction touching the produce of timber or wood upon lands or tenements; but that all such provisions and directions shall and may be made and given as if this Act had not passed."

Common Law Courts.

BANKRUPTCY.

BRISTOL BANKRUPTCY COURT.

Thursday, Aug. 19.

(Before Mr. Commissioner HILL.)

POWELL *v.* HAYES.

Absconding debtor—Ground for motion.

Where a debtor states it to be his intention to leave a place in England, where he then is, on a particular day for Ireland and foreign parts, and to reside abroad; upon proof of this, by affidavit of the creditor, the Court will grant a warrant under the Act for the immediate arrest of the debtor, and this although the permanent residence of the debtor appears to have been in Ireland.

This was an application under the recent Act, 14 & 15 Vict. c. 52, to Facilitate the more Speedy Arrest of Absconding Debtors, for a warrant for the immediate arrest of a debtor, who contemplated leaving, and had threatened to depart the kingdom, to avoid the creditor when applied to for payment of the debt, in respect of which the intervention of the Court was sought.

W. Bevan for Mr. Powell, the creditor, applied to the Court to-day under the 1st section of the statute, which authorises a commissioner of a District Court of Bankruptcy, on application by or on behalf of any creditor, and due proof by affidavit of himself or of some other person, entitled in one of the Superior Courts of Common Law, or by affirmation, proving to the satisfaction of such commissioner that a debt of 20*l.* or upwards is owing to such creditor, and is payable at the time of applying, from the person against whom such application is made, and that there is probable cause for *believing* (*a*) that such debtor, unless forthwith apprehended, is about to quit England, with intent to avoid or delay the creditor, or with intent to remain out of the jurisdiction of the Courts of Law in England, so long as that the creditor will be delayed in recovery of his debt, to grant a warrant, in the form prescribed by the schedule to the Act, directed to the messenger of the Court of Bankruptcy, authorising such officer, at any time within seven days after the date of the warrant, to arrest the debtor *in any part of England*, who thenceforth becomes, and is detained in custody, in the same manner as if arrested under a capias issued upon a judgment recovered in a Superior Court, or by virtue of a special capias, obtained by order of a judge at chambers; this warrant and such arrest being preliminary to issuing a capias to be granted or applied for at chambers, and auxiliary thereto, and which it is *imperative* on the creditor to obtain immediately after the execution of the commissioner's warrant; the intention and operation of the present Act being to prevent the precipitate flight of a debtor contemplating and seeking to depart the realm, and investing country commissioners in bankruptcy and County Court judges, out of the metropolitan districts, with the summary power, on ex parte application, of defeating the machinations of fraudulent debtors dishonestly intending to leave the kingdom, with the object of defrauding their creditors, and this without the delay of applying to the judge of the Superior Court in London in the first instance. The affidavit on which the present application was made, was by the plaintiff, a coal proprietor at Newport in Monmouthshire, entitled in the Common Pleas, and stated that the debtor, who was described as of Waterford, in the kingdom of Ireland, then residing and being in the city of Bristol, was justly and truly indebted to deponent in 648*l.* 8s. 1d. for goods theretofore sold and delivered by him to the defendant, at his request; and which said sum was then due and payable from the defendant to deponent. That, on the 18th of August, the defendant informed the deponent at Bristol, "that he should leave that place on Friday the 20th of August for Ireland, and that it was *his intention to leave this kingdom for foreign parts, and should reside abroad.*" The deponent, therefore, deposed that he *verily believed*, from the manner and demeanour of the debtor at the meeting before referred to, that it was his intention to leave Bristol for Ireland, at the time before stated, and afterwards proceed to some foreign country, and permanently reside abroad; wherefore deponent stated there was probable cause for believing that the deponent, unless forthwith apprehended, was about to quit England, with intent to avoid or delay deponent, and to remain out of the jurisdiction of the Courts of Law in England and Ireland, so long that thereby deponent would be delayed in the recovery of his debt.

Mr. Commissioner HILL observed, the affidavit was quite sufficient, and the evidence of intention satisfactory, and granted the application.

Warrant granted.

(*a*) It has been held by the Superior Courts, on application for arrest, under 1 & 2 Vict. c. 110, s. 3, that *hearsay evidence* is admissible; and an affidavit of the plaintiff that he has been *informed and believed* the defendant is about to leave England, provided it state the *name* and *description of the person* from whom the information was received, has been admitted as sufficient evidence to warrant a judge in making an order for a special capias. (See *Gibbons* v. *Spalding*, 11 Mee. & W. 173, which was an application to rescind an order made at chambers for holding a defendant to bail, obtained upon an affidavit which stated only the defendant had been *informed* by a person, whose name and address was given, and *believed*, that the defendant intended to leave England for Belgium; without stating any *certain* time at which it was believed the debtor would actually leave; but the Court, in refusing to discharge the order, observed, Parke, B. (Alderson, Abinger, and Gurney, B. B. concurring) that, "Evidence of this nature is a sufficient foundation for orders like the present, and it is every day's practice to make them on such evidence. In many cases it might be difficult, if not impossible, to procure better; and if we were to establish such a rule with respect to the affidavits, we should render the statute a dead letter. There is, however, this limitation to hearsay evidence, that no judge ought to make an order of this description merely upon the plaintiff's swearing that he is informed and believes that the defendant is about to leave the country; the plaintiff should be required to state in his affidavit the *name of the person giving him that information*. The judge then has before him information which the defendant has the means of afterwards explaining or denying, and if he can do so, he will be of course discharged." The beneficial operation of this new jurisdiction given to District Courts of Bankruptcy and County Courts, and the facility with which creditors can, under this Act, frustrate the evil intentions of designing debtors, was well exemplified in the above case of *Powell* v. *Hayes*. Within an hour from the time of making the application to the Commissioner, the defendant was arrested, and in the course of the same day he *executed a deed of assignment for the general benefit of creditors*, under which his estate will be honestly distributed rateably among all who are justly entitled to participate. Upon this being done, the debtor was *at once set at liberty* by the consent of the detaining creditor, without having been taken to prison, *or being in custody more than a few hours.*—J. C. W.

INSOLVENCY COURT.

Reported by DAVID CATO MACRAE, Esq. of the Middle Temple, Barrister-at-Law.

July, 1852.

(Before Mr. Commissioner LAW.)

Re ———, a Solicitor.

Passing of property at the date of the vesting order—Jurisdiction of the Court—Powers of the provisional assignee—Letters of administration— 1 & 2 *Vict.* c. 110.

Property which an insolvent may claim at the date of the vesting order passes to the provisional assignee absolutely for the benefit of the creditors, and the Court has no jurisdiction to apportion any part of it to the insolvent, as upon the accrual of future acquired property.

Semble, that the power of taking out letters of administration when that is necessary for the acquisition of property to which an insolvent has a title, may be exercised by the assignee.

This was an application to the Court upon petition by the provisional assignee under somewhat novel circumstances, the object being to obtain the sanction of the Court to an arrangement whereby a portion of a sum of 600*l.* to which the insolvent was entitled upon the death of his infant child, and upon taking out letters of administration, might be set apart for the benefit of the insolvent, he upon his part consenting to take out letters of administration, upon the presumption that the provisional assignee could not exercise that power.

Nichols appeared for the petitioner, the provisional assignee, and

Cook and *Macrae* for the respondent (the insolvent).

Nichols briefly stated the facts from the petition. The insolvent passed through the Court in September 1850, and he had a title to certain property at that date, in right of his wife and child, upon taking out letters of administration; but owing to a misconstruction of the words of the deed giving him that right, the property had been distributed amongst other persons. Subsequently, upon the accidental discovery that this was an error, those

parties agreed to refund their respective shares upon the insolvent taking out letters of administration. The provisional assignee, upon the belief that he had not the power to take out these letters of administration, was willing that a portion of the property should be given to the insolvent, upon condition that he would do so, and thus benefit the estate. The sum to be acquired was 600*l.* and the provisional assignee was willing that one-third of that sum should be apportioned to the insolvent. The object of the petition was to know whether the Court would sanction that arrangement. The facts are shortly these,—J. D. the father-in-law of the insolvent, died in 1811, and he gave by his will all his real and personal property to his executors, upon trust to convert the same into money, and among other bequests he directed his executors to raise a sum of 1,000*l.* and pay 400*l.* to his daughter Emma for her own use, and the remaining 600*l.* to place out at interest for her sole and separate use, and after her decease to be paid to her children. She married the insolvent in April 1846, and on the 10th March, 1847, she was delivered of a son, who lived till the 24th April following, when he died, and on the 28th April the mother died. The insolvent, as his late child's personal representative and next of kin, became entitled to this property, but he did not become aware of this till March 1852, when, during the progress of a suit in chancery against the executors, it was suggested by Master Humphery, and the Court directed that he should be made a party to the suit.

Mr. Commissioner LAW.—The provisional assignee, I should think, might obtain letters of administration. I cannot conceive the smallest difficulty.

The *Solicitor* to the provisional assignee intimated that at first there was a doubt on the subject, but since this proceeding had been adopted he had consulted the proctor, who assured him that he could obtain them for the assignee.

Mr. Commissioner LAW.—That being so, it would be a simpler proceeding for the provisional assignee to take out letters of administration, for he would be the party entitled. He did not see one single advantage that could accrue from his employing the insolvent as his agent. It would only complicate matters, and endanger the funds and increase the expense. If the contemplated arrangement were carried out the insolvent would act as trustee for the provisional assignee. That would embarrass the whole proceeding, and he would be less able to give that assistance which is required. The provisional assignee was the party entitled, and to let this party act as his agent would be a roundabout away. The insolvent might die, and this property might be involved in his personal assets. It was very fit, however, that, under the circumstances stated by his counsel, if the insolvent assisted he should be remunerated, and liberally remunerated. His opinion was that the provisional assignee should forthwith take out letters of administration. He could only say, generally, that he should approve of his being liberally remunerated for his assistance. But the creditors must have something to say to it. There were solicitors and proctors in the schedule. He had no jurisdiction to make such an order at all. All he could do was to make a minute for the provisional assignee to take out letters of administration, and that the insolvent should be liberally remunerated out of the funds acquired.

Circuit Reports.

OXFORD CIRCUIT.

Reported by J. E. DAVIS, Esq. Barrister-at-Law.

Stafford Summer Assizes, July 24.

DOE *dem.* ARMISTEAD *v.* NORTH STAFFORDSHIRE RAILWAY COMPANY.

(Before CRESSWELL, J. and a Special Jury).

Powers of railway company to take land—Lands Clauses Consolidation Act—Construction of—Evidence.

The Local Act for the formation of a railway gave the company power to enter upon and take and use such of the lands delineated on the plans, and described in the books of reference, as should be necessary for the purpose of making and maintaining the railway. The company having taken possession of land under the 85th section of the Lands Clauses Consolidation Act (8 Vict. c. 18, incorporated with the Special Act), the powers of which are confined to such lands as are required to be purchased or permanently used for the purposes, and under the powers of that or the Special Act:

Held, that the right of the company, under the above provisions, to take possession of land necessary for the railway, was not confined to land without which the railway could not be constructed between given points, but that it extended to such land as was reasonably necessary for the advantageous use of the railway.

The question whether such land was reasonably necessary is one for the jury.

In an ejectment brought by a landowner to recover land taken possession of by the company:

Held, that letters written to the lessor of the plaintiff by one of the directors who had executed a bond to him under the 85th section of 8 Vict. c. 18, were admissible in evidence against the company.

Ejectment, to recover possession of a piece of land in the occupation of the North Staffordshire Railway Company, situate at Stoke-upon-Trent, in the county of Stafford.

Whateley, Q.C. and *Whitmore*, for the lessor of the plaintiff.

Keating, Q.C. and *Phipson*, for the defendant.

The action was brought under the following circumstances. The land in dispute, called the Cat's Palate, is situated between the line of railway and the Trent and Mersey Canal. In "the North Staffordshire Railway (Pottery Line) Act, 1846," being the Act for the formation of the railway (repealed for most purposes by the "North Staffordshire Railway Act, 1847," but not affecting this question), this field was scheduled as part of the land over which the compulsory powers of the company extended, but about fifteen perches of it were beyond the limits of deviation. Sir Thomas Boughey and Mr. Armistead (the lessor of the plaintiff) were then owners of the property, and Sir Thomas Boughey subsequently sold his interest to the company, and the lessor of the plaintiff also sold a small portion of his, the company in the first instance believing that a small part only of the field would be required. On the 23rd of June, 1847, they informed Mr. Armistead that they wanted twenty-six perches as a road to other fields, and offering him a sum for it. Mr. Armistead replied that the residue of the field being under half an acre, he should require the company to purchase the whole under the provisions of the Railway Act, and preferred that the value should be settled by arbitration. A correspondence ensued, and the company nominated an arbitrator in respect of the twenty-six perches, and Mr. Armistead did the same, but nothing further was done, and after attempts at a friendly arrangement the company on the 1st of July, 1848, gave Mr. Armistead notice that they should require the whole of the land amounting to two roods and six perches accompanying that notice by an offer of 800*l.* for it, which, however, was not accepted. The company then proceeded under the Lands Clauses Consolidation Act 1845 (8 & 9 Vict. c. 18, s. 85), (*a*) and delivered to the plaintiff a bond signed by two of the directors for payment of whatever sum might be awarded for the land, which was subsequently valued by a surveyor appointed by two justices at 638*l.* 1*s.* 3*d.* and that sum was on the 13th of September, 1848, paid into the Bank of England, where it now remains, the plaintiff refusing to take it. A further correspondence ensued between Mr. Armistead and the Railway Company, but as soon as three years expired from the time the special Act passed (when the compulsory powers of the company ceased under sec. 123 of the Lands Clauses Consolidation Act), (*a*) Mr. Armistead brought an action of ejectment against the company to recover possession of the land which had been entered upon by them, laying the demise on the 28th June, 1849, the day after the compulsory powers of the company expired. It was contended in that action on the part of the lessor of the plaintiff, that he was entitled to recover all the land entered upon under section 85 of the Lands Clauses Consolidation Act, as the title of the company to it was defeated by their not having completed the purchase within the prescribed period; and also that the fifteen perches beyond the limits of deviation could not be taken by the defendants, and being included in the bond, vitiated the entry altogether. It was, however, eventually decided by the Court of Queen's Bench, that the expiration of the three years had not the effect contended for, and that the original entry being lawful, the subsequent possession was lawful, and that the ejectment could not be sustained. (*b*)

The present action was then brought by Mr. Armistead, and the principal question now raised was, whether the land was necessary for the purposes of the railway, the company having no power (under the special Act and the Lands Clauses Consolidation Act), to take any lands but such as were required to be purchased, or permanently used for the purposes of the railway, and the lessor of the plaintiff contending that the land was unnecessary. This question was not raised at the former trial, although the objection was taken in the subsequent argument in the Court of Q. B. (*c*)

The following evidence was now adduced on the part of the lessor of the plaintiff.

23rd June, 1847. A letter of this date from the company's solicitor to Mr. Armistead, the lessor of the plaintiff, stating that a further portion of the Cat's Palate was required, but only as a road to the other part, and requesting to know on what terms he would dispose of it.

24th June. Mr. Armistead's reply, preferring arbitration, and requiring the company to purchase the whole.

20th July. Nomination by the company of a Mr. Bill as their arbitrator to value twenty-six perches.

20th September. Letter to Mr. Armistead from the defendant's attorney, stating that the valuation was made, and that they were authorised by the company to offer him 700*l.* for his moiety of the land.

1st July, 1848. A formal notice by the company to Mr. Armistead that the company required the whole of the lands; accompanied by a letter from their solicitor, requesting to know whether Mr. Armistead would take 800*l.* for it.

1st September. Bond executed by John Ridgway and another, being two of the directors of the company, with sureties, under the provisions of the 85th section of the Lands Clauses Consolidation Act.

22nd September. Notice from Mr. Armistead that he should not recognise the proceedings, and would oppose the company's taking the land.

25th November. Letter from Mr. Ridgway to Mr. Armistead.

On this letter being tendered in evidence, *Keating*, Q.C. objected that a letter from a mere director, unless shewn to be authorised by the company, would not bind the latter, or be any evidence to affect them.

Whateley, Q.C. contrà, called attention to the fact that the writer of the letter was one of the two directors parties to the bond, already in evidence, relating to the land in question.

CRESSWELL, J.—Under those circumstances, I think the letter is admissible in evidence.

The letter was read, as well as others between the same parties. Their only value was to shew that the company considered the question as to taking the land was still open. In one of the letters Mr. Ridgway said, "I will take care and send you an account of what land is required."

Some letters from Mr. Ricardo, the chairman of the company, to Mr. Armistead, were then put in. In one of those letters, bearing date the 16th of January, 1849, Mr. Ricardo expressed himself as follows:—"As hitherto you have refused to let us have the Cat's Palate land, and as you have given us notice that you will oppose our taking the land, we have been obliged to abandon our intentions in

(*a*) Which enacts "That if the promoters of the undertaking shall be desirous of entering upon and using any such lands (lands required to be purchased or permanently used for the purposes and under the powers of that or the special Act) before an agreement shall have been come to or an award made, or verdict given for the purchase-money or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit in the Bank by way of security, as hereinafter mentioned, either the amount of purchase-money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall, by a surveyor appointed by two justices in the manner hereinbefore provided in the case of parties who cannot be found, be determined to be the value of such lands, or of the interest therein which such party is entitled to or enabled to sell and convey, and also to give to such party a bond under the common seal of the promoters, if they be a corporation, or if they be not a corporation, under the hands and seals of the said promoters, or any two of them, with two sufficient sureties to be approved of by two justices in case the parties differ, in a penal sum equal to the sum so to be deposited, conditioned for payment to such party, or for deposit in the bank for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, of all such purchase-money or compensation as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the lands so entered upon, together with interest thereon, at the rate of 5*l* per cent. per annum from the time of entering on such lands until such purchase-money or compensation shall be paid to such party, or deposited in the bank for the benefit of the parties interested in such lands, under the provisions herein contained; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase-money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special Act."

(*a*) Which enacts, "That the powers of the promoters of the undertaking, for the compulsory purchase or taking of lands for the purposes of the special Act, shall not be excised after the expiration of the prescribed period, and if no period be prescribed not after the expiration of three years from the passing of the special Act."

(*b*) See the case reported, 20 L. J. (N.S.) Q. B. 249.

(*c*) *Patteson*, J. in delivering the judgment of the Court said with reference to this point, "Whether these fifteen perches were necessary or not, was a question of fact for the jury, and if he had been asked, the judge must have put it to the jury; but it was assumed at the trial, that the company were entitled to take, at all events, what was within the line of deviation, and the circumstance of the fifteen perches being without that line was mainly relied on."

regard to it, and have made other arrangements accordingly."

It was admitted that the defendants took possession of part of the Cat's Palate under and immediately after the execution of the bond of the 1st of September, 1848.

A surveyor was called to prove a plan produced and referred to by the counsel. On his stating that fifteen perches of the land were beyond the limits of deviation,

CRESSWELL, J. observed that was quite beside the present question. The Court of Q. B. had settled that point.

Mr. Harley, another surveyor, stated that the south side of the land was occupied by potatoes, as a garden. The west was entirely waste. There were no works of any kind upon it, and there was no appearance of the land being required for the railway.

On these facts it was contended that the lessor of the plaintiff was entitled to recover. The 17th section of the local Act empowered the company "to make and maintain the said railway and branch railways in, through, and upon the lands delineated on the said plans and described in the said books of reference, and to enter upon, and take, and use such of the said lands as shall be necessary for the purpose." This only gave a power to take lands *necessary* for the purposes of the railway, and the company could not take any land which was not necessary, notwithstanding it was scheduled. The appointment of Mr. Bill as arbitrator, to assess the value of only twenty-six perches, shewed that the company did not adopt Mr. Armistead's proposition, that they should take the whole. They were not bound to take it, as it was more than half an acre, and Mr. Armistead was of course released from his former stipulation, that the company should take the whole. Mr. Ricardo's letter, moreover, positively stating that the company had made other arrangements, was equivalent to saying that the land was not required for the railway.

Keating, Q.C. on the close of the plaintiff's case, submitted that there was no case to go to the jury. The evidence shewed that the defendants entered under the 85th section of the Lands Clauses Consolidation Act.

CRESSWELL, J.—I cannot take upon myself to say that the land was required for the railway. That is a question for the jury.

Keating then addressed the jury.—The company thought twenty-six perches was as much as they wanted. On giving the proper notice for that quantity, Mr. Armistead said the "residue was less than half an acre, and the company must take it." They were not unwilling, and accordingly treated with Sir T. Boughey for his moiety, but eventually found that Mr. Armistead would not make an amicable arrangement for his. The land on each side was the company's, and although at present no use was made of it, it was absurd to suppose that having acquired the land on each side they would not require the intervening space. [CRESSWELL, J.—The point will not quite rest on that. If the company bought land on the east and west sides under a voluntary agreement, not necessary for the works, and merely in consequence of having that unnecessary land, it became necessary for them to have the intermediate ground, then it would not be necessary for the purposes of the railway.] Yes; but it is not likely that the company would buy land on the west side at a high rate per foot if not required for the purposes of the railway. The amount at which the land was valued was paid into the bank, and was there now, but Mr. Armistead was desirous of obtaining a larger sum, and would not take it. The company had done everything in their power; they had offered a jury or arbitrators, but Mr. Armistead would not take the offer. The company then proceeded before the magistrates, and did all the law required. They delivered a bond to Mr. Armistead and paid into the bank the amount of the valuation by the surveyor appointed by the justices. The company's compulsory powers expired at the end of three years, and the very day after Mr. Armistead brought his action.

Whateley, Q.C. objected to any statement respecting the former action, as it was not evidence in this.

CRESSWELL, J.—I think it some evidence. A judgment in ejectment may not be in some cases evidence in a subsequent action of ejectment, but it is a judgment that at that time the plaintiff is not entitled to possession. In this case the demise is the same day in both actions, otherwise I do not think it would be evidence. The judgment in the former action proceeded on the ground that the defendants had a right to go beyond the deviation line. It seems to have been taken for granted that the land was necessary for the railway.

Keating referred to the case of *Sadd* v. *The Maldon, &c. Railway Company*, 20 L.J. (N.S.) Ex. 102, in which the Court seemed to think that even if the land was not necessary, it was a question for a Court of Equity. Here, however, it would be shewn that the land was necessary. Mr. Ricardo's letter did not express an abandonment of the land, but merely stated that other arrangements would be made to obtain possession of it, in consequence of Mr. Armistead's refusal to adopt the proposed arrangement; and the only question is, whether the land was necessary. If it was unnecessary, and Mr. Armistead really wanted the land, he would have an opportunity, under the Railway Clauses Consolidation Act, to repurchase it at the end of ten years, as the company was then bound to sell all land obtained by them not wanted for the purposes of the line, and to offer it to the former owner.

Mr. Keary, the solicitor to the company, was then examined, and proved the proceedings taken under the Lands Clauses Consolidation Act with reference to the land in question, and also that since the trial of the former action the company had proceeded to assess the value of the land before the coroner (the sheriff being an interested party) and a jury, under the 49th and 52nd sections of the same Act, in consequence of Mr. Armistead having refused to attend the arbitration.

Mr. Forsyth, the engineer of the railway, stated that the notice that Cat's Palate was required for the railway was given by his advice, and in his opinion it was necessary for the purposes of the railway. At the time this action was commenced he was having the land stripped previously to its being covered with an embankment. It was intended to lay down sidings and to erect buildings for carriages on it. The land on the east and west sides had been purchased from Sir Thomas Boughey. On the north it was bounded by the line of railway, and on the south by the Trent and Mersey Canal, the property of the railway company. The company had erected a large granary on the east side, and contemplated placing other buildings between the railway and the canal.

Whateley, Q. C. in reply.—The question is, whether the company has proved that the land is *necessary* for the line; not whether it is *convenient*, but whether it is necessary?

CRESSWELL, J.—Do you contend that it is necessary to shew that the land was absolutely necessary to carry on the railway?

Whateley.—The words of the Act are necessary for the purpose of the railway. It must be, therefore, shewn that the land was necessary for the railway. I say something more than mere convenience must be proved. For instance, if the company wanted it merely because they were also the owners of the canal adjoining, it would not be necessary within the words of the Act, for it must be required for the purposes of the railway.

CRESSWELL, J. to the jury.—The question you have to try is an extremely simple one. A great many points in this case have been decided by the Court of Q. B. I am bound by that decision, and I see no reason to differ from it. The Court has decided every point but the one, whether the land is necessary for the railway. The company has the right to take the land described in the book of reference, but has only power to take what is necessary for the railway. The word "necessary" does not mean that without which the railway cannot be constructed from A. to B. It extends to such land as is reasonably necessary for the advantageous use of the railway. For instance, houses, sidings, and standings for carriages are reasonably necessary, although not absolutely necessary. Therefore I advise you to consider the question with reference to what you think is reasonably required for the advantageous use of railways. This question cannot be judged of by a person who knows nothing of the intentions of the company, but the engineer tells you positively the land is required for sidings and buildings for carriages. It is true it has not been yet applied to those purposes, but the company had no sooner taken possession of the land than the action was commenced. That seems to me to be a clear answer why they have not hitherto used it. In conclusion, his Lordship said, the question you have to consider is, whether you think these two roods and six perches of land was land that the company would reasonably require for the use of their railway.

One of the jury inquired whether Mr. Ricardo's letter was to be taken into consideration?

CRESSWELL, J.—Undoubtedly it is part of the evidence as to whether the company really did require the land for the railway, but it does not alter the question for your consideration as to what, according to the judgment of a reasonable man, is necessary for the railway.

Verdict for the defendants.

Ecclesiastical Courts.

CONSISTORY COURT.

CHICHESTER.

Friday, Sept. 3.

(Before Dr. PHILLIMORE.)

RAWLISON *v.* MEDWIN and HURST.

Title to pew in parish church—Perturbation.

This was a suit brought by plaintiff against the defendants for molesting and disturbing him in the use of a seat in the parish church of Horsham.

Deane for the promoter.

Waddilove for the defendants.

The facts and arguments are sufficiently stated and reviewed in the judgment.

Dr. PHILLIMORE.—This is a suit brought by Mr. Rawlison, a parishioner and inhabitant of Horsham, in this diocese, against Mr. Medwin and Mr. Hurst, also parishioners and inhabitants of this parish, for molesting and disturbing him in the use and occupation of a seat in the parish church of Horsham. It appears by the evidence that Mr. Rawlison, the promoter of the suit, is a solicitor, and that Mr. Medwin, one of the defendants, is a solicitor, and the other (Mr. Hurst) is a barrister. At first the defendants conducted this cause in person, but subsequently both parties have availed themselves of the assistance and advice of advocates and practitioners in Doctors' Commons, by whom the Court has had the advantage of having its judgment informed today. The citation was taken out on the 15th of October, 1851. The libel, which was in the common form assigned by practice to suits of this description, and which contains no special matter, was given in on the 12th of November, 1851. Upon the court day no person appearing to sustain the opposition, the libel was admitted. From this admission an appeal was instituted on the 26th of November, pending which the jurisdiction of this Court was of course inhibited. The inhibition was served upon the Court on the 6th day of December, 1851. The result of the appeal was that the judgment of this Court was affirmed, and the cause remitted to it on the 2nd day of June, 1852. Upon that libel five witnesses have been examined in chief and interrogated. An allegation was asserted by the defendants, assigned for the 23rd, and brought in on the 30th of June, 1852. That plea was opposed, and the admissibility of it was argued before the Court. The Court was of opinion that, subject to certain informations directed to be made in it, it was admissible, but accompanied the expression of that opinion by an intimation to the counsel and proctor of the defendants, to which it will be necessary hereafter to refer. The libel pleaded that Mr. Rawlison had been a parishioner of Horsham since the month of April, 1837; that in the month of February, 1851, the churchwardens placed him and his family in a certain seat in the parish church; that the defendant, with his family, took possession of it; that they continued peaceably to occupy it until a Sunday happening on the 17th day of August, 1851; that on that day they were forcibly prevented from occupying it by the defendants, who had unlawfully intruded themselves therein, and refused upon due request being made to them, to retire therefrom. Before we consider whether these statements are supported by the evidence, and whether they are in any respect materially contravened by the counterplea of the defendants, it may be well to state briefly what is the law applicable to the distribution and occupation of seats in a parish church; and I am the more desirous of doing so, because a misconception on this subject appears to have prevailed among some of the parishioners of Horsham, which, perhaps, with respect to many of them is not surprising, but which with respect to the defendants, their legal character, the simplicity of the law upon this subject, the notoriety of the decisions upon being duly considered, appears to me, I must confess, so astonishing as to be scarcely credible. According to the common law ecclesiastical, both before and since the Reformation, the use of the church has been free to all parishioners. Since the Reformation, fixed seats have been introduced instead of moveable ones, which appear to have been in use previously, and to have been in some cases the subjects of private property; but with reference to the use of the church, no innovation was made upon this principle of the ancient law. At the period of the Reformation all seats in churches, with some peculiar exceptions (which it is not now necessary to advert to) are in the disposition of the ordinary, who exercises in the first instance his authority through the churchwardens, who are his officers as well as the officers of the parish, and who are subject to the supervision and control of the Consistorial Courts. The decisions of these courts, with the full concurrence of the authorities of the Common Law, have long ago decided the following points:—First—That according to the general law

there can be no property in seats, and that the sale and lease of them is wholly illegal. Secondly—That all private rights in seats must be held by virtue of a decree of the Consistorial Court, technically called the faculty; or, thirdly, by prescription, which implies the previous grant of the faculty since lost. Fourthly—There is what is called a possessory right, accruing on the allotment of a seat to a parishioner by the churchwardens, or from their sanctioning his possession of the seat. This right is not good against the ordinary, who may, on cause being shewn to him, make a different arrangement, but is quite sufficient to enable the possessor to maintain a suit against a mere disturber. These axioms of this branch of the ecclesiastical law have been frequently laid down in a variety of reported cases, and have received the sanction of Lord Stowell and Sir John Nicoll and other ecclesiastical judges of high authority; they are, in fact, now to be found in almost every elementary work on the subject, and must have been, I should suppose, well known to the legal defendants in this case. Now, to apply these principles of law to the facts before me. Mr. Rawlison, the promoter of the suit, has been examined himself, and he swears that he was placed in his seat by Mr. Thorpe, "upon whom," he says, "the active duties of churchwarden appeared to devolve," and the description appears to be just, for Mr. Aldridge admits that he was disabled by ill-health from discharging his duties, and Mr. Lee, on the sixteenth interrogatory, says that he never had any applications made to him for seats. Mr. Thorpe has been examined, and he swears that he was appealed to by Mr. Rawlison, and consented to his occupation of the seat. The two other churchwardens (for it appears that there are three in this parish) have been examined by the defendants; the first of them (Mr. Aldridge) says that he was ill at the time, and that neither then nor since has he had anything whatever to do with the matter. The third and remaining churchwarden (Mr. Lee) swears that Mr. Rawlison did not consult him previously to occupying the seat, and that he objected to his doing so; that he expressed this objection to his brother churchwardens, and, to use his own expression, "to every one who spoke to him about it;" but he does not swear that he desired Mr. Rawlison to abandon his seat, or, indeed, that he spoke to him upon the subject till July 1851, when, it must be remembered, that he had ceased to be churchwarden. He swears that Mr. Thorpe declared that he had never given his consent to Mr. Rawlison and that Mr. Hodgson, the incumbent, admitted that he had seated Mr. Rawlison in the first instance, and Mr. Stapleton, another witness produced by the defendants, speaks also to Mr. Thorpe's denial; that is to say, of having originally consented, but admits that he subsequently sanctioned the occupation of the seat by Mr. Rawlison. On the other hand Mr. Thorpe himself swears positively to the contrary, so does Mr. Rawlison, so does the incumbent, though he is not quite sure whether the consent of the churchwardens was given after or before Mr. Rawlison's taking possession. I am clearly of opinion that the evidence is in favour of Mr. Rawlison upon this point. It is not my intention to ascribe perjury to Mr. Lee or to any other witness. It is very probable he is deposing with a strong conviction as to the truth of his statement, and nevertheless is under a mistake as to the seat which was the subject of his conversation with Mr. Thorpe; but in weighing his evidence I cannot shut my eyes to a fact which I observe with much regret, and which must, I think, be held as biassing, in some degree, Mr. Lee's testimony—I mean his illegal and very improper conduct when churchwarden. This gentleman swears that he had always understood that the parishioners had a prescriptive right to buy and sell pews, and to hand them down to their successors, and he appears by the exhibit No. 2, proved in this cause, to have taken an active part in July 1851, in carrying a proposition in vestry, which was directly at variance with the law of the land, and the duties of his former office. It does not, however, matter much for the purposes of this suit whether Mr. Rawlison was originally seated with the sanction of a churchwarden or not, for that he occupied the seat for several months with what must be legally, as well as morally, considered the implied sanction of the churchwardens, and without any attempt on the part of any of them to disturb him, is a fact not attempted to be controverted in the case; and here I may remark that the allotment of this pew, which was vacant at the time, appears to have been a perfectly proper and legal act, whether regard be had to the particular station of Mr. Rawlison in the parish, or to the general arrangement of seats in the parish church. Lastly, to close this part of the case, it is not denied that Mr. Rawlison was disturbed in the possession of the seat which he had so occupied for many months, by the defendants, at the time and in the manner laid in the libel, and which disturbance, but for the becoming conduct of Mr. Rawlison, would have led to a desecration of the sanctuary, and to a scene of brawling in the church, for which the defendants would have been unquestionably punishable in the Ecclesiastical Court. Now let us consider what is the defence set up upon the other side. The allegation pleaded that the seat in question had been occupied for a considerable time by the inhabitants of a particular mansion, which is now inhabited by a sister of Mr. Hurst, one of the parties in this cause, but it did not, and, indeed, could not plead, either substantially or in terms, that the seat was attached to the mansion either by faculty or by prescription, and the counsel for the defendant has expressly abandoned any such defence. It did not deny that Miss Smith, the person who inhabited the mansion previously to Miss Hurst, died in January 1851, when the seat became vacant, and was shortly afterwards occupied by Mr. Rawlison; nor is it pleaded that any attempt was made by Miss Hurst to take possession of it either by herself or by deputy until the month of August 1851, she having become only possessed of the mansion in the July preceding. The allegation further pleaded that Mr. Rawlison had never been seated with the knowledge or sanction of any of the churchwardens, that they had expressly refused their sanction, and that he had been seated by the vicar alone. The allegation, however, did not contain that averment, which it was most natural for the defendants it should have contained, that the defendants, the alleged intruders, had ousted Mr. Rawlison, and taken possession of the seat under the authority (supposing them to have possessed any) of the churchwardens. I must now mention more fully a circumstance happening in the progress of the cause, to which I have before alluded. When the allegation was debated, I expressed a very strong intimation of opinion, that inasmuch as it did not set up a title either by faculty or prescription, or possession in the defendants, that, in fact, it would be found to constitute no defence to the plaintiff's suit, while it would greatly augment the expenses of the litigation; nevertheless, as it did directly contradict a material averment in the libel, videlicet—that Mr Rawlison was originally seated by the authority of any of the churchwardens, and as I was much pressed on behalf of the defendants to admit the plea, I consented to do so if they still wished it, warning them, however, that they would be certainly condemned in the costs if they failed by it to establish their case. Thereupon the legal advisers of the defendants requested that time should be allowed them to consult with their clients, and to convey to them this intimation of my opinion. The time which they required was allowed them, and they finally determined to proceed with the suit, and to take evidence upon their allegation. Upon this allegation they have examined six witnesses, and their evidence constitutes by far the larger part of the depositions before me. I have already adverted to the evidence of Mr. Lee, Mr. Aldridge, and Mr. Stapleton, and expressed my opinion thereupon. Mr. Medwin and Mr. Hurst, the defendants, have not been examined themselves. The testimony of the witnesses produced by them, so far from aiding, is, in my opinion, detrimental to the case which they are produced to support. It appears from the cross-examination of all the witnesses, that there had been, and was at the time Mr. Rawlison began to occupy his seat, a practice prevalent at Horsham, [illegible] and selling seats in the parish church; so [illegible]y carried on, that a register was kept of the supposed value of the seats; that this illegal and discreditable traffic had been countenanced, I regret to say, by some vicars, and had been sanctioned and abetted by the churchwardens in direct violation of the duty which they had by solemn declaration bound themselves to fulfil, and it is not difficult to surmise that the real objection to Mr. Rawlison being seated arises from the fact of his being seated according to the Common Law of the land, and in defiance of the illegal custom referred to. I have read, therefore, without surprise, the following answer of Mr. Rawlison to an interrogation addressed to him:—"The proceedings in this cause are primarily at my own expense, that is, I am formally liable for them, but I am guaranteed by the bishop, whose right it is that is invaded, he having stated to me that it was his intention to vindicate the rights of the parishioners against those setting up claims to the pews, as private property, and to put down, as he said, the present practice of buying, selling, and letting pews in the parish." I think it my duty to take this opportunity of warning the churchwardens of Horsham, that if they continue to foster and abet an offence which they are bound to prevent and extirpate, and to disregard the solemn obligation to maintain the Ecclesiastical Law which they contract on their institution into their office, they may find that they have subjected themselves to criminal proceedings, and to punishment in this court, which I trust this admonition will induce them to avoid. Having alluded to the propriety of the allotment of the seat in question to Mr. Rawlison, I must now notice the extreme impropriety which would have attended its appropriation to Mr. Medwin and Mr. Hurst. First, as to Mr. Medwin, neither the pleading nor the evidence offers the slightest defence for his conduct; there is not the faintest pretence for alleging he had any title to the seat in question. It is not even suggested that it did or could in any way belong to him. The evidence shews that Mr. Medwin possessed two pews, independently of the one in question, in the parish church. Secondly, as to Hurst, he appears to be the very last person who ought to have played the part of an intruder into another person's seat. His own witness, Mr. Aldridge, the churchwarden, says upon the sixth interrogatory, "I have no idea how many pews, or parts of pews, Mr. Hurst, one of the parties in this suit, or his father or family lay claim to in the parish church of Horsham—a great many though, for he has five or six large pews in the chancel." Another witness also produced by the defendants, Sarah Thomas, on the sixth interrogatory, says, "Mr. Hurst had an immense number of pews and sittings in the church, in which his tenants used to sit, but whether or not he has or had two pews in the north aisle, I do not know." The Court, therefore, however scandalised, is not astonished to read the following evidence of the vicar, Mr. Hodgson:—"It is not the fact that there is more than sufficient pew accommodation for the parishioners in Horsham Church, for the churchwardens have now twenty applications for pews, which they are unable to provide; and yet, owing to the system of appropriation of pews now existing, I remember it was brought under my observation on Whit Sunday last, that there were only eight persons in as many pews, which would have conveniently held thirty-six persons." I have no hesitation in pronouncing that the promoter of this suit has succeeded in proof of the averments in the libel, and that he is entitled to the sentence of the Court in accordance with his prayer; and I hereby monish the defendants that they do refrain for the future from intruding themselves in the pew in question in this cause, and from disturbing Mr. Rawlison and his family in the quiet and peaceable possession of the same. And further, I think it would be a gross dereliction of my duty if I did not condemn them in the expenses of litigation, which their conduct originally provoked, and which their pleading has unnecessarily inflamed. I do hereby, therefore, condemn them in the costs of this suit.

THE LAW TIMES,

FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

Vol. XIX.—No. 469.] SATURDAY, MARCH 27, 1852.

Single Numbers, or on credit £0 1 0
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For Half Year, paid in advance... 1 7 6

JOURNAL OF PROPERTY.

MONEY MARKET.

ENGLISH FUNDS.	Sat.		
Bank Stock	..	221	
3 ₽ Cent. Reduced Annuities	..		98½
3 ₽ Cent. Consols Annuities	98¼	98½	98¼
Consols for Account	98¼	98½	98¼
New 5 ₽ Cent. Annuities ..			
New 3½ ₽ Cent. Annuities ..			
Long Annu. (exp. Jan 5, 1860)			
Do. 30 yrs. (exp Oct 10, 1859)			
Do. 30 yrs (exp. Jan. 5, 1860)			
India Stock		..	261
India Bonds (1,000l.)	74	74	78
Do. do. (under 1,000l.)....	73	74	76
South Sea Stock............	108¾		
Do. do. New Annuities ..			..
Exchequer Bills, 1,000l.		*	70*
Do. do. 500l.		*	70*
Do. do. Small		*	70

* Premium.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

BOUVERIE.—On the 20th inst at No 8, Chester-street, Mrs. Philip Pleydell Bouverie, of a daughter.

BUXTON.—On the 21st inst at 10, Upper Grosvenor-street, the lady of Sir Edward North Buxton, bart. M.P. of a daughter.

RUSSELL.—On the 25th inst. at 76, Marina, St. Leonard's-on-Sea, the wife of James Russell, esq. Q C. of a son.

SWETENHAM.—On the 22nd inst. at Hartsheath, Flintshire, the wife of Edmund Swetenham, esq. barrister-at-law, of a daughter.

MARRIAGE.

WADDINGTON, Harry Spencer, eldest son of Harry Spencer Waddington, esq M P. of Cavenham Hall, Suffolk, to Caroline, third daughter of Rear-Admiral Sir William Beauchamp Proctor, bart. Langley Park, Norfolk, on the 18th inst. at St. George's, Hanover-square, by the Hon. and Rev. J. T. Pelham.

DEATHS.

ARCHER, George, esq. solicitor, on the 22nd inst. at Little James-street, Bedford-row, aged 46.

ATKINSON, Ann, the relict of George Atkinson, esq. formerly of 24, Castle-street, Falcon-square, solicitor, on the 17th inst. at Lee-road, Blackheath, aged 77.

DUNDAS, the Hon. Elizabeth, widow of the Right Hon. Robert Dundas, of Arniston, Lord Chief Baron of the Court of Exchequer in Scotland, and eldest daughter of Henry, 1st Viscount Melville, on the 18th inst. at Gogar-bank, near Edinburgh, aged 65.

GREENWOOD, the infant son of John Greenwood, esq. Q.C. 53, Chester-square, on the 19th inst. aged 2 weeks.

MARSH, Thomas Henry, of Lincoln's-inn, esq barrister-at-law, on the 14th inst. at Aylesford Vicararge, Kent, aged 27.

MAUDE, John, esq. a magistrate and deputy lieutenant for the West Riding of Yorkshire, on the 16th inst. at his residence, Moor House, near Wakefield, aged 80, having been born Feb. 16, 1772

SCRUTON, Walter, esq. Deputy-clerk of the Peace, on the 12th inst. at Durham, aged 52.

SKELTON, Jonathan Schweitzer, esq. formerly of Trinity Hall, Cambridge, and late of Brick-court, Temple, and of the Western Circuit, barrister at-law, on the 19th inst. aged 39.

STEWART, Amelia Jane, the youngest daughter of Jas Stewart, esq of Lincoln's inn, on the 16th inst. Harrow-on-the-Hill, aged 4.

WAITE, Thomas Harneis, student of St. John's College, Cambridge, eldest son of Thomas Phillips Waite, esq. solicitor, at Louth, Lincolnshire, on the 19th inst. aged 19.

PROCLAMATION FOR ASSEMBLING PARLIAMENT.—Yesterday Lord Brougham's Bill to shorten the time required for assembling Parliament after a dissolution was printed by order of the Lords. The following is the entire Bill after stating the title:—"Whereas on account of the increased facilities of communication which now exist, the time required by law to intervene between the date of the proclamation for assembling Parliament and the day appointed for the meeting thereof may be reasonably shortened. Be it enacted (in the usual manner) that so often as her Majesty shall by her Royal proclamation appoint a time for the first meeting of the Parliament of the United Kingdom of Great Britain and Ireland after a dissolution thereof, the time so to be appointed may be any time less than fifty days after the date of such proclamation, the Act of the 5th of Queen Anne, c. 8, art. 22, or any other law or usage to the contrary, notwithstanding; provided that the time so appointed shall not be less than thirty-five days after the date of such proclamation."

FRIENDLY SOCIETIES CONSOLIDATION BILL.—This Bill, to continue and amend the Friendly Societies Act, which was passed last session, has been printed. It contains only three clauses. After providing for the renewal of the former Act, it proceeds to regulate the payment of the salaries and expenses of the registrars from the fees; and if there is any balance after these payments it is to be paid over to the Consolidated Fund, to meet any deficiencies that may arise in future years.

LEGACY, &C. DUTIES.—Mr. Hume has obtained his annual return as to legacy and other duties, which was printed on Saturday. In 1851 legacy duty was paid in Great Britain on a capital of 49,402,391l. 8s. 1d. varying from 1 to 10 per cent. The total amount on which such duty has been paid from the year 1797 is 1,610,511,719l. 16s. 4d. In Ireland, in the year ending the 5th of January last, the amount of capital on which legacy duty was paid was 2,435,228l. 17s. 5d. and the amount of duty was 58,444l. 8s. 4d. In Ireland, in 1851, the amount of duty on probates beyond the sum stated on legacies was 66,075l. In the year ended the 5th of January last the revenue derived from stamp duties on legacies in England and Wales was 1,160,080l. 16s. 5d.; in Scotland, 95,633l. 2s. 8d.; in Great Britain, 1,225,713l. 19s. 1d. and in Ireland, 59,566l. 18s. 4d.; while on probates, administrations, &c. the sums were respectively 926,019l. 1s. 6d. 71,314l. 997,326l. 1s. 6d. and 66,075l. Since the year 1797 the duty on legacies has been 47,502,446l. 14s. 9d. and on probates, administrations, and testamentary papers, 38,260,557l. 15s. 8¾d.

THE GROUPING OF PRIVATE BILLS.—Another report from the Committee of Selection—making the fourth—has been printed, shewing the grouping of various Private Bills before the House of Commons.

"CURSING" A MAGISTRATE BY A CLERGYMAN.—A most extraordinary, novel, and exciting scene was witnessed at the Flordon station, on Saturday evening. When the 5 o'clock train from Norwich arrived there, the passengers were much surprised at seeing the Rev. Mr. Moore, the curate of the parish, standing in the passage of the station-house, dressed in his canonicals. It was, however, soon understood that he was waiting there to "curse" a neighbouring magistrate, who was expected by the train, and who had given him some presumed offence. When the individual alluded to was giving up his ticket to the station master, the rev. gentleman thus addressed him:—"I inflict a curse upon this man. I curse you; I curse your wife; I curse your children; I curse all you have—may your children be fatherless and vagabonds, and beg their bread," &c. &c.; and thus he went on until the "cursed man" drove off. We understand that the matter has been laid before the bishop; and that the rev. gentleman, in default of finding sureties to keep the peace, was committed on Sunday night to the Castle, by Edward Howes, esq.

EXECUTION OF A BANKRUPT.—At noon, on the 10th inst. just as the Exchange at Hamburgh was crowded with merchants, and presented its busiest aspect, two drummers in the civic uniform came up and rolled their drums for the space of ten minutes, causing a great commotion both within and out of the Bourse. While this was going on, workmen were seen over the principal gateway of the building elevating a black board, on which was painted in white letters the name of a merchant of the city who had lately suspended payment and absconded with all his assets. When the name had been fairly set up, a bell, called the "*schand glocke*," or shame bell, only rung on such occasions, was sounded for two hours from a tower of the Bourse. This penalty of disgrace, called the "execution of a fraudulent bankrupt," is ordained by a law which can be traced to the fourteenth century, when the Hanseatic League was at the height of its greatness. At that period, however, the bankrupt's patent of citizenship, and his certificate as a merchant, were also burnt by the hangman.

LUNACY CASES IN THE COURT OF CHANCERY.—It is stated in a return to the House of Lords, just printed, that the number of petitions and matters in lunacy set down for hearing before the Lord Chancellor on the 2nd November, 1850, was 34. The number of petitions and matters in lunacy heard or otherwise disposed of by his Lordship between the 2nd November, 1850, and the 2nd November, 1851, was 416.

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MESSRS. SHUTTLEWORTH and SONS respectfully inform the public, that the PERIODICAL SALES of REVERSIONARY INTERESTS, &c. will be held at the MART, the FIRST FRIDAY in EACH MONTH throughout 1852, as follows—

April 2	September 3
May 7	October 1
June 4	November 5
July 2	December 3.
August 6	

Particulars may be had, ten days previous to each sale, at the Royal Hotel, Manchester; the Adelphi Hotel, Liverpool; Dee's Royal Hotel, Birmingham; the Angel, Oxford; the Eagle and Child, Cambridge; at the Auction Mart; and of Messrs. Shuttleworth and Sons, 28, Poultry.

A Pair of semi-detached Freehold Villas, at Gravesend, Kent.

MESSRS. BULLOCK are directed to SELL by AUCTION, at the CLARENDON HOTEL, GRAVESEND, on THURSDAY, MAY 20, in Two lots, ALBION VILLAS, being Nos. 22 and 23, Albion-road (between Milton-road and the River). The former has ten rooms, garden, with grass plot, and gravelled walk, and a well planted forecourt, and is let to Mr. Todd, at a low rent of 28*l*. per annum. No. 23 has similar arrangements, and at present is in hand.—Printed particulars may soon be had, at the place of sale; Messrs. Sun and Grimble, Solicitors, 80, Lombard street; and of Messrs. Bullock, 211, High Holborn.

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Ground Leases of Two genteel Residences, Surrey-square, Old Kent-road.

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FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

Vol. XIX.—No. 470.]

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"This work is the first attempt which has been made to embody, in the form of a Treatise, the Decisions of the House of Lords on the Law of Property. The subjects are thus classed: 1st, are the cases on Contract Deeds and Settlements; 2ndly those on Testamentary Dispositions an important Division; 3rdly, the cases on Powers which are common to Dispositions as well by Deed as by Will; and, finally, the authorities bearing upon particular classes as Lessors and Lessees, Mortgagors and Mortgagees, Vendors and Purchasers. The Decisions on the Law of Husband and Wife are ranged under the head of 'Settlement'. ..The writer had at his command some materials which have greatly aided him in a portion of his work; whilst at the bar he retained all the printed cases on Appeals in which he was counsel, with his own notes and the notes of the arguments. From this source principally he has been enabled to add the cases not at present reported between 1821 and 1826."

S. Sweet, 1, Chancery lane.

Just published, price Sixpence,

CONSERVATIVE PRINCIPLES and CONSERVATIVE POLICY. A Letter to the Electors of Tewkesbury. By EDWARD W. COX, Esq. Conservative Candidate for that Borough. Election Committees, &c. supplied with Copies for distribution, at 30s. per hundred.

Crockford, Law Times Office, Essex-street, Strand.

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The following Books for the Circuits are just published.

ALL the NEW CRIMINAL STATUTES, and a DIGEST of all the CRIMINAL CASES reported for the last four years, arranged as a supplement to Roscoe or Archbold, with copious notes, &c. By E. W. Cox, Esq. Editor of Cox's Criminal Law Cases, and W. St. Leger Babington, Esq. Barristers-at-Law. Price, 7s. 6d. cloth.

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N.B.—These Parts bring down the decided Cases to the present time.

THE LAWYER'S POCKET-BOOK and COURT COMPANION, for 1852: containing Almanacs for Three Years, with the time of the Moon's rising and setting on each day; a complete Stamp Table, Interest Tables, Tax Tables, Regal Table shewing the date of any statute; Fee Tables, &c.; and in fact all the information so frequently required for reference in Courts. Price, only 6d. or interleaved with blank pages for memoranda, 1s.

THE PRACTICAL STATUTES for 1850 and 1851, each in a small volume for the bag or pocket. Price, for 1850, 7s. 6d. cloth; 1851, 7s. cloth: comprising all the practical statutes of each year verbatim; with Notes and a copious Index. By Wm. Paterson, Esq. Barrister-at-Law.

Crockford, 29, Essex-street, Strand.

Just published, price 3s. 6d. No. XVIII. of the

JOURNAL of PSYCHOLOGICAL MEDICINE. Edited by FORBES WINSLOW, M.D.

CONTENTS:

1. Crime, Education, and Insanity.
2. Psychology of Epochs.
3. Nervous Influence.
4. An elaborate Report of the important and interesting Lunacy Case of Mrs. Cumming, extending to nearly 200 pages of closely printed matter, embodying a verbatim report of the examinations and cross examinations of all the medical witnesses, the general evidence, and a report taken from the shorthand writer's notes of the three personal examinations of Mrs. Cumming by the Commissioner, with the official reports, &c.

This number of Dr. Winslow's Journal contains nearly 150 pages of extra matter without additional charge.

London: John Churchill, Princes-street, Soho.

Sales by Auction and Private Contract.

Improved Ground Rents.

[illegible]

72*l.* per annum, secured upon Twenty Houses, in Hart street and Stanhope-street, leading from High-street to Church-street, in the parish of St. Paul, Deptford, Kent.—Printed particulars may be had of Messrs. Futvoye, Sawtell, and Lightfoot, Solicitors, John-street, Bedford row; *at the place of sale*; the Castle, Deptford; and of Messrs. Winstanley, Paternoster-row.

Freehold Ground Rents.

MESSRS. WINSTANLEY have received direc-tions to SELL by AUCTION, at the MART, on MONDAY, APRIL 5, in five lots, some excellent FREEHOLD GROUND RENTS, amounting to 11*l.* 7s 6d. well secured upon houses and land, in Morton-road, Wandsworth, Nunhead, and Hook-lane, Harders'-road, Albert-road, Peckham.—Printed particulars will be ready fourteen days previous to the sale, and may be obtained at the place of sale; of D. B. Sladen, Esq. Solicitor, 38, King-street, Cheapside; and of Messrs. Winstanley, Paternoster-row.

Sale of Reversions, Policies of Assurance, Life Interests, Ground and Improved Rents, Patents, Mining, Dock, Canal, and other Shares, Debentures, &c.

MR. EDWARD PALMER, begs to inform his friends and the Public that he intends holding PERIODICAL SALES of the above description of Property, at the MART, Bartholomew-lane, London, on the THIRD WEDNESDAY in EACH MONTH, which Sales will take place as follow:—

April 21	July 21	Oct. 20
May 19	Aug 18	Nov. 17
June 16	Sept. 15	Dec. 15.

Particulars of all Lots intended to be included in either of the above Sales should be forwarded at least twelve or fourteen days prior to such sale to the Offices of Mr. E. Palmer, Auctioneer, Valuer, &c. 20, Change-alley, Cornhill; or 24, Lower Calthorpe-street, Gray's-Inn-road.

Important Building Ground.—St Leonard's-road, near the Railway Station, at Kingston.

MR. NIGHTINGALE will SELL by AUCTION, at the MART, on FRIDAY, APRIL 16, at Twelve in fourteen lots about 4 acres of remarkably eligible BUILDING GROUND, freehold, and redeemed from land tax, desirably situate, at St Leonard's-road, a newly formed and well-gravelled private carriage way 40 feet wide, with 8 feet reserve on the outer side, to prevent the road being broken into, commencing at Hampton-grove, on the Surbiton Estate, within 400 yards of the station, and extending to the Portsmouth turnpike-road, about 150 yards from a public approach to the river Thames, and about half a mile from the capital market town of Kingston. The soil and subsoil are excellent for building purposes. The whole frontage to the Portsmouth-road, comprising about 180 feet by an average depth of 150 feet, will form the first lot; a similar frontage to Hampton-grove will form the second, and there are twelve lots, each of 60 feet frontage to St. Leonard's-road, and overlooking the grounds of Edward Raphael, esq. and slightly varying in depth from 160 to 180 feet. The lots are distinctly marked out.—Particulars may be obtained at the Railway Hotel, Kingston Station; at the Auction Mart, London; of D. B. Sladen, Esq. Solicitor, 38, King-street, Cheapside; and of Mr. Nightingale, Estate Agent and Surveyor, Kingston.

COLCHESTER.—Extensive and valuable Freehold Building Ground adjoining the Eastern Counties Railway Station, and between it and the town, together with small Residence and Garden, offering most eligible investments and votes for the county.

MR. BEADEL has received directions to submit to PUBLIC SALE, at the THREE CUPS, HOTEL, COLCHESTER, on TUESDAY, APRIL 20, at Twelve, in Fourteen Lots, the following desirable PROPERTY, comprising a convenient HOUSE and Offices, and about Eleven acres of most Valuable FREEHOLD LAND, close to the Colchester Station on the Eastern Counties Railway, singularly adapted for building purposes, divided into fourteen plots, possessing capital frontages to good roads. The whole is land-tax redeemed, and possession may be had.—Particulars, with lithographic maps attached, may be obtained of Messrs. Crowder and Maynard, Solicitors, 57, Coleman-street; at the Three Cups Hotel, Colchester; and at Mr. Beadel's Offices, 25, Gresham-street, London.

NORFOLK and SUFFOLK.—Purchasers of Landed Estates in these counties may, upon application to an office of thirty years' standing, stating the amount to be invested and rate of interest required, obtain particulars of estates for sale, varying in extent from 50 to 3,000 acres, and amounting in value to 300,000*l.*

Apply to Mr. Butcher, Land Agent and Auctioneer, Norwich.

LAW STUDENTS' DEBATING SOCIETY, at the LAW INSTITUTION, CHANCERY-LANE.

QUESTIONS FOR DISCUSSION.

For Tuesday, April 6, 1852. *President*—Mr. Morris.

QUARTERLY MEETING.

The Treasurer will lay before the meeting a list of the unpaid fines and subscriptions.

The Secretary's Report of the proceedings of the past quarter will be read.

Members who have been absent from six successive meetings of the Society, must shew cause at this meeting why their names should not be erased from the list of members.

73. Does a demise of premises by a reversioner to a stranger with the consent of the lessee in possession, who immediately upon the execution of the demise gives up possession to the new lessee, amount to a surrender by operation of law? *Lyon v. Reed*, 13 Mees and W. 285; *Nickells v. Atherstone*, 10 Q. B. 944; 2 Smith's L. C. 45.

Affirmative—Mr. Rhodes and Mr. Clayton.

Negative—Mr. Powell and Mr. Baynor.

For Tuesday, April 13th, 1852. *President*—Mr. Howlett.

74. Ought the case of *Boosey v. Jefferys*, 17 Law Times, 110, to be reversed on appeal?

Affirmative—Mr. Gregson and Mr. Dixon.

Negative—Mr. Girdlestone and Mr. Ward.

For Tuesday, April 20th, 1852. *President*—Mr. Baddeley.

LI. Is it expedient to curtail the present civil and military power of the East India Company in British India?

Mr. Bedford is appointed to open the debate, and Messrs. Feuillade, Hayman, and Hughes to speak upon the question.

For Tuesday, April 27th, 1852. *President*—Mr. Curtis.

75. A. Mortgages Whiteacre to B. and Blackacre to C., and B. assigns his mortgage to C. Can A. redeem either mortgage separately? Powell on Mortgages, 341 a, note.

Affirmative—Mr. Rawlinson and Mr. Armstrong.

Negative—Mr. Bunting and Mr. French.

J. W. HOWLETT, Secretary, 68, Lincoln's-inn-fields.

NEW COUNTY COURTS ROBES.—The Members of the Learned Profession requiring Robes for the New County Courts are respectfully informed that the same may be obtained at HARRISON'S Clerical, State, and Law Robe Establishment, 21, Brownlow-street, Bedford-row, London.

The Chief Clerk's or Solicitor's Robe, finest quality, 2*l.* 10s.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Lord Chancellor has appointed the Hon. and Rev. Frank Sugden, M.A. Vicar of Adlingfleet, Yorkshire, to be his lordship's domestic chaplain.

COURT PAPERS.

Court of Chancery.

List of Causes transferred to the Cause-Book of Vice-Chancellor Sir TURNER, by order of the Court, March 27, 1852.

From Vice-Chancellor KINDERSLEY's Book.

Motley v. Wakeman, 2
Brown v. Farnworth
Stapleton v. Cartwright
Simkins v. Sim
Besley v. Perratt, 2
Stubbs v. Oldham
Broughton v. Ryland
Williamson v. Jeffreys
Harvey v. Brooke
Marshall v. Hutchinson
Worth v. Mackenzie

From Vice-Chancellor PARKER's Book.
Further Directions and Costs

Webb v. Ledicott, 2
Gregory v. Smith, 3
Seawin v. Burton
Smith v. Smith, 4
Jones v. Jones, 2
Neave v. Campbell
Hay v. Willoughby
Ashby v. Allden, 2
Booth v. Hippisley, 2
Goode v. Goode
Ker v. Ruxton
Lachlan v. Reynolds
Kenyon v. Buckley
Lewis v. Marsh
Cross v. Spriggs
Ward v. Swift, 6
Hunt v. Roberts, 6
Bagshaw v. Macneil
Parnell v. Foster
Wilks v. Slaney
Brown v. Heavens
Hudlestone v. Whelpdale
Elverstone v. Hale, 2
Arundel v. Arundel, 2
Crosse v. Webb, 2
Williamson v. Plumer
Harborne v. Harborne
Senior v. Dickinson, 2
Penny v. Riley, 3
Johnstone v. Shaw
Cambray v. Draper
Glover v. East, 2
Middleton v. Yonden
Bracey v. Earl of Scarborough, 2
Aaron v. Aaron
Emery v. Phillips
Hinton v. Johnson, 2
Trumper v. Lockett
Collins v. Groome
Gregory v. Nelson
Allen v. Thames Haven Company.

Court of Queen's Bench.

Sittings at Nisi Prius in Middlesex and London, before the Right Hon. LORD CAMPBELL, in and after Easter Term, 1852.

MIDDLESEX — IN TERM.
1st sitting (at 10 o'clock), Friday, April 16
Any Common Jury cause may be taken at this sitting.
2nd sitting (at 10 o'clock), Friday, April 23
Any Common Jury cause may be taken at this sitting
3rd sitting (at 10 o'clock), Thursday, May 6, for undefended causes only.

AFTER TERM.
Monday, May 10.

LONDON — IN TERM.
1st sitting (at 10 o'clock), Thursday, April 22.
2nd sitting (at 10 o'clock), Thursday, April 29.
Any Common Jury cause may be taken in Term.

AFTER TERM.
Tuesday, May 11, to adjourn only.

The Court will sit at half-past nine o'clock on every day after Term

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

The office of the Marshal and Associates is at the Lord Chief Justice's Chambers, Rolls-gardens, Chancery-lane. Hours of attendance eleven o'clock to five during Term and the sittings after Term; eleven o'clock to two during the rest of the year.

Exchequer of Pleas.

Sittings at Nisi Prius in Middlesex and London, before the Right Hon Sir FREDERICK POLLOCK, in and after Easter Term 1852.

IN TERM — MIDDLESEX.
1st sitting, Friday, April 16
2nd sitting, Friday, April 23.
3rd sitting, Friday, April 30.

AFTER TERM.
Monday, May 10.

IN TERM.—LONDON.
1st sitting, Thursday, April 22
2nd sitting, Thursday, April 29.

AFTER TERM.
Tuesday, May 11, to adjourn only

The Court will sit during and after Term at ten o'clock.

The Court will sit in Middlesex at Nisi Prius in Term, by adjournment from day to day until the causes entered for the respective Middlesex sittings are disposed of.

Sittings in Banco appointed for Easter Term, 1852.
April 15, Motions and Peremptory Paper
April 16, Peremptory Paper and Motions
April 17, 19, 20, General Business
April 21, Special Paper
April 22, 23, General Business
April 24 Crown Cases
April 26, Special Paper
April 27, Errors
April 28, Special Paper
April 29, 30, May 1, General Business
May 3, Special Paper
May 4, 5, 6, 7, 8, General Business.

SPECIAL PAPER FOR EASTER TERM.

For Judgment.

Atkinson and Another v. Stephens, demurrer
Williams v. Roberts and Others, demurrer
Miller v. Salomons, Special Verdict.

For Argument.

Remanets from Hilary Term.

Cannan and Others, assignees, v. South-Eastern Railway Company, special case
Burton v. White and Another, ditto
Doe dem. Kimber v. Cafe, do.
Thomas v. Watkins, demurrer
Liverpool Loan Company v. Searle, ditto
Alliard v. Wesson, ditto
George v. Devereux, ditto

NEW TRIAL PAPER FOR EASTER TERM.

Moved Easter Term, 1851.

Griffin and Another v. Humphrey.

Moved Michaelmas Term, 1851.

Wallington v. Dale
Key and Others v. Cotesworth and Others
Wood and Others v. Ripley and Another
Fowles v. Great Western Railway Company.

Moved Hilary Term, 1852.

Black v. Gompertz
Marks v. Hamilton
Furze v. Asher
Barbat v. Allen and Another
De Rothschild v. Royal Mail Steam Company
Vincent v. Shropshire Union Railway and Canal Company
Galvanised Iron Company v. Westoby
Guest v. Warren
Mitcheson v. Nicol
Couturier v. Hastie and Another.
Copner v. Copner
Thomas v. Cross
Whitehead v. Lord, administ.

JOURNAL OF PROPERTY.

Public Sales.

By Messrs FAREBROTHER, CLARK, and LYE, at Garraway's, Wednesday, March 24 — A long leasehold detached villa residence, No. 110, Grange-road, Bermondsey, held on lease for a term of seventy years, from Michaelmas, 1839, at a ground-rent of 15*l.* — 880*l.*

Freehold investment, amounting to 118*l.* per annum, issuing out of two cottages and three brick-built private residences, Nos. 111, 112, 113, 114, and 115, Grange-road, Bermondsey offered in four lots - 1,665*l.*

A substantially built dwelling-house and shop, situate No 255, Strand, near to Temple-bar, let on lease for twenty-one years, at a rent of 150*l.* per annum — 2,630*l.*

A leasehold residence, situate No. 1, Southampton-street, Mornington-crescent, Camden Town, held under lease for the residue of a term of ninety-nine years, from Michaelmas, 1800, at a ground rent of 3*l.* 3s. — 105*l.*

An important and highly valuable long leasehold estate, comprising Nos. 25, 26, and 27, Charles-street, St. James's-square, abutting on the Opera Colonnade, also a ground rent of 10*l.* per annum, issuing out of No. 28 in the same street, the whole held under one lease direct from the Crown, at the trifling ground rent of 58*l.* 5s 7d and producing a total rental of 865*l.* per annum — offered in one lot, and realised the sum of 10,000*l.*

MONEY MARKET.

ENGLISH FUNDS.	Sat.	Mon.				Fri.
Bank Stock	.	220†				221†
3 ₩ Cent. Reduced Annuities	..	..				..
3 ₩ Cent Consols Annuities	98¼	98¼	98¼	98	98¼	98¼
Consols for Account	98¼	98¼	98⅜	98½	98¼	98¼
New 5 ₩ Cent Annuities						
New 3¼ ₩ Cent. Annuities					shut.	
Long Annu. (exp Jan 5, 1860)						
Do. 30 yrs (exp Oct. 10, 1859)						
Do. 30 yrs. (exp Jan. 5, 1860)					6¾	6¾
India Stock					.	261
India Bonds (1,000*l.*)					77	77*
Do. do. (under 1,000*l.*)	..		76	..	77	77*
South Sea Stock	..	110¼	..	..	.	109½
Do. do. New Annuities		..	..	..	..	98¼
Exchequer Bills, 1,000*l.*	70*	68*	71*	70*	68*	71*
Do. do 500*l.*	70*	71*	71*	70*	..	..
Do. do. Small	70*	71*	71*	71*	71*	66*

* Premium † For Account.

PROCEEDINGS OF LAW SOCIETIES.

NEWCASTLE AND GATESHEAD LAW SOCIETY.

THE following excellent petition has been presented from this Society to the House of Commons.

To the Honourable the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled.

The Humble Petition of the Undersigned Attorneys and Solicitors in Newcastle-upon-Tyne and Gateshead,

Sheweth,— That the principle of the Bill for the repeal of the annual tax on attorneys and solicitors' certificates to practise has been affirmed by your Honourable House on five successive divisions.

Your petitioners humbly submit that they are in fact subjected to treble taxation, namely,—

1stly, by the stamp of 120*l.* on their articles of clerkship and the stamp of 25*l.* upon their admission.

2ndly, by the annual certificate duty of 12*l.* in London, and 8*l.* in the country; and

3rdly, by the income-tax.

That your petitioners are of opinion that, on a fair and liberal calculation, the average of net professional income realised by attorneys and solicitors does not reach 200*l.* per annum for each individual, and estimating the annual interest of the 145*l.* required for the purchase of the stamps on articles of clerkship and admission at 5*l.* per cent. per annum, your petitioners are on those items alone severally subjected to an annual tax of 7*l.* 5s. per annum on capital actually sunk and irredeemable, and adding thereto the certificate duty of 8*l.* your petitioners are in fact taxed individually to the amount of 15*l.* 5s. per annum, being at the rate of 7*l.* 12s. 6d. per cent. upon the above mentioned average of professional income.

That the above are exclusive of the annual Income Tax of 2*l.* 18s. 4d. per centum charged upon the professional incomes of your petitioners, earned by them with great pains, much labour, infinite care, and anxiety, and at great personal responsibility and risk; that adding both descriptions of tax together, it follows that your petitioners are in consequence burdened with an annual ad valorem tax of 21*l.* 1s. 8d. on the above-mentioned average of professional incomes, being at the rate of 10*l.* 10s. 10d. per centum per annum.

That the professional incomes of your petitioners are contingent upon life and health, and necessarily terminate with either, leaving your petitioners and those dependent upon them destitute.

That on these grounds your petitioners once more appeal to the justice of your honourable House, and respectfully urge the repeal of an impost which they consider partial, unjust, and oppressive.

And your petitioners will ever pray, &c.

(Signed by seventy-eight out of ninety-five practitioners in Newcastle and Gateshead.)

THE MERCHANTS' AND TRADESMEN'S MUTUAL LIFE ASSURANCE SOCIETY.—The fifth annual meeting was held on Thursday, the 18th of March, at the offices in Chatham-place, Blackfriars. John Macgregor, esq. M.P. presided. It appeared from the report that the number of policies for the year ending 31st of January last are 181, the amount assured 54,650*l.*; the premiums on which are 1,561*l.* 18s. 1d. Since the 31st of January last 61 proposals have been passed, amounting to 21,100*l.* the premiums on which are 720*l.* 1s. 11d.; and there are before the board 13 proposals, amounting to 6,900*l.* the premiums on which are 245*l.* 19s. 9d. now in progress of completion: making the total number of policies 736; the amount assured 216,432*l.*; the annual income of the society, 7,024*l.* 7s. 4d. Twenty-seven proposals for 14,150*l.* have been submitted to the board during the year which have been declined. The claims by death which have been discharged amount to 1,660*l.* and there is one small claim of 100*l.* which the directors cannot settle, in consequence of there being different claimants interested in the sum.

CASES AT THE MIDDLESEX SESSIONS. — On Saturday a return to the House of Commons was printed, shewing the operation of the late Act, 14 & 15 Vict. c. 55, giving additional business to the Middlesex Sessions. The commitments did not commence until September last. In 1850-51 the number of cases of felony or misdemeanours tried numbered 852, and, in 1851-2, to 1,265. A deputy sat on several occasions, through the illness of the assistant-judge. The Court has been divided, and two courts sitting, since the passing of the Act, seventeen days.

HIGHWAY RATES.—It is shewn by a return to the House of Commons, just published, that in England and Wales the receipts on account of highways in counties in the year ending March 25, 1850, were 1,040,645*l.* 18s. 3d. and the expenditure 1,026,504*l.* 12s. 8d. On account of the highways of the cities, boroughs, &c. in the counties the receipts were 861,358*l.* 18s. 4d. and the expenditure 824,383*l.* 3s. 2d.

PROCLAMATION FOR ASSEMBLING PARLIAMENT. —Lord Brougham's Bill as amended on report, to shorten the time required for assembling Parliament after a dissolution thereof, has been printed by order of the House of Lords. As it now stands it is, "that so often as Her Majesty shall by her royal proclamation appoint a time for the first meeting of the Parliament of the United Kingdom of Great Britain and Ireland after a dissolution thereof, the time so to be appointed may be any time not less than thirty-five days after the date of such proclamation, the Act of the fifth year of Queen Anne, c. 8, or the Act of the 7th and 8th years of William III. c. 25, or any other law or usage to the contrary notwithstanding."

PUBLIC DEBT. — A Parliamentary paper has been printed, containing an account of the additions which have been made to the annual charge of the public debt, by the interest of any loans that have been made or annuities created in the last ten years. The last charge was made in 1848 of 69,339*l.* 11s. 6d.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

PAGET.—On the 26th ult. the Lady Alfred Paget, of a son.

PULLEY.—On the 24th ult. at High Wycombe, Bucks, the wife of Mr. William Pulley, solicitor, of Barnet, Herts, of a daughter.

SMITH.—On the 25th inst. at No 12, Oxford-square, Hyde-park, the wife of Charles Manley Smith, esq. of the Middle Temple, of a daughter.

MARRIAGE.

WARD, John, esq. lieutenant, R.N. to Mary Hope, daughter of John Bowie, esq. writer to the signet, at No. 5, Albyn-place, Edinburgh, on the 24th ult.

DEATHS.

ABBOTT, John, esq. of Thames Ditton, Surrey, solicitor, on the 27th ult. aged 51.

BOSWELL, Thomas Alexander, esq. of Crawley-grange, a magistrate and deputy-lieutenant of the county of Bucks, on the 24th ult. at the residence of his father-in-law, John Barker, esq 27, Cadogan-place.

BOWEN, CHARLOTTE, relict of the late T. B Bowen, esq. formerly a commissioner of the Court for the Relief of Insolvent Debtors, on the 26th ult. at her residence, in Portman-street.

CRAUFURD, Jane, Viscountess Hawarden, at Calais, on the 24th ult.

FLETCHER, Rev. William, vicar of Harwell, and a magistrate for the counties of Bucks and Berks, on the 24th ult. at Malmesbury, Wilts, aged 57.

HARRAP, Richard, solicitor, highly and deservedly respected, on March 27, at Leeds, aged 64.

LEAR, Charlotte, wife of George Lear, esq. solicitor, on the 24th ult. at Arundel, aged 48.

MAXWELL, Mary, relict of the late Alexander Maxwell, of Bell-yard, Lincoln's-inn, on the 30th ult. at her son's residence, Upper Clapton.

MEGGY, Robert, esq solicitor, of 34, Trinity-square, Southwark, on the 27th ult. aged 40.

MORRIS, Thomas, esq many years an alderman and magistrate of the city and county of Coventry, on the 24th ult. at Stoke-green, aged 85.

SHELLEY, Sir John, bart. on the 28th ult. at Lonsdale-house, Fulham, aged 80.

LONDON:—Printed by HENRY MORRELL COX, of 74, Great Queen street, in the Parish of St. Giles in the Fields in the County of Middlesex, Printer, at the Printing Office of COX (Brothers) and WYMAN, 74 & 75, Great Queen-street, aforesaid, and published by JOHN CROCKFORD, of 29, Essex-street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, at the Office of the LAW TIMES, No. 29, Essex-street, aforesaid, on Saturday, the 3rd day of April, 1852.

THE LAW TIMES,

FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

VOL. XIX.—No. 471.] SATURDAY, APRIL 10, 1852.

Single Numbers, or on credit £0 1 0
Double Numbers 0 1 6
For Half Year, paid in advance... 1 7 6

Money, Wanted and to Lend.

MONEY.—8,000*l*. wanted for a permanency, upon good landed security, at 3½ per cent.; 1,700*l*. immediately, the remainder in six months.
Apply to "X. L." Post-office, Kimbolton, Hunts.

MORTGAGE.—Wanted, 6,000*l*. in one sum, on long leasehold property of ample value in the county of Middlesex.
Apply to Messrs. STAFFORD, GEE, and STAFFORD, Solicitors, 13, Buckingham-street, Strand.

Situations, Wanted and Vacant.

A SOLICITOR is desirous of obtaining a Situation as Managing Clerk in a respectable office in the country. The advertiser is quite conversant with the country practice, and can produce unexceptionable references.
Address, by letter, "D. T." No. 471, LAW TIMES Office, 29, Essex-street, Strand.

CLERKSHIP.—A Gentleman, who now conducts the Conveyancing business of an office of extensive practice in the North of England, is desirous of meeting with a situation to conduct the Conveyancing, or the general business of a respectable country office. Salary not less than 100*l*. per annum.
Address, by letter, to "Mr. A. B." Post-office, Bury, Lancashire.

LAW CLERK GRATUITOUSLY.—A Gentleman, aged 20, who has served three years of his articles in a respectable country office, and acquired a good knowledge of general routine business, and willing to make himself useful, is desirous of Assigning for the next two years into another country office, of extensive and varied practice, for his gratuitous services only. Unexceptionable references can be given.
Apply to R. H. at Mr. WATTON's, Post-office, Northampton.

LAW.—A Gentleman, who has been several years in practice, wishes to meet with an Engagement as Conveyancing Clerk in a respectable office, either in town or country. A moderate salary only would be expected.
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HODGES.—On the 2nd inst. at 35, Bloomsbury-square, the wife of William Hodges, esq. barrister-at-law, of a daughter.

MILDMAY.—On the 1st inst. Mrs. Edmond St. John Mildmay, of a daughter.

MARRIAGE.

SHADWELL, Alfred Hudson, esq. son of the late Vice-Chancellor of England, to Charlotte Mary, youngest daughter of the late John Hillersdon, esq. of Barnes, on the 3rd inst. at Barnes.

DEATHS.

BURKE, Thomas Haviland, esq. great-nephew and nearest relative of the distinguished statesman and orator, Edmund Burke, on the 3rd inst. aged 57.

JORDAN, Mary Sandford, the wife of W. Hall Jordan, esq. solicitor, on the 2nd inst. at Teignmouth, Devon.

ROKEBY, Edward, only son of Henry, Lord Rokeby, on the 3rd inst. aged 16.

RUSSELL, Humphrey, the son of James Russell, esq. Q.C. on the 6th inst. at St. Leonard's, aged 12 days.

SMYTH, Joseph Burch, esq. *formerly High Sheriff for the* county of Suffolk, on the 30th ult. at Stoke Hall, Ipswich, aged 65.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

At the Court at Buckingham-palace, the 5th day April, 1852; present, the Queen's Most Excellent Majesty in Council:—This day the Right Honourable Sir John Dodson, Knight, was, by her Majesty's command, sworn of her Majesty's Most Honourable Privy Council, and took his place at the Board accordingly.

The Lord Chancellor has appointed William Henry Emmett, of Leeds, gent. to be a Master Extraordinary in the High Court of Chancery.

The Lord Chancellor has appointed his secretary, Mr. Simons, registrar of the Bankruptcy Court, Manchester, in the room of Mr. Hunter Gordon, who has retired.

COMMISSIONS SIGNED BY THE LORD LIEUTENANT OF THE COUNTY OF SUFFOLK.—William Long, esq. and Windsor Parker, esq. to be Deputy Lieutenants.

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Parts I. to VII. bringing down the reports to Michaelmas Term last, may be had price 5s. 6d. each.

This series of Reports, which is the standard and authorized series of County Courts Cases, will be regularly continued, and will comprise the *appeals* under the provisions of the new Act.

NOTICE.—The County Courts Cases and the Insolvency Cases are paged separately for distinct binding; and a few parts may be had without the other by those who do not need both. Orders should carefully specify where either of the separate series is required.

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Re Henry Herrick (Costs of opposition.)

Re Joseph Howe (Appointment of assignees under 1 & 2 Vict. c. 110, and 10 & 11 Vict. c. 102 by the County Courts.)

Re E. Gooding.—(Discharge of debtor in execution for debt after vesting order made on creditor's petition. Effect of, upon claim of creditor to prove for dividend before adjudication.)

Re Charles Hippolyte Mansell otherwise Vicompe de Scepeville (Application for discharge *ad interim*, 7 & 8 Vict. c. 96, s. 6. Opposition upon merits.)

Re John Upton.—(Assignee.—Misconduct.)

Ridsdale v. *Laton*. (Execution.—Discharge of insolvent prisoner. Plaintiff dead, leaving no next of kin.)

Russell v. *Smith*. (Discharge under the Insolvent Debtors Act. Premiums upon policies of assurance deposited as security for the payment of a debt inserted in the schedule subsequently becoming due.)

Turner and Another v. *Wilks*. (Protection statutes.—Imprisonment of debtor beyond twelve months. Discharge of Insolvent.)

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FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

VOL. XIX.—No. 472.] SATURDAY, APRIL 17, 1852.

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CAUTION.—TO TRADESMEN, MERCHANTS, SHIPPERS, OUTFITTERS, &c. Whereas it has lately come to my knowledge that some unprincipled person or persons have for some time past been imposing upon the public by selling to the trade and others a spurious article under the name of BOND'S PERMANENT MARKING INK, this is to give notice, that I am the original and sole proprietor and manufacturer of the said article, and do not employ any traveller or authorise any persons to represent themselves as coming from my establishment, for the purpose of selling the said ink. This Caution is published by me to prevent further imposition upon the public and serious injury to myself.

E. R. BOND, Sole Executrix and Widow of the late John Bond, 28, Long lane, West Smithfield, London.

SIR JAMES MURRAY'S FLUID MAGNESIA. Prepared under the immediate care of the inventor, and established for upwards of thirty years by the profession, for REMOVING BILE, ACIDITIES and INDIGESTION, restoring APPETITE, preserving a moderate state of the bowels, and dissolving uric acid in GRAVEL and GOUT; also as an easy remedy for SEA SICKNESS, and for the febrile affection incident to childhood, it is invaluable. On the value of Magnesia as a remedial agent it is unnecessary to enlarge; but the Fluid Preparation of Sir James Murray is now the most valued by the profession, as it entirely avoids the possibility of those dangerous concretions usually resulting from the use of the article in powder.

Sold by the sole consignee, Mr WILLIAM BAILEY of Wolverhampton; and by all wholesale and retail Druggists and Medicine Agents throughout the British Empire, in bottles, 1s, 2s. 6d, 3s. 6d., 5s. 6d., 11s., and 21s. each.

BERDOE'S superior light OVERCOAT.—This well-known garment combines, with every quality essential to a really respectable article, that will ensure permanent satisfaction, the additional recommendation of being thoroughly impervious to rain, and has long been reputed one of the most convenient, economical, and valuable garments ever invented. Price 45s and 50s. Not waterproof, 8s. less. A very large stock for Selection; also of Morning Coats, Shooting Jackets, &c.

96, New Bond street; and 69, Cornhill (only).

PURE COCOA.—HANDFORD and DAVIES'S pure granulated COCOA, in 1 lb. packets, at 1s. per lb. being the best of the four samples pronounced by the Analytical Sanitary Commission to be genuine out of the whole of the samples tested (vide the *Lancet*, of May 31st, page 610); also their COMPO SOLUBLE COCOA, for parties to whom the full flavour of pure cocoa is unpalatable. It consists of fine arrowroot, cocoa, and sugar only, and is a very superior article of its kind. It is very readily prepared by pouring boiling water on to it. Price 1s 4d. per lb.

Finest Mocha Coffee, 1s. 8d.; finest Jamaica ditto 1s. 6d.; Java ditto, 1s. 4d.; Colombo ditto, 1s. 2d.; Costa Ricardo, 1s; Congo Tea, strong and useful, adapted for general family use, 3s. 8d. per lb.

61, High Holborn.

STARTLING NEWS for TRAVELLERS and OTHERS.—One of the most remarkable cases on record is DALTON'S 15s. DRESSING CASE. The other, the DALTON DRESSING CASE, mounted in Solid Silver, for 3l. 10s. These extraordinary facts for facts they are—are small enough for the pocket, good enough for the fastidious, and, although last not least, exchangeable if not liked. Old Cases repaired or taken in exchange.

DALTON, 85 Quadrant, Regent-street.

THE CASTLE TAVERN and CHOP-HOUSE, HOLBORN (Opposite Southampton-buildings).—Proprietor, T. W SPRING. At this well-known house, which is the most central of the kind in London, Gentlemen can be accommodated at any time from Nine in the morning with Lunches, Dinners, Suppers &c. at moderate charges, lists of which are hung in each room. Wines and Spirits of first rate quality. Professional Gentlemen will find every attention paid to their comfort. Bed and Breakfast, 2s 6d. A first-rate Table d'Hôte every day, at Two o'clock precisely, 1s. per head.

WATER ONLY REQUIRED!

MOORE and BUCKLEY'S PATENT CONCENTRATED MILK.

"Supplies Fresh Milk at all times." *Times*, September 16, 1850.

"It was almost (if not quite) equal in flavour and quality to milk fresh from the Cow."—*Captain H T Austin*, Commander of the Arctic Expedition. H M S *Resolute*, 1st October, 1851.

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Preserved in hermetically sealed tins, each tin producing seven times the quantity of pure milk.

MOORE and BUCKLEY'S COCOA and MILK, and CHOCOLATE and MILK, are combinations of the Concentrated Milk with the finest Trinidad Cocoa and the choicest French Chocolate, in hermetically sealed tins. These delicious preparations are wholly free from the admixtures so common in the packet Cocoas, and considering their quality are equally expensive; for example, a breakfast cup of Pure Cocoa, combined with milk and sugar, can be had at the cost of a penny, by merely adding boiling water.

THE PRIZE MEDAL at the GREAT EXHIBITION was awarded to these preparations for their Novelty, Utility, and Economy; and they were constantly used in the Refreshment Rooms of the Exhibition, giving universal satisfaction.

MOORE and BUCKLEY'S INFANT'S FOOD, is a combination of the Concentrated Milk with pure Farina, and will be found a light and nourishing diet for Invalids as well as Infants, requiring only boiling water for its instant preparation.

The whole of the above are prepared under the immediate inspection of Mr Moore, the Patentee, who was for many years the ordinary medical attendant of the Royal Family in London.

The Finest FRENCH CHOCOLATES in every variety, made expressly for the subscribers by one of the first Paris manufacturers. These Chocolates, it may be observed, are REALLY FRENCH, and are greatly superior to those commonly sold as French, but which are in fact, generally speaking, of English manufacture.

MOORE and BUCKLEY, Ranton Abbey Farm and Works, Staffordshire; and 4, Upper East Smithfield, London, and sold retail by all respectable Grocers and Chemists, &c in town and country.

DAMP WALLS.—NEW PATENT PAINT, as applied on the Thames Tunnel, guaranteed effective and permanent inside or out, in quantities to finish twenty square yards for 10s.

PATENT LIQUID CEMENT for the fronts of houses, for beauty pre eminent, giving the appearance of fine cut stone, and only one eighth the cost of Oil Paint. In casks of 1, 2, and 3 cwt. at 8s., 15s. and 21s each.

PATENT MINERAL ZINC PAINTS, invaluable for cheapness, beauty, and permanence, ready for use. White Stone and Lead, 5s, Greens and Blues, 6s per gallon.

BLACK MINERAL PAINT, very permanent, half the usual price, only 2s. per gallon.

NEW PATENT COLOUR for inside work, may be applied on Wood, Stucco, Cement, or over Oil Paint. No smell, and will dry in an hour. In casks of 1 cwt. at 14s.

G BELL and CO. Steam Mills, 2, Wellington-street, Goswell-street.

In 1 thick vol. the Tenth Edition, enlarged price 16s.

MODERN DOMESTIC MEDICINE: a Popular Treatise, exhibiting the Nature, Symptoms, Causes, and most efficacious Treatment of Diseases; with a Collection of approved Prescriptions, Directions for Diet and Regimen, the means of affording Assistance in Accidents and other cases of emergency, Management of Children, Doses of Medicines, a clear account of the Hydropathic system, &c. Also a large Appendix on the Treatment of Disorders of the Mind and Nerves. Forming a comprehensive Medical Guide for the Clergy, Families, and Invalids, in the Absence of their Medical Adviser. By T. J. GRAHAM, M.D. Member of the Royal College of Surgeons of England.

"It is evidently the result of great professional talent, experience, and judgment; the author everywhere appears conscientious and candid. One object is prominently evident—a sincere desire to benefit his suffering fellow-creatures. To recommend a work like the present to our readers, is only to manifest a proper regard for their welfare."—*Literary Journal*, Feb 1841.

"It is altogether deserving of permanent popularity."—*London Weekly Review*.

SIMPKIN and Co. Paternoster row; HATCHARDS, 187, Piccadilly; and TEGG and Co 85, Queen-street Cheapside. Sold by all Booksellers.

Just published, New and Cheap Edition, price 1s; or, by post, 1s 6d.

THE SCIENCE OF LIFE; or, How to Live and What to Live for; with ample Rules for Diet, Regimen, and Self Management, together with Instructions for securing perfect health, longevity, and that sterling state of happiness only attainable through the judicious observance of a well regulated course of life. By A PHYSICIAN.

Also, by the same Author, price 2s 6d., by post, 3s 6d.,

A MEDICAL TREATISE on NERVOUS DEBILITY and CONSTITUTIONAL WEAKNESS, with Practical Observations, Illustrated with Anatomical Plates, in Health and Disease. This work, emanating from a qualified member of the medical profession, the result of many years' practical experience, is addressed to the numerous classes of persons who suffer from the various disorders acquired in early life. In its pages will be found the causes which lead to their occurrence, the symptoms which indicate their presence, and the means to be adopted for their removal.

London: JAMES GILBERT, 49, Paternoster-row; HANNAY, 63, Oxford-street; MANN, 39, Cornhill; STARIE Titchborne-street, Haymarket; and all Booksellers.

Sales by Auction and Private Contract.

TOWN AND COUNTY OF THE TOWN OF GALWAY, AND COUNTY OF GALWAY.

IN THE COURT OF THE COMMISSIONERS FOR THE SALE OF INCUMBERED ESTATES IN IRELAND

SALE on FRIDAY, the 28th of MAY, 1852

In the Matter of the

ESTATES of ROBERT HEDGES EYRE WHITE and the Rev. ROBERT HEDGES MAUNSELL EYRE, Devisees of ROBERT HEDGES EYRE, deceased, Owners;

WALTER MORROGH, Petitioner.

The Commissioners will, on FRIDAY, the 28th day of May, 1852, at the hour of Twelve o'clock at noon, at their Court, Henrietta-street, Dublin, SELL by AUCTION the FEE-SIMPLE and FREEHOLD ESTATES of the Rev. ROBERT HEDGES MAUNSELL EYRE, one of the Owners in this matter, situate in the TOWN and COUNTY of the TOWN of GALWAY and in the baronies of Tyaquin, Longford, and Leitrim, in the COUNTY of GALWAY.

IN FORTY LOTS.

SUMMARY OF THE ESTATES IN THE TOWN AND COUNTY OF THE TOWN OF GALWAY.

No.	Denominations	Contents Statute.	Net Yearly Rents, or estimated Value after deducting Quit-rent, Head rent, and Tithe Rent-charge	Poor Law Valuation as far as can be ascertained
1	Eyre square, Eyre square west, and Ballaley lane..			
2	Eyre-square south, formerly part of Eyre's Big Garden ..			
3	First Part of Sally Park, or Sally Garden	0 0		
4	Second Part of same ...	2 2		
5	Third Part of same ...			
6	William's Gate, or Eyre-square north	0 1		219 0 0
7	Suckeen	8 1		81 17 6
8	Eyre's Long Walk ...	1 1		112 10 0
9	The Quay..............			Not ascertained.
10	First Part of the [illegible]chant's Road			210 0 0
11	[illegible]			
12	Third Part of same			
13	Fourth Part of same			
14	Fifth Part of same, and Seaweed Shore at West Fort Hill		0	410 0
15	Sixth Part of same		6	[illegible]
16	Seventh Part of same......			Not ascertained.
17	Mutton Island			100 0 0
18	Fair Hill and Fair Hill Marsh, with the Tolls and Customs of the Fairs, and the Strand and Sea weed Shores at Fair Hill and Round Mutton Island .	18 3 22		
19	White Strand Marsh	101 0 22		
20	Feeney's Marsh, White Strand lane, and Faheybeg	8 0 37		
21	First Part of Shantalla....	10 0 12	50 14 1	103 15
22	Second Part of same . .	17 1 17	54 2 4	105 10
23	Abbeygate street	0 3 27		
24	Market street	0 0 37		
25	William street, the Meat Market, Barrack-lane, & Quay	0 1 21		
26	Market-place	1 0 15		Not ascertained.
27	Shop-street, High-street, and Burke's Distillery and Mills	0 2 37	77 11 4½	[illegible]06 0 0
28	Eyre's Mills .. .	0 1 0		
29	The Salmon and Eel Fishery, with Fish-house, Reservoir, &c	0 0 18		
30	Nun's Island and Parkavera, alias Revanbeg ...	4 0 11	19	
31	Boltabroke's Parks.	17 3 36	12	
32	Attyshonock, in hands, within three miles of the Town of Galway			
	Total in Town and County of Town of Galway.	531		
	Net Rental, exclusive of Fisheries			
	[illegible] Law Valuation [illegible]clusive of Lots 9, 16, and 26..			

SUMMARY OF ESTATES IN THE COUNTY OF GALWAY

No.		Quantity, Statute Measure	Net Yearly Rent, or estimated Value, after deducting Quit-rent and Tithe Rent-charge	Messrs Greene's Valuation by order of the Commissioners.
	BARONY OF TYAQUIN.			
33	Gortbrack	109 22		
34	Killimane	403 17		
35	Killonane, Eyre ...	302		
	BARONY OF LONGFORD			
36	Clonrelly, otherwise Englishtown...	222 3	64 3 1½	62 8 0
37	Cloonlaghan	309 3	88 17 11	97 3 [illegible]
	BARONY OF LEITRIM			
38	Brackloch Grange and Lisheen North	173 2 26	53 18 7	91 3 2
39	Cartron..	199 3 15	69 11 1	95 14 10
40	Brackery	108 3 23	40 8 8	42 12 7
	Total in the County of Galway		536 5 4½	624 12 7

OBSERVATIONS AS TO THE TOWN ESTATE.

Lots 1 to 14 inclusive, and Lots 25 and 26, and Burke's Mills, part of Lot 27, are held under a lease of lives renewable for ever, of 19th May, 1712, which is in the course of being converted into a perpetuity. The future rent of 2l. 17s 2½d. is to be payable out of Lot 1, which Lot is to indemnify the other Lots therefrom.

There is a rent of 6l. under a subdemise for three lives payable out of Lot 9.

The sale of N[illegible] 151, in Lot 26, will be postponed, and power is [illegible] to [illegible] pone the sale of the remainder of that Lot.

Lots 15 and 16 are held under a lease of 11th April, 1670, for lives renewable for ever, which is also in the course of being converted into a perpetuity. The future rent of 10s 6d is to be payable out of Lot 15, which Lot is to indemnify Lot 16 therefrom.

Lots 17 to 20 inclusive, are held under a lease of 2nd August, 1715, for lives renewable for ever, which is also in the course of being converted into a perpetuity. The future rent of 2l. 19s 7d. is to be payable out of Lot 17, which Lot is to indemnify the other Lots therefrom.

When Lot 19 was valued for poor-rate, the land (42a. 3r. 28p.) on the shore was inundated, but this land now presents valuable sites for building.

Lots 21 and 22 are held under a lease of 8th October, 1726, for lives renewable for ever, which is also in the course of being converted into a perpetuity. The future rent of 20l. is is to be payable out of Lot 21, which Lot is to indemnify Lot 22 therefrom; and Lot 21 will also be sold subject to an annuity of 23 1s 6d for the life of Mrs. Catherine O'Connor, a lady upwards of sixty years of age, and be bound to indemnify Lots 23, 39, and 40 against payment of said annuity.

Lots 23, 24 28, 29 30, 31, 32 and the premises in Shop-street and High-street, part of Lot 27, are held in fee simple.

The premises in William-street, in Lot 25 will be sold subject to an annuity of 55l. 7s. 8d. for the life of Michael Bourke, now aged about forty-five years, and of any wife he may leave him surviving.

OBSERVATIONS AS TO THE COUNTY ESTATE.

The Quit Rents on Lots 33, 34, and 35, and 38, 39, and 40, will be redeemed.

A sum of 90l. advanced to the Owner under the Land Improvement Acts, on the security of Lots 34 and 35, will also be redeemed.

Lot 34 is held by yearly tenants.

Of Lot 35 2a. 3r. 3p. statute is now in hands, and the tenancy of a Grazing Farm of 122a 7r 23p will terminate on the 1st May, 1852 10a 3r 27p are let on lease, and the remainder to yearly tenants.

The tenancy of a Grazing Farm of 36a. 1r 10p on Lot 35, will terminate in May 1852, the remainder of the lands let to yearly tenants.

With the exception of 2a. 1r 29p in hands of Lot 36, the lands are let to yearly tenants.

The lettings of Lot 37 to four tenants will determine by the Sale.

Lot 38 is let by an old lease of 1785 for three lives.

Of Lot 39 9a 3r 23p are in hands; the lettings of 10a 2r 28p. will determine by the sale, and the remainder let to yearly tenants.

Of Lot 40 11a are held by two tenants, whose lettings will determine by the sale, and the remainder is in hands.

DESCRIPTIVE PARTICULARS

The estates in the town and county of the town of Galway embrace a considerable portion of the most valuable part of the [illegible] and suburbs of Galway, including the well-known and important Salmon and Eel Fisheries.

The new Weirs and Cribs for the Salmon Fishery are now nearly completed by the Board of Works, who last year paid the Receiver 200l a compensation for the season, besides which the Eel Fishery was let for 60l for the season.

The extensive Drainage Works, now nearly completed by the Board of Works, have added considerably to the water-power of the [illegible]

The Docks [illegible] extensive, and vessels of large burden can discharge [illegible] at the quays. A Tidal Basin and new quay have been recently constructed.

The rents are principally ground-rents of premises of great value, embracing large Warehouses, Mills, Distillery, and Houses of a superior description in the best part of the town.

The lands comprising the county property are situate within moderate distances of the excellent market towns of Ballinasloe and Loughrea.

Those estates offer a most secure and advantageous investment for purchasers.

Proposals for the purchase of those estates, or any portion of them will be received up to the 10th of May next, by Mr Litton, the Solicitor having the carriage of this sale, who will submit same [to] the Commissioners, and if approved of deeds of conveyance, with a Parliamentary Title, can be at once obtained.

No proposal will be received after the 10th of May.

Dated this 2nd day of April, 1852.

HENRY CAREY, Secretary.

For rentals, with maps annexed, and further particulars, apply at the Office of the Commissioners, 14, Henrietta-street, Dublin; to John Litton, Esq Solicitor 28, Leeson street, Dublin, where the maps made by order of the Commissioners, by Messrs Clarges, Greene, and Son, may be inspected; also to William Hare Maunsell, Esq Solicitor for the owner, 28, Upper Pembroke street, Dublin; Edward Eyre Maunsell, Esq Shantalla, Galway; Kilroy's Hotel, Galway; John W. Payne, Esq the receiver, Bantry; Messrs M'Causland and Fetherstone, Solicitors for Charles Hollier, 27, Wellington-quay, Dublin; Gilbert Stephens, Esq 13, Northumberland street, Strand, London; Brophy and Co's Estate Registration Offices, 6, College-green, Dublin; 114, Queen-street Glasgow; and 20, Bull's Head-yard Chambers, Manchester.

Valuable Reversion to the Sum of 2,[illegible].

MR. PRICE will SELL by AUCTION, at GARRAWAY'S, on TUESDAY, MAY 4, at Twelve for One, by order of the Mortgagee and with the consent of the Mortgagors, the ABSOLUTE REVERSIONARY INTEREST, consisting of two-seventh parts or shares in the several sums of 4,832l. 6s 5d Three per Cent Annuities, 210l. 0s 8d. Three per Cent Reduced; 6,600l. 3l. 5s per Cent. Annuities, now standing in the name of the Accountant-General of the Court of Chancery, to the credit of a cause, and is receivable on the demise of a lady in her 55th year.—Particulars and conditions may be had, seven days prior to the sale, of John Billing, Esq Solicitor, 33, King-street, Cheapside; of Alfred Jones, Esq Solicitor, Sise-lane, Bucklersbury; at Garraway's; and at Mr. Price's Offices, 48, Chancery lane.

NORTH WALES, on the beautiful coast of Cardigan bay, and near the market and post town of Pwllheli.—A valuable Freehold Estate of 150 acres, a Slate Quarry, and some important Building Ground in the borough.

[illegible] acres of good arable and meadow land divided into compact farms, and let to a very respectable tenantry, with a slate quarry, let on lease, together with some very desirable building ground, most favourably situate on the shore, and in the town and borough of Pwllheli. The estate is situate within three miles of the town, and principally on the turnpike-road from thence to Carnarvon. A portion of the land offers delightful sites for the erection of a residence, being well sheltered, and commanding a grand and extensive view of the bay, and the Merionethshire and South Wales mountains. A trout stream runs through the property, the roads are good, and the Chester and Holyhead Railway, within sixteen miles will be shortly completed; there are at present two coaches passing the property. Particulars may be had of Mr. Green, Auctioneer and Estate Agent 28, Old Bond street.

In HAMPSHIRE, one mile and a quarter from Christchurch, and three hours journey from London.—The Whitehayes Estate, formerly the residence of the late Lord Keane.

MR. GREEN (28, Old Bond-street) has been favoured with instructions from the proprietor to SELL by AUCTION, at GARRAWAY'S, on WEDNESDAY, MAY 12 (unless in the meantime disposed of), a much-admired and valuable FREEHOLD ESTATE; comprising the elegant family residence known as "Whitehayes," with its beautiful lawns, shrubberies, and plantations, productive gardens and orchard, and exceedingly rich grass land, the whole comprising nearly 18 acres, in a ring fence, and in the highest order, a very considerable sum having been lately judiciously expended on the property in draining the land, the erection of a very substantial and ornamental wall to inclose it from the high road, &c. Mr Green can, with the greatest confidence, recommend this property to any party seeking a really good [re]sidence in a healthful and fashionable locality.—Particulars [may be] had at the principal hotels and inns at Christchurch, Ringwood, Lyndhurst, Redbridge, Southampton, and Lymington; at Garraway's; and at the offices of Mr. Green, Estate Agent and Auctioneer, 28, Old Bond-street, where a cosmoramic view of the property may be seen.

QUEEN-SQUARE, BLOOMSBURY.—Freehold Residence, with Stabling.

MR. GREEN (28, Old Bond-street) has been favoured with instructions to SELL by AUCTION, at GARRAWAY'S, on WEDNESDAY, MAY 26, at One (if not in the meantime disposed of by private contract), the capital substantially built FREEHOLD FAMILY RESIDENCE, No. 22, Queen-square, Bloomsbury, in the best part of this desirable and central [situation, w]ith large garden in the rear, communicating with excellent leasehold stabling in Greville-mews, with spacious stable-yard: the whole premises being of the estimated value of 200l. per annum, and presenting a singularly desirable opportunity for residence or investment.—Particulars may be obtained at Garraway's; of Brooke Turner, Esq Solicitor, 1 Red Lion square; and of Mr. Green, Estate Agent and Auctioneer, 28, Old Bond street.

HAMPSHIRE.—The Botleigh Grange Estate, within five miles of Southampton.

MR. GREEN (28, Old Bond-street) has been favoured with instructions to SELL by AUCTION, at GARRAWAY'S, on WEDNESDAY, JUNE 16 (unless previously disposed of) the exceedingly desirable and important FREEHOLD ESTATE of Botleigh Grange, consisting of a most substantial and elegant Elizabethan mansion, with all the appendages for the residence of a first-rate family, surrounded by well-arranged gardens and pleasure-grounds, approached by carriage drives from the entrance lodges, and seated on a gentle eminence in the midst of a beautifully timbered and finely undulated park of about sixty acres, intersected by a trout stream, forming itself in the centre of the park into a large and ornamental sheet of water. In addition to the park there are several fields of rich arable, and the estate comprises altogether about 100 acres, remarkably compact and beautifully wooded. This desirable property combines many undeniable advantages and the situation is peculiarly favourable, being within five miles of Southampton, only a mile and a half from the Botleigh Station, and but two hours' journey from London.—Particulars may be obtained at Garraway's, and of Mr. Green, Estate Agent and Auctioneer, 28, Old Bond-street.

CHELTENHAM.—Important Freehold Property for Sale, comprising about twenty acres, situate close to the town of Cheltenham, and being part of the Park Estate, presenting very eligible sites for building purposes.

MR. GREEN (28, Old Bond-street) has received instructions to SELL by AUCTION, at GARRAWAY'S, on WEDNESDAY, JUNE 16 (unless in the meantime disposed of by private treaty), a most desirable PROPERTY, possessing great advantages for the investment of capital as a building speculation for twenty villa residences, or for the erection of a mansion, in the midst of delightful grounds, laid out with the greatest taste by an eminent landscape gardener, comprising a broad gravel esplanade, meandrous walks, well-grown flowering shrubs, ornamental timber, and a beautiful sheet of water, well sheltered by the distant hills, and almost in the heart of the fashionable town of Cheltenham, together with a small elegant Villa, of the Italian style of architecture at the entrance; and a substantial building, intended for stables, erected at a considerable outlay, and which might be easily converted into a residence. The attention of capitalists is specially invited to this property, which presents peculiar advantages, beyond the limits of an advertisement to describe, and will be more fully entered upon in the printed particulars, to be obtained in the course of a few days, of G. G. Payne, Esq. Tivoli, Cheltenham; Mr. Howard, Solicitor, Cheltenham; the principal hotels at the same place; at Garraway's; at Mr Green's Offices 28, Old Bond-street, and upon personal application at the Royal Insurance Company's Offices, Royal Insurance-buildings, Liverpool.

LAW BOOKS.

MR. HODGSON will SELL by AUCTION, at his GREAT ROOM, 192, Fleet-street, on WEDNESDAY, APRIL 21st, and following day, at Half past Twelve, the valuable LAW LIBRARY of Nicholas Simons, esq. Barrister-at-Law, retiring from practice, including the Statutes at Large to 12 & 13 Vict, Law Journal to 1851, modern Treatises and Books of Practice; series of the Reports in Law and Equity, complete to the present time.—To be viewed and catalogues had.

COLCHESTER. Extensive and valuable Freehold Building Ground, adjoining the Eastern Counties Railway Station, and between it and the town, together with small Residence and Garden, offering most eligible investments and votes for the county.

MR. BEADEL has received directions to submit to PUBLIC SALE, at the THREE CUPS, HOTEL, COLCHESTER, on TUESDAY, APRIL 20, at Twelve, in Fourteen Lots, the following desirable PROPERTY, comprising a convenient HOUSE and Offices, and about Eleven acres of most Valuable FREEHOLD LAND, close to the Colchester Station on the Eastern Counties Railway, singularly adapted for building purposes, divided into fourteen plots, possessing capital frontages to good roads. The whole is land-tax redeemed, and possession may be had.—Particulars, with lithographic maps attached, may be obtained of Messrs. Crowder and Maynard, Solicitors, 57, Coleman-street; at the Three Cups Hotel, Colchester; and at Mr. Beadel's Offices, 25, Gresham-street, London.

LONDON:—Printed by HENRY MORRELL COX, of 74, Great Queen-street, in the Parish of St. Giles in the Fields, in the County of Middlesex, Printer, at the Printing Office of COX (Brothers) and WYMAN, 74 & 75, Great Queen street, aforesaid, and published by JOHN CROCKFORD, of 29, Essex-street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, at the Office of the LAW TIMES, No. 29, Essex-street, aforesaid, on Saturday, the 17th day of April, 1852.

THE LAW TIMES,

FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

Vol. XIX.—No. 473.] SATURDAY, APRIL 24, 1852. [*Price, with Index, 2s. 6d.*

(GRATIS DOUBLE NUMBER.)

Money, Wanted and to Lend.

MONEY.—Wanted, on mortgage of a newly erected small steam corn and sawing mill, with dwelling-house adjoining, standing on an acre of excellent freehold land by the side of a turnpike road; let on lease at 58*l.* per annum; 400*l.* at 5 per cent.

Apply to Mr. Capaur, Solicitor, Holbeach, Lincolnshire.

MONEY.—Wanted, on Mortgage, 4,600*l.* on first-rate Freehold Property of ample value, situate next the main road, within three miles of the Marble Arch. None but principals treated with.

Apply by letter only, to Mr. Lloyd, to be left at Mr. Hill's, Ironmonger, 13, High Holborn.

MONEY.—To Lend, 6,000*l.* at 3½*l.* per cent., 1,500*l.* and 1,900*l.* at 4*l.* per cent.; and several smaller sums ready to be advanced on mortgage of approved freehold or copyhold landed security.

Apply to Mr. W. P. Pillans, Solicitor, Swaffham, Norfolk.

MONEY.—To Lend, on Mortgage, 5,000*l.* in one or more sums of not less than 1,000*l.* each, at 3½ per cent. on Land only; and 18,500*l.* in large or small sums, on good security. As an investment is wanted, the money may remain for a long term.

Apply by letter only, to "Y. Y." 129, Fenchurch-street, City.

Situations, Wanted and Vacant.

LAW.—The Advertiser, who has had many years' experience, is desirous of procuring a situation in a Solicitor's office in the country. He is competent to manage Stewardship, Office Accounts, and Bookkeeping; to draw Bills of Costs; and is fully conversant with the general routine of business. Satisfactory references will be given.

Address, "J. B." at Mr. Andrew Thomas's, Castle-street, Truro, Cornwall.

LAW.—Wanted, a Situation, in July next, by the Advertiser, who will then have been six years in a country office. He is competent to draw ordinary drafts, abstracts, &c. under the superintendence of the principal, and has a general knowledge of the business of the County Courts and Petty Sessions. References will be given.

Apply to "Y. T." Post-office, Christchurch, Hants.

LAW.—The Advertiser, aged twenty-five, wishes an immediate Engagement. He is acquainted with the routine of a country solicitor's office, and is competent to abstract and draw ordinary deeds, and to attend to magisterial and tax business in the absence of the principal. Salary moderate. Reference to employers, and testimonials of magistrates, to whom the advertiser has been assistant-clerk.

Address, "T. R." (No. 473), Law Times Office.

LAW.—Wanted, by an experienced Clerk, who will shortly be disengaged, a Situation in a Country Office. The advertiser understands preparing abstracts and common drafts, stewardship and other accounts, and would be found generally useful. Unexceptionable references to character and competency.

Address, "H." (No. 473), Law Times Office, 29, Essex-street, Strand.

LAW.—Wanted, a Re-engagement as Conveyancing and General Clerk, in an office either in town or country. The Advertiser was articled in the country, and has since been twelve months a pupil, and afterwards engaged in a Conveyancer's chambers in town, and for some months past has been engaged to supply the place of a junior partner in a firm in the country during his ill health. Admitted in Trinity Term. Age, 24.

Address, Mr. H. M. Robinson, Battle, Sussex.

LAW.—An efficient Managing Clerk wishes for Employment. He is qualified, with or without assistance, to draw all kinds of drafts, look into titles, and advise on abstracts, cases, &c. and is willing to make himself generally useful.

Address, "Z." (No. 473), Law Times Office, 29, Essex-street, Strand.

LAW.—A Gentleman, who has lately been admitted, wishes to undertake the management of the Conveyancing Department of some good office. The whole period of his articles was spent in a large Conveyancing Office in the Country, and the last twelve months in the chambers of an eminent Conveyancer. The best references will be given.

Address "H. F." Messrs. Swale and Wilson, Booksellers, 21, Great Russell-street, Bloomsbury.

LAW.—A Solicitor, in good practice, has a Vacancy for a gentleman of respectability as an Articled Clerk. He would have the advantage of the best society, great opportunities of learning his profession, and also the use of a very extensive law library.

Apply by letter, to "G. C. B." Post-office, Cheltenham.

LAW.—Wanted, in a Country Office, a Conveyancing Clerk, competent to draw drafts commonly prepared in an Attorney's office. A gentleman who has passed a year with a conveyancer, and wishes to improve himself and gain experience, will find the situation to his mind. Salary, 120*l.* a year.

Apply by letter, post-paid, with references, which will be very carefully investigated, to "H. R." at Mr. Lowe's, Law Stationer, Bell-yard, Temple-bar, London.

LAW.—Wanted, a Clerk (who must be an admitted Attorney) of good abilities and address competent to conduct cases in the County Courts and before Magistrates, and to assist in the general business of an office of large and varied practice.

Apply, by letter, with full particulars and salary required, to Duignard and Hemmant, Solicitors, Walsall.

LAW.—Wanted, an experienced Conveyancing Clerk, about forty years of age, as Secretary to a private Gentleman. Salary 100*l.* a year, with other advantages.

Address, full particulars of age, former situations, when left, cause of leaving, salary required, length of character—no others will be noticed,—to "A. Y." Mr. Brooks, 209, Piccadilly.

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For further particulars, apply to Mr. John Williams, 54, Hanover-street, Liverpool.

LAW PARTNERSHIP.—A Gentleman who has been admitted, and in active practice in the country for nearly four years, is desirous of entering into Partnership with a gentleman of standing in the Profession, and having an old-established business who may wish to be relieved from close attention thereto. The most unexceptionable references will be given and required.

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IF GEORGE CARR, who is described in the Will of "Ann Pulleine, late of Market Weighton, in the county of York, widow," as "of the town and county of the town of Newcastle-upon-Tyne, gentleman," and Mary Carr, who is described in the same Will as "of Newcastle-upon-Tyne aforesaid, widow," apply to us, the undersigned, they will be informed of the interest they take under the said Will, and if dead, any person giving us information of their death and burial will be rewarded.

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THE EDINBURGH REVIEW, No. CXCIV. will be published on MONDAY NEXT.

CONTENTS.

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PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Borough will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Queen has been pleased to appoint William Charles Gibson, esq. to be Auditor-General for the island of Ceylon; Charles Peter Layard, esq. to be Government Agent for the Western Province of that island; and Edward Hume Smedley, esq. to be District Judge of Galle, in that island.

The Right Honourable Sir John Jervis has appointed Charles Edward Wratislaw, of Rugby, in the county of Warwick, gent. to be one of the Perpetual Commissioners for taking the acknowledgments of deeds to be executed by married women, in and for the counties of Leicester and Northampton.

THE TEMPLE, April 17.—The aftermentioned members of the Hon. Society of the Middle Temple were called to the degree of Barristers-at-Law this evening:—Edmund Burke Wood, esq. Richard Denny Urling, esq. and Arthur Thos. Godfrey, esq.

GRAY'S INN, April 21.—At a pension of the Hon. Society of Gray's Inn, holden this day, Newman Ward, esq. was called to the degree of Barrister-at-Law.

RECORDERSHIP OF ABINGDON.—Thomas Bros, esq. M.A. of St. John's College, Cambridge, and Lincoln's Inn, has been appointed recorder of the borough of Abingdon, vice H. J. Shepherd, esq. Q.C. resigned.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

JONES.—On the 21st inst. at Fortess-terrace, Kentish-town, Mrs. Rd. Minshull Jones, of a son.

WOOLLETT.—On the 18th inst. at Sussex-place, Kensington, the wife of John Woollett, esq. barrister-at-law, of a son.

MARRIAGES.

ADAM, George Read, esq. to Margaret Euphemia, daughter of the late E. Lockhart, esq. W.S. Edinburgh, on the 14th inst. at Park-hall-house, Stirlingshire.

BLYTH, Mr. Neville, of Adelaide, South Australia, youngest son of William Blyth, esq. J.P. of that province, to Julia, younger daughter of the late Henry Barns, esq. of Everton, near Liverpool, on the 14th inst. at the parish church of Alderley, Cheshire.

BURDON, Cotsford, esq. Lincoln's-inn, to Eleanor M. J. P. youngest daughter of the late Thomas Thompson, esq. Bishop Wearmouth, on the 19th inst. at Foston.

DANSON, J. T. esq. barrister-at-law, to Ann Eleanor, eldest daughter of J. G. E. Lockett, esq. Pen-y-Bryn, Llangollen, Denbighshire, on the 15th inst. at Birkenhead.

DYNE, Henry, esq. solicitor, Bruton, to Susannah Sarah, second daughter of the late Colonel Muller, Ceylon rifles, on the 20th inst. at Bruton, Somersetshire.

HOOKER, Rev. William, perpetual curate of Stodmarsh, Kent, to Mary Anne, eldest daughter of the late William Scoones, esq. of Tonbridge, on the 20th inst. at Tonbridge.

JAQUES, John, jun. esq. of Ely-place, solicitor, to Sarah, eldest daughter of Thomas Leachman, esq. of Compton-terrace, on the 17th inst. at St. Mary's, Islington.

SHEPPARD, John, esq. of the Iron-gates, Frome, to Susan Anne Dawe, youngest daughter of James Anthony Wickham, esq. of North-hill, Frome, on the 20th inst. at St. Peter's Church, Frome.

WASBROUGH, William Dowell, of Wantage, Berks, esq. to Georgiana Susanna, eldest daughter of the late G. M. Davidson, of Warmley-house, esq. on the 15th inst. at St. Barnabas Church, Warmley, near Bristol.

WILSON, Fuller Maitland, esq. eldest son of Henry Wilson, of Stowlangtoft-hall, Suffolk, esq. to Agnes Caroline, second daughter of the Hon. the Vice-Chancellor Kindersley, on the 20th inst. at St. John's, Paddington.

DEATH.

DUNDAS, the Hon. Ann, on the 13th inst. at 3, Wilton-crescent.

CORRESPONDENCE.

ESTATE AGENCY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Auctioneers and estate agents monopolise much of the business relating to land and house property. Why should not the attorney and solicitor step into their provinces as part of his own? The one rule is qualification; and who so well qualified? Such a step would double the profits of many *honest* men. AN ATTORNEY.

The *Limerick Chronicle* says that Judge Perrin fined the sheriff of Dundalk 50*l*. for not having a dinner ready for him at the opening of the Assizes.

A COLONIAL JUDGE IN DIFFICULTIES.—The following extract from a private letter describes one of the effects of the gold discoveries in Australia:—"He (the judge) has no servants, his horses are turned out to grass, and, being an invalid, he is pushed to court in a bath-chair by his sons."

BURGLARIES. — CHUBB'S LOCKS.— On the night of the 31st of January a desperate attempt was made upon the Dundee Bank by a set of accomplished thieves. An iron door, secured by CHUBB'S PATENT LOCK, was the incipal object of attack, and the burglars, having exhausted their ill in trying to pick this lock, endeavoured ineffectually to de- ..t by drilling. After some hours' work they were alarmed, made a precipitate retreat, leaving all their instruments behind ... the previous evening, the warehouse of Mr. Clarke, ..., Manchester, was broken into; the thieves picked eight ...e ordinary kind, and then having unsuccessfully endea- d to pick the *Detector* Lock on a Chubb's Fireproof Safe, they ...ce it open, but without avail. This is the second time ... resisted the attacks of burglars.—CHUBB and SON, 57, ..., London; 28, Lord-street, Liverpool, 16, ...et, Manchester; and Horseley-fields, Wolverhampton.

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SCRATCHLEY.—On the 25th ult. at 23, Albany-street, Regent's-park, the wife of A. Scratchley, esq. of a daughter.

MARRIAGES.

LEIGH, Edward, eldest son of the Hon. Vice-Chancellor Kindersley, to Fanny Maitland, fourth daughter of Henry Wilson, esq. of Stowlangtoft-hall, Suffolk, and the adopted child of Charles Porcher, esq. of Clyffe, in the county of Dorset, on the 22nd inst. at Tincleton, Dorset.

PRIOR, Herman, esq. of Lincoln's-inn, to Catherine, youngest daughter of John Arscott Lethbridge, esq. of Greenwich Hospital, on the 27th inst. at St. Alphage, Greenwich.

DEATHS.

ASPNITEL, William Hurst, esq. one of her Majesty's justices of the peace for the county of Middlesex, on the 23rd inst. at his house in Clapton-square, aged 75.

COX, Isaac John, solicitor, of Honiton, Devonshire, on the 21st ult. at Sidmouth, aged 88.

DAVIS, Anna Georgiana, wife of Mr. Henry John Davis, solicitor, at Newport, Monmouthshire, on the 24th ult. aged 38.

DOBIE, John, esq. solicitor, of Gray's-inn, on the 23rd ult. at Ventnor, Isle of Wight.

RAWSTHORNE, Thomas Cragg, esq. barrister-at-law, eldest son of Thomas Rawsthorne, esq. of Heysham-Hall, Lancashire, on the 27th ult. at Heysham-hall, aged 26.

SANDERS, Thomas, barrister-at-law, late fellow of King's College, Cambridge, fourth son of the late Capt. Thomas Sanders, H.E.I.C.S. of Croom's-hill, Greenwich, and of Laleham, in the county of Middlesex, on the 25th of March.

SWEETLAND, John, esq. for many years principal commissary at Gibraltar, and a magistrate for the county of Devon, at his residence, Hermosa, Teignmouth, on the 25th ult. aged 80.

THE NEW COURTS FOR THE VICE-CHANCELLORS.—The new courts provided for the Vice-Chancellors at the back of Westminster Hall are extremely inconvenient. The Nisi Prius Court of Common Pleas sits in one of the turrets of the new Houses of Parliament, and the intricacy of the ascending and descending steps baffles the wits not only of the gentlemen of the Bar and the subtlety of the solicitors, but creates confusion among the judges, and to suitors and witnesses causes insurmountable obstacles. The Vice-Chancellors have much difficulty in finding out the courts in which they are to sit. They have to ascend a number of flights of stairs, then to descend through innumerable passages and staircases, and afterwards to grope their way through various by-ways before they can obtain admission to their courts. The description by Mr. Charles Dickens of the ups and downs of the passages of "the Bleak House," complicated though they be, are not equal to the intricacies of the new courts. Even the difficulties and the delay, and the hard and expensive progress of a Chancery suit are surpassed by the approaches to the courts where equity is supposed to be administered; and after the judge, the counsel, and the attorneys get into court, they find nearly as much difficulty in getting out of it as suitors generally find to their cost to get out of the suits in which they are parties. It is to be hoped that the Woods and Forests will look to this matter, for it is one of some importance.

MASTERS IN CHANCERY.—The four Masters who retire under the provisions of the new Act are Master Farrer, Master Brougham, Sir W. Horne, and Master Senior, leaving five to conduct business; and the business in the offices of the Masters who retire will be distributed among the Masters who remain.

SHIRTS.—WHITELOCK and SON, 166, Strand, (opposite the church, near Somerset-house) invite the attention of gentlemen to the combination of novel improvements now perfecting their celebrated 6s. 6d. SHIRTS, unequalled for comfort, durability, and exact fit. A sample shirt forwarded upon receipt of a post-office order for the amount, with the tight measure of the neck, chest, and wrist of the wearer. They have just received their new patterns for coloured shirts 4s. 6d. each, made in the best manner. Patterns sent per post to select from.

THE SANS-PLI SHIRT, as shown in the Great Exhibition, Class 20, No. 23, is a garment made entirely without gathers. These auxiliaries to the shirt have hitherto been considered indispensable, but, like everything else where the ingenious mind is directed to getting rid of complication, simplicity is proved to be the attribute of perfection. It may be confidently eulogised for its nicety of fit and great ease and comfort.—From the *Morning Herald*.—At WILLIAM REID'S, 51, Conduit-street, Regent-street. Printed flannels for dressing-gowns, cravats, and hosiery in every variety.

SHIRTS.—Patterns of the New Coloured Shirtings in every variety of colours. Upwards of 300 different styles for making FORD'S EUREKA SHIRTS, sent per post (free) on receipt of six postage stamps. Price Twenty-seven Shillings the Half-Dozen.

FORD'S REGISTERED SHIRT COLLARS are not sold by any hosiers or drapers. The Collars possess an improved method of fastening, which entirely dispenses with the use of strings, loops, or elastic contrivances—adapted to any size, suitable for once or twice round cravats. May be had in three different sizes, and either round or pointed. Price 11s. 6d. per dozen. Two as samples, sent post-free on receipt of twenty-eight postage stamps.

RICHARD FORD, 185, Strand, London.

THE BEST SHOW of IRON BEDSTEADS in the KINGDOM is WILLIAM S. BURTON'S.—He has added to his Show-rooms Two very large ones, which are devoted to the exclusive show of Iron and Brass Bedsteads, and Children's Cots, with appropriate Bedding and Mattresses. Many of these are quite new, and all are marked in plain Figures, at prices proportionate with those that have tended to make his Establishment the most distinguished in this country. Common Iron Bedsteads, from 12s. 6d.; Portable Folding Bedsteads, from 12s. 6d., Patent Iron Bedsteads, fitted with dovetail joints and patent sacking, from 16s. 6d.; and Cots, from 20s. each. Handsome Ornamental Iron and Brass Bedsteads in great variety, from 3l. 5s. to 31l.

THE PERFECT SUBSTITUTE for SILVER. The REAL NICKEL SILVER, introduced Fifteen Years ago by WILLIAM S. BURTON, when plated by the patent process of Messrs. Elkington and Co. is beyond all comparison the very best article next to sterling silver that can be employed as such, either usefully or ornamentally, as by no possible test can it be distinguished from real silver.

	Fiddle Pattern.	Thread Pattern.	King's Pattern.
Tea Spoons, per dozen	18s.	32s.	38s.
Dessert Forks „	30s.	54s.	58s.
Dessert Spoons „	30s.	56s.	62s
Table Forks „	40s.	65s.	70s.
Table Spoons „	40s.	70s.	75s.

Tea and Coffee Sets, Waiters, Candlesticks, &c. at proportionate prices. All kinds of re-plating done by the Patent Process.

CHEMICALLY PURE NICKEL, NOT PLATED.

	Fiddle	Thread.	King's.
Table Spoons and Forks, full size, per dozen	12s.	28s.	30s
Dessert ditto and ditto	10s.	21s.	25s
Tea ditto	5s.	11s.	12s.

WILLIAM S. BURTON has TEN LARGE SHOW ROOMS (all communicating) exclusive of the Shop, devoted solely to the show of GENERAL FURNISHING IRONMONGERY (including cutlery, nickel silver, plated and japanned wares), so arranged and classified that purchasers may easily and at once make their selections.

Catalogues, with engravings, sent (per post) free. The money returned for every article not approved of.

39, OXFORD-STREET (corner of Newman-street), Nos. 1 and 2, NEWMAN-STREET; and 4 and 5, PERRY'S-PLACE.
Established A.D. 1820.

CHEAP AND DURABLE ROOFING

F. M'NEILL & CO.'S PATENT ASPHALTED ROOFING FELT.

[PRICE ONE PENNY PER SQUARE FOOT.]

As a roofing it is light, durable and effective. Half the strength of timber used for slates or tiles only is necessary, and is particularly desirable for farm buildings, workshops, and emigrants' houses; supplied in long lengths by 32 inches wide, and easily applied by unpractised hands.

It is an excellent covering for Verandas, desirable to form light ceilings, and to place under slates, tiles, or metal, to counteract the heat of the sun, and the wet and frost, to top rooms, and church roofs.

Also thick HAIR FELT for deadening sound under floors, and VERY THICK HAIR FELT for clothing the boilers and pipes of the steam engine, saving 20 per cent. in fuel.

A WATERPROOF BITUMINOUS FELT, for lining damp walls, free from odour, and can be papered on or coloured, and is a very effective remedy. Price One Penny per Square Foot.

Samples and full directions, with illustrations on the cheap construction of roofs (which any carpenter can follow), sent post free, and orders by post executed. Experienced workmen also sent out. Established thirteen years.

F. M'NEILL & Co.'s Patent Felt Works, Bunhill-row, Finsbury.

THE ORIGINAL AND ONLY WORKS OF THE KIND IN LONDON.

GOLD CHAINS BY TROY WEIGHT AND WORKMANSHIP.

WATHERSTON and BROGDEN, MANUFACTURING GOLDSMITHS, Established A. D. 1798, having been awarded a Prize Medal for their Diamond and Enamel Vase, at the Great Exhibition, beg to announce that in obedience to the numerous calls made upon them, they have thrown open their Manufactory to the public at Manufacturers' Prices. The system of weighing Chains against sovereigns being one of the greatest frauds ever practised on the public, WATHERSTON and BROGDEN sell their Gold at its bullion value; their profit being made on the workmanship alone, which is charged with reference to the intricacy or simplicity of the pattern. A general assortment of Jewellery, all made on the premises.

Manufactory, 16, Henrietta-street, Covent-garden, London.

IF YOU DESIRE really WELL-POLISHED BOOTS, use BROWN'S ROYAL MELTONIAN BLACKING. It renders them beautifully soft, durable, and waterproof, while its lustre equals the most brilliant patent leather. Price the same as common blacking. Made only by E. BROWN, the inventor and sole manufacturer of the De Guiche Parisian Polish for dress boots and shoes, and waterproof varnish for hunting boots.

MANUFACTORY, 25, BROAD-STREET, GOLDEN-SQUARE.
Patronised by the Court and nobility, and to be had at all the principal shops throughout the kingdom.

FRUIT-TREES, FLOWER-BEDS, &c.— Garden Netting, for protecting fruit-trees from frost, blight, and birds, or as a fence for fowls, pigeons, tulip and seed beds, can be had in any length or quantity, at 1½d. one yard wide; 3d. per yard, two yards wide; or 6d. per yard, four yards wide, from JOHN KING FARLOW'S Fishing-rod and Net Manufactory, 5, Crooked-lane, London-bridge. The above Netting, being tanned, will stand exposure to the weather, and, being made by hand, can be cut in any form or direction without running. Forwarded to any part of the kingdom on the receipt of post-office order or reference in town.

Copy the address—5, Crooked-lane, London-bridge.

AWARDED A PRIZE MEDAL UNDER CLASS XIX.

TO THE CARPET TRADE.—ROYAL VICTORIA FELT CARPETING.—The PATENT WOOLLEN CLOTH COMPANY beg to inform the Trade that their NEW PATTERNS in CARPETS and TABLE COVERS, for the present season are now out, and will be found far superior to any they have hitherto produced, both in style and variety. The public can be supplied at all respectable Carpet-houses in London and the country. The Company deem it necessary to caution the public against parties who are selling an inferior description of goods as Felted Carpets, which will not bear comparison with their manufacture, either in style or durability; and that the genuineness of the goods can always be tested by purchasers, as the Company's Carpets are all stamped at both ends of the piece, "Royal Victoria Carpeting, London," with the royal arms in the centre.

The Company's Manufactories are at Elmwood Mills, Leeds; and Borough-road, London. Wholesale Warehouse at 8, LOVE-LANE, WOOD-STREET, CHEAPSIDE.

"For the apparel oft proclaims the man."—*Hamlet.*

EVERY WELL-DRESSED MAN KNOWS how difficult it is to find a tailor who thoroughly understands the peculiarities of each figure, and can suit its requirements with a well-cut gentlemanly fitting garment, in which ease and taste, being equally regarded, the eye of the observer is pleased with its graceful effect, while the comfort of the wearer is secured. Hence it is that so few feel "at home" during the first day's wear of any new garment, and so many are apparently doomed to appear in clothes, however costly, that never can become adapted to their forms. To remedy so manifest a deformity in costume, FREDERICK FOX adopts this means of making known that he has practically studied both form and fashion in their most comprehensive meaning, and in the course of an extensive private connection has clothed every conceivable development during the past thirteen years, always adapting the garment, whether coat, waistcoat, or trousers, to the exigencies of its individual wearer, and the purposes it is intended to serve, thus invariably attaining elegance of fit with that regard for economy which the spirit of the age dictates.—F. FOX, Practical Tailor, 73, Cornhill, same side of the way as the Royal Exchange.

NO. 79, CHEAPSIDE, No. 79.—HAIR-DYE.— FREDK SACKER now offers to his Friends and the Public a DYE more permanent, and produces (in one-third of the time) a more beautiful black or brown head of hair than any dye ever used before. Whiskers dyed in a few minutes. Private rooms for dyeing. Sold only at SACKER'S Perfumery Warehouse and Hair-cutting Saloons. Cases, 3s. 6d., 5s. 6d., 10s. 6d. and 21s. F. S. for many years the projector and perfecter of Wig-making, invites his friends and the public to inspect his magnificent assortment of ornamental hair. Wigs, 1l. 10s.; Scalps, 10s.; Ladies' Frontlets, 5s. 6d. Country orders punctually attended. Gentlemen's hair cut, charge, 6d.

WATER ONLY REQUIRED!

MOORE and BUCKLEY'S PATENT CONCENTRATED MILK.

"Supplies Fresh Milk at all times." *Times*, September 16, 1850.

"It was almost (if not quite) equal in flavour and quality to Milk fresh from the Cow." *Captain H. T. Austins*, Commander of the Arctic Expedition, H. M. S. *Resolute*, 1st October, 1851.

"The Milk is most admirable; none should go to sea without it."—*Captain Ommaney*, H.M.S. *Assistance*, Arctic Expedition, 25th October, 1851.

"The greatest comfort and blessing we had on board our ships in the Arctic Expedition."—*Medical Officer's Report to the Lords of the Admiralty*, November, 1851.

Preserved in hermetically sealed tins, each tin producing seven times the quantity of pure milk.

MOORE and BUCKLEY'S COCOA and MILK, and CHOCOLATE and MILK, are combinations of the Concentrated Milk with the finest Trinidad Cocoa and the choicest French Chocolate, in hermetically sealed tins. These delicious preparations are wholly free from the admixtures so common in the packet Cocoas, and considering their quality are equally expensive; for example, a breakfast cup of Pure Cocoa, combined with milk and sugar, can be had at the cost of a penny, by merely adding boiling water.

THE PRIZE MEDAL at the GREAT EXHIBITION was awarded to these preparations for their Novelty, Utility, and Economy; and they were constantly used in the Refreshment Rooms of the Exhibition giving universal satisfaction.

MOORE and BUCKLEY'S INFANT'S FOOD, is a combination of the Concentrated Milk with pure Farina, and will be found a light and nourishing diet for Invalids as well as Infants, requiring only boiling water for its instant preparation.

The whole of the above are prepared under the immediate inspection of Mr. Moore, the Patentee, who was for many years the ordinary medical attendant of the Royal Family in London.

The Finest FRENCH CHOCOLATES in every variety, made expressly for the subscribers by one of the first Paris manufacturers. These Chocolates, it may be observed, are REALLY FRENCH, and are greatly superior to those commonly sold as French, but which are in fact, generally speaking, of English manufacture.

MOORE and BUCKLEY, Ranton Abbey Farm and Works, Staffordshire; and 1, Upper East Smithfield, London, and sold retail by all respectable Grocers and Chemists, &c. in town and country.

THE PRIZE MEDAL, with "Honourable Mention," has been awarded for the GLENFIELD PATENT STARCH, by the Jurors of the Exhibition of all Nations, and is now used in the Royal Laundry. Being thus doubly noticed for its "General Superiority" (a mark of distinction conferred on no other) by the Royal Commissioners and Jury, from amongst thirty or forty exhibitors, sets it far above every other of its competitors. The ladies are, therefore, respectfully requested to make a trial of the Glenfield Patent Double-refined Powder Starch, which, for domestic use, now stands unrivalled. See also testimonials from the laundress to Her Majesty, the Lady Mayoress of London; the lady of W. Chambers, Esq. of Glenormiston, one of the Publishers of *Chambers's Edinburgh Journal*; the laundresses of the Marchioness of Breadalbane; Countess of Eglinton; Countess of Dartmouth, &c.

Sold Wholesale in London by Messrs. Pattin and Turner, Hooper, Brothers; Batty and Feast, Croft and Innocent; Petty, Wood, and Co., Twelvetrees, Brothers; R. Letchford and Co., John Yates and Co.; Yates, Walton, and Turner; Clayton, Bland and Co.; Field, Roberts, and Barber, A Braden and Co.; Hicks, Brothers; C. R. Williams and Co.; Sterry, Sterry, and Co., Thomas Snelling; John Brewer; and Retail, by all Shopkeepers.

London Depot, Wotherspoon, Mackay, and Co. 40, King William-street, City.

Agents wanted: apply to Mr. R. Wotherspoon, 40, Dunlop-street, Glasgow.

The attention of Shippers and Merchants is respectfully called to the above article, now in large demand in the British Colonies and United States, where it commands always the highest prices. Shipping Orders executed in a superior manner, and on the shortest notice.

BERDOE'S superior light OVERCOAT.—This well known garment combines, with every quality essential to a really respectable article, that will ensure permanent satisfaction, the additional recommendation of being thoroughly impervious to rain, and has long been reputed one of the most convenient, economical, and valuable garments ever invented. Price 45s. and 50s. Not waterproof, 8s. less. A very large Stock for Selection; also of Morning Coats, Shooting Jackets, &c.

96, New Bond-street; and 69, Cornhill (*only*).

PURE COCOA.—HANDFORD and DAVIES'S pure granulated COCOA, in 1 lb packets, at 1s. per lb. being the best of the four samples pronounced by the Analytical Sanitary Commission to be genuine out of the whole of the samples tested (vide the *Lancet*, of May 21st, page 610); also their COMPO SOLUBLE COCOA, for parties to whom the full flavour of pure cocoa is unpalatable. It consists of fine arrowroot, cocoa, and sugar only, and is a very superior article of its kind. It is very readily prepared by pouring boiling water on to it. Price 1s. 4d. per lb.

Finest Mocha Coffee, 1s. 8d.; finest Jamaica ditto, 1s. 6d.; Java ditto, 1s. 4d.; Colombo ditto, 1s. 2d.; Costa Ricardo, 1s.; Congo Tea, strong and useful, adapted for general family use, 3s. 8d. per lb.

61, High Holborn.

MILNER'S SAFES.—The strongest Safeguards in the World against Fire, Robbery, and Violence.

"Holdfasts," by main strength and scientific adaptation of material (strong wrought iron and steel) and construction, and fire-resisting by the mutual reaction of non-conduction and evaporation, within the chambers, when exposed to fire,—the only effective resisting medium that can be interposed between red heat outside, and the contents of a safe. A fire-taming arrangement exclusively secured by Milner's patents, and solely worked by the Patentees. All other safes being chambered with dry non-conductors only, soon acquire a temperature throughout, when fire surrounds them, which destroys their contents. Water, Steam, or Moisture, unconfined, cannot be made hotter than boiling water, in which Books, Documents, or Bank Notes, cannot be burnt, and combined with and permeating the best non-conductors, constitute Milner's Fire-resisting Chambers. See certificates of hundreds of tes's and proofs. The magnificent Group of Milner's Safes from the Great Exhibition, Class 22 No. 642, are removed to their London Depôt, where they will be kept on view as a record of 1851 (adding the improvements of the day as they arise), and as Sample Safes, suitable for all classes, together with all sizes of Milner's lighter and cheaper Fire-resisting Safes, Chests, and Boxes.

Milner's London Depôt, 47A, Moorgate-street, City, near the Bank of England. Milner's Safe Works (the most extensive in the world), Liverpool.

BURGLARIES.—CHUBB'S LOCKS.— On the night of the 31st of January a desperate attempt was made upon the Dundee Bank by a set of accomplished thieves. An iron door, secured by CHUBB'S PATENT LOCK, was the principal object of attack, and the burglars, having exhausted their skill in trying to pick this lock, endeavoured ineffectually to destroy it by drilling. After some hours' work they were alarmed, and made a precipitate retreat, leaving all their instruments behind them. On the previous evening, the warehouse of Mr. Clarke, Cross-street, Manchester, was broken into; the thieves picked eight locks of the ordinary kind, and then having unsuccessfully endeavoured to pick the Detector Lock on a Chubb's Fireproof Safe, they tried to force it open, but without avail. This is the second time this safe has resisted the attacks of burglars.—CHUBB and SON, 57, St. Paul's-churchyard, London; 28, Lord-street, Liverpool; 16, Market-street, Manchester; and Horseley-fields, Wolverhampton.

METCALFE and CO.'S NEW PATTERN TOOTH-BRUSH and PENETRATING HAIR-BRUSHES.—The tooth-brush performs the highly important office of searching thoroughly into the divisions, and cleaning in the most extraordinary manner,—hair never comes loose, 1s. Peculiarly penetrating hair-brushes, with the durable unbleached Russia Bristles, which will not soften like common hair; improved clothes brush, that cleans harmlessly in one-third the usual time; the new Velvet-Brush; and immense stock of genuine unbleached Smyrna Sponge.

At METCALFE, BINGLEY, and CO.'s only establishment, 130 B, Oxford-street, one door from Holles-street.

CAUTION.—Beware of the word "from" Metcalfe's, adopted by some houses.—Metcalfe's Alkaline Tooth Powder 2s. per box.

TO FAMILIES REMOVING.—The BEDFORD PANTECHNICON and STORE-ROOMS (late Messrs. Collard and Collard's Pianoforte Manufactory), 194, Tottenham-court-road, for the WAREHOUSING of FURNITURE, PIANOS, PAINTINGS, and every description of valuable property, are fitted up into separate and well-ventilated compartments, so that each depositor can have his own lock and key, and from the great extent of the premises the Proprietor is enabled to charge much less than similar establishments. Estimates, including packing, removing, &c. free of expense.

For terms and prospectus apply on the premises; or of the Proprietor, Mr. W. TINGEY, Polytechnic Silversmith Establishment, 312, Regent-street. Advances made, if required, on very moderate terms.

A NEW DISCOVERY.—MR. HOWARD, Surgeon Dentist, 52, Fleet-street, has introduced an entirely NEW DESCRIPTION of ARTIFICIAL TEETH, fixed without springs, wires, or ligatures. They so perfectly resemble the natural Teeth as not to be distinguished from the original by the closest observer, they will NEVER CHANGE COLOUR, or DECAY, and will be found very superior to any teeth ever before used. This method does not require the extraction of roots, or any painful operation, and will give support and preserve teeth that are loose, and is guaranteed to restore articulation and mastication; and that Mr. Howard's improvements may be within the reach of the most economical, he has fixed his charges at the lowest scale possible. Decayed teeth rendered sound and useful in mastication.

52, Fleet-street. At home from Ten till Five.

A SOVEREIGN REMEDY for BAD TEA.— A LEADEN PACKAGE, containing 5lbs. of fine, true, rich, ripe, rare SOUCHONG TEA (which will please everybody), sent, carriage free, to any part of England, on receipt of a post-office order for One Sovereign.

By PHILLIPS and CO. Tea Merchants, 8, KING WILLIAM-STREET, CITY,
and will prove indeed a sovereign remedy for bad tea.

DAMP WALLS.—NEW PATENT PAINT, as applied on the Thames Tunnel, guaranteed effective and permanent inside or out, in quantities to finish twenty square yards for 10s.

PATENT LIQUID CEMENT for the fronts of houses, for beauty pre-eminent, giving the appearance of fine cut stone, and only one-eighth the cost of Oil Paint. In casks of 1, 2, and 3 cwt. at 8s., 15s. and 21s. each.

PATENT MINERAL ZINC PAINTS, invaluable for cheapness, beauty, and permanence, ready for use. White Stone and Lead, 5s., Greens and Blues, 6s. per gallon.

BLACK MINERAL PAINT, very permanent, half the usual price, only 2s. per gallon.

NEW PATENT COLOUR for inside work, may be applied on Wood, Stucco, Cement, or over Oil Paint. No smell, and will dry in an hour. In casks of 1 cwt. at 14s.

G. BELL and CO. Steam Mills, 2, Wellington-street, Goswell-street.

PROTECTION FROM RAIN.

D'OYLEY'S SCOTCH WOOLLEN WAREHOUSE. Established 1878. WALKER, BABB, and CO.'S Registered Ventilating Waterproof and Llama Wool Overcoats, 35s. and 40s. The most noted house in London for Over-coats, Box-coats, Boat-cloaks, Military and Opera Cloaks, Capes, &c.

Servants' Liveries of the best materials and at the lowest possible charges, for Cash. A large assortment of Scotch Woollen Scarfs and Tweed Trowserings, Irish Friezes, Eight-quarter and other Cloths, Table Covers and D'Oyleys.

346, Strand, opposite Waterloo-bridge.

Just published, New and Cheap Edition, price 1s.; or, by post, for 1s. 6d.

THE SCIENCE OF LIFE; or, How to Live and What to Live for; with ample Rules for Diet, Regimen, and Self-Management: together with Instructions for securing perfect health, longevity, and that sterling state of happiness only attainable through the judicious observance of a well-regulated course of life. By A PHYSICIAN.

Also, by the same Author, price 2s. 6d., by post, 3s. 6d.,

A MEDICAL TREATISE on NERVOUS DEBILITY and CONSTITUTIONAL WEAKNESS, with Practical Observations, Illustrated with Anatomical Plates, in Health and Disease. This work, emanating from a qualified member of the medical profession, the result of many years' practical experience, is addressed to the numerous classes of persons who suffer from the various disorders acquired in early life. In its pages will be found the causes which lead to their occurrence, the symptoms which indicate their presence, and the means to be adopted for their removal.

London: JAMES GILBERT, 49, Paternoster-row; HANNAY, 63, Oxford-street; MANN, 39, Cornhill; STARIE, Tichborne-street, Haymarket; and all Booksellers.

Sales by Auction and Private Contract.

Periodical Sale of Chambers, also Shares in the Law Life, Law Fire, Legal and General, and other Insurance Offices in connection with the legal profession.

MR. HAMMOND respectfully announces that his next SALE by AUCTION of the above PROPERTY will take place at his great ROOMS, 28, Chancery-lane, on THURSDAY, MAY 6, at Twelve, and begs to solicit those desirous of disposing or purchasing the same to forward their instructions early prior to the sale.—Agency Offices, 28, Chancery-lane.

Valuable Freehold Chamber Property, at Lincoln's-inn.

MR. HAMMOND is directed by the Executors of the late Samuel Vines, esq. to SELL by AUCTION, at his GREAT ROOM, 28, Chancery-lane, on THURSDAY, MAY 20, at Twelve, the above, comprising TWO excellent SUITES of FREEHOLD (land tax redeemed) BUSINESS and RESIDENCE CHAMBERS, at No. 6, New-square, Lincoln's-inn, let to two respectable barristers, T. H. Hadden, esq. at 115*l.* per annum, and T. H. Fisher, esq. at 65*l.* per annum, and forming an important investment for capital. Particulars and conditions of sale to be had of Messrs. Whitcombe and Cox, Solicitors, Clifford's-inn, and at the Auction Offices, 28, Chancery-lane.

VOTES for WEST KENT.—An important Property, at Gravesend, producing an income of about 800*l.* per annum.

MESSRS. BULLOCK are directed to SELL by AUCTION, at the CLARENDON HOTEL, adjoining the Terrace-pier and Gardens, GRAVESEND, on THURSDAY, MAY 20, at Twelve for One precisely, in 37 Lots, an extensive FREEHOLD ESTATE, land-tax redeemed, comprising 37 brick built houses, of a modern and genteel class, forming the whole of Wellington-street, and a considerable portion of Upper Wellington-street, Milton-road, nearly all let to a respectable tenantry, and of the value of about 800*l.* per annum.—Printed particulars may be had at the Victoria Hotel, Rochester; Sun, Chatham; Bull and Victoria, Dartford; Prince of Orange, Gravesend; the place of sale; Auction Mart, London; of Mr. Steele, Solicitor, 1, Lincoln's-inn-fields; and Messrs. Bullock, 211, High Holborn.

GRAVESEND, KENT.—Valuable Freehold and Leasehold Estates, land tax redeemed, including a Brewery, two Public-houses, and a Baker's Shop.

MESSRS. BULLOCK are directed to SELL by AUCTION, at the CLARENDON HOTEL, GRAVESEND, on THURSDAY, MAY 20, in Four Lots, the WELLINGTON BREWERY and DWELLING-HOUSE, No. 10, Wellington-street, with yard and stabling; let to Mr. John Keddell, jun. on lease, at a low rent. The brewery is compact, and well adapted for private trade. The Ingress Tavern, on the south side of the Milton-road, on the high Dover road—a well-built and modern building, in a commanding situation for trade; let on lease at a very trifling rent to Mr. Curtis. The Brunswick Arms Tavern and Tea-gardens, Brunswick-road, Milton road, a well frequented house, doing a good trade; and the adjoining House, with a Baker's Shop, both let on lease to old and respectable tenants, at rents amounting to 95*l.* per annum, and held for an unexpired term of years, at a ground rent.—Printed particulars at the hotels named in the above advertisements; the place of Sale; Auction Mart, London; Mr. Steele, Solicitor, 1, Lincoln's-inn-fields, and Messrs. Bullock, 211, High Holborn.

GRAVESEND, KENT.—Freehold House and Shop, Garden and Building Ground, five minutes' walk from the Railway Station.

MESSRS. BULLOCK will SUBMIT to AUCTION, at the CLARENDON HOTEL, GRAVESEND, on THURSDAY, MAY 20, in Two Lots, the modern well-built FREEHOLD HOUSE and GROCER'S SHOP, No. 2, Wrotham-road, adjoining the residence and grounds of Charles Spencer, esq. with a large and productive walled garden, together covering an area of 68 ft. by 140 ft.; and a Plot of Building Ground in the rear, fronting a new street to the Railway, land tax redeemed.—The premises may be viewed, and particulars had thereon; also at the place of sale; at the hotels named in the above advertisements; of Mr. Pendergast, Solicitor, 37, Colet-place, Commercial road, Limehouse, and of Messrs. Bullock, 211, High Holborn.

GRAVESEND, KENT.—Valuable and compact Freehold Estates, land-tax redeemed, advantageously situate on the high road.

MESSRS. BULLOCK are directed to SELL by AUCTION, at the CLARENDON HOTEL, GRAVESEND, on THURSDAY, MAY 20, in Lots, a modern and uniform range of EIGHT Nine-roomed FREEHOLD DWELLING HOUSES, with shops and private entrances, being Nos. 79 to 86, Milton-road, and Three Leasehold Houses, Nos. 87, 88, and 89, Milton-road, of corresponding elevation; let, and of the value of 400*l.* per annum.—Also Three Plots of Freehold Building Land, in Wellington-street.—Printed particulars may be had at the hotels named in the above advertisements; the place of sale; Auction Mart, London; Mr. Steele, Solicitor, 1, Lincoln's-inn-fields; and Messrs. Bullock, 211, High Holborn.

GRAVESEND, KENT.—A pair of genteel semi-detached Freehold Villas, land-tax redeemed.

MESSRS. BULLOCK are directed to SELL by AUCTION, at the CLARENDON HOTEL, GRAVESEND, on THURSDAY, MAY 20, in two lots, ALBION VILLAS, being Nos. 22 and 23, Albion-road, between Milton-road and the river; the former has ten rooms, garden, with grass-plot, gravelled walk and a well-planted forecourt, and is let to Mr. Todd, at a low rent of 28*l.* per annum; No. 23 has similar arrangements, and at present is in hand.—Printed particulars may be had at the place of sale; at the hotels named in the above advertisements; of Messrs. Sunn and Gribble, Solicitors, 80, Lombard-street; and of Messrs. Bullock, 211, High Holborn.

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MESSRS. BULLOCK are directed by the Trustees for sale to SELL by AUCTION, at the CLARENDON HOTEL, GRAVESEND, on THURSDAY, MAY 20, in lots, the private RESIDENCE, No. 37, in the High-street, Rochester, adjoining the Corn Exchange, and, if required, well situate for business purposes; Two Cottages in Pump-lane, leading into the High-street; and a House on Castle-hill. The property is let to two respectable tenants, at very low rents, amounting to 90*l.* per annum.—Printed particulars may be had at the hotels named in the above advertisements; the Bull, Dartford; the place of sale; the Auction Mart; of Mr. Steele, Solicitor, 1, Lincoln's-inn-fields; and Messrs. Bullock, 211, High Holborn.

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MESSRS. BULLOCK will SELL by AUCTION, peremptorily, at the NEW INN, EALING, near the Church, on WEDNESDAY, MAY 12th, at Two for Half-past Two o'clock, a genteel SEMI-DETACHED VILLA, in Ealing park, with garden front and back, charmingly situate, well-drained, abundantly supplied with water, and fit for immediate occupation; held for ninety-seven years unexpired at a ground-rent of 6*l.* 16s. 10d. per annum, and land-tax redeemed ...

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MR. OUGHTON is instructed by the Trustees of the Will of the late Mr. Lockyer to SELL by AUCTION, on THURSDAY, MAY 13, at Two precisely, at the COMMERCIAL HALL, KING'S-ROAD, CHELSEA, THREE Eight-roomed Freehold DWELLING HOUSES, being Nos. 2, 3, and 4, York-buildings, King's road.—Also, a PLOT of BUILDING GROUND, suitable for four houses, in Riley-street, in Four Lots.—Particulars at the place of sale; of Mr. Whitehouse, Solicitor, 43, Lincoln's-Inn Fields; Mr. Fisselmeyer, Solicitor, 23, Bedford row; Messrs. Hillfary, Solicitor, 63, Fenchurch street; and of the Auctioneer, Fulham-road, Chelsea.

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QUESTIONS FOR DISCUSSION.

For Tuesday, May 4th, 1852. *President*—Mr. Galland.

74. Ought the case of *Boosey* v. *Jefferys*, 17 Law Times, 110, to be reversed on repeal?

Affirmative—Mr. Gregson and Mr. Dixon.
Negative—Mr. Girdlestone and Mr. Ward.

For Tuesday, May 11th, 1852. *President*—Mr. Warmington.

LIII. Should the British Colonies be permitted to send representatives to the Imperial Parliament?

Mr. G. C. Bompas is appointed to open the debate, and Messrs. Ackworth, Holmes, and Winearls, to speak upon the question.

For Tuesday, May 18th, 1852. *President*—Mr. Hayman.

76. By a sentence of the Court of Arches a clergyman was ordered to be deprived of all his Church preferment; but before any official notice of the sentence was received by the diocesan the defendant presented an appeal to the Privy Council. Pending the appeal, certain sums of rent-charge in lieu of tithes became payable in respect of a living held by the defendant. On the hearing of the appeal the original sentence was confirmed. Does the confirmation of the sentence date back to the time of the first judgment, so as to deprive the defendant of the rent-charge in favour of his successor in the living? (*Hutton* v. *Cove*, 1 Barn. & Adol. 538.)

Affirmative—Mr. Cotton and Mr. Murray.
Negative—Mr. Lowe and Mr. Walter.

For Tuesday, May 25th, 1852. *President*—Mr. Morris.

77. By a deed, executed in contemplation of marriage, a woman conveyed real estate to trustees upon trust for her own separate use for life, then for the intended husband for life, then for children, and, if none, for the husband in fee. By the same deed she assigned to the trustees certain household furniture, upon trust for her own separate use for life, without anticipation, but without creating any further trust whatever. The wife survived the husband, but has since died, there having been no children of the marriage. Are the representatives of the husband entitled to the furniture? (*Jarman* v. *Woolloton*, 3 Term Rep. 618; *Newlands* v. *Paynter*, 4 Myl. & C. 408.)

Affirmative—Mr. Boyce and Mr. Wright.
Negative—Mr. Trollope and Mr. Humphry.

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The Attorneys engaged in Prosecutions at the said Sessions, are requested to take notice that all instructions for Indictments are required to be sent to the Clerk of the Peace's Office four days, at least, before the said Sessions respectively.
GORSTS and BIRCHALL,
Clerk of the Peace's Office, Preston, May 3, 1852. Deputy Clerks of the Peace.

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GILBERT HENDERSON, Esq Recorder
The COURT of QUARTER SESSIONS of the PEACE for the BOROUGH will be held in the Sessions House, in Chapel-street, on MONDAY, the 10th day of May next, at Ten o'clock in the Forenoon. WRIGHT, Clerk of the Peace.
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PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Earl of Cawdor is to be appointed Lord-Lieutenant of Carmarthenshire, in the room of Lord Dynevor, deceased.—*Standard.*

CALLS TO THE BAR.—A further call to the bar of students of the Inner Temple was made yesterday evening, and comprises the following gentlemen:—Thomas J. White, esq. and Julian Pancefote, esq.

CALLS TO THE BAR.—LINCOLN'S-INN.—On Wednesday the under-mentioned gentlemen were called to the degree of barrister-at-law:—John Buck, esq.; Richard Ottaway Turner, esq.; William John Petts, esq.; Charles Lees, esq.; Francis Ottiwell Adams, esq.; J. B. Smith, esq.; and Augustus Arthur Vansittart, esq.

Last night's *Gazette* contains a notice that writs have been issued for the election of a Temporal Peer of Ireland, in the room of Randal Edward, Baron Dunsany, deceased.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

BITTLESTON.—On the 1st inst. at 17, Southampton-street, Bloomsbury, the wife of Adam Bittleston, esq. of a son.

CAMDEN.—At Rome, on the 28th ult. the Viscountess Campden, of a son.

LOWE.—On the 3rd inst. at Hampstead, the wife of Francis Lowe, esq. of the Inner Temple, of a daughter.

WORLLEDGE.—On the 1st inst. at 56, Ebury-street, the wife of J. Worlledge, esq. barrister-at-law, of a son.

MARRIAGES.

DENNETT, Rev. J[ame]s, of Grove, Berks, to Jane, fourth daughter of the late William Richardson, esq. of Regent-place West, Regent-square, and Walbrook, solicitor, on the 29th ult. at St. Pancras New Church.

NORWOOD, Mr. Edward, of Charing, Kent, solicitor, to Mary Ann, only daughter of the late Mr. Edward Norwood, of Dover, surgeon, on the 6th inst. at St. Andrew's, Holborn.

[illegible] Rev. Frederick William, B.A. curate of Madron, Cornwall, fourth [son] of Sir William Henry Poland, of Blackheath, Kent, to Mary, second daughter of William Hichens, esq. of St. Ives, on the 29th ult. at St. Ives, Cornwall.

[S]MITH, John Uppleby Stapylton, esq. of Melton-wood, near Brigg, second son of J. G. S. Smith, esq. Judge of the Lincolnshire County Courts, to Harriott, eldest daughter of Frederick Burton, esq. of Lincoln, on the 25th ult. at the Church of St. Peter, in Eastgate, in the city of Lincoln.

WEALE, William, esq. of Temple-chambers, Fleet-street, solicitor, to Rosa Annie, second daughter of William Val[illegible], esq. of North Brixton, on the 29th ult. at St. Mark's, Kennington.

WHITE, Mr. George, solicitor, Guildford, to Elizabeth, the second daughter of Valentine Follwell, esq. of Stone-house, Deal, on the 29th ult. at St. Leonard's Church, Deal.

DEATHS.

BAIN, Alexander, esq. of the Inner Temple, barrister-at-law, on the 25th of March, at Madras, aged 31.

BUDGEN, Thomas, esq. for many years major of the 2nd Royal Surrey, and the oldest magistrate and deputy-lieutenant of the county, on the 25th ult. at Holmesdale-lodge, Nutfield, Surrey, aged 87.

NEWBOLD, John, esq. of the firm of Sharpe, Field, Jackson, and Newbold, solicitors, 41, Bedford-row, at his residence, Cranmer-road, Brixton-road, on the 4th inst. aged 40.

SNELL, Thomas, esq. of Pebworth, Gloucestershire, for many years an active magistrate for the counties of Gloucester and Worcester, on the 2nd inst. aged 71.

SMITH, Rev. Theyre T., vicar of Wymondham, Norfolk; Honorary Canon of Norwich Cathedral, and formerly assistant preacher at the Temple, on the 4th inst. at the Vicarage.

WICKHAM, Robert, esq. many years of Gray's-inn, on the 1st inst. at Fulham, aged 69.

CORRESPONDENCE.

TOUTING LAWYERS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—You will confer an obligation on the respectable members of the legal profession, both here and elsewhere, if you will suggest some means by which touting lawyers can be made to feel the shame of their unprofessional practices.

There are a few of these *gentlemen* residing here, who, either by themselves or their myrmidons, regularly infest certain localities (especially the Police Courts), touting for prosecutions *or* defences. They generally prefer prosecutions, if they can get them, but if unsuccessful in that respect, off they rush to the prisoner, soliciting the honour of defending his innocence.

It is really marvellous to see how quickly these *gentlemen* become acquainted with the arrest of a prisoner, and the only solution of the wonder would seem to be that policemen's hearts and sympathies are not proof against the influence which the touters' pockets possess.

No sooner is a felony (or misdemeanor where costs are allowed) committed, than the prosecutor is besieged by the touting lawyers, or their jackals, and it is a common thing for a prosecutor to be first informed of the prisoner's arrest by the presence of one of these gentry soliciting the prosecution.

I should not be at all surprised at hearing again (as I once did) a prisoner, when called on to plead to the indictment against him, inquire for Mr. So and So, *his* attorney, who was absolutely conducting the prosecution.

Really, Mr. Editor, the public may well suspect the characters of lawyers, when such practices as the above are resorted to.

I am, Sir, yours, &c.

Gloucester, April 26, 1852. A. B.

[The subject has often occupied our thoughts, but we can devise no remedy for the mischief. Can any of our readers? We have a drawn Bill that will partially meet this, among other evils, and which we hope to be able to advance in the next Parliament.—ED. L. T.]

THE ATTORNEYS' TAX.

TO THE EDITOR OF THE LAW TIMES.

SIR,—It seems hopeless to expect from the Chancellor of the Exchequer any relief from the iniquitous poll-tax levied on attorneys; and for an independent member to carry a measure for the purpose through all its parliamentary stages in the face of Government opposition is, as we have already experienced, too arduous a task to be undertaken with much probability of success. The tactics I would recommend for obtaining a measure of relief already suggested in your columns would be to move in committee on the Income-tax Bill a clause providing that every attorney, on producing his annual certificate to the collector of income-tax, should be entitled to credit for the amount of the certificate duty in payment, or part payment, as the case might be, of the duty assessed on his professional income, and that the collector should be allowed the amount in his schedule of discharges.

We have already seen that the sense of the House of Commons in favour of the repeal of the duty is sufficiently strong to carry it in an isolated division, and if it were once engrafted on the ministerial Income-tax Bill, it would be beyond the reach of most of the dangers to which a separate measure is subjected in its passage through Parliament.

I am, Sir, yours, &c. ONE, &c.

[The suggestion of our correspondent is ingenious, but he seems to forget that it would fail to relieve those who most require relief, the Attorneys whose incomes are less than 150*l.* a year, while it would exempt the men with large professional profits, who do not require *relief*, but only demand the repeal as an act of justice.—ED. L. T.]

THE SOLICITOR-GENERAL.—The Solicitor-General, Sir Fitzroy Kelly, has returned to London, but is expected to leave town again to-morrow, having been invited to become a candidate for the representation of the eastern division of Suffolk, in the room of Lord Rendlesham, deceased. No opposition is expected to the learned gentleman's return.—*Standard*, of Monday.

FEES IN THE COURT OF CHANCERY.—Fees in the Court of Chancery are likely to be shortly abolished. In a report on the subject, printed in a Parliamentary document, it is suggested that the fees should be reduced and the judges paid out of the Consolidated Fund. "These fees (it is stated) are now met with at every step of a suit, and are most burdensome."

CHANCERY REFORM.—On Friday week there was printed, by order of the House of Commons, a copy of a report received by her Majesty's Commissioners appointed to inquire into the process, practice, and system of pleading in the Court of Chancery, from the Incorporated Law Society, and of the correspondence between Mr. Barber, the secretary of the Commissioners, and the Society. Several practical suggestions are made in the report on Chancery Reform, particularly with reference to the Master's offices. The report states that to the Masters' offices, as at present constituted, is to be attributed a large portion of the delay. Further, the "machinery itself in the Masters' offices is in many cases uselessly expensive, and is not calculated to insure expedition, even when all parties do their utmost to promote it."

LONDON:—Printed by HENRY MORRELL COX, of 74, Great Queen-street, in the Parish of St. Giles in the Fields, in the County of Middlesex, Printer, at the Printing Office of COX (Brothers) and WYMAN, 74 & 75, Great Queen-street, aforesaid, and published by JOHN CROCKFORD, of 29, Essex street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, at the Office of the LAW TIMES, No. 29, Essex-street, aforesaid, on Saturday, the 8th day of May, 1852.

THE LAW TIMES,

FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

Vol. XIX.—No. 476.] SATURDAY, MAY 15, 1852. [Price 1s.

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LAW.—Wanted, by a respectable Married Man, thirty-six years of age, a Situation as Clerk; he can abstract deeds, draw common drafts, keep books, make out accounts, &c. and is well acquainted with the general routine of a country solicitor's office.
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LAW.—A Gentleman who has had much practice as a Draughtsman in Conveyancing, wishes to obtain a Situation as Conveyancing Clerk. A moderate salary will be accepted.
Address to "P. R. S." Mr. Alexr. Boyle's, Law Stationer, 10, Gray's-Inn-place, London.

LAW.—A Youth, aged 19, whose connections are respectable, wants a Situation in a Country Attorney's Office, at a small Salary; he writes neatly, is very clever in matters of account, wishful to be generally useful, and if, after a year's trial, it be agreeable to both parties, would be glad to arrange for being articled.
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Dated, Bardon, 26th April, 1852.

WINGROVE COOKE on AGRICULTURAL TENANCIES.—In 8vo. price 18s. boards.—This work contains the Customs of the Country for every County—Accounts of the Tenant Right of every District—All the new Agreements between improving Landlords and their Tenants—Model Agreements and Leases for all Kinds of Farming—and the Alterations in Agricultural Law made last Session.
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The balance-sheet for the year ending the 31st of December, 1851, with a report from the directors, was read and unanimously approved. It appeared, as the fact was, that the income of the Society arising from dividends and interest on investments and from the premiums on existing policies (averaging above 1,000*l.* each, and assuring upwards of 432,000*l.*), amounted to nearly 18,000*l.* per annum; and that the sum invested in Government and on real securities, with the cash in hand, after discharging all claims and demands to that day, was nearly 80,000*l.*

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CHIGWELL, ESSEX.—Desirable small Copyhold Estate.

MR. GREEN (28, Old Bond-street) will SELL by AUCTION, at GARRAWAY'S, on TUESDAY, JUNE 8, at One (if not previously disposed of by private contract), a desirable small COPYHOLD PROPERTY, known as BROOM HILL COTTAGE, very pleasantly situate on the high road, at the entrance of the rural village of CHIGWELL, only eleven miles from town, with neat garden, a rich meadow, and a small slip of ground, containing altogether about two acres, commanding a very valuable and extensive frontage to the road.—Printed particulars may be obtained at the King's Head, Chigwell; at Garraway's; of R. BUCHANAN, Esq. Solicitor, 1, Walbrook-buildings, City; and, with cards to view, of Mr. GREEN, Estate Agent and Auctioneer, 28, Old Bond-street.

BRENT LODGE, FINCHLEY.—An elegant modern Residence, and nearly 25 acres of Pleasure-Grounds and park-like land, 5½ miles from the Regent's-park, 6 from the City, and 2½ from a Station on the Great Northern Railway.

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MR. GREEN (28, Old Bond-street) has been favoured with instructions to SELL by AUCTION, at GARRAWAY'S, on WEDNESDAY, JUNE 2, at One (if not in the meantime disposed of by private contract), the capital substantially built FREEHOLD FAMILY RESIDENCE, No. 22, Queen square, Bloomsbury, in the best part of this desirable and central situation, with large garden in the rear, communicating with excellent leasehold stabling in Greville-mews, with spacious stable-yard; the whole premises being of the estimated value of 200l. per annum, and presenting a singularly desirable opportunity for residence or investment.—Particulars may be obtained at Garraway's; of BROOKE TURNER, Esq. Solicitor, 1, Red Lion-square; and of Mr. GREEN, Estate Agent and Auctioneer, 28, Old Bond-street.

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IN CHANCERY.—*Bird v. Smith* and *Bird v. Pitman*.—Leasehold Estates, Marylebone and Gray's-Inn-road.

MESSRS. ELLIS and SON (the persons appointed by William Brougham, esq. one of the Masters in the High Court of Chancery) are directed to SELL by AUCTION, at GARRAWAY'S, on THURSDAY, May 27, at One, in Three Lots, the LEASEHOLD PREMISES, No. 9, Harcourt-street, and No. 11, Little Harcourt-street, Marylebone, held for forty years at a ground-rent of 12l. let at rents amounting to 49l. per annum. Leasehold Houses, Nos. 4 and 6, Ampton street, Gray's-inn-road, held ... years at a peppercorn. No. 4 let at 40l. per annum, and No. 6 on hand, but recently let at 40l. per annum.—Printed particulars may be had at the said Master's Chambers, Southampton-buildings, Chancery-lane; of Mr. T. E. JOHNSON and Mr. P. H. BROOKS, 58, Lincoln's-inn-fields; of Mr. REMNANT, 52, Lincoln's-inn-fields; at Garraway's; and of Messrs. ELLIS and SON, Auctioneers and Estate Agents, 36, Fenchurch-street.

DULWICH, SURREY.—Capital Family Residence, with suitable Offices, Gardens, Pleasure Grounds, and about 27 Acres of Meadow Land.

MESSRS. ELLIS and SON are directed to SELL by AUCTION, at GARRAWAY'S, in the month of JUNE (unless an acceptable offer be previously made by private contract), a capital FAMILY RESIDENCE, delightfully situate in the highly respectable and picturesque village of Dulwich, about five miles from the Bridges. It is approached by a carriage drive, and lodge at entrance, and contains a spacious entrance-hall, an elegant drawing-room opening to the grounds (about 30ft. by 19ft. and 13ft. high), a noble dining-room (30ft. by 20ft. and 13ft. high), a beautiful conservatory, a breakfast parlour, a library, principal and secondary staircases, numerous lofty light bedchambers and dressing rooms, bath room, excellent domestic offices with good supply of water, detached coach-house, six stalled stable, and suitable out-buildings, capital kitchen garden (walled), hothouses, melon ground, ice-house, beautiful pleasure grounds and gardens, and three paddocks of park-like meadow land, finely timbered, and surrounding the mansion. The whole containing about 27 acres and possessing all requisite accommodation for a gentleman's family. Held for a term of 22 years, at a low rent.—To be viewed by tickets, which may be had of Messrs. ELLIS and SON. Printed particulars may be had 21 days prior to the sale at Garraway's; of Messrs. DOD... and SONS, Solicitors, Billiter square; and of Messrs. ELLIS and SON, Auctioneers and Estate Agents, 36, Fenchurch street.

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MESSRS. HAMMOND and EILOART are directed by the Executors of the late Samuel Vines, esq. to SELL by AUCTION, at their GREAT ROOM, 28, CHANCERY-LANE, on THURSDAY, MAY 20, at Twelve, the above, comprising TWO excellent SUITES of FREEHOLD (land-tax redeemed) BUSINESS and RESIDENCE CHAMBERS, at No. 6, New-square, Lincoln's-inn, let to two respectable barristers,—T. H. Hadden, esq. at 11l. per annum, and T. H. Fisher, esq. at 60l. per annum, and forming an important investment for capital.—Particulars and conditions of sale to be had of Messrs. WILLOUGHBY and Cox, Solicitors, Clifford's inn; and at the Auction Offices, 28, Chancery-lane.

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Sales by Auction and Private Contract.

Improved Rent of 100l. per annum, for 32½ years, well secured. A desirable Investment.

MESSRS. CHINNOCK and GALSWORTHY will SELL by AUCTION, on WEDNESDAY, JUNE 16, at One, at the MART, a PROFIT RENT of 100l. per annum, well secured on an improving property, comprising 21 houses, situate in New-street and Regent-street, Limehouse, close to the railway station. Held for 32½ years from March, 1852, and let for the whole term, less 15 days, at a net improved rent of 100l. per annum, secured by a rack rental of upwards of 350l. per annum. May be viewed and particulars had at the Mart; of Messrs. J. and W. GALSWORTHY, Solicitors, 9, Charlotte-row, Mansion house; and at CHINNOCK and GALSWORTHY's offices, 28, Regent street, Waterloo-place.

THE CEDARS.—PUTNEY.—Delightful Freehold Villa Residence, with immediate possession, seated in its own grounds, on an elevated bank of the Thames, surrounded by about 6½ acres of Land: also several outlying pieces of Common Land, near the same, and valuable rights belonging thereto.

MESSRS. CHINNOCK and GALSWORTHY have the honour to announce they have received instructions from the Council of Civil Engineers to SELL by AUCTION, at the MART, on WEDNESDAY, JUNE 16, at One, the truly delightful FREEHOLD VILLA, known and justly admired as the Cedars, adapted for the occupation of a family of rank. It is approached by a drive, with lodge entrance, and contains an elegant suite of reception-rooms fronting the river, and overlooking the grounds of Ranelagh House on the opposite bank; spacious library, numerous bed-rooms, bath-room, and offices, excellent stabling and coach-houses, productive walled kitchen gardens, lawns, and pleasure grounds, adorned with stately cedars feathering to the ground, fountains and retreats, with land adjoining; the whole being about 6½ acres. Also, in separate lots, several pieces of allotment Land, with the valuable rights belonging thereto, situate close to the Cedars. The property may be viewed, and particulars had of Messrs. WHITE and BORRETT, Solicitors, 10, Whitehall-place, of Messrs. PICKERING and SMITH, Land Surveyors, 14, Whitehall place; at the Mart; and at Messrs. CHINNOCK and GALSWORTHY's Auction and Land Offices, 28, Regent-street, Waterloo-place.

WIMBLEDON-PARK ESTATE adjoining the Common.—Valuable Freehold Building Sites for Villa Residences.

MESSRS. CHINNOCK and GALSWORTHY are instructed to SELL by AUCTION, at the MART, on THURSDAY, JUNE 24, at One, numerous PLOTS of FREEHOLD BUILDING LAND, some of which are villa sites of the most charming description, having extensive views over the richly diversified scenery of the park, with its beautiful lake, the Surrey hills, Wimbledon Common, and a vast extent of country. The plots vary in quantity from one acre upwards, and are approached by roads from Wimbledon Common, within easy access of the heart of London by rail both from Putney and Wimbledon, and offering a desirable opportunity to gentlemen desirous to build for occupation, and to builders for speculation.—Particulars and plans will be published early, and may be obtained at the Mart; of WILLIAM BATTY, Esq. Solicitor, 26, Charles-street, St. James's-square; and of Messrs. CHINNOCK and GALSWORTHY, 28, Regent-street, Waterloo-place.

Important Reversionary Interest to large Freehold and Leasehold Estates, in possession on the decease of a lady, upwards of sixty years of age; also in valuable old Life Policies for 1,000l. and 499l., with large bonuses, in a moiety of an Annuity of 45l. per annum, with Policy of Assurance for 200l. in the Equitable, with large bonuses, being effected in 1801—in one lot.

MESSRS. CHINNOCK and GALSWORTHY will SELL by AUCTION, at the MART, on THURSDAY, JUNE 3, by direction of the Mortgagee, a REVERSIONARY INTEREST, which falls in on the decease of a lady, aged upwards of sixty, to the following valuable PROPERTIES, viz.: The entirety of Three Freehold Houses, 2, 3, and 4, Princes street, Barbican, and Leasehold House and Tenement, 9, Wells-street, Oxford-street; to the Moiety of Five Freehold Houses, 9 to 13, Princes-street, Barbican, Moiety of Nine Leasehold Houses in Brook-street, Lambeth; ditto of Leasehold House, King-street, Lambeth, ditto of Leasehold House and Stables, Duncan place, City road; ditto of Two Leasehold Houses, 7 and 8, Hornsey-road; ditto of Two ditto, 4 and 5, Canonbury-lane, Islington—producing about 900l. per annum; also a Moiety of Improved Rents, well secured, amounting to 60l. per annum, Moiety of an Annuity of 45l. per annum, with policy in the Equitable, effected in 1801, for 200l., and the large bonuses thereto, amounting altogether to 660l.; also in the entirety of Two Policies, 1,000l. and 499l., effected in 1833 and 1835, in the Union and Economic Associations, with the bonuses thereto. Particulars may be obtained at the Mart; of Messrs. JAS. TAYLOR and MASON, Solicitors, 15, Furnival's-inn, Holborn; and at Messrs. CHINNOCK and GALSWORTHY's Offices, 28, Regent street, Waterloo-place.

SUFFOLK.—Valuable Freehold and Copyhold Estates, comprising Mansion-house and Park of 40 acres, several capital Farms, with good homesteads, numerous Cottages, well-preserved Manor, valuable Manorial Rights, &c., comprising in the aggregate about 778 acres of land, and producing a rental of 1,184l. per annum—in two lots.

MESSRS. CHINNOCK and GALSWORTHY have received instructions to SELL by AUCTION, at the Mart, London, in the month of JUNE next, TWO very valuable FREEHOLD and COPYHOLD ESTATES, situate close to the village of Walsham le-Willows, and in the adjoining parishes of Hepworth, Stanton, and Badwell Ash, being only five miles from the Elmswell Station of the Eastern Union Railway, and 10 from Bury St. Edmund's, comprising an excellent family mansion, known as the Lawn, containing great accommodation, and fit for immediate occupation, with extensive outbuildings, excellent gardens, stabling, &c., seated in a finely timbered park of 40 acres. The lands are of superior quality, and in a high state of cultivation, divided into the following convenient farms, viz.:—Church Farm, 149a.; Home Farm, 119a.; West Street Farm, 112a.; Four Ashes, 176a; Scace's-hole Farm, 142a.—each having excellent farm-houses, homesteads, several good cottages, &c. The farms are let on short leases, and the whole in the occupation of a good tenantry at fair rents, producing, with the estimated value of the mansion, a rental of 1,184l. per annum.—Particulars with plans may be obtained at the Mart, London; of Messrs. VALLANCE and VALLANCE, Solicitors, 20, Essex-street, Strand; Messrs. FLADGATE and CLARKE, Solicitors, 43, Craven-street, Strand; Mr. PARKER, at Badwell Ash; of Messrs. GOULDING and SON, Solicitors, Walsham-le-Willows; and at Messrs. CHINNOCK and GALSWORTHY's Auction and Land Offices, 28, Regent-street, London.

IMPORTANT BUILDING SITE.—Wimbledon-park, Surrey, comprising a beautiful undulating park enclosure of about 20 acres, in one lot.

MESSRS. CHINNOCK and GALSWORTHY beg to call the attention of gentlemen desirous of building for occupation, and of the public generally, to this FREEHOLD BUILDING SITE comprising a park enclosure of about 20 acres which will be OFFERED for PUBLIC COMPETITION, at the MART, on THURSDAY, JUNE 24, at One. It forms a portion of Wimbledon-park, and is approached from the Merton-road by a new road, with lodge entrance, which runs through the park to the Wimbledon entrance, bounded on the south and east by the noble park avenue, a mile and a half in length. The land is of rich quality, and, being studded with some fine stately timber, it has a beautiful park like appearance. Its position is most healthful, sheltered from the north by rising ground and a belt of woodland, having a southern aspect, and it commands an unequalled prospect over a large extent of highly picturesque scenery, extending to the Surrey hills. It will be offered in one lot, being most admirably adapted for the erection of a first class residence, a collegiate establishment, or public institution. It offers also to builders and others a desirable speculation, as it is equally well adapted for small villas, the access from London being most convenient. Particulars and plans may be obtained at the Mart; of W. BATTY, Esq. Solicitor, 26, Charles-street, St. James's-square; and of Messrs. CHINNOCK and GALSWORTHY, 28, Regent-street, Waterloo place.

WEST-HILL and WIMBLEDON-PARK ESTATES.—To Builders, &c.—Valuable Freehold Building Plots, close to Wandsworth; also several Plots fronting the Merton-road, adapted for shops.

MESSRS. CHINNOCK and GALSWORTHY are directed to SELL by AUCTION, at the MART, on THURSDAY, JUNE 24, at One, numerous valuable PLOTS of FREEHOLD BUILDING LAND, comprising the principal part of the South Fields portion of the Wimbledon and West-hill Estates, which, from the large number of plots already disposed of, and the numerous interests consequently brought to bear upon the property, from the great building operations now going on, is improving daily in value. Some of the plots adapted for villas, command remarkably picturesque views of the richly diversified scenery of the park, and others are equally desirable for terraces, small villas, and shops. The situation being close to Wandsworth, it is within easy access of London by the Richmond Railway; and the locality, from its dry gravelly soil, is universally acknowledged one of the most healthful near the metropolis.—Plans and particulars may be obtained at the Mart; of W. BATTY, Esq. Solicitor, 26, Charles-street, St. James's-square; and at Messrs. CHINNOCK and GALSWORTHY's Offices, 28, Regent-street, Waterloo-place.

ISLINGTON.—Eligible Leasehold Investment, producing a profit rent of 80l. 18s. per annum, held for 58 years unexpired.

MESSRS. CHINNOCK and GALSWORTHY will SELL by AUCTION, at the MART, on WEDNESDAY, JUNE 16, at One, the excellent LEASEHOLD corner PREMISES, 6, Lloyd's-row, facing Green-terrace, New River Head, a spot well known as including the celebrated Spa of Islington; also two Houses adjoining, being 1 and 2, Spa Cottages, together with the Ground Rents arising from the cottages Nos. 3 to 18, inclusive, which are re-let for the whole term, securing the ground rent for the whole, and leaving a net income of 80l. 18s. per annum, held for 58 years unexpired.—May be viewed, and particulars had at the Mart; of W. L. HANLEY, Esq. Solicitor, 34, Wilson-street, Finsbury-square; and at CHINNOCK and GALSWORTHY's Offices, 28, Regent-street, Waterloo-place.

WANDSWORTH.—Valuable Leasehold Estate, comprising two delightful Villas, a Cottage, and a Plot of Building Land, with a frontage of 400 feet: the whole commanding a beautiful prospect of the banks of the Thames—held for 88 years.

MESSRS. CHINNOCK and GALSWORTHY will SELL by AUCTION, at the MART, on WEDNESDAY, JUNE 16, at One, a very eligible LEASEHOLD ESTATE, known as NORTH FIELDS VILLAS, WANDSWORTH; comprising two well-built villa residences, each containing 10 rooms, and having coach-houses and stabling; a cottage, held at a pepper-corn; a very desirable plot of building ground, with a frontage of 400 feet to a private road, having the sewers formed, and a depth of 160 feet for pleasure grounds. The whole estate has a delightful south west aspect, and commands a most attractive prospect of the banks of the Thames, extending to the Cedars at Putney. One villa is let at 55l. per annum, the other is in hand, thus affording a compact estate both for investment and occupation, with an excellent opportunity for a safe building speculation.—May be viewed, and particulars had on the premises; at the Mart; of Mr. PARSONS, upholsterer, Battersea-rise; and at CHINNOCK and GALSWORTHY's offices, 28, Regent-street, Waterloo-place.

PUTNEY COLLEGE ESTATE.—Important to Capitalists, Builders, Speculators, &c.—The desirable Freehold Property comprising the site of Putney College, about 11 acres, with the excellent and valuable river frontage thereto, being the only spot from London to Richmond of its character, on the south bank of the Thames, without a towing path, also an Inclosure of 2½ acres of Freehold Building Land, lying on the opposite side of the road.

MESSRS. CHINNOCK and GALSWORTHY have the honour to announce that they are directed by the Council of the College of Civil Engineers to offer this valuable FREEHOLD PROPERTY to the competition of the public, at the AUCTION MART on WEDNESDAY, JUNE 16, at One, comprising the beautiful site of the establishment known as Putney College, a plot of land containing nearly 11 acres, bounded by the high road from London and sloping to the banks of the Thames, adorned with forest trees of extraordinary beauty and stately growth, with the truly valuable and only river frontage of the character, obtainable from London to Richmond, free from the rights of the towing-path, and from its elevated position, its compact form, and its many other advantages, offers to capitalists, builders, and others, an unusual opportunity for a desirable high class building speculation, affording numerous frontages for villas, crescents, or terraces, with the beautiful river prospect and pleasing views of the nobility's seats on the opposite bank; also an Enclosure of Freehold Building Land, lying on the opposite side of the road, about 2½ acres, with valuable frontages thereto, adapted for small villas, which are in much request in this locality.—Plans and particulars may be obtained at the Mart; of Messrs. WHITE and BORRETT, Solicitors, 10, Whitehall-place; of Messrs. PICKERING and SMITH, Land Surveyors, 14, Whitehall-place; and at Messrs. CHINNOCK and GALSWORTHY's Auction and Land Offices, 28, Regent-street.

CHARLES-STREET, MAYFAIR.—Fashionable Town Residence, with excellent Stabling, &c. in perfect order, and with immediate possession, held for a long term, at a low ground rent.

MESSRS. CHINNOCK and GALSWORTHY are favoured with instructions to SELL by AUCTION, at the MART, on WEDNESDAY, MAY 19, at One, the fashionable TOWN RESIDENCE, situate No. 20, Charles-street, Mayfair, leading from Berkeley-square, containing large entrance-hall, vestibule, and spacious light stone staircase, a suite of splendid reception-rooms, adapted for large assemblies, numerous best and secondary bed-chambers, excellent well arranged domestic offices, extensive stabling, &c. This residence has been recently decorated throughout regardless of expense, and in excellent taste, and is fit for the immediate reception of a family of distinction. The furniture upon the premises is of a highly ornamental character, and the best manufacture, including many expensive fitted items, which may be taken at a valuation if required. Held for 61 years, at a low rent, and being of the estimated annual value of 600l. May be viewed at any time, and particulars had at the Mart; of Messrs. DAVIES, SON, CAMPBELL, and HAND, Solicitors, 17, Warwick-street, Golden-square; and of Messrs. CHINNOCK and GALSWORTHY, 28, Regent-street, Waterloo-place.

Freehold Private Residence, in the main road, being No. 4, Norland-place, Notting hill, let to an excellent tenant, at 65l. per annum—a desirable investment.

MESSRS. CHINNOCK and GALSWORTHY will SELL by AUCTION, at the MART, on THURSDAY, JUNE 3, at One, the substantial FREEHOLD HOUSE, No. 4, Norland-place, Notting-hill, containing excellent accommodation, and in good repair, with garden in rear and small garden in front, enclosed from the road by iron railing, let to a highly respectable tenant, at the low rent of 65l. per annum.—May be viewed, by permission of the tenant, at stated hours, and particulars had at the Mart; of Messrs. RICHARDSON and SADLER, Solicitors, 28, Golden-square; and of Messrs. CHINNOCK and GALSWORTHY, 28, Regent-street, Waterloo place.

HENDON, MIDDLESEX.—About forty acres of Freehold Meadow and Arable Land, some portion of which is admirably adapted for building purposes, also Seven small Houses, a Blacksmith's Shop, Barn, and Stables, situate opposite the Bell Inn, Hendon, in lots.

MESSRS. CHINNOCK and GALSWORTHY are instructed to SELL by AUCTION, at the AUCTION MART, on WEDNESDAY, MAY 19, at One, the above valuable FREEHOLD PROPERTY. Lot 1 will comprise Twenty-nine Acres of excellent Meadow and Arable Land, with good barn thereon, situate in Shearhall-lane, Hendon, and called Renters. Lot 2, a rich Meadow of seven acres, called Cordils, near Bell lane; and in several lots, a Meadow Field, well adapted for the erection of cottages and small houses, which are much required in this locality. Also Seven Houses and Blacksmith's Shop, situate opposite the Bell Inn. The whole at present producing 180l. 4s. per annum.—Plans and particulars may be obtained of Messrs. JAS. TAYLOR and MASON, Solicitors, 15, Furnival's-inn; at the Mart; at the Bell, Hendon; and at the Offices of Messrs. CHINNOCK and GALSWORTHY, 28, Regent street, Waterloo-place.

12, QUEEN-STREET, MAYFAIR, let on lease at 126l. per annum; and 84A, Charles-street, Berkeley-square, with possession.—Capital Investments.

MESSRS. CHINNOCK and GALSWORTHY will SELL by AUCTION, at the MART, on WEDNESDAY, MAY 19 next, at One, the desirable LEASEHOLD RESIDENCE, 12, Queen-street, let to a highly respectable tenant for twenty-one years, at 126l. per annum. Also, the Residence adjoining, in perfect order and repair, at present in hand, but of the estimated value of 150l. per annum. It contains great accommodation, and fit for the immediate reception of a respectable family. Both held for 63 years, at low ground-rents.—May be viewed, and particulars obtained at the Mart; of Messrs. DAVIES, SON, CAMPBELL, and HAND; and of Messrs. CHINNOCK and GALSWORTHY, 28, Regent-street, Waterloo-place.

NORTH-STREET, EDGEWARE-ROAD.—Two well-built Houses, with Shops, producing 85l. per annum.

MESSRS. CHINNOCK and GALSWORTHY will SELL by AUCTION, at the MART, on THURSDAY, JUNE 3, at One, by direction of the Executors of Mr. Edmund Humphris, deceased, TWO well-built HOUSES and SHOPS, situate and being Nos. 57 and 58, North street, close to the Edgeware-road; let to good tenants, one on lease, producing together a rental of 85l. per annum; held for a long term, at a ground-rent of 10l. 10s. each house.—May be viewed, and particulars had at the Mart; of Messrs. S. and M. ABRAHAMS, Solicitors, 4, Lincoln's-inn-fields; of Messrs. GRAY and BERRY, Solicitors, 38, Edgeware road; and at CHINNOCK and GALSWORTHY's Offices, 28, Regent-street, Waterloo-place.

Freehold Ground-rents, amply secured, amounting to 95l. 10s. per annum, in one lot.

MESSRS. CHINNOCK and GALSWORTHY will SELL by AUCTION, at the MART, on THURSDAY, JUNE 3, at One, FREEHOLD GROUND-RENTS, amounting to 95l. 10s. per annum, amply secured by ten houses, situate on the east side of Prince's-road, Notting-hill; the Crown public-house, occupying the corner of St. James's-road; two houses in Prince's-road, adjoining; together with a coach-house and dwelling in Prince's-place, of the rack value of 481l. per annum.—Particulars may be obtained at the Mart; at the Crown public-house, on the estate; of Messrs. RICHARDSON and SADLER, Solicitors, 28, Golden-square; and of Messrs. CHINNOCK and GALSWORTHY, 28, Regent-street, Waterloo-place.

WINSLEY-STREET, OXFORD-STREET, opposite the Pantheon.—First-class Leasehold Investments (Shop Property), producing 326l. per annum.

MESSRS. CHINNOCK and GALSWORTHY will SELL by AUCTION, at the Mart, on WEDNESDAY, MAY 19, at One o'clock, desirable INVESTMENT, LEASEHOLDS, viz.: Five newly and substantially built houses and shops, situate and being Nos. 7, 8, 9, 10, and 11, Winsley-street, Oxford-street, immediately opposite the Pantheon Bazaar, let to excellent tenants, principally on lease, at rents amounting to 326l. per annum, held under separate leases for terms of 58 years, at moderate ground rents.—May be viewed, and particulars obtained at the Mart; of Messrs. DAVIES, SON, CAMPBELL, and HAND, Solicitors, 17, Warwick-street, Golden-square; and of Messrs. CHINNOCK and GALSWORTHY, 28, Regent-street, Waterloo-place.

CLAPHAM.—Eight Freehold Private Houses, let to excellent tenants, at 35l. per annum each, offering a desirable opportunity for investment.

MESSRS. CHINNOCK and GALSWORTHY will SELL by AUCTION, at the MART, on WEDNESDAY, JUNE 16, at One, in lots, EIGHT well-built FREEHOLD HOUSES, situate and being Nos. 1, 2, 3, 4, and 5, and 11, 12, 17, Clapham park-terrace, forming a portion of a very attractive terrace, situate on the east side of Park-road, Clapham, let to excellent tenants, principally for terms, at the low rents of 35l. per annum each.—May be viewed by permission of the tenants, and particulars obtained at the Mart; at the Swan, Stockwell; of Mr. WALES, Surveyor, 17, St. Helen's-place, Bishopsgate, City; and at CHINNOCK and GALSWORTHY's Offices, 28, Regent-street.

KENT.—BRASTED.—Valuable Freehold Estate, comprising an excellent stone-built Mansion, seated in a finely timbered park, with extensive stabling, out-buildings, gardens, rookery, and about 600 acres of arable, pasture, hop, and thriving wood land, with excellent Farm-houses, Homesteads, and Cottages, together with the well preserved Manor, affording capital sporting, and the Chancel of Brasted Church.

MESSRS. CHINNOCK and GALSWORTHY are instructed by the Trustees, to SELL by AUCTION, at the LATTER END of JUNE, at the MART, the desirable PROPERTY, known as Brasted-park with several valuable Farms attached, comprising in the whole about 600 acres. The situation is most desirable, being only twenty-one miles from London, seven miles from the Edenbridge Station, South Eastern Railway, and two from the market town of Westerham, surrounded by the seats of many of the nobility and gentry of the county, in the midst of a richly diversified country, and some of the most picturesque scenery in Kent. The mansion is built of stone, after the style of Inigo Jones, at an immense expense, and presents a pleasing specimen of architecture, with noble porticoes to the entrance and garden fronts, placed in a park of about 40 acres finely timbered, and bounded by the main road, with entrance lodges, rookery, &c. and containing every convenience for the residence of a family of distinction, the rooms being lofty, well arranged, and of large proportions, with noble entrance-hall and vestibule. The farms are in the occupation of old and punctual tenants, at rents commensurate with the present times, and have several good farm-houses, homesteads, oast-houses, and cottages, together with the valuable well-preserved manor, which affords some excellent sporting, there being several plantations, and a large wood in the centre of the estate; also, the chancel in Brasted Church, with the privileges belonging thereto. Immediate possession of the mansion will be given, and the purchaser can take, at a valuation, the furniture and effects, which are in good condition, modern, and appropriate. If not taken power will be reserved to sell the same on the premises.—Particulars and plans may be obtained of Messrs. JENKINS and PHILLPS, Solicitors, Red Lion-square; at the Mart; King's Arms, Westerham; and at Messrs. CHINNOCK and GALSWORTHY's Offices, 28, Regent-street, Waterloo-place.

EXCELLENT FREEHOLD INVESTMENT OF 550l. PER ANNUM.

MESSRS. WINSTANLEY have received directions to SELL by AUCTION, at the MART, on WEDNESDAY, 19th MAY, the important Freehold Property known as PLATFORM WHARF and WAREHOUSE, situate at ROTHERHITHE, opposite the London Docks, and extending to Paradise-street in the rear, comprising several stacks of lofty, strongly timbered, and substantial Warehouses, erected at an enormous expense, occupying a very considerable area, and capable of stowing many thousand quarters of grain, or other produce, with an extensive frontage to the river, and depth of water sufficient for large vessels to discharge and load alongside. Let for a term (excepting a small portion) to a highly respectable and responsible Tenant, at the low Rent of 550l. per annum. To be viewed, by permission, on application on the premises, where Particulars may be obtained twenty-one days previous to the Sale. Particulars, also of Messrs. DAWES and SONS, Solicitors, Angel-court, Throgmorton-street; at the place of Sale; and of Messrs. WINSTANLEY, Paternoster-row, London.

LONDON:—Printed by HENRY MORRELL COX, of 74, Great Queen street, in the Parish of St. Giles in the Fields in the County of Middlesex, Printer, at the Printing Office of COX (Brothers) and WYMAN, 74 & 75, Great Queen street, aforesaid, and published by JOHN CROCKFORD, of 29, Essex-street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, at the Office of the LAW TIMES, No. 29, Essex-street, aforesaid, on Saturday, the 15th day of May, 1852.

THE LAW TIMES,

FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

Vol. XIX.—No. 477.] SATURDAY, MAY 22, 1852. [Double Number, *Price* 1s. 6d.

Money, Wanted and to Lend.

MONEY.—Wanted, on a very ample Freehold Landed Security, 3,500*l.* at 4*l.* per cent. interest.
Apply to Mr. E. Tilsley, Solicitor, Moreton-in-Marsh, Gloucestershire.

MONEY.—Wanted, 7,000*l.* at 3*l.* per cent. upon an excellent Landed Security in the County of Warwick. Apply to Messrs. Dewes and Son, Solicitors, Coventry.

MONEY.—Wanted to borrow 700*l.* at 4 per Cent.—The punctual payment of the interest from dividends arising from the funds, will be secured by an order of the Court of Chancery, during the life of a lady, aged 53, and the principal by a policy of twenty years' standing, on the life of the lady. One or two smaller sums required at 5 per Cent.
For particulars apply to Mr. Ninn, 11, Beaufort-buildings, Strand.

Situations, Wanted and Vacant.

LAW.—Wanted, by a respectable Young Man, a Situation as general Clerk in a solicitor's office; or as an assistant Clerk to a County Court, either in Town or Country, at a moderate salary. Unexceptionable references can be given.
Address, "J. W." Mr. Pilcher's, Stationer, No. 71, Gray's-inn-lane, London.

LAW.—Wanted, by a Married Man, a Situation as Clerk to an Attorney. The Advertiser is competent to conduct Poor-law, Magisterial, and Tax business, without assistance; and Conveyancing, Chancery, and Common Law, with the superintendence of the principal. Has a general knowledge of business, and can give satisfactory references as to ability, character, &c.
Address, "D. D." (No. 477), Law Times Office.

LAW.—The Advertiser, who is about 26 years of age, and is intimately acquainted with every branch of Magisterial and Conveyancing business, is desirous of a permanent engagement. The highest references and testimonials will be furnished.
Address, "L. O. M." care of Mr. Hills, Guy's Hospital, London.

LAW.—A Situation in an Office in the Country is Wanted by the Advertiser, who has had considerable experience in Conveyancing, and the general routine of practice, and whose references are unexceptional.
Address, "X." (No. 477), Law Times Office.

LAW.—A Young Man, admitted in 1848, wishes a Situation as Junior Partner or Managing Clerk, with a view to future partnership, or a permanent situation in a respectable Attorney's office. Employment in a good office would be of more importance than the amount of salary.
Address, "X. Y. Z." (No. 477), Law Times Office.

LAW.—Wanted, by a Youth, aged 19, a Situation in a Solicitor's Office, either in town or country, as Copying and Engrossing Clerk. Is willing and obliging; writes a good hand; and can be well recommended by his last employer.
Address "X. Y. Z." Post-office, Nether Stowey, near Bridgewater, Somerset.

LAW.—Wanted by a Young Man, who can furnish unexceptionable references, a Situation in a Solicitor's Office in the country; he can write and engross neatly and expeditiously, keep accounts, prepare ordinary drafts and abstracts, and is acquainted with the duties of a clerk of the County Courts. A moderate salary only required.
Address, "A. B." Post-office, Lymington, Hants.

TO SOLICITORS and MANAGING CLERKS. Wanted immediately, in an Office in one of the Midland Counties, a gentleman as Managing Clerk, who is fully capable of advising with Clients, and taking the entire management of a country office. He must be a good Conveyancer, and have had considerable experience in the profession. None other need apply. A liberal salary will be given. A Solicitor will be preferred.
Apply, stating amount of salary required, by letter, to "R. S." (No. 477), Law Times Office.

LAW.—Wanted, by a Solicitor in the Country, an active Managing Clerk.
Applications stating qualifications, and salary required, to be addressed to Mr. Warner, 11, Cursitor-street, Chancery-lane, London.

Practices, Wanted and for Sale.

LAW.—A Twenty-five Years' lucrative Business to be disposed of by the executors of a deceased Practitioner, in one of the first country towns in England.
Address by letter, post paid, to "A. Z." 5, Serjeant's Inn, Temple, London, with real name and address.

Partnerships, Wanted and for Sale.

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RIVOLTA —On the 18th inst. at 10, Hart-street, Bloomsbury, Mrs D A Rivolta, of a son.

TYNTE – On the 14th inst, at Brighton, the lady of Col. C Kemeys Tynte, M P. of a daughter.

MARRIAGES.

BRIDGES, Charles, esq. solicitor, Birmingham, to Sophia, eldest daughter of Mr. Richard Bray, of Brampton, on the 13th inst at Church Brampton, Northamptonshire.

BAYLEY, Lyttelton Holyoake, esq. barrister-at-law, youngest son of Sir John Bayley, of Poets-corner, Westminster, to Isabella, eldest daughter of Anthony Mactier, esq of Durris House, on the 12th inst. at Durris House, Kincardineshire, N.B.

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DEATHS.

COOMBS, Thomas, sen. esq. on the 13th inst. at Dorchester, in the 76th year of his age.

SPRAGGETT, George, esq solicitor, second son of the late Richard Spraggett, esq. on Sunday, the 9th inst. at Southam, Warwickshire, aged 27.

THORNHILL, George, esq M P. on the 19th inst at Diddington, Huntingdonshire, aged 68.

TILLOTSON, William, esq of Harewood square, London, barrister at law, and formerly of St. Peter's College, Cambridge, on the 17th inst at Little Somerford, Wilts.

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10	1 7 6	1 5 4	46	3 11 6	3 3 2
13	1 9 3	1 7 0	50	4 1 9	3 13 3
16	1 11 3	1 8 10	53	4 11 6	4 2 6
20	1 14 1	1 11 6	56	5 4 0	4 14 0
23	1 17 0	1 13 8	60	6 6 0	5 12 6
26	2 0 3	1 16 2	63	7 4 0	6 9 6
*30	2 5 0	1 19 9	66	8 4 0	7 10 8
33	2 8 6	2 2 10	70	10 0 4	9 7 6
36	2 13 0	2 6 4	73	11 16 2	11 2 6
40	2 19 9	2 12 0	76		13 1 9
43	3 5 3	2 17 2	80		15 12 10

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LIV. Is the decree of the President of France of the 22nd of January last, whereby the Estates of the House of Orleans were annexed to the domain of the State, in accordance with principles of morality and public policy?

Mr Lowe is appointed to open the debate, and Messrs. Galland, T. R Kent, and Loxton, to speak upon the question

For Tuesday, June 8th, 1852. *President*—Mr. BADDELEY

78. Can the heir of a voluntary grantor within the statute 27 Eliz. c. 4, avoid the voluntary conveyance by a sale for value? *Burrell's* case, 6 Rep. 72.

Affirmative—Mr Wade and Mr T. Parker.
Negative—Mr Miller and Mr. Yeatman

For Tuesday, June 15th, 1852. *President*—Mr. CURTIS.

79. A having taken a conveyance from B. with the usual covenants for title and quiet enjoyment, lays out money in improvements on the land conveyed, and is afterwards evicted by a person claiming through B. Can A. recover from B. the value of the outlay? *Lewis v. Campbell*, 8 Taunt. 715.

Affirmative—Mr Bower and Mr. A. Parker.
Negative—Mr. Bedford and Mr. James.

For Tuesday, June 22nd, 1852. *President*—Mr GALLAND.

LV Should the Bill now before Parliament, for the abolition of Grand Juries in the Metropolitan Districts, be made general, and so altered, pass into a law?

Mr Howlett is appointed to open the debate, and M[illegible] Clarke, and Prudence, to speak upon the question.

For Tuesday, June 29, 1852. *President*—Mr. WARMIN[illegible]

80 A by false representations, induced B. a tradesman, [illegible] him with goods on credit. B. recovered judgment for t[illegible] and was paid. Can he prosecute A. for a misdemeanour [illegible] v. *Marsh*, 6 Barn. & Cress. 304.

Affirmative—Mr. Morris and Mr. Cross.
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MR. J. CAIN is favoured with instructions to SELL by AUCTION, by order of the proprietor (unless previously disposed of by private contract), at the MART, on WEDNESDAY, JUNE 23, at Twelve for One, all that truly valuable and important ESTATE, known as CHEAM HOUSE. This eligible property is surrounded by a ring fence, every portion of which presents a road frontage, thus affording a rare and almost unequalled opportunity for building speculation in a locality where villas are so much desired and sought for, but not to be obtained. The small capitalist or spirited purchaser can here insure a safe investment. To mercantile gentlemen, whose avocations call their daily attendance in London, and, above all, the great advantage of locating their families in a pure and healthy air, blended with the very easy access to the metropolis, the village of Cheam must be acknowledged as a highly favoured spot. The substantial mansion is well calculated for the reception of a family of distinction, one wing of which has, within a very few years, been built at a great outlay, under the direction of a first-rate architect. The residence contains, on the upper floor, six good bed-chambers; on the first floor are two noble bow bed-rooms, each 25 feet by 18 feet, three others, severally 23 feet by 15 feet, 19 feet by 12 feet, and 16 feet by 15 feet, three other rooms of less magnitude, two dressing rooms, large nursery bed-room, water-closet, and morning drawing-room. On the ground floor will be found a noble entrance-hall, large dining-room, 28 feet by 17 feet; octagon drawing-room, 20 feet by 20 feet, ante drawing-room, 27 feet by 18 feet, study or breakfast-room, and a small sitting-room. The principal reception-room communicates with the extensive and beautifully timbered lawn by a flight of stone steps. The offices are numerous, and judiciously arranged for every possible domestic comfort and convenience; a detached stable-yard, with coach houses for three carriages, and excellent stabling for five horses, with lofts, three rooms, and one sitting-room over. The grounds comprehend extensive walled kitchen gardens, well cropped and stocked, a beautiful verdant lawn, tastefully adorned with splendid timber and flowering shrubs, and a fancy meadow—in all averaging nearly seven acres, all parts of which are well adapted for building purposes, and affording to each villa an adequate proportion of ground. Plans and particulars are in preparation, which may be had of Messrs. Gregson and Kewell, Solicitors, Angel-court, Throgmorton-street, J. B. Watson, Esq., Surveyor, 39, Manchester-street, Manchester-square; on the premises, West Cheam; at the Mart; at the principal inns; and at the Auctioneer's Estate Offices, Richmond, Surrey. The estate may be viewed at any time on application to Mr. Brown, the gardener, on the premises.

Important and Valuable Sale of Freehold Property, at Richmond, in Ten Lots (unless previously disposed of by private contract).

MR. JAMES CAIN is honoured with instructions to SELL by AUCTION, at the GREYHOUND INN, RICHMOND, on TUESDAY, the 29th JUNE, 1852, at One for Two o'clock, by order of the proprietors, TEN SEMI-DETACHED ELEGANT FREEHOLD VILLA RESIDENCES, of handsome modern elevation, designed, and erected (regardless of expense), in the most substantial, ornamental, and architectural manner. The whole are most respectably tenanted, at the following rentals—Two at 95l. per annum, two at 87l.; four at 70l., one at 100l.; and one at 120l. thus producing a net rental of 894l. per annum. The above are situate on the most retired and sunny side of Richmond-green, known as the High Walks, and abutting upon and commanding extensive views over the Royal Park, fine pure air and gravelly soil. These delightful villas are approached by front gardens and portico entrances, with ornamental flower-gardens in the rear, within four minutes' walk of the Richmond Railway Station, being within twenty minutes' communication with London.—Plans and particulars are preparing, and may shortly be had at the Auction Mart, London; of Messrs. Birchan, Dalrymple, and Drake, Solicitors, 46, Parliament-street, Westminster; Messrs. Nicholson and Son, Surveyors and Builders, Wandsworth; at the principal inns in the neighbourhood; and at the Auctioneer's Estate Agency Office, Kink-street, Richmond, Surrey.

Policy of Assurance, on a life of 87, in the Law Life Assurance Company, and Three Shares in the same prosperous establishment, a 100l. Share in Drury-lane Theatre; and Shares in Coupland's Patent for Improvements in Furnaces by the Consumption of Smoke. By Mr. JURY, at the AUCTION ROOMS, 28, Chancery-lane, on THURSDAY, JUNE 10, at 12 for 1, by directions of the Executors of John Close, Esq. deceased, in lots.

A POLICY of ASSURANCE in the Law Life Assurance Company (Fleet-street), effected in 1845, for 100l. on a life now of the age of 87, also the bonuses thereon, Three Shares, of 100l. each, in the same permanently established prosperous Company, a 100l. Joint-Stock or Proprietor's Share in the Theatre Royal Drury lane; and Six Twelfth Shares in Coupland's Patent for Improvements in Furnaces by the Consumption of Smoke, an important invention, more particularly since the recent Act of Parliament for providing for that very desirable object has come into operation.—Particulars may be had of J. W. Flower, Esq. Solicitor, 17, Gracechurch street; Messrs. Reed, Langford, and Marsden, Solicitors, Friday street; and Mr. Jury, Auctioneer, 20, King's Arms-yard, Coleman-street.

Law Library of about 800 vols. including Modern Reports, Works on Conveyancing, &c.—By Mr. JURY, at the AUCTION ROOMS, 28, Chancery-lane, on THURSDAY, JUNE 10, at Two Precisely (to follow the sale of Life Policy, &c. by direction of the executors of John Close, esq. deceased).

THE LIBRARY: including Barton's Conveyancing, Bythewood's Precedents, Adolphus and Ellis's Reports, Petersdorff's Abridgment, Law and Equity Reports, Cruise's Digest, Tidd's Practice, Sugden's Vendors, Williams's Extracts, and numerous other works in Chancery Practice, Wills, Conveyancing, &c., the Jurist, 1837 to 1841, Statutes at Large, from Magna Charta; State Trials, and other works.—To be viewed at the Sale Rooms the day prior and morning of sale, and catalogues had there, and of Mr. Jury, Auctioneer, 20, King's Arms-yard, Coleman-street.

For Investment or Occupation.—In Bankruptcy. Three Houses, Sydney-street, Brompton.

MR. FRED. GODWIN will SELL by AUCTION, at the MART, on FRIDAY, JUNE 4, at Twelve for One, by order of the Assignees, TWO well-built 10 roomed HOUSES, Nos. 37 and 39, Sydney street Fulham-road, very improving property; let to highly respectable tenants, at 45l. per annum each house; also No. 41, an eight roomed house, adjoining, with immediate possession—term from the free holder 73 years. Ground rents 6l. and 8l. per annum.—May be viewed by permission, and particulars had of H. H. Stansfeld, Esq. 76, Basinghall-street, Official Assignee; of Messrs. Dacey, 10, Billiter-square; of J. L. Witten, Esq. 48, Conduit street, Bond street; at the Mart; and at Mr. Godwin's Offices, 3, Halkin terrace, Belgrave square.

Preliminary Announcement.

MR. FRED. GODWIN has received instructions from the trustees for sale named in the will of Samuel Archbutt, sen. esq. of Oakley-square, Chelsea, deceased, to SELL at GARRAWAY'S, on WEDNESDAY, JUNE 23, in various lots, a valuable LEASEHOLD ESTATE, consisting of ground-rents of upwards of 300l. a year, arising out of houses of ample value, and a beer-house doing a large trade, and several well-tenanted shops and private houses, situate in Westbourne street and Caroline-street, Eaton-square, the whole of which are held direct from the Marquis of Westminster, at a nominal rent, for a term of nearly seventy years, full particulars of which will be announced in future advertisements.

MR. GODWIN has also received instructions to SELL by public AUCTION, at the same time and place, a FREEHOLD PRIVATE DWELLING HOUSE, situate No. 68, Hatton-garden (with possession), and other property, particulars of which will be shortly announced.—Auction Offices, 3, Halkin-terrace, Belgrave-square.

SALEM CHAPEL, WALHAM-GREEN, with possession.

MR. FRED. GODWIN will SELL by AUCTION, at the MART, on FRIDAY, JUNE 4th, at Twelve for One, by order of the Trustees, SALEM CHAPEL, WALHAM-GREEN, eligibly situate in a thickly populated suburb, within a short distance of Brompton, Chelsea, Kensington, &c. The building is of modern elevation, the interior fitted with pews and reading-desk, lighted by gas; together with a PLOT of GROUND, suitable for the erection of a minister's residence, or for general building purposes; the whole held for ...

Halkin-terrace, Belgrave-square.

HYDE-PARK, WESTBOURNE-TERRACE, UNIQUE MANSION.

MR. FRED. GODWIN will SELL by AUCTION at the MART, on FRIDAY, JUNE 4, at Twelve for One, by order of the Mortgagee, the GROUND LEASE (with possession) of the elegant MANSION, 68, Westbourne terrace, Hyde-park, situate on the western side of that fine pile of buildings, in substantial and ornamental repair, and ready for immediate occupation. It contains nine bed chambers and dressing rooms, the entire drawing-room floor forms a splendid picture gallery or salon 100 feet long, opening to conservatory, a noble dining room 30 feet by 20 feet, library 24 feet 6 in. by 17 feet 6 in. stone hall and stairs, suitable domestic offices, double coach-house, four-stall stable, and loose box in the rear.—The Mansion may be viewed, and particulars had, also of Messrs. King and Attwaters, Solicitors, 21, Earl street, Blackfriars, at the Mart; and at the Offices of Mr. Godwin, 3, Halkin-terrace, Belgrave-square.

UPPER BELGRAVE PLACE, PIMLICO, WITH POSSESSION.

MR. FRED. GODWIN will SELL by AUCTION, at the MART, on FRIDAY, JUNE 4, at Twelve for One, by order of the Proprietor, the modern RESIDENCE, No. 20, Upper Belgrave place, Pimlico, close to Eaton and Chester squares. It contains ten rooms, with front and back gardens, and is held for sixty-seven years from Lady Day 1851, at an apportioned ground rent of 6l. per annum.—May be viewed by cards, and particulars had of John Aitkens, Esq. Solicitor, 10, Lincoln's Inn-fields, at the Mart, and of Mr. Godwin, 3, Halkin terrace, Belgrave square.

...ortant Collection of Pictures, formed by a ... at Madrid.

MR. GREEN (28, Old Bond-street) has the honour to announce that he has received instructions to SELL by AUCTION at the AUCTION GALLERY, 21, Old Bond-street, on FRIDAY, JUNE 4, at Twelve a very important and valuable COLLECTION of PICTURES, formed during twelve years by an eminent connoisseur (painter in ordinary to Majesty the Queen of Spain), comprising some of the finest examples of

Caravaggio	Spagnoletti	Velasquez	Rubens
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and other celebrated painters, and a few Landscapes of the modern Spanish School. Mr. Green has great confidence in calling the particular attention of the nobility and gentry to these fine pictures, as, being in possession of their history, he is enabled to represent them as undoubted works of the above great masters of the old Spanish, Flemish, and Venetian schools, and the pictures being in precisely the same state in which they have just been received from Madrid the connoisseur will at once be satisfied of their originality.—May be viewed for three days preceding the sale; and Catalogues obtained at the Queen's Hotel, Liverpool and Manchester, the Adelphi Hotel, Leeds, *Midland Counties Herald* Office, Birmingham, and of Mr. Green, 28, Old Bond-street.

No. 7, BLOMFIELD ROAD, MAIDA HILL.—The elegant Modern Furniture.

MR. GREEN (28, Old Bond-street) has received instructions to SELL by AUCTION, on the PREMISES, 7, Blomfield-road, Maida-hill, on SATURDAY, JUNE 5, at Twelve, without reserve, the elegant modern FURNITURE, comprising for the drawing room, a carved rosewood suite of ... work, elegantly carved loo, occasional, and other tables, with needlework covers to correspond, winged cheffonier, cottage pianoforte, davenport, and elegant chimney glasses, mahogany telescope dining-table, set of chairs, and capital secretary bookcase, tapestry, Brussels, and other carpets, damask window curtains, ornamental bronzes, Parisian clocks and Bohemian glass, water-colour drawings, framed engravings of musical celebrities, china and glass, elegant Spanish mahogany, birch and japanned four-post and half-tester bedsteads, with Cashmere and damask hangings, excellent clean bedding, Spanish mahogany marble-top basin and toilet tables, cheval and dressing-glasses, winged wardrobe, chests of drawers, &c. the domestic appendages and usual appointments of an elegant villa residence.—May be viewed on Friday preceding the sale; and catalogues obtained of Mr. Green, Estate Agent and Auctioneer, 28, Old Bond-street.

CHIGWELL-ROW, ESSEX.—Excellent modern Furniture and Effects.

MR. GREEN (28, Old Bond-street) has been favoured with instructions from Captain Reynell to SELL by AUCTION, on the Premises, CHIGWELL ROW, on THURSDAY, JUNE 10, without reserve, the excellent modern FURNITURE, comprising suites in rosewood and Spanish mahogany for the drawing-room, dining-room and library, Brussels and other carpets and rugs, chimney-glasses, damask window hangings, excellent cottage pianoforte, by Oxtoman and Plumb, a cabinet pianoforte, china and glass, 200 volumes of books, superb Chinese cabinet and pair of tables to correspond, splendid jars, vases, antique bronzes, carvings, decorative objects, original drawings, 59 ornamental flower vases, and other items, brought by the proprietor direct from China and Japan, the furniture of the eight bed chambers, including Spanish mahogany winged wardrobe, chests of drawers, and marble-top basin and dressing tables; the contents of the domestic offices; valuable gray cob, bay mare, pair of ponies, elegant phaeton, pony gig, two cows, sow and store pigs, Chinese fowls, and other poultry, greenhouse plants, out-door articles, and numerous effects. May be viewed on Wednesday preceding the sale, and catalogues obtained of Mr. Alfred Savill, Estate Agent, at the King's Head, Chigwell; the principal Inns in the neighbourhood; and of Mr. Green, 28, Old Bond-street.

CHIGWELL ROW, ESSEX. Villa and Eight Acres, with valuable Right of Pasturage in Hainault Forest.

MR. GREEN (28, Old Bond-street) has been favoured with instructions from Captain Reynell to SELL by AUCTION, at GARRAWAY'S, on TUESDAY, JUNE 8, at One (if not previously disposed of by private contract) his admired RESIDENCE, at Chigwell row, comprising an elegant villa, standing in the centre of tastefully-disposed lawns and pleasure-grounds, with an adjoining paddock of 8 acres. This delightful residence is most ... , placed at a short distance from the road from which it is effectually screened; and commands a most extensive view of the course of the river Thames, the Kent hills, and the ... adjoining country, is in the midst of rural and picturesque home scenery, with fox-hounds and harriers in the immediate neighbourhood, and truly in one of the most delightful and healthy situations that can be found within so short a distance of London; being but eleven miles from the City, with omnibuses passing the entrance gate, and only four miles from the Ilford and Romford Stations. The villa contains accommodation for a moderate-sized family, with conservatory, coach-house, stabling, brew-house, laundry, cow-house, farm-yard, piggery, kitchen garden, and, in fact, every appendage that can possibly be desired upon a small and inexpensive scale; the whole property being remarkably compact, and comprising about 8 acres, held on lease for 25 years at a low rental. The furniture may be purchased by valuation, or it will be sold by auction, on the premises, on Thursday, June 10.—Printed particulars and cards to view may be obtained of Mr. Alfred Savill, Estate Agent, Chigwell; and of Mr. Green, 28, Old Bond-street.

CROOMS-HILL, GREENWICH.—Capital Freehold Residence.

MR. GREEN (28, Old Bond-street) has received instructions to SELL by AUCTION, at GARRAWAY'S, on WEDNESDAY, JUNE 16, if not previously disposed of, the capital substantial FREEHOLD FAMILY RESIDENCE, No. 15, Crooms-hill, Greenwich, overlooking the park, and within five minutes' walk of the railway station and steam-boat pier. This desirable residence is in an excellent state of repair, and contains entrance-hall, well proportioned dining, drawing, and morning rooms, ten bed chambers, two dressing rooms, and very convenient ... at Garraway's, and with cards to view of Mr. Green, Estate Agent and Auctioneer, 28, Old Bond-street.

HAMPSHIRE.—The Botleigh Grange Estate, within five miles of Southampton.

MR. GREEN (28, Old Bond-street) has been favoured with instructions to SELL by AUCTION, at GARRAWAY'S, on WEDNESDAY, JUNE 16, at One (unless previously disposed of), the exceedingly desirable and important FREEHOLD ESTATE of Botleigh Grange, consisting of a most substantial and elegant Elizabethan mansion, with all the appendages for the residence of a first-rate family, surrounded by well-arranged gardens and pleasure-grounds, approached by carriage-drives from the entrance lodges, and seated on a gentle eminence in the midst of a beautifully timbered and finely undulated park of about sixty acres, intersected by a trout-stream, forming itself in the centre of the park into a large and ornamental sheet of water. In addition to the park there are several fields of rich arable, and the estate comprises altogether about 190 acres, remarkably compact and beautifully wooded. This desirable property combines many undeniable advantages, and the situation is peculiarly favourable, being within five miles of Southampton, only a mile and a half from the Botleigh Station, and but two hours' journey from London.—Particulars may be obtained at Garraway's; and of Mr. Green, Estate Agent and Auctioneer, 28, Old Bond street.

CHELTENHAM.—Important Freehold Property, comprising about twenty acres, situate close to the town of Cheltenham, and being part of the Park Estate, presenting very eligible sites for building purposes.

MR. GREEN (28, Old Bond-street) has received instructions to SELL by AUCTION, at GARRAWAY'S COFFEE-HOUSE, on WEDNESDAY, JUNE 16, at One (unless in the mean time disposed of), a most desirable PROPERTY, possessing great advantages for investment as a building speculation for twenty villa residences, or for the erection of a mansion, in the midst of delightful grounds, laid out with the greatest taste by an eminent landscape gardener, comprising a broad gravel esplanade, meandrous walks, well-grown flowering shrubs, ornamental timber, and a beautiful sheet of water, well sheltered by the distant hills, and almost in the heart of the fashionable town of Cheltenham, together with a small elegant Villa of the Italian style of architecture at the entrance, and a substantial building, intended for stables, erected at a considerable outlay, and which might be easily converted into a residence. The attention of capitalists is specially invited to this property, which presents peculiar advantages.—Particulars may be obtained of G. O. Payne, Esq. Tivoli, Cheltenham; Mr. Howard, Solicitor, Cheltenham; the principal hotels at the same place; at Garraway's; at Mr. Green's Offices, 28, Old Bond-street, and upon personal application at the Royal Insurance Company's Offices, Royal Insurance-buildings, Liverpool.

BRENT LODGE, FINCHLEY.—An elegant modern Residence, and nearly 25 acres of Pleasure-Grounds and park-like Land, 5½ miles from the Regent's-park, 8 from the City, and 2½ from a Station on the Great Northern Railway.

MR. GREEN (28, Old Bond-street) has received instructions to SELL by AUCTION, at GARRAWAY'S, on WEDNESDAY, JUNE 16, at One (unless previously sold), the admired ESTATE of BRENT LODGE, most pleasingly situate in the salubrious and rural village of Finchley, and comprising one of the most recherché abodes for a family of taste and fortune within its distance of the metropolis. It was erected a few years since, under the superintendence of an eminent architect, and decorated in a remarkably chaste and elegant style. It is approached by two entrance lodges and carriage-drives, and is seated in very pleasingly arranged grounds and well timbered park-like land, the whole amounting to about twenty-five acres, twelve being freehold, and the remainder leasehold, at a moderate rent. The offices farm, and outbuildings, are on the most approved plan, and the whole property is in the highest possible order. Particulars may shortly be had of Messrs. Evans and Clode, Solicitors, 2, Gray's-inn-square; of Anthony Salvin, Esq. Architect, 30, Argyle-street, Regent street; at Garraway's; and of Mr. Green, Estate Agent and Auctioneer, 28, Old Bond-street.

CHIGWELL, ESSEX.—Desirable small Copyhold Estate.

MR. GREEN (28, Old Bond-street) will SELL by AUCTION, at GARRAWAY'S, on TUESDAY, JUNE 8, at One (if not previously disposed of by private contract), a desirable small COPYHOLD PROPERTY, known as BROOM HILL COTTAGE, very pleasantly situate on the high road, at the entrance of the rural village of CHIGWELL, only eleven miles from town; with neat garden, a rich meadow, and a small slip of ground, containing altogether about two acres, commanding a very valuable and extensive frontage to the road.—Printed particulars may be obtained at the King's Head, Chigwell; at Garraway's, of R. Buchanan, Esq. Solicitor, 1, Walbrook-buildings, City; and, with cards to view, of Mr. Green, Estate Agent and Auctioneer, 28, Old Bond street.

QUEEN-SQUARE, BLOOMSBURY.—Freehold Residence, with Stabling.

MR. GREEN (28, Old Bond-street) has been favoured with instructions to SELL by AUCTION, at GARRAWAY'S, on WEDNESDAY, JUNE 2, at One (if not in the meantime disposed of by private contract), the capital substantially built FREEHOLD FAMILY RESIDENCE, No. 23, Queen-square, Bloomsbury, in the best part of this desirable and central situation, with large garden in the rear, communicating with excellent leasehold stabling in Greville-mews, with spacious stable-yard: the whole premises being of the estimated value of 300l. per annum, and presenting a singularly desirable opportunity for residence or investment.—Particulars may be obtained at Garraway's; of Brooke Turner, Esq. Solicitor, 1, Red Lion square; and of Mr. Green, Estate Agent and Auctioneer, 28, Old Bond-street.

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	Whole Life Premiums			Whole Life Premiums	
	£ s d	£ s d		£ s d	£ s d
10	1 7 6	1 5 4	46	3 11 6	3 3 2
14	1 9 3	1 7 0	50	4 1 0	3 13 3
16	1 11 3	1 8 10	53	4 11 6	4 2 6
20	1 14 4	1 11 6	56	5 4 0	4 14 0
23	1 17 0	1 13 8	60	6 6 0	5 12 6
26	2 0 3	1 16 2	63	7 4 0	6 9 6
*30	2 5 0	1 19 9	66	8 4 0	7 10 8
	2 8 6	2 2 10	70	10 0 4	9 7 6
	2 13 0	2 6 4	74	11 16 2	11 2 6
					13 1
	3 4	2 17			15 12 10

* EXAMPLE —A gentleman whose age does not exceed 30, may insure 1,000*l* payable on his decease by an annual payment of 22*l* 10s, and a lady of the same age secure the same sum for an annual payment of 19*l* 17s 6d

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Important Sale of Long Leasehold Properties, situate on the Paddington Estate.—St. John's-wood and Milton-street, Dorset-square.

MR. GEORGE DEEKS begs to announce that he is instructed to submit for SALE by AUCTION, at the MART, on TUESDAY, JUNE 8, at Twelve for One precisely, in lots, THREE eligible private DWELLING-HOUSES, with gardens front and rear, most desirably situate, being Nos. 14, 22, and 23, Victoria-terrace, in Richmond-road, Westbourne-grove, Paddington, let at rentals amounting to 120l. per annum; the lease of which will be granted direct from the freeholder. Two compact Dwelling-houses with shops, also six capital Coach-houses and Stables, situate in Eastbourne-mews, at the rear of Eastbourne-terrace, Paddington, let at rentals amounting to 208l. per annum. A most desirable semi-detached Villa Residence, with a good garden known as Oxford Villa, situate in the Queen's-road, St. John's-wood, let at 52l. 10s. per annum. Also a capital private Dwelling-house, situate and being No. 24, Milton street, Dorset-square, let at 60l. per annum. The whole of the above properties are held for long terms at low ground rents. To be viewed by permission of the tenants only.—Printed particulars and conditions of sale to be had at the office of the Estate, Talbot-road, near Richmond road, where the draft leases may be inspected; at the Eyre Arms, St. John's-wood; at the Auction Mart; and at Mr. George Deeks's Auction and Estate Agency Offices, 26, Albion street, Hyde-park-square.

KING'S-ROAD, CHELSEA.—Eligible Leasehold Property for Investment.

MR. GEO. DEEKS begs to announce that he is instructed to SELL by AUCTION, at the MART on TUESDAY, JUNE 8, at Twelve for One precisely, in one lot, EIGHT capital brick built DWELLING-HOUSES (one with shop), of neat elevation, and small gardens at the rear, situate and being Nos. 1 to 8 (inclusive), Jubilee-place, King's-road, Chelsea, held on lease for a term of about 30 years unexpired, at a low ground-rent; and let to respectable tenants, producing rentals amounting to 227l. per annum. The property may be viewed by permission of the tenants. Printed particulars and conditions of sale to be had of H. H. Hallett, Esq. Solicitor, 58, Lincoln's-inn-fields; at the Commercial-hall, King's-road, Chelsea; at the Mart; and at Mr. Deeks's Offices, 26, Albion-street, Hyde park-square.

Improved Ground Rent.

MR. GEO. DEEKS begs to announce that he will SELL by AUCTION, at the MART, on TUESDAY, JUNE 8, at Twelve for One precisely, an IMPROVED GROUND RENT of 60l. per annum, well secured on very eligible property, in Ledbury road, Bayswater, for a term of 98 years unexpired. Particulars and conditions of sale to be had, ten days prior to the sale, at the Pembridge Castle, Ledbury-road, Bayswater; at the Mart; and at Mr. Deeks's Offices, 26, Albion-street, Hyde park square.

PADDINGTON. A most desirable long [illegible] Residence [illegible] Investment.

MR. GEO. DEEKS begs to announce that he is instructed to SELL by AUCTION, at the AUCTION MART, on TUESDAY, JUNE 8, at Twelve for One, precisely, a substantially erected brick-built DWELLING-HOUSE, of attractive elevation, with fore court, and garden at the rear, and most cheerfully situate, being No. 4, Alexander-terrace, Westbourne-park-road, Paddington, held on lease for a term of ninety seven and a-half years unexpired, at a low ground rent, and let to a highly respectable tenant, at a rental producing a clear income of about 45l. per annum. May be viewed by permission of the tenant.—Printed particulars and conditions of sale to be had of Messrs. Rhodes, Lane, and Rhodes, Solicitors, 63, Chancery-lane; at the Princess Royal, Westbourne-grove; at the Auction Mart; and Mr. Deeks's Offices, 26, Albion-street, Hyde-park-square.

KENSINGTON PARK and HARROW-ROAD.—Eligible long Leasehold Properties, for Investment or Occupation.

MR. GEO. DEEKS is instructed to SELL BY AUCTION, at the MART, opposite the Bank of England, on TUESDAY, the 8th of JUNE, at Twelve for One o'Clock precisely, in Five Lots, FOUR very eligible DWELLING-HOUSES, with commanding SHOPS, most desirably situate, and being Nos. 2, 3, 4, and 5, Ladbroke-gardens East, Kensington Park, Notting hill, which will produce 180l. per annum. Also, a capital PRIVATE RESIDENCE, with fore-court and garden at the rear, and back entrance thereto, situate and being No. 10, Carlton terrace (near the toll gate), Harrow-road, let to a respectable tenant at the very low rent of 35l. per annum. Held under separate leases for near ninety nine years unexpired, at low ground-rents. The premises may be viewed (the private house by permission of the tenant).—Particulars and conditions of sale to be had at the Pembridge Castle, Ledbury-road, Westbourne grove, Bayswater; at the Mart; and at Mr. Deeks's Offices (where the draft leases may be inspected), 26, Albion-street, Hyde Park-square.

[illegible]luable Freehold Property, West Cheam, in the county of Surrey, distance about three miles from Epsom, and within five minutes' walk of the Cheam Station on the Epsom direct line. A delightful Freehold Estate, situate in this charming, picturesque, and healthy village, by which the property is surrounded.

MR. J. CAIN is favoured with instructions to SELL by AUCTION, by order of the proprietor (unless previously disposed of by private contract), at the MART, on WEDNESDAY, JUNE 24, at Twelve for One, all that truly valuable and important ESTATE, known as CHEAM HOUSE. This eligible property is surrounded by a ring fence, every portion of which presents a road frontage, thus affording a rare and almost unequalled opportunity for building speculation in a locality where villas are so much desired and sought for, but not to be obtained. The small capitalist or spirited purchaser can here insure a safe investment. To mercantile gentlemen, whose avocations call their daily attendance in London, and, above all, the great advantage of locating their families in a pure and healthy air, blended with the very easy access to the metropolis, the village of Cheam must be acknowledged as a highly favoured spot. The substantial mansion is well calculated for the reception of a family of distinction, one wing of which has, within a very few years, been built at a great outlay, under the direction of a first rate architect. The residence contains, on the upper floor, six good bed-chambers; on the first floor are two noble bow bed-rooms, each 25 feet by 18 feet, three others, severally 23 feet by 15 feet, 19 feet by 12 feet, and 16 feet by 15 feet, three other rooms of less magnitude, two dressing-rooms, large nursery bed-room, water-closet, and morning drawing room. On the ground floor will be found a noble entrance hall, large dining-room, 28 feet by 17 feet, octagon drawing room, 20 feet by 20 feet, ante drawing-room, 25 feet by 18 feet, study or breakfast room, and a small sitting-room. The principal reception-room communicates with the extensive and beautifully timbered lawn by a flight of stone steps. The offices are numerous, and judiciously arranged for every possible domestic comfort and convenience, a detached stable-yard, with coach houses for three carriages, and excellent stabling for five horses, with lofts, three bed-rooms, and one sitting-room [illegible]. The grounds comprehend [e]xtensive walled kitchen-garden [w]ell cropped and stocked, a beautiful verdant lawn, tastefully adorned with splendid [timber] and flowering shrubs, and a fancy meadow—in all averaging nearly seven acres, all parts of which are well adapted for building purposes, and affording to each villa an adequate proportion of ground.

Plans and particulars are in preparation, which may be had of Messrs. Gregson and Kewell, Solicitors, Angel-court, Throgmorton-street; J. B. Watson, Esq. Surveyor, 39, Manchester street, Manchester-square; on the premises, West Cheam; at the Mart; at the principal inns; and at the Auctioneer's Estate Offices, Richmond, Surrey. The estate may be viewed at any time on application to Mr. Brown, the gardener, on the premises.

Five Dwelling Houses, situate at Stepney, Mile-end, and Walworth; each House a lot suitable for occupation.

MR. MOORE will SELL by AUCTION, at the MART, on THURSDAY, JUNE 10, at Twelve, a 7-roomed House, No. 40, King-street, Stepney, let at 24l.; term, 60 years; ground-rent, 4l. Two 7-roomed Houses, Skidmore-street, Mile-end, let at 20l. each; term 61 years, ground-rent, 2l. 10s. Two Houses, 12 and 13, Beresford-terrace, Beresford street, Walworth-road, let at 23l. each; term 51 years; ground-rent, 3l.—May be viewed, and particulars had at the Inns near the Properties; of Messrs. Sheffield, 68, Old Broad-street; at Mercers' Hall; at the Mart; and at the Auctioneer's Offices, Mile-end-road.

Seven Leasehold Estates, producing 768l. per annum, in ten lots, admirably adapted for the profitable investment of capital.

MR. MOORE will SELL by AUCTION, at the MART, on THURSDAY, JUNE 10, at Twelve, Ten Houses, in the Grove, Homerton; let at 132l.; term, 71 years, ground-rent, 22l. 10s.; also Twenty Houses, Butcher-row, Old King-street, Deptford; let at 180l. per annum; term, 12 years; ground-rent, 45l. 10s.; Four Houses, Margaret street [illegible]; let at 86l.; term, 42 years; ground-rent, 13l. Four Houses, William-street, Mile-end; let at 73l.; term, 93 years; ground-rent, 11l. Eleven Houses (two with shops), Morpeth-road, Victoria park; let at 183l., term, 74 years; ground-rent, 20l. 15s. Nine Brick-built Cottages, Wanstead-flats, Forest-gate; let at 94l.; term, 90 years; ground-rent, 21l. and an Improved Rent of 10l. 13s. 9d. well secured on a house in Alfred-street, Stepney, for 20 years, and reversion of 40 years, remainder of term.—May be viewed and particulars had at the inns near the properties; of Messrs. Madox and Wyatt, 30, Clement's-lane, City; at the Mart; and at the Auctioneer's Offices, Mile-end-road.

BEDFORDSHIRE. Important and valuable Freehold Estate, known as Sandy place, comprising a substantial brick-built Mansion, with Park, Pleasure grounds, and Offices, capital Water Corn-mill, with Residence, [se]veral Farms and Homesteads, [illegible] Houses and Cottages in the village of Sandy, eligible and beautiful Building Sites, and valuable Garden and Accommodation Lands, the whole including about 1,500 acres of most fertile land, in a fine sporting country.

MR. BEADEL has been favoured with instructions to SELL BY AUCTION, at the MART, LONDON, [on] TUESDAY, JUNE 29, in forty lots, the highly important FREEHOLD and MANORIAL ESTATE of SANDY PLACE, situate at Sandy, in the county of Bedford, where there is a station on the Great Northern Railway, within eight miles of the town of Bedford, three of Biggleswade, fourteen of Huntingdon, and little more than one hour's ride from the metropolis. This property includes a fine old family mansion, with offices, pleasure-grounds, and gardens, most delightfully placed in a park studded with noble tre[es], close to the church and village of Sandy, but completely [enc]losed and screened by belt[s] of plantatio[n], and partially bounded by a branch of the river Ivel, also a valuable corn-mill, with excellent head of water, stone built residence and offices, comprising altogether about 85 acres. Several farms, with homesteads and agricultural buildings, extensive covers, ornamental plantations, and woods, containing about 1,000 acres, and forming a first-rate landed investment. Detached fields and accommodation lands surrounding the village, several houses and cottages, the Stone Axe Inn, and various plots of eligible building ground. The whole is freehold, and all tithe free excepting about 40 acres, which are subject to a corn rent.

This estate offers in[illegible]ections to [illegible] [ge]ntleman fond [illegible] [illegible] Oakle[y] [illegible] of Mr. Race's celebrated pack of harriers. The covers [and] plantations on the estate afford first rate partridge and pheasant shooting, and the game has been carefully preserved. The [p]rivate stream, which partly bounds the park, and the river Ivel, both well stocked with fish, afford ample opportunity for boating, fishing, and other aquatic sports. On part of the estate are quar[ries of] stone obtained from which is suited for building purposes and has been used in erecting churches and bridges in the neighbourhood. The quality of the soil is superior, a large portion being garden ground, which has long been celebrated for supplying the metropolis and manufacturing districts with cucumbers and every description of vegetable produce, for the transit of which the railway offers great facilities. Particulars may be obtained of Messrs. J. C. and H. Freshfield, New Bank-buildings, Lothbury; of Messrs. Wordsworth and Dunn, 32, Threadneedle street; of Messrs. Cole, Adelphi terrace, London; of Messrs. Blood and Douglas, Witham, Essex; of Mr. Tilcock, at Sandy; and of Mr. Beadel, 25, Gresham-street, London, where alone cards to view may be had.

SANDY, BEDFORDSHIRE.—A desirable Property, Freehold and great-tithe free, situate in this favourite locality, being only eight miles from the county town of Bedford, fourteen from Huntingdon, and, by the Great Northern Railway, little more than an hour's ride from London.

MR. BEADEL is directed to SELL BY AUCTION, [at the] MART, LONDON, on TUESDAY, JUNE 29, at Twelve, [in] three lots, an eligible FREEHOLD PROPERTY, including [a r]esidence, with shop, in the village of Sandy, occupied as the post office, together with a capital small farmery in the rear; also, Buntings field, now intersected by the Great Northern Railway, containing 21a. 2r. 18p. of very productive land in a high state of cultivation; the whole let to Mr. Wm. Tilcock, a yearly tenant, at 67l. per annum.—Particulars may be obtained of Messrs. J. C. and H. Freshfield, New Bank-buildings, Lothbury; of Messrs. Wordsworth and Dunn, 32, Threadneedle street; of Messrs. Cole, Adelphi terrace, London; of Messrs. Blood and Douglas, Witham, Essex; of Mr. Tilcock, at Sandy; and of Mr. Beadel, 25, Gresham-street, London, where alone cards to view may be had.

Amply secured Freehold Investments of 152l. per annum, in the Strand, and Wych-street, Drury-lane.

MR. GEO. HAINES announces for SALE by AUCTION, at GARRAWAY'S, on MONDAY, JUNE 7, at Twelve o'clock, in Two lots by direction of the Trustees of the late Thomas Turton Pearson, esq. deceased, TWO valuable FREEHOLD BUSINESS PREMISES, in the possession of most responsible tenants, on lease for sixteen years, at very low rents, amounting to 152l. per annum, most desirably situate, No. 310, Strand, in the densely crowded thoroughfare, close to St. Mary's Church; and No. 55, Wych street, Drury-lane, opposite the Olympic Theatre.—May be viewed by permission of the tenants, of whom particulars may be obtained; also at the place of sale; of Messrs. Clutton and Ade, Solicitors, 48, High street, Southwark; and at the Auctioneer's Offices, Grosvenor street West, Eaton square, and 12, High street, Kensington.

To Capitalists and Building Societies.—Ground-Rents and Houses, Walworth.

MR. GEO. HAINES will SELL by AUCTION, at GARRAWAY'S, on MONDAY, JUNE 7, at Twelve, in one lot, by direction of the Executrix, SIX DWELLING HOUSES and BUSINESS PREMISES, and Ground-Rents, held for 33½ years, producing a rental of 128l. per annum, comprising 28 and 29, Amelia street, Walworth; 1, 2, and 3, Church-street; and the ground-rents of 43 and 44 Amelia street, and four houses in Amelia place, Walworth, adjoining the Kent road and the Surrey Zoological Gardens. The whole held at a small rent-charge.—May be viewed. Particulars had on the Premises; at the place of sale; of T. F. Cars[illegible], Esq. Solicitor, 18, Essex-street, Strand; of Messrs. Loveland and Tweed, Solicitors, Lincoln's-inn fields; and Shawfield Cottage, King's road, Chelsea; of G. Bro[illegible], Esq. 21, Finsbury-place; and at the Auctioneer's Offices, Grosve[nor]-stre[et] west, Eaton square, and 12, High-stre[et], [Ke]nsington.

GROUND-RENT. Capital Leasehold Investments, and a Reversion to a sum of 2,000l.

MR. W. H. HEWITT has received instructions from the Executors of the late Mr. DAVIS to SELL by AUCTION, at the Mart, on THURSDAY, JUNE 10, 1852, at Twelve o'Clock, in four Lots,—A FREEHOLD GROUND RENT, of 40l. per annum, secured upon Houses adjoining Wilson-street, Finsbury; a capital LEASEHOLD RESIDENCE, being No. 16, Westbourne place, Eaton-square, held for a long term, at a small ground-rent, and let to an excellent tenant, for a period of which upwards of three years are unexpired, at a rent of 70l. per annum; TWO SEMI-DETACHED RESIDENCES, being Nos. 27 and 28, North Bank, Regent's-park, held for a long term, at a low ground-rent, and let at rents amounting together to 70l. per annum; and the ABSOLUTE REVERSION to the sum of 2,000l. receivable on the death of a gentleman now in his 64th year.—Particulars and conditions of sale may be had at the Mart; of Charles Berkeley, Esq. 52, Lincoln's-inn fields; and at Mr. Hewitt's Offices, 11, Hart-street, Bloomsbury-square, London.

GROVE-HOUSE, LYMINGTON, HANTS.—Freehold Family Residence, with Pleasure Grounds, Garden, rich Meadow Land; with possession; admirably adapted for a gentleman fond of yachting.

MESSRS. MANSELL and ELLIOTT are instructed to SELL by AUCTION, at the AUCTION MART, London, on WEDNESDAY, JUNE 9, a highly desirable FREEHOLD ESTATE, comprising an excellent and most substantial family residence, known as Grove-house (late the residence of Lady Hussey Bickerton, deceased), very beautifully situate close to the town of Lymington, having a southern aspect, and commanding very charming and extensive views of the Solent Sea and the Isle of Wight, with excellent four stall stables, coach-houses, and other outbuildings, very productive gardens, greenhouse, shrubberies, and very superior meadow land, altogether about 4½ acres. The residence is in first-rate state of repair, is approached by a handsome portico, and contains spacious dining, drawing, and breakfast rooms, library, twelve good bedchambers, water-closets, and convenient servants' offices. The premises are admirably arranged, and abundantly supplied with excellent water. The locality is the most salubrious on the western coast, abounding with charming drives, is in the midst of first-rate society, and from its proximity to the Solent Sea (affording safe anchorage for yachts in all weathers), is peculiarly adapted for the abode of a gentleman fond of yachting.—For printed descriptive particulars and orders to view, apply to Messrs. Moore and St. Barbe, Solicitors, Lymington; J. A. M. Pinniger, Esq. 5, Raymond's-buildings, Gray's-inn; and to Messrs. Mansell and Elliott, Auctioneers and Land Agents, 13 a, Belgrave square, London, where a view of the residence may be [seen].

HAMPSHIRE. The Bramshaw Hill Estate, one of the most delightful Residential Properties in the New Forest (on the borders of Wilts), within four hours' journey of London.

MESSRS. MANSELL and ELLIOTT are favoured with instructions to SELL by AUCTION, at the AUCTION MART, London, on WEDNESDAY, JUNE 9 (unless acceptable offer shall be previously made by private treaty), the [val]uable FREEHOLD ESTATE, lying in a ring fence, most delightfully situate, near the picturesque village of Bramshaw, close to, and with rights in, the New Forest, and comprising an excellent gentlemanly residence (which is a substantial and uniform structure), with superior and well-arranged stabling, offices, and out-buildings of every description, bailiff's cottage, an abundant supply of water, pleasure-grounds, lawn, shrubberies, extensive walks, walled gardens, hot-house and green-house, with vines in full bearing, and orangery, the whole surrounded by a park of 65 acres of pasture-land, beautifully adorned by choice and stately timber, and bounded on one side by the high road from Southampton to Salisbury. The residence, which is well placed on an eminence with a south aspect, in the centre of the estate, commanding varied and extensive scenery, is approached through the park by a carriage drive, with lodge entrance. It is surrounded by good roads, a beautiful and healthy neighbourhood, and excellent society, and is in the centre of the meets of hounds, and there is a church and post office near. It is distant from Lyndhurst five miles, Redbridge six, Southampton ten miles, and within a pleasant drive of the Redbridge and Romsey Railway Stations.—Printed particulars, with plans, may be had, in due time, of F. Dowding, Esq. Solicitor, 15, Vineyards, Bath; at the Dolphin Hotel, Southampton; Angel Hotel, Lymington; King's Arms, Dorchester; White Hart, Salisbury; at the Auction Mart; and at the offices of Messrs. Mansell and Elliott, Land-agents, Auctioneers, and Surveyors, 13 a, Belgrave-square, London, where orders to view may be had, and a view, with plan, can be seen.

EALING PARK, MIDDLESEX.—Long Leasehold Villas, for investment or occupation, in this much-admired and healthy locality, only twenty minutes from town by rail.

MESSRS. BULLOCK will SELL, at the AUCTION MART, on THURSDAY, the 17th inst. at Twelve for One o'clock, in two lots (unless previously disposed of), PARK VILLAS, EAST and WEST, a pair of gentlemanly semi-detached residences, charmingly situate, with front and back gardens, well drained, and abundantly supplied with hard and soft water. The title is most clear and simple, the premises being held by separate leases direct from the freeholder, for ninety-seven years unexpired, at ground-rents of 6l. 16s. 10d. each, land tax redeemed. May be viewed by permission. Particulars of Messrs. Bullock, 211, High Holborn; Mr. Steele, 1, Lincoln's-inn-fields; and Messrs. Murray, Rymer, and Murray, 7, Whitehall-place, Solicitors; also of Mr. Amor, and of Mr. Webb, plumber, at Ealing.

Eligible long Leasehold Investment, Camberwell, Surrey.

MESSRS. BULLOCK are directed by the Trustees to SELL at the AUCTION MART, on THURSDAY, the 17th inst. at Twelve for One o'clock, in one Lot, A PAIR of BRICK-BUILT GENTEEL SMALL RESIDENCES, conveniently arranged, and abundantly supplied with water, with Gardens and Forecourts, Nos. 1 and 2, Durham Cottages, Leipsic-road, a few minutes' walk from the Camberwell high road; now and for the last five years occupied by Mr. Schroeder and Mr. Ackrill, yearly tenants, at 26l. per annum each. Held for fifty-four years unexpired at Midsummer next, at an apportioned rent of 6l. Land-tax redeemed.—May be viewed by permission. Particulars at the Mart; of Messrs. Bullock, 211, High Holborn; and of Mr. Ralph Docker, Solicitor, Birmingham.

IMPORTANT LANDED PROPERTY.—Upwards of 1,000 Acres.—FELTWELL, NORFOLK. TO BE SOLD by PRIVATE CONTRACT, a most desirable FREEHOLD and LEASEHOLD ESTATE, late the property of Mr. Wm. Nurse, deceased, comprising about 584 acres of capital land, principally arable, with two respectable freehold farmhouses, barns, stables, and outbuildings, and 488 acres of excellent fen land (the greater part of which has been clayed) under a complete drainage, with house and necessary farm-buildings. The leasehold is held under a reasonable lease from the Master and Fellows of Christ's College, Cambridge, twenty years of which were unexpired at Michaelmas last. Also, the Manor of East Hall, in Feltwell, with the rights and privileges to the same belonging. [The]re is excellent shooting over the above property, the neighbourhood abounding with game, and the Estate is situate within three miles of the Lakenheath, and five miles of the Brandon Station, on the Eastern Counties and Norfolk Railway.—For further particulars apply to Mr. Geo. Nurse, the Lodge, Feltwell; Messrs. Manson and Tattersall, Land Agents, Clare and Newmarket; or to Mr. Edmund Tattersall, Hyde-park-corner, London.

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THE LAW TIMES,

FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

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MR LAHEE, at the MART, on THURSDAY, the 17th, at Twelve for One, the UNEXPIRED TERM of EIGHT YEARS, from Midsummer, 1852 wanting twenty-one days, at 17l 13s per annum, with privilege of renewal, of a comfortable family-house, being 8, Bentinck street, Cavendish square, consisting of three upper bed-rooms, two principal bed-rooms, dressing room, and water-closet, two drawing-rooms of handsome proportions, with folding-doors, dining-room, breakfast-room, good entrance, kitchen, scullery, footman's pantry, detached washhouse, coach house, stable, &c The coach house and stable is let at 20l per annum —May be viewed, and particulars had at the Mart, on the premises, of Messrs. Burgoynes, Thrupp, and Clarke, Solicitors, 160, Oxford street, and at Mr. Lahee's (only) Offices, 65, New Bond-street.

To Gentlemen, Private Families, Wine and Spirit Dealers.—3,000 dozen of old bottled Port, Sherry, Wines, consisting principally of the choice vintages of 1820, 1834, 1840, and 1842, and of the shipments of Thompson and Croft, Company, Omerod, Fonseca Bruno Silva, Gonzalez Dubosq, Garvey, and others.

MESSRS. HAINES and SON have instructions from the proprietor, retiring from the trade, and in consequence of the purchaser of the premises having a large and well-selected stock of his own, to SUBMIT to PUBLIC AUCTION, in the extensive vaults of the Cross Keys Tavern, 1, Blackfriars-road, foot of the bridge, on WEDNESDAY, JUNE 16, and following day, commencing at eleven for twelve precisely, the immense and well selected STOCK of about 3,000 dozen old BOTTLED PORT, Sherry, Claret, Champagne, and other wines now lying in the vaults of the above establishment. On show, by order from the Auctioneers, one week prior to the sale. Sample bottles on the usual terms Catalogues to be had on the premises, or at the Auctioneers' Offices, 38, Moorgate-street, City.

Excellent Freehold Investment in that desirable business locality, Hatton-garden.

MR. FRED. GODWIN has been instructed to SELL by AUCTION, at GARRAWAY'S, on WEDNESDAY, JUNE 23, at One, an excellent FREEHOLD FAMILY DWELLING HOUSE, 62, Hatton garden, containing fourteen rooms, and well adapted for a professional residence or for offices, having a frontage of 23 feet 2 inches, and measure in depth from east to west 100 feet or thereabouts, of which immediate possession may be had.—May be viewed, and particulars and conditions of sale had of Messrs. Archbutt and Kays, Solicitors, 13, Furnival's-inn, Holborn, at Garraway's, and of the Auctioneer, 3, Halkin-terrace, Belgrave-square.

GOWER-STREET —Ground Lease, direct from the Duke of Bedford.

MR. FRED. GODWIN has received instructions from the Executor of William Liddiard, esq deceased, to SELL by AUCTION, at the MART, on THURSDAY, JULY 1, the GROUND LEASE of the substantial FAMILY RESIDENCE with coach house and stables, No 74, Gower-street, held for a term of 28 years, at 9l 18s. ground-rent. The house is well adapted for professional purposes, having three rooms on the ground floor and plate glass windows —May be viewed on application to J F Weymouth, Esq 8, Gower street, and particulars had at the Mart, and at Mr Godwin's Offices 3, Halkin-terrace, Belgrave square.

Eligible Leasehold Investment, at Chelsea.

MR. FRED. GODWIN is instructed by the Trustees of the Pimlico Building Society, under a power of sale contained in a mortgage, to SELL by AUCTION, at GARRAWAY'S, on WEDNESDAY, JUNE 23, at One, a capital LEASEHOLD MESSUAGE, being No. 17, Radnor-street, King's-road Chelsea, containing eight rooms; let to a respectable tenant, at the low annual rent of 22l.; held for a term, whereof 60 years are unexpired, at a ground rent of 6l. The house may be viewed, and particulars and conditions of sale had of Messrs. Archbutt and Kays, Solicitors, 13, Furnival's-inn, Holborn; at Garraway's; and of the Auctioneer, 3, Halkin-terrace, Belgrave-square.

STOCKWELL, SURREY.—Two capital newly-built Cottages, held for a term of ninety-three years and a quarter.

MR. FRED. GODWIN is instructed by the Proprietor to SELL by AUCTION, at GARRAWAY'S, on WEDNESDAY, JUNE 23, at One, in one lot, TWO capital LEASEHOLD COTTAGES, known as Nos 11 and 12, East Cottages, Wellington road, Stockwell, near the Bedford Arms, of the estimated annual value of 40l. and subject to a ground-rent of 10l. per annum, held for a term whereof 93¼ years are unexpired. The fixtures will be included in the purchase. The premises possess a frontage to Wellington-road of 40 ft. 9 in.—May be viewed, and particulars and conditions of sale had of Messrs. Archbutt and Kays, Solicitors, 13, Furnival's-inn, Holborn; at Garraway's; and of the Auctioneer, 3, Halkin-terrace, Belgrave-square.

KENSINGTON PARK, NOTTING-HILL.—For Investment or Occupation.

MR. FRED. GODWIN will SELL by AUCTION, at the MART, on THURSDAY, JULY 1, by order of the Executor of William Liddiard, esq No. 13, Ladbroke-terrace, a commodious FAMILY HOUSE, built in the villa style, semi detached, with enclosed fore-court and plantation, and garden in the rear, 300 feet deep Term, seventy years; ground-rent, 10l. 10s. Also, No 2, Park Villas, Clarendon-road, of similar style, but lesser pretensions, with garden and back entrance. Term, eighty five years; ground-rent, 12l.—The house may be viewed (No. 13 from the 17th to the 27th) between the hours of Eleven and Three, and particulars had at the Castle-inn, Notting-hill; of J F. Weymouth, Esq 8, Gower-street, Bedford-square, at the Mart, and of Mr Godwin, 3, Halkin-terrace, Belgrave square.

Valuable Leasehold Ground Rents of upwards of 300l. per annum, arising out of property in Westbourne-street, and Caroline-street, Pimlico, yielding a rental of upwards of 1,300l per annum; also a Free Beerhouse, No. 14, Westbourne-street; a Butcher's Shop, No 5, Westbourne-street; and Seven Private Houses in the same street.

MR. FRED. GODWIN has received instructions from the Trustees for Sale under the will of Samuel Archbutt, esq sen deceased, to SELL by AUCTION, at GARRAWAY'S, on WEDNESDAY, JUNE 23, at One precisely, in 18 lots, a Valuable LEASEHOLD ESTATE, consisting of ground rents, amounting to 322l. per annum, amply secured upon well tenanted property in Westbourne street and Caroline-street, Pimlico; also a Free Beerhouse, No 14 Westbourne street, at the corner of Caroline street, a Butcher's Shop, No 5, Westbourne-street, in the occupation of Mr Blore, and Seven Private Dwelling Houses, viz: Nos 7, 8, 9, 10, 11, 12, and 14, Westbourne-street; the whole of which is held direct from the Marquis of Westminster, at the nominal rent of 8l per annum for the whole, for a term of which sixty nine years were unexpired at Lady-day, 1852 May be viewed by permission of the tenants, ten days prior to the sale Particulars and conditions of sale may now be had of Messrs. Archbutt and Kays, Solicitors, 13, Furnival's-inn, Holborn; at Garraway's; and at Mr Godwin's Offices, 3, Halkin-terrace, Belgrave-square.

Freehold Building Land, on the Croydon Line of Railway.

MESSRS. WINSTANLEY are instructed to SELL by AUCTION, at the MART, on TUESDAY, the 15th day of JUNE, in Four Lots, SIXTEEN ACRES of FREEHOLD BUILDING LAND, Land-tax redeemed, and free from great tithe, most delightfully situate between Croydon and Woodside Green, and within ten minutes drive of the Norwood Station on the Croydon Railway The Property commands varied views of extent and beauty, offering the most eligible opportunity for a building speculation —To be viewed by applying to Mr Skidmore, farmer at Woodside Green (near to the property), of whom particulars, with plans annexed, may be obtained. particulars may also be had of Messrs. Drummonds, Robinson, and Till, Solicitors, and of Messrs Blake, Auctioneers, at Croydon, at the Jolly Sailor, White Lion, and White Hart Inns, at Norwood; the Crooked Billet, at Penge, the Greyhound, Dulwich, at the place of sale of Mr Dwyer, Globe Tavern, Hatton-garden; and of Messrs. Winstanley, Paternoster-row

HERTS Eligible and highly desirable Freehold Building-Ground, Dwelling House, with Garden and Paddock.

T. COMPTON has been favoured with instructions to SELL by AUCTION, at GARRAWAY'S COFFEE-HOUSE, CORNHILL, on FRIDAY, JUNE 18, 1852, at Twelve o'clock, in Ten Lots, a desirable FREEHOLD PLOT of BUILDING-GROUND, tithe free, on the High Road leading from Cheshunt and Enfield to Hatfield, presenting a frontage of 850 feet by a depth of 225 feet; also, a compact FREEHOLD DWELLING HOUSE, containing two bed-rooms, two sitting rooms, and Washhouse, Yard, with Cart-shed, small Garden, and in the rear a productive paddock. The above is most delightfully situate at Coffleys, in the parish of Northaw, three and a-half miles from a station on the Great Northern Railway, and five miles from the Eastern Counties Railway May be viewed by permission of the tenants, and particulars had ten days previous to the Sale, at the principal Inns in the neighbourhood, of Messrs. Jenkinson, Sweeting, and Jenkinson, Solicitors, 29, Lombard-street, at Garraway's, and at Thomas Compton's Auction and Estate Agency Offices, 76, Coleman street; and at Enfield Middlesex

IN BANKRUPTCY.—Four important and valuable Life Policies.

THOMAS COMPTON has received instructions from the Assignees of Mr Thomas Harris to SELL by AUCTION, at GARRAWAY'S on FRIDAY, JUNE 18, at Twelve, a POLICY of ASSURANCE for the sum of 2,000l effected in the London Corporation Assurance Company, dated 6th January, 1840, on the life of a gentleman then aged 41, and on which the premium has been reduced to the annual payment of 48l. Also Three Policies of Assurance for the sums of 2,000l. 2,000l. and 1,000l. together with the whole of the vested bonuses, effected in the Scottish Widows' Fund Assurance Company, subject to the annual premiums of 67l. 8s. 4d., 71l. 5s. and 35l. 12s. 6d. respectively.—Particulars may be had of Messrs. Reed, Langford, and Marsden, Solicitors, 59, Friday-street, Cheapside, of H. H. Cannan, Esq Official Assignee, 18, Aldermanbury; and at Mr. Compton's Auction and Estate Agency Offices, 76, Coleman-street, City, and at Enfield, Middlesex

Periodical Sales of Houses, Reversions, Policies of Assurance, Life Interests, Ground and Improved Rents, Patents, Mining, Dock. Canal, and other Shares, Debentures, &c

MR. E. PALMER begs to inform the Public that his PERIODICAL SALES, at the MART, will be continued on the third WEDNESDAY in each month, as follows:—

June 16	Sept. 15	Nov 17.
July 21	Oct. 20.	Dec. 15.
August 18		

Particulars of all lots to be included in either of the above sales should be forwarded at least seven days previously, to the Auctioneer's Offices, 20, Change alley, Cornhill, City, and 24, Lower Calthorpe-street, Gray's-inn-road.

PERIODICAL SALE, WEDNESDAY NEXT, JUNE 16.—Reversion to 200l. payable on the death of a lady in her seventy-fifth year, if a gentleman, aged —, survive her; and a Policy for 200l. in the Argus, payable if the said gentleman predecease the said lady; all the premiums have been paid in advance.

MR. E. PALMER has received instructions to include in his SALE by AUCTION, at the MART, on WEDNESDAY NEXT, at Twelve, the above REVERSION, equal in all respects to absolute—Particulars may be had of G. R Dodd, Esq Solicitor, 26, New Broad-street; at the Mart; and at the Auctioneer's Offices, 20, Change-alley, Cornhill, and 24, Lower Calthorpe street, Gray's-inn-road.

PERIODICAL SALE, WEDNESDAY NEXT, JUNE 16. PECKHAM.—Suitable for occupation or Investment

MR. E. PALMER has received instructions to include in his SALE by AUCTION, at the MART, on WEDNESDAY NEXT, at Twelve o'clock, a PAIR of well and newly built, semi-detached, six-roomed COTTAGES, with fore-courts and gardens, known as Crystal Cottages, Crabtree Shot-road, Peckham, near the Rosemary Branch. Annual value 24l each; lease ninety-seven years; ground-rent for the two, 7l 17s. 6d. Particulars may be had of J. M. Taylor, Esq Solicitor, 11, Furnival's-inn, at the Mart; and at the Auctioneer's Offices, 20, Change-alley, Cornhill, and 24, Lower Calthorpe-street, Gray's-inn-road.

PERIODICAL SALE, WEDNESDAY NEXT, JUNE 16.—SOMERS-TOWN A detached Leasehold Cottage and Ground.

MR. E. PALMER has received instructions to include in his SALE by AUCTION, at the MART, on WEDNESDAY NEXT, at Twelve, a well built COTTAGE, known as Vine Cottage, York-buildings, Chalton street, Somers-town, near the New-road, together with a Piece of Ground sufficient to build a similar cottage, let at the low rent of 16l. but worth 24l tenant paying taxes. Lease 30¼ years. Ground rent 2l.—Particulars may be had of J. M. Taylor, Esq. Solicitor, 11, Furnival's-inn, Holborn; at the Mart; and at the Auctioneer's Offices, 20, Change-alley, Cornhill, and 24, Lower Calthorpe-street, Gray's-inn-road.

PERIODICAL SALE, WEDNESDAY NEXT, JUNE 16. GRAY'S-INN-ROAD.—Leasehold Estate, producing 103l. per annum, in four lots.

MR. E. PALMER has received instructions to include in his SALE by AUCTION, at the MART, on WEDNESDAY NEXT, at Twelve, FOUR LEASEHOLD six-roomed HOUSES, all let, situate 1 to 4, Phœnix-place, Lower Calthorpe-street, Gray's-inn-road; lease 59 years; ground rent 5l. each house. —Particulars may be had of G. A. M'Phail, Esq Solicitor, 13, Wilmington-square; at the Mart; and at the Auctioneer's Offices, 20, Change-alley, Cornhill, and 24, Lower Calthorpe-street, Gray's-inn-road.

PERIODICAL SALE, WEDNESDAY NEXT, JUNE 16.—Absolute Reversion to the Moiety of 958l 17s. 3d. Three-and-a-Quarter per Cent. Annuities, payable on death of a lady in her 74th year.

MR. E. PALMER has received instructions to include in his SALE by AUCTION, at the MART, on WEDNESDAY NEXT, at Twelve, the above ABSOLUTE REVERSION.—Particulars may be had of Chas Cutler, Esq. Solicitor, 5, Bell-yard, Doctors'-commons; at the Mart; and at the Auctioneer's offices, 20, Change-alley, Cornhill, and 24, Lower Calthorpe-street, Gray's-inn-road.

PERIODICAL SALE, WEDNESDAY NEXT, JUNE 16.—Absolute Reversion to 300l. Consols, receivable on death of a lady in her sixty-ninth year.

MR. E. PALMER has received instructions to include in his SALE by AUCTION, at the MART, on WEDNESDAY NEXT, at Twelve, the above ABSOLUTE REVERSION.—Particulars may be had of G. R. Dodd, Esq. Solicitor, 26, New Broad-street; at the Mart; and at the Auctioneer's Offices, 20, Change-alley, Cornhill; and 24, Lower Calthorpe-street, Gray's-inn-road.

PERIODICAL SALE, WEDNESDAY NEXT, JUNE 16th.—Absolute Reversions to 445l. Consols, and one third of 500l. Three-and-a-Quarter per Cents. receivable on the death of a lady in her 60th year (in Two Lots).

MR. E. PALMER has received instructions to include in his SALE by AUCTION, at the MART, on WEDNESDAY NEXT, at Twelve, the above ABSOLUTE REVERSIONS.—Particulars may be had of G. R. Dodd, Esq. Solicitor, 26, New Broad-street; at the Mart, and at the Auctioneer's Offices, 20, Change-alley, Cornhill, and 24, Lower Calthorpe-street, Gray's-inn-road.

WANDSWORTH, SURREY.

MR. EDWIN YOUNG will SELL by PUBLIC AUCTION, at the SPREAD EAGLE HOTEL, WANDSWORTH, on FRIDAY, JUNE 25, at Two for Three o'clock precisely, in two lots, by order of the Mortgagee under a power of sale a highly advantageous LEASEHOLD PROPERTY, held for a term of ninety-seven years, at a ground-rent. Its situation is peculiarly picturesque and salubrious, being on the west side of the Merton-road, a short distance from the High-street and the South-Western Railway Station at Wandsworth, and comprises a substantial villa residence, in a very forward state of completion, containing reception-rooms, bed-chambers, and domestic offices of spacious proportions, with forecourt and garden in the rear, and unfailing supply of spring water. Also a Plot of valuable Building Ground adjoining, affording a most admirable site for the erection of one or two first-rate villas.—May be viewed, and printed particulars obtained of James M. Wrightman, Esq. Solicitor, 80 Basinghall-street, City; at the Spread Eagle, Wandsworth; Bull Inn, Merton; and at the Auctioneer's Offices, 82, New Church-street West, St Marylebone.

IMPROVED GROUND-RENT.—TO BE DISPOSED OF, an improved GROUND-RENT of 60l per annum, well secured on very eligible property on the Paddington estate.

For particulars apply at Mr Defks' Auction and Estate Agency Offices, 26, Albion-street, Hyde-park

CHAMBERS.—A suite of Five Rooms on the First Floor, newly decorated for residence or business, and well calculated to accommodate a public company, or any one requiring spacious and handsome chambers. Also a Set on the Basement, with board-room and iron closet.

Apply to the Housekeepers, 35, Lincoln's-inn-fields.

LANCASHIRE MIDSUMMER SESSIONS.—Notice is hereby given, that the General Quarter Session of the Peace, for the County Palatine of Lancaster, will be held at the Castle of Lancaster, on Monday, the twenty-eight day of June instant, at ten o'clock in the forenoon, and by adjournment at the following places and times, viz.:—

At the Court House, in Preston, on Wednesday, the thirtieth day of June instant, at ten o'clock in the forenoon.

At the New Bailey Court House, in Salford, near Manchester, on Monday, the fifth day of July next, at ten o'clock in the forenoon.

And at the Court House, in Kirkdale, near Liverpool, on Tuesday, the thirteenth day of July next, at twelve o'clock at noon, on which day County Business alone will be transacted, and the Court will then adjourn to Wednesday morning, at ten o'clock, for the transaction of the ordinary business.

And that all business relating to the assessment, application, or management of the County Stock or Rate, will commence at such Sessions respectively, at twelve o'clock at noon of the first day thereof.

All business arising within the Hundred of Lonsdale is transacted at Lancaster; within the Hundreds of Amounderness, Blackburn, and Leyland, at Preston; within the Hundred of Salford, at Salford, and within the Hundred of West Derby, at Kirkdale.

All Appeals are entered with the Clerk of the Peace, and motions made to the Court respecting them on the first morning of the Sessions, at each of the above-named places, except at Kirkdale, when such proceedings are to take place on the second morning, and the trial of such Appeals takes place at Lancaster, on the first day; at Preston, not earlier than Friday, the third day; at Salford, on Wednesday, the third day; and at Kirkdale, not earlier than Friday, the fourth day.

The Attorneys engaged in Prosecutions at the said Sessions are requested to take notice that all Instructions for Indictments are required to be sent to the Clerk of the Peace's Office four days at least before the said Sessions.

GORSTS and BIRCHALL, Dep. C. P.

Clerk of the Peace's Office, Preston, 7th June, 1852.

WARWICKSHIRE SESSIONS.—Notice is hereby given that the General Quarter Sessions of the Peace for the Warwick division of the said county, will be held at Warwick on Monday, the 28th day of June instant, at eleven o'clock in the morning, and will commence with the county business; and at two o'clock the trial of prisoners will be proceeded with. On Tuesday, the 29th, at ten o'clock in the morning, motions and appeals will be heard.

The said Quarter Sessions will be held by adjournment for the Coventry division of the said county at Coventry on Wednesday, the 30th day of June inst. at eleven o'clock in the morning, and as soon as the preliminary business is disposed of the Court will hear motions and appeals. The trial of prisoners will commence in St. Mary's Hall as soon as any bills are found and returned by the grand jury. W. C. HUNT, Clerk of the Peace.

Stratford-upon-Avon, 9th June, 1852.

IN CHANCERY.—*Perry and Another v. Beauclerk and Others* Sussex.—The St. Leonard's Forest Estate, near Horsham, a remarkably fine Freehold Domain of nearly 2,000 acres, with a capital stone-built Mansion, extensive Park, beautifully undulated Woods, Plantations, 80 acres of productive Orchard, and several capital Farms.

MESSRS. DRIVER have been instructed, pursuant to an order of the High Court of Chancery, made in the above cause, to offer to public COMPETITION, at the AUCTION MART, on TUESDAY, the 29th of JUNE, at Twelve o'clock, in the first instance in one lot, but should it not then be sold it will be immediately afterwards offered in four lots, the above important and highly valuable FREEHOLD LANDED PROPERTY, lying within a ring fence, most eligibly situate in the parishes of Lower Beeding and Slaugham, in the preferable part of the county of Sussex, and only about three miles from the capital market town of Horsham, where there is a station on the London and Brighton Railway. The estate is situate in a fine sporting country, within a short distance of the kennel of the Crawley and Horsham fox hounds. It is surrounded with excellent roads, abounds with game, and adjoins the properties of Sir Charles Burrell, Robt Aldridge, Esq and other large landed proprietors. It comprises a stone built mansion suitable for the residence of a family of the highest respectability, situate upon an eminence commanding most delightful views of its own picturesque woods and plantations and the surrounding varied scenery, with extensive park, beautifully undulated and studded with fine stately timber, with a highly ornamental lake affording abundant fishing, in view of the mansion, and from which it is a prominent feature: together with the following farms, viz.—Park Farm, containing about 600 acres; Eastland's Farm, 160 acres; and Freechase Farm, 183 acres, with suitable homesteads to each and all necessary agricultural buildings, and about 700 acres of wood and thriving plantations and other lands, making, in the whole, nearly 2,000 acres of productive arable, pasture, meadow, and wood lands, including about 80 acres of orchards, producing rents of the estimated annual value of 1,500*l*. The estate being principally in hand, immediate possession may be had. It is admirably adapted either for occupation or investment, and abounds with stone quarries.—To be viewed on application to Mr. KAY, the Bailiff, residing on the estate. Printed particulars, with plans, may be had at the King's Head, Horsham; Star, Lewes; Old Ship, Brighton; White Hart, Guildford; of Messrs FIELDER, JOHNSON, and MASTER, Solicitors, 22, Duke-street, Grosvenor-square; Messrs. ROBINSON and HAYNES Solicitors, 17, Orchard-street, Portman-square; Messrs. NORRIS, ALLEN, and SIMPSON, Solicitors, Bedford-row; Messrs. BELL, STEWARD, and LLOYD, 59, Lincoln's-inn-fields, at the Auction Mart, and of Messrs. DRIVER, Surveyors and Land Agents, 5, Whitehall.

ORLEANS HOUSE, TWICKENHAM.—A noble and distinguished Freehold Mansion, Park, and extensive Pleasure-grounds, on the banks of the Thames, comprising in the whole about Thirty Acres.

MESSRS. DRIVER have been favoured with instructions to offer to PUBLIC COMPETITION, at the MART, on TUESDAY, JUNE 29, at Twelve (unless an acceptable offer should in the mean time be made by private contract), with immediate possession on the completion of the purchase, the above highly valuable and very distinguished FREEHOLD PROPERTY, most beautifully and delightfully situate on the banks of the Thames, and less than ten minutes' walk from the Twickenham Railway Station, and only one mile from that at Richmond, comprising a noble and elegant mansion, in most perfect order and repair, both ornamental and substantial, and replete with every accommodation for any family of distinction; containing fifteen bed-rooms and dressing-rooms; also all requisite reception rooms en suite, comprising dining and drawing rooms, library, boudoir, breakfast-room, bath-room, spacious halls, two staircases; likewise a magnificent conservatory in two compartments, a statuary room and picture-gallery. In the basement are all requisite domestic offices, and capital cellaring. The mansion is delightfully seated on a beautiful sloping lawn, and no expense has been spared to render it as complete as possible, at the same time combining substantial durability and convenience with embellishment of a most pure and classic style. The pleasure grounds are very extensive, laid out with acknowledged taste and judgment, ornamented with all kinds of luxuriant American and flowering shrubs, gravel and shaded walks, parterres, ornamental waters, fully stocked with gold-fish, and fountains, temples, and summer-houses. The park is encircled with gravel walks and belt plantations, and studded with stately elms and other timber. The carriage-drive is through the centre of the park, and the house is approached under a handsome stone portico. There are two lodges, likewise orangery, hot-houses, graperies, pinery, melon and forcing pits, greenhouses, two capital walled kitchen gardens, well stocked, and clothed with choice fruit-trees, gardener's house, cottages for labourers, a well-arranged farm yard, ice-house and pheasantry. An artesian well supplies the house, ponds, fountains, and premises with water. A spacious enclosed yard, with capital stabling, coach-house, with men-servants' apartments and lofts over. The property is nearly enclosed by brick walls.—To be viewed with cards only on Mondays, Wednesdays, and Fridays, after the 1st of June, between eleven and five o'clock, giving one day's previous notice, which may then be had of Messrs. DRIVER, Surveyors and Land Agents, 5, Whitehall, together with printed specifications and plan of the property. Printed specifications and plans may also be had of — WILLIAMS, Esq. 62, Lincoln's-inn-fields; and at the Mart.

QUEEN'S HOTEL, CHELTENHAM.—In the matter of the Joint Stock Companies' Winding-up Act, 1848, and of the Cheltenham Hotel Company.

MESSRS. DRIVER beg respectfully to inform the public that they have received directions from the official manager acting in pursuance of an order of Wm Brougham, esq. one of the Masters of the High Court of Chancery, to OFFER the following remarkably valuable and highly important PROPERTY for SALE by PUBLIC AUCTION, at the QUEEN HOTEL, CHELTENHAM, on SATURDAY, the 19th of JUNE inst at Twelve for One o'clock precisely, in One Lot, together with all the fixtures in and about the premises, and by direction of the said Master, will be put up at the sum of 8,000*l*. and there will be no reserved bidding. This property is equal to freehold, being copyhold of inheritance, and subject to merely a fixed nominal fine and quit rent not amounting in the whole to 1s.; most eligibly situate in and forming one side of Imperial-square, in the preferable part of Cheltenham, comprising the Queen's Hotel, of imposing elevation, with grand portico entrance overlooking the gardens in the square and the Imperial Promenade, and commanding extensive views in the distance. This hotel was built in the year 1837, at a cost of upwards of 40,000*l* and comprises on the principal and upper floors 58 best bedchambers, 46 servants' sleeping apartments, 16 elegant sitting rooms, richly embellished, and 2 excellent suites of apartments. On the ground floor is a noble entrance-hall and principal staircase, besides secondary staircases, spacious coffee-room, about 50 feet by 25 feet; two elegant drawing rooms, a suite of four handsome apartments, billiard room, and all requisite domestic offices for any establishment of the greatest magnitude, with excellent cellarage, and other accommodation in the basement; and excellent Tap, called the "Queen's;" a capital enclosed yard, with stabling for seventy horses, besides numerous loose boxes and lock-up coach-houses. This valuable property is capable of being divided so that a portion of the hotel can be appropriated as private dwelling-houses, with or without shops, at the same time thereby reducing the size of the hotel, as to render it a most desirable investment, and the lawn and grounds would form very valuable sites for building purposes. The whole of the household furniture and appendages, paintings, plate, plated articles, linen, china, glass, wines, carriages, horses, and numerous miscellaneous effects will be sold by auction on the premises shortly after the sale of the hotel. An inventory of the fixtures, which will be included in the property submitted for sale, may be inspected at Messrs DRIVER'S Offices, and also at the Queen's Hotel, Cheltenham. Printed particulars and plans of the property may be had on application to the official manager, JAMES HUTTON, Esq 46, Moorgate-street; of Messrs. RIXON and SON, King William-street, London, Solicitors to such manager; Messrs. BURR and Messrs. WILLIAMS and GRIFFITHS, Solicitors, and Mr. DANGERFIELD, Architect, Cheltenham; of Messrs. DAWES and SONS, Solicitors, Angel court, Throgmorton-street; Messrs. NEW and PRANCE, Solicitors, Evesham, Worcestershire; at the Queen's Hotel, Cheltenham; at the Auction Mart; and of Messrs. DRIVER, Surveyors and Land Agents, 5, Whitehall, London.

DORSETSHIRE.—Valuable Freehold Estate, called the Upton and East Ringstead Farms, comprising upwards of 492 acres of productive arable, pasture, and meadow lands, most eligibly situate, in the parish of Osmington, about five miles from Weymouth and seven from Dorchester, both capital market towns.

MESSRS. DRIVER have been favoured with instructions to offer to PUBLIC COMPETITION, at the AUCTION MART, on TUESDAY, JUNE 29th, at Twelve, in one lot, a very valuable FREEHOLD ESTATE, exonerated from land-tax, well adapted for investment, most eligibly situate in the parish of, and within about a mile of the picturesque and rural village of Osmington, in the county of Dorset, about seven miles from Dorchester, thirteen from Wareham, and abutting south on the Ringstead Bay of the English Channel, opposite the delightful watering-place of Weymouth, from which it is distant about five miles, comprising Upton and East Ringstead Farms, lying very compact, and containing together upwards of 492 acres of highly productive arable, pasture, and meadow lands, with farm-house, homestead, and all necessary agricultural buildings, and sundry cottages dispersed over the estate; in the occupation of Mr. Richard Andrews, a highly respectable tenant, on lease, which will expire at Michaelmas next, at the net annual rent of 400*l*. when possession may be had. The property is situate within a few miles of three stations on the Southampton and Dorchester branch of the South-Western Railway, being only seven miles from the Dorchester station, eight from Wool, and four and a-half from Moreton.—Printed specifications, with plans annexed, may be had, after the 31st of May, at Luce's Hotel, Weymouth; King's Arms, Dorchester; Red Lion, Wareham; Radley's Hotel, Southampton; of Messrs. BRAY, WARRENS, and HARDING, Solicitors, Great Russell-street, Bloomsbury; at the Auction Mart; and of Messrs. DRIVER, Surveyors and Land Agents, 5, Whitehall, London.

Important and Valuable Sale of Freehold Property at Richmond, in Ten Lots (unless previously disposed of by private contract).

MR. JAMES CAIN is honoured with instructions to SELL by AUCTION, at the GREYHOUND INN, RICHMOND, on TUESDAY, JUNE 29, at One for Two, by order of the Proprietor, TEN semi detached elegant FREEHOLD VILLA RESIDENCES, of handsome modern elevation, designed and executed regardless of expense, in the most substantial, ornamental, and architectural manner. The whole are most respectably tenanted at the following rentals: two at 95*l*. per annum; two at 97*l*; four at 70*l*; one at 110*l* and one at 120*l*.; thus producing a net rental of 804*l*. per annum. The above are situate on the most retired and sunny side of Richmond-green, known as the "High Walks," and abutting upon and commanding extensive views over the Royal Park, fine pure air, and gravelly soil. These delightful Villas are approached by front gardens and portico entrances, with ornamental flower-gardens in the rear, within four minutes' walk of the Richmond Railway Station being within twenty minutes' communication with London.—Plans and particulars are preparing, and may shortly be had, at the Auction Mart, London; of Messrs. BIRCHAM, DALRYMPLE, and DRAKE, solicitors, 46, Parliament-street, Westminster; Messrs NICHOLSON and SON, Surveyors and Builders, Wandsworth, at the principal Inns in the neighbourhood; and at the Auctioneer's Estate Agency Offices, King-street, Richmond, Surrey.

Valuable Freehold Property, West Cheam, in the county of Surrey, distance about three miles from Epsom, and within five minutes' walk of the Cheam Station on the Epsom direct line. A delightful Freehold Estate, situate in this charming, picturesque, and healthy village, by which the property is surrounded.

MR. J. CAIN is favoured with instructions to SELL by AUCTION, by order of the proprietor (unless previously disposed of by private contract), at the MART, on WEDNESDAY, JUNE 23, at Twelve for One, all that truly valuable and important ESTATE, known as CHEAM HOUSE. This eligible property is surrounded by a ring fence, every portion of which presents a road frontage, thus affording a rare and almost unequalled opportunity for building speculation in a locality where villas are so much desired and sought for, but not to be obtained. The small capitalist or spirited purchaser can here insure a safe investment. To mercantile gentlemen, whose avocations call their daily attendance in London, and, above all, the great advantage of locating their families in a pure and healthy air, blended with the very easy access to the metropolis, the village of Cheam must be acknowledged as a highly favoured spot. The substantial mansion is well calculated for the reception of a family of distinction, one wing of which has, within a very few years, been built at a great outlay, under the direction of a first-rate architect. The residence contains, on the upper floor, six good bed-chambers; on the first floor are two noble bow bed-rooms, each 25 feet by 18 feet; three others, severally 23 feet by 15 feet, 19 feet by 12 feet, and 16 feet by 15 feet, three other rooms of less magnitude, two dressing-rooms, large nursery bed room, water-closet, and morning drawing-room. On the ground floor will be found a noble entrance-hall, large dining-room, 26 feet by 17 feet; octagon drawing-room, 20 feet by 20 feet; ante drawing-room, 20 feet by 18 feet, study or breakfast-room, and a small sitting-room. The principal reception-room communicates with the extensive and beautifully timbered lawn by a flight of stone steps. The offices are numerous, and judiciously arranged for every possible domestic comfort and convenience; a detached stable-yard, with coach-houses for three carriages, and excellent stabling for five horses, with lofts, three bed rooms, and one sitting-room over. The grounds comprehend extensive walled kitchen gardens, well cropped and stocked, a beautiful verdant lawn, tastefully adorned with splendid timber and flowering shrubs, and a fancy meadow—in all averaging nearly seven acres, all parts of which are well adapted for building purposes, and affording to each villa an adequate proportion of ground.—Plans and particulars are in preparation, which may be had of Messrs GREGORY and KEW, Solicitors, Angel-court, Throgmorton-street; J. L. WATSON, Esq Surveyor, 39, Manchester-street, Manchester-square; on the premises, West Cheam; at the Mart, at the principal inns; and at the Auctioneer's Estate Offices, Richmond, Surrey. The estate may be viewed at any time on application to Mr. BROWN, the gardener, on the premises.

Stock of Law Books, Copyright, Shop and Counting-house Fittings, &c.

MR. HODGSON will SELL by AUCTION, on the PREMISES, No. 67, Chancery-lane, near Holborn, on THURSDAY next, JUNE 17, at Twelve o'clock precisely, the entire STOCK of LAW BOOKS of Messrs. Spettigue and Farrance, Law Booksellers and Publishers, Bankrupts (by order of the Assignees), including The Lawyer's Companion and Remembrancer, with 161 sheets of type, 2 sheets of stereotype plates, and the copyright, and 197 reams of fine post and double crown paper for ditto; 30 Clark and Finnelly's Reports of Appeal Cases, 2 vols and Vol. III. Part I.; 34 Stewart's Blackstone, 4 vols.; 11 Phillipps and Arnold on Evidence, 2 vols., 870 Browell's Real Property Statutes; 200 County Court Reports; 760 Law Student's Question Book; 270 Goldsmith's English Bar; 764 Hand Book of Precedents in Conveyancing; 220 Kendall's Bankruptcy and Insolvency Practice; 50 Lawes's Common Law Rules and Orders; 78 Prideaux on Judgments; 770 Wharton's Conveyancing; 300 Wharton's Articled Clerk's Manual; 95 Wharton's Law Lexicon; a collection of Law and Equity Reports, and modern Treatises and Books of Practice, bound and in boards. The Shop and Counting house Furniture and Fittings comprise ranges of neat wainscot bookshelves, 9 feet 3 mahogany winged bookcase; patent wrought-iron fire-proof safe, by Mordan and Co; mahogany library table; counting-house desks, gas fittings, &c. &c.—To be viewed; catalogues had of H. H. CANNAN, Esq. Official Assignee, 18, Aldermanbury; THOMAS KENNEDY, Esq. Solicitor, 100, Chancery-lane; at the place of Sale; and at Mr HODGSON'S Offices, 192, Fleet-street.

Freehold Dwelling houses and Building Ground, Saffron-hill, Holborn.

MR. W. H. DEAN will SELL by AUCTION, at the MART, on THURSDAY, JULY 1st, 1852, at Twelve, in one lot, all that valuable FREEHOLD ESTATE, comprising three dwelling houses, with shop fronts, numbered 111, 112, 113, Saffron-hill Holborn, as let to respectable tenants, producing a rental of 77*l* 10s per annum; and a large Plot of Building Ground, adjoining the said houses, eminently adapted for the erection of a factory, or business premises.—May be viewed, with leave of the tenants; and particulars and conditions of sale may be had at the Mart; of Messrs. W. & H. P. SHARP, Solicitors, No. 2, Verulam-buildings, Gray's-Inn; and of the Auctioneer, Stratford, Essex.

An amply secured Rent of 38*l*. per annum.

MR. LEREW will SELL by AUCTION, at the MART, on THURSDAY, JUNE 17th, at Twelve, the above improved RENT, arising out of property at Kensall New Town, held by mortgagee, with the power of sale for thirty years from Lady-day 1839, at the clear yearly rent of 15*l*. and underlet on lease for the whole term, producing 53*l*. per annum.—Particulars may be had of R. FISHER, Esq. Solicitor, 35, Queen-square; at the Mart; and of Mr. LEREW, Hornsey-road, and 2, Cardington-street, Hampstead-road.

KENTISH-TOWN.—Desirable Long Leaseholds.

MR. LEREW will SELL by AUCTION, at the MART, on THURSDAY, 17th JUNE, at Twelve for One, in two lots, TWO well-built RESIDENCES, of very attractive elevations, with gardens pleasantly situate, and being Nos. 9 and 10, Castle-terrace, New Hampstead-road. Held by lease for an unexpired term of eighty-four years, at a ground-rent of 6*l*. each, and of the value of 80*l*. per annum.—May be viewed; particulars and conditions of sale had on the premises; of Messrs. DUNN and DOBIE, Solicitors, 2, Raymond-buildings, Gray's-inn; at the Mart; and of Mr. LEREW, Auctioneer, Hornsey-road, and Cardington-street, Hampstead road, London.

Valuable absolute Reversions.

MR. LEREW will SELL by AUCTION, at the MART, on THURSDAY, JUNE 17, at Twelve, in Two Lots, the valuable ABSOLUTE REVERSIONS, to three ninth parts of one sixth part or share of and in a well built Leasehold Estate, in the parish of St. Marylebone, producing a net rental of about 1,500*l*. per annum; also, the Absolute Reversion to three ninth parts of two capital Residences, both let on lease, and producing a net rental of about 115*l*. per annum, subject to the life-interest of a lady in the 60th year of her age.—Particulars and conditions of sale may be had of S. J. WALTHEW, Esq. Solicitor, 39, Alsop-terrace, New-road; at the Mart; and of Mr. LEREW, Auctioneer and Estate-Agent, Hornsey-road, and Cardington-street, Hampstead-road, near the Euston-station.

CAMDEN-SQUARE, CAMDEN NEW TOWN.—Long Leasehold Residence, and Two Houses with Business Premises.

MR. LEREW will SELL by AUCTION, at the MART, on THURSDAY, JUNE 17, at Twelve, in Three Lots, THREE well-built HOUSES, situate and being Nos. 18, 19, and 20, Murray-street, Camden-road-villas, of the annual value of 125*l*. held for about ninety-three years, at low ground-rents.—Particulars and conditions of sale may be had at the Auction Offices, 2, Cardington-street, Hampstead-road.

IN BANKRUPTCY.—Very superior Private Residences in the Harrow-road, and first class business property, with good residences at Westbourne-grove, Bayswater, producing 350*l*. per annum.

MR. LEREW will SELL BY AUCTION, at the MART, on THURSDAY, JUNE 17, at Twelve, in Six Lots, by order of the assignees, Valuable LONG LEASEHOLD ESTATES, comprising Three well-built genteel Family Residences delightfully situate, and being Nos. 2, 3, and 4, Cromwell-terrace, Harrow-road; and Four excellent Houses and business premises, Nos. 1, 2, 3, and 6, Ledbury-road, Bayswater, held at low ground-rents. May be viewed by permission and particulars obtained of R. FISHER, Esq. Solicitor, 35, Queen-square; at the Mart; and at the Auction-offices, Hornsey-road, and 2, Cardington-street, Hampstead-road, near the Euston Station.

BEDFORDSHIRE.—Important and valuable Freehold Estate, known as Sandy place, comprising a substantial brick built Mansion, with Park, Pleasure-grounds, and Offices, capital Water Corn-mill, with Residence, several Farms and Homesteads, numerous Houses and Cottages in the village of Sandy, eligible and beautiful Building Sites, and valuable Garden and Accommodation Lands; the whole including about 1,500 acres of most fertile land, in a fine sporting country.

MR. BEADEL has been favoured with instructions to SELL BY AUCTION, at the MART, LONDON, on TUESDAY, JUNE 29, in forty lots, the highly important FREEHOLD and MANORIAL ESTATE of SANDY-PLACE, situate at Sandy, in the county of Bedford, where there is a station on the Great Northern Railway, within eight miles of the town of Bedford, three of Biggleswade, fourteen of Huntingdon, and little more than one hour's ride from the metropolis. This property includes a fine old family mansion, with offices, pleasure-grounds, and gardens, most delightfully placed in a park studded with noble trees, close to the church and village of Sandy, but completely inclosed and screened by belts of plantations, and partially bounded by a branch of the river Ivel; also a valuable corn-mill, with excellent head of water, stone-built residence and offices, comprising altogether about 85 acres. Several farms, with homesteads and agricultural buildings, extensive covers, ornamental plantations, and woods, containing about 1,000 acres, and forming a first-rate landed investment. Detached fields and accommodation lands surrounding the village; several houses and cottages; the Stone Axe Inn; and various plots of eligible building ground. The whole is freehold, and all tithe-free excepting about 418 acres, which are subject to a corn rent.

This estate offers unusual attractions to any gentleman fond of field sports, being in the immediate neighbourhood of the Oakley hounds, within three miles of the Cambridgeshire kennel, and a like distance of Mr Race's celebrated pack of harriers. The covers and plantations on the estate afford first-rate partridge and pheasant shooting, and the game has been carefully preserved. The private stream, which partly bounds the park, and the river Ivel, both well stocked with fish, afford ample opportunity for boating, fishing, and other aquatic sports. On part of the estate are quarries, the stone obtained from which is suited for building purposes, and has been used in erecting churches and bridges in the neighbourhood. The quality of the soil is superior, a large portion being garden ground, which has long been celebrated for supplying the metropolis and manufacturing districts with cucumbers and every description of vegetable produce, for the transit of which the railway offers great facilities.—Particulars may be obtained of Messrs. J. C. and H. FRESHFIELD, New Bank-buildings, Lothbury; of Messrs WORDSWORTH and DUNN, 32, Threadneedle street; of Messrs. COLE, Adelphi-terrace, London; of Messrs. BLOOD and DOUGLAS, Witham, Essex; of Mr. TILCOCK, at Sandy; and of Mr. BEADEL, 25, Gresham-street, London, where alone cards to view may be had.

SANDY, BEDFORDSHIRE.—A desirable Property, Freehold, and great-tithe free, situate in this favourite locality, being only eight miles from the county town of Bedford, fourteen from Huntingdon, and, by the Great Northern Railway, little more than an hour's ride from London.

MR. BEADEL is directed to SELL BY AUCTION, at the MART, LONDON, on TUESDAY, JUNE 29, at Twelve, in three lots, an eligible FREEHOLD PROPERTY, including a residence, with shop, in the village of Sandy, occupied as the post-office, together with a capital small farmery in the rear; also, Bunting's-field, now intersected by the Great Northern Railway, containing 21a. 2r. 38p. of very productive land in a high state of cultivation: the whole let to Mr. Wm. Tilcock, a yearly tenant, at 67*l*. per annum.—Particulars may be obtained of Messrs. J. C. and H. FRESHFIELD, New Bank-buildings, Lothbury; of Messrs. WORDSWORTH and DUNN, 32, Threadneedle-street; of Messrs. COLE, Adelphi-terrace, London; of Messrs. BLOOD and DOUGLAS, Witham, Essex; of Mr. TILCOCK, at Sandy; and of Mr. BEADEL, 25, Gresham-street, London, where alone cards to view may be had.

LONDON:—Printed by HENRY MORRELL COX, of 74, Great Queen-street, in the Parish of St. Giles in the Fields, in the County of Middlesex, Printer, at the Printing Office of COX (Brothers) and WYMAN, 74 & 75, Great Queen street, aforesaid, and published by JOHN CROCKFORD, of 29, Essex-street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, at the Office of the LAW TIMES, No. 29, Essex-street, aforesaid, on Saturday, the 12th day of June, 1852.

THE LAW TIMES,

FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

VOL. XIX.—No. 481.] SATURDAY, JUNE 19, 1852. *Price* 1s. **Gratis Double Number.**

Situations, Wanted and Vacant.

LAW.—Wanted, by a Solicitor in the Country, a respectable Clerk, who writes a good hand, and understands the usual routine of a Solicitor's office.

Applications by letter, stating age, with references, which will be strictly inquired into, and salary required, to be addressed to "—.3." CHARLES ARROWSMITH'S, Esq. Solicitor, 40, Devonshire street, Queen-square.

LAW.—A respectable Married Man, who has had 25 years' experience in Country Offices of good standing, is desirous of Re-engaging as Managing Clerk. The Advertiser is competent to assist materially in the conveyancing and common law departments, and also in magisterial and sessional practice, having for a series of years acted as assistant clerk to magistr—. Salary moderate; and references unimpeachable.

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LAW.—Wanted, by a Solicitor, who is quite competent to undertake the sole management of a Country Practice, a Situation as Clerk, and would prefer one where there may be a prospect of ultimately purchasing a share in such practice. Unexceptionable references will be given.

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TO SOLICITORS, ELECTION AGENTS, &c. A young Solicitor, of gentlemanly address, w— has, during his clerkship, been actively engaged in a contested election, is desirous of entering into an engagement for the forthcoming general election.

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Address "A. B." 32, Great Coram street, Russell square.

FRENCH.—Mons. M. DE BEAUVOISIN'S CLASS ROOMS, 17, KING WILLIAM-STREET, CITY.—NEW ELEMENTARY and CONVERSATION CLASSES are now being formed on M. De Beauvoisin's much-approved Oral and Practical Method of Teaching French, the terms of admission to which are 2*l.* 2s. for the complete Course, entitling the Pupil to the Classes for a period of Twelve Months. Terms also quarterly.—Morning Classes for Ladies. Private Lessons.—Further particulars are stated in the Prospectus, which may be had at the Class Rooms.

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TO GENTLEMEN ABOUT to PUBLISH.— HOPE and Co. Law and General Printers and Publishers, No. 16, Great Marlborough-street, London, undertake the Printing and Publishing of Books, Pamphlets, &c. The Works are got up in first-rate style, very greatly under the usual charges, while in the Publishing department every endeavour is made to promote an extensive sale. Authors will save considerably by employing HOPE and Co.

LAW.—GREAT SAVING.—Briefs and Abstracts copied at 6d. per sheet; draft copies, 1d per folio; Deeds and full-length copies, 1½d per folio. Deeds abstracted at 1s. 6d per sheet; Indentures, 2s.; Followers, 1s. 9d.; which includes making up seals, &c.

ROBERT KERR, Chichester-rents, Lincoln's Inn.

MALTA.—Mr. GEORGE D. PAGE, Notary and Solicitor, formerly of London, having established himself in Malta, will be happy to undertake for the Profession and others every description of Law Business in the Mediterranean, including the recovery of debts.

Reference, Mr. ALEXANDER RIDGWAY, Notary and Foreign Law Agent, 28, Royal Exchange, and 42, Leicester-square, London.

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SOCIETY for PROMOTING the AMEND-MENT of the LAW.—A PUBLIC MEETING will be held on WEDNESDAY, the 23rd of JUNE, at the SOCIETY'S ROOMS, when the attendance of all persons who feel interested in the important object of the Amendment of the Law, in any of its branches, is earnestly requested. LORD BROUGHAM will take the Chair at Three o'clock precisely.

By order of the Council,

21, Regent-street. GEORGE TENNANT, Clerk.

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Messrs. WILDY and SONS beg to announce that in a few days will be ready, the

LAW of WILLS AMENDMENT ACT, with Notes, by J. P. DEANE, Esq. Advocate in Doctors' Commons, and of the Inner Temple, Barrister-at-Law. Sewed, price 6d. and sent post-free.

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LEEDS BOROUGH SESSIONS.—Notice is hereby given, that the next General Quarter Sessions of the Peace for the Borough of Leeds, in the county of York, will be holden before Thomas Flower Ellis, Esquire, Recorder of the said Borough, at the Court House, in Leeds aforesaid, on Wednesday, the Seventh Day of July next, at Twelve of the clock at Noon; at which time and place all persons summoned as Grand Jurors, and also all Prosecutors, Witnesses, Persons bound by Recognisances, Police Officers, and Constables, are required to attend.

And Notice is hereby also given, that all persons summoned to the said Court of Quarter Sessions as Petty Jurors, are required to give their attendance at the place aforesaid, at Half past Twelve of the clock at Noon of the said Seventh day of July next.

And Notice is hereby also given, that all Appeals will be tried and all Proceedings under the Highway Acts will be heard at the opening of the Court, on the First Day of the said Sessions, and that the List of such Appeals will be called over by the Clerk of the Peace, at Half past Twelve of the clock at Noon; and that all Appeals in which the parties shall not then appear, by themselves or Counsel, will be struck out. And that all such Appeals and proceedings as aforesaid as shall not be disposed of on the First Day of the said Sessions will be taken as soon as the Criminal Business of the said Sessions shall be concluded.

And Notice is hereby also given, that all Appeals to be entered for trial at the said Sessions must be entered with the Clerk of the Peace before the opening of the Court on the First Day of the said Sessions, unless the contrary shall be allowed by the Court on motion by Counsel, or in case of absence of Counsel by Attorney, on special grounds stated and duly verified.

And Notice is hereby also given, that all Appellants against Orders of Removal to which the statute 11th & 12th Victoria, chap 31, is applicable, are required at the time of entering the Appeal with the Clerk of the Peace to file with him a Copy of the Order of Removal, of the Notice of Chargeability, of the statement of the Grounds of Removal and of the Grounds of Appeal.

By Order, JAMES RICHARDSON, Clerk of the Peace for the said Borough of Leeds

Clerk of the Peace's Office, No. 11, Albion-street,
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CLERICAL, MEDICAL, and GENERAL LIFE ASSURANCE SOCIETY.
Pe[rsons o]f all ages, and in every station, may assure with this Society, and the assured can reside in any part of Europe, the Holy Land, Egypt, Madeira, the Cape, Australia, New Zealand, and in most parts of North and South America, without extra charge.

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The FIFTH BONUS was declared in January last, and the amount varied with the different ages, from 24½ to 55 per cent. on the premiums paid, during the last five years ; or from 1*l.* to 2*l.* 10s. per cent per annum on the sums assured.
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A copy of the last report, setting forth full particulars, with a prospectus, can now be obtained of any of the Society's agents, or by addressing a line to
GEO H. PINCKARD, Resident Secretary.
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FAMILY ENDOWMENT LIFE ASSURANCE and ANNUITY SOCIETY,
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JOHN CAZENOVE, Secretary.

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AT ANDREW ROBERTSON'S, 30, CHANCERY-LANE.

(See former Advertisements, Feb. 7, March 6, May 15, June 5.)

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IN CHANCERY.—*Perry and Another v. Beauclerk and Others*—Sussex. The St. Leonard's Forest Estate, near Horsham, a remarkably fine Freehold Domain of nearly 2,000 acres, with a capital stone-built Mansion, extensive Park, beautifully undulated Woods, Plantations, 80 acres of productive Orchard, and several capital Farms.

MESSRS. DRIVER have been instructed, pursuant to an order of the High Court of Chancery, made in the above cause, to offer to public COMPETITION, at the AUCTION MART, on TUESDAY, the 29th of JUNE at Twelve o'clock, in the first instance in one lot, but should it not then be sold it will be immediately afterwards offered in four lots, the above important and highly valuable FREEHOLD LANDED PROPERTY, lying within a ring fence, most eligibly situate in the parishes of Lower Beeding and Slaugham, in the preferable part of the county of Sussex, and only about three miles from the capital market town of Horsham, where there is a station on the London and Brighton Railway. The estate is situate in a fine sporting country, within a short distance of the kennel of the Crawley and Horsham fox-hounds. It is surrounded with excellent roads, abounds with game, and adjoins the properties of Sir Charles Burrell, Robt. Aldridge, Esq and other large landed proprietors. It comprises a stone built mansion suitable for the residence of a family of the highest respectability, situate upon an eminence commanding most delightful views of its own picturesque woods and plantations and the surrounding varied scenery, with extensive park beautifully undulated and studded with fine stately timber, with a highly ornamental lake affording abundant fishing, in view of the mansion and from which it is a prominent feature, together with the following farms, viz. Park Farm, containing about 600 acres, Eastland's Farm, 186 acres, and Freechase Farm, 181 acres, with suitable homesteads to each and all necessary agricultural buildings, and about 700 acres of wood and thriving plantations and other lands, making, in the whole, nearly 2,000 acres of productive arable, pasture, meadow, and wood lands, including about 80 acres of orchards, producing rents of the estimated annual value of 1500l. The estate being principally in hand, immediate possession may be had. It is admirably adapted either for occupation or investment, and abounds with stone quarries.—To be viewed on application to Mr. Kay, the Bailiff, residing on the estate. Printed particulars, with plans, may be had at the King's Head, Horsham; Star, Lewes; Old Ship, Brighton; White Hart, Guildford; of Messrs. Fletcher, Johnson, and Master, Solicitors, 22, Duke-street, Grosvenor-square; Messrs. Robinson and Haynes, Solicitors, 17, Orchard-street, Portman-square; Messrs. Norris, Allen, and Simpson, Solicitors, Bedford-row; Messrs. Bell, Steward, and Lloyd, 59, Lincoln's-inn-fields; at the Auction Mart, and of Messrs. Driver, Surveyors and Land Agents, 5, Whitehall.

DORSETSHIRE. Valuable Freehold Estate, called the Upton and East Ringstead Farms, comprising upwards of 492 acres of productive arable, pasture, and meadow lands, most eligibly situate, in the parish of Osmington, about five miles from Weymouth and seven from Dorchester, both capital market towns.

MESSRS. DRIVER have been favoured with instructions to offer to PUBLIC COMPETITION, at the AUCTION MART, on TUESDAY, JUNE 29th, at Twelve in one lot, a very valuable FREEHOLD ESTATE, exonerated from land tax, well adapted for investment, most eligibly situate in the parish of, and within about a mile of the picturesque and rural village of Osmington, in the county of Dorset, about seven miles from Dorchester, thirteen from Wareham, and abutting south on the Ringstead Bay of the English Channel, opposite the delightful watering place of Weymouth, from which it is distant about five miles, comprising Upton and East Ringstead Farms, lying very compact, and containing together upwards of 492 acres of highly productive arable, pasture, and meadow lands, with farm house, homestead, and all necessary agricultural buildings, and sundry cottages dispersed [illegible] estate, in the occupation of Mr. Richard Andrews, a highly respectable tenant, on lease, which will expire at Michaelmas next, at the net annual rent of 400l., when possession may be had. The property is situate within a few miles of three stations on the [illegible] hampton and Dorchester branch of the South-Western Railway, being only seven miles from the Dorchester station, eight from Wool, and four and a half from Moreton. Printed specifications, with plans annexed, may be had, after the 31st of May, [illegible] Luce's Hotel, Weymouth; King's Arms, Dorchester; Red Lion, Wareham; Radley's Hotel, Southampton; of Messrs. Bray, Warren, and Harding, Solicitors, Great Russell-street, Bloomsbury; at the Auction Mart; and of Messrs. Driver, Surveyors and Land Agents, 5, Whitehall, London.

ALTERATION IN DAY OF SALE.

ORLEANS HOUSE, TWICKENHAM. A noble and distinguished Freehold Mansion, Park, and extensive Pleasure-[illegible] on the banks of the Thames, c[illegible] [illegible]irty Acres.

MESSRS. DRIVER have been favoured with instructions to offer to PUBLIC COMPETITION, at the AUCTION MART, near the Bank of England, on FRIDAY, JULY 16, instead of Tuesday, June 29, as previously advertised, at Twelve (unless an acceptable offer should in the mean time be made by private contract), with immediate possession on the completion of the purchase, the above highly valuable and very distinguished FREEHOLD PROPERTY, most beautifully and delightfully situate on the banks of the Thames, and less than ten minutes' walk from the Twickenham Railway Station, and only one mile from that at Richmond, comprising a noble and elegant mansion, in most perfect order and repair, both ornamental and substantial, and replete with every accommodation for any family of distinction; containing fifteen bed-rooms and dressing-rooms, also all requisite reception-rooms en suite, comprising dining and drawing rooms, library, boudoir, breakfast-room, bath room, spacious halls, two staircases; likewise a magnificent conservatory in two compartments, a statuary room and picture-gallery. In the basement are all requisite domestic offices, and capital cellaring. The mansion is delightfully seated on a beautiful lawn, and no expense has been spared to render it as complete as possible, at the same time combining substantial durability and convenience with embellishment of a most pure and classic style. The pleasure grounds are very extensive, laid out with acknowledged taste and judgment, ornamented with all kinds of luxuriant American and flowering shrubs, gravel and shaded walks, parterres, ornamental waters, fully stocked with gold-fish, and fountains, temples, and summer-houses. The park is encircled with gravel walks and belt plantations, and studded with stately elms and other timber. The carriage drive is through the centre of the park, and the house is approached under a handsome stone portico. There are two lodges, likewise orangery, hot-houses, graperies, pinery, melon and forcing pits, greenhouse, two capital walled kitchen gardens, well stocked, and clothed with choice fruit trees, gardener's house, cottages for labourers, a well-arranged farm-yard, ice-house, and pheasantry. An artesian well supplies the house, ponds, fountains, and premises with water. A spacious enclosed yard, with capital stabling, coach-house, with men servants' apartments and loft over. The property is nearly enclosed by brick walls. To be viewed with cards only on Mondays, Wednesdays, and Fridays, between eleven and five o'clock (giving one day's previous notice), which may be had of Messrs. Driver, Surveyors and Land Agents, No. 5, Whitehall, together with printed specifications and plan of the property. Printed specifications and plans may also be had of Messrs. Cox, Williams, and James, Solicitors, 62, Lincoln's-inn-fields; and at the Auction Mart, near the Bank of England.

FOREST HILL, five minutes' walk from the Railway Station, and Nos 6 and 7, De Beauvoir-place, De Beauvoir-town.

MR. FRED. GODWIN will SELL by AUCTION, by order of the Mortgagees, at the MART, on THURSDAY, JULY 1, at One o'clock, the semi-detached RESIDENCE, No. 1, Dartmouth place, Forest-hill. The house is convenient in accommodation and pleasant in situation; let to a good tenant at 70l. and held for eighty years at 8l. ground rent. Also the Lease for seventy years, at a ground rent, of Nos. 6 & 7 De Beauvoir-place, De Beauvoir town, with plot of ground, in rear, well let, and producing 61l. 10s. per annum.—The houses may be viewed by permission of the tenants, and particulars and conditions of sale, had of Messrs. Carritt and Osgood, 23 and 24, Basinghall-street; at the Mart; and of Mr. Godwin, 3, Halkin-terrace, Belgrave-square.

GOWER-STREET.—Ground Lease, direct from the Duke of Bedford.

MR. FRED. GODWIN has received instructions from the Executor of William Liddiard, esq. deceased, to SELL by AUCTION, at the MART, on THURSDAY, JULY 1, the GROUND LEASE of the substantial FAMILY RESIDENCE, with coach-house and stables, No. 74, Gower-street, held for a term of 28 years, at 9l. 18s. ground-rent. The house is well adapted for professional purposes, having three rooms on the ground-floor and plate glass windows.—May be viewed on application to J. F. Weymouth, Esq. 8, Gower-street, and particulars had at the Mart, and at Mr. Godwin's Offices, 3, Halkin-terrace, Belgrave-square.

KENSINGTON-PARK, NOTTING-HILL.—For Investment or Occupation.

MR. FRED. GODWIN will SELL by AUCTION, at the MART, on THURSDAY, JULY 1, by order of the Executor of William Liddiard, esq. No. 13, Ladbroke-terrace, a commodious FAMILY HOUSE, built in the villa style, semi-detached, with fore-court and plantation, and garden in the rear, 300 feet deep. Term, seventy years; ground-rent, 10l. 10s. Also, No. 3, Park Villas, Clarendon-road, of similar style, but lesser pretensions, with garden and back entrance. Term, eighty-five years; ground-rent, 12l. The houses may be viewed (No. 13 from the 17th to the 27th) between the hours of Eleven and Three, and particulars had at the Castle-inn, Notting-hill; of J. F. Weymouth, Esq. 8, Gower-street, Bedford-square; at the Mart; and of Mr. Godwin, 3, Halkin-terrace, Belgrave square.

DAY of SALE ALTERED.—Freehold Dwelling-houses and Building-ground, Saffron-hill, Holborn.

MR. W. H. DEAN will SELL by AUCTION, at the MART, on THURSDAY, JULY 15, at Twelve, in one lot, all that valuable FREEHOLD ESTATE, comprising three dwelling-houses, with shop-fronts, numbered 141, 142, 143, Saffron-hill, Holborn, as let to respectable tenants, producing a rental of 77l. 10s. per annum; and a large plot of building-ground adjoining the said houses, eminently adapted for the erection of a factory or business premises.—May be viewed with leave of the tenants, and particulars and conditions of sale may be had at the Mart; of Messrs. W. and H. P. Sharp, Solicitors, 9, Verulam-buildings, Gray's Inn; and of the Auctioneer, Stratford, Essex.

CALCUTTA.—180l. per annum, Investment.

MR. DEACON will SELL, by authority of the Court of Chancery, at the MART in London, on FRIDAY, JULY 9, next, an undivided moiety or half-part, of certain DWELLING-HOUSES and LAND, situated in DHEE, CALCUTTA, EAST INDIES, producing, after all deductions on payment over in English money in London, 180l. per annum, a little more or less. The property is held for ever, and let to highly responsible tenants.—Printed particulars may be had fourteen days preceding the sale, and any information obtained of Thomas M. Vickery, Esq. Solicitor, No. 25, Lincoln's Inn Fields; at the Mart; and at 13, George-street, Hanover square, all in London.

BEDFORDSHIRE.—Important and valuable Freehold Estate, known as Sandy-place, comprising a substantial brick built Mansion, with Park, Pleasure-grounds, and Offices, capital Water Corn-mill, with Residence, several Farms and Homesteads, numerous Houses and Cottages in the village of Sandy, eligible and beautiful Building Sites, and valuable Garden and Accommodation Lands; the whole including about 1,300 acres of most fertile land, in a fine sporting country.

MR. BEADEL has been favoured with instructions to SELL by AUCTION, at the MART, LONDON, on TUESDAY, JUNE 29, in forty lots, the highly important FREEHOLD and MANORIAL ESTATE of SANDY PLACE, situate at Sandy, in the county of Bedford, where there is a station on the Great Northern Railway, within eight miles of the town of Bedford, three of Biggleswade, fourteen of Huntingdon, and little more than one hour's ride from the metropolis. This property includes a fine old family Mansion, with offices, pleasure-grounds, and gardens, most delightfully placed in a park studded with noble trees, close to the church and village of Sandy, but completely inclosed and screened by belts of plantations, and partially bounded by a branch of the river Ivel; also a valuable Corn-mill, with excellent head of water, stone-built residence and offices, comprising altogether about 85 acres. Several farms, with homesteads and agricultural buildings, extensive covers, ornamental plantations, and woods, containing about 1,000 acres, and forming a first-rate landed investment. Detached fields and accommodation lands surrounding the village, several houses and cottages, the Stone Axe Inn, and various plots of eligible building ground. The whole is freehold, and all tithe free, excepting about 418 acres, which are subject to a corn rent.

This estate offers unusual attractions to any gentleman fond of field sports, being in the immediate neighbourhood of the Oakley hounds, within three miles of the Cambridgeshire kennel, and a like distance of Mr. Rose's celebrated pack of harriers. The covers and plantations on the estate afford first-rate partridge and pheasant shooting, and the game has been carefully preserved. The private stream, which partly bounds the park, and the river Ivel, both well stocked with fish, afford ample opportunity for boating, fishing, and other aquatic sports. On part of the estate are quarries, the stone obtained from which is suited for building purposes, and has been used in erecting churches and bridges in the neighbourhood. The quality of the soil is superior, a large portion being garden ground, which has long been celebrated for supplying the metropolis and manufacturing districts with cucumbers and every description of vegetable produce, for the transit of which the railway offers great facilities.—Particulars may be obtained of Messrs. J. C. and H. Freshfield, New Bank-buildings, Lothbury; of Messrs. Wordsworth and Dunn, 32, Threadneedle-street; of Messrs. Cole, Adelphi-terrace, London; of Messrs. Blood and Douglas, Witham, Essex; of Mr. Tilcock, at Sandy; and of Mr. Beadel, 25, Gresham-street, London, where alone cards to view may be had.

SANDY, BEDFORDSHIRE.—A desirable Property, Freehold, and great-tithe free, situate in this favourite locality, being only eight miles from the county town of Bedford, fourteen from Huntingdon, and, by the Great Northern Railway, little more than an hour's ride from London.

MR. BEADEL is directed to SELL BY AUCTION, at the MART, LONDON, on TUESDAY, JUNE 29, at Twelve, in three lots, an eligible FREEHOLD PROPERTY, including a residence, with shop, in the village of Sandy, occupied as the post-office, together with a capital small farmery in the rear; also, Bunting's-field, now intersected by the Great Northern Railway, containing 21a. 2r. 38p. of very productive land in a high state of cultivation: the whole let to Mr. Wm. Tilcock, a yearly tenant, at 67l. per annum. Particulars may be obtained of Messrs. J. C. and H. Freshfield, New Bank-buildings, Lothbury; of Messrs. Wordsworth and Dunn, 32, Threadneedle-street; of Messrs. Cole, Adelphi-terrace, London; of Messrs. Blood and Douglas, Witham, Essex; of Mr. Tilcock, at Sandy; and of Mr. Beadel, 25, Gresham-street, London, where alone cards to view may be had.

Periodical Sales of Houses, Reversions, Policies of Assurance, Life Interests, Ground and Improved Rents, Patents, Mining, Dock, Canal, and other Shares, Debentures, &c.

MR. E. PALMER begs to inform the Public that his PERIODICAL SALES, at the MART, will be continued on the third WEDNESDAY in each month, as follow:—

July 21	Sept. 15	Nov. 17.
August 18	Oct. 20.	Dec. 15.

Particulars of all lots to be included in either of the above sales should be forwarded at least seven days previously, to the Auctioneer's Offices, 20, Change alley, Cornhill, City, and 24, Lower Calthorpe-street, Gray's-inn-road.

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THE LAW TIMES,

FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

VOL. XIX.—No. 483.] SATURDAY, JULY 3, 1852. [Price 1s.

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MONEY.—Wanted, on Mortgage of Green Fields (freehold), 5,500l at three per cent. for a term.
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THE COMMON LAW PROCEDURE ACT.—This important measure will not come into operation until the 24th of October, before which time, and as speedily as possible, an edition of it, in a convenient form, with an analysis, copious practical notes, and a full index, by EDWARD WISE, Barrister-at-Law, will be published.
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LAW STUDENTS' DEBATING SOCIETY, at the LAW INSTITUTION, CHANCERY-LANE.
QUESTIONS FOR DISCUSSION.
For Tuesday, July 6th, 1852
ANNUAL MEETING *President*—Mr. HAYMAN.
The Treasurer will lay before the meeting a statement of the payments and receipts of the Society during the past year, and a list of the unpaid fines and subscriptions.
The Committee's Report of the proceedings of the Society during the past year will be read.
The Officers of the Society for the ensuing year will be elected.
81 A leases land to B. for seventy-five years. He afterwards grants to B a further lease of the same land, to commence upon the expiration of the former term, there being at the time of the second grant more than twenty-one years of the first lease unexpired Is the second lease void under the rule against perpetuities? Burton's comp 784 838 Butler's Co Litt 379 b
Affirmative - Mr G C Bompas and Mr. Winearls.
Negative—Mr. Miller and Mr Phillips
For Tuesday, July 13th, 1852 *President* Mr MORRIS
LVI. Is it advisable that members of the Government holding office under the Crown, should be ex-officio members of the House of Commons without a vote?
Mr. Church is appointed to open the debate, and Messrs. Lowe, Farrar, and Seale, to speak upon the question.
For Tuesday, July 20th, 1852 *President* - Mr. HOWLETT.
82 That the decision of the Court of Queen's Bench in *Regina v. Eastern Counties Railway Company*, 8 Law Jl. Rep. (N. S.) Q. B 310, cannot be supported. See *Anstruther v. East of Fife Railway Company*, 19 Law T 158.
Affirmative - Mr Wade and Mr. Acworth.
Negative— Mr. Feuillade and Mr Clayton.
For Tuesday, July 27th, 1852 *President*—Mr. BARDSLEY
83 Should the exceptions to the Master's Report in *Bud v. Faulkner*, 2 De Gex and Smale, 772, have been overruled?
Affirmative—Mr Warmington and Mr. French.
Negative—Mr Girdlestone and Mr Yeatman.
For Tuesday, August 3rd, 1852. *President*—Mr. CURTIS.
LVII. Is a general registry of the Title Deeds of Real Property practicable and desirable?
Mr. Cotton is appointed to open the debate, and Messrs. Boyce, Powell, and Armstrong, to speak upon the question.
There will be no further Meetings of the Society until October 20th, 1852.
J. W HOWLETT, Sec.
68, Lincoln's-inn.

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The Fine True Ripe Rich Rare Souchong Tea now only	4s. 0d.	"
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Lot 2. An estate called MAUGHANBY, situate in the said parish of Addingham, in the occupation of Thomas Glenton, as farmer thereof, comprising a Farmhouse, Homestead, and Farm-buildings, and several Inclosures of Land, containing together 208a. 2r. 29p. more or less, of which about 10a. 2r. 2p. are thriving plantation. This estate lies together in a ring fence, and pays a yearly tithe-rent charge of 28l. 18s. 9d. in lieu of tithes. It is entitled to right of common on the valuable and extensive wastes called Glassonby Fell, which are well adapted to the breeding and rearing of sheep; and on the common called Viol Moor, and is situate between Long Meg Estate and the next Lot, No. 3. Certain small parcels of this estate are customary, held under Sir George Musgrave, bart. as parcel of his manor of Glassonby, and under the Dean and Chapter of Carlisle, as parcel of their manor of Little Salkeld, and the remainder, being the great bulk of the estate, is freehold.

Lot 3. An estate, called GLASSONBY FARM, situate at GLASSONBY, in the said parish of Addingham, consisting of a Dwelling-house, homestead, and Farm-buildings, and several Inclosures of Land, containing together 156a. 0r. 37p. more or less, in the occupation of Joseph Hetherington, as farmer thereof (except a field called Raines, in the occupation of Thomas Glenton), and of a Cottage, Garth, and Outbuildings, at Glassonby, in the occupation of the said Joseph Hetherington or his undertenants, and of several Inclosures of Land, situate in the townfields of Glassonby, aforesaid, containing together about 40a. 0r. 6p. more or less, in the occupation of William Kidd, as farmer thereof. This estate is situate about eight miles from the town of Penrith. The tithes have been commuted for a tithe-rent charge of 26l. 15s. 4d. It is also entitled to a right of common on Glassonby Fell and Viol Moor. Certain small parcels of this lot are also of customary tenure, held under the said manors of Glassonby and Little Salkeld, and the remainder is freehold, being the greatest portion of the estate, is freehold. Those three lots, which comprise an acreage of 707a. 2r. 17p. and lie contiguous together, are situate in a fine sporting country, in the midst of game preserves strictly attended to, and, from the wood, water, and shelter in which they are bound, are admirably adapted for the breeding of game.

Lot 4. All that Close, called High Close and Wood, in Glassonby aforesaid, adjoining Viol Moor, containing 4a. 0r. 29p. more or less, in the occupation of the said Joseph Hetherington.

Lot 5. All that piece of Freehold Land, containing 31 perches, adjoining the Church-yard of Addingham, in the occupation of Thomas Glenton.

Lot 6. All that compact Estate, called EDEN LACY, situate in the parish of Great Salkeld, in the said county, consisting of a new built Dwelling house, and Farm Buildings of the best description, and several Inclosures, all of the first-rate quality, lying in a ring-fence, containing together 76a. 0r. 21p. more or less, now in the occupation of Mrs. Sanderson. About 11a. 0r. 20p. of this estate comprise plantations of fine growing useful and ornamental oak, larch, and timber wood, all laid out in the most tasteful manner. It is of copyhold tenure, held under the Manor of Great Salkeld, member of the honour of Penrith, by payment of several small copyhold rents, and subject only to a fine on change of lord or tenant by death or alienation, of the same amount as the copyhold rent, and is situate about five and a half miles from Penrith. The tithes of this estate are commuted for a tithe rent charge of 10l. 2s. 10½d.

Lot 7. A Freehold Estate, called WOLFA, situate in the said Parish of Great Salkeld, consisting of a Dwelling-house and Farm-buildings and several Inclosures of Land, containing together 79a. 0r. 31p. more or less, in the occupation of John Heidford, as farmer thereof, of which about 22 acres are wood. The tithe rent-charge on this estate is 7l. 7s. 11½d. and it is situated about four miles from Penrith.

Lot 8. All that Copyhold Dwelling-house, with a Garden and piece of Land adjoining, situate in the Village of Great Salkeld, now in the occupation of the Rev. George Chapman, as farmer thereof. This lot is held under the Manor of Great Salkeld by payment of the yearly copyhold rent of 1d.

Lot 9. A Freehold Close, called Farlands, situate in the Townfields of Glassonby, containing 2a. 0r. 30p. more or less, in the occupation of Thomas Glenton, as farmer.

Lot 10. A Freehold Close, called High Moor, situate in the Townfields of Yanwath, in the County of Westmorland, containing 2a. 1r. 10p. more or less, in the occupation of James Lewin, of Penrith. The Wood on the estates will be sold to be taken at a valuation by the purchaser.

The estates may be viewed on application to the several tenants; and all further information, plans, and printed particulars may be obtained on application to Mr. SYLVANUS MILLER, Land Surveyor, Penrith; Messrs. RUTTER and TROTTER, Solicitors, 4, Ely-place, Holborn, London; and Mr. JAMESON, Solicitor, Penrith.

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MR. LEREW will SELL by AUCTION, at the MART, on WEDNESDAY, JULY 7, at Twelve, in two lots, TWO well-built long Leasehold PRIVATE RESIDENCES, situate and being Nos. 5 and 6, Stibbington-street, on the Bedford Estate, producing 71l. per annum. Particulars may be had of Mr. CHARLES MARTIN, Solicitor, No. 17, Salisbury-square; and of the Auctioneer, Hornsey-road, and Cardington-street, Hampstead-road, near the Euston Station.

FOR INVESTMENT or OCCUPATION.—Valuable Leasehold Estates at Kensington, Kilburn, and Camden New Town, producing 548l. per annum.

MR. LEREW will SELL by AUCTION, at the MART, on WEDNESDAY, JULY 7, at Twelve, in lots, the very desirable LEASEHOLD PROPERTY, viz. a genteel residence, 4, Campden-grove, Kensington, a ditto, 5, Stratford place, Camden-square; four semi-detached villa residences, 2, 4, 6, and 8, St. George's road, Kilburn, and five capital houses (four with business premises), 7, 8, 9, 10, and 11, Murray-street, Camden-square; the whole held for long terms at low ground-rents. May be viewed by permission, and particulars had of Messrs. DAVIES, SON, CAMPBELL, and HAND, 17, Warwick-street, Regent-street; of Messrs. ABBOTT and WEATLEY, Solicitors, 231, Southampton-buildings; at the Mart; and of the Auctioneer, Hornsey-road, and Cardington-street, Hampstead road, near the Euston-station.

Valuable long Leasehold Property in Middlesex, Kent, and Surrey, producing 474l. per annum.

MR. LEREW is instructed to SELL by AUCTION, at the MART, on WEDNESDAY, JULY 7, at Twelve, in Lots, THIRTEEN desirable, well-built RESIDENCES, situate and being No. 3, Alfred-place, West Brompton; Nos. 48 and 49, Liverpool-street, King's-cross, opposite the Great Northern Railway Station; No. 4, Melville-terrace, Caledonian-road, N. Moore-street, Chelsea; Nos. 23 and 24, First street, Chelsea; No. 6, Enfield-road, De Beauvoir Town, Kingsland; Nos. 22 and 21, Barrington-crescent, North Brixton; No. 7, Burney street, Greenwich; and Two Houses in the Guildford road, Greenwich, Kent; the whole held for long terms at low ground-rents.—Particulars may be had of T. J. FOORD, Esq. Solicitor, Pinner's Hall, Old Broad-street, City; at the Mart, and Auction Offices, Hornsey-road, and Cardington-street, Hampstead-road, near the Euston Station.

Freehold and Copyhold Property, within ten miles of London, and near a station on the Great Western Railway, comprising a gentlemanly villa residence, a small farm adjoining, some eligible building land, cottages, &c. the whole comprising about 118 acres.

MESSRS. WINSTANLEY have received instructions to SELL by AUCTION, at the MART, in the month of JULY, in several lots, the valuable FREEHOLD and COPYHOLD PROPERTY of the late John Robins, esq. delightfully situate at Norwood-green, between Brentford and Southall, in the county of Middlesex, consisting of the residence, occupied for many years by the deceased, and built by him in a most substantial manner, with the pleasure and kitchen gardens and about sixteen acres of park like meadow land, an orchard and other land fronting the green, suitable for building purposes, a farm with convenient farm buildings, bounded by the road to Hanwell; several out-lying parcels of land, sundry cottages, &c. The day of sale will shortly be advertised, and particulars can then be obtained twenty-one days previously, at the inns in the neighbourhood, of Messrs. BLAKE, TYLEE, and TYLEE, Essex-street, Strand; at the Mart; and of Messrs. WINSTANLEY, Paternoster-row.

ABBEY FARM LODGE, ST. JOHN'S WOOD.

MESSRS. WINSTANLEY have received instructions from the Executors to SELL by AUCTION at the MART, on TUESDAY, JULY 13, ABBEY FARM LODGE, the distinguished Elizabethan residence of the late Charles Woodcock, esq. which is approached by a carriage drive and encircled in its own tastefull disposed pleasure grounds, with gravelled terrace walk, belted by shrubberies and plantations. It is delightfully in the New Finchley-road, about a mile from the Regent's park, and at the corner of the road leading to Hampstead, and was erected about six years since of red brick, in the most substantial manner, and finished with stone quoins, mullions, &c. and contains twelve principal and secondary bed-chambers, two dressing-rooms, two water-closets, linen and bath rooms, on the ground floor, a lofty drawing-room, 25 feet by 20, a dining room, 22 feet 6 by 16 feet 6, library and billiard-room, water-closet, &c.; a turretted tower, which communicates both with the house and grounds, and commanding a splendid panoramic view. The domestic offices are well arranged, and supplied with water. There is stabling for three horses, two coach-houses, men's rooms, gardener's cottage, kitchen-garden, &c. the whole comprising about 1a. 3r. and held for ninety-three years, at a ground rent. May be viewed by tickets only, which, with particulars, may be obtained of Messrs. BENNETT and FIRTH, Solicitors, 2, New square, Lincoln's-inn; and of Messrs. WINSTANLEY, Paternoster row; particulars also at the Mart, and the Eyre Arms, St. John's wood.

Important Estates in the county of Hants, comprising a mansion-house and park, several desirable farms, and woodlands, altogether about 1,500 acres.

MESSRS. WINSTANLEY will SELL by AUCTION, at the MART, in the month of JULY, in lots, pursuant to an Order of the High Court of Chancery, in a cause of "Rodney v. Rodney," with the approbation of Ja. William Farrer, Esq. one of the Masters of the Court, the extensive and valuable ESTATES of George Lord Rodney, deceased, situate at Alresford and elsewhere, in the county of Hants. The property consists of the mansion at Alresford, various farms, some woodlands, containing altogether about acres, freehold and copyhold tenure, and the remainder held leases for two lives from the Bishop of Winchester. Also the reversion in fee expectant on the decease without issue of a person aged 61, and a bachelor, to about 750 acres of freehold and copyhold land, in the parishes of Long Sutton and Ropley, in the county of Hants. The farms are let to most respectable tenants, and the woodlands in hand.—Particulars and conditions of sale are in course of preparation, and may shortly be had (gratis) at the Master's office, Southampton buildings, Chancery-lane; of Messrs. YOUNG and VALLINGS, Solicitors, St. Mildred's-court, Poultry; of Messrs. ROOPER and PARTINGTON, 9, Davies-street, Berkeley-square; of J. B. LOWNDES, Esq. 2, New Inn, Strand; of Messrs. KARSLAKE, CRAWLOCK, and KARSLAKE, 4, Regent street; of Messrs. DUNN, HOPKINS, CARTER, and BLACKMORE, of Alresford; Messrs. WINSTANLEY, Paternoster-row, and at the place of sale.

Freehold Grass Farm.

MESSRS. NASH beg to announce that the FREEHOLD GRASS FARM, called New House, with Residence, Four Cottages and Thirty Acres of Land, at Hookwood, in the parishes of Horley and Charlwood, Surrey, advertised to be Sold by Auction, at Garraway's, on Thursday, July 29, is SOLD by Private Contract.—Reigate, June 21.

SURREY, on the south side of Leith-hill, in the parish of Abinger, a well known picturesque and beautiful part of the country.

MESSRS. NASH are instructed by the Proprietor to SELL BY AUCTION, at GARRAWAY'S, on THURSDAY, JULY 29, at Twelve in One Lot, a very improveable small FREEHOLD ESTATE, called Little Burchetts, consisting of a Cottage, with large Garden, capital close of Meadow Land, with beautiful stream of water running through, containing together about four acres, and let to Mr. Mace, a yearly tenant, at the very low rent of 12l. per annum. The timber in the meadow, ... This property adjoins the high road from Forest green to Abinger, distant from the latter three miles, the same from the Gomshall Station; about eight miles from Dorking and Guildford; and thirty from London.—Printed particulars are preparing, and may be had fourteen days previously to the sale at the principal inns at Dorking, Shere, Gomshall, Guildford, Ockley, and Horsham; at Garraway's; of Messrs. ELLIS, PHILLIPS, and SALVADERSON, Solicitors, 12, Clement's-lane, London; and of Messrs. JOSEPH and JOHN NASH, Land Agents, Surveyors, Auctioneers, &c. Reigate, Surrey.

CHARLWOOD, SURREY.—By

MESSRS. NASH, at GARRAWAY'S on THURSDAY, JULY 29, at Twelve, in one lot, by direction of the Devisees in Trust, under the will of William Ellis, esq. a very desirable FREEHOLD FARM (with a small part copyhold), called Great and Little Greeves, consisting of a good Farm House, requisite agricultural buildings, and 110 acres of arable, meadow, pasture, and wood land, in convenient enclosures, remarkably well timbered, rendering the property a eligible investment, situate on a commanding eminence, having fine views of Leith and Box Hills, about one mile from the village of Charlwood, six from Reigate, the same distance from Dorking and Horsham, and twenty-seven from London. The farm being in hand, immediate possession may be had. The timber to be taken by valuation, as well as the usual tenant's right pertaining to the land, in every respect according to the custom of the country. Mr. Shove, at the adjoining farm, will shew the property.—Particulars are preparing, and may be had fourteen days previously to the sale at the principal Inns at Charlwood, Crawley, Horsham, Dorking, Guildford, Epsom, Sutton, Croydon, Old Ship, Brighton; Sussex Express Office, Lewes, and Duke-street, London-bridge; Garraway's, of WM. SANGER, esq. Solicitor, 4, Essex-court, Temple; Messrs. JOSEPH and JOHN NASH, Land Agents, Surveyors, Auctioneers, &c. Reigate, Surrey, at whose offices a plan of the estate may be seen.

SURREY—in the parishes of Leigh and Betchworth.—By

MESSRS. NASH, at GARRAWAY'S, on THURSDAY, JULY 29, at Twelve, by direction of the Devisees in trust under the will of William Ellis, esq.—Lot 1. A small COPYHOLD FARM (timber free), at Westwood, in the parish of Leigh, in the county of Surrey, in the occupation of Mr. James Beaman, a yearly tenant, at the rent of 15l. consisting of a brick and tile cottage, with garden, orchard, barn, yard, &c. and thirteen acres of arable, meadow, and pasture land, in convenient inclosures, bounded by lands of his Grace the Duke of Norfolk and Thomas Hope, esq. Lot 2. (A short distance from Lot 1), in the parish of Betchworth, a small Close of FREEHOLD ARABLE LAND, containing 2a. 3r 6p. in the occupation of Mr. W. Harman, a yearly tenant at the rent of 3l. It adjoins the high road from Leigh and Brockham to the Holmwood-common, and is suitable for the erection of a cottage residence. The above described properties are beautifully situate, about four miles from Dorking and Reigate, two from the rural villages of Brockham and Leigh, and twenty five from London. The purchaser of each lot will have to take the timber by valuation, and also to pay the respective tenants whenever they may quit, such valuation as they may be entitled to under their holdings. The tenants will shew the property.—Particulars are preparing, and may be had fourteen days previously to the sale at the principal inns at Dorking, Guildford, Epsom, Sutton, Croydon; Old Ship, Brighton; Sussex Express Office, Lewes, and Duke-street, London-bridge; Garraway's; of WM. SANGER, Esq. Solicitor, 4, Essex-court, Temple; Messrs. JOSEPH and JOHN NASH, Land Agents, Surveyors, Auctioneers, &c. Reigate, Surrey, at whose offices plans of the estates may be seen.

KNOCKWOOD-PARK, KENT.—A Freehold Estate of 150 acres, in a ring-fence.

MESSRS. QUALLETT and LEWIS have been favoured with positive instructions to SELL by AUCTION, at the MART, LONDON, early in AUGUST (unless previously disposed of by private contract), the very compact and valuable FREEHOLD ESTATE, called Knockwood-park, in the parish of Tenterden, and within a quarter of a mile of the market town. It consists of about 150 acres of land of excellent quality, thoroughly drained, and disposed in equal quantities of park-like pasture and superior arable, embellished by handsome timber and thriving underwood. A gentleman's farm-house, with suitable buildings, and two cottages, render complete this truly eligible property, which for healthy and picturesque position, accessibility, and capability, is not surpassed within its distance of town. It is within an easy drive of a station on the Dover line, and possesses further advantages, which will be detailed in the particulars now in preparation, and may shortly be had at the Offices of Messrs. QUALLETT and LEWIS, 10, New Bond street.

WYFORD BURY.—An elegant suburban Villa and Grounds, in St. John's-wood park.

MESSRS. QUALLETT and LEWIS (late Hedger and Co.) have been favoured with instructions from the Proprietor, who is removing, to SELL by public AUCTION (unless previously disposed of by private treaty), at the MART, on THURSDAY, JULY 22nd, a very charming VILLA RESIDENCE, seated in its own grounds, and in one of the most delightful districts near town, being within an easy walk of Hampstead and its beautiful picturesque scenery, yet within a short drive of the palace, parks, and operas. A handsome carriage sweep conducts through the lawn to the residence, which is of pleasing elevation, and comprises an entrance hall, on the right of which is an elegant drawing-room, decorated with considerable taste, and opening into a conservatory; on the right is an excellent dining room, from which steps descend to the pleasure grounds, which are usefully as well as ornamentally disposed, and are of some considerable extent. There is also a morning-room and the chamber, bath, and culinary departments are arranged equally in accordance with comfort and convenience. A double coach house, stable, and enclosed yard complete the property, which may be fairly characterised as one of the most elegant and commodious villas in the vicinity. Full particulars may shortly be had of THOMAS EDEN, esq. Solicitor, 3, Salisbury-street Strand; and of Messrs. QUALLETT and LEWIS, Land Agents, &c. 10, New Bond-street, opposite the Clarendon, who are fully authorised to treat for the sale by private contract.

A delightful retreat, with Seven Acres of Land, at Ealing, within eight miles of town.

MESSRS. QUALLETT and LEWIS (late Hedger and Co.) will SELL by AUCTION, by order of the proprietor, at the MART, early in AUGUST, a very pretty COTTAGE, known as "Rose Villa" Hanger-hill, Ealing, with Seven Acres of capital Grass Land. The position is truly enchanting, being within view of Harrow and the rich panoramic scenery around. The house is in complete order, with sufficient accommodation for a moderate-sized family, with good flower and kitchen gardens, ornamental water, conservatory, aviary, melon-pits, ice-house, capital stabling for eleven horses, double coach-house, harness-room, and every suitable outbuilding, forming a miniature farm yard, with every suitable appendage. It is very easy of access, both by coach and railway, and may be purchased with the new furniture, stock, &c. and immediate possession obtained.—Particulars are in preparation, and may shortly be had at the Mart, and at the offices of Messrs. QUALLETT and LEWIS, Land agents, &c. 10, New Bond-street, opposite the Clarendon.

NOTTING-HILL, close to Lord Holland's beautiful Park.

MESSRS. QUALLETT and LEWIS (late Hedger and Co.) are directed by the Proprietor to SELL by AUCTION (unless previously sold by private treaty), at the MART, on THURSDAY, JULY 22, Nos. 1 and 3, Clifton-terrace, Notting-hill, TWO very superior LEASEHOLD RESIDENCES, held for Seventy-two years, at trifling ground-rents, most delightfully situate, close to Lord Holland's beautiful park, facing the main road, though at a sufficient distance therefrom to obviate the slightest annoyance. They are admirably arranged as to comfort and convenience, both with gardens, and one having stabling in the rear.—Particulars may be had at the Mart; the Mitre, Notting-hill; of Mr. SMITH, Solicitor, 35, Walbrook, City; and of Messrs. QUALLETT and LEWIS, 10, New Bond-street, opposite the Clarendon.

PERIODICAL SALE (appointed to take place the first Thursday in each month) of Reversions, Life Interests, Annuities, Policies of Assurance, Advowsons, Next Presentations, Rent-charges in Lieu of Tithes, Post Obit Bonds, Tontines, Debentures, Improved Rents, Shares in Docks, Canals, Mines, Railways, Insurance Companies, and other public undertakings for the year 1852.

MR. MARSH begs to announce that his PERIODICAL SALES (established in 1843), for the disposal of every description of the above-mentioned property, will take place on the first Thursday in each month throughout the present year, as under:—

Thursday, August 5.	Thursday, Nov. 4.
Thursday, Sept. 2.	Thursday, Dec. 2.
Thursday, Oct. 7.	

Mr. MARSH has been induced to hold these sales from his experience of the heavy drawback and great difficulty to which this description of property has been exposed in the ordinary course of sale, and the above plan has proved equally advantageous to venders and purchasers. Notices of sale intended to be effected by the above means should be forwarded to Mr. MARSH at least a fortnight antecedent to the above dates. Mr. MARSH requests all persons desirous of being furnished monthly with the particulars of the above sales, to forward their address to his Offices, 2, Charlotte-row, Mansion-house, where every information as to the disposal and purchase of this description of property may be obtained.—The particulars and conditions of the sales for the present year may be obtained, seven days prior to each day of sale, at Mr. MARSH'S Offices, 2, Charlotte row, Mansion house.

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THE LAW TIMES,

FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

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IN CHANCERY.—*Radford v. Radford*, and *Radford v. Brown*.—WINDSOR.—Desirable Freehold Investment.

MR. PRICE will SELL by AUCTION, at GARRAWAY'S, on TUESDAY, JULY 27, at Twelve for One, in four lots, with the approbation of Nassau Wm. Senior, esq. the Master to whom these causes stand referred, THREE remarkably well-built FREEHOLD HOUSES, delightfully situate, being Nos. 5, 6, and 7, Adelaide-square, King's-road, Windsor, Berks, together with a small parcel of rich meadow land, with fine growing timber thereon, and Two Cottages, at Clewer-green, in the parish of Clewer, near Windsor, situate a short remove from the high road near to the Prince Albert Inn, and has a good building frontage. The whole is let at very low rentals, amounting to 66*l*. 1s. per annum. The property may be viewed till the sale, and particulars had, ten days prior at the said Master's Office, Southampton-buildings, Chancery-lane; of Mr. ANDREW, Solicitor, 44, Lincoln's-Inn-fields; Mr. THOMAS BRACE, Solicitor, 9, Chandos-street, Cavendish-square; Messrs. MORRIS, STONE, and TOWNSON, Solicitors, Moorgate-street Chambers; Mr. RABT. GEO. SMITH, Solicitor, 5, New inn; at the Castle Inn, Windsor; at the various Inns in the neighbourhood; at Garraway's; and at Mr. PRICE'S Offices, 48, Chancery-lane.

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MR. PRICE has been favoured with instructions to SELL BY AUCTION, at GARRAWAY'S, on TUESDAY, JULY 27, at Twelve for One, in Lots, FIFTEEN substantial brick-built MESSUAGES, being Nos. 49, 53, 54, 55, 57, and 58, Great Titchfield street, Nos. 8, 10, and 11, Clipstone-street, Nos. 11, 16, and 19, Charlton-street, and Nos. 42, 43, and 44, Upper Marylebone-street, comprising nearly the whole of that valuable pile of buildings bounded by the four streets above mentioned. Many of the houses have good ornamental shop fronts, particularly the four corner houses, which have extensive double return fronted shops, and are very commanding in appearance. The whole are well let, principally on lease, to tenants of great respectability. The property is situate in a good and substantial business neighbourhood, where the rentals may be relied upon with certainty; and Mr. PRICE feels great pleasure in recommending this investment to his friends generally, but more especially to those seeking to increase their present incomes, the remainder of the terms being about twenty one years. The premises may be viewed by permission of the tenants, and particulars had ten days prior to the sale of T. D. KNIGHT, Esq. Solicitor, 73, Basinghall-street; at Garraway's; and at Mr. PRICE'S Offices, 48, Chancery lane.

IN CHANCERY.—*Forsyth v. Chard*.—Leasehold Ground-rents and Reversionary Interest in the same Premises, arising from property situate in Goswell-street-road, Brewer-street, Alfred-buildings, Rawstone-street, and Bridge-place, respectively, in the County of Middlesex.

MR. W. F. BRAY is instructed to SELL by AUCTION, at the MART, facing the Bank of England, on TUESDAY, the 20th day of JULY, at Twelve o'Clock at noon, with the approbation of Nassau William Senior, esq. one of the Masters of the Court of Chancery, in pursuance of an Order of the said Court, made in a cause intituled *Forsyth v. Chard*, in Three Lots LEASEHOLD GROUND RENTS of 110*l*. 8s. per annum, and of the REVERSIONARY INTEREST, amounting to 1,436*l*. per annum, in the same premises, after the determination of the leases under which the ground rents are reserved, and of the interest, amounting to 5—*l*. per annum, in other premises in — aforesaid. Particulars may be had at the Chambers of the said Master in Southampton-buildings, Chancery-lane; of Mr. LEIGH, Solicitor, No. 16, George-street, Mansion-house; of Messrs. SMITH, HENNING, and CROFT, No. 3, Basinghall-street, Solicitors; Mr. HENRY THOMAS, No. 15, Lincoln's-inn fields, Solicitor; Mr. SAMUEL SHUTTLEWORTH, No. 3, South-square, Gray's-inn, Solicitor; Messrs. LEGARD, BANNATYNE, and GAMMON, No. 9, Cook-lane, City, Solicitors; of the Auctioneer, No. 259, High Holborn; and at the Mart.
SAMUEL SHUTTLEWORTH, Solicitor, Gray's-inn.
July 3, 1852.

Freehold.—Fort-street, Bishopsgate.

MR. BRAY, Jun. will SELL, at the MART, facing the Bank of England, on TUESDAY, 20th JULY, at Twelve o'clock, by order of the Mortgagee, and with concurrence of the Mortgagor, a FREEHOLD DWELLING, No. 7, Fort-street, near Union-street, Bishopsgate; redeemed; partly let, and estimated to produce 50*l*. per annum. May be viewed, and particulars and conditions of sale had on the Premises, of D. A. RIVOLTA, Esq. Solicitor, 10, Hart-street, Bloomsbury; at the Mart; and of the Auctioneer, 259, High Holborn.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTH.

BREWSTER.—On the 30th ult. at No. 3, St. Hilda's-terrace, Whitby, the wife of John Brewster, esq. solicitor, of a son.

MARRIAGES.

CRICKITT, Robert Edward, of Doctors'-commons, esq. to Emily Mary Wyneken, relict of the late William Price, esq. and youngest daughter of General Sir Colin Halkett, G.C.B. on the 3rd inst. at St. Luke's, Chelsea.

HEYGATE, William Unwin, Barrister-at-law, second son of the late Sir William Heygate, bart. of Roecliffe-hall, Leicestershire, to Constance Mary, only daughter of the late and sister of the present Sir George Beaumont, bart. of Cole-Orton-hall, in the same county, and granddaughter of the late Archbishop of Canterbury, on the 6th inst. at Cole-Orton, Leicestershire.

WESTON, JOHN, eldest son of William Weston, esq. Solicitor, Leicester, to Emma, relict of the late Mr. Thomas Wheeler, of Sydney, and only daughter of the late Joseph Kay, esq. of Surbiton, near Kingston-on-Thames, Surrey, on the 3rd inst at St. Pancras.

RANSOM, Robert, esq. of Hastings, to Isabel, youngest daughter of John Weldon, esq. of Durham, on the 29th ult. at Southchurch, Bishop Auckland.

DEATHS.

BRINK, Pieter Gerhard, esq at Cape Town, Cape of Good Hope, late auditor-general of that colony, on the 11th of May.

BROWN, Parkhurst, eldest son of George Brown, of No. 24, Portman-place, Edgeware-road, solicitor, on the 4th inst. aged 17.

JONES, Charles Chadwicke, esq. serjeant-at-law, on the 7th inst. aged 52.

RANSFORD, Mr. T. G. late of Bristol, on the 1st inst. at St. Saviour's, Jersey, aged 60.

WEDDALL, David William, esq. of Brownlow-street, Bedford-row, formerly of Gosport, on the 8th inst. aged 69.

WODEHOUSE, the Hon. Sophia, daughter of the first Lord Wodehouse, on the 22nd ult at Hingham, Norfolk, aged 82.

MONEY MARKET.

ENGLISH FUNDS.

Bank Stock	225	225½	..	226	226	226¼
3 ℔ Cent. Reduced Annuities	100⅝	100⅞	101⅛	100	101	101
3 ℔ Cent. Consols Annuities	..	..	.	100⅛	100¹	100⅞
Consols for Account	100¼	100⅜	100⅜	100¼	100⅜	..
New 5 ℔ Cent. Annuities ..						
New 3¼ ℔ Cent. Annuities ..	104⅛	104¼	104¼	104	104¼	104
Long Annu. (exp. Jan. 5, 1860)			6¼	6¼	6¼	.
Do. 30 yrs. (exp Oct. 10, 1859)	6¾			..	..	6⅞
Do. 30 yrs. (exp. Jan. 5, 1860)				.	‡6¾	..
India Stock				271‡	272	.
India Bonds (1,000l.)	.	.	89		..	89*
Do. do. (under 1,000l.)	92	..	89		..	..
South Sea Stock	..	..	111¼		..	110¼
Do. do. New Annuities	..	..	..		..	..
Exchequer Bills, 1,000l. June	72*	69*	69*		69*	72*
Do. do. 500l. June	72*	69*	69'			
Do. do. Small, June	72*	69*	69'		72'	

* Premium. † 100⅜ Ex. div. ‡ Ex. div.

Public Sales.

By Messrs. CAFE and REID, at Garraway's.—A leasehold residence, 22, Queen's-road, Gloucester-gate, Regent's-park, let at 75l. per annum; term unexpired, ninety-two years, ground-rent, 12l.—900l.

The Granby Arms, 25, Granby-street, Hampstead-road, let at 51l. 16s. per annum, ground-rent, 10l.; term unexpired, seventy-four years.—900l.

A baker's shop, 23, Granby-street, let at 45l. per annum; ground-rent, 4l. 5s.; term unexpired, seventy-four years.—650l.

A leasehold property, comprising 27 and 28, Granby-street, the whole of Granby-yard, four plots of ground adjoining, and the garden-ground known as the Granby Nurseries, producing a rental of 171l. 10s. per annum, ground-rent, 35l. 4s.; term unexpired, seventy-four years.—1,980l.

A private residence, 3, Harrington-street North, Hampstead-road, let at 35l. per annum; ground-rent, 5l. 5s.; term unexpired seventy-four years.—305l.

A family mansion, 7, Eaton-place, Belgrave-square, with possession; estimated rental, 270l.; ground rent, 30l.; term unexpired fifty-seven years.—3,450l.

A freehold ground-rent of 29l. 12s. per annum, amply secured on a dwelling-house and premises, 148, Waterloo-bridge-road.—800l.

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The Best Souchong Tea	4s. 4d.	"
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The Best Old Mocha Coffee	1s. 4d.	"
The Best West India Coffee	1s. 4d.	"
The Fine True Ripe Rich Rare Souchong Tea now only	4s. 0d.	"
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THE PRIZE MEDAL, with "Honourable Mention," has been awarded for the GLENFIELD PATENT STARCH, by the Jurors of the Exhibition of all Nations, and is now used in the Royal Laundry. Being thus doubly noticed for its "General Superiority" (a mark of distinction conferred on no other) by the Royal Commissioners and Jury, from amongst thirty or forty exhibitors, sets it far above every other of its competitors. The ladies are, therefore, respectfully requested to make a trial of the Glenfield Patent Double-refined Powder Starch, which, for domestic use, now stands unrivalled. See also testimonials from the laundress to Her Majesty; the Lady Mayoress of London; the lady of W. Chambers, Esq. of Glenormiston, one of the Publishers of *Chambers's Edinburgh Journal*; the laundresses of the Marchioness of Breadalbane, Countess of Eglinton, Countess of Dartmouth, &c.

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RA. LEIGH, Clerk of the Peace for the said Borough.

Dated the 28th day of June, 1852.

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Hope, James Robert, esq. Q.C. Temple
Hughes, Henry, esq. Clement's Inn
Jay, Samuel, esq. Lincoln's Inn
Jones, John Oliver, esq. 4, Upper Bedford-place
Lake, Henry, esq. Lincoln's Inn
Law, Henry Shephard, esq. Bush-lane
Lefroy, George Bentinck, esq. Piccadilly
Loftus, Thomas, esq. New Inn
Marten, George, esq. [illegible]
Parke, James, esq. Lincoln's-Inn-fields
Pickering, Edward Rowland, esq. Lincoln's Inn
Reeve, Philip, esq. Lincoln's Inn
Steward, Samuel, esq. Lincoln's Inn-fields
Tilleard, John, esq. Old Jewry
Turner, Francis, esq. Lincoln's Inn
Tyrrell, Timothy, esq. Guildhall
Vizard, William, esq. 61, Lincoln's Inn-fields
White, Thomas, esq. Bedford-row
Woodrooffe, William, esq. Lincoln's Inn
Wrottesley, the Hon. Walter, Lincoln's Inn.

PHYSICIAN.

H. Pitman, M.D. Montague-place.

SOLICITORS.

H. D. Warter, esq. Carey street, Lincoln's Inn.
Robert Curling, esq. Frederick's place, Old Jewry.

Bonus.—Policies effected (on the profits scale) prior to the 31st December, 1853, will participate in FOUR-FIFTHS OF THE PROFITS to be declared at the close of the year 1855; and appropriated by addition to the policy, reduction of premium, or payments in cash, as the Assured may desire.

Extensive license to travel.

Appearance before the Board dispensed with.

Prospectuses, &c. may be had at the Office, or will be forwarded on application to JOHN KNOWLES, Actuary and Secretary.

THE NEW LAWS.

The following are now ready.

THE LAW of WILLS AMENDMENT ACT, with Notes. By GEORGE S. ALLNUTT, Esq. Barrister-at-Law. Price 1s. sewn. N.B. This will be contained, without additional charge, in Allnutt's Practice of Wills and Administrations.

The COUNTY COURTS IMPROVEMENT ACT, with Notes, and a DIGEST of all the Cases relating to the County Courts recently decided, and an Abstract of the new CITY SMALL DEBTS ACT, with a copious Index, by EDWARD W. COX and MORGAN LLOYD, Esqrs. Barristers-at-Law, will be ready on Wednesday next. Price 2s. 6d. sewn; 3s. cloth. They are also introduced into the *Fourth Edition of Cox and Lloyd's Law and Practice of the County Courts*, without additional charge.

The HIGHWAYS ACT, with all the Cases and Forms, &c. by WM. FOOTE, Esq. of Swindon. Price 10s. 6d. cloth.

LAW TIMES Office, 29, Essex-street, Strand.

SURREY, on the south side of Leith-hill, in the parish of Abinger, a well known picturesque and beautiful part of the country.

MESSRS. NASH are instructed by the Pro-prietor to SELL BY AUCTION, at GARRAWAY'S, on THURSDAY, JULY 29, at Twelve, in One Lot, a very improveable small FREEHOLD ESTATE, called Little Burchetts, consisting of a Cottage, with large Garden, capital close of Meadow Land, with beautiful stream of water running through, containing together about four acres, and let to Mr. Mace, a yearly tenant, at the very low rent of 12*l.* per annum. The timber in the meadow, which is very handsome and growing, will be sold with the estate. This property adjoins the high road from Forest-green to Abinger, distant from the latter three miles; the same from the Gomshall Station; about eight miles from Dorking and Guildford, and thirty from London.—Printed particulars are preparing, and may be had fourteen days previously to the sale, at the principal inns at Dorking, Shere, Gomshall, Guildford, Ockley, and Horsham; at Garraway's; of Messrs. ELLIS, PHILLIPS, and SALAMONSON, Solicitors, 12, Clement's-lane, London; and of Messrs. JOSEPH and JOHN NASH, Land Agents, Surveyors, Auctioneers, &c. Reigate, Surrey.

CHARLWOOD, SURREY.—By

MESSRS. NASH, at GARRAWAY'S on THURSDAY, JULY 29, at Twelve, in one lot, by direction of the Devisees in Trust, under the will of William Ellis, esq.; a very desirable FREEHOLD FARM (with a small part copyhold), called Great and Little Greenings, consisting of a good Farm House, requisite agricultural buildings, and 140 acres of arable, meadow, pasture, and wood land, in convenient enclosures, remarkably well timbered, rendering the property an eligible investment, situate on a commanding eminence, having fine views of Leith and Box Hills, about one mile from the village of Charlwood, six from Reigate, the same distance from Dorking and Horsham, and twenty-seven from London. The farm being in hand, immediate possession may be had. The timber to be taken by valuation, as well as the usual tenant's property in and relating to the land, in every respect according to the custom of the country. Mr. Shove, at the adjoining farm, will shew the property.—Particulars are preparing, and may be had fourteen days previously to the sale at the principal Inns at Charlwood, Crawley, Horsham, Dorking, Guildford, Epsom, Sutton, Croydon; Old Ship, Brighton; *Sussex Express* Office, Lewes, and Duke-street, London-bridge; Garraway's; of WM. SANGER, esq. Solicitor, 4, Essex-court, Temple; Messrs. JOSEPH and JOHN NASH, Land Agents, Surveyors, Auctioneers, &c. Reigate, Surrey, at whose offices a plan of the estate may be seen.

SURREY.—in the parishes of Leigh and Betchworth.—By

MESSRS. NASH, at GARRAWAY'S, on THURSDAY, JULY 29, at Twelve, by direction of the Devisees in trust under the will of William Ellis, esq.—Lot 1. A small COPYHOLD FARM (timber free), at Westwood, in the parish of Leigh, in the county of Surrey, in the occupation of Mr. James Beaman, a yearly tenant, at the rent of 15*l.* consisting of a brick and tile cottage, with garden, orchard, barn, yard, &c. and thirteen acres of arable, meadow, and pasture land, in convenient inclosures, bounded by lands of his Grace the Duke of Norfolk and Thomas Hope, esq. Lot 2. (A short distance from Lot 1), in the parish of Betchworth, a small Close of FREEHOLD ARABLE LAND, containing 2a. 3r. 6p. in the occupation of Mr. W. Harman, a yearly tenant, at the rent of 2*l.* It adjoins the high road from Leigh and Brockham to the Holmwood-common, and is suitable for the erection of a cottage residence. The above described properties are beautifully situate, about four miles from Dorking and Reigate, two from the rural villages of Brockham and Leigh, and twenty-five from London. The purchaser of each lot will have to take the timber by valuation, and also to pay the respective tenants whenever they may quit, such valuation as they may be entitled to under their holdings. The tenants will shew the property.—Particulars are preparing, and may be had fourteen days previously to the sale at the principal inns at Dorking, Guildford, Epsom, Sutton, Croydon; Old Ship, Brighton; Sussex Express Office, Lewes, and Duke-street, London-bridge; Garraway's; of WM. SANGER, Esq. Solicitor, 4, Essex-court, Temple; Messrs. JOSEPH and JOHN NASH, Land Agents, Surveyors, Auctioneers, &c. Reigate, Surrey, at whose offices plans of the estates may be seen.

Valuable Estates in Cumberland for Sale

THE Trustees of the late Col. Lacy will offer for SALE in PUBLIC AUCTION, at the GEORGE INN, in PENRITH, on FRIDAY, the 23rd day of JULY, 1852, precisely at Three o'clock in the Afternoon, in the following or such other lots as may be arranged at the time of sale, the several valuable ESTATES, situate in the several parishes of Addingham and Great Salkeld, in the county of Cumberland, all lying (with a trifling exception) contiguous to each other, and consisting of:-

Lot 1 A Freehold Estate, called Longmeg, in the said parish of Addingham, in the occupation of Joseph and Thomas Holliday, as farmers thereof; comprising a farmhouse, with homestead and farm buildings, and several Inclosures of land, containing together by admeasurement 307a. 2r. 26p. of which 70a. 1r. 17p. of excellent soil are covered with growing timber, principally of oak, larch, elm, and ash, of large dimensions, between forty and sixty years' growth. The plantations were carefully thinned and attended to in the course of their growth by the late owner, whose great knowledge in the rearing of timber wood was universally known, and now form an acreage of the most thriving and valuable timber in the county. This estate is bounded on the south-west for upwards of a mile by the beautiful windings of the river Eden, which abounds with trout, and affords excellent diversion to the lovers of angling. It is situated 6½ miles from the town of Penrith, and being all of first-rate quality, is admirably adapted to either corn or grazing. It lies compactly together in a ring fence, and is tithe free: the tithes having been commuted for an allotment of land on the enclosure of Little Salkeld Common. This estate is situate in one of the most admired parts of Cumberland, and possesses the most perfect remains of a Druids' Temple to be found in England. These remains form a circle of not less 350 feet in diameter, and have long been the wonder and admiration of the curious in antiquity.

Lot 2 An estate called MAUGHANBY, situate in the said parish of Addingham, in the occupation of Thomas Glenton, as farmer thereof, comprising a Farmhouse, Homestead, and Farm-buildings, and several Inclosures of Land, containing together 203a. 2r. 2p. more or less, of which about 10a. 3r. 2p. are thriving plantations. This estate lies together in a ring fence, and pays a yearly tithe rent charge of 25l. 18s. 9d. in lieu of tithes. It is entitled to right of common on the valuable and extensive estates called Glassonby Fell, which are well adapted to the breeding and rearing of sheep, and on the common called Viol Moor, and is situate between Long Meg Estate and the next Lot, No. 3. Certain small parcels of this estate are customary, held under Sir George Musgrave, bart. as parcel of his manor of Glassonby, and under the Dean and Chapter of Carlisle, as parcel of their manor of Little Salkeld; and the remainder, being the great bulk of the estate, is freehold.

Lot 3 An estate, called GLASSONBY FARM, situate at GLASSONBY, in the said parish of Addingham, consisting of a Dwelling-house, homestead, and Farm-buildings, and several Inclosures of Land, containing together 135a. 0r. 37p. more or less, in the occupation of Joseph Hetherington, as farmer thereof (except a field called Ranes, in the occupation of Thomas Glenton), and of a Cottage, Garth, and Outbuildings, at Glassonby, in the occupation of the said Joseph Hetherington or his undertenant; and of several Inclosures of Land, situate in the townfields of Glassonby, aforesaid, containing together about 40a. 0r. 0p. more or less, in the occupation of William Kidd, as farmer thereof. This estate is situate about eight miles from the town of Penrith. The tithes have been commuted for a tithe rent charge of 20l. 1s. 4d. It is also entitled to a right of common on Glassonby Fell and Viol Moor. Certain small parcels of this lot are also of customary tenure, held under the said manors of Glassonby and Little Salkeld, and the remainder thereof, being the greatest portion of the estate, is freehold. Those three lots, which comprise an acreage of 707a. 2r. 17p. and lie contiguous together, are situate in a fine sporting country, in the midst of game preserves strictly attended to, and, from the wood, water, and shelter in which they are bound, are admirably adapted for the breeding of game.

Lot 4 All that Close, called High Close and W[illegible]od, in Glassonby aforesaid, adjoining Viol Moor, containing [illegible] or [illegible] more [illegible] in the occupation of the said Joseph Hetherington.

Lot 5 All that piece of Freehold Land, containing 33 perches, adjoining the Church yard of Addingham, in the occupation of Thomas Glenton.

Lot 6 All that compact Estate, called EDEN LACY, situate in the parish of Great Salkeld, in the said county, consisting of a new-built Dwelling house, and Farm Buildings of the best description and several Inclosures, all of the first rate quality, lying in a ring fence, containing together 76a. 0r. 21p. [illegible] in th[e occup]ation of Mrs Sander[illegible] About 14a. 0r. 29p. of this estat[e com]prise plantations of fin[e gr]owing useful and ornamental oak, larch, and timber wood, all lai[d ou]t in the most tasteful manner. It is of copyhold te[nure], held u[n]der the Manor of Great Salkeld, member of the honour of Penrith, by payment of several small copyhold rents, and subject only to a fine on change of lord or tenant by death or alienation, of the same amount as the copyhold rent, and is situate about five and a half miles from Penrith. The tithes of this estate are commuted for a tithe rent-charge of 10l. 2s. 10d.

Lot 7 A Freehold Estate, called WOLFA, situate in the said Parish of Great Salkeld, consisting of a Dwelling-house and Farm-buildings and several Inclosures of Land, containing together 93a. 0r. 31p. more or less, in the occupation of John Redford, as farmer thereof of which about 22 acres are wood. The tithe rent-charge on this estate is 5l. 7s. 11d. and it is situated about four miles from Penrith.

Lot 8 All that Copyhold Dwelling house, with a Garden and piece of Land adjoining, situate in the Village of Great Salkeld, now in the occupation of the Rev George Chapman as farmer thereof. This lot is held under the Ma[nor] of Great Salkeld by payment of the yearly copyhold rent of 1d.

Lot 9 A Freehold Close, called Farlands, situate in the Town fields of Glassonby, containing 2a. 0r. 29p. more or less, in the occupation of Thomas Glenton, as farmer.

Lot 10 A Freehold Close, called High Moor, situate in the Townfields of Yanwath, in the County of Westmorland, containing 2a. 3r. 10p. more or less, in the occupation of James Irwin, of Penrith. The Wood on the estates will be sold to be taken at a valuation by the purchaser.

The estates may be viewed on application to the several tenants; and all further information, plans, and printed particulars may be obtained on application to Mr Sylvanus Miller, Land Surveyor, Penrith; Messrs Rutter and Thornton, Solicitors, 4, Ely-place, Holborn, London; and Mr Jameson, Solicitor, Penrith.

CALVERT YARTY, Auctioneer.

MILE END. Valuable Freehold and part Copyhold Road side Property, subject to trifling quit rents, adapted for investment or business occupation.

MR. MOORE will SELL by AUCTION, at the MART, on THURSDAY, JULY [illegible] at Twelve, by order of the Executors of the late Mr Wilt[illegible] [illegible] the reserve, a brick-built HOUSE and SHOP, [illegible] situ[ate] Mile end road, opposite the Jews' Hospital, in occupation of Messrs Lodge and Cobb, oilmen, very old tenants, at 3[illegible]l per annum. also a brick-built Dwelling-house, No. 3, adjoining, and a [illegible] house, with very large garden, No 2, adjoining, recently [illegible] tion of deceased.—May be viewed by permission, and [par]ticulars with plans, had of Messrs Baddeley, Solicitors, 18, Leman Goodman's-fields, at the Mart; and at the Auctioneer, Mile end-road.

Valuable Freehold, Copyhold, and Leasehold Estates, at the East end of London, very desirable for Investment.

MR. MOORE will SELL by AUCTION, at the MART, on THURSDAY, JULY 15, at Twelve, in six lots, a COPYHOLD ESTATE of EIGHT HOUSES, in Terrace-place, Stepney green, let at 94l. 5s. held for ever of the Manor of Stebonheath at a quit rent of 8d per annum, and a fine certain of 10s. A Copyhold House, in Samuel-street, Limehouse, let at 14l.; quit rent, 4d.; fine, same as above. Two Freehold Houses, in Boundary street, Shoreditch, let at 1[illegible]l. A Freehold House in Ernest Street, Mile end, let at 16l. 5s. Four Dwelling Houses, in Charles street, opposite the Ben Jonson, Stepney, let at 72l. 19s.; term 71 years; ground rent, 7l. And Two Houses, with [illegible], in Charles street, Commercial road, let at 39l.; term, [illegible] years; ground rent, 8l. The land tax on all the above houses is redeemed, and the fixtures in them will be included in the purchase.—May be viewed, and particulars had of A. Wolston, Esq. Solicitor, 8, Furnival's-Inn; at the Mart, and at the Auctioneer's Offices, Mile-end-road.

WANSTEAD.—Nine Acres of valuable and highly productive Arable Freehold Land, tithe free and land-tax redeemed, giving a vote for Essex.

MR. MOORE will SELL by AUCTION, at the MART, on THURSDAY, JULY 15, at Twelve, a piece of FREEHOLD LAND, with an excellent Crop of Barley, desirably situate at Redbridge-lane, in the parish of Barking, Essex, comprising upwards of Nine Acres, with a considerable frontage to the road from Wanstead to Woodford-bridge; also a Cottage and Garden thereon, well adapted for investment.—Particulars, with plans and conditions of sale, may be had of Samuel Prentice, Esq. Solicitor, 28, Whitechapel road; of Mr. Davey, the Bee Hive, near the property (who will shew the land); at the Angel, Ilford; George, Wanstead; at the Mart; and at the Auctioneer's Offices, Mile end-road.

CITY-ROAD and ST. GEORGE'S EAST.—Small Investments.—By

MR. MASON, at GARRAWAY'S, on TUESDAY, JULY 20, by order of the Executors of Miss Fogg, deceased, HOUSE and SHOP, 7, Anthony street, the corner of Chapple street, Commercial road East, let at 20l. held at 1l. 17s. Three Houses, 1, 2, and 3, Grove place or Mason's place, York-street, City-road, let at 47l. held at 12l.—Particulars of Messrs. Walters and Son, Solicitors, 36, Basinghall street; and of the Auctioneer, Norton-folgate.

HACKNEY ROAD. Eligible Leaseholds.—By

MR. MASON, at GARRAWAY'S, on TUESDAY, JULY 20, THREE RESIDENCES, 69, 70, and 71, Great Cambridge-street, let at 59l.; Four Houses, 8, 9, and 10, Brunswick-street, and 8, Little Cambridge-street, let at 78l.; a commodious Wharf, and Eight small Houses, Bath-place, let at 144l.; Seven Tenements, 1 to 6, Nicholl's-street, and 31, Dove row, let at 73l.; a neat stuccoed front Residence, 22, Dove-row, and Two Messuages, Nos 1 and 2, James-street, let at 53l. the whole held for long terms at ground rents.—Particulars of D. Hughes, Esq. Solicitor, 25, Old Jewry; and of the Auctioneer, Norton Folgate.

KENSINGTON.—Second Sale of valuable Freehold Building Land, opposite the entrance to Lord Holland's Park, tithe free, and land tax redeemed.

MR. MASON begs to notify that, in conjunction with Mr. MITCHELL, he is instructed to SELL, on TUESDAY, AUG 3, unless acceptable offers be previously made, about FORTY LOTS of exceedingly eligible BUILDING GROUND, with frontages on Earl's court-road, Foxley road, Newland-street South, and Stradford-road, immediately contiguous to the High road, Kensington, planned for the erection of about eighty houses. The roads are made, and sewers will be laid down by the vendor. A plan lies for inspection at the Pembroke Arms, Earl's-court-road, and the Devonshire Arms, Abingdon-road. Liberty will be given to erect a public house on a corner plot. Particulars may be had of Mr Mitchell, 21, Motcomb-street, Belgrave-square; of Mr Mason, Norton Folgate, and Messrs Wilkinson, Gurney and Stevens, Solicitors, Nicholas lane, Lombard-street.

HIGHBURY.—Two Capital Residences, let at 205l per annum, held for nin[ety years], at ground rents.—By

MR. MASON, on TUESDAY, JULY 20, at GARRAWAY'S, an excellent RESIDENCE, of handsome elevation, with balconies to windows of the principal story and first floor, No. 20, Grove Villas. The interior is finished in the most expensive style, and comprises on the ground floor a noble dining room, two parlours, entrance hall, and water-closet; on the first floor an elegant drawing-room and two bed-rooms; upper floor, four chambers. The basement is conveniently arranged, the garden is disposed in lawn and flower-beds, walled in; the front [illegible] tastefully laid out and inclosed with ornamental iron [illegible] let on lease to Mrs Rutter at 105l per annum. The Residence No 16 is semi-detached, with bow front to the drawing room, and is well fitted; let to Mrs Castelli, at 100l. a year: both held for upwards of ninety years, the first described at a ground rent of [illegible]l and No 16 direct from the freeholder, at 11l 11s. Particulars may be had of D Hughes, Esq Solicitor, 25, Old Jewry; at the Alwyne Castle, near the property, and of the Auctioneer, Norton Folgate.

KINGSLAND-ROAD and CALEDONIAN-ROAD.—By

MR. MASON, on TUESDAY, JULY 20, [at] GARRAWAY'S, THREE HOUSES, Nos 77, 78, and 79, Mansfield-street, Kingsland road, let at 64l. per annum, and held direct from the freeholder for sixty seven years, at a ground rent of [illegible]l each; and a Dwelling-house, No 1, Freeling-street, Caledonian-road Islington, let at 24l. held for ninety-two years, at 6l. Particulars [illegible] [Mansfie]ld-street, of W Mills, Esq Brunswick str[eet] [illegible]-road; and Freeling-street, of W Mansfield, Esq 20, John [stre]et, Bedford row; also of the Auctioneer, Norton Folgate.

STOKE NEWINGTON-ROAD.—Six Pairs of Villa Residences with gardens, and a Detached Stable with Coach-house, held for [up]ward sixty years.—By

MR. MASON, on TUESDAY, JULY 20, at GARRAWAY'S, a PAIR of well built SEMI-DETACHED RESIDENCES, just out of the high road, being Nos 1 and 2, [Somer]ford-grove, with gardens and front courts, let to F. A. Davies, esq. Martin Ocks, esq. at 70l. per annum, ground rent 5l. each; a pair of respectable Residences, with large gardens, 120 feet frontage at the end of the Grove, known as 1 and 2, Somerford-villas, commanding a view up into the high road, let at 80l.; ground rent [illegible]l. 10s. each, with a detached two-stall stable and coach-house; four pairs of semi detached Cottages, with gardens, Nos 17, 18, 19, 20, 21, 22, 2[illegible], and 26, Somerford grove, let at 167l. and held at 1l. 10s. each house.—Particulars of Cureton Cureton, Esq. Sol[icitor] Winchester buildings, Broad-street, and of the Aucti[oneer] Norton Folgate.

STOKE NEWINGTON. Shop Property in [fr]ont of the High Road, held direct from the Freeholder for 9[illegible] [ye]ars at the original ground rent of 6l each house.—By

MR. MASON, on TUESDAY, JULY 20, at GARRAWAY'S, in eight lots, EIGHT respectable HOUSES forming a uniform row in front of High street, Stoke Newington, near Abney park Cemetery, most of them have plate-glass shop fronts. Let to Mr Heath (stonemason), Turney (bootmaker), Taylor (stationer), Pashley (cheesemonger), Dudley linendraper, and others, at 318l. Particulars may be had of Messrs G. and G. H. Clark, Solicitors, 2, Finsbury-place; and of the Auctioneer, Norton Folgate.

DALSTON.—Equity of Redemption, subject to a Mortgage of 3,000l. payable on the 29th October, 1857, of, in, and to the Ground Rents arising from Twenty Houses, and the Rack Rents arising from Fourteen well built Private Residences, Queen's-[roa]d and Shrubland road, held direct from the freeholder, producing, after payment of interest and outgoings, 230l. 10s. per annum for ninety years.—By

MR. MASON, on TUESDAY, AUGUST 3, at GARRAWAY'S, a well secured GROUND RENT of 88l. 10s. per annum, arising from Eighteen Houses in Middleton-terrace and Marlborough terrace and two others, Nos 31 and 34, Brownlow-road, held at a peppercorn; Two very neat Private Residences, Nos 1 and 2, Gotha cottages, Shrubland road, well built and expensively finished, let at 70l.; Four comfortable Residences, 25, 26, 27, and 28, north side of Shrubland road, let at 112l.; Four pleasant and commodious Residences south side of the same road, known as Archimedean cottages, let at 114l.; Four superior Residences, in front and on the east side of Queen's road, let to Dr. Hooper and others at 150l. The whole are held direct from Sir William Fowle Fowle Middleton, bart. for upwards of ninety years, at 82l. to which is to be added the interest on amount of mortgage at five per cent. This estate affords an opportunity of securing a good income to any gentleman of small capital who can devote a small portion of his time to the management of his property.—Particulars may be had at the Middleton Arms, Queen's road; Salmon and Ball, Bethnal-green; of D. Hughes, Esq. Solicitor, 25, Old Jewry; and of the Auctioneer, Norton-folgate.

VERE LODGE, OLD BROMPTON.—For peremptory Sale.

MR. C. FURBER has been favoured with instructions to submit to AUCTION, on the PREMISES, on THURSDAY, JULY 15, at Twelve for One, the charming suburban retreat well known as VERE LODGE, Brompton, a short remove from the High Fulham-road. The villa has been built in the most substantial manner, is in an excellent state of repair, and, as the residence of a man of fashion, the domestic arrangements are of the first class. The reception-rooms, dining-saloon, morning-room, and library are all well-proportioned and noble apartments, and the spacious entrance-hall, leading to an elegantly-designed and spiral staircase, give a distingué air to the whole. The extensive pleasure-grounds are arranged with much taste, and shaded by ample foliage. The buildings consist of a large green-house, two newly-built loose boxes, and adjoining, but sufficiently removed from the house, is an excellent four-stall stable and coach-house, with groom's rooms. The villa stands within its own grounds, and is excluded from observation by a substantial brick wall which skirts the Old Brompton-road. It is held for an unexpired term, at a rent which may be denominated a ground-rent.—The premises may be viewed daily, where particulars and conditions of sale may be obtained, as also of Messrs. Harrison and Donner, Solicitors, 20, Hart-street, Bloomsbury; of S. B. Abrahams, Esq. Solicitors, 70, St. Martin's lane; and at the Auction Offices, Warwick-court, Gray's-inn.

PEREMPTORY SALE.—HAYES, MIDDLESEX.—Three Votes for the County.—By order of the Executors of the late Charles King, esq. deceased.

MR. CHARLES FURBER will SELL by AUCTION, at the MART, on THURSDAY, the 29th of JULY, at Twelve for One, THREE FREEHOLD COTTAGES, with nearly an acre of land, situate and being on BOTWELL COMMON, in the parish of HAYES, in the county of MIDDLESEX, of the annual value of 5l. each. This property affords [an] eligible opportunity to gentlemen desirous of possessing a freehold qualification at a small cost.—May be viewed, and particulars, with conditions of sale, obtained of Mr. Towsey, Solicitor, Quality-court, Chancery-lane; at the principal Inns at Hayes and the neighbouring towns; at the Mart; and at the Auction Offices, in Warwick-court, Gray's-inn.

Important Investment.—Fulham, Middlesex.

MR. CHARLES FURBER begs to announce that he has been favoured by the instructions of the Executors of the late Charles King, esq. in consequence of the decease of his widow, who possessed a life interest in the estate, to submit to public AUCTION, at the MART, on THURSDAY, JULY 29, at Twelve for One, precise time, the much-admired gentlemanly RESIDENCE or COTTAGE ORNEE, known as Craven Cottage, immediately adjoining the Bishop of London's palace at Fulham, in the county of Middlesex. The property is let for seventy years to Sir Ralph Howard, bart. at 200l. per annum up to the 15th July, 1860, from thence at 225l. a-year, and is held upon lives renewable for ever. The princely liberality of the present lessee has rendered this villa the resort of the fashionable world, and no expense has been spared to render it most attractive, both in the internal accommodation and decoration, as also in the tasteful arrangement of the grounds of about four acres, in which it stands, and which are skirted by ornamental timber. The grounds are disposed in lawn, terrace, and other walks, parterres, and beautiful slopes to the bank of the river, and an extensive conservatory has recently been added, now forming one wing of the river frontage. It is by universal consent pronounced the most charming villa on the Thames. There is an excellent kitchen garden, with hothouse and forcing-pit, good stabling, gardener's cottage, out buildings, &c.—Particulars, with conditions of sale, may be obtained at the principal Inns in the neighbourhood; of Mr Towsey, Solicitor, Quality-court, Chancery-lane; at the Mart; and at the Auction Offices, in Warwick court, Gray's-inn.

[Freehol]d and Copyhold Property, within ten miles of London, and [near a] station on the Great Western Railway, comprising a gen[teel fami]ly villa residence, a small farm adjoining, some eligible bu[ild]ing land, cottages, &c. the whole comprising about 118 acres.

MESSRS. WINSTANLEY have received instructions to SELL by AUCTION, at the MART, in the month of JULY, in several lots, the valuable FREEHOLD and COPYHOLD PROPERTY of the late John Robins, esq. delightfully situate at Norwood green, between Brentford and Southall, in the county of Middlesex, consisting of the residence, occupied for many years by the deceased, and built by him in a most substantial manner, with the pleasure and kitchen gardens, and about sixteen acres of park-like meadow land, an orchard and other land fronting the green, suitable for building purposes; a farm, with convenient farm buildings bounded by the road to Hanwell; several out-lying parcels of land, sundry cottages, &c. The day of sale will shortly be advertised, and particulars can then be obtained twenty-one days previously, at the inns in the neighbourhood; of Messrs. Blake, Tyler, and Tyler, Essex street, Strand; at the Mart; and [of Messrs] Winstanley, Paternoster-row.

ABBEY FARM LODGE, ST. JOHN'S-WOOD.

MESSRS. WINSTANLEY have received instructions from the Executors to SELL by AUCTION, at the MART, on TUESDAY, JULY 13, ABBEY FARM LODGE, the distinguished Elizabethan residence of the late Charles Woodcock, esq. which is approached by a carriage-drive, and encircled in its own tastefully-disposed pleasure grounds, with gravelled terrace-walk, belted by shrubberies and plantations. It is delightfully situate in the New Finchley road, about a mile from the Regent's-park, and at the corner of the road leading to Hampstead, and was erected about six years since of red brick, in the most substantial manner, and finished with stone quoins, mullions &c. and contains twelve principal and secondary bed-chambers, two dressing-rooms, two water-closets, linen and bath rooms; on the ground-floor, a lofty drawing room, 25 feet by 20, a dining room, 22 feet 6 by 16 feet 6, library and billiard-room, water-closet, &c.; a turretted tower, which communicates both with the house and grounds, and commanding a splendid panoramic view. The domestic offices are well arranged, and supplied with water. There is stabling for three horses, two coach houses, men's rooms, gardener's cottage, kitchen-garden, &c. the whole comprising about 1a. 35p. and held for ninety-three years, at a ground-rent.—May be viewed by tickets only, which, with particulars, may be obtained of Messrs. Bennett and Field, solicitors, 2, New-square, Lincoln's-inn; and of Messrs. Winstanley, Paternoster row; particulars also at the Mart, and the Eyre Arms, St. John's-wood.

Important Estates in the County of Hants, comprising a mansion-house and park, several [illegible] [alto]gether about 3,500 acres.

MESSRS. WINSTANLEY will SELL by AUCTION, at the MART, in the month of JULY, in lots, pursuant to an Order of the High Court of Chancery, made in a cause of "Rodney v. Rodney," with the approbation of James William Farrer, Esq. one of the Masters of the Court, the extensive and valuable ESTATES of George Lord Rodney, deceased, situate at Alresford and elsewhere, in the county of Hants. The property consists of the mansion at Alresford, various farms, and some woodlands, containing altogether about 3,500 acres, partly freehold and copyhold tenure, and the remainder held under leases for two lives from the Bishop of Winchester. Also the reversion in fee expectant on the decease without issue of a person aged 61, and a bachelor, to about 730 acres of freehold and copyhold land, in the parishes of Long Sutton and Ropley, in the county of Hants. The farms are let to most respectable tenants, and the woodlands are in hand.—Particulars and conditions of sale are in course of preparation, and may shortly be had (gratis) at the Master's office, Southampton-buildings, Chancery-lane; of Messrs. Young and Vallings, Solicitors, St. Mildred's-court, Poultry; of Messrs. Boodle and Partington, 9, Davies-street, Berkeley-square; of J. B. Lowndes, Esq. 2, New Inn, Strand; of Messrs. Karslake, Crealock, and Karslake, 4, Regent street; of Messrs Dunn, Hopkins, Carter, and Blackmore, of Alresford; Messrs. Winstanley, Paternoster-row; and at the place of sale.

LONDON:—Printed by Henry Morrell Cox, of 74, Great Queen-street, in the Parish of St. Giles in the Fields, in the County of Middlesex, Printer, at the Printing Office of COX (Brothers) and WYMAN, 74 & 75, Great Queen street, aforesaid, and published by JOHN CROCKFORD, of 29, Essex-street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, at the Office of the Law Times, No 29, Essex-street, aforesaid, on Saturday, the 10th day of July, 1852.

THE LAW TIMES,

FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

Vol. XIX.—No. 485.] SATURDAY, JULY 17, 1852. [Price 1s.

BIRTHS, MARRIAGES, AND DEATHS.

MARRIAGES.

CHINN, Sinckler, esq of the Close, Lichfield, to Emma Mary, eldest daughter of the late Lebbeus Charles Humfrey, esq. Q C. on the 8th inst. at Laughton, near Market Harborough.

JOHNSON, John James, esq. barrister-at-law, to Miss Mary Judith Barton, of Rolands Castle, Hants, on the 8th inst. at Redhill Church, Hants.

LABOUCHERE, the Right Hon. Henry, M.P. to Lady Mary Howard, sister of the Earl of Carlisle, on the 13th inst. at St. Paul's, Knightsbridge.

POOLEY, Augustus, youngest son of the late Joseph Hockley, esq of Guildford, Surrey, to Juliana, youngest daughter of the late Rev. John Thomas, of Radnorshire, South Wales, on the 10th inst. at Holy Trinity Church, Brompton.

YOUNG, William, third son of the late William Young, esq of Edinburgh, to Emily Dunlop, eldest daughter of Thomas G Margary, esq. solicitor, Paris, on the 14th inst. at Bushey Church.

DEATHS.

BURNINGHAM, Mr. Thomas, upwards of forty years clerk in the Masters' Offices in Chancery, on the 13th inst. at Islington, aged 76.

GREGSON, Sarah, eldest daughter of Mr. William Gregson, solicitor, on the 9th inst., at Rochford, Essex.

HARDWICK, Benjamin, esq. solicitor, of Weavers' Hall, London, on the 10th inst. at Mottingham, Kent.

KINGLAKE, William, esq of Wilton House, Taunton, on the 10th inst.

MACTAVISH, John, esq. Her Britannic Majesty's Consul for the State of Maryland, on the 21st ult. in Baltimore, U. S. aged 65.

MORTIMER, John Lewis, barrister-at-law, fifth son of the late Edward Horlock Mortimer, esq. of Bellfield House, in the county of Wilts, on the 3rd inst. at Cheltenham.

ROBINSON, Ann Elizabeth, relict of George Jocelyn Robinson, esq. solicitor, on the 7th inst. at her residence, Hereford-road, Bayswater, aged 78.

SMYTH, Sir G H. bart. of Berechurch Hall, Colchester, and formerly for many years M.P. for that borough, on the 11th inst.

JOURNAL OF PROPERTY.

Public Sales.

By Mr MOORE, at the Mart, July 15.—In three lots, a valuable freehold and part copyhold estate, situate Nos. 2, 3, and 4, Mile end-road—1,480*l*.

In one lot, eight copyhold houses, in Terrace-place, Stepney-green, let at 94*l*. 5s.; quit-rent, ½d.; fine certain, 10s. on each—740*l*.

Two freehold houses in Boundary-street, Shoreditch, let at 40*l*.—280*l*.

Nine acres of freehold land, situate at Wanstead, Essex, tithe free, and exonerated from land tax, sold for 620*l*.

In one lot, four houses, Nos. 10 to 13, Champion-street, Stepney, let at 72*l*. 16s.; term, 70 years, ground-rent, 7*l*—490*l*.

In one lot, two houses with shops, situate in Charles-street, Commercial-road, let at 39*l*.; term, 41 years; ground-rent, 8*l*—145*l*.

A freehold house in Ernest-street, Stepney, let at 10*l*. 8s.—120*l*.

MONEY MARKET.

ENGLISH FUNDS.	Sat.	Mon.				Fri.
Bank Stock	225¼	..	226¾		226½	228
3 ℔ Cent. Reduced Annuities	101⅜	101⅜	101¼	101⅛	101½	101¼
3 ℔ Cent. Consols Annuities	100¼	100⅜	100¼	100	100⅜	100⅜
Consols for Account	100⅜	100½	100¼	100⅜	100⅜	100⅜
New 5 ℔ Cent. Annuities	..	..	..	..		126†
New 3¼ ℔ Cent. Annuities	104½	104½	104⅝	104⅝	104⅝	104½
Long Annu. (exp. Jan 5, 1860)	..	7	..	7	7	
Do. 30 yrs. (exp Oct. 10, 1859)	..	..	..		6⅞	
Do. 30 yrs. (exp. Jan. 5, 1860)	6⅞	..	6⅞			
India Stock	[illegible]71	280	280			
India Bonds (1,000*l*.)	93	90	91	91		
Do. do. (under 1,000*l*.)	90			..	91	91*
South Sea Stock		112¼		111⅛		
Do. do. New Annuities		..		..		
Exchequer Bills, 1,000*l*. June		69*		69*		
Do. do. 500*l*. June		69*		72*		
Do. do. Small, June				72*	69*	

* Premium. † Ex. div.

THE RETIRING MASTERS IN CHANCERY.—On Saturday last the Senior Master in Chancery Farrar, with the concurrence of his colleague, Master Brougham, who retires simultaneously on the full stipend of 2,500*l*. per annum, issued a notice to the Profession, stating that it was their wish to finish the business of their offices as far as possible before their retirement under the Abolition Act, and to afford every facility for the speedy conclusion of cases and matters before them, and would be glad if the Profession would assist them in carrying out their intention.

CITY-ROAD and ST. GEORGE'S EAST. – SMALL INVESTMENTS.—By Mr. MASON, at Garraway's, on TUESDAY, July 20, by order of the Executors of Miss Fogg, deceased.

HOUSE and Shop, 7, Anthony-street, the corner of Chapple-street, Commercial-road East, 'e' at 29l. held at 1l. 17s. Three Houses, 1, 2, and 3, Grove-place or Mason's place, York street, City-road, let at 47l. held at 12l.—Particulars of Messrs. WALTERS and SON, Solicitors, 46, Basinghall-street; and of the Auctioneer, Norton Folgate

HACKNEY-ROAD.—ELIGIBLE LEASEHOLDS By Mr MASON, at Garraway's, on TUESDAY, July 20,

THREE RESIDENCES, 69, 70, and 71, Great Cambridge-street, let at 69l.; Four Houses 8, 9, and 10, Brunswick-street, and 8, Little Cambridge-street, let at 78l; a commodious Wharf, and Eight small Houses, Bath place, let at 141l; Seven Tenements, 1 to 6, Nicholl's-street, and 31, Dove-row, let at 79l.; a neat stuccoed front Residence, 22, Dove-row, and Two Messuages, Nos. 1 and 2, James-street, let at 53l—the whole held for long terms, at ground rents—Particulars of D HUGHES, Esq Solicitor, 25, Old Jewry, and of the Auctioneer, Norton Folgate.

HIGHBURY - TWO CAPITAL RESIDENCES, let at 205l per annum, and held for ninety years, at ground rents. By Mr MASON, on TUESDAY July 20, at Garraway's,

AN excellent RESIDENCE of handsome elevation, with balconies to windows of the principal story and first floor, No. 20, Grove Villas. The interior is finished in the most expensive style and comprises on the ground floor a noble dining-room, two parlours, entrance-hall, and water-closet; on the first floor an elegant drawing-room and two bed rooms; upper floor, four chambers. The basement is conveniently arranged, the garden is disposed in lawn and flower-beds, walled in, the front court is tastefully laid out and inclosed with ornamental iron railing, let on lease to Mrs Rutter, at 105l per annum. The Residence No. 16 is semi-detached, with bow front to the drawing-room, and is well fitted, let to Mrs Castell, at 100l a year both held for upwards of ninety years, the first described at a ground-rent of 30l. and No. 16, direct from the freeholder, at 11l. 11s.—Particulars may be had of D. HUGHES, Esq Solicitor 25, Old Jewry; at the Alwyne Castle, near the property, and of the Auctioneer, Norton Folgate.

STOKE NEWINGTON.—SHOP PROPERTY in front of the High Road, held direct from the Freeholder for 95 years at the original ground rent of 6l each house—By Mr. MASON, on TUESDAY, July 20, at Garraway's, in Eight Lots,

EIGHT respectable HOUSES, forming a uniform row in front of High-street, Stoke Newington, near Abney-park Cemetery, most of them have plate-glass shop fronts Let to Mr Heath (stonemason), Turney (boot maker), Taylor (stationer), Pashley (cheesemonger), Dudley (linen-draper), and others, at 318l. Particulars may be had of Messrs. G and G. H CLARK, Solicitors, 28, Finsbury-place, and of the Auctioneer, Norton Folgate

DALSTON.—EQUITY of REDEMPTION, subject to a Mortgage of 5,000l payable on the 29th October, 1857, of, in, and to the Ground Rents arising from Twenty Houses, and the Rack Rents arising from Fourteen well built Private Residences, QUEEN'S ROAD and SHRUBLAND-ROAD, held direct from the freeholder, producing, after payment of interest and outgoings, 239l 10s per annum for ninety years By Mr MASON, on TUESDAY, August 3 at Garraway's.

A WELL-SECURED GROUND-RENT of 82l 10s. per annum, arising from Eighteen Houses in Middleton terrace and Marlborough terrace, and two others, Nos. 33 and 34, Brownlow-road held at a peppercorn; Two very neat Private Residences, Nos 1 and 2, Gotha-cottages, Shrubland-road, well built and expensively finished, let at 76l.; Four comfortable Residences, 25, 26, 27, and 28, north side of Shrubland-road, let at 113l.; Four pleasant and commodious Residences south side of the same road, known as Archimedean cottages, let at 144l., Four superior Residences, in front and on the east side of Queen's road, let to Dr. Hooper and others at 130l. The whole are held direct from Sir William Fowle Fowle Middleton, bart for upwards of ninety years, at 82l. to which is to be added the interest on amount of mortgage at five per cent This estate affords an opportunity of securing a good income to any gentleman of small capital who can devote a small portion of his time to the management of his property.—Particulars may be had at the Middleton Arms, Queen's road; Salmon and Ball, Bethnal-green; of D HUGHES, Esq Solicitor, 25, Old Jewry; and of the Auctioneer, Norton Folgate

KINGSLAND-ROAD and CALEDONIAN-ROAD—By Mr. MASON, on TUESDAY, July 20 at Garraway's,

THREE HOUSES, Nos. 77, 78, and 79, Mansfield-street, Kingsland road, let at 64l per annum, and held direct from the freeholder for sixty-seven years, at a ground rent of 3l. each; and a Dwelling-house, No. 1, Freeling-street, Caledonian-road, Islington, let at 24l. held for ninety-two years, at 4l.—Particulars of Mansfield-street, of W MILLS, Esq Brunswick street, City road, and Freeling-street, of W MANSFIELD, Esq 20, John-street, Bedford row, also of the Auctioneer, Norton Folgate

STOKE NEWINGTON-ROAD—SIX PAIR of VILLA RESIDENCES, with Gardens, and a Detached Stable with Coach-house, held for near sixty years—By Mr MASON, on TUESDAY, July 20, at Garraway's,

A PAIR of well-built SEMI-DETACHED RESIDENCES, just out of the high road, being Nos. 1 and 2, Somerford-grove, with gardens and front courts, let to F A Davies, esq. Martin Ooks, esq. at 70l. per annum, ground rent 5l each; a pair of respectable Residences, with large gardens, 120 feet frontage, at the end of the Grove, known as 1 and 2, Somerford-villas, commanding a view up into the high road, let at 80l.; ground rent, 7l 10s. each, with a detached two stall stable and coach-house; four pair of semi detached Cottages, with gardens, Nos 17, 18, 19, 20, 21, 22, 23, and 24, Somerford-grove, let at 187l and held at 4l the each house—Particulars of CHESTON CHESTON, Esq Solicitor, Winchester-buildings, Broad street, and of the Auctioneer, Norton Folgate

PERIODICAL SALE, WEDNESDAY NEXT. Valuable Life Interest and Reversion

MR. E. PALMER will SELL by AUCTION, at the MART, on WEDNESDAY next, JULY 21, at Twelve, the valuable LIFE INTEREST of a GENTLEMAN, aged 52, and a LADY, aged 48, in the annual dividends arising from the sum of 828l 17s. 6d 3¼ per cent Reduced Irish Annuities; also, the valuable Absolute Reversion to a Moiety of the above Sum, on the death of the above-named parties Particulars of G. R. DODD, Esq. Solicitor, 26, New Broad street, City, at the Mart, and at the Auctioneer's Offices, 20, Change alley, Cornhill, and 24, Lower Calthorpe-street, Gray's-inn-road

PERIODICAL SALE, WEDNESDAY NEXT —Absolute Reversions.

MR. E. PALMER will SELL by AUCTION, at the MART, on WEDNESDAY next, JULY 21, at Twelve in Two Lots, the ABSOLUTE REVERSION to ONE FOURTH of 1,082l. Three per Cents payable on the death of a lady in her sixty third year; also the Absolute Reversion to 150l Three per Cents. payable on the death of a lady aged seventy three; and another Sum of 150l on death of a gentleman aged forty-five. Particulars of G R DODD, Esq Solicitor, 26, New Broad-street, City, at the Mart, and at the Auctioneer's Offices, 20, Change-alley, Cornhill, and 24, Lower Calthorpe-street, Gray's Inn road

PERIODICAL SALE, WEDNESDAY NEXT Holborn and Lincoln's-inn-fields For Investment

MR. E. PALMER will SELL by AUCTION, at the MART, on WEDNESDAY next, JULY 21, at Twelve, in One Lot, FIVE LEASEHOLD HOUSES, Nos 2 to 6, Titchborne court, High Holborn, let at 140l per annum, and Que Leasehold House, No 7, Whetstone park, Lincoln's-inn-fields, let on lease at 40l Held for thirty-seven years unexpired at a ground rent.—Particulars of P G GRANVILLE, Esq Solicitor, 42, Lombard street; at the Mart, and at the Auctioneer's offices, 20, Change alley, Cornhill, and 24, Lower Calthorpe-street, Gray's inn-road

PERIODICAL SALE, WEDNESDAY NEXT.—Valuable Absolute Reversion.

MR. E. PALMER will SELL by AUCTION, at the MART, on WEDNESDAY next, July 21, at Twelve, the ABSOLUTE REVERSION to 440l. 15s. payable on the death of a lady in her 66th year—Particulars of W. PALMER, Esq. Solicitor, 3, George-street, Euston-square; at the Mart; and at the Auctioneer's Offices, 20, Change-alley, Cornhill; and 24, Lower Calthorpe-street, Gray's-inn-road

PERIODICAL SALE, WEDNESDAY NEXT.—CAMBERWELL.—Valuable Leasehold Estate, land-tax redeemed, producing 210l. per annum, in eight lots, suitable for occupation or investment

MR. E. PALMER will SELL by AUCTION, at the MART, on WEDNESDAY next, JULY 21, at Twelve, a PAIR of semi-detached COTTAGES, known as Herne and Clifton Cottages, Denmark road, Cold Harbour-lane Camberwell, near the Green, let at 35l per annum each, term ninety years direct from the freeholder, ground-rent, 5l each; and SIX Dwelling-houses Nos. 5, 6, 7, 10, 11, and 12, Denmark-place, near the above, let at 24l per annum each, term ninety years direct from the freeholder, ground-rent, 4l each—Particulars of J H TRIMMER, Esq, Solicitor, 3, Staples-inn, Holborn, at the Mart; the Golden Lion, Camberwell-green; and at the Auctioneer's Offices, 20 Change-alley, Cornhill, and 24, Lower Calthorpe-street, Gray's-inn-road.

PERIODICAL SALE, WEDNESDAY NEXT. ROTHERHITHE.—Freehold Cottages, Land tax redeemed

MR. E. PALMER will SELL by AUCTION, at the MART, on WEDNESDAY next, July 21, at Twelve, in one lot, TWO neat six-roomed FREEHOLD COTTAGES, with Gardens, situate in Debnam-road, Rotherhithe New-road, eat the Greenwich Railway; annual value 36l Particulars of G R DODD, Esq Solicitor, 26, New Broad-street, at the Mart, and at the Auctioneer's Offices, 20 Change alley, Cornhill, and 24, Lower Calthorpe street Gray's-inn-road

SURREY, on the south side of Leith-hill, in the parish Abinger, a well known picturesque and beautiful part of untry

MESSRS. NASH are instructed by the Proprietor to SELL BY AUCTION, at GARRAWAY'S, on THURSDAY, JULY 29, at Twelve, in One Lot, a very improvable small FREEHOLD ESTATE, called Little Burchetts, consisting of a Cottage, with large Garden, capital close of Meadow Land, with beautiful stream of water running through, containing together about four acres, and let to Mr Mace, a yearly tenant, at the very low rent of 12l per annum The timber in the meadow, which is very handsome and growing will be sold with the estate This property adjoins the high road from Forest-green to Abinger, distant from the latter three miles the same from the Gomshall Station, about eight miles from Dorking and Guildford, and thirty from London Printed particulars are preparing, and may be had fourteen days previously to the sale, at the principal inns at Dorking, Shere, Gomshall, Guildford, Ockley and Horsham; at Garraway's, of Messrs ELLIS, PHILLIPS, and SALAMONSON Solicitors, 12, Clement's-lane, London and of Messrs. JOSEPH and JOHN NASH, Land Agents, Surveyors, Auctioneers, &c Reigate, Surrey

CHARLWOOD, SURREY—By

MESSRS. NASH, at GARRAWAY'S on THURSDAY JULY 29, at Twelve in one lot, by direction of the Devisees in Trust, under the will of William Ellis, esq, a very desirable FREEHOLD FARM (with a small part copyhold), called Great and Little Greenings, consisting of a good Farm House, requisite agricultural buildings, and 140 acres of arable, meadow, pasture, and wood land, in convenient enclosures, remarkably well timbered, rendering the property an eligible investment, situate on a commanding eminence having fine views of Leith and Box Hills, about one mile from the village of Charlwood, six from Reigate, the same distance from Dorking and Horsham and twenty-seven from London The farm being in hand, immediate possession may be had The timber to be taken by valuation, as well as the usual tenant's property in and relating to the land, in every respect according to the custom of the country. Mr Shove, at the adjoining farm, will shew the property—Particulars are preparing, and may be had fourteen days previously to the sale at the principal Inns at Charlwood, Crawley, Horsham Dorking, Guildford, Epsom Sutton, Croydon, Old Ship, Brighton; Sussex Express Office, Lewes and Duke-street, London-bridge; Garraway's, of WM. SANGER, Esq Solicitor, 4, Essex-court, Temple; Messrs JOSEPH and JOHN NASH, Land Agents, Surveyors, Auctioneers, &c Reigate, Surrey, at whose offices a plan of the estate may be seen

SURREY in the parishes of Leigh and Betchworth—By

MESSRS. NASH, at GARRAWAY'S, on THURSDAY, JULY 29, at Twelve, by direction of the Devisees in trust under the will of William Ellis esq—Lot 1 A small COPYHOLD FARM (timber free), at Westwood, in the parish of Leigh in the county of Surrey, in the occupation of Mr James Beaman, a yearly tenant, at the rent of 15l consisting of a brick and tile cottage, with garden, orchard, barn yard, &c and thirteen acres of arable, meadow, and pasture land, in convenient inclosures, bounded by lands of his Grace the Duke of Norfolk and Thomas Hope esq Lot 2 (A short distance from Lot 1), in the parish of Betchworth, a small Close of FREEHOLD ARABLE LAND, containing 2a. 3r 6p in the occupation of Mr W Harman, a yearly tenant at the rent of 2l It adjoins the high road from Leigh and Brockham to the Holmwood-common, and is suitable for the erection of a cottage residence The above described properties are beautifully situate, about four miles from Dorking and Reigate two from the rural villages of Brockham and Leigh, and twenty five from London The purchaser of each lot will have to take the timber by valuation, and also to pay the respective tenants whenever they may quit, such valuation as they may be entitled to under their holdings The tenants will shew the property Particulars are preparing, and may be had fourteen days previously to the sale at the principal inns at Dorking, Guildford, Epsom, Sutton, Croydon; Old Ship, Brighton; Sussex Express Office, Lewes and Duke-street, London-bridge; Garraway's, of WM. SANGER, Esq. Solicitor, 4, Essex-court, Temple; Messrs JOSEPH and JOHN NASH, Land Agents, Surveyors, Auctioneers, &c Reigate, Surrey, at whose offices plans of the estates may be seen

No 13, SUSSEX-PLACE, REGENT'S-PARK Handsome Residence, Furniture, and Effects, for immediate sale

MR. ELGOOD is instructed to SELL by AUCTION, on MONDAY, AUGUST 2 (unless previously disposed of) the LEASE, for an unexpired term of seventy years, at a ground-rent of fifty guineas, of that very eligible RESIDENCE for a small family, No. 13, the centre of Sussex-place, the residence and property of George Wilder, esq deceased, by whose liberality and taste it was improved at considerable expense in the addition of a portico and conservatory, enlargement of the hall with marble columns, &c The situation facing the park, is most delightful and the large and beautiful pleasure-garden, which is entered from the dining-room, a great acquisition; there is also suitable stabling The excellent furniture and effects are of appropriate character and will be sold after the residence The premises may be viewed, and further particulars had at Mr ELGOOD's Offices, 98, Wimpole street, who is fully authorised to treat by private contract

REGENT'S-PARK. The late Admiral Sir Edward Hamilton's spacious residence, furniture, and effects, 17, Cumberland-terrace.

MR. ELGOOD is favoured with instructions from the Executors to SUBMIT to PUBLIC SALE, upon the PREMISES, on FRIDAY, 30th inst. or that by private contract, the beneficial lease, for a long term, the very commodious and superior FAMILY RESIDENCE, delightfully situate on the preferable side of the park, and containing some reception rooms, ten bed-rooms, with two upper water-closets, and high service of water, very complete servants' offices, double coach house, and five stall stable, held at the low rent of 172l 16s but of the annual value of 250l. The Household Furniture will be sold shortly after.—May be viewed and printed particulars had; also at the Mart; of Messrs. BOODLE and PARTINGTON, 9, Davies street; and at Mr. ELGOOD's Offices, 98, Wimpole-street.

An eligible Family Residence, 35, on the west side of Devonshire place.

MR. ELGOOD is commissioned to SELL by AUCTION, upon the PREMISES, on THURSDAY, the 29th inst. (if an acceptable offer is not previously made either to rent or purchase), the desirable TOWN RESIDENCE, No. 35, Devonshire-place, Portland-place, an airy, quiet, and select locality, near the Regent's-park, containing ample accommodation for a family, with convenient servants' offices; an excellent double coach-house and four-stall stable. with rooms over. The property is held by lease of the Portland Estate for a term of nearly forty years, at a trifling ground-rent of 14l. The purchaser may be accommodated with a portion of the furniture.—The premises may be viewed, and printed particulars had; also at the Mart; of Messrs. BAXTER, ROSE, and NORTON, 3, Park-street, Westminster; and at Mr ELGOOD's Offices, 98, Wimpole-street.

IN CHANCERY.—Forsyth v. Chard.—Leasehold Ground-rents and Reversionary Interest in the same Premises, arising from property situate in Goswell-street-road, Brewer-street, Alfred-buildings, Rawstone-street, and Bridge-place, respectively, in the County of Middlesex

MR. W. F. BRAY is instructed to SELL by AUCTION, at the MART, facing the Bank of England, on TUESDAY, the 20th day of JULY, at Twelve O'Clock at noon, with the approbation of Nassau William Senior, esq. one of the Masters of the Court of Chancery, in pursuance of an Order of the said Court made in a cause intituled Forsyth v. Chard, in Three Lots—LEASEHOLD GROUND-RENTS of 110l. 8s. per annum and of the REVERSIONARY INTEREST, amounting to 1,436l. per annum, in the same premises, after the determination of the leases under which the ground-rents are reserved, and of the interest in possession, amounting to 50l. per annum, in other premises in Rawstone-street aforesaid. Particulars may be had at the Chambers of the said Master in Southampton-buildings, Chancery-lane; of Mr. LEIGH, Solicitor, No. 16, George-street, Mansion-house; of Messrs. SMITH, HENNING, and CROFT, No. 3, Basinghall-street, Solicitors; Mr. HENRY THOMAS, No. 35, Lincoln's-inn-fields, Solicitor; Mr. SAMUEL SHUTTLEWORTH, No. 3, South-square, Gray's-inn, Solicitor; Messrs LEFARD, BANNATYNE, and GAMMON, No. 9, Cloak-lane, City, Solicitors; of the Auctioneer, No. 259, High Holborn, and at the Mart.

SAMUEL SHUTTLEWORTH, Solicitor, Gray's-inn.

July 3, 1852

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Clerk of the Peace's Office, Liverpool, July 13, 1852.

LANCASHIRE INTERMEDIATE SESSIONS. Notice is hereby given, that a General Sessions of the Peace for the County Palatine of Lancaster, for the trial of persons committed and held to bail on charges of felony and misdemeanor, will be held at the Court-house, in Preston, on Thursday, the 5th day of August next, at Ten o'clock in the forenoon, and at the New Bailey Court-house, in Salford, on Monday, the 30th day of August next, at Ten o'clock in the forenoon.
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		AUCTIONEER.	WHERE ADVERTISE	
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"	Ibid.	Ibid.	Ibid.	Fifteen Messuages, Marylebone
Thursday, July 29	Mart.	Furber, C.	Ibid. p. 64	Three Freehold Cottages on Botwell-common, in the parish of Hayes, Middlesex
	Ibid.	Ibid.	Ibid.	Residence or Cottage Ornée, known as Craven-cottage, at Fulham
	Garraway's.	Nash, Messrs.	July 3, p. 60.	Freehold Estate, called Little Burchetts, in the parish of Abinger, Surrey
	Ibid.	Ibid.	Ibid.	Freehold Farm, Charlwood, Surrey
	Ibid.	Ibid.	Ibid.	Copyhold Farm, in the parish of Leigh, Surrey
	35, Devonshire-place	Elgood	July 17, p. 68.	Town Residence, No. 35, Devonshire-place, Portland-place, and Furniture and Effects.

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3 ₩ Cent. Reduced Annuities	101¼	101⅛	101	101		
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New 5 ₩ Cent. Annuities ..						
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Long Annu. (exp. Jan. 5, 1860)				6⅛	6⅛	6⅛
Do. 30 yrs. (exp. Oct. 10, 1859)				6⅛	6⅛	
Do. 30 yrs. (exp. Jan. 5, 1860)						
India Stock..................						
India Bonds (1,000*l.*)			93	93	94	91*
Do. do. (under 1,000*l.*)....						94*
South Sea Stock.............			112½			
Do. do. Old Annuities....						100⅛
Exchequer Bills, 1,000*l.* June	76*	76*	72'			69*
Do. do. 500*l.* June..	76*	69*	72'			79*
Do. do. Small, June	79*	..	72*			69*

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PROCEEDINGS OF LAW SOCIETIES.

LAW STUDENTS' DEBATING SOCIETY.

COMMITTEE'S REPORT TO ANNUAL MEETING OF JULY 6TH, 1852.

YOUR Committee beg to report that during the past year thirty-eight meetings of the society have been held, at which twenty-four legal and nine jurisprudential questions were discussed.

In point of number, these questions shew a considerable decrease upon those of former years, particularly as regards jurisprudential subjects. To some extent this is to be attributed to the fact that many questions of the latter class have, in consequence of the great interest taken therein by members, occupied two evenings in discussion; but it is in a much greater degree owing to some very important alterations which, since the last annual meeting, have been made in the rules of the society. By one of these alterations it was determined that only one question should in future be placed in the paper for discussion on each evening, instead of two as heretofore; and by another alteration a preference is given to strictly legal subjects, by providing that two questions of that class should be discussed for every jurisprudential question. These alterations have necessarily occasioned a decrease in the number of subjects brought under the consideration of the society, but your committee are of opinion that what has been lost in that respect has been more than regained in the extension and improvement of the debates consequent on the alterations.

It is an evil inseparable from the nature of the society that a great proportion of its members can remain such for a limited time only; and your committee have accordingly to regret that during the past year thirty-four members have resigned, chiefly in consequence of leaving London. It is nevertheless gratifying to find that the society has increased in number, no less than forty new members having been elected during the year. The number of members at the present time is sixty; a short time since it amounted to sixty-five.

The attendance at the weekly meetings has increased during the year, and now averages upwards of thirty; and at no previous period of its history was the society so flourishing in point of numbers and attendance.

Whilst congratulating their fellow members on the satisfactory progress of the society, your committee desire to urge on each individual the duty of maintaining the position and extending the usefulness of the society by a regular attendance at the debates, and by obtaining a constant succession of new members. The great changes which have been accomplished and are in progress in the administration of the law render the objects for which this society is formed of increased importance to the members of that branch of the Legal Profession to which it is confined.

The treasurer's account has been received from the auditors, and shews a balance in his hands of 45*l.*

Law Institution, July 6th, 1852.

CORRESPONDENCE.

LIFE INSURANCES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In common with my other professional brethren, I have constant applications from assurance offices, setting forth in inviting terms the benefits of their respective regulations; but there is one point connected with them in which I believe the Profession generally think improvement might be introduced. So long as the life lasts, and premiums are paid, all is well, but when it drops, and the sum assured is demanded, the matter assumes a different aspect. In the simple case of a person insuring his own life, and his executors requiring payment, the following are the require[ments] [o]f the most eminent offices:—

Certificate of baptism of the assured.

Certificate of his burial.

Certificate from medical man who attended him in his last illness as to cause of death.

Probate of his will.

If a baptismal certificate be required, it should be at the outset, and the burial certificate may well be dispensed with, the remaining evidence being amply sufficient for all ordinary cases, and particularly after the notice usually required, which gives abundant time for the office to make inquiries in cases of suspicion.

But when, as frequently happens, the policy has been transferred, the trouble and expense generally necessary to complete the chain of evidence required to establish the title of the claimant, to the satisfaction of the office, though familiar to your readers, is beyond the power of description. Here I have not time to do more than draw attention to the subject; and I would on no account depreciate the inestimable advantage of life assurance, but the more money assured is assimilated to ready money at the death of an insured person, and the less trouble and expense there is in obtaining it, the greater such advantage becomes; and the offices, no less than the public, would find their account in attending to the suggestion.—I am, Sir, yours, &c.

Cambridge, July 14. CLEMENT FRANCIS.

NECROLOGY.

OF LEGISLATORS, MAGISTRATES, AND LAWYERS.

MR. JOHN JAMES.

WE have to record the death of Mr. John James, for twenty-one years Secondary of the city of London. Mr. James was well known by his able discharge of the duties of his office, and deservedly esteemed and respected amongst a wide acquaintance. Mr. James was a solicitor for many years in the City, and relinquished one of the largest and most lucrative practices to take the office of Secondary. He married early in life Miss Combe, the daughter of Alderman Combe, then M.P. for the city of London—the friend of Fox and Sheridan.

Mr. Edwin James, the Queen's Counsel, is his eldest son.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTH.

HOARE.—On Friday, the 16th inst. the Lady Mary Hoare, in Queen-square, of a daughter

ROPER.—On the 15th inst. Lady Roper, of a daughter, stillborn.

MARRIAGES.

DEWAR, Rev. David Erskine, rector of Edgcott, Fellow of New College, Oxford, son of the late Sir James Dewar, Chief Justice of Bombay, to Elizabeth Ann Fane, eldest daughter of John Billingsley Parry, esq. Q.C. on the 15th inst. at Cottisford, Oxon.

DEATHS

COBBOLD, Herbert Wilkinson, fourth son of J. C. Cobbold, esq M.P. of Ipswich, on board the Hon. East India Company's steam-frigate *Zenobia*, in the Rangoon River, on the 10th of May, aged 18.

DELMAR, Harriett, the beloved wife of George Delmar, esq of Lincoln's-inn-fields, and Park crescent, Portland-place, on the 16th inst. at Herne-bay.

EVANS, Hugh Robert, esq. formerly of the city of Ely, solicitor, and lately of Bristol-house, Brighton, on the 20th inst. at Windsor, aged 88.

JONES, Herbert Gerald Herbert, youngest son of the late John Jones, esq of Llanarth court, Monmouthshire, and of the Lady Harriett Jones, on the 16th inst. at Boulogne-sur-Mer, aged 26.

Public Sales.

By Messrs. CHINNOCK and GALSWORTHY, at the Mart, July 15.—Freehold estate known as Brasted-park, Brasted, Kent, comprising mansion house, farm buildings, &c and 593 acres of land, of the value of 576*l.* per annum—15,150*l.* the timber to be taken at a valuation.

The Wheal Providence Mine, near Tavistock, Devon, with dwelling, plant, machinery, &c held by lease for nineteen years unexpired at dues of 1-14th, offered for sale under the Winding-up Act, and knocked down for 2,300*l.* which was declared to be below the sum fixed by the Master in Chancery.

Several enclosures of freehold, meadow, and arable land and a hop garden, near Odiham, Hants, containing in the whole 35 acres—sold in lots for 2,595*l.*

NOTICES OF NEW LAW BOOKS.

The General Highway Act and other Statutes affecting the Law in connection with the Highways in England and Wales; with Practical and Explanatory Notes, Forms, References to Statutes and Cases, and a copious Index. By WM. FOOTE, Esq. Attorney-at-Law. London: Crockford.

MR. FOOTE, the author of this treatise, is an active and intelligent *locum tenens* of a magistrates' clerk in Wiltshire, and he has made the laws relating to highways his peculiar study, having taken an active part in the preparation of the various reforms that have recently been made and proposed, being in constant communication upon the subject with those who had undertaken in the Legislature the difficult task of putting the law upon a more rational basis. In the course of these various inquiries and discussions, and the necessity which they imposed upon him of looking carefully into the laws regulating highways, for the purpose of mastering them, Mr. FOOTE found that there was no book that gave him the information he sought; that the law was scattered and confused; and he bethought him that it might not be an unwelcome service to magistrates, magistrates' clerks, surveyors, parish officers, attorneys concerned for parishes, and the many other persons who are engaged about highways, if he were to avail himself of his extensive experience to compile a *practical* treatise upon the subject, such as he had himself found the want of. Accordingly, the compact volume before us was prepared expressly with that view, and experienced men inform us that he has succeeded in his purpose, insomuch that in some parishes copies have been ordered to be supplied to the parish officers for their guidance in the execution of their duties.

The general Act is given in full, with very copious notes of the cases decided upon it; a complete collection of the forms required and practical instructions to officers and persons engaged in its administration. Then follow the subsequent statutes by which it has been modified, including the Parochial Assessment Act; and an index of no less than thirty-six closely printed pages affords the readiest access to any portion of the work that may be sought. The value of so complete an index will be recognised by the practitioner. How carefully and laboriously the work has been compiled, will appear from the fact, that upwards of *eight hundred* cases are cited in it.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

COMMISSION SIGNED BY THE LORD-LIEUTENANT OF THE COUNTY PALATINE OF LANCASTER.—Sir James George Fitzgerald, bart. to be Deputy-Lieutenant.

COMMISSIONS SIGNED BY THE LORD-LIEUTENANT OF THE COUNTY OF BUCKINGHAM.—Thomas Tyrwhitt Drake, esq.; Henry Musgrave Musgrave, esq.; Henry Christopher Roberts, esq.; Randolph Henry Crewe, esq.; Charles Robert Scott Scott Murray, esq.; Philip Duncombe Pauncefort Duncombe, esq.; the Most Hon. the Marquis of Chandos; Thomas Raymond Barker, esq.; William George Duncan, esq.; the Hon. George Ives Irby; Robert Bateson Harvey, esq.; Philip Wroughton, esq.; John Edward Bartlett, esq.; to be Deputy-Lieutenants.

THE COMMONS' ENCLOSURE ACTS EXTENSION ACT.—An Act of Parliament was passed on the 30th of June, to amend and further extend the Acts for the enclosure, exchange, and improvement of land. The provisions of several Acts are now amended and further extended. No lands are to be enclosed without the previous authority of Parliament. The Enclosure Commissioners are empowered by this Act to do a number of things to carry out the several Acts which hitherto they were not empowered to do. There are thirty-five clauses in the Act.

LONDON:—Printed by HENRY MORRELL COX, of 74, Great Queen-street, in the Parish of St. Giles in the Fields, in the County of Middlesex, Printer, at the Office of COX (Brothers) and WYMAN, 74 & 75, Great Queen-street, aforesaid, and published by JOHN CROCKFORD, of 29, Essex-street, in the Parish of St. Clement Danes, in the City of Westminster, at the Office of the LAW TIMES, No. 29, Essex-street, on Saturday, the 24th day of July, 1852.

THE LAW TIMES,

FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

VOL. XIX.—No. 487.] SATURDAY, JULY 31, 1852. [Price 1s.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Right Hon. Sir John Jervis has appointed Benjamin William Rawlings, of Romford, in the county of Essex, gent. to be one of the Perpetual Commissioners for taking the acknowledgments of deeds to be executed by married women in and for the county of Essex.

COMMISSIONS SIGNED BY THE LORD-LIEUTENANT OF THE COUNTY OF GLOUCESTER, AND OF THE CITY AND COUNTY OF THE CITY OF GLOUCESTER, AND OF THE CITY AND COUNTY OF THE CITY OF BRISTOL.—Sir Christopher William Codrington, bart.; Sir Martin Hyde Crawley Boevey, bart.; Robert Stayner Holford, esq.; William Philip Price, esq.; William Nash Skillicome, esq.; Charles Lloyd Harford, esq.; Charles James Barnett, esq.; John Henry Elwes, esq.; William Henry Stanton, esq.; William Moore Adey, esq.; William Osborne Maclaine, esq.; Robert Fitzhardinge Jenner, esq.; the Rev. Francis Edward Witts; the Rev. Edward Francis Witts; Lewis Clutterbuck, esq.; to be Deputy-Lieutenants.

COMMISSIONS SIGNED BY THE LORD-LIEUTENANT OF THE COUNTY OF WIGTON.—John Charles Dalrymple Hay, esq. jun. captain, R. N.; Edward Hunter Blair, esq.; William Charles Stewart Hamilton, esq.; Edward James Stopford Blair, esq. jun. to be deputy-lieuts.

COMMISSIONS SIGNED BY THE LORD-LIEUTENANT OF THE COUNTY OF KINCARDINE.—George Taylor, esq. and Patrick Davidson, esq. to be Deputy-Lieutenants.

COURT PAPERS.

VICE-CHANCELLOR SIR J. PARKER'S COURT.

SITTING AND BUSINESS OF THE COURT.

THE following notice has been posted up in this court:—

Vice-Chancellor Parker's Court, July 29.

This Court will not sit after Friday, the 6th of August.

Petitions will be taken on Saturday, the 31st inst. and from day to day, until all be disposed of.

Short causes, short claims, and claims will be taken on Wednesday, the 4th of August.

After the motions and petitions are disposed of, causes, further directions, and exceptions of a pressing nature, and special cases from the general paper will be taken on special application.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

COX.—On the 14th inst. at Honiton, the wife of S. M. Cox, esq. solicitor, of a son.

GRAHAM.—On the 19th inst. at Abingdon, Mrs. P. H. Graham, of a son.

MELMOTH.—On the 25th inst. at Sherborne, Dorset, the wife of J. Y. Melmoth, esq. of a daughter.

MARRIAGES.

HARMAN, Mr. Edward Samuel, second son of the late Mr. Charles Harman, solicitor, to Miss Mary Jemima, eldest daughter of the late Mr. John Harman, solicitor, of Kennington, on the 19th inst. at St. Mary's, Lambeth.

JOHNSTON, Alexander James, esq. of the Middle Temple and the Northern Circuit, to Amelia Davenport, widow of the late John Borrer, jun. esq. of Portslade, Sussex, on the 27th inst. at St. Margaret's, Westminster.

ROBSON, Christopher, Solicitor, of Clifford's-Inn, London, to Emma Sarah, daughter of Mr. Thomas Dove, of No. 36, Bloomsbury-square, on the 27th inst. at St. George's Church, Bloomsbury.

ROYSE, Lieut. R.N. to Hannah, youngest daughter of William Hemp, esq. Serle's-place, Lincoln's-Inn, on the 27th inst. at St. Clement Danes.

DEATHS.

BIGG, William Robert, esq. of 23, Old-square, Lincoln's-inn, on the 23rd inst. aged 48.

ELSWOOD, A. esq. solicitor, Bungay, Suffolk, on the 27th inst. in London.

JAMES, John, on the 21st inst. at No. 17, Artillery-place, Finsbury-square, aged 69, for twenty-one years Secondary of the City of London.

WATSON, Hon. Richard, the lately elected M.P. for Peterborough, on the 24th inst. at Homburg, after an illness of only four days.

CORRESPONDENCE.

THE ATTORNEYS' TAX.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In the *Times* of this day, there is, in a sharply written article upon Lord Robert Grosvenor, the following passage:—"That most *just* and *reasonable* tax, the duty on attorneys' certificates." Now, Sir, when it is notorious that the late Government did not *defend* the tax, but pleaded that it could not be spared at present, it really is necessary that the Profession should not let the matter slumber in the next Session of Parliament, as they may see that the "Thunderer" will be against them. As the origin and *present* injustice of the impost have been so often explained, and admitted by men of all parties, it is monstrous for any writer in the *Times* to call the tax *just* and *reasonable*!!

I am, Sir, yours, &c.

City, 26th July, 1852. FAIR PLAY.

DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES."

	PLACE.	AUCTIONEER.	WHEN ADVERTISED.	
Early in August	Mart.	Quallett and Lewis	July 17.	Freehold Estate, in the parish of Tenterden.
"	Ibid.	Ibid.	Ibid.	Cottage at Ealing, with seven acres of Land.
Tuesday, August 3	Garraway's.	Mason.	July 10.	Freehold Building Land, Kensington.
	Mart.	Ancona.	July 17, 24, 31	Valuable Reversions.
	Abbey Farm Lodge, St. John's Wood.	Winstanley.	July 31.	Household Effects of the late C. Woodcock, esq
Thursday, August 5	Mart.	Marsh.	July 24 and 31.	Periodical Sale of Reversions.
"	Ibid.	Ibid.	Ibid.	Freehold Farms, Fen Drayton, Cambridgesh.

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Appointment of Overseers Act.
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23	1 17 0	1 13 8	60	6 6 0	5 12 6
26	2 0 3	1 16 2	63	7 4 0	6 9 6
*30	2 5 0	1 19 9	66	8 4 0	7 10 8
33	2 8 6	2 2 10	70	10 0 4	9 7 6
36	2 13 0	2 6 4	73	11 16 2	11 2 6
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Valuable Reversionary Interests.

MR. ANCONA is favoured with instructions to offer for SALE by AUCTION, at the MART, on TUESDAY, the 3rd of AUGUST, at Twelve o'clock, the following valuable REVERSIONS. Lot 1. A sum of 472l. Consols, part of a sum of 1[illegible]l. standing in the name of a gentleman deceased, and subject to the life interest of a lady in her eighty third year. Lot 2. A sum of 771l. 9s. 4d. East India Stock, part of a sum of 1[illegible]l. standing in the names of two highly respectable trustees, and also subject to the life interest of the lady above referred to. For particulars and conditions of sale, apply to Messrs. GRAHAM and LYDE, Solicitors, Mitre-court, Temple; to the Auctioneer, 21, Southampton-street, Bloomsbury square; and at the Mart.

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FINCHLEY.—A Capital Freehold Family Residence, with [illegible]den and Buildings.

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The proprietary capital to provide for the purchase of vessels, the expenses of organisation, management, and superintendence, both at home and abroad, and to be invested in the purchase of land, in assisting emigrants and in such other manner as the directors may deem for the benefit of the shareholders.

The mutual capital will be raised by payment of fixed sums, or weekly or monthly subscriptions from the intending emigrants, and so soon as a sufficient sum is raised, a proportionate number will be forthwith provided with cabin, intermediate, and steerage [illegible]nts, according to the class to which they [illegible] [illegible], the priority to be decided by purchase, ballot, or rotation, in the same manner as in a building society.

In order to secure the repayment of the sums advanced to emigrants out of the proprietary capital, they will be required to give approved personal or other security in Great Britain.

Each holder of twenty shares will be entitled to nominate a steerage passenger, who will also be entitled to an outfit; each holder of thirty shares, an intermediate passenger and outfit; and of fifty shares a cabin passenger and outfit.

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Name ....
Profession or occupation ...
Address ....
Reference......................
Date............................

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THE LAW TIMES,

FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

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ATTORNEYS IN THE COUNTY COURTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The Legal Profession would read with considerable astonishment the announcement in your columns, a few weeks ago, to the effect that an attorney, according to the recent County Courts Act, is not to be allowed to appear in court unless instructed directly by the party, and not by any other attorney.

That the clause in question was *smuggled* into the recent Act there cannot be a doubt, for otherwise, how comes it that a provision of this nature, affecting the whole of the attorneys in the kingdom, was utterly unknown to the Profession until the intelligence first appeared in your journal, under the intimation that you had only just discovered it on reading the Act of Parliament as it had passed into law?

Now, Sir, I should like to know, as one of the people of this country, and having a voice in making the laws by which we are to be governed, if there is no method of ascertaining how and by whom the clause in question was inserted?

If there be nothing but that which will bear the daylight with regard to the insertion of the clause, will the author favour the public with an explanation how it came to be inserted in the statute unknown to the Profession, and to be passed into law without at least affording a *fair* opportunity of shewing cause against the impropriety of such a provision?

The parties who make these laws should know that they are not merely legislating for London, where there are abundance of barristers, but also for the provinces, where, as a general rule, there are very few.

What is the state of affairs as the law now stands? We will suppose a portion of a county in which these are perhaps a dozen courts held. In the centre of these dozen courts, perhaps, there may or may not be as many as two barristers resident, and even these perhaps at a distance of eighteen or twenty miles from most of the courts, whilst there are at least half a score of attorneys residing in the vicinity of every one of the courts, as fully competent to appear in the County Court, as their distant neighbours, the barristers. We will suppose further, an attorney has a case in one of these courts, which, from pressure of business, or for any reason, he may wish some other party to conduct. Whether does it seem most reasonable that he should run about the country, to see whether he can get a barrister at a great expense, to come down and attend to the matter, or that he should transfer it without any trouble, and at little cost, to some other attorney on the spot, who after all may be in every way as fully qualified as the barrister to undertake the matter?

It is said that one of the judges has expressed an opinion to the effect that it was illegal for one attorney to act as an advocate for another attorney. With every respect to the high authority by whom this opinion is said to have been pronounced, I will beg to say that from time immemorial in the old County Court (which, by the way, could try questions *without limit* as to the *amount* in dispute), hundreds upon hundreds of cases were tried every year in which attorneys appeared as advocates, instructed by other attorneys, without the slightest objection from the barristers, who generally officiated as assessors, or any demur being made by the barrister-opponent of the attorney-advocate. Should this be questioned, I can refer to proofs.

If it be illegal for one attorney to act as an advocate for another attorney, will any one condescend to tell us why, on the same principle, it is not equally applicable to cases before magistrates in Petty Sessions and in arbitrations; and scarcely a week elapses in any Petty Sessions Court in the kingdom where attorneys do not appear as advocates, instructed by other attorneys, and this to the entire satisfaction of magistrates, clients, and all concerned. But, according to the principle acted upon in the new statute, this must be a most intolerable state of things, and the next thing we shall hear of will be that this is also forbidden, unless the attorneys take steps to regain the rights, of which they have so unfairly, and by such indefeasible means, been deprived in the passing of the recent County Courts Act.

I am, Sir, yours, &c. EXAMINER.

THE PROFESSION AND THE COUNTY COURTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—How are the Profession henceforth to conduct the business of the County Courts? Whilst the alterations effected in the present session were under consideration, no small degree of sensitiveness was displayed by controversial Barristers and Attorneys, in anticipation of the proposed changes.

The County Courts, which were originally designed for the speedy recovery of *small debts*, have gradually been converted into tribunals of first instance for the adjudication of the great bulk of the business of Westminster Hall. The cramped machinery applicable to the originally narrow province of these courts, has, however, hitherto continued in full operation over their now more extended field; the Bench filled by men liable to be distracted by the daily duties, cares, and jealousies of Lawyers in actual practice, or anxious to get briefs. The regular attendance of a competent Bar virtually prohibited, and the suitor strictly precluded from recovering, in the majority of cases, the fair expenses of professional assistance, which he has been put to.

To remedy these inconveniences the new Act secures to the business of the County Courts the undivided attention of the judges; and the Profession will have little reason to regret that these gentlemen will henceforth neither figure on Circuit nor in Westminster Hall. The new Act also introduces a system of *allowance of costs* of the suitor, including the legitimate expenses to which he may have been put in the prosecution or defence of his case by the retainer of Counsel and Attorney, the production of witnesses, &c. and lastly, the Bar are restored to the same position in these courts as they enjoyed at Common Law, viz. they are *legally* authorised, and compellable to afford their services to any suitor who may demand them.

Now the two first of these County Court *reforms* being obviously to the general advantage of the profession, as well as the public, cannot the last also be made equally conducive to the general good, if the two branches of the profession will only meet each other in an honourable spirit?

It must always be borne in mind, that by the new Act, Barristers and Attorneys are simply restored to the same legal position in the County Courts as they already stand in at Quarter Sessions.

There is no more positive right on the part of Barristers to have exclusive audience in one court than in another, nor is there any positive right in either instance for the Attorneys to prevent Barristers acting without their intervention, but with a spirit worthy of a liberal profession, the general interest was allowed, in the older tribunals, to take precedence of individual claims, and etiquette established what the law did not enforce. Barristers and Attorneys were, by a voluntary regime, confined within their more immediate and peculiar sphere, and the pre-audience of the Bar was hailed by both branches of the profession, less as an invidious distinction conferred on a wig and gown, than as a salutary substitute for the system of *Attorney-Advocates* and *Barrister-Attorneys*. Let this same good understanding be encouraged in the County Courts, and the interest both of the profession and the public will be secured.

I address myself to the junior branch of the profession, as really more interested in this matter than the Bar. The habitual attendance of the Bar in the County Courts would obviously be conducive to the cause of justice, by aiding the presiding judge in accurately applying the law, and preventing those unseemly irregularities and improprieties, which are ever apt to arise in courts free from such a salutary control; but are not the general body of the Attorneys and Solicitors immediately benefited by the Bar maintaining intact both their old privileges and their old etiquette? for the privilege and the etiquette must go hand in hand, and will evidently stand or fall together.

The present unsettled system in the County Courts has, no doubt, called into existence many individual practitioners, who, with the legal qualification of Attorneys, seek to make a livelihood by advocacy, and the absence of a regular Bar to enforce the wholesome rules of professional etiquette has, no doubt, in these Courts, as in the Court of Bankruptcy, tended to foster a happily small batch of members of the long robe, who are content to wriggle into practice per fas et per nefas. The opinions and the feelings of these various practitioners may be well anticipated. Their arguments must be viewed with suspicion. The contrabandists have ever been the most zealous opponents of wholesome reforms.

But more worthy men have been compelled to [illegible]umb to [illegible] mania—cedunt privata publicis,—and let the whole body of legitimate practitioners on the rolls of Attorneys judge whether it is to their advantage to adopt the alternative of gradually surrendering the practice of the County Courts to this spurious race, or submitting to the inconvenience of attending on every occasion, and performing the double functions of Attorney and advocate in person, forcing the junior bar, in self-defence, to avail themselves of their legal right of imitating this inconvenient practice, and acting without the intervention of the other branch of the profession.

Occasionally it happens, no doubt, that a solicitor of honourable standing is to be found, who avails himself con amore of his legal right of acting as advocate; but let any unprejudiced member of the profession attend for a few hours in any of the Metropolitan County Courts, and he will be able at once to judge for what manner of practitioners the boon of *Attorney advocacy*, hitherto so vigorously contended for by the Law Societies, is really conferred.

The Profession now have the opportunity of amicably and prudently setting this matter at rest. In a short time we shall see the junior bar, no doubt, attending the County Courts, as they do at present at the Quarter Sessions. If the *Attorney advocates* are suffered to combine to keep them out of practice there, the Barristers will be compelled to counteract the combination: but if the higher class of solicitors will, as it is their obvious interest to do, interfere before it is too late, the evil may yet be averted by a timely understanding that the Barrister and Attorney shall, as in better times, strictly confine themselves to their own legitimate and honourable vocations.

The very first act of a bar mess would be to repress any breach of an honourable understanding as to professional practice among their members. Why, then, cannot the Law societies endeavour to repress the irregular practices of the Attorneys who practice in the County Courts.

My good intentions must be my apology for this long letter. Acting in unison, the Bar and the Attorneys may make the practice of the County Courts respectable: opposed to one another, the lowest only of each branch of the Profession will probably follow the vocation.

I am, Sir, yours, &c.

Temple, July 7, 1852. NISI PRIUS.

THE PROFESSION IN THE COUNTY COURTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The 10th section of the County Courts Improvement Act, I presume, cannot apply to an attorney's correspondent in another district appearing in court for such attorney. As, for instance, where one attorney instructs another in a different district wherein a defendant dwells, to apply for an order for the *commitment* of such defendant, judgment having been obtained in the home court.

If it does apply, and there happen to be no bar in the foreign court, I suppose it would be necessary for the attorney "acting generally in the action" to travel thither for the purpose.

I am, Sir, yours, &c.

July 25, 1852. ONE, &c.

[This is one of the inconveniences we have stated as resulting from the provision so hastily introduced. —ED. L. T.]

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

THE Lord Chancellor has appointed William Winterbotham, of Cheltenham, in the county of Gloucester, gent. to be a Master Extraordinary in the High Court of Chancery.

It is reported that Alexander Gordon, esq. who has been sheriff-substitute of Sutherland for the last sixteen years, will demit his office on the retiring allowance on account of bad health, and that Edward Fraser, esq. advocate, admitted to the bar in 1843, is to be his successor.—*Witness*.

OFFENCES AGAINST THE EXCISE LAWS.—By an Act now in force, informations for penalties, &c. under the Excise laws may be heard before the Inland Commissioners or by the metropolitan magistrates.

THE NEW METROPOLITAN BURIAL ACT.—This Act, which became operative on the 1st instant, when it received the Royal assent, contains 54 clauses. It is entitled "An Act to amend the Laws concerning the Burial of the Dead in the Metropolis," and was passed in consequence of the failure of "the Metropolitan Interments Act, 1850," which it repeals. It is now provided that on the representation of the Secretary of State her Majesty in Council may order the discontinuance of burials in any part of the metropolis, which order is not to extend to the burial-grounds of Quakers or Jews, unless expressly included. After such an order in Council for discontinuance of burials it is to be deemed a misdemeanour to bury therein. There is a saving of certain rights to bury in vaults, &c. and also as to cemeteries mentioned in the schedule annexed to the Act, and in new burial-grounds or cemeteries hereafter to be provided with the approbation of the Secretary of State. There is an exception as to St. Paul's Cathedral and Westminster Abbey. No new burial-ground or cemetery (parochial or non-parochial) is to be provided and used in the metropolis, or within two miles of any part thereof, without the previous approval of the Secretary of State. In any parish in the metropolis, on the requisition of ten or more ratepayers, that the place of burial is "insufficient or dangerous to health," a vestry may be called to determine whether a burial-ground shall be provided under this Act, and, if agreed upon, then a "burial board" is to be formed to carry out this Act, and to act in the manner prescribed by the several clauses for the benefit of the public concerning the burial of the dead.

COUNTY of GALWAY.—In the COURT of the COMMISSIONERS for SALE of INCUMBERED ESTATES in IRELAND.—In the matter of the Estate of Edward Blake, Owner, and John Arthur Wynne and William Willoughby Wynne, Petitioners.—The Commissioners will on FRIDAY, the 12th day of NOVEMBER next, at the hour of Twelve o'Clock at noon, at their Court, Henry-street, in the city of Dublin, SELL by AUCTION the fee simple and inheritance of the CASTLEGROVE ESTATE, comprising the mansion house, demesne, and lands of Castlegrove, the bogs of Castlegrove, Beagh, Cloonmoylan, Kilbannon, Old Fartagar, otherwise Uppertown, and Buckawn; the meadows of Castlegrove, Cloonmoylan, Buckawn, Uppertown and Fartagar, Sylaun, Beagh, Lisline or Lisaleen, Clareen, and Beagh, reclaimed bog: all which said lands are situate in the Barony of DUNMORE and County of GALWAY, containing, in the whole, 1,117a. 3r 29p. Irish plantation measure, producing a profit rent of 1,018l. 1s. 6½d per annum, and will be sold in the following lots

Lot No 1.—The mansion-house, demesne, and lands of Castlegrove East, the lands of Castle-grove West, and part of Johnstown, a subdenomination of the lands of Beagh, containing 393a 2r 33p Irish plantation measure, of the yearly rent or value of 422l 11s.

Lot No. 2.—The lands of Fartagar and Sylaun, containing 163a. 1r 17p. Irish plantation measure, of the yearly rent of 110l 4s 6d.

Lot No. 3.—The lands of Johnstown, a subdenomination of the lands of Beagh, containing 21[illegible] 1r 13p Irish plantation measure, of the yearly rent or value of [illegible] 11s 10d

Lot No. 4.—The lands of Creggane and Woodvillage, being subdenominations of the lands of Beagh, containing 50a. 0r. 35p Irish plantation measure, of the yearly rent or value of [illegible] 8s 7d

Lot No 5 The lands of Beagh, containing 109a 3r 3p Irish plantation measure, of the yearly rent or value of 11[illegible] 3s [illegible]

Lot No 6.—The lands of Bulcaun, otherwise Buckawn, and the lands of Cloonmoylan, containing 20[illegible]a 0r 35p. Irish plantation measure, of the yearly rent or value of 13[illegible] 6s 8d.

Lot No. 7.—The lands of Lisaline, otherwise Lisline, otherwise Lisaleen, containing 140a. 1r 1p Irish plantation measure, of the yearly rent or value of 13[illegible] 15s 10d

Lot No 8.—The lands of Clareen, otherwise Clareen, containing 41a. 0r 12p Irish plantation measure, of the yearly rent or value of 30l 18s 4d.

Dated this 22nd day of June, 1852

HENRY CAREY, Secretary

These lands will be sold free of quit rent, and subject only to a tithe rent charge of 37l 18s 7½d on the entire of the estate The estate and demesne of Castlegrove is situate on the mail coach road running from Tuam to Castlebar, and within five miles of the former town. The land is of excellent quality The demesne contains 207a. 0r 37p statute measure, or 127a. 3r. 27p. Irish plantation measure, well laid out, and wooded with old and young plantations, and is an excellent farm either for pasture or tillage The mansion house has been erected within the last twelve years and is in every respect suitable for a nobleman or gentleman of fortune, and contains every requisite and convenience usual in a modern first-rate residence. The offices are extensive and commodious; there is a good walled in garden and orchard, and attached to the estate is an extensive tract of bog, which from its situation is very valuable for the purpose of turbary, and also presents every facility for reclamation, being placed upon a bed of limestone gravel. Several families of distinction reside in the neighbourhood, which has been at all times remarkably quiet and peaceable

For rentals and particulars of sale, apply to Messrs C[illegible] and WHITLOCK, Solicitors, 4, Raymond buildings, Gray's-inn, London, or WILLIAM DIX and SON, Solicitors, having carriage order for sale, 35, Gardiner's place, Dublin

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Important Estates in the county of Hants, comprising a mansion-house and park, several desirable farms, and woodlands, altogether about 3 500 acres

MESSRS. WINSTANLEY will SELL by AUCTION, at the MART, London, on WEDNESDAY, AUGUST 25, in Lots, pursuant to an order of the High Court of Chancery, made in a cause of *Rodney* v *Rodney*, with the approbation of James William Farrer, esq one of the Masters of the Court, the extensive and valuable ESTATES of George Lord Rodney, deceased, situate at Alresford and elsewhere, in the county of Hants The property consists of the mansion at Alresford various farms, and some woodlands, containing altogether about 3,500 acres, partly freehold and copyhold tenure, and the remainder held under leases for two lives from the Bishop of Winchester Also the reversion in fee expectant on the decease without issue of a person aged sixty-three, and a bachelor, to about 730 acres of freehold and copyhold land, in the parishes of Long Sutton and Ropley, in the county of Hants The farms are let to most respectable tenants, and the woodlands are in hand.—Particulars and conditions of sale may be obtained gratis at the Master's office, Southampton-buildings, Chancery-lane; of Messrs. YOUNG and VALLINGS, Solicitors, St. Mildred's-court, Poultry; of Messrs BOODLE and PARTINGTON, 8, Davies street, Berkeley-square; of J B LOWNDES, Esq. 2, New-inn, Strand; of Messrs KARSLAKE, CREALOCK, and KARSLAKE, 4, Regent street; of Messrs. DUNN, HOPKINS, CARTER, and BLACKMORE, of Alresford, of Messrs OSBORN and GARRETT, Surveyors, Fareham, Hants; of Messrs WINSTANLEY, Paternoster-row; and at the place of sale

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NORTHUMBERLAND

TO BE SOLD, pursuant to a Decree of the High Court of Chancery made in the several causes of *Blake* v *Blake*, *Blake* v *Blake*, and *Blake* v *Alder*, with the approbation of Nassau William Senior, esq one of the Masters of the said Court, at the Queen's Head Inn, Newcastle upon-Tyne, on TUESDAY, the 31st day of AUGUST, 1852, at One o'clock in the afternoon, in Ten Lots, the valuable and interesting FREEHOLD ESTATE called Norham Mains, consisting of the farms of Norham East and Norham West Mains, on the southern bank of the river Tweed, which forms the northern and western boundaries of the estate, and within a mile from the Berwick and Kelso Railway Station This estate is situate favourably for markets, is eligible in a very high degree as an investment, and presents some remarkably fine situations for a mansion, commanding beautiful views of the ruins of the ancient baronial castle of Norham, and the windings of the river Tweed, with its richly wooded banks, also the valuable agricultural and mineral estate of Bowsden, situate in the parish of Lowick, in the county of Northumberland, consisting of the two farms called Bowsden Hall and Bowsden Moor, with the seams of coal and limestone under the same

A tithe rent-charge of 35l a year arising from the estates of New and Old Heaton, in the adjoining chapelry of Cornhill Three Freehold Closes containing 12a. 3r 16p called Robertson's Land, situate at Norham Boathouse, Two Freehold Closes adjoining the above, and called Bowwell Land, containing 8a 1r 18p And several very valuable shares of fisheries, called Potwell, Greenhill and Wilford Fisheries, in the river Tweed, near Norham

Printed particulars and plans of the estates may be had (gratis) in London, at the Chambers of Sir RICHARD TORIN KINDERSLEY, Southampton buildings, Chancery lane, of Messrs MOUNSEY and GRAY, No 9, Staple-inn; and Mr ROBERT PORT, No 2, Raymond's-buildings, Gray's-inn, and in the country, of Mr [illegible] Solicitor, Alnwick; Mr. GRACE, Wallsend; Mr CARTHORNE [illegible] Tweed lodge, Coldstream; Mr BROTON, Auctioneer, and the place of sale And the estates may be viewed on application to the tenants

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RYE, SUSSEX.—The famous Castle Estate, commanding great Parliamentary influence within the borough, and adjoining the town, railway station, and harbour of Rye, comprising about [illegible] acres of rich grazing land, also a capital Manorial Estate of 1,[illegible] acres, about five miles distant, in a picturesque part of the county.

MESSRS. DANIEL SMITH and SON are instructed by the Trustees of the Estate of a gentleman, deceased, to announce that (unless previously disposed of by private treaty) will be submitted for SALE by AUCTION, at the MART, on TUESDAY, AUGUST 10, at Twelve, the above very important FREEHOLD ESTATES, recently relet to first-class tenants at very moderate rents, and from their peculiar situation, and many and great local advantages, and sources of improvement, offering remarkably choice, safe, and valuable properties for investment.—For particulars and plans, and to treat for the purchase, apply at their Offices, in Waterloo place, Pall mall Particulars may be also had of E N. DAWES, Esq Solicitor, Rye, and of Messrs WRIGHT and KINGSFORD, Solicitors Essex-street, Strand and at the Auction Mart.

SUSSEX.—Important and truly valuable Freehold Estates and Manor, in the interesting and beautiful vicinity of Rye and Northiam, on the river Rother, comprising upwards of 1,580 acres, nearly in a ring fence.

MESSRS. DANIEL SMITH and SON will submit to PUBLIC SALE, at the Mart, on TUESDAY, AUGUST 10, at Twelve o'clock (unless an acceptable offer shall be previously made), the very valuable and picturesque FREEHOLD ESTATE and MANOR of KNELLE, comprising several eligible farms in a famous hop district, and embracing a fine tract of rich marsh land, bounded for a great extent by the navigable river Rother, near Newenden wharf with a superior and complete farm residence and other homesteads; all in the highest state and condition The estate comprises above 1,580 acres, including some remarkably thriving woodlands (in hand), and lies in a compact ring fence, in the parish of Beckley, about four miles from Rye, offering a most valuable, improving, and influential property as a first rate landed investment, let to a first class tenant.—Particulars may be obtained by application to Messrs WRIGHT and KINGSFORD, Solicitors, Essex-street, Strand, to Mr DAWES, Solicitor, or to Messrs DANIEL SMITH and SON, Land Agents, in Waterloo place, Pall-mall, who are authorised to receive offers by private contract.

Important Domain and most capital Landed Investment, with trifling exception all Freehold, with a handsome Mansion, rich Park, Manors Farms, &c. near Bury St Edmund's, Suffolk, comprising about 1,750 Acres, in a perfect Ring Fence, abounding with Game

MESSRS. DANIEL SMITH and SON will SELL by AUCTION, at the MART, on THURSDAY, AUGUST 26, at Twelve the truly valuable and singularly compact ESTATE of BRETTENHAM HALL comprising the manor or reputed manor of Brettenham with Rishings and Wetherden Hall, a handsome mansion, containing well-arranged suites of rooms, with suitable offices good stabling productive gardens, and pleasure grounds laid out by Repton, but all on a compact and comfortable scale, suited for a moderate establishment, approached by an avenue of noble oaks, with double Lodges, and gently elevated in the centre of a fine park of remarkably rich grazing land, embracing, with the Home Farm, [illegible] acres, studded with various and noble timber, and embellished by a beautiful lake skirted by an extensive wood, affording delightful drives and walks The whole estate is beautifully timbered, and remarkably compact, and completely surrounding the park, judiciously divided into eligible farms, with very convenient homesteads and buildings of every description, the whole comprising nearly 1,750 acres, interspersed with thriving and ornamental woods full of game, every acre productive, and all let (except the mansion and woods in hand) to respectable punctual tenants at very moderate rents It is situate about six miles from Hadleigh Railway Station, ten miles from Bury, seven from Stowmarket (where there is a station on the Eastern Junction Railway, bringing it within three hours' journey of London), and fifteen from Ipswich.—The estate may be viewed, and particulars with plans, had at the Auction Mart; of Messrs BENNETT and FIELD, Solicitors, Lincoln's-inn, Messrs HALL, BOYS, and AUSTEN, Solicitors, Ely place and of Messrs SMITH Land Agents, 10 Waterloo-place, Pall-mall

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NORTH DEVON, WOOLFARDISWORTHY, near Bideford.—A Domain of about 900 Acres with the Manor of Bucksh (having upwards of a mile of bold wooded and romantic coast, looking towards Lundy Island and across the Bristol Channel into Wales, and adjoining the far famed lands of Sir J H Williams, Bart at Clovelly Court), together with the impropriate tithe-rent per annum and the advowson of the said parish

MESSRS. HUSSEY and SON will offer for SALE, in lots, by PUBLIC AUCTION at the NEW INN, in BIDEFORD, on TUESDAY the 24th day of AUGUST next, at One for Two o'clock, the FREEHOLD LANDS, called West Buckish, Ashcroft, West Town, Ashmansworthy, and other Lands, comprising upwards of 900 Acres, situate in the parish of Woolfardisworthy, Devon, consisting of several farms, overlands, and cottages, an excellent and comfortable family residence, lately built, with coach house, stabling, and other necessary buildings, and surrounded with walled garden, shrubberies, and lawn, together with the impropriate tithe rent charge of the whole parish, commuted at 120l per annum, also the advowson of the parish, to which belongs a newly erected residence for the vicar, with about sixteen acres of land The annual value of the advowson (including 20l from the tithe rent charge) is about 90l

The property is well worth the attention of capitalists as an investment, and might be much improved by a judicious outlay, having a good supply of sea sand (without any charge) for manuring the same, and lime kilns on the property Woolfardisworthy is eight miles from the excellent market town and port of Bideford, where large ships are built, and is the principal shipping port for Wales, which is one of the best markets for agricultural produce The North Devon Railway is now in progress and the directors have taken powers to carry a branch line from Barnstaple to Bideford, which will make the journey to London only six hours. There are good roads through the property to Clovelly, Hartland, Bute, &c and there are daily conveyances to Exeter.—Particulars of the lots and any further information may be had of the Auctioneers, Waybrook, Alphington, at the Offices of Messrs. GEARE, MOUNTFORD, and GEARE, Solicitors and Proctor, Exeter, or of Messrs DOBINSON and GEARE, Solicitors, 57, Lincoln's inn fields, London where, as well as at Mr CHAPPLE's Land Agent, North Tawton, Devon, maps of the property may be seen For viewing the premises, apply to Mr R. HARDING, Cranford Village Woolfardisworthy, who has also maps of the property.—Dated Waybrook, Exeter, July 23rd, 1852.

Freehold Ground-rent of 84l 4s per annum, with early reversion, well secured on fifty six houses near White-chapel.

MR. MOORE will SELL by AUCTION, at the MART, on THURSDAY AUGUST 12, at Twelve, in one lot, a FREEHOLD GROUND RENT of 84l 4s arising out of fifty six houses on the Osborn Estate, in Mile end New-town, the annual rental of which is about [illegible] with reversion thereto in 18[illegible].—Particulars may be had of Messrs TAYLOR and CLARKE, Solicitors, 110, Fenchurch street, at the Mart; and at the Auctioneer's Offices, Mile end road

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STEPNEY, MILE END, HACKNEY, HOMERTON, and CAMBRIDGE-HEATH.—Favourable opportunity of laying out unemployed capital, and purchasing for occupation

MR. MOORE will SELL by AUCTION, at the MART on THURSDAY, AUGUST 12, at Twelve, in eight lots, THREE compact and well built SEVEN-ROOMED HOUSES, with fore courts and [illegible] pleasantly situate in Emmott-street; Bridge-street, Stepney, let at 16l 10s each; term, sixty one years, ground-rent, [illegible] each house A Seven roomed House, with garden cellarage, and side entrance, respectably situate in Hannibal road, Stepney green, let at 21l.; term, forty-five years, ground rent, [illegible] The tenants pay the taxes Eight Brick built Five roomed Houses, with gardens, in Arthur-street, Well-street, Hackney; let at 107l 18s per annum term, ninety years, ground rent, [illegible] each Three Four roomed Houses, with yards in John street and College street, Homerton, let at [illegible], term, thirty years; ground rent 16l 16s And a small House in Grove street, Cambridge-heath, let at 13l.; term, thirty three years, ground rent [illegible] Vendors pay the rates.—May be viewed and particulars had of Messrs J and W SHEFFIELD, Solicitors, 8[illegible] Old Broad street; at the Mart, and at the Auctioneer's Offices, Mile end road

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WESTBOURNE-PARK VILLAS, PADDINGTON.—Long Leaseholds, for investment or occupation

MR. E. PALMER will SELL by AUCTION, at the MART, on TUESDAY next, at Twelve, in four lots, THREE well-built genteel VILLA RESIDENCES, being Nos. 60, 62, and 68, pleasantly situate as above No 60 and 62 each contain three bed-rooms, dressing-room, drawing, dining, and breakfast rooms spacious entrance-hall, and the usual domestic offices; good front and back gardens let at the very low rent of 45l each. No 68 contains two extra bed rooms and store room, conservatory, ornamental fountain, and summer-house, annual value 63l; lease eighty-four years; ground rent, 1l each Also a Plot of Garden Ground, [illegible] feet by 20 feet, with an entrance from the footpath between Westbourne-park Villas and Westbourne-park-road; estimated value, 15l per annum.—Particulars of H PICKETT, Esq. Solicitor, Temple chambers, Fleet street; at the Royal Oak, Paddington; at the Mart; and at the Auctioneer's Offices, 20, Change-alley, Cornhill and 24, Lower Calthorpe-street, Gray's-inn-road,

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Ground Rents, 78l. per annum.

MR. E. PALMER will SELL by AUCTION, at the MART, on TUESDAY next, at Twelve, in one lot, an IMPROVED LEASEHOLD GROUND RENT of 78l. per annum, well secured on forty-four cottages, situate Vicarage-lane, Stratford, Essex; held for 100 years unexpired.—Particulars of Messrs. TURNER and SON, Solicitors, 8, Mount-place, Whitechapel-road; at the Swan, Stratford; at the Mart; and at the Auctioneer's Offices, 20, Change-alley, Cornhill; and 24, Lower Calthorpe-street, Gray's Inn road.

JUST PUBLISHED.—NEW LAW OF WILLS.

THE NEW WILLS AMENDMENT ACT, 1852, with Introduction, and Forms of Attestation Clauses. By G. S. ALLNUTT, Esq. Barrister-at Law. Price One Shilling, sewn.

Also, the Third Edition of

PRACTICE of WILLS and ADMINISTRATIONS, containing the New Wills Act. By G. S ALLNUTT, Esq. Barrister-at Law. Price 16s. cloth; 17s. half-bound; 18s. in calf.

JOHN CROCKFORD, 29, Essex-street, Strand.

THE LAW RELATING TO MASTER AND SERVANT, comprising Domestic and Menial Servants and Clerks, Husbandmen, and Persons employed in the different Manufactures, and the principal Statutes relating to Workmen, the Settlement of Disputes, Tickets of Work, Limitation of Labour, Payment of Wages, School Attendance of Children, &c. including the NEW FACTORY ACT (13 & 14 Vict. c. 54), with General Observations, all the Cases up to the present time, and a copious Index. By CHARLES J. B. HERTSLET, Esq. of the Middle Temple, Barrister-at-Law. Price 7s. 6d. boards; 8s. cloth; 9s. 6d. half-calf; 10s. 6d. calf

"A little work on the *Law relating to Master and Servant*, by Mr. C J B Hertslet, has just been issued, which will prove valuable to all classes, and is calculated to prevent wrongs and inconveniences which are often inflicted or submitted to on each side through ignorance of the actual nature of the responsibilities which exist. The various decisions in connection with the subject appear to have been digested with much care; and the author has collected those statutes which contain general regulations in reference to the contract between the employer and the employed, as well as those relating to particular occupations. By persons engaged in trade and manufactures, with large numbers of clerks and workmen, as well as ordinary servants, such a volume has long been wanted" *Ti[illegible]*.

CROCKFORD, 29, Essex street, Strand.

In the press,

THE PRACTICAL STATUTES of the SESSION of 1852 Edited, with explanatory Notes, copious Index, &c. by WM PATERSON, Esq. Barrister-at Law. Price [illegible] 6d cloth

NOTE.—This work contains all the Statutes *verbatim* that can ever be required to be used by the English Lawyer, omitting the Irish, Scotch, and Colonial Statutes, so that the entire of the practical new law of the Session is comprised in a small volume, which can be easily carried in the pocket or bag It is made of further utility to the Profession by a very copious Index.

Like volumes have already appeared containing the *Practical Statutes of the Session of* 1850 price 7s 6d. and 1851, price 7s.

The volume for 1849 is in the press, and it is intended to issue the previous Statutes uniform with these, but excluding all the repealed Statutes and parts of Statutes, and adding Notes of all the Cases decided upon the construction of the Statutes contained in them, thus presenting the existing law with the judicial interpretation of it Thus, the volume for 1849 will contain the New Bankruptcy Act, with all the Cases decided upon its construction.

The following Statutes will be given entire in the volume for 1852:—

Commons Inclosure Act.
Municipal Corporations Acts Amendment Act
Protection of Inventions Act, 1851 (Extension of Term).
Copyright Amendment Act
Poor Relief Act Continuance Act.
Loan Societies Act Amendment Act.
Ecclesiastical Jurisdiction Act.
Stock-in-Trade Act.
Application of Highway Rates to Turnpike Roads Act.
Property-Tax Continuance Act.
Act for Re-assembling Parliament.
Wills Act Amendment Act.
Registration of Births, Deaths, and Marriages Act.
Apprehension of Deserters from Foreign Ships Act.
Industrial and Provident Societies Act.
Protestant Dissenters Act.
Appointment of Overseers Act.
General Board of Health Act (No. 1 and No. 2).
Disabilities Repeal Act
Passengers Act Amendment Act.
Differential Dues Act
Property of Lunatics Act
Schools Sites Acts Extension Act.
Militia Act.
Enfranchisement of Copyholds Act
County Courts Improvement Act
Trustees Act Extension Act.
Pharmacy Act
Corrupt Practices at Elections Act.
Excise Summary Proceedings Act
Woods, Forests, and Land Revenues Act
Metropolitan Sewers Act.
Nisi Prius Officers Act
Militia Ballots Suspension Act.
Common Law Procedure Act
Secretary of Bankrupts' Office Abolition Act.
Commons Inclosure Acts Extension Act.
Masters in Chancery Abolition Act.
County Rates Act.
Patent Law Amendment Act.
Metropolis Water Supply Act
Metropolitan Burials Act.
Improvement of the Jurisdiction of Equity Act.
Suitors in Chancery Relief Act.

London: JOHN CROCKFORD, 29, Essex-street, Strand.

DRAINAGE, VENTILATION, &c.—In all cases of defective drainage, imperfect ventilation, and noxious emanations from house-drains, &c. (whether in the metropolis or in the country), application may be made to Mr. HALE, Surveyor to the late Commission of Sewers, who will provide an effectual and permanent remedy at small cost.—Office, 24, New Broad-street, City

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BURGLARIES.—CHUBB'S LOCKS.— On the night of the 31st of January a desperate attempt was made upon the Dundee Bank by a set of accomplished thieves. An iron door, secured by CHUBB'S PATENT LOCK, was the principal object of attack, and the burglars, having exhausted their skill in trying to pick this lock, endeavoured ineffectually to destroy it by drilling After some hours' work they were alarmed, and made a precipitate retreat, leaving all their instruments behind them. On the previous evening, the warehouse of Mr. Clarke, Cross-street, Manchester, was broken into; the thieves picked eight locks of the ordinary kind, and then having unsuccessfully endeavoured to pick the Detector Lock on a Chubb's Fireproof Safe, they tried to force it open, but without avail. This is the second time this safe has resisted the attacks of burglars.—CHUBB and SON, 57, St. Paul's-churchyard, London; 28, Lord-street, Liverpool; 16, Market-street, Manchester; and Horseley-fields, Wolverhampton.

LONDON:—Printed by HENRY MORRELL COX, of 74, Great Queen-street, in the Parish of St. Giles in the Fields, in the County of Middlesex, Printer, at the Printing Office of COX (Brothers) and WYMAN, 74 & 75, Great Queen-street, aforesaid, and published by JOHN CROCKFORD, of 29, Essex-street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, at the Office of the LAW TIMES, No. 29, Essex-street, aforesaid, on Saturday, the 7th day of August, 1852.

THE LAW TIMES,

FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

VOL. XIX.—No. 489.] SATURDAY, AUGUST 14, 1852. [Price 1s.

Money, Wanted and to Lend.

MONEY.—18,000*l.* to be Lent upon Mortgage of Freehold or long Leasehold Property, in one or more sums, at 4*l.* per cent. Apply to Messrs. COXWELL and BASSETT, Solicitors, Southampton.

MONEY.—5,000*l.* to be Lent on approved Freehold Security, at 5*l.* per cent, in sums of about 500*l.* Apply to Messrs. RUSSELL and BURGON, Solicitors, 23, Martin's-lane, Cannon-street, London.

MONEY.—Trust Money, in any sums from 1,000*l.* to 6,000*l.* may be had on approved Mortgage security, at 3½ per cent. on application to Messrs. HODGKINSON and SON, Solicitors, Newark, Notts.

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THE Act of last Session was only the skeleton of an Act. Throughout, it refers to and embodies previous statutes, so that to learn what is the law relating to the Militia, which is now about to be embodied, the inquirer has to hunt through many large volumes of statutes, and when he has found all the different Acts that belong to the subject, he experiences the utmost perplexity in comparing them and incorporating them one with another. In this predicament, Mr. SAUNDERS's little book will be found of great value and utility, for he has here brought together all the statutes, and parts of statutes now in force relating to the Militia, and which forms, in fact, the code under which it is to be raised and governed, including the New Militia Pay Act. These he has arranged in the order of date, and made intelligible by notes, that shew the references backward and forward, and how one enactment is affected by the other. So singularly vague and imperfect is the law, that there will be some difficulty in working it, but that difficulty will be materially relieved by the volume that thus brings the law together within a small compass, where it can be found in a moment. It is accompanied with a very copious index, and that is the most important matter in a compilation such as this.

LEGAL INTELLIGENCE.

Assizes.

NORTHERN CIRCUIT.

LANCASTER, Aug. 9.—Lord Chief Justice Campbell and Mr. Justice Wightman arrived here on Saturday. The calendar contains the names of 16 prisoners, 2 of whom are charged with murder, 2 with manslaughter, 3 with rape, 1 with stabbing, the rest with minor offences. The cause list contains an entry of nine cases.

APPLEBY, Aug. 6.—The commission was opened here late last night. Lord Chief Justice Campbell arrived alone to take the business of the assizes. The calendar contained the names of fifteen prisoners and nine charges, two of them concealment of birth, two burglaries, the rest larcenies. The cause list contained an entry of two causes.

NORTH WALES CIRCUIT.

CHESTER, Aug. 9.—The commission was opened on Saturday, before Mr. Justice Talfourd. The cause list presents a meagre shew of business. It numbers six entries, of which one only (understood to be an action of libel, brought by a clergyman against the proprietor of a newspaper) is a special jury cause. The calendar contains 65 prisoners for trial. Of these, the educational returns shew that 16 can neither read nor write, 17 read and write imperfectly, 19 read imperfectly, 4 read and write well, and 1 is returned as having had a superior education. The offences comprise 2 charges of arson, 4 prisoners are charged with bigamy, 10 with burglary, 4 with concealing the births of children, 3 with uttering and being in possession of counterfeit coin, 5 with cutting and maiming, 3 with horse-stealing, 3 with housebreaking, 3 with murder (amongst these is the man who murdered and buried his mother at Prenton), 1 with perjury, 3 with rape, 19 with riot (these are the Stockport rioters), 2 with unnatural crimes, 1 with administering savin with intent to procure abortion, 1 with throwing a stone against a carriage upon a railway, and 1 with stealing coals.

WESTERN CIRCUIT.

BRISTOL, Aug. 4.—The commission was opened here yesterday afternoon by Baron Platt. For the first time the clerk of assize and associate, regularly belonging to the Western Circuit, have taken their proper seats in this Court, the local associates having been removed. This augurs well, and we may hope yet to see Bristol placed in its proper position, having the assizes twice a year, and a gaol delivery before the judges of assize on the Western Circuit. There are nineteen causes for trial, four of which are marked for special juries. The bad ventilation and inconvenience of the court still continue.

WELLS, Aug. 5.—The commission was opened in this city yesterday. This morning the business of the assize commenced, Baron Platt presiding in the Crown Court, and Baron Martin at Nisi Prius. There is a fair amount of civil business, there being twelve causes entered for trial, of which five are marked for special juries. The calendar presents a list of sixty-two prisoners for trial, and the great majority of the cases are of a very serious character. On analysing the calendar we find them to be,—murder, 4; manslaughter, 2; maliciously wounding, 2; arson, 2; robbery, 1; burglary, 4; rape, 3; unnatural, 2; perjury, 2; uttering a forged cheque, 1; horsestealing, 1; housebreaking, 2; concealment of birth, 1; false pretences, 1; riot, 9; larceny, 6; misdemeanor, 3.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

FALLON.—On the 9th inst. at Cheltenham, the wife of James Fallon, esq. barrister-at-law, of a daughter.

GREVILLE.—On the 6th inst. at 62, Eaton-square, the Lady Rosa Greville, of a son.

LUND.—On the 11th inst. the wife of Henry Lund, esq. of Lincoln's inn, barrister-at-law, of a daughter.

MARRIAGES.

BAKER, Henry Mitchell, esq. mayor of the borough, to Elizabeth Pinchard, youngest daughter of J. H. Sparke, esq. controller of H.M.'s Customs of that port, on the 9th inst. at Townstal Church, Dartmouth.

ROWLAND, Mr. William Henry, solicitor, Hungerford, Berks, and eldest son of William Rowland, esq. of Ramsbury, to Harriet Louisa, only daughter of the late George Spencer Brewer, esq. on the 5th inst. at the parish church of Lower Wallop, Hants.

BILLSON, Mr. William, of Leicester, solicitor, to Mary Chamberlin, second daughter of Samuel Stone, esq. of Elmfield, near Leicester, on the 5th inst. at the Great Meeting, Leicester.

FISHER, William Richard, esq. of Lincoln's-inn, barrister-at-law, to Amelia Mary, youngest daughter of Richard Woodhouse, esq. of Gloucester-place, Portman-square, on the 11th inst. at St. Mary's, Bryanston-square.

GOODLIFF, William Gimber, second son of F. M. Goodliff, esq. of the Admiralty, Somerset House, to Eliza, second daughter of the late James Shannon, esq. solicitor, Dublin, on the 5th inst. in Dublin.

TURNER, John, esq. Captain, Royal Horse Artillery, son of Lieut.-General Charles Turner, Colonel, 19th Regiment, to the Hon. Caroline Sugden, daughter of the Right Hon. the Lord Chancellor, on the 11th inst. at Thames Ditton, Surrey.

WARD, Robert Arthur, esq. solicitor, Maidenhead, Berks, elder son of the late Rev. Robert Ward, of Thetford, to Charlotte Hensman, elder daughter of Henslip Palmer, esq. of Upwell, on the 5th inst. at Upwell, Norfolk.

DEATHS.

FLETCHER, Joseph, esq. barrister-at-law, her Majesty's Inspector of Schools, hon. secretary to the Statistical Society of London, &c. on the 11th inst. at Chirk, North Wales.

HALL, John Charles, esq. of 64, Lincoln's-inn-fields, on the 7th inst. at his residence, 8, Bloomsbury-place, aged 46.

HILLYARD, Alida, widow of the late Charles Hillyard, esq. formerly of Upper Clapton, and Copthall-court, London, solicitor, on the 9th inst. at Nottingham, aged 72.

JONES, Margaret, the wife of John Jones, esq. Town-clerk of Beaumaris, on the 8th inst. at Beaumaris, aged 67.

KENSINGTON, the Right Hon. William Lord, on the 10th inst. at Kensington, aged 75.

PATTISSON, Joseph, esq. magistrate and deputy-lieutenant for the county of Essex, and late of the 5th Dragoon Guards, on the 31st ult. at Maldon, aged 65.

POLE, the Lady Louisa, wife of Sir Peter Pole, bart. of 6, Upper Harley-st. and Todenham-house, Gloucestershire, and daughter of the late Earl of Limerick, on the 6th inst. at Brighton.

SORBY, James, esq. solicitor, Sheffield, on the 4th inst. at his residence, Sharrow-lodge, aged 58.

WATSON, the Hon. Richard, of Rockingham Castle, M.P. for Peterborough, on the 26th ult. at Homburg.

JOURNAL OF PROPERTY.

Public Sales.

By Messrs. CHINNOCK and GALSWORTHY, at the Mart, Aug. 4.—Reversion to 254*l.* payable upon the death of a lady aged 77—165*l.*

A leasehold carcass of a private house, No. 1, Ledbury-road, Bayswater, annual value when finished, 90*l.*; cost to finish, 300*l.*; ground-rent, 10*l.* 10s.; term, 97 years—640*l.*

A ditto adjoining house and shop, annual value when finished 60*l.*; cost to finish, 200*l.*; ground-rent, 10*l.* 10s.; term, 99 years—240*l.*

Freehold and copyhold estates at Walsham, near Bury St. Edmonds, Suffolk, comprising Mansion-house and 602 acres of land; annual rental, 985*l.*; bought in at 24,000*l.* the last offer being 23,100*l.*

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A convenient seven-roomed house in Hannibal-road, Mile-end-road; let at 21*l.*; term, 65 years; ground-rent, 4*l.* 10s.—225*l.*

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ENGLISH FUNDS.	Sat.				Thurs.	Fri.
Bank Stock...........	229	231	227	228	223	223
3 ℔ Cent. Reduced Annuities	100½	100	99	99½	99⅝	100
3 ℔ Cent. Consols Annuities	99⅞	92	99	98⅞		99⅛
Consols for Account........	99½	99	99¼	98⅞		99⅛
New 5 ℔ Cent. Annuities ..				135		
New 3½ ℔ Cent. Annuities..	103½	103⅜	103	102⅞	102⅝	103
Long Annu. (exp. Jan. 5, 1860)	6⅞			6⅞	7	6⅞
Do. 30 yrs. (exp. Oct. 10, 1859)	.	6⅝	6		6⅞	
Do. 30 yrs. (exp. Jan. 5, 1860)	6⅞	..	6⅞		..	
India Stock..................	284		281		277	
India Bonds (1,000*l.*)	94		91		89	90*
Do. do. (under 1,000*l.*)....		94			89	
South Sea Stock............		112				
Do. do. Old Annuities....						
Exchequer Bills, 1,000*l.* June	73*	73'				
do. 500*l.* June..						
do. Small, June	70*	.				

* Premium.

DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES."

		AUCTIONEER.	WHEN ADVERTISED.	
Tuesday, August 17	Mart.	Spillman & Spence	July 31.	Farm of 48 acres, near Bognor.
,,	Ibid.	Ditto.	Ibid.	Villa Residence at Finchley Common.
,,	Ibid.	Ditto.	Ibid.	14 Cottage Residences, Clapham Rise.
,,	Ibid.	Ditto.	Ibid.	Freehold Estate of 4 acres, at Finchley.
,,	Ibid.	Ditto.	Ibid.	Well-secured rent of 73*l.* per annum.
Wednes. August 18	Ibid.	Palmer.	Aug. 14.	Leasehold House, Castle-court-chambers.
,,	Ibid.	Ditto.	Ibid.	2 Leasehold Houses, Brighton-st. Judd-st.
,,	Ibid.	Ditto.	Ibid.	Leasehold Estate at Bermondsey.
,,	Ibid.	Ditto.	Ibid.	Reversion to a Freehold House, Gt. Arthur-st.
Friday, August 20.	Ibid.	Deeks.	Ibid.	5 Newly-erected Houses, Brunswick-terrace.
	Ibid.	Ditto.	Ibid.	5 Houses, Archer-ter. Westbourne-grove.
	Ibid.	Ditto.	Ibid.	Newly-erected Residence, Alexander-terrace.

LAW PROPERTY ASSURANCE and TRUST SOCIETY,

30, Essex-street, Strand, London, and 19, Princess-street, Manchester.

Subscribed capital, 250,000*l.* in 5,000 shares of 50*l.* each.

LONDON BOARD.

DIRECTORS.

Ralph T. Brockman, esq. | James Macaulay, esq.
Benjamin Chandler, jun. esq. | Henry Paull, esq.
Edward W. Cox, esq. | Robert Young, esq.

AUDITORS.

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James Hutton, esq. Moorgate-street.

BANKERS.

London and County Bank, 21, Lombard-street.

STANDING COUNSEL.

Henry Stevens, esq. 7, New-square, Lincoln's-inn.

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MEDICAL OFFICER.

Dr. McCann, Parliament-street.

SOLICITOR.

William Colley, esq. 16, Bucklersbury.

PROCTOR.

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ACTUARY AND SECRETARY.

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W. H. Partington, esq. 19, Princess-street.

This Society is established to apply the principle of Assurance to PROPERTY as well as to Life; and its business consists of—

The Assurance of DEFECTIVE and UNMARKETABLE TITLES, rendering them absolute and perfect.

The Assurance of COPYHOLDS, LIFEHOLDS, and LEASEHOLDS, thereby making them equal to, or even better than FREEHOLDS, for all purposes of sale or mortgage.

The redemption of LOANS and MORTGAGES, and guaranteeing their absolute repayment within a given period.

Increased and Immediate ANNUITIES granted upon HEALTHY as well as DISEASED LIVES.

The FIDELITY of Clerks, Servants, and others GUARANTEED upon the payment of a small annual premium, and a reduction of nearly one-half is made when a Life Assurance is combined with the Fidelity Guarantee Policy.

LIFE ASSURANCES effected for the whole term of life, or for a term of years, and the premiums can be paid yearly, half-yearly, or quarterly.

ENDOWMENT and EDUCATION ASSURANCES and ANNUITIES granted; the premiums can be paid upon the returnable or non-returnable system, in case of death before attaining the age agreed upon.

IMMEDIATE ANNUITIES or increased incomes granted in exchange for REVERSIONARY INTERESTS.

Whole World Policies granted, and all Policies issued by this Society are INDISPUTABLE, except in cases of fraud.

Every information furnished, free of expense, by applying to

WILLIAM NEISON, Esq. Actuary and Secretary,
30, Essex-street, Strand, London.
AGENTS WANTED.

THE YORKSHIRE FIRE and LIFE INSURANCE COMPANY.

Established at York, 1824, and empowered by Act of Parliament. Capital, 500,000*l.*

TRUSTEES.

Ralph Creyke, esq. Rawcliffe Hall.
John Swann, esq. Askham.
Leonard Thompson, esq. Sheriff Hutton Park.

BANKERS.—Messrs. Swann, Clough, and Co. York.
ACTUARY and SECRETARY.—Mr. W. L. Newman, York.

The attention of the public is particularly called to the terms of this Company for LIFE INSURANCES, and to the distinction which is made between male and female lives.

Extract from the Table of Premiums for insuring 100*l.*

Age next birth-day.	A MALE.			A FEMALE.			Age next birth-day.	A MALE.			A FEMALE.		
	Whole Life Premiums							Whole Life Premiums					
	£	s.	d.	£	s.	d.		£	s.	d.	£	s.	d.
10	1	7	6	1	5	4	46	3	11	6	3	3	2
13	1	9	3	1	7	0	50	4	1	9	3	13	3
16	1	11	8	1	8	10	53	4	11	6	4	2	6
20	1	14	4	1	11	6	56	5	4	0	4	14	0
23	1	17	0	1	13	8	60	6	6	0	5	12	6
26	2	0	8	1	16	2	63	7	4	0	6	9	6
*30	2	5	0	1	19	9	66	8	4	0	7	10	8
33	2	8	6	2	2	10	70	10	0	4	9	7	6
36	2	13	0	2	6	4	73	11	16	2	11	2	6
40	2	19	9	2	12	0	76				13	1	9
43	3	5	3	2	17	2	80				15	12	10

* EXAMPLE. A gentleman whose age does not exceed 30, may insure 1,000*l.* payable on his decease, for an annual payment of 22*l.* 10s.; and a lady of the same age can secure the same sum for an annual payment of 19*l.* 17s. 6d.

Prospectuses, with the rates of premium for the intermediate ages, and every information, may be had at the Head Office in York, or of any of the Agents.

FIRE INSURANCES

are also effected by this Company, on the most moderate terms.

AGENTS.

Edinburgh.—M'Intosh and Ducat, W.S. 68, Great King-street; D. S. Peddie, George-street.

Glasgow.—Peter White, 20, Buchanan-street; William Lang, 20, St. Vincent-place; John Carmichael, 5, Dixon-street; William Robertson, Trongate Branch of the City of Glasgow Bank.

Agents are wanted in those towns where no appointments have been made. Applications to be made to Mr. W. L. NEWMAN, Actuary and Secretary, York.

ALBERT LIFE ASSURANCE COMPANY.

Established 1838.

Principal Office, 11, Waterloo-place, Pall-mall, London.

Indisputable policies.

Assurances, annuities, and endowments granted, and every other mode of provision for families arranged.

Half the annual premiums for the first five years may remain on credit for any period until death, on payment of interest at five per cent. per annum.

Parties allowed to go to or reside in most parts of the world without extra premium.

Naval and military lives, not in active service, assured at the ordinary rate.

Policies forfeited by non-payment of premium revivable at any time within six months, on satisfactory proof of health, and the payment of a trifling fine.

Policies on the life of another secured, notwithstanding the part of the world to which the assured may go.

HENRY WILLIAM SMITH, Actuary and Secretary.

ANCHOR ASSURANCE COMPANY,

67, Cheapside, London.

Life Assurances may be effected with this Office at the most moderate Premiums, while the bonus additions to Policies tend still further to lessen the cost of assurance.

Life Annuities are granted by the Company on terms exceedingly favourable to the assured.

Prospectuses may be had on application.

T. BELL, Secretary and Actuary.

Chief Agencies—Manchester, 1, Ducie-place; Glasgow, 135, Buchanan-street, and 115, St. Vincent-street; Hull, Exchange-buildings; Newcastle-on-Tyne, Grey-street; Plymouth, 5, Frankfort-street; and 6, Hermann-strasse, Hamburg.

Applications for agencies, in places where none are appointed, may be addressed to the Secretary.

LAW REVERSIONARY INTEREST SOCIETY.

Offices 5, Lincoln's-inn-fields, London.

Capital, 500,000*l.* in 10,000 shares of 50*l.* each, with power to increase the capital to 1,000,000*l.* sterling.

Provisionally registered pursuant to Act of Parliament, 7 & 8 Vict. cap. 11.

TRUSTEES.

The Right Hon. the Lord Chief Baron
The Hon. Mr. Justice Coleridge
Nassau W. Senior, esq. Master in Chancery.
John Ellis Clowes, esq. Temple.

DIRECTORS.

CHAIRMAN—Russell Gurney, esq. Q.C. Temple
George Concanen, esq. 5, Lincoln's-inn-fields
John Clerk, esq. Barrister-at-Law, Temple
John M. Clabon, esq. 21, Great George street
Daniel A. Freeman, esq. 34, Old Jewry
John Gregson, esq. 8, Angel-court
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Alfred H. Shadwell, esq. 13, Austinfriars
Richard William Jennings, esq. Doctors'-commons
C. Ranken Vickerman, esq. Gray's-inn.
(With power to add to their number.)

AUDITORS—John Boodle, esq.; Thomas W. Capron, esq.; Alexander Edgell, esq.

BANKERS—Messrs. Hoare, Fleet-street

SOLICITORS—Messrs. Capron, Brabant, Capron, and Dart, Savile-place, New Burlington-street

This Society is established for the Purchase of Reversionary Property, Life Interests (absolute or contingent), Life Annuities (immediate or deferred), Life Policies of Assurance, and every other description of property, in possession or expectancy, depending upon the duration of human life.

The great increase of Life Assurances, and of family arrangements under wills and marriage settlements, seems to require the further extension of Reversionary Interest Societies, in order that something like a defined and equitable value may be attached to such property. While no such institutions existed the value depended entirely upon the views of the casual buyers, and in consequence of the difficulty of disposing of such property, large amounts were daily sacrificed at arbitrary and incommensurate prices, to the enormous profit of those who invested their money in such securities.

That deposit upon the shares is fixed by Parliament at 5s. per share; the remainder of the first instalment of 2*l.* 10s. per share will be payable as soon as the Society is completely registered; and further calls not exceeding 2*l.* 10s. per share, and at intervals not less than three months, will be made as opportunities occur for profitable investment.

Applications for Shares to be addressed to the Solicitors, Messrs. CAPRON, BRABANT, CAPRON, and DART, Savile-place, New Burlington-street; or to the Directors, at the Offices of the Society, 5, Lincoln's-inn-fields, London, where prospectuses may be obtained. An early allotment of the shares will be made.

WESTERN LIFE ASSURANCE and ANNUITY SOCIETY,

3, Parliament street, London.

TEMPORARY LOANS are granted in sums varying from 50*l.* upwards on available security, in connection with Life Assurance or Annuity Policies, for which the payments can be made by such arrangements as may be most convenient.

Applications for Agencies &c. to be made at 3, Parliament-street, London, to ARTHUR SCRATCHLEY, M.A. Actuary, author of a Treatise (with Rules and Tables) on Benefit Building Societies, &c.

JAMES'S REGISTERED RAILWAY TRUNK.

—They are the strongest, lightest, and cheapest description of Trunk that has ever been manufactured for Railway Travelling. They are fitted up inside with a collapsible Hat-case, Tray, Sliding Division, and Pocket. The Registered Collapsible Hat-case can be adapted to any other sort of Trunk.

Drawings, or any further particulars, will be forwarded to any party requiring them. A large assortment of hat-boxes, cases, and tin boxes, for travellers to India, and every description of conveniences required by travellers, at the Inventor's, as below.

JAMES, 102, Oxford-street, corner of John street; Manufactory, 14, John-street

TO FAMILIES REMOVING.—FURNITURE

and every description of property carefully PACKED, Removed, and Warehoused in extensive fire-proof well-ventilated Warehouses, at charges below any similar establishment. It is the most extensive depository of the kind, and the best adapted to its purpose. Estimates given free of cost. Separate rooms if desired. Every information and ample references on application to Mr. HARRISSON, at the Thames-bank Depository, Ranelagh-road, adjoining Cubitt's Pimlico-pier. Water-side Manufacturing Premises and Cellars to be Let.

ECONOMICAL LUXURIES for WARM or WET WEATHER.

BERDOE'S LIGHT SUMMER PALLIUMS and FROCK COATS of all kinds. Sea-side, Rusticating, &c. Coats of superior description, in great variety, from 15s. to 25s. The well-known Waterproof Pallium resists any amount of rain, without obstructing free ventilation (the fatal objection to all waterproofs), and is adapted for general use at all times equally as for rainy weather; price 45s. A very large stock for selection; also of Waterproof Shooting Jackets, Cloaks, Mantles, Capes, Habits, &c. for Ladies.

W. BERDOE, Tailor, 96, New Bond-street; and 69, Cornhill (only)

FORD'S EUREKA SHIRTS are, beyond doubt,

the most scientific and really useful improvement in the art of shirt-making. Their superiority does not rest solely upon their being entirely different from all others but upon the combination of perfect novelty of design with sound practical use, resulting from a study of scientific principles, making them, in fact, the only solid and thoroughly sensible alteration from the old shapes worth of notice.

There are two qualities, in both of which the principle is strictly carried out, viz. six for 40s.; second quality, six for 30s.

List of prices and mode of self-measurement sent per post free.

RICHARD FORD, 38, POULTRY; late 185, STRAND, LONDON.

CROWN HOTEL and TAVERN, Rupert-street, Coventry-street, Haymarket.

GEORGE BOTT begs to inform professional and private Gentlemen visiting London, that they will find at the above Hotel every comfort and accommodation, with moderate charges. It is most centrally situate, in the immediate neighbourhood of the Houses of Parliament, Courts of Law, Public Offices, Theatres, Parks, and all Places of Public Amusement. The private sitting and bedrooms are commodious and replete with comfort; the coffee and smoking room is capacious and well ventilated.

Dinners always ready from One till Seven o'Clock.
excellent Assortment of Wines and Spirits of the first Quality.
Omnibuses to all parts every minute, fares 3d. and 6d.
A Night Porter always in attendance.

BARON LIEBIG'S OPINION OF "PALE ALE."

The prominence given to the name of Baron Liebig in placards and advertisements will have excited the impression that he coveted a celebrity inconsistent with the dignity of his station in the scientific world. Having learned that he had obtained such undesirable notoriety, Baron Liebig has requested the publication of the following letter, with the view of informing the public of the motives which dictated his communication to Mr. Allsopp:—

"The question of adulteration by strychnine, which has been taken up seriously in England, seemed to me of great importance, and I thought to do some good by aiding to demonstrate the error. If I wished to associate with any individual brewery my remarks on the alleged adulteration of bitter beer with strychnine, it would have been natural to have mentioned another brewery in which alone, and not in Mr. Allsopp's, I was engaged in investigating the Burton mode of brewing; and it was also in that other brewery the Bavarian brewers acquired all the instruction they obtained at Burton. The admiration I expressed of this beverage in my letter to Mr. Allsopp is advertised in such a manner as to lead to the inference that my praise was exclusively confined to Mr. Allsopp's beer; this was not the case; my remarks referred to that class of beer.

"JUSTUS LIEBIG."

"Giessen, July 24, 1852.

PROFESSOR MUSPRATT to MR. ALLSOPP.

"I have carefully analysed samples of your Ales, and find they do not contain a particle of any injurious substance. I and my family have used your Ales for years, and with perfect confidence in their purity. I know the Pale Ale, prepared, as in your Brewery, under scientific surveillance, contains a large quantity of nutritious matter; and the hop, by its tonic properties, gives a healthy tone to the Stomach."

"SHERIDAN MUSPRATT, F.R.S.E.
"Member of the Royal Irish Academy, and of la Société d'Encouragement."

"College of Chemistry, Liverpool."

ALLSOPP'S PALE or BITTER ALE may be

obtained in Casks of 18 gallons and upwards from the Brewery, Burton-on-Trent; and from the under-mentioned Branch Establishments:—

LONDON—at 61, King William-street, City.
LIVERPOOL—at Cook-street.
MANCHESTER—at Ducie-place.
DUDLEY—at Burnt Tree.
GLASGOW—at 115, St. Vincent-street.
DUBLIN—at Ulster Chambers, Dame-street.
BIRMINGHAM—at Market Hall.

It is also supplied by the most respectable dealers throughout the Country, either in casks (at the same price as if direct from the Brewery), or in bottles; and whose addresses will be forwarded to any private Consumers, on application to the Brewery, Burton-on-Trent.

CHEAP TEA and CHEAP COFFEE.—

Although we sell Black Tea at 3s. per lb. and good Black Tea at 3s. 4d.; Strong Coffee at 10d. and Fine Coffee at 1s. per lb. we still say to all who study economy, that "The Best is the Cheapest," particularly when the best can be obtained from us at the following prices.—

The Best Congou Tea	3s. 8d.	per lb
The Best Souchong Tea	4s. 4d.	"
The Best Gunpowder Tea	5s. 8d.	"
The Best Old Mocha Coffee	1s. 4d.	"
The Best West India Coffee	1s. 4d.	"
The Fine True Ripe Rich Rare Souchong Tea now only	4s. 0d.	"
The Pure, Rich, Rare Gunpowder	5s. 0d.	"

Tea or Coffee, to the value of 40s. sent carriage free to any part of England by PHILLIPS and Co. Tea Merchants, No. 8, King William-street, City.

THE EXPENSES of FUNERALS, so much

complained of as extortionate and unnecessary, can be reduced to a moderate scale, and obvious saving of one-half, by applying in the first instance to SHILLIBEER'S office, instead of employing the nearest undertaker, who generally has to hire all the requirements, and consequently inflicts twofold profits. SHILLIBEER'S charge for a respectable hearse and coach funeral, two horses to each, coffin, pall, and every necessary article, is only 10*l.* 10s. A first-rate funeral, fit for a nobleman, with lead coffin, case, hearse and four, two coaches and pairs, and all needful fittings, complete for 30 guineas. Artisans' funerals from 4*l.*; tradesmen's, 6*l.*, 8*l.* and upwards. No extra charge within ten miles of London. Patent funeral carriage, to convey deceased and six mourners to any cemetery, with two horses, 1*l.* 11s. 6d.; single horse, 1*l.* 1s.; hearse or mourning coaches, pairs, 1*l.* 1s. each.—City-road, next Bunhill-fields Burial-ground. Originated in 1842.

MILNER'S SAFES.—The strongest Safeguards in the World against Fire, Robbery, and Violence.

"Holdfasts," by main strength and scientific adaptation of material (strong wrought iron and steel) and construction, and fire-resisting by the mutual reaction of non-conduction and evaporation, within the chambers, when exposed to fire,—the only effective resisting medium that can be interposed between red heat outside, and the contents of a safe. A fire-taming arrangement exclusively secured by Milner's patents, and solely worked by the Patentees. All other safes being chambered with dry non-conducters only, soon acquire a temperature throughout, when fire surrounds them, which destroys their contents. Water, Steam, or Moisture, unconfined, cannot be made hotter than boiling water, in which Books, Documents, or Bank Notes, cannot be burnt, and combined with and permeating the best non-conductors, constitute Milner's Fire-resisting Chambers. See certificates of hundreds of tests and proofs. The magnificent Group of Milner's Safes from the Great Exhibition, Class 22, No. 642, are removed to their London Depôt, where they will be kept on view as a record of 1851 (adding the improvements of the day as they arise), and as Sample Safes, suitable for all classes, together with all sizes of Milner's lighter and cheaper Fire-resisting Safes, Chests, and Boxes.

Milner's London Depôt, 47A, Moorgate-street, City, near the Bank of England. Milner's Safe Works (the most extensive in the world), Liverpool.

BURGLARIES.—CHUBB'S LOCKS.—

On the night of the 31st of January a desperate attempt was made upon the Dundee Bank by a set of accomplished thieves. An iron door, secured by CHUBB'S PATENT LOCK, was the principal object of attack, and the burglars, having exhausted their skill in trying to pick this lock, endeavoured ineffectually to destroy it by drilling. After some hours' work they were alarmed, and made a precipitate retreat, leaving all their instruments behind them. On the previous evening, the warehouse of Mr. Clarke, Cross-street, Manchester, was broken into; the thieves picked eight locks of the ordinary kind, and then having unsuccessfully endeavoured to pick the Detector Lock on a Chubb's Fireproof Safe, they tried to force it open, but without avail. This is the second time this safe has resisted the attacks of burglars.—CHUBB and SON, 57, St. Paul's-churchyard, London; 28, Lord-street, Liverpool; 16, Market-street, Manchester; and Horseley-fields, Wolverhampton.

THE ROYAL EXHIBITION.—Valuable

newly-invented very small powerful WAISTCOAT POCKET GLASS, the size of a walnut, to discern minute objects at a distance of from four to five miles, which is found to be invaluable to SPORTSMEN, GENTLEMEN, and GAMEKEEPERS. Price 1*l.* 10s. sent free.

TELESCOPES.—A new and most important INVENTION in TELESCOPES, possessing such extraordinary powers, that some 3½ inches, with an extra eye-piece, will show distinctly Jupiter's moons, Saturn's ring, and the double Stars. They supersede every other kind, and are of all sizes, for the waistcoat pocket, Shooting, Military purposes, &c.

Opera and Race-course Glasses, with wonderful powers; a minute object can be clearly seen from ten to twelve miles distant.

Invaluable newly-invented preserving Spectacles, invisible and all kinds of Acoustic Instruments for relief of extreme Deafness.

Messrs. S. and B. SOLOMONS, Opticians and Aurists, Albemarle-street, Piccadilly, opposite the York Hotel.

Sales by Auction and Private Contract.

ISLE OF SHEPPY, KENT.—Important Freehold Estates:—The Manors of Warden and Minster, Warden and Sheppy Court, Marine Residences, compact Farms and Marsh Lands, in the parishes of Minster, Eastchurch, Warden, and St Thomas Apostle; Houses in Mile-town and Blue-town, Sheerness, and Ground-rents issuing out of Sixty Houses and Shops; the whole comprising 1,600 acres, and producing rents amounting to 2,500*l.* per annum.

MESSRS. FAREBROTHER, CLARK, and LYE are instructed to SELL, at the ROYAL HOTEL, SHEERNESS, on THURSDAY, AUGUST the 26th, and following day, at Twelve o'clock precisely each day, in numerous lots, under an Order of the High Court of Chancery, made in the cause *Banks* v. *Banks*, and with the approbation of J E Blunt, esq one of the Masters of the said Court, important FREEHOLD ESTATES, consisting of the Manors of Warden and Minster, with rights, royalties, &c. producing 22*l.* per annum; a marine residence, called Warden Court, and land, in hand, containing about 250 acres, the Coast Guard Station at Warden Point, the Smack public-house, and five cottages and plots of land adjoining, and two cottages at the Sluice, in the parish of Warden; Cart's Farm, with newly erected farm-house and buildings, containing 118 acres, let to Mr. Thomas Bigg, at 190*l.* per annum: Barn Land Farm, containing 96 acres, let to Mr. White, at 117*l.* per annum; Swanley Farm, containing 250 acres, let to Mrs. Mitchell, at 240*l.* per annum, sundry cottages at Mud row, and two others on the waste at Swanley, the Coast Guard Station at Hensbrook, two cottages and plots of land adjoining; the whole situate in the parish of Eastchurch: Long Farm, principally pasture-land, containing 179 acres, let to Mr. Shrubsole, at 170*l.* per annum, situate in the parish of St Thomas Apostle, Isle of Harty; also the following estates, situate in the parish of Minster, viz. a detached plot of arable land, near the Royal Oak, at East-end, let to Mr. Beale; the Waterloo and Highlander public-houses, in the High-street of Minster, and other cottages adjoining; a detached farm, with superior farm residence and outbuildings, containing 118 acres, let to Mrs Masters, at 148*l.* per annum; Sheppy Court residences, with extensive offices, pleasure grounds, and walled garden, and forty-six acres of rich marsh land, let to Thomas C. Reid, esq. at 100*l.* per annum, several highly productive marshes securely walled in from the sea, let to Messrs. Wood, Hern, Alston, Taylor, Hollick, and others; five good private residences, with gardens in front and rear, forming the whole of Banks-terrace, Rose Cottage, and five smaller ditto; adjoining, a house, an ironmonger's shop, in Blue-town, let to Mr. Ambrose, at 35*l.* per annum, and a dwelling-house in the rear. Ground rents amounting to 130*l.* per annum, issuing out of numerous houses and shops, situate in Kent-place, Sussex-place, Prospect-place, Victoria-street, &c. including the New Jolly Sailor public-house, the gas-works, British school, Mr. Alston's extensive premises on the beach, Sheppy Cottages, adjoining, lately used as baths, a house and garden, in the High-street of Queenborough, abutting on the town-hall, let to Richard Rouse. The farm-houses and buildings throughout the estate are of recent erection, and in the best possible state of repair, and are occupied by a highly respectable tenantry. Several of the marshes abutting on the main road next Mile-town present eligible sites for building purposes. The whole estates contain together about 1,600 acres, and produce a clear annual rental of about 2,500*l.* per annum. The estates may be viewed by leave of the respective tenants.—Particulars and plans are now preparing, and may be had at the said Master's chambers, Southampton-buildings, Chancery-lane; the Royal Hotel, Sheerness; the Sun, Chatham; of Messrs. Tilson, Clarke, and Morice, 29, Coleman-street, City; of William Sanger, Esq. Solicitor, 4, Essex-court, Temple; at Garraway's; and at the offices of Messrs. Farebrother, Clark, and Lye, Land Surveyors, 6, Lancaster place, Strand.

MONTGOMERYSHIRE and MERIONETHSHIRE.—Extensive Freehold Estates, comprising nearly 1,600 acres of land, and 1,200 acres of sheep-walk, several dwellings, accommodation and building land, at Caersws, Llandinan, and Cemmes, on the high road from New-town to Aberystwith.

MESSRS. FAREBROTHER, CLARK, and LYE are instructed to SELL, at the BEAR'S HEAD INN, NEWTOWN, on MONDAY, AUGUST 30, at twelve, in nine lots, and at the WYNNSTAY ARMS, MACHYNLLETH, on TUESDAY, AUGUST 31, at Two, in twenty lots (pursuant to an order of the High Court of Chancery), the following valuable FREEHOLD ESTATES of the late Sir J D King, bart.; comprising—in the parish of Llanwnog, about seven miles from Newtown, intersected by the main road to Aberystwith, in the townships of Caersws, Surnant, and Weeg, a Farm, containing nearly 200 acres of excellent land, with suitable farm buildings, let to Mr. Savage; several enclosures of garden and accommodation land; a woollen carding-mill, with water power, and a ground-rent of 4*l.* per annum; a cottage residence, and 22 acres of arable and pasture land, called Ty-yn-y-Coed, commanding beautiful and extensive views over the valley of the Severn, and well adapted for building purposes, being on the high road midway from Newtown to Llanidloes; and a cottage and ground, called Waun Llwydion, in the parish of Llandinan; also in the parish of Cemmes, about fourteen miles from Machynlleth, the following Farms:—Nant Hir, Blaen-ty-fole, Brynglas, Brynmelrig, Llwyndu, Beudy Bach, Cambio, Aberhirieth, Aberhirieth-mill, Typorth, Tynywern, Tglerne, Werglodduewydd, Dolybont, Penygyrn, and Doldwymin; a public house, smithy, several cottages, and accommodation land, in the village of Cemmes, county of Montgomery; also a cottage and 33 acres of land, called Mant-y-r-hen Ifes, in the parish of Llanymowddwy, in the county of Merionethshire. The whole estate in the occupation of respectable tenantry, at rents amounting to nearly 1,100*l.* per annum.—May be viewed by permission of the tenants, and particulars and plans may be had at the principal inns near the estates; of Mr. T J. Griffiths, Land Agent, Bishop's Castle, Shropshire; of Messrs. Burly and Carlisle, Solicitors, and Messrs. Powell, Broderick, and Wilde, Solicitors, Lincoln's-inn, New-square; of Messrs. Hertslet and Scott, Solicitors, 31, Norfolk-street, Strand; at Garraway's; and at the Office of Messrs. Farebrother, Clark, and Lye, Lancaster-place, Strand.

LINCOLNSHIRE, three miles from the Railway Station at Brigg, and three from Scawby.—Very valuable and extensive Freehold and Tithe-free Estates lying within a ring fence, with Shooting-box and newly-erected Farm-houses and Agricultural Buildings, and nearly 1,000 Acres of Land, let, independent of the woods in hand, at 1,075*l.* per annum, with wharf on the navigable river Ancholme.

MESSRS. FAREBROTHER, CLARK, and LYE are instructed to SELL, at GARRAWAY'S, on WEDNESDAY, SEPTEMBER 8, at Twelve (unless an acceptable offer is previously made by private contract) the BROUGHTON capital FREEHOLD and TITHE-FREE ESTATE, which is situate about three miles from the capital market towns of Brigg and Scawby, where there are railway stations, fifteen from Hull, and twenty three from Lincoln, and consists of three excellent farms, with newly-erected stone and slated superior farm residence, with complete agricultural buildings—the whole amply supplied with water. A wharf, with wharf-house and buildings, on the river Ancholme, which runs through the estate, communicating with the Humber at Ferriby. Also a shooting-box, called the Lodge, commanding beautiful views. The estate consists altogether of 974 acres, of which nearly 300 are of the richest description, having been originally flooded by the Humber, but now perfectly drained. Also about eighty acres of grass land, near to Broughton village, some water meadow, and the remainder very productive light land, clayed at a considerable expense, and there is capital building and lime stone on the estate. The woods comprise 270 acres, are noted for their beauty, and afford excellent covert for game. A small lake in front of the woods is stored with fish, and there are several newly-erected cottages, with good gardens. The present rental, independent of the woods, paid by a most respectable and intelligent tenantry, who hold on leases, is 1,075*l.* per annum.—The estate may be viewed, and descriptive particulars, with plans, may be had at the Lodge; at the Inns at Scawby and Brigg; at the White Hart, Market Rasen; Royal Hotel, Hull; of John Moore, Esq. Solicitor, Lincoln; of Messrs. Scott and Tahourdin, Solicitors, Lincoln's Inn-fields; at Garraway's; and at the Offices of Messrs. Farebrother, Clark, and Lye, Lancaster-place, Strand.

STAFFORDSHIRE, on the borders of Worcestershire and Shropshire, within easy distance of the borough and market-towns of Bewdley, Kidderminster, and Bridgnorth.—The Arley Castle Estate, late the property of the Right Hon. George Earl of Mountnorris, deceased, consisting of the Manor of Arley, with the noble Castle, extensive Pleasure-grounds, Park, Woods, and Lands, embracing Two Thousand Six Hundred and Forty Acres on each side, and adjoining the river Severn, with the beautiful Cottage and Grounds, in the occupation of the Viscountess Valentia.

MESSRS. FAREBROTHER, CLARK, and LYE have received instructions to SELL, at GARRAWAY'S, on THURSDAY, SEPTEMBER 30, at Twelve, in pursuance of an order of the High Court of Chancery, made in the cause of "Slaughter v Foster," and with the approbation of William Henry Tinney, esq. one of the Masters of the said Court, the ARLEY ESTATE, situate on each side of the river Severn, in the parish of Arley, county of Stafford, bounded by the counties of Worcester and Shropshire, in which are very small portions of the estate, giving votes for these counties; presents a finely undulated and picturesque surface, the banks of the river, as well as a considerable portion of the estate, being clothed with timber and plantation, amidst which rises the old hall, erected by the Lyttletons in 1630, an ancient Elizabethan structure, of picturesque character, with gabled attic windows; to this is attached the edifice raised by the late Earl Mountnorris, and styled by that nobleman Arley Castle, castellated, of the Norman period, with rich decorations of rather a later date, situate on high ground, commanding extensive views of the surrounding beautiful country. The Castle is of noble design, and the character of the Norman architecture, its aspect and rich effect completely obtained, and that with a hand unsparing of expense. The grand front, called the Lancaster Tower, or Keep, has four angle towers, heavy machicolated battlements and surmounting the whole an octangular flag tower, of considerable height and beauty; beyond this four hexangular towers, with an archway between them, provided with oak doors and portcullis. A fine terrace, of about 80 feet in width, extends the whole length of the building; at one end is the barbican, projecting from the main building, of the most extraordinary picturesque character, constructed entirely of stone, with machicolated battlements, and four square bartizans rising at each angle. The entrance to the Castle is on the east side (nearly opposite the village church, which, as with nearly all old English dwellings, stands approximate), by a noble octangular tower, through an early English archway, opening to the corridors, which lead to the great dining room in the Lancaster Tower, the ceiling of which is formed of massive arched ribs in the full character of the Norman period, four richly decorated Gothic windows, and the whole of the most elegant design, and the arrangement skilful and scientific. Numerous other reception rooms, sleeping apartments, and all the requisite offices. The kitchen gardens are walled, and a handsome Norman structure, with machicolated wall and towers in character with the castle, form the entrance; the pleasure grounds surrounding the castle comprise about 26 acres, disposed in verdant lawns, with noble forest and other trees of the rarest kind and of almost every clime, and the walks, considerable in extent, are shaded by luxuriant shrubs of great beauty. On the west of the Castle a path leads from the barbican to an enclosed pleasure ground, called Naboth's Vineyard, in which are extensive ponds arranged for effect, with waterfalls and fountains, also a building, the principal room of which is lined with Elizabethan wood carvings of the first character, the exact representation of an ancient English dining-room. Near the grounds is the quarry which furnished the greater portion of the stone for the completion of the Castle. The lands, plantations, woods, &c. in hand, comprise together about 762 acres. Near to the Castle stands the very picturesque residence distinguished as Arley Cottage, with its tasteful pleasure-grounds, in the occupation of the Dowager Viscountess Valentia. The manor of Arley, with its chief rents, heriots, &c. eighteen compact farms, with all necessary dwellings and agricultural buildings, several quarries, mines, the greater portion of the village, and parcels of accommodation and orchard land. The whole estate of the estimated annual value of upwards of 3,000*l.* and extending to 2,640 acres, the principal part of which is freehold, and the remainder copyhold of the inheritance of the manor of Arley, watered by the river Severn, and situate four miles from Bewdley, six from Kidderminster, and nine from Bridgnorth (all market and borough towns), and rail accessible within six miles. Also, rent charges payable out of adjoining estates in the parish of Arley. It is impossible within the limits of an advertisement to do ample justice to this magnificent estate; the public are therefore referred to the illustrated particulars, which, with plans, may be had (gratis) at the Master's Offices, Southampton-buildings, Chancery-lane; of Mr. Slaughter, Solicitor, 5, Duchess street, Portland place; of Mr. J. H. Benbow, Solicitor, Stone-buildings, Lincoln's inn; of Mr. J. P. Cooke, Solicitor, Rolls chambers, Chancery lane; of Messrs. Bischoff and Coxe, Solicitors, 19, Coleman-street, City; at Garraway's; and at the offices of Messrs. Farebrother, Clark, and Lye, Lancaster-place, Strand. Particulars and plans may also be had in the country, of Messrs. J. Cooke and Sons, Solicitors, Bristol; of Messrs. Nicholas and Pardoe, Solicitors, Bewdley; of Mr. Boucher, Land Agent, Cleobury, near Bewdley, and of Mr. John Steward, the Bailiff on the estate, who will shew the property.

Valuable Fee Farm Rents, in the counties of Durham and Lincoln, producing 261*l.* 17*s.* 7*d.* per annum.

MESSRS. FAREBROTHER, CLARK, and LYE have received instructions from the Executors of Mrs. Elizabeth Corner, deceased, to SELL by AUCTION, at GARRAWAY'S, on THURSDAY, SEPTEMBER 30, at Twelve, valuable FEE FARM RENTS, amounting to 261*l.* 17*s.* 7*d.* issuing out of estates in the county of Durham, at Bradley, Langley Forest, Houghton, Headlam, Castle Barnard, Helmedon, Row, East Brandon, Dalton Piercy, Wharlton, and Brancepeth, belonging to his Grace the Duke of Cleveland, Thomas Bowes, esq. Northern Mining Company, Hon. G. F. H. Russell, and others, and in Lincolnshire out of lands in Epworth and Hunnald Ferry, belonging to William Johnson, esq. and Mr. C. Briggs. A very small portion of the rent-charges is in small sums; they are punctually paid, and present a most favourable opportunity for the investment of capital entirely free from risk.—Particulars may be had of Mr. Boyd, the receiver, Urpeth, Chester le-Street, Durham; of Messrs. Fladgate and Clarke, Solicitors, Craven-street, Strand; at Garraway's; and at the Offices of Messrs. Farebrother, Clark, and Lye, 6, Lancaster-place, Strand.

GLAMORGANSHIRE, near the seaport town of SWANSEA.—Freehold Rent Charges of 352*l.* 14*s.* 9*d.* and 329*l.* 8*s.* 9*d.*

MESSRS. FAREBROTHER, CLARK and LYE will SELL at GARRAWAY'S, on WEDNESDAY, SEPTEMBER 8, at Twelve, in lots, the FREEHOLD COMMUTED RENT CHARGE, amounting to 352*l.* 14*s.* 9*d.* in lieu of the great and small tithes of the upper hamlet of the parish of Llanrhidian, containing upwards [illegible],000 acres. Also a Freehold Commuted Rent Charge of 329*l.* 8*s.* 9*d.* in lieu of the great and small tithes of the lower hamlet of Llanrhidian, containing upwards of 5,000 acres, near the flourishing seaport town of Swansea.—Particulars may be had at the hotels at Swansea; of Messrs. Palmer, France, and Palmer, Solicitors, 24, Bedford row; at Garraway's; and at the Office of Messrs. Farebrother, Clark, and Lye, Lancaster-place, Strand.

Desirable Investment.

MR. GEORGE DEEKS begs to announce that he is instructed to SELL by AUCTION, at the MART, on FRIDAY, AUGUST 20, at Twelve for One precisely, in lots, a very desirable newly-erected RESIDENCE of attractive elevation, with fore court and garden, situate No. 6, Alexander-terrace (corner of a new road), in Westbourne park-road, Paddington, of the estimated value of 75*l.* per annum; also Three compact Dwelling-houses, with fore courts and gardens, eligibly situate on the Westbourne estate, being Nos. 14, 22, and 23, Victoria-terrace, in Richmond-road, Westbourne-grove, Paddington, producing rentals amounting to about 120*l.* per annum: the leases of which will be granted direct from the freeholder for long terms at low ground rents. The premises may be viewed by permission of the tenants.—Particulars and conditions of sale to be had—for No. 6, Alexander-terrace, of J. B. Holman, Esq. Solicitor, 18, Bedford-row; for the houses in Victoria-terrace, at the Westbourne estate-office, Talbot-road, Paddington; also at the Princess Royal, Westbourne-grove; at the Auction Mart; and at Mr. Deeks's Offices, 26, Albion-street, Hyde-park.

Eligible Investments.

MR. GEO. DEEKS is instructed to SELL by AUCTION, at the MART, on FRIDAY, AUGUST 20, at Twelve for One precisely, in lots, FIVE newly-erected DWELLING-HOUSES, of neat elevation, with fore-courts and gardens, situate Nos. 5, 6, 7, 8, and 9, Brunswick-terrace, Deptford Lower-road, Rotherhithe, of the estimated value of 125*l.* per annum. Also a capital Dwelling-house, No. 24, Camden-street, Church-lane, Kensington, producing 26*l.* per annum; held under separate leases for long terms, at low ground-rents, and presents to small capitalists most secure and profitable investments. The premises may be viewed by permission of the tenants.—Particulars and conditions of sale to be had at the Jolly Caulkers Tavern, Deptford Lower-road (near the property); [illegible] Arms, corner of Camden-street, Kensington; at the Auction Mart; and at Mr. Deeks's Offices, 26, Albion-street, Hyde-park.

For Investment or Occupation.

MR. GEO. DEEKS is instructed to SELL by AUCTION, at the MART, on FRIDAY, AUGUST 20, at Twelve for One precisely, in lots, FIVE substantially erected DWELLING HOUSES, with stuccoed fronts and gardens in the rear, situate Nos. 9, 10, 11, 12, and 13, ARCHER-TERRACE, on the south side of the main road leading from Westbourne-grove West to Notting-hill, of the estimated value of 200*l.* per annum; also, FOUR similar HOUSES, with brick fronts and ornamental architraves, situate Nos. 10, 11, 12, and 13, Archer-terrace North, opposite the above-named property, of the estimated value of 160*l.* per annum. Held under separate leases for long terms, at low ground rents. The premises may be viewed.—Particulars and conditions of sale to be had at the Pembridge Castle, Ledbury-road, Westbourne-grove; at the Auction Mart; and at Mr. Deeks's Offices, 26, Albion street, Hyde park.

CITY OF LONDON.—Leasehold Premises, let as Chambers; to be sold, without reserve, by order of the Proprietor, proceeding to Australia.

MR. E. PALMER will SELL by AUCTION, at the MART, on WEDNESDAY next, AUGUST 18, at Twelve, in One Lot, a capital LEASEHOLD HOUSE, known as Castle-court chambers, Birchin-lane, in the heart of the city of London; part let to respectable tenants, but the whole at the estimated annual value of 201*l.* Term, eight years; ground-rent and insurance 80*l.*—Particulars of Messrs. Newbon and Evans, Solicitors, 1, Wardrobe-place, Doctors'-commons; at the Mart; and at the Auctioneer's Offices, 20, Change-alley, Cornhill, and 24, Lower Calthorpe-street, Gray's-inn-road.

St. Pancras, near the Great Northern Railway.

MR. E. PALMER will SELL by AUCTION, at the MART, on WEDNESDAY, next, AUGUST 18, at Twelve, TWO Leasehold, Eight-roomed DWELLING-HOUSES, (one a Shop), Nos. 12 and 13, Brighton-street, Judd-street, New-road; let at rents amounting to 68*l.* 5*s.* per annum; term, thirty-seven years, at a ground-rent. A new street is expected to be formed from the Railway through Brighton-street, which will greatly improve this property.—Particulars of W. Colley, Esq. Solicitor, 10, Bucklersbury; at the Mart; and at the Auctioneer's Offices, 20, Change-alley, Cornhill, and 24, Lower Calthorpe-street, Gray's-Inn-road.

236*l.* per annum.—A compact Leasehold Estate at Bermondsey.

MR. E. PALMER will SELL by AUCTION, at the MART, on WEDNESDAY next, AUGUST 18, at Twelve, in one lot, a LEASEHOLD COTTAGE, known as "Napoleon Cottage," Neckinger-road, Bermondsey; let for three, five, or seven years, at 28*l.* per annum. Also Three Cottages in the rear, let at 3*s.* per week each; term, 37½ years: and Sixteen Dwelling Houses, Nos. 4 to 16, Napoleon-place, and Nos. 1, 2, and 3, Napoleon-passage, near the above; let at rents amounting to 244*l.* 8*s.* per annum; term, 46½ years.—Particulars of C. J. G. Eiloart, Esq. Solicitor, 30, Great James street, Bedford-row; at the Mart; and at the Auctioneer's Offices, 20, Change-alley, Cornhill, and 24, Lower Calthorpe-street, Gray's Inn road.

Reversion to a Freehold House on death of a gentleman aged 65.

MR. E. PALMER will SELL by AUCTION, at the MART, on WEDNESDAY next, AUGUST 18, at Twelve, the ABSOLUTE REVERSION to a FREEHOLD HOUSE, No. 10, Great Arthur-street, Goswell street, let at 18*l.* per annum, tenant paying taxes.—Particulars of W. Barrett, Esq. 2, Bell-yard, Doctors'-commons; at the Mart; and at the Auctioneer's offices, 20, Change-alley, Cornhill, and 24, Lower Calthorpe-street, Gray's-inn-road.

Important Estates in the county of Hants, comprising a mansion-house and park, several desirable farms, and woodlands, altogether about 3,500 acres.

MESSRS. WINSTANLEY will SELL by AUCTION, at the MART, London, on WEDNESDAY, AUGUST 25, in Lots, pursuant to an order of the High Court of Chancery, made in a cause of *Rodney* v. *Rodney*, with the approbation of James William Farrer, esq. one of the Masters of the Court, the extensive and valuable ESTATES of George Lord Rodney, deceased, situate at Alresford and elsewhere, in the county of Hants. The property consists of the mansion at Alresford, various farms, and some woodlands, containing altogether about 3,500 acres, partly freehold and copyhold tenure, and the remainder held under leases for two lives from the Bishop of Winchester. Also the reversion in fee expectant on the decease without issue of a person aged sixty-three, and a bachelor, to about 730 acres of freehold and copyhold land, in the parishes of Long Sutton and Ropley, in the county of Hants. The farms are let to most respectable tenants, and the woodlands are in hand.—Particulars and conditions of sale may be obtained gratis at the Master's office, Southampton-buildings, Chancery-lane; of Messrs. Young and Vallings, Solicitors, St. Mildred's-court, Poultry; [illegible] Boodle and Partington, 9, Davies-street, Berkeley-square; of J. B. Lowndes, Esq. 2, New-inn, Strand; of Messrs. Karslake, Crealock, and Karslake, 4, Regent-street; of Messrs. Dunn, Hopkins, Carter, and Blackmore, of Alresford; of Messrs. Osborn and Garrett, Surveyors, Fareham, Hants; of Messrs. Winstanley, Paternoster-row; and at the place of sale.

IN KENT.

MR. TOOTELL is favoured with instructions to submit to public COMPETITION, at the MART, near the Bank of England, London, on WEDNESDAY, AUGUST 25, at Twelve, in one lot, that important Freehold Property, the STANDEN-STREET ESTATE, situate in the parishes of Sandhurst and Benenden, Kent, two miles from Hemsted Park, the seat of T. L. Hodges, esq. four miles from the capital market town of Cranbrook, five miles from Tenterden, ten miles from the Staplehurst station of the Dover Railway, three miles from Hawkhurst, and about a mile on the north side of the Tonbridge and Rye turnpike-road. It comprises two excellent farms, situate amidst the beautiful scenery of this part of the county; in extent 280 acres, most conveniently divided for cultivation, ornamentally timbered, and the judicious outlay recently made is shown in the high and flourishing state of cultivation, in which the estate may now be viewed; 26 acres are thriving hop land, free from the extraordinary tithe, 30 acres meadow and marsh land (the latter abutting on the navigable river Rother), 73 acres of wood, tithe free, 114 acres of arable, and 13 of orchard and fruit land. There are two farm-houses, and very superior farm-buildings, and eleven labourers' cottages, with good gardens. The estate may be viewed at any time by applying to Mr. Harden and Mr. Drury, the present tenants, whose leases expire at Michaelmas next. Descriptive particulars, conditions, and plans may be had at the Bull Inns, at Rolvenden and Benenden; George, Rye; Woolpack, Tenterden; Railway Hotel, Staplehurst; Rose and Crown, Tunbridge; Shakspeare Hotel, Dover; Sussex Hotel, Tunbridge-wells; the Mart, London; of Messrs. Hughes, Kearsey, and Masterman, 17, Bucklersbury, London; and of Mr. Tootell, Land Agent, Maidstone.

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THE LAW TIMES,

FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

VOL. XIX.—No. 490.] SATURDAY, AUGUST 21, 1852. [Price 1s.

NECROLOGY

OF LEGISLATORS, MAGISTRATES, AND LAWYERS.

VICE-CHANCELLOR SIR JAMES PARKER.

Intelligence reached town at a late hour on Saturday evening of the death of Vice-Chancellor Sir James Parker, who suddenly dropped down dead on Temple, Loughborough, Leicestershire. The learned gentleman had been for some time labouring under an internal disease, and for the last few days of remaining in town he had at intervals expectorated blood, but such a sudden bereavement was not anticipated by his large circle of relatives and friends. It appears he was out with a party enjoying the sport of angling so late as Thursday last, and up to a very brief period of his decease he betrayed no symptoms to create alarm among those friends who were immediately associated with him. His age was scarcely forty-nine, and he had only enjoyed his preferment to the Chancery bench ten months. Sir James was the son of the late Mr. Charles Stuart Parker, of Blockairn, near Glasgow, and was born at Glasgow in 1803, and married in 1829 the daughter of the late Mr. Thomas Babington, of Rothley Temple. He was educated at the Grammar School and College of Glasgow, and graduated M.A. at Trinity College, Cambridge, in 1823; he became the seventh wrangler in 1825, and was called to the Bar by the Hon. Society of Lincoln's-inn in February, 1829. In July 1844 he obtained a silk gown, and in the month of October last was appointed one of the Vice-Chancellors of England, upon the extensive alterations which then took place in the Chancery Courts; he received the order of Knight Bachelor on the occasion of his promotion to the judicial seat. Besides being one of the benchers of Lincoln's-inn, he was in the commission of the peace for Leicestershire. His town residence was 21, Chester-terrace, Regent's-park, and many who have shared his friendship will be deeply pained at this sad announcement of his loss.

Sir James Parker contested the borough of Leicester in the Tory interest in 1847, when he was elected by a very considerable majority. He was a consistent Tory, and owed his elevation in no respect whatever to political influence. Indeed, it was highly to the credit of Lord John Russell's Government, that upon the vacancies on the Chancery bench occurring much about the same time, no less than three of the promotions were conferred upon political opponents of the Administration, professional fitness being considered more than political partisanship. Sir Knight Bruce was promoted to be one of the Lords Justices in the Court of Appeal; Sir James Parker was created one of the Vice-Chancellors, and Sir George Turner, the Conservative M.P. for Coventry, another. Sir R. Kindersley, promoted from being a Master in Chancery, is the third.

The deceased Vice-Chancellor was a member of one of the principal of a group of families who, in Glasgow, and more recently and to a smaller extent in Liverpool, exercised no small influence over both the commercial and social local worlds. Dr. Chalmers was an early friend of the household, and its principal member at the time of the disruption of the Scotch Church contributed largely to the Free Establishment. Sir James was from a boy strongly attached to all manly exercises, particularly angling and boating, and when a young man was a frequent wanderer in the wildest and most desolate portions of the Highlands. In those days he was renowned for his anecdotical and conversational powers, and for his narration of odd reminiscences of northern character and adventure, which he used to tell with infinite drollery and mimetic power—so much so, that there is a story, which his melancholy death will revive in many a Highland circle, of a Sutherlandshire minister being absolutely obliged to rise abruptly from table, and make for the stable-yard to order his gig, in consequence of his dread of fatal consequences from the paroxysms of laughter to which the stories of the young Parker excited him. Once fairly embarked, however, in legal studies, the Highland trips were given up, and the collection of Highland traits and stories was not indeed forgotten but not increased. James Parker became a devoted lawyer—given up body and soul to Themis; a strong and earnest intellect, and a peculiarly clear and shrewd manner of stripping off extraneous circumstances, and grappling with the pith and kernel of a case, were valuable gifts which he possessed to a very great degree. He was also laborious and painstaking in the extreme. He never attained to the reputation of a brilliant lawyer, but he was a very sound and trustworthy one, and his decisions and opinions generally commanded the respect and admiration of the Bar. It is true that his judicial career was of the shortest, but he never had a decision reversed; and in the most important issue which he tried—the Wagner case—his judgment was unanimously pronounced to be able, strictly impartial, and setting forth in the clearest light the state of the law and the facts.

It may be worth while to mention that Lady Parker is the cousin of Mr. Macaulay, the historian, and that the late Vice-Chancellor was the brother-in-law of Mr. Cardwell.—*Morning Chronicle.*

JEFFERY HART BENT, Chief Justice of British Guiana, died on the 29th June, at the age of seventy-two. The *Royal Gazette* speaks of him as "a good man, and an upright, well-beloved judge." Mr. Arrindale has been appointed in his place.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

THE following places have been duly licensed for the solemnisation of marriages therein:—
Kingsland Chapel, Hackney.
Christ Church, Woodbury, Devonshire.

THE RECORDERSHIP OF HULL.—We have much pleasure in announcing that Mr. Samuel Warren, Q.C. has been appointed to the recordership of Hull, an office successively filled by Mr. Justice Cresswell, the Right Hon. M. T. Baines, and the late T. C. Granger, M.P. for Durham. The appointment of Mr. Warren has given great satisfaction on the Northern Circuit.—*Globe.*

On Tuesday week Mr. W. H. Dennett, of Worthing, was appointed clerk to the Board of Health of that town.

SIR JAMES PARKER.—The friends of the late Vice-Chancellor Sir J. Parker will be glad to learn that Mr. J. Bailey, the sculptor, of Conduit-place, Paddington, has taken a mask, and is now modelling a bust of him, which promises to be an excellent likeness.

ALL THE DIFFERENCE.—Mr. Pollock.—Speak up, sir. Witness.—Oi thinks oi speaks up enough. Baron Alderson.—You don't speak so loud as the learned counsel. Witness.—Noa, it's not loikoly; oi's not used to it; it's his trade. (Laughter.)

DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES."

		AUCTIONEER.	WHEN ADVERTISED.	
August 24	New Inn Bideford	Hussey and Son.	Aug. 7.	900 Acres of Land, Woolfardisworthy, Devon
Wednes. August 25	Mart.	Winstanley	Ibid.	Estates of Lord Geo. Rodney, dec. in Hants.
	Ibid.	Tootell, Jas.	Aug. 14.	The Standen Estate, in Kent.
	Ibid.	Tims.	Aug. 21.	Shop, 125, Tottenham-court-rd.; also 3 Houses
	Ibid	Ditto.	Ibid.	Two Twelve-roomed Residences, Regent-sq.
Thursday, August 26	Ibid.	Winstanley.	Aug. 7.	Estate of Brettenham Hall.
	Royal Hotel, Sheerness	Farebrother, Clarke, and Lye.	Aug. 14.	Freehold Estates, Isle of Sheppy.
	Mart	Smith and Son.	Aug. 21.	Three Freehold Farms in Stanmore, Harrow.
Friday, August 27.	Ibid.	Hammond and Edoart.	Ibid.	Freehold Dwelling-house, Took's-court.
	Ibid.	Ditto.	Ibid.	Interest in the Lease of No. 25, Paddington-st.
	Ibid.	Ditto.	Ibid.	Improved Ground-rent of 19l. 19s.
	Ibid.	Hoggart, Norton, and Trist.	Ibid.	Freehold Estate, near Bishops Stortford.
	Ibid.	Ditto.	Ibid.	Freehold Estates, &c. near Bromley, Kent.
	Ibid.	Ditto.	Ibid.	Winchester Hall, Highgate-hill.
Saturday, August 28	Garraway's.	Green.	July 31.	Two Freehold Residences, near Bideford.

Sales by Auction and Private Contract.

HERTFORDSHIRE.—The Pishobury Estate and Mansion, a compact and truly valuable Freehold Property, bounded by the beautiful River Stort, with the Home Farm and Lodge, comprising altogether about 290 acres; situate near Sawbridgeworth and Bishops Stortford—a highly picturesque and favourite sporting part of the county, and only 23 miles from London.

MESSRS. HOGGART, NORTON, and TRIST have received instructions to offer for SALE by AUCTION, at the MART, on FRIDAY, AUGUST 27, at Twelve o'clock (unless previously sold by private contract), the important and singularly compact FREEHOLD ESTATE of Pishobury, situate on the high Cambridge-road, near Bishops Stortford, twelve miles from the town of Hertford, and within one hour's journey, by railway, of the metropolis; comprising a capital and substantial mansion of handsome elevation, arranged with every regard to comfort, in a perfect state of repair, and adapted in all respects for the immediate occupation of a gentleman's establishment, without requiring any extraordinary expense for its perfect enjoyment and maintenance. It commands a beautiful view over the rich and finely timbered park, with its ornamental woods and plantations, skirted by the picturesque River Stort, broad winding streams intersecting the pleasure grounds, and affording excellent fishing and amusement, with extensive gardens and pleasure-grounds, laid out with much taste and embellished with the choicest shrubs and evergreens, broad gravelled walks leading to the water, an ornamental bridge, elegant conservatory, hot and forcing houses, grapery, &c.; ice-house, fish store, stabling, coach-house, and offices of every description; together with the home farm, called Rowney-lodge, with bailiff's cottage, garden, yards, and very complete Farm Buildings, and about 280 acres of most productive arable, wood, and rich meadow and pasture land, the whole, with the exception of about twelve acres, being land-tax redeemed. The property is bounded for a considerable distance by the high London road and is screened by belts of plantations and on the western side is a handsome and newly erected Elizabethan lodge with a grand approach to the mansion through an avenue of stately timber by a splendid drive. The land is in an excellent state of cultivation and produces abundant crops; the woods are filled with thriving timber, and abound with game; the farm buildings are of a superior description, the fences and roads excellent, and the estate altogether, from its beauty, intrinsic value, and local advantages, deservedly ranks as one of the most desirable for investment in the county, and, as a residence, offers attractions rarely to be met with. The whole of the elegant and appropriate furniture may be purchased with the estate, and the valuable timber and fixtures will be included in the purchase, if preferred. —May be viewed fourteen days prior to the sale (or at any time by special order), and particulars had at the hotels at Bishops Stortford, Ware, Hoddesden and Hertford; of Messrs Smith and Alliston, Solicitors, 4, Warnford-court, Throgmorton-street; at the Mart; and of Messrs Hoggart, Norton, and Trist, 62, Old Broad-street, Royal Exchange.

CHISELHURST-COMMON, KENT.—Valuable Freehold Estates, comprising a delightful Residence, with Offices, Pleasure Grounds and Meadow Land (with possession), the Crown Public-house, and Five Cottages adjoining.

MESSRS. HOGGART, NORTON, and TRIST have received instructions to offer for SALE by AUCTION, at the MART, on FRIDAY, AUGUST 27, (instead of the 13th, as previously advertised), at Twelve, the following valuable FREEHOLD ESTATE, viz:—Lot 1. A very compact gentleman's Residence, known as Meyrick's, on Chiselhurst-common near Bromley, Kent, commanding extensive and picturesque views of the surrounding lovely country, in a perfect state of repair, and containing two servants' bed rooms and a man's room, with secondary staircase, five other sleeping apartments, two dressing rooms, elegant drawing and dining rooms, breakfast-parlour, morning-room, spacious entrance-hall and landing, water closet, very complete domestic offices, and every accommodation for a moderate establishment with carriage yard, double coach house, four stall stable, harness-room, loft, &c. and an abundance of pure spring water. The pleasure-grounds (in which is a conservatory) are beautifully laid out in lawn and flower gardens filled with choice plants, and adorned with beautiful American and other flowering shrubs, and some fine timber, two walled productive kitchen-gardens, small yard, piggeries, cow-house, ice house, and other offices, and a very valuable enclosure of rich meadow land, the whole containing about five acres; also a cottage and garden adjoining, now let off at 8l. per annum. Lot 2. The valuable Freehold Public-house, known as the Crown, at Chiselhurst common, with yard, stabling, gardens, &c. let to Messrs Nichol and Co. upon lease at a net rent of 50l. per annum. Lot 3. A Freehold Property, adjoining lot 2, comprising four cottages, with yards and gardens, in the occupation of yearly tenants, at rents amounting together to 22l. per annum.—May be viewed, and particulars with cards, had at the White Hart, Bromley; at the Mart; of Messrs. J. H. and G. Lake, Solicitors, 10, New-square, Lincoln's-inn; and of Messrs. Hoggart, Norton, and Trist, 62, Old Broad-street, Royal Exchange.

HIGHGATE-HILL.—Winchester hall, with its beautiful pleasure grounds, productive gardens, and rich meadow land.

MESSRS. HOGGART, NORTON, and TRIST have received instructions to offer for SALE by AUCTION at the MART, on FRIDAY, AUGUST 27, at Twelve (unless an acceptable offer should be previously made by private contract), a very valuable PROPERTY, nearly equal in value to freehold, known as Winchester hall, delightfully situate on Highgate hill, commanding views of great extent and beauty, and about five miles from the metropolis. It comprises a capital and substantial mansion, placed in its own grounds, approached by a carriage drive, and entirely secluded from the high-road. It contains five principal bed chambers, dressing room, and water-closet, six secondary bed-chambers, and convenient closets, handsome entrance hall, 31 feet by 25 feet; dining-room, 29 feet by 16 feet, and drawing room, 25 feet 6 by 21 feet each, with bay-windows opening to the lawn; library, and store-room; the domestic offices include kitchen, butler's and footman's pantries, scullery, excellent laundry, larder, cool dairy, and capital wine, beer, and coal cellars, the whole amply supplied with fine spring water; detached double coach house, stabling for three horses, and loose box, with three servants' rooms and lofts over, cart shed, wood house, drying-ground, piggeries, tool-house, and a variety of useful out-buildings, a productive kitchen-garden, enclosed by lofty walls, and hot house, extensive pleasure grounds, tastefully laid out in lawn, ornamented with cedars, American shrubs, and luxuriant evergreens, terrace walk, ornamental summer house, greenhouse, two cottages, and an enclosure of park like meadow, the whole containing about six acres, and forming a most complete and desirable property. Held of the manor of Hornsey, and subject to a small fine certain of only a few shillings.—May be viewed by cards, and particulars had of Messrs. Rutter and Thorn..n, Solicitors, 4, Ely place, Holborn; at the Mart; and of Messrs. Hoggart, Norton, and Trist, 62, Old Broad street, Royal Exchange.

HAMPSHIRE.—Valuable Freehold Farm, in the parish of Hawkley, together with a Rent Charge in lieu of tithes.

MESSRS. HOGGART, NORTON, and TRIST have received instructions from the Devisees in Trust under the will of the late Wm. Postlethwaite, esq. to offer for SALE by AUCTION, at the MART, on FRIDAY, SEPTEMBER the 10th (instead of August 27th, as previously advertised), at Twelve o'clock, a valuable FREEHOLD ESTATE, called Standfast Farm, situate in the parish of Hawkley, two miles from the romantic village of Selbourne, seven from Petersfield, five from the Alton and nineteen from the Farnborough Railway Stations, on the South-Western Railway, in the county of Hants, comprising 67 acres of useful arable, meadow, hop, and wood land, with a double cottage and garden, barn, hop, oast, stabling, yard, and other buildings; also a rent charge in lieu of tithes, arising from about 25 acres of land, in the parish of Hawkley.—May be viewed, and particulars, with plans had of J. J. Tourle, Esq. Solicitor, 12, Southampton-buildings, Chancery-lane; at the Mart; and of Messrs Hoggart, Norton, and Trist, 62, Old Broad-street, Royal Exchange.

SUSSEX.—A valuable Freehold Rent-charge, in lieu of tithes commuted at 30l. 10s. per annum, the Lay Rectory of Barnham, and several Enclosures of valuable Freehold Land.

MESSRS. HOGGART, NORTON, and TRIST have received instructions to offer for SALE by AUCTION, at the MART, on FRIDAY, SEPTEMBER the 10th (instead of August 27th, as previously advertised), at Twelve o'clock, in one lot, a valuable FREEHOLD RENT-CHARGE, in lieu of tithes, commuted at 30l. 10s. upon certain lands in the parish of Barnham, in the county of Sussex; also the Lay Rectory of Barnham, with all the rights and appurtenances thereto belonging; and a valuable Freehold Property, situate in the parishes of Barnham, Eastergate, and Yapton, in the same county, comprising several enclosures of excellent arable and pasture land, with farm-house, parsonage, barn, farm-buildings, garden, and orchard, containing together 23a. or 3lp. in the occupation of Mrs Elizabeth New, at a rental of 40l. 11s. 3d. per annum.—May be viewed by permission of the tenant and particulars had of J. J. Tourle, Esq. Solicitor, 13 Southampton-buildings, Chancery lane; at the Mart; and of Messrs Hoggart, Norton, and Trist, 62, Old Broad-street, Royal Exchange.

KENT.—The Foley House Estate, most beautifully situate, within a mile of the important town of Maidstone.

MESSRS. HOGGART, NORTON, and TRIST have received instructions to offer for SALE by AUCTION, at the MART, on FRIDAY, SEPTEMBER 10 (instead of August 13th, as previously advertised), at Twelve o'clock, in Fifteen Lots (unless an acceptable offer should be previously made for the whole by private contract), the very valuable FREEHOLD ESTATE, distinguished as Foley House, for many years the residence of the late Mrs Tyssen, delightfully situate about a mile from the flourishing town of Maidstone, on the roads to Boxley, Debtly, and Sittingbourne, and eight miles from Rochester, the most healthful and beautiful part of the county of Kent; comprising a capital and substantial family residence, of uniform elevation, containing numerous bed chambers of good proportions, and dressing-rooms, handsome drawing and dining rooms, each 23 feet by 19 feet, and 12 feet high, library, entrance-hall, water closets, servants' hall, and all requisite domestic offices, with laundry, washhouse, dairy, stabling for six horses, loose box, double coach-house, and detached offices of every description; the whole abundantly supplied with pure spring water. The residence stands on a rising ground, facing the south, in the midst of the beautifully undulated and highly picturesque park like land, ornamented with stately timber, and commanding splendid views of Lord Romney's park, the distant hills, and the surrounding lovely country, the plantations and shrubberies adjoining forming secluded groves, intersected with dry pleasure walks, and embracing at all points, views of great variety and extent. Also pleasure garden, conservatory, hot and forcing houses, large and highly productive kitchen gardens, orchard, and well-arranged farm buildings at the rear, together with several enclosures of very productive arable, ... woodland ... a cottage residence and gardens; two fine orchards filled with thriving fruit trees, and four cottages ... in different parts of the estate, the whole property comprising about ... acres, by far the greater portion of which is now available for building purposes, there being frontages to the various roads of many thousand feet in extent, and presenting singularly valuable and very important sites for the erection of villas, the soil being perfectly dry, and the water excellent. The residence and most beautiful part of the park and land, with the pleasure grounds, plantations, &c. to the extent of about sixty acres and four cottages, will form the first lot; and the remainder of the property, with the cottages thereon, will be subdivided into lots varying in extent from two to five acres. May be viewed and particulars had of Chester Cruston, Esq. Solicitor, 1, Winchester buildings, Great Winchester street, City; of Messrs Ashurst and Whi... Maidstone, at the hotels at Maidstone, Roch... ...gbourne; at the Mart, and of Messrs Hoggart, N... Trist, 62, Old Broad street, Royal Exchange.

KENT.—The Lossen... Estate, with a very comfortable Residence, Offices, Gar... and 211 acres of first-rate Land, of the value of about 450l.

MESSRS. HOGGART, NORTON, and TRIST have received instructions to offer for SALE by AUCTION, at the MART, ...ly ... SEPTEMBER, the LOSSENHAM ESTATE, a very valuable freehold property, land-tax redeemed, situate in the parish of Newenden, five miles from Tenterden, ten from Rye, and fo... ...en from Staplehurst, in a fine district of the county of Kent, comprising a desirable family residence, placed on an elevated spot and commanding a rich view of the surrounding country. It is approached by an entrance-lodge, through an avenue of trees, and contains four principal bed-rooms, three servants rooms, and water-closet, entrance-hall, dining, drawing, and breakfast rooms, attached and detached offices well supplied with water, coach house, stabling, walled gardens, and suitable agricultural buildings, together with several enclosures of land lying well together, of which ... acres are in rich pasture, and 52 acres in arable. To any gentleman desirous of combining occupation with investment this estate p... ...opportunity rarely to be met with. —May be viewed, and particulars shortly had of John Sen..., Esq. Solicitor, Tenterden; of Messrs. Willis and Neve, Solicitors, Cranbrook; at the George, Rye; at the Auction Mart; and of Messrs. Hoggart, Norton, and Trist, 62, Old Broad-street, Royal Exchange.

COTTENHAM PARK ESTATE, comprising a Mansion and 250 ... Building Land at Wimbledon, Surrey.

MESSRS. HOGGART, NORTON, and TRIST have received instructions to offer for SALE by AUCTION, in lots, at the MART, on FRIDAY, OCTOBER 8 at Twelve (unless previously disposed of by private contract), COTTENHAM PARK, a singularly compact and important Freehold Estate, tithe free and land tax redeemed, situate close to the extensive and picturesque common of Wimbledon. It has a south aspect, the views are rich and varied in the extreme, the South Downs and the sea off Shoreham being visible from the mansion, the building frontage next to the high road extends upwards of a mile and a half, the soil is dry and healthy, and the park and grounds abound with the finest timber and shrubs. This property was the residence of the late Earl of Durham, from whom it passed to the Earl of Cottenham and is in the immediate vicinity of the estates of the Dukes of Cambridge and Somerset. Wimbledon appears to have been selected by the nobility and aristocracy as the favourite place of residence nearest London, in consequence of its extreme beauty and the great facility with which the metropolis can be reached. The west end of the town is only seven miles from the park, which is approached by two lines of railway, with water communication by steamer every half-hour to the City. More detailed advertisements will shortly appear. Plans and particulars of sale are in course of preparation, and, in the mean time, any additional information may be obtained on application to Messrs. Hoggart, Norton, and Trist, 62, Old Broad-street, Royal Exchange.

...ss Premises, for Occupation or Investment, without reserve.

MESSRS. HAMMOND and EILOART will SELL by AUCTION, at the MART, on FRIDAY, AUGUST 27, at Twelve, the FREEHOLD DWELLING and BUSINESS PREMISES, No. 8, Took's-court, Chancery-lane; let ... respectable tenant, and of the value of 50l. per annum.—Particulars and conditions of sale may be had of Messrs. Clowes and Wedlake, Solicitors, 10, King's Bench-walk, Temple; at the Mart; and Auction Offices, 28, Chancery-lane.

Improved Ground rent of 19l. 10s. at Camberwell, and Copyhold Land at Hampstead.

MESSRS. HAMMOND and EILOART will SELL by AUCTION, at the MART, on FRIDAY, AUGUST 27, at Twelve, an IMPROVED GROUND RENT of 19l. 10s. for twenty-five years unexpired, well-secured upon premises known as the White Hart, and house adjoining, at Southampton street, Camberwell; also an eligible Plot of Land held under the Manor of Hampstead, presenting a valuable site for building purposes, and at present let as a garden for 20l. per annum.—Particulars and conditions of sale may be had of Messrs. Hall and Hunt, Solicitors, 11, New Boswell-court; at the Mart; and at the Auction Offices, 28, Chancery-lane.

Improved Rent of 58l. 10s. per annum, at Marylebone.

MESSRS. HAMMOND and EILOART will SELL by AUCTION, at the MART, on FRIDAY, AUGUST 27, at Twelve, the BENEFICIAL INTEREST in the LEASE of No. 25, Paddington-street, Marylebone, held for twenty-one years, at 4l. 10s. per annum ground rent, and let to a respectable tenant for the whole term, less one quarter, at 58l. per annum. —Particulars and conditions of sale to be had of Messrs. Smith and Son, Solicitors, 16, Southampton-street, Bloomsbury; at the Mart; and Auction Offices, 28, Chancery-lane.

Secure Investments.—Tottenham-court-road, and George-street, Euston-square.

MR. T. TIMS will SELL by AUCTION, at the MART, on WEDNESDAY, AUGUST 25, by order of the Executors, the very commodious PREMISES, with attractive shop, being No. 125, Tottenham-court-road, situate in the best part of that most important thoroughfare, held for a term whereof twenty-two years are unexpired, at a ground-rent of only 5½ guineas, and let upon lease, at 100l. per annum: the lessee may be treated with for possession. Also, in lots, THREE capital DWELLING-HOUSES and a compact Measuage, with SHOP, Nos. 53, 54, 55, 55A, George-street, Euston-square, forming a compact estate, in the valuable locality of the great railway terminus, the London University, and the Hampstead and New Roads; Nos. 53 and 54 are let to very respectable tenants, at 50l. a year each, and will be sold free of ground-rent; No. 55 is at present in hand, and, with the shop adjoining, will be subject to a ground-rent of only 1l. per annum. They are held for a term, whereof about fifty-eight years are unexpired. May be viewed by permission of the tenants.—Particulars ten days prior to the sale, at the Auction Mart; at the offices of Messrs. VAN SANDAU and CUMMING, Solicitors, 27, King-street, Cheapside; and of the Auctioneer, 63, Upper Charlotte street, Fitzroy-square.

Substantial Freehold Residences and Votes for Middlesex.—Regent square.

MR. T. TIMS will SELL by AUCTION, at the MART, on WEDNESDAY, AUGUST 25, at Twelve, TWO very superior twelve roomed RESIDENCES, with gardens, situate and being Nos. 32 and 33, in the most desirable part of Regent-square, in the parish of St. Pancras, and county of Middlesex. They are in excellent repair. No. 32 is let to a most responsible tenant, at 75l. per annum; No. 33 is in hand, and quite fit for immediate occupation.—May be viewed by permission. Particulars on the premises; at the Auction Mart; at the offices of W. Batty, Esq. Solicitor, 26, Charles street, St. James's; and of Mr. Tims, 63, Upper Charlotte street, Fitzroy square.

Long Leasehold Investments, producing a profitable rental of more than 500l. a year.

MR. JOHN DAWSON is instructed by the Executors of the late Mrs Hodges to SELL by AUCTION, at the MART, on TUESDAY, AUGUST 31, at Twelve, profitable LONG LEASEHOLD INTERESTS in residences and premises, situate respectively in Baker-street, Portman-square; Grove-place, Lisson-grove; Cumberland terrace, Regent's park; Tavistock-square; Ely place, Holborn; Canterbury-place; and the New-cut, Lambeth.—Detailed particulars may shortly be had, at the Mart; of Edward J. Kerly, Esq. 1, Guildhall-chambers, Basinghall-street; and at Mr. John Dawson's Auction and Land Offices, Marlborough-chambers, 49, Pall-mall.

TO LAND SOCIETIES, BUILDERS, &c.—An important Freehold Estate, contiguous to the Wimbledon Station on the South-Western Railway, bounded by the high road, with unusual adaptation for division into building lots.

MR. JOHN DAWSON will SELL by AUCTION, at the MART, on TUESDAY, AUGUST 31, at Twelve (unless a liberal offer should be made in the meantime), thirty-two acres of FREEHOLD LAND, bounded on two sides, and a considerable portion of a third side, by the public road from Wimbledon to Merton, and from Merton to London. The form of the estate invites to, and is adapted for, any extent of subdivision by intersecting roads; the immediate proximity to the railway station, twenty minutes from London, with the inducements held out by the South-Western Company to builders of moderate-sized houses, render this perhaps the most eligible and tempting opportunity for a building speculation that has been or can be offered to the public.—Plans and particulars are preparing, and may shortly be had at the Mart, and at Mr. J. Dawson's Auction and Land Offices, 49, Pall mall, and Kingston, Surrey.

Important Estates in the county of Hants, comprising a mansion-house and park, several desirable farms, and woodlands, altogether about 3,500 acres.

MESSRS. WINSTANLEY will SELL by AUCTION, at the MART, London, on WEDNESDAY, AUGUST 25, in Lots, pursuant to an order of the High Court of Chancery, made in a cause of *Rodney* v. *Rodney*, with the approbation of James William Farrer, esq. one of the Masters of the Court, the extensive and valuable ESTATES of George Lord Rodney, deceased, situate at Alresford and elsewhere, in the county of Hants. The property consists of the mansion at Alresford, various farms, and some woodlands, containing altogether about 3,500 acres, partly freehold and copyhold tenure, and the remainder held under leases for two lives from the Bishop of Winchester. Also the reversion in fee expectant on the decease without issue of a person aged sixty-three, and a bachelor, to about 730 acres of freehold and copyhold land, in the parishes of Long Sutton and Ropley, in the county of Hants. The farms are let to most respectable tenants, and the woodlands are in hand.—Particulars and conditions of sale may be obtained gratis at the Master's office, Southampton-buildings, Chancery-lane; of Messrs. Young and Vallings, Solicitors, St. Mildred's-court, Poultry; of Messrs. Boodle and Partington, 9, Davies-street, Berkeley-square; of J. B. Lowndes, Esq. 2, New-inn, Strand; of Messrs. Karslake, Crealock, and Karslake, 4, Regent-street; of Messrs. Dunn, Hopkins, Carter, and Blackmore, of Alresford; of Messrs. Osborn and Garrett, Surveyors, Fareham, Hants; of Messrs. Winstanley, Paternoster-row; and at the place of sale.

IN KENT.

MR. TOOTELL is favoured with instructions to submit to public COMPETITION, at the MART, near the Bank of England, London, on WEDNESDAY, AUGUST 25, at Twelve, in one lot, that important Freehold Property, the STANDEN-STREET ESTATE, situate in the parishes of Sandhurst and Benenden, Kent, two miles from Hemsted Park, the seat of T. L. Hodges, esq. four miles from the capital market town of Cranbrook, five miles from Tenterden, ten miles from the Staplehurst station of the Dover Railway, three miles from Hawkhurst, and about a mile on the north side of the Tonbridge and Rye turnpike-road. It comprises two excellent farms, situate amidst the beautiful scenery of this part of the county; in extent 256 acres, most conveniently divided for cultivation, ornamentally timbered, and the judicious outlay recently made is shown in the high and flourishing state of cultivation, in which the estate may now be viewed; 26 acres are thriving hop land, free from the extraordinary tithe. 30 acres meadow and marsh land (the latter abutting on the navigable river Rother), 73 acres of wood, tithe free, 114 acres of arable, and 13 of orchard and fruit land. There are two farm-houses, and very superior farm-buildings, and eleven labourers' cottages, with good gardens. The estate may be viewed at any time by applying to Mr. Harden and Mr. Drury, the present tenants, whose leases expire at Michaelmas next. Descriptive particulars, conditions, and plans may be had at the Bull Inns, at Rolvenden and Benenden; George, Rye; Woolpack, Tenterden; Railway Hotel, Staplehurst; Rose and Crown, Tunbridge; Shakspeare Hotel, Dover; Sussex Hotel, Tunbridge-wells; the Mart, London; of Messrs. Hughes, Kearsey, and Masterman, 17, Bucklersbury, London; and of Mr. Tootell, Land Agent, Maidstone.

LONDON:—Printed by HENRY MORRELL COX, of 74, Great Queen-street, in the Parish of St. Giles in the Fields, in the County of Middlesex, Printer, at the Printing Office of COX (B... and) WYMAN, 74 & 75, Great Queen-street, aforesaid, and published by JOHN CROCKFORD, of 29, Essex-street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, at the Office of the LAW TIMES, No. 29, Essex-street, aforesaid, on Saturday, the 21st day of August, 1852.

THE LAW TIMES,

FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

Vol. XIX.—No. 491.] SATURDAY, AUGUST 28, 1852. [Price 1s.

Money, Wanted and to Lend.

MORTGAGE.—3,000*l*.—Wanted, on Mortgage of leasehold property in the immediate neighbourhood of London, the above sum, for which 5 per cent. will be given. The premises are held at a ground rent of 100*l*. per annum, and are let upon a repairing lease for the whole of the unexpired term of about fifty years to a wealthy tenant, at a rental of 380*l*. per annum.
Apply to S. M. Cooper, Esq. 14, Gray's-inn square.

MONEY.—4,000*l*. wanted at 4*l*. per cent. on security of 375 Statute Acres of fertile Land in the Queen's County, Ireland, valued last month at 7,041*l*. A valuable estate in England, mortgaged for 4,000*l*. and valued at 6,000*l*. could be added to the security.
Address, "K. L." (491) Law Times Office.

MONEY.—5,000*l*. to be advanced on mortgage of Landed Estates of Freehold or Copyhold Tenure, at 3½ per cent interest. The money can be advanced in one or two sums, and may remain for a term of years if required.
Apply to Messrs. Cruickshank and Burrell, Solicitors, Gosport, Hants.

MONEY.—6,000*l*. to be advanced immediately for a term of years, on good freehold security.
Apply to Charles H. Hodgson, Esq. 5, New Inn.

Situations, Wanted and Vacant.

LAW.—Wanted, a situation, by a confidential Clerk in the country, competent to prepare abstracts and common drafts, stewardship and office accounts, and disposed to be otherwise useful. Respectable references.
Address "V." (No. 491) Law Times Office.

LAW.—Wanted, by a Gentleman aged twenty-seven, who has completed his articles in an office of extensive Conveyancing Practice, in the country, a situation as Clerk. A moderate salary only required; and satisfactory reference can be given.
Apply by letter to "A. B." 11, Seymour-place, Camden-town.

LAW.—Wanted, a Gentleman perfectly competent to undertake the Conduct of a portion of the Business of the usual character of a firm in the country, under the superintendence of the principals. A young gentleman of fair ability, good business habits, and gentlemanly bearing, might find this an advantageous engagement, though the salary would be moderate only as a commencement. If a Solicitor, security not to practise would be required.
Apply to "A. Z." 11, Old Jewry-chambers, Old Jewry, London.

LAW.—Wanted immediately, by a Gentleman who holds the appointment of Clerk to the Justices in a large manufacturing town in Lancashire, a Middle-aged Person of good address, who has had sufficient experience in magisterial business to enable him efficiently to discharge the duties connected with the office of Clerk to the Justices in the absence of the principal.
Applications, with satisfactory references as to character and qualifications, to be addressed to "A. B." care of Messrs. Ridsdale and Craddock, Solicitors, 5, Gray's-inn square, London.

LAW.—Wanted, by a Gentleman, whose articles with an eminent London Firm have recently expired, a Clerkship in a respectable Office in London. The advertiser would be willing to undertake the Management of the Conveyancing and Common Law Branches, under the superintendence of the principal. Most satisfactory references as to character and attention to business can be given.
Address, "D. F. G." 10, Store-street, Bedford-square.

LAW and TAXES.—Wanted, by the Advertiser, a steady, middle aged man, a Situation as Clerk, to take the Management and perform all the duties in the Land, Assessed, and Property Tax Departments. Can engross well, and understands the general routine of a solicitor's office, and will make himself generally useful.
Address, pre-paid, "E. F." (No. 491), Law Times Office.

LAW.—A Gentleman of good general practice in the country has a vacancy for an Articled Clerk.—Unexceptionable references given and required.
Address, "L. J." (No. 491) Law Times Office.

LAW.—A Solicitor, in good practice, is desirous of Engaging a Clerk who has not been articled, competent to take the active management of his Office (under his direction). He must have a good knowledge of Conveyancing and Chancery. Salary not exceeding 130*l*. to be increased as confidence increases.
Apply by letter to D. Northcroft, 96, Chancery lane, London.

LAW.—Wanted, a Gentleman who is a good Draughtsman, is well acquainted with the practice of Conveyancing, and has also had experience in Parliamentary Agency. Satisfactory references will be required, and a liberal salary given.
Applications to be made by letter, addressed "H." care of Mr. Witherby, Parliament-street, London.

Partnerships, Wanted and for Sale.

LAW PARTNERSHIP.—A Gentleman, admitted in Trinity Term, 1843, and who has been in continued practice since, is desirous of purchasing, on the usual terms, a share in a good established Town Practice, or in a Country one, which will produce not less than 400*l*. a-year. Satisfactory references will be given and required. None but principals need apply.
Address "X. Y. Z." (No. 491) Law Times Office.

LAW PARTNERSHIP.—A Solicitor, who has been in practice upwards of thirty years, is anxious to take a PARTNER, with a view of ultimately retiring from the profession. It is desirable that the partner should be qualified to advocate in the County Court, and should possess a command of capital to advance clients on good security. The premium, which would be moderate, might be paid at the convenience of the partner.
Address, with particulars of qualifications, to S. R. (No. 491) Law Times Office, 29, Essex-street, Strand.

Practices, Wanted and for Sale.

PRACTICE for SALE.—TO SOLICITORS.— A Gentleman in the West of England, who has been many years in practice, is desirous of disposing of his practice, and will ... to do so upon liberal terms.
... ns, addressed to "Legalis" (No. 491), Law Times Office, shall receive prompt attention.

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DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES."

DAY.		AUCTIONEER.	WHEN ADVERTISED.	
Monday and Tuesday, Aug 30 & 31.	Bear's Head, Inn, Newton.	Farebrother.	Aug. 14.	Freehold Estates of the late Sir J. D. King, bart. Montgomeryshire and Merionethshire.
Tuesday, August 31	Mart.	Dawson, John.	Aug. 21.	Interests in Residences and Premises, in Baker street, and other Places.
	Ibid.	Ditto.	Ibid.	Freehold Estate, near the Wimbledon Station of the South-Western Railway.
	Queen's Head Inn, Newcastle	Brough.	Aug. 7.	Freehold Estate, called Norham Mains, on the River Tweed.

NECROLOGY

OF LEGISLATORS, MAGISTRATES, AND LAWYERS.

THE LATE COLONIAL CHIEF JUSTICE BENT.

(We give a more extended notice of the late Colonial Chief Justice Bent than that of last week).

Jeffrey Hart Bent, late Chief Justice of British Guiana, for nearly forty years, occupied the judicial bench in several of our colonies, and who had the honour of holding the commission of four successive sovereigns. So great a length of service in our colonies is, we believe, without precedent, and Mr. Bent was, we understand, at the time of his death, the only judge, either at home or abroad, whose judicial career dated from the reign of George the Third. Chief Justice Bent was the eldest son of Robert Bent, esq. a descendant of a very ancient Lancashire family—who, at one period of his life, was intimately and politically connected with Mr. Fox and the leading members of the Whig party, to which party his son continued attached during his life. Chief Justice Bent took a respectable degree at Cambridge, and was called to the Bar by the Society of the Middle Temple, in 1806. His first judicial appointment was in 1814, when he was sent out to New South Wales as chief justice upon the application for assistance from his brother, Ellis Bent, esq. then judge-advocate, and the sole judicial officer in that colony. Upon these two brothers devolved the entire task of modelling the judicial system of the then infant colony; and to Mr. Ellis Bent must be attributed the credit of its first legal constitution. Mr. Ellis Bent finally sank under the labours he had to undergo, and the difficulties he had to encounter; and, upon his death, his brother, the Chief Justice, returned home. In 1819, or 1820, Mr. Bent was appointed Chief Justice of Grenada, and from that period to the time of his death, with the exception of two years' leave of absence, he continued to reside in the West Indies, in the exercise of his high legal functions. During this lengthened period of thirty-two years, he established for himself, throughout the entire of our West India colonies, the very highest reputation as a sound constitutional lawyer and an independent and upright judge. While Chief Justice of Grenada, he carried out many useful legal reforms, and acquired great and deserved popularity from the stand he made against the illegal interference of the governor and council with the liberty of the subject and the independence of the Bench. He was, in consequence, suspended by the then governor. After a lapse of three years, and a lengthened investigation before the Privy Council, the Chief Justice's conduct was fully vindicated and approved of, and the colonial authorities were directed to reinstate him, and pay the arrears of his salary, amounting to 3,000*l*.

The former part of the order was complied with—the latter was wholly disregarded, and Mr. Bent was never able to recover his salary. Mr. Bent was subsequently appointed Chief Justice of St. Lucia. He was here called upon to administer the old French law, in which he proved himself equally proficient as in the more familiar law of his own country, as practised in Grenada. During his judicature in St. Lucia, Mr. Bent introduced many useful practical reforms in the administrative portions of the law, which still remain in force in that colony. Mr. Bent next, at the special request of the then Colonial Secretary, accepted the post of first Puisne Judge of Trinidad. Here he came in contact with the Spanish law, which was in force in that island, and here he shewed himself equally at home, as he had formerly been in the French law. In 1836, he was finally appointed Chief Justice of British Guiana, where he continued till his lamented death. This colony is governed by the Roman Dutch code. The high opinion entertained of Mr. Bent in that colony, the scene of his last labours, is strongly expressed by the local papers, which speak of him both as a man and a judge in terms of the highest praise. We have here given a sketch of a judicial career, which we feel we are justified in terming one without precedent—a career which lasted nearly forty years, under four sovereigns, during which justice had to be administered under three distinct codes, and in three different languages. Had such a career been run at home, Mr. Bent would have been promoted to the highest distinction the sovereign could have bestowed—he would have secured to himself an honourable retirement in his old age, and, at his death, he would have been accompanied to his rest by the respect and deep regret of a grateful country. We here cannot but pause to ask, why was a man of this character unrewarded? why were services so eminent neglected? and still more, why were men whose services in the colonies were so far inferior to his, promoted before him? We fear we must answer these questions by stating, it is because independence of character and true uprightness of conduct are not respected in the colonies, and because the only channel to Royal favour at home is through that of the governors abroad, which can seldom be gained but by servility and a surrender of all honourable independence. In conclusion, we may state that the late Chief Justice Bent was uncle to our respected diocesan—his lordship's father, the Honourable Charles Knox, late Archdeacon of Armagh, having married the sister of the subject of this notice. *Belfast Mercury.*

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

HULL.—At Tickwood, in the parish of Wenlock, Shropshire, the wife of William Winstanley Hull, barrister, a daughter.

[illegible]—On the 18th inst at 8, Bedford-row, the wife [illegible] Will[illegible]en, esq of a daughter

STEWART.—On the 24th inst at Clarendon-crescent, Edinburgh, the wife of Charles Stewart, esq. S.S.C. of a daughter.

MARRIAGES.

PONNOR, Benjamin, esq of Lincoln's inn, to Frances, youngest daughter of Thomas Holt, esq. of Wotton, Gloucester, on the 18th inst. at the parish church of St. Mary-de-Lode, Gloucester.

POXER, Thomas M eldest son of Mr Boxer, of Bromley-street, Radcliff, to Anna Maria, youngest daughter of Mr. George Wells, solicitor, 1, Brunswick-terrace, Commercial-road East, on the 24th inst at St. Dunstan's, Stepney

DOD, Whitehall, esq. late of the 6th dragoons, only son of J. W Dod, esq M P. of Cloverley, Shropshire, to Emma Matilda, daughter of the late Lieutenant-General [illegible] H M Vavasour, bart. of Melbourne and Spaldington, Yorkshire, on the 24th inst. at Brompton, Yorkshire

HALL, Henry, esq. of Ashton-under-Lyne, Lancashire, to Margaret Louisa, daughter of Thomas Dalton, esq. of Holly-grove, Mottram, Cheshire [illegible] the 18th inst. at Mottram in-Longdendale.

JENINGS, Edmund John, of the Inner Temple, solicitor, to Elizabeth Janet, second daughter of the late Rev William Plues, of Skellfield, Ripon, on the 19th inst. at Richmond, Yorkshire.

NEVILLE, Thomas Richard, esq. eldest son of the late Richard, Neville, esq solicitor, to Emmarotta Hannah, only daughter of the late Henry Alexander, esq. on the 16th inst. at Hastings.

WATT, John, esq sheriff-clerk-depute, to Anne, eldest daughter of John Ross, esq. assistant-commissary of her Majesty's Ordnance, on the 19th inst. at Aberdeen

WILDE, John Thomas, esq. solicitor, Blomfield-gardens, Hyde-park, to Annie, eldest daughter of W. T. Ferguson, Park-road, Regent's-park by the Rev. —Mackenzie, on the 19th inst. at St. Martin's in-the-Fields.

DEATHS.

CAMPBELL, Archibald, esq. writer, Glasgow, suddenly at Moffat, on the 20th inst

CLARE, Amelia, youngest daughter of the late James Clare, esq. solicitor, on the 20th inst. at Peckham-grove.

HOLT, Henry, esq one of the magistrates of the county of Devon, on the 19th inst. at Ebberly House, Devon, aged 70.

JOURNAL OF PROPERTY.

Public Sales.

By Mr. GADSDEN, at the Mart, August 20.—Freehold residence, with gardens, offices, and four acres of land, Upper Tooting—3,520*l*.

Freehold meadow, adjoining the preceding lot, containing seven acres, with building frontages, land tax redeemed—2,010*l*.

By Mr. MURRELL, at Garraway's.—Two freehold houses, Spenser-cottages, Stoke Newington, annual value 56*l*. per annum—900*l*.

Two freehold houses, Cowper-terrace, Stoke Newington, annual value 36*l*. each—840*l*.

Four leasehold houses, Park-road, Stoke Newington, annual value, 240*l*. term 96 years, at 24*l*.—in lots, 2,100*l*.

By Messrs. HOGGART, NORTON, and TRIST, August 20, at the Mart.—A freehold farm, known as Highfields, in the parish of Mayfield, near Wadhurst, Sussex, comprising farm-house and buildings, and 126 acres of land, of the value of 100*l*. per annum—1,800*l*.

Freehold estate, known as the Standen and Phials farms, near the Headcorn railway station, comprising farm-house and buildings, with 198 acres of land, let at 105*l*. per annum—2,500*l*.

Little Buckhurst Farm, in the parish of Wadhurst, Sussex, comprising farm cottage and buildings, and 64 acres of freehold land, let at 50*l*. per annum—800*l*.

Freehold property, known as Steele's Farm, in the parish of Wadhurst, Sussex, comprising 56½ acres of land —750*l*.

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Leasehold villa residence, No. 12, Wimbledon-park-road, Wandsworth, held for 98 years at 11*l*. per annum—600*l*.

By Messrs. RUSHWORTH and JARVIS, at Garraway's, August 26.—The freehold residence known as Angley, near Cranbrook, Kent, formerly the residence and property of the late Hon. Admiral King, comprising a mansion and villa residence, park, and pleasure grounds, and 292 acres of land, estimated to produce 584*l*. per annum—19,250*l*.

Leasehold residence, No. 5, Clifton-road, St. John's Wood, held for 99 years from 1843, at 10s. per annum—1,040*l*.

By Messrs. TOPLIS and SON, at the Mart.—Freehold property, comprising four pairs of carcases for villa residences, and a plot of ground for another pair, situate on the Bath-road, in the parish of Heston—1,400*l*.

Freehold house, Cold Harbour, Blackwell, producing 18*l*. per annum—195*l*.

MONEY MARKET.

ENGLISH FUNDS.	Sat.	Mon.	Tues.	Wed.	Thurs.	Fri.
Bank Stock	227	227	228	..	..	230
3 ℔ Cent. Reduced Annuities	100¾	100⅞	100⅝	100½	100⅞	100⅝
3 ℔ Cent. Consols Annuities	99⅞	100	99¾	100	100	100
Consols for Account	99⅞	100⅛	99¾	99⅞	100⅛	100
New 5 ℔ Cent. Annuities	..	..	..	..	..	..
New 3¼ ℔ Cent. Annuities	103⅞	104⅛	104	104⅛	104⅛	104⅛
Long Annu. (exp. Jan 5, 1860)	..	6⅞	6⅞	6⅞	6⅞	6⅞
Do. 30 yrs. (exp. Oct. 10, 1859)	..	..	..	..	..	..
Do. 30 yrs. (exp. Jan. 5, 1860)	..	..	..	..	..	..
India Stock	..	..	..	..	274	..
India Bonds (1,000*l*.)	86	86	88	89	..	86*
Do. do. (under 1,000*l*.)	87	87	..	..	87	..
South Sea Stock	..	..	..	..	..	..
Do. do. Old Annuities	..	..	99⅞	..	..	..
Exchequer Bills, 1,000*l*. June	..	68*	68*	68*	71*	..
Do. do. 500*l*. June	71*	77*	71*	..	71*	68*
Do. do. Small, June	68*	77*	77*	71*	71*	..

* Premium.

PROMOTIONS, APPOINTMENTS, ETC.

THE Queen has been pleased to appoint Boyle Travers Finnis, esq. to be Colonial Secretary; Robert R. Torrens, esq. to be Colonial Treasurer and Registrar-General; George Frederick Dashwood, esq. to be Collector of Customs; and Alexander Tolmer, esq. to be Commissioner of Police for the colony of South Australia.

The Queen has been pleased to appoint William Stuart Walker, esq. Advocate, to be Secretary to the Board of Supervision for Relief of the Poor in Scotland, in the room of William Smythe, esq. resigned.

Her Majesty having been pleased to appoint Charles Cecil John Manners, esq. commonly called Marquis of Granby, to be Lord Lieutenant and Custos Rotulorum of the county of Lincoln, his lordship has taken the oaths appointed to be taken thereupon, instead of the oaths of allegiance and supremacy.

COMMISSIONS SIGNED BY THE LORD LIEUTENANT OF THE COUNTY OF NORTHAMPTON.—Thomas Wilkins, esq.; William Harcourt Isham Mackworth Dolben, esq.; Allen Allicocke Young, esq. to be Deputy Lieutenants.

COMMISSION SIGNED BY THE LORD LIEUTENANT OF THE NORTH RIDING OF YORKSHIRE.—John Lawson, esq. to be Deputy Lieutenant.

COMMISSIONS SIGNED BY THE LORD LIEUTENANT OF THE COUNTY OF WILTS.—Frederick Henry Paul, Lord Methuen; Henry Danby Seymour, esq.; James Wilson, esq.; Robert Parry Nisbet, esq.; John Neeld, esq.; Francis Crowdy, esq.; John Bird Fuller, esq.; Thomas Luce, esq.; Ambrose Lethbridge Goddard, esq.; Edmund Lewis Clutterbuck, esq.; Ezekiel Edmonds, jun. esq. to be Deputy Lieutenants.

The Rev. John William Duncombe Hernamann, M.A., curate of Scarborough, has been appointed by the Lords of the Privy Council her Majesty's assistant inspector of schools, in the counties of Warwick, Worcester, Oxford, Gloucester, Hereford, and Pembroke. The rev. gentleman is a scholar and exhibitioner of St. John's College, Cambridge, was classed amongst the wranglers in the Mathematical Tripos in 1848, and for two years was one of the assistant masters of Repton School.—*Globe.*

Alderman Carter, sheriff elect for London and Middlesex, has appointed Thomas Mortimer Cleobury, esq. under-sheriff for the year of his shrievalty.

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(As settled by Counsel)

Nos

1 Warrant to sue
2 General Retainer
3 Letter for Payment of Debt
4 Præcipe for Writ of Summons
5 Præcipe for Renewal of Writ
6 Writ of Summons.
7 Writ of Summons to be specially endorsed for Immediate Judgment
8 Affidavit of Service of Writ
9 Affidavit of Attempts at Service to obtain Leave to proceed.
10 Affidavit of no Appearance being entered.
11 Appearance Pieces on parchment
12. Declaration in Debt (under 20l)
13 Declaration in Assumpsit (under 20l)
14 Declaration in Debt, common Counts, Account stated, &c
15 Declaration on Promises, Common counts, Accounts stated, &c.
16 Particulars of Demand
17 Notice of Declaration, foolscap, half sheets, with Particulars, 4to with fly leaf without Particulars
18 Notice to produce Documents
19. Notice to inspect and admit, 4to
20 Notice to inspect and admit, foolscap
21 Issue, where Questions are raised of Consent without Pleading
22 Notice of Trial in London
22 a. Notice of Trial in Middlesex.
22 b Notice of Trial at the Assizes
22 c Notice of Trial and of Assessment of Damages.
22 d Notice of Trial where several Defendants
22 e Notice of Trial where several Issues.
22 f Notice of Trial and Assessment on Breaches in Debt on Bond
23 Notice of Continuance
24 Notice of Countermand
25. Notice of Execution of Writ of Inquiry.
26. Affidavit of Service and Attendance on Summons
27. Consent to Judge's Order.
28. Subpœna ad T. t. Parchment and Paper
29 Subpœna before Sheriff Parchment and Paper
30. Subpœna duces tecum for the Assizes.
31. Subpœna duces tecum "before the Sheriff" Parchment and Paper.
32 Cognovit for Payment of Debt
33. Ditto by Instalments.
34. Warrant of Attorney to confess Judgment
35. Notice to Quit where Tenancy uncertain.
36. Notice to Quit, where Tenancy certain.
37. Warrant of Distress.
[illegible] Notice and Inventory of Distress
Notice of Intention to Distrain for Arrears of Tithe Rent-charge.
[illegible] Notice by Agent of Intention to Distrain for ditto.
[illegible] Warrant of Distress.
42. Writ of Ejectment.
43. Writ of Ejectment, Landlord against Tenant holding over.

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87. General release to a debtor who has compounded with his creditors, and paid the full amount of the composition.
88. Form of an agreement, by a lessee to an apportionment of the rents, and also agreeing to join in the conveyance to a purchaser.
89. Assignment of a leasehold dwelling-house by the original lessee to a purchaser for the residue of an absolute term of ninety-nine years; the lessor and an underlessee also concurring for the purpose of apportioning the rent to be payable in respect of the assigned premises.
90 Mutual covenants by two purchasers of leasehold property, held under one lease for the apportionment of the rents, with mutual powers of distress by way of indemnity.
91. Bond of indemnity from a vendor to a purchaser against a mortgage debt which is supposed to have been paid off, but there is no proof of such payment.
92. Bond by a purchaser of leaseholds from the lessee, for indemnifying the latter from the rent and the covenants in the lease.
93. Bond from two sureties for the purpose of securing merchants the amount of value of goods supplied to a tradesman, not exceeding 500l.
94. Bond with two sureties for the faithful discharge of the duties of an attorney's clerk.
95. Bond with two sureties for the faithful discharge of the duties of the chief clerk or manager of a business.
96. Bond with two sureties for the faithful discharge of the duties of an assistant or shopman.
97 Bond of indemnity to a tenant paying rent to his landlord, where the title to the property is disputed
98. Bond by a legatee, on receiving his legacy, to indemnify executors in case of a deficiency of assets.
99. Bond by a tenant for life, who has granted a lease for fourteen years, that in case of his decease during the term, the reversioner shall, upon the lessee's request, either confirm the original lease, or grant him a new lease of the premises, to endure as long as the original term, and under the same rent and covenants
100 Bond by a purchaser to a vendor of an estate charged with a legacy of 300l. payable to a minor on attaining twenty-one, to secure the due payment of such legacy
01 Bond conditioned for the repayment of the purchase-money, in case one of the vendors, an infant, on attaining twenty-one, should refuse to execute the conveyance
02. Bond from an executor to indemnify a bond debtor who pays off a bond debt due to the testator, such bond having been lost or mislaid.
03 Bond with two sureties to secure the balance of a banking account.
04. Bond of indemnity to trustees advancing part of trust moneys to husband and wife, which had been limited by marriage settlement, upon trust for the benefit of the husband and wife, and issue of the marriage, with an absolute limitation in favour of the husband upon failure of such issue, no issue having been born, and there being no prospect of any.
05. Form of a post obit bond.
06 Defeasance of a warrant of attorney to accompany the foregoing security.
07 Post obit bond in consideration of the release of a debt.
08 Memorandum of the delivery of a post obit bond, sealed up in an envelope, into the custody of a depositary, to be kept so sealed up during the lifetime of the party upon whose decease it is to become payable, unless sooner redeemed.
09. Covenant from bankers not to sue sureties on their bond to secure the balance of the banking account of the principal, until the latter, or his sureties, shall omit to pay the same after three calendar months' notice.
10 Bond by an intended husband to the trustees of the marriage-settlement, to authorise his wife to make a will of all such personal property as shall devolve upon her during the marriage.
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12 Bond of resignation of a living
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14 Assent to a bequest, and assignment of leasehold property, by indenture, by an executor to a legatee, the legatee covenanting to indemnify the former against the rent and covenants of the lease
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NEW ORDERS IN CHANCERY, AUGUST 7, 1852.
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TO THE PROFESSION.—The LAWYER'S COMPANION for 1853 being now in preparation, the publishers respectfully request those gentlemen who have not returned the Forms filled up with their Appointments, &c to do so; and those gentlemen who have not been supplied with the form can obtain it, free, on application to the publishers.
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SOLICITORS' BOOK-KEEPING—KAIN'S SYSTEM. The FOURTH EDITION is now ready for delivery, price 4s
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In the press, and will be published early in October, an edition of

THE CHANCERY REFORM ACTS, which will contain the new Rules and Orders, with Notes, Forms, and Index. By OWEN TUDOR, Esq. Barrister-at-Law, author of "Leading Cases in Equity," &c. in one vol. cloth.
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For favourable notices of this work see *Morning Chronicle* and *Daily News*.
John Crockford, 29, Essex-street, Strand.

On Thursday next,

THE PRACTICAL STATUTES of the SES- SION of 1852. Edited, with explanatory Notes, copious Index, &c. by WM. PATERSON, Esq. Barrister-at-Law. Price 7s 6d. cloth, 9s. half calf; 10s calf.

Note.—This work contains all the Statutes *verbatim* that can ever be required to be used by the English Lawyer, omitting the Irish, Scotch, and Colonial Statutes, so that the entire of the practical new law of the Session is comprised in a single volume, which can be easily carried in the pocket or bag. It is made of further utility to the Profession by a very copious Index.

Like volumes have already appeared containing the *Practical Statutes of the Session of* 1850, price 7s. 6d. and 1851, price 7s.

The volume for 1849 is in the press, and it is intended to issue the previous Statutes uniform with these, but excluding all the repealed Statutes and parts of Statutes, and adding Notes of all the Cases decided upon the construction of the Statutes contained in them, thus presenting the existing law with the judicial interpretation of it. Thus, the volume for 1849 will contain the New Bankruptcy Act, with all the Cases decided upon its construction.

The following Statutes will be given entire in the volume for 1852:—

Commons Inclosure Act.
Municipal Corporations Acts Amendment Act.
Protection of Inventions Act, 1851 (Extension of Term).
Copyright Amendment Act.
Poor Relief Act Continuance Act.
Ecclesiastical Jurisdiction Act.
Stock-in-Trade Act.
Application of Highway Rates to Turnpike Roads Act.
Property-Tax Continuance Act.
Act for Re-assembling Parliament.
Wills Act Amendment Act.
Registration of Births, Deaths, and Marriages Act.
Apprehension of Deserters from Foreign Ships Act.
Industrial and Provident Societies Act.
Protestant Dissenters Act.
Appointment of Overseers Act.
General Board of Health Act (No. 1 and No. 2).
Disabilities Repeal Act.
Passengers Act Amendment Act.

Differential Dues Act.
Property of Lunatics Act.
Schools Sites Acts Extension Act.
Militia Act.
Enfranchisement of Copyholds.
County Courts Improvement Act.
Trustees Act Extension Act.
[illegible] macy Act.
Corrupt Practices at Elections.
Excise Summary Proceedings.
Woods, Forests, and Land Revenues Act.
Metropolitan Sewers Act.
Nisi Prius Officers Act.
Militia Ballots Suspension Act.
Common Law Procedure Act.
Secretary of Bankrupts' Office Abolition Act.
Commons Inclosure Acts Extension Act.
Masters in Chancery Abolition.
County Rates Act.
Patent Law Amendment Act.
Metropolis Water Supply Act.
Metropolitan Burials Act.
Improvement of the Jurisdiction of Equity Act.
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London: John Crockford, 29, Essex-street, Strand.

TO BE SOLD by PRIVATE CONTRACT, a RENT-CHARGE, amounting to 34l. 2s. 3½d. fixed under the Tithe Commutation Act in lieu of the tithes of corn and grain and other rectorial tithes, issuing out of lands in the township of [illegible]rompton, in the parish of Northallerton in the county of York.—For further particulars apply to Robt. C. Harrison, Solicitor, [illegible]nderland.—1st September, 1852.

DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES."

		AUCTIONEER.	WHEN ADVERTISED.	PROPERTY.
Wednesday, Sept 8	Garraway's	Farebrother.	Aug 14.	Freehold Rent-charge of 352*l*. 14s. 9d.
Ibid.	Ibid.	Ditto	Ibid	Freehold tithe-free Estate, Lincolnshire.
Thursday, Sept. 9.	Mart.	Lerew.	Sept. 4.	Five Houses and Shops at Kentish-town.
Ibid.	Ibid.	Ditto	Ibid.	Leasehold Estates, Eastrop-villas, Islington.
Ibid.	Ibid.	Ditto	Ibid.	Leases of Two Houses, Kensington.
Ibid.	Ibid.	Ditto	Ibid.	Residence, Werrington-street, Oakley-square.
Friday, Sept. 10.	Ibid.	Hoggart, Norton, and Trist.	Aug 21.	Freehold Estate, Standfast Farm, Hawkley.
Ibid.	Ibid.	Ditto	Ibid.	Freehold Rent-charge, Barnham.
Ibid.	Ibid.	Ditto	Ibid.	Foley-house Estate, Kent
Early in September.	Ibid.	Ditto	Ibid.	The Loosenham Estate, Newenden, Kent.

CORRESPONDENCE.

BRIBERY AT ELECTIONS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I quite agree with the view your correspondent "A. P." takes of the demoralising effects consequent on publicans having the exercise of the suffrage. For whoever has attended either electors' or non-electors' meetings, must have been struck with the artful way by which publicans elude a promise to vote until the very last moment, and thus, by their coquetting with both parties no inconsiderable amount of money is spent in convincing (*lege bribing*) the immaculates, hesitating and conscientious publicans and patriots.

But how is such a measure as the disfranchisement of a great number of voters, whom, though all condemn, yet none dare openly to accuse, to be brought about? It would clearly be an invidious office for an independent member to move for an inquiry into the conduct of past elections in their relation to beer-sellers, and, upon receiving the report (for who can doubt what that report would be?) bring in a scheme for disfranchising these vultures of an election. For, in case of a defeat, the unhappy and rash disturber of "old customs," would subside into "some village Hampden"—appreciated truly by the honest-hearted burgesses, but rejected on all hands through the power of the beer-sellers, with whose charter he (*heu! miserabile puer!*) had the temerity to interfere.

Thus are the people brutalised—ill feeling is encouraged—bribery (if called by its right name) carried on wholesale and thus are the candidates themselves mercilessly plucked.

I invite your attention, Mr. Editor, to this subject, for "purity of election" is a desideratum worthy of the attempts of all. I have had no little experience of the way in which these publicans carry on their election trade, and I feel satisfied that until the ulcer is entirely cut out, bribery Acts, election petitions, cross-examinations, and parliamentary commissions, will be of no avail to carry out the wished-for reform. At present when reflecting upon what has been done towards rooting out, or even mitigating, the corrupt practices at elections, one is led to exclaim sorrowfully, and from conviction—Cui bono?

I am, Sir, yours, &c.

Aug. 31, 1852. W.

NOTICES OF NEW LAW BOOKS.

The New Practice of the Court of Chancery, as regulated by the Acts for the Improvement of the Jurisdiction of Equity, 15 & 16 Vict. c. 86, for Abolishing the Masters' Office, 15 & 16 Vict. c. 80, and for Relief of the Suitors, 15 & 16 Vict. c. 87: with Introduction, Notes, the Acts, Orders, and a copious Index. By JAMES O'DOWD, Esq. Barrister-at-Law. London: Butterworths.

MOST truly does the author remark at the commencement of his introduction to this useful volume, that "the changes effected in the practice and procedure of the Court of Chancery by the Acts of the closing Session of the late Parliament, exceed in magnitude and importance every antecedent endeavour to amend the administration of justice in our Courts of Equity." This very sentence is an earnest that the writer approaches his task of elucidating the new law, and tracing out the future practice, with a due sense of the importance of the duty he has undertaken. After a careful examination of his book, we can conscientiously say of it, that though the earliest in the field, its completeness is nevertheless surprising. Everywhere we find evidence that the author watched closely the passage of these Acts through Parliament, and kept himself au courant with the changes therein worked; for otherwise it would have been impossible in the interval which has since elapsed to master so completely the principles and details of these statutes. The work recommends itself by clearness, method, and comprehensiveness. A fund of useful learning is brought to bear upon the successive enactments of the new law, which, never cumbersome or loosely applied, illustrates the changes, and elucidates whatever appears doubtful or obscure in its provisions. In an introduction of some fourteen pages, the author reviews the course of Chancery Reform during the past thirty years, giving due credit to Sir SAMUEL ROMILLY, the Lord Chancellors COTTENHAM, TRURO, and ST. LEONARDS; to the Chancery Commissioners, the Solicitor-General, and the present Master of the Rolls, to the last of whom his book is dedicated. He then proceeds to treat successively of the new practice under 15 & 16 Vict. c. 86, under the following titles—"The Bill, the Answer, the Evidence, Parties, Abatement." He then takes up the Act for abolishing the Masters' Office, states its operation, describes the general class of business to be performed before a Judge in chambers, and the routine of practice. Lastly, he reviews the statute for the relief of suitors in Chancery, 15 & 16 Vict. c. 87. This is followed by the Acts themselves. A copious index, of ready reference, gives additional value to a work which is not a mere reprint of the Acts, with a few meagre notes, but a well-digested, comprehensive, and luminous treatise on these important statutes. As the book is one calculated to be of great practical service to the Profession, we cordially wish it the success it well deserves, and will, no doubt command.

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Do. do 500*l*. June	71*	77*				
Do. do. Small, Jun	71*	71*			71*	

* Premium

PROMOTIONS, APPOINTMENTS, ETC.

THE Queen has been pleased to approve of Mr. James Duncan Thomson as Consul at the Cape of Good Hope for his Majesty the King of Sardinia.

The Queen has been pleased to approve of Mr. George Newenham Harvey, as Vice-Consul at Cork, for the Grand Duke of Mecklenburgh-Schwerin.

The Queen has been pleased to appoint William a'Beckett, esq. to be Chief Justice, and Redmond Barry, esq. to be Puisne Judge of the Supreme Court of the Colony of Victoria; James Simpson, esq. to be Sheriff of that Colony; and James Denham Pinnock, esq. to be Registrar of the Supreme Court of that Colony.

Her Majesty has been pleased to appoint George Deason, esq. to be Civil Commissioner and Resident Magistrate for the district of Graaff Reinet, in the settlement of the Cape of Good Hope.

The Queen has been pleased to appoint William Arrundell, esq. to be Chief Justice of the colony of British Guiana; and Robert R. Craig, esq. to be her Majesty's Attorney-General, and John Lucie Smith, esq. to be her Majesty's Solicitor-General, for that colony.

COMMISSION SIGNED BY THE LORD LIEUTENANT OF THE COUNTY OF RUTLAND.—George Fludyer esq. to be Deputy-Lieutenant.

COMMISSION SIGNED BY THE LORD LIEUTENANT OF THE COUNTY OF WILTS.—Ernest Augustus Charles Brudenell Lord Bruce, to be Deputy-Lieutenant.

COURT PAPERS.

MIDDLESEX REGISTRATION.—The revising barristers for Middlesex have just appointed the following days for the purpose of revising the list of persons qualified to vote for members of Parliament:—Friday, Sept. 17, at eleven a.m. at the Castle Inn, Brentford, for Acton, Brentford, Ealing, Greenford, Hanwell, Heston, Isleworth, Northolt, Perrivale, and Twickenham. Saturday, Sept. 18, at eleven a.m. at the Black Dog, Bedfont, for the various parishes and places within the polling district of Bedfont. Monday, Sept. 20, at ten a.m. at the Sussex Hotel, Bouverie-street, Fleet-street, for the ... parishes within the city of London. Tuesday, Sept. 21, at ten a.m. at the Lords Justices' Court, Westminster-hall, for Lincoln's-inn and the parishes and places within the city of Westminster. Wednesday, Sept. 22, at ten a.m. at the Belvedere Tavern, Penton-street, Islington, for the parishes and places within the district assigned to poll at the booths, King's-cross, or within half a mile thereof. Thursday, Sept. 23, at ten a.m. at the New Globe Tavern, Mile-end-road, for the several parishes and places within the Mile-end polling district. Friday, Sept. 24, at ten a.m. at the Green Man Tavern, Bethnal-green, for the parishes and districts of Christ-Church, Hackney, Shoreditch, Bethnal-green, Norton Folgate, and the Old Artillery-ground. Saturday, Sept. 25, at eleven a.m. at the White Horse, Uxbridge, for the parishes and districts of Cowley, Hayes, Harefield, Hillingdon, Ickenham, Norwood, Ruislip, Uxbridge, and West Drayton. Monday, Sept. 27, at the Albion Hall, Hammersmith, at ten a.m. for the parishes and districts of Chiswick, Fulham, Chelsea, Hammersmith, and Kensington. Tuesday, Sept. 28, at the Chandos Arms, Edgware, at one p.m. for the parishes and districts of Edgware, Finchley, Great Stanmore, Harrow, Hendon, Kingsbury, Little Stanmore, and Pinner. Wednesday, Sept. 29, at eleven a.m. at the King's Arms Tavern, Enfield, for the parishes and districts of Edmonton, Enfield, Friern Barnet, Hadley, South Mimms, and Tottenham. Thursday, Sept. 30, at ten a.m. at Jack Straw's Castle, for the parishes of Hampstead, Hornsey, and Willesden.

NECROLOGY OF LEGISLATORS, MAGISTRATES, AND LAWYERS.

THE EARL OF FALMOUTH.—We regret to announce the demise of the Earl of Falmouth, who expired at a quarter past nine, a.m. on Tuesday last, at his residence in St. James's-square, after a painful illness of more than six months' duration. The deceased George Boscawen, Earl of Falmouth, Viscount Falmouth and Baron of Boscawen Rose, in the county of Cornwall, in the peerage of the United Kingdom, was only son of Edward (the first earl), and was born 8th of July, 1811. The late peer was for a short time in the House of Commons, being returned for the eastern division of the county of Cornwall in July, 1841, but his father dying in December the same year he succeeded to the earldom. The deceased peer is succeeded as Viscount Falmouth, by his uncle, the Hon. and Rev. John Evelyn Boscawen, prebendary of Canterbury, who will inherit the large family estates in Cornwall. The noble and reverend peer was second son of the third viscount, and was born 11th of April, 1790, and married 4th of May, 1814, Catherine Elizabeth, eldest daughter of Mr. Arthur Annesley (the late Viscount Vallentin), by whom his lordship has a numerous family. The late earl was nephew of the Right. Hon. Geo. Bankes, and cousin of Baroness Le Despencer, who, with several other families of rank, are placed in mourning.

COUNTY of GALWAY.—In the COURT of the COMMISSIONERS for SALE of INCUMBERED ESTATE n IRELAND.—In the matter of the Estate of Edward Blake, Owner, and John Arthur Wynne and William Willoughby Wynne, Petitioners.—The Commissioners will on FRIDAY, the 12th day of NOVEMBER next, at the hour of Twelve o'Clock at noon, at their Court, Henry-street, in the city of Dublin, SELL by AUCTION the fee simple and inheritance of the CASTLEGROVE ESTATE, comprising the mansion-house, demesne, and lands of Castlegrove, the bogs of Castlegrove, Beagh, Cloonmoylan, Kilbannon, Old Fartagar, otherwise Uppertown, and Buckawn; the meadows of Castlegrove, Cloonmoylan, Buckawn, Uppertown and Fartagar, Sylaun, Beagh, Lisline or Lisaleen, Clareen, and Beagh, reclaimed bog; all which said lands are situate in the Barony of DUNMORE and County of GALWAY, containing, in the whole, 1,437a. 3r. 20p. Irish plantation measure, producing a profit rent of 1,048l. 1s. 6½d per annum, and will be sold in the following lots:—

Lot No. 1.—The mansion-house, demesne, and lands of Castlegrove East, the lands of Castle-grove West, and part of Johnstown, a subdenomination of the lands of Beagh, containing 392a. 2r 33p Irish plantation measure, of the yearly rent or value of 422l. 11s.

Lot No. 2.—The lands of Fartagar and Sylaun, containing 163a. 1r. 17p. Irish plantation measure, of the yearly rent of 110l. 4s 0d.

Lot No. 3.—The lands of Johnstown, a subdenomination of the lands of Beagh, containing 241a. 1r. 13p. Irish plantation measure, of the yearly rent or value of 46l. 11s. 10d.

Lot No. 4. The lands of Creggane and Woodvillage, being sub denominations of the lands of Beagh, containing 50a. 0r. 35p Irish plantation measure, of the yearly rent or value of 52l. 3s. 7d.

Lot No. 5.—The lands of Beagh, containing 10a. 3r 5p. Irish plantation measure, of the yearly rent or value of 118l. 4s. 5d

Lot No 6.—The lands of Bulcaun, otherwise Buckawn, and the lands of Cloonmoylan, containing 206a. 0r. 35p. Irish plantation measure, of the yearly rent or value of 130l. 6s. 8d

Lot No. 7.—The lands of Lisaline, otherwise Lisline, otherwise Lisaleen, containing 140a. 1r. 1p. Irish plantation measure, of the yearly rent or value of 138l 15s. 10d.

Lot No. 8.—The lands of Claureen, otherwise Clareen, containing 41a. 0r. 12p. Irish plantation measure, of the yearly rent or value of 36l 18s 4d

Dated this 22nd day of June, 1852.

HENRY CAREY, Secretary.

These lands will be sold free of quit rent, and subject only to a tithe rent charge of 35l 1s. 7½d. on the entire of the estate. The estate and demesne of Castlegrove is situate on the mail coach road running from Tuam to Castlebar, and within five miles of the former town. The land is of excellent quality The demesne contains 207a. 0r 23p. statute measure, or 127a. 3r. 27p. Irish plantation measure, well laid out, and wooded with old and young plantations, and is an excellent farm either for pasture or tillage The mansion house has been erected within the last twelve years, and is in every respect suitable for a nobleman or gentleman of fortune, and contains every requisite and convenience usual in a modern first-rate residence The offices are extensive and commodious; there is a good walled-in garden and orchard, and attached to the estate is an extensive tract of bog, which from its situation is very valuable for the purpose of turbary, and also presents every facility for reclamation, being placed upon a bed of limestone gravel Several families of distinction reside in the neighbourhood, which has been at all times remarkably quiet and peaceable

For rentals and particulars of sale, apply to Messrs CARNSEW and WHITELOCK, Solicitors, 1, Raymond-buildings, Gray's-inn, London; or WILLIAM DIX and SON, Solicitors, having carriage of the order for sale, 35, Gardiner's-place, Dublin.

Leasehold Investment, Sloane-street, Chelsea

MR. ALFRED COX will SELL at the MART, on SEPTEMBER 29th, the compact and convenient PRIVATE RESIDENCE in a good state of repair, ten rooms, being No 72, Cadogan-place, contiguous to that aristocratic neighbourhood, Belgravia, and almost overlooking the pleasure grounds of Cadogan-place Unexpired term, twenty five years; ground rent, 5l The premises are at present let at 6?l per annum, and the tenant pays land-tax, sewers-rate, and all other taxes and rates. Immediate possession might be had by arrangement.—Particulars obtainable of C H HODGSON, Esq Solicitor, 5, New Inn, and at Mr. ALFRED COX's Estate Agency Offices, 68, New Bond street.

LYMINGTON, the coast of Hampshire.—Blake Lodge, a residence in th Elizabethan style, with 24 acres of pleasure-...nds.

MESSRS. GREEN (28, Old Bond-street) have received instructions to SELL by AUCTION, at GARRAWAY'S, on FRIDAY, SEPTEMBER 10, at Twelve (unless in the meantime disposed of by private contract), a very desirable FREEHOLD MARINE RESIDENCE, Blake Lodge, surrounded by pleasure grounds and gardens, with conservatory, greenhouse, pineries, &c. and in all 24 acres of land, most beautifully situate on the margin of the river, commanding very extensive views of the sea, the Needles, the Isle of Wight, and the New Forest To a gentleman fond of yachting this will be found a most desirable residence, there being a quay and hard for a yacht.—Printed particulars may be obtained at the principal inns at Lymington and Southampton; at Garraway's; of Messrs WRIGHT and KINGSFORD, 24, Essex street, Strand; and of Messrs. GREEN, Estate Agents and Auctioneers, 28, Old Bond-street.

NEAR READING, BERKSHIRE.—The Grazeley Lodge Estate, comprising a superior Family Residence, and nearly 70 acres of productive and ornamental ... ...ipation of the owner, with (if desired) a fine Manorial Estate immediately adjoining

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4 Præcipe for Writ of Summons.
5 Præcipe for Renewal of Writ.
6 Writ of Summons.
7 Writ of Summons to be specially endorsed for immediate Judgment
8. Affidavit of Service of Writ
9 Affidavit of Attempts at Service to obtain Leave to proceed.
0 Affidavit of no Appearance being entered.
1 Appearance Pieces, on parchment.
2. Declaration in Debt (under 20l.).
3 Declaration in Assumpsit (under 20l.)
4 Declaration in Debt, common Counts, Account stated, &c
5 Declaration on Promises, Common counts, Accounts stated, &c.
16 Particulars of Demand.
17. Notice of Declaration, foolscap, half sheets, with Particulars, 4to with fly leaf, without Particulars.
18 Notice to produce Documents
19. Notice to inspect and admit, 4to.
20 Notice to inspect and admit, foolscap
21 Issue, where Questions are raised of Consent without Pleading.
22 Notice of Trial in London.
22 a. Notice of Trial in Middlesex
22 b Notice of Trial at the Assizes
22 c Notice of Trial and of Assessment of Damages
22 d Notice of Trial where several Defendants
22 e Notice of Trial where several Issues.
22 f Notice of Trial and Assessment on Breaches in Debt on Bond.
23 Notice of Continuance
24 Notice of Countermand
25 Notice of Execution of Writ of Inquiry.
26 Affidavit of Service and Attendance on Summons.
27. Consent to Judge's Order.
28 Subpœna ad Test. Parchment and Paper
29. Subpœna before Sheriff: Parchment and Paper.
30 Subpœna duces tecum for the Assizes.
31 Subpœna duces tecum "before the Sheriff." Parchment and Paper
32 Cognovit for Payment of Debt.
33. Ditto by Instalments.
34. Warrant of Attorney to confess Judgment.
35 Notice to Quit where Tenancy uncertain.
36 Notice to Quit, where Tenancy certain.
37. Warrant of Distress.
38 Notice and Inventory of Distress.
39. Notice of Intention to Distrain for Arrears of Tithe Rent-charge.
40 Notice by Agent of Intention to Distrain for ditto
41 Warrant of Distress.
42. Writ of Ejectment.
43 Writ of Ejectment, Landlord against Tenant holding over.

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THE COMMON LAW PROCEDURE ACT.

This day is published, in 12mo. price 12s. cloth boards,

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BROOM'S PRACTICE of the COUNTY COURTS. The Practice of the County Courts, including the Act 15 & 16 Vict. cap. 54, just passed. By HERBERT BROOM, of the Inner Temple, Esq. Barrister-at-Law, Author of "A Selection of Legal Maxims," &c.

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London: Butterworths, Law Booksellers and Publishers, 7, Fleet-street.

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London: Spottiswoode and Shaw.

PRIVATE BILLS.—SESSION 1852-3.—TO SOLICITORS AND SURVEYORS.

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London: Stevens and Norton, 26, Bell-yard, Lincoln's-inn; Effingham Wilson, 11, Royal Exchange.

HISTORICAL and PERSONAL SKETCHES of the NEWSPAPER PRESS and of the WRITERS CONNECTED THEREWITH.—THE CRITIC: LONDON LITERARY JOURNAL of September 1, contained a History of "THE EXAMINER" newspaper, being No. IX. of the above series. The other contents of the number were:—The Author's Workshop, No. 11.—Actors and their Critics—Niebuhr's Ancient History—Poetical Remains and Memoir of the Poet Walker—Thoughts on Cottage Lectures—Dr. Sutherland's Journal of the Arctic Voyage—The New Novels—The New Poets—College Life—Life of Baron Von Stein—Burmeister's History of Creation—A Letter from Italy about Art and Literature—Summaries of Science, Architecture, Art, and Artists—Music and Musicians—Gossip of the Literary World—Necrology of Authors, and Dictionary of Living Authors and Artists. A copy sent on receipt of six postage stamps by the publisher, 29, Essex-street, Strand, London.

Just published, uniform with the Act, price 1s. or with the Act, 3s. 6d.

AN INDEX to the COMMON LAW PROCEDURE ACT of 15 & 16 Vict. c. 76 (passed June 30th, 1852), intituled "An Act to Amend the Process, Practice, and Mode of Pleading in the Superior Courts of Common Law at Westminster, and in the Superior Courts of the Counties of Lancaster and Durham." By G. W. THWAITES, Esq. of Lyon's Inn.

The New Forms under the Act are partly ready.

London: J. S. Hodson, printer to the Court for Relief of Insolvent Debtors, 22, Portugal-street, Lincoln's Inn.

In the press, and will be published early in October, an edition of

THE CHANCERY REFORM ACTS, which will contain the new Rules and Orders, with Notes, Forms, and Index. [illegible] DAVIES TUDOR, Esq. Barrister-at-Law, author of "Leading Cases in Equity," &c. in one vol. cloth.

John Crockford, 29, Essex-street, Strand.

DEVONSHIRE, near SOUTH MOLTON.—Valuable Freehold Estate.

MR. W. H. HEWITT will SELL by AUCTION, at the AUCTION MART, London, on THURSDAY, OCTOBER the 14th 1852, at Twelve o'clock, in one lot, all that highly desirable FREEHOLD ESTATE, and celebrated Grazing, Dairy and Sheep Farm, called Kitcott Barton, situate in the parish of Romansleigh, near South Molton, in the county of Devon, consisting of a convenient farm-house, with a most complete range of outbuildings and farm appendages, all in thorough repair, and about [illegible] acres of valuable water meadow, and rich pasture arable and orchard land, all within a ring fence. This estate is distant about sixteen miles from Tiverton; five miles from South Molton, on the new turnpike road; and about the same distance from the Copplestone Station, on the North Devon Railway. It is in the midst of a fine sporting country and beautiful scenery, and is approached in every direction by good roads. The attention of capitalists is directed to this property, which presents a rare opportunity either for occupation or investment, and is also well adapted for the erection of a country seat. Full printed particulars with lithographic plans, may be had twenty one days before the day of sale, at the Fortescue Arms, Barnstaple; the Three Cup Hotel, Tiverton; the George Hotel, at South Molton; at the Auction Mart; also of the Auctioneer, at his Offices, 12, Hart-street, Bloomsbury square, London; at Rutter's Reading-room Shaftesbury; and at the Office of J. Farley Rutter, Solicitor, Shaftesbury.

Valuable Policies effected with the Law Life Assurance Society, London.

MR. G. HUDSON has received instructions to SELL by AUCTION, at the AUCTION MART, London, on THURSDAY, 23rd SEPTEMBER, 1852, at Twelve o'clock, a POLICY for 1,000l. with accumulations thereon amounting to 339l. making together the sum of 1,339l. effected with the Law Life Assurance Society, Fleet-street, London, the 31st January, 1823, on the life of a gentleman, now in his fiftieth year; annual premium, 24l. 10s. 10d.; and a Policy for 2,000l. with accumulations thereon amounting to 335l. making together 2,335l. effected with the Law Life Assurance Society, on the 9th June, 1837, on the life of a gentleman now in his fiftieth year, annual premium, 61l. 6s. 8d. Particulars may be had at the Auction Mart, London; of Messrs. Bower and Son, Solicitors, 46, Chancery lane (the Vendor's Solicitors); of Mr. A. Russell, Solicitor, Dartford; of Isaac Nicholson, Esq. Basinghall-street, London; of Mr. G. Colquhoun, Solicitor, Woolwich; and of the Auctioneer, Brewer-street, Woolwich.

PROCEEDINGS OF LAW SOCIETIES.

LAW ASSOCIATION FOR THE BENEFIT OF THE WIDOWS AND FAMILIES OF PROFESSIONAL MEN.

"Report of the Board of Directors to the Annual General Court, Tuesday, May 11, 1852. J. O. Jones, Esq. in the Chair.

"The Directors have the satisfaction, on the present occasion, to announce to the members at large a continuance of the prosperity of the Association.

"During the year the Three per Cent. Reduced Annuities belonging to the Association have been transposed into Three and a quarter per Cents. thus placing the whole funded property in that stock. The Directors have been enabled to make a further purchase of 301*l*. 18s. 6d. during the year, and thereby the amount has reached the sum of 21,188*l*. 2s. 6d. Three and a quarter per Cents. yielding an income of 688*l*. besides annual subscriptions amounting to 501*l*. 18s.

"In addition to this annual income the directors are much gratified at having to report the following donations, namely:—100*l*. from Sir Charles Ogle and H. Denton, esq. the executors of the late Mrs. Anna Maria Ogle, in the benevolent exercise of a discretion which that lady had confided to them; 21*l*. from Sir C. M. Clarke, bart.; and 5*l*. 5s. from Mr. Charles Sweeting.

Of the handsome donation spontaneously bestowed by Sir Charles Clarke, the society has peculiar reason to be proud, as a substantial proof that its proceedings are sanctioned by distinguished approval beyond the limits of the Legal Profession.

"The sum of 21*l*. 7s. has been received from the estate of the late Mr. Joseph Roberts, of Queen-square, in part payment of a reversionary legacy of 100*l*. left by him to the Association many years since.

"The directors have to report that no new case of the primary class has come before them during the year; and that it is now three years since any application of that description was made.

"In one instance during the year, the widow of a member has received an additional grant of 50*l*. to assist her in releasing her furniture from the claims of her late husband's creditors, some of them agreeing to give up their share of the valuation. And in another case the Board have felt it to be their duty, as stewards of the funds placed at their disposal, to reduce the allowance, in consequence of the widow's means from other sources being improved.

"The outlay in this branch of relief has been 845*l*.

"The sum voted at the last annual meeting for the benefit of non-members' widows and families was 200*l*. the whole of which has been applied in cases of that description; and the directors venture to recommend that a similar grant be made on the present occasion.

"The directors have had under their consideration the subject of the annual subscriptions, and on the report of a committee appointed to inquire into the usual mode of collection, some new regulations are now submitted to the general meeting for approval, having for their object a more convenient system of collection, and the more equal distribution of the income of the Association over the financial year.

"Since the last general meeting, eleven new members have been elected; and the directors trust that every member will use his best endeavours to promote the success of the charity, by inducing his professional friends to manifest a similar concern for its welfare to that which has been found even out of the Profession.

By order of the Board,
"John Murray, Secretary."

NECROLOGY
OF LEGISLATORS, MAGISTRATES, AND LAWYERS.

G. R. PORTER, ESQ.

We regret to have to record the death of Mr. G. R. Porter, Secretary to the Board of Trade. The deceased gentleman entered the office as chief of the Statistical Department at a salary of 1,000*l*. a year. To this was added, under the presidency of the Marquis Dalhousie, the railway department of the office, with an increase of salary of 200*l*. a year. On the election of Mr Macgregor as a member of the House of Commons, and the resignation of his office in the Board of Trade, Mr. Porter was appointed one of the joint secretaries, in his room, at a salary of 1,500*l*. a year. The deceased gentleman died at Tonbridge Wells. His disease was brought on by not taking sufficient exercise, or allowing himself sufficient relaxation from the duties of his office. His loss will be sensibly and widely felt. The integrity of the deceased, his elegant and varied accomplishments, and his amiable disposition, conspired to render him a cherished ornament of a wide social circle. His "Progress of the Nation," and other contributions in statistical literature, had elevated him to the rank of an authority in discussions on most social and economical questions; and his indefatigable industry, combined with his amenity, intelligence, and knowledge, made him a public servant of the very first class. It is literally true that Mr. Porter worked himself to death. A colleague used playfully to allege that Porter pretended to avail himself of the holidays allowed in the office, but that, if strict search were made, he would doubtless be found hid in some obscure nook, working away as usual. In no circumstances would it be easy to fill up the vacancy occasioned by the loss of such a man.

BIRTHS, MARRIAGES, AND DEATHS

MARRIAGES.

Cave, Stephen, esq. barrister-at-law, eldest son of D. Cave, esq. of Cleve hill, Gloucestershire, to Emma Jane, eldest daughter of the Rev. W. Smyth, of Elkington Hall, Lincolnshire, on the 7th inst. at South Elkington, near Louth.

Lewers, William, esq. of the Middle Temple, barrister-at-law, to Sarah Elizabeth, youngest daughter of William Nicholson, esq. Nicholson-house, on the 25th ult. at Bishopwearmouth.

Lord, Rev. J. O. youngest son of the late H. Lord, D.D. rector of Northiam, Sussex, and Barfreystone, Kent, to Lo[illegible] 1 daughter of James Hore, of Lincoln's-inn-fields, and Dulwich, Surrey, esq. on the 31st ult. at St. Giles's, Camberwell.

Shugar, J. M. esq. solicitor, Portsmouth, to Mary, second daughter of T. W. Elam, esq. of Brunswick-place, Hove, on the 8th inst. at the parish church, Hove, Sussex.

DEATHS.

Bosanquet, Merelina, wife of I. W. Bosanquet, esq. and only daughter of the late Right Hon. Lord Chief Justice Tindal, on the 2nd inst. at Claysmore, Enfield, aged 37.

Lee, Joseph, esq. of Redbrook, one of the magistrates of the county of Flint, on the 26th ult. aged 86.

Penfold, George, esq. solicitor, on the 3rd inst. at his residence, London-road, Croydon, aged 44.

Sanders, Mary Cecilia, widow of the late Edward Albert Sanders, of Basinghall-street, solicitor, on the 28th ult. aged 54.

Stock, Edward, esq. of Poplar, one of her Majesty's Justices of the Peace for the county of Middlesex, at Plaistow, Essex, on the 31st ult. aged 53.

Tassell, Robert, esq. of the Inner Temple, barrister-at-law, son of Robert Tassell, esq. East Malling, on the 2nd inst.

CORRESPONDENCE.

ADJUDICATION STAMPS.

TO THE EDITOR OF THE LAW TIMES.

Sir,—A letter signed "J. B." appeared in your paper of the 24th July last, censuring the decision of the Commissioners of Stamps on a case stated by your correspondent.

You likewise published on the 7th of August a reply to "J. B.'s" letter, signed "W. J." doubting the correctness of the Commissioners' decision.

I have not observed that any further notice has been taken of the case by any of your correspondents. It is, no doubt, a very hard case, particularly as the property appears to be of small value; but thinking the Commissioners are right in their adjudication, for [illegible] following reasons, perhaps you will afford [illegible] mall space in your next number.

The Court of Q. B. in *Reg.* v. *Eton College*, 8 Q.B. Rep. 526, decided that in a case where five owners of copyhold, as tenants in common, agreed to sell to a purchaser at an entire price for the whole property, *one stamp only was payable upon the surrender*, but that the purchaser must take admission to each of the five estates in common separately, *and that a separate stamp was payable* for each admittance. Thus, on the authority of that case, independently of the Stamp Acts, the Commissioners are right in adjudicating that a separate stamp is payable for each admittance.

With respect to the admission of the two heirs in moieties, it seems to me that the Commissioners are also right in their adjudication. There are two distinct admissions: if the copies of court-roll were made out separately, each would, of course, require a stamp; and the including both admissions in one copy or memorandum would seem to make no difference, as the Stamp Acts provide that where more than one surrender or admittance, or the memorandum thereof, shall be contained on the same piece of vellum, paper, or parchment, whether upon a sale, mortgage, or other occasion, the proper duty shall be paid in respect to each surrender and each admittance.

The quotation from the recent Stamp Act, given in the letter of your correspondent "W. J." does not embrace quite enough. It is certainly accurate as far as it goes; but those words in the Act refer only to *instruments relating to admissions upon the sale* [illegible] *mortgage of estates*.

Any admittance *not upon a sale or mortgage* is still liable to a 1*l*. stamp where the yearly value of the estate shall exceed 20s. (I presume the case in question was not a *sale*. In "J. B.'s" letter a consideration of 5*l*. is stated to have been paid to one of the heirs; but I imagine this to be a misprint for 5s. a merely nominal sum, the same as paid to the other heir.)

I observe in your paper of August 14th the communication of Messrs. Sharp, Harrison, and Sharp, that the Commissioners had decided the conveyance of a house subject to a mortgage for 220*l*. in consideration of an annuity of 16s. per week was sufficiently stamped with a 35s. stamp. Your correspondents do not state whether the conveyance contains a stipulation that the purchaser shall pay off the mortgage. If so, it seems to me that the deed would have been sufficiently stamped with an ad valorem stamp of 22s. 6d.; for the 220*l*. was part of the consideration (see *The Marquis of Chandos* v. *The Commissioners of Inland Revenue*, reported in the Law Times some few months since), and the annuity of 16s. being, I presume, for life, or other uncertain period, required no ad valorem stamp. I should like the opinion of some of your correspondents on this point.

I am, Sir, yours, &c.

Sept. 8, 1852. A. R.

JOURNAL OF PROPERTY.

Public Sales.

Important Sale of Freehold Estates in the Isle of Sheppy.—Messrs. Farebrother, Clark and Lye sold, at the Royal Hotel, Sheerness, on Thursday and Friday last, the following estates:—The manors of Warden and Minster, a marine residence, called Warden Court, and about 240 acres of land; the coast-guard station at Warden Point; the Smack public-house; several compact farms, with farm residences; the coast-guard station at Hensbrook; the Waterloo and Highlander public-houses in the High-street, Minster; Sheppy Court Residence, and about 96 acres of land, private residences, shops, and cottages; also, ground-rents, amounting to 130*l*. per annum, arising out of houses in the town of Sheerness. The above estates contain together about 1,800 acres, and produce a rental of nearly 2,500*l*. per annum, and were put up for public competition in seventy lots, the whole of which were sold, and realised the sum of 70,800*l*. being over twenty-eight years' purchase. There is certainly here no evidence either of any decline in the value of land, or of any abatement of the desire of capitalists to possess it.

By Messrs. Hoggart, Norton, and Trist, at the Mart, August 27.—The freehold estate of Pishobury-park, Sawbridgeworth, Herts, consisting of mansion, farm-buildings, and 278 acres of land, with possession, land-tax redeemed—18,500*l*.

Freehold and small part copyhold property, known as Winchester Hall, Highgate-hill, with two cottages and six acres of land—5,780*l*.

By Messrs. Hammond and Eiloart, at the Mart.—Freehold premises, No. 8, Took's-court, Chancery-lane, let at 38*l*. per annum—430*l*.

Two cottages, Upper Ann-street, Plumstead, Kent, producing a clear annual rent of 16*l*. 16s. for sixty eight years unexpired—325*l*.

Plot of copyhold ground, Pilgrim's-lane, Hampstead, with greenhouse, &c. let at 20*l*. per annum—255*l*.

Improved ground-rent of 19*l*. 10s. per annum, secured for twenty-five years unexpired upon the White Hart and other premises, Southampton-street, Camberwell—490*l*.

By Mr. E. E. Stone, at Garraway's.—Two houses, Nos. 8 and 9, Gloucester-place, Islington-green, let at 129*l*. 16s. per annum, held for 30 years unexpired at 25*l*.—1,215*l*.

By Mr. Gadsden, at the Mart.—Freehold farm, in the parishes of Fawkham and Horton Kirby, Kent, containing 88 acres—2,500*l*.

Church Down Wood, near preceding, containing 12 acres of freehold land—360*l*.

Freehold residence, at Sutton at-Hone, near Dartford, with 1½ acres of fruit plantation—1,640*l*.

Freehold dwelling-house, baker's shop, and three cottages, at Sutton-at-Hone, let at 20*l*. per annum—550*l*.

Freehold shop, dwelling-house, garden, &c. on the high road near the preceding, let at 20*l*. per annum, also a chapel, let at 8*l*.—635*l*.

Freehold fruit plantation of 3¼ acres, opposite the preceding—740*l*.

Freehold house, No. 7, Howick-place, Vauxhall-bridge road, let at 54*l*. per annum—750*l*.

MONEY MARKET.

ENGLISH FUNDS.

		M.				
Bank Stock	229	230	..	227	227	229
3 ₽ Cent. Reduced Annuities	100½	100⅞	100⅞	100½	100¾	..
3 ₽ Cent. Consols Annuities	100⅛	100	100	100	99¾	100
Consols for Account	100⅛	100	100	100	99⅞	100
New 5 ₽ Cent. Annuities	..	..	..			..
New 3¼ ₽ Cent. Annuities	101⅞	101⅞	101⅝	101⅞	101½	101¾
Long Annu. (exp. Jan 5, 1860)	6¼	6⅝	6½	6⅝	6⅝	..
Do 30 yrs. (exp. Oct. 10, 1859)	..	..	6⅝	6⅞		
Do. 30 yrs. (exp. Jan. 5, 1860)	..	..	..	..		
India Stock	278	278				
India Bonds (1,000*l*.)			88	87		87*
Do. do. (under 1,000*l*.)						
South Sea Stock						
Do. do. Old Annuities						99⅞
Exchequer Bills, 1,000*l*. June						
Do. do. 500*l*. June						
Do. do. Small, June						

* Premium.

Now ready, price 5s 6d. Part XXV. for September, 1852, of

CONCISE PRECEDENTS in MODERN CONVEYANCING,

with Practical and Explanatory Notes By WILLIAM HUGHES, Esq. Barrister-at-Law, Author of "The Practice of Sales," "Practice of Mortgages," "The New Stamp Act," &c.

CONTENTS.

86. Composition deed between a debtor and his creditors, where a fiat of bankruptcy has been issued against the former, the latter agreeing to accept a dividend of ten shillings in the pound, to be secured by bills of exchange drawn by the debtor and accepted by his surety.
87. General release to a debtor who has compounded with his creditors, and paid the full amount of the composition.
88. Form of an agreement, by a lessee consenting to an apportionment of the rents, and also agreeing to join in the conveyance to a purchaser.
89. Assignment of a leasehold dwelling-house by the original lessee to a purchaser for the residue of an absolute term of ninety-nine years; the lessor and an underlessee also concurring for the purpose of apportioning the rent to be payable in respect of the assigned premises.
90. Mutual covenants by two purchasers of leasehold property, held under one lease for the apportionment of the rents, with mutual powers of distress by way of indemnity
91. Bond of indemnity from a vendor to a purchaser against a mortgage debt which is supposed to have been paid off, but there is no proof of such payment.
92. Bond by a purchaser of leaseholds from the lessee, for indemnifying the latter from the rent and the covenants of the lease
93. Bond from two sureties for the purpose of securing merchants the amount of value of goods supplied to a tradesman, not exceeding 500l.
94. Bond with two sureties for the faithful discharge of the duties of an attorney's clerk.
95. Bond with two sureties for the faithful discharge of the duties of the chief clerk or manager of a business
96. Bond with two sureties for the faithful discharge of the duties of an assistant or shopman
97. Bond of indemnity to a tenant paying rent to his landlord, where the title to the property is disputed
98. Bond by a legatee, on receiving his legacy, to indemnify executors in case of a deficiency of assets
99. Bond by a tenant for life, who has granted a lease for fourteen years, that in case of his decease during the term, the reversioner shall, upon the lessee's request, either confirm the original lease, or grant him a new lease of the premises, to endure as long as the original term, and under the same rent and covenants
100. Bond by a purchaser to a vendor of an estate charged with a legacy of 300l payable to a minor on attaining twenty-one, to secure the due payment of such legacy
101. Bond conditioned for the repayment of the purchase-money, in case one of the vendors, an infant, on attaining twenty-one, should refuse to execute the conveyance
102. Bond from an executor to indemnify a bond debtor who pays off a bond debt due to the testator, such bond having been lost or mislaid
103. Bond with two sureties to secure the balance of a banking account
104. Bond of indemnity to trustees advancing part of trust moneys to husband and wife, which had been limited by marriage settlement, upon trust for the benefit of the husband and wife, and issue of the marriage, with an absolute limitation in favour of the husband upon failure of such issue, no issue having been born, and there being no prospect of any.
105. Form of a post obit bond
106. Defeasance of a warrant of attorney to accompany the foregoing security
107. Post obit bond in consideration of the release of a debt
108. Memorandum of the delivery of a post obit bond, sealed up in an envelope, into the custody of a depositary, to be kept so sealed up during the lifetime of the party upon whose decease it is to become payable, unless sooner redeemed
109. Covenant from bankers not to sue sureties on their bond to secure the balance of the banking account of the principal, until the latter, or his sureties, shall omit to pay the same after three calendar months' notice
110. Bond by an intended husband to the trustees of the marriage settlement, to authorise his wife to make a will of all such personal property as shall devolve upon her during the marriage
111. Bond given by a builder and two sureties for the due performance of a contract to build a dwelling-house according to a specified plan
112. Bond of resignation of a living
113. Form of assent by an executor to the bequest of a leasehold estate
114. Assent to a bequest, and assignment of leasehold property by indenture by an executor to a legatee, the legatee covenanting to indemnify the former against the rents and covenants of the lease
115. Miscellaneous forms of recitals, arranged alphabetically.

London: JOHN CROCKFORD, LAW TIMES Office, 29, Essex-street

MUTUAL ASSURANCE WITHOUT PERSONAL LIABILITY
Empowered by special Act of Parliament
Established in 1837

NATIONAL MERCANTILE (MUTUAL) LIFE ASSURANCE SOCIETY

BONUS TO BE DECLARED IN 1857

All parties desirous of participating in the bonus to be declared in July 185., and annually thereafter, must send in their proposals

Number of Policy.	Sum assured	Date of Policy	Age on effecting Assurance	Annual Premium	[illegible] Bonus [illegible]	Date of Death	[illegible] paid [illegible]
1105	£ 400	April 18, 1843	23	£ s 8 1	2 9 67 2	Feb 7, 1852	467 2

Being, in addition to the sum l, a return of all the premiums received, with the exception of 5l 7s

ANNUAL DIVISION OF PROFITS.

The profits are divided annually amongst those policy-holders who have paid five or more annual premiums, and may be taken by way of reduction of premium or addition to the sum assured
JENKINS JONES, Actuary and Secretary

LONDON and PROVINCIAL JOINT-STOCK LIFE INSURANCE COMPANY.

Established 1847
Offices—17, Gracechurch-street.

The Company effect every description of life insurance, both on the participating and non participating scales

They also lend money on the security of freehold and long leasehold property, reversions (absolute or contingent), life interests, and incomes legally assignable, and on personal security, accompanied by at least three unquestionable sureties, and a policy or policies of insurance effected with the Company

If on personal security, the loan is made for periods of from one to five years, repayable by annual, half-yearly, or quarterly instalments

Copyholders wishing to enfranchise and to convert their Copyhold into Freehold Property, under the powers given by the Act of Parliament passed last session, may obtain loans for that purpose

In all cases of Loan the interest is 5 per cent per annum, and the insurance must be effected for at least double the amount borrowed
C. INGALL, Actuary and Secretary.

THE YORKSHIRE FIRE and LIFE INSURANCE COMPANY.

Established at York, 1824, and empowered by Act of Parliament. Capital, 500,000l.

TRUSTEES.
Ralph Creyke, esq. Rawcliffe Hall.
John Swann, esq. Askham.
Leonard Thompson, esq. Sheriff Hutton Park.

BANKERS.—Messrs. Swann, Clough, and Co. York.
ACTUARY and SECRETARY.—Mr. W. L. Newman, York.

The attention of the public is particularly called to the terms of this Company for LIFE INSURANCES, and to the distinction which is made between male and female lives.

Extract from the Table of Premiums for insuring 100l.

Age next birthday.	A MALE. Whole Life Premiums £ s. d.	A FEMALE. Whole Life Premiums £ s. d.	Age next birthday.	A MALE. Whole Life Premiums £ s. d.	A FEMALE. Whole Life Premiums £ s. d.
	1 7 6	1 5 4		3 11 6	3 3 2
13	1 9 8	1 7 0	50	4 1 9	3 13 3
16	1 11 3	1 8 10	53	4 11 6	4 2 6
	1 14 4	1 11 6	56	5 4 0	4 14 0
23	1 17 0	1 13 8	60	6 6 0	5 13 6
26	2 0 3	1 16 2		7 4 0	6 9 6
	2 5 0	1 19 9		8 4 0	7 10 8
33	2 8 6	2 2 10	70	10 0 4	9 7 6
36	2 13 0	2 6 4	73	11 16 2	11 2 6
	2 19 9	2 12 0	76		13 1 9
	3 5 3	2 17 2			15 12 10

EXAMPLE.—A gentleman whose age does not exceed 30, may insure 1,000l. payable on his decease, for an annual payment of 22l 10s; and a lady of the same age can secure the same sum for an annual payment of 19l 17s 6d

Prospectuses, with the rates of premium for the intermediate ages, and every information, may be had at the Head Office in York, or of any of the Agents.

FIRE INSURANCES are also effected by this Company, on the most moderate terms.

AGENTS
Edinburgh—M'Intosh and Ducat, W.S 68, Great King-street; D. S. Peddie, George-street.
Glasgow—Peter White, 20, Buchanan street; William Lang, 20, St Vincent-place, John Carmichael, 5 Dixon street; William Robertson, Tronjate Branch of the City of Glasgow Bank

Agents are wanted in those towns where no appointments have been made. Applications to be made to Mr W. L. NEWMAN, Actuary and Secretary, York.

CITY OF LONDON LIFE ASSURANCE SOCIETY

for General and Deposit Assurances, Indisputable and Self-protecting Policies and Loans, 2, Royal Exchange-buildings.

Mr Commissioner West. | The Hon. W. F. Campbell
John Thomas, esq

The Periodical Valuation of the Policies effected with this Society, on the Participating Scale, was announced at an Extraordinary General Meeting, held 16th June, 1852, and the following then declared—viz a sum equivalent to a cash bonus of 20 per cent on policies of five years' standing and upwards, to be appropriated, at option, either in diminution of premiums, until next division of profits, or as a permanent addition to the Policies.
E. F. LEEKS, Secretary

FAMILY ENDOWMENT LIFE ASSURANCE and ANNUITY SOCIETY,

12, Chatham-place, Blackfriars, London.
CAPITAL, 500,000l.

DIRECTORS.
William Butterworth Bayley, esq Chairman.
John Fuller, esq Deputy Chairman

Lewis Burroughs, esq	Edward Lee, esq
Robert Bruce Chichester, esq	Colonel Ouseley
Major Henderson	Major Turner
C. H. Latouche, esq	Joshua Walker, esq

The periods of Valuation are now An[illegible] d of Septennial
The BONUS for the current [illegible] reduction of the Premium to parties who have made Five Annual Payments or more on the Profit Scale
Endowments and Annuities granted as usual

INDIA BRANCH
The Society has Branch Establishments at Calcutta, Madras, and Bombay

** Tables of Rates, both English and Indian, can be had on application at the Office.
JOHN CAZENOVE, Secretary

CHURCH of ENGLAND LIFE and FIRE ASSURANCE INSTITUTION

5, Lothbury, London.—Established 1840 Empowered by Special Act of Parliament, 4 & 5 Vict. cap 92

LIFE.

The attention of the Clergy, and also of Schoolmasters, and the public in general is particularly directed to the plan of the MUTUAL BRANCH of this Institution, in which complete security is combined with the highest attainable economy. The holders of Policies are fully protected from all LOSS and LIABILITY by the Subscribed Capital of One Million Sterling, in addition to the large fund accumulated from the Premiums on upwards of 3,000 Policies.

At the Division of Profits in 1848 a BONUS of Fifty six per cent on the Premiums paid was declared, and the equivalent reduction varied from Twenty five to Forty per cent on the Premiums payable until the next Division of Profits in 1853

FIRE

Premiums for Assurance against Fire are charged at the usual moderate rates, with a reduction of 10l per cent on the RESIDENCES and FURNITURE of CLERGYMEN, and the BUILDINGS and CONTENTS of CHURCHES and CHURCH SCHOOLS

Prospectuses, the necessary Forms, and every requisite information for effecting Assurances may be obtained on application at the Head Office as above, or to any of the Agents of the Company.
WM EMMENS, Secretary

** All applications for Agencies in those places where the Company have not yet appointed Agents to be addressed to the Secretary

PROMOTER LIFE ASSURANCE and ANNUITY COMPANY,

9, Chatham-place, New Bridge-street, London. Established in 1826 Subscribed capital, 240,000l

The Right Hon W. G. Hayter, M.P.	Robert Palk, esq
Johnstone	John Lewis Prevost
John Towgood Kemble, esq.	Samuel Smith, esq.
John G. Shaw Lefevre, esq C B F R S	Le Marchant Thomas

TRUSTEES
John G. Shaw Lefevre, esq C B F R S, Charles Johnston, esq; and John Deacon, esq

The recent investigation into the affairs of this company shows the following to have been its financial position at the end of last year

Value of Assets	£528,079 11 11
Value of Liabilities....	249,4[illegible]
Surplus .	£278,6[illegible]

And there has just been declared on the beneficial policies (in addition to former bonuses) a bonus in ready money, varying [illegible] to 30 p[illegible] the premiums received, which is equivalent to a [illegible] on a [illegible] dition of from 40 to 60 per cent

The Office effects assurances on most favourable terms, both on the bonus and non bonus systems.

[illegible] les of [illegible] other particulars, may be obtained at the Office.
MICHAEL SAWARD, Secretary.

ALBERT LIFE ASSURANCE COMPANY.

Established 1838.
Principal Office, 11, Waterloo-place, Pall-mall, London.

Indisputable policies.

Assurances, annuities, and endowments granted, and every other mode of provision for families arranged.

Half the annual premiums for the first five years may remain on credit for any period until death, on payment of interest at five per cent. per annum

Parties allowed to go to or reside in most parts of the world without extra premium.

Naval and military lives, not in active service, assured at the ordinary rate.

Policies forfeited by non-payment of premium revivable at any time within six months, on satisfactory proof of health, and the payment of a trifling fine.

Policies on the life of another secured, notwithstanding the part of the world to which the assured may go.
HENRY WILLIAM SMITH, Actuary and Secretary.

NO CHARGE FOR POLICY STAMP.

ENGINEERS', MASONIC, and UNIVERSAL MUTUAL LIFE ASSURANCE SOCIETY.

Head Office, 345, Strand, London. Branch Offices, 183, Friar-street, Reading; 1, Clarence-street, Princes-street, Manchester; and New-street, corner of Cannon-street, Birmingham.

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No entrance-fee for admittance.
Medical referees paid by the Society.
Assignments of policies registered free of charge.
Credit for half the premiums during the whole of life.
Claims promptly paid.
Attendance at the office daily from 10 to 5; on Saturdays from 10 to 4, when assurances may be effected
ANTHONY PECK, Assistant Actuary.

SHOOTING SEASON.—B. COGSWELL, Gun,

Rifle, and Pistol Maker, of 224, Strand, near Temple bar (Established 1770), begs to inform gentlemen his Stock for the Season comprises a large variety of best Guns by the following eminent makers:—Purdey, Lancaster, William Moore, Charles Moore, Forsyth Manton, Ross Westly Richards, and many others. A pair of very best Guns, by John Manton, in case complete. Joyces and Eleys' Sporting Ammunition. Sykes' Shooting Apparatus of every description

A large Stock of Second-hand Guns, well adapted for keepers, from five guineas each.

A liberal allowance in cash or exchange for superior work of every description.

SHOOTING SEASON, 1852.—F. JOYCE'S

Anti-corrosive PERCUSSION CAPS.—Sportsmen are respectfully informed that these Primers, which have stood the test of thirty years' trial, and used exclusively by the first Shots in the kingdom, are still manufactured on scientific principles and with the best composition and machinery, no expense being spared to render them worthy of the distinguished patronage they have so long received, may be obtained as usual of all respectable Gunmakers in the United Kingdom. To prevent accident and disappointment to purchasers, from the use of spurious imitations they are requested to observe the name and address of "F JOYCE, ORIGINAL INVENTOR and SOLE MANUFACTURER," on each sealed packet, without which they are not genuine. This precaution is rendered necessary, by some unprincipled individuals having imitated the labels and wrappers. JOYCE'S Improved Wire Cartridges and chemically-prepared Waddings of a superior description.—Wholesale Warehouse, 57, Upper Thames-street, London

GUTTA PERCHA TUBING.—Many inquiries

having been made as to the Durability of this Tubing, the Gutta Percha Company have pleasure in drawing attention to the following letter, received

FROM MR. C. HACKER, SURVEYOR TO THE DUKE OF BEDFORD:
"Office of Works, Woburn-park Jan 10, 1852.

"In answer to your inquiries respecting the Gutta Percha Tubing for Pump Suctions, I find that the water has not affected it in the least, although it will eat lead through in two years; we have adopted it largely, both on account of being cheaper than lead, much easier fixed, and a more perfect job.
"Yours &c. C. HACKER."

N B. The Company's Illustrated Circulars, containing Instructions to Plumbers for joining tubes, lining tanks, &c will be forwarded on the receipt of three postage stamps.
The GUTTA PERCHA COMPANY, PATENTEES, 18, WHARF ROAD, CITY-ROAD, LONDON,

TO FAMILIES REMOVING.—FURNITURE

and every description of property carefully PACKED, Removed, and Warehoused in extensive fire-proof well-ventilated Warehouses, at charges below any similar establishment. It is the most extensive depository of the kind, and the best adapted to its purpose. Estimates given free of cost. Separate rooms if desired. Every information and ample references on application to Mr HARRISON, at the Thames-bank Depository, Ranelagh-road, adjoining Cubitt's Pimlico-pier. Water-side Manufacturing Premises and Cellars to be Let.

GLENFIELD PATENT STARCH.—Used in

the Royal Laundry and Wotherspoon's Steam-made Confections. Sold by all grocers and druggists
Glasgow—R. WOTHERSPOON and Co 40, Dunlop street.
London—WOTHERSPOON and Co 40, King William-street, City.

PROFESSOR MUSPRATT to MR. ALLSOPP.

"I have carefully analysed samples of your Ales, and find they do not contain a particle of any injurious substance. I and my family have used your Ales for years, and with perfect confidence in their purity. I know the Pale Ale, prepared, as in your Brewery, under scientific surveillance contains a large quantity of nutritious matter, and the hop, by its tonic properties, gives a healthy tone to the Stomach"
"SHERIDAN MUSPRATT, F R S E
"Member of the Royal Irish Academy, and of la Société d'Encouragement."
"College of Chemistry, Liverpool."

ALLSOPP'S PALE or BITTER ALE may be

obtained in Casks of 18 gallons and upwards from the Brewery, Burton on Trent; and from the undermentioned Branch Establishments:—

LONDON—at 61, King William-street, City
LIVERPOOL—at Cook
MANCHESTER—at Ducie-place
DUDLEY—at Burnt Tree
GLASGOW—at 115, St Vincent street
DUBLIN—at Ulster Chambers, Dame street
BIRMINGHAM—at Market Hall

It is also supplied by the most respectable dealers throughout the Country either in casks at the same prices as if direct from the Brewery, or in bottles, and whose addresses will be forwarded to [illegible] ate Consumers, on application to the Brewery, Burton-on-Trent

RUPTURES.—BY ROYAL LETTERS PATENT

THE MOC-MAIN LEVER TRUSS is allowed

by upwards of 200 Medical Gentlemen to be the most effective invention in the curative treatment of Hernia. The use of a steel spring so often hurtful in its effects, is here avoided; a soft bandage being worn round the body, while the requisite resisting power is supplied by the Moc-Main Pad and Patent Lever. Fitting with so much ease and closeness, it cannot be detected, and may be worn during sleep. A descriptive circular may be had and the Truss (which cannot fail to fit) forwarded by post, on the circumference of the body two inches below the hips being sent to the Manufacturer, Mr WHITE, 228, Piccadilly

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THE LAW TIMES,

FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

VOL. XIX.—No. 494.] SATURDAY, SEPTEMBER 18, 1852. [*Price* 1s.

Money, Wanted and to Lend.

MONEY.—4,000*l*. Trust Money ready to be advanced at Four per cent. on freehold property, for a term of years (if required).—Apply, by letter, only, to Mr. FREDERICK WEST, Solicitor, 18, Gresham-street, City.

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A GENTLEMAN who passed his examination as a Solicitor in 1851, and has since spent some time in a conveyancing Barrister's chambers, wishes to engage himself as a Managing Clerk in an office in London, with the occasional superintendence of the principal; he would undertake the conveyancing department, and also assist in the general business of the office.
Letters to be addressed to "L W." Messrs HODGKINSON and Co. 213, Upper Thames street.

LAW.—Wanted by the Advertiser, who has recently completed his articles, a Situation as Conveyancing or Assistant-Conveyancing Clerk. He has had some experience in County Court and Justices' Business, having been in the office of a County Court Clerk and of a Clerk to Justices. Most satisfactory references can be given.
Address, "B. A." care of Mr. HEATH, 497, Oxford street, London.

LAW.—A Situation in a Country Office is wanted by the Advertiser, aged 25, who has had considerable experience in Conveyancing, and the general routine of Practice. He is also competent to take the entire management of a County Court Office, and can assist in Magisterial Matters. Salary, 100 Guineas.
Address, "O. I." (No. 494), LAW TIMES Office.

LAW.—An efficient Conveyancing Clerk, who is willing to make himself generally useful, wishes for Employment with or without the assistance of the principal.
Address, "X." 21, LAW TIMES Office, 29, Essex-street, Strand.

LAW.—Wanted, by a Gentleman thoroughly conversant with his Profession, an Engagement in a Country Office of good practice, to take the charge of the Conveyancing Department. Satisfactory references as to respectability and ability afforded. Salary required, 150*l* per annum.
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Letters to be addressed to "H. B." care of Messrs. MOURILYAN and ROWSELL, 2, Verulam-buildings, Gray's Inn.

WANTED, in an office of extensive practice in Lancashire, where the business is for the most part conveyancing, an intelligent middle aged Clerk, of good address. He must be competent to draw drafts, undertake the general routine of office duties, and advise with clients in the absence of the principals. No one who has been articled need apply, and unexceptionable references will be required.
Application may be made by letter, addressed to "A. B." care of FRANCIS JAMES, Esq. 1, Brick-court, Temple, London.

LAW.—Wanted immediately, a Clerk, thoroughly competent to make out Bills of Costs for delivery or taxation. No one need apply who has not been similarly occupied in an office of extensive practice in the various departments of the business of a Country Office.
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Thick Superfine ditto, 17s. 6d.—A splendid article.
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Ditto, Large and Thick Cartridge, 5 quires for 8s 6d. or 32s per ream.
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Further particulars may be obtained from J. W. CUNNINGHAM, Esq. Secretary of the College.
Sept 1852. R. W. JELF, D.D. Principal.

OWEN'S COLLEGE, MANCHESTER.—(In connection with the University of London.) Session 1852—3. The College will OPEN for the SESSION 1852—3 on MONDAY the 4th of OCTOBER next, and the Examination previous to the admission of proposing Students will commence on that day, and be continued on following days at ten o'clock, A.M. at the College. The session will terminate in July 1853.
Courses of instruction will be given in the following departments.—
Comparative Grammar and English Language and Literature, Professor A. J. SCOTT, A.M. Principal.
Logic, and Mental and Moral Philosophy, Professor A. J. SCOTT, A.M.
Language and Literature of Greece and Rome, Professor J. G. GREENWOOD, B.A.
Mathematics and Physics, Professor ARCHIBALD SANDEMAN, A.M.
History, Professor J. G. GREENWOOD, B.A.
Chemistry, and its application to the Arts &c. Professor EDWARD FRANKLAND, Ph. D. F.C.S.
Chemistry Analytical and Practical, with Manipulation in the Laboratory, which is fitted up with every requisite convenience for the prosecution of this department, Professor EDWARD FRANKLAND, Ph. D. F.C.S.
Natural History. The entire course occupies Two Sessions, the portions for the present Session including Zoology, and Human and Comparative Anatomy and Physiology, Professor W. C. WILLIAMSON, M.R.C.S.L.
French Language and Literature, M. PODEVIN.
German Language and Literature, Mr THEODORES.
Additional Lectures, on which the attendance of the Students is optional and without fees.
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On the Greek of the New Testament, by Professor GREENWOOD.
On the Relations of Religion to Ethics, by Professor SCOTT.
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BARLOW and ASTON, Solicitors to the Trustees,
Sept. 3rd, 1852. Town-hall-buildings, Manchester.

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MR. CROCKFORD begs to inform the Profession, that at the suggestion of many Solicitors he is making arrangements for the most prompt and perfect PRINTING of BILLS and PROCEEDINGS in EQUITY, as required by the new Rules.—The Compositors and Readers in the Printing-office of a Legal Journal being familiarized with the abbreviations used in offices, as well as with legal words and phrases, they will be enabled to print documents from the draft, without requiring a fair copy, and more easily and correctly than it can be done where these advantages are not found. A complete supply of uniform types, paper, and other apparatus, will be kept for the purpose, and arrangements made to secure correctness, speed, and secrecy.
LAW TIMES Office, 29, Essex-street, Sept. 17, 1852.

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A LETTER to the Right Hon. BENJAMIN DISRAELI, M.P. her Majesty's Chancellor of the Exchequer, in reply to several anonymous articles and letters in the *Times* and *Morning Chronicle* newspapers, respecting certain life assurance companies, established since the passing of the Act 7 & 8 Vict. By WILLIAM SWINEY, A.I.A. Actuary and Secretary to the Oak Mutual Life Assurance Company.
London: published by JAMES COOK, 51, Fenchurch street.

In 1 vol 12mo price 18s cloth,

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V. and R. STEVENS and G. S. NORTON, 26, Bell yard, Lincoln's inn.

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AN INDEX to the COMMON LAW PRO-CEDURE ACT of 15 & 16 Vict. c. 76 (passed June 30th, 1852), intituled "An Act to Amend the Process, Practice, and Mode of Pleading in the Superior Courts of Common Law at Westminster, and in the Superior Courts of the Counties of Lancaster and Durham." By G. W. THWAITES, Esq. of Lyon's inn.
The New Forms under the Act are partly ready.
London: J. S. HODSON, printer to the Court for Relief of Insolvent Debtors, 22, Portugal-street, Lincoln's inn.

JAPAN and the JAPANESE.—The CRITIC, LONDON LITERARY JOURNAL, of Wednesday last, contains Sketches of Japan and the Japanese—A German's Account of the Conductors of the London Press—Electricity and the Electric Telegraph—History of Trial by Jury—Biography of Nell Gwynn—Tales and Legends of Lubeck—A Frenchman's Opinion of England and the English—Macgillivray's History of British Birds—The New Fictions—The New Poetry—Summaries of Home and Foreign Literature—A Letter from Naples, and the Gossip of the Literary, Musical, and Artistic Circles. Office, 29, Essex-street, Strand. A copy sent on receipt of six penny postage-stamps.

Next week.

THE PRACTICAL STATUTES of the SES-SION of 1852. Edited, with explanatory Notes, copious Index, &c. by WM. PATERSON, Esq. Barrister-at-Law. Price 9s 6d cloth, 11s. half-calf, 12s. calf.

NOTE.—This work contains all the Statutes *verbatim* that can ever be required to be used by the English Lawyer, omitting the Irish, Scotch, and Colonial Statutes, so that the entire of the practical new law of the Session is comprised in a small volume, which can be easily carried in the pocket or bag. It is made of further utility to the Profession by a very copious Index.

Like volumes have already appeared containing the *Practical Statutes of the Session of* 1850, price 7s. 6d. and 1851, price 7s.

The volume for 1849 is in the press, and it is intended to issue the previous Statutes uniform with these, but excluding all the repealed Statutes and parts of Statutes, and adding Notes of all the Cases decided upon the construction of the Statutes contained in them, thus presenting the existing law with the judicial interpretation of it. Thus, the volume for 1849 will contain the New Bankruptcy Act, with all the Cases decided upon its construction.

The following Statutes will be given entire in the volume for 1852:—

Commons Inclosure Act.	Differential Dues Act.
Municipal Corporations Acts Amendment Act.	Property of Lunatics Act.
	Schools Sites Acts Extension Act.
Protection of Inventions Act, 1851 (Extension of Term).	Militia Act.
	Enfranchisement of Copyholds.
Copyright Amendment Act.	County Courts Improvement Act.
Poor Relief Act Continuance Act.	Trustees Act Extension Act.
Loan Societies Act Amendment.	Pharmacy Act.
Ecclesiastical Jurisdiction Act.	Corrupt Practices at Elections.
Stock-in-Trade Act.	Excise Summary Proceedings.
Application of Highway Rates to Turnpike Roads Act.	Woods, Forests, and Land Revenues Act.
Property-Tax Continuance Act.	Metropolitan Sewers Act.
Act for Re-assembling Parliament.	Nisi Prius Officers Act.
	Militia Ballots Suspension Act.
Wills Act Amendment Act.	Common Law Procedure Act.
Registration of Births, Deaths, and Marriages Act.	Secretary of Bankrupts' Office Abolition Act.
Apprehension of Deserters from Foreign Ships Act.	Commons Inclosure Acts Extension Act.
Industrial and Provident Societies Act.	Masters in Chancery Abolition.
	County Rates Act.
Protestant Dissenters Act.	Patent Law Amendment Act.
Appointment of Overseers Act.	Metropolis Water Supply Act.
General Board of Health Act (No 1 and No 2).	Metropolitan Burials Act.
	Improvement of the Jurisdiction of Equity Act.
Disabilities Repeal Act.	
Passengers Act Amendment Act.	Suitors in Chancery Relief Act.

London: JOHN CROCKFORD, 29, Essex-street, Strand.

DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES."

DAY.	PLACE.	AUCTIONEER.	WHEN ADVERTISED.	PROPERTY.
Wednesday, Sep. 22.	Mart.	Smith and Son.	Sept 18.	Leasehold Property at Paddington.
Ibid.	Ibid.	Ditto	Ibid.	Houses at Camberwell, Clerkenwell, &c.
Thursday, Sep. 23.	Ibid.	G. Hudson.	Sept. 11.	Valuable Policies effected with the Law Life Assurance Society.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

BROWNE.—On the 15th inst. at Sidney-place, Stamford-hill, the wife of Charles Browne, esq. barrister-at-law, of a daughter.

EVANS.—On the 6th inst. at No. 17, Southampton-buildings, the wife of James Cook Evans, esq. barrister-at-law, of a daughter.

GORDON.—On the 9th inst. at Gloucester-place, Hyde-park-gardens, the wife of J. Gordon, esq. barrister-at-law, of a son.

MARRIAGES.

COLLINGWOOD, William, esq. of Peterborough, to Georgiana, eldest daughter of George Game Day, esq. on the 15th inst. at St. Ives, Hunts.

DAVIES, Charles, jun. esq. solicitor, Southampton, to Louisa Maria, youngest daughter of the Rev H. J C Blake, of Birdham-parsonage, on the 7th inst at Birdham, near Chichester.

GREGORY, James Christopher, solicitor, of Chertsey, to Ann, youngest daughter of the late John Read, esq. on the 9th inst. at Chertsey.

OSLER, Timothy Smith, esq. of Lincoln's-inn, barrister-at-law, to Henrietta, second daughter of the late Robert Roscoe, esq. of Englefield-green, on the 14th inst. at Old Windsor.

ROBINSON, Joseph, solicitor, Hereford, to Jane Georgina, youngest daughter of the late James Buchanan, esq her Britannic Majesty's Consul at New York, on the 16th inst. at Kingstown.

TEMPEST, Charles, esq. solicitor, Leeds, to Martha, third daughter of the late Frederick Crosland, esq. Montreal, Canada, on the 7th inst. at Grainthorpe, Lincolnshire

WYLDE, Samuel John, esq. barrister-at-law, eldest son of Samuel F. Wylde, esq. barrister-at-law, to Georgina, only daughter of Edward Martineau, esq. on the 16th inst. at St. Michael's, Stockwell.

DEATHS.

COOK, George Simon, of No. 18, New Bridge-street, Blackfriars, solicitor, on the 12th inst. at his residence, No 70, Upper Norton-street, Regent's-park, aged 59

DOBSON, Elizabeth, relict of the late Richard Dobson, esq solicitor, Newcastle-on-Tyne, on the 4th inst. at No. 4, Eton-place, Plymouth, aged 83.

LEE, Rebecca, relict of the late Thomas Eyre Lee, esq solicitor, at Camden-lodge, Birmingham, on the 12th inst. aged 67.

PARKER, Thomas Hartley, eldest son of the late Thomas M Parker, esq. solicitor, of Deptford, on the 12th inst aged 14.

UNWIN, *Francis Henry, youngest son of the late Thomas* Unwin, esq. of Sawbridgeworth, Herts, on the 13th inst

NOTICES OF NEW LAW BOOKS

The Acts for Promoting the Public Health, 1848 to 1851. By CUTHBERT W. JOHNSON, Esq. Barrister-at-Law. London: Knight.

MR. JOHNSON has, in this volume, collected the Public Health Acts, to which he has subjoined some practical notes. An appendix contains a great deal of miscellaneous matter relating to sanitary questions, as the reports of the General Board and the evidence of various witnesses as to water and water-rates, the consumption of water, the quantities to be obtained, and the expenses of water-works; list of the districts to which the Public Health Act has been applied; and a large amount of interesting information on the agricultural value of sewage and land drainage water. It is a useful volume, and of wider interest than a mere law book.

We have received a number of pamphlets on legal topics, notice of which has been necessarily deferred until the busy season had passed away. We now briefly submit them to our readers. The *Law Magazine* for August contains some excellent articles, as usual, and abounds in variety. Among the most learned of them is an essay "on the Sale of Reversionary Interests;" one of the most interesting "a Chapter of Discussions on County Court Matters;" one of the most curious, a paper on "Cromwell's Statutes;" one of the most attractive that on "the Oxford University Commission;" and one of the most useful that on "The Enfranchisement of Copyholds." A ponderous pamphlet, containing the "Proceedings in the Court of Chancery, and before the House of Commons, in relation to the Norfolk Estuary Works," has been published, and a copy sent to us, but we can only announce the fact, caring nothing about the controversy. Mr. A. RIDGWAY, Notary, has published some "*Remarks on Notarial Evidence*," suggested mainly by evidence that was received in Dr. ACHILLI's case. It is an able collection and review of the law on this subject. Mr. W. COLLINS, Solicitor, has addressed to Lord BROUGHAM a letter "*On the Law of Insolvency*," in which he recommends various improvements, classified under sixteen heads: some are manifestly such; others are questionable. The same writer has addressed a letter to Lord CAMPBELL, "*On the Law administered in Ecclesiastical Courts over Wills and Administrations.*" He repeats the objections that have been so often raised against the existing system, and suggests various alterations. But there is only one cure, the entire abolition of these anomalous Courts and their absurd jurisdiction. Lord DERBY has promised that *this* shall be the *next* great Law Reform. *An Index to the Chancery Reform Acts*, printed the size of the Acts themselves, so as to bind with them, has been sent to us. It seems to be carefully and laboriously constructed. A pamphlet on *Scotch County Courts*, full of facts and arguments, demands for that country a general reform of the local Courts, and the assimilation of them to our own County Courts. It is powerfully written, and will doubtless make a stir in the legal circles on the other side of the Tweed.

JOURNAL OF PROPERTY.

MONEY MARKET.

ENGLISH FUNDS.	Sat.	Mon.	Tues.	Wed.	Thurs.	Fri.
Bank Stock	..	..	shut	..	229½	228†
3 ℔ Cent. Reduced Annuities	..	..	shut	.	..	..
3 ℔ Cent. Consols Annuities	..	100	99⅞	99⅞	99¾	100
Consols for Account	100	100⅛	100	99⅞	99¾	100⅛
New 5 ℔ Cent. Annuities	..	..	..	.	..	..
New 3¼ ℔ Cent. Annuities	..	..	..	..	..	..
Long Annu (exp Jan. 5, 1860)	..	..	shut	..	..	..
Do. 30 yrs. (exp Oct. 10, 1859)	..	..	shut	..	..	..
Do. 30 yrs (exp Jan. 5, 1860)	.	..	7	..	..	..
India Stock	..	..	..		280	..
India Bonds (1,000*l.*)	..	..	84	87	..	87*
Do. do. (under 1,000*l.*)	87	84	84	87	84	..
South Sea Stock	..	..	..	..	..	..
Do. do. Old Annuities	..	..	shut	..	..	..
Exchequer Bills, 1,000*l.* June	70*	67*	70*	70*	67*	67*
Do. do. 500*l.* June	67*	..	70*	75*	67*	67*
Do. do. Small, June	67*	70*	..	75*	67*	67*

* Premium. † For account.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Queen has been pleased to appoint Arthur Edward Kennedy, esq. now Governor of her Majesty's Settlements in the River Gambia, to be Captain-general and Governor-in-chief in and over the colony of Sierra Leone and its dependencies.

Her Majesty has also been pleased to appoint Major Luke Smyth O'Connor to be Governor and Commander-in-chief in and over her Majesty's settlements in the River Gambia and their dependencies.

GOVERNMENT INSPECTORS OF SCHOOLS.—The Committee of Council on Education have appointed the following gentlemen to be her Majesty's Inspectors of Schools:—The Rev. R. F. Meredith, M.A. rector of East Chalborough, Somerset, and vicar of Halstock, Dorset; the Rev. Robert Louis Koe, M.A. incumbent of St. Margaret's, Yalding, Kent; the Rev. John G. C. Fussell, B.A incumbent of Chantry, near Frome; the Rev. William Berley, M.A. incumbent of Chorley, near Manchester; and the Rev. Thomas Wilkinson, M.A. vicar of Stanwix, Cumberland.

CORRESPONDENCE.

COUNTY COURTS—COSTS—CONCURRENT JURISDICTION.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The case of *Norman* v. *Marchant*, reported in this month's number of the *Law Journal*, Rep. Ex. 256, leads me to suppose that where the cause of action arises wholly or in some material point within the jurisdiction of the County Court within which the defendant dwells or carries on his business at the time the action brought, notwithstanding the plaintiff and defendant reside more than twenty miles apart, the plaintiff is not entitled to costs in the Superior Courts, and that the Superior Courts have not concurrent jurisdiction within the meaning of the 128th section of the 9 & 10 Vict. c. 95, and the 13th section of 13 & 14 Vict. c. 61.

The 128th section seems to me to embrace three exceptions to the exclusive jurisdiction of the County Court, namely, where the plaintiff dwells more than twenty miles from the defendant—where the cause of action does not arise, &c. and where any officer of the County Court is a party on his own private account. These appear to me to be all separate and distinct exceptions, each one sufficient in itself to oust the exclusive jurisdiction of the County Court, and to make it imperative on the Court in which the action is brought, or a judge at chambers, according to the construction put upon the 13th section of the 12 & 13 Vict. c. 61, to allow to the plaintiff his costs.

I fear there is something in the background in the report of this case, and by which it was decided, which does not appear, or at all events, does not occur to me; as it is stated, however, I think it calculated to mislead; I will therefore thank you or some of your kind contributors to set me right.—

I am, sir, yours, &c.

Manchester. +

A correspondent, signing "An Attorney, Birmingham," has also made a similar objection to the report in the *Law Journal*. We agree with our correspondents, that the case of *Norman* v. *Marchant*, as reported, is not to be relied on as an authority. The 9 & 10 Vict. c. 95, s. 128, clearly gives concurrent jurisdiction to the Superior Courts, where the plaintiff dwells more than twenty miles from the defendant's, although the cause of action *did* arise within the jurisdiction of the County Court, wherein the defendant resides. The 13 & 14 Vict. c. 61, s. 13, as clearly gives the plaintiff his costs of proceeding in a Superior Court, where concurrent jurisdiction is thus given, and we are at a loss to discover how the Court of Ex. disposed of this argument. We may further remark, that the 15 & 16 Vict. c. 54, s. 4, by which the 13 & 14 Vict. c. 61, s. 13, is repealed, still gives the plaintiff his costs under the circumstances which are reported to have arisen in *Norman* v. *Marchant*.—ED. LAW T.

TRUST OF BATHS AND WASHHOUSES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In the town of D. certain of the inhabitants have subscribed and erected baths and washhouses upon land given for that purpose by one of them. A committee was appointed for carrying out the object in view, and such committee are now desirous of having the land and buildings vested in trustees, upon trusts for carrying out the intentions of the parties, and for the benefit of the town.

Can any of your readers inform me where I can obtain a precedent for a document of the kind required? If such a plan is not feasible, what will be the best course to pursue.

I am, Sir, yours, &c.

Sept. 16, 1852. A SOLICITOR.

CHAMBER BUSINESS OF THE COURT OF CHANCERY.—From the commencement of Michaelmas Term chamber business will be transacted in the Court of Chancery. This will be quite a new feature in Equity proceedings. By the 26th section of the new Act, abolishing the office of Masters (15 & 16 Vict. c. 80), it is provided that the business to be disposed of by the Master of the Rolls and Vice-Chancellors respectively, while sitting at chambers, shall consist of such of the following matters as the judge shall from time to time think may be more conveniently disposed of in chambers than in open court, viz.—applications for time to plead, answer, or demur; for leave to amend bills or claims; for enlarging publication, and also applications for the production of documents; applications relating to the conduct of suits or matters; applications as to the guardianship and maintenance of infants; matters connected with the management of property, and such other matters as each such judge may from time to time see fit, or as may from time to time be directed by any general order of the Lord Chancellor.

No successor has yet been appointed to the late Mr. Porter, in the office of Joint Secretary to the Board of Trade. Mr. M'Culloch, of the Stationery Office, has been named, among several other gentlemen, as one very likely to obtain this valuable appointment.—*Observer*.

BILLS IN CHANCERY.—From the 1st of November the practice of engrossing bills on parchment is to be discontinued, and a printed bill is to be filed instead in the Court of Chancery.

DEVONSHIRE, near SOUTH MOLTON.—Valuable Freehold Estate.

MR. W. H. HEWITT will SELL by AUCTION, at the AUCTION MART, London, on THURSDAY, OCTOBER the 14th, 1852, at Twelve o'clock, in one lot, all that highly desirable FREEHOLD ESTATE, and celebrated Grazing, Dairy, and Sheep Farm, called Kitcott Barton, situate in the parish of Romansleigh, near South Molton, in the county of Devon; consisting of a convenient farm-house, with a most complete range of outbuildings and farm appendages, all in thorough repair, and about 524 acres of valuable water meadow, and rich pasture, arable, and orchard land, all within a ring fence. This estate is distant about sixteen miles from Tiverton; five miles from South Molton, on the new turnpike-road: and about the same distance from the Colleton Station, on the North Devon Railway. It is in the midst of a fine sporting country and beautiful scenery, and is approached in every direction by good roads. The attention of capitalists is directed to this property, which presents a rare opportunity either for occupation or investment, and is also well adapted for the erection of a country-seat.—Full printed particulars, with lithographic plans, may be had twenty one days before the day of sale, at the Fortescue Arms, Barnstable; the Three Cups Hotel, Tiverton; the George Hotel, at South Molton; at the Auction Mart; also of the Auctioneer, at his Offices, 11, Hart-street, Bloomsbury-square, London; at Rutter's Reading-room, Shaftesbury; and at the Office of J. Farley Rutter, Solicitor, Shaftesbury.

Leasehold Investments of a superior class, for terms of nearly ninety years, at low ground rents, in a favourite western part of London, offering very eligible properties for parties desirous of increasing their incomes upon excellent sound securities.

MESSRS. DANIEL SMITH and SON will SELL by AUCTION, at the MART, on WEDNESDAY, SEPTEMBER 22, in lots, a very valuable LEASEHOLD PROPERTY, comprising seven well-built houses, known as Western Villas, on the bank of the Regent's-canal, and nine ditto, distinguished as Clifton Villas, pleasantly elevated; two good houses at St. Mary's-terrace and Park-place, Maida-hill: all at Paddington, principally let, and to respectable tenants, at improved rents of above 1,200l. per annum; also an improved ground rent in the same locality.—Descriptive particulars may be had at the Mart; of Messrs. R. and W. G. Roy, Solicitors, 4, Lothbury; and of Daniel Smith and Son, Waterloo-place, Pall-Mall.

Long Leasehold Houses and improved Ground-rents, most amply secured, offering very eligible and safe investments for small capitals, situate near Camberwell-grove, and at Clerkenwell and Pentonville.

MESSRS. DANIEL SMITH and SON will SELL by AUCTION, at the MART, on WEDNESDAY, SEPTEMBER 22, at Twelve, in lots, several respectable LEASEHOLD HOUSES, held for long terms, viz.: Two capital Dwelling-houses, in Fountain-terrace, Camberwell-grove; Four in and near Lloyd-square, Pentonville, held for unexpired terms of sixty-nine years, at ground-rents less than one fourth of the actual rents; and a House in Brunswick-place, of which thirty-seven years are unexpired; also several improved Ground-rents, amply secured, for unexpired terms of sixty-nine and ninety-six years, upon eligible houses in Wharton-street, Clerkenwell.—Particulars may be had at the Auction Mart; of Messrs. R. and W. G. Roy, Solicitors, 4, Lothbury; and at Messrs. Daniel Smith and Son's Offices, in Waterloo-place, Pall-mall, when the houses may be viewed by permission of the tenants.

BOROUGH of DOVOR, in the COUNTY of KENT.—BIRCH, Mayor.—Notice is hereby given, that the Court of Quarter Session of the Peace, of and for the said Borough, and the Liberties of the same, will be holden before William Henry Bodkin, esquire, Recorder of the said borough, at the New Sessions House, of and in the said borough, on Thursday, the 14th day of October next, at the hour of Nine o'clock in the forenoon; at which time and place all persons bound by recognizance, or that have any other business to do at the said Session, are hereby required to attend.

The Grand Jury will be called and sworn at Ten o'clock in the morning, but appeals and any other business not requiring a jury will be called on at Nine o'clock precisely, and notice of every appeal intended to be heard must be given to the Clerk of the Peace two clear days at least before the Session.

LEDGER, Clerk of the Peace.

Dover, 11th September, 1852.

N.B. Persons having traverses to try at the said Session, are to give eight days' notice of trial, and the like notice is to be given in all cases of appeal not provided for by the 12th & 13th Victoria, chapter 45, or by any other Act of Parliament.

LANCASHIRE MICHAELMAS SESSIONS.—Notice is hereby given that the General Quarter Session of the Peace for the County Palatine of Lancaster, will be held at the Castle of Lancaster on Monday, the eighteenth day of October next, at ten o'clock in the forenoon, and by adjournment at the following places and times, viz.:—

At the Court House in Preston, on Wednesday, the twentieth day of October next, at ten o'clock in the forenoon.

At the New Bailey Court House in Salford, near Manchester, on Monday, the twenty-fifth day of October next, at ten o'clock in the forenoon.

And at the Court House in Kirkdale, near Liverpool, on Tuesday, the second day of November next, at twelve o'clock at noon, on which day County Business alone will be transacted, and the Court will then adjourn to Wednesday morning at ten o'clock, for the transaction of the ordinary business.

And that all business relating to the assessment, application, or management of the County Stock or Rate, will commence at such Sessions respectively at twelve o'clock at noon of the first day thereof.

All Business arising within the Hundred of Lonsdale is transacted at Lancaster, within the Hundreds of Amounderness, Blackburn, and Leyland, at Preston, within the Hundred of Salford, at Salford, and within the Hundred of West Derby, at Kirkdale.

All Appeals are entered with the Clerk of the Peace, and motions made to the Court respecting them on the first morning of the Sessions at each of the above-named places,—except at Kirkdale, when such proceedings are to take place on the second morning, and the trial of such appeals takes place at Lancaster on the first day,—at Preston, not earlier than Thursday, the second day,—at Salford, on Wednesday, the third day, and at Kirkdale not earlier than Thursday, the third day.

The attorneys engaged in prosecutions at the said Sessions are requested to take notice that all instructions for indictments are required to be sent to the Clerk of the Peace's Office four days at least before the said Sessions respectively.

GORSTS and BIRCHALL, Deputy Clerks of the Peace.

Clerk of the Peace's Office, Preston, 14th Sept. 1852

BOLTON BOROUGH SESSIONS.—Notice is hereby given, that the next General Quarter Sessions of the Peace for the Borough of Bolton, in the County Palatine of Lancaster, will be held before Robert Baynes Armstrong, Esq. M.P. Recorder of the said Borough, at the Police Office, Bowker's-row, within the said borough, on Thursday, the 7th day of October next, at ten o'clock in the forenoon, at which time and place all jurors, constables, police officers, prosecutors, witnesses, persons bound by recognizances, and others having business at the said Sessions, are required to attend. JOHN GORDON, Clerk of the Peace.

Clerk of the Peace's Office, Bolton, 17th Sept. 1852.

PROTECTION FROM RAIN.

D'OYLEY'S SCOTCH WOOLLEN WAREHOUSE. Established 1678. WALKER BABB, and CO.'S Registered Ventilating Waterproof and Llama Wool Overcoats 35s. and 40s. The most noted house in London for Over-coats, Box-coats, Boat-cloaks, Military and Opera Cloaks, Capes, &c.

Servants' Liveries of the best materials and at the lowest possible charges, for Cash. A large assortment of Scotch Woollen Suits and Tweed Trowserings, Irish Friezes, Eight-quarter and other Cloths, Table Covers and D'Oyleys.

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Just published, price 2s.; free by post 2s. 6d.

A BRIEF INTRODUCTION to the ARTS and SCIENCES, including Explanations of some of the PHENOMENA of NATURE. By WILLIAM MAVOR, LL.D. with Notes and Questions for Examination, forming a Pocket Cyclopædia. By — EVANS, Esq.

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London: Butterworths, Law Booksellers and Publishers, 7, Fleet-street.

BOOKS OF PRACTICE

THE ABSCONDING DEBTORS ARREST ACT, 1851 (14 & 15 Vict. c. 52). With Notes and Appendix, containing Forms of Affidavits on which to procure the Warrant to Arrest and the Writ of Capias from the Superior Courts; and also Forms of the other Proceedings under the Statute. By ROBERT MALCOLM KERR, Advocate and Barrister-at-Law. Price 4s cloth. Recently published.

THE PRACTICE of INSOLVENCY under the PROTECTION ACTS (5 & 6 Vict. c. 116; 7 & 8 Vict. c. 96, and 10 & 11 Vict. c. 102); with the Statutes, Rules, Orders, List of Fees, the Forms (as adapted to the change of jurisdiction) and Cases decided up to the Present Time, including Numerous Decisions not hitherto reported; with Memoranda of the Duties of the Officers of County Courts in Insolvency. By David Cato Macrae, Esq. Barrister-at-Law. Price 21s cloth.

N.B.—This work has been revised throughout by the officers and practitioners in the Insolvent Court, and contains a great number of MS cases and notes of the judges.

"This work is one of the very best manuals we have met with on Insolvency practice."—Globe.

The LAW of EVIDENCE AMENDMENT ACT, with Introduction, Notes, and Index. By Edward W. Cox, Esq. Barrister-at-Law.

N.B.—This work is in two sizes, to bind up with text books, in 8vo to bind up with Taylor, Phillips, Starkie, &c. price 2s 6d, and in 12mo to bind with Roscoe, Archbold, &c. price 1s. 6d. Orders should state particularly which size is required.

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The different Writs of Summons, Renewal, and Modes of Service.
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Misjoinder and Nonjoinder of Parties to be amended in the course of Proceedings or at Trial.
Issues in Fact and Questions of Law raised of consent without Pleading.
The new Forms of Declarations, Pleas, Demurrers, New Assignments, &c.
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The Notice of Trial and Countermand.
Judgment for not Proceeding to Trial.
New Jury Process.
Notices to try by Special Jury.
New Practice as to Notices to produce and Admission of Documents.
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New Proceedings to revive Judgments, &c. by Writ of Revivor.
Suggestions of Death, Marriage, Bankruptcy, &c. to prevent Abatement of Action.
Suggestions of omitted Facts or Allegations on Motions in Arrest of Judgment, or for Judgment non obstante veredicto.
New Proceedings in Error, by Suggestion.
Bail, in Error.
Assignment of Errors in certain Cases.
Judgments of Courts of Error.

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New Writ of Ejectment and Service thereof.
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The Trial, and Questions for the Jury.
Execution on Verdict for Claimant.
Actions not to abate—Suggestion to be entered of Deaths, &c.
Ejectment by Landlord against Tenant for Nonpayment of Rent.
Ejectment by Landlord against Tenant holding over.
Provisions as to Mesne Profits.
Ejectment by Mortgagor against Mortgagee.
Compulsory Amendment of Defects and Errors in the Proceedings.
New Rules and Writs of Proceedings to be framed.
Injunction.
New Procedure applied to Counties Palatine.
New Procedure may be applied to all Courts of Record.
Schedule of Forms of Proceeding.

APPENDIX

Forms of Petitions, Affidavits, &c.

Note.—All the forms in ordinary and every-day use will be placed in their proper places in the Commentary upon the Statute. Forms in only occasional use will be inserted in the Appendix.

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(As settled by Counsel).

Nos.
1 Warrant to sue.
2 General Retainer.
3. Letter for Payment of Debt.
4 Præcipe for Writ of Summons.
5 Præcipe for Renewal of Writ.
6 Writ of Summons.
7. Writ of Summons to be specially endorsed for immediate Judgment.
8. Affidavit of Service of Writ.
9. Affidavit of Attempts at Service to obtain Leave to proceed.
10. Affidavit of no Appearance being entered.
11. Appearance Pieces, on parchment.
12 Declaration in Debt (under 20l.).
13. Declaration in Assumpsit (under 20l.).
14 Declaration in Debt, common Counts, Account stated, &c.
15. Declaration on Promises, Common counts, Accounts stated, &c.
16. Particulars of Demand.
17. Notice of Declaration, foolscap, half sheets, with Particulars. 4to with fly leaf, without Particulars.
18 Notice to produce Documents.
19. Notice to inspect and admit, 4to.
20 Notice to inspect and admit, foolscap.
21 Issue, where Questions are raised of Consent without Pleading.
22. Notice of Trial in London.
22 a. Notice of Trial in Middlesex.
22 b. Notice of Trial at the Assizes.
22 c. Notice of Trial and of Assessment of Damages.
22 d. Notice of Trial where several Defendants.
22 e. Notice of Trial where several Issues.
22 f. Notice of Trial and Assessment on Breaches in Debt on Bond.
23 Notice of Continuance.
24 Notice of Countermand.
25. Notice of Execution of Writ of Inquiry.
26. Affidavit of Service and Attendance on Summons.
27 Consent to Judge's Order.
28. Subpœna ad Test: Parchment and Paper.
29 Subpœna before Sheriff: Parchment and Paper.
30 Subpœna duces tecum for the Assizes.
31. Subpœna duces tecum "before the Sheriff." Parchment and Paper.
32 Cognovit for Payment of Debt.
33. Ditto by Instalments.
34. Warrant of Attorney to confess Judgment.
35 Notice to Quit where Tenancy uncertain.
36. Notice to Quit where Tenancy certain.
37 Warrant of Distress.
38. Notice and Inventory of Distress.
39 Notice of Intention to Distrain for Arrears of Tithe Rent charge.
40 Notice by Agent of Intention to Distrain for ditto.
41 Warrant of Distress.
42. Writ of Ejectment.
43 Writ of Ejectment, Landlord against Tenant holding over.

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